Placing Mobile Identities: Freedom to Wander and the Right to Travel in Early Modern Spain and Spanish America

by

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Declaration

I, Beatriz E. Salamanca, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.
To my parents
Abstract

Urban growth and the unprecedented expansion of imperial Spain sparked a sense of constant fluctuation and anonymity that challenged early modern categories of belonging and space demarcation. The Spanish crown claimed a monopoly which sought to exclude tentatively defined foreigners, and in the peninsula, urban growth encouraged measures to identify and restrict the presence of the ‘undeserving’ poor. Nascent frameworks of legal identity exacerbated a public discourse of suspicion against constant motion and the ‘undocumented’, and this interaction between mobility and emerging techniques of identification has an intellectual history that has not received sufficient attention. The Dominican theologian Francisco de Vitoria controversially oscillated between the ethical defence of hospitable behaviour and a notion of ‘openness’ permeated by the language of the rights of ‘nations’. His disciple Domingo de Soto more openly challenged current measures by insisting on the limits of any attempt to create fixed definitions of poverty and legitimate movement. This research explores how movement was both monitored and discussed in a highly mobile world of fragile categories of identity and fragmentary and porous boundaries. It inquires how different narratives of identity and belonging were articulated in regulations and legal cases, and examines their influence on intellectual debates about hospitality and kindness to strangers in both transatlantic and local frameworks. In this context, I intend to offer new insights on the means through which nebulous identities and mechanisms of identification were incorporated to an emerging bureaucracy of movement, and contribute to a better understanding of how these practices helped shape the terms in which freedom of movement was advocated or objected. This research claims that the discursive ambivalence of notions like the right to travel or the itinerant-undeserving poor, exposed a climate of resistance to an emerging bureaucracy of identification and increasing mobility regulations.
Impact Statement

This research incorporates social, cultural, legal and intellectual history approaches, which illuminate how highly malleable and flexible categories of identity obstructed emerging processes of legal identification and state formation. It offers an entangled approach to the history of mobility regulations and identification by integrating concrete practices and ideas about movement. It goes beyond purely intellectual frameworks, examining practices of identification and legal cases containing the perspectives and claims of both travellers and local authorities, while also looking at the different ways in which these policies and practices shaped and were shaped by ideas. This research pursues perceptions and conceptions of movement through their incomplete terminology, and claims that undefined notions of ‘legitimate poverty’ and ‘Spanishness’ obstructed royal administration’s emerging policies of migration. Francisco de Vitoria’s defence of the universal duty to behave kindly to strangers is contrasted with increasingly stringent transatlantic mobility regulations, but also with travellers’ defiant practices resisting the establishment of fixed classifications. Meanwhile, the slow implementation of begging licences for the itinerant poor conveyed a climate of resistance expressed in Domingo de Soto’s critique of policies based on rigid definitions of poverty and legitimate movement.

The fear and mistrust of strangers continue to haunt us today, and the line separating hospitality from hostility often remains obscure. The current migration crisis has challenged the nation-state’s capacity to cope with large scale displacement, reactivating anxieties about knowing and naming newcomers. Current policies and technologies of identification do not suffice to answer the pressing ethical questions about the rights of locals and strangers, making it critical now more than ever to gain historical perspectives on the different ways that ideas of movement have been conceived, debated, and transformed. With this in mind, this project seeks to offer insights that are relevant not only within but beyond academia: to enrich the discussion and formulation of policies, to offer historical perspectives to humanitarian organizations, and to influence public discourse. To this end, this project can be disseminated to a wide audience through lectures, seminars and publications, as well as through activities of public engagement such as radio programmes, public debates, collaborations and exhibitions.
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Note on the Translations:

All translations, unless otherwise noted, are my own.
‘What men, what monsters, what inhuman race... Shut up a desert shore to drowning men, and drive us to the cruel seas again?’


‘Ideas are the most migratory things in the world’

Introduction

The Global Hispanic World

The Spanish Empire reached unprecedented dimensions in the sixteenth century, encouraging an enormous flow of peoples, goods and ideas. It was estimated that about 450,000 Spaniards officially travelled to America between 1500 and 1650. Studies on illegal migration have suggested, though, that these numbers were significantly higher.\(^1\) At the local level, and as a result of high mortality rates, early modern cities relied on a constant influx of newcomers to maintain their size and growth. During the sixteenth and early seventeenth century, the population of Seville grew almost five times, increasing from 25,000 to 120,000 inhabitants, alongside Madrid’s population which reached 130,000 by the mid-seventeenth century, a figure nonetheless dwarfed by London’s population which grew from 40,000 to 400,000 across the same period.\(^2\)

In this context, most residents of heavily populated cities were likely to have been born outside those cities. Migration accounted for a large percentage of most early modern cities’ population, frequently surpassing birth rates.\(^3\)

The early modern revolution of space would anticipate what Carl Schmitt saw as the first planetary basic order, a result of new ship-making techniques and the development of more complex navigational instruments.\(^4\) The first immediate and permanent trade connection between America and Asia was established in 1571 when the city of Manila was founded. Eighty percent of the world’s silver was being produced in Spanish America and it was shipped directly from Acapulco to Manila and then into China, with an enormous impact on global trade.\(^5\)

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the sixteenth century as the era when world trade had begun, making reference to the discovery of America and the discovery of the passage to the East Indies as the most important historical events of all. In his view, ‘by uniting, in some measure, the most distant parts of the world, by enabling them to relieve one another’s wants, to increase one another’s enjoyments, and to encourage one another’s industry, their general tendency would seem to be beneficial’. Smith described these events’ contribution to forging communication networks and links of mutual aid and exchange, but he also recalled the ‘dreadful misfortunes’ which then prevented an equal interaction between natives and Europeans.

Intellectual historian David Armitage has insisted on looking at the sixteenth century as a period of global interconnectedness, as one among multiple and discontinuous precedents of globalisation. Increasingly popular visual representations of the terrestrial globe made reference to worldly knowledge, but also manifested its political connotations. The globe in Hans Holbein’s *The Ambassadors* of 1533 famously depicted the French claims to Brazil, and Queen Elizabeth 1588’s *Armada Portrait* commemorated the defeat of the Spanish Armada, while insinuating her claims to the world. But images of imperial aspirations entwined with a sense of global awareness were not exclusive to Europe. Asian emperors and monarchs would also portray themselves standing on the globe, as was the case with *Jahangir’s Dream* of 1618. There, the Mughal emperor was portrayed embracing his opponent, the Persian monarch Shah Abbas, as they both stood on the globe.

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Many historical accounts published in the sixteenth and seventeenth century incorporated this global approach. António Galvão’s *Tratado dos Descobrimentos* conveyed accounts of Sebastian Cabot, Christopher Columbus, Vasco da Gama, the journeys of the Portuguese in Southeast Asia, Hernán Cortés’ affairs in Mexico, and Pizarro’s expedition in the Andes. Sir Walter Raleigh’s *History of the World*, which in the end could only manage an account of English history, had the intention to address the global aspirations of both Turks and Spaniards. The indigenous historian Domingo Chimalpahín’s *Eight Relations and the Memorial of Colhuacan*, written in Nahuatl in New Spain between 1607 and 1637, decribed at great lengths the geographical features of Africa and Asia, and commented on recent European affairs like the assassination of Henry of Navarre in the streets of Paris. *The Essence of History* (1591-1598), written by Ottoman historian Mustafa Ali, incorporated an extensive discussion of American affairs.

Philip II was certainly well acquainted with this sense of the ‘global’. The prudent king had inherited from his father Charles V a vast empire marked by the motto: ‘*non sufficit orbis*’ – the world is not enough – expressing the extent to which territorial expansion knew no limits. This research engages with these unprecedented dynamics of mobility, triggered by emerging conditions of large scale connectedness. Yet, rather than a traditional study of migration, it pursues some of the ideas and concepts emerging in the process of acknowledging and making sense of the ethical and

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14 Domingo Chimalpáhin, *Las ocho relaciones y el memorial de Colhuacan*, ed. and trans. Rafael Tena (Mexico, Consejo Nacional para la Cultura y las Artes, 1998), 64–70. For more on sixteenth century authors who could be viewed as world historians see Subrahmanyan, “On World Historians,” 33-34.
15 Ottoman texts of the 1570s and 1580s offered accounts of the Americas seemingly based on sources like Lopez de Gomara’s *Historia general de las Indias* of 1553, Pietro Martire d’Anghiera’s writings and the *Map of all the Countries of the World* written in 1602 by the Italian Jesuit Matteo Ricci. See Subrahmanyan, “On World Historians,” 33-34.
political significance of increasingly itinerant subjects in a world of fragmentary and porous boundaries. It examines the notion of freedom of movement in key policies, practices, and discussions of transoceanic and urban mobility, and traces its reception in emerging bureaucracies of migration and identification.

High Degree of Mobility

Within the European context, authors like Jan De Vries, Leslie Page Moch and Leo Lucassen have insisted on the highly migratory character of pre-industrial society. This trend also applied to the Iberian world, where the processes of urbanisation and migration from rural areas took place in the context of a profuse population movement. Helen Nader’s study of the sale of towns during the Habsburg period suggests a high degree of inter-municipal mobility, as people moved to avoid diseases or overcrowded places. In some cases, entire communities would move from one place to another in search of better conditions. According to Bartolome Yun Casalilla, in 1530 more than forty ghost villages were found in Tierra de Campos, North of Valladolid, a situation that was not altogether unusual in many other regions, particularly near Seville. This agitated flow of people was not only triggered by economic motivations or the desire for adventure. Although Spanish soil was relatively free from armed conflict after the Revolt of the Comuneros in 1521, foreign policy had visible effects on domestic patterns of movement. Charles V’s confrontations with King Francis I, and Philip II’s armed conflicts with the Turks, the English, and the Dutch, triggered the mobilization of soldiers on a large scale.

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High mobility rates were not exclusive to the early modern period. Catherine Delano-Smith has described Medieval roads as full of movement, regardless of age, gender or social status. Moving around was a key survival strategy in a world where nature was harsh and hostile, forcing people to adapt to changing climate and soil conditions. Even those involved in farming moved about, taking their produce to faraway market places and fairs. Likewise, members of the clergy had to do a considerable amount of travelling, involving visits to Rome, summits, and missions. Ruling elites often experienced an itinerant lifestyle, as they constantly went away on military campaigns, peregrinations, and official visits to their different domains. Even from the afterlife, nobles and kings imposed long journeys upon their relatives and vassals, who were left in charge of transporting their remains to remote burial places. When Eleanor of Castile, wife of King Edward I of England died in 1290, her husband erected a cross on every stop from Lincoln to Charing Cross in London. This practice survived into the early modern period, with Juana the Mad bearing the coffin of her husband Philip the Handsome all around Spain. Her behaviour, which many interpreted as eccentric, was in fact rationally motivated: by attempting to bury her husband together with the Catholic kings, she sought to secure their son Charles V’s legitimate accession to the throne.

Movement had been a particularly notable feature among the royalty, who moved about with their itinerant courts throughout their territories. Medieval kings did not remain in the same place for long, nor rule from fixed capital cities. For economic reasons, it was more efficient to move the king and his retinue to places with food supplies. From a political perspective, the physical presence of the king was one of the best ways of making royal authority effective, all the more so given the low literacy rates. Medieval government was thus known as a government of the roadside. Some

records of Prince Pere’s itinerant courts moving around the kingdom of Aragon from 1261 onwards make reference to an entourage of about 150 men on horses and roughly 30 men on foot, encompassing cooks, hunters, priests, bookkeepers, doctors, and councillors.\textsuperscript{26}

The Catholic monarchs continued the medieval custom of moving around dispensing justice. The chronicler Fernández de Oviedo had praised the presence of the queen at the Alcázar in Madrid as both lower and upper classes were given the opportunity to access justice in itinerant public audiences.\textsuperscript{27} It was only in the 1480s that discussions about replacing the itinerant judicial system with a fixed one began to take place. In 1489, the ‘audiencia y cancillería’ found a permanent seat in Valladolid. A second court was created in Ciudad Real in 1494 and another permanently established in Granada in 1505.

Charles V was also an itinerant king. He was in Madrid when he signed the treaty that released King Francis I of France in 1526. His marriage to his cousin, Isabella of Portugal, took place in Seville a few months later, after which he went to his honeymoon in Granada, where he remained until the court moved to Valladolid next January. Charles’ tendency to move around within Spain followed the Catholic Kings’ steps, and proved to be advantageous in terms of obtaining the loyalty and devotion of Spaniards. Nevertheless, the court began to be more sedentary than the king, and the old custom of regularly holding public court went out of use. At some point, Charles began to implement the Burgundian-style household, where more than 700 people, including both high officers and members of staff, helped run the luxurious royal home.\textsuperscript{28}

The Spanish kingdoms had a long tradition of internal movement. Historians Claudio Sanchez-Albornoz and Henry Kamen have argued that the incomplete, or ‘immature’ version of feudalism in late Medieval Spain encouraged a higher degree of freedom of movement in the region. In Sanchez-Albornoz’s view, the Islamic invasion had

\textsuperscript{26} Miriam Cabré, \textit{Cerverí de Girona and his Poetic Traditions} (London: Tamesis, 1999), 21.
interrupted the development of rigid vassalage-like institutions of Visigothic Spain, allowing for a higher degree of movement. On the other hand, the Reconquista had also triggered movement through processes of migration and repopulation. Although medievalists have not yet reached full consensus on the extent to which feudalism developed in Spain, some of Sanchez-Albornoz’s insights are worth considering in terms of Spain’s history of movement. Regarding the Reconquista, he observed how, as an incentive to attract newcomers, many peasants were granted the status of free men, along with many other personal liberties, expressed in the 1188 charter of King Alfonso IX, and in municipal fueros. The result seemed, in many cases, the existence of free rural communities whose members, including those who did not work their own lands, enjoyed freedom of movement and other civil rights. Some of these territories began to be shared among different villages, encouraging settlers to move around seeking common pastures, arable land, firewood and lumber.

A 1325 ordinance in Valladolid recognised the freedom to move away from seignorial towns: ‘libertad de los vecinos de pueblos de señoríos para mudar su vecindad para los Realengos’. Likewise, a 1480 ordinance confirmed the freedom to migrate from different types of seignorial lands:

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‘Qualesquier personas que viven y moran en Qualesquier ciudades, villas y lugares destos nuestros reinos y señoríos, así de Realengo como de Abadengo, órdenes y Señoríos y Behetrías, que se quisieren pasar a vivir dellos a otros lugares y partes con sus bienes y hacienda, lo pueden hacer y a vecindarse en ellos, y sacar sus ganados, pan y vino y otros mantenimientos, y todos los otros sus bienes muebles... y ningún grande ni caballero no ge lo empache ni perturbe…’

The ordinance emphasised that anyone could move to any other city, town or village and take all their belongings with them without being prevented from doing so by grandees or noblemen. In contrast to the colonial project in the Americas, the Reconquista allowed for more open processes of repopulation which encouraged the arrival of Christians, but also non-Christians, non-vassals, and foreigners. Jewish settlers, who had been previously displaced by the Muslims, received as many incentives to return and repopulate the regions of the southern frontier. The resettlement process, particularly, encouraged the presence of foreigners and non-Christians, who could openly access citizenship rights. This openness and the availability of citizenship remained the case into the early modern period, but policies gradually introduced from the late fourteenth to the seventeenth century meant that, in practical terms, only orthodox Catholics could inhabit Castile. The expulsion of the Jews in 1492 was followed by decrees against the Morisco population, and their eventual expulsion in 1609–1612.

Spanish conditions of freedom of movement cannot therefore be narrated in linear terms. Flexible attitudes to movement were all the while counteracted by measures which punished ‘excessive’ mobility, as in the case of anti-vagrancy and anti-Gypsy legislation. The increasingly persecuted figure of the vagrant, in particular, expressed the importance of eventually settling down in a community where rights of citizenship were established through a long-term commitment to the place. Vagrancy was also an

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34 Novísima recopilación, ley 6, tít. 26, lib. VII, 570.
38 Page Moch, Moving Europeans, 27.
issue in the New World, where fear of people living like *derramados* led to policies to create fixed settlements and stable populations.

Early modern Hispanic history has predominantly approached issues of mobility from a legal and demographic perspective, offering important contributions to our understanding of migration trends and the legal status of foreigners, their origins, and occupations. Thanks to the vast collections of Pierre and Huguette Chaunu and Peter Boyd-Bowman from the 1950s and 1960s, we know the approximate number and origins of migrants to Spanish America, including classifications of specific groups such as clerics, merchants or women. These groups have also been the object of research by social historians, whose accounts have illustrated the ordinary lives of migrants and have offered great insights into the social and economic conditions of the societies they left and those they encountered. Examples of this approach can be found in the pioneering research of James Lockhart in his *The Men of Cajamarca* of 1972, and Enrique Otte’s edition of *Cartas privadas de emigrantes a Indias* of 1988. Other similar works include Ida Altman’s work on migrating communities and the development of cities, and Auke Pieter Jacobs’s insights on illegal migration.

Nevertheless, there are still many unanswered questions about the way in which movement and identity were discussed and conceptualised, and about the terms in which ethical and political aspects were brought into consideration. The intellectual history of these dynamics has not received the attention it deserves. In the Hispanic World’s great age of urban expansion and transatlantic voyages, little direct attention has been paid to the way in which different views about identity and hospitality were incorporated into practices and discourses about movement. How was the notion of

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41 Ida Altman, *Transatlantic Ties in the Spanish Empire: Brihuega, Spain, and Puebla, Mexico, 1560-1620* (Standford: Stanford University Press, 2000), and Jacobs, “Legal and Illegal Immigration” and *Los movimientos migratorios entre Castilla e Hispanoamérica durante el reinado de Felipe III, 1598-1621* (Amsterdam: Rodopi, 1995).
foreignness handled in trials against travellers captured on American shores? How did categories of ‘true poverty’ and ‘Spanishness’ shape scholarly debates on freedom of movement? These categories, at the heart of public policy and scholarly debates, were expressed in malleable and contingent ways, and their fluctuating meaning has a lot to say about the nature of early modern political power and the boundaries of its interaction with subjects and non-subjects.

Porous Boundaries

Medieval and early modern travellers would have their baggage checked in regions with more stringent fiscal regulations, or religiously motivated censorship policies, but this tended to be the outcome of specific circumstances and hardly ever operated on a permanent basis. Borders were not so obviously identifiable because of overlapping ecclesiastical, municipal and feudal jurisdictions, and in most cases, were not perceived as obstacles to the movement of people. A mound, a tree, or another landmark, might have indicated the presence of a boundary, but also an itinerary or a route. Charles Estienne’s *Le Guide des chemins de France* of 1553, an early modern travelling guide, made reference to a boulder and an elm as the crossing point between four separate provinces near Mat Saint-Paul. Estienne’s account offered physical descriptions of signposts that represented the boundaries between provinces but made no mention of customs officers or travelling restrictions. Another popular form was the engraving of coats of arms on stones. *The Diary of John Evelyn*, a chronicle of seventeenth-century life, described how the Duke of Tuscany’s arms, carved on a rock opposite an inn, signalled the confines of the Etrurian State. Coats of arms were often used as displays of sovereignty rather than check points. In other cases, boundaries were more specific about their role, as was the case with the Latin inscription carved on a stone at the border between the kingdom of Naples and the Papal states, directly addressing newcomers: ‘Stranger! Here are the borders of the kingdom of Naples. If

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you come as a friend, you will find everything at peace, fine customs and fine laws’. Instead of demarcating space as a barrier, this inscription encouraged the entry of peaceful newcomers. Rather than a territorial division, it demarcated a space of non-violence and peace that offered reciprocal terms to well-intentioned travellers.

In the thirteenth century, Christians and Muslims in the Iberian Peninsula lived alongside each other with rather diffused dividing lines. In Valencia, for instance, Christians occupied a fortress or a castle, surrounded by land cultivated by Moorish communities. There, Muslim regions were akin to enclaves, controlled by the Christian king of Aragon. As David Abulafia observes, ‘these regions were “bubbles” with an outer Christian skin, but Muslim air within’. During the Reconquista in Spain, it became extremely difficult to draw definite lines of demarcation. Ongoing fights over territories involved a continuous process of defining who was in charge. An ideal map of this period would have had to reflect multiple changes over time, while combining physical with political and demographic features.

The variable connotations of frontiers can also be seen through the changing perception of coastlines in Portolan charts which, in use since the late Middle Ages, linked ports and harbours together, providing sailing and navigation directions. Navigation in pre-modern societies had strongly relied on routes and itineraries made by previous travellers who would offer directions from one point to another, forming a line with connective rather than dividing connotations. In most cases, sea-journeys took place along coastlines, always in relation to certain landmarks and hazards like rocks or shallow waters, venturing into the open seas only occasionally. These coastlines were often perceived by migrating groups as lines along which they moved, and not necessarily as borderline between land and sea. Direct observation and the

46 Quoted by Maćczak, Travel in Early Modern Europe, 111.
48 This was not so much the case in Medieval Granada, which was surrounded by the sierra and by a chain of defensive forts. See David Abulafia, “Introduction: Seven Types of Ambiguity,” 11. Also Flocel Sabaté and Jesús Mestre i Campi, Atlas de la “reconquista”: la frontera peninsular entre los siglos VIII y XV (Barcelona: Península, 1998). On the Castilian-Granadan frontier see Robert Bartlett and Angus MacKay, eds., Medieval Frontier Societies (Oxford: Clarendon Press, 1992), particularly chapter 7 and 8.
knowledge accumulated from previous generations established frameworks for navigating by stars, which guided sailors through. Even in the early modern period, sailing tended to take place along rather than across the newly discovered seas, trying to remain as close as possible to the shore. The rare ventures offshore were often undertaken under the assumption that even in the open seas there would be islands or archipelagos which would guarantee safe stopovers. It was in this context that Columbus thought that what he had encountered could not have been other than an island.\footnote{See Edwin Hutchins, \textit{Cognition in the Wild} (Cambridge: MIT Press, 1995), particularly chapter 2, and John R. Gillis, \textit{The Human Shore: Seacoasts in History} (Chicago: University of Chicago Press, 2012), chapter 3.}

During the reign of the Catholic Kings, Galicia, Asturias, Leon, Castile, Murcia and Andalusia, shared common frontiers, as well as common legislation, currency, taxation and economic policies. In contrast, Navarre, Aragon, Catalunia and Valencia, united by the personal rule of Ferdinand, each had their own cortes and currency, and separate borders from Castile, represented through the so-called puertos secos (inland ports).\footnote{For more on puertos secos see José Larraz, \textit{La época del mercantilismo en Castilla, 1500-1700} (Madrid: Aguilar, 1963).} The establishment of common currency and borders would only take place under the Bourbons. Until then, bandits from Valencia, for instance, would take advantage of the Castilian frontier by crossing to the other side each time they wanted to get away from the authorities, who could not operate in the neighbouring kingdom.\footnote{Antonio Domínguez Ortiz, \textit{La esclavitud en Castilla en la Edad Moderna y otros estudios de marginados} (Granada: Editorial Comares, 2003), 176.}

The frontier between Spain and Portugal began to be demarcated in the thirteenth century with the Treaty of Badajoz of 1267 and Alcañices of 1297, but additional details about the frontier continued to be disputed until the nineteenth and twentieth century. Even though there was a territorial boundary already in the late fifteenth century, tensions between Spain and Portugal encouraged Portuguese elites to implement additional efforts to demarcate the frontier with greater precision and improve the capacity to defend the raya.\footnote{João Pedro Gomes, “Bajo el signo de Géminis: Portugal y la Monarquía Hispánica en los siglos XVI y XVII”, in \textit{Las vecindades de las Monarquías Ibéricas}, ed. José Javier Ruiz Ibáñez (México: FCE, 2013), 187-189.} Duarte de Armas’ \textit{Book of Fortresses of}
1509-1510 depicted every castle and praça de armas located on the boundary between the two kingdoms, a display of the strength of the Portuguese network of defences. Nevertheless, these images also depicted connective elements going beyond an exclusively militaristic interpretation of demarcations. They made reference to town dwellers occupied in daily activities, boats travelling along rivers, the movement of commerce, and depictions of fields and cattle (Fig. 1). A large percentage of the frontier lacked ‘natural boundaries’ capable of obstructing communication. This encouraged commerce and different forms of interaction. Laws against smuggling testify to the fact that the interactions between both kingdoms subsisted even at times of conflict, while public discourse strongly emphasised the existence of a frontier. The rivalries between the Spanish and the Portuguese crown did not necessarily imply antagonism among the inhabitants on either side of the frontier.

Fig. 1 Duarte de Armas, ‘Caminha’, Livro das fortalezas, 1509-1510. (detail)


55 For a reading of the Livro das fortalezas that goes beyond military architecture, highlighting elements that suggest greater interaction along the frontier, see Edison Bisso Cruxen, “O viajante Duarte de Armas e sua obra imagética sobre a Fronteira Luso-Castelhana (1509),” Oficina do Historiador 5 no. 1 (2012), 82-100.
In similar terms, the frontier between Spain and France was formally demarcated only in 1659, when both kingdoms began to become unified, territorial nation-states. Yet, the complete consolidation of the Pyrenees as a national linear boundary would only take place in the late nineteenth century, with the delimitations accords of 1868. The Pyrenees, with their 2500 meters average height and about 450 kilometres of extension, were crossed more easily at their extremes, where they lost height as they approached the sea. Crossing this mountain range gave place to different impressions. Some testimonies described numerous obstacles, while others described a smooth, uninterrupted passage. Bartolomé Joly, a French knight travelling through Spain between 1603 and 1604, narrates the story of the fugitive Cardinal Jean-François-Paul-Gondi de Retz who, while crossing the border into Spain from France was simply asked to pay the frontier’s fee as well as to declare the money, horses, and other goods in his possession. Likewise, in his Relation d’un voyage en Espagne of 1612, an anonymous traveller described a trouble-free passage into Spain, only

57 From Añalarra to the mouth of the Bidassoa River (treaty of 1856), from Navarre to Andorra (1862), and from Andorra to the Mediterranean (1866). See Fronteras e Historia. Balance y perspectivas de futuro (Badajoz: Gehsomp, 2014), 11-12.
59 Javier Liske and Félix Rozanski eds., Viajes de extranjeros por España y Portugal en los siglos xv, xvi, y xvii (Valladolid, Maxtor, 2010). Also Alfredo Alvar, “Viajes, Posadas, Caminos”, 116-7, 121-122.
recalling an isolated Spanish castle where a small toll was exacted. In contrast, in his *Journal du voyage d’Espagne*, the traveller François Bertaut described the great inconveniences of crossing the river Bidassoa in the Pyrenees, and the exorbitant fee *gabarra* (passage fee) he had to pay to the ferryman. But the Pyrenees were not normally seen as an obstacle or barrier. According to Tamar Herzog, mountains’ dividing connotations were stronger until herding became more widespread, and communities began to use upper mountains for pasture. Thereafter, the idea that mountains separated communities gradually dissolved. If anything, the mountains united them. Quite often, the Pyrenees were subject to contracts of free passage, also known as *lies et passeries*, equivalent to peace treaties regulating pastoral and agricultural issues and arranging mutual defence.

Mountain ranges only began to be used as ‘natural’ marks of political division in the seventeenth century. In his *Science de la géographie* of 1652, the Jesuit geographer Jean-François Foucquet made reference to mountains as ‘very strong walls and ramparts between kingdoms, sufficient to stop the progress of a conqueror and the armies of the enemy. Such are the Pyrenees between France and Spain’. Certainly, ever since Antiquity the Pyrenees would have been incorporated in narratives of demarcation, referred to as a landmark distinguishing the Gauls in space, but in the sixteenth and early seventeenth centuries the Pyrenees still lacked the role of legal or official border.

Foucquet’s reference to mountains as ‘very strong walls’, also evoked a sense of defence in military terms. But even in this context, most conflicts over boundaries sought to secure regions that guaranteed free passage, as opposed to imposing barriers.

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64 Quoted by Sahlins, *Boundaries*, 35.
As French historian Peter Sahlins has put it ‘natural frontiers were important to the French crown not as boundaries but as passages’. Mountains and rivers strongly evoked passageways that permitted the creation of strategic strongholds. Around the time of the Treaty of the Pyrenees, the French sought to keep a portion of the Cerdanya Valley, a key location that provided free passage into Catalonia. Unlike geographers, military leaders looked at mountains as passages rather than barriers. Securing a region was motivated by the need to guarantee free access, suggesting that mobility was a primary concern. Like Foucquet, the Jesuit geographer Philippe Labbé incorporated a language of natural frontiers with multiple purposes. His *Royal Geography Presented to Louis XIV* of 1646 made reference to the defensive significance of these landmarks, but also examined their meaning as boundaries and limits to the prince’s aggressive endeavours. An atlas from Cardinal Richelieu’s time presented geography as a discipline that studied the kingdom’s boundaries in order to instruct princes on the limits they should set to their ambition.

Prior to the early modern period, though, there was a stronger emphasis on waterways as points of demarcation or ‘natural’ frontiers. Up to the thirteenth century, the division between France and the Holy Roman Empire was marked by rivers. In Ortelius’ *Teatrum Orbis Terrarum* of 1570, the delimitating function of rivers was still being emphasised in exaggerated depictions. Like mountains, rivers suggested divisions but also connections and passageways. Political claims and military conflicts over these spaces were not always intended to impose barriers but also guarantee passage.

‘Natural’ frontiers served the purpose of protection and defence but were at the same time an extremely flexible and permeable category, which could even perform as an educational tool for sovereigns to learn the landmarks they should not surpass. As recent studies have pointed out, they marked physical divisions but also articulated all kinds of cultural, religious, artistic, or economic interactions. The French

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68 Sahlins, “Natural Frontiers,” 1433.
69 Mantecón and Truchuelo, “La(s) frontera(s) exteriores e interiores”, 21-22.
philosopher Etienne Balibar considered ‘natural’ frontiers a political myth, an attempt to naturalise a political concept, which assumes that, like the course of the river or the mountain chain, frontiers will forever be.70 Seas, oceans, mountains and rivers, often seen as rigid marks of division, are also spaces of unity and communication, and a common place of interaction. Rivers might divide one state from another but they are also frequently major conduits of freight and folk. Frontiers have played the role of obstacles or necessary limits, but they have also been the place of encounter between neighbouring communities, as well as routes and itineraries.71

Neo-Scholastics and Freedom of Movement

In a famous public lecture held at the University of Salamanca in 1539, the Spanish theologian Francisco de Vitoria (1485-1546) recalled Virgil’s account of the Trojans’ perilous approach to the coast of North Africa, echoing perennial concerns about the vulnerable condition of those tossed about by the waves and barred from all coasts. Through Virgil’s depictions of cruel seas and merciless shores, Vitoria lamented the absence of rights and laws required to provide a more humane reception towards newcomers. His reflections appealed to ideas about neighbourly love and universal brotherhood, and, more polemically, the need for legal frameworks to enforce such openness. The outcome of his discourse was a series of dichotomies, which on one hand fiercely defended the idea of freedom of movement and, on the other, appealed to a legal structure that gave priority to the Spanish and regulated movement at a global scale. Such statements arguably positioned Vitoria as the father of International Law, but also opened up long-lasting discussions about the ethical and political impact of regulated movement on a worldwide scale. Today, these debates have not reached full consensus, and the terms with which these tensions have been historically addressed remain more relevant than ever. How have we historically dealt with the uncertainties

brought about by strangers? What can Hispanic practices and narratives tell us about the early modern response to movement?

Vitoria was a leading figure of the so-called School of Salamanca, who contributed to the revival of Thomism and Scholasticism, using them as a basis for discussions in a wide variety of fields, including physics, philosophy, theology, economics, and political and legal theory. Many of Vitoria’s disciples also became prominent scholars, including Diego de Covarrubias (1512-77), Melchior Cano (1509-60), Fernando Vazquez (1509-66) and Domingo de Soto (1494-1560). Francisco de Vitoria’s lectures and Domingo de Soto’s publications incorporated a vast medieval heritage of philosophy, theology and legal theory surrounding the most pressing debates of the time, and addressing key controversial aspects of the Spanish conquest, the rights of native Americans and the power of both the emperor and the pope. Their views were sometimes highly regarded, sometimes censored. Vitoria’s opinions where occasionally requested by Charles V himself, and Soto served for years as the emperor’s personal confessor and was sent as his representative at the Council of Trent. The Dominicans also contributed to shifts in legislation, as in the case of the promulgation of Charles V’s Leyes Nuevas and Philip II’s amendments to the Poor Laws. Their views on imperial power were daring and provocative, even if not sufficiently confrontacional. The academics from Salamanca questioned the idea of world power and exposed its dangers. Yet, Vitoria’s and Soto’s debates about freedom of movement had unavoidable imperialistic connotations. The question at stake was not only whether freedom of movement was positive or desirable, but whose freedom was defendible and under which terms. Vitoria’s defence of the Spanish right to travel to the Americas and Soto’s reflections on the free movement of the wandering poor expressed many of the complexities involved, and exposed many of the uncertainties brought about by the arrival of newcomers.

Vitoria defended principles of global kindness and fellow-feeling, but formulated the right to travel as a Spanish prerogative. In contrast, Domingo de Soto undertook a more comprehensive approach. Reflecting on the poor migrants of sixteenth-century urban Castile, Soto claimed that they all had the freedom to wander wherever they pleased, denouncing the arbitrariness through which policy-makers intended to create fixed definitions of poverty and legitimate movement. Soto’s minoritary voice
condemned the spirit of the Spanish Poor Laws, and his *Deliberación en la causa de los pobres*, published in 1545 and dedicated to Philip II, proved to be highly influential through multiple publications and translations. Whether as a direct consequence or not, the Poor Laws were amended in 1565.

Many of the discussions of Vitoria and Soto gravitated around the question of who could legitimately claim the right to move freely and what sort of identity helped secure freedom of movement. In effect, the implementation of travelling and begging licences was permeated by the need to establish the ‘true’ identity of their holders by registering their physical and spiritual lives. The Spanish claimed a monopoly which sought to veil the American shores from their (not so easy to distinguish) European counterparts, and in the peninsula extramural growth provoked the development of measures to identify and restrict the presence of the ‘undeserving’ poor. Throughout the sixteenth century, the Spanish crown issued numerous decrees monitoring both transatlantic and local movement. Early into the imperial project, heretics, Jews, conversos, Moors, Moriscos, single women and foreigners were excluded from the right to travel. In similar terms, the Castilian Poor Laws of 1540 exacerbated categories of ‘true’ poverty, promoting licencing systems for beggars and excluding the foreign poor.

The Spanish Scholastic Francisco de Vitoria’s contributions to international thought have been the object of fruitful discussions ever since the 1928 publication of James Brown Scott’s *The Spanish Origin of International Law*, the post-colonial critiques of Antony Anghie and Martti Koskenniemi, and the most recent collection of essays fully dedicated to the Dominican: *At the Origins of Modernity: Francisco de Vitoria and the Discovery of International Law.* Both Vitoria and his disciple Domingo de Soto’s views on free movement and rights of hospitality have received attention in the works of Andreas Blank, Anthony Pagden, Georg Cavallar, Richard Tuck and Brian Tierney,

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as well as Lynda Martz and Jaime Brufau Prats. The study of freedom of movement as a category of the emerging ‘international’ realm has benefited from the remarkable contributions of Cambridge intellectual historian Annabel Brett, who in her Changes of State placed the Scholastics’ language of rights and liberty within the emerging discourses of statehood and global order, shedding new light on Soto’s international perspective and Vitoria’s references to the rights of ‘states’. Brett’s nuanced reading of both Soto and Vitoria’s key legal aspects has inspired my own research, which shifts the attention towards the impact of concrete mobility practices and identity categories on the Dominican theologians’ approach to hospitality and free movement.

This thesis goes beyond contextual readings of the Neo-Scholastics, and takes an ‘entangled’ approach that incorporates the voices of travellers, officers, and local authorities. Their testimonies complement the picture of the unique early modern experience of wandering from town to town and embarking overseas. With their perspective, we can build a better image of the subtleties and nuances with which contemporaneous scholars conceptualised the role of royal authority on migration. Mobile subjects raised questions about the interaction of categories like sovereignty and space, and as Lauren Benton has already observed, travellers acted as the crown’s agents, playing a fundamental role in the consolidation of colonial power.

Policies, practices and scholarly discussions about freedom of movement regularly informed each other. This research seeks to understand travel and movement during this preliminary stage in the development of the nation-state and its bureaucratic apparatuses. It examines how movement was monitored but also discussed in a climate of fragmentary and porous boundaries and precarious mechanisms of identification.

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The ideological and conceptual reception of changing dynamics of movement has an intellectual history that has not received sufficient attention. I argue that the political, legal, and ethical theories arising from scholarly debates about movement illuminate the meaning and scope of categories like ‘Spanishness’ or the ‘deserving poor’. The Dominican theologians actively engaged with these undefined and complex notions, showing the extent to which these categories were still too nebulous to be systematically implemented by policy-makers.

Mobile Identities

There has been increasing scholarly interest in early modern categories of identity. Identity’s (or rather ‘identities’) inescapably plural form has been deliberately emphasised as a response to fixed and ideologically driven narratives of ‘collective identity’. Works like Tamar Herzog’s *Defining Nations*, Harald Braun’s edited volume *The Transatlantic Hispanic Baroque*, and Antonio Feros’ *Speaking of Spain*, have insisted on the dialectical and malleable history of notions like ‘nationhood’ or ‘Spanishness’. In her *Defining Nations*, Tamar Herzog offered an extraordinary account of Spanish citizenship, expressing the extent to which categories of belonging were fundamentally and primarily forged at the local level. Legally speaking, there was no Spanish citizen, only ‘vecinos’ of specific towns and cities located within the Spanish kingdoms. Yet, claims to the unbounded territory of the Americas contributed to the construction of a colonial notion of Spanishness. The exclusive right to travel to the New World was attributed to the ‘natives of the kingdoms of Spain’, which constituted a sort of pan-Spanish community that regarded each other as alien or foreign vassals within Spain, but once abroad they acquired the unity that

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76 To the same extent that notions of identity have been more recently addressed in terms of ‘identities’, some historians have opted to express the idea of nation in its plural form as ‘nations’. On how ‘nation’ made reference to a concept which was ‘in the making’, see Xavier Gil Pujol, “Un rey, una fe, muchas naciones. Patria y nación en la España de los Austrias,” in *La monarquía de las naciones, patria, nación y naturaleza en la monarquía de España*, eds., Antonio Álvarez-Ossorio Alvariño and Bernardo José García García (Madrid: Fundación Carlos de Amberes, 2004), Harald Ernst Braun and Jesús Pérez Magallón, eds., *The Transatlantic Hispanic Baroque: Complex Identities in the Atlantic World* (New York: Routledge, 2011).


79 Herzog, *Defining Nations*, 11. See also Antonio Domínguez Ortiz, *Los extranjeros en la vida española y otros artículos* (Diputación de Sevilla, área de cultura y ecología, 1996).
differentiated them from non-Spaniards. According to Herzog, this pan-Spanish community first appeared in the context of the attempt to differentiate natives from foreigners for colonial purposes.80 Alison Games has pointed out similar issues in the context of British America, where some regions became British a long time before Britain itself.81

The influence of cultural aspects, religious affiliation and colonialism has been widely discussed. This research, instead, asks how Spanishness was incorporated to policies of mobility, while examining the different ways in which this undefined and complex notion defied the crown’s efforts to monitor movement. In the Americas, Spanishness was fundamental to policies of imprisonment, travel bans, collective expulsions, and relocations. Both peninsular and colonial authorities were involved in efforts to define Spanishness through administrative and judicial procedures, creating an incipient bureaucracy of identification. The Casa de Contratación in Seville and local authorities in the Americas expressed current anxieties about how to translate ‘mobile identities’ into fixed structures of legal identification. This research tracks the notion of Spanishness in migration policies and discussions and asks the extent to which this malleable category challenged policy.

In Peninsular Spain, an increasing emphasis on the distinction between the deserving and the undeserving poor was incorporated to legal initiatives that sought to monitor and restrict local migration. The Castilian Poor Laws of 1540 promoted the implementation of licences certifying that beggars’ poverty was ‘truthful’, and instigated local authorities to restrict their mobility. This research also addresses this local–urban migration, tracing different categories of identity among the poor, and examining their incorporation into policies of urban mobility. Here, too, emerging mechanisms of legal identification sought to incorporate these malleable categories and immobilise them both physically and conceptually. Domingo de Soto’s discussion of freedom of movement, in particular, shows how ‘mobile’ and flexible categories of

identity informed an emerging bureaucracy of migration and legal identification. But, more radically, these discussions show how awareness about the multifaceted nature of ‘true’ poverty accompanied the slow and scattered consolidation of bureaucracies of identification and poor relief.

