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Divine law divided: Francisco de Vitoria on civil and ecclesiastical powers

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ABSTRACT

Francisco de Vitoria (c. 1485–1546) is well-known for his philosophical contributions to natural rights and international law. However, his extensive work on the conflict between civil authority and the authority of the Catholic Church has been largely neglected by political theorists and intellectual historians. While scholars have recently recognized the significant role played by natural law in the history of political secularism, they have focused almost exclusively on the "modern" natural law theories of Hobbes, Pufendorf, and Thomasius, as opposed to the "scholastic" natural law of early modern Thomists like Vitoria. This essay undertakes an analysis of Vitoria's use of natural law theory in his approach to civil–ecclesiastical conflict. Contrary to critiques from the "modern" natural lawyers, it argues that Vitoria's idea of natural law spearheads a forceful defense of the autonomy of civil power from ecclesiastical power. Based on his sharp distinction between the natural and the supernatural spheres of human life, Vitoria argues for a "dualist" position in which civil and ecclesiastical powers are independent and equally binding on human consciences. The essay acknowledges that Vitoria's dualism ultimately gives way to his endorsement of papal supremacy over all Christian princes. However, this papalist conclusion does not follow from Vitoria's natural law theory but rather from an opposing political principle: the notion of the universal Christian commonwealth.

KEYWORDS

Francisco de Vitoria; natural law; divine law; civil authority; ecclesiastical authority; papal power

The vast majority of recent scholarship on the political thought of Francisco de Vitoria (c. 1485–1546) has focused on his theory of international justice and his response to the Spanish conquest of America.[1] As valuable as this scholarship is, it has tended to remove these aspects of Vitoria's thought from their larger theological context. Vitoria's ecclesiology has received some attention by recent scholars, but these studies have largely ignored the question of the relationship between civil and ecclesiastical powers, which was central to Vitoria's entire political philosophy.[2] He devoted significant attention to discussing this perennial political issue, most systematically in three lectures: *De Potestate Civili* (1528), *De Potestate Ecclesiae Prior* (1532), and *De Indis* (1539).[3] Vitoria's profound influence on early modern understandings of civil–ecclesiastical relations can be seen in the frequency with which these lectures are cited and imitated by the next

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generation of Catholic political thinkers: Luis de Molina, Robert Bellarmine, Juan de Mariana, and Francisco Suárez.[4]

While scholars have recently recognized the significant role played by natural law in the history of political secularism, they have focused almost exclusively on the "modern" natural law theories of Grotius, Hobbes, Pufendorf, and Locke, largely ignoring the "scholastic" natural law of the early modern Thomists like Vitoria. One possible reason for scholarly neglect of Vitoria's contributions in this area is the fact that Vitoria's conclusions seem to merely reproduce the papalist position of the medieval and early modern Catholic Church. In *De Potestate Ecclesiae Prior*, Vitoria ultimately concludes that all earthly princes are subject to the spiritual power of the pope, who has the authority to make and unmake princes when necessary for the defense of the Church. The philosophers of the School of Salamanca, who followed in his wake, defended versions of this same papalist doctrine. Understandably, then, the "scholastic" natural law of the Salamancans was shunned by later generations of natural law thinkers as an obstacle to the liberation of civil power from ecclesiastical power. Samuel Pufendorf and Christian Thomasius, for example, viewed the project of disentangling church and state as requiring a wholly de-theologized philosophy of natural law based on the humanism of Grotius and Hobbes rather than the scholasticism of Vitoria and Suárez.[5] While this "modern" school of natural law fell out of favor in the wake of Kant, it has experienced a revival spurred by the natural law histories of Richard Tuck and Istvan Hont. These recent accounts have recovered the work of eighteenth-century intellectual historians – including Thomasius, Jean Barbeyrac, Friedrich Glafey, and Johann Brucker – who lionized Grotius and Pufendorf for rescuing natural law from scholastic theology.[6] It would be a mistake, however, to uncritically accept these pre-Kantian historians' assessment of scholastic natural law as an enemy of political secularization.

While not denying either the limitations of scholastic natural law or the significant contributions of the "modern" school, this essay questions the assumption that scholastic natural law was simply a tool for justifying the Church's control over secular authorities.[7] Although it does indeed result in the notion that civil powers rule by divine right, this idea was used to argue for a sharp separation of civil and ecclesiastical authority. A close reading of Vitoria's lectures on civil and ecclesiastical authority reveals a series of arguments for the autonomy of civil power from ecclesiastical power, all built on an Aristotelian–Thomist theory of natural law. These lectures sharply distinguish between the natural legal foundations of civil power and the supernatural legal foundations of ecclesiastical power. This distinction allows Vitoria to argue – against the papalists – that civil powers are neither dependent on ecclesiastical power nor subject to the temporal authority of the pope. Vitoria's natural law philosophy leads him to endorse a "dualist" approach in which civil and ecclesiastical jurisdictions independently pursue temporal and spiritual purposes, respectively. This natural law framework, however, does not drive Vitoria's entire ecclesio-political theory. In these same lectures, Vitoria ultimately places all civil powers under the pope's indirect temporal power, which ends up being no different in practice from the temporal supremacy of the pope over all Christian princes. Here, natural law runs up against the canonist notion of the Church as a universal *respublica Christiana*. In order to fulfill the Church's supernatural end, ecclesiastical authorities must possess temporal powers of legislation and punishment. Although Vitoria attempts to reconcile this principle with the dualist conclusions that follow from natural law, I argue

that this attempt fails, resulting in a self-contradictory and incoherent account of civil–ecclesiastical relations. This failure allows natural law to remain unimplicated in Vitoria's theocratic conclusions.

The argument of this article is divided into three parts. Part I argues that Vitoria's conception of natural law is integral to his defense of the autonomy of civil power from ecclesiastical authority. Part II follows Vitoria's attempt to steer a "dualist" middle course between the extremes of caesaropapism and hierocratism by maintaining the mutual independence of civil and ecclesiastical powers. Part III shows that Vitoria's dualist theory ultimately gives way to a contradictory canonist principle, which Vitoria fails to reconcile with his natural law philosophy.

"*Ius Naturale et Divinum*": the autonomy of civil powers

In his *Relectio de Potestate Civili*, Vitoria provides a systematic account of the origins and nature of the powers that govern the "secular commonwealth" (*respublica saecularis*).[8] It is a spirited defense of the rights of civil sovereigns directed against those who hold that civil government is merely human artifice and has no basis in either the natural order or in divine command.[9] To these opponents, Vitoria responds:

> We may cast aside their calumnies and agree with all right-minded men that monarchy or kingly power is not only just and legitimate but also that sovereigns have their power by natural and divine law (*iure divino et naturali*), not from the commonwealth or from men.[10]

This concept of *ius naturale et divinum* is central to Vitoria's defense of civil sovereignty against ecclesiastical intrusion.[11] In this lecture, Vitoria constructs this concept in two basic steps. First, he argues that civil authority exists according to natural necessity and is thus legitimately wielded by pagans and non-Christians. Secondly, he argues that civil authority descends directly from God and thus binds in the same way as divine positive law and ecclesiastical law. The result is a view of secular power as both autonomous from and morally equivalent to the power of the Church.

The first part of Vitoria's argument establishes that civil power is founded on *ius naturale*. Twentieth-century scholars have disagreed over whether Vitoria's use of the word *ius* conveys the "objective" view of Aquinas or the "subjective" view of later scholastics like Jean Gerson and Conrad Summenhart.[12] As Daniel Deckers and Annabel Brett have shown, Vitoria employed both of these senses of *ius* in different contexts.[13] In some instances, he employs the objective understanding of *ius* as that which is permitted or required by law.[14] At other places, he employs the subjective meaning of *ius* as equivalent to *dominium*: "the faculty of using an object as one personally sees fit".[15] In *De Potestate Civili*, Vitoria employs a version of the "objective" view of *ius naturale* as synonymous with Aquinas's definition of natural law (*lex naturalis*).[16] Thus, Vitoria's defense of civil power rests on Aquinas's theory of the relationship between divine law, natural law, and human law.

