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The Implementation of the Rights to Self-Determination of Aymara and Quechua Indigenous Peoples: An International Normative Response to the Spanish Conquest of Tawantinsuyu

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THE IMPLEMENTATION OF THE RIGHT TO SELF-
DETERMINATION OF AYMARA AND QUECHUA
INDIGENOUS PEOPLES: AN INTERNATIONAL NORMATIVE
RESPONSE TO THE SPANISH CONQUEST OF
TAWANTINSUYU

Yuri G. Mantilla*

ABSTRACT

Contrary to ethnocentric views of law, this Article proposes an inter-
civilizational perspective of international law. This perspective provides an
analytical tool to understand the importance of preserving and empowering
diverse cultures and peoples. In a globalized world, there is an increasing
recognition of the contributions of diverse cultures and nations, including
indigenous, to the economic development and the cultural heritage of
humankind. The Article focuses on the importance of the resolution of a
historical and ongoing ethnic conflict between the people of Tawantinsuyu,
especially the Quechua and Aymara, and the descendants of Spanish
conquistadors who continue to pursue policies to undermine indigenous
civilizations. This Article makes the case for the implementation of
indigenous peoples’ right to self-determination, in its remedial and internal
aspects, as one of the foundations for the peaceful resolution of ethnic
conflicts in Bolivia, where the decedents of the people of Tawantinsuyu are
a significant part of the population. To accomplish this objective, it analyzes
historical and legal ideas that have sustained the natural right to self-
determination of indigenous peoples. It also addresses issues regarding
ethnocentric, unjust normative discourses that justified the conquest and
colonization of the Inca realm. The Article evaluates historical and
anthropological facts regarding indigenous nations that were affected by the
ideas and actions of Spanish thinkers and conquerors. The international
relations between the Inca Empire and Spain are an excellent case study to

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Maya Q’ech’i’ Agua Caliente Community v. Guatemala, which was submitted to the Inter-American Court of
Human Rights.
understand the importance of cultural presuppositions in the construction of international normative ideas that have influenced international relations between diverse civilizations.

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I. INTERNATIONAL LAW AND THE IMPORTANCE OF CULTURAL AND CIVILIZATIONAL DIVERSITY

Contrary to ethnocentric views of law, in the twenty-first century, an intercivilizational perspective of international law provides an analytical tool to understand the importance of preserving and empowering diverse cultures and peoples. Considering that the current international normative system was constructed, in part, as a reaction to Nazism—an ideology that tried to destroy cultural diversity and impose a totalitarian racist view of reality—it is imperative to focus on international legal discourse regarding the rights of indigenous peoples and the historical roots of systematic discrimination against them. If the Nazi regime had prevailed, it would have constructed an international legal discourse based on totalitarian views of international law. This discourse would serve as a foundation for the imposition of ideologies inherently contrary to ideas regarding respect for human dignity, ethnic diversity, and political pluralism. These three elements are essential components in the defense of indigenous peoples’ rights. International human rights law serves to promote universal
values that ensure respect for human dignity. There are other fields of law that also promote the well-being of humankind, including the protection of the environment.

In the current international context, one of the main objectives of international environmental law is the preservation of flora and fauna diversity. This includes efforts to protect endangered species such as dolphins and sea turtles.\(^1\) Biodiversity is important for the welfare of humankind. Historically, indigenous peoples, such as the Aymara and Quechua, have sustained views consistent with environmental protection, including the land.\(^2\) In this context, it is paradoxical that ethnocentric ideas and policies have undermined normative concepts regarding the protection of human diversity—another essential value and objective of humankind.\(^3\) This unjust view disregards the essential contributions of indigenous people to the well-being of humankind and its civilizational diversity.

In a globalized world, there is increasing recognition of the contributions of diverse cultures and nations, including indigenous, to the economic development and cultural heritage of humankind.\(^4\) The Andean civilization made significant contributions in this area.\(^5\) The indigenous peoples of *Tawantinsuyu* were one of the most important and powerful in what is now South America.\(^6\) However, after the Spanish conquest and colonization of the Inca realm, there have been systematic efforts to assimilate and destroy the indigenous cultures of South America. These cultures include those which were part of *Tawantinsuyu*, such as the Aymara and Quechua.\(^7\) Despite these systematic attempts to undermine their cultures and livelihood, indigenous people have resisted and survived unjust and illegal conquest.

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\(^2\) See, e.g., Theodore Butcher-Cornet, *Recognising Indigenous Conceptions of Custodianship in Environmental Law*, 28 AUSTL. L. LIBR. 156, 157 (2020) (discussing Aymara and Quechua peoples’ view of mother earth) (“In 2008, Ecuador became the first country to formally implement Indigenous cosmology into law by recognising the legal personhood of *Pacha Mama* (Mother Earth) and her inherent rights to be restored and protected in its Constitution. Two years later Bolivia followed by enacting the *Law of the Rights of Mother Earth 2010* (Ley Derechos de la Madre Tierra).”).


\(^6\) See id. at 4–6 (describing the characteristics of the Andean Civilization).

This Article highlights facts regarding Francisco de Pizarro’s leadership in the Spanish conquest of the Inca Empire, which resulted in the destruction of a great civilization. The ethnic conflicts and racist movements which started with the Spanish conquistadores’ efforts to destroy the Inca civilization continue to influence current historical context.\(^8\) Fundamental historical facts provide important context to these events.

Part II analyzes the importance of understanding the influence of sixteenth century Spanish legal, theological, and cultural ideas, which were the ideological foundation for the conquest of indigenous peoples such as the Tawantinsuyu. This Part focuses on the influence of worldviews in the construction of normative discourses that shaped the encounters between Spain and the indigenous nations of the New World. This contributed to the establishment of an inter-civilizational international system.

Part III focuses on the historical characteristics of the Spanish and Inca empires in the sixteenth century context. This Part examines the material and intangible elements of power in Spain and Tawantinsuyu. It also analyzes Spanish cultural views of minority groups, including Jewish and Muslim peoples, that eventually influenced Spanish conquistadores’ understandings of indigenous peoples such as the Quechua and Aymara.

Part IV addresses issues regarding the encounters between Spanish invaders and the indigenous peoples of Tawantinsuyu. It focuses on violent ethnic and political conflicts that characterized the international relations between these civilizations. The Part includes an analysis of the genocide committed by Spanish conquistadores against the indigenous peoples of Tawantinsuyu. It also highlights the custom of human sacrifices practiced in Tawantinsuyu and other regions of the New World.

Part V analyzes Inca and Spanish normative ideas that influenced international relations between these nations. Part VI focuses on the Spanish legal instrument of the Requirimiento, which was used as a normative discourse to justify the Spanish conquest of the Inca realm.

Part VII describes the unjust Spanish use of force in the conquest of Tawantinsuyu and the reasons for the collapse of Inca power during the Spanish occupation of indigenous territories. This Part also highlights Aymara and Quechua indigenous peoples’ resistance to the Spanish invasion of

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Tawantinsuyu and the indigenous peoples’ defense of their natural right to self-determination.

As a normative answer to the unjust consequences of the Spanish conquest of Tawantinsuyu, this Article makes the case for ensuring respect for indigenous peoples’ rights, including the right to self-determination. To accomplish this objective, Part VIII analyzes the right to self-determination in positive international law and its application to the case of the Aymara and Quechua people as offspring of the people of Tawantinsuyu. Part VIII also focuses on Bolivia—where most Aymara and Quechua people live—and the implementation of the right to self-determination in Bolivian constitutional law.

Because of the magnitude of ethnic conflicts and the significant indigenous population in Bolivia, this Article focuses on the importance of the resolution of a historical and ongoing conflict between the people of Tawantinsuyu—especially the Quechua and Aymara—and the descendants of Spanish conquistadores who continue to pursue policies to undermine indigenous civilizations. This Article makes the case for the implementation of indigenous peoples’ right to self-determination, in its remedial and internal aspects, as one of the foundations for the peaceful resolution of ethnic conflicts in Bolivia. To accomplish this objective, this Article analyzes historical legal ideas that have sustained the natural right to self-determination of indigenous people. It also addresses issues regarding ethnocentric unjust normative discourses that vindicated the conquest and colonization of the Inca realm. This Article seeks to understand the influence of Spanish philosophical and theological ideas in the establishment of international norms applicable to international relations between diverse civilizations. It examines the implications of Spanish normative ideas for the Inca people and their descendants. To accomplish this objective, the Article evaluates historical and anthropological facts regarding indigenous nations that were affected by the ideas and actions of Spanish thinkers and conquerors. The international relationship between the Inca Empire and Spain is an excellent case study to understand the importance of cultural presuppositions in the construction of international normative ideas that have influenced international relations between diverse civilizations.

The Spanish conquest of indigenous nations was based on totalitarian views that denied the intrinsic worth and dignity of indigenous peoples. Spanish legal ideas, based on racist theories, justified the conquest and colonization of

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9 See generally FERNANDO MOLINA, RACISMO Y PODER EN BOLIVIA (2021) (discussing racial, economic, and political power structures in Bolivia).
Tawantinsuyu, Kollasuyu, and other indigenous political organizations.10 This Article shows that, notwithstanding the Spanish conquest of Tawantinsuyu, indigenous peoples systematically and courageously resisted the Spanish occupation of their territories and the efforts to destroy their lives and cultures. This Article highlights indigenous resistance movements for the defense of the natural right to self-determination of leaders such as Túpac Amaru, Túpac Katari, and Bartolina Sisa.

This Article also explains how indigenous peoples’ resistance movements have defeated racist political regimes. In countries such as Bolivia, Peru, and Ecuador, the Aymara and Quechua people have not only resisted racist efforts to destroy their existence, but they have thrived, influencing the cultural, economic, legal, and political systems of their countries.11 As part of their victories, they have influenced the enactment of laws, including the Constitution of the Bolivian Plurinational State, that recognize indigenous peoples’ rights, including the right to self-determination.

II. THE CONSTRUCTION OF INTERNATIONAL NORMATIVE DISCOURSES AND THE IMPORTANCE OF CULTURAL IDEAS

The Spanish scholastic discourse regarding the law of nations emerged as a result of the relations between Spain and the indigenous nations of the New World.12 To understand this topic, it is important to study the origins of normative ideas applicable to international relations between nations from diverse civilizations. These normative ideas are essential to comprehend the influence of legal discourse in the sixteenth century that justified the use of extreme political violence by Spain against indigenous nations.

For a proper analysis of the influence of culture on the international relations between Spain and the Inca Empire, it is vital to know fundamental aspects of both nations’ social systems, including normative, political, and religious structures. For example, the killing of innocent human beings in religious

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10 See generally MARIA ROSTWOROWSKI DE DIEZ CANSECO, HISTORY OF THE INCA REALM (2d ed. 1999) (discussing the history of Tawantinsuyu). Current territories of Bolivia, Peru, Ecuador, Argentina, and Chile were once part of Tawantinsuyu. Id. The southeast part of the Inca Empire was known as Kollasuyu. Id.


cere monies was part of the Inca religious worldview. The saving of innocent human beings from the Inca was used as one of the main justifications for the Spanish use of force.

The Spanish conquest and colonization of the New World established one of the first inter-civilizational international systems—an international system based on the imposition of the imperial and ethnocentric interests of Spain on the indigenous nations of the New World. Considering the fundamental differences between the Spanish and Inca societies and the characteristics of their interactions, a cultural analysis to study the encounters between the societies is especially relevant. Regarding the concepts of culture and the international system, Alexander Wendt writes:

[T]he shared ideas or culture of an anarchic system is its structure, although in reality there is more to its social structure than that. I proposed that anarchy can have at least three distinct cultures, Hobbesian, Lockean, and Kantian, which are based on different role relationships, enemy, rival, and friend. These structures and roles are instantiated in states’ representations of Self and Other (role identities) and ensuing practices, but it is at the macro-level, relatively autonomous from what states think and do, that they acquire logics and tendencies that persist through time.

In the historical context of the Spanish conquest and colonization of the Inca and other indigenous nations, there were three main ideological Spanish views regarding the inter-civilizational international structure. The first view was held by Francisco de Vitoria and other Spanish scholastic thinkers, who recognized the existence of political communities in indigenous nations such as the Inca. The second view was held by Juan G. Sepulveda, who believed in the subhuman nature of indigenous people, and the lack of existence of indigenous political communities in the New World. The third view was held by Bartolome de las

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15 See Brian S. Bauer et al., *Vilcabamba and the Fall of the Inca Empire*, in *Voices from Vilcabamba: Accounts Chronicling the Fall of the Inca Empire* 3 (2016).


17 Anthony Pagden, *Introduction to Francisco de Vitoria: Political Writings* xxiv–xxvii (Anthony Pagden & Jeremy Lawrence eds., 12th ed. 2010) (analyzing Vitoria’s views regarding the status of the indigenous nations of the New World, including Vitoria’s recognition of indigenous property rights, the existence of cities, marriage laws, and other institutions that demonstrated the existence of political communities in indigenous territories).

18 See Juan Ginés de Sepúlveda, *Tratado sobre las justas causas de la guerra contra los
Casas, who not only recognized the existence of political communities in the New World but also challenged the legality of Spain’s conquest and colonization of indigenous nations.19 Francisco de Vitoria is considered one of the founders of the field of international law because of his writing regarding the application of legal norms to the international relations between Spain and the indigenous nations of the New World.20 The normative ideas of Spanish thinkers regarding the legal status of indigenous peoples and their political communities were shaped by cultural presuppositions of reality. Regarding the concept of culture in international relations, Alexander Wendt writes:

[T]he concept of culture is analytically neutral between conflict and cooperation. A Hobbesian war of all against all can be as much a cultural form as a Kantian collective security. Knowing which of these cultures dominates is the first thing we need to know about a particular anarchic system, and will enable us to make sense in turn of the role that power and interest play within it.21

Sixteenth century philosophical ideas that dehumanized indigenous communities, such as Juan Ginés de Sepúlveda’s, were the foundation of a culture that legally justified the violent use of force and extreme economic exploitation of indigenous societies.22 The culture of respect for norms of the

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20 See generally James Brown Scott, The Spanish Origin of International Law: Francisco de Vitoria and His Law of Nations 9 (1934) (“[T]here was a Spanish school of international law in the sixteenth century, within forty years after the discovery of America; that the founder of this school was Francisco de Vitoria, prima professor of theology in the University of Salamanca; and that his two Relectiones, De Indis Noviter Inventis and De Jure Belli, set forth his law of nations, which was to become the international law not merely of Christendom but of the world at large.”).
21 Wendt, supra note 16, at 310.
22 José A. Fernández-Santamaria, Juan Ginés de Sepúlveda on the Nature of the American Indians, 31 Américas 434, 436 (1975). (explaining Sepúlveda’s political and legal views were based on the dehumanization of indigenous peoples) (“Sepúlveda divides the world of nations into two groups. In the first are included the true commonwealths; those nations (both Christian and non-Christian) in which obedience to natural law and civilization flourish. The second group encompasses those republics which, barbaric and uncivilized, shun the precepts of natural law. Thus, in the same universe that contains perfectly mature political entities we also find groups of men living in ignorance of the basic fundamentals of civilized life—barbarians. The next question, once these new standards have been formulated, evidently suggests itself. Are the Indian polities true commonwealths, true states? Sepúlveda’s answer is categorically negative. The barbarian communities of the New World lack even the rudiments of culture and the most basic principles of a monetary economy; they wage war in a most brutal and uncouth manner; the inhabitants go about naked. Above all, the evil and unnatural practices of cannibalism, idol-worship, and human sacrifices are widespread in those commonwealths.

In themselves, these flaws are not excessively unusual; after all, concedes Sepúlveda, many among the civilized commit similar or worse outrages against nature. What is truly significant, however, is that those unnatural practices are sanctioned by the laws and public institutions of those peoples. And since the laws are the truest foundation of civil society, it is inconceivable that the legislation of man should go against the clear and explicit commands of God and still remain laws. Sepúlveda therefore concludes that the laws of ‘those
law of nations applicable to diverse civilizations, proposed by authors such as Francisco de Vitoria and Bartolomé de las Casas, was not as influential as the ones that sustained racist views of indigenous people.  

