



A Theologian's Answer to the Challenge of Colonization

Francisco de Vitoria on the Meta-Communicative Aspects of Religious Contact in a Colonial Setting

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ABSTRACT In Francisco de Vitoria's (1483?–1546) texts, one may witness a significant object-language attempt to contemplate on and to establish the conditions for successful communication between traditions. It is an attempt on meta-communicative issues involved in the situation of religious contact between Spanish conquerors and missionaries and the indigenous population of the New World. The Dominican professor bases his considerations on the analysis of language as the preeminent element of human communities. Criticizing former missionary practices, Vitoria aims at establishing the notions of reason and purity of conduct as *tertia comparationis* that allow the connection of Christian discourse to the mindset of the indigenous. Therefore, to Vitoria, the main meta-communicative goal of a missionizing Christian speaker in facing a non-Christian audience is to establish a situation that allows hearing reason being communicated.

KEYWORDS Mission, Meta-communication, colonialism, philosophy of language, reason, purity, Francisco de Vitoria, De Indis

Francisco de Vitoria and the Establishment of a *Tertium Comparationis*

In the late sixteenth century, scholars retrospectively considered the “brilliant, lively, humane” Dominican professor with “pungent style” (Hamilton 1963, 7), Francisco de Vitoria (1483?–1546) of Salamanca University, a paramount theologian—despite his lifelong “tendency towards inconspicuousness” (Thumfart 2012, 14). His pupil Bartolomé de Medina (1527–1580) even praised him to be nothing less than the *restaurator divinae Theologiae*; thus, in fact, linking him even more closely to Martin Luther than the mere dates of his life alone could have done anyway.¹ Vitoria is also described as “quintessentially Scholastic—an

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1 See, on the dispute on Vitoria's birth year, Campagna (2010, 26).

even-tempered and dispassionate intellectual who treats all questions with equanimity and is swayed only by the exigencies of reason itself" (Salas 2012, 331). Though he is most acknowledged with regard to his pathbreaking contributions to the *ius gentium*, the law of nations,² and his considerations on the rights of the Indians, above all in his highly celebrated lecture *De indis recentur inventis*,³ it is remarkable that most of his later admirers stress the fact that Vitoria, albeit prominently dealing with juridical and ethical issues, was a theologian in the first place (see Domínguez-Reboiras 2002, 174; Justenhoven 2012, 122–23). Accordingly, he was willing to answer the challenges his time provided in a decidedly theological manner,⁴ that is, as a proponent of religious object-language trying to develop meta-language that allowed him to deal with the tasks in question.

To the Christian theologian Vitoria, the situations of contacts of religious traditions were not only a theoretical issue but probably also a dire personal experience. In both regards, the cases he was concerned with displayed an asymmetry of power that led to the subjugation and suppression of one part. From his mother's side, Vitoria had Jewish ancestry, rendering his status precarious in times *conversos* were excluded from academia (see Horst 1995, 17).⁵ The question of baptism by force, accordingly, was also vital in Spain itself before it became an issue in the newly discovered world across the Atlantic. Additionally, the Dominican order, which he joined in 1505 at Burgos, had just been profoundly reformed due to the initiative of the Spanish rulers aiming at the centralization of their country. One of the first major indictments of Spanish conduct in the territories of the New World, however, also originated in the Dominican order. It manifested in Antonio de Montesinos' (c. 1475–1540) question of late 1511, '¿Estos no son hombres?', thus accusing the Spanish settlers of behaving inhumanly towards the natives (see Seed 1993). Later on, especially following Bartolomé de Las Casas (1484–1566), who entered the order in 1522, it was the Dominicans who led the campaign against the violent conquest and forced conversion of the *Indios* (see Terraciano 2004, 338).⁶

The reform of the Dominican order provided Vitoria, as a student, the opportunity of coming into contact with Paris as the predominant classical center of knowledge, thus relieving Spanish universities from isolation (Horst 1995, 19), and at the same time getting some sense of the value of contact with regard to the process of academic theological knowledge. In Paris, Vitoria learned to admire the synthesis of Scripture and antique philosophy as manifested in the work of Thomas Aquinas, allowing the 'true philosophy' of pagan thinkers to enter academic discussions (Horst 1995, 24).⁷ As John Marenbon has pointed out, the dis-

2 To Salas, Vitoria even introduces a "new humanism" to the discussion, based on the fact that the discovery of the New World "was not just the encounter of new territories and resources, but the discovery of man precisely as such" (2012, 340–41).

3 Vitoria's Latin works are quoted by using the edition by Horst, Justenhoven and Stüben (1995, 1997). For a decidedly interdisciplinary approach to *De Indis*, compare the collective volume by Brieskorn and Stiening (2011).

4 See, on theology's competence, Campagna (2010, 37, 40–49).

5 "Daß auch im Dominikanerorden die Gesetze propagiert und beobachtet wurden, ist für eine Reihe berühmter Konvente bezeugt, die die Aufnahme von 'Judenkonversen' oder deren Nachkommen untersagten. Es scheint, daß Vitoria später ebenfalls von solchen Ressentiments betroffen war, und daß ihn nur das hohe akademische Ansehen, dessen er sich an der Universität Salamanca bereits erfreute, davor bewahrte, in ein anderes Haus versetzt zu werden." On the discussion in the Dominican order concerning the *conversos*, see Horst (2015). See on this point also Thumfart (2012, 158–59).

6 For a concise comparison of Vitoria's and Las Casas' positions, compare the useful synopsis in Delgado (1994, 58).

7 Back in Spain, in Salamanca, Vitoria himself, in accordance to his studies at Paris, acted as a reformer of the university's curriculum by exchanging Petrus Lombardi's *Sententiae* for the *Summa Theologica* of Aquinas as the guiding study-book, thus inaugurating the renaissance of Thomist thinking in the sixteenth century and allowing the 'School of Salamanca' to emerge and unfold.

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courses concerning the treatment of the pagan Roman and Greek philosophers and the pagan inhabitants of the New World in the context of Christian theological thinking became, above all, strongly connected by Las Casas' efforts to refute the justifications of the Spaniards taking the lands of the indigenous people (see Marenbon 2015, 249). In *stressing the role of reason* in the process of missionizing, Vitoria can also be seen as a protagonist of connecting these discourses.

In contrast to later evaluations of the situation, to Vitoria, the theological struggle of the period of the Reformation was a second-class matter compared to the theological problems arising with the discovery of the New World. Contemplating the question on the legitimacy of the Europeans in the New World regarding conquests and trade, Vitoria arrived at philosophical and theological positions that carefully mediated scholastic traditions and contemporary challenges that emerged with the discovery of unknown lands and the presence of an indigenous population.⁸ To some churchmen, however, the conversion of the Indios seemed a good opportunity "to create a new brand of Christianity, free from Jewish, Islamic, and Protestant interference" (Terraciano 2004, 337). [4]

But then, of course, not only the results of current discoveries and colonization attempts, but also the recent developments within European Christianity, i.e., Humanism and the Reformation, had to be taken into account with regard to the academic audience Vitoria was addressing in his *Relectiones* (see Schnepf 1992, 4). Here, in a context of a "long tradition of ritual legitimation which the kings of Castile had, since the Middle Ages, regularly enacted when confronted with uncertain moral issues" (Pagden 1991, XVII),⁹ it is the theologian's competence (as someone being able to interpret the words of God) that renders Vitoria's position a remarkable contribution to the theme of religious *language* within a colonial context, apart from his merits as a theorist of natural law and the *ius gentium*, which will not be the main focus of my following considerations. [5]

Regarding this article's foremost subject-matter, i.e., the situation of contact of religious traditions, in Vitoria's texts one may witness a significant object-language attempt to contemplate on and establish the conditions for successful communication between traditions.¹⁰ As Volkhard Krech argues, religious studies have to focus on the communicative event of the contact of religious traditions in order to scrutinize the particular ways in which parts of the contact and the prevailing subject matter are *made subject* within the situations of contact itself (see Krech 2019, 285).¹¹ This is clearly the case in Vitoria's writings, which are both the result of a contact situation—of Catholic Christianity, under the impact of evolving Protestantism, meeting with the indigenous inhabitants of the New World, whose beliefs have no share in the known religious background in the Old World—as well as the attempt to deal with it. Theological object-language thus aims at establishing meta-language by means of a reflection on meta-communicative issues. Confronted with the failure of missionizing activities of his Spanish compatriots in the New World, Vitoria *reflects on the situation of contact itself* that is at work there, and how to render it more 'successful.' In his *meta-communicative* efforts one may observe the attempt to establish a suitable *tertium comparationis* that may serve as a [6]

8 See, on the influence of Vitoria's concept of colonial policy upon later generations of colonial administrators, van der Kroef (1949).

