

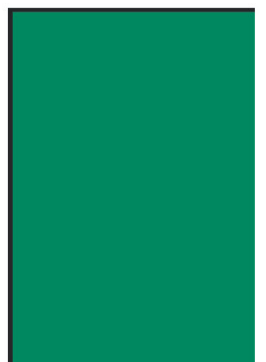
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# Moral Philosophy on the Threshold of Modernity

edited by  
Jill Kraye  
and Risto Saarinen



 Springer



MORAL PHILOSOPHY ON THE THRESHOLD OF MODERNITY

The New Synthese Historical Library  
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# MORAL PHILOSOPHY ON THE THRESHOLD OF MODERNITY

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## Introduction

Over the past twenty years the transition from the late Middle Ages to the early modern era has received increasing attention from experts in the history of philosophy. In part, this new interest arises from claims, made in literature aimed at a less specialist readership, that this transition was responsible for the subsequent philosophical and theological problems of the Enlightenment. Philosophers like Alasdair MacIntyre and theologians like John Milbank display a certain nostalgia for the medieval synthesis of Thomas Aquinas and, consequently, evaluate the period from 1300 to 1700 in rather negative terms. Other historians of philosophy writing for the general public, such as Charles Taylor, take a more positive view of the Reformation but nevertheless conclude that modernity has been shaped by conflicts which stem from early modern times.<sup>1</sup>

Ethics and moral thought occupy a central place in these theories. It is assumed that we have lost something – the concept of virtue, for instance, or the source of common morality. Yet those who put forward such notions do not treat the history of ethics in detail. From the historian's perspective, their far-reaching theoretical assumptions are based on a quite small body of textual evidence. In reality, there was a rich variety of approaches to moral thinking and ethical theories during the period from 1400 to 1600. Scholastic discussions did not stop when the Middle Ages came to a close; on the contrary, they acquired many new features in sixteenth-century Neo-Scholasticism. Theories of human rights and of dominion were not modern inventions; these issues were already debated by medieval thinkers. This discussion continued into the early modern era when humanists and Reformers rediscovered ancient moral traditions such as Stoicism and, in addition, applied the theological insights of the Reformation to ethical issues.

After the work of P. O. Kristeller, Charles B. Schmitt and Quentin Skinner, among others, professional historians of philosophy have become aware of the wealth of innovation which can be found in the years between 1400 and 1600.<sup>2</sup> This awareness, even more than the theories mentioned above, has been a key factor behind the new scholarly interest in this

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<sup>1</sup> Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*. Notre Dame: University of Notre Dame Press 1981; John Milbank, *Theology and Social Theory: Beyond Secular Reason*. Oxford: Blackwell 1990; Charles Taylor, *Sources of the Self: The Making of the Modern Identity*. Cambridge: Cambridge University Press 1989.

<sup>2</sup> See, e.g., *The Cambridge History of Renaissance Philosophy*, ed. C.B. Schmitt, Q. Skinner, and E. Kessler, Cambridge: Cambridge University Press 1988; C.B. Schmitt and B. C. Copenhaver, *Renaissance Philosophy (A History of Western Philosophy 3)*. Oxford: Oxford University Press 1992.



period. The contributions in this book belong to this new current of historical scholarship. They are motivated, above all, by the conviction that the moral thought of the fifteenth and sixteenth centuries still remains to a great extent unexplored. We are not yet in a position to formulate or evaluate abstract claims concerning the deeper meaning of the transition from the medieval to the early modern period. Before doing so, we must read and analyse the extant texts in all their diversity and variety. With special regard to the developments of moral philosophy on the threshold of modernity, this is what the present volume aims to do.

Although this book concentrates on individual case studies rather than attempting to present a comprehensive overview, a thread which connects many of the contributions is the continuity between late medieval and early modern moral thought. Ethical discussions initiated by medieval Aristotelians were carried on by Neo-Aristotelians in the sixteenth century. Far from abandoning or forgetting ancient and medieval ways of thinking about moral issues, humanists and Reformers sought to revive past ethical theories. The humanist programme of a return *ad fontes* by no means neglected the classical sources of moral philosophy. Given the weight of this evidence, one cannot simply assert that some moral treasure was lost or forgotten during the Renaissance and Reformation. Early modern ethics was attentive to older traditions as well as more recent ones. Its innovations should be seen in the light of this attentiveness.

The papers collected in this volume were first presented in a workshop entitled 'Late Medieval and Early Modern Ethics and Politics', held at the European Science Foundation (ESF) in Strasbourg, France, in November 2001. This workshop was one of the meetings of the 'Early Modern Thought' network. The network, funded by the ESF from 1999 to 2001, has already produced other volumes dealing with natural philosophy, language sciences and metaphysics.<sup>3</sup> We are grateful to the ESF for funding this network and the publications which have arisen from it. We also wish to thank Kluwer Academic Press and the editors of *The New Synthese Historical Library* for agreeing to publish this volume in their series. We also owe a very special thanks to *Jussi Varkemaa* who has acted as the technical editor of the present volume.

The overall aim of the network was to reconsider the borderline between late medieval and early modern thought. In order to promote this

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<sup>3</sup> C. Leijenhorst, C. Lüthy and J.M.M.H. Thijssen (eds.), *The Dynamics of Aristotelian Natural Philosophy from Antiquity to the Seventeenth Century (Medieval and Early Modern Science 5)*. Leiden: Brill 2002; R.L. Friedman and L.O. Nielsen (eds.), *The Medieval Heritage in Early Modern Metaphysics and Modal Theory, 1400-1700 (The New Synthese Historical Library 53)*. Dordrecht: Kluwer 2003; S. Ebbesen and R.L. Friedman (eds.), *John Buridan and Beyond. The Language Sciences 1300-1700* (Copenhagen: The Royal Danish Academy of Science and Letters, forthcoming).

aim, three guidelines were adopted in the original workshop. First, the emphasis of the papers was to be on the early modern period. Second, contributors were asked to consider, where appropriate, the relevance of the medieval background to their topics. Third, the subject matter was to be approached both philosophically and historically. While some papers emphasize historical analysis, others concentrate on the intellectual reconstruction of philosophical sources. As a whole, however, this collection attempts to combine an historical reading of texts with a philosophically competent understanding of the issues at stake.

We have grouped the papers into three sections: 1. Scholastics and Neo-Scholastics; 2. Theories of Human Rights and Dominion; 3. Reformers and Humanists. While all three sections treat roughly the same time period, with a particular emphasis on the sixteenth century, they have distinct thematic profiles. Papers in the first group investigate the fate of Thomism and are thus concerned with the continuity of Aristotelian scholasticism in Catholic philosophy. *David Lines* studies the reception of the commentaries on the *Nicomachean Ethics* of two major medieval philosophers, Thomas Aquinas and Jean Buridan, in Renaissance Italy. He shows that Thomas Aquinas continued to exert an important influence, as can be seen, for instance, in the commentaries of Niccolò Tignosi and Donato Acciaiuoli, but that Buridan's commentary made little impact on fifteenth-century Italy. This is interesting because we know that Buridan was still influential at the time in the universities of France and central Europe.

*Thomas Pink* investigates the concept of obligation in the action theories of Francisco Suarez and Gabriel Vasquez. They understood obligation to be an internal justificatory force which rationally motivates the will. Pink asks why, for Suarez and Vasquez, this force does not merely recommend actions to the will but actually issues orders. He concludes that their view of obligation as an action-specific justificatory force presupposes a theory of action no longer shared by later philosophers. *Martin Stone* studies the doctrine of 'pure nature' in Michael Baius and Dominic de Soto. In Cardinal Cajetan's interpretation of Thomism, this doctrine expresses the state of man as directed to his natural end. According to this early sixteenth-century interpretation, one can theoretically discuss human morals without presupposing supernatural ends. Stone shows that although the Augustinian-minded Baius and the Thomist Soto differ in their philosophical outlook, they nevertheless agree in their criticism of this assumption of pure nature. Both prefer to think of human subjects as concrete and morally imperfect individuals.

Casuistry is a feature of early modern ethics which has received a generally negative, even hostile, treatment from later philosophers and historians. *Rudolf Schüssler* and *Sven K. Knebel* demonstrate, however, that

casuistic considerations contained important theoretical innovations. Schüssler sets out the probabilism of Bartolomé de Medina and traces the spread of ethical probabilism in the early modern period. He explains the ways in which probabilism can offer help with practical decision-making in uncertain situations. Schüssler concludes that liberty-centred probabilism can be regarded as an ancestor of modern liberalism and possessive individualism. Knebel uses the example of torture in order to show how early modern casuistry transformed moral reasoning. He claims that Leonard Lessius's interpretation of casuistry softens the natural rights paradigm of charity and opens the door to an expansion of human autonomy.

The second group of papers, 'Theories of Human Rights and Dominion', opens with *Roberto Lambertini's* study of Franciscan political theory. In his view, William of Ockham's position cannot be called the supreme Franciscan contribution to this branch of philosophy; rather, Ockham develops his own, highly specific theory from general Franciscan features. Lambertini notes that even the opponents of the Franciscans, Jean Gerson for instance, could adopt Franciscan ideas. Thus Gerson resorted to the idea that human dominion is a purely human institution made necessary by sin. *Virpi Mäkinen* shows how early modern ideas of individual rights of property and subsistence were anticipated by late medieval Franciscans. Even before William of Ockham, Godfrey of Fontaines formulated an idea of the inalienable individual right of subsistence.

*Jussi Varkemaa* analyses the moral casuistry of the fifteenth-century scholars Jean Gerson and Conrad Summenhart. Using the juridical language of his contemporaries, Summenhart articulates a liberty-based approach to natural rights. He defends the view that a human being is *dominus* of his own person and that this dominion is a natural right of the individual. Through Gerson, Summenhart's concept of subjective right becomes associated with Franciscan discussions. *Risto Saarinen* studies Martin Luther's view of the three estates: *oeconomia*, *politia* and *ecclesia*. The three estates are connected, on the one hand, with the tripartite division of ethics in medieval Aristotelianism. On the other hand, Luther's frequent use of the concept *ordinationes Dei* connects the estates with the idea of God's ordained power and covenant theology. Whereas his views of *oeconomia* and *politia* bear some resemblance to Aristotelian social ethics, his description of individual ethics as taking place in the sphere of *ecclesia* is permeated by the Christocentric theology of the Lutheran Reformation.

The third section of the book, 'Reformers and Humanists', is concerned with the transformation of ethics which took place as a result of the humanist search for new sources. *Günter Frank* and *Dino Bellucci* study Philipp Melanchthon's ethics in the context of his broader philosophy. After Luther's criticism of Aristotle, Melanchthon reintroduced

the *Nicomachean Ethics* into the university curriculum. At the same time, Melanchthon's commentaries on Aristotle are pervaded by Luther's biblical theology and his own distinctive philosophy of mind. Frank explains Melanchthon's conception of the human mind as God's image and indicates how this theological precondition shapes his practical philosophy. Dino Bellucci discusses Melanchthon's natural philosophy and the relationship between mind and body. In his theory of action, Melanchthon takes over much of Aristotle's teleology, but he interprets it in relation to natural and cosmic influences. He speculates on the notion of spiritual, or celestial, matter operative in the brain and the nerves. In his view, locomotion is produced in the body by the God-given spirits of the neural system. Not just theological theories, but also complex neurological and medical ones, inform Melanchthon's influential view of human action.

The three final articles are concerned with what happened when, in the sixteenth century, Aristotelian moral theory was confronted by at least two rival systems: post-Reformation Christian ethics, on the one hand, and Neo-Stoicism, on the other. Taking the Christian ethics of Lambert Daneau as his starting-point, *Christoph Strohm* outlines early Calvinist moral thought. Aristotle remained the most important ethical thinker in Daneau's Christian ethics. The revival of Stoicism, however, also had an impact on his views. By seeking to rationalize and internalize the new *Zeitgeist* of early modern Europe, Neo-Stoicism lent an aura of modernity to Calvinist ethics. *Lorenzo Casini* studies Juan Luis Vives's view of emotions. He demonstrates that while Vives harmonizes Stoic moral philosophy with Christianity, he nevertheless rejects the Stoic theory of the emotions and embraces the Aristotelian view instead. In the concluding article, *Jill Kraye* explores the sixteenth-century engagement with Neo-Stoicism through an examination of Marc-Antoine Muret's 1585 edition of Seneca. Muret, whose philosophical predilections inclined more towards Aristotelianism and Platonism than Stoicism, takes a rather critical view of Stoic philosophy: he judges some views held by the Stoics to be worthy of respect, but more often he denounces their doctrines as absurd and incompatible with Christian theology.

The original title of the ESF network, 'Early Modern Thought: Reconsidering the Borderline between the Middle Ages and Early Modern Times', was chosen in order to encourage an interdisciplinary discussion of the sources of modernity. The overall goal of this network was 'to replace the established paradigm of a great Renaissance divide between medieval and modern thought with a less rigid model'. We hope that the present volume contributes to this goal. Even more than suggesting new models of periodization, it is important to highlight the range and diversity of moral philosophy between 1400 and 1600. If we are to gain an adequate picture of this period, we cannot limit ourselves to a handful of classics. We must also

take into account the many interesting philosophers who were influential in their own time but are less well known today. If the studies collected in this volume show that these authors still deserve to be read and are worthy of new investigations, it will have fulfilled its purpose.

The Editors

# Sources and Authorities for Moral Philosophy in the Italian Renaissance: Thomas Aquinas and Jean Buridan on Aristotle's *Ethics*

David A. Lines  
(University of Miami, Florida, USA)

Like their medieval predecessors, Renaissance writers could look to a vast number of works from antiquity which were either connected with or bordered on moral philosophy. Many of the authors who were used remained the same as those cited in Geremia da Montagnone's *Compendium moralium notabilium*, probably written shortly before 1310: Aristotle, Cicero, Seneca, Valerius Maximus, Virgil, Horace, Catullus, Statius and others.<sup>1</sup> At the same time, a significant change was provided by the rediscovery or renewed study of several works from antiquity. For example, Marsilio Ficino's translations (1484, 1496) gave the Latin West, for the first time, access to the complete Platonic corpus.<sup>2</sup> Furthermore, the increasing availability of authors such as Lucretius, Epictetus and Plutarch would have important consequences for the development of moral thought.<sup>3</sup> Nor were Petrarch's discovery of Cicero's *Letters* and philological work on Livy's *Decades* irrelevant, especially in the area of political philosophy.<sup>4</sup>

Despite the expansion of the canon, however, the works which had dominated the late medieval study of moral philosophy were not abandoned. Indeed, it would be wrong to suppose that the 'new' works and other favourite humanist authors supplanted the traditional practice of discussing virtue with constant reference to the Scriptures or to Aristotle or to both. The facile distinction between a Bible- and Aristotle-loving scholasticism, on the one hand, and a Plato- and Cicero-loving humanism, on the other, is now generally regarded, by serious scholars, as little more than a crude caricature. Not only did leading humanists such as Jacques

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<sup>1</sup> On this work, see especially Ullman (1955), pp. 81–115.

<sup>2</sup> Hankins (1990), I, pp. 300–18. There had been, of course, other attempts during the course of the fifteenth century to translate selected dialogues; see *ibid.*, *passim*.

<sup>3</sup> For the impact of Lucretius on moral philosophy, see Krays (1988), pp. 374–83; on Epictetus, see Krays (2001). The reception of Plutarch's *Lives* is discussed in Celenza (1997) and Pade (forthcoming).

<sup>4</sup> One of Niccolò Machiavelli's main works is, indeed, his *Discorsi ... sopra la prima decada di Tito Livio*.

Lefèvre d'Étaples make constant references to the Scriptures when discussing virtue,<sup>5</sup> but Aristotle was read and studied even more intensively during the Renaissance than before.<sup>6</sup> Aristotle's *Nicomachean Ethics*, for example, enjoyed a remarkable success: in Italy, during the period 1300–1650, over 160 Latin interpretations (including translations, commentaries, compendia, and other genres) were devoted to this text alone.<sup>7</sup> Furthermore, all over Europe the *Ethics* remained the standard text for the study of moral philosophy in the universities from the thirteenth through at least the seventeenth century.

Rather than insisting, however, on the popularity of this traditional text in Renaissance moral philosophy, my aim here is to study the *fortuna* of two medieval commentaries on it: Thomas Aquinas's *Sententia in libros Ethicorum* and Jean Buridan's *Quaestiones in Ethicam*. These were arguably the most important commentaries on the *Ethics* from the thirteenth and fourteenth centuries, and their reception in Renaissance Italy is indicative of the continuing influence of the medieval commentary tradition during the heyday of humanism.<sup>8</sup> The reception of the two works also, however, says something about the factors affecting their influence and the strategies sometimes adopted towards medieval authorities.

This paper is divided into three parts. First, I discuss some of the differences of perspective and emphasis in the commentaries by Thomas and Buridan. I then examine various factors which suggest the different reception of the two works in Renaissance Italy. The last part of the paper examines the efforts of a fifteenth-century commentator, Niccolò Tignosi, to reconcile the views of these and other medieval interpreters of the *Ethics*. A particular point of concentration will be the evolving attitudes towards Thomas's *Sententia* between the fourteenth and the fifteenth centuries. As will become clear, it was without question the most influential of the medieval *Ethics* commentaries in Renaissance Italy. This does not,

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<sup>5</sup> See, e.g., Lefèvre d'Étaples (1497).

<sup>6</sup> On the reception of Aristotle in the Renaissance, some fundamental studies are Schmitt (1983), Lohr (1988), and Bianchi (2003).

<sup>7</sup> Lines (2002), especially Appendix C.

<sup>8</sup> The acquaintance of Renaissance writers with the medieval *Ethics* commentaries is becoming increasingly recognized. See, e.g., Coluccio Salutati's praise of the works on the *Ethics* by Eustratius, Michael of Ephesus, Albert the Great, Thomas Aquinas, Giles of Rome, Albert of Saxony, Gerard of Odo, Walter Burley, Jean Buridan, and Henry of Friemar: Salutati (1891–1905), IV.1, pp. 37–9, discussed by Bianchi (1990), pp. 53–4, who also treats the influence of Eustratius, Albert the Great, Thomas and Burley on Donato Acciaiuoli's *Ethics* commentary published in 1478: pp. 43–51; and that of Eustratius, Thomas and Burley on Bernardo Segni's commentary published in 1550: pp. 34–5. The Jesuit Antonio Possevino (1603), pp. 76–7, edited in Lines (2002), p. 543, especially praised, among medieval commentaries on the *Ethics*, those by Averroes, Thomas and Albert.

however, mean that readers' interpretations and views of his commentary remained static.

## THOMAS AND BURIDAN ON ETHICS

Although the commentaries by both Thomas and Buridan can be dated to the years of their teaching at the University in Paris, there are noteworthy formal and doctrinal differences between the two works. Thomas's *Sententia* (possibly written around 1271–2)<sup>9</sup> is a literal exposition. As such, it remains close to the text, sequentially discussing the *Nicomachean Ethics* and clarifying its content. On the whole, there are few digressions, even though Thomas's interpretation is of course still affected by his metaphysical and theological assumptions. Buridan's *Quaestiones* (c. 1340–60?)<sup>10</sup> is characterized instead by the familiar scholastic procedure of posing and answering questions and objections. This method allows more interpretative freedom; and indeed Buridan addresses both issues of particular interest to him as well as those arising more directly from the text.

On a number of points Thomas and Buridan interpret Aristotle differently or with varying emphases. It is worthwhile considering a few examples in view of our later discussion of how the two were treated in Niccolò Tignosi's commentary in fifteenth-century Florence. Unfortunately, Buridan's commentary breaks off after Book X, q. 5, so on some issues a comparison with Thomas's commentary is not possible.

Connected with Aristotle's famous statement that 'moral excellence is concerned with pleasures and pains' (II.3, 1104<sup>b</sup>9–10) is his later point that 'excellence is concerned with passions and actions, in which excess is a form of failure, and so is defect, while the intermediate is praised and is a form of success' (II.6, 1106<sup>b</sup>25–27).<sup>11</sup> The medieval *recensio recognita* (probably by William of Moerbeke) reads: 'Virtus autem circa passiones et operationes est. In quibus quidem superhabundancia viciosa est et defectus vituperatus, medium autem laudatur et dirigitur.'<sup>12</sup> This passage proved problematic for several ancient and medieval interpreters, among them Thomas and Buridan, who were uncertain how to resolve the relationship between virtue and the passions. Thomas sees virtue as residing in the

<sup>9</sup> Thomas (1969). The dating is not entirely certain: see Gauthier (1969), pp. 242, 245–6.

<sup>10</sup> The dating is discussed in Michael (1985), pp. 871–873. The oldest surviving manuscript of the *Quaestiones* dates to 1363. Buridan's work still awaits a modern critical edition. I rely on Buridan (1637).

<sup>11</sup> English translations are taken from Aristotle (1984).

<sup>12</sup> Aristotle (1973).



higher part of the appetitive element ('in appetitu qui participat rationem'), a part of the soul which he associates with the will.<sup>13</sup> Still, Thomas gives the emotions an important role in the activity of virtue. Emotions, much like the higher part of the appetitive soul, are in-between powers, belonging to both body and soul. Like Aristotle, Thomas does not think they are necessarily obstacles to the exercise of virtue: he sees them as morally neutral, but—because they are nonetheless powerful—needing the guidance of the will and reason. In some instances, the emotions can be impediments to the exercise of virtue, especially when they cloud the judgement.<sup>14</sup> But it is also possible for them to play a positive role, for example by making a good seem more attractive because of its connection with pleasure. Likewise, the emotions can also be helpful *after* the act of virtue has been performed: they can increase the value of a particular act or confirm the agent's commitment to it. Thus, the emotions, viewed not as an overpowering of reason but as a physiological/psychological change, 'can be in a virtuous person, insofar as they are subordinate to reason'.<sup>15</sup> So reason does not apparently need to exercise a despotic rule over them.

Buridan, however, is less sympathetic than Thomas to a positive role for the emotions. This is doubtless due in part to Buridan's emphasis on the will and its freedom.<sup>16</sup> The fact remains that one finds hardly any positive references to the emotions in his commentary: he repeats standard Aristotelian fare that the young are not proper hearers of the *Ethics* because they follow their passions, points out the danger that the will may be perverted and discusses the need for pleasure and for the emotions to be repressed by the will.<sup>17</sup>

<sup>13</sup> Thomas (1969), Lib. I, lec. III; Lib. III, lecs. XI–XIII.

<sup>14</sup> E.g., *ibid.*, Lib. VI, lec. IV, p. 346, ll. 131–39: 'quando autem est vehemens delectatio vel tristitia, apparet homini quod illud sit optimum per quod sequitur delectationem et fugit tristitiam, et ita, corrupto iudicio rationis, non apparet homini verus finis, qui est principium prudentiae circa operabilia existentis, nec appetit ipsum, neque etiam videtur sibi quod oporteat omnia eligere et operari propter verum finem, sed magis propter delectabile'.

<sup>15</sup> Thomas, *Summa Theologica*, Ia IIae, q. 59, a. 2 quoted in Barad (1995), p. 650. The main source for this paragraph is Barad (1995), who observes at p. 651: 'The rule of reason within the individual himself over his emotions is a political rule: each emotion contains within itself its own freedom, its own power of resistance, and it is the role of virtue to overcome this resistance, although never in such a way as to suppress the power itself.'

<sup>16</sup> For freedom of the will see, e.g., Buridan (1637), Lib. II, q. 6.

<sup>17</sup> Two examples will suffice. *Ibid.*, Lib. VI, q. 21, p. 563, Buridan states that every perfect virtue requires two habits besides prudence: 'unus, firmans et determinans appetitum ad faciliter sustinendum tristitias corporales, et refugiendum voluptates et oicia, et ad reprimendum impetum aliarum passionum, quae possent appetitum movere ad rebellandum rationi; et ille habitus generatur ex assuetudine sustinendi et refutandi et reprimendi dictas passiones. Alius firmans et determinans appetitum ad amorem honesti, qui generatur ex multis actibus amandi honestum.' See also, *ibid.*, Lib. II, q. 4, p. 99: 'Verbi gratia, quod electio in voluntate sit per optime consona rationi, tamen forte appetitus sensitivus ad

Buridan, like Thomas, places moral virtue in the upper part of the irrational soul, explicitly connecting this with the will. He, however, arrives at this decision only after agonizing about the possible participation of the sensitive appetite in moral virtue. This indecision could be due to a desire to include the emotions somehow, even by giving them a very minor role. But it is clear that Buridan, in contrast to Thomas, is uncomfortable with Aristotle's discussion of the passions throughout Book II.

The differences between Thomas and Buridan on this point can be further illustrated by their attitude towards Stoic writers. Thomas is among the most vocal medieval critics of the Stoic position, opposing, for example, the Stoic views on the four cardinal virtues.<sup>18</sup> Buridan may castigate the Stoics on some points but follows the Platonic/Stoic moral tradition antedating the translation of Aristotle's corpus. Indeed, Buridan's references to Seneca outnumber those to any other writer,<sup>19</sup> and he takes into consideration, for example, Stoic perspectives such as the tripartite division of prudence.<sup>20</sup>

A second difference between the two interpreters is their attitude towards the formation of virtuous habit. As is well known, Thomas insists on the importance of repeated actions in the formation of such a habit and therefore already refers to the *principia humanorum actuum* in his first lecture.<sup>21</sup> Buridan, instead, has more difficulty with Aristotle's emphasis on actions. He describes a complicated chain process in which the will, the sensitive appetite, the bodily members and external things depend on one another's co-operation for producing an action. He concludes that virtue is generated not so much by external actions as by the inner promptings of the will. He does not deny that the repetition of a good action can create a praiseworthy disposition but argues that this disposition can be blocked by the sensitive appetite. The will, by contrast, is completely free, and the repeated willingness to do something (even when there is no possibility of carrying it out) creates a firmer disposition.<sup>22</sup>

A third important area of disagreement between Thomas and Buridan concerns the subject of moral philosophy and the function of the *Ethics*. Eustratius had already argued that ethics is concerned with individual betterment.<sup>23</sup> Thomas elaborates on Eustratius's view, while at the same

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oppositum passionatus, etsi ex toto rebellare non possit, tamen cum tristitia multotiens obediēt rationi, propter quod non erit ejus operatio perfecta consona rationi.'

<sup>18</sup> Thomas (1969), Lib. II, lec. VIII.

<sup>19</sup> Walsh (1966), pp. 26–7.

<sup>20</sup> Buridan (1637), Lib. VI, q. 18, p. 551; cf. Walsh (1966).