In analyzing the influence of Spanish normative standards applicable to the international relations between Spain and the Inca Empire, it is important to consider the influence of the Spanish and Inca worldviews, ethnic identities, and the normative discourses that shaped the conquest and colonization of the Inca realm. Regarding the Spanish conquest of the Aztec—another indigenous empire—Wendt writes:

When the Spanish met the Aztecs in 1519, each side began the encounter with private, domestically rooted beliefs about Self and Other that constituted their interests and definition of the situation, beliefs taken on each side to be true even though they lacked any basis in relevant experience. Upon interaction these beliefs became a social structure of knowledge that generated outcomes neither side expected.  

The interactions between Spain and the Inca Empire were heavily shaped by Spanish political, religious, and anthropological ideas that disregarded the existence of political communities in the Inca realm and rejected the human nature of indigenous people. In contrast, many of Francisco de Vitoria’s ideas could have sustained a normative foundation for international relations between Spain and the Inca Empire that reflected the interests of both states.  

barbarians’ cannot possibly be true laws, and their states are not true states.”).  

Edward James Schuster, *Juridical Contributions of Las Casas and Vitoria*, 61/62 REVISTA DE HISTORIA DE AMÉRICA 133, 152–53 (1966) (“The juridical contributions of Las Casas and Vitoria are impressive: they include specifically arguments and legislation directed toward the solution of immediate problems on the basis of Christian ethics and right reason, while also taking of realistic considerations. Indirectly but unmistakably their writing were based on Spain’s rich inheritance from classical and earlier Christian thinkers with special reference to Scholastic treatment of natural and divine laws, as well as positive law and the jus gentium. It is difficult to assess accurately the long range, indirect effects of their writings. While it is true that Las Casas and Vitoria possessed no unique title as defenders or exponents of ethical and natural law concepts, yet their elaborations and applications of these notions provided a rich treasury which thinkers of the Western World have drawn on since their time. Motivated by love for their fellow men, with special reference to their inherent nature, dignity and rights, Las Casas and Vitoria devoted talents and training to the development of effective arguments culminating in legal measures to protect the Indians. Yet their enduring contributions are not limited to protective legislation for the natives. Equally important, with abiding relevance and urgency, were their reassertion of the primacy and indispensability of the moral element in law, and their development of natural law and jus gentium concepts which continue to influence mankind.”).  

WENDT, supra note 16, at 141.  


See JUAN BELDA PLANS, LA ESCUELA DE SALAMANCA Y LA RENOVACION DE LA TELOGIA EN EL SIGLO XVI 379–93 (2000) (highlighting the influence of Francisco de Vitoria’s scholastic ideas in establishing a school
understand the diverse cultural normative worldviews regarding the conquest of the Inca realm, it is crucial to know the Spanish ideological justifications—reflected in legal instruments—for the conquest and colonization of the Inca realm. The *Requirimiento* was one of the main Spanish normative instruments that reflected prevalent cultural Spanish values and was used to justify the use of extreme political violence against the Incas. 27 Regarding the concepts of common knowledge and culture, Wendt writes:

Specific cultural forms like norms, rules, institutions, conventions, ideologies, customs, and laws are all made of common knowledge. . . . Nevertheless, given the tendency in [international relations] scholarship to equate cultural factors with cooperation, it is important to emphasize that the relevance of common knowledge is not limited to cooperative relationships. Shared beliefs can constitute a Hobbesian war of all against all or a Kantian perpetual peace. Like game theory more generally, common knowledge is analytically neutral between conflict and cooperation, and so in principle as applicable to Realist and Neoliberal concerns. 28

The Incas possessed shared ideas about law, politics, culture, and religion. This was the foundation for the establishment of their political communities. 29 Similarly, Spain constructed its political institutions based on common knowledge of law, customs, ideology, and other cultural expressions. The encounter between the Spanish and the Incas established a process for the sharing of ideas, which served as a foundation for a new international system characterized by the imposition of Spanish colonial norms and political institutions. The power of Spain was shaped by cultural ideas regarding supposed Spanish superiority over the indigenous nations of the New World. 30 The social structures created by the imposition of Spanish cultural ideas on indigenous peoples were influenced by prevalent Spanish philosophical ideas of thought, which included international legal ideas that challenged the Spanish conquest of indigenous peoples and sustained views consistent with the interest of both Spain and the indigenous nations of the New World). 27 See Robert A. Williams, Jr., *Columbus’s Legacy: Law as an Instrument of Racial Discrimination Against Indigenous Peoples’ Rights of Self-Determination*, 8 ARIZ. J. INT’L & COMP. L. 55–56 (1991).

28 WENDT, supra note 16, at 160.


30 See Edward J. Brennan, *The Ideology of Imperialism: Spanish Debates Regarding the Conquest of America*, 47 IRELAND Q. REV. 66–82 (1958) (explaining how one of the most important intellectual differences that reflected the diverse cultural presuppositions of Spanish thinkers regarding the conquest of indigenous nations was between Bartolomé de las Casas and Juan Ginés de Sepúlveda).
regarding the “uncivilized” nature of indigenous peoples. “In sum, the ontology of international life that I have advocated is ‘social’ in the sense that it is through ideas that states ultimately relate to one another, and ‘constructionist’ in the sense that these ideas help define who and what states are.”

In the sixteenth century, when Spain conquered the Inca and other nations of the New World, there was not a universal system of positive law applicable to the international relations between Spain and the nations of the New World. Considering that Spanish law could not be applied to the jurisdictions of the Inca and other indigenous nations, some Spanish scholars, such as Francisco de Vitoria, proposed a system of norms and principles, based on natural law, that could apply to the relations of nations from diverse civilizations.

Why are the Inca people important in the study of the laws applicable to international relations between nations from diverse civilizations? First, the Inca were one of the most important and powerful empires in the New World. Second, they were victims of widespread violations of natural law norms, including acts of extreme political violence such as genocide. Third, they have survived those violations of natural law and have preserved their culture, language, and customs. Fourth, the Spanish actions in the Inca realm inspired Francisco de Vitoria and other Spanish scholastic thinkers to write about the law of nations and denounce the injustices of the conquest of the New World.

Philosophical, theological, and cultural views of the Inca and other indigenous nations of the New World shaped the normative ideas of Spanish scholastic thinkers regarding the Spanish presence in the New World. The writings of Spanish authors were the sources of information that shaped the normative doctrines regarding indigenous nations of Spanish government officials, conquerors, theologians, and other influential sectors of Spanish society. Therefore, the indigenous perspective was not considered in deciding the status of indigenous peoples in their own territories. It is a tragedy that there are no records of Aymara, Quechua, Maya, Aztec, and other indigenous thinkers’ views on the application of normative standards to the international relations between diverse civilizations.

31 WENDT, supra note 16, at 372.
32 See Adolfo Miaja de la Muela, El Derecho ‘Totius Orbis’ En El Pensamiento De Francisco De Vitoria, 18 REVISTA ESPAÑOLA DE DERECHO INTERNACIONAL 341, 348–52 (1965) (analyzing the interactions and interrelations between natural law and the law of nations in Francisco de Vitoria’s writings).
33 See ARNOLDO MORA RODRÍGUEZ, LA FILOSOFÍA LATINOAMERICANA: INTRODUCCIÓN HISTÓRICA (2005).
34 Id. at 145. Professor Mora provides an excellent analysis of the contributions of Spanish philosophers to the formation of the Latin American understanding of philosophy, including the defense of indigenous nations.
III. THE INCA AND SPANISH EMPIRES IN THE SIXTEENTH-CENTURY
HISTORICAL CONTEXT

Regarding the concepts of power and interest, Alexander Wendt writes:

The claim is not that ideas are more important than power and interest, or that they are autonomous from power and interest. Power and interest are just as important and determining as before. The claim is rather that power and interest have the effects they do in virtue of the ideas that make them up. Power and interests’ explanations presuppose ideas, and to that extent are not rivals to ideational explanations at all.35

To understand the place and influence of the Inca Empire—as the leader of the Andean civilization—and Spain—as a leader of the Western Christian civilization—in the sixteenth century context, it is important to consider the ideas and material structures that sustained the military, political, and economic power of these political structures.36 The Inca possessed a high level of power, allowing them to rule, influence, conquer, and colonize other indigenous nations. Spain was also able to conquer and colonize other civilizations, such as the Andean, because of its power. “Power can be thought of as the ability of an actor to get others to do something they otherwise would not do...”37 Regarding the diverse nature of power, “the distinctively Realist claim is the materialist hypothesis that the effects of power are constituted primarily by brute material forces. The rival idealist hypothesis is that power is constituted primarily by ideas and cultural contexts.”38 In this Article, both aspects of power are considered to analyze the international relations between Spain and the Inca Empire.

The Inca Empire’s power was evidenced by its economic, cultural, political, normative, and military development.39 Incan ideology, based on religious

Id.
35 WENDT, supra note 16, at 135.
36 See, e.g., HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE 80–108 (1951). For Morgenthau, a classic exponent of realism, the elements of national power are geography, natural resources, military preparedness, industrial capacity, population, national character, national morale, and the quality of diplomacy. Id.
37 ROBERT O. KEOHANE & JOSEPH S. NYE, POWER AND INTERDEPENDENCE: WORLD POLITICS IN TRANSITION 11 (1997); see also Joseph S. Nye, Soft Power, 80 FOREIGN POL’Y 153, 154 (1990) (“The dictionary tells us that power means an ability to do things and control others, to get others to do what they otherwise would not. Because the ability to control others is often associated with the possession of certain resources, politicians and diplomats commonly define power as the possession of population, territory, natural resources, economic size, military forces, and political stability.”).
38 WENDT, supra note 16, at 97.
39 Charles Stantish, Nonmarket Imperialism in the Prehispanic Americas: The Inka Occupation of the
presuppositions, was the foundation for the use of power in the Andean region.\(^{40}\) The political actions of the Inca Empire were often consistent with natural law standards of justice; however, sometimes they were also expressions of extreme political evil. The efficient production and distribution of food, sophisticated constructions of roads, and the creation of beautiful art and other cultural expressions were examples of the social and economic development of Tawantinsuyu.\(^{41}\) The Incan custom of human sacrifices was an example of violations of just norms regarding respect for innocent human life. From the Incan perspective, human sacrifices were good because they helped preserve their nation, protect their people, and appease their gods.\(^{42}\)

The size of a territory and the population of a nation are important elements of the power of a nation.\(^{43}\) Regarding the Inca Empire, Gordon McEwan writes:

At the time of the Spanish Conquest in A.D. 1532, the majority of the vast territory of Andean South America had been united into a single political entity now commonly called the Inca Empire. Known to its rulers as Tawantinsuyu, meaning roughly ‘The Land of Four Quarters’ in the Inca language, this empire included parts of the modern countries of Colombia, Ecuador, Peru, Bolivia, Argentina, and Chile. This huge domain was the property of a small kin group called the Incas. From their capital city of Cuzco, located in the southern highlands of Peru, the rulers of this realm controlled a vast territory encompassing approximately 906,000 square kilometers. . . . Within the borders of this empire dwelled a population of perhaps 10 million people divided into a multitude of tribal groups, each with its own customs and language. . . . The entire empire was interconnected by a highway system of some 38,600 kilometers in extent that, as an engineering feat, rivalled or surpassed anything known in Europe.\(^{44}\)

Because of their economic success and ideological strength, the Inca people developed a high level of military power. This power was used to spread their ideology in the Andean region. One of the main reasons for the Inca territorial

\(^{41}\) Id. at 112.
\(^{42}\) See Davies, supra note 14 (discussing human sacrifices during the Inca Empire).
\(^{43}\) See, e.g., HENRY R. NAIU, PERSPECTIVES ON INTERNATIONAL RELATIONS 57 (7th ed. 2021) (analyzing international relations, including the concept of power).
\(^{44}\) McEwan, supra note 40, at 3.
expansion was the maintenance of their religious worldview, which required the worship of dead Inca kings and the protection of their lands. As a result, new Inca emperors needed new territories to produce wealth and keep their power.\textsuperscript{45}

A key element of power is the government of a nation. The Inca Empire, or Tawantinsuyu, had a system based on the absolute power of the Inca emperor.\textsuperscript{46} The self-confidence of a nation is another important intangible element of power.\textsuperscript{47} What was the national morale of the Incas? At the time of the Spanish conquest, the Inca Empire had only 100 years of development.\textsuperscript{48} Therefore, it did not have a high level of unity. Ethnic conflicts between diverse ethnic groups, many of whom opposed the Inca hegemony, created the conditions for Spanish conquerors to gain allies who opposed the Incas.\textsuperscript{49} Additionally, the disputes for political power between Atahuallpa and Huascar to become the new Inca ruler created deep divisions among the Inca.\textsuperscript{50} The combination of political disputes with the constant expansion of Inca rule to gain new territories led to a weakening of the Inca political, social, and economic structures. In this context, Francisco Pizarro, with a small number of Spanish invaders, conquered one of the greatest civilizations in the New World.\textsuperscript{51}

In the case of the Inca Empire, the use of military force was a common means to achieve geopolitical objectives. “When diplomacy failed, the Incas resorted to force. In planning a campaign, the most successful generals would be consulted for advice. Sacrifices would be made and omens read.”\textsuperscript{52} The Inca Empire had well-structured ideological, economic, social, and political systems that enabled them to have high levels of military power and economic development. The Inca had great achievements in the arts, medicine, textiles, communication systems, and other areas.\textsuperscript{53} The Inca normative system was based on the absolute power of the Inca king as the supreme ruler of the Inca realm. The Inca king was considered the son of the sun god ‘Inti’ and, therefore, his will was deemed to be divine.\textsuperscript{54}

\textsuperscript{45} Id. at 126–27.
\textsuperscript{46} WALDEMAR ESPINOZA SORIANO, LA DESTRUCCIÓN DEL IMPERIO DE LOS INCAS 43 (4th ed. 1986).
\textsuperscript{47} See Nye, supra note 37, at 164 (commenting on intangible elements of power and soft power).
\textsuperscript{48} See DIEZ CANSECO, supra note 10, at 22.
\textsuperscript{49} Id.
\textsuperscript{50} See, e.g., JUAN DE BETANZOS, NARRATIVES OF THE INCAS 195–96 (Roland Hamilton trans., 1996).
\textsuperscript{51} See ESPINOZA SORIANO, supra note 46, at 41–51.
\textsuperscript{52} McEwan, supra note 40, at 130.
\textsuperscript{53} See, e.g., 1 FEDERICO KAUFFMAN DOIG, HISTORIA GENERAL DE LOS PERUANOS (1988).
\textsuperscript{54} See, e.g., BERNABE COBO, HISTORY OF THE INCA EMPIRE 126 (Roland Hamilton trans., 2005).
The Inca believed in the existence of many gods including Inti and Pachamama. The principles of reciprocity and duality were the foundations of the Inca worldview. Regarding this, Gordon McEwan writes:

The purpose of Andean religion was to delineate the basic divisions of the cosmos and maintain them in harmony through reciprocal exchange. . . . These principles were said to have been expressed in a cosmological model kept in the principal temple of the sun, the Coricancha, in Cuzco. . . . Inca cosmology also conceived of a cosmos divided into three parts: hanaq pacha (the world above), kay pacha (this world), and ukhu pacha (the world below). . . . As part of their cosmology, the Incas followed the practice of dividing time into ages. Each age ends with an event called a pachacuti, which can be translated as “cataclysm” or “world reversal.”

Even though the Inca worldview, culture, economic, social, and political systems were completely different from those of Spain and Europe, there were some similarities between Spain and the Inca. Like the Inca Empire, Spain also expanded its jurisdiction and power to other nations. Before the encounters and wars against the nations of the New World, Spain waged other wars, especially against Muslim populations, to recuperate Spanish lands. Spain’s victories led to crusades and the conquest of the Canary Islands, which prepared Spain for the conquest of the New World. The Spanish understanding of law, conquest, and war were shaped by historical, cultural, religious, and ethnic presuppositions of reality. For example, ethnic and religious perceptions regarding other people, such as Muslims and Jews, influenced Spanish thinkers’ legal and political doctrines about the newly encountered indigenous nations of the New World. However, unlike Muslims who invaded Spain, the indigenous nations of the New World did not hold territories that had belonged to Spain in the past.

