

Francisco De Vitoria on the Nature and Source of Civil Authority

Thomas M. Osborne Jr.

Abstract: Readers have found at least two distinct and perhaps contradictory accounts of civil authority in the works of Francisco de Vitoria, and some hold that Vitoria himself holds contradictory positions. This article argues that Vitoria holds one consistent position, namely, that civil power is based on a necessity that is rooted in human nature, and in particular on the final cause of human life, and not on a necessity that is a result of any historical decision or process on its own. Rulers receive from the community their authority, which is a power to act on behalf of that community. Scholars have failed to consider how Vitoria's understanding of civil power is Aristotelian and Thomistic to the extent that it is based on the thesis that the political community is natural in a way similar to how families and individuals are natural.

Francisco de Vitoria's political thought has had enormous influence owing to his roles as the founder of Spanish Thomistic revival in the sixteenth century, an advisor to the king of Spain and Emperor Charles V, a defender of the Native Americans, and a contributor to international and commercial law in the context of the Spanish conquest of the Americas. His absence from some standard accounts of political philosophy may be the result of a failure to understand the consistency and depth of his thought. For example, contemporary scholars have found at least two distinct and perhaps contradictory accounts of civil power in his works, namely, that political authority is based on consent and that it is natural.

Annabel Brett connects the distinct strands of Vitoria's thought on political authority with the view she attributes to Vitoria, that there are two kinds of subjective right.¹ One kind, which involves the freedom to act, is part of

Thomas M. Osborne, Jr. is professor of philosophy at the University of St. Thomas, 3800 Montrose Blvd., Houston, Texas, USA 77006 (osborntm@stthom.edu)

Thanks to those who provided comments on and questions about material from this paper which I presented at the Institute of State and Law (Prague, Czech Republic) and the Catholic University of America (Washington, DC), and to the anonymous referees of this journal for their suggestions.

¹Annabel Brett, *Liberty, Right, and Nature: Individual Rights in Later Scholastic Thought* (Cambridge: Cambridge University Press, 1997), 124–37.

Vitoria's politics of consent. Another kind of subjective right, which is based on law, is part of Vitoria's distinct view that political authority is based on natural necessity. Brian Tierney thinks that Vitoria uneasily combines a traditional account of subjective rights with Thomas's account of objective rights.² He holds that Vitoria finds two and perhaps even three possibly incompatible sources of political authority in human institution or choice, human nature, and God.³ Tierney does not distinguish between different notions of subjective right in the way that Brett does. Nevertheless, he similarly connects Vitoria's account of subjective right as a power or faculty with the position that political authority comes from human institution. As we will see, it is not clear that Brett's distinction between kinds of subjective rights or Tierney's distinction between objective and subjective rights is significant for Vitoria's account of political authority.

Brett and Tierney are not the only scholars to separate Vitoria's view that political authority is founded on consent from his view that it is natural. For example, Andres Alves thinks that Scholastic authors generally hold that the exercise of political authority depends on some sort of social contract, and that Vitoria thinks that "the commonwealth delegates to the political authorities the authority to legislate."⁴ Alves and Jose Moreira separate this approach from alternative accounts that are based on human nature. According to them, "Political society does not derive directly from the social inclinations of man. Rather, the emergence of the state is explained by historical circumstances and not rooted directly in natural law."⁵ Although they correctly point to Vitoria's position that it is natural to have some regime even though no particular regime is natural, they do not explain the way in which Vitoria's account of political authority depends on his view of human nature.

In general, scholars have failed to consider how Vitoria's understanding of political authority is Aristotelian and Thomistic to the extent that it is based on the thesis that the political community is natural in a way similar to how families and individuals are natural. Vitoria develops his views in the context of this previous Aristotelian tradition. By recognizing both what he owes to his predecessors and how he builds on their thought, we can see that Vitoria holds one consistent position on the roots of civil power. I argue that for Vitoria, civil power is not ultimately based on a necessity

²Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law, 1140–1625* (Atlanta, GA: Scholars, 1997), 256–65.

³Tierney, *Idea of Natural Rights*, 291–95.

⁴André Alves, "Vitoria, the Common Good and the Limits of Political Power," in *At the Origins of Modernity: Francisco de Vitoria and the Discovery of International Law*, ed. José María Beneyto and Justo Corti Varela (Cham, Switzerland: Springer, 2017), 67. See also André Alves and José Moreira, *The Salamanca School* (New York: Bloomsbury, 2013), 45–51.

⁵Alves and Moreira, *Salamanca School*, 47.

that is a result of any historical decision or process on its own, but instead on a necessity rooted in human nature, and in particular on the final cause of human life. Only this natural necessity can explain why the community's representatives can pass laws that bind the consciences of its members and punish the members when they violate these laws. Civil authority is distinct in kind from any right or power that private individuals have and are able to transfer to someone else. This authority comes from the needs of political society itself, which ultimately is based on the fact that humans are naturally political. I show how according to Vitoria the political community is natural. Second, I explain how the origin of civil power rests on the natural necessity of the final cause. Third, it will be seen how this necessity of the end is compatible with Vitoria's position that civil power has its material cause in the commonwealth as a whole and not in the collection of its members. Fourth, I explain how even though the commonwealth's members might choose a ruler or even a particular political constitution, such a choice as such does not create political power.

1. The "Perfect" or "Complete" Community and Human Nature

According to Aristotle and Thomas Aquinas, there are three natural objects according to which practical philosophy is divided: the individual, the family, and the political community.⁶ This division shows that the family and the political community are objects that unify a science even though they are made of different natural substances. Like the individual, the family and the political community are natural and not merely results of human choice. Humans naturally live in such communities, which have a unity of order. On account of these distinct objects, moral philosophy is divided into monastic ethics (*monastica*), economics or household ethics (*oconomica*), and politics (*politica*). This threefold division is not subject to human decision or law. Although the family and the individual can to some extent exist apart from the political community, the political community is in a way prior, since individuals and families flourish only as part of the larger political unit. This larger unit is not like a kinship grouping, a sports club, or a business organization created by mutual agreement. It is natural and needed for a humanly happy or full human life, which is the end of human nature. Thomists, following Aristotle, call such a community "perfect" or "complete" (*perfectus*), since it is not a part of some wider whole in the way

⁶Thomas Aquinas, *Sententia libri Ethicorum*, lib. 1, lect. 1, in *Opera Omnia* (Rome: Leonine Commission, 1884–), vol. 47.1, 4–5. See also Francisco de Vitoria, *In I-II*, q. 90, art. 3, in *Comentario al Tratado de la Ley*, ed. Vicente Beltrán de Heredia (Madrid: Consejo Superior de Investigaciones Científica, 1952), 13–14; translation in Francisco de Vitoria, *Political Writings*, ed. and trans. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991), 158. Unless otherwise indicated, I cite the edition of Pagden and Lawrance.

that a family or an individual is. It is complete or perfect because it provides what is needed for achieving those goals or ends that are proportionate to human nature.

Vitoria follows Thomas and Aristotle in describing the perfect or complete community as self-sufficient and necessary for living well.⁷ He describes such a community as a commonwealth (*respublica*), even if it is a monarchy.