<sup>21</sup> Thomas (1969), Lib. I, p. 5.

<sup>22</sup> Buridan (1637), Lib. II, qq. 4–6, esp. q. 6, pp. 103–6.

<sup>23</sup> Eustratius et al. (1973), p. 2: 'ethicae quidem subiectum est secundum unum hominem melioratio, ut et bonus et optimus fiat sequens ea quae tradita sunt in morali negotio,

time giving it a firmer philosophical grounding. He begins by emphasizing that the subject of moral philosophy is human actions proceeding from the will according to the ordering of reason.<sup>24</sup> His strong insistence on the actions themselves provides him, unlike Eustratius, with a link to oeconomics and politics, for while ethics is concerned with the actions of the individual, the other two branches concern actions of broader groups. Thus, the *Ethics*, *Oeconomics* and *Politics* are viewed as works which deal with increasingly broader spheres of human activity and which should therefore be studied in sequence. The goal is to arrive at the *Politics*, which in Thomas's view is the crowning part of moral philosophy.

Denying that the subject of moral philosophy is the human good, or God, or happiness, or the virtues, or any other human actions, Buridan instead offers an alternative definition: 'videtur mihi, quod homo in ordine ad ea quae sibi conveniunt, ut est liber, vel homo ut est felicitabilis, hoc est quantum ad ea quae sibi conveniunt ad ducendum felicem vitam, est subiectum proprium in hac scientia'.<sup>25</sup> He thus emphasizes that ethics considers man in general, indifferently speaking—everyman—and not what one person in particular should do.<sup>26</sup> Furthermore, Buridan argues that prudence is not so much concerned with our own actions (which could be considered just as contingent as the object of the *Meteorology*), but rather with universals—more precisely, questions of the type: 'What would someone, to whom such and such a thing happened, do?' Thus, in a certain sense, our deliberations belong to science.<sup>27</sup> This view went back to Averroes and Albert the Great, who had also considered ethics to furnish the principles which would in turn be applied by oeconomics and politics.<sup>28</sup> This was the principal alternative, throughout the late Middle Ages and the Renaissance, to the position held by Eustratius and Thomas.

Finally, Thomas and Buridan disagree as to the relative importance of ethics and politics. Although Thomas argues that prudence properly belongs to ethics, his view of the importance of communities leads him to give politics and oeconomics a higher place than ethics, and to consider

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prudenter vivens et propriam rationem habens, irae et concupiscentiae dominans et mensuram motibus earum imponens et nequaquam concedens eis ut contingit ferri ut in tali quis habitu constituatur, ut de omni quod operatur paratus sit rationem reddere rectam ...'

<sup>24</sup> Thomas (1969), Lib. I, p. 4, ll. 39–45: 'Sic igitur moralis philosophiae ... proprium est considerare operationes humanas secundum quod sunt ordinatae ad invicem et ad finem. Dico autem operationes humanas, quae procedunt a voluntate hominis secundum ordinem rationis ...' See also his comments in *Summa theologiae*, Ia IIae, q. 1, a. 1.

<sup>25</sup> Buridan (1637), Lib. I, q. 3, p. 11; cf. *ibid.*, q. 6, p. 19: 'Ethica considerat de unoquoque homine secundum quod est felicitabilis vel meliorabilis, quemcumque gradum indifferenter obtineat in communitate domestica, vel civili.'

<sup>26</sup> *Ibid.*, Lib. I, q. 6, p. 20.

<sup>27</sup> *Ibid.*, Lib. VI, q. 17, p. 544.

<sup>28</sup> Lines (2002), pp. 125–7.

*legispositiva* as the highest part of politics.<sup>29</sup> Thus, Thomas can freely discuss politics as the architectonic science and says (following Aristotle in the *Ethics* I.2) that under it belong arts such as oeconomics and rhetoric. But he is specific about the very limited pre-eminence of politics. Although it may dispose that geometry be taught, it cannot give orders about the conclusions of geometry. And, although it is called *principalissima*, it is so only within the sphere of the practical or active sciences; divine science must retain its place as the head of all others.<sup>30</sup> In relation to wisdom, for example, prudence does not say what people should think about divine matters, but rather shows how men may come to wisdom.<sup>31</sup> Politics can sometimes use rhetoric to good effect, but the two should not be confused.<sup>32</sup>

Partly because of his views on the subject of ethics, Buridan disagrees with Thomas about the subordination of ethics to politics (his hierarchy is ethics, oeconomics, politics),<sup>33</sup> although he agrees with him about the pre-eminence of the *legispositiva* in politics.<sup>34</sup> He offers especially stimulating comments on two fronts: the relationship of moral philosophy to a kind of moral dialectic, and its relationship to law. In the first case, Buridan argues that, just as the speculative sciences need another discipline (logic) which indicates how the subject should be taught and expressed, so too does moral philosophy. Such a *logica moralis* or *dialectica moralis* (to be found in Aristotle's *Rhetoric* and *Poetics*) is necessitated by the fact that moral philosophy must not only investigate the truth, but must also dispose the appetite not to resist the intellect.<sup>35</sup> In his comments about prudence,

<sup>29</sup> Thomas (1969), Lib. VI, lec. VII, p. 357, ll. 96–102: 'quia totum principalius est parte et per consequens civitas quam domus et domus quam unus homo, oportet quod prudentia politica sit principalior quam yconomica et haec quam illa quae est sui ipsius directiva; unde et legispositiva est principalior inter partes politicae et simpliciter praecipua circa omnia agibilia humana'.

<sup>30</sup> Ibid., Lib. I, lec. II; cf. Lib. VI, lec. VI.

<sup>31</sup> Ibid., Lib. VI, lec. XI.

<sup>32</sup> Ibid., Lib. X, lec. XIV–XV.

<sup>33</sup> Buridan (1637), Prologue, p. 3.

<sup>34</sup> Ibid., Lib. VI, q. 18, p. 551.

<sup>35</sup> Ibid., Prologue, p. 2: 'Ipsa autem scientia, seu philosophia moralis, duas habet partes primas, unam principalem, aliam adminiculativam seu instrumentalem. Sicut enim in speculativis, haec quidem scientia naturas rerum docet, videlicet metaphysica, physica, et mathematica, illa vero modum docendi et dicendi subministrat, scilicet logica, sic in moralibus oportet hanc quidem docere moralem vitam, hanc autem illi modum docendi subministrare. Prima ergo et principalis pars, scilicet quae docet bene vivere ad salutem, traditur in libris Ethicorum, Oeconomicorum et Politicorum. Secunda vero pars quae hunc modum docendi docet, traditur in libris Rhetoricae et Poetriae. Unde scientia dictorum duorum librorum vere et proprie dicenda est non Logica simpliciter, neque moralis scientia simpliciter, sed logica moralis. ... Propter quod duplici logica, seu dialectica indigemus: una quidem quae simpliciter docet modum inveniendi dubiam veritatem, et illam vocamus logicam simpliciter, vel dialecticam; et alia contracta, quae docet modum, quo simul et dubium et verum invenitur, et appetitus sic afficitur et disponitur, ut determinet, vel non

Buridan says much more explicitly than other commentators that the habit derived from teachings contained in books of laws, decrees, and so forth pertains to prudence just like that derived from teachings in the books on morals.<sup>36</sup> In these comments, Buridan was not altogether original. Averroes, for example, had pointed out that the *prudens* should be ‘cognitor logicae particularis’.<sup>37</sup> And Giles of Rome had emphasized the need for rhetoric (a ‘grossa dialectica’) in moral philosophy.<sup>38</sup> But Buridan’s distinction between rhetoric and moral philosophy is noteworthy: although the two may work towards the same end of moral perfection, their functions should not be confused and are in no way interchangeable.

### THE RECEPTION OF THOMAS AND BURIDAN IN EARLY RENAISSANCE ITALY

I would now like to address a fairly straightforward (but methodologically complicated) question: which of the two, Thomas’s *Sententia* or Buridan’s *Quaestiones*, found a greater following in Italy? Although questions of influence cannot be easily solved, I think that the criteria of evaluation employed here can at least suggest an answer. In particular, the following analysis relies on three principal considerations: the origin and diffusion of manuscripts; references made to Buridan or Thomas in *Ethics* texts or commentaries; and Renaissance libraries containing works on the *Ethics*. I shall argue that, especially in the fourteenth century, Thomas’s commentary was more widely accepted than Buridan’s, and that his interpretation largely continued to be favoured in fifteenth-century Italy as well.

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impediat intellectum ad concedendum conclusum; et haec vocatur dialectica moralis, quae subest dialecticae simpliciter, sicut et subalternata ...’

<sup>36</sup> Ibid., Lib. VI, q. 17, p. 545: ‘Ulterius videtur mihi satis notum, quod in libris legum vel decretorum et in libris moralibus multae scribuntur propositiones de quolibet praedictorum generum ... videtur mihi quod habitus acquisitus ex doctrina librorum legum, decretorum, et universaliter librorum moralium pertinet ad prudentiam.’

<sup>37</sup> Averroes (1562–74), Lib. I, f. 1<sup>v</sup>.

<sup>38</sup> Aegidius Romanus (1502), II, 2, cap. viii, f. 48<sup>v</sup>: ‘Est autem rethorica, ut innuit philosophus in Rethoricis suis, quasi quaedam grossa dialectica. Nam sicut fiendae sunt rationes subtiles in scientiis naturalibus et in aliis scientiis speculabilibus, sic fiendae sunt rationes grossae in scientiis moralibus, quae tractant de agibilibus. Quare sicut necessaria fuit dialectica quae docet modum arguendi subtilem et violentiorem, sic necessaria fuit rethorica quae est quaedam grossa dialectica docens modum arguendi grossum et figuralem.’

## Origin and diffusion

The *Ethics* commentaries by Thomas and Buridan each survive in around 100 manuscript copies.<sup>39</sup> It might thus appear that the two works were equally popular, and one might assume that this was the case in Italy as elsewhere in Europe. But an examination of the scribal hand and probable origin of these manuscripts points to a different conclusion. In the case of Thomas, Gauthier identifies the scribal hand with relative certainty in 82 cases. He finds that 15 of these manuscripts (c. 18%) were written either in Italy or by an Italian hand. By contrast, Bernd Michael's study suggests that only 10 manuscripts of Buridan's *Ethics* commentary were written either in Italy or by an Italian hand.<sup>40</sup> Most Buridan manuscripts were copied either in Paris or in the central European universities:

	MSS	Italian hand	MSS in Italy	Lost MSS	Ethics with annotations from
<b>Thomas</b>	c. 100	c. 15 of 82	25	43 (22 in Italy)	27+MSS; 11 of 16 in Ital. hand
<b>Buridan</b>	c. 100	c. 10	18	Unknown	Few in Italy.

We can also consider the diffusion of the two works. A study of where manuscripts are currently found shows that a fourth of the surviving *Sententia* manuscripts (and over half of the manuscripts which are known to be lost) are now housed in Italian libraries. Several Thomas manuscripts belonged to eminent Italians,<sup>41</sup> and we know of manuscripts now elsewhere bearing indications of ownership by Italians.<sup>42</sup> By contrast, less than a fifth (18) of the manuscripts of Buridan's commentary are currently known to be held in Italian libraries; and it is suspected that a number of other Buridan manuscripts (or at least *secundum Buridanum* commentaries) remain to be identified in central Europe. This would further lower the percentage of Buridan manuscripts in Italian libraries. It is true that some of the owners of these manuscripts were notable figures in the history of philosophy,<sup>43</sup> and

<sup>39</sup> For Thomas, see Gauthier (1969), pp. 1\*–30\*; for Buridan, see Michael (1985).

<sup>40</sup> Michael (1985), pp. 831–62.

<sup>41</sup> E.g., Vatican City, Biblioteca Apostolica Vaticana (hereafter BAV), Urb. lat. 212 (s. XV) and 1366 (s. XIV), belonged to Federico II of Urbino: see Gauthier (1969), p. 14\*.

<sup>42</sup> E.g., Paris, Bibliothèque Nationale, lat. 6457 (s. XIII/XIV): see Gauthier (1969), p. 9\*.

<sup>43</sup> Padua, Biblioteca universitaria (hereafter BU) 1472 (AD 1407), item 1, ff. 1<sup>ra</sup>–158<sup>vb</sup>, was owned by Giovanni Pico della Mirandola and Cardinal Domenico Grimani, d. 1523: see Michael (1992), pp. 143 and 150, n. 46; Florence, Biblioteca Nazionale Centrale (hereafter

that some of the manuscripts are clearly related to the university (although probably not to the teaching) context.<sup>44</sup> But, even allowing for the vagaries of fortune, the proportion of Buridan manuscripts in Italy seems very low. Nonetheless, this criterion appears to be a very crude instrument for evaluating influence. If we consider the proportion of manuscripts of *Ethics* commentaries in Italian libraries,<sup>45</sup> we might conclude that Walter Burley and Gerard of Odo were more important than Eustratius and Thomas, which was certainly not the case:

Averroes	70%	7/10 MSS
Walter Burley	58%	10/17 MSS
Gerard of Odo	47%	8/17 MSS
Eustratius	33%	7/22 MSS
Albertus Magnus ( <i>lectura</i> )	33%	4/12 MSS
Albertus Magnus (paraphrase)	28%	7/25 MSS
Henricus de Frimaria	25%	6/21 MSS
Thomas Aquinas	25%	25/100 MSS
Albert of Saxony	25%	6/24 MSS
Buridan	18%	18/100 MSS

Even when considering the absolute number of manuscripts in Italy, we might reach the conclusion that Buridan was read more often than Eustratius. By contrast, my reading of Italian *Ethics* commentaries suggests that the most important authors in Italy were Averroes, Thomas, Eustratius and Albert the Great. It is therefore important to take other forms of evidence into consideration.

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BNC) II.I.81 (s. XV), ff. 1<sup>r</sup>–210<sup>r</sup>, 1<sup>r</sup>–171<sup>v</sup> (double pagination) belonged to Donato Acciaiuoli: see Garin (1958), p. 153.

<sup>44</sup> Bologna, BU 366 (AD 1395), ff. 1<sup>ra</sup>–182<sup>th</sup>, written in Italy, belonged in the fifteenth century to the Bolognese teacher of Arts and Medicine, Giovanni Garzoni: see Frati (1909), p. 200, no. 239, and Michael (1985), pp. 828–829; Padua, BU 1472 (AD 1407), item 1, ff. 1<sup>ra</sup>–158<sup>vb</sup> was written ‘ad instantiam magistri Ni[colini] ... in felicissimo studio patavino’: see Federici-Vescovini (1976), pp. 41–5; cf. Michael (1992), pp. 143 and 150, n. 46.

<sup>45</sup> The data for the medieval commentaries and their testimonies can be found in Lines (2002), Appendix B.

A valuable indication is furnished by printed editions. It is telling that Thomas's *Sententia* was printed at least thirteen times up to 1660 and counts as the most frequently printed of the medieval *Ethics* commentaries. Nine of these editions were printed in Italy. By contrast, Buridan's *Quaestiones* was printed five times, and none of these editions was produced in Italy. Indeed, before the seventeenth century, all of the printed editions were produced in Paris. This gives powerful support to the hypothesis of a stronger reception of Thomas's commentary in Italy.

Finally, one can turn to contemporary testimony. It seems that, around 1400, Coluccio Salutati (the chancellor of Florence) had access to a manuscript of Buridan's *Quaestiones* but was unable to secure a complete copy of the work. He apparently believed the (presumably Italian) *peritiores* in his time, who said that Buridan had written no questions after Book IX, q. 2.<sup>46</sup> This point seems to testify to a surprising unfamiliarity with a work which, especially in Paris and central Europe, was considered of great importance.

## References and sources

Decisive evidence, which should be taken into consideration, is provided by the references made to Thomas and to Buridan by readers of the *Ethics* or by Italian commentators on the text.

The data provided by Gauthier suggests that Italians were enthusiastic students of Thomas's *Sententia*. He lists 27 manuscripts of the *Ethics* bearing notes taken from Thomas. Of the 16 cases where he identifies the annotating hand, 11 are Italian.<sup>47</sup> This data largely corresponds with my own findings. In a group of some 20 annotated manuscripts of the *Ethics* (in Italian libraries) for which we have reliable information, the base commentary can be discerned in all but three cases. Thomas turns out to be the exclusive source in six cases,<sup>48</sup> the primary source in five,<sup>49</sup> and one of

<sup>46</sup> Salutati (1891–1905), III, pp. 391–9: 'Questiones optimi Buridani, ultra duas questiones noni libri, licet Parisius super hoc scripserim, nunquam potui reperire; dicuntque peritiores eum ulterius non processisse.'

<sup>47</sup> Gauthier (1969), pp. 30\*–36\*.

<sup>48</sup> \*Florence, Biblioteca Medicea Laurenziana (hereafter BLaur.), Plut. XIII Sin. Cod. 6 (s. XIII), ff. 77<sup>r</sup>–124<sup>v</sup>; \*Cod. 11 (s. XIII), ff. 103<sup>r</sup>–179<sup>r</sup>; Vatican City, BAV, Ottob. lat. 2214 (s. XIV), ff. 1<sup>r</sup>–88<sup>v</sup>; \*Pal. lat. 1012 (s. XIV/XV), ff. 1<sup>r</sup>–57<sup>v</sup>; 1017 (s. XIV), ff. 1<sup>r</sup>–79<sup>r</sup>; Urb. lat. 1325 (s. XIV), ff. 1<sup>r</sup>–97<sup>v</sup> (especially 1<sup>ra</sup>–18<sup>th</sup>). I mark with an asterisk manuscripts I have seen; for the others I rely on the description in Gauthier (1969).

<sup>49</sup> \*Bologna, BU 2252 (s. XIV), 109 ff.; Poppi, Biblioteca Comunale (hereafter BCom.) 14 (s. XIV in.), ff. 2<sup>v</sup>–64<sup>v</sup>; Siena, BCom. Intr. H.VI.1 (s. XIV ex.), ff. 1<sup>r</sup>–86<sup>v</sup>; H.VI.4 (s. XIV),



the main sources in five further cases.<sup>50</sup> In the remaining manuscript, Burley is perhaps the main source.<sup>51</sup> These observations confirm the popularity of Thomas's *Sententia* in Italy. By contrast, it is telling that Buridan's opinions go practically unmentioned. Although it may be true that, for formal reasons, we should not expect snippets of a commentary proceeding by questions to appear in the margins of a text of the *Ethics*,<sup>52</sup> we might possibly expect to find some allusions to Buridan's moral thought or cross-references to specific passages of his commentary. In my experience, however, such encounters are extremely rare. Nor do we find many heavily annotated manuscripts of Buridan's *Quaestiones* in Italy as we do of Thomas's commentary.

An examination of fourteenth-century Italian works on the *Ethics* confirms the popularity of Thomas's *Sententia*. Of the seven attributed works whose base commentary can be identified, four rely on Thomas very heavily and almost exclusively.<sup>53</sup> Bartolomeo da Santo Concordio seems to be the only one to base himself primarily on other commentators (indeed, his work is a summary of Giles of Rome).<sup>54</sup> The fact that Dominicans figure largely among the Italian interpreters of the *Ethics* provides a partial explanation for the success of Thomas's *Sententia* there.

We may well ask whether the situation changed in Italy during the fifteenth century. Two important features of the fifteenth-century reception of the *Ethics* in Italy are that laymen (including humanists) become increasingly active in interpreting the work and that Thomas is no longer the almost exclusive authority for commentators on the *Ethics*.<sup>55</sup> One would think that this increasing openness to commentators already well known in northern Europe and the apparent compatibility of Buridan's ethical theory (e.g., his stress on the freedom of the will) with some humanist emphases would have led to an increasing reception of Buridan's commentary there. This has, in fact, been argued by Bernd Michael. Although he admits that the reception of Buridan's moral philosophy in Italy does not begin to

ff. 1<sup>ra</sup>–4<sup>vb</sup>; Vatican City, BAV, Vat. lat. 2996 (s. XIV), ff. 1<sup>r</sup>–58<sup>v</sup> (especially 11<sup>v</sup>–18<sup>r</sup>, 24<sup>v</sup>–25<sup>v</sup>).

<sup>50</sup> \*Parma, Biblioteca Palatina, Fondo Parm. Palat. 65 (s. XIV), ff. 1<sup>r</sup>–84<sup>v</sup>; \*Siena, BCom. Intronati L.III.17 (s. XIV), ff. 1<sup>r</sup>–96<sup>v</sup>; \*Vatican City, BAV, Ottob. lat. 2524 (s. XIV), ff. 101<sup>r</sup>–140<sup>v</sup>; \*Pal. lat. 1020 (s. XIV), ff. 2<sup>r</sup>–118<sup>v</sup>; and Vat. lat. 2995 (s. XIV), ff. 6<sup>ra</sup>–63<sup>rb</sup>.

<sup>51</sup> \*Bologna, BU 2295 (s. XIV), ff. 62<sup>r</sup>–106<sup>v</sup>; cf. Frati (1909), p. 456, no. 1150.

<sup>52</sup> I am grateful to Christoph Flüeler for this observation.

<sup>53</sup> See the works by Giacomo da Pistoia: Lines (2002), p. 472, no. 1; Corrado d'Ascoli: *ibid.*, p. 474, no. 5; and Guido Vernani's *Lectura* and *Summa*: *ibid.*, pp. 475–6, nos. 7 and 8. Paolo Nicoletto Veneto relies on Thomas as well as on Eustratius and Albert the Great for his *compendium*: *ibid.*, pp. 479–80, no. 16.

<sup>54</sup> On Bartolomeo da San Concordio and his commentary, see Lines (2002), p. 478, no. 12.

<sup>55</sup> Lines (1999a).

compare with the Italian enthusiasm for his natural philosophy,<sup>56</sup> nor with the study of his moral philosophy in the universities of France and central Europe,<sup>57</sup> Michael suggests that Buridan was accepted more readily among the Italian humanists and in the circles of the high clergy than in the universities.<sup>58</sup>

This does not, however, seem to be the case, at least for the humanists. As we shall see, the commentary by Niccolò Tignosi was addressed to a humanist audience; nonetheless, the work's dedication (to Piero de' Medici) makes no mention of Buridan, but only of Thomas, Eustratius, Averroes and Albert the Great.<sup>59</sup> Likewise, Donato Acciaiuoli's commentary draws freely from Thomas, Eustratius, Burley and Albert the Great;<sup>60</sup> of these, Thomas seems by far the most important.<sup>61</sup> By contrast, he does not have complimentary things to say about Buridan;<sup>62</sup> and Acciaiuoli's supposed role in studying or annotating a copy of Buridan's questions is a baseless fiction.<sup>63</sup> Numerous fifteenth-century marginalia on the *Ethics* also confirm the growing acquaintance with other commentators; nonetheless, Buridan is rarely mentioned.<sup>64</sup> Finally, there are simply not

<sup>56</sup> On this see also Garin (1958) and Federici Vescovini (1976), p. 25: it is significant that, whereas there was a great interest in Florence, c. 1396–1400, in Buridan's works on physics, psychology and logic, the same cannot be said for his moral philosophy.

<sup>57</sup> Michael (1992), pp. 148–51.

<sup>58</sup> E.g., he states, *ibid.*, p. 149: 'Während die naturwissenschaftlich, medizinisch und astrologisch orientierten italienischen Artisten und Mediziner Buridans Ethik-Kommentar im Vergleich zu seinen übrigen Werken nur ein relativ geringes Interesse entgegenbrachten, genöß derselbe Kommentar in humanistischen Kreisen Italiens seit 1400 hohes Ansehen ...'

<sup>59</sup> Florence, BLaur., Plut. LXXXVI, 49, f. 1<sup>ra-b</sup>: 'Plures viri clarissimi libros istos commentati sunt: Eustratius, Averrois, Albertus et sanctus Thomas, quorum palma est.' On Tignosi see Lines (2002), Chapter 5.

<sup>60</sup> Bianchi (1990), pp. 43–51.

<sup>61</sup> It is worth noting that Acciaiuoli's commentary seems to have been written with Thomas's *Sententia* constantly to hand. See Florence, BNC, Naz. II.I.104, in which one often reads in the margins 'S.T.' ('Sanctus Thomas'), followed by snippets from his commentary.

<sup>62</sup> See Garin (1958), p. 153.

<sup>63</sup> See *ibid.* for this view, which was repeated by Michael (1992), p. 149. Florence, BNC, Naz. III.I.81 is a copy of Buridan's *Quaestiones* in two volumes (ff. 1<sup>r</sup>–210<sup>r</sup> and 1<sup>r</sup>–171<sup>v</sup>), ending with the *quaestiones longae*. The flyleaf at the beginning of the second volume does indeed indicate that the book was owned by Acciaiuoli. He did not, however, transcribe or annotate the work. The first 84 folios of the text are written and annotated by a humanist hand, but a comparison with other Acciaiuoli autographs (especially Florence, BNC, Naz. II.I.104) indicates that it is not his hand. (In any case, it is not clear that Acciaiuoli also owned the first volume; the two volumes could have been brought together and bound at a later date.) Apparently, this transcription was made in order to fill the gap in the older and rather inelegant (Gothic bookhand) copy, which starts at Lib. III, q. 5.

<sup>64</sup> E.g., Siena, BCom. Intronati H.VI.1 (s. XIV ex.), ff. 1<sup>r</sup>–86<sup>v</sup>, contains marginalia taken from Thomas, but also from Albert, Eustratius, Buridan and Burley; cf. Gauthier (1969), pp.

enough annotated manuscripts of Buridan's *Questiones* in Italy to support Michael's claim; and the evidence reported above about the diffusion of the work in manuscript and printed editions suggests instead that Buridan's work was poorly received in Italy, both inside and outside the universities.

### Library catalogues

The diffusion of the commentaries by Thomas and Buridan in fourteenth- and fifteenth-century Italy is also illustrated by old library catalogues, whether of institutions or of individuals. As mentioned above, over half of the lost commentaries of Thomas's *Sententia* were housed in Italian libraries. This leads one to expect a predominance of Thomas's commentary on the *Ethics* over Buridan's; and that is, in fact, what one finds. Nevertheless, the proportion between copies of the two works is not quite what one might expect.