Categories like Spanishness or the deserving poor gained greater relevance in early modern discourse but their boundaries were never fully defined. The notion of the ‘true’ pauper, increasingly framed in terms of physical impairment or old age, was challenged by economic conditions of unemployment and differing views of idleness. Likewise, the Spanishness of transatlantic travellers was constructed through multiple – yet inconclusive – perspectives: language and cultural unity, religious affiliation, citizenship, imperialism. This thesis asks how these categories of belonging shaped approaches to travel and migration, and claims that their flexible character helped to curb emerging tactics of legal identification. They motivated mobility regulations but their ambiguities became the principal obstacle for their implementation. This research tracks these plural and mobile identities in intellectual discussions on freedom of movement, as well as emerging bureaucracies of mobility and legal identification. By focusing on the role of mobility regulations and travel documents, it seeks to place the interaction between these ambiguous expressions of collective identity and formal-legal identification emerging in the context of increasingly controlled urban migration and transatlantic travel.

Legal Identification and Travel Documents

Works like John Torpey’s *The Invention of the Passport*, Mark Salter’s *Rights of Passage*, and Vincent Denis’ *Historia de la identificación de las personas* provide insightful long-term European genealogies of identification, but their main focus is the late eighteenth to the twentieth century. Similarly, while two important collections of essays – *Documenting Individual Identity*, edited by Jane Caplan and John Torpey, and *Identification and Registration: Practices in Transnational Relations* (Lynne: Rienner Publishers, 2003), and also Vincent Denis, *Historia de la identificación de las personas*, (Barcelona: Ariel, 2011).
Perspective, edited by J. Brown, I. About, and G. Lonergan—include valuable references to the early modern period, they also show the extent to which research on earlier stages remains marginal. Along the lines of recent research undertaken by Valentin Groebner and Edward Higgs in the European and English contexts, this project endorses the claim that the bureaucratic history of identification can be traced back to the early modern period.

Valentin Groebner has shown how, already in the late Middle Ages, a network of control posts spread throughout Europe, and even before the advent of photography and biometric data, authorities had no lesser strategies to keep track of people. This thesis incorporates these views, but shifts the attention away from predominantly Eurocentric and Anglocentric perspectives, examining these questions in light of the large-scale projects of travel regulation and identification in the sixteenth-century Hispanic World.

This research pursues the plurality of discourses through which freedom of movement was entangled with emerging mechanisms of identification. It addresses the Spanish crown’s increasingly stringent legal developments, but also incorporates bottom-up accounts that reveal the dead letter of these regulations’ means and aims. It shows how local authorities often struggled to keep up with royal decrees, and traces these measures’ reception at the core of scholarly debates. This amalgam of differing narratives and practices of movement cannot be expressed in linear terms. Yet, these malleable aspects constitute a fertile perspective from which to look at the terms in which variable discourses shaped and were shaped by emerging policies, while tracing

the extent to which their variable nature obstructed and delayed the establishment of national and international systems of migration and identification.

Medieval guiatges or safe conducts worked as a kind of letter of recommendation, a laissez-passer at the frontier, or a licence which identified its holder within a certain group. They were sparsely used and were granted to concrete individuals or groups to protect them from the actions of other authorities. The origin of safe conducts can be traced back to the Latin term guidaticum, which means to guide or to protect, so that safe passage is guaranteed. Medievalists such as Robert Burns and Gian Piero Bognetti have attributed the proliferation of these documents to the rapid urbanization of Europe in the eleventh century, where politically autonomous units created a stronger sense of awareness towards strangers and newcomers. Medieval safe conducts were often used by distinguished visitors and their retinue, but they were also used by different kind of visitors to enter a territory, transport merchandise, or even allow entry to the enemy to negotiate. At a later stage, safe conducts began to be also granted to people whose crimes had been forgiven, to debtors while they recovered their financial means, or to those who had participated in revolts but had received amnesty. In general terms, safe conducts were issued by the king or in the name of the king and were granted to ‘high and low’, men and women, subjects and foreigners, Christians, Muslims, and Jews. These written documents made it possible for their bearers to move around without being detained or subjected to judicial arbitrariness. Even though the monarchical powers of the early modern period were gradually gaining exclusive control over the right to grant passage, the full consolidation of this faculty was still a long way to go.

Medieval safe conducts were usually temporary, episodic and obeyed to particular circumstances. In his Book of Deeds, king James I of Aragon (1213-1276) described different circumstances in which he granted his Christian or Muslim enemies a guiatge. One of them had been the result of a negotiation process where the Muslims

87 Jesús Lalinde Abadia, La institución virreinal en Cataluña (1471-1716) (Barcelona: Instituto español de Estudios mediterraneos, 1964), 379-381.
88 Salter, Rights of Passage, 14-16.
had surrendered a region in exchange for safe passage. There are also surviving guiatge records of James I’s son, Peter III or Prince Pere, who granted passes to individual Saracen visitors on diplomatic missions containing instructions to treat them kindly and offer them guidance and protection. Other safe conducts involved large groups of Saracens returning to their homeland in the aftermath of war, and other passes were issued to protect people’s merchandise and possessions in their transit from one place to another.  

According to Valentin Groebner, one of the most substantial transformations in the history of identification took place in the mid-fifteenth century when travel documents began to acquire a more compulsory character and their use extended to more groups of people. In 1464, the French king Louis XI implemented the use of identity documents among the couriers of the royal system. These documents, which began to be called passeports, sought to trace every single one of the couriers’ journeys by keeping a register in a centralised passport office, establishing the long-lived connection between registers and travel papers.

During this same period, soldiers were also obliged to hold passports. The increasing number of mercenaries made it necessary to keep a register that could help prevent soldiers from trying to return home after their pay, skipping the battlefield altogether. In 1462, Louis XI made it compulsory for soldiers to obtain a passeport from their commanding officers in order to be allowed to go back home. Deserters’ lack of appropriate documents was then used as the living proof of unauthorized movement.

The implementation of mechanisms of controlled mobility was progressively applied to more groups of travellers during the fifteenth and sixteenth centuries. On top of the compulsory use of badges, pilgrims too were forced to carry a letter from their local priest or bishop informing whether they had official permission for their pilgrimage, as well as confirming their name and destination. Likewise, beggars would carry a letter confirming that they were authorized to solicit alms in some specific area,

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91 Groebner, Who Are You?, 171.
92 Groebner, Who Are You?, 172-175.
explaining the reasons for having fallen into poverty. According to Groebner, the prohibition to beg, together with the registration of the poor, was one of the most important steps towards the creation of the identity paper.\textsuperscript{93} These new documents emphasised the way in which their bearers were in a place where they were veiled from, as occurred with the soldier, the beggar, the pilgrim, or those trying to enter a city in time of plague.

As Antoni Mańczak has pointed out, an early modern traveller was potentially required to provide up to four separate documents. Some cities, particularly in the north of Italy, required a Health certificate or Health Passport, which became increasingly relevant as a compulsory form of identification. Alongside this, entry and exit permits were also often used.\textsuperscript{94} The implementation of these documents was not uniform and varied from one place to another. In 1470, travellers Anselme Adorno and Pierre Barbate wrote descriptions of two different experiences. While Adorno was required to obtain three separate documents, Barbate travelled with a single one all the way.\textsuperscript{95} In 1655, almost two centuries later, the French Antoine de Brunel related how he was told of the imperative to have a certificate from the Spanish customs in order to cross the border, but once he arrived, was asked no questions and crossed with no obstacles. In contrast, Madame d’Aulnoy, who was in possession of a passport issued by the king of Spain himself, was required to provide an additional customs certificate or \textit{billete} in order to be allowed free passage.\textsuperscript{96} Travel papers were also used for inland journeys in Spanish America. Some Jesuit missionaries travelled with safe conducts or \textit{salvoconductos} in New Spain, and these documents were also issued to members of indigenous communities, and recognised by their authorities. In 1645, the Jesuit missionary Andrés Pérez de Ribas described the efficiency with which Jesuit ‘passports’ worked: ‘pero en viendo los enemigos el papel y los sellos, era como ver al capitán y servían al portador y le aseguraban el paso por sus tierras’.\textsuperscript{97}

\textsuperscript{93} Groebner, \textit{Who Are You?}, 179.
\textsuperscript{94} Mańczak, \textit{Travel in Early Modern Europe}, 112.
\textsuperscript{95} Quoted by Groebner, “Describing the Person,” 19.
\textsuperscript{96} These cases are mentioned by Mańczak in \textit{Travel in Early Modern Europe}, 116.
Travel documents in the early modern Hispanic world were not ubiquitous and did not cover entire populations. They relied on fiscal issues, circumstances threatening public health, or the existence of hostilities with neighbouring communities. Nevertheless, the crown’s increasingly profuse mobility regulations placed two groups at the core of the anxious campaign towards identification: the itinerant poor and transatlantic passengers. This research tracks these groups’ engagement with growing bureaucratic identification, and its impact on people’s perceptions of who to trust. It argues that licencing programmes for these two groups fuelled suspicions against undocumented travellers in ways which led to the emergence of key elements of the modern state.

Modernity and State Formation

The emerging bureaucracy of movement can be traced back to the foundation of the Casa de Contratación in Seville in 1503.\(^98\) In the process of controlling ships, merchandise and the flow of people to and from Spain and America, the Casa levied taxes, administered commercial law, and had its own judges and jail. Established only twenty-five years after the Spanish Inquisition, the Casa operated through similarly bureaucratic structures. Its policies of migration and identification displayed a growing bureaucratic apparatus, which prefigured the operation of the modern state. Along the lines of Irene Silverblatt’s work, this research shares the claims that the emergence of modernity can be traced back to bureaucracies of sixteenth-century Spanish colonialism.\(^99\)

Notions like Spanishness or ‘true’ poverty were to some extent shaped by dynamics of state-building that were grounded on a greater differentiation and specification of individuality. To Michel Foucault, the modern state began to distance itself from dynastic rule through growing bureaucracies which sought to establish a form of ‘surveillance that makes it possible to qualify, to classify, and to punish’.\(^100\) Talking about the emergence of disciplinary power, Foucault observed: ‘the scarcely

sustainable visibility of the monarch is turned into the unavoidable visibility of the subjects’.\textsuperscript{101} According to Foucault, the key to understanding the nature of modern power is through this ‘inversion of visibility’, manifested in mechanisms of examination. Individuals are placed in a ‘network of writing’ which adheres them to a ‘mass of documents that capture and fix them’.\textsuperscript{102}

Foucault’s insights on the increasing visibility of individuals made no reference to the Spanish context, but these dynamics vividly manifested there. Philip II implemented an unprecedented network of information that sought to make both his territories and his subjects more legible. The fixed location of his throne in the sixteenth century came about in sharp contrast to his predecessors. His endeavours to implement a more bureaucratic and centralised government took shape in El Escorial, built in isolation from the rest of the world. Philip thus came to be seen as one of the first European rulers to exercise power from a sort of ‘centre’.\textsuperscript{103} In his \textit{Filipe Segundo, Rey de España}, published in 1619, the historian Luis Cabrera de Cordoba described how the king ‘meneaba el mundo desde su real asiento’.\textsuperscript{104} Likewise, Lorenzo Vander Hamen, a friend of Francisco de Quevedo, also noted how Philip’s display of power lacked the nomadic patterns of previous times:

se encerró en Madrid y el Escorial, centro suyo, desde donde tirava con admirable providencia, y rectitud las líneas del gobierno a la circunferencia de su amplísima Corona, resuelto en no salir más y en mirar desde allí las ondas y borrascas de la tierra (…) Cuánto mas lejos estaba de sus vasallos, tanto más le temían, conciviendo [?] con la distancia una grandeza adorable y alguna cosa más que las ordinarias a los hombres, y así, en cualquier parte, por remota que fuese, era tan obedecido, que un hombre solo, autorizado con sus órdenes y un poco de papel o pergamo, obró más que en otras partes millones de oro y multitud de gente de guerra.\textsuperscript{105}

\textsuperscript{101} Foucault, \textit{Discipline and Punishment}, 187.
\textsuperscript{102} Foucault, \textit{Discipline and Punishment}, 187.
\textsuperscript{104} Luis Cabrera de Córdoba, \textit{Filipe Segundo, Rey de España} (Madrid, 1619), 5.
\textsuperscript{105} Lorenzo Vander Hammen, \textit{Don Filipe, el Prudente} (Madrid, 1632), 120.
Philip sought to compensate for his sedentary politics with an intensification of his writing and bureaucratic apparatus. The king seemed to have grown suspicious of constant movement, therefore expecting his subjects to remain where they could be observed and checked, something that was reflected in the complex network of mobility controls he implemented, going from background reports, to passenger lists and travel licences. Even though El Escorial was not as empty and solitary as has been traditionally described, and even though the king could often be found in other places hunting or at different summer residencies, his reputation as a ‘motionless mover’ remained in the collective imagination.\textsuperscript{106}

Philip’s distant relation with the subjects of his vast domains was overcome by the piles of ink and paper describing those he would never come into contact with. The petitioner rarely requested his licence in person, and most people made use of scribes who sent several petitions together to Madrid through emissaries. The king’s adhesion to paper created an illusion of comprehensive knowledge of both subjects and places.\textsuperscript{107} The prudent king was said to personally handle thousands of petitions that carried his signature, and from the 1580s, he had to make use of a reading glass and substitute his signature with a stamp.\textsuperscript{108} The use of licenses and badges to identify ‘legitimate’ and local beggars illustrates how identification procedures came to play a role similar to that of the gatekeeper, although operating in more ubiquitous ways.

The urge for registration and a written record of the king’s subjects, demonstrated Philip II’s reputation as ‘the paper king’. In Valentin Groebner’s words, ‘his paper kingdom was always at risk of becoming an illusory world of self-confirming registration systems and files’. Anonymous travellers got their lives and journeys registered and written, in an attempt to incorporate them into the political body and turn them into legal subjects of the crown. The outcome was, though, a rudimentary system that sought to monitor its mobile population, creating the illusion of a

\textsuperscript{107} See Bredecke, Imperio e información, 17-54.
bureaucracy capable of seizing the identity of those whose mobility was at risk of slipping out of control.\textsuperscript{109}

As the anthropologist James C. Scott has explained, the standardization of modern structures was conveyed through population registers and mechanisms of identification, as well as the homogenization of aspects like urban design and legal discourse. The process of state-building was thus intertwined with making subjects more legible through the promotion of sedentarisation.\textsuperscript{110} Along these lines, Leo Lucassen has insisted on the connection between early embryonic expressions of state power and repressive policies against itinerant groups such as gypsies or vagrants.\textsuperscript{111}

Entangled Approach

This thesis proposes an entangled approach to practices, policies and ideas. The notion of entanglement, widely used by Jorge Cañizares-Esguerra in the context of the imperial history of the Anglo-Iberian Atlantic, addresses global and transnational interactions, but also conveys powerful interconnections in methodological terms. From this viewpoint, this research aims at understanding migration through the language and ideas at the core of scholarly debates, while also incorporating testimonies of local authorities and captured unlicensed and illegal travellers. The emphasis on the crown’s regulations and intellectual discussions expresses a generally top-down approach, which nevertheless merges with some bottom-up elements that invite further research possibilities. The sixteenth-century meaning of freedom of movement can be better understood through the crosscutting comparison of discourses, their usage and intentions, dissemination and reception.\textsuperscript{112} This research incorporates the Cambridge School perspective of ideas in context, but emphasises

\textsuperscript{109} Bernhard Siegert, “Pasajeros a Indias. Biographical Writing between the Old and the New World”, in Talleres de la memoria: Reivindicaciones y autoridad en la historiografía india en los siglos XVI y XVII, Robert Folger and Wulf Oesterreicher, eds. (Münster: LIT-Verl., 2006), 304.
\textsuperscript{110} James Scott, Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed (Yale University Press, 1998), 2.
\textsuperscript{111} Leo Lucassen, “Eternal Vagrants? State Formation, Migration, and Travelling Groups in Western Europe, 1350-1914,” in Migration, Migration history, History, eds. Jan Lucassen and Leo Lucassen (Berne: Peter Lang, 1997), 226.
what David Armitage has framed as ‘history in ideas’. 113 This means that ideas are not exclusive to philosophical or theological treatises, and are not buried in the peculiarity and boundaries of their own contexts. They are entangled in time and space, and can be traced at many different levels: from the high spheres of policy-makers, to the accounts of ordinary men and women. 114

This research pursues perceptions and conceptions of movement through their incomplete terminology. Paradoxically, the ambiguities and contradictions in discourses and practices contain some of their most valuable contributions. This thesis claims that undefined notions of ‘legitimate poverty’ or ‘Spanishness’ obstructed royal administration’s emerging policies of migration. Legally-speaking, Non-Christians, Non-Spaniards and crew-members were excluded from the crown’s territories in the Americas. But the accounts of travellers imprisoned under procedures of the Casa de Contratación present a more complex picture: English Catholics passing for Spanish, soldiers and settlers disguised as sailors, Spaniards defending their Spanishness. Francisco de Vitoria’s polemical defence of freedom of movement incorporated different – and not entirely coherent – lines of argument, but his discussion of Stoic and Christian doctrine contained a notion of peaceful travel, fellow feeling and neighbourly love that problematized the emerging classifications of the bureaucratic apparatus of mobility and identification. At the local level, Domingo de Soto’s discussion of begging licences conveyed the ambiguities and uncertainties embedded in the notion of the ‘deserving’ poor. The doubts he raised against a form of public policy derived from a fixed definition of poverty, accomplished amendments to the Poor Laws on the treatment of foreign beggars, and could potentially be articulated with the study of the slow Spanish consolidation of centralised hospitals.

This research incorporates social, cultural, legal and intellectual history approaches, which illuminate how highly malleable and flexible categories of identity obstructed emerging processes of legal identification and state formation. It offers an interdisciplinary approach to the history of mobility regulations and identification by integrating concrete practices and ideas about movement. It goes beyond purely intellectual frameworks, examining practices of identification and legal cases containing the perspectives and claims of both travellers and local authorities, while also looking at the different ways in which these policies and practices shaped and were shaped by ideas. Francisco de Vitoria’s defence of the universal duty to behave kindly to strangers is contrasted with increasingly stringent transatlantic mobility regulations, but also with travellers’ defiant practices resisting the establishment of fixed classifications. At the local level, the slow implementation of begging licences for the itinerant poor conveyed a climate of resistance expressed in Domingo de Soto’s critique of policies based on rigid definitions of poverty and legitimate movement.

The first chapter focuses on Francisco de Vitoria’s polemical and fluctuating approach to freedom of movement. It explores Vitoria’s appeal to Stoic ideas about kindness and fellow-feeling – strongly permeated by notions of self-love and self-preservation – alongside the Christian value of neighbourly love. It explicates some of Vitoria’s lesser-known passages, and examines the terms in which he presented hospitality as a practice to overcome strangeness and bring peace. Looking at some of the most polemical aspects of Vitoria’s views, it traces the impact of his incorporation of the language of the rights of nations – with an emphasis on the Spanish nation – and claims that the inner contradictions of Vitoria’s position illuminate growing tensions between increasingly global interconnectedness and proliferating demands for the restriction of movement.

The second chapter traces measures that sought to establish the legal profile of the ‘rightful’ migrant while keeping a record of their spiritual background and suitability to populate the newly acquired territories. It examines the intersections of identity and mobility, and the way in which their interdependency acquired a novel dimension in sixteenth-century imperial Spain. Alongside discussions about what it meant to belong
to a specific place or become a resident or a citizen, this chapter incorporates archival material describing judicial procedures against foreigners captured in the Americas, and explores the terms on which their freedom to move was discussed, and the nebulous notion of Spanishness invoked. Along these lines, it locates policies against constant motion and people living *derramados*, and explores the way in which permanent settlements were perceived as instrumental to political hegemony.

The third chapter looks at urban growth and cities’ shifting boundaries, and asks how these spatial transformations influenced the experience of entering the city. It examines emerging identification mechanisms for the wandering poor, and explores their connection with increasingly obsolete city walls. The chapter locates widespread narratives of suspicion against impostors, and suggests possible connections between the growing emphasis on the description of the body in travel documents and visual representations of urban space like Juan de Solórzano Pereyra’s depictions of city walls as eyes looking outwards, scanning and inspecting.

The fourth chapter looks at Domingo de Soto’s reflections on the wandering poor and his objections to the creation of fixed definitions of poverty and identity. It examines Soto’s critique of idleness and purposeless journeys, but also the nuanced and multifaceted terms in which he discussed Spain’s conditions of unemployment and aristocratic idleness. It explores the Thomist legacy of Soto’s views on sinful and immoral behaviour, and shows how the Dominican’s overlooked distinctions between criminal law and morality reveal a more tolerant and permissive conception of wandering and vagrancy.

This research contributes to the history of mobility regulations and identification by tracing the overlapping terms with which malleable conceptions of identity were incorporated into policies, practices and discussions of movement. I hope to cast light on the bureaucratic efforts to define shifting perceptions of identity and determine the way that travellers were able to cross oceans and territories. By reflecting on the recursive relationship between movement and identity, this research contributes to genealogical narratives of how modern identification gradually coopted personal choice to decide who to trust, at a huge cost for individual freedoms and values like kindness and compassion.
Traditional historiography described the hospitable welcome offered to Hernán Cortés as an act of kindness that led to the subjugation of Montezuma’s entire empire. Subsequently this interpretation has been questioned and nuanced by research on diplomatic practices and networks of power between Europeans and Indigenous elites. Nonetheless, narratives that link hospitality and exposure, and recall the uncertainties of unidentified newcomers, still haunt us today; and the grounds under which we choose to perform an act of compassion or resort to hostile self-defence remain obscure. This project has an enormous contemporary resonance. The examination of these ideas and practices, I would argue, has an ethical urgency.
Chapter 1

Kindness across the Ocean and The Right to Travel

In a public lecture in 1539, Francisco de Vitoria formulated a political theory of open borders which caused controversy from the outset. Exploring the legitimacy of the affairs in the Indies, the Dominican theologian argued that the Spanish had the right to travel and dwell in the New World, as well as the right to preach and trade, become citizens and get marry, and access resources held in common. Vitoria’s view on hospitality has been mostly discussed in terms of its political connotations and the extent to which his claims favoured imperial endeavours. However, little attention has been given to the ambivalence with which Vitoria merged the ethical values imbedded in hospitable behaviour with a legal discourse of open borders in the realm of the law of nations. This chapter looks at Vitoria’s defence of freedom of movement, and traces the way in which the Dominican merged classical and medieval notions of ‘all-encompassing’ kindness to a legal form of kindness which only applied to ‘identifiable’ objects: the ‘Spaniard’, the ‘Christian’. By looking at Vitoria’s selective defence of hospitable behaviour, this chapter seeks to show how intellectual discussions on mobility were also permeated by the urge to know, name, and identify newcomers.

In her Changes of State, intellectual historian Annabel Brett brilliantly examined the way in which vagrants and travellers challenged the dichotomy between the universal character of natural law and the enclosed space of the city, illuminating some of the jurisdictional puzzles caused by constant motion. Along similar lines, this chapter charts some of the paradoxes of universal freedom of movement. It addresses Vitoria’s complex views on the value of kindness to strangers, exploring the foundations of his language of universal and all-embracing hospitality, while tracing the way in which his ethics of kindness were reshaped by categories of identity and a language of legal rights specifically granted to Spaniards.

116 Brett, Changes of State, particularly chapters 1 and 7.
In this chapter’s first part I present an overview of Vitoria’s discussion of the right to travel as well as the responses of some of his colleagues in Salamanca and fellows from the Dominican and Jesuit orders. This controversy has remained the object of contemporary historiographical debates, which I also outline to show how Vitoria’s ideas of free travel have been approached from the perspective of their political impact and their association to imperial propaganda. In the second part, I examine Vitoria’s dual language of hospitality, shaped by all-encompassing Stoic and Christian ethical references, as well as the legal language of corporate rights, strikingly centred on the Spanish. In fact, by subsequently looking at similar arguments later deployed by Hugo Grotius, this chapter seeks to shed some new light on the impact of the ethical dimension – or the lack of it – in the formulation of legal frameworks.

1. Francisco de Vitoria

Francisco de Vitoria entered the Dominican order in 1504 and soon after moved to Paris to study at the College de Saint-Jacques, known for its connection to Thomas Aquinas and Albert the Great. There Vitoria studied under the influence of Pierre Crockaert, who had himself been a pupil of the Scottish Nominalist philosopher John Mair. During the almost eighteen years he spent studying and teaching at the University of Paris, Vitoria participated in the revival of Thomist philosophy, which combined the writings of Aristotle with the teachings of the early Christian Fathers. On his return to Spain, Vitoria was appointed Prime Chair of Theology at the University of Salamanca, teaching those who later became prominent figures in jurisprudence, theology and political philosophy: Diego de Covarrubias, Melchor Cano, Fernando Vazquez, and Domingo de Soto, among many others. Vitoria and the intellectual community that surrounded him came to be known as the Second Scholastics because of their close connection to the teachings of Aquinas and his theory of natural law as a boundary of human law and political endeavours. Vitoria’s appeal to the right to travel was strongly linked to a Thomist view of natural sociability.

and the equality of all human beings by natural law.\footnote{119}{See Vitoria, “On the American Indians,” 239-251.} In contrast to arguments later put forth by humanists like Juan Ginés de Sepúlveda, Vitoria insisted on the Indians’ true humanity and dominion, and denied they could be described according to the Aristotelian category of natural slaves. This meant that their right to property, as well as their cities and governments had to be respected. As he put it: ‘they have some order in their affairs: they have properly organized cities, proper marriages, magistrates and overlords, laws, industries, and commerce, all of which require the use of reason’.\footnote{120}{Commenting on Aristotle, Vitoria explained how slavery could only be the outcome of legal or other form of human imposition. In an attempt to reconcile Aristotle to Christian doctrine, he suggested that, if anything, there might be some people whose ‘natural deficiencies’ explained their need to be directed or even governed, but even in this case, they possessed rights which could not be violated.}\footnote{121}{Emperor Charles V approached Vitoria in various instances seeking advice on his overseas enterprises. In different ‘consultas’, some of which took place soon after Vitoria’s lecture \textit{De indis}, the emperor requested the Dominican’s ‘parecer’ or opinion on issues such as the education and conversion of the Indians and the process of sending missionaries to New Spain.\footnote{122}{In a letter signed in Toledo, on the 31\textsuperscript{st} of January, 1539, the emperor addressed Vitoria in a rather affable tone: \begin{quote} Ciertos capítulos y dudas que en la Nueva España, que es en las nuestras Indias del mar océano, se han ofrecido acerca de la instrucción y conversión de los naturales de ella a nuestra santa fe…y yo por la buena relación que de vuestra persona, letras y vida tengo, he acordado de os las mandar remitir.\footnote{123}{See “Real cédula de Carlos V al maestro fray Francisco de Vitoria, en que le ruega escoja de entre sus discípulos doce sacerdotes de buena vida y doctrina para enviarlos a Nueva España” (Toledo, 18 de abril de 1539), in Vicente Beltrán de Heredia, \textit{Los manuscritos del maestro Fray Francisco de Vitoria}, O.P, (Madrid, Valencia: 1928) 163.}\footnote{124}{See “Real cédula del emperador Carlos V en que consulta al maestro fray Francisco de Vitoria sobre asuntos de Indias (Toledo, 31 de enero de 1539)” and “Real cédula de Carlos V en que consulta al maestro fray Francisco de Vitoria sobre asuntos de Indias (Madrid, 31 de marzo de 1541)” in Esperabé de Arteaga, ed., \textit{Historia pragmática e interna de la Universidad de Salamanca}, (Salamanca: Nuñez Izquierdo, 1917), vol. 2, 427-428.}
Nevertheless, Charles V was not oblivious to discussions that questioned overseas affairs. In a letter sent to the Prior of San Esteban in November 10, 1539, he complained about the Dominican’s lectures, requesting the manuscripts and prohibiting their public discussion and publication without his consent:

El rey: yo he sido informado que algunos maestros religiosos de esa casa han puesto en plática y tratado en sus sermones y en repeticiones del derecho que nos tenemos a las Indias, islas, y tierra firme del mar océano (...) por la pesente os encargamos y mandamos que luego sin dilación alguna llameis ante vos los dichos maestros (...) y recibais de ellos juramento para que declaren en qué tiempos y lugares y ante qué personas han tratado y afirmado lo susodicho (...) [que] sin expresa licencia nuestra, no traten, ni prediquen, ni dispuiten de lo susodicho, ni hagan imprimir escritura alguna tocante a ellos porque de lo contrario yo me tendré por muy deservido.  

Charles V’s concerns were no surprise, considering that Vitoria explicitly maintained that no prince, nor even the emperor himself, had the right to rule over the entire world: ‘the emperor is not master of the whole world, because if he were it would be solely by authority of some enactment (lex), and there is no such enactment’. Assuming this law granting universal jurisdiction was proclaimed, ‘the enactment could not be binding on those who were not his subjects’.

According to Vitoria, the emperor could not claim dominion over the whole world by human law, nor could he do so by divine or natural law. Vitoria followed Aquinas’ views on the ‘human’ origins of dominion, ‘dominion and supremacy (praelatio) were introduced by human law, not natural law (ST II-II. 10. 10).’ Making reference to Aristotle, Vitoria explained how the kind of power instituted by nature – that of fathers and husbands – was different from civil power, which had not been established by nature but by human law. In addition, because of the Indian’s right to property, Charles V had no legal claim to

125 Vitoria, “On the American Indians,” 257
126 Ibid., 257.
their domains. Even if the emperor had some form of jurisdiction over the whole world, Vitoria argued, ‘such a right does not include the licence to turn whole countries to his own use, or dispose at whim of townships or even estates’.\textsuperscript{128} From Vitoria’s perspective, all nations formed a single community \textit{[totus orbis]}, which went beyond European kingdoms and the world of Christendom, and their members related to each other horizontally and not in a hierarchical way.\textsuperscript{129}

On the other hand, the pope could not claim universal dominion either, as his power was limited to the spiritual jurisdiction. In Vitoria’s words, ‘the pope has temporal power only insofar as it concerns spiritual matters, that is, as far as is necessary for the administration of spiritual things.’\textsuperscript{130} On top of this, the pope could not possibly rule the entire world as ‘he has no spiritual jurisdiction over the infidel… hence he has no temporal jurisdiction over them either.’\textsuperscript{131} Vitoria’s adherence to Aristotelian principles, including his conception of the perfect polis, was not compatible with a belief in a global political structure. In Aristotle’s eyes, even Babylon was too large to count as a single polis.\textsuperscript{132}

None of Vitoria’s lectures were published before Charles V’s death, and even then, the first edition came into life in France. According to Pablo Zapatero’s account, the first edition was published by Jacques Boyer in Lyon in 1557, and the following ones in Salamanca in 1565, Lyon in 1587, Antwerp in 1604, Venice in 1626, Salamanca in 1680, Cologne in 1696, and Madrid in 1765.\textsuperscript{133} More so, there was a proposal in 1590 to include \textit{De Indies} in the Index of Forbidden Books by Pope Sixtus V. Even though Vitoria never published during his lifetime, his enormous influence is unquestionable. His preparatory notes for term and public lectures at Salamanca encompass a large percentage of his intellectual production. The Dominican’s long teaching trajectory also had a remarkable impact on the lives of his students and disciples, who soon

\textsuperscript{128} Ibid., 258.
\textsuperscript{130} Vitoria, “On the American Indians,” 261.
\textsuperscript{132} Aristotle, \textit{Politics} (Cambridge: Cambridge University Press, 2010), 1276a25. See also Richard Tuck, \textit{The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant} (Oxford University Press, 2001), 41.
\textsuperscript{133} Zapatero, “Legal Imagination,” 257.
became prominent figures among the intellectual elites. The great resonance of Vitoria’s teachings and the dissemination of his – not always consistent – ideas was largely achieved through word of mouth and transcripts of his manuscripts, but his legacy lived on through the many polemic discussions in which his contemporaries and future generations of scholars engaged.

2. Armed Strangers and Invasion

Vitoria spoke of ‘the right to travel and dwell in those countries’, while adding:

‘it is an act of war to bar those considered as enemies from entering a city or country, or to expel them if they are already in it. But since the barbarians have no just war against the Spaniards, assuming they are doing no harm, it is not lawful for them to bar them from their homeland’.

Vitoria’s contemporaries rapidly began to interpret his arguments in favour of open borders as a threat to the sovereignty of princes and rulers. In 1546, the same year of Vitoria’s death, one of his closest disciples Melchor Cano argued that it was absurd to conceive a law of nations which prevented the king from restricting the circulation of newcomers. In Cano’s perspective, absolute rights of passage would limit the king of Spain’s power to deny entry, for instance, to the French. Cano also exposed the danger of newcomers who rather than travellers behave like invaders. In the American context, Cano argued, ‘the Spaniards [have entered] not as travellers but as invaders – unless one were to label Alexander a traveller. For the Spaniards themselves would not endure this at the hands of the French’. Cano’s preoccupations about a French invasion seems understandable considering that most of Charles V’s reign endured constant conflicts with their neighbours across the Pyrenees. Yet, Spanish-French confrontations originating in the late fifteenth century over the Duchy of Milan and the kingdom of Naples had continued on Italian soil throughout the sixteenth century.

136 Quoted in Lupher, Romans in a New World, 87. The latin version of this passage can be found in Melchor Cano, “De dominio Indorum,” in Juan de la Peña, ed. De Bello Contra Insulanos: Intervención de España en América (Madrid: Consejo Superior de investigaciones científicas, 1982), vol. 1, 579. See also Anthony Pagden, “Dispossessing the Barbarians,” in The Languages of Political Theory in Early-Modern Europe (Cambridge: Cambridge University Press, 1990), 89.
The Jesuit Luis de Molina (1535-1600) initially agreed with Vitoria, arguing that refusing rights of passage constituted a legitimate cause of just war. He quotes the passage from the scriptures (Numbers 21), in which the Israelites had attacked Sihon, king of the Amorites, for refusing free passage through his kingdom. The Israelites had asked the Amorite king to grant them passage, ‘prometiéndole que no se meterían en sus campos y viñas, ni beberían aguas de sus pozos, sino que caminarían por el camino real hasta que salieran de sus confines’.  

137 They had been through years of harsh conditions and scant provisions of water in the desert, and when their passage was denied, they waged war against the Amorites, taking all their lands and cities. According to the biblical account, Moses had liberated the Israelites from slavery in Egypt, and they had subsequently wandered in the wilderness in search of the promised land. According to Molina, ‘los hijos de Israel movieron justa guerra contra los amorreos… por el Derecho de la sociedad humana debía aparecer como lo más equitativo’.  

138 In this initial approach the Jesuit invokes the right to the society of human beings [jure humanae societatis], according to which allowing harmless transit was a matter of equity whose violation justified a just war.

Nevertheless, in a subsequent section Molina criticises Vitoria’s reflections on the right to travel, considering that such a right gave entry to large numbers of – possibly armed – foreigners, something that no European nation would have accepted. In his own words: ‘con tanta mayor razón podrá un Estado licitamente prohibir el comercio, los puertos y la habitación a los extranjeros cuanto éstos sean más poderosos. Ya que justamente se podrá temer, tal como es la humana malicia, que traten de someterlos’.  

139 Molina’s concerns laid on the potential risks and sense of exposure experienced by locals in the presence of powerful strangers. The Spanish nation had previously used the argument of ‘the dangerous strangers’ in their interaction with specific groups, some of whom had happened to live alongside each other for centuries, as it was the case with the Jews and the Moors. From the Jesuit’s perspective, any sovereign state had the right to close its borders and deny goods to inhabitants of other regions, unless

138 Ibid., disp. 104, 334.
139 Ibid., disp. 105, 336.
they were in extreme need. It was legitimate to deny entry to foreigners, especially if there was the risk of being conquered or some other harm feared. According to Molina:

‘como quiera que después de la division de las cosas y de los países no por ello deja de ser propio de cada Estado lo que en él se posea en común, es notorio que cualquier Estado podrá prohibir licitamente a todos los demás que las usen, cuando no las necesiten de un modo grave y extremado, e incluso puede licitamente negarse a admitir todo comercio con el extranjero, sin que ello suponga ninguna injuria que dé base a una guerra justa, y así lo vemos hacer en no pocos Estados’, 140

Molina assimilated the property of the individual to the property of the commonwealth, so that, the common possessions of the entire community could receive the same legal treatment as the personal possessions of individuals. In his own words:

‘Y el que una nación conceda el uso de algunas de sus cosas públicas a algunos extranjeros, evidentemente no disminuye su libertad para denegar el mismo uso a otros, ya que cualquiera tiene perfecto derecho a otorgar el uso de sus cosas a quien le parezca, y negárselo a los demás’. 141

All citizens’ joint property was equivalent to the individual’s private property, and in both cases it was licit to bar newcomers from these possessions, unless, of course, they were in a state of extreme need. 142 Thus, just as an individual could keep anyone off his property, so could a commonwealth, and the state could legitimately refuse commerce, harbour facilities and residence to strangers, without doing them an injury which would cause a just war.

140 Ibid., disp. 105, 336.
141 Ibid., disp. 105, 336.
In one of his latest works *De Thesauris in Peru* of 1566, Bartolomé de las Casas condemned the abuses committed by Spaniards and the appropriation of the treasures or *guacas* of indigenous peoples, but also offered some more moderate suggestions on the way in which newcomers could be more safely received. Las Casas thus proposed that ‘el desembarco o entrada en cualquier tierra, sea ordenada y sin causar daños y no se realice sin el permiso de los habitantes’. An entry that contradicted these precepts, caused unrest or lacked the explicit consent of the inhabitants, was a form of injury and the host community was justified to seek redress. In this way, Las Casas added,

Hágase la entrada despacio, no de repente (...) pues sabido es que todas las novedades insólitas, inopinadas y repentina, causan gran turbación por el gran temor que causan (...) De nuevo comenta Baldo quién quiere turbar el orden se expone a la acción de injurias y se le puede hacer resistencia, incluso a mano armada.

Las Casas’ rules about peaceful and consensual entry appeared as an essential condition for the possibility of hospitable behaviour. Instead, when the approach was rushed and caused disruption, there were plenty of reasons to block out entry to newcomers. A prudent king, according to Las Casas,

‘si viera que convenía a la paz, tranquilidad, a evitar la corrupción y perversión de costumbres, a la defensa, seguridad y conservación de la libertad del reino y su república, puede terminar o prohibir que ninguna persona de fuera y extranjera o de cualquier otro reino o extraña nación entre en el reino, patria, provincia o ciudad de su jurisdicción o para ejercer el comercio, etc., o por cualquier otra causa’.

Las Casas’ prudent king was thus entitled to close the borders when peace, security, and freedom were at risk, since it was better to prevent an injury than taking revenge afterwards. Quoting the medieval jurist Baldus de Ubaldis, he compared the process

144 Las Casas, *Los Tesoros Del Perú*, 121.
145 Ibid., 121.
of entering a kingdom or a city to breaking into someone’s estate: ‘quien se empeña en entrar en la finca ajena contra la voluntad de su dueño, le infiere una violencia perturbadora al no permitirle que use libremente de su cosa, por tanto comete injuria contra él’. 146 In a set of arguments that end up closer to those of Melchor Cano and Luis de Molina, Las Casas’ observations expressed concerns about newcomers who posed a violent threat: ‘podría acontecer que los extranjeros viniesen con males intenciones al reino extraño (...) congregarse en un lugar muchas gentes y agruparse grandes ejércitos contra aquel reino y así turbarle, depredarle, destruirle o someterle a su esclavitud’. 147 As it appears, the common concern was not so much individual newcomers, but large groups who could potentially become a military threat.

At the turn of the seventeenth century, Hugo Grotius also came to have a more nuanced approach to free passage. As he explained, this right should be granted when ‘just occasion shall require’, for instance, when a group of people has been ‘expelled of their own country, or they want to settle in some uninhabited land, or if they are going to traffic with some distant people, or to recover, by a just war, what is their own right and due’. 148 To objections about the risks involved in giving entry to a large multitude, Grotius made reference to the many measures that had been historically implemented to prevent harm, like dividing the multitude in smaller groups, prohibiting the use of arms, or demanding hostages during passage. In his view, fear and suspicion were not sufficient reasons to prevent free passage: ‘for one man’s right is not diminished by another man’s fear’. 149 On the other hand, Grotius also mentioned the ‘right to stay for some time’, which required the existence of particular circumstances like health issues or other just cause. As an example Grotius makes reference to Virgil’s account of the episode in which the Trojans had been mercilessly denied access to the coasts of Africa – also quoted by Vitoria. Another example was the Athenians’ unjustified refusal to allow the Megarenses access to their shores, which, according to Grotius’ allusion to

146 Ibid., 125-133.
147 Ibid., 127.

149 Ibid., 26.
Plutarch, was against the law of nations, and could understandably be perceived as a just cause of war.\footnote{150}{Ibid., 28.}

The most pressing difficulties remained in cases based on hypothetical situations of danger, in which the seemingly peaceful newcomers hid evil intentions, or could eventually turn against their host. In a way, these discussions about open borders and hospitality avoided more detailed reflections on the differences between effective acts of aggression and the possibility of aggression. After all, the uncertainties embedded in the act of welcoming strangers can never be fully overcome, treachery and danger always lingering in the encounter with the unknown. Vitoria’s defence of hospitable behaviour represents an act of both acknowledgment and confrontation of danger, and his insistence on open borders appears as, perhaps, the most Christian way of dealing with these uncertainties. The Dominican claimed that it was ‘inhuman to treat strangers and travellers badly’, describing ‘strangers’ or ‘guests’ with the Latin term hospites which also meant host. In a literal reading of the Dominican’s statements, it could be argued that the benevolent behaviour he claimed for guests, equally applied to hosts. Guest were also expected to behave benevolently towards their hosts. Hospitable behaviour ran both ways. Vitoria seems to have inattentively interchanged discussions of individual rights, e.g., right to free trade or free movement, with the more abstract language of the rights of nations. The Dominican professor moved hastily and unknowingly from classic and medieval traditions of universal brotherly love and kindness to strangers, to legal frameworks formulating the Spanish kingdom’s right to wage war.

