

Francisco de Vitoria as a Precursor of *Dignitatis Humanae*'s Teaching on Religious Liberty

Francisco de Vitoria como un precursor de la enseñanza de *Dignitatis Humanae* sobre la libertad religiosa

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ABSTRACT

Scholarship on the history of *Dignitatis Humanae* has largely overlooked the relationship between the declaration's teaching on religious liberty and the thought of Francisco de Vitoria. The article fills this lacuna in scholarly literature, arguing that Vitoria's writings articulate a right to religious liberty that anticipates *Dignitatis Humanae*'s teaching. Specifically, both Vitoria and the Vatican II document derive a right to religious liberty from man's natural law obligation to seek religious truth. Though they differ as to the practical scope of this right, the structure of their arguments for the existence of a right to religious freedom is identical. This fact establishes Vitoria as a precursor to *Dignitatis Humanae* and therefore suggests that the declaration has important antecedents in the scholastic philosophical and theological tradition.

Keywords: Francisco de Vitoria, *Dignitatis Humanae*, religious liberty, natural law, scholasticism, natural rights, human rights.

RESUMEN

Muchos estudios sobre la historia de *Dignitatis Humanae* han pasado por alto la relación entre la enseñanza de la declaración sobre la libertad religiosa y el pensamiento de Francisco de Vitoria. Este artículo cubre esta laguna en la literatura académica, argumentando que Vitoria articula un derecho a la libertad religiosa que anticipa la enseñanza de *Dignitatis Humanae*. En concreto, tanto Vitoria como el documento del Concilio Vaticano II hacen derivar el derecho a la libertad religiosa de la obligación por la ley natural de buscar la verdad religiosa. Aunque difieren en cuanto al alcance práctico de este derecho, la estructura de sus argumentos en favor de un derecho a la libertad religiosa es idéntica. Vitoria aparece así como un precursor de *Dignitatis Humanae* y se puede decir por tanto que la declaración tiene antecedentes importantes en la tradición escolástica.

Palabras clave: Francisco de Vitoria, *Dignitatis Humanae*, libertad religiosa, ley natural, escolasticismo, derechos naturales, derechos humanos.

INTRODUCTION

The continuity of the Second Vatican Council's Declaration on Religious Liberty *Dignitatis Humanae* with past Catholic teaching on the freedom of religion has been much debated. The principal point of dispute has been the question of whether the document's teaching that the human person possesses a natural right to religious liberty can be reconciled with the apparent condemnation of religious liberty issued by nineteenth-century popes such as Gregory XVI, Pius IX, and Leo XIII.¹ While undoubtedly an important question, often overlooked is the issue of whether the document's teaching on the right to religious freedom has roots in the Catholic theological tradition, particularly seminal scholastic theologians who are a central part of this tradition. Scholars who have addressed this question, notably Thomas Pink and Robert Fastiggi, have argued that *Dignitatis Humanae*'s principal scholastic antecedent is the Spanish Jesuit Francisco Suárez (1548-1617).² I believe, however, that the thought of another key figure in the history of scholasticism, the Spanish Dominican Francisco de Vitoria (c. 1485-1546), is no less important an antecedent to the declaration's teaching on religious freedom than is Suárez. The connection between Vitoria and *Dignitatis Humanae* has received little attention in scholarship on the declaration³ or in scholarship on Vitoria's

1 See Gregory XVI, *Mirari Vos* (1832), §14, <https://www.papalencyclicals.net/greg16/g16mirar.htm>; Pius IX, *The Syllabus of Errors* (1864), prop. 79, <https://www.papalencyclicals.net/pius09/p9syll.htm>; Leo XIII, *Libertas* (1888), §20, https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_20061888_libertas.html.

2 Pink argues that the right to religious liberty articulated in *Dignitatis Humanae* is a modern restatement of Suárez's view that the state lacks authority to impose religious coercion on individuals and hence that human beings have a natural right to religious freedom against the state. Controversially, however, Pink also argues that individuals have no such right against religious coercion by the Church and that the Church can use temporal sanctions to punish crimes against canon law and the Catholic faith. Fastiggi observes that Suárez was opposed to the forced conversion of many non-Catholics and that he supported toleration of the religious rites of non-Catholic monotheistic religions, concluding that in these respects Suárez's teaching anticipated that of Vatican II, which also upheld the rights of non-Catholics to practice their faith and denied the liceity of forced conversions. See Thomas Pink, "The Right to Religious Liberty and the Coercion of Belief: A Note on *Dignitatis Humanae*," in *Reason, Morality, and Law: The Philosophy of John Finnis*, eds. John Keown and Robert P. George (Oxford: Oxford University Press, 2013), 427-442; Robert Fastiggi, "Suárez, the Natural Law, and the Limits of Religious Freedom," *Filosofia Unisinos* 23.2 (2022): 2-7, <https://doi.org/10.4013/fsu.2022.232.12>.