The commonwealth [*respublica*] is, properly speaking, a perfect community [*perfecta communitas*]; but this too needs clarification. . . . A “perfect” thing is one in which nothing is lacking, just as an “imperfect” thing is one in which something is lacking: “perfect” means, then, “complete in itself.” A perfect community or commonwealth is therefore. . . . complete in itself; that is, one which is not part of another commonwealth, but has its own laws, its own independent policy, and its own magistrates.⁸

Vitoria thinks that humans naturally belong to complete and historically distinct political units. It belongs to human nature to have laws, policies, and regimes, even though it does not determine which kinds.

Like Thomas, Vitoria accepts Aristotle’s division between three kinds of just government according to the number of authorities who rule for the common good: by the people (“timocracy” according to Vitoria’s commentary), by the few (aristocracy), and by one (monarchy).⁹ These three forms have three unjust forms of government: democracy, oligarchy, and tyranny. Unlike Thomas, who applies the term “democracy” to a just rule by the people, Vitoria follows Aristotle in reserving the term “timocracy” for the just form, and “democracy” for the corrupt form.¹⁰ Despite the difference in terminology, Aristotle, Thomas, and Vitoria all maintain the existence of only six regimes, based on whether the rule is by one, a few, or many, and on whether the rule is just or unjust.

⁷Aristotle, *Politics* 1.2 1252a24–1253a39; Thomas Aquinas, *Sententia libri Politicorum*, loc. cit., in *Opera*, vol. 48, A 73–A 80; *ST I-II*, q. 90, art. 2, resp. For Vitoria’s understanding of the perfect community, see Aemilius Naszalyi, *Doctrina Francisci de Vitoria de Statu* (Rome: Scuola Salesiana, 1937), 107–24. It seems to me that Georg Cavallar, *The Rights of Strangers: Theories of International Hospitality, the Global Community, and Political Justice since Vitoria* (Aldershot: Ashgate, 2002), 104–7, minimizes the ways in which according to Vitoria commonwealths are independent and sovereign.

⁸Francisco de Vitoria, *On the Law of War*, q. 1, art. 2, in *Relectio de iure belli; o, Paz dinámica*, Corpus Hispanorum de Pace 5, ed. Luciano Pereña et al. (Madrid: Consejo Superior de Investigaciones Científicas, 1981), 118 (Pagden/Lawrance, 301).

⁹Vitoria, *In I-II*, q. 105, art. 1 (Heredia, *Tratado*, 80; Pagden/Lawrance, 197). See also Thomas, *ST I-II*, q. 105, art. 1, resp.; Aristotle, *Nicomachean Ethics* 8.10; *Politics* 3.7.

¹⁰Pagden/Lawrance, 19n43.

The order to the common good is essential to the just regime and just laws.¹¹ Justice, considered as a general virtue, is concerned with the ordering of acts of each of the virtues to this political common good. As Thomas writes:

everything which is contained under a community is compared to the community as a part to the whole. But the part is that which belongs to the whole; hence any good of the part is orderable to the good of the whole. Therefore according to this the good of any virtue, whether ordering someone to himself or ordering him to some other singular person, is referable to the common good, to which justice orders. And according to this, the act of each virtue is able to pertain to justice, insofar as it [justice] orders someone to the common good.¹²

Laws that are not directed to the common good are not binding because they are not even true laws.¹³ The relevant common good on the Thomistic account is a shared goal to which the activities of the members are directed. The political common good is living well, or human happiness, which is the purpose of the political community. The common good differs from the individual's good as the whole differs from a part.¹⁴ Individuals are unable to achieve their good of human happiness except as members of a political community.¹⁵

Just rule must be ordered to the common good, whether it is the rule of one, a few, or the multitude. Vitoria continues the widely held Scholastic view that any particular constitution, even a monarchy, in some way requires consent by members of the commonwealth.¹⁶ Nevertheless, political authority does not entirely come from this consent, nor does it consist of the rights which have been granted to it by individuals.

2. How Civil Power Comes from Nature

In *On Civil Power* (*Relectio de potestate civili*, 1528), Vitoria's account of civil power is framed in the context of Aristotle's four causes, namely, the final, the material, the efficient, and the formal.¹⁷ According to this approach, a

¹¹Vitoria, *In I-II*, q. 90, art. 2, q. 92, art. 1 (Heredia, *Tratado*, 13, 20–22; Pagden/Lawrance, 157–58, 164–67). For Vitoria and Thomas on the perfect community and the common good, see my "MacIntyre, Thomism and the Contemporary Common Good," *Analyse & Kritik* 30 (2008): 382–97.

¹²Thomas, *ST II-II*, q. 58, art. 5.

¹³Vitoria, *In I-II*, q. 96, art. 3 (Heredia, *Tratado*, 30–35; Pagden/Lawrance, 173–79).

¹⁴*ST II-II*, q. 58, art. 7, ad 2.

¹⁵*ST II-II*, q. 47, art. 10, ad 2.

¹⁶For the meaning of "consent" in Scholastic political thought, see Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought, 1150–1650* (Cambridge: Cambridge University Press, 1982), 39–42; Jean Dunbabin, "Government," in *The Cambridge History of Medieval Political Thought, c. 350 – c. 1450*, ed. J. H. Burns (Cambridge: Cambridge University Press, 1988), 513–19.

¹⁷Aristotle, *Physics* 2.3.

statue of Pericles might have bronze as its material cause, the shape of Pericles as its formal cause, the sculptor as an efficient cause, and the representation of Pericles or perhaps even the payment as a final cause. Vitoria follows Aristotle's *Metaphysics* in his description of the order in which these causes were discovered.¹⁸ The first philosophers focused on material causes such as earth or water. They wanted to discover what something is made of. While other philosophers studied efficient and formal causes, Aristotle was the first to emphasize the final cause, which explains all the other causes.

In his discussion of the necessity that gives rise to civil power, Vitoria distinguishes between the necessity of material causes and the necessity of the final cause.¹⁹ Material causes by themselves cannot fully explain the necessity of an effect. For instance, someone might explain that bones are inside the body and covered by flesh by appealing to the heaviness of the matter from which the bones are made. Such an explanation is based entirely on material necessity. But the explanation from the end is better. Bones are needed for the end of supporting flesh and limbs.

Vitoria argues that civil power is based on the necessity of the end, and not just on material necessity.²⁰ Whereas Harro Höpfl falsely opposes appeals to final causality and appeals to necessity,²¹ Luis Valenzuela-Vermehren has correctly shown that for Vitoria, human authority is necessary for the sake of the end of human life, which is living well, or happiness.²² The political community is necessary for humans to achieve happiness, and authority is necessary for the existence of a political community. Vitoria cites the poet Lactantius in his first argument for this thesis, which seems to follow Thomas's *De regno* in its focus on the way in which humans lack the basic tools that nature gives to other animals.²³ For instance, by nature weaker animals are able to run quickly in order to flee, and other animals have horns or claws for fighting. No other animals need clothes or tools in the way that humans do. Consequently, human survival itself requires some sort of society that can remedy these deficiencies. Like Thomas, Vitoria also recounts Aristotle's argument that man is a political animal not only on account of his bodily

¹⁸See especially Aristotle, *Metaphysics* 1.7.