The importance of gold for the Spanish economy was a strong stimulus to find and conquer new territories. The perception in Spain was that other regions of the world had large amounts of gold. For other segments of Spanish society, there was a religious duty to evangelize non-Christian nations. In this context,
ethnic presuppositions and religion played a key function in the conquest and colonization of the indigenous nations of the New World.

After around 500 years of Islamic occupation of most Spanish territories, Spain won several wars, including the defeat of Muslim armed forces in Las Navas De Tolosa in 1212, and recuperated their land.61 Regarding this process, Lyle McAlister writes:

To the student of Hispanic expansion, the Reconquest has a special meaning. It provided the momentum that carried Spaniards and Portuguese across seas and oceans to Sicily, Naples, and Greece; to Africa and the Atlantic islands; then ultimately to America and Asia. At the same time, it gave them prolonged experience in the conquest and colonization of alien lands, and it created values and institutions that they carried with them wherever they adventured.62

The reign of Ferdinand and Isabella was very significant in increasing the power of Spain. In 1469, Isabella, sister of Henry IV of Castile, married Ferdinand, the successor to the crown of Aragon.63 In 1474, Isabella became queen of Castile, Ferdinand became king of Aragon, and the two kingdoms united.64 They established the Catholic Inquisition in 1478, re-conquered a Muslim stronghold in Granada, and expelled many Jewish and Muslim minorities from Spain.65 These successful conquests granted Spain a strong self-confidence which provided the foundation for the crusade and the conquest of the Canary Islands.66

Some religious-political ideas were the ideological foundation for the unity of the Spanish kingdoms. In this context, Jewish and Muslim people were considered apostates and idolaters.67 In 1478, the Inquisition was established to deal with Jewish converts to Christianity who were tortured and killed because they were considered not to be true Christians.68 Even those who genuinely converted to Christianity were suspected and treated as outsiders.

62 M CALISTER, supra note 57, at 11–12.
63 Id. at 56.
64 Id.
65 Id. at 58.
There was systematic discrimination against Spain’s Jewish population. Spanish governmental authorities doubted the conversion of Jewish persons who were forced to convert to Christianity because of social and political pressures. On March 31, 1492, a law was promulgated to deport persons of Jewish origins from Spain. For 700 years, Muslims ruled in Spain. After the defeat of Granada—the last Muslim-controlled region—the relations between Spanish Christians and Muslim people were characterized by constant ethnic conflict. In this context of deep ethnic conflicts, many of the ideas regarding the human nature of indigenous nations were shaped by Spanish views on infidels. Spain became the leading European power and waged wars in Europe to expand its influence. In the sixteenth century, Spain was characterized by great achievements in economics, the arts, philosophy, and other areas of knowledge. In 1516, Charles I became king of Spain and, in 1519, Emperor of Europe as Charles V. He knew about Spanish scholastic thinkers, such as Francisco de Vitoria, who questioned the legality of the Spanish conquest of the New World. Sometimes he asked Vitoria’s opinion on theological issues of national importance and, on other occasions, he questioned and tried to censor Vitoria and other Spanish scholastic thinkers’ writings for criticizing the legality of the Spanish actions in the New World.

IV. ETHNIC CONFLICTS AND POLITICAL VIOLENCE IN THE INTERNATIONAL RELATIONS BETWEEN SPAIN AND THE INCA EMPIRE

Spain had the military power to impose its will upon the Inca and other indigenous nations, often threatening to use force to persuade the Inca to submit to Spanish political will. Other times, Spain directly used military force to conquer indigenous territories and exploit their natural resources and labor force. Regarding the Spanish conquest of the Aztecs, which was similar to the one of the Inca Empire, Alexander Wendt writes:

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69 Id. at 176.
70 Id. at 187.
72 Armstrong, supra note 67, at 3–7.
73 Id.
74 GEOFFREY PARKER, EMPEROR: A NEW LIFE OF CHARLES V 75, 100 (2019) (“Charles had indeed succeeded spectacularly at the game of thrones, becoming king of Castile, Aragon, Naples and Sicily, and now king of the Romans – and all ‘without bloodshed.’”).
Sometimes international politics has no culture. It is an empirical
question whether actors share any ideas, and sometimes they do not.
When the Spaniards encountered the Aztecs in 1519, their interaction
was highly structured by their beliefs about each other, beliefs that
were rooted in pre-Encounter experiences and thus not shared. The
structure of their interaction was “social” (because, in Weber’s terms,
each side took the other “into account”) but it was not “cultural.”

To understand international politics between Spain and the Inca Empire in
the sixteenth century, it is important to know the cultural ideas articulated in
normative instruments which were used to justify the Spanish actions in the Inca
realm. Consistent with Spanish cultural normative ideas regarding the authority
of Spain to expand its jurisdiction to the New World, on July 26, 1529, Queen
Isabella and the Supreme Council of Indies signed the Capitulation of Toledo.
This Spanish normative instrument granted Francisco Pizarro the jurisdiction to
conquer the Inca realm as governor of Peru. Before the Spanish invaders
arrived in the Andean region, they already had a long experience in wars of
conquest against indigenous nations in the New World. Their military
experience allowed them to obtain knowledge regarding the effective use of
power, including military force, to control indigenous people. Spain’s effective
use of military control also reinforced their ideological understanding regarding
their supposed ethnic “superiority” and religious mission to conquer indigenous
nations.

During the conquest and colonization of the Inca realm, interactions between
indigenous communities and Spanish conquerors created social structures of
common understanding. Unfortunately, these structures were characterized by
norms which justified ethnic discrimination, extreme forms of labor
exploitation, and the destruction of cultural expressions of indigenous
communities. As an expression of fundamental political, cultural, and
philosophical beliefs, sovereign states can justify the most extreme actions of
political evil. Historically, powerful nations have unjustly used force against

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78 Wendt, supra note 16, at 158.
80 1 José Antonio del Busto, Pizarro 241–43 (2000).
81 See George Raudzens, So Why Were the Aztecs Conquered, and What Were the Wider Implications? Testing
Military Superiority as a Cause of Europe’s Pre-Industrial Colonial Conquests, 2 War in Hist. 87, 95–96, 100–01 (1995)
(discussing how the Spanish conquest of the Aztec Empire in 1521 gave the conquistadores experience to engage
the Inca Empire in 1532).
82 Patricia Seed, ‘Are These Not Also Men?’: The Indians’ Humanity and Capacity for Spanish Civilisation, 25 J. Latin Am.
weak ones. However, both weak and powerful nations often have committed acts of extreme violence against their own citizens. 83

In the sixteenth century, both Spain and the Inca Empire were multiethnic and multicultural societies. In Spain, Christian, Jewish, Muslim, and other ethnic and religious groups lived together in one territory. The Inca Empire also was composed of diverse ethnic groups such as Collas, Lupaka, Moche, and Huancas. 84 Ethnic divisions of labor, labeling, and dehumanization of others led to extreme violence against ethnic minority groups who lived in Spain. 85 The Inca, as a ruling ethnic group, also dehumanized other ethnic groups and used force to conquer them on many occasions. 86 In the Inca wars of conquest, many innocent members of diverse indigenous groups were killed. 87 Similarly, in Spanish wars against Muslim and Jewish communities, many innocent persons lost their lives. Therefore, war was a central instrument of conquest for both Incas and Spaniards. 88

At the end of the fifteenth century, the Incas’ influence expanded in the Andean region as a result of diplomacy and the use of force. This expansion was characterized by intense ethnic conflicts and the imposition of Incan laws, political system, and religion. 89 However, other ethnic groups did not agree with the Incan hegemony. 90 As a result, at the time of the arrival of Spanish conquerors, many of those ethnic groups were willing to cooperate with Francisco Pizarro to defeat the Inca Empire. 91 The Spanish invaders were able to conquer in great part because of their alliances with ethnic groups that opposed the Incas. 92 The Spaniards also had an effective strategy to use force to conquer the Inca realm.

84 See Espinoza Soriano, supra note 46.
85 See McCAlister, supra note 57, at 11–12.
86 See Espinoza Soriano, supra note 46.
88 See Joseph F. O’Callaghan, Reconquest and Crusade in Medieval Spain 1, 3, 7, 8 (2003) (discussing Spain’s wars against Muslim population during the reconquest).
89 See Espinoza Soriano, supra note 46.
90 Id.
91 Id.
92 Id.
As a result of the Spanish conquest of the Inca realm, there was a large depopulation resulting from killings, diseases, and slavery. The actions of Spanish conquerors reflected the will of Spain, which enabled its citizens to commit evil actions to fulfill its national interests with the excuse of bringing civilization to the Incas and eradicating idolatry in the Andean region. These extreme, violent actions happened because of political ideas that sustained ethnic divisions of labor and the exclusion of indigenous people from meaningful political participation. Therefore, Spain’s colonial actions and policies were based on racist presuppositions. Spain’s racist perceptions could be seen in the descriptions of the Inca and other indigenous people by influential Spanish political, theological, and legal thinkers. For example, Juan Ginés de Sepúlveda characterized indigenous nations as “sub-human” and “barbarian.” These types of Spanish views were based on false anthropological presuppositions regarding the Inca and other indigenous people. Most Spanish historians who focused on indigenous people had racial prejudices and political interests which influenced their writings. Some Spanish thinkers who created legal and political doctrines had never been in the New World, leading them to construct their doctrines based on the information provided by eyewitnesses who wrote about indigenous communities. The authors of legal and political doctrines also brought their ethnically biased perspectives into their writings. Legal doctrines which dehumanized the Inca and other nations served to justify extreme, violent actions against indigenous nations.

In the history of humankind, the use of power and force is often characterized by extreme, violent consequences and widespread destruction of human life. The unjust use of power and force leads to actions—such as large-scale killings of innocent human beings—because of political interests, economic gain, or ethnic prejudices. The unjust use of power can also lead to the exploitation of nations and the destruction of cultures. The unjust use of military, political, and economic power creates conditions that can even lead to genocide. Regarding the Spanish colonial use of force, David Maybury-Lewis wrote:

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94 See DONALD L. HOROWITZ, ETHNIC GROUPS IN CONFLICT 624 (1985) (discussing the causes of ethnic conflicts, including ethnic divisions of labor).
95 See Williams, supra note 27, at 52.
96 See SEPÚLVEDA, supra note 18.
European military superiority was evident from the very beginning of the European expansion. Even at the end of the Middle Ages, when the Spanish invaded the Americas, it soon became clear that their firearms, their fine steel weapons . . . enabled them to defeat much larger numbers of Indians, even when the latter fought, as they often did, with great courage. The Spanish could therefore establish themselves as the absolute overlords of the defeated populations and, if they were so inclined, could institute local reigns of terror involving torture, killings, and mass murder. 99

The Inca and other indigenous nations dehumanized minority ethnic groups. This dehumanization led to massacres and other actions contrary to universal principles of justice. 100 A constant dehumanization of indigenous nations also characterized the Spanish conquest and the colonization of the New World. As a result, violent wars of conquest led to the devastation of nations and cultures. “It is because genocide everywhere depends on the perpetrators’ dehumanizing their intended victims, establishing them as radically alien creatures who deserve to be eliminated, and having the power to kill them.” 101 A letter of Marcos de Niza, an eyewitness of the atrocities committed by Spanish conquerors in Peru, described the capacity of sovereign states to commit extreme violent actions. According to him:

I testify that I saw with my own eyes Spaniards cutting off the hands, noses and ears of local people, both men and women; simply for the fun of it, and that this happened time and again in various places throughout the region. On several occasions I also saw them set dogs on the people, many being torn to pieces in this fashion, and they also burned down houses and even whole settlements, too numerous to count. 102

Why were Francisco Pizarro and other Spanish conquerors capable of committing such acts of extreme cruelty? Hannan Arendt’s description of the trial of the Nazi war criminal, Adolf Eichmann, helps explain the political and ideological reasons for irrational and brutal actions. She explains the problem of political evil and why any human being can commit extreme crimes. 103

Commenting on this, Patrick Hayden writes:

100 See Espinoza Soriano, supra note 46, at 104 (describing how the Inca General Quisquis led the massacre of more than 900 Huanca).
101 See Maybury-Lewis, supra note 99, at 52.
For Arendt, it was “sheer thoughtlessness” that made Eichmann “perfectly incapable of telling right from wrong” in the sense that he chose not to exercise the capacity to think about and judge his actions in light of the ends of the social system within which he functioned as an agent.  

The inability of Spanish conquerors to distinguish right from wrong in their actions against innocent indigenous persons was the result of the ideological and material coherence of their personal interests to obtain power and wealth, with the perceived national interest of Spain to conquer indigenous nations and expand its empire. As a result of the dehumanization of indigenous people, extreme political violence led to the destruction of indigenous communities, including their political and economic structures.

Because of the Spanish use of force in the Andes and other regions of the New World, many innocent humans lost their lives. Regarding the direct and indirect destructive effects of war in the depopulation of the Andean region in the sixteenth century, Professor Massimo Livi Bacci writes: “This entire experience needs moreover to be understood in the context of the destruction of the Inca system, a system based horizontally on the reciprocity and solidarity of different ethnic groups and communities and vertically on the redistribution between the communities and the state.” Between 1520 and 1630, there was a dramatic population decline in the Andean region caused by deadly epidemics, inhumane work conditions, wars of conquest, destruction of the Incan system of production, forced migration for the exploitation of the labor force, and destruction of social structures. Regarding economic exploitation of indigenous people and diseases, Massimo Livi Bacci writes:

The exaggerated amount of personal service required of the Indios aggravated the other interlinked negative effects already examined separately: wars, disease, exploration, mining, migration and climatic change, and forced resettlements. The pressure on the Indios tended to get worse as the Spanish population grew and the indigenous one declined. . . . It is not so much, then, the European microbiological invasion that we need to consider in order to understand the demographic fate of Peru, as the tragic mechanics of the Conquest itself.