9 If not noted otherwise, all English translations of Vitoria's text are from this edition.

10 See, on communication in Vitoria's thinking, Sievernich (2001).

11 "In religionswissenschaftlicher Perspektive ist daher das Kommunikationsgeschehen des Religionskontak[t]s selbst in den Vordergrund zu rücken. Von dort aus kann die Frage gestellt werden, ob und gegebenenfalls wie Teilnehmende thematisch werden, und wie das im Verhältnis zur Sachdimension, d. h. zu den infrage stehenden religiösen Themen geschieht."

common basis of communication.¹² To Vitoria, this *tertium* is linguistically mediated *reason*. On reason, both parts of the contact may agree as means of communication that, as Vitoria argues, ultimately cannot but lead to missionary success. Of course, his establishment of reason as the basis of communication is thoroughly one-sided and intended to serve missionary aims, rendering the situation of contact as reflected on by Vitoria asymmetric (the missionaries right to reason is merely counterbalanced by the Indios' right to hear reason). However, the process of analyzing and structuring the situation of contact by meta-communicative means,¹³ performed by one part of the contact itself, and the ways to establish a common basis of communication is an important subject to scrutinize in the study of the history of religions in contact (see Krech 2012, 194–95).

Vitoria on Language and Communication

Language as such is not a paramount subject of Vitoria's careful and systematic considerations.¹⁴ Hints at a developed philosophy or theory of language are sparse and dispersed among his various lectures and commentaries. Additionally, Vitoria's remarks on language are always closely related to other themes that are the main objects of his examinations. This is, above all, the human disposition to community. It is this very combination that makes Vitoria's consideration a worthwhile subject of study. To Vitoria, language and sociality, i.e., the by nature necessary community of human beings, are closely interrelated and, accordingly, discussed within the same context. [7]

There are, therefore, some parts in his lectures that allow a glance at Vitoria's ideas on language and its relationship to reason and to its main expression, community. In his *De Potestate Civili* Vitoria promotes an 'anthropology' based on the idea that, compared to other living beings, human beings lack the natural means to protect or defend their life.¹⁵ This lack, however, is compensated by capabilities that make man outshine other beings: *homo ceteris animalibus praestat ratione, sapientia atque sermone*.¹⁶ By reason, wisdom, and language, human beings are able to overcome their miserable beginnings as fragile, weak, impoverished, frail, and helpless beings in their needy, naked, and hairless (*nudum incrinemque*) condition. The display of reason, wisdom, and language allows establishing virtues that are necessary for living in a community that is, according to Vitoria, humanity's answer to the challenges of the mostly hostile environment, thus manifesting the natural sociability of human beings. Anthropology, thus, by necessity turns into sociology. Vitoria adapts an Aristotelian idea: To be human and to be part of a community therefore is, by nature, the same thing: *Est enim* [8]

12 On the role of *tertia communicationis*, see Krech (2012, 193).

13 The notion of meta-communication used in the following combines different meanings. In the German-speaking world, the notion is related to the psychologist Wolfgang Metzger, a leading figure of the *Gestaltpsychologie*, and means *communication on communication in order to make communication easier*. In the English-speaking world, it is associated with the work of Gregory Bateson. Here, meta-communication deals with *ordering communication by means of contextualization, re-contextualization, or de-contextualization*. Both meanings address meta-communicative considerations as a reflection on the very possibility of communication, its preconditions that must be met to allow communication in the first place. Issues of the language spoken and translation are important, but in fact secondary.

14 Vitoria's careful use of language in his juridical and philosophical considerations is stressed by Luis Valenzuela-Vermehren, in particular regarding possible violations of the law of nations by the indigenous peoples: Here, Vitoria uses a highly conditional language (see Valenzuela-Vermehren 2013a, 285, 291).

15 See, on the *Bedürfnisnatur* (needy nature) of the human being, Bunge (2011, 208–9).

16 Vitoria, *De Potestate Civili* (1995, 122).

homo natura animal civile sicut et ignis natura calidus (The human being is by nature a social animal in the same way fire is, by nature, hot).¹⁷

To Vitoria, then, anthropology is basically sociology. Both the disadvantages and the advantages of human existence dispose man to community which is predominantly characterized by mutual support. Accordingly, opposing philosophers and theologians alike, Vitoria emphatically denies that egotism is the main force of human conduct, but rather the pursuit of the common good.¹⁸ [9]

The pursuit of the common good is closely related to reason and reason-based action. Relying strongly on Aristotle, Vitoria stresses the necessity of teaching and experience to fully develop reason. In order to fulfil this aim, language is needed as the errand boy of reason: *sermo intellectus est nuntius*. The deliverance of reason, Vitoria suggests, is the sole purpose of language, serving as the device that holds human community together and guarantees (via teaching) its persistence throughout time: [10]

Aristotle also declares that language is the messenger of understanding, and was given to man solely for this purpose, so that in this one respect he excels or surpasses all other animals. Now language could not exist outside human partnership [...] Even if it were possible for wisdom to exist without language, it would be a rough and uncouth wisdom [...].¹⁹ [11]

Accordingly, to Vitoria, there is no reason and no wisdom without language that could possibly relate the individual human being to a community of human beings. Therefore, human society as essentially based on reasonable and wise behavior and thinking is basically *communication*. Nature commands man to communicative society; as a consequence, a human being separated from community loses his status as a human and has to be counted among the animals (see Aristotle, *Politics* 1253 a29-37). Here, Vitoria presents himself to share Aristotle's, Cicero's, and not least Thomas Aquinas' opinion on the subject.²⁰ [12]

'Nature abhors all solitary things' (Cicero, *De amic.* 23.88), and we are all, as Aristotle says, impelled by nature to seek society.²¹ [13]

Linguistic communication provides the natural bond of these connections that are characterized by a division of labor. However, human communities are additionally characterized by some inner dynamics. For the division of labor, in turn, tends to exceed or transcend the smaller communities of families or households. By necessity, a small community naturally develops into larger communities that are more likely to provide protection from violence and injustice: [14]

Since, therefore, human partnerships arose for the purpose of helping to bear each [15]

17 Vitoria, *De matrimonio* (1995, 506).

18 See his claim in *De homicidio*: "Ad hoc quamquam sint clari philosophi et theologi, qui ita esse arbitrentur, ego vero nego hominem inclinari ad diligendum se plus quam Deus vel proprium bonum plus quam commune. [...] [E]x naturali inclinatione, homo, quem Deus fecit partem rei publicae, natura inclinatur ad bonum publicum plus quam ad privatum" (1995, 464).