¹⁹Francisco Vitoria, *On Civil Power*, q. 1, art. 1, nn. 1–2, in *Obras de Francisco de Vitoria: Relecciones Teológicas*, ed. Teófilo Urdánoz (Madrid: Editorial Católica, 1960), 151–54 (Pagden/Lawrance, 4–6). The Pagden/Lawrance translation departs from the printed texts because it is based on manuscripts and not on a critical edition. It seems to me that Vitoria has in mind Aristotle, *Physics* 2.9; *On the Parts of Animals* 1.1.

²⁰Vitoria, *On Civil Power*, q. 2, art. 2, nn. 3–4 (Urdánoz, 154–57; Pagden/Lawrance, 6–9).

²¹Harro Höpfl, *Jesuit Political Thought* (Cambridge: Cambridge University Press, 2004), 188.

²²Luis Valenzuela-Vermehren, "The Origin and Nature of the State in Francisco de Vitoria's Moral Philosophy," *Ideas y Valores* 62 (2013): 84–93. For the final cause of the state, see Naszalyi, *Doctrina de Statu*, 153–95.

²³Thomas Aquinas, *De regno* 1.1 (Leonine, vol. 42, 449–51).

needs but also on account of his rational nature.²⁴ Unlike other animals, humans possess language, which is necessary for partnership. Vitoria follows a long tradition when he argues that the political community is necessary not only for living, but also for living well. He concludes, “the primitive origin of human cities and commonwealths was not a human invention or contrivance to be numbered among the artefacts of craft, but a device implanted by nature in man for his own safety and survival.”²⁵ He clearly excludes any theory that would base civil power entirely on human decision.

The final cause of human life and human society, which is happiness, requires the existence of a political community, which in turn entails the existence of some authority to direct the commonwealth. Without such an authority everyone would follow his own opinion and the goal of society would be unattainable. “Just as the human body cannot remain healthy unless some ordering force [*uis ordinatrix*] directs the single limbs to act in concert with the others to the greatest good of the whole, so it is with a city in which each individual strives against the other citizens for his own advantage to the neglect of the common good.”²⁶ Consequently, as John Doyle has argued, Vitoria does not base his argument on the fact that a state of nature without civil society would be impractical.²⁷ Instead, he is making a point about what is needed to fulfill human nature. Nevertheless, the need for a political community for basic survival perhaps most clearly points to the necessity of political authority.

Like Thomas,²⁸ Vitoria thinks that the need for authority arises not merely from fallen human nature, but primarily from the way in which society should be ordered. Natural bodies would fall apart without an intrinsic principle that directs the various limbs and organs. Similarly, human society would fall apart without someone to provide the order. This necessity shows that political society is natural and not a result of human choice. Christ’s kingdom also aims at this happiness, but only in a secondary way.²⁹ It is primarily about the salvation of souls. In contrast, political communities are primarily about human peace and happiness, and only secondarily about spiritual salvation.

This need for order also shows that civil authority is legitimate. It is based on the natural law, which is the way in which humans use reason to act to attain ends that are established by nature. Like Thomas, Vitoria thinks that

²⁴Aristotle, *Politics* 1.2 1253a7–18.

²⁵Vitoria, *On Civil Power*, q. 2, art. 2, n. 5 (Urdánoz, 157; Pagden/Lawrance, 9).

²⁶*Ibid.* (Urdánoz, 157; Pagden/Lawrance, 9–10).

²⁷John Doyle, “Vitoria on Choosing to Replace a King,” in *Hispanic Philosophy in the Age of Discovery*, ed. Kevin White (Washington, DC: Catholic University of America Press, 1997), 47.

²⁸Paul Weithman, “Augustine and Aquinas on Original Sin and the Function of Political Authority,” *Journal of the History of Philosophy* 30 (1992): 353–76.

²⁹Vitoria, *On Civil Power*, q. 1, art. 11a (Urdánoz, 172; Pagden/Lawrance, 125).

the final cause is the most important because it is itself a reason or cause for all the other causes.³⁰ It is the end towards which every other cause in some way is directed. The fact that civil power is necessary on account of the final cause of human living entails that civil power is natural in a way that, apart from the family, other human associations are not.

Brett misinterprets this understanding of natural necessity in such a way that it is incompatible with Vitoria's later texts. As we have seen, she thinks that Vitoria has two accounts of political authority, which are based on two distinct notions of "right."

The first is a sense of subjective right which involves the notion of obligation and law: natural right in this sense, the natural right of the *Relectio De potestate civili*, is associated with a politics of nature and necessity. The second sense, wherein right is coincident with *dominium* and bears the sense of liberty and freedom from obligation, is at the base of the politics of free consent and of independent personal authority within the *civitas* which characterizes the commentary on the 2a2ae.³¹

Brett states that Vitoria in *On Civil Power* bases civil power merely on nature, and therefore contradicts the account of his *Commentary on the Secunda Secundae* (1534–1537) of Thomas Aquinas's *Summa Theologiae*, which is based merely on consent. Similarly, Tierney argues that Vitoria in *On Civil Power* holds that political society is natural, whereas in his later work he claims that human beings institute it.³²

Brett and Tierney fail to recognize that Vitoria never abandons his thesis that political authority is necessary for achieving the common good. For example, in his later *Commentary on the Prima Secundae* (1533–1534) of the *Summa Theologiae*, Vitoria emphasizes that the human need for others to survive, which results from human weakness, does not entail that humans congregate together merely in order to survive.³³ He refers to how Aristotle and other philosophers show that the common good is happiness, which consists in the exercise of virtue. Survival is necessary for some such happiness, but survival is for the sake of the happiness of the political community. The Aristotelian and Thomistic argument that humans are political draws upon the way in which humans need each other in a way that other animals do not. But it does not imply that the human community is concerned most of all with mere animal survival. The primacy of the common good explains

³⁰Ibid., q. 2, art. 2, n. 2 (Urdános, 152–54; Pagden/Lawrance, 4–6). See especially Aristotle, *Physics* 2.3 195a21–26, and Thomas, *In Physicorum*, lib. 2, lect. 5 (Leonine, vol. 2, 71).

³¹Brett, *Liberty, Right, and Nature*, 136–37. For a similar interpretation, see Daniel Deckers, *Gerechtigkeit und Recht: Eine historisch-kritische Untersuchung der Gerechtigkeitslehre des Francisco de Vitoria (1483–1546)* (Freiburg/Vienna: Universitäts Verlag/Heider, 1991), 281–86.

³²Tierney, *Idea of Natural Rights*, 290, 295.

³³Vitoria, *In I-II*, q. 92, art. 1 (Heredia, *Tratado*, 20–22; Pagden/Lawrance, 164–67).

why human law binds conscience and why public officials can punish wrongdoers.

Contrary to the interpretations of Brett and Tierney, Vitoria's use of "ius" for subjective rights has little bearing on his understanding of political authority. The establishment of such political authority in general does not depend on or directly involve the surrendering of any subjective rights. In his commentary on the *Secunda Secundae*, Vitoria takes into account several meanings of the term "right" (*ius*), which is also a term for law, and connects only one of them with one meaning of the term "dominium," a Latin term that is difficult to translate and can sometimes indicate political authority.