3 Key contemporary treatments of the history of *Dignitatis Humanae* do not discuss Vitoria's relationship to the document. See, for example, R. Michael Dummigan, *Religious Liberty and the Hermeneutic of Continuity: Conservation and Development of Doctrine at Vatican II* (Steubenville, Ohio: Emmaus Academic, 2023); David L. Schindler, "Freedom, Truth, and Human Dignity: An Interpretation of *Dignitatis Humanae* on the Right to Religious Freedom," in David L. Schindler and Nicholas J. Healy Jr., *Freedom, Truth, and Human Dignity: The Second Vatican Council's Declaration on Religious Freedom* (Grand Rapids, Michigan: William B. Eerdmans, 2015), 39-210; Russell Hittinger, *The First Grace: Rediscovering the Natural Law in a Post-Christian World* (Wilmington: ISI Books, 2003), 215-241; Martin Rhonheimer, "Benedict XVI's 'Hermeneutic of Reform' and Religious Freedom," *Nova et Vetera* 9.4 (2011): 1029-1054; Avery Dulles, "Dignitatis Humanae and the Development of Catholic Doctrine," in *Catholicism and Religious Freedom: Contemporary Reflections on Vatican II's Declaration on Religious Liberty*, eds. Kenneth L. Grasso and Robert P. Hunt (Lanham, Maryland: Sheed and Ward, 2006): 43-67; John

understanding of spiritual and temporal authority.⁴ Moreover, while some scholars of Vitoria's conception of human rights recognize in his thought a right to religious liberty consisting in immunity from forced conversion and the right to preach the Catholic faith, they have not examined the relationship of Vitoria's view to the teaching of *Dignitatis Humanae* in detail.⁵ Indeed, among such scholars, only Sison and Redín mention that this right foreshadows *Dignitatis Humanae*,⁶ but their treatment is limited to the claim that immunity from forced coercion is a part of the right to religious freedom for both Vitoria and *Dignitatis Humanae*. As we will see, however, immunity from forced conversion is not actually a point of agreement between the two sources, contrary to Sison and Redín's analysis.

It is my view that Vitoria's thought anticipates *Dignitatis Humanae*'s argument for religious liberty in a way that is different from, and more foundational than, what other scholars have claimed. The key contribution this article makes to scholarly literature is to bring this deeper continuity to light. As I will show, Vitoria defends a right to religious liberty consisting in the freedom to preach religious truth and the freedom to follow this truth using precisely the same form of argument that *Dignitatis Humanae* uses to defend the right to religious liberty that it articulates, and it is the identical structure of their arguments for a religious liberty right (rather than the specific content of this right) that constitutes the real point of continuity between the two sources. Specifically, both Vitoria (rather uniquely among scholastic

Finnis, "Response to Thomas Pink," in *Reason, Morality, and Law: The Philosophy of John Finnis*, eds. John Keown and Robert P. George (Oxford: Oxford University Press, 2013), 566-577; John Courtney Murray, "The Declaration on Religious Freedom," in *Vatican II: An Interfaith Appraisal*, ed. John H. Miller, C.S.C. (Notre Dame, Indiana: Notre Dame University Press, 1966), 565-576.

4 Mariano Fazio Fernández, "Francisco de Vitoria: una secularización more Aristotélico," *Sapientia* 52.202 (1997): 279-287; Toy-Fung Tung, "Vitoria's Ideas of Supernatural and Natural Sovereignty: Adam and Eve's Marriage, the uncivil Amerindians, and the Global Christian Nation," *Journal of the History of Ideas* 75.1 (2014): 45-68; Robert Fastigi, "Ecclesiastical and Temporal Power in Vitoria, Suárez and Bellarmine," *Catholic Social Science Review* 9 (2004): 211-216; Vicente Beltrán de Heredia, "Doctrina de Francisco de Vitoria sobre las relaciones entre la iglesia y el estado y fuentes de la misma," *Ciencia Tomista* 56 (1937): 22-39; Nathaniel Mull, "Divine Law Divided: Francisco de Vitoria on Civil and Ecclesiastical Powers," *Intellectual History Review* 31.2 (2021): 201-223, <https://doi.org/10.1080/17496977.2020.1738818>; Maurice Barbier, "Les rapports du pouvoir spirituel et du pouvoir temporel chez Vitoria," *Bibliothèque d'Humanisme et Renaissance* 66.2 (2004): 297-310; Antonio Osuna, "El poder temporal de la iglesia de Vitoria a Suárez," *Cuadernos salmantinos de filosofía* 7 (1980): 81-106; Carlos Isler Soto, "La potestad del papa según Francisco de Vitoria," *Revista De Estudios Histórico-Jurídicos* 46 (2025): 375-389, https://www.scielo.cl/scielo.php?pid=S0716-54552024000100375&script=sci_arttext&tlng=es; Bernice Hamilton, *Political Thought in Sixteenth-Century Spain: A Study of the Political Ideas of Vitoria, De Soto, Suárez, and Molina* (Oxford: Clarendon Press, 1963), 69-97.