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106 See TANTALEAN ARBULLI, supra note 93, at 1141–74.
107 LIVI BACCI, supra note 105, at 190–91.
Some authors have tried to deny Spanish responsibility, or minimize the effects of the conquest of the New World, in the destruction of indigenous populations.108 But, as shown above, it is hard to deny the depopulation of indigenous nations of the New World after the Spanish conquest. The word genocide properly describes what happened with indigenous people. Regarding the crime of genocide, Professor William A. Schabas writes:

“The fact of genocide is as old as humanity,” wrote Jean Paul Sartre. The law, however, is considerably younger. This dialectic of the ancient fact yet the modern law of genocide follows from the observation that, historically, genocide has gone unpunished. Hitler’s famous comment, “who remembers the Armenians?”, is often cited in this regard. Yet the Nazis were only among the most recent to rely confidently on the reasonable presumption that an international culture of impunity would effectively shelter the most heinous perpetrators of crimes against humanity.109

This culture of impunity also applies to sixteenth century acts of genocide, such as those committed by Spanish conquerors against indigenous peoples. The lack of international positive law norms regarding the destruction of groups because of their ethnic or other characteristics does not mean that genocide did not happen in the sixteenth century. Natural law norms, such as the right to life and the right to self-determination, were applicable to sixteenth century Inca-Spanish international relations. Raphael Lemkin not only created the concept of genocide, but also was one of the first to study it in relation to the indigenous nations of the New World.110 The common understanding is that Lemkin created the concept based on the tragic events of the Holocaust. However, Lemkin also studied the concept of genocide in relation to the actions of Spain against the indigenous nations of the New World. “[W]hat Lemkin’s manuscripts reveal is that early modern and modern colonialism was central to his conception of genocide. Indeed, the very notion is colonial in nature because it entails occupation and settlement.”111 Regarding the massacres committed by Spain in the New World according to Lemkin, Michael A. McDonnell and Dirk Moses wrote:

These were of three sorts. Preemptive strikes were carried out by Pizarro in 1532 after he entered the city of Caxamarca, and by Cortes

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111 Id. at 501.
in Cholula, in order to intimidate the locals, and to forestall attack by them. Fear of being overwhelmed by the far more numerous Indian forces was an important factor, Lemkin observed. The second sort of massacre was the putting down of rebellions. Killing took the form of reprisal actions: “. . . Some governors and captains simply had populations massacred without ceremony.” Captured locals suffered a worse fate: “Indian captives of the Spanish were frequently tortured and killed. This was not the exception among the cruder soldiers but was looked upon as a matter of course by soldiers and officers alike.” In form, such massacres resembled the third type: gratuitous exhibitions of violence for their own sake.112

Lemkin also considers the following forms of genocide: genocidal slavery, biological genocide, and cultural genocide.113 Regarding the acts of genocide committed by the Spanish conquerors, José de Acosta, a sixteenth century Spanish Jesuit missionary and scholar, wrote: “Hardly, has there ever been committed so many and so huge crimes by one barbarian and ferocious people . . . as by those defenders of natural law, and by the propagators of the Christian faith. . .”114 However, it was not just the Spanish conquerors who committed extreme acts of political and religious violence. Indigenous peoples, including the Aztecs, Incas, and Mayas, also had political and religious beliefs that justified widespread violations of the right to life. For example, the Aztec ideology encouraged human sacrifices of prisoners of war as offerings to their gods.115 Father Bernardino de Sahagún, a Spanish ethnohistorian, who from 1529 to 1590 lived in New Spain, described the horrendous human sacrifices of children, women, and men practiced by the Aztecs as part of their worship to their gods Xipec Totec and Huitzilopochtli.116 According to Charles Phillips:

> Another important central element of Mesoamerican civilization—at least as far back as the Olmecs in c. 1,200 B.C.—was the use of human blood sacrifice to honour and propitiate the gods. Among the Aztecs, vast lines of prisoners of war were paraded up steep temple pyramids to be sacrificed by having their hearts ripped from their chests.117

112 Id. at 506.
113 Id.
One of the characteristics of the Incan religious worldview was the offering of child sacrifices to the mountains—which were considered gods—and other deities. Unlike the Aztecs, the Incas believed in sacrificing whole human bodies without removing any body parts. For the Incas, human sacrifice was a ritual to appease and obtain blessings from their gods and show their power to other nations of the Andean civilization. According to Constanza Ceruti:

The summits of mountains are specifically mentioned in the ethnohistorical accounts to the places for capacocha ceremonies, in which human victims were sacrificed and buried with offerings of typical Inca style. According to these accounts, sacrifices were made for different reasons, such as the important events in the life of the Inca emperor, including his illness and death and the succession of a new emperor to the throne. In regional contexts, they were noted as often having been made to stop natural calamities, such as droughts, epidemics and volcanic eruptions. The fact that the mountains were already sacred in the eyes of the local people allowed the Incas to frame the ceremonies performed on the summits within a broader context of political strategies to legitimate the power of the empire.

In the Andean region, ethnic groups such as the Mochica and the Paracas also practiced human sacrifices. Regarding the Incan practice of human sacrifice, Nigel Davis writes: “A seemingly conservative figure comes from Fray Joseph de Acosta, who states that when the Inca Huayna Capac died, only a very few years before the Conquest, a thousand human offerings followed him to the next world.”

Spain committed acts of genocide and other violations of universal natural law in the Andean region and in other regions of the New World. Consistent with the Spanish scholastic perspective, the Inca had the right to self-defense and could justly punish Spain for its crimes. However, the Inca did not have the military power to do so, and there was not an international organization that could have used force or other sanctions against Spain. As for the Inca, can it be said that they were punished for their unjust actions of human sacrifice by the Spanish conquest and colonization of the Inca realm? If so, this punishment was completely disproportionate to the Incas’ actions, and it led to the destruction of one of the greatest civilizations of the New World.

118 Constanza Ceruti, Human Bodies as Objects of Dedication at the Inca Mountain Shrines (North-Western Argentina), 36 WORLD ARCHAEOLOGY 103, 113–14 (2004).
119 Id. at 113.
120 Id.
121 Davies, supra note 14, at 261.
V. INCA AND SPANISH NORMATIVE IDEAS

“Socially constructed rules, principles, norms of behavior, and shared beliefs may provide states, individuals, and other actors with understandings of what is important or valuable and what are effective and/or legitimate means of obtaining those valued goods.”122 Structures of knowledge can be the foundation of legal and ethical norms. Could international norms have served to prevent the extreme political violence Spain committed in the Inca Empire? Could domestic normative standards enable a peaceful encounter between Spain and the indigenous political communities of the New World?

From the Incan ideological perspective, the Inca king was the son of the sun god Inti.123 Accordingly, all nations of the world had the obligation to follow the norms dictated by the Inca king. He had jurisdiction over the entire world because he was the ‘son of God.’124 This interpretation of the Incan worldview is similar to the Spanish theological perspectives that recognized the universal authority of the Pope on earthly matters because the Pope was the vicar of Jesus Christ on earth and could grant jurisdiction to the Spanish kings over the New World.125 If the Inca had won the sixteenth-century war against Spain and conquered the New World, they probably would have imposed their normative ideas of laws applicable to nations as an expression of the will of the Inca king, the ruler of the world. However, Spain won the wars of conquest, and it was Spanish ideas of law that were applied in the international relations between Spain and the Inca Empire. Prevalent European medieval normative doctrines were applied in the sixteenth century to justify the conquest of indigenous nations, including the Inca.126 The legal ideas reflected in the Alexandrian Papal Bulls, the Requerimiento, and the Capitulations—contracts for the conquest of indigenous nations—served as normative discourses to justify the imperialistic actions of Spain in the New World.127

In the sixteenth century, the Inca did not have a written system to codify their normative ideas into law. Rather, they expressed their normative ideas in their art, music, and other forms of communication. They also kept their

124 Id. at 91–98.
126 Robert A. Williams, Jr., The American Indian in Western Legal Thought: The Discourses of Conquest 81 (1990).
127 Id.
information in a system of multiple knots in ropes of diverse colors, which were known as *quipus*.\(^{128}\) Despite the fact that there were no written records of the Incan understanding of the law, including law applicable to the relations between different ethnic groups, Spanish chronicles described the general normative ideas of the Inca reflected in their social organization and political institutions.\(^{129}\)

The Inca normative system was based on customary law and on the norms kept in the *quipus*. The Inca had judges and government officials who oversaw the implementation of the will of the Inca king, which was reflected in the law.\(^{130}\) They had diverse laws for communal labor, reciprocal work, distribution of wealth, religious ceremonies, marriage, and protection of foreigners.\(^{131}\) The Inca had strict punishments for laziness, blasphemy, theft, and adultery. They often imposed the death penalty for murder, treason, theft, and rape.\(^{132}\) The Inca had fundamental normative principles such as *ama llulla*, *ama sua*, *ama qhella*, which translates to “do not be a thief,” “do not be a liar,” and “do not be lazy,” respectively.\(^{133}\)

In the Inca Empire, religious narratives were used to accomplish normative and political objectives. Regarding the divine origin of Inca law and punishment, Professor Basadre Ayullo writes: “The faults committed by individuals were considered the consequences of breaking a pre-established order and the administrative dispositions were the instruments to know divine principles. This divine origin made the infractions to be of public character.”\(^{134}\) The Inca also believed in concepts such as the “living mummies.”\(^{135}\) Because of this belief, personal property was buried with the dead as a fulfillment of legal and religious norms.\(^{136}\)

The Inca people believed that their king had supernatural powers. The Inca king controlled a centralized socio-political system in which he had the highest

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131 Id.
132 Id.
133 See, e.g., FEDERICO GENG DELGADO, HISTORIA DEL DERECHO DEL DERECHO PERUANO 30 (2005); see also FEDERICO GARCÍA & PILAR ROCA, PACHAKUTIQ: UNA APROXIMACIÓN A LA COSMOVISIÓN ANDINA 82–87 (2004).
134 2 JORGE BASADRE AYULLO, HISTORIA DEL DERECHO 77 (3d ed. 2001).
136 Id.
legislative and judicial power.\textsuperscript{137} The power of the Inca ruler was expressed in all areas of life, including the Ayllu communities, family, and work. “In synthesis, the law for the coexistence of the members of the Inca society had its origin in the sovereign, who was the divine creator, who had the authority to dispose even of the life and the property of his subjects.”\textsuperscript{138}

Anthropological and archaeological analysis of the Incas’ use of force in its relations with other ethnic groups provides insight into the Inca perspective of norms. Once the Inca conquered other nations, the Inca indoctrinated the leaders of the conquered people into the Incan worldview and required them to make pilgrimages to sacred places, such as the Island of the Sun and the Island of the Moon.\textsuperscript{139} The Inca imposed their religious and normative worldviews on other nations and assimilated the conquered nations.\textsuperscript{140} Sacred places were essential to propagate Incan normative ideas, including obedience to the universal authority of the Inca king. Inca religious and normative ideas were based on ideologies of older cultures, such as Tiwanaku.\textsuperscript{141}

The Inca did not know of the existence of European regional normative and political systems. They did not know about the existence of Spain, the king of Spain, the Pope, or the European emperor. As the Inca expanded and developed their empire, religious ideas, and normative ideas to justify the conquest of foreign territories, Spain was also expanding its influence and developing legal and religious arguments for the conquest of “infidel” nations.\textsuperscript{142} The Spanish positive laws, which served to justify the conquest and colonization of indigenous nations of the New World, were sustained by ethnocentric medieval European presuppositions of jurisdiction and power.\textsuperscript{143} The doctrine of universal Papal authority on spiritual and earthly matters served as one of the main foundations for the promulgation of norms and principles applicable to the international relations between Spain and the indigenous nations of the New World.\textsuperscript{144} Two of the main presuppositions of normative Spanish instruments,

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\textsuperscript{137} JORGE GROHMAIN BASADRE, HISTORIA DEL DERECHO PERUANO 73 (2d ed. 1997).
\textsuperscript{138} BASADRE AYULLO, supra note 134, at 81.
\textsuperscript{139} See Alan R. Covey, Kinship and the Performance of Inca Despotic and Infrastructural Power, in ANCIENT STATES, AND INFRASTRUCTURAL POWER: EUROPE, ASIA, AND AMERICA 218–42 (Clifford Ando & Seth Richardson eds., 2017).
\textsuperscript{140} See Richard L. Burger, The Archaeology of Inka Power: Concluding Thoughts, in VARIATIONS IN THE EXPRESSION OF INKA POWER 427 (Richard L. Burger et al. eds., 2007).
\textsuperscript{142} See SILVIO A. ZAVALA, LAS INSTITUCIONES JURÍDICAS EN LA CONQUISTA DE AMERICA (4th ed. 2006) (discussing Spanish normative arguments for the conquest of other nations).
\textsuperscript{143} See, e.g., Williams, supra note 27, at 56.
\textsuperscript{144} Id. at 59.
\end{flushright}
such as the *Papal bulls*, the *Capitulations*, and the *Requerimiento*, were the ethnic inferiority of indigenous nations and the superiority of Spanish and European religious and political ideas.\footnote{145 See Silvio A. Zavala, *La Filosofía Política en la Conquista de América* (3d ed. 1984).}

In the sixteenth century, Spain considered Lithuanian, Jewish, Muslim, Incan, and other non-Christian peoples to be infidels.\footnote{146 See D. James Muldoon, *Popes, Lawyers, and Infidels: The Church and the Non-Christian World, 1250-1550*, at 29–30 (1979).} Unlike Islamic and Jewish people, the Inca never lived in Spanish territories, did not know about Christianity, and did not take over any Spanish territories. Nevertheless, ethnocentric normative instruments, which were used to justify the conquest of the Inca Empire, were based on similar theological and anthropological presuppositions as the ones used in the normative doctrines which justified the use of force against Lithuanian, Jewish, and Muslim people by European countries.\footnote{147 Id.}

VI. THE MASSACRE OF CAJAMARCA AND THE *REQUERIMIENTO*

Francisco de Vitoria and other Spanish scholastic thinkers knew about the Spanish conquerors’ extreme, violent conduct in the Inca realm.\footnote{148 See Ivan R. Reyna, *El Encuentro de Cajamarca* (2010) (analyzing the encounter between the Incas and the Spanish conquistadores).} Vitoria believed that the actions of Spain were unjust and against the law of nations.\footnote{149 Id.} In a letter written on November 8, 1534, to his friend Friar Miguel de Arcos, Vitoria expressed his strong criticism of Francisco Pizarro’s actions in Cajamarca.\footnote{150 Francisco de Vitoria, *Carta a Miguel de Arcos*, in *Carta Magna de los Indios: Fuentes Constitucionales 1534-1609*, at 37–40 (Luciano Pereña ed., 1988).}

Vitoria developed a normative discourse regarding the laws applicable to the international relations between Spain and the indigenous nations of the New World. This discourse was an effort to find norms applicable to international relations between diverse civilizations. Regarding the Spanish use of force in Cajamarca, Vitoria said:

> I understand from eyewitnesses who were personally present during the recent battle with Atahuallpa, neither he nor any of his people had ever done the slightest injury to the Christians, nor given them the least grounds for making war on them.

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\footnote{145 See Silvio A. Zavala, *La Filosofía Política en la Conquista de América* (3d ed. 1984).} 
\footnote{147 Id.} 
\footnote{149 Id.} 
\footnote{150 Francisco de Vitoria, *Carta a Miguel de Arcos*, in *Carta Magna de los Indios: Fuentes Constitucionales 1534-1609*, at 37–40 (Luciano Pereña ed., 1988).}
But even supposing the justice in the war is all on the side of the Spaniards, hostilities may not proceed beyond subduing them and compelling them to accept the emperor as prince with the infliction on them of as little damage and loss as possible. This does not mean robbing them and leaving them destitute of everything regarding their temporal goods. . . .

In truth, if the Indians are not men but monkeys, they are incapable of injury. But if they are men, and our neighbors, and as they claim vassals of the emperor, I cannot see how to excuse these conquistadors of utter impiety and tyranny; nor can I see what great service they do to His Majesty by ruining his vassals.151

Vitoria’s letter shows the importance of human nature in his view of the conquest of the Inca Empire. 152 Vitoria’s philosophical and theological views regarding the nature of humanity are a central aspect of his perspective on the laws applicable to nations from diverse civilizations. If indigenous people were sub-human, then they could not violate the laws applicable to human beings. However, if they were fully human, then those norms applied to them. Therefore, indigenous peoples’ human dignity and lives should be respected, and their status as members of humankind should be recognized. 153 Vitoria’s letter does not reflect an ethnocentric perspective of reality. On the contrary, it shows a just criticism of the Spanish conquerors’ actions in the Inca realm. The Spanish wars in the Andean region were contrary to Francisco de Vitoria’s Spanish scholastic perspective of the law of nations.

As part of the Spanish strategy for the conquest of the Inca Empire, Vicente de Valverde explained the main concepts of the Requerimiento to the Inca king Atahualpa.154 Valverde demanded that Atahualpa accept the Catholic worldview as well as the universal jurisdiction of the Pope and the European Emperor.155 If Atahualpa rejected the precepts of the Requerimiento, the Spanish conquerors could use force against him. 156 Atahualpa refused Valverde’s offer.157 Therefore, he rejected the jurisdiction of Spain in the Inca

151  See Francisco de Vitoria, Letter to Miguel Arcos, OP Salamanca, 8 November [1534], in FRANCISCO DE VITORIA: POLITICAL WRITINGS, supra note 17, at 331–33.
152  Id.
153  See Pedro Calafate & Ricardo Ventura, The Iberian School of Peace: Natural Law and Human Dignity, 75 REVISTA PORTUGUESA DE FILOSOFIA 793, 817–34 (2019) (analyzing Spanish scholastic thinkers’ views regarding the legitimacy of indigenous political communities as part of the international community).
154  See CARLOS DEUSTUA PIMENTEL, ENSAYO SOBRE LAS INSTITUCIONES JURÍDICAS DEL VIRREINATO DEL PERÚ 85–90 (2007).
156  Id.
157  Id. at 80–81.
realm and the legality of the Spanish conquerors’ actions. This gave the Spaniards the normative excuse they needed to use force against the Inca king and his people.