Vitoria's definition of *ius naturale* emerges in his teleological argument for civil power in *De Potestate Civili*. Here Vitoria adopts the Aristotelian–Thomist idea of the *civitas* as existing for the fulfillment of certain natural human goods. The first of these goods is self-preservation, which is a particularly challenging task for human beings. Unlike other animals, humans are born without any special physical endowments to aid them in

survival: coats for warmth, weapons to defend against attackers, flight or speed to escape danger. Humans are born naked and defenseless, with only their inner endowments of reason and virtue. For this reason, humans are forced to abandon the solitary life of most other animals and form cooperative partnerships with each other (*societates*). Unlike smaller associations like households, the *civitas* is self-sufficient because it is able to defend against attack and ensure the safety and survival of its members. In this way, the *civitas* is not a human invention but "a device implanted by Nature in man for his own safety and survival".[17] Besides self-preservation, civil community gives its members the opportunity to achieve the ends necessary for a good life. Some of these ends are classified as virtues. The intellectual virtues of wisdom and understanding can only be attained through education and experience, which require large societies in which wisdom is accumulated and passed down through generations. While animals attain the full extent of their knowledge individually, humans accumulate wisdom through intercourse and language, which are impossible apart from society.[18] Moral virtues such as justice and friendship are also social in nature and are thus attained in the context of the *civitas*. Finally, Vitoria argues that political society is a good in itself, in addition to being an instrumental good through which other ends are achieved.[19]

Following Aquinas, Vitoria saw these natural human ends as the first principles of the *lex naturalis*. They are not innate dispositions (*habitus*) but dictates that are apprehended by reason. As he explains in his lectures on Aquinas's *Prima secundae*,

> natural law is not so called because it exists in us by nature: children have neither natural law nor the disposition for it within them. It is so called because we judge what is right by natural inclination, not because of some naturally implanted quality.[20]

This point proves especially important for the existence of a properly political society. Because the *civitas* arises from the *lex naturalis*, it cannot exist among those who are devoid of natural reason. In his discussion of the civil sovereignty of the American Indians, Vitoria argues that if the Indians are so devoid of reason that, like children, they are incapable of ruling themselves, then Spain ought to rule them for their own benefit.[21] However, he points to the Indians' orderly political and social lives as evidence that they do in fact possess the use of reason.[22]

Having established that the *civitas* exists according to natural reason, Vitoria then argues for the necessity of a centralized power to govern the *civitas*. Adopting the influential synthesis of Jacques Almain, Vitoria combines Aquinas's idea of *lex naturalis* from the *Prima secundae* with the later scholastic idea of *ius*.[23] He does this by describing the rights and powers that entities must possess in order to fulfill the ends prescribed by natural law. In order for the *civitas* to achieve its ends, it must possess a power that directs all of its parts toward these ends: "If all members of society were equal and subject to no higher power, each man would pull in his own direction as opinion or whim directed, and the commonwealth would necessarily be torn apart".[24] As this argument suggests, the most fundamental precept of natural law is self-preservation. Like many scholastics before him, Vitoria found it useful to compare the *civitas* to the human body, drawing a parallel between the public power of the sovereign and the governing power (*vis ordinatrix*) of the human body. Natural law requires humans to preserve themselves and, toward this end, they must possess natural rights over their bodies and rights to fight off internal and external threats to their lives.[25] In the case of the *civitas*, the governing power cannot reside in

the entire body of the commonwealth (*respublica*) but must be vested in particular individuals.[26] Once the *civitas* is constituted through the vesting of civil power in a sovereign, this right of self-preservation – Almain's *ius conservandi* – cannot be abolished. To do so would be analogous to an individual relinquishing his powers of self-preservation and would thus violate the *ius naturale*.[27]

Having established the existence of a natural legal order that serves as the foundation for legitimate civil power, Vitoria rejects the view that non-Christians cannot hold civil authority, or any other kind of *dominium*.[28] Although he has in mind contemporary controversies regarding the American Indians, his theological critique is aimed at the fourteenth-century heresies of Richard FitzRalph and John Wycliffe, who argued that civil *dominium* depended on supernatural grace.[29] In response to this view, Vitoria takes on the question of God's role in constituting and governing civil powers. His conclusion is that, while civil power does indeed descend directly from God, it does so through natural law, which is independent of supernatural grace. This is the essential meaning of his oft-repeated claim that civil power is of *ius naturale et divinum*. The result is a radically exalted view of civil sovereigns as equal in legal authority to Christ and the pope. Vitoria approaches this question from several different angles. He first uses Aristotle's categories of causation to make nature and God co-creators of the *civitas*. While natural necessity functions as the final cause of civil power, God – as sole author of natural law – is the efficient cause. Vitoria presents this claim as simply an extension of Aristotle's argument from the *Physics*: God is the "First Mover" who endows all entities with their natural inclinations.[30]

However, this mechanistic explanation does not adequately convey Vitoria's essential point, which is that God directly endows civil sovereigns with their rights and powers. This point is made clearer in his discussion of the sovereign's right to kill. A person's right of self-preservation must include the power to cut off any infected limbs that threaten his life. Likewise, the *ius conservandi* of the *civitas* must include the right of capital punishment against citizens who threaten the health of the civic body.[31] This right to kill sets public power apart from private power: private individuals have the right to kill in self-defense but do not have the right to carry out capital punishment on their own authority.[32] Thus, the *civitas*'s right to kill cannot arise from the contracting of private individuals to give up their rights to a sovereign representative. Nor, it seems, does this right arise as a natural consequence of the creation of the civil power. Because the commandment to not kill was given directly by God through the revelation of the Mosaic Law, the right of civil sovereigns to kill must likewise come from God's direct command.[33] Vitoria restates the point when refuting the democratic theory of civil power: although the citizens of the commonwealth have the authority to elect a sovereign, the sovereign's special coercive powers descend directly from God rather than ascending from the commonwealth.[34]

In addition to granting civil sovereigns the power of life and death over their citizens, God also gives them ultimate legislative power. Vitoria thus weighs in on the perennial question of whether human law is binding "in the court of conscience" (*in foro conscientiae*). Here he cites Gerson, who had argued that humans could only mortally sin by disobeying God's direct commands. Neither natural laws nor human laws had this power over the human soul.[35] The more immediate context for Vitoria's argument was Luther's notion of an "evangelical liberty" against the civil and ecclesiastical laws.[36] Luther had argued that the conscience of the Christian – formerly bound to obey these

laws – had been liberated from its legal burdens through faith in Christ. The conscience's slavish submission to the law was not only unnecessary but also incompatible with the Christian faith.[37]

In order to bolster the legal authority of the civil sovereign against these claims, Vitoria argues that human law conveys the same moral obligation as God's direct commandments. His initial argument echoes Aquinas's conclusion in the *Prima secundae* 96.4: human law binds in conscience. However, the substance of Vitoria's argument differs dramatically from that of his predecessor. Aquinas adheres closely to the intellectualist approach outlined in *Prima secundae* 95.2, according to which the content of human laws must strictly accord with natural and divine law in order to be binding in conscience. In this vein, Aquinas's discussion of human law in 96.4 focuses on the limitations of human law and the various ways in which it can fail to bind in conscience. Vitoria's response, while making a passing reference to these limitations, takes a voluntarist turn, arguing that the essential characteristic of all law is its power to transform morally indifferent matters into matters of sin.[38]

> It is broadly clear, then, that nothing is vicious unless it is prohibited by law, nor virtuous unless it is praised and recommended in law. As the doctors of the Church stoutly prove, all goodness in the human will consists in obedience to the will and law of God, and all evil consists in disobedience to divine law, which is the yardstick of all human actions. In the same way, I say, human law has the power to decide that one thing is essentially virtuous, while its contrary is essentially vicious.[39]

In so doing, he draws human law so close to divine positive law so as to make them almost indistinguishable:

> Therefore, *just as divine law has the power to assign guilt, so too does human law*. If this seems a wilful conclusion, here are the proofs. First, human law comes from God; therefore it imposes responsibility just like divine law. The major premiss is proved as follows: a work of God is not only one which He performs Himself, but also one which He produces through intermediate second causes. Therefore divine laws mean not only those which God himself has instituted, but also those which men have carried by the authority of God.[40]

Vitoria thus grants sweeping moral powers to each civil sovereign. Within each civil territory, the sovereign can determine which previously indifferent actions are good and which are evil. Contrary to Luther's claim, Vitoria argues that the Christian's conscience remains in the hands of the human superiors set over him by God.