5 See Alejo José G. Sison and Dulce M. Redín, "Francisco de Vitoria on the Right to Free Trade and Justice," *Business Ethics Quarterly* 31.4 (2001): 630-635, <https://doi.org/10.1017/beq.2021.2>; Carlos Bretón Mora Hernández, "Los derechos humanos en Francisco de Vitoria," *En-claves del Pensamiento* 7.14 (2013): 50-52, https://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1870-879X2013000200002; Carlos Isler Soto, "Alcance de la defensa de los derechos humanos en Francisco de Vitoria," *Cauriensia: Revista Anual de Ciencias Eclesiásticas* 17 (2022): 203, 208, <https://doi.org/10.17398/2340-4256.17.195>.

6 Sison and Redín, "Francisco de Vitoria on the Right to Free Trade and Justice," 633.

figures) and *Dignitatis Humanae* ground their respective religious liberty rights in the natural law obligation of man to seek the truth about God. For Vitoria, the fulfillment of this natural law obligation requires that human beings be free to preach religious truth and to embrace this truth once it is heard. In much the same way, *Dignitatis Humanae* argues that the natural law obligation to seek religious truth requires for its fulfillment liberty to preach and practice one's religious beliefs. Both Vitoria and the declaration, in other words, see some degree of religious liberty as necessary for the fulfillment of the natural law obligation to seek the truth about God and hence conclude that such liberty is a right established by natural law, differing, as we will see, only in the degree of liberty they believe is required for the fulfillment of this natural law obligation. Contrary to the scholarly literature, it is the identical structure of their respective arguments for a right to religious liberty (i.e., the grounding of this right in man's duty to seek religious truth) that establishes Vitoria as a notable scholastic antecedent to *Dignitatis Humanae* and thus establishes that the declaration has important roots in the Catholic scholastic tradition.

Methodologically, I will proceed by first examining *Dignitatis Humanae*'s understanding of the natural right to religious liberty, showing that the document grounds this right in the natural law obligation of the human person to seek the truth about God. I will then explain the similarities and differences between Vitoria's understanding of religious freedom and that of *Dignitatis Humanae*, showing that Vitoria's argument for a natural right to freely preach religious truth and to accept it once discovered is identical in structure to *Dignitatis Humanae*'s argument for a right to religious freedom, even if the two sources differ in their respective understandings of the scope of the religious liberty right implied by natural law. Finally, I will conclude by showing that the similarities between the two sources—which are more fundamental than the differences—establish that *Dignitatis Humanae*'s teaching on religious liberty is not wholly alien to, but rather rooted in, the scholastic theological and philosophical tradition.

1. THE NATURAL RIGHT TO RELIGIOUS LIBERTY IN *DIGNITATIS HUMANAЕ*

Let us begin by considering *Dignitatis Humanae*'s conception of, and argument for, the right to religious liberty. The declaration argues for the existence of a such a right in two ways, one philosophical and one theological.

The document portrays the theological argument as secondary, that is to say, as simply confirming the philosophical argument, and the document's teaching is thus ultimately based on the philosophical argument. *Dignitatis Humanae* acknowledges that Christian revelation does not explicitly affirm a right to religious liberty,⁷ but it adduces certain themes present in revelation that “cast light upon” the “general [philosophical] principles upon which the doctrine of this declaration on religious freedom is based”—themes such as the freedom of the act of faith and Christ's demonstration of respect for the freedom of his disciples.⁸ As this statement suggests, in the view of the authors of *Dignitatis Humanae*, the right to religious freedom ultimately has a philosophical basis, and though certain Scriptural themes are consonant with and suggestive of a right to religious liberty, they do not explicitly establish such a right. Hence reason more than revelation is the ultimate basis of this right.

The philosophical justification for religious liberty is found earlier in the declaration. The document argues that the natural law obliges human beings to seek the truth about God and order their lives in accordance with it; that such an obligation requires, at least in an age such as ours that prizes freedom,⁹ respect for religious liberty both for individuals and social groups; and hence that the state, which is bound to respect the requirements and precepts of the natural law, has an obligation to legally recognize a right to religious liberty. As the document states:

It is in accordance with their dignity as persons—that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility—that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth, once it is known, and to order their whole lives in accord with the demands of truth. However, men cannot discharge these obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom. Therefore the right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature.¹⁰

7 “Revelation does not indeed affirm in so many words the right of man to immunity from external coercion in matters religious.” Paul VI, Declaration on Religious Freedom *Dignitatis Humanae* (1965), §9 (hereafter *DH*), https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html. Quotations from documents of the Second Vatican Council are taken from the official English translations published by The Holy See.

8 *DH*, §9-10.

9 *DH*, §1.

10 *DH*, §2.