19 "Rursum etiam sermo intellectus est nuntius et in hunc solum usum datum Aristoteles tradit, quo uno homo ceteris animalibus antecedit, qui extra hominum societatem nullus foret. Atque adeo etiam, si fieri posset, si sapientia esset sine sermone, ingrata et insociabilis esset ipsa sapientia." (Vitoria, *De Potestate Civili*, 1995, 122, 124).

20 See, on Aquinas' categories regarding the unsurmountable difference between men and animals, Seed (1993, 638).

21 "Nihil enim natura solitarium amat, omnesque, ut ait Aristoteles, natura ferimur ad communicationem." (Vitoria, *De Potestate Civili*, 1995, 124).

other's burdens, amongst all these partnerships a civil partnership [...] is the one which most aptly fulfils men's needs. It follows that the city [...] is, if I may so put it, the most natural community, the one which is most conformable to nature. The family provides its members with the mutual services which they need, but that does not make it whole and self-sufficient [...] especially in defense against violent attack.²²

To achieve its protective aim, Vitoria argues, a community is in need of a guiding force [16] balancing the interests of its prevailing parts. This balance provides a benefit and a necessity to human communities that only gods can resist ("cui non nisi dii repugnant").²³ As balanced, a community is just, and accordingly communication is a matter of theological consideration, for every just community is established by God: "Quia quaelibet res publica iusta constituta est a Deo."²⁴ In sum, Vitoria promotes theologically the all-encompassing community of mankind on the basis of communicative reason (Thumfart 2012, 33).²⁵ As communication is essential to human existence that is, existence in communities, Vitoria contemplates intensely on communication,²⁶ thus introducing *meta-communicative elements* to the discussion on the rights of the Indians and the question of mission as a special situation of contact.

This idea is not left to mere theoretical considerations. The examination of metacommuni- [17] cation is not at last valid in Vitoria's personal conduct as an academic teacher. With regard to the meta-communicative elements in Vitoria's thinking and academic practice, some authors stress the forward-looking characteristics.²⁷ Although in his own situation of speech, he is relieved of the immediate need for decision on this subject (Wagner 2011a, 165), still, as an important aspect, authors emphasize Vitoria's courageous risk to discuss current questions publicly (Justenhoven 1995, 7),²⁸ thus establishing a 'public theology' (Thumfart 2012, 12), or rather a 'public philosophy' (Böckenförde 2006, 344). His new style, though based on the system of theories of Aquinas, rejected scholarly polemics, thus establishing an open and dialogical attitude that allowed other scholarly currents without condemning them. Accordingly, as Domínguez-Reboiras put it, "without doubt, Vitoria was a tolerant mind in an intolerant century," displaying an "open and frank way of uttering his opinion" (Domínguez-Reboiras 2002, 178–79).²⁹ Vitoria used the traditional annual *Relectiones*, that consisted in extraordi-

22 "Cum itaque humanae societates propter hunc finem constitutae sunt, scilicet ut alter alteruis onera portaret et inter omnes societates societas civilis ea sit, in qua commodios homines necessitatibus subveniant, sequitur communitatem esse, ut ita dixerim, naturalissimam communicationem naturae convenientissimam. Quamquam enim mutua officia sibi praestent, non tamen familia una sufficiens est sibi, et maxime adversus vim iniuriamque propulsandam." (Vitoria, *De Potestate Civili*, 1995, 124).

23 Vitoria, *De Potestate Civili* (1995, 126).

24 Vitoria, *De Potestate Ecclesiae* (1997, 282).

25 On the interrelatedness of communication and colonization, compare Todorov (1985, 213).

26 Johannes Thumfart has emphasized the fact that Vitoria's *ius gentium* comprises the *ius communicationis* (guaranteeing the social unity of the whole world) as a central element, even allowing the Spaniards to wage war against the Indios in case they should prevent the former from exercising it (see 2012, 20). Compare also Vitoria, *De Indis* (1997, 460, 462).

27 On the importance of meta-communicative aspects in linguistic situations of religious contact, see Müller (2015) and Stünkel (2015).

28 See, on the establishment of a public sphere in the theological discussions of the period of the Reformation, Stünkel (2016, 71–76).

29 Domínguez-Reboiras' characterization is confirmed by Carl Schmitt, who writes on Vitoria's *relectiones*: "Der erste Eindruck, den der heutige Leser von diesen Vorlesungen erhält, ist der einer ganz außerordentlichen Unvoreingenommenheit, Objektivität und Neutralität. Die Argumentation erscheint dadurch nicht mehr mittelalterlich, sondern 'modern'" (Schmitt 1950, 71). There is, however, according to Schmitt, the question of how to explain Vitoria's astounding objectivity (1950, 79) and its relationship to the conquest and the colonization of the New World.

nary lectures on a subject freely chosen by the lecturer, in order to spread his opinions on current matters that could hardly be discussed in the normal curriculum. The choice of subject is guided by the conscience that is, above all, the turf of the theologian.

Vitoria on Religion and Theology

According to Ernst Feil's history of the concept 'religion,' in his commentary on Aquinas' *Summa Theologica* Vitoria explains *religio* as ordering the human being towards God. It is, however, not a theological virtue (*virtus theologica*), but rather a paramount moral virtue. Hence, Feil argues, Vitoria considers *religio* to be a *habitus* towards the divine, a way of conduct and action one is by nature obliged to adapt (Feil 1997, 126).³⁰ [18]

Vitoria seems to recognize different forms of this kind of religion and acknowledges the fact that these forms are a matter of origin and tradition.³¹ Because of that, the prevailing forms of religion are not easily ignored or cast aside. Above all, the diversity of religion cannot be a cause of just war ("Causa iusti belli non est diversitas religionis").³² Of course, to the theologian Vitoria, there is religion proper, that is, Christianity that is contested by notorious enemies, the Muslims, and the Jews. He speaks of them as the perpetual enemies of Christian religion ("de saracenis et Iudaeis perpetuis hostibus religionis Christianae").³³ There is, however, as Vitoria points out, some natural suction towards religion proper, and this is because of the close relationship of Christian religion and reason. [19]

To Vitoria, religion seems to be a matter of practical action, manifesting a faithful conduct of life. He stresses the overall necessity and persistent presence of faith. At the same time, the proper way of reverence is revealed, being the core feature of 'true religion'. [20]

Since faith has always been necessary, and has never been lacking in any age, as shown above, it seems that revelation was accomplished chiefly with the aim of instituting the worship of God, which is the most important part of true religion and the life of the faithful.³⁴ [21]

In this sense, Vitoria equates religion and good work.³⁵ At some points, he also equates religion with reason, in particular when he lists the observations that may count for the Indios being human beings and well able to order their conduct of life. The Indios possess some form [22]

30 Compare also Feil's comment: "Ganz selbstverständlich erscheint in diesen Ausführungen Vitorias 'religio' schlicht als jene Tugend, die in lateinischer Tradition seit alters eine zwar wichtige, gleichwohl aber spezifische Haltung des Menschen zum Ausdruck bringt, nämlich eine sorgfältige Achtung und Beachtung der Gott gegenüber angemessenen Verhaltensweisen und Handlungen" (1997, 126).

31 "Esset enim intolerabilis lex, ut homo cogereetur deserere religionem a maioribus acceptam tam atroci poena." (Vitoria, *De Indis*, 1997, 510).

32 Vitoria, *De Iure Belli* (1997, 556). See Justenhoven (2012). See, on Vitoria's considerations on the topos of the just war and his pathbreaking 'desacralization of martial law' and his foundation of the law of nations, Zahnd (2020, 27–28).