Vitoria then takes up an objection raised by Almain: God has transferred this legal power to bind in conscience only to ecclesiastical powers, not to civil powers.[41] Almain's reasoning is that ecclesiastical power is directly instituted by God, while civil power (*potestas laica*) is indirectly instituted by God through natural reason.[42] This argument underscores the significance of Vitoria's earlier argument that civil power descends to sovereigns directly from God. Having already established this point, Vitoria plainly states the implications for civil-ecclesiastical relations: "The Lord made the princes of this earth to govern the temporal commonwealth, as he made pontiffs to govern the spiritual commonwealth […] Scripture commends obedience to secular powers no less diligently than to ecclesiastical ones".[43] Here we see the outlines of Vitoria's dualist theory. God's divine law operates in two parallel sets of human laws: one natural and the other supernatural.

The dualist *Via Media*

While *De Potestate Civili* discusses the foundations and extent of civil power, it does not directly address the relationship between civil and ecclesiastical power. This issue is taken up most systematically in the *Relectio de Potestate Ecclesiae Prior*. The six questions can be usefully divided into two parts. The first part – containing the first four questions – focuses on the nature of ecclesiastical power, with some discussion of its differences from civil power. The second part – Questions 5 and 6 – directly addresses the relationship between ecclesiastical and civil power. The strongest arguments both for and against civil autonomy appear in Question 5, which addresses the question of "Whether spiritual power is above civil power." The importance of this question for the lecture is indicated by its size: nine propositions defended over the course of 19 sections. The first five propositions are clearly "dualist", arguing for the independence of civil powers from the pope. The latter four propositions are clearly "hierocratic", discussing the various ways in which the pope may exercise temporal power over princes. In this section, I show how Vitoria's dualist argument emerges from his natural law theory. In the next section, I show how Vitoria's hierocratic argument breaks away from natural law.

In his preface to the fifth question, Vitoria states that he aims to steer a middle course between two extreme positions: (1) the argument that all civil and spiritual authority is dependent on the pope; and (2) the argument that all civil and spiritual authority should be vested in civil powers.[44] These two extreme positions closely resemble the "hierocratic" and "caesaropapist" ideal types described by Max Weber.[45] These ideal types represent historical attempts to definitively resolve civil–ecclesiastical conflict by uniting the temporal and spiritual powers under a single head: either civil or ecclesiastical.[46] Vitoria's proposed middle course is an attempt to preserve the autonomy of each of these two spheres by distinguishing between the natural ends of secular powers and the supernatural ends of the Church. The resulting "dualism" is an argument for two distinct and independent legal jurisdictions.

The hierocratic view had gained a foothold in canonist thought by the thirteenth century, though its roots can be traced to the Gregorian reforms of the eleventh century.[47] Vitoria identifies Augustinus Triumphus, Silvestro Mazzolini da Prierio, Antonino of Florence, Pope Innocent IV, and Hostiensis as proponents of this view.[48] The central hierocratic thesis that Vitoria rejects is that all civil power originates from and is dependent on the spiritual authority of the Church, which – for these thinkers as well as for Vitoria – resides in the papacy.[49] These hierocratic thinkers translated the pope's universal spiritual authority into universal temporal authority. They viewed the whole world as a single principality with Christ as its ruler and the pope as Christ's vicar.[50] Although secular rulers are ordained by God, they receive this divine authority through the pope, not directly from God. As Hostiensis put it, "just as the moon receives its light from the sun and not the sun from the moon, so too the royal power receives authority from the priestly and not *vice versa*".[51] For Augustinus Triumphus, this hierarchal ordering of powers meant that, if secular rulers deviated from divine or natural law, the pope had the authority to override them or depose them.[52] For hierocrats, this principle applied to non-Christian peoples as well: even the pagans of America who had never received the Gospel were subject to the pope's dominion and could be punished by the

pope for violations of divine law.[53] The fundamental premise behind these hierocratic arguments is that civil power is founded on God's supernatural grace, which can only be conferred by the Church.[54] Medieval hierocratism also took non-papalist form in the political philosophies of Wycliffe and FitzRalph. Like the papal hierocrats, these thinkers saw all civil authority as dependent on God's supernatural gift of grace.[55]

Vitoria's anti-caesaropapism is mostly directed against Marsilius of Padua's *Defensor pacis* (c. 1324). In this treatise, Marsilius denounces the system of overlapping civil and ecclesiastical jurisdictions, which he sees as undermining the peace of the city. His solution is the elimination of an independent ecclesiastical jurisdiction and the consolidation of civil and ecclesiastical authority under each prince.[56] Marsilius's theory reduces the priesthood to an office of the city; priests only hold coercive powers that are delegated to them by the civil legislator.[57] Although Vitoria does not appear to have read the *Defensor pacis*, Marsilius's work was widely viewed by sixteenth-century Catholics as a dangerous ally of Lutheranism.[58] There are certainly striking similarities between Marsilius's and Luther's political thought, both of which attack ecclesiastical privileges and argue that the true church consists of an egalitarian priesthood of all believers.[59] In his defense of the dualist system of civil and ecclesiastical powers, Vitoria directly confronts both Marsilius and Luther for denying the independent political authority of the Church and its sovereign, the pope.[60]

Vitoria refutes the hierocratic and caesaropapist views by arguing that God directly ordains civil and ecclesiastical powers to govern two separate kingdoms. Drawing on Aquinas's natural–supernatural distinction, he divides divine law into two independent parts: the natural part (*ius naturale et divinum*) gives rise to civil powers, while the supernatural part gives rise to the Church. As demonstrated in *De Potestate Civili*, secular power exists for the natural ends of preservation, virtue, and society. Although they are divinely ordained, these ends are natural in the sense that they are understood through natural reason and achieved through the natural faculties with which all human beings are equipped. The Church, meanwhile, pursues only supernatural ends: "the remission of sins, the conferral of grace, and the consecration of the Eucharist".[61] This fundamental division of divine law may be lost on some modern readers. For example, Quentin Skinner argues that Vitoria's idea of divinely sanctioned secular power is akin to Wycliffe's idea that secular dominion is founded on God's grace.[62] However, as we saw above, the idea of grace-founded civil power was anathema to Vitoria's entire political philosophy.