The normative discourse of the *Requerimiento* reflected a Spanish ethnocentric understanding of human nature. Regarding this, Tzvetan Todorov writes:

> Not only there is a confusion of the temporal power and the spiritual one. . . . but also the Indians only can choose between two positions of inferiority: either they submit out of their own will, and become servants, or they will be submitted by force and will be reduced to slavery. To talk about legality, in these conditions, is laughable. There is a presupposition that the Indians are inferior because the Spaniards decide the rules of the game. It can be said that the superiority of those that announce the "Requirement" is already in the fact that they are the ones speaking, meanwhile the Indians listen.158

In the Massacre of Cajamarca, Atahuallpa was kidnapped, and high-level Inca leaders and many other Inca people were killed.159 Those killings were committed to stop the human sacrifices performed by the Inca. Rather, the objective of the Spanish invasion and use of force was to take over the natural resources of the Inca, especially gold and silver.160 The invasion also had the religious motivation of converting indigenous people to Christianity. However, the Massacre of Cajamarca was contrary to the principle of peaceful evangelization.161 Therefore, the massacre had no proper normative justification in the Spanish scholastic perspective of natural law and the law of nations. Quite to the contrary, it was a grave violation of these laws, including respect for the right to life.

Because the Inca did not accept the *Requerimiento*, they rejected the Pope and the Spanish Crown’s claims to universal authority over indigenous territories of the New World. The *Requerimiento*, as positive Spanish law, was based on the will of one sovereign, who imposed its will on other sovereign nations.162 From the Inca perspective, the *Requerimiento* was not law and was a violation of the laws and customs of the Inca Empire, which recognized the Inca king as the ruler of the world, not the Pope or the Spanish crown. From an Incan perspective, the acceptance of the *Requerimiento* was a betrayal of their political

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159 MacQuarrie, *supra* note 155, at 81–85.
160 Id. at 86–117.
162 See Williams, *supra* note 126, at 89–93 (analyzing the Requerimiento).
and religious institutions and a rejection of Inti as their supreme God. This shows that the positive law discourse, which pretended to regulate the relations between Spain and the Inca Empire, was a European ethnocentric law forcefully imposed on indigenous nations.

Although Vitoria did not directly refer to the *Requerimiento*, he condemned the Massacre of Cajamarca, which began the conquest of the Inca Empire under the *Requerimiento*. In Vitoria’s views, the Holy Roman Emperor did not have universal authority to promulgate laws for the nations of the New World. In the Andean region, Solórzano de Pereira followed the ideas of Vitoria and believed that the New World was not under the jurisdiction of the European emperor.

From the Incan perspective, there was also the mistaken idea that the Inca king had jurisdiction over the entire known world. According to Terrence D’Altroy:

In the final version of Inca government, the king was an absolute ruler—a divine being with a celestial mandate to rule the world. In practice, however, the very human monarch had to work closely with Cuzco’s contentious aristocracy to take the throne and rule afterward . . . Ideally, his existence passed through three stages. . . . Early in life, he had to show himself to be a warrior worthy of his lineage and the support of Cuzco’s noble kin. Once anointed by the Sun to rule the land, he was revered as a deity whose powers and perquisites were unique among the beings who walked the earth. In death, however, his descendants accentuated his perpetual vitality, as he feasted and conversed with the quick and the dead in public during the day and retired to his quarters for repose at night.

Neither the European emperor nor the Inca king had universal authority over all the nations of the world. The Inca king had authority over *Tawantinsuyu*, which for the Inca was the entire world. European emperors, such as Charles V, had limited authority over Europe. Even this European authority was already questionable and very weak in the sixteenth century.

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163 See *Vitoria*, supra note 151.
165 *Juan de Solórzano y Pereira, De Indiarum Iure (Liber II: De Acquisitione Indiarum)* (Cap. 16-25) 281 (2000).
166 D’Altroy, *supra* note 123, at 91.
167 See *Juan Goti Ordeña, Del Tratado de Tordesillas a la Doctrina de los Derechos Fundamentales en Francisco de Vitoria* 126 (1999).
A comparative analysis between the text of the *Requerimiento* and the writing of Vitoria shows how Vitoria opposed it. The *Requerimiento* recognized the universal authority of the Pope. Vitoria believed that the Pope did not have authority over the entire world. The *Requerimiento* explains the power of the universal Lordship of Jesus Christ was transmitted to the Apostle Peter, and then it was transferred to the Pope. According to Vitoria, Christ did not have political power. Therefore, Christ could not have transferred it to the Pope, and the Pope could not have universal political power by natural law, positive law, or the law of nations. Contrary to the discourse of the *Requerimiento*, the Pope did not have the political power to take away the sovereignty of indigenous nations and give it to the king of Spain. Moreover, even if the Pope had such power, he could not grant it to the king of Spain. In addition, Vitoria believed that the emperor was not the lord of the territories of the New World. “Therefore, indigenous peoples cannot be required nor obliged to recognize and obey the pope and the emperor. They cannot be obliged to recognize their sovereignty because it cannot evidently be demonstrated by natural reasons.”

The Inca king had the main authority for the conquest of other nations. Therefore, the Inca high priest did not have the authority to give the Inca king the power to conquer the world. To have a deeper understanding of this issue, it is necessary to know the Incan worldview of God as the source of authority for the Inca king. Regarding this, D’Altroy writes:

Worship of the Sun was a centerpiece of official Inca religion. By 1532, Inti outshone all other Inca deity combined in worship, institutional scale, and properties. Although solar deities had long existed in Andean religions, the Incas’ innovative emphasis on solar observations tied in neatly with their claims to cosmological supremacy. It placed crucial sacred knowledge in their hands and

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168 *See PEREÑA, supra note 12, at 34–45.*
169 *Lewis Hanke, The ‘Requerimiento’ and Its Interpreters, 1 REVISTA DE HISTORIA DE AMÉRICA 25, 26 (1938).*
170 WILLIAMS, supra note 126.
171 *See LUCIANO PEREÑA, supra note 12.*
172 *Id.*
173 *Id.*
174 *Id.*
175 *Id.*
176 *Id.* at 38.
177 *D’ALTROY, supra note 123, at 99.*
backed up their pretensions to be vital to the world’s well-being. . . . The Inca ruler could claim a direct genealogical link to the Creator through the Sun, since the Creator fathered Inti, who in turn sired the king.\textsuperscript{178}

According to the Incan worldview, the Inca king had the authority to rule any territory of the world. If the Inca had the power to conquer and colonize Spain, would they have done it? Based on their religious beliefs, including the Inca king’s authority over the entire world and the lack of separation between temporal and eternal authority, the Inca probably would have conquered and colonized Spain to accomplish their eternal and earthly objectives. This could have fit well with the function of the Inca king as the mediator between humankind and the gods of the universe. Since Spain conquered and colonized the Inca realm, we cannot know with reasonable certainty how the Inca would have treated European nations and which laws the Inca would have applied to them.

\section*{VII. THE SPANISH INVASION OF \textit{TAWANTINSUYU} AND INDIGENOUS PEOPLES’ RESISTANCE MOVEMENTS FOR SELF-DETERMINATION}

A historical doubt regarding the justice of the Spanish presence in the indigenous territories was created by challenges to the legality of normative instruments that justified the Spanish conquest of the Inca realm, such as the \textit{Requirimiento}.\textsuperscript{179} Francisco de Vitoria, Domingo de Soto, Melchor Cano, Alonso de la Veracruz, and other Spanish scholars of the School of Salamanca questioned the fulfillment of conditions for a just war in the New World.\textsuperscript{180} Despite Spanish intellectual efforts to consider the legality of the Spanish conquest of indigenous communities, most Spanish \textit{conquistadores} in the Andean region did not care about just war doctrines and used military force indiscriminately. One of the worst widespread violations of Spanish scholastic views of the law of war occurred on November 16, 1532, in the city of

\begin{footnotesize}
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\item \textsuperscript{178} Id. at 147.
\item \textsuperscript{180} See María Martín Gómez, \textit{Francisco De Vitoria y La Escuela Ibérica De La Paz}, 75 \textit{REVISTA PORTUGUESA DE FILOSOFIA} 861 (2019). The Spanish school of thought, known as the School of Salamanca, followed the ideas of Thomas Aquinas regarding topics such as just war theory. St. Thomas Aquinas, \textit{Suma Theologiae} Ilaae 40: On War, in \textit{AQUINAS POLITICAL WRITINGS} 240–41 (R.W. Dyson ed., 2006) (“If a war is to be just, three things are required. First, the authority of the prince by whose command war is to be waged. . . . Second, a just cause is required: that is, those against whom war is to be waged must deserve to have war waged against them because of some wrongdoing. . . . Third, it is required that those who wage war should have a righteous intent: that is, they should intend either to promote a good cause or avert an evil.”).
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Cajamarca. The Massacre of Cajamarca provides an example of conquistadores’ use of force. Here, Francisco Pizarro and other conquerors met with the Inca king Atahualpa. Regarding the beginning of the encounter in Cajamarca’s Plaza, Kim MacQuarrie wrote:

Atahualpa and some five to six thousand warriors crowded into the square filling it up. The wide plaza was now like a packed theater, with only two small exists, and with Atahualpa borne aloft on a cumbersome litter, carried by some of the highest-ranking chiefs in the land. Because of the great number of troops and the relative lack of space, Athualpa had ordered the rest of his legions to wait in the fields outside town.181

As part of the Spanish strategy to find a reason to wage war against the Inca, a medieval imperialistic version of the law of nations, reflected in the Requerimiento, was explained to the Inca king Atahualpa by Vicente de Valverde, through his interpreter Martinillo de Poechos.182 Valverde explained to Atahualpa that he had a legal and moral obligation to accept the universal normative jurisdiction of the Pope and the European emperor.183 If Atahualpa rejected the doctrines of the Requerimiento, the Spanish conquistadores could use force against him.184

Atahualpa did not accept the Spanish imposition of foreign jurisdiction in the Inca Realm.185 As an expression of the will of the Inca people, Atahualpa threw away Valverde’s Bible.186 By doing this, he expressed the Incas’ rejection of Spanish jurisdiction in indigenous territories and the legality of the Spanish conquistadores’ actions in Tawantinsuyu.187 This gave the Spaniards the normative excuse they needed to use military force against the Inca king and his people.

“The Spaniards quickly began slashing, stabbing, impaling, hacking, and even beheading as many natives as they could, using their razor-sharp swords, knives, and lance . . . Attacking from all sides and suddenly crushing the warriors together.”188 This was the beginning of the collapse of one of the greatest

181 MACQUARIE, supra note 155, at 75–76.
183 Id.
184 See DEUSTRA PIMENTEL, supra note 154.
185 MACQUARIE, supra note 155, at 79–81.
186 LAMANA, supra note 182.
187 CIEZA DE LEÓN, supra note 25, at 211.
188 MACQUARIE, supra note 155, at 81–82.
civilizations in the history of humankind. A few Spanish invaders, motivated by a strong commitment to Spanish ethnocentric political and religious ideas, were able to kill, torture, and persecute the Inca people, who did not expect such quick defeat of their divine king. After the Massacre of Cajamarca, other acts of extreme political violence took place, including the kidnap and execution of Atahuallpa. Despite the fulfillment of the Spanish ransom of a room full of gold and silver, he was not liberated—he was instead condemned to death.

Empowered by what happened in Cajamarca, the Spanish invaders traveled to the city of Cuzco with the objective of increasing their control of Incan territory and taking silver and gold. Golden idols and other artifacts, which had a cultural and religious value for the Inca, were stolen by Spanish conquerors from sacred places such as the Coricancha. The killing of indigenous persons, diseases brought by the Spaniards, and the destruction of cities, economic systems, religious, and cultural symbols, created the conditions for the weakening and destruction of indigenous populations.

Falsely believing that they would be liberated from Incan oppression, ethnic minority groups who were antagonistic toward the Inca, such as Huancas, Chachapoyas, and Chancas, joined the Spanish side in the war against the Inca empire. This created the conditions for violent conflicts between indigenous peoples from diverse ethnic backgrounds. In addition, the Inca were themselves divided, which made it easier for the Spaniards to conquer them. The violent Spanish actions in the Andean region were contrary to the Spanish perspective regarding the use of force held by Bartolomé de las Casas. Rather, it was Spanish normative ideas, such as those of Juan Ginés de Sepúlveda, based on an ethnocentric imperialistic perspective of law, that was used to justify the actions of the Spanish conquest of indigenous nations.

Historical facts demonstrate that the use of force in the conquest of the Inca realm created a significant depopulation and destruction of indigenous cultures

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189 Id. at 71–85.
190 MACQUARIE, supra note 155, at 118–37.
191 Id.
192 Id. at 112–15.
193 Id. at 71–85.
194 See TANTALEAN ARBULU, supra note 93.
195 See, e.g., ESPINOZA SORIANO, supra note 46.
196 Id. at 414–20 (analyzing Sepúlveda’s ethnocentric discriminatory views).
and economic systems. Consistent with the Spanish scholastic perspective of the Salamanca School of Thought, the violence perpetrated by Spanish conquerors was a grave violation of the right to life of indigenous peoples. Therefore, a just response by the Inca could have been the use of force in self-defense and punishment for the extreme violations of the right to life and other fundamental natural rights perpetrated by the Spanish. However, the Inca did not have the power to use military force against Spain. Consistent with the Spanish scholastic perspective, nations not only had the right, but the obligation to wage wars of self-defense out of necessity. Some Spanish scholars recognized the Inca’s right of self-defense against Spanish aggression to defend their lives, territories, and cultures. However, Spanish conquistadores were either ignorant of the existence of the laws of war, or they purposefully disregarded the ideas of the Salamanca School on the law of nations.

An example of the conquistadores’ ignorance of the laws of war is Francisco Pizarro’s actions against the Inca. In 1532, after the execution of Atahualpa in Cajamarca, Francisco Pizarro met Manco Inca Yupanqui, a son of Huayna Capac, on his way to Cuzco. Manco Inca and Pizarro made an agreement for the peaceful resolution of their conflicts. Manco Inca initially believed that the Spanish conquerors came to bring justice to his side, which opposed Atahualpa. Because of this, he and his army decided to become allies with the Spaniards. This agreement between Pizarro and Manco Inca allowed the Spaniards to take over the city of Cuzco. Manco Inca may have initially believed that his god, Pachacamac, sent Pizarro and the other conquerors to liberate them. However, it is more likely that Manco, who supported the Inca Huascar, wanted to see the total defeat of the Inca who supported Atahualpa. Like the leaders of ethnic groups that fought against the Inca, Manco Inca mistakenly believed that the Spaniards would restore political power to his side and help him achieve his objectives. Manco Inca, with the full support of

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200 See TANTEALEN ARBULU, supra note 93.
201 See Calafate & Ventura, supra note 153.
203 See Calafate & Ventura, supra note 153.
205 Id. at 46.
206 Id. at 45–46.
207 Id. at 46–47.
208 Id. at 45–46.
209 Id.
Spanish conquerors, was formally crowned Inca king in Cuzco.\textsuperscript{210} The Spaniards wanted to use him as a puppet to achieve their political and military objectives of conquering the Inca realm.\textsuperscript{211}

Manco Inca reminded Pizarro to fulfill their agreement to restitute the Inca Empire; however, the Spaniards did not fulfill their side of the agreement, and Manco Inca was imprisoned.\textsuperscript{212} Manco was able to convince the Spaniards to set him free with the promise that he was going to bring back more treasures. He promised Hernando Pizarro that he would bring back a golden statue of the former emperor Huayna Capac.\textsuperscript{213} However, this was an excuse to escape, organize an uprising against the Spanish conquerors, and restore the power of the Inca.\textsuperscript{214} The military leadership of the uprising was entrusted to Huillac Umo, the supreme religious leader of the Inca. He directed the first war for self-determination against the Spaniards.\textsuperscript{215}

On May 6, 1536, the Inca successfully blockaded the city of Cuzco.\textsuperscript{216} The objective of their military actions was to liberate themselves and punish those that had profaned their sacred sites, such as the Coricancha and Acllahuasi.\textsuperscript{217} The Inca set fire to many places where Spanish conquerors and their allies were hiding.\textsuperscript{218} The Spaniards used their horses to resist and counterattack, killing many Incan soldiers, with the help of indigenous fighters and African slaves.\textsuperscript{219} However, Incan soldiers killed and beheaded Spanish soldiers, terrorizing the Spanish in an attempt to force them to surrender.\textsuperscript{220}