33 Vitoria, *De Indis* (1997, 402, 404).

34 "Quia si fides semper fuit necessaria et nunquam defuit in quacumque aetate, ut dictum est, maxime videtur relevatio facta de ratione colendi Deum, quae potissima pars est verae religionis et vitae fidelis." (Vitoria, *De potestate ecclesiae I*, 1995, 219).

35 "Nec tales sunt haeretici dicendi, sed apostatae a fide, ab aiiis bonis, ut a religione ad mundum revocati dicuntur apostatae et apostatae a religione aut a bono opera inc{}epto." (Vitoria, *De Indis*, 1995, 531).

of religion³⁶ and that requires the use of reason.³⁷ Connecting the display of religion to reason (see Pich 2012, 390) provides him with the interface that allows missionizing the Indios of the New World without spoiling one's conscience by conversion by force. The *religio* of the missionary manifests itself as the true one in the way he deals with a religious situation of contact, i.e., the way he treats his target group. To establish *religio* proper, theology is required.

To Vitoria, theology was more than a closed-shop academic discipline or some kind of special knowledge, but rather a fundamental science (*Grundlagenwissenschaft*) that provided the ordering principles for other fields of human knowledge. Due to its subject-matter, theology is by essence a transgressing and unlimited discipline. This characterization renders it independent of any other discipline of human knowledge. However, the proposed independence of theology means a stern obligation of the theologian. On the theologian, the claim of his discipline is absolute and forces him to a permanent pursuit of knowledge and insight.³⁸ [23]

As such, the problems obviously transcending the old medieval world-views can only be solved by the transgressing way of thinking unlimited by disciplinary boundaries—and this way is, according to Vitoria, theology. [24]

Vitoria leaves no doubt about the paramount role of theology in the field of human knowledge and science. The theologian therefore is the very epitome of human wisdom. In his *De potestate civili*, Vitoria insistently stresses theology's special status: [25]

The office and calling of a theologian is so wide, that no argument or controversy on any subject can be considered foreign to his profession.³⁹ [26]

In fact, nothing that is human is alien to the theologian, and there is no field of human action that cannot be treated theologically. Nothing escapes theology's preeminence: "For theology is [...] the chief and first of all sciences in the world."⁴⁰ So, the first and main approach to any subject given should be theological, though, as Vitoria admits, good and reliable theologians are hard to find. Interestingly enough, here he refers to Cicero's *De Oratore*, thus linking Cicero's lament on the little number of eminent masters of (political) language in a community (the *res publica*) to the subject of theology. [27]

Theology's particularity and eminence refers to its expertise on *conscience*. The concept is of paramount importance for the contact situation examined here. Also in the contemporary discussion of the role of the Spanish conquerors, conscience played a key role.⁴¹ According to Carl Schmitt, Vitoria himself speaks as an advisor in matters of conscience and as a teacher [28]

36 See, on Vitoria's attitude towards the religiosity of the Indios, Hasselhoff (2021, 128): "Es wurde [...] ein aus europäisch-exklusivistisch anmutender Perspektive sehr umfangreiches Eigenrecht der indigenen Bevölkerung in politischer wie religiöser Hinsicht eingeräumt. Zwar wird ein Existenzrecht der Religion(en) der 'Inder' nicht im eigentlichen Sinne zugestanden, aber es wird eingeräumt, dass sie ein anderes Glaubenssystem haben als die bis dahin in Europa bekannten. Damit hebt er sich von der Mehrzahl seiner Zeitgenossen ab, die sich zur gleichen Zeit mit in anderer Hinsicht ebenso drängenden Fragen der Auslegung und Interpretation der eigenen Traditionen beschäftigten."

37 "[H]abent pro suo modo usum rationem. Patet, quia habent ordinem aliquem in suis rebus [...] quae omnia requirunt usum rationis, item religionis speciem" (Vitoria, *De Indis*, 1997, 402).

38 Vitoria reminds his students insistently: "Nullas habemus studiorum ferias, nullam vacationem ab exercitiis litterarum." (Vitoria, *De homicidio*, Vitoria 1995, 442).

39 "Officium ac munus theologi tam late patet, ut nullum argumentum, nulla disputatio, nullus locus alienus videatur a theologica professione et institutio" (Vitoria, *De potestate civili*, 1995, 116).

40 "Est autem theologia omnium disciplinarum studiorumque orbis prima" (Vitoria, *De potestate civili*, 1995, 116).

41 See, on conscience as a key concept of the discourse on the conquest and the Christianization of the New World, Sievernich (2011).

of future advisors of politicians (Schmitt 1950, 79). Accordingly, Vitoria establishes a close relationship of the judgement of experts and a good conscience:

[...] in every case of doubt there is a duty to consult with those competent to pronounce upon it, since otherwise there can be no security of conscience, regardless of whether the action concerned is really lawful or unlawful.⁴² [29]

Now, when it comes to conscience itself, to Vitoria, there is no doubt that it is exclusively about the clergy to decide matters: “Yet since this is a case of conscience, it is the business of the priests, that is to say of the Church, to pass sentence upon it.”⁴³ Nevertheless, as Vitoria complains, the theologian’s expertise is very rarely enlisted in order to decide these problems. This is all the more regrettable for the course of things, because to him, there is even an obligation to listen to theologians in matters of conscience: [30]

It must be so, because in matters which concern salvation there is an obligation to believe those whom the Church has appointed as teachers, and in cases of doubt their verdict is law. Just as a judge in a court of law is obliged to pass sentence according to the evidence presented, so in the court of conscience every man must decide not according to his own inclination, but by logical arguments or the authority of the learned. To do otherwise is impudent, and exposes one to the danger of sin, which is itself sinful.⁴⁴ [31]

Vitoria’s juridical background provides him with the decisive metaphor of his considerations. As a court of sorts (*in foro conscientiae*), conscience bridges the gap between objective validity and subjective obligation, thus between theoretical consideration and practical conduct. Accordingly, it is theology’s double competence, with regard to its expertise and its ability to decide in theoretical as well as in practical matters that secures the theologian an outstanding position on issues of the Spanish conquest of the New World.⁴⁵ [32]

Meta-communication, and Reason as a *Tertium Comparationis*

The discovery of America provided the theologian Vitoria with one of the paramount issues of his thinking.⁴⁶ This issue was in many ways disturbing, for, as John Marenbon has put it, “contrary to the widespread belief before, there were large parts of the world where the Gospel has [33]

42 “In rebus dubiis quilibet tenetur consulere illos, ad quos spectat haec docere; alias non es tutus in conscientia, sive illa dubia sint < de re > in se licita sive illicita.” (Vitoria, *De Indis*, Vitoria 1997, 378).

43 “Et cum agatur de foro conscientiae, hoc spectat a sacerdotibus, id est ad ecclesiam deferre.” (Vitoria, *De Indis*, 1997, 380).

44 “Tenetur enim credere in his, quae spectant ad salutem, his, quos posuit ecclesia ad docendum, et in re dubia arbitrium illorum est lex. Sicut enim in foro contentioso iudex tenetur iudicare secundum allegata et probata, ita in foro conscientiae quilibet tenetur iudicare non ex proprio sensu, sed vel per rationem probabilem vel auctoritatem sapientum; alias est temerarium iudicium, et exponit se periculo errandi et hoc ipso errat.” (Vitoria, *De Indis*, Vitoria 1997, 376).