Against the hierocratic position, Vitoria argues that secular power arises out of the natural part of divine law and is thus legitimately wielded by heretics, unbelievers, and pagans without the permission or interference of the Church. In *De Potestate Ecclesiae Prior*, he argues that "civil power is not subject to the temporal power of the pope" because the pope possesses no "merely temporal" power of his own. The sharp distinction between the temporal power of princes and the spiritual power of the pope follows from the distinct ends pursued by each. Because the pope's power exists only in pursuit of supernatural ends, he possesses only the requisite spiritual power to achieve these ends.[63] For Vitoria, the natural ends pursued by civil powers are both independent from and historically prior to the spiritual powers of the Church: "Temporal power existed before the giving of the keys to the Church; therefore, true princes and temporal lords existed before the advent of Christ".[64]

Vitoria also attacked a common teleological argument for papal hierocracy, which cited Aristotle's analogy of the lesser craft and the higher craft from the *Nicomachean Ethics*:

> But where such arts fall under a single capacity – as bridle-making and the other arts concerned with the equipment of horses fall under the art of riding, and this and every military action under strategy, in the same way other arts fall under yet others – in all of these the ends of the master arts are to be preferred to all the subordinate ends; for it is for the sake of the former that the latter are pursued.[65]

Fourteenth-century hierocrats such as Giles of Rome and James of Viterbo employed this analogy to argue that the art of civil government was subordinate to the art of ecclesiastical government because the *civitas* existed ultimately for spiritual ends. Thus, he who possessed authority in spiritual matters must also hold authority over civil matters. Just as bridle-makers prepare material for war, the civil powers prepare material for the spiritual powers: they secure temporal safety, health, and prosperity, so that their citizens can seek eternal felicity through the Church.[66] Because temporal goods are only intermediary goods, not ends in themselves, when the pursuit of temporal goods hinders the pursuit of spiritual goods, the spiritual power must intervene.

Against the bridle-making analogy, Vitoria argued that temporal goods are ends in themselves, not merely intermediary goods. Therefore, civil power does not depend in any way on ecclesiastical power:

> The proof runs as follows: civil power is not exclusively ordered for spiritual, as a craft is exclusively ordered for its superior, and therefore the analogy is not at all exact […]. Even if there existed no spiritual power, nor any supernatural felicity, there would still be some kind of order in the temporal commonwealth [*respublica*], and some kind of power, as there is in natural things, even irrational ones, where some are active and others passive for the good of the whole.[67]

The most striking difference between Vitoria and his hierocratic opponents is that Vitoria was willing to imagine a purely natural world ordered solely toward temporal ends. Here Vitoria goes beyond the idea of the natural law, which is only available to rational creatures, to a natural *order* in which rational and irrational beings cooperate "for the good of the whole". This natural good exists independently from the spiritual good achieved through the supernatural powers of the Church. Thus, the civil commonwealth, which achieves this natural good most perfectly, must be self-sufficient and autonomous from all other powers.[68]

Vitoria famously deployed this anti-hierocratic idea of natural order in defense of the natural and civil rights of the Indigenous Americans. In *De Indis*, Vitoria argues that the Indians possess two types of *dominium*: private property and public authority.[69] Denouncing the hierocratism of Richard FitzRalph, he argues that all types of *dominium* are dependent on man's rational nature and not on grace. FitzRalph likewise argued that man's *dominium* followed from his rational nature, but he maintained that man's rational nature was dependent on being in a state of "justifying grace".[70] For FitzRalph, this rationality was the essence of the notion that man is created in the image and likeness of God (Genesis 1:26–28).[71] However, humans lost this original nature through the fall of Adam and Eve. Fallen man, being in in a state of mortal sin, no longer resembled God and thus no longer possessed natural *dominium* over all things.[72] Against FitzRalph, Vitoria argues that mortal sinners continue to possess natural *dominium* over their own

bodies and actions, thus proving that our rational nature does not depend on grace. For this reason, the mortal sin of the Indians does not annul their rights to property and civil power.[73]

This distinction between the natural and the supernatural is also central to Vitoria's attack on the other extreme position: the caesaropapist idea that civil powers ought to govern both temporal and spiritual affairs. This anti-caesaropapist argument appears in the first four questions of *De Potestate Ecclesiae Prior*, in which Vitoria discusses the nature of the Church's spiritual power. This discussion was particularly relevant in light of one of the principal conclusions of *De Potestate Civili*: that civil power can be legitimately wielded by non-Christians.[74] If Marsilius was correct in arguing that civil power included authority over all spiritual matters, then pagan rulers could appoint priests within their realms and determine how their Christian subjects should worship. For Vitoria, this caesaropapist argument seemed to rely on the pagan idea that civil power, established on the basis of natural reason, was sufficient to guide citizens toward the good, both in this world and the next.[75] In response, Vitoria argues that even the most virtuous civil ruler can only instill "moral or civil virtue and goodness". Christians should "exceed the righteousness not only of pagans and heretics but also that of that of the best philosophers; and so we should have some acts which are ordained for supernatural ends".[76] In his subsequent discussion on the spiritual effects of the Church, Vitoria focuses on one supernatural end in particular: the remission of sins, which is made possible through the sacrament of penance. This act, like all sacraments, cannot be effected by civil authorities but only by ecclesiastical authorities.[77]

In the following question, Vitoria adopts a line of argument that mirrors his argument in *De Potestate Civili*, defending the Church's autonomy from civil powers on the basis of its supernatural legal foundations. While civil power is founded on "natural and divine law" (*De Potestate Civili* 1.6), ecclesiastical power is founded on "positive divine law" (*ius divino positivo*).[78] This division between the natural and supernatural parts of divine law closely follows Aquinas's distinction between natural law (*lex naturalis*) and divine law (*lex divina*).[79] While natural law is available to all rational human beings through their natural reason, "positive divine law" is promulgated by God at specific historical moments.[80] Likewise, while civil power comes into existence whenever humans form political societies, ecclesiastical power must be instituted by God at these moments of supernatural legal promulgation.[81]

The ecclesiastical power that currently resides in the Church can be traced to the moment at which Christ gave Peter the keys to the kingdom of Heaven (Matthew 16:19). This "power of the keys" is the essence of ecclesiastical power and is defined by Vitoria, following Lombard's *Sentences*, as the "power to bind and loose, at the moment when the righteous are accepted into the kingdom and the unworthy excluded".[82] Following the standard canonist treatment, Vitoria divides this power to "bind and loose" into two parts: sacramental and jurisdictional.[83] He defines the Church's sacramental power (*potestas ordinis*) as a power of consecration, which includes administering the sacraments and conferring priestly power. For Vitoria, the essence of this power is the priests' unique ability to forgive sins, especially through the sacrament of penance.[84] Vitoria's argument for the existence of this power is directed against the notion that God alone, not the priesthood, has the power to forgive sins. This idea can be seen in Marsilius's *Defensor pacis*, which argues that priests are analogous to physicians. Their expertise in divine law

allows them to diagnose sin and prescribe treatments, such as contrition, but the powers of absolution and damnation remain in God's hands.[85]

It is important to note that this debate about sacramental power is not a normative debate about whether ecclesiastical power *should* be in the hands of the civil sovereign. The question is whether or not the priesthood does *in fact* possess a unique spiritual power of absolution. If Vitoria is correct, then ecclesiastical power is, by its very definition, autonomous from civil power. Indeed, even the most repressive pagan emperors of Rome could not take control of the priesthood's spiritual powers. In Vitoria's lifetime, it was argued that, following Henry VIII's break from the Church, the English priesthood retained its autonomy from royal power by virtue of its *potestas ordinis*.[86] If ecclesiastical power was limited to the sacramental powers of conferring orders and remitting sin, a tenable compromise between temporal and spiritual powers may have been possible.[87] Vitoria would not have been satisfied with such a compromise, however, because it would have denied the Church its jurisdictional power (*potestas iurisdictionis*), which was just as integral to its power over the keys. As we will see in the next section, it is this jurisdictional power that ultimately comes into conflict with civil power, leading Vitoria to embrace a hierocratic solution.

