

# THE DISCOURSE ON HUMAN RIGHTS IN FRANCISCO VITORIA: PIONEERING APPROACHES AND LIMITATIONS

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## **Abstract**

This paper is based on a presentation given at the International Seminar held at the University of Salamanca in October 2025, entitled: The Discourse on Human Rights, from Francisco de Vitória to the Present.

## **Keywords**

Human rights' discourse. Francisco de Vitória. Natural Rights of Men.

I am deeply grateful to have had the good fortune to be invited by Professor Cláudio Brandão to co-lead, at the University of Salamanca, the “International Seminar on the Discourse on Human Rights from Francisco Vitoria to the Present” on the occasion of the meeting on October 10, 2025, at my university in Salamanca, which is *part of the International Humanities & Rights*, which he leads and in which I have had the honor of participating since its founding—an initiative that will lead to the publication of Volume 8 of the \*Humanities and Rights Global Network Journal\*, which readers now hold in their hands, and for which I was granted the honor of serving as Editor.

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The aforementioned seminar was organized by the International Seminar on Contemporary History of Human Rights (SIHCDH), a pioneering permanent body of the DHMMCA/USAL, established for the study and research of human rights; the “Research Group on the History of Human Rights” (GIR HDH), Radio Universidad de Salamanca, and the International Network Humanities & Rights Global Network, becoming part of the numerous activities initiated in 2025 and to be carried out primarily throughout 2026, launched by the Universities of Salamanca and the Pontifical University, the Dominican Order, the City Council of Salamanca, and the Regional Government of Castile and León, to commemorate the 500th anniversary of the School of Salamanca, the starting point of “Five Centuries of Global Thought at a University with More Than 800 Years of History.”

In this context, it seemed inevitable that the article would refer to the first treatise on the natural rights of man—the initial foundation and precursor to subsequent works on what would later be called “human rights”—written by Francisco Vitoria, considered the founder or leader of the “School of Salamanca.”

The content of this article is based on a review of numerous publications on the School of Salamanca, the earliest of which—testimonial or doctrinal in nature—appeared in the 16th and 17th centuries, and others that followed, between the 1980s and 1990s, on the occasion of the 500th anniversary of Vitoria’s birth, as well as more recent ones, including those inspired by the 500th anniversary of the School’s founding. The primary sources will be mainly the “lessons” taught to students by Vitoria, as recorded in their notes, the “re-lectures” or lectures delivered annually to teachers on topics of

particular interest, the letters written by the Dominican friar, reports, and memoirs by members of the School, as well as the so-called Laws of the Indies, in which the unmistakable influence of these members—whether religious or academic—can be seen.

The methodology applied to the analysis of these reflections will be Discourse Analysis (DA), which requires consideration of the speaker and the (collective) audience of the discourse under study, the context and interactions that shape and inform its production and reception, and the temporal meaning of the terms and concepts used, the literal content of the communicative actions undertaken (locution), their objectives or messages (illocution), and their social, political, and legislative impact (perlocution)

Whether “human rights” (understood as subjective, inalienable, and universal powers or prerogatives of human beings) are attributed a natural and ahistorical character or a historical one, whether they are considered an indisputable truth discovered by reason, the result of a philosophical or legal consensus that fosters commitment, or a widespread “instrumental fiction,” as, among others, Yuval Noah Harari<sup>2</sup> views them, scientifically there is no room to dispute their historicity, nor the existence and impact of a dynamic “discourse” with emancipatory aspirations that recognizes them<sup>3</sup> —a

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<sup>2</sup> In his famous book *Sapiens: A Brief History of Humankind*, which has been reprinted many times since its first publication in 2012 and translated into 64 languages

<sup>3</sup> The normative, philosophical, ethical, or political discourse on human rights has not been able to escape accusations regarding its early ties to liberalism or its Western origins, and has been the subject of challenges, denunciations, violations,

discourse susceptible to multiple interpretations and manifestations over time, extending to the present day, but which, beyond more or less contrived “precursors,” did not truly emerge until the dawn of the Modern Age.

In fact, the first theoretical construct on the “natural” rights of man was developed at the University of Salamanca between 1538 and 1539, and is attributed to Francisco de Vitoria, born in Burgos probably in 1483 (according to some, in 1492), during the reign of the Catholic Monarchs, and who died in 1546 at the age of 63.