The argument here is that man is “impelled by nature,” which is to say, bound by natural law, to seek the truth about God and to order his life in accordance with it.¹¹ Given that man’s nature is defined by freedom and rationality, he cannot fulfill this natural moral obligation unless he is granted immunity from external coercion in religious matters, and hence a right to such immunity is to be incorporated into civil law.¹² In other words, a right to religious freedom follows as a corollary from the natural law obligation to seek religious truth and to order our lives in accordance with it inasmuch as this obligation, at least in our time, requires such liberty as a condition for its fulfillment. As the third paragraph, summarizing this argument, explains, “every man has the duty, and therefore the right, to seek the truth in matters religious.”¹³

The scope of the immunity from coercion that *Dignitatis Humanae* contemplates as necessary for a free, rational being’s fulfillment of his natural law obligation to seek religious truth is quite broad. As the declaration explains, individuals cannot be forced to act against, or be restrained from acting in accordance with, their consciences in religious matters.¹⁴ Hence laws punishing heresy or apostasy, for example, would violate the religious freedom required by the natural law obligation to seek religious truth. Further, individuals must have the ability to give external expression to their religious beliefs, and as such laws restricting the public dissemination of religious beliefs likewise violate the right to religious freedom.¹⁵ Moreover, as the document explains, religious liberty extends not only to individuals but also to groups. This is because man has a social nature, and such a fact entails that the fulfillment of his natural law obligations to search for religious truth occurs in community.¹⁶ Hence, organized religious groups possess similar liberties to individuals. They can, for example,

11 The inclinations of nature, according as they are regulated by reason, furnish the precepts of natural law, and to say that we are “impelled” (or, equivalently, inclined) by nature to seek the truth about God implies that it is a good we ought to pursue. See Thomas Aquinas, *Summa theologiae*, trans. Fathers of the English Dominican Province (New York: Benziger Brothers, 1947-1948), I-II, q. 94, a. 2 (hereafter *ST*).

12 *DH*, §2. “This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right.” Presupposed here is the claim that the state is bound by, and therefore must respect, natural law.

13 *DH*, §3. That man has a natural law obligation to seek religious truth is not a novel teaching. It was, for example, explicitly formulated by Aquinas, though Aquinas himself does not extrapolate any right to religious liberty for individuals or even for the Church from this obligation. See *ST* I-II, q. 94, a. 2.

14 *DH*, §3.

15 *DH*, §3.

16 *DH*, §4.

freely teach and witness to their faith, govern themselves internally, and establish educational and charitable endeavors, among numerous other freedoms.¹⁷

The document is clear that such freedoms are due to individuals and groups even when they “do not live up to their obligation of seeking the truth and adhering to it.”¹⁸ In other words, it is not only the true religion that possesses a right to religious liberty; erroneous forms of religion do as well, and the ultimate reason why is that, for a rational and free creature, governmental coercion of such groups for specifically religious reasons makes it less likely that they will ultimately be able to find religious truth (that is to say, in the words of the declaration, “discharge these [natural law] obligations [to seek the truth about God]”).¹⁹ Coercion of such individuals in the name of promoting the Catholic faith might, for example, make them resentful of the Church and hence less likely to find religious truth. The only limit that the document allows states to impose on religious liberty is what is necessary for “just public order,” which the document defines strictly as preservation of other citizens’ rights, public peace, and guardianship of public morality.²⁰ In summary, *Dignitatis Humanae* philosophically establishes a broad right to religious liberty by arguing that such liberty is necessary for the fulfillment of man’s natural law obligation to seek the truth about God, for which reason states must respect it. It is a right that flows from natural law, and as such it can properly be called a natural right.

2. RELIGIOUS LIBERTY IN FRANCISCO DE VITORIA

Some four centuries prior to *Dignitatis Humanae*, Francisco de Vitoria had already appealed to man’s natural law obligation to seek the truth about God in order to deduce a natural right to religious liberty, a right which consists specifically in the freedom to preach religious truth and to accept it once heard.

17 *DH*, §4.

18 *DH*, §2.

19 *DH*, §2.

20 *DH*, §3, §7. John Lamont and Thomas Storek have argued that “just public order” encompasses the practice of true religion for its own sake, concluding that *Dignitatis Humanae* thus allows the state to limit non-Catholic religious liberty in the name of promoting adherence to the true religion. Citing *relationes* of the Council, Thomas Pink has persuasively critiqued such an interpretation as a misunderstanding of the document’s conception of public order, which does not in fact include the propagation of religious truth for its own sake. See John R.T. Lamont, “Catholic Teaching on Religion and the State,” *New Blackfriars* 96 (2015): 691-695; Thomas Storek, *Foundations of a Catholic Political Order*, 2nd ed. (Waterloo, Ontario: Arouca Press, 2022), 36-41, 45; Thomas Pink, “*Dignitatis Humanae*: Continuity after Leo XIII,” in *Dignitatis Humanae Colloquium: Dialogos Institute Proceedings*, vol. 1 (Dialogos Institute, 2017), 113.

In this section, I will examine the similarities and differences between Vitoria's understanding of religious liberty and that of *Dignitatis Humanae*, showing that the identical structure of their respective arguments for a religious freedom right is more fundamental than their divergent conceptions of the scope of this right—a fact that establishes the Spanish Dominican as an important scholastic antecedent to *Dignitatis Humanae*'s teaching.