"*Respublica Christiana*": from dualism to hierocratism

Vitoria's shift from dualism to hierocratism happens suddenly, in the middle of Question 5. Having argued unequivocally against papal hierocratism in the first five propositions, Vitoria turns to argue in favor of papal hierocratism in the next four propositions.[88] In the fifth proposition, Vitoria argues against the Aristotelian analogy of the superior craft, concluding that civil power is not dependent on ecclesiastical power but is rather "complete and perfect in itself" (*integra et perfecta in se*).[89] In the sixth proposition, Vitoria suddenly embraces the craft analogy, using it to render civil power subject to ecclesiastical power:

> But the purpose of temporal power depends on the purpose of spiritual power in some way; therefore also civil power depends on spiritual power. The assumption in the premiss is proved as follows: human happiness is imperfect, and ordered towards the perfection of supernatural felicity, just as the craft of armoury is ordered towards soldiering and generalship, ship-building towards sailing […] and so on. So it is not correct to think of civil and spiritual powers as two disparate and distinct commonwealths, like England and France.[90]

In this proposition, and again in the ninth proposition, Vitoria argues for hierocracy on the basis of order. Civil and ecclesiastical powers are not analogous to England and France because they are parts of a larger entity: the Church. Referring to the Church as the "*respublica christiana*", Vitoria argues that, as with any commonwealth, the internal parts of the Church must be hierarchically ordered in order to work together and avoid conflict. If the civil and ecclesiastical parts of the Church are to be hierarchically ordered, the latter must be superior because temporal ends are ordered toward spiritual ends.[91]

The seventh and eighth propositions argue for hierocracy from a different angle. Vitoria adopts a teleological argument, according to which the pope must possess all the powers necessary for him to achieve the Church's supernatural ends. Sometimes a supernatural

end requires the exercise of temporal power. However, we cannot expect civil rulers to use their powers for such supernatural purposes because this goes beyond their secular knowledge and responsibility. For example, a civil ruler might enact a law that, while effectively pursuing temporal purposes, is contrary to divine law or harmful to the spiritual good of his citizens. The pope, as guardian of the spiritual good of all Christians, would recognize the error and step in to correct it. To do so, the pope must possess temporal power even greater than that of a prince: "he has not only all the powers which secular princes have, but also the power to make new princes, to unmake others, to divide empires, and many other such things".[92]

It is important to note that Vitoria is clearly aware of the apparent tension between his argument for civil autonomy and his argument for papal hierocracy. He repeatedly describes the ways in which his theory differs from more extreme papalist views by respecting civil autonomy. For example, Vitoria argues that the pope's temporal power is only to be exercised in cases of necessity, as a last resort. In the case of the harmful law, for example, the pope must not immediately take the temporal sword out of the hands of the prince. He must first exercise his spiritual power, exhorting the prince to revoke the law. This preserves the rights of civil rulers: "Otherwise [the pope] will commit an offence against rulers by taking over their duties".[93] It is only if the civil ruler refuses to heed the pope's spiritual advice that the pope must act directly in temporal affairs. Although it is not my purpose here to assess the difference between this version of hierocracy and that of, say, Augustinus Triumphus, it should be clear to the reader that Vitoria's version does not leave any real autonomy for the civil ruler.

This brief summary already makes clear that Vitoria's hierocratism is not based on his understanding of natural law but rather on his understanding of the Church as embracing both civil and ecclesiastical powers. This wide view of the Church is spelled out at the beginning of *De Potestate Ecclesiae Prior*. Vitoria adopts the definition of the Church as the *congregatio fidelium*: the worldwide community composed of all individuals who embrace the true religion of Christ.[94] Although this was a standard and widely used definition, its significance emerges when we contrast it with a narrower definition of the Church that was used throughout later medieval political thought: the Church as a corporate entity consisting of the clergy as distinct from laity.[95] Vitoria himself employs this narrower idea of the Church in his defense of papal hierocracy, stating that the right to use temporal power for spiritual ends must belong to the Church, as opposed to secular authorities.[96] Despite this brief lapse, as we have seen, Vitoria's hierocratism rests on the wider notion of the Church.

William McCready and Joseph Canning have observed that the medieval debates between royalists and papalists often hinged on the choice between these two conceptions of the Church. The wider view of the Church as a *congregatio fidelium* was based on an Augustinian worldview in which the entire world is "spiritualized", thereby absorbing the natural purposes of the *civitas* into the supernatural purposes of the Church.[97] Dualist arguments inevitably faltered when they accepted this wider conception of the Church as including both powers.[98] As long as civil powers were conceived of as parts of a universal body of Christ, the spiritual ends of that body would trump all civil ends. A tenable dualist argument could only rest on a clear separation of *civitas* and *ecclesia* or, as McCready puts it, a "neutral" world divided into natural and supernatural realms.[99] Such a neutral view was implied by the narrower notion of the Church as the

clerical class, which was championed through the eleventh-century Gregorian reforms as a way to maintain the autonomy of the Church from temporal powers.[100] Although initially conceived as way to insulate the Church from secular power, this sharp separation also protected secular power from clerical intrusions.[101] Had Vitoria employed such a conception of the Church, his analysis of civil–ecclesiastical conflict would likely have been limited to questions such as clerical immunity from civil prosecution (which he takes up in Question 6).

Equally central to Vitoria's hierocratic conception of the Church is the idea that the Church is a Christian commonwealth (*respublica Christiana*). This distinguishes Vitoria's idea of the Church from the concept of the *congregatio fidelium* employed by two of the greatest critics of hierocracy: Marsilius and Luther. In contrast to these apolitical conceptions of the Church, for Vitoria and the canonist tradition, the Church is a *civitas* and thus operates through law, coercion, and punishment. As discussed above, these political aspects of the Church are encapsulated by the canonist concept of *potestas iurisdictionis*. In this vein, Vitoria defines ecclesiastical power as "the authority to rule the faithful in matters which concern religion, and to direct them towards the life eternal".[102] To be sure, there may be instances of this *potestas iurisdictionis* that do not come into conflict with civil power.[103] Medieval dualists like John of Paris imagined civil and ecclesiastical powers as complementary governments pursuing distinct ends with minimal overlap in jurisdictions.[104] For his part, however, Vitoria ignores these easy cases and focuses on "doubts and controversies"; instances in which ecclesiastical rule comes into conflict with civil rule, in which Christians are forced to choose between obeying their earthly sovereign and obeying the pope.[105] While dualist theories often attempted to minimize conflict by confining the pope's temporal power to a specific category of cases, such as *ratione peccati*, Vitoria makes no such pretensions, arguing instead that the pope has the right to take up the sword whenever he deems it spiritually necessary.[106] In doing so, Vitoria insists on foregrounding what Michael Wilks calls "the problem of sovereignty" in civil–ecclesiastical relations.[107]

A stark example of the sovereignty problem that Vitoria repeatedly raises is the papal power of deposition:

> In the same way, if the people of Christendom were to elect a prince who was an unbeliever, of whom it might justly be feared that he would lead the people from the Faith, this prince, considered solely in light of divine law, would be a true ruler. Nevertheless, it would be the pope's duty to exhort, or indeed to order, the people to depose such a prince. If the people refused, or was unable to do so, the pope would then be empowered to depose the prince on his own authority; and the prince, who before was a true prince, would lose his sovereignty by the pope's authority.[108]

The problem was particularly relevant in Vitoria's lifetime with the rise of Protestant principalities throughout western Europe. As the above passage indicates, the most pressing concern was the corruption of the faith through the spread of heretical doctrine, which was traditionally viewed as an existential threat to the Church. Just as the civil commonwealth possesses *ius conservandi*, the Church must also have the power to coerce its members for the sake of its preservation. Aquinas's position on this question was authoritative: Christian princes who "soweth discord" within the Church pose a threat to the health of the body of Christ and must be excised.[109] Quoting the Latin father Jerome on the Arian

heresy, Aquinas writes: "Arius was but one spark in Alexandria, but as that spark was not at once put out, the whole earth was laid waste by its flame".[110] Vitoria reproduces this standard view, stating that heretical princes must be deposed by the pope for the protection of the Church and "defence and propagation of the Faith and Christian religion".[111]