One cannot understand Vitoria’s groundbreaking intellectual contributions—produced primarily at the University of Salamanca and later completed and developed by his disciples—nor his limitations, without considering both his biography, education, and personal experiences as well as the context in which these ideas were proposed and defended: the Castilians’ discovery of the American continent, the conquest and colonization of much of it by Castile and Portugal, the development of commercial capitalism, the first wave of economic globalization, power struggles, the crisis of medieval religiosity, the rise of Protestantism, the rise of neo-scholasticism, and the need to adapt principles, ideas, and behaviors to a changing world.

In 1505, Vitoria had joined the powerful Dominican Order, which had been reformed in 1502 and was in the midst of an

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and rejections, but even amid the crisis we are experiencing today (2026) within the UN and international public law on human rights, the appeal to the latter continues to hold considerable potential for legitimization, protection, and change.

intellectual and religious transformation—a transformation to which he set out to contribute by deepening his knowledge. In 1508, he was sent to Paris to complete his education, where he came into contact with Erasmian and nominalist circles and pursued his theological studies between 1512 and 1516—the year in which Emperor Charles V of Germany assumed the Spanish crown—earning his licentiate in theology in 1522<sup>4</sup>, and where he was influenced by humanism, and, in some respects, by nominalism and the School of Monteaudo. Its leader was John Mair, an advocate of the popular origin of political power, the application of theology to earthly affairs, and the involvement of theologians in socio-political issues, and a staunch critic of the pope’s temporal power; for this reason, as early as 1510, he questioned in his publications the legitimacy of Castilian rule over the Americas. A dominion authorized, as is well known, by the papal bulls of Pope Alexander VI, which between 1493 and 1494 granted the Crown of Castile and the Kingdom of Portugal the right to the conquest and colonization of the American territories and the obligation to evangelize their indigenous peoples. On most of these issues, Vitoria agreed with Mair, although he never went so far as to endorse conciliarism and sought alternative arguments to those based

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<sup>4</sup> “Theology,” Ramón Hernández (1984, p. 31) emphasizes, “was conceived at that time as the supreme science. It was regarded as the wisdom of the first causes of the world: God and His providence. The reason for its success lay not in remaining in the heights of contemplation, but in recognizing that there was an eminently practical aspect, one that had to be deeply internalized in order to apply it successfully. This would be the secret of Vitoria’s triumph, just as ignoring it would be the downfall of thousands of theologians.”

on the pope's temporal power—in which he did not believe either—to uphold the legitimacy of the Castilian conquest of the Americas. Also important to him were the lectures of Pedro Crockaert, a disciple of the nominalist John Mair, who had begun teaching the *\*Secunda Secundae\** of St. Thomas in those classes; Vitoria later incorporated this work into his own teaching, thereby breaking with the tradition of explaining theology based on Peter Lombard's *\*Four Books of Sentences\** (Álvarez Uría, 2015, p. 143)

Vitoria returned from Paris to Spain with a wealth of new friendships, intellectual connections, knowledge, and intellectual pursuits, and in 1523 we find him as an acclaimed and already prestigious professor at the College of San Gregorio in Valladolid, a renowned Dominican center for theological studies. We know that in the city and among the Dominicans, the early reports of the mistreatment of the indigenous Americans by the conquistadors—made by missionaries who were contemporaries of Vitoria, such as Antonio Montesinos (1475–1540), the first defender of the indigenous peoples (Advent Sermon, 1511), and Pedro de Córdoba (1474/84–1566)<sup>5</sup>, and , who, beginning in 1512 and especially from 1524

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<sup>5</sup> Montesinos' Sermon caused a great stir among the colonizers; it deeply moved Bartolomé de las Casas—who was then an encomendero and, since 1522, a Dominican friar—leading him to condemn the conduct of the conquistadors and denounce it before Ferdinand the Catholic. Vitoria, who was not unaware of this, would take some time to take into account the complaints accumulated by members of the order that attested to the abuses committed by the conquistadors against the indigenous peoples. Bartolomé de las Casas reports on this in his *\*History of the Indies\**, Book III, Chapters 3–5. See also the *text of Antón Montesino's sermon*

onward, discussions about the “New World” were frequent at the College of San Gregorio, from which García de Loaisa hailed—he had been president of the Council of the Indies since that latter year and was inclined to consult the faculty of the college where he had been educated regarding the situation in the Americas—the young professor of theology, who was aware of and followed the issues as they arose, still hesitated to publicly commit himself to defending a cause he did not know firsthand and which not the entire Dominican Order—fearful of losing its missionary project in the Americas—shared,<sup>6</sup> while he continued his specialization. In 1525, Vitoria was awarded the title of Master of Theology. In 1526, he applied for the chair of Theology at the University of Salamanca, which had become vacant, and won it (Hernández, R. 1984, pp. 13–30).