45 See Stiening (2011a, 124): “Nicht nur die spezifischen Inhalte, sondern die Reflexionsform ist es, die nach Vitoria die Zuständigkeit der Theologie hinsichtlich der Frage nach der Rechtmäßigkeit der spanischen Eroberungen in Übersee aufdrängt. Nur die Theologie als theoretische und praktische Wissenschaft kann Entscheidungen fällen, ist mithin nicht allein wissenschaftlich analytisch, sondern praktisch, d.h. handlungsleitend virulent, weil sie nicht nur überlegt, sondern abschließend beweist.“

46 To Thumfart, Vitoria’s insistence on himself being a theologian provides the paramount methodological issue for the interpretation of *De Indis* (see 2012, 182).

never been preached. This realization would eventually change thinking about what was required for salvation [...]” (Marenbon 2015, 249). It is such an influence displayed by the New World on Old Europe that can be found in Vitoria’s writings that react to the new situation as well. Therefore, Vitoria was part of “a remarkable top-to-bottom rethinking” of how one should “*conceptualize* the ‘others’” and how one should “*regulate behavior*” with the Indios of the New World (Strenski 2004, 638). Being an eminent and persuasive academic teacher, his findings and results displayed influence over time and space. Bernice Hamilton emphasizes Vitoria’s importance beyond the university as follows: “But the influence of the ‘university philosophers’ must certainly have been great: e.g. several thousand students, lay and clerical, passed through the classrooms of Francisco de Vitoria, and many of his pupils later occupied prominent positions in church, university or administration in Old and New Spain” (1963, 2). What is more, some of his early students became missionaries who were defenders of the Indians (see Horst 1995, 168).⁴⁷ At last since the year 1534, Vitoria exchanged letters with missionaries in the New World, as they were the most important and most authentic sources of information about it (Horst 1995, 19).

Though lacking first-hand knowledge of the situation in the New World, it becomes clear that the information Vitoria gained from these letters and from accounts of missionaries returning to Spain shook him profoundly. The reports he received challenged him as a theologian. In a letter of advice to his religious superior, Miguel de Arcos, from November 8, 1534, Vitoria gets everything off his chest. Commenting on the massacre at Cajamarca, the assassination of the Inca Atahualpa, and the subsequent claim of the looting and pillaging soldiers to have their booty legally confirmed, he writes: [34]

As for the case of Peru, I must tell you, after a lifetime of studies and long experience that no business shocks me or embarrasses me more than the corrupt profits and affairs of the Indies. The very mention freezes the blood in my veins. Yet I work as best I can, so that if they [the Spanish conquerors of Peru, KMS] make off with the assets, at least I suffer no loss of that other asset, a clear conscience. Mine may be less eye-catching but I think it no less valuable. (1991, 331) [35]

Here, Vitoria distinctly separates himself from the conduct of the conquistadores by recurring on the incompatible opposition between a clear and a spoiled conscience. This issue provided the Salamanca professor of *prima theologia* with the reason to intervene into the discussion. To Vitoria, the matter of the conduct of the Europeans in the New World is nothing less than a matter of spiritual welfare, as the conquerors of these lands are in danger of forfeiting the salvation of their souls because of their greed for worldly goods in the form of booty stolen from the innocent. [36]

Some of these Peruvian adventurers I fear, may be the type ‘that desire to be rich [and fall into temptation]’ (1 Tim. 6: 9), of whom it was said ‘[it is easier for a camel to go through the eye of a needle than] for a rich man to enter into the kingdom of heaven’ (Matt. 19: 23-4). (1991, 332) [37]

Of the spoiled conduct of the conquistadors Vitoria would be no part. He furthermore stresses his stern disapproval of the actions of the Spanish soldiers persistently in the same letter as follows: [38]

Even if I badly wanted the archbishopric of Toledo which is just now vacant and [39]

47 See also the list of Salamanca students in America provided by Rodríguez (1984).

they offered it to me on condition that I signed or swore to the innocence of those Peruvian adventurers, I would certainly not dare do so. Sooner my tongue and hand wither than say or write a thing so inhuman, so alien to all Christian feeling. (1991, 333)

Of course, Vitoria in his considerations was not without predecessors. First, his thought [40] is firmly based on traditional theology and philosophy, but also recent intellectual developments and discussions are carefully taken into account.⁴⁸ To some degree, due to his studies at Paris, Vitoria was indirectly related to the Scottish scholar John Mair (Major) (1467–1550), who was of great influence to him as he quotes him extensively and, above all, who was also the first (in 1510) to consider the political and moral problems emerging with the discovery of the New World.⁴⁹ Though suggesting that the Indians might be the Aristotelian ‘slaves by nature’ (see Castilla Urbano 2013, 4–6),⁵⁰ in his considerations on the discoveries, Mair stresses the importance of situations of contacts with regard to the establishment of Christian ethics among the pagans of the newly discovered territories. These people, he argues, could be made accustomed to Christianity by means of mutual contact (Horst 1995, 27). Not least, Mair also addresses communicative issues, above all, the issue of language as a means of communication: According to him, because the Indios do not understand Spanish (“*linquam hispanicam non intellexerunt*”)⁵¹ and do not allow Christian preachers to them without being forced, one is entitled to establish fortified places in order to allow customizing contact and adaption of Christian ethics (Sievernich 2001, 189). Thus, for Mair it is not only linguistic communication that causes the success of mission, but also an element of habituation one gets used to in daily contact.⁵² As we will see, Vitoria himself, in his meta-communicative considerations, here moves beyond Mair as he examines the precondition of contact and linguistically guided adaption described by Mair, as *reason*.

The early phase of Spanish colonialism is differentiated from later phases by means of its [41] “astounding liberty of speech concerning ethical questions of colonialism,” but nevertheless not by the extent of oppression it displays (Delgado 2011, 542–43). The relative freedom of speech, however, allowed Vitoria to come to the defense of the Indians in the only way he could: as an academic theologian wielding the intellectual weapons of the jurist.⁵³

The *Relectio De Indis* and the following discussion of Spanish jurists and theologians on it found no parallel in other countries. Vitoria launched a most powerful attack on most aspects of Spanish behavior in America. John Marenbon describes it as follows: “Although he stops short of openly condemning the entire colonial venture, he allows only a few ways in which the Spaniards might have justly come to rule in America, and does not accept that they have in fact gained the lands in these ways” (Marenbon 2015, 251). No less dubious are the methods of spreading the gospel, the techniques of mission the Spanish conquerors apply to the unfortunate Indians. To Vitoria, the missionary efforts of his time in the New World suffer from correspondingly severe defects, questioning the very basis of the missionizing process. Moreover, as a consequence of his considerations, Vitoria had “left his king with only a slender [42]

48 See, on the previous discussion, Thumfart (2012, 76–124).

49 See, on the importance of Mair for Vitoria, Thumfart (2012, 76–80).

50 See, on Vitoria’s stance towards the question of natural slaves, Pich (2012, 392–96).

51 Joannes Maior, In secundum sententiarum, Paris 1510 fol 96 va. (quoted in Hasselhoff 2021, 119).

52 “*ut succesu temporum effrenis populous ad mores christianorum assuresceretur*” (Maior 1510, quoted in Thumfart 2012, 78).