Three fifteenth-century Dominican libraries unsurprisingly favour Thomas over Buridan. The library catalogue for San Marco in Florence (from 1500) includes only one work possibly attributable to Buridan, but three copies of Thomas's *Ethics* commentary,<sup>65</sup> as well as copies of *Ethics* commentaries by Acciaiuoli and others.<sup>66</sup> Furthermore, a catalogue from Santa Maria Novella in Florence shows that, by 1489, the collection there included two copies of Thomas's *Sententia* but only one copy each of Albert's *Super Ethica* and of Buridan's commentary.<sup>67</sup> Also, the fifteenth-century inventories of the Dominican library in Perugia list Buridan's commentaries on treatises such as *De anima* and the *Physics*,<sup>68</sup> but not his work on the *Ethics*. For Thomas, instead, one finds two commentaries on the *Ethics*.<sup>69</sup> Given the presumed bias of Dominican libraries towards Thomas, however, it is useful to examine other library lists as well.

The fifteenth-century library of the Visconti and the Sforza families in Milan included one copy each of the *Ethics* commentaries by Thomas and Buridan,<sup>70</sup> in addition to the Greek commentaries and that of Gerard of Odo.<sup>71</sup>

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26\*–27\*. Florence, BNC, Naz. II, IV, 159 (s. XIV), 112 ff., contains dense marginal notes, especially on *Nicomachean Ethics* III–X, drawing heavily on Burley and Albert the Great.

<sup>65</sup> Ullman and Stadter (1972), items 395, 618, 629

<sup>66</sup> *Ibid.*, items 622, 628.

<sup>67</sup> Orlandi (1952), p. 42.

<sup>68</sup> Kaeppli (1962), C. 342; B. 346 and C. 313.

<sup>69</sup> *Ibid.*, D. 76, 290.

<sup>70</sup> Pellegrin (1955), respectively A. 183, p. 113 and A. 201, p. 118.

<sup>71</sup> *Ibid.*, A. 190, p. 115 and A. 127, p. 100

A list of some 800 volumes taken from Naples to Spain in the sixteenth century and subsequently dispersed includes Thomas's commentary on the *Ethics*,<sup>72</sup> but nothing by Buridan. A list of over 600 manuscripts which previously belonged to the crown of Aragon in Naples (and which have now largely been identified, especially in the Bibliothèque Nationale of Paris) includes only the *Ethics* commentary of Thomas,<sup>73</sup> in addition to translations by Johannes Argyropoulos<sup>74</sup> and Leonardo Bruni.<sup>75</sup> A third list, of books sold in the early sixteenth century, includes Acciaiuoli's commentary on the *Ethics*;<sup>76</sup> again, Buridan is not mentioned.

Finally, it is fruitful to examine personal libraries as well. Judging from the numerous copies of the *Ethics* in his library, Giovanni Pico della Mirandola (1463–94) had a particular interest in this work. His library did not, however, contain an especially wide range of commentaries on it: the surviving library catalogue mentions only Buridan's *Ethics* commentary,<sup>77</sup> as well as those by Gerard of Odo, Thomas and Burley, which were bound together in one volume.<sup>78</sup>

Niccolò Leonicensi (1428–1524), who lectured on the *Ethics* in Ferrara around 1488, also seems to have owned only a small selection of commentaries on moral philosophy; these included the works by Eustratius, Buridan, Gerard of Odo and Argyropoulos (i.e., Acciaiuoli).<sup>79</sup> Strikingly, he does not seem to have owned a copy of Thomas's commentary; however, this anomaly might be explained in various ways—for example, he might have availed himself of a copy in one of the conventual libraries.

The evidence gathered above suggests, at the very least, that Buridan's *Questions* on the *Ethics* were not received with any particular enthusiasm in Italy, whereas Thomas's commentary was considered the standard interpretation which one could not do without. Although Buridan's work was doubtless present in various libraries in fifteenth-century Italy,<sup>80</sup> this does not prove that it was actually read or studied with any attention.

Perhaps Buridan's commentary was simply out of fashion in fifteenth-century Italy, and—even when it was studied and known—it did not seem polite to cite it or make overt reference to it. It seems to me, however, that the differences of reception experienced by the *Ethics* commentaries of Thomas and Buridan can be explained by at least three concomitant factors.

<sup>72</sup> Mazzatinti (1897), p. cxxxii, no. 121.

<sup>73</sup> *Ibid.*, p. 75, no. 205.

<sup>74</sup> *Ibid.*, pp. 36–7.

<sup>75</sup> *Ibid.*, p. 138, no. 361.

<sup>76</sup> *Ibid.*, p. cxxiii, no. 62.

<sup>77</sup> Kibre (1936), p. 219, no. 746.

<sup>78</sup> *Ibid.*, p. 147, no. 193.

<sup>79</sup> Mugnai Carrara (1991), pp. 179, 171, 199, 180, 178, and 171.

<sup>80</sup> Some further examples are noted in Michael (1992), pp. 149–50.

First, it was hard to use Buridan's questions on the *Ethics* in the universities, since disputations on moral philosophy were not the norm in Italy as they were in central Europe and elsewhere.<sup>81</sup> Indeed, in Italy ethics was taught as a feast-day subject throughout the fifteenth century (and even later); the audience seems to have included students without training in the technical vocabulary of philosophy. This audience was probably allergic to academic exercises such as disputations, and they would doubtless have found Thomas easier to follow than Buridan. Second, since the Dominicans played such a dominant role in interpreting the *Ethics* in fourteenth-century Italy,<sup>82</sup> Buridan's emphases and perspectives would have had to fight against an already established tradition which relied heavily on Thomas. Thus, it was not until the late-fifteenth and especially the sixteenth century that Buridan's commentary received more serious attention in Italy. Finally, humanists probably disliked both the form of Buridan's work and the view it promoted concerning the separation of moral philosophy and rhetoric. Many humanists seem to have appreciated Thomas's *Sententia* as a model of straightforward and clear (although not stylistically elegant) exposition. Following Petrarch's example, they may have found Buridan—like many other scholastics—to be too enamoured of questions and subtleties. This view was still being aired in 1600 by Lelio Pellegrini, a professor of moral philosophy in Rome.<sup>83</sup> But Buridan's failure to link ethics and rhetoric may have counted equally decisively against him. Indeed, although Thomas likewise—as we have seen—keeps the two subjects separate, Buridan distinguishes them even more rigorously. In line with his understanding of moral philosophy as a science, unconcerned with pleasures and pains or with the emotions, he assigns the subject a theoretical, rather than a motivating, function. Thus, although Buridan (unlike some of his contemporaries) has positive things to say about rhetoric in its proper sphere, his strict demarcation of moral philosophy and rhetoric may have contributed to making his commentary unpalatable to the Italian humanists.<sup>84</sup> For humanists convinced that language and moral power are inextricably intertwined, Buridan's views must have seemed very distant from their own.

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<sup>81</sup> For the lack of disputations in Italy and the general context of the teaching of moral philosophy, see Lines (2002), § 2.2.

<sup>82</sup> See Lines (1999a), pp. 253–5.

<sup>83</sup> Pellegrini (1600), f. iv': 'Habentur Buridani, Burlaei aliique eiusdem farinae molitores non pauci, qui in istos de moribus libris subtiles et ad tenuissimum elimatas quaestiones ediderunt. ... At hoc praeter propositum fuerit Aristoteles, qui non semel in his libris philosophiam de moribus ait nec requirere, nec pati exquisitam nimis, elaboratamque rerum, quae sub actionem cadunt, tractationem, ac materiam, quae illi subiicitur, eiusmodi esse, ut non admitteret, ferretve demonstrationes.'

<sup>84</sup> On this point see above, pp. 13–14.

## THOMISM REVISITED

The tepid reception accorded to Buridan's commentary in fifteenth-century Italy is not, however, the end of the story. I would like to conclude by giving a specific example of how the views of Thomas and Buridan were treated in the fifteenth-century *Ethics* commentary by Niccolò Tignosi. By considering how Tignosi treated some specific doctrinal issues on which the two philosophers differed, I hope to show that the way in which Thomas was interpreted seems to have changed.

A native of Foligno near Perugia, Tignosi (1402–74) was especially known as a medical doctor and was active in the University of Florence, where he taught between c. 1438 and the year of his death.<sup>85</sup> In addition to a commentary on Aristotle's *De anima*, Tignosi wrote a full commentary on Aristotle's *Ethics*: the *Commenta in Ethicorum libros*, which is datable to c. 1460<sup>86</sup> and which seems to be addressed to a humanist audience, without philosophical training.<sup>87</sup> Nonetheless, this work is a serious philosophical exposition of Aristotle's text, buttressed by arguments taken from Augustine, Averroes and Albert the Great, but lightened too by quotations from poetry and references to historical examples. Tignosi addresses here several of the issues previously discussed by Thomas and Buridan.

Like earlier commentators, Tignosi has little trouble with Aristotle's definition of virtue as an *habitus electivus*.<sup>88</sup> He reinterprets, however, Aristotle's statement that moral virtue concerns pains and pleasures (*voluptates et dolores*) to mean, not that pains and pleasures are the object of virtue (each virtue has its own object—for example, courage, that which is fearsome; liberality, money), but that delight, pain and so forth follow upon a particular action, as the *consequences* of virtue.<sup>89</sup> In these comments, he remains close to Thomas's interpretation and wording.<sup>90</sup>

<sup>85</sup> Park (1980), p. 295 and passim; Davies (1998), p. 194. The university records for 1440–73 are patchy and often do not say what subjects the professors taught. For the literature on Tignosi and his commentary, see Lines (2002), pp. 490–1, no. 40.

<sup>86</sup> Conflicting datings are offered in Field (1988), pp. 138–58 and Kraye (1995), pp. 101–2.

<sup>87</sup> See Lines (1999b).

<sup>88</sup> Florence, BLaur., Plut. LXXVI, 49 (s. XV), Lib. VI, f. 101<sup>v</sup>: 'Secundo volumine superioris operis habitum est quod virtus est habitus electivus in mediocritate consistens quo ad nos ratione terminata et ut sapiens terminaret'. This is the dedication copy to Piero de' Medici.

<sup>89</sup> Ibid., Lib. II, f. 32<sup>vb</sup>: 'Virtus in genere quattuor concernit, scilicet obiectum circa quod operatur, ut fortitudo circa terribile, liberalitas circa pecunias; circumstantias inter quas operatur, de quibus infra in tertio; et actus quos operatur; et quarto illa quae sequuntur actus, ut voluptas vel molestia sive gaudium vel dolor ...'; Lib. II, f. 33<sup>vb</sup>: 'circa omne quod

Tignosi also discusses the location of virtue, and at length. After briefly referring to a five-fold division of the soul (to be found in Giles of Rome),<sup>91</sup> he centres his attention especially on the sensitive and the rational appetites. Tignosi views the sensitive appetite as subservient to the rational appetite, which is in turn subservient to reason. The rational appetite he conceives of as the will, and that is where the moral virtues really reside, although some like to assign their place to the sensitive appetite.<sup>92</sup> It is, in fact, the intellective or rational appetite which inclines us towards what the intellect has judged to be good or otherwise.<sup>93</sup> No matter how exactly one views the will and its role in performing virtuous acts, Tignosi concludes that the virtues really reside in this higher element of the appetitive soul, which somehow also partakes of reason. (Thus, he considers the appetitive element which partakes of reason and the intellective element which partakes of the appetite as being the same in Aristotle's scheme.) In so doing, he seems to side with Thomas's view that the moral virtues are located in the will. In a nod to Giles of Rome, however, he also allows that courage and temperance reside respectively in the irascible and concupiscible parts of the sensitive appetite.<sup>94</sup> Tignosi thus seems to be attempting a reconciliation between the Dominican and the Augustinian Hermit, even though he does not name either of them.

In Book I, Tignosi sees the *ars civilis* (i.e., politics) as that which allows or disallows certain subjects within the city and has other arts under it. As usual, *civilis* orders the use or presence of these arts; with respect to the subjects, however, it does not order their conclusions. For example, politics may encourage the development of philosophy, but does not order

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contingit ratione moderari vel ordinari contingit esse virtutem moralem ... Et quamvis virtus sit sine passione animum perturbante, tamen non est sine passionibus quae appetitum sensitivum concitant ...'

<sup>90</sup> Thomas (1969), Lib. II, lec. III, p. 267.

<sup>91</sup> See Aegidius Romanus (1502), II, cap. ii.

<sup>92</sup> Florence, BLaur., Plut. LXXVI, 49, Lib. I, f. 28ra: 'Partes animae sunt quinque, scilicet vegetativa, appetitiva secundum locum motivam, sensitiva et intellectiva, et iterum appetitiva duplex, scilicet sensitiva et rationalis. Pars intellectiva dicitur rationalis quoniam in seipsa rationem formaliter habet. Appetitiva vero sensitiva in irascibilem dividitur et concupiscibilem, et dicitur rationalis non principaliter sed quia nata est oboedire iudicio rationis. Non tamen cogitur a ratione quamvis nata sit illi oboedire'; Lib. I, f. 28<sup>va</sup>: '...virtutes morales dicuntur principaliter in voluntate fundari, et ob hanc causam dividitur appetitus in sensitivum et rationalem, et rationalis appetitus est voluntas ... Ex quo sequitur quod homo bene ordinatus secundum appetitum sensitivum facilius actum virtuosum potest elicere.'

<sup>93</sup> Ibid., Lib. I, f. 2<sup>va</sup>: 'Appetitus sensitivus est inclinatio in rem sensatam mediante iudicio sensus de illius bonitate vel improbitate. Appetitus vero intellectivus, qui proprio nomine voluntas dicitur, inclinatur ad rem intellectam mediante iudicio intellectus iudicantis an bona sit vel mala.'

<sup>94</sup> Aegidius Romanus (1502), II, caps. ii–iii.

philosophers to embrace a specific view on the motion of the heavens.<sup>95</sup> Nor does it teach what is good; one of its main functions seems to be that of clearing the way for the exercise of speculation.<sup>96</sup> It is ethics, instead, which teaches what the *summum bonum* is, for the city as for the wise man. Oeconomics and politics derive their definitions of the good from ethics, and thus depend upon and are subject to ethics; all three, at least in principle, are concerned with the same good, but have different functions in relation to it.<sup>97</sup>

It would thus seem that, for Tignosi, politics is subject to ethics according to the teachings of Averroes, Albert the Great, Gerard of Odo and Buridan. Book VI, however, presents a different picture. Here Tignosi depends heavily on Thomas in his arguments proving that there are various kinds of prudence (that of the individual, of the family, and of the city), of which the principal is the *civilis*, which he divides into *legispositiva* (proper to those who write the laws) and *civilis* (proper to judges). All these types of prudence have the same habit in that they aim to reach the *summum bonum* or *finis ultimus* or *felicitas*; but the *legispositiva* is clearly the architectonic one; and he describes the types of prudence as differing inasmuch as the city is superior to the family, which in turn is superior to

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<sup>95</sup> Florence, BLaur., Plut. LXXVI, 49, Lib. I, f. 5<sup>va</sup>: in regard to the arts, the *civilis* ‘non solum quales sed quousque disponit, permittit, vel prohibet ... speculativis vero praecipit usum, sed non determinationem; vult ut suadet homines philosophari, verum si caelo motus continuus inest vel luna suo dierum numero eclipsetur phylosophum sic vel aliter disseruisse non praecipit, nec quod geometra de triangulo monstret aliter quam conveniat. Et quantum ad hoc theologi et canonistae suis legibus supponuntur, pars enim sunt societatis civilis; similiter qui leges ipsas promulgantur, quarum interpretes fiunt, quibus sat constat civilem humanis omnibus dominari; an vero praesideat sapientiae in Sexto videbitur, unam ut videor conditionem scientiae civilis apposuit, scilicet quod suis subditis praecipit quid debeat operari, quemadmodum equestris illi quae frenos facit.’

<sup>96</sup> Ibid., Lib. I, f. 5<sup>vb</sup>: ‘Et si petatur an ipsa doceat quid est illud bonum, dicitur quod non. Sed bene docet illud in speculatione consistere, unde satis est ordinasse quod humana studia in vitia non labantur nec aliquod impedimentum ab ipsis oriatur et sibi invicem sint auxilio.’

<sup>97</sup> Ibid., Lib. I, ff. 5<sup>vb</sup>–6<sup>ra</sup>: ‘Collige summatim ethicam describere summum bonum quid sit, quae et quot sint virtutum species, et quae indifferenter deceant homines ut illud summum bonum adipiscantur formaliter vel secundum gradum propinquum ut unicuique possibile est. Et summum bonum quod docet duplex est, scilicet politicum de quo in hoc Primo, et illud quod sapientis est in Decimo. Economica et Politica quid sit hoc summum bonum ab Ethica supponentes, intendunt quomodo per diversos hominum gradus in communi sive pro societate possint virtutes et bonum procurari, salvari atque distribui quo societas vel familiaris vel civilis rectissime gubernetur, unde patet ethicam ambabus caeteris esse priorem, illasque sibi subalternari, quoniam quae dicta sunt in ethica praesupponunt.’ Lib. I, f. 6<sup>ra-b</sup>: ‘Patet igitur idem esse bonum quod ethica considerat et politica. In prima scimus quid est et elementa traduntur civilis disciplinae; politica id esse praesupponit et salvare procurat ... Hoc dictum, scilicet quod idem sit bonum ab utraque consideratum, non consonat iis quae dicuntur in Decimo, ubi videtur alia esse felicitas politica, alia quae in contemplatione est ...’



the individual (f. 111<sup>r-v</sup>). Furthermore, in Book X Tignosi maintains that at least a part of politics is such that it is not subject to any other science and that rhetoric falls under it.<sup>98</sup>

This confusion makes it hard to know whether Tignosi really thought politics or ethics to be superior. Furthermore, it remains unclear what the ideal sequence is, in his view, for reading the *Ethics*, *Politics* and *Oeconomics*. Whether he holds to the Albertian or to the Thomist position, oeconomics and politics would follow upon ethics. Albert, however, had argued that discussion of the *Politics* should immediately follow upon an examination of the *Ethics*, whereas Thomas thought that the *Oeconomics* should be discussed directly after the *Ethics*.<sup>99</sup>

More important, however, is Tignosi's attitude towards authorities. Although on some points he clearly chooses one particular position,<sup>100</sup> on several others he makes (largely unconvincing) efforts to reconcile the conflicting points of view. Although such efforts were part of the traditional medieval attempt to reconcile authorities, in the case of the *Ethics* it was a fairly new approach in Italy. In fact, the fifteenth century can be seen as the time when several commentators, who had already received a good hearing elsewhere, finally got one in Italy as well. This seems to have been especially the case for the Byzantines Eustratius and Michael of Ephesus, as well as for Averroes, Albert the Great and Burley.

After 1500 Thomas still continues to be read and used, and it could be argued that even in the sixteenth century he still plays the leading role. Yet the polite murmur of other voices heard in Tignosi's commentary soon develops, in the sixteenth century, into a loud argument. Other scholastic authors such as Burley and sometimes Buridan become a more familiar presence in the Italian commentaries. The comments of Averroes, who was avidly studied in the sixteenth century and whose *Opera omnia* went through several monumental editions, colour interpretations of the *Ethics* even more strongly than previously. Increasingly, Aristotle commentaries rely on Plato and on various representatives of the Neoplatonic tradition (such as Themistius and Simplicius). References to Cicero and other Latin (or Greek) moralists become almost mandatory. Finally, there seems to be a new sense that the views of contemporaries, and not only of past thinkers, are worthy of consideration and should therefore be discussed.

Thus, in Italy Thomas eventually becomes only one voice among many—except of course among the Jesuits, where *Ethics* commentaries

<sup>98</sup> Ibid., Lib. X, f. 197<sup>va</sup>: 'At politica statutam et firmam habet partem quam exequi dignam non credit, nec est instrumentum alicuius scientiae; at rhetorica instrumentum est et politicae subicitur, ut in prohemio huius declaratur.'

<sup>99</sup> Lines (2002), pp. 146–7.

<sup>100</sup> This is the case, for example, when he espouses Thomas's view of the ideal sequence of studies.

served as introductions to the study of his *Summa*.<sup>101</sup> Until at least the fifteenth century, however, his is usually the dominating perspective among *Ethics* commentators, and long after 1500 his commentary continues to be admired as a model of expository clarity. Scholars familiar with P. O. Kristeller's work will be reminded of his insistence that the humanists could hardly have rejected the medieval cultural heritage completely (or even generally), and even when selective rejection occurred, it required at least knowing what was being rejected.<sup>102</sup> Although Buridan was not enthusiastically received in Italy, formal, doctrinal and practical considerations probably played a great part in this phenomenon. Certainly he was not given the cold shoulder simply because he was a scholastic author. The continuing presence of Thomas among the fifteenth-century commentators confirms this fact. But it also suggests that the humanists' use of the past was (as it always is) selective, guided by their tastes and perceptions of practical utility.

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<sup>101</sup> Lines (2002), pp. 362–83.

<sup>102</sup> One example among many is Kristeller (1974).

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## Action, Will and Law in Late Scholasticism

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In what follows I wish to discuss a distinctive natural law-based conception of obligation—and the intimate relation which that conception of obligation bears to an equally distinctive theory of human action. I shall concentrate my attention on two early modern thinkers in particular, Francisco Suarez (1548–1617) and Gabriel Vasquez (1549–1604). How widely their conception was shared by other thinkers in their tradition is a question for another time.

When it comes to obligation, Suarez and Vasquez might sensibly be contrasted. For Vasquez, obligations could arise prior to and independently of any act of will or intellectual judgement, of any being, God included.<sup>1</sup> In particular, then, obligations need not be the creations of any law-maker or legislator, whether human or divine. Thus, in Vasquez's view, existed the pre-political obligations of the natural law—moral obligations not to kill and the like. These did not arise through any form of legislative act. Whereas for Suarez, all obligations, all moral obligations included, did presuppose some legislative act. There was no exception to this. For someone to be under an obligation to perform an action, that person must always be subject to a superior; and the superior must have willed that the action be obligatory on the person obliged and have promulgated to that person his will to that effect.<sup>2</sup> In the case of moral obligations of the natural law, the required legislative superior was God.

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<sup>1</sup> According to Vasquez (1612), p. 8 (Disputation 150, Chapter 3), obligations under pre-positive or natural law arise in this way: 'Ex quibus omnibus colligere licet, legem naturalem, si pro prima regula naturali actionum creaturae rationalis capiatur, sive in Deo, sive in ipsa natura rationali, non esse imperium, nec iudicium rationis, nec voluntatem, sed quid prius. Hoc autem sequitur ex eorum sententia, qui dicunt quaedam esse bona, quaedam vero mala ante omne praeceptum et iudicium intellectus et voluntatis Dei.' This *regula* or *lex naturalis*, is rational nature; see *ibid.*, p. 7: 'Cum autem lex aut ius sit regula, cui aequare debent actiones, ut iustae sint; naturalis lex, aut naturale ius erit regula naturalis, quae nulla voluntate, sed suapte natura constat ... Haec [regula] non potest alia esse, quam ipsamet rationalis natura ex se non implicans contradictionem, cui tanquam regulae et iuri naturali bonae actiones conveniunt at aequantur, malae autem dissonant et inaequales sunt, quamobrem et illae bonae, hae autem malae dicuntur.'

<sup>2</sup> For law and obligation is required, according to Suarez (1856–78), vol. 5, *De legibus*, p. 15: '...aliquem actum efficacis voluntatis...haec autem voluntas non oportet, ut sit de ipsa

So for Suarez, moral obligations presuppose some divine will or command. For Vasquez, there is no such presupposition. Nevertheless, I shall suggest that, this difference between them notwithstanding, both Suarez and Vasquez share a common underlying conception of what action and obligation are and of how the two are related. This conception is substantial and intuitive but problematic—and the differences between these two thinkers exhibit alternative ways of resolving the considerable difficulties which arise.

Suarez and Vasquez share a conception of obligation as a special kind of action-specific justificatory force, and this conception rests on a theory of action which I shall term practical reason-based. The conceptual dependence of the theory of obligation on the theory of action is total. Abandon the theory of action, and you can no longer coherently conceptualize obligation in this way. One of the main reasons why such a theory of obligation is no longer current within, for example, modern English language philosophy, is simply that that philosophical community has abandoned and forgotten the practical reason-based theory of action.

The shared conception of obligation is proposed as part of a general theory of law—of *lex* or *ius*. This theory of law was used to do many things; but one at least was to provide a theory of a certain kind of normativity: that special kind of demanding call on us to respond which some moral standards make and which constitutes their obligatoriness—a call to ignore which, without excuse, is to be blameworthy for doing wrong.

The connection between law and obligation is intuitive. Obligation, in the moral sphere, is naturally conceived as a demand specifically on action. We can only be under a moral obligation to do things or refrain from doing them. We cannot be under a moral obligation for things to happen independently of our own agency.

So a body of obligations seems to be a body of demanding directives specifically on action. But a body of demanding directives on action—a body of directives for breaching which without excuse we count as culpable agents or as blameworthy wrongdoers—this seems to be, in some general sense, a law. Therefore, the view that obligation consists in just such a demand specifically on actions and omissions can be described as the view that obligation constitutes a special normativity of law. But under what conditions, and in what ways, can obligation be so conceived? To answer this question, we need to turn to action—to what obligation *qua* law is supposed peculiarly to govern.

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observatione seu executione legis...Per se requiritur ut sit de obligatione subditorum, id est, ut sit voluntas obligandi subditos, quia sine tali voluntate non obligabit illos...'

## HUMAN ACTION AS THE PRACTICAL EXERCISE OF REASON

A practical reason-based conception of agency characterizes fully human, fully intentional or deliberate agency (the realm of the perfectly voluntary, as Suarez and Vasquez both put it) as the exercise of a distinctive capacity for rationality—the exercise of a capacity to be moved or directed by a practical or action-guiding reason and thereby to exercise reason practically, in an action-constitutive manner. Such a conception of agency is not current in modern English-language philosophy, nor is it generally identified as a feature of past action theory.<sup>3</sup> But it was such a feature; and is of immense historical and philosophical importance. In the work of Suarez and Vasquez, and of predecessors in their intellectual tradition, such as Thomas Aquinas and Duns Scotus, it took a particular and distinctive form.

Consider Scotus's account, to which Suarez himself referred. In discussing human action, Scotus used the term *praxis*. For him, *praxis* occurs as the exercise of a faculty which has the function of being moved and directed by reason—specifically, by a practical or *praxis*-guiding reason, as it directs the operation of faculties besides the intellect itself:

Also note that *praxis* or practice is an act of some power or faculty other than intellect, which naturally follows an act of knowledge or intellection and is suited by nature to be elicited in accord with correct knowledge if it is to be right.<sup>4</sup>

In other words, voluntary action occurs as the exercise of a capacity to be moved or directed by practical knowledge or reason—to respond motivationally to thoughts or deliberations and reasonings about what to do, thoughts and deliberations which are intellectual and cognitive, and which direct us to the good or to some other practical value. The exercise of this rational capacity may of course be defective as well as competent: the practical reason-based conception of voluntary agency allows for voluntary action which is irrational.