When discussing right (*ius*), Vitoria observes that the broadest division of right is into (1) the equal that is the object of justice, (2) the science of law, and (3) the law itself. When he distinguishes between right and *dominium*, he notes that in common speech right can mean what is lawful.³⁴ I loosely apply to this latter meaning the contemporary term "subjective right," because it indicates an ability that someone has to do what is commanded or permitted by law.³⁵ Vitoria does not separate this notion of right from its basis in the law itself. He cites Conrad Summenhart (d. 1502) on this right that we could call "subjective." Summenhart, following Jean Gerson, describes it as a "power or faculty fitting to someone according to the laws."³⁶ Vitoria himself notes that this use of the term "power" (*potestas*) is common in scripture and found in the classical author Terence. This sense of "right" seems to correspond to the third sense in the broadest division of "right," insofar as it is used in connection with the lawful. To have such a

³⁴Francisco de Vitoria, *In I-II*, q. 57, art. 1, in *Comentarios a la segunda secunda de Santo Tomás*, vol. 3, *De iustitiae* (qq. 57–66), ed. V. Beltrán de Heredia (Salamanca: Publicaciones de la Asociación Francisco de Vitoria, 1934), 4.

³⁵There are many interpretations of objective and subjective rights in the scholarly literature. For some of the issues, see John Lamont, "In Defence of Villy on Objective Right," in *Truth and Faith in Ethics*, ed. Hayden Ramsay (Exeter: Imprint Academic, 2011), 177–98. For the existence of what some might call "subjective right" in Thomas Aquinas, see Gladden J. Pappin, "Rights, Moral Theology and Politics in Jean Gerson," *History of Political Thought* 36 (2015): 234–61. For an argument that Vitoria's *dominium* is a subjective right, see Deckers, *Gerechtigkeit und Recht*, 166–88.

³⁶"jus est potestas vel facultas conveniens alicui secundum leges." Vitoria, *In I-II*, q. 62, art. 1 (Heredia, *De iustitiae*, 64). For the broader discussion, see 63–65; Virpi Mäkinen, "Dominion Rights: Their Development and Meaning in the History of Human Rights," in *A Companion to Early Modern Spanish Imperial Political and Social Thought*, ed. Jörg Alejandro Tellkamp (Leiden: Brill, 2020), 153–58. For Gerson's understanding of rights and the error of unequivocally attributing to him Tierney's notion of "subjective right," see Pappin, "Rights, Moral Theology and Politics," 241–54. For Gerson and Summenhart on right and dominion, see Jussi Varkemaa, *Conrad Summenhart's Theory of Individual Rights* (Leiden: Brill, 2012), 80–83.

right is merely to be able to act lawfully. For instance, having a right to property allows someone to use it in a way that someone else should not.

Vitoria broadly follows Gerson and Summenhart in his description of how rights are related to *dominium*.³⁷ However, Gerson and Summenhart were not Thomists. In Thomas's writings, "dominium" has a variety of meanings and is perhaps best understood as an analogous term.³⁸ In many contexts it can be translated as "lordship." For example, in its primary meaning, God's *dominium* over creatures is based on his power.³⁹ All creatures are subject to God. In another context, humans have a *dominium* according to which they can use irrational creatures for their own sake, since these lower creatures are ordered to the higher.⁴⁰ In a related sense, *dominium* indicates not only the use of property, but its ownership, which can be transferred in exchange.⁴¹ Humans have *dominium* over other humans in two ways.⁴² First, owing to the condition of humans after the Fall, masters have *dominium* over their slaves or servants. Masters order their slaves or servants to their own good. Second, rulers have *dominium* over their subjects in ordering them towards the common good. This latter *dominium* is based on the social nature of humans and would have been present before and apart from the Fall. The meanings so far discussed all are about some sort of power or authority over inanimate objects or over other humans. In yet another sense, humans, unlike other animals, have *dominium* over their own acts.⁴³

Brett and Tierney may have been misled by the various meanings of the terms "ius" and "dominium." For example, writing on Vitoria's *On the American Indians* (*Relectio de Indis*, 1539), Tierney states that "since, as Vitoria wrote, *dominium* was nothing else but a right, his argument was essentially about rights, and, insofar as he was considering natural *dominium*, about natural rights."⁴⁴ But the terms do not so easily map onto each other. Vitoria's explicit account of *dominium* covers most of the uses that we have seen in Thomas Aquinas. According to Vitoria, there are three distinct meanings of the term.⁴⁵ Most properly it means a relation of superiority, such as of a ruler to the ruled. But second, it can also mean ownership as opposed to

³⁷Valenzuela-Vermehren, "Origin and Nature of the State," 84–89.

³⁸Jaime Brufau Prats, "La noción analógica del 'dominium' en Santo Tomás, Francisco de Vitoria y Domingo de Soto," *Salmanticensis* 4 (1957): 96–126.

³⁹Thomas, *ST I*, q. 13, art. 7, ad 1. For the application to other contexts, see *II-II*, q. 66, art. 1; q. 103, art. 3.

⁴⁰*ST I*, q. 96, art. 1–2.

⁴¹*ST II-II*, q. 78, art. 1.

⁴²*ST I*, q. 96, art. 4.

⁴³*ST I*, q. 96, q. 1, art. 2, resp.

⁴⁴Tierney, *Idea of Natural Rights*, 265. For a similar reading, see Cavallar, *Rights of Strangers*, 80–84.

⁴⁵Vitoria, *In II-II*, q. 62, art. 1 (Heredia, *De iustitiae*, 66–67). Brufau Prats, "Noción analógica del 'dominium,'" 126–29. On Gerson and Summenhart on right and dominion, see Varkemaa, *Conrad Summenhart's Theory*, 80–83.

mere use or possession. The first two meanings are clearly in Thomas Aquinas. Moreover, Vitoria follows Summenhart in using it in a third and improper sense, which is simply as having the power to use something according to the law. He states that his meaning is not recognized by lawyers but can be valuable when considering restitution. It is in this third sense that *dominium* is the same as a sense of right (*ius*) that is an ability to act lawfully.

In Vitoria's usage, the word "ius" has little to do with political *dominium*. He recognizes that "dominium" in its first and proper sense is used for political authority, but when used as a synonym for "ius," it is in a much wider and different sense. The *dominium* that is an ability to act lawfully, which might be described as a subjective right, is not the same kind of *dominium* that a ruler has over his subjects. Vitoria explicitly dissociates right (*ius*) in the meaning of a subjective power from that which is relevant to political authority. Consequently, his account of political authority is not based on a consensual surrendering or transfer of a subjective right that could also be called *dominium*.

Contrary to the claims of Brett and Tierney, Vitoria provides one consistent account of political authority that includes individual subjective rights, consent, and the natural necessity of the political. Humans by nature require a political community and political authority to live well. The natural necessity results from the final cause. His discussion of how political authority rests on the necessity of the end does not mention consent because such consent is not relevant to discussion of how humans by nature are political. Vitoria's understanding of consent is connected to the way in which the commonwealth is a material cause of political power.

3. How Civil Power Comes from the Whole Commonwealth

Like other Scholastics, Vitoria holds that political authority in some way comes from God and like most others he also holds that it comes from the political community itself. As Valenzuela-Vermehren emphasizes, Vitoria accounts for these two diverse origins of civil power by recognizing in them two distinct kinds of causality.⁴⁶ God is the efficient cause of civil power, whereas the commonwealth is its material cause. Consent is relevant in the context of this material cause.