The disjunction between this hierocratic philosophy and Vitoria's natural law philosophy emerges most starkly when one contrasts the heteronomy of Christian sovereigns with the civil autonomy of the Indians. In his defense of Indian civil autonomy, Vitoria draws out some of the implications of his natural law philosophy, in which divine law is divided into natural and supernatural halves, resulting in two supreme and independent legal orders. This bifurcation allows him to take a morally complex view of Indian society as simultaneously sinful and virtuous. Even while they sin mortally against God through their unbelief, their laws and institutions continue to hold divine approval.[112] Even though they may not acknowledge God's existence, the Indians live according to a divinely ordained civil order, through which they pursue their divinely appointed natural ends.[113] Because the Indians exist outside of the Church, the pope has no spiritual power over them and can thus not simply override their civil rights in pursuit of their supernatural good.[114] Vitoria even acknowledges that the Indians's civil powers have the right to impose idolatrous religion on their citizens, and he accepts this idolatry as a necessary part of their civil order that arises out of natural reason.[115] The Indians thus occupy a more neutral space, in which the Church (represented by the Spanish) must respect the natural-law claims of pagan civil powers.

This reluctance to override civil sovereignty for spiritual purposes stands in sharp contrast to Vitoria's discussion of the "unbelieving prince". Because Christian citizens belonged to the universal Christian commonwealth, the civil governments that ruled over them did not enjoy the deference granted to pagan governments. The pope was entrusted by God to ensure the protection of the members of His Church from spiritual error and was thus obligated to depose rulers who were likely to lead them astray. Vitoria's worry about the rise of Lutheran princes underscores his belief that civil powers have the right to impose religion on their subjects and are likely to have success in converting them.[116] Given this assumption, it is significant that he did not call for the pope to similarly replace pagan princes with Christian ones. Vitoria called instead for a compromise between temporal and spiritual pursuits, in which the Spanish must be permitted to evangelize while respecting the civil rights of the Indians.[117] The situation changes drastically, however, when Vitoria considers the possibility of the successful evangelization of the Indians. If a significant number were to accept Christianity, they would suddenly find themselves under the authority of the pope. The neutral ground, with its complexity and compromise, gives way, and the pope is compelled to protect the faith of the new converts by dissolving the sovereign powers of the pagan prince.[118]

Conclusions

This analysis of Vitoria's complex and ambivalent understanding of civil–ecclesiastical relations provides crucial context for some of the central issues in Vitoria scholarship. For example, one cannot make sense of Vitoria's theories of war and humanitarian intervention without comprehending the two different theological frameworks with which he approached all political questions. As we have seen, when considering relations between

Christian and non-Christian societies, Vitoria tended to employ a natural law framework in which supernatural ends had to be balanced against the rights of civil powers. At the same time, Vitoria saw relations among Christian commonwealths as taking place within an overarching Christian commonwealth and thus subject to the pope's temporal power.[119] Even in Christian–pagan relations, Vitoria's dualist approach involves an often-unstable compromise between civil and spiritual ends. In sum, in any interpretive work involving Vitoria's political philosophy, one must be closely attuned to the shifting and conflicting legal–theological paradigms at work.

These inconsistencies seem to validate some of the criticism leveled against the scholastics by modern natural lawyers. Thomasius's assessment of scholasticism as a "mishmash of theology and philosophy" – one that draws unsystematically on pagan philosophy, the Bible, and canonist authorities – can with some fairness be applied to Vitoria's political philosophy.[120] However, this essay has resisted Thomasius's claim that these methodological issues resulted in an incoherent account of natural law that failed to distinguish between the natural and the supernatural.[121] It is true in some sense that this idea of natural law had to be liberated from its scholastic trappings in order to serve as an effective tool for the modern, secular state. It would be a mistake, however, to conclude that Vitoria's natural law framework had to be discarded and replaced with an entirely new system. While Vitoria's entire philosophy of civil and ecclesiastical powers may be incoherent, his idea of natural law provides a clear and compelling distinction between the natural and supernatural foundations of civil and ecclesiastical jurisdictions. Because Vitoria ultimately abandons this complex dualist position in favor of a simpler hierocratic solution, the full implications of his natural law theory were not worked out in his political philosophy.

One particularly radical possibility is that the divinely ordained civil commonwealth theorized by Vitoria in *De Potestate Civili* cannot co-exist with a universal Christian commonwealth theorized in *De Potestate Ecclesiae Prior*. In other words, one way to reconcile the self-sufficiency of the secular commonwealth with the universal Church is to limit the Church's power to sacramental – rather than jurisdictional – power. Implications such as these are not built into Vitoria's natural law theory. They are merely possible ways of working out the dilemmas that Vitoria's theory creates.

Notes

1. See Brunstetter, "Tale of Two Cities"; Koskenniemi, "Vitoria and Us"; Bain, "Saving the Innocent"; Fitzmaurice, *Sovereignty, Property and Empire*, 40–50; Cavallar, "Vitoria, Grotius, Pufendorf, Wolff"; Muldoon, "Vitoria and Humanitarian Intervention"; Tuck, *War and Peace*; Anghie, *Imperialism*; Pagden, *Fall of Natural Man*; Mattingly, *Renaissance Diplomacy*; Hanke, *Spanish Struggle*; Scott, *Spanish Origin*.
2. See Castaño, "La *Summa Potestas*", 107–17; van Liere, "Vitoria, Cajetan, and the Conciliarists", 597–616. Two notable exceptions are Tung, "Supernatural and Natural Sovereignty", 45–68, and Barbier, "Pouvoir Spirituel et Temporel", 297–310.
3. References to these lectures are from the Latin manuscripts in Urdánoz, *Obras*. All English translations are from Pagden and Lawrance, *Political Writings*.
4. Molina, *De iustitia et iure*, Part I, Tract II, disp. 21, 22, 26, 29, 30; Bellarmine, *De Laicis*, ch. 11, and Bellarmine, *De potestate summi Pontificis*, preface, chs 5, 35, 36, both translated in Tutino, *On Temporal and Spiritual Authority*, 46, 136, 186, 376, 381; Mariana, *De Rege*, I.1, 19–22; Suárez, *De legibus ac deo legislatore*, II.14, and Suárez, *Defensio fidei*, III.5, both translated in Pink, *Selections from Three Works*, 306, 768.