Even though historians and political scientists still disagree on the impact of the Peace of Westphalia of 1648, the language and the terms of these treaties expressed shifting approaches to political power.\footnote{151}{See Stuart Elden, The Birth of Territory (Chicago: University of Chicago Press, 2013), 309-313.} Both the Münster and Osnabrück treaties granted rulers territorial rights [iuris territorialis] and territorial superiority [iure territorii et superioritatis], expressing a growing emphasis on a territory-based form of political power.\footnote{152}{“Treaty of Osnabrück,” art. 1, 8, 4, and “Treaty of Münster,” 64, 67, in Frances Gardiner Davenport, ed., European Treaties Bearing on the History of the U.S. and its Dependencies to 1648 (Gloucester: Smith, 1967).} As historian Benjamin Arnold explains, the medieval notion of ‘lordship
was not a specific political right to govern a given terra or extent of land, but was a personal power attached to and inherited within a dynasty’. The medieval personal bond between the ruler and his subjects gave place to a form of territorial government where power was asserted within the boundaries of space, and legal rights and duties moved from a personal to a spatial basis.\(^{154}\)

3. Peaceful Travel: Vitoria’s Commentaries on Aquinas

In his less-known *De Jure gentium et naturali* (Commentary on St Thomas Aquinas) of 1533-4, Vitoria had already examined the notion of *ius gentium* (law of nations) and its precepts about travel, diplomacy, and war. In this lecture, he claimed that these issues had no equity of their own, but only when they were implemented to promote peace.\(^{155}\) Decisions about captives of war or the movement of people were part of the ‘common consensus of all peoples and nations’.\(^{156}\) After all, all nations in theory rejected the mistreatment of strangers, and valued the right to travel from nation to nation. But these precepts were means for something else: peace and concord among men. They addressed a ‘certain disposition of things with relation to a third just thing’.\(^{157}\) As he explained, ‘that which is not in itself just, but is derived from human statute firmly established in reason, is called law of nations, so that on its own account it does not imply equity, but on account of something else’.\(^{158}\) The law of nations’ regulations about travel, diplomacy or war were valid in a relative way, since they were to be judged according to the aim of bringing peace and preserving the natural law.\(^{159}\) As part of the law of nations, the right to travel had to serve the purpose of bringing peace and unity among men. A large group of armed foreigners could not


\(^{155}\) On Vitoria and Roman law see Koskeniemmi, “Empire and International Law,” 14-15. In addition, Anthony Pagden offers some interesting insights on whether Vitoria’s *ius gentium* was closer to natural or positive law. From his perspective, Vitoria’s law of nations was closer to natural law since it was based upon it, and also because it was practically impossible to abrogate it as it was the result of universal consensus. See his “Introduction”, in Vitoria, *Political Writings*, xvi.


\(^{157}\) Vitoria, “De Jure gentium.” cxii.

\(^{158}\) Vitoria, “De Jure gentium.” cxii.

\(^{159}\) Aquinas, “Summa Theologiae;” I.II, q. 96, a. 4.c.
claim the right to travel, because it was against the peaceful aim for which their presence in foreign soil was being protected. Vitoria’s early commentaries on Aquinas would have settled some of the objections that a few of his contemporaries had posit, particularly those of Luis de Molina about offering entry to armed invaders.

The conditional character of the law of nations did not mean that it could be modified arbitrarily or according to particular interests. In fact, Quentin Skinner has pointed out how Vitoria and all sixteenth century Thomists considered that all positive laws had to agree with the law of nature.\textsuperscript{160} Even Francisco Suárez would later on support this in his \textit{The laws and God the Lawgiver}, confirming that ‘a law not characterized by this justice or righteousness is not a law, has not binding force and must never be obeyed’\textsuperscript{161}. In effect, Suárez devoted a chapter against Machiavelli where he explained how the civil law had to be limited by claims of justice and not by claims of political expediency. Skinner explains how before Suárez, some early Jesuits theorists like Possevino and Rybadeneira wrote against both Luther and Machiavelli’s rejection of natural law as the ‘moral basis for political life’. Theirs were among the first works in which Luther and Machiavelli were considered the founder fathers of the impious modern state. Rybadeneyra’s \textit{Religion and the Virtues of the Christian Prince}, first published in 1595, attacked Machiavelli’s assumption that the prince’s main objective was the conservation of his state by any means.\textsuperscript{162}

Vitoria also observed how both property and mobility shared the purpose of promoting peaceful relations. As he explained, when property was held in common, people moved freely from place to place, and this freedom remained even when private property was established. In his own words:

‘in the beginning of the world, when all things were held in common, everyone was allowed to visit and travel through any land he wished. This right was clearly not taken away by the division of property (\textit{diuisio rerum}). It was never the

\textsuperscript{161} Quoted in Skinner, \textit{The Foundations}, Vol. 2, 149.
\textsuperscript{162} This is mentioned and further discussed by Skinner, who provides a more extensive list of works against Machiavelli in Spain between 1612 and 1637. See his \textit{Foundations}, 143-171.
intention of nations to prevent men’s free mutual intercourse with one another by this division’.  

Both the right to property and the right to travel were part of the law of nations, and on this grounds, their validity was conditioned to pursuing peace. In the Thomist theory of political society, the right to hold property was conceived as part of the law of nature. However, private property was also considered part of the law of nations, and as such a positive human law. The problem with this double approach was that it created potential conflicts between alterations to private property and principles of natural justice. If, for instance, a group of people decided to collectively hold all of their property, a possible objection was the violation of the natural law for which the right to property was inviolable. Vitoria and other Thomist theologians tried to solve this by arguing that property was communal by the law of nature, but this was considered a permissive aspect of the law of nature [concessio] and not so much a binding prescription [praescriptio]. This is why the law of nature could be used to sanction either the continuation or the abolition of communal ownership, and the question of the division of property could be left to men to decide for themselves. In this way, given that division took place everywhere, it could not have been grounded in the civil law of one or another region, but by means of the ius gentium. In fact, Vitoria argues,  

‘property may be private – one may not say in equity or justice – but such a division of property is ordered for the peace and concord of men which cannot be preserved unless everyone should have his property clearly defined. And therefore it is the ius gentium that property should be private. (...) Indeed, the world could go on, if possessions should be in common as it is the case among the religious: however, it would be with great difficulty, for men would be likely to rush into discords and wars’.  

Like property, rights of hospitality were valid as long as they aimed at maintaining peaceful conditions among peoples. Vitoria strongly emphasised the idea that travel  

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163 Vitoria, “On the American Indians,” 278. See also Brett, Changes of State, 198.  
had to be harmless. His support of free mutual intercourse and hospitable behaviour towards strangers took place in the context of ordered and peaceful relations. As David Boruchoff has pointed out, his doctrine was not a campaign for the domination of one side over the other, but an expression of his ‘belief in equitable and isotropic relations between peoples’.  

Brian Tierney has also observed how Vitoria’s passages in defence of freedom of movement were almost always followed by the condition of not causing any harm, as when he explicitly warned:

‘Amongst all nations it is considered inhuman to treat strangers and travellers badly without some especial cause, humane and dutiful to behave hospitably to strangers. This would not be the case if travellers were doing something evil by visiting foreign nations’.  

For Vitoria, harmless behaviour should generally be considered lawful. Following the Thomist tradition, Vitoria would argue that only conducts which injured others were to be outlawed. As had been put by Aquinas himself, human law only prohibits vicious conducts ‘which do harm to others, without the prohibition of which, human society could not be maintained’. This meant that, from the friar’s perspective, peaceful movement and peacefully visiting foreign nations was by definition legitimate.

4. Hospitality and Imperial Affairs

The *Historia general de las cosas de la Nueva España*, compiled in 1576 by the Franciscan friar Bernardino de Sahagún, describes the events of the night of the 22nd of May, 1520, when Spaniards staying in Montezuma’s own palace massacred hundreds of unarmed Aztecs who were celebrating an important native festival – the Feast of Toxcatl.  

‘Here it is told how the Spaniards murdered the Mexicas who were celebrating the

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Fiesta of Huitzilopochtli in the place they called The Patio of the Gods. At this time, when everyone was enjoying the fiesta, when everyone was already dancing, when everyone was already singing, when song was linked to song and the songs roared like waves, in that precise moment the Spaniards determined to kill people. They surrounded those who danced… attacking all the people, stabbing them, spearing them, wounding them with their swords… Some tried to escape, but the Spaniards murdered them at the gates while they laughed. Others climbed the walls, but they could not save themselves… The blood of the warriors ran like water as they ran, forming pools, which widened, as the smell of blood and entrails fouled the air.”

Chronicles often recount moments of uncertainty prior to the arrival of newcomers, describing crucial decisions that allegedly transformed history forever. Montezuma’s ‘openness’ was blamed for the fall of Tenochtitlán and similar accounts sought to trace the role of naive hospitable behaviour in the demise and subjugation of native populations. Pedro Cieza de León’s *Crónica del Perú* of 1553, narrates the scene in which Pizarro and his men approached Cajamarca, and recounts the Inca king Atahualpa and his advisors’ deliberations on whether it was best to assassinate all 160 Spaniards on their way, kill them upon arrival, or allow them in and hear their intentions. This final alternative led fatally to the capture and execution of the Inca king.

Yet, in both Fray Bernardino de Sahagún’s and the Dominican Diego Durán’s account, there is evidence that giving shelter to the Spaniards in the royal palace was common practice with visitors. These practices of hospitality show how authorizing entry was not in itself a sign of weakness or vulnerability, but the very act through which danger could be challenged and eventually – though not always – dispersed. Unpredictable visitors were welcomed in order to closely keep an eye on them. Hernán Cortés mentions the arrival and welcome to Tlaxcala of a Mexica embassy composed of more

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than two hundred people. Mexicas and Tlaxcalans had a long history of hostilities, but even then they were received and allowed to freely come and go.\textsuperscript{171} Foreign rulers and ambassadors were usually housed with luxury and comfort in a performative display of power which sought to impress guests while watching over them.\textsuperscript{172} The Mexicas received Cortés as an ambassador, and their hospitality was closer to a rite of diplomacy, rather than an act of surrender. These encounters, mediated by alliances with internal indigenous groups, created complex networks of power and warfare that put into perspective the duality of the stranger-enemy, and the inherently threatening and harmful behaviour of the ‘outsiders’.\textsuperscript{173}

In any case, the devastating consequences of the Spanish conquest had left little room for discussing whether there had been opportunity for appropriate practices of hospitality towards strangers – especially heavily armed ones. Vitoria’s reflections came about less than two decades after Hernán Cortés’ siege of Tenochtitlán, and only a few years after Francisco Pizarro’s capture of the Inca king Atahualpa. It is not surprising that his defence of kindness to strangers has since then obtained an ambivalent reception. Together with Vitoria’s letter to Miguel de Arcos, there are passages in which the Dominican friar expressed his concerns about ill treatments and abuses committed across the Atlantic. For instance, in the opening lines of his lecture \textit{De Indis}: ‘but when we hear subsequently of bloody massacres and of innocent individuals pillaged of their possessions and dominions, there are grounds for doubting the justice of what has been done’.\textsuperscript{174} Almost five hundred years on, scholars still disagree on the kind of adverse connotations of Vitoria’s liberal concessions. Antony Anghie’s work, one of the most well-known post-colonial readings of Vitoria, has condemned the way in which the Spanish theologian sought to impose a particularly European ideal of ‘international law’ on culturally different societies.\textsuperscript{175}

\textsuperscript{172} Fray Diego Durán, \textit{Historia de las Indias de Nueva España y islas de Tierra Firma}, ed. José F. Ramirez, 2 vols. (Mexico: Plus atlas, 1967), ch. 43. See also Sahagún, \textit{Florentine Codex}, 12, 15, 41.
\textsuperscript{174} Vitoria, “On the American Indians,” 238.
From Anghie’s perspective, the universal law was nothing more than ‘the particular cultural practices of the Spanish, unilaterally taken to a universal level’. In these terms, Vitoria’s argument implied that the Indians could be legitimately disciplined and subjected if they did not follow the set of European ideals.

Annabel Brett has pointed out the paradoxes of Vitoria’s defence of the rights of the Indians, while also reinforcing the rights of seemingly hostile newcomers. In the words of the Cambridge historian:

‘Vitoria was able to construe much of Spanish activity in the New World as a violation of Amerindian rights. Equally - or perhaps not so? famously, he was also thereby enabled to find that if the Indians barred Spaniards from travelling and trading in their lands, they would thereby violate the natural rights of human communication and travel which belonged to the Spaniards, and so could be object of a just war. What the concept of natural rights gives with one hand, it can take away with the other.’

From this perspective, the champion and defender of the rights of native Americans would have also granted the Spanish Crown the legal weaponry to justify the ‘affairs of the Indies’. The Dominican acknowledged the Indians’ right to dominion and property, which was grounded on their human condition and rational nature. Yet, these rights seemed outweighed by the Spanish ‘right to be welcomed’ and ‘travel and dwell’. Paradoxically, Vitoria’s defence of free movement and universal interaction ended up acquiring some unavoidably ‘invasive’ connotations. According to Vitoria’s formulation, depriving someone from the right to travel constituted an *iniuria* (injury) and therefore those who suffered it could legitimately enforce their rights.

The problem with Vitoria’s legal innovations was not so much the content of his precepts – to travel and dwell in the place of choice – but their formulation as subjective rights or entitlements of self-attributed power. In his article ‘Legal Imagination in Vitoria’, Pablo Zapatero agrees with Brian Tierney on the ‘creative’

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176 Antony Anghie, “Francisco de Vitoria,” 326.
character of Vitoria’s rights. Likewise, Anthony Pagden observes how Vitoria’s right to ‘society and natural communication’ was more and less a right of his own invention. As Vitoria put it, ‘the Spaniards have the right to travel and dwell in those countries, so long as they do no harm to the barbarians, and cannot be prevented from doing so… But since the barbarians have no just war against the Spaniards, assuming they are doing no harm, it is not lawful for them to bar them from their homeland’. Vitoria’s references to rights as a subjective attribution of power reshaped the value of hospitality into a right to be compulsory welcomed.

In contrast to Vitoria’s language of subjective rights, Tomas Aquinas’ references to law and justice had been formulated in purely objective terms. Aquinas’ primary definition of ius was ‘what is just’ [quod iustum est] or ‘the just thing itself’ [ipsam rerum iustam], a notion that had also been held by Aristotle, and the Roman jurists Gaius and Ulpian, who had presented ius as a ‘thing’ [rem], or ‘something existing in external nature’. Yet, the origins of subjective rights have not been conclusively established. It is not entirely clear whether the Romans had a sense of subjective rights, although, as Richard Tuck points out, the absence of the specific term does not mean a lack of awareness of its existence and implications. According to the French historian Michel Villey, the earliest references to subjective rights can be found in Ockham’s Nominalist philosophy in the fourteenth century, but Brian Tierney has traced their origins to the canonists of the twelfth century. As Annabel Brett has explained, subjective rights were ‘an element outside the resources of strictly Thomist

179 Anthony Pagden, La ilustración y sus enemigos (Barcelona: Península, 2002), 102.
181 On the discussion of whether Aquinas and Vitoria use the term ius in an objective or subjective way see Tierney, The Idea of Natural Rights, 22-26, 257-259.
183 As Richard Tuck has put it: ‘This in turn rises the problem of whether, despite the fact that classical Romans did not have a theory about legal relationships in which the modern notion of a subjective right played any part, they can nevertheless be said to have had the concept. In general, the mere absence of a word or phrase translatable into modern terms proves nothing’. Richard Tuck, Natural Rights Theories, (Cambridge: Cambridge University Press, 1981), 12-14, 19, 22.
discourse, but one which they [the Spanish Scholastics] made distinctively their own: partly through their exposure to the language of Almain at Paris.\textsuperscript{185} In effect, during his time as a student and professor at the College de Saint-Jacques in Paris, Vitoria was exposed to Almain’s Nominalist tradition, which was strongly influenced by figures like William of Ockham and John Mair. Vitoria’s language of subjective rights has thus facilitated objections against the many passages which seemed to have endorsed war against the Indians.\textsuperscript{186}

5. Fellow-Feeling and Neighbourly Love

Francisco de Vitoria – who never set foot in the New World – introduced the notion of hospitality in mostly theoretical terms, expressing perennial concerns embedded in the practice of welcoming strangers. His 1539 lecture opened with a quotation from Virgil’s first-century epic, the \textit{Aeneid}, bringing up the connection between civility and hospitable behaviour in a setting surrounded by merciless nature:

\begin{verbatim}
What men, what monsters, what inhuman race,
What laws, what barbarous customs of the place,
Shut up a desert shore to drowning men,
And drive us to the cruel seas again?\textsuperscript{187}
\end{verbatim}

The poem presented hospitality as an expression of humanity and civilization and complained about the lack of legal structures capable of addressing such cruelties. The absence of compassion and hospitality was expressed as monstrosity and barbarity, and suggested that in such a state only the gods could redress this inhumane behaviour. As Virgil’s poem observed:

\begin{verbatim}
If our hard fortune no compassion draws,
Nor hospitable rights, nor human laws,
The gods are just, and will revenge our cause.’\textsuperscript{188}
\end{verbatim}

\textsuperscript{185} Annabel Brett, “Scholastic Political Thought and the Modern Concept of the State,” in \textit{Rethinking the Foundations of Modern Political Thought} (Cambridge: Cambridge University Press, 2007). 144.
\textsuperscript{188} Virgil, \textit{Aeneid}, I.764, 22.
Vitoria then rephrases Virgil’s words, emphasising the barbarity and lack of humanity among those who refuse to give entry to strangers:

amongst all nations it is considered inhuman to treat strangers and travellers [hospites et peregrinos] badly without some special cause, humane and dutiful to behave hospitably to strangers. This would not be the case if travellers were doing something evil by visiting foreign nations.\(^{189}\)

Vitoria’s observations on free movement integrated other rights such as the right to trade, the right to access resources held in common, and the right to settle, get married and acquire citizenship.\(^{190}\) These other rights show that Vitoria was not only focused on so-called rights of passage, which traditionally involved giving way to groups mobilizing from one territory to another. Vitoria’s idea of hospitality was not provisional or contingent. His reference to marriage and citizenship explored an ethical basis for the interaction of strangers in a setting that expanded beyond first encounters. In Vitoria’s imagination, Spanish-native American relations could become neighbourly relations through constant, long-term interactions. Assuming the existence of these amiable relations, the Spanish ships could legitimately put in on any shore, and they could make use of any common property, such as the sea, the roads and the rivers. The Spanish had the right, in Vitoria’s view, to appropriate things which did not belong to anyone, like ‘gold in the ground or pearls in the sea or anything else in the rivers’.\(^{191}\) According to Vitoria, if the American Indians welcomed other groups of native peoples, there was no reason to refuse entry to the Spanish, in the same way that it was ‘not lawful for the French to prohibit Spaniards from travelling or even


living in France, or vice versa, so long as it caused no sort of harm to themselves. Vitoria had in fact spent almost half of his adult life in France, and was likely to be familiar with movement across the border.

Vitoria’s idea of natural partnership and communication made reference to Roman law and echoed the cosmopolitanism of stoic thinkers. Even though Stoic texts were not so widely available throughout the Middle Ages, works like Cicero’s *Paradoxes of the Stoics* (46 BC), *De Officiis* (44 BC), and Seneca’s *Letters to Lucilius* (65 AD), were widely available and became highly relevant to Vitoria’s own work. In the opening lines of his lecture *On Civil Power*, Vitoria compares the prominence of early modern theologians to the high status that Cicero had once attributed to orators. Likewise, his subsequent explanation about the structure of the earth and the mutual attraction of its parts was strongly indebted to Cicero’s *De natura deorum*. Many of Vitoria’s passages evoked Stoic ideas about natural sociability and universal friendship, for instance when he claimed that,

> nature has decreed a certain kinship between all men (Digest I. 1. 3), so that it is against natural law for one man to turn against another without due cause; man is not a ‘wolf to his fellow man’, as Ovid says, but a fellow.

The phrase ‘wolf to his fellow man’, later used by Thomas Hobbes in the dedication of his *De Cive* of 1642, expressed a sceptical approach to human nature and human beings’ capacity to behave kindly towards others. Vitoria’s comments, on the other hand, were grounded on the idea of natural friendship and companionship. In his own words: ‘amity (*amicitia*) between men is part of natural law, and that it is against nature to shun the company of harmless men’. Vitoria’s references to the notion of

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192 Vitoria, “On the American Indians,” 278. Vitoria does not develop the idea of the right to travel in a European context, but he certainly mentioned it. In this way, it is not entirely correct to say that Vitoria’s right to travel was only discussed regarding the Indies, as Annabel Brett points out in her *Changes of State*, 34.
amity heavily relied on Cicero’s work, and in his *On Civil Power*, he repeatedly quoted him in his discussion of men’s mutual necessity and the natural origins of the *civitas*. According to Vitoria, we use amity ‘“on more occasions than fire and water themselves”’, as Cicero says (*De amicitia* 6.22), adding that both justice and amity ‘would disappear completely without some sort of shared life’. Making reference to Aristotle, Vitoria observed that without amity ‘no virtue can exist (*Politics*, 1253a 38-40)’, and lamented the solitary existence of those who chose or were forced to detach themselves from the company of fellow men.198 As Vitoria put it:

> “Nature abhors all solitary things” (Cicero, *De amic.* 23.88), and we are all, as Aristotle says, impelled by nature to seek society. As Cicero says, “even if a man were to climb the skies and behold the workings of heaven and the beauty of the stars, the awe-inspiring sight would lack savour without a friend to share it” (*De amic. 23.88*).199

The notion of natural sociability appears at odds with Stoic doctrines which traditionally proclaimed self-centred attitudes and practices of self-sufficiency. Yet, Stoics regarded human interaction as an extension of one’s own being, which meant that individual accomplishment and self-love was something that extended to others, to the point of creating a sense of human unity.200 The impulse for self-preservation – known as *oikeiosis* – required mutual interaction with others for its realization. As Cicero put it in his *De Finibus*:

> Nature creates in parents an affection for their children; and parental affection is the source to which we trace the origin of the association of the human race in communities… It is clear that we derive from nature herself the impulse to love those to whom we have given birth. From this impulse is developed the sense of mutual attraction which unites human beings as such; this also is bestowed by

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198 Ibid., 8.
199 Ibid., 8.
nature. The mere fact of their common humanity requires that one man should feel another man to be akin to him.\textsuperscript{201}

Stoic ‘fellow-feeling’ operated in the form of concentric circles whose centre was a form of self-love that progressively extended to relatives, friends, and fellow-citizens, reaching afterwards the whole of mankind. In his \textit{De Amicitia} of 44 BC, Cicero makes Laelius express ‘fellow-feeling’ in a hierarchy of prioritised relationships: ‘it seems to me that we were created in such a way that there is a bond between us all that grows stronger the closer we are to each other’.\textsuperscript{202} Nevertheless, in a separate passage of \textit{De Officiis}, Cicero observes that caring only for neighbours, and excluding strangers, was a behaviour that weakened universal fellowship: ‘Others again who say that regard should be had for the rights of fellow-citizens, but not of foreigners, would destroy the universal brotherhood of mankind; and, when this is annihilated, kindness, generosity, goodness, and justice must utterly perish.’\textsuperscript{203} The existence of stronger bonds among those who are closer to each other does not prevent the duty of treating strangers and fellow-citizens alike.

Friendship and parental love were thus the base that inspired human partnership and fellowship on a larger scale, but this connection also worked in the opposite direction: the unity of mankind allowed the existence of love and friendship at more intimate levels. As expressed by the Roman Stoic philosopher Seneca in his \textit{Epistulae Morales ad Lucilium} of 64 AD,

This fellowship, maintained with scrupulous care, which makes us mingle as men with our fellow-men and holds that the human race have certain rights in common, is also of great help in cherishing the more intimate fellowship which is based on friendship.\textsuperscript{204}

Paradoxically, Seneca wrote this letter towards the end of his life, after many years of working as an advisor to Emperor Nero. His writings, nevertheless, made an enormous contribution to Stoic literature on the extent to which self-sufficiency required bonds of friendship and mutual assistance. As he famously expressed it, ‘and no one can live happily who has regard to himself alone... you must live for your neighbour, if you would live for yourself’. Likewise, the emperor Marcus Aurelius’ Meditations conveyed a strong sense of unity through references to the idea of a world-community: ‘we are all fellow-citizens: and if so, we have a common city. The universe, then, must be that city’. This world of mutual relations comes as a natural response to ‘the connection of all things in the universe’, which means that ‘all things are, as it were, entangled with each other, and are, therefore, mutually friendly’. Human interaction was thus portrayed as essentially ‘kind and social’, giving for granted the existence of an ethical basis that supported a more expansive network of relations.

Stoic reflections on ‘fellow-feeling’ had certain limitations. Their sense of human fellowship refrained from challenging slavery and the inequalities against women, foreigners and the poor. Christian doctrine, on the other hand, seemed to have proposed a more radically universal sense of humanness. Commenting on Matthew’s passage ‘love thy neighbour as thyself’, Augustine claimed: ‘the commandment to love our neighbour excludes no human being’. The question of who should be regarded as ‘neighbour’ was addressed in the parable of the good Samaritan. The tale described an Israelite traveller who had been robbed, wounded and left on the roadside. People passing by had ignored him, until a Samaritan had taken pity, assisting him with great benevolence, despite existing tensions between Israelites and Samaritans. The Christian message thus conveyed a sense of care and compassion that went beyond the dividing barriers among different groups, promoting universal brotherhood and kindness. From Augustine’s perspective, the parable of the Samaritan showed that ‘we should understand by our neighbour the person to whom an act of

205 Seneca, Moral Letters, letter XLVIII, no. 2.
207 Marcus Aurelius, “Meditations,” book vi, art. 38, 78
compassion is due if he needs it or would be due if he needed it… who can fail to see that there is no exception to this, nobody to whom compassion is not due?’. 211 The Church Fathers thus introduced a global sense of ‘neighbour’, and an idea of Christian kindness subverting all forms of social, racial or political boundaries. 212

Francisco de Vitoria followed the Renaissance fashion of reviving the classics, incorporating Stoic cosmopolitanism to Christian Doctrine. In a language evoking both stoicism and the teachings of the scriptures, Vitoria also quoted Augustine’s expression ‘every man is your neighbour’, and argued: ‘amity (amicitia) between men is part of natural law, and that is against nature to shun the company of harmless men.’ 213 As a result, Vitoria observed, it was ‘inherently evil’ not to welcome strangers and foreigners. 214 In addition, Matthew’s precept, ‘I was a stranger and ye took me not in’, demonstrated how Christ was present in every newcomer, so that welcoming strangers was an act of kindness to God’s own son. 215

Vitoria’s reflections on due kindness to strangers were introduced in his lecture De Indis, while discussing the possible legitimate titles which could justify the Spanish’s presence in American territory and their ‘control’ of the Indians. In the Dominican’s words:

‘the Spaniards are the barbarians’ neighbours, as shown by the parable of the Samaritan (Luke 10: 29-37); and the barbarians are obliged to love their neighbours as themselves (Matt. 22: 39), and may not lawfully bar them from their homeland without due cause’. 216

A reader aware of how events unfolded in the Americas would find Vitoria’s words either naïve or cynical. Indian princes – many of whom had been captured and ransomed – would be expected to treat Spaniards benevolently and in the same way

211 See Augustine, On Christian Teaching, 1.31.
they would want to be treated, after all, Christian doctrine commanded to ‘do as you would be done by’. Yet, Vitoria’s use of conditional clauses prevented hospitality from becoming an act of exposure or voluntary subjugation. His observations on universal love were conditional and involved a reciprocally respectful behaviour, present in expressions like: ‘so long as this can be done without harm’, which prevailed throughout the text. Hospitality, Vitoria concluded, should be performed in a heartfelt and willing manner, and ‘without grudging (1 Pet. 4: 9)’. This meant that neighbourly love could only take place in the absence of constrains or threats, from a person’s free will.

Vitoria’s belief about human beings’ natural partnership and communication could also be connected to the Counter-Reformation’s response to Lutheran views on mankind’s sinful nature. In effect, Martin Luther’s early writings, particularly his *Disputation against Scholastic Theology* of 1517, proclaimed the sinful character of human nature when deprived of god’s grace: ‘without the grace of God the will produces an act that is perverse and evil’.

Catholic doctrine recognised human beings’ moral weakness, but responded vehemently to the denial of man’s innate grace. As it was established during the Council of Trent, ‘[all men] were so far the servants of sin, and under the power of the devil and of death... Although free will, attenuated as it was in its powers, and bent down, was by no means extinguished in them’. Free will, then, allowed men to behave either righteously or in a sinful manner. Even though the discussion seems to have relied on matters of degree, the approach of scholasticism conveyed a stronger sense of moral optimism, which would have significant connotations in the context of the polemics about the New World, and Europe’s climate of imperial and religious wars. The scope of man’s ‘servitude to sin’ helped shape discussions on encounters and exchange, and informed the extent to

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which the act of welcoming strangers – whether enemies or allies – was imbued with trust or suspicion.

6. Only Spaniards Welcome?

Vitoria’s discussion of the Spanish’s right to travel initiated as an appeal to ‘fellow-feeling’ from an individual perspective, but his reflections on neighbourly love were mingled with some more controversial statements. Moving away from the duties of the host, Vitoria shifts the attention to the rights of the Spanish ‘nation’ to enforce their right to be welcomed. If the Spaniards were denied what was ‘theirs by the law of nations’, said Vitoria, ‘they may lawfully go to war’. 222 Entry restrictions were equivalent to acts of hostility that had to be redressed: ‘it is an act of war to bar those considered as enemies from entering a city or country, or to expel them if they are already in it’. 223 Passages like these evoked military practices in which the refusal to grant rights of free passage could be taken as an act of aggression. In fact, Vitoria – and afterwards Luis de Molina – made reference to the Old Testament account of how the Israelites came to conquer lands of unbelievers, not because they were sinners or infidels but because they had obstructed rights to free passage. 224

As mentioned above, Vitoria’s theory of the just war is one of his most controversial and widely discussed aspects. As Anthony Pagden has observed in his recent book Burdens of Empire, ‘what were, in fact, private rights – such as the ius peregrinandi – could be used not merely to trump the rights of states, but also to legitimate wars in their defence, which could, of necessity and by right, only be waged by states’. 225 This statement, which Pagden elaborates in passing and while explaining Pufendorf’s response to Vitoria, contains a key reference to the ‘rights of states’ which has not received sufficient attention from the perspective of the right to travel. In fact, Vitoria is not solely concerned with the rights of individuals, but the rights of corporate entities, e.g., the rights of the Spanish. Since war can only be waged by a commonwealth, the rights which are defended are the rights of commonwealths.

In his *History of Rome*, Livy promotes *jus hospitii* as a new ideal that the roman peoples could use in their interaction with strangers, following the ideals of brotherhood of late Stoicism and Christianity.\(^{226}\) Livy points out how, even before the peaceful times brought about by the Augustan Age, some forms of *hospitium* were already in place. One was *hospitium publicum*, which worked as a public treaty of hospitality between Rome and other communities, and another one was *Hospitium privatum*, between individuals from different communities who agreed to treat each other in a benevolent manner even if their countries were at war. (Livy 25, 18.5-9).

This distinction between a public and a private law of hospitality was not entirely clear in Vitoria’s text. His references to the *ius gentium* (law of nations) never fully determined whether it operated among individuals of geographically distant lands, or among political units. The Roman jurist Gaius had defined *ius gentium* as ‘that which natural reason has established among all men’ (quod naturalis ratio inter omnes *homines* constituit) (Dig. 1.1.9). Borrowing almost every word from Gaius’ definition, Vitoria replaced the expression ‘among all men [*homines*]’ for ‘among all peoples or nations’ [*gentes*], raising the question of whether he was expressing a historical transformation of this concept.\(^{227}\) In his *Concise History of the Law of Nations*, Arthur Nussbaum considered that Vitoria’s modification was not deliberate, and made no difference to the status of *ius gentium*.\(^{228}\) Anthony Pagden, on the other hand, has insisted on Vitoria’s conscious description of *ius gentium* as a law between nations. It cannot be assumed, though, that Vitoria was the first to articulate a language to express agreements among political communities, whose interactions had always required negotiations and the establishment of the terms of their relations. In his commentaries to Aquinas’ *Summa Theologiae*, Vitoria refers to *ius gentium* as the common

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\(^{227}\) Vitoria: ‘Quod naturalis ratio inter omnes *gentes* constituit’, *De Indies*, 3.1.2. See also Tierney, *The Idea of Natural Rights*, 136. According to A. Anghie, the link between *ius gentium* and natural reason allowed Vitoria to justify the fact that the Indians were also subject to it, since they possessed reason like any other human being. See Anghie, *Francisco de Vitoria*, 325.

consensus of ‘all peoples and nations’ or of ‘the whole world’\textsuperscript{229}. However, the consensus of ‘all peoples and nations’ or of ‘the whole world’ does not necessarily indicate whether he is making reference to a law that rules individuals or rules nations. In either case, it could be argued that Vitoria’s constant references to ‘the “Spanish” right to travel’ expresses the experience of the encounter with others in terms of groups or through a sense of belonging to a community.

From a very early stage the Spanish crown had received papal support to exercise exclusive rights over the West Indies. Alexander VI’s bull \textit{Inter Caetera} of May 3, 1493 backed the Spanish kings’ mission of bringing the Catholic faith to the native population of the West Indies, and granted them a monopoly over the lands discovered and to be discovered. According to this, the Catholic kings had exclusive control over the movement of people towards the territories their agents had found. They were given the faculty to regulate the movement of their own subjects, but also anyone else entering their vast ‘possessions’. As it was specifically stated in \textit{inter caetera}:

\begin{quote}
we strictly forbid all persons of no matter what rank, estate, degree, order, or condition, to dare, without your especial permit or that of your aforesaid heirs and successors, to go for the sake of trade or any other reason whatever to the said islands and countries after they have been discovered and found by your envoys or persons sent out for that purpose.\textsuperscript{230}
\end{quote}

\textit{Inter caetera}’s concessions were not unprecedented. As James Muldoon has explained, the practice whereby popes received and granted lands can be traced back to the eleventh century.\textsuperscript{231} For instance, in 1091, a papal letter disposed of an island near Pisa and the Lipari islands, and in 1295, Roger Doria, admiral of Sicily, was granted the islands of Gerba and Kerkeni, near Tunis, by pope Boniface, who justified this concession by arguing that these islands had no Christian ruler. In the fifteenth century, the papacy got involved in the conflict between the Teutonic Knights and the Kingdom of Poland through the Council of Constance (1414-17), and in 1453, pope

\textsuperscript{229} Vitoria, “De Jure gentium”, cxi-cxiii.
\textsuperscript{231} Muldoon, \textit{Popes, Lawyers, and Infidels}, 55-56.
Nicholas V granted the Canary Island to the Portuguese in the bull *Romanus Pontifex*, where he authorized the conquest of the land and a trade monopoly.  

Initially, Vitoria seemed to question *Inter caetera*, and the pope’s authority to grant the American territories, arguing that ‘the pope has no temporal power over these barbarians, or any other unbelievers’.  

The pope’s power had a spiritual character, which meant he could not interfere with the jurisdiction of temporal kings. He was not entitled to grant imperium and dominium over *terra incognita*, which belonged to the jurisdiction of temporal power.  

Nevertheless, Vitoria acknowledged the pope’s power over spiritual matters, endorsing the concession offered to the Spanish of promoting the gospel. Preaching was, according to Vitoria, a task that could be granted to the Spanish exclusively.

The pope’s concession to the Spanish was challenged by other European powers. The legislation that excluded foreigners from the Spanish newly discovered territories fluctuated throughout the sixteenth century, relying on Spain’s internal affairs and relations with its European neighbours. In his *The Limits of the British Empire* of 1578, queen Elizabeth I’s advisor, John Dee, challenged Spanish hegemony while also supporting the figure of the papal donation. Dee considered that the papal bull’s act of donation was legitimate but it only included those places which had been, as a matter of fact, found. According to Dee, the pope’s jurisdiction over the New World was legally equivalent to Elizabeth’s letter patents, which also laid claims to the New World, authorizing ‘to discover, search, find out, and view such a remote, heathen, and barbarous lands, countries, and territories, not actually possessed by any Christian prince, nor inhabited by any Christian people’.

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232 Ibid., 106, 134-135.  
234 See Pagden, *Lords of all the Worlds*, ch 2. The denial of temporal political authority also took place among humanists. Many followers of Vitoria supported his ideas regarding the pope throughout the sixteenth and seventeenth centuries.  
If the pope was denied his right to grant land, queen Elizabeth would face similar objections, which Dee sought to avoid. In addition, the pope’s dispositions had awarded Spain with ‘all lands towards the west and south’, which meant, according to Dee, that the Spanish could not just claim everything west of the line.237 Dee interpreted *inter caetera* as a limitation rather than a ‘wide-ranging gift’. By explicitly framing the concession west and south, it restricted Spain’s unlimited ambition regarding the New World, and challenged the idea that all newfound lands were to be in the hands of the Iberians.238

More radically, Richard Hakluyt directly attacked the validity of *inter caetera*, arguing that ‘no pope had any lawful authority to give any such a donation at all’ and therefore, he had handed out something that did not belong to him239. According to Hakluyt, the pope showed a blatant favouritism towards the Spanish, which could be linked up to the well known friendship between the pope and Ferdinand.240

In 1580, shortly after Francis Drake’s return from his circumnavigation, the English claimed the land located in present-day California ‘in the name of Elizabeth’. This was immediately disputed by the Spanish ambassador in London, who argued that these territories already belonged to the kings of Spain.241 The British crown reiterated the legitimacy of their own claims, insisting on the need of usage and possession in order to acquire dominium. They refused to recognise the papal donation altogether, arguing it was against the law of nations to exclude people from commerce with the West Indies.242 In this specific case, the English crown also made use of the idea that the pope had no authority to donate to the Spanish king every single corner of the Indies:

> The Spaniards have brought these evils on themselves by their injustice towards the English, whom, contra *ius gentium*, they have excluded from commerce with the West Indies. The queen does not acknowledge that her subjects and those of

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237 “Inter caetera,” in Davenport, *European Treatises*, 77.
240 See “Inter caetera,” in Davenport, *European Treatises*, 75.
other nations may be excluded from the Indies on the claim that these have been
donated to the king of Spain by the pope, whose authority to invest the Spanish
king with the New World as with a fief she does not recognise. The Spaniards have
no claim to property there except that they have established a few settlements and
named rivers and capes. This donation of what does not belong to the donor and
this imaginary right of property ought not to prevent other princes from carrying
on commerce in those regions or establishing colonies there in places not inhabited
by the Spaniards. Such action would in no way violate the law of nations, since
prescription without possession is not valid. Moreover, all are at liberty to navigate
the vast ocean, since the use of the sea and the air are common to all. No nation or
private person can have a right to the ocean, for neither the course of nature nor
public usage permits any occupation of it.243

Vitoria’s endorsement of the pope temporal powers and their justification of the
Spanish missions overseas, also led him to conclude that their freedom to travel to the
New World excluded other nations. Paradoxically, one of Vitoria’s passages claims
that the journey across the Atlantic should be denied to others:

‘the princes of Spain were the first to undertake the voyages of discovery, at their
own expense and under their own banners; and since they were so fortunate as to
discover the New World, it is just that this voyage should be denied to others, and
that they alone should enjoy the fruits of their discoveries’.244

Vitoria’s support for the Spanish missionary enterprises around the world explains his
claim that only Spaniards enjoyed the freedom to travel to the Indies. In contrast to
France or England, Spain’s hegemonic status in matters of religion had established
significant differences. Spain had – tragically – managed to suppress its ethnic and
racial diversity and had consolidated Catholicism with greater success than other
nations.