While the Order of Saint Dominic focused its preaching and attention on the Indies, the University of Salamanca gained increasing power and intellectual prestige, which would reinforce the influence that Vitoria’s membership in the Order already conferred upon him. Salustiano de Dios highlights the mutually beneficial symbiosis that

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*as recorded by Bartolomé de las Casas, with commentary by Gustavo Gutiérrez. Commemoration of the 500th anniversary of Antón Montesino’s sermon and the first Dominican community in the Americas, December 21, 1511–2011, available at [https://www2.dominicos.org/kit\\_upload/file/especial-montesino/Montesino-gustavo-gutierrez.pdf](https://www2.dominicos.org/kit_upload/file/especial-montesino/Montesino-gustavo-gutierrez.pdf). Accessed June 1, 2026.*

<sup>6</sup> Provincial Alonso de Loaysa in Burgos had written to Pedro de Córdoba following Montesinos’s sermon, prohibiting members of the Order from addressing such matters, which “would hinder the work on which you have labored so hard” (Álvarez-Uría, F., p. 2015)

had been developing since the reign of the Catholic Monarchs between the university and the monarchy: “The kings for the university, the university for the kings, as the Greek inscription on the border of the effigy of the Catholic Monarchs on the main façade of the University of Salamanca reads” (De Dios, S. and Torijano, E., 2012, p. 69 ff.), which supplied scholars, professors, and graduates to the many institutions that supported the Court and filled positions within the Church—a political, advisory, and legal authority, which persisted during the reign of Charles V and later under Philip II (Martínez de Codes, R. M. and Chaparro Gómez, C., 2023), contributing to imperial legitimacy.

This alliance, like that of the Dominicans with the Crown, did not, however, prevent the Order and the University—which were often consulted—from becoming embroiled in the tensions and debates generated by an imposed domination and by the excesses that accompanied the conquest of the Americas and that remained unresolved, following the debate sparked by Montesinos’s sermon in 1511, with the convening of a council of theologians and jurists in Burgos that culminated in the enactment of the Laws of Burgos in 1512—even though these laws seemed to some to be little more than a token gesture and were intended to alleviate the plight of the indigenous peoples of the Americas<sup>7</sup>. Nor would the controversy over

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<sup>7</sup> Recalling that these were subjects of the King of Castile, lords of the Indigenous peoples by virtue of their commitment to evangelization, and should be treated as befitted such a circumstance, recognizing their status as free men, owners of homes and their own property, although, as subjects of the Crown, they could be required to perform labor as wage earners (paid in cash or in kind)

the procedures that were to guide the occupation of new territories and the treatment of their indigenous peoples be resolved by the promulgation, by Charles V, of the Ordinances of Granada of 1526 regarding the manner—in principle “peaceful” (in the absence of resistance) in which the colonization of new territories, their settlement, and the ransoms were to be carried out, following a formal *Requerimiento*<sup>8</sup>. The Ordinance was a response to the conquest of Mexico by Hernán Cortés, carried out without prior authorization from the Crown or regard for regulations, as denounced by Bartolomé de las Casas on January 20, 1531, in a letter to the Council of the Indies, and in subsequent memorials and reports.