This faculty where *praxis* occurs, according to Scotus, is the will—or as we might put it today, our capacity for decision making and intention-formation. According to Scotus:

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<sup>3</sup> The idea of a practical reason-based theory of agency is introduced and explored in Pink (1996) and (1997).

<sup>4</sup> Scotus, *Lectura*, prolog. pars 4, qq. 1-2, quoted in Wolter (1986), pp. 126-8: 'Sciendum etiam est quod *praxis* est actus alterius potentiae quam intellectus, naturaliter posterior intellectione, natus elici conformiter intellectioni rectae, ad hoc quod sit rectus.'

From all this it follows that nothing is formally *praxis* except an imperated or elicited act of will, because no act other than that of will is elicited in agreement with a prior act of the intellect.<sup>5</sup>

I shall shortly go into this important, indeed fundamental, difference between elicited acts and imperated or commanded acts. The important point for the moment relates to the will—the will is the primary faculty involved in intentional action; it is the faculty in and through which we exercise our capacity to respond to practical or praxis-governing reason.

Scotus's account of *praxis* was noted and endorsed by Suarez, in his commentary on Aristotle's *De anima*, using, relatively unusually for him, Scotus's own term *praxis*. Suarez distinguishes an *actus practicus* of the intellect—an exercise of the intellect which involves arriving at a conclusion about what is to be done—from *praxis* or voluntary action itself:

...for an *actus practicus* is that exercise of the intellect which orders or directs some action, while *praxis* is the action which is regulated and ordered by the *actus practicus*...<sup>6</sup>

Suarez also entirely shared Scotus's view as to the location of voluntary action in elicited and imperated or commanded acts of the will, as we shall see.

A central feature of a practical reason-based conception of human agency is that it is going to be a dual structure. That is, we are going to have two levels of human action. Besides the first order level, at which we move our hands, look out the window and the like, there can be the prior point at which we decide or form intentions to do these things. And this point of decision making and intention-formation, of *intentio* and *electio*, is going to be an action too—a second order, action-generating action.

For the point at which I decide to look out the window as opposed to continue reading my book is, intuitively, a point at which I am indeed exercising, correctly or incorrectly, a capacity to be moved by practical reason. A natural conception of decisions and intention-formations is that they have the function of applying our prior deliberations or reasonings about what to do, by ensuring that thereafter we are and remain motivated

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<sup>5</sup> Ibid.: 'Ex hoc sequitur quod nihil est praxis formaliter nisi actus voluntatis imperatus vel elicited, quia nullus actus sequitur actum intellectus cui conformiter elicited nisi actus voluntatis, quia omnes actus aliarum potentiarum possunt praecedere actum intellectus, sed non actus voluntatis.'

<sup>6</sup> Suarez (1991), vol. 3, p. 250: 'Tam fortis dissensio est de nomine, nam actus practicus dicitur ille actus intellectus quo ordinat aut dirigit operationem aliquam, praxis vero dicitur illa operatio quae regulatur et ordinatur per actionem practicam intellectus, nam "praxis" nomen graecum est, latine "operationem" significans. Et hic videtur communis usus vocabulorum. Et ita communiter praxis est actus alterius potentiae ab intellectu; actus vere practicus est elicited ab ipso intellectu.'



to act as we have deliberated that we should. Our decision making capacity or will was viewed generally in the schools as a rational motivational power—a motivational capacity which is responsive to reason in practical form, as it concerns the good or some other relevant practical value. And so on a practical reason-based conception of human agency, this makes the exercise of the will itself a case of intentional action—which is precisely what scholastic proponents of a practical reason-based conception of agency held the exercise of the will to be.

The practical reason-based conception is a common tradition uniting a more voluntarist thinker such as Scotus, who allows the will to operate to a fair degree independently of the intellect, with a more intellectualist thinker such as Aquinas, who ties the operation of the will to that of the intellect. The battle between voluntarists and intellectualists about how far the operation of the will is actually determined by or a function of the operation of the intellect can perfectly well be carried on within a wider allegiance to the practical reason-based conception. Aquinas, after all, still characterizes intentional agency in the same terms as Scotus, as the exercise of a particular capacity for rationality, an *operatio rationalis*.<sup>7</sup> The relevant kind of exercise is one which involves the agent being moved by a practically rational cognition—by cognition of an end as good or worth pursuing.<sup>8</sup> And voluntary actions thus characterized are clearly to be found in actions of the will: for an act of will ‘...is nothing other than a certain inclination proceeding from an internal cognitive principle’.<sup>9</sup> In all these thinkers we find the same view of voluntary agency as located in elicited and imperated or commanded acts of the will. If Aquinas ties the operation of the will far more closely than Scotus does to the intellect, both thinkers share the same conception of voluntary action as involving the exercise of a will-based capacity to be moved by practical reason.

I have argued that Suarez and Vasquez inherit a practical reason-based conception of voluntary agency—a conception which involves a dual structure theory of agency. Not only that. It is also true that decisions and intention-formations—these second order actions of the will itself—are seen as fundamental to agency. Indeed, decisions and intention-formations are taken to be the primary and immediate cases of agency.

Fully human agency was conceived, as we have noted, as the exercise of a rational capacity—a capacity to be moved by reason. But within this tradition, this brought an important kind of dualism to bear on the theory of

<sup>7</sup> Thomas Aquinas (1950), *Summa theologiae* I-II q. 6 a.1: ‘...voluntarium est actus qui est operatio rationalis’.

<sup>8</sup> Ibid., I-II q. 6 a. 2: ‘...ad rationem voluntarii requiritur quod principium actus sit intra, cum aliqua cognitione finis’.

<sup>9</sup> Ibid., I-II q. 6 a. 4 resp: ‘actus voluntatis nihil est aliud quam inclinatio quaedam procedens ab interio principio cognoscente’.

action. This was faculty dualism. Intellectual or rational cognition and motivational responses to rational cognition took place in special rational faculties—those of intellect and will. And these faculties, as befitted the dignity of reason which placed it above matter, were immaterial. They lacked a bodily organ and survived bodily death without corruption. In so far as voluntary action involved the exercise of a reason-motivational capacity, its primary occurrence must be within one of these immaterial rational faculties—in particular, the motivational faculty of will.

Suppose someone performs a first order action—take an example which Suarez considers, the action of giving alms: *actus dandi eleemosynam*. Suarez terms this an external act—*exterior actus*—by contrast to internal actions of the will, such as deciding to give alms; and, as an action involving limb motion, this external action is located in the exercise of a corporeal locomotive capacity. The action occurs then, in a corporeal organ. What then makes this first order action a voluntary action?

It cannot be that the exercise of the locomotive capacity of itself constitutes a case of being moved by some cognition of practical reason. For as we have seen, rational responsiveness to such a cognition must take place in an immaterial faculty. Suarez combines the conviction that first order bodily actions, such as giving alms, are exercises of and occur within corporeal locomotive faculties, with the further conviction that the process of responding to and being moved by a rational cognition, and so the primary occurrence of agency, must occur within an immaterial faculty of will. So we cannot explain the voluntary status of giving alms directly in terms of the practical reason-based model.

Instead, we have to explain the voluntary status of a corporeally located action in terms of its being in a certain relation to a prior act of the will to which the practical reason-based model directly applies. Whenever I voluntarily give alms, there is, first of all, an intrinsically voluntary or active event of my willing or deciding that I should give alms, the status of which as agency being explained by its very nature—as my exercise of my immaterial capacity to be moved by reason. This is an *elicited* act of the will—*elicited* in relation to the will because it is an act of the very faculty of will itself. And this elicited act of the will has as its object, as the further action willed or decided on, the first order action of giving alms—an action which it then efficiently causes and informs. The first order action of alms giving then occurs as an *imperated* or *commanded* act of the will. It is imperated or commanded because it is an action performed on the basis of a prior decision to perform it, occurring as an effect and object of that elicited act which occurred within the will itself. The elicited act is intrinsically voluntary; the imperated act is only extrinsically voluntary, by virtue of its standing as the willed effect and object of the prior eliciting action:

Voluntariness in the way of an imperated act is nothing other than a certain character or denomination of the imperated act received from an elicited act, of which the imperated act is object and effect. For an imperated act is termed voluntary simply because it proceeds from an elicited act of the will and is in a measure informed by it and with it constitutes one morally significant act.<sup>10</sup>

So one effect of faculty dualism is to make unavoidable for this tradition a hybrid account of voluntary agency. The overall theory is practical reason-based. Whenever human action occurs, there must be some intrinsically intentional or intrinsically voluntary action, the status of which as agency arises out of its constituting an exercise of an immaterial rational motivational capacity—a capacity to be moved by some rational cognition. But the status of first order actions which are exercises of corporeal faculties then has to be explained in other terms—by virtue of their being objects and effects of the intrinsically intentional actions of the will.

It might seem objectionable to make intentional action hybrid in this way. Is not raising my hand, an external action according to the theory, at least as much an exercise of my capacity for agency as the earlier internal action of deciding to raise my hand? And as such should there not be something significantly in common between these two actions? But even as actions, deciding to raise my hand and actually raising it seem on this theory to have nothing much in common: one is an exercise of reason, whereas in itself the other is a mere non-rational effect.

Suarez tried to suggest that they did have something significantly in common—both had the property of being *volitus* or willed. Elicited acts of the will, we have seen, are acts of the rational appetite itself—of a capacity to be moved by practically rational cognitions. But it is important that, for Suarez, the voluntariness of these elicited acts involves their possessing a reflexive quality:

Voluntariness in an elicited act of the will comes to nothing other than being an act which, in coming immediately from the will, is inherently self-willed through a virtual and inherent self-reflexion.<sup>11</sup>

Being willed, *volitus*, is, as we have seen, a characteristic of imperated acts. But for Suarez it is a characteristic of elicited acts too, though not in the

<sup>10</sup> Suarez (1856–78), vol. 4, *De voluntario et involuntario*, p. 160: ‘voluntarium per modum actus imperati, nihil enim aliud est, quam habitudo, seu denominatio quaedam in actu imperato ab actu elicito, cuius est obiectum et effectus, non enim alia ratione actus imperatus voluntarius dicitur, nisi quia procedit ab actu elicito voluntario, et ab ipso quodammodo informatur, et cum illo constituit unum actum moralem ... Tota ergo difficultas revocatur ad actus elicitos.’

<sup>11</sup> *Ibid.*, p. 160: ‘esse voluntarium in actu elicito, nihil aliud esse quam esse actum, ita immediate manentem a voluntate, ut per se ipsum intrinsece sit volitus per virtualementem, et intrinsecam reflexionem in ipso inclusam.’

same way. In contrast to imperated acts, the inherently willed character of elicited actions does not involve their being the object and effect of any prior and distinct act of will. Rather, it is a reflexive relation they bear to themselves, simply as elicited acts of the will.

Suarez cites Augustine, Anselm and Scotus to vindicate this view of elicited acts of will, appealing to what I shall call the ‘reflexion principle’ that ‘*omnis volens ipse suum velle necessario vult*’—anyone who wills necessarily wills his own willing.<sup>12</sup>

Suarez thus offers to unite elicited and imperated acts within one and the same category of the *volitus* or willed. But this is something which Vasquez refuses to do. For Vasquez, as for Suarez, elicited acts of the will arise from a cognitive principle or object internal to them. They are perfectly voluntary actions because they are exercises of a capacity to respond motivationally to intellectually presented justifications for action—to the cognitive presentation of an end. This permits the practical reason-based model to apply. Given that status, it is not necessary to suppose that an elicited act must also be *volitus*. Nor is it sensible: willing is something produced by the will, but is no more itself willed through being so produced than seeing is itself seen.<sup>13</sup> Willedness is essential to voluntariness or agency only in the case of imperated actions—only in the case of what is, for both thinkers, an entirely secondary and derivative case of agency.<sup>14</sup>

So Suarez’s attempt to unite the voluntary uniformly within the category of the willed is rejected by Vasquez. But the demand to infer from deliberate agency to willedness—to suppose that deliberate agency is in every case done on the basis of being willed or intended—is an old one.<sup>15</sup> It

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<sup>12</sup> *Ibid.*, p. 196.

<sup>13</sup> Vasquez (1611), p. 165 (Disputation 23, Chapter 2): ‘...ac proinde volitio quidem erit producta a voluntate, sed non volita per ipsam productionem; sicut visio, quae est species et qualitas expressa, non erit visa per fieri et productionem sui ipsius.’

<sup>14</sup> *Ibid.*, p. 168 (Disputation 23, Chapter 3): ‘Deinde ex eadem doctrina colligitur, ut actus voluntatis quicumque sit voluntarius, frustra requiri id, quod recentiores Theologi postulabant, nempe aliquo modo esse volitum: ut enim constat ex definitione voluntarii, voluntarium solum postulat principium intrinsecum, et cognoscens, ita ut principium eius sit cognitio: hoc autem habet quicumque actus voluntatis hoc ipso, quod obiectum ipsius cognitum est, et ex tali cognitione principium habet. Nam principium actus facultatis appetentis est obiectum ipsius, actus vero exterioris facultatis, ut sit voluntarius, debet esse cognitus et volitus, quia est voluntarius secundarie ab actu facultatis appetentis, et ita debet esse obiectum illius, esse tamen volitum non est de ratione voluntarie univere, ut voluntarium est.’

<sup>15</sup> As I discuss in more detail elsewhere, the thought that it must at least be possible for deliberate agency to be done on the basis of being willed is often connected within the scholastic tradition to the thought that deliberate agency is something which is within our power or control. For example, in *Summa theologiae* I–II q. 17 a. 5, Aquinas connects the ‘up-to-ness’ or ‘within our power-ness’ of the will to its being subject to the *imperium* or

was to be insisted on by the practical reason-based tradition's principal opponent, Thomas Hobbes. In debating with that tradition's local representative, Bishop John Bramhall, Hobbes accused the scholastic tradition of equivocation. It was clear why external or imperated acts are actions. They occur as effects of willings or of intentions that they occur. And Hobbes could understand voluntariness on that basis:

He [Bramhall] says that Actus Imperatus is when a man opens or shuts his eyes at the command of the will. I say when a man opens and shuts his eyes according to his will, that it is a voluntary action; and I believe we mean one and the same thing.<sup>16</sup>

Imperated or external actions, then, were not a problem for Hobbes. But elicited action, the prior internal action of the will itself, was in Hobbes's view a scholastic fiction. What, after all, could make willings voluntary actions too?

One option, of course, as we have seen, is to explain the status of willings as actions in quite different terms from those which apply to imperated actions. Willings are voluntary actions, not for the reason which imperated actions are—they are not actions because they themselves are effects of prior willings that they occur—but because they constitute exercises of reason in practical form. Willings are special reason-responsive motivations.

Hobbes's criticism of this, the standard scholastic position, is twofold. First, the theory of agency becomes mired in equivocation. We are inconsistently explaining action in two quite different ways—in the imperated case as a kind of willed non-rational effect; and in the elicited case as a mode of exercising rationality. But secondly, and worse, this theory of elicited agency is, in Hobbes's view, simply incomprehensible. He claimed not even to understand what a specifically reason-responsive motivation was, and how it differed from evidently passive motivations—from humble desires and urges such as hunger. Willings—decisions and intentions—are just more motivations, of exactly the same kind as mere desires and urges, the only difference being that compared to urges and desires full-scale willings are motivations which are stronger. For willings are nothing more than those motivations which have proved strong enough to override contrary motivations finally to determine our external action. If, as seems intuitive, humble urges and desires are passive occurrences—

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command of reason—and so also to the acts of the will itself which such commands of reason presuppose, and by virtue of which they motivate what is both willed and commanded: 'Sed contra, omne quod est in potestate nostra, subiacet imperio nostro. Sed actus voluntatis sunt maxime in potestate nostra: nam omnes actus nostri intantum dicuntur in potestate nostra esse, in quantum voluntarii sunt. Ergo actus voluntatis imperantur a nobis.'

<sup>16</sup> Hobbes 1656, p. 236.

passions which come over us without being our deliberate doing—then willings can be no different.

The second option is to avoid the mystery and equivocation—to tell more or less the same story about elicited actions as we told about imperated actions. We appeal to a higher order willedness at the level of elicited acts: they are voluntary actions because they too occur on the basis of having been willed. But in Hobbes's view, that is impossible. Motivations or willings cannot themselves occur on the basis of being willed: 'I acknowledge this liberty, that I can do if I will, but to say, I can will if I will, I take to be an absurd speech.'<sup>17</sup>

## PRECEPTIVE LAW

Let us now turn to obligation, and the theory of law or *lex* which was used to characterize it. Essential to *lex*, both Suarez and Vasquez agree, is the property of containing *praecepta*, and not merely *consilia*. And the force of *praecepta* is to demand (or in negative forms, as prohibitions, to forbid), while mere *consilia* only recommend or advise.<sup>18</sup>

The *praecepta* of law are justificatory—to break them is to contravene reason. But legal *praecepta* constitute a force of reason in mandatory, and not merely recommendatory mode. Law can bind and oblige us. And through this binding form of justification law governs human actions—actions which can be imputed to their agents, and so for which their agents can be held responsible. As Suarez claims, '*lex tantum datur de humanis actibus*'—law is only given regarding human, that is, perfectly voluntary, intentional agency.<sup>19</sup>

Within the tradition, the distinction between *consilia* and *praecepta* is often illustrated by referring to the absence or presence of a superior-inferior relation. As Aquinas noted:

On the second point we should say that to advise is not a peculiarly legal act, since it can apply also to a private person who is not in a position to make

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<sup>17</sup> *Ibid.*, p. 29.

<sup>18</sup> Vasquez (1611), p. 26: '*primum naturali legi convenit praecipere actus suapte natura bonos, non omnes, sed eos qui necessarii sunt; nam qui dicuntur in consilio, non praecipuntur lege naturali*'.

<sup>19</sup> Suarez (1856–78), vol. 4, *De bonitate et malitia humanorum actuum*. p. 293. He is absolutely insistent that precepts of law only address free, and so perfectly voluntary, acts; see vol. 5, *De legibus*, p. 7: '*Addo praeterea, loquendo de propria lege, de qua nunc agimus, tantum esse posse propter creaturam rationalem: nam lex non imponitur, nisi naturae liberae, nec habeat pro materia, nisi actus liberos...*'

law. Whence too, in giving advice, the Apostle said: 'It is I who am saying this, not the Lord.' And so advice is not placed among the effects of law.<sup>20</sup>

The distinctive authority of obligation-involving *praecepta* is conveyed by referring to the authority of a legal superior. And so it is tempting within this tradition to see, with Suarez, a superior-inferior relation as essential to obligation. Simply to point out that some things are good and others are bad, Suarez urges, is not to speak preceptively, but only indicatively. It is to stay within the realm of advice, and not to attain that of demand and obligation. As Suarez says:

Finally, a judgement indicating the nature of an action is not the act of a superior, but can occur in an equal or inferior who has no power of imposing obligation; hence, such a judgement cannot have the character of law or prohibition: otherwise a teacher showing what is good or bad would be imposing law, which cannot be said. Law therefore is that command which can introduce an obligation; judgement, however, does not introduce the obligation, but rather exhibits it as something which must already be in place. So to have the character of law, judgement must be referring to some command from which such an obligation derives.<sup>21</sup>

But also within the same tradition the demandingness of obligation can equally be illustrated by reference to the culpability of breaching it—a culpability which is based simply on the moral badness of wrongful actions and their imputability to the agent. As Aquinas again said:

Hence, a human action is worthy of praise or blame in so far as it is good or bad. For praise and blame is nothing other than for the goodness or badness of his action to be imputed to someone. Now an action is imputed to an agent when it is in his power, so that he has dominion over the act. But this is the case with all voluntary actions: for it is through the will that man has dominion over his action... Hence, it follows that good or bad in voluntary actions alone justifies praise and blame; for in such actions badness, fault and blame come to one and the same.<sup>22</sup>

<sup>20</sup> Thomas Aquinas (1950), *Summa theologiae*, I–II q. 92, a. 2, resp ad sec.: 'Ad secundum dicendum quod consulere non est proprius actus legis, sed potest pertinere etiam ad personam privatam, cuius non est condere legem. Unde etiam Apostolus, 1 ad Cor. 7,12, cum consilium quoddam daret, dixit: Ego dico, non Dominus. Et ideo non ponitur inter effectus legis.'

<sup>21</sup> Suarez (1856–78), vol. 5, *De legibus*, p. 106: 'Denique iudicium indicans naturam actionis non est actus superioris, sed potest esse in aequali, vel inferiore, qui nullam vim habeat obligandi; ergo non potest habere rationem legis vel prohibitionis: alias doctor ostendens quid sit malum quidve bonum, legem imponeret, quod dici non potest. Lex ergo est illud imperium, quod potest obligationem inducere: iudicium autem illud non inducit obligationem, sed ostendit illam quae supponi debet; ergo iudicium illud, ut habeat rationem legis, debet indicare aliquod imperium, a quo talis obligatio manat.'

<sup>22</sup> Thomas Aquinas (1950), *Summa theologiae* I–II q. 21 a. 2, resp: 'ergo actus humanus ex hoc, quod est bonus vel malus, habet rationem laudabilis vel culpabilis ... nihil enim est aliud laudari vel culpari quam imputari alicui malitiam vel bonitatem sui actus. Tunc autem actus imputatur agenti quando est in potestate ipsius, ita quod habeat dominium sui actus.'

And this threatens to leave a superior-inferior relationship inessential to law and obligatoriness—an implication which Vasquez is happy to draw out. To establish the possibility of law prior even to God’s making an act of judgement or command, Vasquez asserts the possibility of *culpa*—of blameworthy fault or guilt—prior to any such act. He argues:

Badness in any action constitutes a fault; and in a free action it constitutes guilt: so if prior to God’s prohibition we suppose badness in a free act against rational nature, as must necessarily be granted, by that very fact there ought also to be supposed moral guilt.<sup>23</sup>

Suarez insists that the source of genuine obligation must lie in the will of a superior. But he is aware of the strength of Vasquez’s position—indeed, he comes close to conceding the substance of it, as we see from the following rather tortuous passage:

I therefore reply that in a human action there is indeed some goodness or badness by virtue of the object positively aimed at, in as much as that object is compatible or incompatible with right reason, so that by right reason the action can be counted as bad, and a fault and blameworthy in that regard, apart from any relation to law proper. But beyond this a human action has a particular character of being good or bad in relation to God, when we add divine law forbidding or decreeing, and in respect of that the human action counts in a particular way as a fault or blameworthy in relation to God by virtue of its breaching of the genuine law of God himself, which particular badness Paul seems to have referred to by the name of transgression when he said, ‘Where there is not law, neither is there any transgression’... The natural law precisely prohibits whatever is in itself bad or disordered in human actions, and in the absence of such a prohibition an action would not have the complete and unqualified character of a blameworthy fault and offence against divine law, which cannot be denied of acts that definitely violate natural law.<sup>24</sup>

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Hoc autem est in omnibus actibus voluntariis: quia per voluntatem homo dominium sui actus habet ... Unde relinquitur quod bonum vel malum in solis actibus voluntariis constituit rationem laudis vel culpae; in quibus idem est malum, peccatum et culpa.’

<sup>23</sup> Vasquez (1612), p. 659 (Disputation 97, Chapter 3): ‘... malitia in quovis actu facit peccatum; in actu autem libero facit culpam: ergo si ante Dei prohibitionem supponamus malitiam in actu libero contra naturam rationalem, ut necessario fatendum est, debet etiam supponi hoc ipso culpa moralis’.

<sup>24</sup> Suarez (1856–78), vol. 5, *De legibus*, p. 110: ‘Respondeo igitur in actu humano esse aliquam bonitatem vel malitiam ex vi obiecti praecise spectati, ut est consonum vel dissonum rationi rectae, ut secundum eam posse denominari, et malum, et peccatum, et culpabilem secundum illos respectus, seclusa habitudine ad propriam legem. Praeter hanc vero habet actus humanus specialem rationem boni et mali in ordine ad Deum, addita divina lege prohibente vel praecipiente, et secundum eam denominatur actus humanus speciali modo peccatum vel culpa ad Deum, ratione transgressionis legis propriae ipsius Dei, quam specialem malitiam videtur Paulus significasse nomine praevaricationis cum dixit, ubi non est lex, nec praevaricatio ... lex naturalis vere et proprie prohibet quidquid secundum se malum seu inordinatum est in actibus humanis, et sine tali prohibitione actus non haberet ...’



But if there really is culpability or blameworthy fault prior to any divine prohibition, do we not have enough for obligation? What is an obligation if not a standard which it is blameworthy to breach?

For Suarez the obligatoriness of the action does follow, although indirectly, from the badness of not performing it; for that badness, given the existence of rational created beings, necessarily implies that God has prohibited its performance.<sup>25</sup> Hence, the natural reason by which we determine that our failure to perform the action would be bad can constitute the sufficient promulgation of the law which the action's obligatoriness presupposes.<sup>26</sup>

The voice, then, of pre-positive law in us—the voice of natural law—is the voice of our reason. The demanding force with which law addresses us is the force of our reason, and one which it is irrational for us to disregard. Suarez endorses the view which:

in respect of rational nature distinguishes two things: one is that nature itself, in as far as it is the basis of the compatibility or incompatibility with itself of human actions; the other is a certain power of that nature, which we call natural reason. Taken the first way, this nature is said to be the basis of natural moral goodness; taken the second way, it is called the natural law itself, which prescribes or forbids to the human will what is to be done by natural right.<sup>27</sup>

We now reach an absolutely fundamental feature of this natural law-based conception of obligation. If we do see moral obligation as addressed to us as a demanding force of reason or justification, then moral obligations must bind the will as much as they bind external, imperated action.

This is because it is a quite general characteristic of features which justify performing some external action such as, for example, giving alms that they also justify, with the same force, deciding or intending or becoming fully motivated to perform that same action. That is how justifications for external actions such as giving alms move us to perform

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consummatam vel perfectam rationem culpae et offensae divinae, quae negari non potest in actibus qui praecise sunt contra legem naturae.'

<sup>25</sup> Ibid., p. 111: '... ideoque supposita voluntate creandi naturam rationalem cum sufficienti cognitione ad operandum bonum et malum, et cum sufficienti concursu ex parte Dei ad utrumque, non potuisse Deum non velle prohibere tali creaturae actus intrinsece malos, vel nolle praecipere honestos necessarios.'