The principal text in which Vitoria's argument for a right to liberty in religious matters emerges is his 1539 *Relectio de Indis* (*Relectio* on the Indians), the work for which he is best known today. In the context of evaluating potential justifications for Spanish conquest of the Americas, such as whether the Native American peoples could be conquered for refusing to allow the Church to preach the Gospel to them, Vitoria claims that the Native Americans are “bound to listen to and carefully consider” what someone else may have to say to them about “things pertaining to religion.”²¹ This is because the beliefs of the Native Americans contain the “gravest errors” and cannot have any “convincing or probable reasons” in support of them—that is to say, because their beliefs are contrary to reason and can be demonstrated by natural reason to be false.²² The argument Vitoria is making in these lines is that the Native Americans have an obligation to replace their false religious beliefs with true religious beliefs (in other words, to seek religious truth) and, as such, they are bound to listen to the preaching of others. The duty to seek religious truth thus grounds the Native Americans' obligation to give a hearing to religious preaching. There is no reason, moreover, to think that this obligation is limited only to Native Americans; indeed, as we will see below, in other texts Vitoria notes that it binds more than just the Native Americans.²³ Now, to say that human beings are bound to listen to the religious preaching of others implies that the latter have a *right* to preach, and the obligation to seek the truth about God thus grounds a religious liberty right to

21 “Illi habent gravissimos errores de quibus non habent rationes verisimiles aut probabiles. Ergo si quis admoneat eos ut audiant ac deliberent de rebus spectantibus ad religionem, tenentur saltem audire et consultare.” Francisco de Vitoria, *Relectio de Indis*, in *Obras de Francisco de Vitoria: Relecciones Teologicas*, ed. Teófilo Urdániz O.P. (Madrid: Biblioteca de Autores Cristianos, 1960), §12, 694 (hereafter *De Indis*). Except where otherwise noted, translations of Vitoria are my own from the Latin edition cited.

22 For the quotation, see note 21 above. Presumably, this is because their beliefs are polytheistic. According to Vitoria, reason can prove that God is one, that He created the world and conserves it in being, that He exercises providence over it, that He rewards those who seek him, and that He possesses supreme dominion over creation (and hence is omnipotent). A religion that would deny any of these propositions is thus demonstrably false, and adhering to it would be contrary to reason. See Francisco de Vitoria, *Relectio de potestate Ecclesiae prior*, in *Obras de Francisco de Vitoria: Relecciones Teologicas*, ed. Urdániz, q. 3, §3, 276; Francisco de Vitoria, *Comentarios a la Secunda Secundae de Santo Tomás*, ed. Vicente Beltrán de Heredia, vol. 4 (Salamanca: Biblioteca de Teólogos Españoles, 1932), q. 85, a. 4, 301 (hereafter *Comentarios a la Secunda Secundae*).

23 See note 25 below.

preach about religious matters. This right cannot be abrogated even by civil authority, something which Vitoria himself realizes. As he argues, were Native American communities to deny the Church the right to preach religious doctrine to them, such an action would be grounds for a just war against them.²⁴

To grasp the continuity between Vitoria and *Dignitatis Humanae*, it is crucial to observe that for the Spanish Dominican the obligation to seek religious truth which grounds the religious liberty right to preach is an obligation of *natural* law. In the *De Indis* passage cited above, Vitoria clearly envisages unaided natural reason—not just Christian revelation—as obliging the Native Americans to seek religious truth by listening to the religious preaching of others. This is evident from the fact that in the passage he clearly assumes that the Native Americans can and should grasp *prior to hearing Christian preaching* that they are morally bound to seek religious truth by giving a hearing to the religious preaching of Christian missionaries. That is to say, not yet having heard the Christian message (and hence not yet knowing of duties that arise solely from revelation), the Native Americans are still, Vitoria thinks, bound to seek religious truth by listening to religious preaching. It must therefore be unaided natural reason, not just revelation, that lays this duty upon them and other human beings. This point is confirmed in another of Vitoria's texts, his 1535 *Relectio de eo ad quod tenetur homo cum primum venit ad usum rationis* (*Relectio* on that to which man is bound when he first comes to the use of reason). In the work, Vitoria writes that, before the advent of Christian revelation, there were never lacking “philosophers and wise men” who taught that there is one God, and those who worshipped multiple deities were “rationally bound” to believe the monotheism taught by these wise men given the falsity of their own polytheistic beliefs.²⁵ In other words, independently of revelation—that is to say, by unaided natural reason—man finds himself obliged to seek religious truth and to give a hearing to those who preach it.

For Vitoria, to say that unaided natural reason prescribes that man seek religious truth is to say that it is natural law that imposes this obligation on the human person. As Vitoria explains in his commentary on the *Prima secundae* of Aquinas's *Summa theologiae*, the precepts of the *lex naturalis* are precisely those

24 Vitoria, *De Indis*, §12, 717. For discussion of the role of the right to preach in scholastic justifications of Spain's conquest of the Native Americans, see Daniel S. Allemann, “Empire and the Right to Preach the Gospel in the School of Salamanca, 1535-1560,” *The Historical Journal* 62.1 (2019): 35-55.