5. For the anti-scholastic projects of Pufendorf and Thomasius, see Hunter, *Rival Enlightenments*, 6–7, 149–50, 201. For the influence of Grotius and Hobbes on these projects, see Tuck, "The 'Modern' Theory of Natural Law".
6. Tuck, "The 'Modern' Theory of Natural Law"; Hont, "Sociability and Commerce"; Schneewind, *The Invention of Autonomy*, 66.
7. Christian Thomasius argues this in his foreward to the 1707 edition of Grotius's *De iure belli ac pacis*. See Thomasius, "History of Natural Law", 41–3. Detlef Döring attributes this view to Pufendorf. See Döring, "Säkularisierung und Moraltheologie", 156–74, cited by Hunter, *Rival Enlightenments*, 150. For a contemporary critique of scholastic natural law along these lines, see Hunter and Saunders, *Natural Law and Civil Sovereignty*, 2–5.
8. Vitoria, *De Potestate Civili*, §1, 151; Pagden and Lawrance, *Political Writings*, 4.
9. As we will see, these arguments cut in several different directions. Lutherans used this idea to argue that Christians are not obligated in conscience to obey human laws. Defenders of ecclesiastical supremacy argued that kings rule only by human law and are thus subordinate to the Church. Defenders of democracy argued that kingship was a human institution and could thus be altered or challenged by the commonwealth as a whole. Vitoria rejects all of these political doctrines in this lecture.
10. Vitoria, *De Potestate Civili*, §8, 161–2; Pagden and Lawrance, *Political Writings*, 14.
11. Vitoria uses both "*ius naturale et divinum*" and "*ius divinum et naturale*". See *De Potestate Civili*, 159, 161, 166.
12. For a summary of this debate, see Tierney, *Idea of Natural Rights*, 257.
13. Deckers, *Gerechtigkeit und Recht*, 188–90; Brett, *Liberty, Right, and Nature*, 123–37.
14. Vitoria, *Comentarios*, Vol. III, Q. 62, a. 2, n. 5. Richard Tuck focuses on this passage in his objective interpretation of Vitoria. See Tuck, *Natural Rights Theories*, 46.
15. *Comentarios*, III, 62, 1, 29, translated and cited by Brett, *Liberty, Right, and Nature*, 131. See also Oliveira e Silva, "Francisco de Vitoria", 153.
16. For a similar discussion of *ius naturale* as natural necessity, see *Comentarios*, III, 57, 2–3. See also Brett, *Liberty, Right, and Nature*, 125–6.
17. Vitoria, *De Potestate Civili*, §5, 157; Pagden and Lawrance, *Political Writings*, 9.
18. Vitoria, *De Potestate Civili*, §4, 154–6. Here Vitoria closely follows Aristotle's *Nicomachean Ethics*, 1103a4–1103b5.
19. This follows closely from Aristotle's view of humans as political animals and the idea of "immanent impulse in all men towards an association". See Aristotle, *Politics*, I. ii. 15.
20. Vitoria, *De lege*, §123, 169.
21. Vitoria, *De indis*, 3.18, 723–5. For a detailed discussion of this question, see Pagden, *Fall of Natural Man*, 66–108.
22. Vitoria, *De indis*, 1.23, 664.
23. Brett, *Liberty, Right, and Nature*, 117–22.
24. Vitoria, *De Potestate Civili*, 1.2; Pagden and Lawrance, *Political Writings*, 9. This same argument is found in Almain, *Libellus de auctoritate ecclesiae*, 135–6. Vitoria and Almain were both drawing on the subjective notion of *ius* developed by Jean Gerson and Conrad Summenhart. According to these thinkers, *iura* are the natural powers possessed by all created things in accordance with right reason: all animals have the right to use other living things for their sustenance, and the sun has the right to shed its light on the earth. Some of these rights are merely permitted by right reason because they do not contravene natural law. Other rights, however, are required by natural law because a being cannot achieve its proper ends without them. See Brett, *Liberty, Right, and Nature*, 36–7, 76–85; Tierney, *Natural Rights*, 260–2.
25. Vitoria, *De Potestate Civili*, §5, 157.
26. Ibid., §8, 162.
27. Ibid., §10, 166; Almain, *Libellus de auctoritate ecclesiae*, 135–6.
28. Vitoria, *De Potestate Civili*, §9, 164–5. This point had been partially defended by Aquinas in his *Secunda secundae*. See Vitoria, *Comentarios*, I, 10, 1, 1, 200–1.
29. Vitoria, *De Potestate Civili*, §9, 165; Vitoria, *De indis*, 1.5, 651–2.
30. Vitoria, *De Potestate Civili*, §6, 158–9. Vitoria cites Aristotle, *Physics*, 254b13–256a3.

31. Vitoria and Almain adopted this idea from Aquinas, *Secunda secundae*, Q. 64, a. 2. See Brett, *Liberty, Right, and Nature*, 118.
32. See Aquinas, *Secunda secundae*, Q. 64, aa. 3, 7.
33. Vitoria, *De Potestate Civili*, §7, 160. Vitoria also makes this point in his discussion of homicide. See *Comentarios*, III, 64, 2, 8. Vitoria offers a different explanation of capital punishment with the same conclusion in *De lege*, §125, 177.
34. Vitoria, *De Potestate Civili*, §8, 164.
35. Gerson, *De Vita Spirituali Animae*, Lecture IV, 157.
36. Vitoria addresses "evangelical liberty" (*libertas evangelica*) directly in *De Potestate Civili* §8, 163. The Roman Church saw Lutheran evangelical liberty as posing a direct threat to civil authority everywhere. See Pope Adrian VI's letter to Cardinal Chieregati (1522), reprinted in Smith and Jacobs, *Luther's Correspondence*, Vol. 2, 143. See also Decock, "Adrian of Utrecht", 573–93.
37. Luther, "Freedom of a Christian", 349–50; Luther, *Lectures on Galatians*, 1:7.
38. Brett similarly notes the voluntarist tendencies in Vitoria's legal philosophy. See Brett, "Later Scholastic Philosophy of Law", 344–5.
39. Vitoria, *De Potestate Civili*, §16, 184; Pagden and Lawrance, *Political Writings*, 34–5.
40. Vitoria, *De Potestate Civili*, §§16–17, 184–5; Pagden and Lawrance, *Political Writings*, 34–5.
41. Almain, *De potestate ecclesiastica et laica*, Question I, ch. 10, col. 1045.
42. Ibid., I.1, col. 1014.
43. Vitoria, *De Potestate Civili*, §17, 186; Pagden and Lawrance, *Political Writings*, 36. Although Almain is not named here, Vitoria explicitly refutes Almain's view in *De lege*, §125, 177–8.
44. Vitoria, *De potestate ecclesiae prior*, Question 5, §1, 292–3.
45. Weber, *Economy and Society*, vol. 3, 1159–60.
46. Wilks, *The Problem of Sovereignty*, 255–6; Berman, *Law and Revolution*, 113–16; Watt, "Temporal and Spiritual Powers", 422.
47. Canning, *Ideas of Power*, 12.
48. Vitoria, *De potestate ecclesiae prior*, 5.2, 294. See also Vitoria, *Relectio de temperantia*, 1057; Vitoria, *De Indis*, 2.2, 2.7, 676, 684.
49. Vitoria, *De potestate ecclesiae prior*, 5.1, 292–3.
50. Ibid., 5.2, 294.
51. Hostiensis, *On Decretales*, 4.17.13, *Per Venerabilem*, excerpted in Tierney, *Crisis of Church and State*, 156.
52. Augustinus Triumphus, *Summa de ecclesiastica potestate*, Question 22, article 3, 452–3.
53. Muldoon, *Popes, Lawyers, and Infidels*, 9–17; Tuck, *Rights of War and Peace*, 59–62. Vitoria takes up this argument in *De temperantia*, 1057.
54. Canning, *Ideas of Power*, 31.
55. FitzRalph, *Summa de Erroribus Armenorum*, 75v, cited by Gwynn, *English Austin Friars*, 60–1; Wycliffe, *De Civili Dominio*, 1a. English translation in McGrade et al., *Medieval Philosophical Texts*.
56. Marsilius, *Defender of the Peace*, Discourse I, chs 17, 19, 114–22, 127–36.
57. Ibid., I. 5, 28–30; II. 23, 409–11.
58. Izbicki, "The Reception of Marsilius", 319–22.
59. Marsilius, *Defender of the Peace*, II. 2, 145–6; Luther, "Temporal Authority", 117; Luther, "Freedom of a Christian", 354–5. Luther himself was not a true caesaropapist in Weber's sense of the term, because he denied that civil rulers held any spiritual authority. See Luther, "Temporal Authority", 106–10. However, the caesaropapist ambitions of civil rulers were bolstered by Luther's break from the Church and the rise of autonomous national churches. See Skinner, *Foundations*, vol. 2, 81–5.
60. For Vitoria on Luther's idea of the priesthood of all believers, see *De potestate ecclesiastica relectio secunda*, Question 2, 375–8. For his engagement with Luther on ecclesiastical law, see *De lege*, §125, 175. On Marsilius, see Vitoria, *De potestate ecclesiae prior*, 6.9, 326–7.
61. Vitoria, *De potestate ecclesiastica relectio secunda*, 1.4, 358; Pagden and Lawrance, *Political Writings*, 115.