In 1532, with the Laws of Burgos of 1512 and the Ordinances of Granada of 1526 formally in force, Pizarro’s conquest of Peru was accompanied by acts as cruel and senseless as the Cajamarca massacre—which for a long time remained largely hidden and little known in Castile—and the capture and execution in 1533 of the Inca prince Atahualpa, events that left even those who participated in them with a heavy conscience

Vitoria, who had been informed by Bartolomé de Carranza and by the soldiers who took part in the Battle of Cajamarca and profited from the distribution of goods stolen from the indigenous people before returning to Spain, did not feel comfortable remaining

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<sup>8</sup> It was absurd—and could hardly end well—to demand, through the devised “*Requerimiento*” procedure, that the Indigenous peoples accept the “peaceful” occupation of the land they inhabited, assisted by interpreters and two clergymen tasked with making the natives of the territory “understand” what was intended, authorizing war if they resisted.

silent or refraining from seeking solutions or humanizing approaches to an ongoing process that could not be easily reversed immediately, as is evident from the shaken and horrified letter he wrote to his colleague and confidant Miguel de Arcos—which has been preserved—followed by the Relectio “De Indiis”<sup>9</sup> delivered before the faculty between 1538 and 1539, a true foundational text of Victorian discourse on the natural rights of man—original and remarkably advanced for its time, and in some respects even for our own, such as when he articulates the unrestricted *ius migrandi* (the absolute right to migrate and freedom of movement)—though not without limits and concessions to *the status quo*, and curtailed by a self-censorship that would lead him to remove from it “the most controversial pages,” in the words of Luciano Pereña (1986, p. 49), of the premature \*Relección Indiana\* of 1537.

In this crucial text, Vitoria reveals himself as a scholar and teacher, rather than as a preacher or activist, and for that reason, and because of the dual support provided by his religious community and his university in Salamanca, he escaped reprisals and never incurred as much wrath as Montesinos or Bartolomé de las Casas, who has long been accused by revisionist literature of being the founder of the “black legend” of Spanish colonization due to his detailed denunciations of the abuses of the conquest<sup>10</sup>.

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<sup>10</sup> One example among many of this enduring antipathy toward Bartolomé de las Casas is the different treatment given to Vitoria and de las Casas in the most recent revisionist publications on the School of Salamanca, such as the one by José Carlos Martín de la Hoz and León Gómez Rivas, significantly titled “When Spanish

Such was the temperament of the author of *\*De Indiis\**—prudent and cautious, not without a certain pragmatism and a willingness to come to terms with reality, while not ignoring the risks involved in challenging the recipients of his discourse (conquistadors, conservative professors, defenders of the empire, merchants, court bureaucrats, jurists benefiting from offices and privileges, missionaries, etc.). Everything led him to avoid taking positions of radical confrontation with the established powers. He feared—as he expressly acknowledges—being branded a schismatic if he questioned the pope’s decisions and being considered an enemy of the emperor if he dared to condemn the conquest of the Americas (Pereña, L., 1986, p. 23). This explains why, even while daring to advocate for limiting the pope’s temporal power—arguing that such authority cannot justify the pope’s gift of the Indies to the Spanish sovereigns— he did not challenge it entirely, admitting that such temporal power permits

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Thought Enlightened the World,” which was first published by Sekotia in March 2025 and received a second edition in October of that same year. The aforementioned authors state: “A major criticism of de las Casas concerns the description of events in his *\*Historia de las Indias\**, which is colorful but riddled with exaggerations and historical inaccuracies. It is also worth recalling that Las Casas’s great mistake was to demand that the encomenderos and the Spaniards change the order of the confession rite, insisting on the restitution of the property they had appropriated prior to sacramental absolution. This error led to his resounding failure as Bishop of Chiapas and, consequently, in his defense of the indigenous peoples. Domingo de Soto would delicately point this out in his *\*Sumario\**, but the Council of the Indies, from that point on, took good note of it and henceforth harshly attacked the “Defender of the Indians”>> (Martín de la Hoz, J.C., and Gómez Rivas, L., p. 61)

certain papal interventions of a temporal nature when dealing with Christian political communities (Isler Soto, C. A. (2025)). He also explains that Vitoria does not deny the legitimacy of imperial domination in the Americas, but rather reformulates it to ground it in natural human rights, and that, when he decides to take a stand to defend the dignity of the indigenous peoples and alleviate their plight by upholding their rights—such as the right of all human beings— to their own culture, their land, and their beliefs, their religious freedom, and, ultimately, their self-determination—even though embodying such principles represented an undeniable pioneering theoretical advance, which would later be used by some American independence activists to legitimize their cause—he limited its application to cases where such self-determination was beneficial to the inhabitants of the Americas and freely demanded by them.