Despite these defeats in Cuzco, the Pizarro brothers decided to continue the battle and attack the fortress of Sacsayhuaman.\textsuperscript{221} Finally, the Spaniards won the battle and broke the Siege of Cuzco.\textsuperscript{222} “As was usual in the lopsided battles between natives and Spaniards, thousands died on the Inca side while the Spaniards suffered relatively few losses.”\textsuperscript{223} The killing of a large number of

\begin{footnotesize}
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\item \textsuperscript{210} Id. at 47–48.
\item \textsuperscript{211} Id. at 48–49.
\item \textsuperscript{212} Id.
\item \textsuperscript{213} Id. at 50.
\item \textsuperscript{214} Id.
\item \textsuperscript{215} See Pardo, supra note 204, at 50–51.
\item \textsuperscript{216} Id. at 52.
\item \textsuperscript{217} Id.
\item \textsuperscript{218} Id. at 52–53.
\item \textsuperscript{219} Id. at 53.
\item \textsuperscript{220} Id.
\item \textsuperscript{221} Id. at 53–54.
\item \textsuperscript{222} Id. at 55–56.
\item \textsuperscript{223} MacQuarrie, supra note 155, at 229.
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Incan people, including innocent women and children, in an unjust war constituted a violation of Spanish scholastic standards regarding the just use of force in war.\textsuperscript{224}

After failing to take over Cuzco and Lima, Manco Inca escaped to the region of Vilcabamba, where he organized the Incan resistance.\textsuperscript{225} During the Inca wars for self-determination, the Spanish invaders continued to violate the laws of war, including the right to life and the proportional use of force.\textsuperscript{226} The Spaniards had no respect or regard for the lives of women and children, and many innocent people were killed as a result of these military actions.\textsuperscript{227} These actions were justified by ideas that dehumanized the Inca people and by economic interests supported by the idea of a “natural” Spanish right to exploit indigenous peoples and their territories.\textsuperscript{228}

After Manco Inca was killed by Spanish conquerors in Vilcabamba, Titu Cusi became the new king of the Inca.\textsuperscript{229} He continued the struggle for self-determination until he was killed by Spanish conquerors.\textsuperscript{230} Subsequently, Túpac Amaru became the Inca king but was later taken prisoner and executed in Cuzco by orders of the Viceroy Francisco de Toledo.\textsuperscript{231} Consistent with Spanish scholastic normative ideas, the Inca had the right to wage both defensive wars—to protect Tawantisuyu and its population—and offensive wars—to restore their territories and punish the Spanish invaders for the injuries they inflicted on innocent Inca people. The injuries against the Inca can be seen through the depopulation of their territories, the destruction of their economic systems, and the destruction of their cities.

In Francisco Pizarro’s war against the Inca, the use of force was completely disproportionate to the supposed objective of saving the lives of innocent human beings. Even if the Spanish invaded the Inca Empire to stop human sacrifices—which was not the case—they did not have a just reason to occupy and take over Incan territories. If the only way to stop the killing of innocent human beings in the Inca realm was to change the Incan worldview, then an argument could be made that Spanish presence in the Inca realm was needed to convince indigenous

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\textit{Vitoria, supra} note 151.
\textit{See} 1 Pedro de Cieza de León, \textit{Guerra de las Salinas, in Guerras Civiles del Perú} 424 (1899).
\textit{Id.} at 317.
\textit{Id.}
\textit{Id.}
\textit{Bauer et al., supra} note 15, at 4–5.
\textit{Id.} at 356–70.
\textit{Id.} at 365–78.
people to end human sacrifices. However, the Spanish occupation of the Inca realm led to the destruction of the Inca and other indigenous nations’ populations, cultures, and economic systems.232

Pizarro’s actions were contrary to Spanish scholars’ normative ideas regarding the proportional use of force. If these views of proportional use of force were applied to the war between Spain and the Inca Empire, the result would not have been favorable to Spain. This demonstrates that Spanish scholastic normative ideas could have served to construct a mutually beneficial common normative understanding for Spain and the Inca Empire. Consistent with Spanish scholastic views, even if the Spanish conquerors had the right to wage wars against the Inca, they did not have the right to occupy Incan territories. Regarding the injustice of the Spanish actions against indigenous nations, Juan de la Peña, one of the leading thinkers of the University of Salamanca scholastic group, wrote:

> When a war is licit to defend innocents, it must fulfill, nonetheless, during the same war the precept of prudence that often is respected in just wars: that the war that is waged in defense of fellow human beings should not result in more damage than the one that would result from [human] sacrifices. This would be the case in the war done to defend them, because more human beings died in a few days than the ones that died in years of sacrifices. In this case, the war certainly would be unjust.233

One of the leading Spanish thinkers in the Andean region in the sixteenth century was José de Acosta. He supported the idea that force could be used to defend the life of innocent persons in cases of human sacrifices if it was done in a just manner.234 However, Acosta rejected the practice of this norm in the case of the Spanish conquest of indigenous communities. He stated:

> [I]t is established by infinity of testimonies that many more, by far, have died in wars against the Indians than with any tyranny of the barbarians. . . . Therefore, speaking morally, it would be very difficult,
or better to say that it never can be alleged that the defense of innocents is a just cause of war against the Indians.\footnote{Id. at 297.}

Regarding the proportionality of the Spanish use of force against indigenous nations, José de Acosta wrote:

Not because a republic was guilty of giving unjust and shameful laws, or its prince and governmental officials gave themselves to licentious customs, has another republic or its prince [the right] to give them laws, force its citizens, against their will, to accept and fulfil them, conquest with arms those that don’t want to submit, deny goods and life to those that resist. If such a great power would be given to a republic over another, nothing would be accomplished, but to disrupt, in short time, the entire world, and fill it with discords and death.\footnote{Id. at 273.}

This statement summarizes what Spain did in indigenous territories. Even though the Inca had unjust normative ideas and standards that allowed for human sacrifices, which the Spaniards could have stopped, the conquest of the Andean region was not part of an effort to prevent these human sacrifices. Spanish ideas regarding the inferiority of indigenous people sustained unjust norms that justified the destruction of many innocent human lives and cultures of the Andean civilization.\footnote{See, e.g., Brunstetter, supra note 199 (discussing Sepúlveda’s ideas that sustained racist views of indigenous peoples).}

The Spanish invasion of the Inca realm and the use of force had the main objective of taking over the natural resources of the Inca, especially gold and silver.\footnote{Id.; see also MACQUARRIE, supra note 155, at 71–85.} The violent uses of force, as seen in the Massacre of Cajamarca, ran contrary to the Spanish scholastic norm regarding peaceful evangelization.\footnote{See FRANCISCO CASTILLA URBANO, EL PENSAMIENTO DE FRANCISCO DE VITORIA: FILOSOFÍA POLÍTICA E INDIO AMERICANO 341–42 (1992).} The massacre had no proper normative justification in Spanish scholastic perspectives of the law of nations or natural law. Rather, it was a grave violation of natural law norms, including respect for the right to life.\footnote{Id.}

The Inca kings who resisted the Spanish invasion—Manco Inca, Tútu Cusi, and Túpac Amaru—had the authority to wage just wars against Francisco Pizarro and other Spanish conquerors whose actions led to the destruction of a great civilization. They also had the same authority defend of the Incan people’s natural right to self-determination. In addition, any sovereign in the world could
have acted to stop and punish the actions of the Spanish invaders. The Inca king, Atahuallpa, had the authority to declare both defensive and offensive wars against Spain. The Spanish king did not have the authority to wage wars against the Inca because the Inca did not injure Spain. Spanish \textit{conquistadores} invaded and colonized the Inca realm and were responsible for the deaths of countless innocent people, as well as the partial destruction of the Andean civilization, through their waging of unjust wars, bringing deadly diseases to the New World, and systematically trying to destroy indigenous cultures.

Despite Spain’s military supremacy and the extreme violent use of force in the conquest and colonization of \textit{Tawantinsuyu}, indigenous peoples systematically rejected and resisted the unjust occupation of their territories.\footnote{See John Howland Rowe, \textit{The Incas Under Spanish Colonial Institutions}, 37 HISP. AM. HIST. REV. 155 (1957).} One of the historical leaders of indigenous struggles for self-determination in the Andean region was Túpac Amaru II. Regarding his efforts, Elena Cirkovic writes:

\begin{quote}
The Inca nobleman Jose Gabriel Condorcanqui Túpac Amaru II (the “Great Snake” in Quechua) initiated the Great Rebellion of the Andes in 1780 in response to the increasing pressures on indigenous peoples by Spanish colonial rule, including the labour draft assigned to the mining and other sectors of the economy. The movement of Túpac Amaru II was an insurgence of self-determination, much influenced by new ideas and events in Europe and the United States, as well as the Andean currents of neo-Inca revivalism and nationalism in the second half of the eighteenth century.\footnote{Elena Cirkovic, \textit{Self-Determination, and Indigenous Peoples in International Law}, 31 AM. INDIAN L. REV. 375, 377 (2006).}
\end{quote}

Consistent with the Quechua worldview, Túpac Amaru II was an expression of the return of the Inca king, who would have the ability to bring back the just order that the Spanish conquerors destroyed.\footnote{Id.} Túpac Amaru II’s movement was defeated, and, on May 18, 1791, he was tried and executed in the city of Cuzco.\footnote{Id.} His family members, including his wife Micaela Bastidas, were also executed.\footnote{Id. at 378.} One of the main motivations for the Spanish use of force and its justification by legal discourses was the fear of the restoration of Inca power and rule.\footnote{Id. at 377–79.} Spanish use of force was also sustained by the racist presuppositions of Spanish \textit{conquistadores} who believed in the complete subjugation of indigenous
people who were considered inferior and dangerous. Túpac Amaru II’s efforts are an example of indigenous communities’ resistance to racist political regimes. He wanted to liberate indigenous peoples from the unjust Spanish occupation and economic exploitation. Spanish conquistadores justified their violent reaction to resistance efforts for self-determination by using normative discourses of universal justice. Regarding this, Elena Cirkovic writes:

[T]he founding act of violence of the legal order became so embedded in the functioning of the legal order of the colonies. This is how the Spaniards justified their actions in conquering and governing the Indians, and legitimized the view that any rebellion against this new order was a transgression in violation of the universal legal order. Eventually, the terror of such colonial encounters became a suppressed memory within contemporary institutions and values of the international law — what remained was only its universal moralism.

Like Túpac Amaru II, Túpac Katari led a historical movement for the natural right to self-determination and the defense of the human dignity of indigenous people in Tawantinsuyu. He [challenged the colonial regime] as one of the three leaders of the Great Rebellion evolving in the Andean highlands from 1780 to 1782 which was neither the only nor the last indigenous insurgency but the most powerful. And it incurred the most serious and far-reaching consequences for indigenous polities. The event was triggered by unequal power relations, abuse of power by Spanish administrators and their vassals, the expropriation of indigenous land and territory, increasing tributes, and forced purchase of Spanish merchandise . . . .

Inspired by the indigenous worldview regarding Pachacuti (the establishment of a reformed new world), the Great Rebellion was supported by key indigenous leaders including Túpac Katari, who lead the revolutionary efforts in North of Potosi, and Túpac Amaru II. Motivated by these events, Túpac Katari organized and lead a seven months siege of La Paz city, which was the seat of government of Bolivia in 1781. Túpac Katari was of Aymara origin and his wife, Bartolina Sisa, was also a leader of indigenous peoples’ resistance

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247 Id. at 378.
248 Id. at 377–78.
249 Id.
251 Id.
252 Id.
movements for self-determination. Ultimately, Túpac Katari’s revolution was defeated, and he was executed in 1782.

Since the 1740s, the Spanish colonial regime has been challenged in places such as Omasuyos, Larecaja, Pacajes, and Sicasica. According to Sergio Serulnikov, this was in part a reaction to “the expansion of the forced sale of goods and the corregidores’ increasingly discretionary removal and appointment of community chiefs.” The anti-colonial uprising led by Túpac Katari near La Paz is a clear example of the enduring indigenous resistance against the destruction of their lives and cultures. The siege of La Paz was an effort to restore indigenous peoples’ right to self-determination in their territories. “On March 13, 1781 . . . the inhabitants of La Paz woke up to the news that some forty thousand Indian men and women had occupied the high plain known as El Alto overlooking their city.”

Pablo Zárate Willka was an Aymara indigenous leader who, in 1898, challenged the rule of Spanish elites in Bolivia and organized a movement to fight against the Bolivian army. Willka’s actions illustrate his efforts to organize and lead a movement to implement the natural right to self-determination of indigenous people and defend their human dignity. Regarding the effect of his actions, Nancy Postero writes: “After a massacre of whites and mestizos by Willka’s followers, fears of ‘race war’ caused Bolivia’s mestizo–Creole elite to rethink the position of indigenous populations vis-à-vis the state.”

Like their ancestors, indigenous Aymara and Quechua leaders in Bolivia, such as Felipe Quispe Huana (El Mallku), Evo Morales Ayma, David Choquehuanca, Eva Copa, Tomasa Yarhui, Remedios Loza, Jenaro Flores Santos, have continued their struggle for the implementation of the right to self-determination and respect for their fundamental human rights and dignity.

\[253\] Id.
\[254\] Id. at 498.
\[256\] Id.
\[257\] Id. at 115.
\[258\] Id.
\[259\] Id.
\[261\] Id.
\[262\] Id. at 25–40 (analyzing how indigenous peoples’ leaders influenced the political process of Bolivia); Juliana Strobele-Gregor, Culture and Political Practice of the Aymara and Quechua in Bolivia: Autonomous
What are some normative remedies to address widespread violations of indigenous peoples’ rights? One of the possibilities is the proper implementation of the right to self-determination.

VIII. THE RIGHT TO SELF-DETERMINATION OF THE DESCENDANTS OF THE PEOPLE OF TAWANTINSUYU IN INTERNATIONAL AND NATIONAL LAW

Previous sections of this article have focused on cultural, legal, and political discourses that have justified violations of fundamental human rights of indigenous peoples of Tawantinsuyu, including their right to self-determination. Consistent with international legal norms, the current international political consensus recognizes the imperative to remedy the historical wrongdoings against indigenous peoples. International law recognizes indigenous communities, such as the Aymara, Quechua, and other descendants of the people of Tawantinsuyu as people because they are distinct communities with their own cultural, political, linguistic, historical, and social characteristics. Therefore, consistent with international positive law, they have the right to self-determination.

One of the main objectives of providing remedies for violations of the right to self-determination of indigenous peoples is to end political, economic, social, and cultural structural impediments that have caused unjust discriminatory institutional practices. To ensure the preservation and empowerment of the descendants of the Inca Empire, the protection of individual human rights, minority rights, and indigenous peoples’ collective rights—including self-determination—is necessary. This implementation requires constructing societies that respect individual human rights, including the rights of indigenous peoples. To accomplish this objective, it is necessary to implement the international human rights norms—including non-discrimination—of the

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*Forms of Modernity in the Andes, 23 Latin Am. Persps. 72, 72–90 (1996) (analyzing the influence of Aymara culture and leaders, such as Jenaro Flores Santos, in national politics in Bolivia).*

*See generally Hurst Hannum, The Right of Self-Determination in the Twenty-First Century, 55 Wash. & Lee L. Rev. 773 (1998) (discussing self-determination as a right under international law).*


*See generally Hannum, supra note 263 (discussing the United Nation’s shift in recognition from a principle of self-determination to a right to self-determination).*

*See S. James Anaya, Contemporary Definition of the International Norm of Self-Determination, 3 Transnat’l L. & Contemp. Probs. 131, 163 (1993) (discussing the importance of new institutional structures as a remedy to past injustices against indigenous people).*
Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and other international human rights law instruments. Further, to implement individual human rights, it is necessary to construct just societies that recognize the historical necessity of correcting actions of extreme injustice against ethnic minority groups and the importance of implementing collective rights of indigenous peoples, including self-determination. This is the case for some South American societies, which should properly implement the right to self-determination of the descendants of the Inca Empire to prevent violent ethnic conflicts and construct just societies.