62. Skinner, *Foundations*, vol. 2, 140.
63. Vitoria, *De potestate ecclesiae prior*, 5.4–5.8, 297–300; Pagden and Lawrance, *Political Writings*, 86–8.
64. Vitoria, *De potestate ecclesiae prior*, 5.3, 296; Pagden and Lawrance, *Political Writings*, 85.
65. Aristotle, *Nicomachean Ethics*, I.1, 1094a5–15.
66. Giles of Rome, *De ecclesiastica potestate*, II.6, 117, 127; James of Viterbo, *De regimine Christiano*, 211. This idea of temporal ends as intermediate rather than final is also present in Aquinas, *De regimine principum*, ch. 15, 41.
67. Vitoria, *De potestate ecclesiae prior*, 5.9, 301–2; Pagden and Lawrance, *Political Writings*, 89.
68. Vitoria, *De potestate ecclesiae prior*, 5.4, 297–8: "Sed potest confirmari, quia respublica temporalis est respublica perfecta et integra. Ergo non est subiecta alicui extra se, alias non esset integra".
69. Vitoria, *De Indis*, 1.4, 650.
70. FitzRalph, *De Pauperie Salvatoris*, Book II, ch. 2, 336; II. 6, 344–5. For a full discussion of FitzRalph's theory of grace-founded *dominium*, see Brett, *Liberty, Right, and Nature*, 68–71.
71. FitzRalph, *De Pauperie Salvatoris*, II. 6, 344–5.
72. Ibid., II. 11, 353.
73. Vitoria, *De Indis*, 1.5–6, 652–3: "Peccatum mortale non impedit dominium civile et verum dominium".
74. Vitoria, *De potestate ecclesiae prior*, 1.8, 249.
75. Ibid., 1.12, 252–3.
76. Ibid., 1.13, 255; Pagden and Lawrance, *Political Writings*, 56.
77. Vitoria, *De potestate ecclesiae prior*, 2.1–2.10, 256–73.
78. Ibid., 3.6, 278: "Tota potestas ecclesiastica et spiritualis, quae nunc residet in Ecclesia, est de iure divino positivo mediate vel immediate".
79. Aquinas, *Summa Theologiae*, I–II, 91.4: "per naturalem legem participatur lex aeterna secundum proportionem capacitatis humanae naturae. Sed oportet ut altiori modo dirigatur homo in ultimum finem supernaturalem. Et ideo superadditur lex divinitus data, per quam lex aeterna participatur altiori modo".
80. Vitoria, *De lege*, §122, 160–1.
81. Vitoria, *De potestate ecclesiae prior*, 3.1–3.6, 274–9.
82. Ibid., 1.13, in Pagden and Lawrance, *Political Writings*, 57. This passage is absent from the Urdánoz manuscript.
83. Ibid., 2.1, 257.
84. Ibid., 2.2–2.10, 258–73.
85. Marsilius, *Defensor pacis*, II. 7, 211–12.
86. Oakley, "Royal *Potestas Ordinis*", 347–54.
87. Weber describes such a compromise based on the rationalization of salvation. See *Economy and Society*, vol. 3, 1161–2.
88. This tension has been pointed out in Fernández-Santamaria, *The State, War and Peace*, 101–2. However, he ultimately sees these two positions as reconcilable.
89. Vitoria, *De potestate ecclesiae prior*, 5.9, 301.
90. Ibid., 5.10, 302; Pagden and Lawrance, *Political Writings*, 90.
91. Vitoria, *De potestate ecclesiae prior*, 5.10, 302–4.
92. Ibid., 5.11–12, 304–6; Pagden and Lawrance, *Political Writings*, 91–3.
93. Vitoria, *De potestate ecclesiae prior*, 5.13, 306–7; Pagden and Lawrance, *Political Writings*, 93.
94. Vitoria, *De potestate ecclesiae prior*, 1.4–7, 243–6. For an influential articulation of this view, see Hugh of St. Victor's *De sacramentis Christianae fidei* (c. 1134), which Vitoria often cites. Hugh describes the Church as composed of all the members of the faithful and is divided into two parts: the inferior laity and the superior clergy. See Hugh of St. Victor, *On the Sacraments of the Christian Faith*, Book II, Part 2, chs II–VII, 254–8.
95. Canning, *Ideas of Power*, 29; McCready, "Papal *Plenitudo Potestatis*", 662; Ladner, "Church and State", 403–22.
96. Vitoria, *De potestate ecclesiae prior*, 5.12, 305: "Sed hoc non spectat ad officium principum saecularium, qui ignorant proportionem rerum temporalium ad spiritualia, nec habent

curam rerum spiritualium. Ergo ista cura utendi temporalibus ad spiritualia est potestatis ecclesiasticae".

97. McCready, "Plenitudo Potestatis", 660. McCready draws on Arquillière's influential notion of "political Augustinianism". See Arquillière, *L'Augustinisme Politique*.
98. I am indebted to Joseph Canning for pointing this out to me. See Canning, *Ideas of Power*, 29.
99. McCready, "Plenitudo Potestatis", 665.
100. Ibid., 662.
101. Berman, *Law and Revolution*, 110–1.
102. Vitoria, *De potestate ecclesiae prior*, 1.13; Pagden and Lawrance, *Political Writings*, 57. This passage is absent from the Urdánoz manuscript.
103. I am grateful to an anonymous reviewer for pointing out this important qualification.
104. John of Paris, *On Royal and Papal Power*, especially ch. 13, 152–60.
105. Vitoria, *De potestate ecclesiae prior*, 5.14, 309; Pagden and Lawrance, *Political Writings*, 95.
106. Vitoria, *De potestate ecclesiae prior*, 5.12, 305–6. On the argument from *ratione peccati*, see Tierney, "*Tria Quippe Distinguit Iudicia*", 48–59. For an example of this argument, see John of Paris, *On Royal and Papal Power*, ch. 13, 153.
107. Wilks, *The Problem of Sovereignty*, especially 265–6, 321–2.
108. Vitoria, *De potestate ecclesiae prior*, 5.13, 307; Pagden and Lawrance, *Political Writings*, 94. Vitoria also makes this argument in *De Potestate Civili*, §14 and *De Indis*, 3.14.
109. Aquinas, *Summa Theologiae*, II-II, 12.2.
110. Ibid., 11.3.
111. Vitoria, *De Potestate Civili*, §14, 180; Pagden and Lawrance, *Political Writings*, 31.
112. Vitoria, *De indis*, 1.6, 653–5, 2.15, 697–8.
113. Vitoria makes this point explicitly in his lecture *De eo ad quod tenetur homo, cum primum venit ad usum rationis*, cited in Brett, *Changes of State*, 41.
114. Vitoria, *De indis*, 2.6, 682.
115. On the necessity of idolatry, see Vitoria, "Evangelization of Unbelievers", 347. On the reasonableness of Indians' false religion, see Vitoria, *De indis*, 1.23, 664.
116. Vitoria, "Evangelization of Unbelievers", 344.
117. Vitoria does discuss this possibility, but he implies that such drastic measures would only be justified by the Indians' violent resistance to evangelization. See Vitoria, *De Indis*, 3.9–3.11, 715–7.
118. Ibid., 3.14, 719–20.
119. For example, see his discussion of the justness of war between Christian countries in Vitoria, *De Potestate Civili*, §13, 167–8.
120. Thomasius, "History of Natural Law", 32–3.
121. Ibid., 45.

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