53 See, on the discussion of Vitoria’s role in the development of colonialism, Cavallar (2008, 186–88). Cavallar himself, instead of outright debunking Vitoria (as he does with Grotius) as an agent of European colonialism, considers “Vitoria’s moral cosmopolitanism [as] incomplete, but still [as] an impressive feat” (2008, 209).

claim to jurisdiction (*dominium iurisdictionis*) in America, but no property rights whatsoever. [...] Vitoria had not quite argued the emperor out of the larger portion of his empire; but he had come perilously close to it” (Pagden 1991, XXVII-XXVIII). It does not come as a surprise, then, that Vitoria’s propositions gained him a decree muzzling freedom of speech by the Emperor, Charles V (who was himself famously suffering from pangs of conscience about the situation in his new lands), forbidding him to treat political matters in his lectures in a letter from November 1539.⁵⁴

You [i.e., Vitoria’s pupil Domingo de Soto] shall command the clerics and teachers in question to refrain, now and in all future times, from engaging in discussions, sermons, or debates without Our express permission regarding the topic mentioned above.⁵⁵

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In *De Indis*, Vitoria takes his point of departure from the necessity to interpret Christ’s order to teach and baptize the peoples in view of the Indians who are now under Spanish rule but who were “unknown to our world before” (“ignoti prius nostro orbi,” Vitoria 1997, 370). In this process, language seems to be of some importance. To Vitoria, however, the order to “teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost” (Mt 28,19) is closely related to the question of whether it is allowed to baptize the children of unbelievers against the will of their parents; a question that has been discussed controversially since Aquinas and Duns Scotus (Horst 1995, 84). The answer to this question is a matter of law, and leads Vitoria to scrutinize the prevailing rights derived from it. To him, it is necessary to examine the rights the Spanish rulers *in temporalibus et in civilibus* have, on the one hand, and the rights the bishops and the church *in spiritualibus et <in> spectantibus ad religionem* have, on the other hand (Vitoria 1997, 370). The lecture *De Indis* thus is above all an evaluation and delimitation of competences. As Ulrich Horst has pointed out, it is Vitoria’s main matter of concern that the expertise of the theologians has been neglected in the previous discussion. For it is the application of divine laws (as the core competence of the theologians) that is crucial in this matter (1995, 84–85). Furthermore, the theologian’s expertise on conscience demands to be taken into account:

[44]

In these matters, the decision is not only the jurists’ to make, but - as it is all about the court of conscience - it is also the task of the theologians to declare their position.⁵⁶

[45]

Because it is all about the court of conscience, not only jurists, but also theologians have to be consulted in the first place; and they have, finally, to decide on this matter. So, considerations on matters of the New World with regard to the question of mission according to Matthew 28.19 (which is the scriptural basis of Vitoria’s reflection) require both, i.e., legal and ultimately theological, expertise.

[46]

Concerning the promotion of the Christian religion (*religionis Christianae propaganda*), Vito-

[47]

54 See, for a more pessimistic reading of Vitoria’s impact on the discussion about the rights of the Indios, Noreña (1978, 71): “Nevertheless, his [i.e., Vitoria’s, KMS] hasty and biased endorsement of the right to free trade and tutelage laid the foundations of modern colonialism.” Furthermore, Noreña adds: “Vitoria’s religious prejudice was immediately felt in the course of historical events. His crude theory of free trade and international trusteeship was to have a long and not entirely positive effect upon later theoreticians of mercantilism and colonialism” (1978, 85).

55 The letter is quoted in van der Kroef (1949, 143). See, on the relation of Vitoria and Soto with regard to the justification of the Spanish conquest, Tellkamp (2011).

56 “Determinatio huius negotii non spectat ad solos iuriconsultos, sed cum agatur de foro conscientiae, hoc spectat ad theologos definire” (1997, 372, my translation).

ria is firm in his basic conviction that Christians have the right to preach the Gospel in the lands of the pagans: *Christiani habent ius praedicandi evangelium in provinciis barbaorum* (1997, 472).⁵⁷

This does not mean, however, that Christian rulers of lands populated by pagans might simply order them by law to renounce their religious beliefs and to become Christians. This reservation holds true for the New as well as for the Old World, for Muslims as well as for pagans. The main task of the rulers is not to threaten their subjects with loss of life, banishment, or confiscation, but rather to enlighten their subjects and teach them reasonably about Christianity. [48]

A law would not be tolerable, if an edict was to be established that on pain of death the worship of Mohammed or of idols was generally forbidden and that Christ is to be worshipped on pain of banishment or confiscation. Rather, it has to be achieved that they are enlightened and instructed about the vanity and falsity of their law or their rites; and they have to be industriously be made to hear the holy law of Christ in order to recognize its probability and to recognize the improbability of the other law to which they are deludingly subjugated.⁵⁸ [49]

The right to preach (and to hear) the Gospel is, according to Vitoria, closely related to the role of reason in the process of thinking and justification. The relationship, at least according to him, is the main reason for accepting Christianity unforced out of free choice, which is, in turn, one major argument for acceptance. To break with this reasonable custom, Vitoria argues, would diminish Christianity's glorious preeminence and spoil its name: [50]

It is no irrelevant argument for the Christian religion that it grants free choice to anyone, if he wants to be a Christian. Force was never used, but the infidels were treated with reasons and signs. It would destroy this glory, if we began to force people to accept Christ's law.⁵⁹ [51]

Though being quite optimistic about the peaceful spreading of Christianity here, to Vitoria, nevertheless, displaying one's capacity of reasonable thinking and behavior is salient for the evaluation of one's rights. He leaves no doubt that "[H]omo est homo simpliciter in quantum rationalis [...]".⁶⁰ The distinctive quality of man is reason ("Praecipuum autem in homine est ratio").⁶¹ This definition is something that speaks in favor of the inhabitants of the New World, and is of paramount importance for their treatment by church and state alike. Vitoria strongly opposes the idea that the inhabitants of the New World are to be counted among the animals. Though the Indios might lack sophistication, to Vitoria, however, it is clear from [52]

57 See, on the notions of *barbarous*, *barbari* in Vitoria's writings, Pich (2012, 398).

58 "Non enim esset tolerabilis lex, si statim faceret edictum, ut sub poena capitis nullus coleret Mahumetum vel etiam idola vel ut coleret Christum vel etiam sub poena exilii vel confiscatione bonorum, sed oportet primum dare operam, ut instruantur et doceantur de vanitate et falsitate suae legis vel ritus, et industria trahendi sunt ad audiendam legem sanctam Christi et ingenio, ut videant probabilitatem eius et improbabilitatem alterius legis, sub qua decepti vivunt" (Vitoria, *De Indis*, 1997, 508, 510, my translation).

59 "Est enim inter alia unum non exiguum argumentum Christianae religionis, quod semper facit liberum cuilibet, ut sit Christianus, neque umquam fuit vis adhibita, sed semper actum est cum infidelibus rationibus et signis. Et tolleretur quodammodo haec gloria, si inciperemus cogere homines ad recipiendum legem Christi" (Vitoria, *De Indis*, 1997, 510, my translation).

60 Vitoria, *De Homicidio* (1995, 456).

61 Vitoria, *De Indis* (1997, 402).

their ability to order their conduct of life that reason is at work here,⁶² though it might be the case that the human capacity for reason is, in their case, not fully developed. At this point, in accordance with his Aristotelian emphasis on teaching and education as the main promoter of reasonable human community, Vitoria also promotes the image of the Indios as promising children with regard to their capacity of reason. Ultimately, of course, the capacity for reason is synonymous with the capacity for Christianization (compare Seed 1993, 638–39).⁶³

However, there is more to reason than that. Reason comes dangerously close to being a means of salvation of its own.⁶⁴ The importance of reason can be shown by Vitoria's remark that even an unbeliever may reach grace by doing his share via his use of reason and his consequent decision for a good life.⁶⁵

It is, above all, meta-communicative aspects that Vitoria takes into consideration in *De Indis* regarding the contact of religious languages. In general, Vitoria presents a situation of religious contact as situation of communicating. He describes a certain setting of communication, elaborating on a certain situation of the missionizing process, i.e., the Christian missionary talking to a pagan audience on the reasonability of the Christian faith. The theologian, according to him, has to analyze this situation according to his overall aim: the promotion of the Christian faith.