Professor James Anaya defines self-determination as “a universe of human rights precepts concerned broadly with peoples . . . and grounded in the idea that all are equally entitled to be in control of their own destinies.” The right to self-determination has two elements—one internal and one external. It includes the right of people to choose their political status and the characteristics of their international relations with other political entities. Consistent with important decisions of some national courts, such as the Supreme Court of Canada, when a sovereign state does not implement fundamental human rights of minority groups, then a domestic court may hear their claims for self-determination. International law’s recognition of the right to self-determination is a result of the historical experience of the international community recognizing the necessity of protecting ethnic minority groups and avoiding civil wars, which can create the conditions for widespread violations of international human rights law and humanitarian law.

Claims of self-determination often take place in countries where the systematic oppression of minority ethnic groups is characterized by widespread violations of fundamental human rights. For example, the normative

267 G. A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 7 (Dec. 10, 1948); International Covenant on Civil and Political Rights, art. 26, Dec. 16, 1966, 999 U.N.T.S. 171 (hereinafter ICCPR) (“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); G.A. Res. 2200 (XXI) A, International Covenant on Economic, Social, and Cultural Rights, art. 2(2) (Dec. 16, 1966).


270 Id. at 12.


272 See Anaya, supra note 266, at 133–34.
implementation of the right to self-determination has become more prevalent after the disintegration of the Soviet Union. In the case of the former Yugoslavia, the Yugoslavian people implemented the right to external self-determination to establish new sovereign states. In the case of Sudan, the Southern Sudanese people, including the Dinka, lived under systematic political, religious, and economic oppression by the government of Northern Sudan. As a result, the Southern Sudanese people claimed their right to external self-determination and have since established a sovereign state. Around the world, ethnic minorities have made, and continue to make, claims for the implementation of their right to self-determination. Professor Lung-Chu Chen writes:

In Asia, the Palestinians, the Lebanese, the Kurds, the Tamils, the Koreans, the Tibetan people, and the Taiwanese; in Europe, the Baltic peoples, the Armenians, the Croats and Slovenians of Yugoslavia, the Germans of Romania, the Scots, the Welsh, the Catholics of Northern Ireland, and the Catalans and Basques of Spain; in Africa, the Ibos, the South Sudanese, the Eritreans, and the Somalis; and in the Americas, the French Canadians of Quebec, the Puerto Ricans, and various indigenous populations.

Like the peoples mentioned by Professor Lung-Chu Chen, the Aymara, Quechua, and other indigenous peoples of Tawantinsuyu have the right to choose the type of political, social, cultural, and legal organizations that they consider best for the preservation of their lives, economic well-being, and development of their cultural identity.

The right to self-determination is recognized in Article 1.2 of the United Nations Charter, which states that one of the objectives of the United Nations is “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. . .” This international norm has supported the decolonization process in Africa. In its 1960 Declaration on

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278 U.N. Charter, art. 152.
279 Majinge, supra note 275, at 560.
the Granting of Independence to Colonial Countries and Peoples, the U.N. General Assembly recognized the necessity of ending colonialism in all its forms. Article 1 of the Declaration states that “[t]he subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.” In addition to the U.N. Charter, ICCPR and ICESCR also recognize the right to self-determination.

Historically, the international community has acknowledged the illegitimacy of the colonial regimes in the African continent as a reason to implement the right to self-determination in favor of the African people. In countries such as South Africa, the application of the right to self-determination functioned as one of the foundations to end the racist apartheid regime. In the case of the peoples of the Tawantinsuyu, the Spanish colonial regime violated the indigenous groups’ natural right to self-determination. Latin American countries then formed as a product of the emancipation process that the indigenous groups led against Spain. Despite these transformations, the governments of the newly established countries have continued policies of systematic racial discrimination and imposed political, economic, cultural, and social institutions against the interests and will of indigenous peoples, including the Aymara and Quechua. The history of violations of the right to self-determination in Latin America is similar to that in Africa. In both continents, the colonizers assumed the superiority of their races and imposed their discriminatory systems on indigenous communities through political-economic, cultural, and social domination.

Even though the right of self-determination has been associated with secession, it has many other components and interpretations. In its internal

281 Id. art. 1.
282 ICCPR, supra note 267, art. 1, ¶ 1 (“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”); International Covenant on Economic Social and Cultural Rights, art. 1, ¶ 1, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR] (“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”).
283 Anaya, supra note 268, at 323 (“Self-determination precepts comprise a world-order standard with which colonialism was at odds and with which other institutions of government also may conflict.”).
285 Id.
component, the implementation of self-determination ensures respect for individual and collective human rights within an existing sovereign state. In the case of the Aymara and Quechua people, the exercise of internal self-determination and the recognition of the remedial aspects of this right are of vital importance in resolving historical grievances by peaceful means. To implement the right to internal self-determination in Bolivia and other countries that were part of Tawantinsuyu, it is essential to ensure the leadership and participation of indigenous peoples in all spheres of society. If this does not happen, indigenous people have the legal opportunity to exercise their right to external self-determination. This legal opportunity is justified by South American countries’ history and is characterized by the systematic and persistent economic exploitation, political oppression, and cultural destruction of indigenous communities.

In Bolivia, the implementation of the right to external self-determination of indigenous peoples could affect a significant number of territories for the establishment of a new political sovereign entity. Ruling Hispanic-Mestizo elites should not underestimate the destructive impact of the Aymara, Quechua, and other indigenous peoples’ exercise of their external self-determination on the elites’ economic and political interests. The best approach for the peaceful resolution of ethnic conflicts is to respect the rights of indigenous peoples and ensure the proper implementation of their right to internal self-determination. This approach is consistent with the national interests of Bolivia, the interests of the international community, and the maintenance of regional peaceful relations in South America.

Contrary to historical context and international normative standards, there are ongoing efforts in Bolivia to deny and undermine the central role of indigenous communities in the political and economic power structures. Specifically, there are political movements that continue to propose the restoration of racist structures of power. As part of this movement, there are efforts to deconstruct the plurinational state that is recognized in the current Bolivian constitution. Some powerful segments of Bolivian society still view discriminatory behavior as normal, such as the dehumanization of indigenous

287 Hurst Hannum, supra note 269, at 12.
289 See McEwan, supra note 40, at 3.
290 See Molina, supra note 9.
291 Id.
peoples by Hispanics and Mestizos who refer to indigenous peoples as “savages.” For example, Romulo Calvo, the president of the Civic Committee of Santa Cruz, said the following regarding indigenous immigrants who live in his department: “[T]hey are human beasts, [and] they do not have the dignity to be human, they do not have the dignity to be persons.” Despite the positive transformation of Bolivian political and economic institutions, this type of discourse continues to be prevalent. Like his ancestor Pablo Zarate Willca, Felipe Quispe Huanca, also known as El Mallku, reacted to Calvo’s statement, stating: “These people . . . are sick, sick with racism. They said that we are Indians . . . that we are ignorant.”

Considering the systematic oppression and racial discrimination that indigenous peoples endure in Bolivia, the remedial aspect of self-determination has been undermined. The historical efforts to weaken the cultural, political, and economic interests of indigenous peoples have continued. Therefore, there is evidence of violations of the right to internal self-determination of indigenous people. These violations mean that indigenous people could exercise their right to external self-determination and establish their own sovereign state. There are proposals from indigenous leaders, such as Felipe Quispe Huanca, who believe that the reestablishment of the pre-Spanish conquest political order in South America is necessary to resolve the systemic problems of racial inequality in Bolivia and other countries that once were part of Tawantinsuyu.

The Aymara and Quechua people did not choose to be under the colonial regime that the Spanish conquerors imposed on them. This lack of choice

292 Id.
294 MOLINA, supra note 9.
298 Siegfried Wiessner, Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis, 12 HARV. HUM. RTS. J. 57, 117 (1999) (“[Professor Anaya] proposes a substantive concept of ‘constitutive’ self-determination which requires ‘minimum levels of participation’ in processes of ‘creation, alteration or territorial expansion of governmental authority,’ coupled with ‘ongoing’ self-determination, mandating a ‘governing order under which individuals and groups are able to make meaningful choices touching upon all spheres of life on a continuous basis.’ Since colonialism violated both of these principles, a ‘remedial’ aspect of the principle of self-determination would come into play, which he sees implemented by the U.N. |
means the Spanish conquest violated the constitutive element of the right of self-determination. The Aymara and Quechua people also did not choose to be under the racist regimes that emerged from the formation of independent Latin American countries. Therefore, they did not freely determine their political status.

International law recognizes the right to self-determination of indigenous people as a fundamental norm. Regarding the constitutive element of self-determination, Professor Anaya writes:

[T]he question is whether the claimant group or its members have been denied meaningful participation in discrete episodes that have given rise to or changed the governing institutional order under which they live. An extreme form of such denial is where a government has extended its rule over an inhabited territory without regard for the wishes of the people already living in the territory.

The history of the Spanish invasion of indigenous political communities and its colonial policies demonstrates that the Aymara and Quechua people not only did not consent to colonial subjugation, but also were excluded from meaningful participation in the political and economic systems of the South American countries. The Spanish colonial regime thereby violated the natural right of the Aymara and Quechua people to constitutive self-determination. The imposition of this regime was sustained by the unjust use of force, including acts of genocide and other violations of the law of nations and natural law. Similar to the process of colonization in Africa, the colonization of what is now Bolivia was an imperialistic imposition that violated the constitutive aspect of self-determination. Another essential element of the right to self-determination is its ongoing element. Regarding this, Professor Anaya writes:

This inquiry focuses on the contemporary day-to-day life of the claimant group and its members, as related to the form and functioning of the governing institutional order under which they live. Relevant
here are the stories, which are usually central to self-determination claims, about an oppressive government that impedes the ability of a group to develop freely in all spheres of life—stories of discrimination, suppression of democratic participation, and cultural suffocation.302

This aspect of self-determination has been clearly violated in Kollasuyu. First, the Spanish conquerors violated the constitutive aspect of self-determination of the Aymara and Quechua people. Second, the local ruling Hispanic-Mestizo elites have continued to violate the principle of self-determination in its ongoing aspect.303 These violations are seen in the denial of fundamental access to education and proper participation in governmental institutions, economic exploitation, and systematic racial discrimination against the Aymara and Quechua people.304 Throughout the history of Bolivia, oppressive governments have systematically denied the economic development of indigenous communities, restrained their political participation, and tried to destroy their cultural identities.305 For example, during military and civilian dictatorship, racist discourses and actions became prevalent and often encouraged by governmental entities.306 Also, the Aymara and Quechua people were negatively impacted by political and social systems which, for more than 500 years, have hindered their economic development.307 In the case of Bolivia, indigenous people constitute forty-one percent of the total population.308 The government of Bolivia has a legal obligation to follow international law and apply the norm of self-determination in its remedial aspect. Bolivia must follow the international norms that protect the rights of indigenous peoples to remedy the injustices of the colonial and present-day regimes.

The decolonization process in Africa set a precedent that past violations of the right of self-determination should be resolved. "The international concern over conditions that deviate from the substantive elements of self-determination has given rise to remedial prescriptions and mechanisms..."309 The creation of the Republic of Bolivia and its independence from Spain did not remedy the historical injustices committed against the Aymara and Quechua people. Despite

302 Anaya, supra note 268, at 163.
304 See Molina, supra note 9, at 39–43.
305 See Herbert S. Klein, A Concise History of Bolivia (2d ed. 2011).
306 See Molina, supra note 9, at 143–146, 148.
308 See Germán Freire et al., supra note 11.
309 Anaya, supra note 268, at 331.
the abolition of the colonial regime, the new republic continued the policies of racial discrimination and exploitation against the Aymara and Quechua people in violation of their right to self-determination. Aymaras and Quechuas continued to be discriminated against, marginalized from participation in the government, and placed at the lowest levels of the system of production by a designed system of ethnic division of labor. Because of the discriminatory measures adopted by Hispanic-Mestizo elites, the Aymara and Quechua people are among the poorest in Bolivia and are systematically stigmatized as “uncivilized” people. This situation is not only a violation of fundamental civil rights and liberties under Bolivian law, but also a violation of the international norms regarding indigenous peoples’ rights.

International law recognizes not only the right to self-determination of ethnic minority groups but also of indigenous peoples. Regarding this, Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples says: “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Professor Anaya distinguishes between four categories that are derived from the requirements of the right of self-determination of indigenous peoples: (1) cultural integrity, (2) lands and resources, (3) social welfare and development, and (4) self-government. Consistent with this view, the indigenous peoples of Tawantisuyu, including those of Bolivia, should live in societies where their cultural identity is not only respected but also recognized as a central component of society. As part of the implementation of the right to self-determination, indigenous peoples in Bolivia should have access to effective means for the economic development of their territories and the protection of their property.

According to Article XIII.1 of the American Declaration on the Rights of Indigenous Peoples:

Indigenous peoples have the right to their own cultural identity and integrity and to their cultural heritage, whether tangible or intangible, including historic and ancestral heritage; and to the protection, preservation, maintenance, and development of that cultural heritage.

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310 See Stobart, supra note 296.
311 Id.
312 Id.
314 Anaya, supra note 268, at 342–60.
for their collective continuity and that of their members and so as to transmit that heritage to future generations.315

Despite 500 years of oppression, the Aymara and Quechua cultures are flourishing in Bolivia. Their struggle is a historic example of successful cultural and political resistance against structures of systematic racial discrimination.316 Bolivian dances and folklore music are internationally recognized as powerful expressions of indigenous cultures.317 The music, language, and art of the Aymara and Quechua people are a fundamental influence in the Bolivian culture.318 The Aymara and Quechua people have resisted assimilation efforts and have substantially contributed in the construction of a multicultural society.319 Because of this, the recognition of the cultural rights of indigenous peoples is paramount in the process of building up a pluralistic democratic society where conflicts are resolved by peaceful means. Consistent with Article X.1 of the American Declaration on the Rights of Indigenous Peoples, Bolivian society should continue to reject assimilationist efforts, which are based on racist presuppositions. Bolivia should also understand that a significant element of its strength is due to the cultural influence of the Aymara, Quechua, and other indigenous peoples.320

The American Declaration on the Rights of Indigenous Peoples recognizes the rights of indigenous peoples to their lands. Article XXV.3 states that

[i]ndigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.321

Even though the Aymara and Quechua people have been able to get their lands back through agrarian reforms, they often do not have the economic means to develop their lands. To ensure the protection of land rights, the Bolivian government and the private sector should support efforts for the economic development of indigenous lands.