25 “Nunquam videntur defuisse philosophi et viri sapientes, qui unitatem veri Dei affirmarent et docerent [...] et alii tenebantur rationabiliter illis credere.” Francisco de Vitoria, *Relectio de eo ad quod tenetur homo cum primum venit ad usum rationis*, in *Obras de Vitoria: Relecciones Teologicas*, ed. Urdánoz, §4, 1337.

things that right understanding or practical reason (that is to say, practical reason operating in accordance with our true natural inclinations) prescribes that we do or avoid doing.²⁶ Hence, Vitoria's claim that *reason* obliges man to seek religious truth amounts to the claim that man is under a natural law duty to seek this truth. It is, therefore, natural law that ultimately grounds the right to preach religious truth. Specifically, this right follows from man's natural law duty to seek the truth about God since religious preaching is necessary if human beings are to be able to seek religious truth.

In Vitoria's view, moreover, the religious liberty implied by the natural law obligation to seek religious truth includes more than just the right of certain persons or organizations to preach doctrine. It also includes the freedom of individuals to embrace religious truth once it is proclaimed. That is to say, if individuals are to be able to seek religious truth, they must be free to accept it. This is clear from the fact that Vitoria maintains that if the civil authority in Native American communities were to deny any of its members the freedom to convert to Christianity, this would be grounds for a just war against the offending Native American tribe.²⁷ The religious liberty which in Vitoria's view is required if individuals are to be able to fulfill their natural law obligation to seek religious truth thus includes more than the freedom to preach; it includes also the freedom of human beings to order their lives in accordance with religious truth by accepting it and following its demands. For Vitoria, the right to religious liberty thus extends to both proclaiming religious truth and accepting it.²⁸

26 Francisco de Vitoria, *On Law (Lectioes in ST I-II.90-105 De lege)*, in *Vitoria: Political Writings*, eds. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991), §123, q. 94, a. 2, 170-171.

27 Vitoria, *De Indis*, §12, 717.

28 The right to religious liberty that follows according to Vitoria from the natural law obligation to seek the truth about God does not, however, include immunity from forced conversion. It is true that, as scholars such as Sison, Redín, Hernández, and Soto observe, Vitoria does in *De Indis* argue that it would be unjust for Spain to wage war on the Native Americans to force them to convert. However, in his commentary on Aquinas's *Secunda secundae*, Vitoria argues that it is only unjust to forcibly convert unbaptized persons when they are not already political subjects of the Catholic ruler; by contrast, unbaptized persons subject to Catholic rulers can be forced to convert so long as there is no risk of causing scandal (which, however, he thinks there often is). It would thus seem that the Native Americans' immunity from forced conversion is not part of the religious liberty right that follows from man's natural law obligation towards religious truth but rather simply the result of Spain's lack of jurisdiction over them. Vitoria's acceptance of forcible conversion of unbaptized subjects, moreover, appears to be a divergence from Aquinas's view, according to which unbelievers who have never received the faith cannot be forcibly converted since faith involves a free act of the will. See Vitoria, *De Indis*, §15, 695; Vitoria, *Comentarios a la Secunda Secundae*, vol. 1, q. 10, a. 8, §3-13, 191-196; Sison and Redín, "Francisco de Vitoria on the Right to Free Trade and Justice," 633; Hernández, "Los derechos humanos en Francisco de Vitoria," 50; Soto, "Alcance de la defensa de los derechos humanos en Francisco de Vitoria," 203, 208.

The structural similarity between Vitoria's argument for religious freedom and that of *Dignitatis Humanae* is manifest. For both Vitoria and the authors of the Vatican II declaration, religious freedom is rooted in the natural law obligation to seek religious truth. Inasmuch as certain activities are necessary for individuals to carry out this obligation, human beings have a right to perform them—a right that cannot as a general rule be abridged by the state. The right in question, moreover, since it follows from man's obligation under the *lex naturalis* to seek the truth about God, can therefore be called a natural right. In summary, then, Vitoria and *Dignitatis Humanae* have a structurally identical argument for religious liberty, deriving a right to liberty in religious matters specifically from our natural law obligation to seek religious truth.