Although Vitoria thinks that all civil power in a way comes from God, he does not endorse anything like the later account of the "divine right of kings." The reason why all civil power comes from God is that God is the efficient cause of nature, and civil power comes from the natural law.⁴⁷ This view consequently excludes any theories that would found civil power on mere

⁴⁶Valenzuela-Vermehren, "Origin and Nature of the State," 93–95.

⁴⁷Vitoria, *On Civil Power*, q. 1, art. 3, n. 6 (Urdánoz, 158–59; Pagden/Lawrance, 10).

human agreement or human law. Civil power comes from God insofar as God creates nature and the natural law. Vitoria's account is incompatible with any attempt to directly base civil power on God's power without passing through nature, as well as with any attempt to base it on merely human agreements or laws.

Since God and the commonwealth are causes of political authority in distinct ways, they do not somehow compete with each other as causes. Both Brett and Tierney provide accounts of Vitoria that are at least to some extent incompatible with my reading. According to Brett, Vitoria introduces God's authority at this point to preserve the ruler from the community's power.⁴⁸ But Vitoria's argument does not require or even explicitly mention any such motive. According to Tierney, Vitoria invokes God as an efficient cause in order to explain why the rulers have an authority that individuals do not.⁴⁹ He states that Vitoria's appeal to divine authority is uncharacteristic and is set aside in his later work. Moreover, Tierney claims that in this passage Vitoria does not distinguish between temporal power, which is usually seen as coming from the community, and the pope's power, which ultimately comes from God. He suggests that Vitoria's account of civil power in this respect differs from that of later contract theorists such as Hugo Grotius (1583–1645) because according to Vitoria the public authority's unique power to punish derives from God and not the individual.⁵⁰ Both Brett and Tierney neglect how Vitoria's thesis that God is the efficient cause of civil power follows immediately from the two theses that (1) political authority is based on nature, and (2) that God is the efficient cause of nature. There is no need for additional motives or premises.

Vitoria states that God efficiently causes the social inclination of man in the same way that he efficiently causes nonrational natures that are inclined to move in one way rather than another.⁵¹ We do not directly appeal to God when we immediately try to explain why a stone moves towards the center of the earth or why fire moves upward. On the other hand, according to Vitoria and the Thomistic tradition, the ultimate explanation of such motion is the nature that is given to the stone or the fire by God. Similarly, Vitoria's appeal to God as an efficient cause of civil power is an appeal to the ultimate efficient cause of human nature: "For this reason Paul teaches us that 'whosoever resisteth the power, resisteth the ordinance of God' (Rom. 13:2)."⁵² Vitoria's civil power is a theory of divine right to the extent that the natural law is ultimately based on the human nature that God has created.

⁴⁸Brett, *Liberty, Right, and Nature*, 136.

⁴⁹Tierney, *Idea of Natural Rights*, 291–93, 295–96.

⁵⁰*Ibid.*, 333–34.

⁵¹Vitoria does not make and does not attribute to Aristotle a clear distinction between "social" and "political." See his *On Civil Power*, q. 1, art. 2, nn. 4–5 (Urdánoz, 154–56; Pagden/Lawrance, 1–10).

⁵²Vitoria, *On Civil Power*, q. 1, art. 3, n. 6 (Urdánoz, 159; Pagden/Lawrance, 11).

Vitoria holds that the whole commonwealth is a material and not an efficient cause of civil power.⁵³ The relevant issue is whether one person or group originally holds the authority, or whether the authority belongs to the whole group and must be invested in rulers. Vitoria seems to give two general arguments for the latter.⁵⁴ His first argument is based on the absence of any natural reason for giving authority to any individual or group of individuals. We have seen the civil power itself is based on natural law on account of the natural needs that humans have as social animals. The natural law consequently indicates that there must be a civil authority. But it does not indicate what kind of political constitution or who should be such an authority. Consequently, the authority itself resides not in a person or group, but in the commonwealth itself that requires the authority.

Vitoria's second argument for the whole commonwealth as a material cause is based on how civil rulers must perform actions that cannot be performed by private citizens. On these issues he largely follows Thomas Aquinas, who emphasizes that political authority is a power to act on behalf of the community. Vitoria's account of public authority reflects the teaching of Thomas Aquinas, as well as the wider Christian medieval political tradition, that public authorities can perform many acts that private persons cannot, such as creating laws, punishing violators of laws, and even executing citizens.⁵⁵ In general, anyone can praise or reward good actions, but only ministers of the law have the authority punish bad actions.⁵⁶ A private person who commits revenge on someone who deserves punishment sins precisely because he lacks the authority.⁵⁷ Similarly, only public officials can execute criminals or wage war.⁵⁸ Thomas does not hold that sinful acts of revenge or killing become licit when performed by an authority. Punishment and just killing are distinct in kind from such sinful acts because of the difference between someone who represents the whole community and someone who does not. Private persons are incapable of performing those kinds of acts.

Vitoria agrees with Thomas that the authority to act in this way, as well as the relevant laws and institutions, belongs not to the civil authority as an individual, but to the whole commonwealth which he represents. The power of the whole community is concentrated in him.⁵⁹ The public official has such authority because it is necessary for human society. He does not represent individuals as such, but the community as a whole. He acts on behalf of

⁵³Ibid., q. 1, art. 4, n. 7 (Urdánóz, 159–61; Pagden/Lawrance, 11–12).

⁵⁴For the persistence of these arguments in Jesuit Scholasticism, see Höpfl, *Jesuit Political Thought*, 204–8.

⁵⁵Thomas, *ST I-II*, q. 96, art. 6, resp.; II-II, q. 60, art. 1, resp.; q. 64, art. 3, resp.

⁵⁶*ST I-II*, q. 92, art. 2, ad 3.

⁵⁷*ST II-II*, q. 108, art. 1.

⁵⁸*ST II-II*, q. 64, art. 3.

⁵⁹For the way in which this power is concentrated, and for the difference from later social contract theories, see Naszalyi, *De Doctrina de Statu*, 200–211.

and for the end of the political community, and not merely on behalf of some or even all individual members.

Tierney argues that Vitoria contradicts himself over whether the ruler's power comes from the community.⁶⁰ For instance, in *On Civil Power*, Vitoria writes that "the commonwealth does not transfer to the sovereign its power, but simply its own authority,"⁶¹ whereas in *On the Power of the Church* (*Relectio de potestate Ecclesiae prior*, 1532) he writes that "all the power of princes comes from the community and commonwealth."⁶² Tierney concludes that Vitoria changed his mind. It seems to me that Tierney is misled by the different uses of the word "power" in different contexts. In the first passage, Vitoria is concerned to show that the community does not divide up or give away its power. Even when a ruler exercises authority, the ultimate power still rests in the community. In the second passage, Vitoria is discussing the ruler's power to act on the community's behalf. Since the political community lacks power in spiritual matters, so do the political rulers. Vitoria does not mean to say that in this context the ruler has obtained power from the community in such a way that his power is separate from and equal to that of the community. Political authority is itself a power to act on the community's behalf. When Vitoria attributes power to rulers, he does not mean to say that power ultimately rests in the rulers in the same way that it rests in the whole community.