<sup>26</sup> Ibid., p. 112: 'Unde dicitur ulterius ipsummet iudicium rectae rationis inditum naturaliter homini, esse de se sufficiens signum talis voluntatis divinae, nec necessariam aliam insinuationem.'

<sup>27</sup> Ibid., p. 102: 'in natura rationali duo distinguit, unum est natura ipsa, quatenus est veluti fundamentum convenientiae vel disconvenientiae actionum humanarum ad ipsam: aliud est vis quaedam illius naturae, quam rationem naturalem appellamus. Priori modo dicitur haec natura esse fundamentum honestatis naturalis: posteriori autem modo dicitur lex ipsa naturalis: quae humanae voluntati praecipit vel prohibet quod agendum est ex naturali iure.'

the actions which they justify—by providing the same justification for, and so justifying with precisely the same force, the motivation which deliberate performance of the external action would require. A justification which did not address the will with the same force with which it supports the external action justified simply could not move us into action. We would, as rational, justification-sensitive beings, note the justification for giving alms; yet we would be unmoved by it, since we lacked the same justification for being correspondingly motivated to give alms. But it would be quite absurd for a practical justification to bypass the will in this way; for then we would have supposed justifications for action which, however, were incapable of moving even rational, justification-sensitive agents to act. And no genuine justification for action can so lack the force to move us to do what it justifies. Accordingly, if we do conceive of obligation as the force of a justification or reason, that force, like any justificatory force, must apply not only to external actions, but also to motivations of the will.

Suarez and Vasquez, along with others of their tradition, make precisely this assumption of obligation. The obligations of pre-positive, natural law are supposed to lie on the will as much as on external action. We are not only under an obligation, say, actually to help our neighbour, but by the very fact of that obligation we are also obliged to will or intend that our neighbour be helped. Indeed, for Suarez, the will is what obligations primarily bind, precisely because these obligations are addressed to us as the demand of our reason—as a force of justification. ‘*Lex naturalis in ratione posita est*’: the natural law is placed in reason. So the right exercise of the will is subject to the prescription and obligation of natural law, and is necessary if we are fully to comply with that law. Suarez puts the point with some emphasis—but asserts it as something quite uncontroversial:

So teaches Saint Thomas and on this point everyone ... And the point is established because the law of nature is placed in reason and immediately directs and governs the will. So it is on the will first and foremost that, as it were, by its very nature the obligation of the law is imposed. So the law is not kept unless through the exercise of the will.<sup>28</sup>

But if obligation is specifically action-governing—if ‘*lex tantum datur de actibus humanis*’—it means that there must on this conception of obligation be such a thing as an internal agency of the will. There must be a category of internal elicited voluntary acts. This natural law-based conception of

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<sup>28</sup> Ibid., p. 123: ‘*Modus operandi voluntarie cadit sub praeceptum legis naturalis, et necessarius est ad illius observationem. Ita docet D. Thomas q. 100 art 9 et ibi omnes. Et probatur, quia lex naturalis in ratione posita est, et immediate dirigit et gubernat voluntatem; ergo illi imponitur quasi per se, et principaliter obligatio illius legis: ergo non observatur illa lex nisi mediante voluntate ...*’

obligation clearly demands a practical reason-based conception of action. And by now it should be becoming clear why.

Obligations, conceived in natural law-based terms, are justifications for action which are action-specific in their force. The existence of such justifications means, then, that our will or motivational capacity, the capacity to which the force of any justification for action performs applies, must itself be a capacity for action. And what makes it a capacity for action must be precisely its status as a faculty addressed by and responsive to justifications for action such as obligations. Actions of the will must therefore count as actions in practical reason-based terms—that is, they must count as actions because they are motivations addressed by and responsive to the force of practical justifications. The natural law-based conception of obligation as an action-specific force of rational demand and the practical reason-based model of action fit together as hand and tailor-made glove.

### **OBLIGATION: THE FORCE MODEL VERSUS THE FEATURE MODEL**

How can we make sense of a force of reason which is not merely advisory but demanding? Consider how the force of reason ordinarily seems to work. It works purely and simply by justifying what it supports as more reasonable than any alternative. The other options are left less reasonable, or even as downright silly. But that particular kind of rational force, no matter how forcefully it comes—that is, no matter how silly other options are left—is simply a force of recommendation. We are still in the realm of advice, however forceful. We have not yet arrived at obligatoriness or demand; for to do even what is very silly is not *ipso facto* to breach an obligation and do wrong. It is tempting, therefore, to seek to characterize obligatoriness further. But that is not easy to do.

What of the idea, endorsed by Suarez, that the source of all obligation is to be found in the authority of a superior? We might take this idea and seek to use it to provide a reductive account of what obligatoriness is—an account which explains obligatoriness in other terms. Obligatoriness, on this view, consists in nothing other than the property of being commanded by a superior.

But this claim is not very plausible—nor I think is it really Suarez's. It is true that many obligatory actions are commanded by a superior—perhaps it may turn out to be true, as many theists suppose, that all of them are. But that being commanded is surely a feature of the action which generates a justification for performing it—it is not itself the action's obligatoriness,

which is surely something fundamentally different, namely the force with which that feature of being commanded justifies the action. And the features which justify an action are one thing; the force with which those features justify it is quite another. It is a category mistake to confuse the two.

Suppose it is claimed that all actions which are obligatory are so only because they are the subject of the will or command of a superior. To make that claim is not to say anything about what obligatoriness itself consists in. It is simply to say that all obligatoriness must have a very specific source—in the command of a superior. So in making this claim we may be doing no more than making a necessary link—between the justificatory force of obligatoriness or demand and the justification-generating feature of being commanded. And simply to make that link is not to say anything more about what the force of obligation comes to, let alone to reduce obligatoriness to nothing more than the feature which generates it.

Suarez certainly cannot be involved in any reductive account of obligatoriness. He cannot be seeking to explain obligatoriness in other terms. Far from claiming to explain what obligatoriness is in other terms, Suarez happily uses the notion in his specification of the content of the very legislative volition by which a superior imposes obligations. The content of the volition is, not that a given action be performed, but that a given action be obligatory. For Suarez, then, obligatoriness is not being reduced to something else. The notion is instead being assumed; it is presented simply as the justificatory force of demand—a distinctive justificatory force which is already being entertained and employed within the very legislative volition which generates it.

But what is that force? How does demand differ from mere recommendation? If we still seek to answer that question, we can appeal, as in effect Vasquez does, to the badness of not doing what is obligatory and the imputability of that badness to the agent. This is to understand the demandingness of an obligatory standard, plausibly enough, as lying in the fact that we can be held responsible for keeping to the standard, on pain of counting as bad for breaching it. The trouble with this account is that it threatens to render redundant what is central to the natural law theory: the thought that the force of obligation is a force of reason—one which it is irrational to disregard.

Vasquez does try to make the connection between obligation and reason. He ties the badness of performing the wrongful action to the incompatibility of that wrongful action with one's rational nature. But this connection of the badness of wrongful action to the irrationality of performing it is merely asserted. The appeal to rationality is not really doing any work in specifying what obligatoriness comes to. That work is instead being done by the thought that the agent would be bad not to do

what is obligatory. And that thought is all too easily detached from any structure of reason or justification. Wrongdoers can perfectly well be seen as bad for doing wrong, without *ipso facto* being viewed as irrational. This is why later on Hume was happy to characterize the obligatoriness of a moral standard in terms of the badness of breaching it—but precisely as part of his central ethical project of severing entirely the connection between obligation and rational justification. The idea of a force of reason or justification which is, however, not simply advisory or recommendatory, but which is still undeniably a force of reason, remains elusive.

I have said that this natural law-based theory of obligation depends on a specific theory of action—one which permits there to be such a thing as an action-specific justificatory force. We need to be able to conceive action in practical reason-based terms, as an exercise of a motivational capacity for rationality, a motivational capacity which is governed by and responsive to distinctively practical justifications.

In Hobbes, as I also said, we find a developed assault on this practical reason-based theory of action. The assault maintains that there are no special, action-constitutive motivations. The realm of elicited internal agency is abolished, and all we are left with are imperated external actions. This view of action was, eventually, to become a dominant orthodoxy within the English language philosophical tradition. It follows, on this new theory of action, that if all justifications for action must address motivation or the will, as they surely must, there can be no justifications with a force which is action-specific—there can be no justifications which apply to action and action alone. If they are to move us to act, all practical justifications must still address, with the same force, our motivations as well as the actions which those motivations cause and explain. But those motivations are now passions; they are not internal actions.

Even on this new theory of action, we can continue to adopt a superficially Suarezian theory of obligation—a theory of obligation which preserves certain immediately prominent Suarezian claims both about it and about action. Obligation can still remain a kind of law in the sense of being an action-specific standard. And action can still remain obligatory because commanded. And all action can still occur as something *volitus* or willed. But because on this new theory we are restricting agency to genuinely external, imperated acts—because, in other words, we are abolishing the category of internal, elicited motivational actions—we can only preserve these Suarezian claims at a cost. We will be forced to abandon a core element of Suarez's theory of obligation. Obligation can no longer address us as an action-governing force of our reason. We will have to transform obligation from an action-specific justificatory force into something quite different.

We must move from a Force model of obligation, where obligation is a justificatory force, to a Feature model of obligation as a justification-generating feature. Motivations now being passive, they had better not be obligatory, if obligation is to remain tied to action. So we must now identify obligatoriness with the feature of being commanded.<sup>29</sup> Only in this way can we have obligations on external actions which do not immediately translate into obligations on motivations to perform those external actions. And that is because being commanded is a feature which external actions can possess alone, without the feature attaching to motivation as well.

I can perfectly well command you to perform an external action, such as raising your hand, without *ipso facto* also commanding you to will or intend to raise your hand. The justificatory force generated by my command that you raise your hand must, like any such force, actually extend to the will; when my command to raise your hand gives you reason to raise your hand, it must also give you the same reason to intend to raise your hand. But my command to you to raise your hand need not likewise extend to the will. All I have commanded you to do is raise your hand—not intend to raise it. In which case, since being obligatory is now reduced simply to possessing the feature of being commanded, if you are unmotivated to do what I have commanded, you are no doubt indifferent to or even contemptuous of your obligations. But you have not yet actually breached any obligation. For that, you need actually to have failed to raise your hand.

Such a Feature model of obligation has its attractions. This is so especially if we consider, not obligation of a purely moral kind, but obligation in relation to positive law—that is, in relation to the laws passed by human states and legislators; for we use the language of obligation in describing these positive laws too. We talk of actions being made ‘legally obligatory’ or obligatory under positive law. And in this case obligatoriness does look like another justifying or reason-giving feature of an action. What else, we might wonder, is being ‘legally obligatory’ or obligatory under positive law but a legislatively created feature of actions—the feature of being decreed or commanded by a government—a feature which then serves to justify performing them?

On the other hand, on more careful reflection, even here it seems absurd to treat obligation as no more than an action-justifying feature. For

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<sup>29</sup> Consider the account of obligation in Austin (1995), p. 22: ‘Being liable to evil from you if I comply not with a wish which you signify, I am bound or obliged by your command, or I lie under a duty to obey it. ... Command and duty are, therefore, correlative terms: the meaning denoted by each being implied or supposed by the other. ... He who will inflict an evil in case his desire be disregarded, utters a command by expressing or intimating his desire: He who is liable to the evil in case he disregard the desire, is bound or obliged by the command.’

if we do that, we have lost the idea of demandedness essential to obligation, which seems, as I have observed, to be, not a justification-generating feature of an action, but rather the peculiar force with which some features of an action justify its performance. Take an action such as paying one's taxes. It is not as if, besides its other features, this action has a further, additional feature—the feature of being obligatory—which simply recommends or makes it the more advisable to perform it. Rather, given the other features which the action has, including being commanded of us by the state, supporting the state's welfare services and the like, we *must* perform it: to fail to would be to do wrong. And the action's obligatoriness is the force of that justificatory *must* or demand—a force generated by the feature of the action's being decreed by the state, and so not that feature itself. And this sense of a demanding force arises even in relation to positive legality, as something generated by the decrees of positive law—certainly for those who accept that positive law's claim to impose obligations is genuine.<sup>30</sup>

There is more than one way, then, of conceiving of obligation as a law on action—even of conceiving it as a law commanded by a superior. To conceive of it as a commanded law in the precise way that Suarez did, you will need very distinctive notions of obligatoriness and action—notions that you will share as common property with thinkers such as Vasquez, who do not see law as resting on the commands of a superior at all. You will need to conceive obligation as an action-specific justificatory force, and you will need to conceive of action as a practical mode of exercising rationality—and so as a motivational response to practical justifications. And these conceptions will just as clearly divide you from many others who might well share your particular belief that obligation comes only with a superior's command.

The idea of obligatoriness as an action-specific justificatory force is deeply intuitive. But it is a conception of obligation which has, as I have said, largely disappeared, at any rate from much Anglophone philosophy. And by now it is not hard to see why. The supposed force of obligation

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<sup>30</sup> It is, of course, tempting, as does Austin, to relocate the missing justificatory force of demand in some sanction or 'evil' that will meet non-performance of the obligatory. But then a standard scholastic distinction, that between the directive force of obligatoriness, and the coercive force with which that directive force can be accompanied, is thereby abolished. The former, justificatory force comes to be identified with the sanctions which coercively enforce compliance—which is surely a mistake. For the issue of whether something is obligatory is quite distinct, as Suarez realises, from the issue of whether its doing is to be enforced by sanctions; see Suarez (1856–78), vol. 5, *De legibus*, p. 424: 'Ratio autem est, quia legislator potest simul sua lege obligare in conscientia, imponendo poenam transgressoribus, ut in superioribus ostensum est, *et potest etiam obligare in conscientia sine adiectione poenae; ergo etiam obligare in conscientia solum ad debitum poenae ...*' (My emphases)

seems to resist further analysis. It is very hard to show that it really is a force of reason. And this conception of obligation as an action-specific justificatory force rests on a theory of action which, at any rate, in the hands of Suarez or Vasquez, now seems profoundly strange. Action threatens to be dissociated from such familiar observable bodily activities as walking or raising a hand, and to be driven implausibly within, to be left an invisible motion of the mind. These are no small problems to resolve if such a theory of obligation and action is to be made credible again.<sup>31</sup>

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<sup>31</sup> The ideas of obligation as an action-specific justificatory force and of action as a practical mode of exercising reason are explored further and defended in my books, *The Ethics of Action: Action and Normativity* and *The Ethics of Action: Action and Self-Determination* (Oxford forthcoming).



# Michael Baius (1513–89) and the Debate on ‘Pure Nature’: Grace and Moral Agency in Sixteenth-Century Scholasticism

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Recent, if belated, interest among historians of philosophy in early modern ethics has served to uncover and clarify several features of the moral thought of the sixteenth and seventeenth centuries. The cumulative effect of such study has been to ameliorate our current understanding of the genealogy of modern ideas about autonomy,<sup>1</sup> and our knowledge of the varied ancient and medieval sources which early modern thinkers used or rejected in their deliberations about the scope and point of morals.<sup>2</sup> Yet despite a developing appreciation of these previously ignored aspects of the history of philosophy, many elements of early modern moral thought are still unfamiliar to students of the subject or else are wholly ignored by contemporary scholars.

One area to suffer from general neglect is the subject of divine grace and the moral status of human beings after the fall.<sup>3</sup> Believed by many historians of philosophy to be of ‘mere theological interest’, these topics rarely feature in treatments of early modern philosophy and ethics.<sup>4</sup> To

<sup>1</sup> See Schneewind (1998).

<sup>2</sup> For the best available surveys in any modern language see Kraye (1988) and (1998).

<sup>3</sup> Some of the issues relating to early modern views on grace and human nature are touched on, if only fleetingly, by Poppi (1988), esp. 661–67; and Sleight, Chappell and Della Rocca (1998), esp. pp. 1195–1206. Further to that there has been some coverage of grace in recent discussions of the work of Malebranche, Arnauld, and Leibniz. For a representative sample of writing in this area see Riley (1992), Kremer (2000) and (1994), pp. 219–39; Ndiaye (2001), pp. 217–263; Moreau (1999), pp. 268–99; and Sleight (1990), pp. 48–94 and (1996).

<sup>4</sup> The subject of grace, though ignored by historians of philosophy, has received a great deal of attention from historians of theology, especially among Roman Catholic writers of the second part of the twentieth century. Chief among these was Henri de Lubac S.J. (1896–1991), whose influential historical study (1946), reprinted in two volumes (1965a) and (1965b), sought to recast then contemporary theological thinking about grace and nature. For a recent assessment of this work, and especially its historical theses on which so many of Lubac’s positive theological proposals might be said to rest, see Bonino (2001a). For other historical surveys of medieval and early modern ideas about grace and nature see *DTC* (1899–1953), VI, cols. 1554–1686; Vanneste (1996); and Lettieri (1999).

anyone with even the slightest understanding of the history of the period this omission may appear perverse. For in the earnest yet fractious religious culture of sixteenth and seventeenth-century Europe, different yet competing ideas about divine grace and opinions about the pre- and post-lapsarian condition of humankind served to condition several accounts of moral agency, practical reasoning and virtue.<sup>5</sup> It is not difficult to understand why this should have been the case. According to the central doctrines of orthodox Christian theology—even as that teaching was understood by early modern thinkers on both sides of a newly established confessional divide—all men and women are born into the state of original sin by virtue of being descendants of the first human beings, Adam and Eve. When Adam and Eve rebelled against God through the sin of pride (*superbia*) and were cast out of the earthly paradise,<sup>6</sup> they no longer enjoyed the benefits of their original created state, endowments which included free will, the virtues, as well as all the requisite powers of theoretical and practical reasoning.<sup>7</sup>

From the very earliest of times, Christian thinkers appreciated that the loss of such God-given gifts must clearly affect any conceptual description of human nature. What was, they asked, the extent of human freedom after the fall? Could sinful human beings become virtuous by their own efforts, or were they utterly dependent upon the grace of God? What, indeed, was the nature of such grace? What were the cognitive effects of original sin? And, what was the extent of the powers of practical reasoning in fallen humanity? From St Paul<sup>8</sup> to Augustine of Hippo,<sup>9</sup> and on to the scholastics of the twelfth and thirteenth centuries and late Middle Ages,<sup>10</sup> Christian thinkers in the West debated these questions on the basis of an understanding of the essential characteristics of fallen humanity, arrived at different answers and formulated views about the human person and the limits of practical reasoning. This continued in the early modern period, especially in the second half of the sixteenth century, when the immediate stimulus of the events of the Reformation and the call for renewal in the Roman Catholic Church—a request heeded by the Council of Trent (1543–

<sup>5</sup> These theories are fully discussed in Stone (forthcoming).

<sup>6</sup> Genesis 3:1–24.

<sup>7</sup> The full repercussions of humanity's fall from grace are spelt out by Augustine in his many writings on the Creation and Fall. See, in particular, *De Genesi ad litteram*; *De Genesi ad litteram liber imperfectus*; and *De Genesi adversus Manichaeos*. On these works see Pelland (1972).

<sup>8</sup> Romans 1–3.

<sup>9</sup> On Augustine see Vanneste (1996), pp. 21–48; Lössl (1997); Rist (2000), pp. 148–203; and Schulze (2002), pp. 11–34.

<sup>10</sup> See Auer (1942–51); and Vanneste (1996), pp. 49–106.

63)—conspired to make the topics of grace and fallen human nature matters of pressing intellectual concern.<sup>11</sup>

In what follows I propose to explain how notions of grace and ideas about fallen human nature—ideas and notions which derived from the anti-Pelagian writings of Augustine<sup>12</sup>—were treated by several important Roman Catholic thinkers around the time of the Council of Trent. My discussion will be restricted to two issues. First, I shall consider how these thinkers thought about moral agency in the light of their interpretation of fallen human nature; and second I shall attempt to uncover how their thinking about grace and the moral condition of pre- and post-lapsarian human beings helped them to reconsider several ideas about fallen human nature which were a feature of early sixteenth-century scholasticism. Further to these aims, I intend, by focusing on neo-Augustinian and Thomist writers, to shed some much needed light on the period immediately preceding the *De auxiliis* debate. A virulent and acrimonious dispute about grace, divine foreknowledge and human freedom, the *De auxiliis* debate was occasioned by the publication in 1588 of the infamous *Concordia* of Luis de Molina's (1535–1600).<sup>13</sup> While the novel proposals set down by Molina would command the attention of scholastic and non-scholastic thinkers for a century and more, it is important to be aware that many of the questions he sought to resolve were already to the fore and deemed to be matters of controversy in the decades before, during and immediately after Trent.

Given the profusion of sources which constitute neo-Augustinian and Thomist thought in the second half of the sixteenth century, I shall advance my analysis by concentrating on a few individuals. Central to my story will be Michael Baius (1513–89) of the University of Louvain.<sup>14</sup> The publication of Baius's *Opuscula theologica* in 1566 would embroil him in

<sup>11</sup> For an overview of these debates see Carro (1960). See also the informative article by Schmutz (2000), pp. 215–36.

<sup>12</sup> These works were written between 411 and 421. They are: *De peccatorum meritis et remissione et de baptismo parvulorum*; *De perfectione justitiae hominis*; *De natura et gratia*; *Ad Simplicianum*; *De gratia Christi et de peccato originali*; *Enchiridion*; and *Contra Julianum*. Theological interest in the anti-Pelagian writings of Augustine was by no means restricted to the sixteenth century, since commentary on these texts had been a staple feature of medieval theology, especially the period from the mid-fourteenth century onwards. One figure strongly associated with the neo-Augustinian movement was Gregory of Rimini (d. 1358). For further discussion of Gregory's use of Augustine's writings see Burger (1981). For an extensive discussion of the 'Augustinian movement' in late medieval theology see Saak (2002).

<sup>13</sup> Molina (1953). For a discussion of Molina's views on freedom and grace see Royeyer (1942) and Queralt (1975–6).

<sup>14</sup> The most recent account of the details of Baius's life is E. Van Eijl, 'Bay (Baius), Michel de', in *NBW* (1964–96), I, cols. 114–29. See also *DTC* (1899–1953), II, cols. 38–112.

near continuous controversy up to his death,<sup>15</sup> and would win him a posthumous reputation as a Jansenist *avant la lettre*, with supporters such as the editor of his *Opera omnia*, Dom Gabriel Gerberon (1628–1711),<sup>16</sup> and detractors such as the Jesuits Robert Bellarmine (1542–1621)<sup>17</sup> and Juan Martinez de Ripalda (1594–1648),<sup>18</sup> eager to extol the merits or otherwise of his distinctive theological position. A figure known mainly to historians of Post-Tridentine Catholic theology, Baius rarely intrudes into histories of early modern philosophy and has never been associated (at least to my knowledge) with the subject of ethics. In many respects this is unsurprising, since Baius was first and foremost a theologian whose own view of his *métier* would have been as a ‘humble servant of scripture’, engaged in the defence of the heritage of his beloved Augustine. Yet despite the fact that Baius himself was removed from many of the philosophical debates of his day, his striking defence of the neo-Augustinian idea of fallen humanity, his parsimonious theory of *liberum arbitrium* and his outright rejection of the idea of the ‘pure state of nature’—a notion which had been gaining momentum in scholastic circles in the years before Trent—would serve to unsettle previously stable ideas about grace, human nature and moral agency which were characteristic features of scholastic philosophy before the *De auxiliis* controversy. This fact will be observed in my discussion of writers like Dominic de Soto (1499–1560).

### THE LIFE AND TIMES OF MICHAEL BAIUS

Michel de Bay, or Michael Baius, was born in 1513 at Melun, in the province of Hainaut—modern day Belgium.<sup>19</sup> The beneficiary of a sound education in classical rhetoric, literature, philosophy and Christian

<sup>15</sup> Baius (1566). For other documents relating to Baius’s life and teaching see Roca (1953).

<sup>16</sup> Benedictine monk of the Maurist congregation, Dom Gerberon was an historian of the Jansenist movement as well as one of its many apologists; see Gerberon (1701). For his main work of Jansenist apologetics see Gerberon (1676); see also his edition of St Anselm (1675). See Orcibal (1957) for a discussion of his work, and Lenain (1997), esp. pp. 122–9 on his motives for undertaking the task of editing Baius (1696). This volume is split into two parts: the first comprises the writings and letters of Baius, the second documents relating to his life and teaching. I shall refer to the first part of the volume as *Gerberon*, and the second (following accepted convention) as *Baiana*.

<sup>17</sup> On Bellarmine’s criticism of Baius’s theology see Galeota (1966) and Biersack (1994).

<sup>18</sup> On Ripalda’s objections to Baius see Aldama (1954) and Kaiser (1965).

<sup>19</sup> For general studies of Baius’s work and its influence see Du Chesne (1731); Linsenmann (1867); Jansen (1927); Litt (1934), pp. 13–42; Abercrombie (1936), pp. 85–92; Van Dooren (1958); and Lubac (1965b), pp. 15–48.

theology, courtesy of the various colleges of Louvain University,<sup>20</sup> his first academic appointment, immediately after his ordination, was as principal of the Standonck College in 1541. Three years later he was appointed to the chair of philosophy there, a post he retained until 1550. In that year he took the degree of Doctor of Theology and was made President of the 'Pope's College', recently founded by a distinguished alumnus of the university, Pope Adrian VI (1459–1523, elected 9 January 1522).<sup>21</sup> Further to that, Baius was appointed deputy to the professor of Holy Scripture, the holder of which was then absent at the Council of Trent, eventually becoming full professor some two years later at the titular's death. During this time, Baius formed a close friendship with John Hessels (1522–52),<sup>22</sup> who not only influenced him in his study of Scripture and Augustinian theology, but also provided him with valuable personal support during his many clashes with the members of the theology faculty and other parties.<sup>23</sup>

While the leaders of the university, especially Vice-Chancellor Ruard Tapper (1487–1559)<sup>24</sup> and Josse de Ravesteyn, Professor of Theology (c. 1506–70),<sup>25</sup> were away at the Council of Trent, Baius and Hessels profited from their absence by introducing new teaching methods and doctrines into a well-established course of theological studies.<sup>26</sup> Their approach to theology stood in marked contrast to earlier stalwarts of the faculty such as

<sup>20</sup> On the University of Louvain at the time of Baius's studies and during his tenure as a professor see De Jongh (1911) and Claeys-Bouuaert (1956). For a discussion of humanist studies see De Vocht (1941–5); and on the theology faculty of which he was a member see Van Eijl (1977).