243 Quoted by Cheyney, “International Law,” 660.
According to Vitoria, the right to travel, like any other right of the laws of nations, aimed at the establishment of peace among peoples. He grounded his defence of Spanish exclusivity on a discourse of peace and stability, and argued that the exclusion of other nations helped preserving this peace:

‘because if there were an indiscriminate rush to the lands of these barbarians from other Christian countries, the Christians might very well get in each other’s way and start to quarrel. Peace would be disturbed, and the business of the faith and the conversion of the barbarians upset’.\(^{245}\)

As Daniel Allemann observes, the right to preach the gospel could only be conceived in a non-European, imperial context. By definition, missionaries would interact with so-called non-apostate unbelievers, that is, those who were not and had never been ruled by Christians. This form of infidels or unbelievers had no equivalent in Europe, and for this reason, the right to preach had more ‘imperial’ connotations than the right to travel. As Allemann notes, Vitoria’s right to travel also applied to the interactions between the Spanish and the French, thus expressing its applicability in a European setting.\(^{246}\) Nonetheless, travelling and preaching were not as separate as they appeared. As Vitoria himself put it, the Spanish alone enjoyed the freedom to travel to the Indies because of their conversion missions. Vitoria’s observations about every human being as a neighbour would encourage an idea of all-encompassing charity that included infidels and sinners, but it would also incite claims like the right to preach at a global level. Discourses of universal kindness were often placed side by side with campaigns justifying the pursuit of global faith. Vitoria’s comments on the Spanish entitlement to travel to remote lands were primarily grounded on its benefits for the implementation of Christian missions. This theological purpose also linked global trade to global Christian missions.\(^{247}\) In a separate passage about the right to preach, Vitoria argues that ‘the pope may entrust the task to them [the Spanish], and deny it to all others. He may restrict not only the right to preach, but also the right to trade, if

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\(^{247}\) On the connection between trade and theology see Thumfart, “On Grotius’ Mare Liberum and Vitoria,” 82.
this is convenient for the spreading of the Christian religion’. The concession of a trade monopoly also was, according to Vitoria, a compensation for the Spanish’ duty to preach the gospel.


Making use of Vitoria’s precepts, Hugo Grotius would claim that the Dutch had as much right to peaceful travel and trade as the Spanish and the Portuguese. Grotius wrote his *De Jure Praedae Commentarius (Commentary on the Law of Prize and Booty)* in 1604 after obtaining his doctorate in civil and canon law from the University of Orléans, although he was still an unknown solicitor in The Hague. Grotius’ pamphlet, which he took two years to finish, undoubtedly opened up great prospects for a short-lived political career as a member of the provincial government, and later on, the Estates General, the federal government of the Dutch Republic. With the exception of chapter XII, which was turned into his *Mare Liberum*, Grotius’ *Commentary on the Law of Prize* was not published until the nineteenth century. His justification of military aggression would not have seemed so appropriate at the time when the twelve years’ truce between the United provinces and Philip III of Spain and Portugal was being negotiated.

Grotius’ *Commentary* contained 68 references to the work of Vitoria, but his defence of freedom of movement was made in favour of the Dutch and against the Iberians. The text was a formal defence of the Dutch captain Jacob van Heemskerck, who had captured the Portuguese ship Santa Catarina the year before. According to Grotius, the Dutch attack against the Santa Catarina was part of a just war which sought to punish Portuguese violations of natural law. As he observed, ‘it has been demonstrated ... (with authoritative confirmation drawn from Vitoria and with the aid of examples) that a just cause of war exists when the freedom of trade is being defended against those who would obstruct it, we arrive at the conclusion that the Dutch had a just cause for

To Grotius, the ultimate consequence behind the conception of free passage as a right is the possibility of legitimately enforcing it. In these terms, the VOC had the right to resort to military action in order to protect their freedom to move and trade.

The Dutch war of independence (1568-1648) had fuelled hostilities between the United Provinces and Portugal, especially after Portugal was annexed to the Spanish crown in 1580. As well as an apology for the United Dutch East India Company, or VOC (Verenigde Oostindische Compagnie), Grotius’ *Commentary* incorporated major developments in the history of natural law and theories of natural rights, many of which were based on the writings of Francisco de Vitoria. Making use of the arguments of the Spanish Dominican, it presented a staunch defence of open shores and freedom of movement and trade. From the perspective of the ‘law of nations’, Grotius claimed, ‘access to all nations is open to all’.

Human friendship and mutual need ‘naturally’ foster the unity of mankind, as it was shown by:

> the breath of the winds in their regular courses and in their special deviations, blowing not always from one and the same region but from every region at one time or another… Are these things not sufficient indications that nature has granted every nation access to every other nation? In Seneca’s opinion, the supreme blessing conferred by nature resides in these facts: that by means of the winds she brings together peoples who are scattered in different localities.

Alongside his references to Vitoria, Grotius strongly emphasizes his point by making reference to Seneca. Peaceful encounters are made possible by what Grotius calls ‘the sacrosanct law of hospitality’, according to which, princes have no power to prohibit others to ‘enjoy access’ to their territories or ban trade with their subjects. From Grotius’ perspective, Vitoria had attributed to the Spanish the right to wage a just war if their right to free travel and trade was violated: ‘if the Spaniards should be prohibited

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252 Ibid., 183.
253 Ibid., 183.
by the American Indians from travelling or residing among the latter… these causes might serve them as just grounds for war against the Indians’. 254

In order to justify the Dutch attack, Grotius offered an account of Portuguese repeatedly inhospitable behaviour. One episode had taken place in 1598, when the fleet of Olivier of Rotterdam – which had circumnavigated the world four times – encountered the Portuguese on the Ilha do Príncipe. Among flags of truce, members of the crew had disembarked only to meet the swords of their hosts. Grotius also relates how, during the same journey, near Rio de Janeiro, ‘two men who had been instructed to land were spirited away by means of an ambush which the Portuguese had prepared in advance’. Likewise, ‘At the Doce River, indeed, the Dutch were prevented from even approaching the shore or making use of the fresh water’. 255 Grotius recalls a series of other episodes taking place in 1601 in which Dutch sailors intercepted by the Portuguese had fallen victims to poisonous provisions, outrageous mutilations and murder. He describes how, on arrival to the Chinese market town of Macao in November 1602, seventeen Dutch sailors from the United Amsterdam Company had been executed by Portuguese authorities. 256 Despite concerns about the legitimacy of a Portuguese judicial sentence implemented ‘against foreigners and the lives of freeborn persons’, the executions had been carried out secretly and in the cruelest manners. As Grotius described it, the Dutchmen had approached the land amidst displays of peace tokens, only to be captured upon arrival. Those who were not executed ‘were led in bonds, at midnight (so that they might be defrauded even of human witnesses and human pity), to that very shore which they had approached after sighting the signals of peace; and there, weighted with rocks, they were rolled into the sea’. 257

From Grotius’ perspective, the Dutch had, on the other hand, practiced policies of open doors. He brings up Dutch documentary records from 1577 in which, despite the existing climate of war, the Portuguese were ‘empowered to enter, depart from, or remain within the territory of the Low Countries’. 258 Even in the year 1581, when the

254 Ibid., 183.
255 Ibid., 151.
256 Ibid., 167.
257 Ibid., 169.
258 Ibid., 148.
Portuguese came to acknowledge the sovereignty of Philip II, they enjoyed ‘safe passage to and fro, residence, and the practice of commerce, among the people of the Low Countries’. Nonetheless, these benevolent attitudes were not replicated on the Portuguese side. Free transit had been publicly promised at the beginning of Philip III’s reign, but soon after Dutch ships were being confiscated and their crews imprisoned and sent to the galleys.\textsuperscript{259}

Conclusion

Vitoria defended a form of hospitable behaviour he believed should take place in peaceful terms and guarantee safe encounters. As he noted on his lesser-known lectures on Thomas Aquinas, aspects like the rules of war and diplomacy and the conditions for admitting newcomers were means for promoting peace among societies, not ends on themselves. Yet, despite his manifest repugnance for the atrocities committed against native Americans, and his objections against the idea of global empire, Vitoria could not to overcome the logical consequences of his theory of hospitality as a legal right of the Spanish.

The Dominican transformed natural partnership and communication into a set of rights that involved travel, trade, access to citizenship and natural resources, whose violation potentially justified war. While appealing to Stoic and Christian notions of ‘fellow-feeling’, Vitoria defended the rights of the Spanish ‘nation’ to monopolize movement and enforce their rights. The limits of this undertaking were soon expressed by Hugo Grotius, who defended the same set of rights for the Dutch and against the Spanish and Portuguese. Grotius’ explicit use of Vitoria’s arguments evidenced the extent to which the discussion was moving away from its ethical framework to become a tool of political agendas. The attempt to classify and impose a fixed legal framework to the experience of welcoming strangers transformed the meaning and scope of discourses on kindness and compassion, and already manifested the limits and potential abuse of ‘national’ rights. Vitoria’s defence of the Spaniards’ right to travel echoed contemporaneous anxieties about identity and the emerging implementation of large scale identification mechanisms.

\textsuperscript{259} Ibid., 150.
Chapter 2

Monitoring Movement: The Challenge of Mobile Identities

Placelessness evokes non-identity. Cervantes’ travelling characters typically have vague, ill-defined roles. Far from being conceived as fixed figures, they evolve and transform as they move about. And yet, in Heraclitean fashion, something remains through change. In Cervantes, physical movement therefore becomes a metaphor revealing the difficulties behind attempts to envisage a fully transparent sense of identity.\(^\text{260}\) In *El coloquio de los perros* Cervantes’ most pressing question is who the two dogs truly are; meanwhile, the protagonist of *El Licenciado Vidriera* dissociates himself from all places while dissolving his own identity. Diego Cortado, from *Rinconete y Cortadillo*, knows neither where he comes from nor where he goes, suggesting a certain form of anonymity. Who these characters are and where they go are strongly intertwined. Each has a mobile identity that varies according to movement, waxing or waning as they move from place to place. If, as the cliché has it, life is indeed a ‘journey’, then this throws into question the idea of stable, unequivocal identity, emphasising instead the bond between movement and change. As Steve Hutchinson has put it, the traveller is ‘the same person throughout but never quite the same from one step to the next’.\(^\text{261}\) Movement and misidentification thus run together; if identity can mutate with movement, this raises potentially urgent concerns about knowing and naming newcomers.

Movement and identity are thus intimately connected. Identifying someone is often associated with ‘placing’ or ‘locating’ them, suggesting the extent to which the experience of recognition requires immobility: ‘placing’, ‘fixing’ or ‘settling’ within conceptual space. A person’s identity can appear to slip away with movement, placelessness evoking an identity that is obscure or obscured. Early-modern Spanish licences and other travel documents were implemented as a response to concerns about a mobile population whose identity and political allegiance ebbed with movement and the absence of place. As Imperial Spain expanded to unprecedented levels, the need to control access to its domains was also translated into the urge to construct discourses


\(^{261}\) Hutchinson, *Cervantine Journeys*, 79.
of identity. But glaring differences among the natives of the kingdoms of Spain increased the challenge of defining foreigners and strangers. Much scholarly attention has been given to categories that formed identity, but less has been said about the practices that deformed it. The meticulous mobility regulations of the early-modern Hispanic world evidenced the elusive identities of those on the move, and the many ambiguities still present in narratives of belonging.

This chapter thus examines the various ways in which Imperial Spain’s mobility regulations sought to grasp, control, fix and determine the evanescent identity of its subjects. It complements current research on the loose character of identity categories, and seeks to reassess the idea that these categories managed to effectively inform policies of movement. To this end, I first introduce narratives of belonging involving notions like vecindad, patria, and nación, as well as the role of overseas encounters and Catholic identity. I then explore the question of how Spaniards defined themselves for the purpose of legitimizing their journeys overseas, and examine the different mechanisms that sought to define ‘foreigners’ in the same context. Some of these definitions were established through policies on members of Spanish fleets, travel bans, expulsions and relocations, and others took shape within legal cases and juicios de expulsión. These trials, preserved in the Archivo de Indias and Archivo General de la Nación (Bogotá), illuminate some of these debates and vividly express the terms in which both travellers and authorities articulated the motives and the legitimacy of journeys.

1. The Transatlantic Passenger

Everyone embarking on overseas journeys was subject to bureaucratic scrutiny, and even those who enjoyed exemptions or privileged treatment, e.g., clerics or merchants, had to prove their status before the authorities. The Americas created the right conditions for a project of large-scale identification of people, where the passenger undertaking the transatlantic journey gradually became a bureaucratic cipher whose identity and moving existence had to be registered and acknowledged by law.262 Writing served the purpose of securing biographical information and identification,

262 Bernhard Siegert, “Pasajeros a Indias”, 295-297, 303.
and gave a sense of fixity to itinerant behaviour at an unprecedented scale. During the early years of the Spanish presence in the Indies, a mandate of Ferdinand of 1511 allowed travellers to cross the ocean by simply giving their names and indicating their place of origin:

que permitiesen pasar a las Indias, Islas, y Tierra firme del mar océano, todas las personas naturales, vecinos y moradores de estos reinos que quisieren ir a ellas sin pedirles información sino solo con escribir los nombres de los que pasasen, para que se supiere la gente que iba, y el lugar de donde eran vecinos (...) deseo que tenia de que las Indias se poblasen y ennobleciesen.263

The imperative to create a profile of the passenger and to trace his movement grew during the 1520s and 1530s, when further ordinances vehemently prohibited ‘New Christians’, Moors, Jews, heretics, and their descendants, as well as single women, from embarking to the Indies.264 This process consolidated the ‘machinery of description’ launched by Philip II in his 1552 initiative reinforcing licences and background certificates.265 The judges of the Casa de Contratación were in charge of verifying that all passengers provided a certificate of purity of blood, which contained:

informaciones hechas en sus tierras y naturalezas, (asi como las solian dar en la Casa) por donde constase si son casados o solteros, y las señas y edad que tienen, y que no son de los nuevamente convertidos a nuestra santa fe católica de Moro, o de Judio, ni hijo suyo, ni reconciliados, ni hijos ni nietos de persona que publicamente hubiere traído Sanbenito, ni hijos ni nietos de quemados o condenados por herejes.266

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264 See Veitia, Norte de la contratación, 219.
Those travelling to the New World were thus required to provide judicially approved descriptions of their physical appearance as well as their Christian background and lifestyle. Travellers requesting a license had to provide the names and descriptions of those intending to travel with them, while also demonstrating their own and their companions’ *Limpieza de sangre* (Purity of Blood). These checks on people’s Christian background had begun in the late fifteenth century with the establishment of the Inquisition, whose rulings excluded from public office the descendants of those who had been condemned. Alongside this, some institutions such as religious orders, cathedrals, and universities required their members to go through these examinations, reinforcing the belief that religious orientation survived in the blood from one generation to another. The idea of *limpieza* or ‘clean’ background did not take hold in Spanish society straight away, but gained force when its use as a tool to access power became more widespread. In 1556, Philip II gave royal support to measures that introduced Purity of Ancestry as a requirement to access public office in Toledo. Through this mechanism, the crown attributed itself a fundamental role in deciding who could join the ranks of the Spanish power elites. Similarly, strict *Limpieza de sangre* requirements for passengers overseas provided the crown with the means for supervising those who populated its new territories.

Licenses were normally issued in court and did not require petitioners to be physically present, so it was at the *Casa de Contratación*, established in Seville in 1503, where the identity of those listed in licenses was ‘verified’, making paper and reality agree. The judges of the *Casa* had to verify that the documents that travelers provided were genuine, interrogating witnesses about the information supplied, with particular attention to the petitioner’s physical appearance, confirming any birthmarks, scars, or freckles. Similar to the early modern figure of the ‘sturdy beggar’, authorities sought to unmask forbidden travelers and those pretending to be someone else. The *Casa de Contratación* was a growing bureaucratic apparatus where anything and anyone

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271 See Siegert, “Pasajeros a Indias,” 300.
crossing the ocean would have to be registered in the *Libro de asientos de Pasajeros a Indias.* Before departure, royal officers often entered the ships in the port of the Guadalquivir River to make sure that all passengers on board were registered, and their ‘true’ identity fully confirmed.

This approach to identity looked at people’s presence, as opposed to their absence. Whether it was a license on paper, a badge, or a seal, these objects of identification were carried along by their holders to actively prove who they were. In contrast, according to Valentin Groebner, previous identification techniques had been usually produced for absent criminals, so that the material objects of identity – a described portrait – would be in the hands of the authorities, and not the person in question. Like portraits, the passenger’s license was a material and tangible object that functioned both as a letter of passage and an identification document, which sought to convey a faithful representation of the individual.

Renaissance portraits expressed the rebirth of realism and the desire to make faithful representations of individuals. Nevertheless, fidelity and trustworthiness contrasted with prevalent values of *fantasia* and *ingegno* (inventive talent). Paradoxically, the depiction of the essence of nature required the artist to be inventive and make use of his imagination, particularly in the context of the Renaissance fashion of making portraits of absentee models. To copy nature in a precise and detailed way and discovering that which was not visible to the naked eye, required ‘fantasy.’ In this way, a portrait became a way of extracting the individuality of a person, but artists were aware of their own contribution to shaping the identity of their models.

Authorities were aware of the existence of false witnesses and fraudulent schemes, as it was stated in one of the king’s ordinances warning officers of the House of Trade to remain alert to these episodes. The ordinance, inserted at the beginning of a *Libro de pasajeros,* read: ‘los pasajeros… presentan testigos falsos para probar lo que

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272 Archivo General de Indias (AGI) Contratación, 5537, L. 1, fol. 4v.
As Bernhardt Siegert has observed, procedures for the elaboration of licences constituted a ritualistic act of repetition that reproduced the petitioner’s claims, which in turn restated the parameters of the law. The circle of repetition that went from the witness to the petitioner, and from the petitioner to the law, only proved the fictional character of this ritualistic process, in which the forgery took place not only in the person of the traveller but in the procedure as a whole. Both petitioners and witnesses made sure they expressed their motivations and background in the terms already established by the law, and officers confirmed that these testimonies indeed agreed with the law. The ‘true’ profile of the passenger was thus established through an act of registration, whose accuracy could only be confirmed through the same bureaucratic procedure.

2. Narratives of Belonging: On Spanishness

Spanish history is filled with profuse attempts to define the notion of Spanishness. In his *Conservación de monarquías y discursos políticos* of 1626, Pedro Fernandez de Navarrete warned against the way in which ‘Spanish’ identity was being challenged by imperial affairs and territorial expansion. Navarrete, a cleric, poet and politician, denounced the accelerated expansion of the Spanish empire, and the pace of Spain’s depopulation, arguing that disproportionate growth could cause serious disruptions. Navarrete was concerned with the effects of extreme growth, particularly when its inhabitants – the Spaniards – were extinguishing and consuming. In a place that expands with no limits, its inhabitants shrink and dilute: ‘para evitar el consumirse y acabarse los españoles, sería cordura poner límite y raya a su extendido imperio’.

He was mainly concerned with population decline, but his use of organic metaphors and words such as *consumirse* expressed a sense of identity that faded away with expansion and displacement: ‘en provincias tan faltas de gente no conviene intentar nuevos descubrimientos o nuevas conquistas, en que se acaben de consumir los pocos.

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275 AGI, CONTRATACION.5537, L. 1, fol. 4v.
276 Bernhardt Siegert, “Pasajeros a Indias,” 298-304.
In Navarrete’s terms, the colonial enterprise had depopulated Spain and he proposed to stop any activities of discovery or conquest in order to discourage people from leaving. According to his calculations, more than forty thousand people were leaving the peninsula every year, most of whom were highly skilled on matters of land and sea. The percentage of those who returned was low and the number of those getting married and leaving offspring was even lower. Spain’s depopulation, a movement outwards, reduced Spaniards not only in their numbers, but also threatened their very identity and existence.

According to Sebastián de Covarrubias’ definition, the expression ‘to be consumed’ involved impoverishment: ‘consumido… el que ha gastado toda su hacienda y está pobre’. Navarrete uses this term in a similar way, but he was also concerned with the decline of society’s virtues, particularly when ambition grew in an unrestrained way: ‘la ambición solicitó la codicia, que es la raíz de todos los males con que se va experimentando en España lo que en todas las demás monarquías, cuya ruina suele originarse de la misma grandeza’. According to Navarrete, empires at the peak of their grandeur find at the top the very cause of their decline. Navarrete’s reference to the decay of Spanish society also involved a sense of disease and dissolution. In Covarrubias’ definition, to be consumido (consumed) was to be ‘flaco y macilento’ (skinny and sickly). In fact, the term consumption later on came to designate the wasting disease of pulmonary tuberculosis. Navarrete’s allusion to the consumption of the Spanish population appealed to demographic rates and moral decline, but it also expressed concerns about a sense of Spanishness which he believed was dissolving.

Once the gates to another world were opened, it became increasingly urgent to define who the king’s subjects were and how their place of origin conditioned their relation to the king. The idea of the Spanish nation was entangled in various mythical constructions, which were particularly reinforced in nineteenth-century historical accounts emphasising a sense of unity against Napoleon’s invasion. Indeed, to be a

279 Fernandez Navarrete, Conservación de monarquías, 46.
280 Sebastián de Covarrubias, Tésoro de la lengua castellana, o Española (Madrid: Sanchez, 1873), 160.
281 Fernandez Navarrete, Conservación de monarquías, 47.
282 Covarrubias, Tésoro de la lengua, 160.
283 Kamen, Imagining Spain, 1-3.
national from a certain place was an expression in its infancy. Like patria, it made reference to a place of origin but often indicated a larger unit. At the turn of the seventeenth century, Sebastián de Covarrubias’ definition of nation was still vague. In his *Tesoro de la lengua Castellana* of 1608 he described it as ‘reino o provincia extendida’ as it was the case with ‘la nación española’. John Elliott has famously noted that nation during this period remained a significantly abstract and evasive notion: ‘los conceptos de nacionalidad, basados en lengua y etnicidad comunes, no estaban claramente definidos y carecían de la resonancia que iban a alcanzar con el movimiento romántico entre los siglos XVIII y XIX, pero esto no significa que no existiera un fuerte sentimiento de identidad colectiva’. The idea of Spanishness as a collective identity should thus be approached in rather flexible terms. As Harald Braun has explained, ‘if we must accept the existence of a so-called “collective identity,” then it should without a doubt be a dialectical and flexible concept that incorporates various explicit and frequently conflicting expressions of nationhood’.

Identities, as well as the attempt to understand them, are processes in constant transformation, constructions that fluctuate and are subject to multiple interpretations. Like the imagined communities of Benedict Anderson or Eric Hobsbawm, narratives of belonging and non-belonging have been always in perpetual motion. In legal documents, the word ‘Spain’ was often used as a shorthand to designate a conglomeration of kingdoms, but it did not have a legal existence of its own. Legally speaking, there was only a long list of provinces ruled by the same king. A provision from 1586 shows the common practice of addressing Philip II as ‘rey de Castilla, de Aragón, de las dos Sicilias, del Jerusalém, de Portugal, de Navarra, de Granada, de Toledo, de Valencia, de Galicia, de Mallorcas, de Sevilla, de Sardinia, de Córdoba, de Córnsica, de Murcia, de Jaén, de los Algarves, de Gibraltar, de las islas de Canaria, de las Indias orientales y occidentales, islas y Tierra firme del Mar Océano, archiduque...

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284 Covarrubias, “nación”, in *Tesoro de la lengua*, 119.
de Austria, duque de Borgonia y Milán; conde de Habsburgo, de Flandes, de Tirol, de Barcelona, señor de Biscaya, de Molina, etc.\textsuperscript{289}

According to Fernandez Albaladejo, the Spanish nation of the sixteenth century was very distant from the nationalistic discourses of the nineteenth century. Instead, the idea of Spain was closer to the notion of Hispania, commonly expressed in plural as \textit{Hispaniae} or ‘las Españas’, evoking the diverse kingdoms which had been coexisting since the time of the Visigoths. In his view, the Catholic Kings made use of this legacy to create a discourse of restauration of the old Hispania, but the main focus was religion: instead of ‘Reyes de España’, Isabella and Ferdinand had been granted by the pope Alexander VI the title ‘Reyes Católicos’.\textsuperscript{290}

The notion of patria also shifted meaning and scope. The historian John Hale describes soldiering as a cosmopolitan experience that lacked a fixed sense of patria.\textsuperscript{291} If anything, the diverse composition of armies often encouraged a sense of companionship that ‘broke the spell of national identity’.\textsuperscript{292} Local patriotisms only episodically merged into regional allegiances and occasionally reached a larger sense of identity. In Hale’s words: ‘antagonisms between nations, there certainly were, but they were neither so clearly defined nor so widely shared as to provide a cause of war or to guarantee automatic support for one’.\textsuperscript{293} Charles V’s appointment of foreigners to public office sparked discontent and resentment among locals, but patriotic attitudes and national rivalries were never at the heart of ongoing wars. Additionally, the word patria sometimes evoked Spain as a whole, but it was also conceived in very specific geographical terms. When Don Quixote and Sancho were returning home at the end of Cervantes’ novel, they cross ways with a knight who tells them he was returning to Granada, his patria: ‘yo, señor, – respondió el caballero –, voy a Granada, que es mi patria’.\textsuperscript{294} Patria \textit{chica} or ‘little patria’ expressed a sense of belonging through a very

\textsuperscript{290} Pablo Fernández Albaladejo, “España desde España,” in \textit{La idea de españa en la edad moderna} (Valencia: Real Sociedad económica de amigos del país, 1996), 68.
\textsuperscript{291} Hale, \textit{War and Society}, 44.
\textsuperscript{292} Hale, \textit{War and Society}, 44.
\textsuperscript{293} Hale, \textit{War and Society}, 43.
\textsuperscript{294} Miguel de Cervantes, \textit{Don Quijote de la Mancha} (Bogotá: Alfaguara, 2005), 1089.
concrete geographical affiliation, a motherland that could be the size of a village or a town, but could also potentially extend to a kingdom.\textsuperscript{295}

The notion of Spanishness is often linked to the experience of encounter in overseas enterprises. According to Henry Kamen and María José Rodriguez-Salgado, a certain sense of identity was nurtured by ideas of ethnic and cultural superiority developed in narratives about Spain’s self-proclaimed empire amid fierce European competition.\textsuperscript{296}

In these terms, the idea of being ‘Spanish’ was forged as a result of the encounter with infidels in the civilising missions of the American continent, and the wars against the Ottomans and the English in the 1570s and 1580s. In North Africa, Spain’s failure to consolidate its colonial enterprise or at least secure previous alliances, fuelled fears that a Muslim invasion could eventually be backed by the Morisco population. The Moors – concomitantly with the Jews – increasingly became the focus of suspicion and fear, which developed into measures such as the Jews’ expulsion in 1492, and the Muslims’ forced conversions of 1499 and final expulsion in 1609, with an enormous impact for Spain’s reputation as a multi-cultural and multi-racial place.\textsuperscript{297}

Tamar Herzog, on the other hand, has emphasised the role of the idea of religious or civic community in the construction of Spanishness. According to Herzog, ‘Spaniards’ were not so much the result of national or proto-national developments but rather an idea of belonging to a specific religious or civic community.\textsuperscript{298} According to Herzog, heretics, even those who were born and had grown up in Spain, were perceived as foreigners. In contrast, those who demonstrated to be faithful, even if they came from abroad, were admitted as Spaniards or were worthy of being treated as such.\textsuperscript{299} In the end, according to Herzog, the key factor for the identification of foreigners was religious orthodoxy, and not necessarily a form of national discourse. For instance, for Bartolome de las Casas and Jose de Acosta, non-Catholics, including Protestants, Jews

\textsuperscript{295} Gil Pujol, “Un rey, una fe,” 40.
\textsuperscript{297} Rodriguez-Salgado, “Christians, Civilised,” 235, 240.
\textsuperscript{299} Herzog, “Can you Tell a Spaniard?,” 154. See also Marco Antonio de Camos, Microcosmia o gobierno universal del hombre cristiano (Barcelona, 1592). On religion as a tool of unification see Elliott, Imperial Spain, 76.
and Muslims, were all equally barbarians. The idea of the foreigner was often associated to those whose faith was dubious, as it was expressed by a law of 1602 that ordered to ‘clean’ the land from suspicious people in matters of faith: ‘que se procure limpiar la tierra de extranjeros y gente sospechosa en cosas de la fe’.

Englishmen confronted by the inquisition in Spanish America were required to demonstrate their Catholic background, an arduous task considering that many of them were incapable of saying their prayers in Latin, let alone in Spanish. As the English sailor Miles Philips reported, they were ‘commanded to say the Pater Noster, the Ave Maria and the creed in Latin, which God knoweth a great number of us could not say, otherwise then in the English tongue’. Nevertheless, England’s religious orthodoxy continually shifted in the second part of the sixteenth century. From Catholicism, it went to Henry’s and Edward’s reformed churches, then a strong Catholic turn under Mary, and back to Protestantism during Elizabeth. These oscillations, though, made it the more difficult to frame national identity in terms of religious conviction.

According to Barbara Fuchs, English subjects like Miles Philips who travelled in Spanish America sometimes managed to disguise themselves as Spaniards, challenging the idea of an obvious notion of national identity.

The idea of ‘the Spaniards’ was also expressed through categories of moral virtue. As Rodríguez-Salgado has pointed out, only occasionally did Bartolomé de las Casas address his own people as ‘the Spanish’. The Dominican friar seemed to have used the word ‘Spaniards’ more often to address soldiers and colonists who exploited the ‘Indians’. In contrast, those who he had a favourable opinion of were addressed by their names or occupation, as when he compared ‘the friars to the Spanish tyrants’.

Las Casas referred to non-Spaniards in America as Christians, particularly Italians.

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301 Recopilación de Indias, tit. 27, ley 9 (1602).
302 Miles Philips, “A Discourse Written by One Miles Philips Englishman,” in Richard Hakluyt, The Principal Navigations Voyages Traffiques and Discoveries of the English Nation, 12 vols. (Glasgow: MacLehose, 1903-05), vol. 9, 425.
305 Las Casas, Breve resumen, 79.
306 Las Casas, Breve resumen, 34-40.
Nonetheless, these distinctions were soon overcome by the language of ‘conquistadores’ who came to express negative connotations. Yet, the approach to a ‘Spanish’ moral identity was not entirely consistent. In his novel *La Araucana* of 1589, Alonso de Ercilla addressed both settlers and conquistadors as ‘Españoles’. He criticised the atrocities committed by the Spaniards, while calling himself a Spaniard, and making use of expressions like ‘nuestra gente española’.

The exclusionary policies of the Spanish crown did not deter members of minority groups from perceiving themselves as Spaniards and express a strong sense of patria. In *Don Quijote*, Sancho’s encounter with his neighbour Ricote expresses the tragedy suffered by Moriscos living in exile, and mourning their motherland. As Ricote tells Sancho, ‘doquiera que estamos lloramos por España, que, en fin, nacimos en ella y es nuestra patria natural; en ninguna parte hallamos el acogimiento que nuestra desventura desea, y en Berbería, y en todas las partes de Africa donde esperábamos ser recibidos, acogidos y regalados, allí es donde más nos ofenden y maltratan’. Despite Spanish hegemonic efforts, the Morisco Ricote regards Spain as his own patria, and the impossibility to create a sense of belonging after exile.

Barbara Fuchs has amply discussed the role of the Moriscos in challenging the notion of Spanishness and the existence of a homogenous Spanish society. In Fuchs’s words, ‘their [the Moriscos] rhetorical arguments for inclusion actually render them an intrinsic part of the Spanish self’. In a petition to the Audiencia of Granada in 1566, the Morisco leader Francisco Núñez Muley condemned the different measures that forbade Muslim cultural practices, arguing that perfect Christians were not to be identified by cultural expressions such as dress or language. Even if this was the case, Grenadine’s dress was considerably different from dress patterns in Fez or Turkey, and therefore could not denote any form of affiliation or problematic sympathies. In fact, Old Christian Grenadine women had adopted the use of veils and ‘almalafas’.

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308 Cervantes, *Don Quijote*, 963.
and this practice had become so widespread that in 1513, the authorities had to issue a Royal ordinance banning these items.\footnote{Garrad, K., ed., “The original Memorial of Don Francisco Núñez Muley,” \textit{Atlante} 2, no. 4 (1954), 219.}

Not even the attempt to attribute a sense of ‘otherness’ to the Turks was that straightforward. A report made by the imperial ambassador to Venice, Lope de Soria, described the Turkish ambassador Janus Bey as a tall man wearing a beard and a Turkish-style turban. Yet, the description also warned about the possibility that he might cut his hair and remove the turban, and look like an Italian: ‘trae turnante como turco phero es de creer que se lo quitará por camino y tendrá la cabesa rasa a la Italiana, griego y latino’.\footnote{Quoted by Stephanie H. Jed, “Relations of Prose: Knight Errant in the Archives of Early Modern Italy,” in \textit{The Project of Prose in Early Modern Europe and the New World} (Cambridge: Cambridge University Press, 1997), 50.} This report shows how the distance between Christians and infidels – and enemies – could so easily be shortened. The threat of the Turkish was not so much grounded on their differences but on their similarities. The most alarming aspect seemed to be the fact that the Turkish ambassador could so easily pass for any other European. Instead of actual differences, these portrayals of ‘otherness’ were constructed by imperial officers trying to reinforce categories of difference. As Stephanie H. Jed observes,

To counter this threat of sameness, imperial agents developed habits of reporting on appearance, clothing and hair styles that would maintain a strict differentiation between ‘self’ and ‘other’. Concepts and categories such as ‘Turkish’ or ‘Italian, Greek, and Latin’, emerged as much from the everyday relations of administrative reporting as from any stylistic feature of dress and appearance.\footnote{Stephanie H. Jed, “Relations of Prose,” 50.}

In similar terms, research undertaken by historian Chloe Ireton shows how officers of the House of Trade treated many free black Christians as \textit{naturales} of Castile and true vassals of the king. As Ireton shows, hundreds of free black men and women had their inheritances processed through \textit{Bienes de difuntos}, and were issued licences to travel to the New World in order to settle with their families. Many lived in difficult
conditions of poverty, but many other became distinguished members in their communities. As Jorge Cañizares-Esguerra has also explained,

*Moriscos, conversos, and castas* could create networks of patronage through economic success to deny any Moorish, Jewish, Amerindian, or African ancestries. Descendants of perceived heretics and enemies of the faith, regardless of their colour or physiognomy, often manipulated the system. Demonstrating high social standing in the community, attesting one’s own *calidad*, was often enough for conversos, moriscos, and castas to be considered Old Christians. In the case of blacks and mulattoes, they could even legally prove to be ‘white’.

The idea of ‘spanishness’ manifested in many contexts. The Jews claimed to be a nation within Spain, and the kingdom of Granada made similarly robust claims. Certain groups of merchants could be recognized through a sense of ‘nationality’, and separate units within an army could be distinguished in terms of nations. The idea of the Spanish nation could be found in the colloquial language of travellers longing for home, scholarly treatises and public discourse, but another question was whether this term implied a ‘political reality’. The word ‘nation’ was present in many different sources, but its meaning adopted many forms and was by no means fixed. And, as the next section shows, defining foreigners and strangers was not so straightforward either.

3. Defining Strangers

Away from a legally established town, individuals’ identity seemed to fade away. Tamar Herzog explains how belonging could only be conceived as belonging to a specific community, and only through this concrete bond, it was possible to talk about a ‘Spanish citizen’. Residency rules were highly flexible and focused on individual

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315 See Kamen, *Imagining Spain*, 12.
acts of commitment to the place. There were no abstract legal definitions, and discussions centred on whether the person in question could claim a certain right or perform a concrete duty within the community. In Herzog’s words,

the question was never who was a Spaniard, who was a Frenchman, or who was a citizen of a local community. At stake was always the question of who could enjoy a specific right or to be obliged to perform a certain duty… The exercising of rights, rather than legal enactments or official declarations, defined the boundaries of early modern communities.316

Residents or vecinos were entitled to certain rights and required to comply with duties, e.g. access to common pastures or participation in the local administration, and taking part in these practices allowed individuals to both claim and confirm their membership. Most natives had never received formal declarations, and letters of naturalization were mostly issued to wealthy residents. As Herzog has extensively discussed, acquiring naturaleza was a an adaptable process, which required a series of practices demonstrating a strong sense of belonging to the community, reflected in acts of love and loyalty to the place.317 Strictly speaking, there were not ‘natives of Spain’, but ‘natives of the kingdom of Aragon’ or ‘natives of the kingdom of Valencia’, and this status was achieved by demonstrating the condition of vecino in one of these kingdoms’ local communities.

As Herzog explains, the term vecindad originated in Castile in the eleventh and twelfth century in the context of the Reconquista of Muslim lands.318 Paradoxically, vecindad had been conceived in the experience of migration, granting benefits and duties to those who were willing to leave their homes and settle in a new community. Belonging was not taken for granted, but was created through experiences of movement and transition. The mobile antecedent imbedded in this early category of vecinos informed the way in which acquiring residency remained a flexible process well into the

316 Herzog, Defining Nations, 4.
317 Herzog, “Los naturales de España, entre el Viejo y el Nuevo Mundo,” in De re publica Hispaniae: una vindicación de la cultura política en los reinos ibéricos en la primera modernidad, eds. Francisco José Aranda Pérez and José Damião Rodrigues (Madrid: Silex, 2008), 412. Also Herzog, “Can you tell a Spaniard,” 149, 154.
318 Herzog, Defining Nations, 6, 9.
eighteenth century. Nevertheless, the nomadic origins of the term *vecindad* seems to have been overshadowed by the stronger emphasised placed on identity’s relation to space and belonging.

Residency requirements were the same for people coming from places like Aragon and Andalusia, but also for those coming from outside the peninsula. According to Manuel Herrero Sánchez, in Castile residence requirements were the same for subjects and non-subjects. Frenchmen, Genoese or Englishmen had the same residence requirements as Catalans, Neapolitans, Milanese or Flemish. Certainly, having a Catholic background was fundamental, and those who were also the king’s subjects enjoyed certain advantages, but in the end, vassalage or religion were not enough for foreigners to take up residence.319 Regulations from 1561 and 1562 established that anyone seeking to be considered a *natural* or acquire *naturaleza* should spend a period of ten years in either the Spanish kingdoms or the Indies. Alongside this, they were expected to have acquired a home of their own and be married to locals. In 1608 the residency period was made twice as long, which was, according to Veitia Linage, a response to what he called ‘the grave difficulties’ of this period.320 These policies echoed Spanish homogenizing policies targeting Jews, gypsies and the Morisco population, as well as events abroad such as the Anglo-Spanish war (1585-1604), the Dutch Revolt, the French wars of religion, and the upheavals produced by the Protestant Reformation.

Defining foreigners acquired greater relevance in the the process of deciding who could legitimately go to the New World. In his *Política Indiana* of 1648, Juan de Solórzano Pereyra, described the Aragonese as foreigners: ‘son extraños (...) y que así se declaró en las cortes de Segovia del año de 1532’. Adding a quote by Burgos de Paz, he concluded that ‘los originarios y naturales del reino de Aragón son tenidos por extranjeros o alienígenas’.321 Solórzano Pereyra also pointed out how queen Isabella had ordered that Columbus’ weapons and emblems had to carry the inscription: ‘Por Castilla y por León Nuevo Mundo halló Colón, y también porque no consentía pasar

320 “Cédula del 2 de oct de 1608,” in Veitia, *Norte de la contratación*, cap. xxxi, 236-244.
a ellas sino a Castellanos y si algún Aragonés allá iba, era con su licencia y expresó mandamiento'.

In Solórzano’s view, ever since Columbus’ journeys, the Aragonese had been rhetorically relegated from the Spanish crown’s affairs in the Indies.

The union of the crowns after Isabella and Ferdinand’s marriage did not seem to alter the sense of otherness with which Castilian and Aragonese regarded each other. As Solórzano Pereyra put it, ‘y no obsta que todos estos reinos se hallen unidos y constituyan una como monarquía, por donde parece que importa poco que todos los vasallos de ellos se igualen, o por mejor decir, que no se pueden tener por extranjeros ni peregrinos los que están debajo del dominio de un mismo rey...’. As Solórzano observed, the fact that these kingdoms were ruled by the same king did not do much to overcome the fact that their inhabitants persisted in treating each other as foreigners. On the face of it, subjects of the same king were closer to each other and more ‘alike’, but still referred to each other with a sense of otherness. Solórzano insisted on the question of whether the Aragonese and Navarrese were as foreign as Italians, Flemish, or Portuguese:

Lo que he visto dudar algunas veces es si los Navarros y Aragoneses se han de reputar por naturales de Castilla y León y particularmente de nuestras Indias, o por extranjeros, como a los Portugueses, Italianos, Flamencos, y otros, cuyas provincias no están unidas a los dichos reinos de Castilla y León, y las Indias accesorivamente, sino con igual principado y conservando sus leyes y fueros con que se gobernaban antes de su unión y agregación.

Around 1650, the Aragonese bishop Juan de Palafox commented on how rulers recognized the diversity of the different Spanish regions, describing how ‘queen Isabella even changed her clothes according to the nation she was in; in Castile she was a Castilian, in Aragon an Aragonese, in Catalonia a Catalan’. Likewise, Philip II appeared Castilian for his Castilian subjects and Aragonese for his Aragonese subjects, and when he married Mary Tudor in 1554, his outlook was meant to help

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322 Solórzano Pereyra, Polítia Indiana, 670.
323 Solórzano Pereyra, Polítia Indiana, 670.
324 Solórzano Pereyra, Polítia Indiana, 669.
325 Quoted by Kamen, Imagining Spain, 15.
him gain English acceptance. Court historian Florián de Ocampo described how the
queen sent Philip the outfit he had to wear both during his entry ceremony into
Winchester and during the wedding itself. As Alexander Samson has pointed out,
they were dressed up almost identically as a symbol of their political union, with
Philip’s jewellery displaying specific references to England’s historical past.
Philip’s outfit included a French-style brocade suit, a doublet and hose, and white
shoes, but in general terms he was dressed as an Englishman to reassure his role as
king of England. As Samson explains, ‘his clothes were a negotiation of national
particularities as well as international politics.’ Something similar took place when
he became king of Portugal in 1681, as he was dressed up in Portuguese fashion.