The authority to make laws and execute criminals is consequently based not on any human agreement or positive law itself, but on the power that rests in the community. The natural and divine law make political organization and positive law possible. Brett and Tierney misunderstand this issue when they argue that Vitoria accepts Jacques Almain's position that the civil community receives its right to punish internal and external enemies from citizens who have ceded or in some way transferred their own right of self-defense to it.⁶³ According to Brett, "Vitoria employs Almain's argument to the effect that just as every individual man has 'the power and right of self-defence by natural law, since nothing can be more natural than to repel force by force,' so the community or commonwealth has this same power, to the extent of being able to excise limbs which threaten the *salus* of the whole. This power, Vitoria goes on, must then be delegated to a ruler of some description."⁶⁴ However, although Vitoria recognizes an individual

⁶⁰Tierney, *Idea of Natural Rights*, 293–96.

⁶¹Vitoria, *On Civil Power*, q. 1, art. 5, n. 8 (Urdánoz, 164; Pagden/Lawrance, 16–17).

⁶²Vitoria, *I On the Power of the Church*, q. 6, art. 3, n. 3 (Urdánoz, 320; Pagden/Lawrance, 103–4).

⁶³Brett, *Liberty, Right, and Nature*, 135–36; Tierney, *Idea of Natural Rights*, 292. For Almain, see Brett, *Liberty, Right, and Nature*, 116–22. Vitoria's basic argument can be found not only in Almain but also in Thomas, *ST II-II*, q. 40, art. 1; q. 64, art. 2–3.

⁶⁴Brett, *Liberty, Right, and Nature*, 135. She cites Vitoria, *On Civil Power*, q. 1, art. 4, n. 7 (Urdánoz, 159; Pagden/Lawrance, 11).

right of self-defense, he thinks that the community's right to punish or wage an offensive war is not based on it.⁶⁵ The public authority is distinct in kind from that of a private citizen. Just as a private citizen can in justice protect himself from an unjust aggressor, so can a group of citizens wage a defensive war. But they cannot justly punish the aggressor or wage an offensive war. Only the commonwealth or its ruler has such authority.

Although Vitoria's thesis that the commonwealth is the material cause of civil power in no way implies that the sovereign's powers are simply delegated to him by the commonwealth's members, he recognizes that the community in some way consents to one form of government rather than another. He clearly prefers a limited royal government, although he recognizes the legitimacy of other just forms. A king's authority comes from God because, like the civil authority of aristocrats and timocratic rulers, it is based on divine and natural law.⁶⁶ In each of these three cases an individual or group exercises authority on behalf of the whole community. All three forms of government are different in kind from human associations in which private citizens delegate power to private citizens:

If men or commonwealths did not derive their power from God, but formed an agreement to set up a power over themselves for the public good, then this would be a [human] power, such as the power which members of a religious order ascribe to their abbot. But it is not so. A civil community is constituted by all its citizens, and thus the commonwealth has the power to administer and govern itself and its citizens in peace, and to compel any who breach that peace and contain them in the bonds of civil duty.⁶⁷

The whole text clearly excludes any theory that would find the source of political authority in a kind of social contract. On Vitoria's account, the commonwealth transfers its own authority to the ruler or rulers, who then act for and on behalf of the community. The power materially lies in the whole community but comes from God as from an efficient cause.

The ruler's civil authority allows him to pass laws that bind consciences in such a way that those who break the law sin and can be punished by the civil authority.⁶⁸ This authority is different in kind from any authority that the individual has over himself or over his family. Vitoria does not anticipate a view according to which the citizen or subject truly wills what the sovereign wills, and by disobeying the sovereign is disobeying his own will. The

⁶⁵Francisco de Vitoria, *On the Law of War*, q. 1, art. 2, in *Relectio de iure belli*, 110–20 (Pagden/Lawrance, 299–302).

⁶⁶Vitoria, *On Civil Power*, q. 1, art. 5, n. 7 (Urdánoz, 160–61; Pagden/Lawrance, 12–14). See also art. 8, n. 11 (Urdánoz, 19–20; Pagden/Lawrance, 19–21). Urdánoz's text is considerably more condensed than that used by Pagden/Lawrance.

⁶⁷*Ibid.*, q. 1, art. 5, n. 8 (Urdánoz, 164; Pagden/Lawrance, 17).

⁶⁸*Ibid.*, q. 3, art. 1, nn. 15–17 (Urdánoz, 183–86; Pagden/Lawrance, 34–36). See also *In I-II*, q. 96, art. 4 (Heredia, *Tratado*, 32; Pagden/Lawrance, 174).

sovereign insofar as he represents the commonwealth has powers that no individual or collection of individuals can possess.

Vitoria's argument for the position that human law binds consciences rests on the way in which civil authority derives from natural law, but it also in a curious way invokes the divine law. In this context Vitoria again makes the point that God institutes both human and divine law, but not in the same way.⁶⁹ He commands directly through divine law and indirectly through natural law. Civil rulers, since their authority is based on nature, which is caused by God, ultimately are acting on God's authority. Moreover, they can be considered in some way as legatees of God. Consequently, if we admit that divine law is binding on consciences, we must for the same reason admit that human law is binding.

The binding force of the law depends on the way in which the law is related to the common good, which is the end of the political community and the ultimate justification of civil power.⁷⁰ Vitoria writes, "where an enactment vitally concerns the peace of the citizens, the increase of the common good, or public morals, any transgression against that statute will be a mortal crime; but where an enactment is something more trivial, useful, but not necessary to the commonwealth, then the crime will be venial."⁷¹ For instance, taxation is vital to public defense and public works. Consequently, violating tax laws is a mortal sin. On the other hand, civil laws concerning the status of luxury items such as silk might serve a useful purpose but not directly endanger the state. Violating laws concerning silk would therefore be a venial sin. Moreover, when the reason for a law ceases to exist, then the law itself does.⁷² All things being equal, useless laws do not bind consciences even though a civil authority promulgates them.

Even though the material cause of civil power is the whole commonwealth, the power itself is invested in rulers and distinct in kind from the powers that are possessed by any citizen or even a group of citizens. Only lawgivers have the authority to enact such laws, since they are responsible for directing the commonwealth's affairs with this end in mind. This authority is not based on contract but on natural law. The ability to bind consciences and to punish offenders derives from the political community and ultimately from God as the efficient cause of human nature, but it is exercised only by those who have care of the commonwealth.

My interpretation of Vitoria's account of political authority conflicts with that of Brett, Tierney, and Alves and Moreira, who think that there is conflict or perhaps even a contradiction between Vitoria's view that political authority requires the consent of the multitude and his view that it is necessary for the

⁶⁹Vitoria, *On Civil Power*, q. 3, art. 1, n. 17 (Urdánoz, 185; Pagden/Lawrance, 35).

⁷⁰*Ibid.*, q. 3, art. 2, nn. 18–19 (Urdánoz, 186–90; Pagden/Lawrance, 36–39); *In I-II*, q. 96, art. 4 (Heredia, *Treatado*, 32–35; Pagden/Lawrance, 175–79).

⁷¹Vitoria, *On Civil Power*, q. 3, art. 2, n. 19 (Urdánoz, 188; Pagden/Lawrance, 37).