<sup>21</sup> On Adrian of Utrecht see *NBW*, iii (1964–96), cols. 5–19, and Vereecke (1978). On the foundation of the 'Pope's College', see Couttenier (1985); and on its constitution see Edward de Maesschalck, 'Normatieve Bronnen voor het Heilig-Geest en het Pauskollege in de XVI<sup>e</sup> eeuw', in Van Eijl (ed.) (1977), esp. 163–173.

<sup>22</sup> On Hessels see *DTC* (1899–1953), VI, cols. 2321–4; Van Eijl (1974); and importantly, Lamberigts (1974).

<sup>23</sup> We have Baius's own testimony of the extent of Hessels's influence on him. In a 'Letter to Cardinal L. Simonete, March 16<sup>th</sup> 1568', see Baius (1696), *Baiana*, p. 124, he wrote: 'Ante annos octodecim, cum primum coepi publice et quotidie Sacram Theologiam in Scholis nostris profiteri, partim ob Haereticos, qui nihil audire volunt, nisi Scripturam sacram et veterum dicta Sanctorum, partim etiam ob consortium cum optimo quodam et eruditissimo viro Joanne Hessels, Sacrae Theologiae Professore, qui eandem docendi normam sequebatur in lectione, quam nunc plusquam octodecim annos continuous Deo me confortante quotidie prosecutus sum ...'

<sup>24</sup> On Tapper see *DTC* (1899–1953), XVI.2, cols. 52–54; De Jongh (1911), pp. 180–6; Fabisch (1987) and Schrama (1994).

<sup>25</sup> On Ravestyn see *DTC* (1899–1953), XIII.2, col. 1793.

<sup>26</sup> On the theological curriculum at Louvain at this time see Guelluy (1941) and Van Eijl (1977), esp. pp. 102–53.

Jacob Latomus (1475–1544),<sup>27</sup> Joannes Driedo (c. 1480–1535)<sup>28</sup> and the aforementioned Tapper. Insofar as these individuals can be grouped together, they were fully committed to the belief that a *theologus* must fully accept the *depositum fidei* contained in Scripture and tradition. Since the deposit of faith had been entrusted to the Church by Christ, it was to be faithfully transmitted by her authoritative representatives (*theologi*) to the *fideles* or ‘people of faith’. As they saw it, the consequent task of the theologian was to examine, specify and teach the doctrines of the Church by means of reason and argument according to the accepted practices of scholasticism.<sup>29</sup> Scripture and the Fathers were the primary expressions of revealed doctrine, whose transmission to the Church was guaranteed by the guidance of the Holy Spirit. Within this perspective, the Latin Bible or ‘Vulgate’ was particularly valued. Sanctified by tradition, it was believed to be an exact expression of revealed truth, and its interpretation was deemed to be essential to any theological education. While a careful determination of the original text and of its exact meaning by philological practices and historical methods was considered paramount, such labour was regarded as nothing more than a prolegomenon to a more exact study of revealed truths for which Scripture was a source. Such was the outlook of early sixteenth-century scholastic theology at Louvain.<sup>30</sup>

By the close of the first half of the century this established method of theological practice no longer commanded universal allegiance, undoubtedly due to the influence of humanism, new methods in biblical scholarship and the doctrinal upheavals occasioned by the events of the Reformation.<sup>31</sup> A younger generation of thinkers at Louvain, headed by Baius and Hessels, now argued that if the verities of the old religion were to be made persuasive and attractive to a new intellectual constituency, it was necessary to reconstruct the content of Christian faith with more

<sup>27</sup> Latomus was a renowned theologian who crossed swords with both Luther and Erasmus. See *DTC* (1899–1907), VIII, cols. 2626–8; De Jongh (1911), pp. 173–9; Verrucyusse (1983) and (1984).

<sup>28</sup> On Driedo see De Jongh (1911), pp. 156–160; Murray (1959); Fabisch (1986); and Gielis (1994).

<sup>29</sup> For a flavour of the scholastic culture in the Louvain faculty see De Jongh (1911), pp. 30–30; and Van Eijl (1977), pp. 71–100. One of the more influential fifteenth-century thinkers who helped to shape scholastic philosophy and theology at Louvain was Heymericus de Campo (van de Velde) (1395–1460). Heymericus was an eclectic thinker who synthesised ‘Thomist’, ‘Albertist’ and ‘Neoplatonic’ elements in his thought. See Hoenen (1990) and Korolec (1981). Another study that focuses on scholasticism at Louvain is Baudry (1950).

<sup>30</sup> For a very thorough survey of late medieval biblical exegesis and the manner in which it informed scholastic debates see Dahan (1999), esp. pp. 239–299. For a discussion as to how exegetes from the middle of the fifteenth century onwards came to question and abandon many of the principles of scholastic exegesis see Bentley (1983); and Reventhow (1997); pp. 9–67.

<sup>31</sup> See De Jongh (1911), pp. 104–47, and Bentley (1979).

emphasis assigned to the teaching of Scripture and the Fathers.<sup>32</sup> Then, and only then, could one demonstrate that the *depositum fidei* of the Church was consonant with the doctrines of the Bible and the early church. This is precisely what they did, with the consequence that they aimed to sever Catholic theology from many vestiges of its medieval past and sought instead to ground it in Scripture and the early Fathers of the Church, particularly the Father and texts of their choice: Augustine and his anti-Pelagian writings.<sup>33</sup>

On their return from Trent in 1552 the *ancien régime* fought back. Tapper, in particular, sought to quash the methods favoured by Baius and Hessels, and called on Cardinal de Granvelle (d. 1558), Archbishop of Malines, to intervene. Granvelle succeeded for a time in restraining the efforts of the younger scholars; but Tapper's death in 1559 only served to precipitate conflict between Baius, in particular, and other senior figures in the faculty. After Tapper's demise, Ravesteyn assumed the mantle of Baius's most virulent opponent, although the latter was shielded from the worst effects of his displeasure by the patronage of Hessels, who had now been elected to the chair in Sacred Scripture in 1558.

Baius was not just adept at winning friends and making enemies within the theology faculty at Louvain. Within the Franciscan province of the Southern Lowlands there was likewise a split between supporters and opponents of his neo-Augustinian views. Some of the friars, opposed to his influence among their brethren, went so far as to present eighteen theses taught by one Franciscus Sablonius O.F.M. (d. 1563), a disciple of Baius, to the theology faculty of Paris, which responded by condemning most of them on 27 June 1560.<sup>34</sup> Baius took it upon himself to answer the censure in a memoir now lost, but his action only served to exacerbate the controversy. Wearied by the seemingly facile yet all too frequent accusations and counter-accusations of 'heresy' emanating from pulpits and faculty *disputationes*, Granvelle imposed silence on all parties to the

<sup>32</sup> Needless to say, Baius was very mindful of the putative theological errors committed by those 'heretics' who advocated *sola Scriptura*; see his remarks in n. 23. For further discussion of the scholastic debate about Scripture and its influence on their work see Brett (2000), a paper that also treats Louvain thinkers.

<sup>33</sup> It is important to be aware of the general enthusiasm for Augustine's works among members of the theological faculty at that time. Thomas Gozeus (d. 1571), an associate of Baius, decided to make a critical edition of the saint's work, and before his death had collected a couple of hundred manuscripts and enlisted the editorial assistance of several members of the faculty. After his death, Joannes Molanus (1533–85) assumed responsibility and printing began in Antwerp in 1576. Ten volumes were completed by the following year, and the edition would become the most important edition of Augustine's works for a century, until the publication of the Maurist edition of 1679–1700. For discussion of the Louvain edition see Ceyskens (1982) and Petitmengin (1988).

<sup>34</sup> See Van Eijl (1958).

dispute until such time as the Council of Trent, now in recess, could render a decision on the matter.

When Trent was resumed in 1561, Baius and Hessels with some others were selected to represent the university at Trent.<sup>35</sup> The papal legate objected to the choice of the university, but Cardinal de Granvelle considered that the presence at the Council of the two young professors would be good both for them and the university.<sup>36</sup> Shortly before his departure, Baius published his first work containing three short tracts: 'On free will' (*De libero hominis arbitrio*); 'On justice and justification' (*De justitia et justificatione*), and 'On the sacrificial nature of the Eucharist' (*De sacrificio*).<sup>37</sup> In 1563 they departed for Trent, not, however, as delegates of the university, but as theologians of the King Philip II of Spain. Unfortunately, the contents of Baius's tracts were not within the agreed programme of the last three sessions of the Council of Trent, so no public discussion of his views took place. It is known, however, that the views of Baius and Hessels were considered to be doctrinally unsound by some members of the Council, and it was only their association with the Spanish Crown which saved them from formal condemnation.<sup>38</sup>

Baius and his colleagues returned to Louvain in 1564 and in the same year he published new tracts, which with the addition of the previous series, were collected in his *Opuscula omnia* of 1566, the year of Hessels's death. These works contained essays on the meritorious nature of good works (*De operum meritis*); on the original righteousness of the first man (*De prima hominis justitia*); the virtues of non-believers (*De virtutibus impiorum*); an essay on the sacraments directed against Calvin (*De sacramentis in genere contra Calvinum*); and a tract which discussed the Trinitarian formula used in the celebration of the sacrament of baptism (*De forma baptismi*).<sup>39</sup>

With the publication of his *Opuscula* many of the central themes of Baius's thought—so-called 'Baianism'—emerged in much clearer detail. An illustration of the subjects and themes dear to him can be found in the preface to *De prima hominis justitia*. There, Baius asks what after the creation of the first human being was the 'righteousness' (*justitia*) natural to him? Significantly, he argues that without a detailed answer to this

<sup>35</sup> On their invitation to the Council and their selection see De Ram (1841), pp. 46–58.

<sup>36</sup> Cardinal de Granvelle makes this point in a 'Letter to Cardinal Boromeo, 4 July 1563', in Granvelle (1877–96), I (Appendice), pp. 554–5.

<sup>37</sup> See Baius (1696), *Gerberon*, pp. 75–88; 103–52; 153–67.

<sup>38</sup> Further to their royal protection, some of the Fathers at the Council came to the aid of Hessels and Baius. One such was Martinus Boudewijns de Rythoven (Rythovius) (1511–83). See the 'Letter of Morillon to Cardinal Granvelle, 2 January 1568', in Roca (1953), p. 367, which makes it clear that Rythovius did not want to condemn the Louvain theologians.

<sup>39</sup> *Gerberon*, pp. 25–44; 45–73; 212–220; and 221–228.



question a theologian cannot begin to understand the original corruption of human nature (by Adam's sin) nor its eventual reparation by the grace of Christ which is so central to the Christian belief.<sup>40</sup> These thoughts give us the sequence of his mature theological speculations in which the separate yet related subjects of the state of pure nature, the moral condition of fallen humanity and the state of redeemed nature are examined with reference to the teaching of Scripture and the anti-Pelagian writings of Augustine. It would be his remarks on the so-called 'state of pure nature' which would bring him eventual notoriety as a Roman Catholic theologian.

Baius endeavoured to work out the state of pure nature in the following way. According to Scripture, the first man was created in the image and likeness of God and was adorned with all virtues.<sup>41</sup> The righteousness (*justitia*) of Adam consisted not only in his complete knowledge of the divine law and full submission to his creator, but also in the fact that his lower powers (such as his animal inclinations) were subject to his higher faculties (such as will and reason), and all parts of his body and their movements were submissive to his will, which possessed genuine *liberum arbitrium*.<sup>42</sup> Furthermore, Adam's initial *justitia* was not constructed from a 'supernatural' elevation of his nature. For, according to Baius, all perfections which pertain to any class of beings in their original state are 'natural' (*naturalis*).<sup>43</sup> Thus, he considers the lack of *justitia* in fallen man to be an evil, since for him what is 'evil' (*malum*) is a simple privation (*privatio*) of what is natural. Hence, the evils derived from original sin in Adam's posterity can be termed natural, but only in a very loose sense, that is, in as much as they are the result of the transmission through generation of a corrupt nature.<sup>44</sup> Conversely, if, and to whatever extent, the natural endowments (such as the virtues and *liberum arbitrium*) lost in Adam's sin are restored to fallen man through the saving agency of Christ, they can be called 'supernatural', but only in the sense whereby one may designate the term 'supernatural' to include anything derived from a special benefit of

<sup>40</sup> *De prima hominis justitia*, praefatio, in Baius (1696), *Gerberon*, p. 47: 'Tales autem quaestiones semper esse judicavi, quibus quaeritur: Qualis ab initio fuerit naturalis hominis integritas, et quid sentiendum sit de virtutibus impiorum, qui nulla unius veri Dei fide abuti, multa honesta et apud homines laudabilia fecisse leguntur. Nam sine his quaestionibus non satis potest intelligi, neque prima humanae naturae corruptio, neque ejusdem per Christi gratiam reparatio; in quibus tamen duobus (si divo Augustino credimus) proprie fides Christiana consistit: neque enim aliud est corruptio quam quod vulgo dicimus malum.' For further discussion of the central ideas of this tract see Vanneste (1994).

<sup>41</sup> *De prima hominis*, i–ii, in Baius (1696), *Gerberon*, pp. 49–53.

<sup>42</sup> *Ibid.*, iii, p. 54; see Jansen (1927), pp. 49–52, 62–72.

<sup>43</sup> *De prima hominis*, iv, in Baius (1696), *Gerberon*, p. 55.

<sup>44</sup> *Ibid.*, v, p. 56: 'qua ad posteriorum hanc navitatem ex transgressione pracepti corruptam pertinet, ut libido, mors, et reliqua mala, quae per peccatum in naturam humanam invecta generatione trajicuntur in posteros'; cf. vi, p. 58.

God. Only in this sense is the restored *justitia* of humankind 'supernatural'.<sup>45</sup> Although Baius calls the endowments of man's original state 'natural', he does not mean that they emanate from the nature of man, in the manner in which essential human characteristics, such as body, soul, intellect and will might be said to do. Rather, he intends that they are directly granted by God and, as such, are divine gifts rather than human propensities or accomplishments.<sup>46</sup>

Created in this state of natural *justitia*, Adam was obliged to obey his creator and thus to merit eternal life: the unending and immediate vision of God. Even as God's unchangeable wisdom established eternal death as the proportionate punishment for human disobedience and sin, the same wisdom established that the first man would have received eternal life as the natural and just recompense for his obedience to God. Thus, the reward of eternal life would have been humanity's natural end and would have been due solely to man's natural merit, and in no way to grace. Similarly, the good angels after their trial received eternal life not as a grace, nor as anything owed to them by God, but rather as a just reward for their obedience.<sup>47</sup> From this, Baius concludes that God could not have created man without endowing him with *justitia* and without destining him uniquely to the beatific vision. He therefore maintains that a 'pure state of nature' (*status naturae purus*) in which man would have been ordained by God to an end inferior to the direct and immediate vision of God (thereby lacking the perfection of *justitia*) is impossible and chimerical. Thus is set down one of the more infamous abuses of early modern neo-Augustinian theology.<sup>48</sup>

Baius has also much to say on the subject of sin. Through sin Adam forfeited his *justitia* and all possibility of attaining his unique end. His sin with these two consequences was transmitted to all his descendants by the 'vitiated and disordered generative act' (Baius has no time for the pleasures of the body) whereby all human beings are conceived.<sup>49</sup> Original sin consists in the following phenomena: the malice of a will which does not love God and his righteousness; the act of rebellion occasioned by fallen man's lower nature; and in man's ignorance, which is a consequence of the

<sup>45</sup> *Ibid.*, vii–x, pp. 58–61. For further discussion of this point see Alfrado (1952); De Lubac (1965b), pp. 25–33; and Colombo (1965).

<sup>46</sup> *De prima hominis justitia*, xi, in Baius (1696), *Gerberon*, pp. 62–3.

<sup>47</sup> *De meritis operum*, i–iii, in Baius (1696), *Gerberon*, pp. 25–8. For further discussion of scholastic views on angelology and their influence on early modern theology see Schmutz (2002a).

<sup>48</sup> For further discussion of Baius's thesis see Abercrombie (1936), pp. 88–92; De Lubac (1965b), pp. 25–38; Kaiser (1965), pp. 69–132, and Vanneste (1977).

<sup>49</sup> *De peccato originis*, i–ii, in Baius (1696), *Gerberon*, pp. 1–4.

cognitive depravity occasioned by hereditary sin.<sup>50</sup> Because of original sin, every type and station of human being is subject to the judgement of God and to eternal death. Even as Adam was created in God's favour through no merit of his own, so the newborn infant is the object of God's judgement. By virtue of being born into the state of original sin, and not because of any deeds and commitments on their part, newborn infants stand in opposition to God and his law.<sup>51</sup> Seen in this way, sin for Baius is essentially opposition to God's law and disobedience to His divine commandments. The question whether sin is voluntary or involuntary has nothing to do with its essence, he thinks, for strictly speaking, true *liberum arbitrium* was lost at the fall. In his original state of *justitia* Adam could have fulfilled the law with true freedom of choice,<sup>52</sup> but by his sin this power was lost completely.<sup>53</sup>

Baius reserves his most trenchant criticism for the state of fallen nature. There is nothing more deplorable, he thinks, than the moral condition of post-lapsarian man. Even those human thoughts which are not acted upon, such as the odd moment of base fancy or a seemingly innocent pang of lust, are sins worthy of eternal punishment.<sup>54</sup> Furthermore, every sin deserves eternal punishment because all are by their nature mortal sins. Baius makes no room in his moral lexicon for merely venial acts, or even those which could be classified as 'indifferent'.<sup>55</sup> To make matters worse for Adam's descendants, Baius holds that even in the condition of their wretched fallen state, there is no certainty that God will grant them the power to perform what He commands. On the contrary, the opinion that God commands nothing impossible, Baius contends, finds no support in Augustine but derives instead from the 'heretic Pelagius'. The only possible end of man is to love God, since without charity there is only sin.<sup>56</sup> Baius thinks that one prominent scholastic view, formulated by authors like Thomas Aquinas, that love is a permanent gift of God which supports human fellowship with Him, is utterly mistaken.<sup>57</sup> The origin of love, he claims, is a transitory impulse received from God, and this is all

<sup>50</sup> Ibid., iii, p. 4.

<sup>51</sup> Ibid., iv, p. 5: 'Quia sicut equum, aut servum quaerentes, non tam intuemur quis eum tenuerit, ac fecerit; quam intuemur qualis sit: sic et Deus hominem judicans, non tantum intuebitur quis eum bonum aut malum fecerit: sed etiam an bonus an malus sit, sive proprio, sive etiam alieno opere talis sit.'

<sup>52</sup> *De libero hominis arbitrio*, ix, in Baius (1696), *Gerberon*, pp. 81–2.

<sup>53</sup> Ibid., xi, in Baius (1696), *Gerberon*, p. 82; see Jansen (1927), pp. 44–8, 62–71.

<sup>54</sup> *De peccato originis*, ii, in Baius (1696), *Gerberon*, pp. 3–4.

<sup>55</sup> Ibid., p. 26.

<sup>56</sup> Ibid., v–viii, pp. 66–71.

<sup>57</sup> On *caritas* as a permanent gift of God see *Summa contra gentiles*, III, c. 151; and *De caritate*, a. 2, ad 15. For further discussion of Thomas's ideas see Lavard-Keller (1929); Stévaux (1948); and Hughes (1975).

that matters, because such an impulse (indefinitely repeated) enables us to live in justice.<sup>58</sup> Thus, perfect charity is not to be understood by reference to any sacrament or settled moral dispositions such as the virtues, but rather is best thought of in terms of God's immediate, if fleeting, influence on the human person.<sup>59</sup>

The denial of the significance, if not the existence, of habitual or sanctifying grace and its correlative notion of a propensity for virtue has an important bearing on Baius's notion of merit, which is solely and exclusively the execution of God's commands in terms of the fulfilment of the divine law. According to our Louvain theologian, human acts considered in themselves, that is, without regard to *liberum arbitrium* and the influx of grace or the infused virtues, merit either paradise or perdition: heaven if such acts proceed from charity (from a transitory impulse to God which is stronger than any evil inclination stemming from the corrupted will), and hell, if they proceed from the evil desires of *concupiscentia* which conspire to violate God's law. Significantly, Baius rejects out of hand one dominant scholastic view, stringently defined by the Council of Trent, that it is the adoption by God of all human beings as living members of the body of Christ, sharing in His divine nature, which enables these same agents to merit eternal life by means of the use of their *liberum arbitrium*.<sup>60</sup> For Baius this view is simply erroneous, since there is no need for human beings to be in a state of grace in order that their actions may merit eternal life.<sup>61</sup>

The stark nature of Baius's new Augustinian theology, especially when judged against the prevailing mixture of scholasticism and humanism of mid-sixteenth century Louvain, could not go unnoticed. Unsurprisingly, the wily Ravesteyn saw in the publication of these writings an opportune moment to mount another attack on Baius, who was now in a more vulnerable position following the death of Hessels. Ravesteyn sent the *Opuscula*, a selection of these excerpted from it and fifteen propositions *nondum scriptis editae*—apparently borrowed from the *disputationes theologicae* of the faculty—to Philip II (then monarch of the Spanish Netherlands), who forwarded them on to the theological faculties of Alcalá and Salamanca for consideration. On 31 March and 8 August 1565

<sup>58</sup> *De charitate* ii, in Baius (1696), *Gerberon*, p. 90. For further discussion of Baius remarks on charity see Jansen (1927), pp. 89–94, and De France (1950).

<sup>59</sup> *De charitate*, ix, in Baius (1696), *Gerberon*, p. 101.

<sup>60</sup> See Denzinger (1953), 1525–1527 and 1574. See Tanner (1990), II, p. 680, for Canon XIV of the 6<sup>th</sup> Session: 'Si quis dixerit, iustitiam acceptam non conservari atque etiam non augeri coram Deo per bona opera, sed opera ipsa fructus solummodo et signa esse institutionis adeptae non etiam ipsius augendae causam.' On post-Tridentine accounts of grace and human freedom see Leahy (1963).

<sup>61</sup> *De meritis operum*, ii, in Baius (1696), *Gerberon*, pp. 36–7; see Jansen (1927), pp. 85–9.

respectively, both faculties condemned most of the propositions sent to them for judgement.<sup>62</sup>

When the news of the verdicts of the Spanish faculties reached Baius in Flanders he was outraged. In a fit of indignation he republished his *Opuscula* and expanded the volume by adding to it a few small tracts on the nature and effect of love (*De charitate*), original sin and its remission (*De peccato originis et ejus remissione*), indulgences (*De indulgentiis*), and prayers for the dead (*De oratione pro defunctis*). His opponents responded immediately by sending this new edition, along with forty theses taken from it, to Spain where, on 20 June 1567, the theologians of Alcalá pronounced yet another condemnation on these and a further sixteen additional theses.<sup>63</sup> At the request of Ravesteyn and other Louvain antagonists, Philip II sent the censures of 1565 and 1567 to Rome in the hope that the pope would once and for all condemn the teaching of Baius. Thus on 1 October 1567, Pope Pius V (1504–72, elected 7 January 1566) signed the Bull *Ex omnibus afflictionibus*, which condemned in global fashion 76 (or 79 according to another reckoning) propositions. Much to the displeasure of all and sundry, the saintly Pius did not mention Baius by name.<sup>64</sup>

According to the tradition of the Roman Chancery, *Ex omnibus afflictionibus* was written without any punctuation, divisions or numbers. Again, as had been done before in several instances, the objectionable propositions were not censured severely, but various *notae*, containing phrases ranging from 'haereticos' to 'scandalosas', were applied to the whole series. These comments served to rally supporters of Baius, who asked a number of questions designed to blunt the force of the Pius's condemnation. What they inquired, was the exact number of propositions? Were they 76, 79 or 80 in number? Were they, or were they not, propositions extracted from Baius's published works? And, why had not a copy of the bull been given to the individual whose reputation for orthodoxy it sought to impune?

The formal condemnation following the 76 or 79 theses proclaimed:

quas quidem sententias stricto coram nobis examine ponderatas quamquam nonnullae aliquo pacto sustineri possent in rigore et proprio verborum sensu ab assertoribus intento haereticas erroneas suspectas temerarias scandalosas

<sup>62</sup> For contrasting interpretations of this event see Van Eijl (1953) and Roca (1955).

<sup>63</sup> See Van Eijl (1953), pp. 763–776; and Roca (1955), pp. 783–796.

<sup>64</sup> The bull is printed in Baius (1696), *Baiana*, pp. 49–58; see pp. 50–7, for the condemned propositions. Cf. Denzinger (1963), 1901–1980. See also Lemaître (1994), pp. 275–6, for a brief discussion of Pius's own feelings toward Baius.

et in pias aures offensionem immittentes respective ac quaecumque super iis verbo scriptoque emissa praesentium auctoritate damnamus.<sup>65</sup>

According to whether a comma is placed after *possent* or after *intento* the condemnation has quite different meanings. When the comma is placed after *possent*, the passage reads: ‘After a close scrutiny conducted in our presence, we condemn as heretical, erroneous [etc.] ... in the sense intended by their authors and according to the strict use of the terms employed, the aforesaid opinions, even though some [of them] might in one way or another be defended.’ If, however, the comma is placed after *intento*, then it reads: ‘we condemn as heretical, erroneous [etc.] ... the aforesaid opinions, even though some [of them] might in one way or another be defended in the sense intended by their authors and according to the strict use of the terms employed’.<sup>66</sup> This is the famous *comma pianum*, a dispute which throughout the later spats and recriminations of the Jansenist controversy was not settled to anybody’s satisfaction.

Baius did not embroil himself in the controversy at first; but when the papal bull was brought to the university and read aloud to the faculty in 1567, he subscribed (reportedly in tears) to its structures with the all other professors.<sup>68</sup> When, however, the text of the bull was divulged by an indiscreet colleague, Baius at once began to find fault with it and wrote two lengthy apologies to the pope, in vindication, he said, not so much of himself as of the Fathers.<sup>69</sup> The tone of these apologies was more respectful

<sup>65</sup> Needless to say Gerberon reprints this controversial sentence with punctuation: Baius (1696), *Baiana*, p. 57; cf. Denzinger (1963), 1980.

<sup>66</sup> For further discussion of the dispute over the comma see Orcibal (1962). Modern commentators such as van Eijl (1955), have argued that Pius did not wish to embarrass Baius any more than was necessary, and for this reason made the tone of his condemnation less strident. For a different position see Boissard (1962). A recent study, Quaghebeur (2003), based on research done in the archives of the Holy Office of the Vatican, corroborates van Eijl’s interpretation.