As Antonio Dominguez Ortiz has explained, foreignness had many gradations. There
were those who were not subjects of the Spanish crown but came from an allied nation
and had a Catholic background. There were also those who were subjects of the
monarchy yet foreigners, such as the Portuguese and Flemish, and finally, members
of different kingdoms of peninsular Spain who would also see each other as foreigners,
e.g., Castilians in Aragon, and vice versa.

4. Living ‘Derramados’

Identifying Spaniards was thus no easy task. Cultural, ethnic and religious elements
played a fundamental role, but historical evidence suggests that none of these aspects
offered a definite, fixed way of settling the discussion. Wandering and itinerancy, for
instance, prevented the consolidation of the bonds necessary to claim cultural, civic or
political allegiance, and for this reason, policies and practices promoting permanent
settlements and carefully monitoring access had an enormous – yet underexplored –
impact on narratives of belonging.
From the outset, the Catholic Kings displayed concern about people travelling to the New World and living *derramados* (scattered). In an instruction of 1501, Fray Nicolas de Ovando was commissioned to make sure that ‘cristianos que en la dicha isla Española viven y vivieren de aquí en adelante, no vivan derramados; y que ninguno viva fuera de las poblaciones que en la dicha isla se hicieren’. The Spanish sought to avoid having people scattered about; their empire was built upon the stability thought to be provided by the foundation of towns and cities, and nomadic behaviour necessarily challenged this view.331 A ruling from the Audiencia of New Spain made reference to vagabonds as *inquietos* (the movable ones), and promoted *quietud* (quietness or immobility) as one of its main targets: ‘que haya quietud y sosiego en la tierra entretanto que se hace el repartimiento’ (1533), ‘que se haga mucha cuenta con la quietud de la tierra’ (1535).332

Queen Isabella’s instruction of 1501 reflected this town-based conception of empire, as it specifically commanded to *poblar y pacificar* (to settle and pacify) – in other words, to establish pueblos or towns, and to stop people from living *derramados*, scattered about.334 The foundation of towns was in line with strategies implemented during the Reconquista, whereby claims of possession were made through the establishment of new settlements. In this way, the town contributed to populating, as well as Christianising, new land.335 These injunctions also applied to native Americans. In his *Información en derecho* of 1535, the first bishop of Michoacán Vasco de Quiroga drafted the idea of creating special congregations for the Indians to prevent them from living *derramados* in rural areas. Based on ideals sketched in Thomas More’s *Utopia*, Quiroga argued that with the correct use of *policía* the Indians should remain within their communities with incentives involving ‘buena y cristiana conversación, que no se espantasen con temores de guerra ni espantos de ella’.336 The Spanish word *policía*, derived from the Latin *politia* and the Greek *politeia*, was

331 “Instrucción a Fray Nicolas de Ovando, 1501,” in Colección de documentos inéditos relativos al descubrimiento, conquista y colonización de las posesiones españolas en América y Oceanía CDIA (Madrid: Imprenta de M. Bernaldo de Quirós, 1864), vol. 31, 18.
334 “Instrucción a Fray Nicolas de Ovando, 1501”, in *CDIA*, vol. 31, 18.
connected to the notion of polis, and made reference to the idea of good order or good administration in the city. According to its Latin roots and Cicero’s interpretation, it involved a certain way of behaviour within the city, a set of virtues connected to urbanitas or urban life, in contrast to rusticitas or rusticus. In these terms, policia could only apply to town dwellers, and was meaningless among those who constantly moved about.\footnote{On this notion of policia see Richard Kagan, “A World without Walls: City and Town in Colonial Spanish America,” in City Walls: The Urban Enceinte in Global Perspective, ed. James Tracy (New York: Cambridge University Press, 2000), 132-136. Also Kagan, “Poblando las Americas, unas observaciones comparadas,” in Poblar la inmensidad: sociedades, conflictividad y representación en los márgenes del Imperio Hispánico, ed. Salvador Bernabéu (Barcelona: Rubeo, 2010), 537.} This precept agreed with Aristotle’s view of human virtue as that which took place and developed in the city, outside of which, men could only live like beasts, in a barbaric state: ‘one who is incapable of sharing or who is in need of nothing through being self-sufficient, is no part of a city, and so is either a beast or a god.’\footnote{Aristotle, Politics, trans. Carnes Lord (Chicago: University of Chicago Press, 2013), 1253a25.} As Kagan explains, itinerant behaviour was often addressed through the expression ‘vivir alárabe (to live like an Arab), which was more often applied to Gypsies, Moors, and indigenous groups of the Americas.’\footnote{Kagan, Urban Images, 27.}

Gypsies’ itinerant lifestyle was constantly regulated by the authorities. In different instances, Gypsies were ordered to give up their nomadic behaviour and to permanently settle. They were required to present themselves to local authorities and register their names and domiciles. There were multiple ordinances issued in 1499, 1539, 1586, 1613 and 1619, and some of them were prohibited from living in distinct neighbourhoods, wearing distinctive outfits or speaking languages other than Spanish. In 1695 Gypsies were expelled, and only those who had permanently established themselves in communities with more than 200 vecinos could stay.\footnote{Herzog, Defining Nations, 128-129. See also Sánchez Ortega, Documentación sobre la situación de los gitanos españoles en el siglo XVIII (Madrid: Editora Nacional, 1976).}

Large scale movement towards a land of unthinkable dimensions required the belief in the possibility of a fixed destination and settlement. This vain desire to deter itinerant behaviour on the other side of the Atlantic was expressed through measures that forbade travellers from moving to a different province after arrival. In effect, licences specified the province where their holders could stay, and they were
prohibited from going anywhere else without requesting additional permission. A 1562 ruling ordered ‘que del Nuevo Reino no pasen al Peru, sin especial licencia’, and in 1574 established: ‘que ninguno pase de Venezuela al Nuevo Reino sin licencia del rey’. Licences were generally valid for only two years, and the requirement to renew them allowed a steady supervision of those abroad. These measures thus intended to stop people from wandering to places where the crown could eventually lose its grip on them. Certainly, these objectives had limited applicability for either settlers or natives of the vast lands of the New World. As Jeremy Ravi Mumford has explained, many members of indigenous groups living in reducciones (Spanish towns founded to resettle entire native communities), continually moved back and forth from their previous dwellings, despite the efforts of Spanish local authorities. In addition, the foundation of towns often involved multiple instances in which the entire community changed location before permanently settling.

Controlling movement through physical boundaries was no easy task in the vast territories of the Americas. Licences contributed to establishing hierarchies and classifications of travellers and people on the move, demarcating spaces of ‘legitimate’ movement, and creating channels for the assertion of sovereignty. Like city gates, Spanish ports in the Americas marked entry and departure, but the space they ‘guarded’ had a different nature. While city gates framed a contained and visually demarcated space, the new ports of the Americas gave entry to vast and unknown lands that defied demarcation. Unbounded territory challenged existing forms of space demarcation and might have encouraged a greater emphasis on identification. Obscured as it was, the category of ‘foreigner’ was used in malleable ways and following different motivations. Rather than using existing categories of identity, emerging mobility regulations ‘reshaped’ these categories according to shifting political tensions.

Identifying who ought to be considered a foreigner was never a straightforward process. In fact, because of its inherent ambiguities, on occasions these distinctions had to be established through legislation concerning mobility to the New World.

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342 *Recopilación de Indias*, lib. IX, tit. 26, ley 49 (1562), (1674).
Initially, Charles V’s ordinances authorized foreigners to trade in the West Indies when accompanied by Spaniards, and in 1528, the year he granted his colonies in Venezuela to the Welsers, he authorized both Spanish and non-Spanish subjects to go to the Americas, together with the Genoese and the Portuguese. As the ruling stipulated it, ‘extranjeros puedan poblar y tratar en Indias, que sean súbditos de su majestad y naturales, y del imperio y genoveses, como los naturales de Castilla y de Leon’. In effect, in 1535 the English, French and Portuguese were specifically excluded: ‘las justicias de las Indias prendan y secreten los bienes de las personas inglesas, francesas o portuguesas que se hallaren en Indias y los envíen a Sevilla’. And in December 6, 1538, non-Spanish subjects were banned altogether from travelling to the Indies: ‘que ningún extranjero de estos reinos pase ni ande en la navegación de las Indias, ni ningún maestre los traiga o los lleve en su nao’. Subsequent legislation carried on this practice of naming those who were to be considered foreigners in specific circumstances. In 1560 the French were specifically declared foreigners, the Genoese and the Portuguese in 1571, and the Dutch, French, Germans, English, Portuguese and Italians in 1608.

A subsequent ordinance ordered the expulsion of all foreigners from New Spain and Peru in 1591. The task was not only difficult to implement, but sparked a series of doubts about who should be considered a foreigner. In a letter written the year after, the viceroy Luis de Velasco explained the difficulties experienced in the implementations of these polices, finding it particularly arduous to determine whether the Portuguese – who had been recently incorporated into the Spanish crown – should be considered as foreigners under these ordinances. In addition, the viceroy complained about the hassle of having to go to court to establish if they were foreigners, particularly when they were not that many and most of them were in

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344 CDIU, vol. 21, 91
345 CDIU, vol. 10, 448, no. 203.
346 Veitia, Norte de la contratación, libro 1, cap. 31, 238-239. On requirements for a foreigner to become a ‘natural’, see also Recopilación de Indias, tit. 26, 27.
poverty. In his own words: ‘de otras naciones habrá muy pocos y pobres y por la mayor parte son flamencos o dicen que lo son con quien parece sería mucho rigor deducir el negocio en juicio y andar en pruebas porque de otra manera no se hallaran a composición’. Amid confusion and hesitation, a law from 1596 declared the Portuguese foreigners, as well as any others who did not belong to the Spanish kingdoms: ‘declaramos por extranjeros los que no fueren naturales de estos nuestros reinos de castilla, Leon, Aragon, Valencia, Cataluña y Navarra, y los de las islas de Mallorca y Menorca, por ser de la corona de Aragon. Así mismo declaramos por extranjeros a los Portugueses’.

5. Cosmopolitan Spanish Fleets

Despite existing regulations, foreigners proliferated in the Spanish fleets and in the Indies. The percentage of sailors from other nations was so high that Philip II had to explicitly legalize the presence of foreigners in Spanish vessels, under the condition that they were Catholics. Yet ordinances from 1590 and 1621 specifically excluded the English regardless of their religious orientation. Even in the most famous expeditions – Columbus, Magellan, Cabot – a large percentage of the crew members had foreign origins. On his second trip to Hispaniola and after being appointed first viceroy, Columbus brought such a great number of Genoese that the Franciscan friars already living in the island referred to it as an invasion. According to Fernandez de Navarrete, approximately 35% of Magellan’s crew members were non-Spaniards. Yet these numbers could be even higher, as records suggest that many of those registered as Spaniards were in fact foreigners in disguise. Magellan himself was required to swear that he had made all possible efforts to recruit Spanish sailors:

347 AGI, Mexico, 22, N. 83.
348 Recopilación de Indias, tit. 27, ley 28.
353 Pérez-Mallaina, Spain’s Men of the Sea, 54-56.
I ordered a public announcement made throughout the city of Seville and in the plazas and markets and customary gathering places, and along the banks of the river of this city, saying that all persons, including sailors, apprentices, carpenters, and caulkers and other workmen who wanted to go on the said armada, should come to me… [But] even with all these efforts, and with many others that were made, I could not crew the ships of the said armada with the natives of these kingdoms, and not finding them, I ordered the said masters to receive foreigners who seemed qualified for the said armada.354

Sebastian Cabot’s expedition of 1526 encountered similar circumstances. The *Consejo de Indias* sent Cabot a letter expressing their concerns about the high percentage of foreigners, and imposing among his crew a two-thirds quota of Spaniards. Nonetheless, a petition for salaries made years later by the survivors of Cabot’s expedition showed that, in fact, almost half the crew members were foreigners. Ship captains were often foreigners themselves and were more inclined to recruit people with similar origins who could share a common background. This facilitated the operation of the ship and helped to prevent mutinies. In addition, foreigners represented a form of cheap labour. To obtain a licence as a foreigner was extremely difficult, and their clandestine participation in sea voyages took place under underpaid conditions, which explains captains’ preferences to recruit non-Spaniards.355

In 1568, the *Casa de contratación* issued instructions ordering to limit the number of foreign crew members to six per ship, all of whom should be licence-holders. Nevertheless, official records from the late sixteenth century show a higher presence of foreigners registered in armadas and fleets, and suggests that one in five crew members was a non-Spaniard. Approximately half of the foreigners were Portuguese, another 25 percent Italians, and the rest a mixture of Flemings and Germans.356

Despite official figures, the number of non-Spaniards was likely to have been even higher. Perez-Mallainá makes reference to cases in which those wishing to become masters and pilots – the highest posts in merchant ships – paid bribes to avoid having

354 Ibid., 55.
355 Ibid., 60-61.
356 Ibid., 56-57.
to prove their Spanishness. A report written in 1551 denounces the way in which the Portuguese sent their wives to the nearest Spanish town across the border to declare themselves to be residents there. According to this report, once they succeeded: ‘they return to take their wives back to where they are natives’. 357 Many foreigners passed for Spaniards among the high ranks of masters and pilots but also among regular sailors. Many Spaniards thus managed to access a day job that did not involve embarking across the Atlantic: ‘it is with the agreement of the masters that they sign up as sailors and are entered in the register, although they do not have to go’. 358 Sevillian sailors were thus hired to load the ship and go through inspections and last minute they were substituted by foreigners.

Striking differences among different Spanish provinces contributed to making the divide between Spaniards and foreigners even more diffuse. Thick accents and linguistic varieties allowed Portuguese people to pass as Galicians; French and Italians could easily be perceived as Catalans, and those who spoke a non-Romance language could eventually pass for Basque. Ship masters were concerned about having the necessary workforce, and when they were caught travelling with foreigners they often argued that some Spaniards had deserted and had been therefore compelled to replace them last minute to avoid delays. Ship masters themselves advised foreigners to respond to interrogations by saying that they were ‘from whatever part of Spain they could fake best’. 359 Stronger regional differences within the peninsula thus facilitated more flexible interpretations of what it meant to be a foreigner.

6. The American Shores

The crown was aware that a considerably high percentage of crew members in Spanish fleets were of foreign origin, and sought to veil the main ports of Spanish America with ordinances restricting their access. Different regulations in 1557 restricted the access of foreigners to port cities, even when they held a licence: ‘que los extranjeros, aunque lleven licencias, no pasen de los puertos (...) Que los gobernantes de los

357 Quoted by Perez-Mallaina, Spain’s Men of the Sea, 58.
358 Ibid., 59.
359 Ibid., 59.
puertos no dejen pasar extranjeros’. This remained a matter of concern throughout the sixteenth and into the seventeenth century. An ordinance of Philip IV of 1647 warned governors of coastal cities against foreign residents who could turn out to be spies: ‘Que se procuren evitar las noticias que pueden adquirir y dar los enemigos, mediante los extranjeros que viven en las Indias...’. Secrecy policies regarding maps had some antecedent in the Portuguese world. Ever since the late fifteenth-century Portuguese pilots who sold or gave away maps were punished with the death penalty, showing the extent to which sensitive information was deemed essential for the establishment of imperial hegemony. In the context of West African navigation, the Portuguese Cortes of 1481 had presumably requested,

severe measures for maintaining the secret of the discovered lands. The documents were sequestered; to record new lands on the maps was forbidden; the nautical works became secret books; prohibitory tales were spread; and the navigators forced to keep the oath of silence.

The crown’s concerns about the availability of its costal towns’ geographical information was reflected in Philip II’s decision to choose Madrid as the seat of the royal court. Ports were strategically points for the traffic of people and merchandise but were also exposed to countless dangers, piratical raids among the most pressing ones. This explains why Seville was initially the main port of the peninsula, even though it was not located by the sea, and the journey along the Guadalquivir river to the coast took roughly a week. In fact, this was one of the most difficult parts of the entire journey to the Americas, as dangerous shallow points along the Guadalquivir forced ships to navigate extremely slowly and only partially loaded. In some points, passengers were required to disembark so that the ship could pass through. The risk of exposure to piracy raids seemed to have justified all this trouble, as demonstrated by the Anglo-Dutch attack on Cadiz of 1596, depicted for instance, by Cervantes in

360 Recopilación de Indias, tit. 27, ley 3 (1557), ley 4 (1624), and ley 1, 8, and 9. Veitia, Norte de la contratación, 219. Encinas, Cedulario, I, 461.
361 Recopilación de Indias, tit. 27, ley 7.
363 Perez-Mallaina, Spain Men’s of the Sea, chapter 1.
La Española Inglesa, where the protagonist had been one of the victims of this deadly attack. 364

The presence of foreigners in Spanish American ports was certainly difficult to control. According to Eleonora Poggio, during the last decades of the sixteenth century, more than one in five foreign crew members escaped on arrival to ports in the New World. 365 In a letter addressed to the king, an anonymous writer complained that ‘los portugueses indicaban a los franceses, ingleses y holandeses la situación exacta de los puertos y desembocaduras de los ríos americanos y que los buques corsarios generalmente llevaban timoneles de aquella nacionalidad’. 366 Records of the port city of Cartagena from the 1570s contain local authorities’ complaints about the large number of foreigners who lacked a licence, smuggled unauthorized merchandise, and acted as spies of pirates and buccaneers. 367 Concerns about foreigners increased after Drake’s assault on Cartagena in 1585, as was the case with a Portuguese pharmacist Rodrigo Mendoza, accused of spying for the English: ‘actuaba como encubridor de todos aquellos espías, que bajo apariencia de arrieros, actuaban para Inglaterra’. 368

The presence of foreigners was unavoidable, not only because of lack of enforcement, but also because of the implementation of the legal figure of the Composición in 1593, which allowed non-Spaniards – in a rather discrecional and irregular way – to pay a contribution to the crown so that local authorities refrained from prosecuting them. 369

The presence of foreigners pushed the authorities to order in 1618 that all foreigners living in ports should be relocated inland, and as far as possible from ports:

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366 Quoted by Konetzke, “Legislación sobre inmigración,” 293.
367 See María del Carmen Borrego Plá, Cartagena de Indias en el siglo XVI (Madrid: Consejo Superior de Investigaciones Científicas, 1983), 436.
368 Declarations included in a letter by Pedro de Lodeña to the king written in Cartagena, February 17th, 1585, quoted by Enriqueta Vila Vilar, “Extranjeros en Cartagena (1593-1630),” Lateinamerikas 16 (1979), 177.
369 For more on the discrecional character of the composiciones see Herzog, Defining Nations, 111. Also Borrego Plá, Cartagena, 437.
Que los extranjeros compuestos sean retirados de los puertos... Porque esto se ha de prohibir con graves penas, procurando siempre retirarlos tierra adentro...

Los virreyes y gobernadores se procuren informar de la ocupación en que se emplean y de que correspondencias se valen, y con qué personas contratan.370

These ordinances testify to the manifold composition of ports’ populations, but also their vulnerable position. In the trial of the Genoese Jácome Cajon in the New Kingdom of Granada in 1620, he was made to pay a fee, and was reminded that he had to stay away from port cities: ‘la composición que por ser extranjero de los reinos de Castilla se le ha de dar para que pueda morar y contratar en estos reinos como no sea en los puertos marítimos, en conformidad con la cédula de su majestad’.371 He was told he was allowed to remain in Spanish territory to practice commerce, as long as he stayed away from sea ports.

After the revolt of Portugal in 1640, the crown ordered governors of American provinces to keep close supervision of Portuguese inhabitants to make sure they stayed away from port cities: ‘que los que viven y residen en los puertos de mar de esas provincias (...) sean retirados veinte o mas leguas la tierra adentro’.372 In a letter addressed to the king, an anonymous writer complained that ‘los portugueses indicaban a los franceses, ingleses y holandeses la situación exacta de los puertos y desembocaduras de los ríos americanos y que los buques corsarios generalmente llevaban timoneles de aquella nacionalidad’.373 Yet, some records depict the crown’s concerns about local authorities’ lack of compliance with these measures, expressed in a letter by the king to Don Juan de Bega Bazan, governor of the province of Nueva Granada:

Tampoco abiades cumplido las cedulas que os hauia mandado despachar para que hiciéades retirar a las partes que se hauian señalado los portugueses que residen en la dicha provinncia de Tierra Firme.374

370 Recopilación de Indias, tit. 27, ley 21, (1618, 1619).
372 CDIA, vol. 6, 567.
373 Quoted by Konetzke, “Legislación sobre inmigración,” 293.
374 CDIA, vol. 17, 279.
Some legal cases contained in the *Archivo de Indias* in Seville offer additional details about the limits of establishing the status of travellers, and the ambiguities involved in determining the extent to which they posed a threat to Spanish hegemony. One case tells the story of the Genoese mariner Lorenzo de Pedemonte, who was apprehended and taken to the prison of the House of trade in Seville in 1570. Going against regulations that forbade mariners from leaving their ships, the Genoese sailor had disembarked and stayed in Puerto Caballos, a port in New Spain. He argued that he had fallen terribly ill near the shore, and had had no other choice but to seek inland medical assistance. He reports that a local woman called Eleonora de Sayal had taken him in and looked after him while he was convalescing, adding:

‘por esta razón me quedé en esta provincia y no pude ir en la dicha nave e ahora estando yo en el dicho Puerto de Caballos de camino para los reinos de España, la justicia mayor me embarcó en esta nave y me secuestraron todos mis bienes y se quedaron con ellos y me envían preso sin yo haber sabido por donde e por qué’.  

During the trial, the prosecution cast doubt on the alleged illness, pointing out that during the seven months he claimed to have been ill he had bought a house with a garden, where he was living comfortably until he was caught and sent to prison. In a desperate, last-ditch attempt, Pedemonte pleaded: ‘en esta carcel estoy muriendo de hambre y tengo mujer e hijos que mantener. Suplico a su señoría mande soltarme de esta carcel’. Pedemonte and many others found themselves at the threshold of these legal conundrums, which selectively veiled the American shores according to blurry categories of belonging and unclear policies for disembarking.

In 1565, there was a similar case involving the English sailors Tomas Ingles y Tomas Juanes. They were brought to trial because of their condition as foreigners, and their status as either sailors or soldiers was also called into question. They claimed to be part of the ship’s crew, to be paid a regular wage as sailors, and to have no connection to their captain’s warlike endeavours: ‘no tuvieron culpa de lo que los capitanes y maestres del dicho navío hiciesen, así en ir donde fueron como en acometer el navio

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375 AGI, Justicia,897,No.2, 8.
376 AGI, Justicia,897,No.2, 37.
de Portugueses... No tenían libertad de salirse ni dejar de ir donde el capitán y maestre quería llevar su navío... Por todo lo cual pido e suplico absuelva y de por libres a los dichos [...] de todo lo contra ellos acusado (...) si han estado en algunos puertos que por ordenanza de vuestra alteza les fuese prohibido no fue con su voluntad ni sabían de tales ordenanzas’. Establishing their condition as regular sailors, instead of soldies, was not clear-cut, but nevertheless essential for justifying their presence in the continent.

In 1569, the Englishmen Juan Hue, Yustan Fill and Guillermo Sandis were captured in New Spain and sent to prison in Seville under the charge of having entered the Indies despite being foreigners: ‘haber pasado a las indias siendo extranjeros y haber tratado y contratado en ellas contra lo dispuesto en las ordenanzas’.

Their imprisonment had been decided by the Casa de Contratación, and they appealed their sentence to the Consejo de Indias. The prosecution would insist that these men, who came from London, were also members of the English army, had participated in the battle of San Juan de Ulúa (modern Veracruz), denied the Catholic faith, and were not married: ‘natural y vecino de la ciudad de Londres y niega la fe nuestra y que no es casado’. They nevertheless argued that they had no knowledge of the restrictions against them, nor that one of the ship’s stopovers was forbidden. In their own words: ‘se embarcaron en las naves de Juan Aquines sin entender que... a parte prohibida... Y el dicho Juan de Aquines no hacía daño en los puertos donde llegaba’. They therefore pleaded their innocence through their own good faith and the ship’s captain peaceful intentions.

Felipe Merelo’s case was nevertheless, the most paradoxical. He was a Genoese who had lived in Seville for more than eighteen years, ever since he was a child. The authorities had apprehended him in a visit to the Indies in possession of a sailor’s licence in 1565, and accused him of ‘haber comerciado en Indias siendo extranjero’. In his defence, Merelo claimed, ‘yo a más de siete años que vengo a estas partes de

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377 AGI, Justicia,888,N.9, 15r, 18r. Tomás Inglés y Tomás Juanes, ingleses, pobres y presos en la cárcel de la Contratación, acusados de los excesos cometidos en compañía de Guillermo Mapiques en la jornada de la Florida. ‘El general Pedro Melendez tuvo necesidad de marineros para la jornada de la Florida... Por ello la justicia de la dicha isla de Puerto Rico los mando soltar’.

378 AGI, Justicia,902,N.1, 5.

379 AGI, Justicia,902,N.1, 615.

380 AGI, Justicia,902,N.1, 5.
Indias por mar y he servido a su majestad en sus armadas. Siempre que he venido a estas partes he venido con licencia de los señores de la contratación’. Merelo’s case shows how even those who had lived in Spanish territory for long were not exempted from having their rights and identity challenged. In fact, Spaniards themselves were likely to have their identity disputed. As Tamar Herzog has noted, ‘in Spanish America, merchants classified economic rivals as foreigners to prevent them from immigrating and trading in the New World’.

In her study of a group of 23 foreigners condemned by the Inquisition in New Spain between 1597 and 1601, Eleonora Poggio shows that half of those who travelled to the Indies had lived in Spain beforehand, or at the very least, had been crew members of ships that transported merchandise between Spain and places like Flanders, England and Germany. The Inquisition, the Audiencias, and the Casa de Contratación dealt with judicial procedures of individuals with a fragmentary sense of belonging, and their multiple identities became a major challenge for the project of creating permanent and immovable settlements.

Portuguese travellers posed great challenges to ideas about identity and belonging. In his Suplicación en defensa de los portugueses of 1630, Lourenço de Mendonça complained about officers in the Indies who treated the Portuguese as foreigners:

Siendo Portugal parte de España, y los Portugueses tan naturales y tan verdaderos españoles y tan naturales y leales vasallos de su majestad, no los deben en el Perú y más partes de las Indias occidentales los jueces ejecutores interpretar ni incluir en la cédula real de los extranjeros’… ¿no son, señor, los portugueses tan españoles como los navarros, provincianos de Guipúzcoa, vizcaínos, aragoneses, valencianos y catalanes? Que aunque estos dichos son españoles, como nosotros los portugueses, también como nosotros no son castellanos. ¿Son por ventura los dichos más españoles y más leales vasallos de vuestra majestad que los portugueses?

381 AGI, Justicia.999 n. 2, ramo 3. Similar to other examples, it was difficult to conclude whether he was engaged in commercial activities or whether they aimed at his subsistence.
382 Herzog, Defining Nations, 11.
384 Lorenzo de Mendoza, Suplicación a su magestad católica del Rey nuestro señor, que Dios guarde: Ante sus Reales Consejos de Portugal y de las Indias, en defensa de los Portugueses (Madrid, 1630), fols. 1, 8v–11r, 12v, 16v–18v, and 57v. See also Pedro Cardim, “Todos los que no son de Castilla
Philip II’s military conquest of Portugal in 1580 exacerbated existing tensions, but Portuguese-Castilian relations did not necessarily fall apart. There were tense relations between the Spanish and the Portuguese kingdoms for most of the sixteenth century, but there was no official declaration of war. In fact, marriage alliances taking place between 1490 and 1525 proved how both nations sought to keep smooth relations and maintain unity in a peaceful manner. In Asia, Spanish and Portuguese merchants displayed stable relations while positioning themselves in the context of eastern trade. The Portuguese had a strong presence in Spanish America, and in cities like Buenos Aires, the Portuguese came to represent a third of the population at the beginning of the seventeenth century. In a letter to the king written in 1641, the Duke of Alba, for instance, complained about the large number of Portuguese travellers living in the city of Zamora.

The Archivo General de la Nación in Bogotá contains a remarkable array of legal cases involving Portuguese travellers imprisoned in the New Kingdom of Granada in so-called juicios de expulsión. Some of the cases show how since the 1560s and 1570s the Portuguese presence in Spanish America produced constant tensions with the authorities. For instance, the Portuguese Antonio de Olivera, who was imprisoned and put on trial in 1567, was accused of being a foreigner in Spanish territory. The local authorities argued that he was a ‘natural of Albor que es en el reino de Portugal en el Algarve (...) y que pasó a estas partes de las Indias hace diez y siete años y que no trajo licencia ninguna de su majestad sino que pasó como pasan otros’. Interestingly,


388 Archivo General de Siamancas, Guerra Antigua,1.40.

this observation suggests that there were many other Portuguese who had also entered Spanish domains illegally and without a licence from the king. In addition, the fact that seventeen years had passed since he had left Portugal, did not seem to have any impact to ameliorate his harsh punishment.

In contrast, a trial taking place in the same year against Manuel Alvarez, a Portuguese tailor, had more benign consequences. It was another *Juicio de expulsión* in the hands of the Real Audiencia of Santa Fe, but Alvarez’s proof of a quiet and peaceful behaviour won him a more permissive outcome. It was concluded that ‘ha quince años que está en estas partes de Indias y que es hombre quieto y pacífico y usa y ejerce su oficio de sastre’.  

390 He was allowed to enter and leave the Indies under the condition of paying 1000 pesos and registering any merchandise at the House of Trade. Policies against foreigners thus fluctuated in different cases and were subject to judicial discretion.

Another example is that of Enrique Antunes, who in 1572 was accused of being a foreigner, but also of causing disruption in the community.  

391 There were several complaints about Antunes’ misbehaviour. The *alguacil* related how neighbours had called for his assistance when Antunes was beating up an indigenous woman inside his own shop. He then described how he had apprehended Antunes, confiscated his sword and taken him to prison. In fact, it was not the first time he had been in jail and his behaviour had created discontent among different members of the community. He was released after the incident, but the *alguacil* decided to promote an official inquiry on his condition as Portuguese. As it was described in the trial: ‘después de esto vuestro alguacil mayor de Indias denunció a Antunes por Portugues’. Despite Antunes’ harmful behaviour, his condition as foreigner seems to have constituted the most serious accusation he received. Spanish authorities argued that Antunes had travelled to the Indies without a licence, and requested the Real Audiencia to expel him. According to accounts of different witnesses, Antunes was a Portuguese person who ‘vino a estas Indias en un navío de corsarios luteranos según se dice públicamente. Y estos tales portugueses comúnmente suelen ser pilotos y guía de

391 AGN, Negocios-Exteriores:SC.42,6,D.23.
todos estos corsarios que tanto daño han hecho en estas Indias’. From the case it is not possible to say with absolute certainty whether Enrique Antunes was a foreigner who was being bullied by the local authorities, or whether he had actually displayed an offensive behaviour that had understandably put the community on alert. But it shows how discourses on piracy and the protestant ideology had potentially more weigh than disruptive behaviour. In his defence, Antunes claimed that, throughout his stay in Santa Fe, he had loyally served the king of Spain, and begged the judges to release him from prison, where he was being badly mistreated: ‘en esta cárcel de la cual es alcalde el alguacil mayor y sus tenientes... maltrataron de mi persona como en que se me levanta otro falso testimonio’. In addition, he insisted that the alguacil’s accusations of his allegedly Lutheran allegiance had no grounds and were based on personal antipathies rather than facts.

Conclusion

In the early-modern Hispanic world, categories of belonging were often expressed in terms like nation, patria, or citizenship. Yet these were complex categories whose meaning was particularly challenged by itinerancy and changing subject populations. The Spanish crown sought to control the movement of its subjects through licences that granted rights of passage and conferred on their holders a place in the universe of legally acceptable identities. In the great age of interoceanic journeys, the history of mobility regulations is imbricated with the implementation of identification procedures. Attempts to distinguish the true pauper from the vagabond sought to establish the legitimacy of certain forms of movement, and the same applied to the notion of Spanishness.

The trials of imprisoned foreigners in New Spain and the New Kingdom of Granada express the lack of fixed and pre-existing frameworks of identity. They suggest that narratives of identification were forged concomitantly with and in the process of controlling the movement of peoples. They also evidence fluctuating narratives of self-identification and express the inadequacy of ports to guard the continent’s...
Mobility regulations – rather than, for instance, the experience of war – seem to have made more significant contributions to the construction of the idea of Spanishness, and eventually narratives of national identity. Even religious affiliation, which was fundamental for the establishment of a collective identity, had limitations: a shared Catholicism was necessary, but not sufficient, for gaining access to Spanish-American shores. The dozens of juicios de expulsión contained in the Archives of Seville and Bogotá confirm the way in which different categories of belonging were constantly disputed in an attempt to either execute or thwart existing regulations. Traveller’s ambiguous origins and status as sailors, soldiers or merchants expressed the equally unclear policies for disembarking and the uneven criteria implemented in specific cases.

Mobility regulations sought to create a sense of fixity that was also expressed through policies for the establishment of permanent and immovable settlements. Those whose movement had turned them into objects in need of identification were expected to permanently settle, as evidenced by the short-term character of overseas licences and the obligation to remain in the same province. This was also the case for the begging licences of the Poor Laws of 1540, which sought to confine the legality of alms-seeking to one’s place of birth.

As this chapter confirms, studies on mobility can contribute highly to historical perspectives on categories of identity. The acts of moving, passing-for and passing-through have played a significant role in forming, and de-forming, identity. Most studies tend to focus on conditions that create a sense of identity and belonging, and pay less attention to the experiences through which identity falters, fades or disintegrates. Categories of identity came to occupy the core of mobility restrictions and their ambiguities were used by mobile subjects to adapt and justify their itineraries. Yet this flexibility also gave occasion to biased and politically motivated decisions against targeted individuals. Policies and practices of movement thus shaped and were shaped by these malleable categories. Along these lines, the next chapters examine how these uncertain identities were also incorporated into visual representations of urban space and intellectual discussions dealing with freedom of movement within Peninsular Spain.
Chapter 3
Licencing Wandering and Paper Frontiers

In sixteenth-century Spain, urban growth and overseas ventures sparked a sense of constant fluctuation, transitoriness and anonymity. These social and spatial transformations began to challenge categories of belonging and space demarcation, and reshaped both discourses and practices dealing with the influx of newcomers. In consonance with the rulings of the Spanish Poor Law of 1540, the cities of Zamora, Valladolid and Toledo began to implement mechanisms to ‘examine’ the poor and establish whether their poverty was adequately ‘truthful’. Those who could be deemed ‘true’ paupers were entitled to obtain a license to beg, but only in their place of birth, encouraging beliefs on a fixed sense of identity, and an unequivocal meaning of poverty. Licenses contained the holder’s place of origin, name and distinguishing marks, and could only be granted to citizens or residents demonstrating their inability to work – mostly due to disease or infirmity.

City gates and walls could no longer contain the main urban centres, turning points of space demarcation into nebulous and variable references. It seems tempting to interpret these emerging wall-less cities as open spaces favouring great mobility, but a more detailed look shows the limits of interpreting architectural form as inherently capable of producing either freedom or oppression. In a late interview called ‘Space, Knowledge and Power’, Michel Foucault nuanced his early views on the power of space to, in itself, provoke a situation of liberation or subjugation. In his famous analysis of Bentham’s panopticon, Foucault had suggested that the structure’s layout almost automatically determined the subjection of inmates.\footnote{Foucault, 
\textit{Discipline and Punish}, 200-220.} Yet, in his later approach, he would argue: ‘I think that it can never be inherent in the structure of things to guarantee the exercise of freedom. The guarantee of freedom is freedom’.\footnote{Michel Foucault, “Space, Knowledge and Power”, in \textit{Rethinking Architecture: A Reader in Cultural Theory}, ed. Neil Leach (London, New York: Routledge, 1997), 351.} In the early modern period, changing conditions and approaches to the demarcation of urban space did not necessarily lead to circumstances of greater freedom. This chapter
thus examines the changing role of city gates and walls in early modern Spain, alongside the growing implementation of identification papers. I suggest that increasingly obsolete city gates motivated the implementation of alternative mechanisms to deal with newcomers, expressed through licences for the wandering poor and, on a bigger scale, permits for interoceanic journeys.

Scholars such as Tamar Herzog, Daniel Jütte and Carl Nightingale have made insightful contributions to discussions about the porosity and flexibility of early-modern boundaries, insisting on the limits of purely spatial or physical approaches and the importance of addressing interactions, motivations and responses. A recent collection of essays, *Migration Policies and Materialities of Identification in European Cities*, expresses a growing interest in looking at mobility through the lenses of the history of identification, proposing a material approach that traces the role of identity papers and places of arrival.

This chapter follows a similar perspective, and examines the motives and conditions that encouraged a wider implementation of mechanisms of identification. The first part looks at the figure of mobile impostors and the way they became the focus of discourses and licencing policies intending to put forward programs of poor relief. The next part addresses urban growth and mobility, and explores the growing use of distinguishing anatomical marks as evidence of identification and tokens of passage, proposing an interpretation of identity papers as ‘mobile boundaries’. The final section traces the idea of ‘examination’ in visual representations of city walls in two of Juan de Solórzano Pereyra’s emblems. As will be seen in the following chapters, these shifting attitudes towards identity played an enormous – yet overlooked – role in intellectual discourses on the rights of the itinerant poor.


1. Mobile Impostors and the Poor Laws

In the episode of Sancho’s governorship in *Don Quixote*, Cervantes satirizes the urge to uncover the newcomer. Sancho is asked to solve a case involving a law that ordered: ‘si alguno pasare por este puente de una parte a otra, ha de jurar primero a dónde y a qué va, y si jurare verdad, déjennle pasar, y si dijere mentira, muera por ello ahorcado en la horca que allí se muestra’ (he who crosses this bridge from one point to another, should first swear where he goes and what his purpose is, and if he is found to lie, he shall be hanged). 398 Some of the flaws of this form of inspection are exposed when, upon arrival, a traveller swears that his destination is to be hanged once he reaches the other side. As a result, if the traveller’s words are truthful, they have to refrain from hanging him. Alternatively, if he is forgiven it would mean that he has lied, and should therefore be condemned. The hypothetical case transforms the entire situation in an endless contradiction, in which no course of action could solve the conundrum of the ruling. The case reflected contemporaneous anxieties about travellers’ aims and motives, while illustrating the impossibility of obtaining a fully certain answer. It evoked Philip II’s licenses and their attempt to comprehensively inquire about and control the movement of his subjects. In a great display of wit, and following Don Quixote’s advice, Sancho applies the principle according to which, whenever there is doubt, compassion should prevail. Sancho opts to do away with the entire mechanism and grants the traveler free access: ‘que le dejen pasar libremente pues siempre es alabado más el hacer bien que mal’. 399 Free passage is placed as the most favourable possibility, in a case that strongly addresses early modern concerns about identity, and the uncertainty caused by strangers. It shows the ever-present fear that people could present themselves as someone else, of being deceived about who others truly are. The entire novel is full of references to Don Quixote’s own identity, and whether an impostor has usurped his place. The entire genre of the picaresque was grounded on the fear of deception, performed through wandering practices. 400

399 ‘Let him come freely, since righteous actions are always better praised.’ Cervantes, *Don Quijote*, 940.
Publications like the German Liber Vagatorum of 1512-1514, expressed some of the uncertainties caused by the particularly mutable character associated to people on the move. The Liber Vagatorum warned people against well-known tricks which vagabonds presumably employed. It described the many disguises they adopted, among which there were, prisoners, cripples, church mendicants, students, ‘strollers’, pilgrims, blind beggars, demoniacs, possessed women, pregnant women, merchants who had been robbed, among many others. In England, Thomas Harman’s compilation was published in 1566, under the title A Caveat or Warning for Common Cursitors, Vulgarly Called Vagabonds. Similarly, John Awdely’s Fraternitye of Vocabondes of 1575, together with William Harrison’s Description of England of 1577, contained information on the different roles that vagabonds commonly impersonated.

In his popular Book of the Courtier of 1528, Baldassare Castiglioni complained about the unsettling consequences of man’s mutable character: ‘I have sometimes thought to myself that it would be well for us never to trust anyone in the world... There are so many dark corners and recesses in our minds that it is impossible for human wit to penetrate the deception they conceal’.

Castiglioni’s description of the ideal Renaissance man enjoyed huge popularity, with over one hundred editions throughout the sixteenth century, alongside several translations into Spanish, French, English, Latin and German, and it was apparently one of the books that the Emperor Charles V kept on his night table.