Notwithstanding the shared structure of the two sources' arguments for religious liberty, there are undeniably certain differences in their conceptions of it, and assessing the relationship between Vitoria and *Dignitatis Humanae* involves taking these differences into account. Ultimately, there are two key differences that distinguish Vitoria's understanding of religious liberty from that of the Second Vatican Council, both of which concern the scope of the right to freedom of religion. The first difference regards the scope of the activities protected by the religious liberty right. Vitoria only explicitly includes the preaching of religious truth and the acceptance of this truth through conversion as activities included within the scope of the right to religious liberty afforded by the natural law obligation towards religious truth. By contrast, as we have seen, the range of activities protected by the right to religious freedom in the view of *Dignitatis Humanae* is much broader, extending to matters of internal self-governance by religious bodies, the acquisition of property suitable for constructing houses of worship, the establishment of educational and charitable institutions, and the prerogative of parents to instruct children in their own religion, among many other activities.²⁹ It is, of course, possible that Vitoria might agree with the drafters of *Dignitatis Humanae* that the right to religious liberty following from the obligation to seek the truth about God does include such activities, for he does not explicitly state that the religious liberty right includes only preaching and conversion. Indeed, it is quite possible that Vitoria's silence about protected religious activities beyond preaching and conversion is simply a result of the fact that his discussion of religious liberty is auxiliary to his broader discussion of Spain's conquest of the Americas and is not intended as a

29 *DH*, §4-5.

comprehensive treatment of human freedom in religious matters. Nevertheless, the fact that Vitoria explicitly includes fewer activities under the right to religious freedom is a difference between his understanding of *libertas religiosa* and that of *Dignitatis Humanae*.

The more significant difference between the two sources' views of the scope of the religious liberty right is that for Vitoria not everyone possesses this right, whereas in the understanding of *Dignitatis Humanae* it is possessed by all human beings. In other words, the range of persons to whom the right to religious freedom applies is narrower for Vitoria than it is for the Vatican II declaration. The restriction of the applicability of religious liberty for Vitoria is evident, for example, in his commentary on the *Secunda secundae* of Aquinas's *Summa theologiae*. We have already seen this in the passage of the work treating forced conversion of the unbaptized, a practice which Vitoria accepts so long as the unbaptized persons in question are political subjects of the coercing ruler and so long as the attempt to forcibly convert them does not cause scandal.³⁰ It is just as evident, though, in the commentary's treatment of toleration of those who espouse heresy.³¹ Discussing Aquinas's article on whether heretics should be tolerated, Vitoria argues that, if heretics can be punished with temporal sanctions without harming the common good or the faith of Catholic subjects, then they should be so punished.³² This is principally because heretics desire to "turn us away from God," and hence their punishment—up to and including death—is beneficial.³³ Obviously, if heretics can be executed on account of their heresy, they do not enjoy a natural right to preach or follow their own chosen religious beliefs, and thus the right to religious liberty arising from the duty to seek the truth about God does not, as Vitoria understands it, apply to them.

As Vitoria suggests in the passage, the reason why heretics do not possess a right to religious liberty is because they "turn us away from God"—that is to say, because they propagate false religious doctrine. For Vitoria, it is therefore the truth or falsity of a religious belief that determines whether a person has the right to preach or adopt it. One has a right to preach and to accept true religious beliefs, but one does not have a right to preach or accept false religious beliefs. Given

30 See note 28 above.

31 Vitoria defines a heretic as one who, after having received the faith and assented to its articles, denies some specific article or articles of faith. See Vitoria, *Comentarios a la Secunda Secundae*, vol. 1, q. 10, a. 5, §4, 185-186.

32 Vitoria, *Comentarios a la Secunda Secundae*, vol. 1, q. 11, a. 3, §2, 223.

33 "Sed haeretici volunt nos avertere a Deo. Ergo possunt comburi; et optima est lex quae illud praecepit." Vitoria, *Comentarios a la Secunda Secundae*, vol. 1, q. 11, a. 3, §2, 223.

that for Vitoria Catholicism is the true religion, religious liberty would thus in his view apply preeminently to Catholics. However, it would be a mistake to conclude that in his account only Catholics could ever possess religious liberty rights. As we have seen, Vitoria explicitly argues that ancient polytheists were obliged by natural law to listen to the preaching of monotheistic philosophers and hence that monotheistic philosophers had a natural law right to preach their monotheism.³⁴ Such a claim establishes that at least some non-Christians can have the right to preach and accept religious doctrines that are not uniquely Christian so long as those doctrines are true. Nevertheless, such a concession does not change the fact that for Vitoria religious liberty protections apply only to true religious views and their holders; his ultimate position is that the natural law obligation to seek the truth about God confers on human beings a right to preach and embrace true religious views but not false ones.

Dignitatis Humanae takes a different approach to the question of which persons or groups of persons possess a right to religious liberty. In contrast to Vitoria, the declaration explicitly extends religious freedom protections to those who hold erroneous religious beliefs, and as a general matter it protects the performance of the same religious activities by such persons (including the right to preach, notwithstanding the erroneous content of such preaching) as it does the performance of such activities by Catholics. As the declaration states, “The right to this immunity [i.e., the right to religious liberty] continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it”—that is to say, even in those who hold false religious beliefs.³⁵ The ultimate reason why this is the case is that human beings cannot “discharge” or fulfill their natural law obligation to seek religious truth if they are subject to state coercion in religious matters.³⁶ In other words, the declaration’s view is that, at least in the modern age, human beings are effectively unable to seek the truth about God pursuant to their duty under natural law if the state engages in religious coercion, for in an age such as ours—characterized as it is by an intellectual climate that values freedom and acting on one’s own initiative in religious matters³⁷—forcibly suppressing erroneous religion in the name of promoting Catholicism as the true

34 See note 25 above.

35 *DH*, §2. Again, however, such persons’ right to religious liberty can be curtailed when necessary for the preservation of just public order. See *DH*, §4, §7.