<sup>67</sup> My own view of the *comma pianum* is that, philologically speaking, the comma must be put after *possent*. In classical and Neo-Latin, the word order in sub-clauses is more or less fixed: subject—object (adverbial complement)—adverbial complement (object) – verb. A construction in which the verb of the sub-clause is followed by another adverbial complement would be rather unusual. Moreover, there is an antithesis between ‘aliquo facto’ and ‘in rigore’. On this basis, I am inclined to conclude that Baius and his supporters were disingenuous, if they held that the comma should be placed after *intento*. The concessive sub-clause does not diminish the sense of condemnation implied in Pius’s verdict.

<sup>68</sup> This story derives from Robert Bellarmine and is relayed by his modern biographer, Brodrick (1928), i, p. 28, based on the texts included in Le Bachelet (1911).

<sup>69</sup> See his *Apologia summo pontifici Pio V*, in Baius (1696), *Baiana*, pp. 79–80, esp. p. 79: ‘Metuimus ne quid Vestrae Sanctitatis existimationi detrahant, non tantum propter manifestas calumnias, quae videntur in eis contineri, sed etiam propter verba, et (ut apparet) etiam sensus quosdam Sanctorum Patrum, qui in iis damnari videntur: nam regio haec propter importunitatem haereticorum multos habet longe magis Scripturis Sacris et veterum

in appearance than in reality. In a papal brief dated 1579, Pius V answered that the case had been maturely examined and finally adjudged, and demanded submission.<sup>70</sup> After much hot air and indignation on the part of himself and his supporters, wherein Baius adopted a great deal of equivocation on the subject of the *comma pianum*, he finally abjured all the errors condemned in the bull to Cardinal Granvelle's vicar-general, but was not required to sign his recantation.

The absence of such a formality only contributed to revive the dispute. In 1570, at Ravesteyn's death, Baius became dean of the faculty, an event which blatantly attests to the fact that despite external condemnation he enjoyed the esteem of his Louvain colleagues. Once elected, however, the new dean had then to endure rumours, circulated by his enemies in the University, that he was by no means in accord with orthodox teaching. Followers and adversaries alike suggested that a clear statement of his views was needed. It came under the title of the *Explicatio articulorum*, in which Baius averred that, of the many condemned propositions, some were false and justly censured, some only ill expressed, while still others, if at variance with the terminology of the scholastics, were yet the genuine sayings of the Fathers.<sup>71</sup> At any rate, he continued, more than 40 of the 79 articles had nothing to do with his work.<sup>72</sup> Some have thought that even after two recantations Baius had not changed his position and was simply reverting to his original heterodoxy.<sup>73</sup> Still, the bull was published at Louvain and subscribed to by the whole faculty; and Baius accepted it again. His magnanimity even won him sympathy and helped to advance his career. In quick succession he was made Vice-Chancellor of the University of Louvain, Dean of St Peter's Collegiate Church, and 'conservator' of the university's privileges. Thus, for a short while, peace was restored to Louvain, and Baius was left to his duties.<sup>74</sup>

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Patrum sermonibus assuetos et addictos, quam Doctorum Scholasticorum: qui forte existimant, nonnulla in scriptis Sanctorum Patrum contenta propter eos damnari, qui non nisi sensibus et verbis doctorum Scholasticorum assueverunt, scandalizabuntur.'

See Baius (1696), *Baiana*, p. 140.

<sup>71</sup> *Explicatio articulorum*, in *ibid.*, pp. 141–6, see p. 141: 'eo quod in eis servatus non sit consuetus usus loquendi Scholae, videlicet secundum Scholasticos receptos; quum tamen a plerisque Patres reperiantur eodem modo loquuti.'

<sup>72</sup> *Ibid.*, pp. 143–6.

<sup>73</sup> On this see Claeys Bouuaert (1954).

<sup>74</sup> Recent evidence, in the archives of the Katholieke Universiteit Leuven, has shed some light on Baius's activities at this time. We know, for instance, that he very generously donated money to the ailing Pope's College and was involved in many efforts to put the university on a sound financial footing. These documents, which await a formal study, will do much to change our existing portrait of Baius's character. I am grateful to Professor dr. Jan Roegiers, archivist of the Katholieke Universiteit Leuven, for bringing these documents to my attention.

Whether by design or by accident Baius's career was perpetually blighted by controversy, and in keeping with this trend his final years were by no means free of incident. His putative assertion of certain pejorative views at the expense of the authority of the Holy See, and even of the Council of Trent, and, on the part of his supporters, the hope that a new pontiff, Gregory XIII (1502–85, elected 13 May 1572),<sup>75</sup> might declare void all that had been done by his predecessor, bade fair to reopen the whole question. Proving himself just as obdurate as Baius, Gregory had no intention of disregarding the judgement of Pius V; and in 1579 promulgated the bull *Provisionis nostrae*, which confirmed the preceding papal acts.<sup>76</sup> The Jesuit theologian Francisco Toletus (1552–96) was commissioned to read the bull before Baius and the entire faculty at Louvain on 21 March 1580.<sup>77</sup> We have Baius's submission in a document named *Confessio Michaelis Baii*. There we meet sincere confessions, as when Baius says that he is 'convinced that the condemnation of all those propositions is just and lawful'. Moreover, he confesses that very many (*plurimas*) of '[the censured] propositions are in [his] books, and in the sense in which they are condemned, and he renounces them all, resolving never more to teach or defend any of them'.<sup>78</sup>

Then, in the following years, when new complaints were received in Rome about statements by Baius and his admirers which were not in total agreement with the bull or the teaching of Trent, Gregory XIII charged the nuncio of Cologne and Jean Hancklin (1527–89), Granvelle's successor as Archbishop of Malines, to bring the affair to an end. They requested that the faculty of theology compose a *corpus doctrinae*, which in due course was written by Joannes Leunaeus (1541–1593) and entitled *Doctrinae eius*. There, the faculty set down its position on the substance of the propositions

<sup>75</sup> Himself something of a scholar, Gregory XIII, or Ugo Buoncompagni, studied jurisprudence at the University of Bologna, from which he graduated at an early age as doctor of canon and of civil law. Later, he taught jurisprudence at the same university and had among his pupils the famous future cardinals, Alessandro Farnese, Cristoforo Madruzzo, Otto Truchsess von Waldburg, Reginald Pole, Charles Borromeo and Stanislaus Hosius.

See Baius (1696), *Baiana*, p. 151.

<sup>77</sup> On Toletus's general influence on the affairs of Louvain at this time see Grisar (1946). Significantly, Toletus did broach the subject of the pure natural state in his own theological writings. For a discussion of these see Lubac (1965b), pp. 171–82.

<sup>78</sup> Baius (1696), *Baiana*, p. 152: 'Ego Michael de Bay ... iterato damnatis et prohibitis, ita movum et eo perductum esse et ut plane habeam mihi persuasum earum omnium sententiarum damnationem atque prohibitionem jure meritoque, ac non nisi maturo judicio, ac diligentissima discussione praemissis factam atque decretum esse. Fateor insuper plurimas ex iisdem sententiis in nonnullis libellis a me olim et ante emanatam Sedis Apostolicae super eis censuram conscriptis et in lucem editis contineri et defendi, etiam in eo sensu quo reprobantur. Denique declaro me impraesentiarum ab iis omnibus recedere, et damnationi a Sancta Sede factae acquiescere, neque post hac ullam earum docere aut defendere velle.'



condemned in the bull (1586). Most probably Baius also signed the document.

Not only did Baius have critics within the theology faculty, he also encountered opposition from members of the Jesuit Order. During his seven-year period in Louvain 1569–76,<sup>79</sup> the young Robert Bellarmine, who taught at the Jesuit College, attacked Baius's views on grace, nature and human freedom. Again, the target was Baius's seeming disregard for the scholastic consensus concerning the degree of *liberum arbitrium* remaining in human beings after the fall and his pessimistic views on merit and original sin. Bellarmine's opposition to the teaching of Baius was also crucial to the development of his own distinctive theological anthropology.<sup>80</sup> After Bellarmine's departure, a conflict arose in 1587 between members of the theology faculty and two professors at the Jesuit college, Leonardus Lessius (1554–1623) and Joannes Habertus (1554–89). Among several other things, this dispute turned on questions about the relationship between grace and free will, and about the inspiration of Sacred Scripture.<sup>81</sup> It is not clear how much Baius was involved in this dispute, as his declining health and loss of the powers of speech meant that he withdrew more and more from the affairs of the faculty from 1586 onwards. Many of his responsibilities were taken over by his nephew Jacobus Baius (1545–1614).<sup>82</sup> On 16 September 1589 Baius died in the bosom of the Roman Catholic Church,<sup>83</sup> a church which he thought he had helped to sustain in troubled times by severing it from its errant past, but one to which so many of his enemies considered he had rendered incalculable damage. After his death and in the ensuing debates of the Jansenist controversy, it would prove difficult for a more a sober analysis of his work and legacy to take place. For good or ill, the writings of Michael Baius would always elicit strong opinions from their readers.

If we review the main features of Baius's teaching we can understand why it so vexed his contemporaries, especially those like the Fathers of the Sorbonne in 1580 who, clinging to their mainstream scholastic principles, did not share his view on free will and sin. It is not difficult to appreciate just how far Baius departed from the scholastic consensus of his times, even though his enthusiasm for Augustine was by no means out of the

<sup>79</sup> For a discussion of Bellarmine's years in Louvain see Brodrick (1928), i, pp. 25–50, and Ceysens (1994).

<sup>80</sup> The fullest study of Bellarmine's Louvain lectures against Baius is Biersack (1989). See also Galeota (1966) and Biersack (1994).

<sup>81</sup> On this dispute see Claeys-Bouuaert (1965) and Van Eijl (1994).

<sup>82</sup> On Baius's nephew see E. J. M. Van Eijl, 'Jacques de Bay', *NBW* (1964–96), I, cols. 112–13.

<sup>83</sup> Some days later, on 3 October 1586, Jacob Baius read out a funeral oration to his dead uncle, the text of which has survived and has been edited by Van Eijl (1962–3).

place within the broader theological landscape of mid sixteenth-century Europe. First, he held that human beings are not free under the influence of grace. In addition, he was adamant that charity, which is the transitory impulse of God, is the only and infallible source of good works and merit. Next, he advanced the view that God may and does command human beings to do the impossible; while in another thesis he claimed that fallen human beings are determined to do evil when they are not drawn by charity into holiness. Lastly, Baius denied the idea of a pure state of nature, deriding it as a useless fiction and held that the *justitia* and merit of the first man in his original creation did not proceed from the grace of God.

Baius's resolute attempt to set up the anti-Pelagian tenets of Augustine against the prevailing wisdom of his day bequeathed an account of moral agency which is at best rather thin and overtly pessimistic.<sup>84</sup> The redemptive grace of God is only realized in the fleeting impulse of charity and, as such, is not a part of free human action. Under no circumstances, then, are human beings equipped with anything like the requisite dispositions and abilities to espy and procure the good at the level of action, unless they are transformed by the influence of charity. Yet even within the loving embrace of their creator, an agent's deliberative abilities as a moral agent are somewhat circumscribed. An agent can only act on a divine commandment, purely and simply because it is a divine injunction; he does not possess the means to appreciate rationally the binding force of a moral command other than by acknowledging that it derives from God.

Here, then, is so-called 'Baianism', and one sees in it close affinities with the teaching of another famous son of Louvain, Cornelius Jansen (1585–1638). Of paramount importance to our present study is not just Baius's neo-Augustinian remarks on free will and sin, significant as they are for gauging the tone of his theory of moral agency, but his denial of the state of pure nature. This is especially revealing as it brings to our full attention Baius's description of the extent of the corruption, moral and cognitive, which is endemic to human agents in their fallen state. For Baius's rejection of the state of pure nature is meant to capture a thought so central to early modern Augustinianism: that the very wickedness and conceit expressed in the sinful rebellion of the first man against God is realized in the permanent state of sinfulness endured by all his descendants. An implication of this bleak position is that the moral and spiritual restoration of Adam's posterity can be effected only by God's (selectively given) charity and not by any means or disposition 'natural' to humankind.

If we are to understand the impact of these ideas on early modern moral discourse, something more must be said about the concept of pure nature, and why Baius's denial of it takes us to the heart of then current

<sup>84</sup> Cf. Denzinger (1963), p. 427, who says that Baius was 'rigido Augustinismo addictus'.

thinking about the nature and extent of human agency. For this reason we need to examine other sixteenth-century discussions of the pure state of nature in order to locate Baius's rejection of it in a clearer context. How, then, did the concept come to dominate subsequent discussion? The answer to this question concerns the manner in which early modern scholastics addressed their medieval inheritance and the fact that they came to view and appropriate that intellectual legacy in very different ways.

### THE CONCEPT OF 'PURE NATURE'

The concept of 'pure nature', as it was recognized by sixteenth-century thinkers, was constructed from three sources.<sup>85</sup> In its first sense, derived from the widespread adoption in late medieval theology of the distinction between *potentia Dei ordinata* and *potentia Dei absoluta*.<sup>86</sup> Central to this division was the idea that one could always appeal in any discussion of God's omnipotence to the idea that He could perform a task, that is, something within the province of His 'absolute power', even if He had not performed such a task, that is, the proposed action was not within the realm of His actual deeds (or 'ordained power'). In light of this definition, many late medieval thinkers held that God, by His absolute power, could have created a rational creature worthy of *beatitudo* and without mortal sin.<sup>87</sup>

Secondly, the concept arose out of a discussion of the case of children dying unbaptized. This issue concerned individuals to whom the beatific vision could not be granted since they were not in receipt of the grace of baptism, and whom the theologians felt unable to declare damned (*reprobati*) in quite the same way as persons who had lived and abused their natural span.<sup>88</sup> In order to resolve this problem, medieval theologians advanced the idea of an intermediate state. By analogy, the case was envisaged in which the first human being could have died before receiving the infusion of sanctifying grace, and consequently before having to make the first free choice which resulted in original sin. Thomas Aquinas had envisaged both cases,<sup>89</sup> as indeed did fourteenth-century theologians such

<sup>85</sup> For general overviews of sixteenth-century discussion of pure nature see Roudet (1948); Lubac (1965b), pp. 183–213; and Schmutz (2001).

<sup>86</sup> On this distinction and its different formulations in medieval philosophy see Courtenay (1990); Moonan (1994); and Fumagalli Beonio Brocchieri (2000), pp. 13–24.

<sup>87</sup> For further discussion see Alfaro (1952), pp. 355–7.

<sup>88</sup> For a very full discussion of the medieval theology of baptism, see *DTC*, (1899–1953), II, cols. 250–96; and for the development of Catholic teaching about dead infants, *ibid.*, cols. 364–78.

<sup>89</sup> For Thomas's account of Baptism see *Summa theologiae*, III, qq. 66–71.

as Thomas of Strasbourg (d. 1357) and Pierre de la Palud (d. 1342).<sup>90</sup> That said, it should be mentioned that the issue here concerned exceptional circumstances, having as it did beings such as children (or angels at the first moment in which their choice is fixed) who had not yet reached their normal development nor enjoyed a full life. It was generally thought that such children were, at the time of their deaths, ‘without fault and grace’ (*sine culpa nec gratia*), and that they enjoyed an existence ‘without punishment and glory’ (*sine poena et gloria*); that is, ‘in neither state’ (*in statu neutro*). There was no mention in their case of ‘natural blessedness’ but only of ‘lack of blessedness’ (*carentia beatitudinis*).<sup>91</sup>

The third, and most important stage, in the development of the concept of pure nature was the postulation in theological circles of a ‘natural end’ for human beings, an end which was independent of any ‘supernatural end’.<sup>92</sup> We find this notion in some of the works of Parisian philosophers; but it first found its way into the interpretation of canonical texts, such as those of Thomas Aquinas, courtesy of the work of Cardinal Cajetan (1469–1534).<sup>93</sup> As is well known, Cajetan had studied at Padua from 1491 to 1496 and had subsequently taught there at the Dominican *studium generale*. During his time at Padua, self-styled ‘*Thomists*’ (invariably Dominicans)

<sup>90</sup> Thomas of Strasbourg, *In IV Sent.*, lib. II, dist. 33, q. 1, a. 3, concl. 2, ad 1: ‘Those who descend in original sin alone are not in vain; since, although they do not attain their supernatural end, they nevertheless attain their natural end. For they can possess a clearer contemplation than any philosopher could ever attain in this life; this contemplation is the natural end of the virtuous man’ (‘Illi qui decedunt in peccato originali solo, non sunt frustra; quia, quantumvis non consequantur finem supernaturalem, consequuntur tamen, finem naturalem. Possunt enim habere evidentiorum contemplationem, quam quicumque philosophus unquam habere potuit in hac vita; quae quidem contemplatio est naturalis finis hominis virtuosus’). Or Petrus Paludus, *In IV Sent.*, dist. 1, q. 5, concl. 5: ‘Man who would be formed from the slime of the earth and would die without grace and sin would lack the vision of God, which would not be [his] punishment, but rather [his] nature’ (‘Homo qui formaretur de limo terrae et moreretur sine gratia et culpa, careret visione divina, quod tamen non esset et poena, sed natura’).

<sup>91</sup> Paradoxically, some scholastics such as Giles of Rome (d. 1316) thought that children who died unbaptized before coming to the use of their *liberum arbitrium* really had to suffer the penalty of damnation without being deprived of their natural end and natural blessedness; see Giles of Rome (1581), *In Sent.*, lib. 2, dist. 32, q. 32, a. 2.

<sup>92</sup> It is interesting that many thirteenth-century authors used the term ‘natural perfection’. See Thomas Aquinas’s *Summa theologiae*, I, q. 19, a. 1, discussed by Bradley (1998), pp. 397–8; and the MSS of Albertus Magnus’s *De intellecta et intelligibile* in Averroes (2001), pp. 124–5.

<sup>93</sup> For a general discussion of Cajetan, whose reputation as a reliable commentator of Thomas’s texts has suffered at the hands of twentieth-century interpreters, see Grabmann (1934); and Gilson (1983), esp. pp. 33–89. For a general study of his work see Reilly (1971) and Pinchard (1987).

were then engaged in a bitter struggle with the 'Scotists' (invariably Franciscans), and Cajetan was eager to enter into the fray.<sup>94</sup>

In an attempt to combat Scotist positions,<sup>95</sup> and in order to restore the putative purity of Thomist teaching,<sup>96</sup> Cajetan originated a shift in emphasis which many later Thomists came to accept without reservation. According to him, a human being can only have a really natural desire for an end which is connatural to him. In describing the desire to see God 'face to face' (*beatitudo*), Cajetan argued that Thomas could only speak of the desire awakened in man, that is, a natural desire in man which is naturally raised by God to a supernatural end and enlightened by revelation. Commenting on Thomas's argument at *Summa theologiae*, III, q. 9, a. 2, ad. 3,<sup>97</sup> Cajetan says:

Be cautious, however, and pay attention to the phrase 'insofar as the soul by its very nature is capable of it [scil. the vision of God]' (*inquantum simpliciter per naturam suam est capax eius*). This is a condition which diminishes the sense from *simpliciter* to *secundum quid*. It does not follow from the fact that man is capable of this vision [of God] that 'it is natural for him', or that 'he has a natural potency for it'. More is required for something to be 'natural' unqualifiedly (*simpliciter*) and to be a 'natural potency': and that is a natural inclination with regard to that act. It only follows that man has a nature which can be elevated to that act, for man differs from the animals precisely in the respect that he has an intellectual nature. Consequently, brute animals cannot be elevated to the act of seeing God, whereas man can. This comes from the fact that intellectual nature is capable of the vision, whereas sensitive nature alone is not. Therefore, the vision of God is in some way natural to our soul, but only in a certain respect (*secundum quid*), in that man is capable of it on the basis of his nature. It is not, however, natural to him unqualifiedly (*simpliciter*), or to any other creature, but to God alone.<sup>98</sup>

<sup>94</sup> On the philosophical activity and rivalry at Padua see Nardi (1958); Di Napoli (1963), pp. 227–338; Poppe (1966) and (2001); and Piaia (2002).

<sup>95</sup> On early modern Scotism see Schmutz (2002b).

<sup>96</sup> On 'Thomism' during this period see Kristeller (1967); Hoenen (1997); and Goris (2002).

<sup>97</sup> *Summa theologiae*, III, q. 9, a. 2, ad. 3: 'Beatific vision or knowledge is, in one way, above the nature of the rational soul, for the soul cannot reach it by its own power. But in another way it is in accordance with its nature, insofar as the soul by its very nature has a capacity for it, being made in the image of God ('secundum naturam ipsius inquantum simpliciter per naturam suam est capax eius, prout scilicet ad imaginem Dei facta est') ... But uncreated knowledge is above the nature of the human soul in every way.'

<sup>98</sup> Cajetan (1903), *In III*, q. 9, a. 2, ad. 3, pp. 141–2: 'In responsione ad tertium eiusdem articuli, nota distinctionem de supra naturam, vel secundum naturam. Quoniam hinc habes intellectum diversorum dictorum de beatitudine nostra, cum invenies quod est naturalis, aut quod est supernaturalis. Veruntamen esto cautus: ut bene notes, in secundo membro, ly *inquantum simpliciter secundum naturam suam est capax eius*. Quoniam est conditio haec diminuens a *simpliciter* ad *secundum quid*. Non enim quia homo est capax illius visionis, sequitur, *Ergo est illi naturalis*, aut, *Habet ad illam potentiam naturalem*: quia plus requiritur ad naturalitatem simpliciter et ad potentiam naturalem, scilicet naturalis inclinatio

In this passage Cajetan notes that it is by no means remiss to say that human beings have a ‘natural potency’ for the vision of God, as long as one understands this phrase with a certain qualification. It is ‘natural’ in the sense that man has a natural capacity for the beatific vision which is specific to his intellectual nature. The term ‘natural potency’, however, without any qualification (*simpliciter*), implies also the presence of a connatural active power capable of realizing that potency, as well as a natural inclination for that act. In this case the potency is natural in the full or proper sense. For this reason, Cajetan observes that human beings have a ‘natural potency’ for the vision of God *secundum quid*, but not *simpliciter*, as this unqualified sense would imply in addition a natural inclination.<sup>99</sup>

Cajetan’s role as a supposed innovator within Thomistic circles was debated throughout the sixteenth century and beyond. Supporters of his reading of Thomas on the pure state were prepared to credit him with establishing the concept in theological discourse. Francisco Suárez (1548–1617), for instance, said that ‘Cajetan and more recent theologians (*moderniores theologī*) considered a third state that they called purely natural (*pure naturalem*), which although in fact it did not exist, nevertheless can be thought to be possible.’<sup>100</sup> Detractors such as his fellow Dominican Domingo Báñez (1582–1651) wrote: ‘Cajetan says that St Thomas treats man here as a theologian and therefore calls “natural desire” the desire which man expresses owing to the presupposed divine order through which man is disposed to that supernatural beatitude. This, I say, is not a satisfactory response, but instead weakens St Thomas’s argument.’<sup>101</sup> Other theologians, however, were not so persuaded as Suárez; they did not attribute to Thomas what was the invention of the most personal of his

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in illum actum. Sed solum sequitur quod habet naturam quae potest elevari in illum actum. In hoc enim differt homo ab animalibus, scilicet ex hoc ipso quod est intellectualis animae, quod bruta non possunt elevari in actum videndi Deum, homo autem potest elevari in illum. Quod hinc provenit, quia intellectualitas est capax visionis illius: pars autem sensitiva tantum potest illius capax. Quocirca visio Dei est aliquo modo naturalis animae nostrae, sed secundum quid: quia capax ex sua natura illius. Non est autem simpliciter naturalis illi, ad alteri quicumque creaturae, sed soli Deo’.

<sup>99</sup> See Carro (1936); Alfaro (1952), pp. 5–280; and Hallensleben (1985).

<sup>100</sup> *De gratia, proleg.* IV, c. 1, n. 2, in Suárez (1856–78), VII, p. 179: ‘Cajetanus et moderniores theologī tertium consideraverunt statum, quem pure naturalem appellarunt, qui, licet de facto non fuerit, cogitari tamen potest ut possibilis.’ For further discussion of Suárez’s teaching on grace see Elorduy (1948) and Benzo Mestre (1950).

<sup>101</sup> Báñez (1942), *In primam secundae*, q. 3, a. 8 (de Heredia (ed.) p. 123): ‘[Dicit Cajetanus] quod divus Thomas agit hic de homine sicut theologus, et propterea appellat desiderium naturale illud quod habet homo praesupposita divina ordinatione qua homo ordinatur ad illam beatitudinem supernaturalem: haec, inquam, responsio non satisfacit, quin potius enervat rationem divit Thomae.’ On Báñez’s views about grace, views that came to prominence in his dispute with Molina at the beginning of the *De auxiliis* controversy, see Beltrán de Heredia (1968); and Bermejo (1999).

commentators. This was the case, we shall see, with Soto; but it can also be found in Willem Hessels van Est or 'Estius' (1542–1613), a former pupil of Baius and Hessels,<sup>102</sup> Nicolas Ysambert (ca. 1565/9–d. 1642)<sup>103</sup> and the Jesuit Rodrigo de Arriaga (1592–1667).<sup>104</sup> Only the mild effusiveness so common to the Carmelites of Salamanca, collectively known as the 'Salmanticenses' (fl. 1581–1641), would enable them to report that Cajetan 'faithfully preserved the deposit' of Thomism.<sup>105</sup>

Before going into further detail as to how Soto appraised the concept of pure nature, it is important to record that from the death of Thomas Aquinas down to the time of Cajetan, many members of different Thomist schools' advanced an interpretation which was very different from that of the great cardinal. Johannes Quidort (John of Paris) (d. 1306) argued that 'in the aspect of the proper moral good, immediately through the action of the intellect and will, [God] is the end and beatitude of the rational creature.'<sup>106</sup> The 'Prince of Thomists', John Capreolus (d. 1444) said: 'It is fitting that the ultimate end of human perfection is in understanding something most perfect and intelligible, which is the divine essence; in this regard, every wholly rational creature is blessed because he sees the essence of God.'<sup>107</sup> Likewise, John Versor (d. 1485), who explains the doctrine of Thomas in his commentary on the tenth book of Aristotle's *Nicomachean Ethics* holds that the nature capable of attaining perfect good with help is of a more noble condition than that which attains an imperfect good without assistance.<sup>108</sup> Despite the efforts of Cajetan and his supporters to embed the new interpretation within Thomism, they met with resistance;

<sup>102</sup> Bñez (1680), *In IV Sent.* dist. 49, n. 1, p. 551.