Language is the errand boy of reason and the main instrument of the wise, as Vitoria, quoting Terentius, insistently points out: *Omnia sapientes prius verbis experiri decet*.⁶⁶ Accordingly, to promote mission, Vitoria scrutinizes the conditions of successfully talking about the Christian religion in a meta-communicative manner. If there is a Christian ruler, he may command his non-Christian subjects to participate at sermons on the Christian teachings (Höffner 1969, 396–97). To put that positively: the Indios “have the right to hear arguments and so become convinced” (van der Kroef 1949, 149). But success, Vitoria claims, is only probable if the audience is willing and, above all, able to listen. With regard to the Indios' acceptance of the Spanish king as their overlord, Vitoria also stresses the fact that a situation of fear and ignorance (*metus et ignorantia*), i.e., if the pagans do not understand the Spaniards and are intimidated by their weapons, surely makes any free choice obsolete:

For the barbarians do not know what they do, and perhaps they even do not under-

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- 62 “[...] non sunt amentes, sed habent pro suo modo usum rationis. Patet, quia habent ordinem aliquem in suis rebus, postquam habent civitates, quae ordine constant, et habent matrimonia distincta, magistratus, dominos, leges, opificia, commutations, quae omnia requirunt usum rationis, item religionis speciem” (Vitoria, *De indis*, 1997, 402). “[...] they are not really of unsound mind at all, but have, according to their lights, the use of reason. This is evident, because there is some method in their arrangements; they have organized communities, they certainly have marriages and magistrates, overlords, laws, workshops and a system of exchange, which all demand the use of reason; they even have a religion of sorts” (Hamilton 1963, 121). See, on the role of reason in Vitoria's reasoning about the Indians, Castilla Urbano (2013, 11).
- 63 Seed also emphasizes the fact that ‘reason,’ in particular, was part of Spanish self-ascription (*gente de razón*) that continued well into the eighteenth century and, as a consequence, served as the basis of Spanish Orientalism (1993, 648).
- 64 Compare Valenzuela-Vermehren (2013a, 295): “From the perspective of Vitoria's theological view, ontologically man bears a resemblance to God, the author of natural law, to the extent that reason in him is an inheritance of the perfect divine reason of his creator. It is in that relationship and in that resemblance, that man is said to enjoy dignity and to be equal to others of his species who possess the same qualities.”
- 65 “Veniat ille ad usum rationis qui nihil novit nisi per lumen naturale, proponat bene vivere. Jam ille erit in gratia, quia facit totum quod potest ad esse bonum et ad bene vivendum [...]” (de Vitoria, *Comentarios a la Secunda secundae de Santo Tomas*, quoted in Horst 1995, 73).
- 66 Vitoria, *De Indis* (1997, 468)

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stand what the Spaniards demand. Moreover, they demand it from a defenseless and frightened crowd, which they surround while being armed.⁶⁷

Accordingly, Vitoria examines the necessary conditions of speaking and hearing properly in a colonial setting. These conditions are, above all, a pacific attitude on behalf of the missionaries, and a certain openness of mind on behalf of his audience, an openness that is manifested in the willingness to hear. [57]

If the barbarians are asked and admonished to listen to those who speak peacefully about religion, and if they do not want to listen, then they are not excused of mortal sin.⁶⁸ [58]

Therefore, a pagan audience may well be expected to listen carefully to the missionary's talk, if it is performed peacefully. However, this is not because the missionary claims to be Christian, but rather because he is able to give convincing reasons for his faith, i.e., reasons that are able to show and to disprove the errors of the audience's former beliefs. These pagan people, Vitoria argues, are deeply in error, and fall victim to misconceptions for which they cannot provide probable or credible reasons—something they have in common with Muslims⁶⁹—and which make their conversion likely if communication is performed properly. Because of that, listening to reasonable religious talk can be demanded: to Vitoria, there is a duty to listen to (*tenentur audire*) and to think about the contents of a reasonable talk. Additionally, proper hearing is confirmed by answering the address. In case of a proper, reasonable talk by the missionary, the audience, to Vitoria, will be unable to answer by defending their former beliefs—leaving them only the performative answer of conversion. [59]

One does not consider someone to be convinced if something becomes clear to him, but rather because they cannot answer in a probable way. And they are not to be excused because of ignorance. So, infidels can indeed be convinced about the truth of Christian faith.⁷⁰ [60]

Formally and regarding content, reason is, therefore, to Vitoria an indispensable element of the religious contact situation described as 'mission.' Accordingly, to him, the contact of religious language in the form of the missionary's sermon is solely based on reason. And this reasonable basis of the Christian religion is, as a consequence, manifested by an honorable conduct of life that is, as such, itself a profound reason for the truth of the Christian religion. If the situation of contact is performed in this manner, i.e., both reasonably and credibly, then it is, according to Vitoria, even mandatory⁷¹ to accept the Christian faith: [61]

If the Christian faith is presented to the Barbarians in a probable way, i.e. employ- [62]

67 "Nesciunt enim barbari, quid faciunt, immo forte non intellegunt, quid petunt Hispani. Item hoc petunt circumstantes armati ab imbelli turba et meticulosa" (Vitoria, *De Indis*, Vitoria 1997, 454, my translation).

68 "Si barbari rogati et admoniti, ut audient pacifice loquentes de religione, nolunt audire, non excusantur a peccato mortali" (Vitoria, *De Indis*, 1997, 442, my translation).

69 "Et non est dubium, quin converteremus ad fidem Christi maiorem partem saracenorum, si cum eis haberemus familiaritatem, quia in secta sua non habent nisi meras fabulas et meras nugas." (Vitoria, *De Indis*, Vitoria 1997, 535).

70 "Non enim dicitur convinci aliquis, quia fiat ei evidens aliquid, sed quia non possunt probabiliter respondere. Et non excusantur ignorantia. Et ita convincuntur infidels, quod fides Christiana est vera" (Vitoria, *De Indis*, 1997, 512).

71 See, on the mandatory character of objective norms in Vitoria's thinking, Stiening (2011b).

ing probable and reasonable arguments, associated with an honorable and serious (with regard to the natural law) conduct of life—which is a weighty argument to confirm the truth—, and if it does not only occur once and superficially but carefully and seriously, then the Barbarians on pain of mortal sin are obliged to accept the Christian faith.⁷²

Now, this means that if the ‘Barbarians’ are, because of their previous errors, obliged to listen to the peaceful and reasonable talk of the credible and honorable missionary, then they are also obliged to agree with the reasons that are reasonably communicated (“Because if they are obliged to listen, then they are also obliged to approve, provided that the things heard are reasonable”).⁷³ In Vitoria’s definition, reason consists of the ability of the human being to discuss necessary action and to consider carefully.⁷⁴ In this definition, Vitoria seems to closely relate reason to communal communication and to a consensus of reasonable discussants. [63]

Mission depends on the obligation of the people to be missionized to listen to and to accept reasonable grounds peacefully communicated. As such, Vitoria argues, the communicative situation of contact can only lead to conversion (if the hearers are not utterly obstinate—in which case they have to be punished). But as he himself freely and regretfully admits, there is no reason to believe that previously the Christian faith was communicated to the Indians in such a manner. This well explaining lacking success. Vitoria even justifies their reluctance to accept Christianity because it has not been communicated in an obliging way: [64]

It is not sufficiently clear to me, if the Christian faith has been expounded and preached to the Barbarians in such a way that they are obliged to believe in case of a recent sin. I say this, because [...] they are not obliged to believe if the faith has not been expounded with probable persuasion. But I do hear nothing about miracles and signs, [hear] about an impious conduct of life, hear about many offences and brutal crimes and many impieties. Therefore it does not seem to be the case that the Christian religion has been preached to those people in a way that is sufficiently adequate and pious, so that they would be obliged to accord.⁷⁵ [65]

Though the infidels are obliged to follow revealed law,⁷⁶ to Vitoria, it still holds true that if the meta-communicative preconditions of mission are violated or ignored, the communicative situation of contact can only lead to failure. [66]

72 “Si fides Christiana proponatur barbaris probaliter, id est cum argumentis probabilibus et rationabilibus et cum vita honesta et secundum legem naturae studiosa {}, qua magnum est argumentum ad confirmandam veritatem, et hoc non semel et perfunctorie, sed diligenter et studiose, barbari tenentur recipere fidem Christi sub poena peccati mortali” (Vitoria, *De Indis*, 1997, 444, my translation).