As Virginia Cox explains, the Renaissance person’s ethos or character could not possibly be something fixed, but a shifting, versatile, and adaptable feature. The individual was declared a shaper of himself, or using Stephen Greenblatt’s terms, an agent capable of ‘self-fashioning’. Giovanni Pico della Mirandola’s Oration on the

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Dignity of Man of 1486 presented the possibility of self-transformation as the essence of the human being, who could be compared to Proteus, the god of ‘elusive sea change’. In his description, God addresses Adam in the following terms: ‘we have made you a creature neither of heaven nor of earth, neither mortal nor immortal, in order that you may, as the free and proud shaper of your own being, fashion yourself in the form you may prefer.’

Public discourse pointed out the existence of recurrent practices of dissimulation, emphasizing the difficulties of looking beyond the surface of appearances. This, Jon R. Snyder has argued, was aggravated by the climate of religious intolerance in the mid and late sixteenth century, which fuelled conflicting images of an ‘internal’ and ‘external’ self, the need to selectively choose what to reveal and what to conceal.

In his Deliberation in the Cause of the Poor of 1545, The Dominican theologian Domingo de Soto discussed the problem of impostors and people disguising their poverty, although he refrained from too harshly condemning those exaggerating their condition. Those who faked disease challenged the means of identifying those who did deserve charity, but Soto and other members of the mendicant orders insisted on the need to behave mercifully regardless of the merits of the recipient. According to Soto, ‘ostra cosa es ser juez del malo y otra cosa es ser limosnero del pobre. Por eso se llama limosna, que quiere decir misericordia, porque se hace a los indiginos.’

Charity was thus an act of mercy, and to behave in a compassionate way was something that had to be distinguished from the act of judging men’s misconduct. From Soto’s perspective, the distinction between true and false beggars could hardly be put in practice, and there was always an enormous risk of misjudgment. At the heart of the discussion for implementing more systematic poor relief programs, there was thus the attempt to restrict the arrival of more people whose itinerant behaviour could not be legitimized.

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406 Giovanni Pico della Mirandola, Oration on the Dignity of Man (South Bend: Gateway, 1956), 7.
408 Domingo de Soto, “Deliberación en la causa de los pobres” in El gran debate sobre los pobres en el siglo XVI Domingo de Soto y Juan de Robles 1545 (Barcelona: Ariel, 2003), 38.
409 ‘One thing is to judge wrongdoers and another to give alms to the poor. It is mercy because it is offered to the undeserving.’ Soto, “Deliberación en la causa de los pobres,” 87.
410 Soto, “Deliberación en la causa de los pobres,” 87.
In contrast, the Benedictine Juan de Robles directly criticized Soto’s approach, shifting the debate towards the connection between vagrants and fraudulent beggars. In his treatise *De la orden que en algunos pueblos de España se ha puesto en la limosna*, published a month and a half after Soto’s, Robles presented the wandering poor as ‘gente desordenada, que en tanta multitud y con tantos daños públicos andaban por toda España’. He condemned impostors and paupers in disguise, considering that ‘el que mendiga fingiendo pobreza es ladrón de quien verdaderamente lo requiere’. Fingidos or impostors, took away the aid that would otherwise have been offered to those who truly needed it. In Robles’ view, this justified the implementation of a more centralized programme of poor relief, which relying on formal identification mechanisms, was more capable of coping with the tricks that were played on individual charity. As he put it: ‘en ningún caso es bien, sino mal, que con engaños saquemos a otros su hacienda… Vale más poca limosna y bien empleada, que mucha desordenada y empleada en criar gente dañosa a la república’. Robles’ more bureaucratic approach could provide daily assistance, instead of relying on private individuals who would give one day but not necessarily the next one, and without sufficient judgement to offer relief to those who truly deserved it. Robles’ response to Soto was thus based on the assumption that individuals were more exposed to tricksters and impostors, unlike an organized system which was more capable of recognizing cases of misidentification. Robles evoked many of the ideas already discussed by the Humanist Juan Luis Vives, who in his *Tratado del socorro de los pobres* of 1526, had brought to the fore the problem of impostors, suggesting that one of the aims of poor relief programs was to ‘uncover’ them. His treatise had spread rapidly, with additional publications in Latin and translations into Flemish, Italian and German.

The Poor Law of 1540 sought to address the increasingly familiar debate that divided true paupers – those who were old and infirm – from opportunistic or deceitful

411 Juan de Robles, “De la orden que en algunos pueblos de España se ha puesto en la limosna,” in *El gran debate sobre los pobres*, 128.
412 Robles, “De la orden”, 128.
413 Robles, “De la orden”, 166.
414 Robles, “De la orden”, 296, 301.
415 Robles, “De la orden”, 228-229. See also Anne Cruz, *Discourses of Poverty*, 26.
vagabonds faking poverty. Along these lines, the law introduced restrictions to the mobility of the poor, authorizing the imprisonment of those caught begging outside their place of birth or without a licence, and those who relapsed could be expelled or forced to work. According to John Elliott, the scarcity of labour in the Spanish textile industry would have explained the revival of these measures, which allowed the implementation of forced labour among those found begging publicly.\textsuperscript{417}

Harsher measures came in the reign of Philip II, who in 1552 condemned vagabonds to galley service. Those caught for the first time were condemned to four years, and those who relapsed could be sent to the galleys for life.\textsuperscript{418} Sixteenth-century Spanish legal attitudes to vagrancy incorporated some of the strategies that became essential for the consolidation of modern states: a more punitive system that involved identification procedures and the restriction of movement.\textsuperscript{419} Philip II implemented similar restrictions to pilgrims, who were required to obtain licenses to prove the cause and motives of their journeys. In 1590, Philip II prohibited \textit{naturales} (natives) from his kingdoms to use the pilgrim attire, usually consisting of a staff, hat, cloak, and badge (for instance, the scallop-shell of Santiago). The ‘paper king’, as king Philip came to be known, demanded instead a certificate issued by the local authorities, containing date of request, age, and ‘demás señas’ (distinguishing marks).\textsuperscript{420} This document was to be carried alongside another certificate issued by the prelate from the traveler’s place of birth. The scribe’s signature would allow the license-holder to be \textit{conocido} (known), and this legal construction of the pilgrim’s identity would establish defining boundaries in terms of their movement. In fact, pilgrims were not allowed to stray more than four miles to the left or right from the way to Santiago, but now their path was not being demarcated by private practices of self-fashioning, but by an emerging bureaucracy of movement.

2. Extramural Growth and the Gate

\textsuperscript{417} Elliott, \textit{Imperial Spain}, 128.
\textsuperscript{418} Novísima Recopilación, tomo V, libro XII, sec. 31, ley IV, 431.
\textsuperscript{419} Novísima Recopilación, tomo, III, libro vii.
\textsuperscript{420} Novísima recopilación, 149.
The imperial iconography of the Bisagra gate in Toledo was crowned by the figure of the guardian angel, who held a sword in one hand and a miniature fortified city in the other. The gate that the newcomer encountered appeared as a military structure, but also the frame of the civitas, the threshold of an encircled, protected space. The appeal to safety was often made visible on the gate itself, as in the case of the inscription on the Puerta de Toledo in Ciudad Real, completed in 1328: ‘visita, oh señor, te lo rogamos, esta morada, y aparta de ella todas las acechanzas del enemigo; tus santos ángeles nos guarden en paz a los que habitamos en ella’. But the meaning embedded in the term ‘enemy’ seems to have had broader connotations. Alongside the threat of invasion, there were also the dangers brought about by the force of nature, disease and uncivil behaviour. As the philosopher Peter Sloterdijk has observed, encircled spaces tended to provide a sense of immunity that allowed ‘humans to be jointly “inside” in their own place’. As well as warfare mechanisms, the walls of ancient cities were used to collect water, stop floods, and counteract the ruthless force of nature, imbuing the city with a sense of sacredness. Spanish city walls, proliferating between the eleventh and the fourteenth century, often marked a space of predominantly urban law, in contrast to the feudal law from the outside. The Siete Partidas defined the city as ‘todo aquel lugar que es cercado de los muros’. Imperial and royal charters granted freedoms to those who lived within the city, contributing to the idea of walled towns as an expression of civic rights. The protective connotations of gates were expressed through the idea of a contained space, a walled legal space, separated from the violence and uncertainties of the ‘outside’. Those who entered the city and settled for at least a year were dispensed of their serfdom duties. Rulers built fortresses against hostile neighbours and encouraged the arrival of newcomers by granting freedom of

movement and exempting settlers from compulsory payments and feudal military duties. As Lewis Mumford has emphasized, citizenship was consolidated through the principle of free mobility, which contributed to the expansion of craftsmanship and the trading class across cities.\textsuperscript{427} The motto of the cities of the Hanseatic League can still be found today above some of their old city gates: ‘the air of a city makes people free’.\textsuperscript{428}

Strangers and outsiders were usually interrogated at the gate, where they were required to offer an account of who they were, the places they had previously visited, and their place of birth. In Toledo, both the alcalde and the gatekeeper of the Puerta de Bisagra were in charge of opening it at sunrise every morning, after the bells of the monasteries of Saint Agustine and La Concepción had been rung, and could not close it until the cathedral bells were rung for prayers to the Virgin Mary.\textsuperscript{429} The Puerta de Bisagra, which had been refurbished during the reign of Charles V and in his honour, had its own alcalde, appointed by the corregidor – who was in turn appointed by the king. This was unique to Bisagra, whose tolls and taxes provided revenue to the city, unlike other gates in Toledo like the Alcantarara, which produced revenue for the crown.\textsuperscript{430}

Details about the collection of tolls, taxes and duties, survived in a fragmentary way, partly because of changing regulations. Christian residents of Toledo had been exempted from portazgos (gate taxes) since the twelve century, and most records make reference to the role of the gate in controlling the entrance of unregistered wine.\textsuperscript{431} A local ordinance specifically emphasized concerns about wine merchants crossing the gate, insisting on the need to watch their entrance also through the night.\textsuperscript{432} Passing the gate with foreign wine was harshly punished, and those breaking these regulations faced 30 days in prison or double this time if they were caught twice.\textsuperscript{433} The earliest record of this kind of tax can be traced back to the reign of Alfonso VIII in the

\textsuperscript{427} Mumford, \textit{The City in History}, 262, 263.
\textsuperscript{428} Richard Sennet, \textit{Flesh and Stone: the Body and the City in Western Civilization} (London: Faber and Faber, 1996), 155.
\textsuperscript{429} Antonio Martín Gamero, ed., \textit{Ordenanzas para el buen régimen y gobierno de la muy noble, muy leal e imperial ciudad de Toledo} (Toledo: José de Cea, 1858), 15.
\textsuperscript{430} Gamero, \textit{Ordenanzas para el buen régimen}, 33
\textsuperscript{431} See Francisco de Pisa, \textit{Descripción de la Imperial Ciudad de Toledo} (Madrid: Villena, 1974) 53v-54.
\textsuperscript{432} Gamero, \textit{Ordenanzas para el buen régimen}, 269.
\textsuperscript{433} Gamero, \textit{Ordenanzas para el buen régimen}, 269.
thirteenth century: the king stipulated that the funds collected through these measures were to be used to build and repair the walls and towers of the cities. The punishment for climbing the wall or in any way avoiding the gate could range from the trivial to the severe: records from Brussels report fines and short periods of imprisonment, but also expulsion from the city or even the death penalty. Travellers who passed all requirements were given a pass to the city, and the gate clerks had to make a list of all newcomers, including the specific place where they were going to stay. These passes suggest certain continuities between the inspection taking place at city gates in the early modern period and contemporary practices, although its local and fluctuating character would create a distinctive contrast.

Travellers were subjected to more detailed inspections during plague outbreaks, or in regions with religiously motivated censorship policies, or more stringent fiscal regulations. During the plague outbreaks of Seville in 1585 and 1600, travellers without ‘Health Certificates’ were taken to the plague jail, which was commonly used on these occasions, but was not a permanent feature of the city. In 1600, innkeepers were required to refrain from admitting those without the right documents, which triggered complaints from innkeepers whose inns were located just outside the gates. Despite the constant vigilance of the authorities, municipal ordinances expressed concerns about the bad state of portillos: smaller doors on (besides) the gate, which sometimes allowed unmonitored traffic. Other cities, such as Toledo, took even more restrictive measures. During the epidemic of 1598, the city tried to completely block itself off from the outside, prohibiting the entry of both people and merchandise. Restrictions on imported goods were particularly harmful to the textile industry, affecting jobs availability and creating more poverty. Only nobles or people with certain status were allowed in, and only by showing written documentation certifying that they came from places with no plague concerns. The poor, on the other hand, had their entry refused, regardless of whether they held any documentation.

Maria Boes’ study of the city of Frankfurt shows how locals were highly involved in the process of welcoming or rejecting outside travellers. There were, though, numerous tensions between the city council and the inhabitants regarding newcomers. This can be deduced from several council decrees prohibiting people from lodging foreigners who lacked a special permit. These decrees, issued between 1557 and 1572, seemed to have been largely ignored, as later decrees of similar nature kept insisting on the prohibition to house strangers, sometimes under the threat of physical punishment.\textsuperscript{438} Clothes or the possession of certain objects like weapons or merchandise helped determine passage fees. In effect, an account of the person’s belongings proved particularly useful at city gates, where newcomers were often required to pay municipal fees and tolls.\textsuperscript{439} In the absence of a widespread system of identification, local visual symbols filled the gap. In the late fifteenth and throughout the sixteenth century, the city of Frankfurt introduced dress codes. Locals had to wear a certain type of dress with a prescribed fabric and colour, which was classified according to occupation and social status. A 1592 ordinance established a dress code whereby only doctors, patricians and nobles could wear ‘jackets or coats made of velvet, damask, satin, or other silk products. Well-known burghers and traders, merchants, and city councilmen, however, were permitted to use two yards of velvet for their clothing, and prominent retailers and notaries, one’.\textsuperscript{440} Some of these specificities thus helped to establish further distinctions between locals and newcomers. Together with the description of travellers’ outfits and possessions, the outward appearance provided additional personal information through skin marks or physical impairments. In a world that lacked identity documents, names, surnames, and nicknames offered extra details about the person’s place of birth and their physical description.\textsuperscript{441}

Local boundaries were controlled in variable and contingent ways. Travellers were subjected to greater inspection during plague breakouts, or circumstances demanding

\textsuperscript{438} Boes, “Unwanted Travellers,” 109.
higher levels of taxation. Restrictions fluctuated according to specific situations and operated temporarily. The city gate thus obstructed movement in some respects, but encouraged it in others; it was a source of protection but also nuisance. It was often the space of inspection and taxation where strangers and outsiders were interrogated about their identity and whereabouts and were charged entry fees and tolls, and also operated as a public space for markets and trials as well as ceremonial entries for ambassadors and the ruling elites.\footnote{442} But even high dignitaries in possession of safe conducts sometimes faced entry obstacles. In a letter written on the 23rd of June 1537, John Briertonne, who accompanied the English ambassador Sir Thomas Wyatt, described a seemingly unexpected treatment at the gate of Zaragoza:

we came into a Citie called Seragoza, where we were extremely handled as though we had been Jews. All our caringe was had home to the serch house, where al my Master’s apparail and the gentlemens, with the rest of the servaunts were searched to th’uttermost. They made us pay for all things that were unworne. They be the spitefullest people in the world.\footnote{443}

In many Castilian cities, extramural growth helped meliorate the influx of migrants from the countryside and other regions from Spain. Extramural space had usually been reserved for slaughterhouses, gallows, pillories, and stakes, but cities like Burgos or Valencia rapidly populated suburban areas with opulent Renaissance buildings of the upper classes. Some cities, though, had had large extramural districts since Muslim times, particularly in Andalusia, with neighbourhood’s like Albaicín and Bibarambla in Granada, and Triana in Seville.\footnote{444}

\footnote{442} The question of who to charge fees and tolls to and who ought to collect them was a matter of constant dispute. See David Gobel, “Spanish City Gates Under Charles V” (PhD diss., Princeton University, 1991), 24.

\footnote{443} Kenneth Muir, Life and Letters of Sir Thomas Wyatt (Liverpool: Liverpool University Press, 1963), 44.

\footnote{444} The extramural growth of many Hispanic-Muslim cities can be traced back to the eleventh and twelfth centuries. The Reconquista, though, interrupted their demographic growth. In this regard see Leopoldo Torres Balbás, “Extensión y demografía de las ciudades hispanomusulmanas,” Studia Islamica 3 (1955): 55-56. See also Antonio García y Bellido, et al., eds., Resumen histórico del urbanismo en España, (Madrid: Instituto de Estudios de Administración Local, 1968), vol. 1, 67-173, 179-190.
As a result of urban expansion, sixteenth-century city gates were no longer the most obvious demarcation of the entrance to the city. In his View of Toledo of 1563, Anton Wyngaerde filled the space before the Bisagra gate with figures of travellers, merchants, and passers-by (Fig. 3). The city boasted a plethora of extramural activity, especially along the road from Madrid, and outside other gates like Bisagra Antigua and Cambrón. King Philip II had commissioned the Flemish artist to show the number and grandeur of Spanish cities, as well as improve his understanding of his vast dominions. As the seventeenth-century historian Luis Cabrera de Córdoba enthusiastically put it, Philip ‘sabía sus provincias, ciudades, pueblos, el sitio, montes, ríos… lo que no pisó lo presentaba la pintura’.  

Fig. 3 Anton van den Wyngaerde, View of Toledo, 1563.

In the 1575 account of the Relaciones geográficas de los pueblos de España, there are references to nine inns outside the walls of Toledo: ‘una enfrente de Sant Anton, otra al lado de Sant Eugenio, otra llamada de Salinas… la venta de la Beata, más adelante la venta Nueva, luego la de Marín Hernandez, luego la de Blas cavallero, otra del licenciado Rojas llamada la cavañuela, otra la de pozo de Olias’. A local ordinance also made reference to these inns and other extramural constructions, pointing out how they had become spaces for gambling and prostitution which only entertained idlers and vagabonds: ‘acogiendo en ellas hombres y mujeres de mal vivir… que van a hacer

445 Luis Cabrera de Córdoba, Filipe Segundo, Rey de España (Madrid, 1619), 5.
446 Luis Hurtado de Toledo, “Memorial de algunas cosas notables que tiene la Imperial ciudad de Toledo,” in Relaciones histórico-geográfico estadísticas de los pueblos de España hechas por iniciativa de Felipe II (Madrid: Consejo Superior de Investigaciones Científicas, 1963), part 3, 569.
ofensas a Dios nuestro señor’. As a response, the council ordered that ‘ningún ventero que estuviera media legua alrededor de esta ciudad, no venda en la dicha venta ningún género de mantenimiento sino fuere pan e vino’. These accounts make reference to urban growth, but also to the degree with which local authorities got involved in the extramural life of the city. The city’s jurisdiction and population were no longer contained within its walls, and their gates gradually became obsolete as defensive structures. Traditionally, the gate’s twin-towers had been used to spot the approaching enemy, and launch attacks from both sides as they attempted to gain entry. Yet, with the implementation of artillery and the use of canons, angle bastions gained in greater military relevance. Even though city walls only began to be comprehensively dismantled in the nineteenth century, their defensive importance was already crumbling in the early modern period even as their conceptual and symbolic importance grew.

Urban expansion transformed the contingent way in which city gates operated, but also altered their very meaning and purpose. Once new walls were built, the old gate was sometimes left as part of inner circuits, reshaped into a triumphal arch or was altogether removed, leaving a memorial of its previous existence, like Puerta del Sol in Madrid. References to these transformations can already be found in fifteenth-century treatises of architecture, for instance, in the Humanist Leon Battista Alberti’s De re aedificatoria of 1443-1452. As he observed, ‘the arch is a gate that is continually open. Its invention I ascribe to those who enlarged the empire; according to Tacitus, they were the ones traditionally responsible for extending the boundaries of the city’. Alberti thus noted a certain correlation between the growth of imperial power and the transformation of the boundaries of the city, whose gates were being kept but reshaped as triumphal arches.

The gate, together with its brothels, stables, and blacksmith’s workshops, eventually became the centre of extramural neighbourhoods. Writing at the turn of the

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447 Gamero, *Ordenanzas para el buen régimen*, 248
448 Gamero, *Ordenanzas para el buen régimen*, 248.
seventeenth century, the Spanish lexicographer Sebastián de Covarrubias described extramural growth through his definition of the plaza: ‘Lugar ancho y espacioso dentro del poblado, lugar público donde se venden los mantenimientos y se tiene el trato común de los vecinos y comarcanos... Antiguamente a las entradas de las ciudades había plazas’. In Covarrubias’ account, this public space, which operated as a marketplace and a central space for the operation of tribunals, used to be located at the city gate and it now functioned ‘dentro del poblado’ (within the city).

3. Anatomy at the gate

Official documents containing descriptions of bodily signs and physical marks, determined whether entry was granted or refused, delineating boundaries of movement for their holders. The role of city gates and walls in demarcating space was superseded by marks laying on the surface of the body. Increasing interest in deciphering the physical body contributed to shaping emerging large-scale identification mechanisms. Licensing drew boundaries which those on the move carried with themselves, whether they were on a pilgrimage, seeking alms, or embarking across the Atlantic.

A typical transatlantic travel license contained the description of the petitioner and those he aimed to bring along. Passengers’ identifying features were fixed on paper and made legal through the process of writing and royal validation. In a license issued in 1617, the king granted the nobleman Don Pedro Cortés, his wife, and his servants, free passage to New Spain, signing the resolution with the famous ‘yo, el rey’. Anyone wishing to legally make their way to the New World had to go through this written construction that sought to deal with the elusive identity of those renouncing their spatial connection to the crown and embarking themselves to terra incognita. Don Pedro Cortés’ licence described some of his servants as follow:

Martín de Morizzo y de edad de 27 años moreno, con señal de herida en la frente, Gerónimo de Estrada de 18 años con un lunar pardo sobre la ceja izquierda,

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453 Covarrubias, Tesoro de la lengua, 143.
454 Covarrubias, Tesoro de la lengua, 143.
Alonso de Alarcón de ojos pequeños y las ventanas de la nariz abiertas,
Andrés del Aguila de 26 años manco de la mano izquierda (...).’

(Martín de Morizzo, 27 years old, dark skin, with a sign of a wound on the forehead,
Gerónimo de Estrada, 18 years old, with a brown mole above his left brow.
Alonso de Alarcón, small eyes and wide-open nostrils,
Andrés del Aguila, 26 years old, missing left hand).  

The architecture history specialist Gordana Fontana-Giusti has observed how some of the terms which had traditionally designated urban boundaries began to be adopted in early modern anatomy treatises, particularly in Andreas Vesalius’ work, who for over a decade served as surgeon at the court of Charles V. Vesalius’ *On the Fabric of the Human Body* of 1543, dedicated to the emperor, made use of the term *paries* (walls) to designate bodily membranes. The term *paries* (walls) began to be used to denote the most intricate partitions and cavities of the body, incorporating architectural language to anatomical studies of the individual. One of Vesalius’ engravings placed the anatomical drawing of the body in the foreground of a city landscape (Fig. 4). The ‘Muscle Man’ appeared at the centre of the image with the city laying at his feet. The engraving, possibly designed in Titian’s workshop, shifted the city view’s main focus towards the body as an object that could now be more easily identified and apprehended. Urban boundaries were being expressed in a language that appealed to a more microscopic level, to the human body.  

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455 Philip III, “Pedro Cortés permission to travel to New Spain with his wife and servants”, 1617. Newberry Library.
457 Ibid.
The Latin term *murus* had usually made reference to city walls and their defensive purpose in military terms, in contrast to the word *paries*, which traditionally made reference to the walls of buildings. In his *De re aedificatoria* of 1443-1452, the Italian architect and Humanist Leon Battista Alberti made use of the term *paries* to explain the structural role of walls, and *murus* to denote the exterior walls of palaces and illustrious residences within the city. According to Gordana Fontana-Giusti, Alberti’s use of the term *murus* to designate the walls of internal buildings was unprecedented. When Alberti’s treaties began to be translated into Italian and other vernacular languages, *murus* became the predominant word to designate any form of wall. This terminology evoked a process of ‘domestication’ of city walls, a process by which urban *murus* were beginning to lose their role in demarcating space, merging instead with other inner constructions.

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460 Leon Battista Alberti, *De re aedificatoria libri decem* (Strasbourg, 1541), 54.
The title page of the *Historia de la composicion del cuerpo humano* of 1556, written by the Spanish physician Juan Valverde de Amusco, depicts a triumphal arch whose composition includes dissection scenes and two skeletons holding the book’s title in the centre of the image. (Fig. 5) Valverde’s engravings had been closely modelled after Vesalius’, and also insinuated some connections between anatomy and urban space. Valverde placed the material body at the entrance of the city, seemingly emphasizing the role of physical description in emerging mobility regulations. An even more striking parallel can be found in the cover of the British surgeon Nathaniel Highmore’s *Corporis Humani Disquisitio Anatomica* of 1651, which presents us with a double-headed flayed skin hanging from a triumphal arch (Fig. 6). Highmore’s anatomical treatise is filled with analogies of urban gates and walls. The head of the hanging figure is Janus, the Roman god of doorways and passages, beginnings and endings. In the opening paragraph, Highmore warns: ‘Reader stop! And pay attention to the door before you examine the house, and first explore the face then read the man’. Highmore’s treatise aimed at mapping the circulation of blood and recovering the value of anatomical studies against those still defending a purely theoretical approach. But it also presented the body as an object that could be read and interpreted. Nature and the material world provided important answers, and marks on the human body were more revealing than traditionally assumed. ‘Lifting up the door of skin’, Highmore observed, revealed ‘the architecture of man’. Gates now opened towards the human body.

465 Highmore, *Corporis Humani*, 120.
Fig. 5 Juan Valverde de Amusco, *Anatome corporis humani*, Venezia, studio & industria Lucantonio II Giunta, 1589.
The material body could be approached as a piece of evidence, the skin a surface containing the person’s identifying marks. According to medieval physicians, the skin bounded the body and its internal organs in concentric enclosures, and it was the place where the person’s humours manifested.466 The organs were enclosed in different layers of membranes and skin constituting, as Steven Connor put it, ‘an endless series of such enclosures’.467 The skin thus separated areas of the body while also keeping them in contact with each other, a metaphor of the place of the human body within the universe, and more specifically, in relation to fellow humans living together in the city.

Changing approaches to the human body as a material form of evidence were also present in medieval works of jurisprudence. The fourteenth-century *Treatise on Scars*, attributed to the medieval jurist Bartolus of Sassoferrato – reflected on the use of scars and other tangible marks as legal evidence, in contrast, for instance, to previous practices like swearing oaths. Bodily marks now had the power to both narrate stories and give them credibility. In Valentin Groebner’s words, ‘the human epidermis can be understood (and deciphered) as a document, record, or archive (...) It is a surface that has been written on irrevocably, where all is exteriorized and made fully visible’. Skin was fragile and it was exposed to the passage of time, but it was also an object that collected the indissoluble marks of the individual’s interactions with the world. Early medieval otherworldly conceptions of signs gradually shifted towards a more material and corporeal approach. When signs began to be conceived in an earthier and more physical way, identification shifted towards more tangible objects such as licenses, badges, seals, and coats of arms, and towards perceptible marks on the material body. Badges made of tin, leather, cloth and paper, had to be displayed in the clothes or bags, representing a more concrete and tangible strategy to recognize a person. Between the fourteenth and the sixteenth century, municipal servants, couriers and pilgrims were wearing badges pinned to their cloaks and other garments. Those in a position of authority and people on the move were the first ones being required to identify themselves.

Emerging identification mechanisms helped to articulate the Spanish crown’s initiatives to control movement both at the local sphere and overseas. Faith in the revelatory character of corporeal signs eased anxieties about disguised identities and deception. Yet, the confidence deposited in bodily marks as a source of evidence also created the fiction that the information provided by these marks was unmistakable. As Hispanist Jorge Cañizares-Esguerra explains, early modern Iberians regarded the body as ‘extremely malleable’, easily shaped by climate, diet, the stars, and maternal

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imagination.\textsuperscript{472} In his view, eighteenth-century casta paintings gradually contributed to weakening the idea of malleable bodies, and encouraged instead the emergence of more fixed categories of race.\textsuperscript{473} Along these lines, it can also be argued that the use of material objects of identification in the sixteenth and seventeenth century helped shape an emerging sense of fixed identity and curb practices of self-identification.

4. Juan de Solórzano Pereyra’s Wall of Eyes

How did the sprawling city deal with the outside world and ‘outsiders’? How did expanding cities cope with their nebulous boundaries? As walls and gates merged with inner buildings, how were new frameworks of protection understood? In his Emblemata of 1653, the Castilian jurist Juan de Solórzano Pereyra emphasized how the city was no longer protected by walls. Solórzano, who spent eighteenth years in Peru working closely with the royal audience of Lima, was a leading legal thinker and a precursor to the collection of derecho indiano, later known as Recopilación de leyes de las Indias (1680).\textsuperscript{474} His emblem titled ‘Las leyes son defensa de las ciudades’ (Laws Defend the City) depicted the city surrounded by a circle of piercing eyes held by spears, which merged with the facades of the buildings (Fig. 7). Solórzano’s metaphorical city scrutinized newcomers through vigilant eyes which represented the law. In the introduction, Solórzano observed:

\begin{quote}
Son ojos las leyes? Si,
Las mejores atalayas,
Los baluartes más firmes,
Las más valientes murallas.\textsuperscript{475}
\end{quote}

\textsuperscript{473} Cañizares-Esguerra, “Demons, Stars and the Imagination”, 322.
\textsuperscript{475} Juan de Solórzano Pereyra, Emblemas regio-políticos, trans. L. Mattheu y Sanz (Valencia, 1658-60), vol. 7, no. 66, 224. (BL: 12305.a.4)
The eyes of Solórzano’s emblem girded the city. They contained it by ‘keeping an eye’ on the outside and outsiders. The city’s piercing gaze supersedes strongholds and bastions, too vulnerable in military terms, but also in terms of the population, which sprawls beyond physical boundaries.

Solorzano’s image thus insinuates the shift by which legalized procedures of scrutiny and mechanisms of identification gained relevance over demarcations provided by walls.

In another emblem titled ‘La concordia defiende los que une’ (Concord Defends those it Unites), Solórzano depicted a city whose walls were replaced by a circle of armed citizens (Fig. 8):

Qué muro tiene aquella ciudad rara?
Qué muralla valiente es quien la ampara?
No hay piedra según veo, que sirva de trofeo
a su defensa fuerte
almenas vivas son, si bien se advierte
de ciudadanos, que el amor conforma,
y la concordia enlaza... 476

Fig. 8 Juan de Solórzano Pereyra, Emblemata, XCV

The emblem vividly conveys the increasingly personal approach to boundaries. The allusion to the stones of the fortress in the hands of the enemy resembled the words of the military engineer Vincenzo Scamozzi, who in his *L’idea della architettura universale* of 1615 had noticed how gates were being made in increasingly delicate styles, resembling triumphal arches which the enemy soon took as trophies under their artillery. As he observed ‘laonde quando sono state offese dalle artiglierie, all’hora sono rimaste come trofei de’nemici’ (when they were attacked with artillery, they became trophies of the enemy). 477

Solórzano’s use of the Latin word *coronam*, translated into Spanish as *amparar* (to protect), also made reference to verbs like ‘to crown’ and ‘to encircle’. The citizens crowned and encircled the city with protective purposes, but this image also evoked the prominent role played by city councils, and the relative political autonomy which

476 Solórzano Pereyra, *Emblemas*, vol. 10, no. 95, 157-158.
many Iberian cities had historically enjoyed.\textsuperscript{478} Protection from the outside no longer exclusively relied on material boundaries. It became, instead, a role gradually performed through tactics of surveillance and watchfulness facilitated by identity papers. The second part of this chapter thus examines how watching and inspecting came to be seen as another form of boundary, and the way in which individual marks of identification framed new forms of spatial demarcation.

Conclusion

Licenses for the wandering poor described their distinguishing marks, along with their name and place of origin. Likewise, licences to travel to Spanish America meticulously described the petitioner’s physique as well as his spiritual condition. Description and registration helped to establish whether the impaired wanderer was a ‘legitimate’ pauper, and helped to pair the overseas passenger’s distinguishing marks to his identity and background information. In contrast to inspections at the gate, identification procedures operated in more ubiquitous ways. This chapter suggests that boundaries remained in the form of emerging policies for the regulation of movement, with travel licenses metaphorically operating as ‘mobile’ borders. Licensing delineated boundaries of movement for their holders, superseding physical frontiers.

Demographic fluctuations and extramural growth in cities like Seville, Madrid, and Toledo confirm radical transformations in urban space, which affected the role and meaning of city gates and walls, no longer encircling and defining the \textit{civitas}. Two of the emblems of Juan de Solórzano Pereyra depict city walls being replaced by ‘walls of eyes’, a shift which seem to materialize in the growing bureaucracy of watching and inspecting. Emerging procedures of scrutiny gradually come to occupy the place of the wall, turning individual marks of identification into another form of spatial demarcation. The Latin term \textit{murus} (wall) had originally made reference to the walls of the city, but in its early modern usage it came to also designate the internal walls of houses and buildings. More interestingly, the use of terms like \textit{paries} (internal walls) in anatomical treatises confirms a metaphorical incorporation of urban terminology to

the membranes and cavities of the human body, a shift from urban to individual demarcation. Vesalius’ engravings depicting the human body in the foreground of a city view evidenced the extent to which outward boundaries turned towards the individual. Juan Valverde de Amusco and Nathaniel Highmore’s depictions of anatomical figures framed by triumphal arches or city gates further emphasized the connection between urban space and the human body, which could now be more easily apprehended and identified.
In 1540, Toledo’s Poor Law revived fourteenth-century anti-vagrancy measures in response to growing concerns about the large number of wandering poor. The Spanish philosopher and theologian Domingo de Soto was among the minority of voices condemning the harsh and indiscriminate nature of the law, which imposed severe restrictions on people’s freedom of movement. The Poor Law became the legal framework that authorized ecclesiastical authorities and municipal councils to implement measures deterring paupers from wandering from town to town, requiring that they remain in their place of birth or within six leagues, and obtain a license to beg. The law authorized the imprisonment of those caught begging outside their place of birth or without a license, and those who relapsed were held to be vagabonds and punished accordingly with forced labour or expulsion. The rise of vagabonds – whether in actual numbers or in the authorities’ willingness to make use of the term – was powerfully reflected during Philip II’s reign, when most of the rowers in the galleys had been charged with vagrancy.479

Domingo de Soto’s Deliberación en la causa de los pobres of 1545 praised the benevolent intentions of the Poor Law but questioned its practical consequences. Soto’s treaty was published in Spanish in Salamanca on the 30th of January, and subsequent Latin editions soon appeared in Venice and Rome. In his Deliberación, the Dominican friar acknowledged vagrancy’s negative connotations, but also challenged the attributes that were deemed to differentiate vagrants from true paupers. Even though vagrancy continued to be prosecuted, opposition to the Poor Law had an effect. Only a few years later, the provisions regulating licences and the exclusions of foreign beggars were discarded in cities like Zamora, Salamanca and Valladolid.480

This chapter examines Domingo de Soto’s reflections on vagrancy and freedom of movement in the light of ongoing debates and fluctuating attitudes and policies towards wandering. In contrast to most interpretations, I suggest that Soto’s overlooked theory of criminal law, which he distinguished from other laws regulating morality, illuminates his permissive attitude to the wandering poor. His reflections on the wickedness of idleness expressed his participation in shared early modern assumptions, but also indicated a broader understanding of Spain’s increasingly strenuous economic conditions. By exploring Domingo de Soto’s reflections on the diverse circumstances affecting the itinerant poor, this chapter seeks to offer a better understanding of the urban and local dimension of early modern policies about movement, and the impact of emerging mechanisms of identification on charitable behaviour.

1. Domingo de Soto

Domingo de Soto was born in Segovia in 1494 and studied natural philosophy and logic at the University of Alcalá de Henares, as well as physics when he moved to Paris in 1515. After finishing his master’s degree of arts, he became acquainted with studies of theology under the influence of the Scottish nominalist John Major, the nominalist and later Thomist Peter Crokaert, and certainly Francisco de Vitoria, then teaching at the Dominican priory of Saint-Jacques. Soto completed his course on theology in Spain, and after teaching philosophy at the college of San Ildefonso for a few years, he entered the Dominican Order in Burgos, where he was professed on 23rd July 1525.

Soto grew up at the heart of a modest family of farmers, experiencing moments of hardship and deprivation. Even later in life, he went through the famine that affected Salamanca and other parts of Spain in 1540, caused by extreme winter temperatures and harvest failures. His voice seems to have been heard and highly respected. He was one of the arbiters in the 1550-1551 Controversy of Valladolid between

481 Belda Plans, La escuela de Salamanca, 399. For more on Soto’s early years see Beltrán de Heredia, Domingo de Soto. Estudio biográfico documentado, (Salamanca, 1960), 11.
Bartolomé de las Casas and Juan Gines de Sepúlveda regarding Indian slavery, although his writings on the Spanish conquest, including his De Rationi Promulgandi Evangelium, have disappeared. In 1548 Soto became Charles V’s personal confessor. The Dominican appeared as perfectly suitable for the role, as confessors were usually chosen among personalities outside court with no aspirations to hold office, a condition described by Robert Bellarmine in his De officio principis Christiani of 1619. Soto’s successful academic career and detachment from political life almost certainly secured him access to the deepest secrets of the most powerful man on earth. The Dominican priest must have discussed with Charles V his more obscure regrets and desires, a role that strongly required clarity of judgement and a good degree of impartiality to speak the truth. Soto assumed this influential post for a couple of years but soon returned to his work in Salamanca.

Soto was also one of the emperor’s representatives at the Council of Trent in 1545, leaving an account of his participation in his De natura et gratia of 1547, where he defended the harmonious relation between theology and philosophy, against the anti-intellectual attacks of Lutheran and Nominalist currents. From Soto’s perspective, philosophy and natural reason were necessary to fight heresy. As he put it, ‘considerad a la filosofía como un antiveneno (antídoto) que cura las picaduras de las mismas víboras’. Soto defended the Scholastic method against those who considered it an abstract and useless form of thinking. On the contrary, he argued that scholasticism addressed valuable and pressing issues about the human existence both individually and in society.

Soto’s work reflected the Counter-Reformation position on salvation as a result of good deeds and righteous behaviour, in contrast to Luther’s arguments in his De servo arbitrio (The Enslaved Will) of 1525, where the German insisted on the role of divine grace alone. Luther’s treatise was a response to Erasmus, who in his De libera arbitrio (On Free Will) of 1524 had proposed a middle ground theory incorporating both grace and good works. Despite different attempts to harmonize these views, including the

Jesuit Luis de Molina’s *Concordia liberi arbitrii cum gratiae donis* of 1588, the Council of Trent reaffirmed the idea that salvation was the outcome of acquired, internal righteousness, and not something externally granted by God’s will. Nevertheless, the proposals for poor relief reforms were not necessarily the outcome of a Catholic-Protestant divide. According to historians such as Maureen Flynn, Brian Pullan and Linda Martz, both Catholic and Protestant cities began to implement policies seeking to transform the personal approach to charity, and in many instances they were strongly supported by top Catholic ecclesiastical authorities.

2. Vagrancy and the Law

The figure of the beggar-impostor was not a novelty, but its criminalization acquired more large-scale dimensions in the sixteenth-century. Sturdy beggars had been mentioned in the *Siete Partidas*’ section regulating people’s duties to their native land and its cultivation. There, beggars who appeared as capable of work were described as *mendicantes validi* or in Spanish *baldíos*, and the law admonished the authorities: ‘que no tan solamente fueren echados de ella, mas aún, que si siendo sanos de sus miembros pidiesen por Dios, que no les diesen limosna’. Expulsions were only again contemplated a century later in the law of Briviesca of 1387, which authorized the apprehension of vagabonds and idle people and forcing them to work:

Vagamundos y holgazanes que no quisieren trabajar con sus manos, ni vivir con señor... que cualquiera de los nuestros Reynos los puede tomar por su autoridad, y servirse dellos un mes sin soldada, salvo que les de de comer y de beber; y si alguno no los quisiere así tomar, que la justicia del los lugares haga dar a cada uno de los vagamundos y holgazanes sesenta azotes, y los echen de la villa.

Large tracts of uncultivated lands were presented as evidence of a widespread practice of idleness and errancy. The law was motivated by complaints about people who,

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487 *Siete Partidas*, Partida 2, tít. 20, ley 4, 843, 847.
488 *Novísima Recopilacion*, tomo V, libro xii, 429.
although capable of work, were not willing to undertake physical labour or serve a feudal lord, and alongside one month of forced labour, allowed punishments such as flogging and expulsion. A century and a half later Charles V and his mother queen Joanna reiterated concerns about vagabonds in a law promulgated in 1528, where ‘personas que no tienen señores’ (people with no master), were given ten days to voluntarily leave the court or face flogging and temporary or perpetual banishment.  