⁷²*Ibid.*, q. 3, art. 5, n. 22 (Urdánoz, 192; Pagden/Lawrance, 41–42).

achievement of the end to which human nature is directed, which is happiness, or living well. I have shown that even though Vitoria thinks that political authority comes from the commonwealth, he does not think that the commonwealth is the efficient cause of this authority. Humans do not create political bodies through artificial agreements. They do not make them as they would make boats or houses, or even as they might establish guilds or corporations. The political community is natural. Nevertheless, although God is the efficient cause of political authority, it rests in the whole commonwealth as in a material cause. Acts that require political authority, such as punishing or binding consciences, do not rest in any individual or mere group of individuals. A ruler has such authority only insofar as he represents or acts in place of the whole community.

4. How Rule Is Determined

Even though humans do not choose to be political animals, they can at times choose their ruler and even the nature of their regimes. Vitoria emphasizes that it is natural for there to be some regime even if no particular regime is natural. The community cannot simply do away with public power altogether, whose form is “the faculty, authority or right of governing the civil commonwealth.”⁷³ Just as an individual cannot give away his right to administer his affairs and defend himself, so a community cannot do away with its administration and defense. Such an attempt to disestablish any government would be against human nature, and consequently in violation of natural and divine law. As has been widely noted, although Vitoria emphasizes that the ruler has the authority from the commonwealth as a whole by natural and divine law, he also thinks that at least in certain contexts the majority of the community can decide to change the political regime.⁷⁴ Vitoria’s concern is with whether in such cases the majority in a commonwealth can decide to substitute one kind of regime with another, change a legitimate ruler, or join another political community.

Vitoria seems to give slightly different accounts of such changes in his *Commentary on the Summa Theologiae* and in his lectures *On the American Indians* (*Relectio de Indis*, 1539) and *On Civil Power*. In his *Commentary*, Vitoria considers the issue in light of the decision of the Jewish people in

⁷³“*facultas, auctoritas, sive ius gubernandi rempublicam civilem.*” *Ibid.*, q. 1, art. 7, n. 10 (Urdánoz, 193; Pagden/Lawrance, 18). Pagden/Lawrance reads “the authority or right of government over the civil commonwealth.” My translation slightly modified for accuracy, and to include “*facultas.*”

⁷⁴Doyle, “Vitoria on Choosing to Replace a King,” 50–57. See also James Brown Scott, *The Catholic Conception of International Law* (Washington, DC: Georgetown University Press, 1934), 67–71; Bernice Hamilton, *Political Thought in Sixteenth-Century Spain* (Oxford: Clarendon, 1963), 36–37. The “majority” seems to mean the “stronger” or “greater” part.

the Old Testament to petition God for a king.⁷⁵ Vitoria understands them to be asking to change from an aristocracy to a monarchy and states that the legitimacy of the change to some extent depends on the kind of regime. Since in a timocracy the authority lies in the whole commonwealth, the people can choose whatever kind of government it wants. Similarly, an aristocracy is ruled by leaders (*senatores*) elected by the commonwealth. Consequently, they can choose another form of government, such as when the Jewish people chose monarchy. In this text, Vitoria argues that the majority can change a regime only if it has not given perpetual authority to a monarch. Even though the king's authority comes from the decision of the people, once the royal form of government is chosen, the people can no longer establish another form of government. Vitoria admits that if the king becomes a tyrant he can be deposed. But such a deposition is possible only because the king by his own action has become an illegitimate ruler.

In *On the American Indians*, Vitoria gives a somewhat different account of regime change. He places different restrictions on the multitude's ability to change regimes and seems to argue that all commonwealths, including those governed by a king, can choose a different regime or at least different rulers. He discusses changing a regime in two places in this work. In the first, he considers the false claim that the Native Americans have chosen to give authority to the Spanish.⁷⁶ Vitoria denies that the conditions for such a decision have been met, since a free decision would have been impossible owing to the ignorance of the Native Americans and their fear of Spanish soldiers. More generally, Vitoria states: "Since the barbarians already had their own true masters and princes . . . a people cannot without reasonable cause seek new masters which would be to the detriment of their previous lords. Nor, on the contrary, can the masters themselves elect a new prince without the assent of the whole people."⁷⁷ This text makes two distinct points. First, a regime change must be reasonable. The majority cannot arbitrarily choose to set up one system rather than another. Second, the civil authorities on their own cannot change the nature of the regime. They have the authority to enforce and pass laws, but not to determine who exercises this authority.

In a later passage in the same work, Vitoria sets aside the historical issue and considers whether Spanish rule would be justified if the Native Americans decided to elect the Spanish king as their ruler. The majority in any commonwealth can elect a ruler. He gives as an example the way in which the Franks elected Pepin the Short as their king instead of Childeric III. Vitoria seems to have in mind the substitution not of one regime for

⁷⁵Vitoria, *In I-II*, q. 105, art. 2 (Heredia, *Tratado*, 81–82; Pagden/Lawrance, 200).

⁷⁶Francisco de Vitoria, *On the American Indians*, q. 2, art. 6 (I.2.23), in *Relectio de Indis*, Corpus Hispanorum de Pace 5, ed. Luciano Pereña and José M. Pérez (Madrid: Consejo Superior de Investigaciones Científicas, 1967), 74 (Pagden/Lawrance, 275–76).

⁷⁷Vitoria, *On the American Indians*, q. 2, art. 6 (I.2.23) (CHDP 5, 73; Pagden/Lawrance, 276).

another, but of one king for another. The Franks seem to have retained a monarchy while deciding to replace one legitimate monarch with a better one. Since Vitoria never suggests that Childeric was a tyrant, it is difficult to see how his teaching here is compatible with that of his *Commentary on the Summa Theologiae*, in which he states that a king can be removed only by being deposed for tyranny.

Vitoria thinks that a change in constitution requires only a majority decision and not a universal consensus. His argument for this thesis is the practical observation that it would be difficult or even impossible to establish a consensus for a particular course of action. He is not here arguing for what we would describe as democracy. The majority decision would itself determine whether the constitution is timocratic, aristocratic, or monarchical. The commonwealth has the power to set up diverse kinds of constitutions, among which is the democratic or timocratic.

Although constitutions are made legitimate by the majority consent, Vitoria does not defend the thesis that democracy is natural in such a way that it is the ordinary or at least in some way primary form of rule and other states result from it.⁷⁸ Charles McCoy has shown that on the more traditional Scholastic account, the multitude that transmits authority to the ruler is not on its own a political body or in some way a distinct regime that is prior to the regime that receives authority.⁷⁹ Mark Murphy argues that for Thomas any of the customary forms of government is established by the consent of the community according to a customary law that is in some way prior to the regimes.⁸⁰ It is hard to know what this customary law would be or how it would be promulgated apart from already existing political communities. Although Vitoria more explicitly than Thomas recognizes that there are laws that bind different communities, he does not suggest that these laws are somehow constitutive of communities or prior to the establishment of a political regime. Historically kingship seems primary, and it is preeminent on account of both sacred scripture and natural law.⁸¹ He does not suggest that a king is given authority by some independently existing political body.

Tierney thinks that Vitoria's account of kingship undermines his account of political authority. Vitoria's claim that the king is "not only above any

⁷⁸For the possible attribution of such a view to Francisco Suarez, see Höpfl, *Jesuit Political Thought*, 253.