36 *DH*, §2.

37 *DH*, §1. “A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man, and the demand is increasingly made that men should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty...This Vatican Council takes careful note of these desires in the minds of men.”

faith will cause scandal and ultimately make it less likely that men and women find the truth about God (which Catholicism alone contains in its fullness).³⁸ Thus, the religious liberty right that follows from man's obligation to seek religious truth is possessed even by those who hold erroneous religious views, since suppressing their errors would have the effect of turning them away from the truth about God.³⁹

The divergence between Vitoria and *Dignitatis Humanae* on the question of who possesses a right to religious liberty is real and meaningful, but it should not obscure the deeper continuity between their views on religious freedom. Underlying the divergence between the Spanish Dominican and the Second Vatican Council on the scope of the religious liberty right is a more fundamental agreement on the claim that there is a right to religious liberty of some kind that follows from a natural law obligation incumbent on man to seek the truth about religious matters. On the primary question of whether the natural law duty towards religious truth implies a right to religious freedom, Vitoria and *Dignitatis Humanae* are in complete agreement, providing arguments for a right to *libertas religiosa* that share the same conceptual structure—namely, the inference from a natural obligation to seek religious truth of a liberty right to the activities and conditions required to meet this obligation. Their disagreement regards only the secondary question of what conditions are in fact required to meet this obligation and hence what the scope of the human person's right to religious freedom is in practice.

CONCLUSION

The fundamental continuity between Vitoria's right to preach religious doctrine and accept religious truth and *Dignitatis Humanae*'s right to religious freedom establishes that Vitoria is an important scholastic antecedent to the

38 For a Vatican II statement on Catholicism as the fullness of religious truth, see Paul VI, Dogmatic Constitution on the Church *Lumen Gentium* (1964) §4: "The Church, *which the Spirit guides in the way of all truth*," [emphasis added]. https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_1964121_lumen-gentium_en.html

39 Though it is not explicitly stated, Vitoria's position, in contrast with that of *Dignitatis Humanae*, assumes that only the protection of true religious belief is necessary for individuals to carry out their natural law obligation. As we have seen, his position is that those things which are protected by the right to religious liberty arising from the natural law obligation to seek the truth about God are precisely all those things that are necessary for fulfilling this obligation. Hence, if something is not protected by the right to religious liberty (for instance, the preaching of or adherence to religious error), then it is not necessary for the fulfillment of the human person's natural law duty to seek religious truth.

Second Vatican Council's declaration. In deducing a religious liberty right from the natural law obligation incumbent on the human person to seek the truth in religious matters, the Council Fathers were treading an intellectual path forged by Francisco de Vitoria centuries earlier, even if they did not necessarily agree with the Spanish Dominican as to the scope of religious liberty. This is not to say that they were necessarily aware that their position had been anticipated by Vitoria or that they knowingly borrowed it from him. On the contrary, this was most likely not the case. Neither the final text of *Dignitatis Humanae* nor any of the five earlier drafts of the document cite the Spanish Dominican explicitly.⁴⁰ Further, a search of the entire *Acta Synodalia* of Vatican II reveals just a handful of references to Vitoria by the Council Fathers, only one of which occurs in the context of discussion of *Dignitatis Humanae*. That citation simply references Vitoria as an important expositor of the *ius gentium* and does not suggest that he was a source for *Dignitatis Humanae*'s argument for religious liberty from man's obligation to seek the truth about God.⁴¹ Indeed, neither, for that matter, does the declaration cite any other scholastic authors as direct sources of its philosophical argument for religious liberty. Thus, so far as the Council Fathers seem to have been aware, this specific argument was novel and original to them. Yet the fact that their argument was anticipated by Vitoria suggests that *Dignitatis Humanae*'s teaching on religious freedom, even if new in respect of the scope of religious freedom, has meaningful roots in the scholastic theological and philosophical tradition and that it cannot therefore be regarded as entirely alien to that tradition.

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40 For the text of the five draft schemas, see "The Five Conciliar Schemas," trans. Patrick T. Brennan, S.J., and Michael Camacho, in Schindler and Healy, *Freedom, Truth, and Human Dignity*, 244-379.

41 The citation is found in a written comment on a working draft of the declaration submitted by the Portuguese bishop António Ferreira Gomes between the third and fourth sessions of the Council. See *Acta Synodalia*, vol. IV, part I, 742. The second reference to Vitoria in the *Acta Synodalia* was made by the Cardinal Archbishop of Buenos Aires Antonio Caggiano in an entirely unrelated context, namely in a discussion of the role of Aquinas in modern priestly formation. See *Acta Synodalia*, vol. III, part VIII, 15.

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