Poor laws had begun to be implemented in Nuremberg and other German cities from 1522, followed by Flanders in 1525, and spreading to Venice and Geneva in 1529, and cities like Verona, Lyon and Paris in 1530. Slightly later, they were implemented in England through Henry VIII’s proclamations of 1536 and in Bologna in 1548. Despite the association of these new measures with Luther’s proposals to secularize poor relief, many Catholic cities welcomed these measures, and the upper echelons of the Catholic Church pronounced themselves in favour. The mendicant orders at Ypres were among the minority of voices who, in 1530, expressed opposition. Their complaints were backed by theologians at the Sorbonne who refrained from condemning the ordinances but ruled out the possibility of restricting the right to beg. Poor laws were however generally backed by Charles V in an imperial edict for the Low Countries in 1531.

The Poor Law of 1540 became the legal framework that authorized ecclesiastical authorities and municipal councils to implement measures deterring paupers from wandering from town to town, requiring that they remain in their place of birth or within six leagues, and obtained a licence to beg: ‘los pobres no anden por los pueblos de estos Reynos, y cada uno pida en el de su naturaleza (...) porque de andar generalmente los pobres por estos reynos se sigue que hay muchos holgazanes y vagamundos’. The Poor Law, passed on the initiative of Cardinal Juan Tavera of Toledo, was only printed in Medina del Campo in 1544, when its rulings had already begun to be implemented in cities such as Zamora, Valladolid, Salamanca, Novísima Recopilacion, tomo V, libro xii, 429.


492 Brett, Changes of State, 17.

493 Novísima Recopilacion, tomo III, libro vii, 703.
Toledo and Madrid.

3. Contagious Mischief and The Metaphors of Vagrancy

In the early Christian tradition, human existence was perceived as a journey or pilgrimage through earthly life. In his *City of God*, St Augustine addresses the true believer as a traveller, as opposed to a rooted dweller in this world. The most stable and constant aspect of human life was its movement towards an immovable order.\(^{494}\)

Along similar lines, Thomas Aquinas depicts Jesus Christ as a traveller or *homo viator*.\(^{495}\) This theological notion contributed to the medieval notion of chivalry, inspiring not only the literary image of the knight-errant but the hyperreal knights of the Crusades.\(^{496}\) Early Christians often went on pilgrimages that had no destination. Instead, the purifying effect was the result of the journey itself and the act of wandering.\(^{497}\) The early church fathers’ praise of poverty was associated with a sense of humility advocated within the Christian tradition. Divesting oneself of any material belongings often involved becoming homeless, emphasising the idea of the pauper on the road, and the pauper as a stranger.\(^{498}\) Nevertheless, this idealization of those who were constantly on the move was often accompanied by suspicious attitudes towards nomads, like the itinerant Bedouin that pilgrims encountered on their way to the Holy Land. William of Boldensele’s writings of 1336 describe the ‘Tartars’ with some reserve and depict with great perplexity the fact that they lacked a city of their own. The *Rule of St. Benedict*, written in AD 480–550, describes the *gyrovagi* monks, known to wander around from one place to another, as the worst type. Yet, they were distinguished from the itinerant missionary-saints of later times, like Columbanus and Fursa.\(^{499}\)

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\(^{495}\) Aquinas, “Summa Theologiae,” I q.113 a.4 ad 1; III q.15 a.10c.

\(^{496}\) See Gerhart B. Ladner, “‘Homo Viator’ Medieval Ideas on Alienation and Order,” *Speculum* 42, no. 2 (1967): 246.


Some evidence of shifting attitudes towards wandering can be found in the *Siete Partidas*, a Castilian law compilation commissioned by Alfonso X (1252–1284). There *vagos* or vagabonds entered legal jargon in the context of the discussion of jurisdictional limitations. In principle, a judge could only make a decision against a delinquent whose crime had been committed within his jurisdiction. Nevertheless, if the accused turned out to be a vagrant or *vagamundo*, then his case could be pursued. The legal figure of the vagabond seems to have been inserted in the history of Spanish criminal law as a tool to overcome the obstacles of law and space. A vagabond was thus a legal category that helped local authorities bring to justice those who tried to escape the law, those who, taking advantage of the connection between law and place, moved loosely about. In the law’s terms:

Nadie puede ser acusado fuera del lugar del delito o domicilio, o de aquél a cuyo juez se prorrogó jurisdicción; salvo cuando es vago el que se quiera acusar (...) que cuando el juez quiere que se decrete la muerte contra un malechor conocido, que no delinquió en sus territorio; debe procurar que se confiese vagamundo; pero esto, añade, no debe hacerse por ostentación, sino sólo cuando lo dicte la conciencia.  

The perception of those on the move as dangerous seems the outcome of medieval legal procedures that sought to apprehend criminals on the run, increasing the powers of judicial structures. This attachment of the law to the place is still present in some early modern sources. For instance, in Robert Cawdrey’s *A Table Alphabetical* of 1617 – known as the first English dictionary – the word ‘fugitive’ is defined as ‘runnagate or darting away’, suggesting that a fugitive is not someone who escapes justice or the law but he who escapes a place, and more specifically, a gated city. The word vagabond was thus introduced as a means to overcome the limitations of the spatial framework of the law, but it also created an association between people on the move and the figure of the runaway.

There was also a link between pilgrimage and vagrancy. This was present in Sebastián

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de Covarrubias’ definition of the word *vagar*, or to wander, which placed the very origin of the word ‘vagabond’ on pilgrims coming to Spain from France. As he put it, ‘en tiempos atrás acudieron muchos de una ciudad de Francia, dicha Bagamun, que hoy llamamos Tornay, y de allí se dijeron vagamundos’.\(^\text{502}\) Pilgrims were sometimes mistaken for vagrants and their itineraries often cast doubts on their legitimacy. Among the masses of pilgrims moving towards Santiago there were also the so called ‘charlatan pilgrims’, who would dress up as pilgrims and wear the cockleshell emblem normally picked up on the beach at the end of the journey as proof of having been to Compostela.\(^\text{503}\) This is probably the reason why Philip II forbade pilgrim attire in 1590 and forced the faithful to carry an identity document issued by the local authorities giving the bearer’s name, age, destination, and ‘distinguishing’ marks.\(^\text{504}\) Pilgrims were also required to remain within four miles of the route that led to Santiago. Domingo de Soto denounced these measures arguing that they treated pilgrims like cattle. For Soto, the length of time during which pilgrims remained could be restricted, but spatial limits were both arbitrary and impractical.\(^\text{505}\)

In his *Tesoro de la lengua castellana* of 1611, Covarrubias recalls how Draco’s laws condemned vagabonds to death, and sums up Castilian legal developments towards vagrancy: forced labour, banishment, flogging, and galley service. He defined the verb *vagar* (to wander) as ‘andar ocioso de un lugar a otro’, but one of the most important aspects of his observations was the way in which they reflected early modern preoccupations with wandering figures who gradually began to be associated with wickedness and delinquency. As Covarrubias points out: ‘ellos son muy perjudiciales, y si no tienen de qué comer lo han de hurtar o robar’,\(^\text{506}\) expressing the growing assumption that the deprived lives of the errant poor turned them into thieves and harmful people.

Vagrancy was not only a certain type of misconduct in itself, but a conduct that spread

\(^{502}\) Covarrubias, *Tesoro de la lengua*, 65: ‘A long time ago many came from a city in France called Bagamun, known today as Tornay, and it was then that the word ‘vagamundos’ came into being’.


\(^{505}\) Soto, “Deliberación,” 73.

\(^{506}\) ‘They are very harmful, and if they have nothing to eat they will steal it’. Covarrubias, *Tesoro de la lengua*, 65.
all sorts of deviant behaviour. In his definition of the word *vagar*, Covarrubias makes reference to the contagious nature of mischievous behaviour and compares vagabonds to the plague: ‘ésta es una plaga que cunde mucho en las cortes de los reyes y en los lugares grandes y populosos, y a esta causa los jueces criminales hacen gran diligencia en limpiar la república de esta mala gente’.  

His metaphoric language reflects preconceived assumptions about mischief as contagious. It is both a condemnable activity on its own right, but also because of its infectious character. The use of the verb *limpiar*, which literally means ‘to clean’, but in this context can be interpreted as ‘to remove’ or ‘to expel’, implies a sort of antiseptic attitude, an association that links both dirt and disease with wickedness.

In these discourses vagabonds transmit bad habits but also disease. In his *Tratado del socorro de los pobres*, published in 1526, Juan Luis Vives had blamed vagabonds for bringing plague and syphilis, warning of those who ‘se mezclan entre la turba y muchedumbre, habiéndose apartado en aquél mismo punto del lado de alguno que acaba de morir de peste’. Vives warned of wanderers who had been exposed to disease, and then inserted themselves in highly populated spaces such as market places and churches. Nevertheless, his concerns are not solely about disease. Vives is also concerned about contagious deviant behaviour. In Vives’ terms, in the same way people who have been infected with the plague are avoided, evil people should be avoided too, especially in conversation: ‘huye de la conversación de los malos como de los que están heridos de peste; que no menos se ha de temer que se pegue el un mal que el otro’. But behind this there is the sense that behaviour could also be contagious, and the greater danger came from those who constantly moved. Domingo de Soto does not avoid these medical metaphors for ethical concerns. In a passage about vagabonds he also mentions the infectious nature of human vices: ‘y sus vicios facilmente los pegan a otros’.

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507 ‘This is a plague that spreads in the courts of the kings and in large and populous cities, and because of this, judges do a great job to clean the Republic from these evil people’. Covarrubias, *Tesoro de la lengua*, 65.

508 ‘They mix with the crowd and the multitude, having only recently departed from someone who had just died because of the plague.’ Juan Luis Vives, *Tratado del socorro de los pobres*, 100.

509 ‘Avoid talking to evil people, in the same way you avoid someone infected with the plague, the transmission of neither of those is less harmful than the other’. Vives, *Tratado del socorro*, 182.

510 ‘And their vices are easily transmitted to others’. Soto, “Deliberación,” 59.
In his *Discurso contra la ociosidad* of 1608, Pedro de Valencia resorts to the imagery of the human body and the metaphor of idleness as a fatal disease to empires: ‘se van perdiendo estos sus Reinos con el ocio y el regalo y deleites, que son las enfermedades de que han muerto los grandes imperios’.\(^{511}\) Likewise, in the *Conservación de Monarquías* of 1626 Fernández Navarrete makes reference to the numbers of ruffians and idle people at court, and advises the alcaldes to ‘limpiarla y purgarla de la mucha [gente] que el día de hoy tiene’.\(^{512}\)

People constantly on the move sparked the fear of the transmission of unwanted maladies and habits, but also ideas. They moved themselves from place to place, but they also moved and altered spaces as they went. Their perambulations carried ideas, beliefs and doubts, skills and tricks. In a way, their presence reminded locals of the world that lay beyond their city walls but it also triggered fears of disease, dirt, and vice.\(^{513}\) The use of medical terminology in expressions such as finding a ‘remedio’ (remedy) for the poor, like in Juan de Robles’ *De la orden que en algunos pueblos de España se ha puesto en la limosna para remedio de los verdaderos pobres*, or Miguel de Giginta’s *Tratado de remedio de los pobres* of 1579, together with the idea of ‘desinfectar’ (disinfecting) the city, expresses early modern anxieties about control and order, but it also sheds some light on the dangers that began to be attributed to itinerant behaviour.\(^{514}\) Even the madness of the legendary Don Quixote was believed to be contagious, as his squire Sancho Panza ends up acquiring many of his master’s delusions, including the knight-errant’s quest to remain on the road.

Pierre de Lancre, an inquisitor from the French Basque region, condemned the wandering and errant tendency of its people. In his *Tableau de l’Inconstancy of Evil Angels and Demons* of 1612, he accused Basque men of being rootless people who

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\(^{511}\) Pedro de Valencia, “Discurso contra la ociosidad,” in *Obras completas*, IV/1, ed. R. González Cañal, J. L. Paradinas Fuentes, (León: Universidad de León, 1994), 172. See also Bartolomé Leonardo de Argensola, “De cómo se remediarán los vicios de la Corte, y que no acuda a ella tanta gente inútil” (1600), in *Obras sueltas II, coleccionadas e ilustradas por el Conde de la Viñaza* (Madrid, Imprenta y Fundición de M. Tello, 1889), 241-253.

\(^{512}\) Fernandez de Navarrete, *Conservación de monarquías*, 211.


\(^{514}\) On the idea of dangerous things as contagious see Mary Douglas, *Purity and Danger: An Analysis of the Concept of Pollution and Taboo* (London: Routledge, 2003), 3.
abandoned their households, gave up on agriculture, and had turned to fishing in the sea. This view was recurrent among the classics. For instance, similar views were expressed in Horace’s *Odes and Epistles*, and Hesiod's *Works and Days*. Lancre's contemporaries, among whom there was Pierre de La Primaudaye, criticised the uselessness of travel focused on the avarice that led men away from the land and into the sea. According to Lancre, the sea was a space of danger and damnation that evoked inconstancy. It lacked a defined path, which initially suggests freedom but ultimately leads to a chaotic scene of multiple itineraries, of subjugation to the strength of winds and waves and the forces of nature. Lancre’s use of the symbolic language of the sea was probably based on Seneca, who associated inconstancy with a ship that erred on the waves.

Lancre’s critique of the Basques’ tendency to errancy was not only limited to their mobility from one place to another. It also made reference to the physical movement of their bodies. He described with suspicion Basque people’s agitated way of dancing, and their fondness of acrobatics and swimming, which Lancre regarded as acts of ‘inconstancy’. Based on Seneca’s observations, Lancre made reference to the way in which continuous agitation led to an inconstant soul. In other words, the relationship with one’s own body necessarily affected the soul, and constant bodily movements had corrupting effects. Curiosity and the desire for novelties were, according to Lancre, among the qualities of an agitated soul, and as Thibaut Maus de Rolley has observed, these were precisely the type of impulses that encouraged people to travel.

This physical expression of movement in the body could be related to gestures as well. In the thirteenth-century Castilian legal compilation *Siete Partidas*, it was advised that the king used his gestures with moderation: ‘que faga buen contenente quando fablare, señaladamente con la boca, e con la cabeza, e con las manos, que son miembros que

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mucho mueuen los hombres quando fablan. E por ende ha de guardar que lo que quiziere decir, que más lo muestre por palabras que por señales. The king’s moderate behaviour also had to be expressed when he walked. According to this ordinance, it was not convenient to do it in a rush, but neither in a wandering manner: ‘nin mucho de vagar’ using the term vagar to indicate slowness or idleness. According to Maus de Rolley, some stoic writings and medieval guides to ecclesiastical discipline make reference to extravagant and unrestrained gestures as a sign of immorality, lust, or some sort of alliance with the devil. In effect, demonological treatises such as the Malleus Maleficarum of 1486, claimed that frenetic and intense gestures helped to identify a person who had been possessed. Nevertheless, physical movement was not the only sign. The way a person moved from one place to another also offered some evidence of the extent to which his or her behaviour was influenced by a spell. The inability to stay still and be constantly moving about was thus demonized. Maus de Rolley compares the wandering behaviour of the adulterous husband described in the Malleus Maleficarum to witches flying through the night at great speeds. The demonization of extreme mobility agreed with the belief that demons, like vagabonds, were continually moving. Movement’s negative connotations had also been expressed by Marsilio Ficino in his Book of Life of 1489 where, making reference to the melancholic character of scholars, he explained: ‘because of the frequent movement involved in thinking, the spirit is also continually broken by such movement’.

4. Defining Vagrancy: Between Criminal and Moral Law

519 Siete Partidas, Partida 2, tít. 5, ley 4, 767.
520 Ibid., 767.
524 Marsilio Ficino, The Book of Life, trad. Charles Boer (Dallas: Spring, 1980), 6. On Ficino’s idea that repose is more perfect than movement, and a comparison with Cervantes’ views on continual motion as the essence of life see Hutchinson, Cervantine Journeys, 56-57. Also Paul Oskar Kristeller, The Philosophy of Ficino, (Gloucester: Peter Smith, 1964), 189.
In contrast to predominant ideas of his time, Soto challenged the connection between vagrancy and delinquency. He expressed his concern about the implementation of excessive measures which could only harden the hearts of those it sought to restrain. In these terms, not all vagabonds could be treated as delinquents. More so, he argued that the harsher the measures, the more likely it was that vagabonds turned into thieves. Accusing the wandering poor of being vagabonds and therefore punishing them, only encouraged more delinquency: ‘aunque de estos vagabundos salgan algunos ladrones, y por ende se deba tener algun cuidado en castigarlos, empero, por otra parte, no es mal templarse en este rigor, porque muchos que serian vagabundos no se hagan ladrones’\(^525\). In these terms, vagabonds who committed offenses had to be punished through a judicial process, but this did not involve acting against all wandering poor.\(^526\) In response, Robles argued that there were inconveniences in the application of all laws, and this did not mean they should be suppressed. Society required laws that, for instance, punished theft and premeditated murder, and the fact that they sometimes punished innocent people was not sufficient grounds to get rid of them. As he put it: ‘qué ley hay (por muy justa que sea) de que no se sigan algunos inconvenientes?’\(^527\)

However, Soto’s main concern was the way in which vagrancy was being made equivalent to crimes like murder or theft, thus proposing a theory of criminal law that punished harmful behaviour and left aside human vices with no impact on others. Human law should differ, according to Soto, from issues of morality, virtue and vice, which fall under the jurisdiction of god. Even though wanderers were perhaps more prone to idleness and wrongdoing, they could only be punished if they caused harm. Their poverty and itinerant behaviour could not provide sufficient grounds to establish an illegal conduct.

According to Soto, the example of different laws that had historically made vagrancy illegal was not the only aspect to be considered. Making reference to Paul, he added: ‘muchas cosas son lícitas, que no son expedientes, ni edifican, sino que sería mejor lo

\(^525\) ‘Even though some vagabonds might turn out to be thieves, in which case they ought to be punished, it would not be unwise to moderate this rigorousness, as many would-be vagabonds will not turn into thieves.’ Soto, “Deliberación,” 88.

\(^526\) Soto, “Deliberación,” 91. Soto also mentions the distinction between mercy and justice on pages 78, 83, and 86.

\(^527\) Robles, “De la orden,” 159.
contrario (...) Y determinadas dos cosas entrambas por licitas, cuál sea la que más conviene hace de consultar por las reglas de equidad y prudencia’. To Soto, prudence and equity had to be taken into account, and he rather allowed some undeserving poor wandering around begging for alms, than taking the risk of committing an act of injustice against a true pauper. He believed it was preferable to leave vagabonds unpunished as long as a ‘true’ pauper is not mistakenly targeted. From his perspective it was unfair to exclude four ‘true’ paupers in order to punish twenty dissimulators. In a metaphorical way, Soto compares this situation to the process of weeding a field, advising to remove weeds without destroying the wheat. His main concern is thus the implementation of measures that could affect innocent people: ‘entre tantas manadas de pobres que, so color de vagabundos, se han desterrado de las ciudades, han ido algunos mezclados, que por tener justo derecho a las limosnas, han padecido injuria’. Juan de Robles’s response insisted on the local authorities capacity to tell the difference between wicked vagabonds and the ‘good’ poor, and act accordingly by expelling the wicked: ‘la orden destierra a los malos y remedia a los buenos’. According to Soto, the distinction between truly poor people and vagabonds was in no way obvious, and expelling people from cities on these grounds was highly problematic.

Soto shared with Aquinas the idea that not all vices were to be regulated by law. Aquinas was certainly a central figure for the members of the School of Salamanca and a greatly influential figure for the scholastics. From his perspective, the majority of men are not close to perfect virtue, and for this reason, human law does not prohibit all the vices from which virtuous men abstain, but only the more grievous ones, from which it is possible for the greater part of the community to abstain; and especially those which do harm to others, without the prohibition of which, human society could not be maintained. Thus human law:

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528 ‘Many things are licit which are not expedient nor edifying, and for which the opposite would be better (...) And between two similarly licit things, the most convenient should be determined by the rules of equity and prudence’. Soto, “Deliberación,” 57.
530 ‘Among such great numbers of poor people, if any had been expelled from cities, mistaken for vagabonds, they would have suffered an injury, for they in fact had the just right to beg.’ Soto, “Deliberación,” 84.
531 Robles, “De la orden,” 190.
forbids homicide, theft and things of that kind.\textsuperscript{532}

Soto agreed that only vices that caused harm to others were to be punished by law, adding that ‘si todos los pecados se castigasen en este mundo no le quedaria a Dios nada que castigase en su juicio.’\textsuperscript{533} Vices that escaped the realm of human law belonged to Divine Law, and became God’s concern. In his \textit{De iustitia e iure}, Soto added,

\begin{quote}
cuando Isidoro dijo que es menester reprimir el desenfreno de los hombres con el temor de las leyes, él mismo expone que se han de prohibir con las leyes las injurias que los hombres malvados y atrevidos infieren injustamente a la sociedad, pero no considera necesario que por esto se hayan de castigar con la misma severidad todas las culpas en que incurre la flaqueza del género humano.\textsuperscript{534}
\end{quote}

To Soto, mankind’s propensity to vice means that the laws should adapt to men’s behaviour: ‘las leyes humanas han de acomodarse a la manera de ser de los hombres.’\textsuperscript{535} In addition, society overreacts to the wickedness of vagabonds and pays no attention to its own faults. Men of letters, public ministers, clerics, and grandees also have differing degrees of weakness and wickedness, but they receive less attention than those of the poor. In his own words, ‘en todos los estados, entre los oficiales, entre los letrados y ministros públicos de justicia, entre los clérigos y entre los frailes, y entre los grandes y entre los prelados, en cada uno en su grado hay flaquezas, y pecados y maldades’.\textsuperscript{536} According to Soto, the lack of virtuousness of the poor should not be constantly put on trial, in the same way that the faults of the rich were not a matter of routine punishment.

In his \textit{De iustitia et iure}, Soto harshly condemns errant people who move about causing harm. Nevertheless, he qualifies his statement by making reference to the fact

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\textsuperscript{532} Thomas Aquinas, “Summa Theologiae,” q. 96, a. 2, 140. \\
\textsuperscript{533} ‘If all sins in this world were punished, there would be no sin left for god to punish after the judgement.’ Soto, “Deliberación,” 87. \\
\textsuperscript{534} Soto, \textit{De la justicia y el derecho}, lib. I, q. 6, a. 2, 48. \\
\textsuperscript{535} Soto, \textit{De la justicia y el derecho}, lib. I, q. 6, a. 2, 47. \\
\textsuperscript{536} ‘In all states, among officers, among men of letters and public ministers, among clerics and friars, grandees and prelates, they all have differing degrees of weakness, sin and wickedness.’ Soto, “Deliberación,” 87.
\end{flushright}
that he does not condemn movement in general terms, but harmful movement. In his own words,

Y lo que Aristóteles dijo, en el mismo libro I de los Políticos, cap. 3, o sea, que de la misma manera que pueden venderse las bestias, podemos emprender la guerra contra aquellos hombres que han nacido para servir, ha de entenderse que podemos repeler por la fuerza y someter al orden a aquellos que, como las fieras, andan errantes sin tener respeto ninguno a las leyes del pacto, sino que invaden lo ajeno por donde quiera que pasan.537

According to Annabel Brett’s interpretation of this fragment, to a certain extent Soto compares wanderers to the Aristotelian category of natural slaves, against whom a just war could be waged. Brett’s reading of the passage suggests that:

Because they are not travelling between cities, to or for something, they effectively take themselves out of the human world and travel instead the borderline between city and nature, in the physical but not political space of animals.538

However, a closer reading of the passage suggests that Soto does not target vagabonds or itinerant people as such, but itinerant people who roam around breaking the law, stealing and causing harm. Soto’s use of the word repeler por la fuerza or ‘drive back’ indicates a response to aggression, a retaliation against those who move about behaving against the law. In this way, Soto’s allusion to the use of force seems to be more in tune with a defensive attitude rather than a justification of war based on natural slavery. In effect, the notion of natural slavery had already been challenged by the Dominicans, and the concept of servus, which is the Latin word used in the text, was often employed in the sixteenth century more closely to the medieval serf, or to the notion of servidumbre, than the slave in Aristotle’s mind, as was pointed out by Robert

537 ‘And as Aristotle claimed, in the first book of his Politics, chapter 3, in the same way as a beast can be sold, war can be waged against those who were born to serve, meaning that we can use force to drive back and bring to order those who, like wild beasts, wander around with no respect for the laws of the pact, invading people’s property wherever they go’. Soto, De la justicia y del derecho, lib. IV, q. 2, a. 2.

538 Brett, Changes of State, 26, 221.
E. Quirk in relation to Juan Ginés de Sepúlveda’s debate with Bartolomé de las Casas regarding the Indians of the New World. 539

5. Poverty, Idleness, and Quixotic Journeys

Domingo de Soto’s Deliberación en la causa de los pobres was dedicated to Philip II, and to a large extent, expressed prevalent beliefs about vagrancy and poverty. Soto recalled the shared belief that vagabonds had to be punished, and, as he explained, this was not a novelty. 540 In his own account, there were historical episodes where vagrants had been condemned to either exclusion or forced labour, as had previously been the case, for instance, with the Code of Justinian (529-534), the Siete Partidas (1256-1265) or the law of Briviesca of 1387. 541 Soto’s perception of idleness shared similar grounds to predominant attitudes. He noted that vagabonds were infamous because they were deemed to be idle and carried a vague and purposeless existence. Lacking a home, they moved aimlessly through the world, bereft of purpose or principle. The perpetual motion of their lives was not motivated by necessity or utility. 542 Thus vagabonds could not possibly be true paupers, nor travellers with a trade or occupation. Instead, they were masterless men, or in Soto’s words, ‘baldíos, como ganado sin dueño’. 543

Soto knew that the most disquieting aspect of vagrancy was idleness’ connection to wickedness. He recalled how in Plato’s Republic idleness was described as ‘la pestilencia de los mortales’, and how all idle people were banned from the ideal republic. In Soto’s words, ‘el ocioso siempre está preñado de deseos, y por eso no puede sino parir maldades’. 544 The devastating consequences of idleness were particularly present in Lutheran manifestoes for godly living. Lucas Cranach, a close friend and portraitist of Luther, for example, depicted the connection between female idleness and wickedness in his Allegory of Melancholy of 1528 (Fig. 9). The painting

544 ‘The idle person is always impregnated with desire, and that is why he can only give birth to evil’, Soto, “Deliberación,” 59.
shows the lethargy and inertia of a young woman indifferent to her surroundings, submerged in a state of idleness that comes with melancholy or tristia, evoking a cloud of sinful scenes and demonic behaviour. Cranach’s commentary on idleness strongly references witchcraft, expressed through flying figures riding goats and cats, but also horses and pigs symbolizing carnality. Other elements like military-style banners suggest the emergence of destructive forces which could potentially go beyond the personal sphere and affect society as a whole. In fact, in subsequent versions of this painting in 1532 and 1533, Cranach adds a military battle in the background, showing the potential evils of idleness and melancholia on an even larger scale.\textsuperscript{545}

Acedia or listlessness was, on one hand, associated with philosophical contemplation and intellectual pursuits, but it could also be linked to more negative terms like sloth, which triggered more perverse forms of melancholia. In his *De Vita Triplici*, the Florentine Marcilio Ficino had formulated idleness’ dual condition, seeking to find ways of counterbalancing its negative effects while strengthening its intellectual and artistic benefits. He advises the use of talismans related to Jupiter to counteract Saturn’s pervasive influence.⁵⁴⁶ Elements of the famous English proverb ‘the Devil makes work for idle hands’, can be found in some of the writings of the early church fathers, but closer versions can be found in the fifteenth century in texts like Geoffrey

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Chaucer’s *Tale of Melibeus* of 1405, which advises the reader to ‘do some good deeds, so that the Devil, which is our enemy, won’t find you unoccupied’.  

Soto backed his rejection of idleness with popular passages from the scriptures. In the excerpt where man was expelled from paradise, God condemned him ‘que viviese del sudor y del trabajo de sus manos’. Adam and Eve’s punishment to labour had thus been, since the beginning of time, mankind’s primary burden. Soto shares this view and incorporates Paul’s quote: ‘el que no trabajare no coma (I Tes 3), which had also been used by Juan Luis Vives in his *El socorro de los pobres* of 1526, in which he expressed prevalent attitudes against idleness. From Vives’ perspective, the poor should be put to work in all cases in which age and physical condition were not an obstacle: ‘no se ha de permitir que nadie viva ocioso en la ciudad, en la que como en una casa bien organizada cada uno debe estar cumpliendo su deber’. In Vives’ more practical terms, idleness was the very opposite of work, whose absence threatened the economic life of the city. The Renaissance rhetoric of work was not only grounded on Christian doctrine but was also nourished by classical references, like those in Hesiod’s *Work and Days*, which observed: ‘For Famine is ever the companion of a man who does not work; and gods and men feel resentment against that man’.

There is a great paradox in *Don Quixote* when Sancho is appointed governor of the island of Barataria. In line with current attitudes, Sancho promotes the expulsion of all vagabonds, even though it appears absurd to condemn the wandering lifestyle that he himself and his master Don Quixote had been accused of. Yet, the key difference lies on the definition of idleness. The knight errant and his squire wander around, but their journeys are far from purposeless, at least in their own terms. What Sancho seeks to punish is, more specifically, idleness. As Sancho announces while he is Barataria’s governor:

548 ‘To live by the sweat of his brow and the work of his hands’, “Deliberación,” 58.
549 ‘If any would not work, neither should he eat’, “Deliberación,” 58.
551 ‘No one should be allowed to live idly in the city, where, like in a well-organized house, everyone must fulfil their duty’, Vives, *El socorro de los pobres*, lib. II, cap. III, 28.
es mi intención limpiar esta ínsula de todo género de inmundicia y de gente vagamunda, holgazanes y mal entretenida. Porque quiero que sepáis, amigos, que la gente baldía y perezosa es en la república, lo mismo que los zánganos en las colmenas, que se comen la miel que las trabajadoras abejas hacen.  

Sancho’s discourse combines allusions to King Salomon’s equanimity and Sancho’s own rustic behaviour. His role as a governor underlines reflections on the aristocracy and the idle upper nobility, as well as the colonial enterprise. It evokes the idleness of elites through the lives of those who had undertaken the journey overseas dreaming of becoming governors and gaining easy and unlimited wealth and prestige. Having a character like Sancho Panza rejecting idleness illustrates the extent to which the problem with idleness had much to do with its own definition. The island of Barataria represents a parody of chivalric literature, in which knights would promise their squires an island as compensation for their services, but it also alludes to New World practices, where conquistadors made similar promises. A case in point was Columbus’ offer of the island of La Bella Saonese to Michele da Cuneo.

Sancho’s governorship reflected many policies adopted in Spain at the time, from price controls to trade regulations, the examination of the truly poor and the expulsion of vagrants. The episode resembles princely advice manuals or the genre of ‘regimiento de principes’, which also revolved around issues like the Andalusian Moriscos and the bandoleros of Catalonia. In fact, once he leaves Barataria, Sancho encounters his Morisco neighbour Ricote, and soon after they cross ways with the bandit Roque Guinart near Barcelona. Additionally, Cervantes’ parody of utopian idealism referenced Thomas More’s Utopia and Plato’s own descriptions of his failed experience in Sicily, written in his ‘Seventh Letter’.

Physical impediments seemed the only valid excuse to be out of work. The truly poor were thus those who suffered from some impairment or disability. In Lazarillo de Tormes, published only nine years after Soto’s Deliberación, the main character

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553 Cervantes, Don Quijote, 919.
complains that once he had recovered from his wounds, no one was willing to offer him charity: ‘y mientras estaba malo siempre me daban alguna limosna; mas después que estuve sano todos me decían: “Tú, bellaco y gallofero eres. Busca, busca un buen amo a quien sirvas”’. Those who wandered around with a healthy complexion were looked at with suspicion. Unlike vagabonds, the deserving poor were, in theory, those incapable of work as a result of disease or infirmity.

What is particularly unique about Domingo de Soto’s approach is the way in which he questioned established criteria to distinguish the deserving poor from the undeserving. Towards the end of his treatise he examines whether illness truly is the only cause of poverty, concluding, ‘para que uno sea legítimamente pobre no es necesario que sea enfermo’. Certainly, those who wandered from one city to another looking for work might have been able-bodied and sturdy, yet unfortunate enough to find no-one willing to offer them a job. Under these conditions, Soto argued, they had ‘el derecho de irlo a buscar por todo el reino’. To Soto, lack of employment justified idleness: ‘aquellos que en la parábola del evangelio fueron reprendidos porque estaban todo el día ociosos, legitimamente se compurgaron diciendo que no hallaban quien los cogiese’. Healthy and sturdy wanderers were not intrinsically purposeless, and there were plenty of circumstances that could potentially justify their behaviour.

In Thomas More’s *Utopia* of 1516, the correlation between vagrancy and unemployment had already been emphasised. In More’s account, the expansion of the English wool industry had encouraged the use of land for pasture and relegated agriculture. As a result, he explained, ‘workers of the countryside are driven out (…) what alternative do they have but to steal? … When they are tainted by sickness and dressed in rags, no one of rank deigns to take them’. From More’s perspective, even though they are willing to work, they end up in prison accused of vagrancy.

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556 ‘When I was injured I was always given alms; but when my wounds healed everybody said: ‘you, sly and idle, go find yourself a master to serve.’ *Lazarillo de Tormes* (Bogotá: Panamericana, 1993), 43.
557 ‘It is no necessary to be ill to be legitimately poor’, Soto, “Deliberación,” 84.
559 ‘Those who, in a passage of the scriptures, were criticized for being idle all day, were excused when they explained that they could find no one to take them on.’ Soto, “Deliberación,” 85.
Yet high rates of unemployment during Soto’s time can be put in contrast with the testimonies of those who argued the opposite: a shortage of labour. In 1552 the Cortes demanded that vagrants be put to work, arguing that there were not enough workmen available. The large-scale depopulation taking place throughout the region allegedly led to insufficient levels of workforce. Pedro Fernández de Navarrete’s *Conservación de monarquías y discursos políticos* of 1626 describes the devastating consequences of demographic decline, blaming the idleness spreading through all spheres of Spanish society: ‘los extranjeros que vienen a España pueden decir de nosotros que pasa por los campos fériles de España, y los ven cubiertos de hortigas y espinas, por no haber quien los cultive; habiéndose los más de los españoles reducido a holgazanes, unos a título de nobles, otros con capa de mendigos’.

According to Navarrete, many preferred begging to work, especially those coming from abroad. As a result of high levels of inflation, there were only high value denomination coins available. In Navarrete’s account, while in the early days a beggar would get a 204th fraction of one *real*, more recently people would get an average of two maravedís, which were equivalent to a 17th fraction of a *real*. As he put it, years ago it was necessary that ‘los que mendigaban hubiesen de tener el socorro de muchas personas para poderse sustentar y así no se inclinaban a ello sino los que no podían seguir otro camino. Pero ahora (...) viene a ser mayor comodidad el pedir limosna que el trabajar, hallando en ella el sustento con más descanso que en el arado y la hazada’. From Navarrete’s perspective, those begging on the streets were receiving coins of higher value, and this became an incentive for people to come to Spain to beg. In the past, only people in extreme poverty begged, since this was unlikely to offer any profit. With these new circumstances, Navarrete argued, people who were not in an extremely bad condition would choose Spain to beg.

Likewise, seasonal workers coming from abroad were often compared to vagabonds.

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561 See Elliott, *Imperial Spain*, 128.
562 Fernandez Navarrete, *Conservación de monarquías*, 56. According to Navarrete, the colonial enterprise had depopulated Spain. As he described it: ‘en provincias tan faltas de gente no conviene intentar nuevos descubrimientos o nuevas conquistas’. According to his calculations more than forty thousand people left the peninsula every year, most of whom were people highly skilled on matters of land and sea. For more on how Spain was seen by non-Spaniards see also J. N. Hillgarth, *The Mirror of Spain, 1500-1700: The Formation of a Myth* (Michigan: University of Michigan Press, 2000).
563 Fernandez Navarrete, *Conservación de monarquías*, 57.
Evidence of the annoyance that this caused can be found in another one of Navarrete’s passages, in which he complained about the arrival in Spain of ‘toda la inmundicia de Europa, sin que haya quedado en Francia, Alemania, Italia y Flandes, y aun en las islas rebeldes, coxo, manco, tullido, ni ciego, que no se haya venido a Castilla’. There were also the cases of those who had left their villages looking for better conditions elsewhere, and those who were in temporary need between episodes of casual labour.

In his *Memorial de la política necessaria y útil restauración a la República de España* of 1600, Martín González de Cellorigo blamed prevailing idleness for the widespread poverty in the realm, opposing those who considered that it was because of the large sums of money that were being sent to pay for wars abroad. In his view, idleness could be prevented, but wars could not be avoided, especially when what it was at stake was the stability and prosperity of the nation. González de Cellorigo saw idleness in the context of the low productivity and manufacturing deficiency in Spain, where gold and silver were not being used for productive activities but rather kept as deposits that were then simply handed over abroad. Yet, Cellorigo also acknowledged recent plague outbreaks that had contributed to the demise of the Spanish population and caused labour shortages, which increased price levels.

In contrast to González de Cellorigo and the many others who condemned idleness, Soto seems to have been particularly aware of the complexities that this notion entailed. As he explained, the amount of work one person was capable of varied. In his own words, ‘hay muchos que pueden trabajar un poco y no pueden trabajar mucho, y quien puede trabajar un día y no otro, una hora y no otra, según su flaqueza. Y no deben los hombres ser compelidos tan al rigor. Y sería cosa molestísima que cada vez

364 Fernández Navarrete, *Conservación de monarquías*, 57.
366 Martín González de Cellorigo, *Memorial de la política necesaria y útil restauración a la República de España y estados de ella y del desempeño universal de estos reinos* (1600), eds. José Luis Pérez de Ayala and Conde de Cedillo (Madrid: Instituto de Cooperación Iberoamericana, 1992), 11-21, 50-56.
que les faltasen las fuerzas hubiesen de acudir a los diputados’. In a burst of irony, Soto satirized the idea of being examined every time the willingness or capacity to work weakened, showing how the able-bodied pauper was in no way a fixed category. Soto condemned idleness but at the same time observed how there were different attitudes towards work that derived from personal circumstances.

One of the most paradoxical elements about the connection between travelling-wandering and idleness can be found in the English etymology of the verb ‘to travel’. In middle English, it was a variant of ‘travail’, which means both journey and work. Cervantes’ last novel Los trabajos de Pérsiles y Segismunda, is sometimes translated to English as ‘the journeys of’ but also as ‘the difficulties’ or ‘the toils of’. The full opposition between wanderers and those who joined the workforce was thus challenged from the outset, with descriptions of travelling experiences which were far from being an idle enterprise.

This was expressed in the constant disagreements that would take place about the occupations that were regarded as work. One important example was that of the mendicant orders. On top of the question of whether they could be considered as truly poor, Soto took pains to clarify that they did in fact perform a form of work, which had a spiritual nature. As he explained, they ‘trabajan en el culto divino y en la predicación del evangelio’. Like charity, which could also be performed through teaching or any other intangible service, work did not have to be physical.