73 “Quia si tenentur audire, ergo ita acquiescere auditis, si sunt rationalibilia” (Vitoria, *De Indis*, 1997, 444, my translation).

74 See Vitoria, *De eo, ad quod tenetur homo, cum primum venit ad usum rationis* (1995, 112): “Dico enim, quod est hominem esse in tali statu, ut possit consultare et deliberare de agendis.”

75 “Non satis liquet mihi, an fides Christiana fuerit barbaris hactenus ita proposita et annuntiata, ut teneantur credere sub nove peccato. Hoc dico, quia [...] non tenentur credere, nisi proponatur eis fides cum probabili persuasione. Sed miracula et signa nulla audio, exempla vitae non adeo religiosa, immo < contra > multa scandala et saeva facinora et multas impietates. Unde non videtur, quod religio Christiana satis commode et pie sit illis praedicta, ut illi teneantur acquiescere” (Vitoria, *De Indis*, 1997, 444, my translation).

76 “[...] tenentur tamen insequi rationem a Deo revelatam” (Vitoria, *De Indis*, 1997, 518).

Conclusion: The Contact of Religious Language in *De Indis*

The process of communication sketched by Vitoria in *De Indis* operates on the basis of a firm belief in the ability of human beings to receive, to accept, and to answer reasonable arguments that are transferred via language. So, in essence, Vitoria's concept is intended to be dialogical in the sense of a teacher-pupil relation. In proper religious communication, reason is communicable and conclusive—if it is heard. It is thus Vitoria's main aim to establish reason as a *tertium comparationis* allowing for communication and, ultimately, mission and conversion. [67]

The main aim of the missionary is therefore to secure an undisturbed course of communication. Correspondingly, for the theorist of law, the *ius gentium* is closely related to a *ius communicationis* (Llano Alonso 2015, 113).⁷⁷ In fact, to Vitoria the freedom to communicate including the freedom to travel or the freedom to trade, is closely related to the justification of Christian mission.⁷⁸ In meta-communicatively fashioning the basis of the (missionary) contact of religious languages, Vitoria relies on the fact that the Indios already had some form of religion—or better, something the Spaniards could interpret as religion. This proves that they are capable of reason that might be communicated to them (see Pich 2016, 765–66). The main meta-communicative aim of a Christian speaker (a missionary) in facing a non-Christian audience is therefore to establish a situation that allows hearing (listening to) reason being communicated. As usual, however, the situation of contact in place here is not restricted to only two parts contacting. To a certain degree, Vitoria seems to extend the validity of the (Protestant) individual maxim *fides ex auditu* to religious situations of contact. [68]

As the missionary can not rely on a commonly shared tradition or frame of knowledge, communication has to be secured otherwise, i.e., 'solely' by employing reasonable argument and a supporting background for it. This is the basic religiosity of the Indios and the unspoiled purity of the missionary's performance. The Christian part has to guarantee the credibility and reasonability of his arguments, the flawlessness of his conduct of life, and the sustainability of his performance. This is, above all, a matter of laborious and repeated effort (*diligenter et studiose*), and not to be achieved easily and superficially.⁷⁹ It is also a matter of practice, and thus in accordance with the philosophical and theological turn from metaphysical speculation to more practical issues Spain and Christianity in general faced during the period of colonization (Valenzuela-Vermehren 2013b, 115). Vitoria stresses that violence, force, negligence, and a dishonorable conduct of life of the Christian speaker prevent this situation from being established, because if such failures happen, the non-Christian audience by no means can be forced to listen to the misconducting speaker, let alone to accept Christianity on his demand and example. Accordingly, the *purity* of conduct might be a complementary *tertium* Vitoria tries to establish in order to guarantee the possibility of community and communication between the [69]

77 See Thumfart (2012, 148–49, 245): "Das *Ius communicationis* ist insofern die unverhandelbare Basis des *ius gentium*, als es den interkulturellen Kontakt festschreibt, der zur Bildung eines tatsächlichen, nicht virtuellen *consensus* innerhalb der *res publica totius orbis* notwendig ist. Das *ius communicationis* bildet eine unverzichtbare Grundlage der Weltgemeinschaft [...]." On the *ius communicationis*, compare also Pich (2015).

78 Concerning "Vitoria's idea of an intrinsic Christian morality of global trade," compare Thumfart (2009, 85, 82): "To Vitoria, global trade was powerfully connected to the global Christian mission, which was entrusted to the supervision of the pope."

79 See on this point Vitoria's thoughts on the development and continuation of a *habitus* in personal conduct: Vitoria, *De augmento caritatis et diminutione* (1997, 67).

missionary and his audience.⁸⁰ To him, in a situation of contact one not only communicates linguistically but also performatively via a pure and coherent (reasonable) conduct of life.

It is the combination of theoretical and practical aspects in the communicative missionary situation, that is, the inseparable combination of reasonable talk and proper (pure) conduct, that makes this situation the theologian's issue. First, he has to examine the conditions to successfully stage the situation, and secondly, he has to describe its formal requirements. Among these, the preparation of a setting that allows hearing the interface of reason and the justification by conduct are the most important.⁸¹ The theologian's expertise on conscience is an additional, interrelated factor. To allow the Indios to join the (Christian) community, the conscience of its members has to be unspoiled and innocent. If this precondition is fulfilled, the Indios, to Vitoria, will out of necessity join the Christian community: *contra naturam est vitare consortium hominum innoxiorum*.⁸² Accordingly, it is the theologian's main task to prevent the situation of mission to be an offence to the Gospel, and if necessary to abolish the misguided offensive attempt. After all, it is the community that is communicated in the attempt to missionize.

[70]

Because of that, one has to prevent oneself from posing a stumbling block for the Gospel. For if it is posed, one has to abandon that method and to look for another.⁸³

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It is thus the "spiritual responsibility of human beings for another, a responsibility extending far beyond the bounds of one's country" (Hamilton 1963, 105) that renders the theologian's expertise as indispensable in Vitoria's meta-communicative thinking. The meta-communicative principles (as part of a universal sociology of communication, compare Sievernich 2001, 199) are, however, to Vitoria universal, all-encompassing, and basically missionary, and will in consequence lead to global community; a process that is synonymous with Christianization (see Campagna 2010, 15).

[72]

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80 See, on purity as a *tertium comparationis* in situations of contact of religious traditions, Frevel (2017).

81 See, on law as a possible (secondary) medium of communication, Wagner (2011b, 580).

82 Vitoria, *De Indis* (1997, 462).

83 "Et ideo hoc inprimis cavendum est, ne offenciculum ponatur evangelio. Si enim poneretur, cessandum esset ab hac ratione evangelizandi et alia querenda esset" (Vitoria, *De Indis*, 1997, 476).

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