316 See Stobart, supra note 296.
318 See Stobart, supra note 296.
319 See MOLINA, supra note 9.
320 See G.A. Res. 2888, supra note 316, art 10.1 (“Indigenous peoples have the right to maintain, express, and freely develop their cultural identity in all respects, free from any external attempt at assimilation.”).
321 Id.
Article XX.1 of the American Declaration recognizes that “[i]ndigenous peoples have the rights of association, assembly, organization and expression, and are entitled to exercise them without interference and in accordance, inter alia, with their cosmovision, values, uses, customs, ancestral traditions, beliefs, spirituality, and other cultural practices.”322 The implementation of this right enables indigenous movements and organizations to influence political processes. Historically, the Aymara and Quechua people in Bolivia have led indigenous peoples’ rights movements. Their organizations, such as the Confederación Sindical Única de Trabajadores Campesinos de Bolivia, were some of the fundamental forces in the resistance against military and civilian dictatorships, and have been an essential force in sustaining the democratic process in Bolivia.323

Article 1 of the U.N. Declaration on the Rights of Indigenous Peoples recognizes that “[i]ndigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms...”324 The Bolivian State should make all efforts to implement both the individual and collective rights of the Aymara, Quechua, and other indigenous peoples. This should include the right to collective property, and the normative principle that requires the prior and informed consent of indigenous communities, without coercive means, before exploiting natural resources in their territories.325

The lack of implementing the right to collective property, including to natural resources, of indigenous peoples would demonstrate a deficiency in understanding the worldview of the indigenous communities who constitute a significant part of Bolivia’s population.326 Consistent with the religious worldview of indigenous peoples, such as the Aymara, the Pachamama (Mother Earth) is one of the main foundations for human existence.327 Consequently, the

322 Id.
323 See Molina, supra note 9.
324 UNDRIP, supra note 313, art. 1.
326 WORLD BANK GRP., INDIGENOUS LATIN AMERICA IN THE TWENTY-FIRST CENTURY: THE FIRST DECADE 24 (2015), http://documents.worldbank.org/curated/en/145891467991974540/pdf/98544-REVISED-WP-P148348-Box394854B-PUBLIC-Indigenous-Latin-America.pdf (“The only country that showed a decrease in its indigenous population is Bolivia, for reasons that have probably more to do with the way the data were collected during the last census than with a real trend to negative growth. The decrease in the proportion of indigenous people in Bolivia (from 62 percent to 41 percent of the population) has in fact been widely discussed, as it has puzzled both the international community and the national authorities. Some preliminary explanations point to the effect of changes in the census questionnaire, as in 2001 Bolivians were asked if they ‘identified’ with an indigenous people, and in 2012 the question was whether they ‘belonged’ to one.”).
327 Yaneth Katia Apaza Huanca, Non-Western Epistemology and the Understanding of the Pachamama
collective ownership of indigenous territories is an integral part of cultural and religious identities.328

The disregard of the collective rights of indigenous communities, including their right to property and natural resources, can not only lead to violations of their collective rights, but are also contrary to fundamental individual human rights. This includes Article 18 of ICCPR which recognizes “the right to freedom of thought, conscience and religion.”329

International norms that guarantee the right to collective property of indigenous peoples, including Article 14 (1–3) of the International Labour Organization’s Indigenous and Tribal Peoples Convention No.169, should be implemented in Bolivia. According to this article:

Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.330

Latin American countries, including Bolivia, have reaffirmed customary international law norms in the American Declaration on the Rights of Indigenous Peoples, including the right to collective property. According to Article VI:

Indigenous peoples have collective rights that are indispensable for their existence, well-being, and integral development as peoples. In that regard, States recognize and respect the right of indigenous peoples to their collective action; to their juridical, social, political, and economic systems or institutions; to their own cultures; to profess and practice their spiritual beliefs; to use their own tongues and languages; and to their lands, territories and resources. States shall promote, with

(Environment) Within the World(s) of the Aymara Identity, 8 INT’L J. FOR CRIME, JUST. & SOC. DEMOCRACY 6, 17–18 (2019) (“Meanwhile, for the Aymaras the Pachamama is their ‘Mother and is sacred’, the one who gives them life, brings them to fruition, not only in a material form, but also spiritually. This gives rise to a relationship of complementarity between them. That is why for the Aymara, the Pachamama is part of their existential intrinsic being. This conception means that they naturally respect and love all of Nature without needing to consider her as a subject of rights by obligation.”).

328 Id. at 18 (“The vision of the Aymaras and their relationship with Pachamama has achieved a broad worldwide acceptance of the rights of Nature (Mother Earth), promoting international legislation and mechanisms for its defense. This indicates that the ancestral knowledge of the diverse cultures that inhabit Latin America can powerfully influence the way of appreciating Nature around the world. These cultures have elements of importance for the universal expansion of knowledge, values and principles concerning various aspects of life.”).

329 ICCPR, supra note 267, art. 18.

the full and effective participation of indigenous peoples, the harmonious coexistence of the rights and systems of different population groups and cultures.331

A proper understanding of the right to collective property for the Aymara and Quechua peoples should include the right to use their natural resources. Regarding this aspect of international indigenous peoples’ law, Erica Daes, U.N. Special Rapporteur, writes:

Indigenous peoples’ permanent sovereignty over natural resources might properly be described as a collective right by virtue of which the State is obligated to respect, protect, and promote the governmental and property interests of indigenous peoples (as collectivities) in their natural resources. What are these interests? In general, these are ownership interests, including all the normal incidents of ownership. The interests involved may vary depending on the particular circumstances, but in general these would be the interests normally associated with ownership: the right to use or conserve the resources, the right to manage and to control access to the resources, the right to freely dispose of or sell the resources, and related interests. It may be that in some situations, an indigenous peoples’ interest may be something less than full ownership, such as a right of use, or a right of hunting and fishing, or a shared right to use a resource.332

The Inter-American system for the protection of human rights is one of the most important normative venues regarding the recognition and implementation of indigenous peoples’ rights, including collective property.333 The cultural diversity of countries such as Bolivia, Guatemala, Ecuador, and Peru, where indigenous peoples are a significant percentage of their populations, constitutes a patrimony not only of Latin America, but of all humankind.334 To preserve and strengthen this, it is essential to recognize and implement the right to internal

331 G.A. Res. 2888, supra note 315.
334 WORLD BANK GRP., supra note 326, at 22.
self-determination, including the right to collective property and use of natural resources, of the Aymara, Quechua, and other indigenous communities. The implementation of the right to collective property, including the use of natural resources of indigenous peoples, will not affect the national sovereignty of the Bolivian state. On the contrary, the implementation of this fundamental human right will increase economic well-being and protect the cultural identity of a fundamental sector of Bolivian society. The consensus of the international community in recognizing the rights of indigenous peoples as essential actors in international relations is seen in efforts to ensure the implementation of norms of international economic law and international human rights law with the objective of remedying historical injustices, such as the denial of indigenous peoples’ right to collective property and use natural resources in their territories.335

Considering the historical efforts to undermine the rights of indigenous peoples in Bolivia, including proposals to deconstruct the Bolivian Plurinational State, it is essential to understand the international legal obligations of the Bolivian State regarding indigenous communities.336 The constitution of Bolivia is an outstanding example of using domestic law to remedy historical injustices against indigenous peoples. The Bolivian Constitution not only recognizes the fundamental rights of indigenous peoples, but also acknowledges the defense of their rights as a fundamental component of Bolivia’s foreign policy.337 Article 30(I) of the Bolivian Constitution defines indigenous people as “every human collective that shares a cultural identity, language, historic tradition, institutions, territory and world view, whose existence predates the Spanish colonial invasion.”338 The Constitution of Bolivia, consistent with international law, recognizes the right to self-determination of indigenous peoples.339 The implementation of Bolivian constitutional norms regarding indigenous peoples’ rights is an effective way to protect the rights of indigenous communities to

335 See Mantilla, supra note 7 (discussing indigenous peoples and the interactions of international human rights law and international economic law in Latin America, especially in the Andean region).
336 Id. at 145–46.
337 CONST. OF BOL., 2009, art. 255(II)(4) (recognizing that the “respect for the rights of native indigenous rural peoples” is a fundamental principle of Bolivia’s international relations).
338 Id.
339 Almut Schilling-Vacaflor, Bolivia’s New Constitution: Towards Participatory Democracy and Political Pluralism?, 90 EUR. REV. LAT. AM. & CARIBBEAN STUD. 3, 9–10 (2011) (“Indigenous peoples’ and communities’ right to self-determination has been incorporated into the new [Bolivian] constitution and, like the provisions in international instruments (particularly the ILO Convention 169 and the UN Declaration about the Rights of Indigenous Peoples), comprises two dimensions: the right to self-government executed within the framework of indigenous autonomy, including the exercise of indigenous political, juridical, and economic systems, and the right to fully participate in state institutions and in the dominant society (Art. 30).”).
internal self-determination. This will contribute to repairing the systematic and long-lasting injuries of a system of colonial and racist exploitation that is still prevalent in Bolivian society.

Another component implementing indigenous peoples’ rights in the Bolivian Constitution is the recognition of the importance of indigenous peoples’ participation in the legislative branch of government. The Bolivian Constitution recognizes the proportional participation of indigenous peoples in electing members of the plurinational assembly. Another component implementing indigenous peoples’ rights in the Bolivian Constitution is the recognition of the importance of indigenous peoples’ participation in the legislative branch of government. The Bolivian Constitution recognizes the proportional participation of indigenous peoples in electing members of the plurinational assembly.340 Regarding the Bolivian Constitution, John Hammond writes:

The constitution fulfills several historic demands of the indigenous people. It declares Bolivia to be a “unitary, social, plurinational, communitarian state governed by the rule of law” . . . It recognizes the thirty-six indigenous languages, along with Spanish, as official languages. The constitution also guarantees respect for all religions and cosmovisiones (referring to traditional indigenous religious beliefs, discussed below), and allows for autonomy for regions predominantly populated by indigenous “nations and peoples.”341

Despite the well-structured norms of the Bolivian Constitution regarding the rights of indigenous peoples, there are constant challenges against their proper implementation.342 Considering this reality, it is important to find the best legal and political strategies for the implementation of indigenous peoples’ rights as an essential element for the maintenance of peaceful ethnic relations. One possibility is the interpretation and implementation of indigenous peoples right to self-determination in a way that grants them the right to have their own sovereign states. Another interpretation recognizes the importance of respecting the national sovereignty and territorial integrity of the Bolivian State and ensuring that the remedial aspects of internal self-determination of the Aymara, Quechua, and other indigenous people are implemented.

There are no easy answers to these questions. It depends on the concrete historical circumstances of each case. For example, in the case of Southern Sudan and the former Yugoslavia, it was in the best interest of these countries

340 CONST. OF BOL., 2009, art. 147 (“I. The equal participation of men and women shall be guaranteed in the election of the members of the assembly. II. Proportional participation of the nations and rural native indigenous peoples shall be guaranteed in the election of members of the assembly. III. The law shall define the special districts of the rural native indigenous peoples, in which population density and geographical continuity shall not be considered as conditional criteria.”).


342 See MOLINA, supra note 9 (discussing the ongoing challenges of indigenous communities).
for minority groups to exercise their right to external self-determination and create their own sovereign states. In the case of Bolivia, indigenous communities, such as the Aymara and the Quechua, are essential actors in the economic, social, cultural, and political processes of society. Therefore, proper implementation of the right to internal self-determination is a viable option.

However, considering the existence of powerful racist movements that still believe in the assimilation and destruction of indigenous communities and cultures, there is a possibility that implementing the right to external self-determination will be necessary. This could happen if ethnocentric Hispanic-Mestizo movements use military, political, and economic power to impose their separatist and racist views. However, considering the strength of Bolivian indigenous movements and their democratic commitment, this scenario is unlikely to happen. Therefore, the focus in the current historical setting should be on the proper implementation of the right to internal self-determination via remedial measures to ensure indigenous peoples’ full participation at all levels of social, political, and economic power structures of Bolivian society. The implementation of the right to internal self-determination enables not only the preservation of sovereign states, such as Bolivia, but also strengthens cultural identities of countries by recognizing the vital place indigenous communities have in society. This also helps prevent potential violent ethnic conflicts and more broadly mitigates the challenges of creating new sovereign states.

CONCLUSION

Violent and peaceful encounters of indigenous peoples with Spanish European conquerors started a historical process of constructing norms and principles for nations formed from diverse civilizations. Based on natural law and law of nations, Spanish scholastic thinkers recognized the justice of the cause of the Inca and other indigenous nations against the Spanish conquest and colonization of their territories. One of the key events in the conquest of Tawantinsuyu was the Spanish massacre of the Inca people in the Battle of Cajamarca in 1532. Francisco Pizarro and other Spanish conquerors violated the fundamental Spanish scholastic norm of respect for the right to life. Therefore, the Inca had the right of self-defense against the Spanish aggression to defend their lives, territories, and cultures. Other than the objective to protect innocent people from human sacrifices, the Spaniards did not have any just reasons to use force against Tawantinsuyu. However, the Spanish invasion of the Andean region did not have the objective of ending human sacrifices; even

if it did, the disproportional use of force and the systematic violations of natural law standards, including the right to life, made the Spanish actions unjust and illegal.

The application of Spanish scholastic thinkers’ ideas to the Spanish conquest of Tawantinsuyu and the characteristics of their philosophical and theological ideas leads to the conclusion that Vitoria’s normative ideas could have sustained the construction of a better international order in the Andean region. This order could have considered the national interests of indigenous peoples. This does not mean that the Spanish scholastic perspective was the only one that could have had positive consequences for the sixteenth-century international relations between the Spanish and Andean civilizations. However, it was Spain that conquered the Inca realm and had the power to impose its ontological and epistemological views of reality. Francisco de Vitoria’s ideas were one of many possible foundations for the Spanish actions in the New World. However, Spanish scholastic ideas of the Salamanca School of Thought did not prevail; instead, racist presuppositions of human nature sustained normative doctrines regarding the Spanish use of force, conquest, and colonization of the Inca realm. Ethnocentric imperialistic philosophical ideas, such as those of Ginés de Sepúlveda, served to justify the Spanish actions in the New World, including those violent actions in Tawantinsuyu.\footnote{See, e.g., Fernández-Santamaria, supra note 22, at 436–47.}

Francisco de Vitoria and other Spanish scholastic thinkers’ recognition of the injustice and illegality of the Spanish conquest of the Inca realm was consistent with indigenous perspectives, actions for liberation, and the implementation of the natural right to self-determination against Spanish colonialism. As an expression of the natural right to self-determination, the Incas of Vilcabamba, under the leadership of Manco Inca, rightfully used force to resist the Spanish invasion.\footnote{See, e.g., Espinoza Soriano, supra note 46.} Túpac Amaru fought for the implementation of the right to self-determination of indigenous people. As a continuation of this struggle for self-determination, Túpac Katari, Bartolisa Sisa, Felipe Quipe Huanca, and other indigenous leaders have fought for their inherent right to self-determination. The right to self-determination of indigenous nations of the Andean region has been sustained by continuous efforts that can be traced back to the beginning of the unjust conquest of Tawantinsuyu.

Since the Spanish conquest of the New World, the inherent natural rights of indigenous communities have been violated. Widespread violations of the right
to life of indigenous people have characterized the history of Bolivia and other Latin American countries where the descendants of the people of Tawantinsuyu live. The implementation of the remedial aspect of the right to internal self-determination should be part of a negotiated solution to ethnic and political conflicts between the descendants of the original owners of Bolivian territories, indigenous peoples, and Hispanic-Mestizo ruling economic elites. Additionally, it is essential to protect and develop democratic institutions that ensure the meaningful participation and leadership of indigenous people in political and economic power structures.

The strengthening of Bolivian democratic institutions requires the construction of a culture of respect for individual human rights for all Bolivians, the recognition of the central place of indigenous communities in the history of Bolivia, and the implementation of indigenous communities’ collective rights. The implementation of the norms of the UDHR, ICCPR, ICESCR, and other international human rights instruments are of special importance for indigenous peoples who have suffered the consequences of long-lasting systematic racial discrimination and extreme economic exploitation.

Despite some political gains, indigenous peoples in South America continue to be marginalized by economic, political, and educational power structures. In countries such as Bolivia, the dominant white and mestizo elites continue to enjoy their inherited power characterized by the economic exploitation of indigenous peoples and ideological racist beliefs.\textsuperscript{346} Considering the paramount global importance of protecting cultural heritage and civilizational diversity, the implementation of the rights of the Aymara, Quechua, and other indigenous people should be of global concern. The efforts to undermine the rights of indigenous peoples create the conditions for ethnic and political conflicts. This often has a negative impact on indigenous peoples’ cultures. Often because of economic reasons, political interests, and ignorance, ruling racist elites in Bolivia continue to embrace ideas and policies that disregard the fundamental contributions of indigenous civilizations to humankind.\textsuperscript{347} As a response to this reality, the language of international law is an instrument to engage the international community in the struggle for the preservation of the Aymara, Quechua, and other indigenous peoples’ cultures, languages, and territories. In this context, the right to self-determination is a fundamental norm of international positive law and natural law which should apply to the preservation of the people of Tawantinsuyu.

\textsuperscript{346} See MOLINA, supra note 9, at 59.
\textsuperscript{347} Id. at 25–29.
In the twenty-first century, it is not acceptable to be bystanders to ethnocentric efforts that seek to undermine or destroy indigenous people and their cultures. Considering the historical injustices against indigenous peoples, their substantial contributions to the well-being of humanity, and the fact that their cultures are part of the patrimony of humankind, the implementation of their fundamental individual and collective rights should be of central importance for all humankind.