Another problematic case was that of gypsies. Their economic activities, which involved trade in animals, sheep-shearing, working with metals, fortune-telling, and dancing, were not always recognised as work. For this reason, their idleness was punished by different ordinances such as the one in 1575 which, soon after the Battle of Lepanto, condemned all able-bodied Gypsies to the galleys, or the one in 1609 that prescribed six years of unpaid galley service for all adult Gypsies not involved in

569 ‘There are many who can work a bit but not much, and those who can work one day and not another, at one hour and not another, depending on their frailty. And men should not be compelled so rigorously. It would be an extreme annoyance for them to have to go looking for a magistrate every time they ran out of strength.’ Soto, “Deliberación,” 85.
agriculture, a penalty that from 1635 was imposed on any unemployed adult.⁵⁷² According to historian Richard Pym, even in episodes when the Habsburgs tried to reverse existing legislation against gypsies, insisting on treating them like all other Spaniards, the underlying intention was still to preserve the religious and ethnic homogeneity of Catholic Spain.⁵⁷³

In a more radical response, the English vagrancy legislation excluded an even wider set of activities that were not to be considered as work. Among them there was the case of pedlars, tinkers, soldiers, sailors, artists, and unlicensed healers. In Beier’s account, ‘masterlessness’ was turned into a criminal offense in England in the fourteenth century, contributing to shaping the idea of the able-bodied poor, and connecting it to those who renounced their manorial ties, and any form of occupation that secured regular income. The Statute of Artificers of 1563 authorized the imprisonment of able-bodied poor who abstained from working in husbandry, or abandoned work in violation of their terms. It also introduced the use of badges and ‘passports’ containing the person’s place of birth or residency and destination.⁵⁷⁴ The Tudor’s dissolution of monasteries and alms houses significantly contributed to the establishment of the London Bridewell in 1553, and the emergence of workhouses throughout the sixteenth and seventeenth centuries.⁵⁷⁵

Paradoxically, the idleness so closely associated with vagabonds was also part of the high spheres of Spanish elites and their aristocratic values.⁵⁷⁶ Soto had recognized this contradiction, making reference to Aristotle’s praise of idleness in wise men, but not among ‘hombres de servidumbre’.⁵⁷⁷ Among the first ones, ocio encouraged intellectual production, whereas among the second ones, it inspired mischievous behaviour. Equivalent comparisons were made in the New World, with a magistrate of Hispaniola claiming in 1550 that ‘Spaniards do not work. All who go there

⁵⁷² See Vassberg, The Village and the Outside, 143. See also Herzog, Defining Nations, 128.
⁵⁷³ Pym, The Gypsies, 23.
⁵⁷⁵ Beier, Masterless Men, 164-169.
immediately become gentlemen’. In effect, the sort of idleness which was viewed with scorn was that of the poor, and it was their movement which was intended to be restricted. In a similar fashion Quevedo would later express this bias by observing that ‘entre todas las naciones sólo el pobre es extranjero’. While royals and ambassadors were welcomed like locals with doors wide open, those in rags were more likely to be subject to scrutiny and rejection. In an attempt to point out this imbalance, Soto claimed: ‘y no han de pedir al pobre más razón que al rico por qué anda fuera de su tierra.’ Soto’s defiance of a fixed idea of purposeful journeys was indeed present in Cervantes’s humorous portrayal of his knight-errant. Whether Cervantes read Domingo de Soto’s unconventional reflections on wandering is uncertain. Nevertheless, there are between them some shared insights. Cervantes’ heroic and legendary character Don Quijote was the most vivid example of a wandering life, in many instances, with no known purpose or direction, as it was the case with all the moments in which the knight-errant was portrayed as simply following the path his horse Rocinante wanted to go. In the chapter where the nobleman Don Diego receives Don Quijote and Sancho, the clergyman confronts Don Quijote’s wandering behaviour, accusing him of being a vagabond: ‘Y vos, alma de cántaro, quién os ha encajado en el cerebro que sois caballero andante y que venceis gigantes y prendéis malandrines? Andad enhorabuena, y en tal se os diga, volved vuestra hacienda, y dejad de andar vagando, papando viento y dando que reir a cuántos os conocen y no conocen’. The clergyman insisted on the uselessness of Don Quixote’s endeavours and the extent to which he had become an object of ridicule. The knight-errant’s quest for justice and his amorous motivations were, from the clergyman’s perspective, simply laughable. As he perceived it, Don Quixote moved around ‘papando viento’, an expression that meant to eat, gawk, or ingest wind. An absurd, meaningless activity, that mocked the knight-errant’s motives. The entire scene puts the notion of purposeless journey in perspective, opening up many questions about the type of criteria that sets permissible motives. The attributes that the clergyman perceived as foolish were the ones defining Don Quixote’s identity.

578 Quoted in Kamen, Early Modern Spain, 46.
579 Francisco de Quevedo, Cartas del caballero de la tenaza, in Obras escogidas de D. Francisco de Quevedo Villegas, tomo II, (Madrid: imprenta de Gonzales, 1788), 175-176.
580 ‘And you cannot demand more explanations from the poor person than the rich as to why he travels outside his native land.’ Soto, “Deliberación,” 66.
581 Cervantes, Don Quijote, 792-793.
Don Quixote’s mobile tendencies were at the heart of his purposeless life. The hidalgo’s maid and niece suggest that he becomes an immobile knight, like those who serve the king by staying at court. Don Quixote replies that the ones in court, ‘sin salir de sus aposentos ni de los umbrales de la corte, se pasean por todo el mundo mirando un mapa, sin costarles blanca, ni padecer calor, ni frio, hambre ni sed; pero nosotros, los caballeros andantes verdaderos, al sol, al frio, al aire, a las inclemencias del cielo, de noche y de dia, a pie y a caballo, medimos toda la tierra con nuestros mismo pies.’

In another passage, Don Quixote insists that the ‘extraordinariamente afligidos y desconsolados’, do not search for help in the houses of men of letters or in churches. They do not request the assistance of knights who have never been outside their own village, but those who have explored the world. The link between knowledge and movement is present throughout the novel: ‘el que lee mucho y anda mucho ve mucho y sabe mucho’. Don Quixote’s purposelessness was thus insinuated as a condition of knowledge, and the experience of wandering equips him to help people in need.

6. Freedom of Movement – for Whom?

In 1556, Domingo de Soto published his De la justicia y del derecho where he addressed issues related to law, justice, and the common good, and even questioned whether the emperor could be deemed to be the owner of the world. From Soto’s perspective, by natural law all men were equally free, and no individual could have dominion over the rest: ‘pues el derecho natural, sencillamente considerado, no otorgó a ningún hombre el dominio sobre los demás; todos, efectivamente, nacen libres.’

This sense of freedom played multiple roles in Soto’s work. His notion of freedom applied to the political sphere, but it was also expressed as individual freedom and freedom of choice. Soto followed the teachings of Thomas Aquinas, for whom free

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82 Ibid., 589.
83 Ibid., 835.
84 Ibid., 747.
85 To this Soto adds, ‘por lo tanto si hay alguno que sea dueno del mundo, lo sera por institucion y concesion de la sociedad… Ahora bien, para que una sociedad instituya un rey, o un emperador a quien traspasen su autoridad, se require que se reuna en asamblea general, o que por lo menos la mayor parte de ella consienta en tal eleccion. Pues bien, nunca en el mundo se celebró tal asamblea’. Domingo de Soto, De iustitia et iure: libri decem, De la justicia y del derecho: en diez libros (Madrid: Instituto de Estudios Políticos, 1968), lib. IV, q. 4, a. 2, 304.
will or free choice [*liberum arbitrium*], was in itself an act of constant motion. From the Thomist perspective, the free will was moved by God, but not in a deterministic way: ‘God so moves the will that it is not determined to one thing but rather its motion remains contingent and not necessary’. It is not surprising, then, that the Spanish Scholastics, whose reflections were so heavily indebted to Aquinas’ doctrine, associated freedom and motion. The motion of the free will was first caused by God but this did not restrict freedom. In Aquinas’ words:

> It should be said that freedom of choice is the cause of its own motion because a person moves himself into action by freedom of choice… Accordingly, God is the first cause moving both natural and voluntary causes. And just as in moving natural causes God does not destroy their natural abilities, so by moving voluntary causes God does not destroy their voluntary actions but rather makes them to be such.

For Aquinas, the will was in constant, unrestrained motion. Human beings had the freedom to choose between different courses of action, and Domingo de Soto incorporated this inner freedom to the idea of freedom of movement. In a passage from his *Deliberación en la causa de los pobres*, Soto presented a remarkable defence of freedom of movement for the wandering poor:

> Nadie puede ser desterrado de ningún lugar sino por culpa o crimen que cometa… Y la razón es porque de derecho natural y de derecho de las gentes, cada uno tiene libertad de andar por donde quisiere, con tal que no sea enemigo ni haga mal; y aunque echar a uno de una ciudad para que se vaya a su tierra no sea tan formalmente destierro, empero privanle del derecho que tiene, del cual no le pueden privar sino por culpa.

At first sight, Soto’s defence of freedom of movement appears as a concession to the deserving poor. As he put it, ‘en pedir por Dios el que es verdaderamente pobre

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588 “No one may be expelled from any place unless he has committed an offense or crime (…) And the reason for this is that by natural law and the law of nations, everyone has the freedom to move wherever they wish, as long as they are not enemies or causing harm; and even though expelling someone from a city and sending him back to his native land is not formally exile, he would be being deprived of his right, which cannot be taken away from him unless an offense is committed.” Soto, “Deliberación,” 64.
ninguna culpa ni crimen comete, no hay por donde le echar de ningún lugar’. Authors like Linda Martz, Annabel Brett, and Félix Santolaria have interpreted Soto’s reflections in these terms, that is, as a defence of those who could demonstrate their poverty. Andreas Blank, in contrast, makes no reference to these distinctions, focusing instead on Soto’s approach to the duties of justice to assist the poor in extreme need, and the duties of hospitality to both provide aid and respect their right to migrate. Yet, many of Soto’s passages suggest that he did not entirely trust the deserving-undeserving dichotomy, which means that his view on freedom of movement was far more radical than has been traditionally assumed. Soto masterfully identifies the embryonic connection between poverty and delinquency, and defies it from the outset. Restricting the movement of the itinerant poor was, in Soto’s view, a punishment that was only valid in the context of criminal behaviour. Soto certainly made rhetorical use of the legitimate-illegitimate pauper dichotomy, but it is also evident that he found the application of this distinction highly problematic.

Domingo de Soto’s commentaries on the poor’s recurrent practice of faking injuries or pretending to be ill were forbearing and merciful. To Soto, accusing the poor of fabricating wounds and dissimulating disabilities was only an argument of the rich to excuse their greed and lack of charity. He supported his view with the writings of the Archbishop of Constantinople, John Chrysostom, a fourth century early church father, who had argued that the needs of the poor had to be of enormous dimensions so as to go through the trouble to appear infirm or weakened, and the cruelty and lack of mercy of the rich were to be blamed for the deceitful attitude of the poor, whose cries were never enough to move them to pity. In this way, Soto concluded that,

Si fácilmente condescendiésemos a las lástimas de los pobres, no tendrían ellos necesidad de usar de tales artes. (...) Hay quien a sus hijos, antes que tengan legitima edad, les sacan los ojos para poder penetrar la insensible dureza de nuestros corazones. Que después que por experiencia han visto que ni andando desnudos, ni por razón de la edad, ni con la lástima de la pobreza pueden doblar la crueldad de los hombres, añaden a estos males otros peores para poderse librar de

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590 Blank, “Domingo de Soto on Justice to the Poor,” 135, 140-142.
Soto’s tolerant attitude towards the frauds of vagabonds is even more striking when he compares them to the fraudulent behaviour of the rich:

Cuántos habrá en la república, oficiales, artífices y oficiales públicos, los cuáles, por fraude y engaño llevan sin comparación mucha mayor hacienda ajena que todos cuántos falsos pobres y vagabundos hay en el reino (...). Y pueden las gentes fácilmente sufrir estos engaños, y que un miserable de un hombre, fingiendo pobreza os saque una miserable moneda, no con otro engaño sino andando desnudo y hambriento, temblando o fingiendo alguna enfermedad, esto en ninguna manera se puede sufrir, sino que éstos han de ser desterrados de las ciudades y el mundo.

Denme un sólo hombre en toda España que por todos los engaños de todos los vagabundos del reino haya sentido en su vida mella en su hacienda. 592

Soto refrained from condemning too harshly those exaggerating their condition of poverty. The Dominican underlines the extent to which the faults of the rich are rarely taken into consideration, while the poor get the blame for disrupting the economy. Those who faked disease certainly challenged the means of identifying those who did deserve charity, but Soto and other members of the mendicant orders insisted on the need to behave mercifully regardless of the merits of the recipient. 593 Charity was thus an act of mercy, and to behave in a compassionate way was something that had to be distinguished from the act of judging men’s misconduct. From Soto’s perspective, the distinction between true and false beggars could hardly be put in practice, and there was always an enormous risk of misjudgement. 594 The mendicant orders defended

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592 ‘In the republic, there must be many officers, tradesmen, and public officers acquiring vastly more wealth through fraud and cheating than all the false poor and vagabonds in the realm… And people can easily tolerate these tricks, but that one man in a state of misery, pretending poverty manages to extract a single coin, not by cheating but by going naked and hungry, trembling or pretending to have some disease, is intolerable, and these people must be expelled from the cities and the world. Show me a single man in the whole of Spain who has seen his property truly diminished by all the tricks of all the vagabonds of the realm’. Soto, “Deliberación,” 87. For more on the issue of disguise and dissimulation see Michael Gordian, “The Culture of Dis/simulation in Sixteenth and Seventeenth-Century Europe,” (PhD diss., The Warburg Institute, 2014).
593 Robles’ response to this argument was to ‘remediar la miseria en lugar de tener compasion de ella’. “De la orden,” 38.
most strongly public begging because it was an essential part of their own practices – gathering alms for the poor – and the term ‘mendicant’ implied this wandering vocation. Martin Luther, who wrote the preface and corrected some of the passages to the 1528 edition of the famous Liber Vagatorum, placed mendicant orders – like the Dominicans and Franciscans – under the category of the undeserving poor, arguing that giving them alms was as bad as giving alms to vagabonds: ‘whereas people will not give and help honest paupers and needy neighbours, as ordained by God, they give, by the persuasion of the devil, and contrary to god’s judgement, ten times as much to Vagabonds and desperate rogues, - in like manner as we have hitherto done to monasteries, cloisters, churches, chapels, and mendicant friars, forsaking all the time the truly poor’.  

Reflecting the main themes of the Protestant reformation, Luther’s critique of the church’s central role in poor relief programs echoed policies such as Henry VIII’s closure of monasteries in the 1530s.

7. The Rights of the City and the Common Good

From Soto’s perspective, by natural law and the law of nations, everyone has the freedom to go from one place to another as they please, and this is a right that cannot be restricted, unless the person has committed a crime or offense. In fact, as Soto explains, the city has the right to punish a criminal, but has no right over the innocent person. Representing the city, the judge can potentially impose the death penalty on the wrongdoer but cannot vainly punish an innocent person for the sake of the common good. In Soto’s words: ‘al criminal solo se le mata por el bien común; más en el inocente no hay motivo alguno que autorice a la sociedad a darle muerte’. For Soto, to wander from one province to another was not a crime on its own, and society’s retaliation had no licit grounds. One of Soto’s examples is the tyrant who demands the head of an innocent man in order to call a halt to the siege of a city, as once happened to Demosthenes in Athens. After exploring different possibilities, Soto concludes that ‘[la sociedad] no es dueña absoluta de la vida de los ciudadanos como lo es Dios; y por ello solamente Dios tiene poder sobre la vida del inocente’. According to Soto,

595 Martin Luther, “Preface,” in The Book of Vagabonds and Beggars, 4.
596 Soto, De la justicia y del derecho, lib. V, q. i, a. vii, 399.
597 ‘[Society] is not the absolute owner of the lives of citizens as god is; for this reason only god has the power over the life of an innocent’. Soto, De la justicia y del derecho, lib. V, q. i, a. vii, 400.
the man whose sacrifice is demanded has the freedom to choose whether he complies with the enemy requests. Only he out of good will and a charitable spirit can hand himself over to the tyrant and save the city, which is, in fact, the decision a good Christian will make. However, his fellow citizens are not entitled to force him into it. The innocent man has an obligation of charity to hand himself over to the tyrant and help preserve the common good, but he cannot be compelled to do so from the perspective of justice.

Soto compares the city which sacrifices one of its citizens to a person renouncing a part of their body. From Soto’s perspective, the citizen had an existence of his own and could suffer injury, unlike an arm, a leg or any other part of the body taken separately. In this way, the person’s decision to slash a part of his or her body was not comparable with society’s removal of one of its members. The city was not entitled to go against the rights of the individual, not even for the common good. Yet, individual rights and the common good did not have to be placed in opposition, considering that the state was obliged to preserve and protect these rights. As Annabel Brett has eloquently put it, ‘Soto’s great achievement was to defend simultaneously the right of the city and the right of the individual man within it’. The city has the right to do justice but should never act against the innocent.

In contrast, Juan de Robles insisted on the need to exclude vagabonds and the undeserving poor from alms-seeking, arguing that this was a right that the city had over its citizens. According to Robles, priority had to be given to the common good, which justified that some could be excluded from wandering around seeking relief. In his view, sometimes justice had to deprive people of their liberties, in order to preserve the common good: ‘todos los hombres que dentro de una ciudad vivimos, anque tengamos libertad cada uno en su estado, mas si para el bien de la ciudad es menester que perdamos nuestras libertades y vidas, es justo que se pierdan…’. In Robles’ view, restrictions to people’s liberties were justified when they sought to protect the

599 ‘Thus, all of us who live in a city, although we each have our own liberties, if for the good of the city it is necessary for us to lose our lives and liberties, it is just that they be lost’. Robles, “De la orden,” 179-180.
city as a whole. Since it had become increasingly difficult to identify those who truly deserved aid among the wandering poor, a system that identified them and controlled their movement was required. For Soto, on the other hand, it was unfair to deprive a single true pauper of moving around seeking alms, since it was against his individual freedom and his right to go wherever he pleased.

8. The Universal Community in a World of Nations

Soto’s defence of freedom of movement was also connected to the idea of a human community that went beyond internal borders and those of the realm. Referring to the passage in the Scripture in which Paul advised doing good deeds for everyone regardless of nation or status, Soto insisted that this also applied to true paupers. Since all Christians are members of a single body, they cannot be legitimately expelled: ‘San Pablo no manda que sólo a los naturales hagamos limosna, mas antes manda que a todos hagamos bien’. In Soto’s view, the good deeds that Paul advised had universal connotations, and charitable behaviour should make no distinctions among those in need. In addition, both wealthy and impoverished regions were part of the same kingdom and the duty of mutual aid knew no boundaries: ‘en un reino hay obispados ricos y obispados pobres; y todo el reino es un cuerpo’. The idea of a single body meant that the foreign poor visiting more wealthy lands deserved equal treatment.

Unity among Christians was often linked to the notion of the respublica Christiana, a term which, in its medieval usage, made reference to Christians from different regions, although it was surprisingly uncommon in medieval documents. This notion was adopted as an instrument of foreign policy towards the early modern period and was eventually used to justify wars against foreign communities. Richard Tuck mentions a mid-fifteenth century appeal to the respublica Christiana in pope Pius II’s Orationes Politicae et Ecclesiasticae, which contained the call for a crusade against the Turks. Similarly, Erasmus’ Utilissima Consultatio de Bello Turcis Inferendo condemns war

600 ‘Paul does not command that we should give alms only to local people, but instead that we should do good deeds for everyone’. Soto, “Deliberación,” 71.
601 ‘In a realm there are rich and poor parishes; and the whole realm is a single body. And therefore just as the wealthy give alms to their neighbours in need, rich parishes should give alms to the paupers from poorer parishes’. Soto, “Deliberación,” 65.
among Christian rulers, but does not quite oppose war by united Christians against Turks, allowing it as long as its purpose is ‘the tranquillity of the Christian republic’. 602

In contrast to this division between the Christian and the non-Christian world, Soto placed the citizen in a kind of community that went beyond the boundaries of Christianity: ‘en Jesucristo, como dice en otro lugar, no hay distinción entre griego y latino, y judío y gentil, porque todos somos de un dueño’603. Those who do not profess Catholicism are, according to Soto, members of the same community, including Jews and even pagans. As noted by Annabel Brett, Soto’s Latin version of his Deliberación makes reference to the union of the whole human race, which was perhaps easier to discuss amongst a small and more educated audience capable of reading Latin. In Soto’s words:

Indeed, if the matter is referred higher, to natural law, the human race is united by the closest bond in its very nature, so that, unless they were our enemies, or we feared some detriment to the faith from them, it would not be rightful to eject even infidel beggars from our commonwealth.604

Soto’s openness towards infidels seems to have been only available in the Latin edition, showing the extent to which his position was both radical and marginal. More so, when the boundaries of his universal community of human beings exceeded local and regional boundaries, perhaps suggesting restrictions on the power of local authorities to decide who entered and left.

Alongside this conception of a wider human community, Soto’s defence of free movement was framed within the discourse of natural law and the law of nations. Soto’s theory of natural law was part of the Thomist tradition which considered natural law as the law of natural inclinations. In these terms, the ‘libertad de andar por donde quisiere’ or freedom to go from one place to another is presented as a natural

602 References to the Christian Republic in both Pius II and Erasmus can be found in Tuck, The Rights of War and Peace, 28, 30.
603 ‘In Christ, as is stated elsewhere, there is no distinction between a Greek and a Latin, a Jew and a gentle, because we all belong to the same master’. Soto, “Deliberación,” 65.
604 Quoted and translated from the Latin version by Brett, Changes of State, 30. See Soto, Deliberatio in causa pauperum (Venetia: 1547), cap. IV, Fo. 103.
inclination, an intrinsic human desire, and an unavoidable tendency. But Soto also claims that freedom of movement is part of the *ius gentium* or the law of nations, a law established by human consensus regulating affairs among groups of people or communities.

How can a law that promotes free movement be based on the same law that established the division of things and the demarcation of *dominia*? In his *De iustitia et iure*, Soto observed how in paradise man had no experience of scarcity and could hold everything in common, but after the expulsion the division of things [*rerum*] had become a necessity. He attributed this division of things and of nations to the *ius gentium*: ‘la primera división de las cosas exteriores fue hecha por el derecho de gentes (...) Es de derecho de gentes, no sólo la división en general, sino también que unas naciones ocupen esta región y otras naciones hayan ocupado otras’. 605 Yet, Soto argued that many things had remained in common, particularly, roads and cities: ‘por derecho natural muchas cosas han continuado siendo comunes, cuyo dominio no pudo repartir el derecho de gentes, por ejemplo, el lugar, como afirma Aristóteles, o sea, la ciudad, los caminos, etc.’ 606 Following the scholastic tradition regarding the common property of all things prior to the fall, Soto argued that subsequent divisions were no obstacle to freedom of movement. As Francisco de Vitoria had already explained, the existence of separate nations did not interfere with ‘men’s free mutual intercourse’. 607 Both ideas were compatible, since the law of division was also, in Annabel Brett’s terms, ‘the law of peoples on the move, seeking, settling, and dividing lands’. 608 In the logic of the Neo-Thomists, the divisions of cities and kingdoms represented no obstacle to movement. Roads and cities were thus open to the harmless use of all, ‘and no one, unless for some fault of his own, can be deprived of the right of staying where he wants’. 609

Soto disapproved of the way in which Vitoria seemed to have presented a doctrine that allowed one people to freely move around plundering the resources of others. From

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605 Soto, *De la justicia y del derecho*, vol. II, lib. IV, q. III, a. 1, 297-298.
606 See Soto, *De la justicia y del derecho*, vol. II, lib. IV, q. 3, a. 1, 4th conclusion, 298. See also Brett, *Changes of State*, 24, 198.
Soto’s perspective, it was licit for his compatriots to go from one nation to another searching for gold, considering that the *ius gentium* had not established a division over these things. However, licit appropriation of natural resources could only take place with the consent of the inhabitants of those regions. As the *ius gentium* had established a division between regions, strangers could not make use of these things without the consent of its inhabitants. According to Soto, the French were not entitled to enter Spain to ravage its natural resources, nor could the Spanish gain access to French resources without their consent. In his own words, ‘for Neither can the French enter into Spain for the same purpose, nor can we enter France without the permission of the French’.

Certainly, the reign of Charles V was characterised by constant armed conflict with Francis I, but most of these confrontations took place away from French and Spanish territories.

Soto’s insights seemed to have had an impact on the writings of the Jesuit Luis de Molina who, in his *De iustitia et iure* of 1592, spoke of the *ius transitus innocui*, or the harmless right of free passage, which equally applied to everyone. In his own words: ‘El derecho de paso por una región sin hacer daño, para ir a otra, es debido a todos por derecho de gentes’. Nevertheless, the context in which Soto and Molina spoke was considerably different. While Soto’s discussion was focused on the freedom of movement of the wandering poor, Molina examined rights of free passage in the context of legitimate justifications for a just war. In contrast to Molina, who focused on the right-holder and allowed a war to be waged when free passage was obstructed, Soto examined the grounds under which restrictions of movement could be implemented. In his view, freedom of movement was a right that applied to everyone, even infidels, and restrictions to mobility could only take place when a crime or offence had been committed. Therefore, people could only be expelled with punitive purposes and as a direct result of illicit behaviour.

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610 Soto, *De la justicia y del derecho*, vol. III, lib. V, q. 3. a. 3, 423. For more on Soto’s more restricted views on the right of interpenetration see Brett, *Changes of State*, 24-25, 35. And Cavallar, *Rights of Strangers*, 111. On the way in which Hugo Grotius supported the possibility of appropriating things in another ruler’s jurisdiction, see Keene, *Beyond the Anarchical Society*, 57.

611 Soto, *De la justicia y del derecho*, vol. III, lib. V, q. 3. a. 3, 423.

Conclusion

Early modern experiences of the encounter with strangers and newcomers were shaped by different motivations and fears, expressed in reflections about the wickedness of idleness, contagious mischievous behaviour, and even demonic wandering. Even though Domingo de Soto recognised the negative connotations of vagrancy, his approach was rather unconventional. In fact, his claim to freedom of movement was far more radical than intellectual historians like Annabel Brett have suggested. Soto condemned vagrancy, but also highlighted the problematic and vague distinction between ‘true’ paupers and vagrants. Likewise, his overlooked theory of criminal law warns of the potential abuse associated with the prosecution of vaguely defined conducts, also connected to recent transformations in judicial procedures which facilitated the introduction of victimless crimes. To Soto, harmless behaviour – although sinful or immoral – should not be legally punished. In line with Tomas Aquinas’ teachings, Soto suggests that punishments or any other form of retaliation could only be implemented as a result of crime or offense. His criticism of idleness appeared as a typical sixteenth century response to purposeless travel and its link to delinquency, but he also challenged the existence of a fixed notion of idleness, considering Spain’s conditions of unemployment and aristocratic idleness. In addition, he seemed to condone the poor’s tendency to trickery and dissimulation when employed to move people to compassion. To expel foreign beggars and to expect everyone to beg exclusively in their place of birth, was against the right everyone had to move freely around the kingdom. This chapter claims that Soto’s nuanced approach to the notion of the undeserving poor exposed the levels of arbitrariness, but also the intrinsic limits of emerging identification mechanisms and increasing mobility regulations.
Conclusion

This research has looked at various discourses and practices of movement, and located some of the ways in which they were shaped by narratives of identity. These narratives involved notions such as the ‘deserving poor’, the ‘Spanish traveller’ and the ‘peaceful newcomer’, each of which framed and conditioned the paths of legitimate and permitted movement both in discourse and in practice. Francisco de Vitoria and Domingo de Soto’s debates about freedom of movement gravitated around the question of whether freedom of movement was desirable but also, and more importantly, about the possible identities which helped to secure this freedom. However, these identities were neither fully established nor well-defined; rather, they were constructed unevenly and non linearly, both informing and informed by other processes of making sense of and dealing with a highly mobile world.

Spanish discussions, policies, and practices of mobility cannot be narrated in linear terms. From a colonial perspective, mobility restrictions gradually became more stringent. In contrast, peninsular Spain was subject to fluctuating policies. Towns and cities were often granted autonomy to implement their own measures, but the crown imposed more systematic and severe restrictions on groups like vagrants and gypsies. The comprehensive measures which sought to regulate mobility across the Atlantic overshadowed incipient efforts to control and register local movement in Peninsular Spain. Walled cities implemented entry restrictions according to specific circumstances, and their level of openness fluctuated over time and varied from one place to another. Most commonly, restrictions were introduced against those coming from places with plague outbreaks, or in regions with religiously motivated censorship policies, or more stringent fiscal regulations; yet even in these cases they rarely operated on a permanent basis. With the Poor Law of 1540, Spanish cities like Zamora, Valladolid and Toledo began to implement mechanisms to ‘examine’ the poor and to establish whether their poverty was adequately ‘truthful’. Those deemed ‘true’ paupers were entitled to a licence to beg, but only in their place of birth. City gates had traditionally been places of inspection for vagabonds and the wandering poor, but the implementation of begging licences and pilgrims’ permits confirmed the beginning of a journey towards more ubiquitous forms of surveillance: a document
accompanying the individual wherever he went, setting boundaries according to legally constructed profiles.

The licencing programmes implemented among transatlantic passengers – and at a much smaller scale among the local poor – expressed an incipient modern bureaucracy which prefigured proto-state institutions seeking a greater classification and visibility of subjects. The regulation of movement in urban contexts gained relevance throughout the sixteenth century, but was not systematic. Royal legislation established parameters of mobility but gave autonomy to cities and towns to define their own concrete policies. In the port of Seville – the official point of entry and exit – the regulation of transatlantic travel acquired an enormous bureaucratic dimension, which was nonetheless constantly challenged by the empire’s vast extension and the complex and diverse backgrounds of subjects and passengers. This research has engaged with the extent to which daily practices and scholarly reflections conveyed a society fiercely resisting these transformations. In line with the crown’s anti-foreigner legislation, Francisco de Vitoria argued for travelling priorities for the Spanish, but he also displayed an array of Stoic and early Christian arguments defending an ideal world of open borders. His disciple Domingo de Soto more openly challenged measures that restricted the movement of the itinerant poor, and objected to public policy based on fixed definitions of poverty and idleness.

Francisco de Vitoria’s defence of free movement across the Atlantic was as contradictory as it was polemical. His approach to the discussion first revealed an attempt to identify newcomers according to their peaceful or violent endeavours. The rightful traveller had the right to access the shore and to be welcomed, if it could be proved he had good intentions. His approach to man’s natural sociability was inspired by Stoic ideas about human kindness as an attribute compatible with self-interest, as well as the Christian doctrine of neighbourly love, which applied to the entire universe of mankind. However, Vitoria’s claims adopted a different tone when, in his De Indis, he redefined the ethical value of kindness to strangers as not the responsibility but the right of the Spanish. Vitoria’s new terminology too easily invited the association of newcomers with armed invaders whose warlike undertakings were endorsed by international law. The Dominican removed hospitable behaviour from his ethical framework and placed it in the political sphere of European imperial competition. The
potential abuse that such powerful rights conferred was pointed out by some of his contemporaries, and later on by Hugo Grotius, whose defence of a more ‘universal’ freedom of movement was nonetheless heavily focused on the concrete legal claims presented by the Dutch against the Spanish and the Portuguese. Both Vitoria and Grotius fluctuated from a discourse of universal kindness to strangers to a ‘localized freedom’, strategically defended in a climate of imperial tension. Rather than enter into the post-colonial discussion of whether Vitoria was an advocate or critic of empire, by recognising these fluctuations I have sought to focus instead on the extent to which his arguments reflected equally contradictory dynamics.

Despite efforts to frame mobility policies on the basis of ‘national’ identity and religious hegemony, ordinary practices of movement did not consistently incorporate these frameworks. Legal cases against foreigners trespassing on Spanish-American domains were approached differently in different scenarios, and local authorities responded harshly or benevolently in unsystematic, sometimes unpredictable ways. Although the papal bull *Inter caetera* had granted the Americas to the Spanish kings, the process of excluding non-Spaniards was episodic and circumstantial, subject to an ill-defined, ambiguous sense of ‘Spanishness’. The ‘other’ was a category in the making, and the act of defining strangers constantly fluctuated according to political tensions and local needs. Thick regional accents challenged the possibility of recognizing members of separate Spanish kingdoms, and despite regulations that considered Portuguese travellers as foreigners, their relation to the king of Spain was commonly raised in claims for equal access to the Indies. Foreign crew members were allowed in Spanish fleets but the conditions through which they were allowed to disembark, and their roles as either soldiers or sailors, were not always easy to establish. Religious affiliation expressed in categories like ‘purity of blood’ were highly malleable, and Jewish, Moorish, African or Amerindian ancestries could eventually be overcome or dispelled through a good social standing in the community and webs of patronage.

The desire to both identify and control an increasingly mobile population had acquired new urgency with the incorporation of the Americas to the list of Spanish domains. The newly established *Casa de contratación* and the *Consejo de Indias* emerged as the head of a bureaucratic apparatus which sought to apprehend the elusive identity of
those renouncing their spatial connection to the crown and embarking themselves to *terra incognita*. The seemingly unbounded space of the Americas sparked concerns about subjects moving out of reach; licences for transatlantic travel thus became a way of designating those whose movement would secure the boundaries of empire, and a way of identifying the rightful newcomer.

At a local and a transatlantic level, travel licences operated as both passage permits and identification documents. The physical and spiritual description of travellers was encouraged by the uncertainties of constant fluctuation and anonymity brought about by urban growth and imperial expansion. Within this framework, I proposed some connections between increasingly obsolete city walls and the growing interest in identification and the human body as the seat of individual identity. Developments in anatomical studies contributed to the idea of an apprehensible body whose internal walls and distinguishing marks could be used as both legal and scientific evidence. The anatomical treatises of Andreas Vesalius, Juan Valverde de Amusco and Nathaniel Highmore depicted the human body in the foreground of city views and at city gates and triumphal arches – seemingly introducing the walls and cavities of the body as equally valid points of demarcation.

Likewise, Solórzano Pereyra’s imagery of ‘eyed’ walls incorporated bodily elements, while, in a time of extramural growth, pointing to the increased emphasis on inspection and scanning as key elements of the city’s defence. Marks on the skin began increasingly to be incorporated as a source of identification, and this materiality was translated to its bureaucratic form through the use of badges, seals and licences. Discourses promoting movement and hospitable attitudes fluctuated between all-encompassing attitudes and selective mechanisms of ‘openness’, which encouraged the classification of paupers in the local scene, and travellers overseas. These mechanisms provoked a climate of suspicion towards the undocumented, and hindered practices of self-identification.

The jurist and theologian Domingo de Soto’s narrative, as well as those of his critics, reflected many of the current anxieties about impostors and those pretending to be ‘true paupers’ or impersonating others. The Humanist Juan Luis Vives had already expressed such anxieties, suggesting that one of the aims of poor relief programmes
was to ‘uncover’ imposters. Other authors like Juan de Robles and Sebastián de Covarrubias followed a similar approach, associating the act of wandering with narratives of vice and misconduct. Although Soto made rhetorical use of the ‘true’ pauper terminology, and condemned the vices associated with vagabondage, his nuanced and sometimes contradictory reflections displayed a more complex, and often more permissive, approach to both poverty and itinerant behaviour. As a member of the mendicant orders, Soto understood the positive connotations of living an itinerant life. Favourable attitudes to people on the road and to the destitute, the renunciation of material belongings – such references to asceticism were promoted by the early church fathers, and of course by Christ himself.

Soto challenged the implementation of legal distinctions between the ‘deserving’ and the ‘undeserving’ poor, incorporating discussions about idleness and purposelessness in terms of current conditions of unemployment and the equally idle habits of the aristocratic elites. To Soto, excluding the undeserving poor from cities ignored the extent to which the wealthy, too, indulged in acts of idleness, theft and corruption. Soto’s distinctive approach relied heavily on his incorporation of the Thomist theory of criminal justice, according to which only behaviour that caused harm should be punished. Moral and criminal law belonged to distinct realms, and human laws could not be in charge of all forms of human conduct. Soto objected proposals to judicially prosecute those who wandered around faking injuries, arguing that human vice belonged to the realm of divine law.

In intellectual circles, Soto’s was a minority voice. Yet unlike Robles’ treaty, which was not published again until the mid-eighteenth century, Soto’s appeals went through several translations and publications. Philip II subsequently amended the Poor Laws removing restrictions for the foreign poor, and the projects of confinement and consolidation of hospitals – which were widely endorsed – were undertaken at an extremely low pace. Nonetheless, these patterns were non-linear. Philip II formally criminalized vagrancy, condemning purposeless wanderers to the galleys. These legislative initiatives appeared hand in hand with transformations in inquisitorial judicial procedures which permitted criminal prosecution regardless of whether the victim promoted it, as was similarly the case with accusations of witchcraft.
This thesis has taken an entangled approach to practices, policies and ideas, where incomplete and malleable terminologies illuminate multiple dynamics of resistance to emerging bureaucracies of mobility and legal identification. It has shown how contradictory discourses in defence of open borders exposed the paradoxes of a highly mobile world facing growing restrictions while struggling to define the terms of its own language. Throughout, it has emphasised the intellectual dimension of the history of migration, locating the overlapping language through which movement was conceptualised in theory and in practice. Looking at the testimonies of travellers and the accounts of local authorities, this research claims that blurry categories like ‘legitimate poverty’ or ‘Spanishness’ counteracted royal policies of migration. Meanwhile, discourses of selective ‘openness’ continually permeated scholarly debates on freedom of movement. Soto highlighted the most problematic aspects of begging licences, insisting on the multifaceted and fluctuating nature of poverty and idleness; the itinerant poor and their right to beg should not be curtailed by uniform policies of mobility and poor relief which were oblivious to individual experience and changing economic circumstances. Vitoria was less straightforward, oscillating between the rights of the Spanish nation in the ‘international’ realm, and an ethical framework of peaceful newcomers and universal kindness.

Above all, this thesis hopes to encourage further studies on the formation of ideas conditioning migration. More comparative and interdisciplinary approaches could offer fruitful insights and perspectives on the meaning and impact of the language through which movement can be perceived and addressed. Relevant research could be undertaken on the connection between the predominantly unbounded space of the Americas and shifting conceptions of urban space in Europe, and further comparisons could be established by the incorporation of intellectual frameworks accompanying, for instance, patterns of migration during the Reconquista. Furthermore, historical studies of identification could benefit from the insights of philosophical theories of perception, as well as anthropological and cultural approaches, which can shed new light on attitudes and practices at the margins of legal frameworks.

The current migration crisis has challenged the ability of available legal infrastructure to protect individual freedoms. Registration and the creation of fixed legal identities – an early modern initiative – have not managed to ease anxieties about unknown others.
Five hundred years after Francisco de Vitoria’s complaints about the lack of laws and norms enforcing ‘men’s free mutual intercourse’, and the duty to ‘behave hospitably to strangers’, we face a world of proliferating regulations that serve to block off and uproot people, capriciously redefining what it means to belong to a place.

The material explored in the preceding chapters expresses the many ways in which identity was known and conveyed as elusive. From Cervantes’ wandering characters to captured non-Spaniards, treacherous newcomers and fake beggars, these cases show that the key categories at stake in emerging mobility regulations were known and regarded as malleable and fluctuating. In Domingo de Soto’s narrative we perceive his reluctance to the construction of legal profiles for the poor, as well as an emphasis on the Christian ethics of mutual aid and freedom of movement. Perhaps the early modern experience can contribute to broadening current debates that are too invested in top down solutions, and can allow us to reassess the role of our cultural and ethical frameworks, as well as our current disposition to values like kindness and compassion.
Bibliography

Archival Sources

Archivo General de Indias, Seville (AGI)
Mexico, 22, No.83.
Justicia, 897, No.2; 888, No.9; 902, No.1; 999 No.2.

Archivo General de la Nación, Bogota (AGN)
Negocios-Exteriores: SC.42.4; 42.5; 42.6.

Primary Sources


Argensola, Bartolomé Leonardo de. “De cómo se remediarán los vicios de la Corte, y que no acuda a ella tanta gente inútil (1600).” In *Obras sueltas II, coleccionadas e ilustradas por el Conde de la Viñaza*. Madrid, Imprenta y Fundición de M. Tello, 1889.


Colección de documentos inéditos relativos al descubrimiento, conquista y organización de las antiguas posesiones españolas de ultramar CDIU. Madrid, 1885.

Colección de documentos inéditos relativos al descubrimiento, conquista y colonización de las posesiones españolas en América y Oceanía CDIA. Madrid: Imprenta de M. Bernaldo de Quirós, 1864.


Gamero, Antonio Martín, ed. *Ordenanzas para el buen régimen y gobierno de la muy noble, muy leal e imperial ciudad de Toledo*. Toledo: José de Cea, 1858.


Hurtado de Toledo, Luis. “Memorial de algunas cosas notables que tiene la Imperial ciudad de Toledo,” in *Relaciones histórico-geográfico estadísticas de los pueblos de España hechas por iniciativa de Felipe II*. Madrid: Consejo Superior de Investigaciones Científicas, 1963.


Mendoza, Lorenzo de. *Suplicación a su magestad católica del Rey nuestro señor, que Dios guarde: Ante sus Reales Consejos de Portugal y de las Indias, en defensa de los Portugueses*. Madrid, 1630.


Philip III, “Pedro Cortés permission to travel to New Spain with his wife and servants”, 1617. Newberry Library.


-----. *Politia Indiana*. Madrid, 1648.


-----. *Deliberatio in causa pauperum*. Venetia, 1547.


---- “On the American Indians.” in *Vitoria: Political Writings*.


*Secondary Sources*


----. “Scholastic Political Thought and the Modern Concept of the State,” in *Rethinking the Foundations of Modern Political Thought* (Cambridge: Cambridge University Press, 2007).


Los extranjeros en la vida española y otros artículos. Diputación de Sevilla, área de cultura y ecología, 1996.


----. “Los naturales de España, entre el Viejo y el Nuevo Mundo.” In *De re publica Hispaniae: una vindicación de la cultura política en los reinos ibéricos en la primera modernidad*, eds. Francisco José Aranda Pérez and José Damião Rodrigues. Madrid: Silex, 2008.


----. *Los movimientos migratorios entre Castilla e Hispanoamérica durante el reinado de Felipe III, 1598-1621*. Amsterdam: Rodopi, 1995.


Poggio, Eleonora. “La migración de europeos a través de los documentos inquisitoriales a finales del XVI.” In *Orbis incognitus: avisos y legajos del Nuevo


Schelkshorn, Hans. “The Change of Geographical Worldviews and Francisco de Vitoria’s Foundation of a Modern Cosmopolitanism.” In *Between Creativity and...*