This renewed interpretation of Natural Law, which recognizes subjective rights for all people (conquerors and conquered), does not necessarily lead to the immediate emancipation of indigenous peoples. His defense of *the ius communicandi*—which implies a right to evangelization and freedom of trade—served to reassure the Dominicans and Catholics who sought the indigenous peoples’ conversion to Catholicism, while his demand for the indefinite and mandatory preservation of trade, in the name of the right to freedom of trade—vital for Castile and for the 16th-century economy—reassured merchants. The defense of the legitimacy of preventing what the UN would centuries later call “harmful traditional

practices”<sup>11</sup>, such as cannibalism or human sacrifice—which must be eradicated and combated—by turning them into justifications for just war and conquest, eases the conscience of the conquerors and whitewashes the conquest. As for the novelty and “progress” that the right to unrestricted freedom of migration might have represented in the 16th century—a right that is not currently a binding right under public international human rights law—despite some voluntaristic interpretations of existing conventions stemming from Critical Legal Theory, there is no shortage of contemporary authors—such as Ferrajoli<sup>12</sup>, and their followers (2011, p. 311)—who, while demanding

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<sup>11</sup> and other practices, which today are not included in the list of prohibitions, were frowned upon by the morals of the time.

<sup>12</sup> Ferrajoli (2011, p. 311) sums it up this way: “The right to migrate—a **right defended in the Western philosophical tradition when it served the purposes of colonization and plunder—is now fiercely repressed**. And this is despite the fact that migration is not an emergency but a structural and unstoppable reality; policies aimed at repressing irregular immigration fail to limit the phenomenon, but only serve to drive it underground and sensationalize it. **The web of regulations that drastically limit the rights of migrants** entails, in addition to a legitimizing effect, a factor of miseducation, by creating an image of the “other” as someone who is naturally inferior, because they are already legally inferior. And this racist perception, in turn, legitimizes discrimination in rights. It is a vicious cycle. The same occurs when institutions promote fear and hatred toward “the other” or persecute those who assist people in danger. This “fascitizes” common sense, devaluing—along with the sense of equality and dignity that people possess simply by virtue of being human—the normal feelings of humanity and solidarity that form the basic foundation of democracy. In short, the ideological foundations of racism are being rebuilt. In the face of this, there is no alternative but *to commit to the true universalization of human rights, to an international constitutionalism*

that such a right—conceived as absolute freedom of movement and settlement anywhere on the planet—be recognized as a universal right, distance themselves from the Vitorian defense, pointing out that the Dominican and his disciples did not anticipate that it would benefit the Americans—whose immigration they had not foreseen—but rather the Spanish settlers who wished to settle in America

But it is true that Vitoria's conception of natural rights goes further and is more comprehensive than the one discussed so far. Credit is due to Ramón Hernández (1984) for having extracted from the “Relecciones,” “Sentencias,” and “Comentarios”—works that emerged from Vitoria's pen or speech and were preserved in the notes of his disciples—not only the aforementioned rights but also the striking body of natural rights and the law of nations that he anticipated. Among these, we will highlight the novelty represented by the inclusion—though not always formulated under the same terms or with the same scope that we ascribe to them today —of civil rights, such as the right to personal liberty—including the freedom to marry—to life, to honor, to self-defense, to physical integrity, and to freedom from inhuman and degrading punishment; and particularly

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*based on the equality of all human beings, overcoming the dichotomy between human rights and civil rights, grounded in the ius migrandi—precisely as an authentic right to have rights.”*

Ferrajoli, Luigi (2011) “Constitutionalism as a Guarantor: Between Paleo-Legal Positivism and Neo-Natural Law” Source document: Doxa. Journal of Philosophy of Law. No. 34, 2011 Journal of Philosophy of Law, No. 34 (2011), pp. 311–360 URI: <https://www.cervantesvirtual.com/nd/ark:/59851/bmc28225>

striking for the time was his defense of certain “social” rights such as the right of (male) parents to freedom in the education of their children, and the right of all people to food (the right to steal from the rich out of extreme necessity, what we call today theft out of starvation), to leisure, and to rest. Not all of these rights were immediately accepted and protected, but they paved the way for their subsequent defense, and in 1542 some of the proposals by Vitoria and the defenders of the indigenous peoples were incorporated into the New Laws (which were not always fully implemented or as effectively as desired) promulgated by Charles I, aimed at ending the encomiendas and the enslavement of the indigenous peoples.

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