⁷⁹Charles N. R. McCoy, "Note on the Problem of the Origin of Political Authority," *Thomist* 16, no. 1 (1953): 71–81.

⁸⁰Mark C. Murphy, "Consent, Custom, and the Common Good in Aquinas's Account of Political Authority," *Review of Politics* 59 (1997): 323–50. For the various notions of consent in Suarez's account of the law of nations, see Höpfl, 304–6.

⁸¹Vitoria, *On Civil Power*, q. 1, art. 8, n. 8 (Urdánoz, 161–64; Pagden/Lawrance, 19–21). But Vitoria also emphasizes that the community's consent in the form of rule makes it responsible for a ruler's bad actions. Therefore, a ruler's citizens can be punished because of the ruler's own wickedness. *Ibid.*, q. 1, art. 9, n. 12 (Urdánoz, 168; Pagden/Lawrance, 21).

individual but above all the citizens together" is incompatible with Vitoria's other position that power resides in the whole political community.⁸² However, this quote from Vitoria when taken in context only distinguishes monarchy from aristocracy and timocracy, and is irrelevant to questions about the material cause of political power. The traditional Thomistic claim that the multitude has power is not about any particular type of regime, but applies to every regime. The claim that the king is superior to all of the individual citizens is a claim about the ruler of one particular kind of regime, namely monarchy. The king's authority itself comes from the whole political community.

Monarchy can be chosen by the political community. In *On Civil Power*, Vitoria argues that all of Christendom could elect one king for its common administration and defense.⁸³ In this way the commonwealth might not only change its constitution, but it could also join with other commonwealths. The notion of a universal monarchy seems unusual, but it had its supporters in medieval and early modern thought.⁸⁴ Although Vitoria seems to be arguing that one commonwealth could join with another, in this case he states that there is an underlying unity that would justify such a choice. There are many Christian commonwealths, but there is a sense in which Christendom already is one commonwealth. Consequently, the majority of Christians could establish a king through election. He states that humans could have similarly elected a king before the division of peoples. Moreover, cities such as Venice and Florence could freely choose to become either aristocracies or timocracies as they might see fit: "Once the commonwealth assumes the right to administer itself, and once the principle of majority rule is established, it may adopt whatever constitutions it prefers, even if this is not the best constitution; just as these cities at present each have an aristocratic constitution, which is not the best."⁸⁵ In this text Vitoria does not discuss a change in or from a monarchical constitution but is instead concerned with aristocracy and timocracy. As the text indicates, such regimes may elect to change, and this change can be for an inferior constitution. Presumably such a change would still need to have a "reasonable cause." The text does not suggest that the commonwealth could choose an unjust constitution that would somehow injure the common good.

⁸²Tierney, *Idea of Natural Rights*, 292; Vitoria, *On Civil Power*, q. 2, art. 1, n. 14 (Urdánoz, 179–80; Pagden/Lawrance, 30–31).

⁸³Vitoria, *On Civil Power*, q. 2, art. un., n. 14 (Urdánoz, 178–81; Pagden/Lawrance, 30–32).

⁸⁴Anthony Pagden, *Spanish Imperialism and the Political Imagination: Studies in European and Spanish-American Social and Political Theory, 1513–1830* (New Haven, CT: Yale University Press, 1990), 6–7, 37–63.

⁸⁵Vitoria, *On Civil Power*, q. 2, art. un., n. 14 (Urdánoz, 181; Pagden/Lawrance, 32). For the alternate reading of Venice and Florence for Rome, see Pagden/Lawrance, 32n60.

These accounts of choosing a regime might seem to support Brett's and Tierney's view that Vitoria at least in some texts holds that civil authority arises through the delegation of rights such as self-preservation to civil authorities. However, even though these regimes do depend on choice, such a choice of regime is not a delegation of powers or rights that are possessed by individuals.

Vitoria's texts do seem to contain incompatible positions over whether and how regimes can be changed. Whereas in *On the American Indians* he argues that the whole multitude can change a regime if there are sufficient reasons to do so, in the *Commentary on the Summa Theologiae*, he holds that kings can be removed only when they become illegitimate by ruling for their own sake and not for the common good. In *On Civil Power*, he holds that a multitude can legitimately establish an inferior regime. But this inconsistency on this one issue does not indicate any important inconsistency in his position on the nature of civil power. These texts all argue that under at least some circumstances regimes can be chosen by the multitude. But the choice of a regime is different from a transmission of rights such as self-defense from individuals to civil authorities. The political authority of rulers is distinct in kind from the rights and powers of individuals.

5. Conclusion

We can now better see why according to Vitoria consent can be important in the choice of a regime even though he denies that civil power as such is based on consent. The ruler's authority does not entirely come either directly from God or from a free choice of the citizens to cede their rights to him. God has a role as the efficient cause of nature and the natural law, and the giver of divine law. Since civil power is based on natural and divine law, God causes this authority. But Vitoria is careful to show that this authority is traced to God through nature. God is the primary efficient cause of civil power, but there are relevant secondary causes.

According to Vitoria, the whole community possesses civil power and the multitude in at least some cases can replace regimes. But Vitoria avoids the pitfall of understanding civil power as the result of a decision between private citizens who give up or delegate their rights or powers. He falls squarely in the Aristotelian tradition in that he thinks that the political community is natural and not invented by humans. He develops this position by arguing that the multitude is the material and not the efficient cause of civil power, even though any particular constitution is the result of human custom and choice, and generally can be changed by a majority decision. Although civil authorities have the care of the commonwealth and consequent authority, ultimately the material cause of their authority is the whole commonwealth in which the power resides. Not only can the majority choose a democracy, but they can freely adopt aristocracy or even monarchy.

Considering Vitoria's recognition of the role of choice in establishing a regime, we can see why some might think that he changed his views on whether political power comes from nature or from free consent. A contradiction results only if we fail to distinguish, as Vitoria did, between the diverse ways in which civil society is natural. Vitoria follows and builds on Thomas and Aristotle in thinking that humans by nature are political, since they need the political community to achieve the end of living well. Political authorities, unlike individuals, have the authority to direct through law and to punish. The existence of some human authority is not subject to human convention or choice. However, any particular political arrangement will be subject to some human choice, and Vitoria thinks that in some cases the political regime can be established by majority rule. In *On Civil Power*, he discusses political power as such. His distinction between God as the efficient cause and the commonwealth as the material cause adds to but does not contradict the thought of his predecessors, such as Thomas Aquinas. Vitoria's later works are more concerned with the existence of different political regimes, but he never denies his earlier account of civil power.

Vitoria's recognition of the majority's ability to choose a political regime at least in some cases is far from later theories in which all civil power results from human choice and even the surrendering of rights. He recognizes that consent plays a role in accounting for political authority while at the same time he avoids the position that political authority reduces to some sort of contract. Despite the theoretical consistency of his account, it faces some of the same practical difficulties that later contract theories face. We might defend his approach by noting that such a majority decision can be made, even if such decisions seem difficult and rare. On the other hand, Vitoria defends the role of the majority in part by arguing for its greater practicality, and he is certainly correct that a majority decision is generally more feasible than universal consensus. It could be that the difficulty lies not so much in Vitoria's thought as in the contingency and complexity of human affairs.