<sup>103</sup> Ysambert (1643), p. 90: 'Cajetanus et plures alii recentiores ita explicant s. Thomam.'

<sup>104</sup> Arriaga (1643), p. 65: '[Argumentum] quod videtur fuisse D. Thomae, desumitur ex appetitu univ[er]sali ... Haec tamen ratio nullo modo vincit. Et ita tandem Cajetanus fatetur.' For further discussion of Arriaga's thought on these issues see Ferrari (1951) and Ortiz-Munoz (1964).

<sup>105</sup> *Salmanticenses* (1691), i, p. 53. On the distinctive teaching of Carmelite fathers of Salamanca, see Sierra del Santísimo Sacramento (1994) and Borde (2001).

<sup>106</sup> John Quidort *In IV Sent.* dist. 49, quoted in Muller (1947), pp. 499-500: 'Sed in ratione boni habitus proprii immediate per actionem intellectus vel voluntatis, [Deus] est finis rationalis creaturae et beatitudo.'

<sup>107</sup> Capreolus (1589), *In II Sent.*, dist. 23, q. 1: 'Oportet quod ultimus terminus humanae perfectionis sit in intelligendo aliquod perfectissimum intelligibile, quod est essentia divina; in hoc igitur unaquaeque tota rationalis creatura beata est, quod essentiam Dei videt.' Capreolus later set down his mature thoughts in his *Defensionum thomae* (1908). For further discussion of his position see Pinckaers (1997).

<sup>108</sup> Versor (1494), *In I. X.*, q. 11: 'Ultima et perfectissima hominis felicitas in visione divinae essentiae consistit. Probatum conclusio. Quia homo non potest esse perfecte felix quamdiu restat sibi aliquid ad desiderandum et quaerendum. Sed homini semper restat tale quaerendum quosque divinam essentiam videat.'

and by the time of Trent, the idea of a pure nature had scarcely made any progress. This can be observed in the work of Dominic de Soto.

## DOMINIC DE SOTO

A contemporary of Baius and his colleague at Trent,<sup>109</sup> Soto composed his treatise *De natura et gratia* during the leisure afforded him by the interval between the sixth and the seventh sessions of the Council, only a few years before Baius started on his *Opuscula*. The book, dedicated to the Fathers of the Church, was published in Venice in 1547. It was to be followed, fifteen years later, by a commentary on the fourth book of the *Sentences*, published at Salamanca in 1561–2, and which Soto was still working on at the time of his death.<sup>110</sup>

At the beginning of *De natura et gratia*, Soto speaks of a man ‘with a mind conceived in pure nature (*in puris naturalibus*)’. He wonders what the power of this ‘bare nature’ (*natura nuda*) would be, that is, what would be possible for such a man to know and achieve in the moral order. But he is very careful to avoid saying that such a state must be held to be actually realizable. That said, Soto explains that there is nothing to prevent us from examining it as a useful fiction, even though there is no basis for the concept in Scripture or the Fathers. ‘Let us imagine’, he says, ‘that man was created by God in this natural state: as a rational animal, without guilt and grace, and without any supernatural gift.’<sup>112</sup>

This is man as the ancient philosophers pictured him, as a rational animal, born to live in political society and endowed with reason and virtue.<sup>113</sup> Soto was well aware, however, that such a description of humankind in his pure state revealed a mistaken conception of his ultimate end. Following orthodox tradition, Soto claims that there is only one true

<sup>109</sup> For Soto's role as a defender of the doctrines of Trent see Viel (1906) and Belda Plans (1925).

<sup>110</sup> For commentary on Soto's views on grace, in the context of his debates with other theologians, see Beltrán de Heredia (1941) and Olazarán (1942). For a general treatment see Schumüller (1951).

<sup>111</sup> Soto (1570), lib. 1, cap. 3: ‘Cum de hoc homine, quem fingimus, nihil vel in sacra pagina vel apud sanctos patres scriptum sit; commodius elucidabitur ...’

<sup>112</sup> Ibid., lib. 1, cap. 3: ‘Faciamus itaque imaginando, ut homo hunc in modum naturalis a Deo sit creatus: utpote rationale animal, absque culpa et gratia, et quovis supernaturali dono.’

<sup>113</sup> Ibid., lib. 1, cap. 3: ‘Cum homo sit rationale animal, finis eius naturalissimus est operari semper secundum rationem, id est, omnia agere propter honestum ... . Suorum autem officiorum in hac vita est pax tranquillisque status republicanae. Est enim homo politicum animal, natum in societate vivere ...’



end laid down for human beings, *beatitudo*, or the blessed vision of God.<sup>114</sup> Among the arguments he uses to establish this point the principal proof (*potissima ratio*) is taken from the Bible. When God said, 'Let us make man in our image, after our likeness' (Genesis 1:26), it was our very nature that he designated, and by this he placed in us a 'natural inclination' or 'appetite' for union with God.

On the other hand, Soto knew perfectly well that this end is gratuitous: 'over and above every boundary and order of created nature, where God is infinite but every creature is limited, and infinitely far removed from that abyss of perfection.'<sup>115</sup> And so, not for the purpose of tending towards it by virtue of a natural inclination or an 'innate appetite', but in order to understand it and desire it with an elicited desire, there is need for that 'supernatural light' which was absent in the deliberations of the ancient philosophers. Soto insists on the necessity of revelation so that we are able to understand and desire 'true blessedness' and insists on the necessity of supernatural help to be able to reach it with a desire pleasing to God. He is fond of quoting in this connection the famous words of Isaiah (64:4) and St Paul (1 Corinthians 2:9): 'Eye has not seen, nor ear has heard' (*Oculus non vidit, auris non audivit*); but he observes how many in his day take the opportunity from this to deny the natural desire. By doing this, he claims, they transform traditional teaching. He restates the position in simple terms: 'that happiness must be called a natural rather than a supernatural end' (*felicitas illa finis potius dicitur naturalis, quam supernaturalis*). Since the vision of God is the object of a natural desire, since it is for every man, whether he knows or not the real end of human nature, it is better, Soto thinks, to continue to say that the vision of God constitutes our 'natural end'. At the same time, this position also strikes him as more rational. The desire is not to be defined by its effect but rather by its cause; therefore, it will be called 'natural' not because human beings could naturally elicit it, but because nature has placed it in human beings. In like manner the end will be natural, not because man could attain it naturally, but only because it is desired by this natural appetite. In this precise sense, Soto says, 'I indeed consider that end to be simply natural for us' (*profecto ita censeo, quod finis ille simpliciter sit nobis naturalis*).<sup>116</sup>

<sup>114</sup> Soto (1589), d. 49, q. 2. a. 1: 'illam veram beatitudinem, quae est videre Deum'; '... quae in Dei visione consistit'.

<sup>115</sup> Soto (1570), lib. 1, cap. 4: 'extra supraque omnem lineam et ordinem naturae conditae, eo quod Deus infinitus sit, omnis autem creatura limitata, ab illaque adeo perfectionis abyssu infinitum distans'.

<sup>116</sup> Ibid., lib. 1, cap. 4: 'Inquietudo ipsa humani animi ... fidem abunde facit illum esse finem nostrum naturalem.' Soto (1589), dist. 49: 'Respondetur ergo ad argumenta Caietani, non bene definisse finem naturalem esse illum quem potest homo naturaliter consequi, neque appetitum naturalem illum qui naturaliter potest habere actum elicatum: quoniam appetitus

Tellingly, Soto's use of terminology in these crucial arguments is far more indebted to Duns Scotus than to his beloved Thomas. Soto was well aware of this. It was Scotus who wrote: 'I concede that God is the natural end of man, although he is not attained naturally but supernaturally.'<sup>117</sup> Thomas had said: 'It is natural for the human intellect that at sometime it should attain the divine vision'; and he had spoken of an end 'in one way above nature, but in another in accordance with nature', or else he had simply referred to an 'end of nature'.<sup>118</sup> Despite this difference in terminology, Soto could feel that he was being faithful to the views of both medieval doctors. Scotus and Thomas did not feel the need to add an attributive adjective to the word end (*finis*)—unlike Peter Olivi (1248–93) who spoke of a 'proper end' (*proprius finis*)<sup>119</sup>—because they had no idea of making a distinction between two ends which were both final and transcendent, one of which would have been 'natural' and the other 'supernatural'.

Ever since the time of Scotus the question had begun to become confused as a result of controversy between the thirteenth-century schools of theology. While holding to the same idea of the vision of God advanced by Thomas, Scotus was minded to emphasize his idea of a natural desire in opposition to a wholly 'elicited' one, like a 'weight of nature' (*pondus naturae*) analogous to what might be the obscure desire of a beast or a stone.<sup>120</sup> Fundamentally, of course, it was only an analogy, but the spiritual element was not sufficiently taken into account. To the former distinction of a natural or necessary desire and an elective or free desire—the one

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naturalis non debet defigiri per effectum, sed per causam. Est ergo appetitus naturalis quem nobis natura inseruit, et eo ipso quod creati sumus ad imaginem Dei, insitum habemus appetitum naturalem ad ipsam videndum. Atque adeo finis naturalis est quem naturaliter appetimus: licet consecutio eius et adeptio non sit nobis naturalis.' When, however, Soto desires to distinguish clearly this final end from the earthly end he speaks very differently. Compare, for instance, the same chapter of the *De natura et gratia*, the passage in which he attacks the opinion of Gregory of Rimini on man's moral powerlessness: 'This pertains to men who do not clearly distinguish between the natural and the supernatural end of man' ('Hoc est hominum haud oculate distinguendum inter finem naturalem et finem supernaturalem hominis').

<sup>117</sup> Duns Scotus (1639), VIII, *In I Sent.*, Prol. q. 1 a. 12, p. 22: 'Concedo Deum esse finem naturalem hominis, licet non naturaliter adispiscendum sed supernaturaliter.' For a helpful analysis of Scotus's position see Wolter (1949).

<sup>118</sup> Thomas Aquinas, *Summa theologiae*, III, q. 9, a. 2, ad 3. For further discussion see Bradley (1998), p. 398, esp. nn. 161–3; and Torrell (2001).

<sup>119</sup> Peter Olivi, *In II Sent.*, q. 56: 'It is agreed, not only in accordance with faith, but also in accordance with right reason, that all rational nature is through essence of such a sort that the proper end cannot be attained through created nature, but only through a supernatural agent' ('non solum secundum fidem, sed etiam secundum rectam rationem constat, quod omnis natura rationalis est per essentiam talis, quod proprius finis non potest per naturam creatam acquiri, sed solum per agens supernaturale').

<sup>120</sup> We find this metaphor already in use in Augustine, *De musica*, VI.11.29.

'physical', the other 'moral'—there was now added the distinction of an innate appetite or an 'elicited' act of desire. Consequently, in criticizing this innate appetite, considered as a crude disposition, some Thomist theologians seemed more or less to deny any real natural desire. At least this is how they were interpreted by sixteenth-century scholastics. Scotus's 'innate appetite' (*appetitus innatus*) was contrasted to an 'elicited appetite' (*appetitus elicitus*), an unsatisfactory expression which Soto chose to avoid. Like earlier thinkers such as Durandus of Saint-Pourçain (d. 1332)<sup>121</sup> and Capreolus,<sup>122</sup> Soto speaks only of an elicited act. But soon theologians were no longer so discerning in the choice of vocabulary.

This was not to remain merely a question of terminology; it was a genuine revision. With Thomas, the elicited act of desire was clearly the sign of a genuine natural desire, that is, of an appetite of nature, even when this latter was not mentioned by name; for this reason Thomas could argue from it, as he often did. On the basis of natural desires that can be observed, he sets out to show that such desires are never fulfilled unless and until they find God.<sup>123</sup> By bringing to bear the concept of an 'elicited appetite' in order to make sense of Thomas's thoughts on this issue, later interpreters of Thomas helped to make his teaching obscure. Chief among those who championed this mode of exegesis was João Poinset or John of St Thomas (1589–1664).<sup>124</sup> The Salamanca Scotist John of Rada (ca. 1545–1608) was to observe with a mixture of bitterness and irony, that whereas the leaders of the rival schools were in agreement, 'so as not to appear to agree with Scotus the statements of St Thomas lead St Thomas to a position which is foreign to him' (*discipuli sancti Thomae, ne videantur cum Soto sentire, Doyum Thomam in alienam adducunt sententiam*).<sup>125</sup>

<sup>121</sup> Durandus of Saint-Pourçain (1550), dist. 49, q. 8, n. 7, fol. 362<sup>r</sup>: 'The appetite is two-fold, natural and elective .... The action of the natural appetite is not any sort of elicited act, but is only the natural inclination to that which is sought; the action of the elective appetite is a certain elicited act which is said to will ...' ('Duplex est appetitus, sc. naturalis et electivus. Actus appetitus naturalis non est aliquis actus elicited, sed est sola naturalis inclinatio ad illud quod appetitur; actus vero appetitus electivi ... est quidam actus elicited quod dicitur velle ...').

<sup>122</sup> Capreolus (1908), vii, pp. 169, 170, 179 and 180.

<sup>123</sup> See Thomas Aquinas, *Summa theologiae*, Ia-IIae, q. 3, a. 8l; *Compendium theologiae*, c. 117, and *Summa contra gentiles*, lib. III, cap. 50. See Bonino (2001b) and Torrell (2001).

<sup>124</sup> John of St Thomas (1930), *Cursus theologicus*, disp. XII, 'De potentia elevabili ad visionem Dei', a. 3, n. 7: 'He speaks expressly about the desire to see the cause by means of its visible effects; therefore, he speaks about desire founded in knowledge, that is, in visible effects; this is the elicited appetite. But he absolutely denies it (the innate appetite)' ('Expresse loquitur de desiderio videndi causam visis effectibus; ergo loquitur de desiderio fundato in cognitione, id est, visis effectibus; qui utique est appetitus elicited. Absolute autem illum (appetitum innatum negat).')

<sup>125</sup> Johannes Rada (1586), *Controversiae theologiae*, controversia prima, a. 2, at p. 14. Cf. p. 13: 'Tandem, admissio, quod loquantur de desiderio pro actu elicited, dico ibi necessario

A fear of the *Scotica officina* had probably influenced the position so resolutely defended by Thomists like Cajetan, Chrysostomus Javelli (1470–1538)<sup>126</sup> and Konrad Koellin (d. 1536).<sup>127</sup> At Padua in the early sixteenth century, the dispute between self-styled ‘Thomists’ and ‘Scotists’ was acrimonious.<sup>128</sup> It was the Scotist theologians of Padua who prepared the first early modern editions of the Subtle Doctor’s works, while in the neighbouring city of Vicenza the Dominicans published the *Libri propugnatorius*. At Padua Silvester de Prierio Mazzolini (1460–1523) wrote his *Malleus in falsas assumptiones Scoti contra sanctum Thomam*, published in Bologna in 1514.<sup>129</sup> Anti-Scotist polemics absorbed the energy of many Thomists at this time, principally among them Cajetan. He expended much time in refuting the views of Antonio Trombetta (d. 1518), who held the Scotist chair at Padua, the chair in opposition to his own. Behind every utterance of Trombetta, Cajetan espied the voice of Scotus; and for this reason the first major Thomist of the early modern era endeavoured to refute and ridicule as many Scotist pronouncements as he could identify.<sup>130</sup> The upshot of Cajetan’s work was to attribute to Scotist writers a hostile reading of Thomas, a reading which found expression in wider Thomist circles, as is evidenced in the writings of Koellin<sup>131</sup> and Javelli.<sup>132</sup>

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subintelligi naturalem inclinationem ad videndum causam: nam ille actus elicited, quo cupimus videre causam, non dicitur naturalis a D. Thoma, nisi quia consonus et conformis est inclinationi naturae’. For further discussion of Rada’s work and its bearing on this debate see Armellada (1959)

<sup>126</sup> On Javelli’s work, especially his criticism of Pomponazzi, see Gilson (1983), pp. 259–77.

<sup>127</sup> For interpretation of Koellin’s work see Wilms (1941), and more specifically (1934) and (1935).

<sup>128</sup> See Di Napoli (1963); and Poppi (1966), and (2001).

<sup>129</sup> On Mazzolini’s anti-Scotist writings see Tavuzzi (1997), pp. 41–4.

<sup>130</sup> It has been pointed out that Cajetan allows himself to get carried away where Scotus is concerned (see Gilson (1952), reprinted in Gilson (1983), pp. 33–7. For textual examples of Cajetan’s general impatience with Scotus see Cajetan (1888), *In primam*, q. 12, a. 11, in 5. Cf. q. 3, a. 7, in 8.

<sup>131</sup> Koellin seems to fear nothing more than a possible agreement between the two great leaders of the schools; see Koellin (1589), q. 113, a. 10, p. 964: ‘It may appear to someone that the holy Doctor wished that there was a natural faculty for grace in the soul. And thus he would agree with Scotus. ... And it may be that the holy Doctor agrees ....’ (‘Potest alicui videri, quia Doctor sanctus vellet, quod anima esset in potentia naturali ad gratiam. Et sic concordaret cum Scoto. ... Et videri posset, quod Doctor sanctus concordet ...’).

<sup>132</sup> Javelli regards it as the worst possible form of reproach of Thomist teaching, and the best refutation of it, to be able to say ‘this is to coincide with the teaching of Scotus’ (‘hoc est incidere in sententiam Scoti’): see Javelli (1695), q. 12, a. 1, f. 21. His method of articulating the difference between Thomas and Scotus is odd to say the least. First he propounds a thesis which he wishes to refute in Scotist terms, and then he meets Scotus’s arguments and adds that ‘some’ wish to attribute the same argument to Thomas. But, Javelli

When compared with these earlier Thomists, Soto reveals himself to be very different. A balanced defender of Thomas, who has also been formed by other intellectual influences,<sup>133</sup> he had no wish to see the thought of his master 'watered down' or 'twisted'.<sup>134</sup> To restore it in the face of what he regarded as misinterpretation, he adopted a contrary terminology to that favoured by Cajetan, Koellin and Javelli, so that his teaching on the *natura pura* adopted a quasi-Scotist tinge. In these terms, at least, Soto's reaction is more vigorous than that of his colleague and immediate predecessor in the *catedra prima* at Salamanca, Francesco de Vitoria (1483–1546), who also opposed the interpretation initiated by Cajetan but had not thought it necessary all the same to approximate Thomas's terminology to that of Scotus.<sup>135</sup>

In any case, Soto had no intention of breaking with what he believed to be the fundamental teaching of Augustine,<sup>136</sup> Thomas,<sup>137</sup> Bonaventure<sup>138</sup> and Scotus, all of whom had never postulated an end which would be transcendent and 'purely natural', and which would consist in knowledge of God other than envisaged by the traditional concept of the beatific vision. Soto never imagined that theologians could ever speak of a man ordained to another end, he merely sought to know what would be the

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adds, Thomas could not have fallen into Scotus's error, so he must be understood in a different sense. Ibid.: 'Note that blessed Thomas seems to maintain that there is a natural desire in the rational creature to see the divine essence, which, nevertheless, does not appear to be true .... Moreover, this coincides with the opinion of Scotus, who wishes the beatific end to be natural, although it is called supernatural by an extrinsic appellation' ('Adverte quod beatus Thomas videtur intendere naturale desiderium inesse creaturae intellectuali videndi divinam essentiam; quod non tamen non videtur verum .... Praeterea, hoc est incidere in sententiam Scoti, qui vult finem beatificum esse naturalem, licet denominatione extrinseca dicatur supernaturalis ...'). For further discussion of notions of causality as it impinged on this debate see Schmutz (2001).

<sup>133</sup> One must remember that before joining the Dominican order and studying under Vitoria at the University of Paris, Soto had received his MA from the nominalist arts faculty of the University of Alcalá, and was very *au fait* with philosophical developments outside the Thomist tradition.

<sup>134</sup> Soto (1562), dist. 49, q. 2, a. 1: 'Cajetan responds, however, that he understands about the desire to know the cause under the aspect of cause, namely, knowing how it effects these things, but not about the desire to see the essence. But, indeed, it is clear that he has misrepresented the mind of St Thomas' ('Respondet autem Caietanus quod intelligit de desiderio cognoscendi causam sub ratione causae, nempe cognoscere quomodo haec efficit, non autem de desiderio videndi essentiam. At vero hoc est plane mentem D. Thomae detorquere').

<sup>135</sup> On Vitoria see Stegmüller (1934).

<sup>136</sup> Augustine, *Contra Iulianum Pelagianum*, lib. 3, cap. 12; cf. lib. 6, cap. 10.

<sup>137</sup> Thomas Aquinas, *Quodlibet* X, q. 8, a. 17; *De veritate*, q. 18, a. 1, and q. 8, a. 3, obi. 12; *De virtutibus in communi*, a. 10; and *Summa theologiae*, Ia q. 12, a. 1.

<sup>138</sup> Bonaventure, *In II Sent.*, dist. 16, a. 2, q. 1; and dist., 29, a. 1, q. 2 ad 4m; and *Breviloquium*, pars viii, cap. 7.

powers of a human being who had not at the outset of his creation been endowed with supernatural powers. If sometimes, Soto appears to depart from the neo-Augustinian tradition it is not that he seeks to depart from the contours of Augustine's teaching. Rather, like so many others embroiled in the theological disputes of the period he has to confront the claims of the Lutherans, then recently condemned by the fifth session of Trent, and their exegesis of crucial passages in Augustine's texts.<sup>139</sup> All the same, like his Thomist and Dominican predecessors, he treats the problems of grace and nature as if he had no idea, within creation, of a natural order distinguished by a natural transcendental end. And, as a matter of fact, Soto had no such idea. It could not be said that he passed over the idea of the pure state of nature in silence, but that he seems to exclude it in advance. That he opposed the attribution of the idea to canonical writings can be seen in his restatement of an argument that had been used by earlier scholastics against those who used Aristotle to deny the existence of the supernatural state. Soto says:

One may respond [to Cajetan] that Aristotle did not say: 'if they had the inclination', but 'if they had the power, they would have the means'. We, however, do not say that nature has the power, that is, the natural power to see God, but only the inclination. Moreover, Aristotle knew nothing about the supernatural, and therefore he would not have conceded that some thing has a natural inclination towards some other thing, unless it had the power and natural strength to obtain it. We, however, concede that our nature is so sublime that it is inclined towards that end which we cannot obtain except through God's help.<sup>140</sup>

There was nothing here preventing Soto from affirming that even if God had not decided to grant the beatific vision to the first man, he would not have been unjust, because God owed the first man nothing. Soto then launched into various hypotheses on the subject. All the sources to which he wished to remain faithful had admitted this before him, at least implicitly, by saying that the beatific vision is a gratuitous gift. In this way, the absolute supernaturalism denied by Baius is upheld. But here we must note the following important feature: Soto did not imagine another world in which a purely natural knowledge of God would have constituted in effect the natural end of human being. With Baius he shared an aversion to the state of pure nature.

<sup>139</sup> This aspect of Soto's work is clarified by Brett (2000), see esp. pp. 73–88.

<sup>140</sup> Soto (1589), dist. 41, q. 2, a. 1: 'Respondeatur [ad Caietanum] quod Aristoteles non dixit: si haberent inclinationem, sed: si haberent vim, haberent instrumenta. Nos autem, non dicimus quod natura habet vim, id est potentiam naturalem ad videndum Deum, sed inclinationem dumtaxat. Praeterea Aristoteles nil de supernaturabilis novit, et ideo non concederet rem aliquam habere naturalem inclinationem ad aliquid, nisi haberet potestatem et naturales vires ad illud assequendum; nos autem concedimus naturam nostram adeo esse sublimem, ut ad illum finem inclinetur quem non nisi per auxilium Dei assequi possumus.'

Yet, unlike the Louvain theologian, Soto was still minded to preserve some vestige of the earlier scholastic thought, whereby the essential characteristics of human beings can still be discussed and illuminated by recourse to an Aristotelian-Thomist anthropology.<sup>141</sup> Like so many before him, Soto claimed that a consideration of these issues of grace and nature comes down, in the final analysis, to postulating a twofold end in human beings: one, which is proportionate to a human being's created nature, which he can attain by himself; the other, which is beyond all proportion and consists in eternal life. For Soto, as well as for the great medieval scholastics, this twofold finality in every created individual does not constitute a double polarity in human nature. The created nature and supernatural end of a human being coexist in concord. The first is determined by virtue and prudence, as explained by the ancients.<sup>142</sup> It is neither removed nor smothered by the other, but it is always subordinate to it. For this reason, the second is fully deserving of the title 'final end' since it transcends the earthly horizon and leads us to our eventual perfection. By any objective standard, this is classical Thomism, and there is no reason to suppose that Soto ever compromised his allegiance to it on this vexed issue.

## CONCLUSION

In Baius and Soto we meet two very different Catholic theologians attempting to work their way through to an orthodox understanding of grace and nature. For Baius, the route to clarifying the thorny doctrinal issues surrounding fallen human nature is through the *duplex fons* of Scripture and Augustine, sources which by-pass any need for further 'scholastic' elaboration, and which preserve the verities of the old religion by means of a clear appeal to revelation and divine authority. For Soto, however, the resources of the scholastic tradition, in the form of Thomism (and certain aspects of Scotism), are to be preserved by a faithful exposition of Thomas's writings. Where necessary, the claims of other Thomist exegetes, such as Cajetan, to have distilled the essence of Thomas's teaching are debunked—as in the case of the pure state of nature—whenever such commentators are thought to exceed the *sensus* and *intentio* of a canonical text. On the foundation of Thomist works, Soto builds his system by drawing on elements of the biblical and patristic heritage in order to show the true *concordia* of the Thomist heritage with Scripture and Catholic tradition.

<sup>141</sup> On Soto's account of human nature as it is expressed in his moral and political writings see Lisson Ramos (1976); Brett (1995), pp. 141–64; and Belda Plans (2000), pp. 487–97.

<sup>142</sup> Soto (1570), lib. 1, cap. 3.

Despite these obvious differences, both Baius and Soto remain united in their opposition to the state of pure nature. This is not without significance. For the ‘Louvain Augustinian’ and ‘Salamanca Thomist’ are steadfast in their belief that any view of moral agency will be crucially dependent on a full characterization of the moral condition of human beings in their fallen state. To my mind, at least, this point is of crucial importance for any general understanding of sixteenth-century moral thought. Since neither Baius nor Soto is concerned with an account of pure human nature which derives from ancient philosophy, or even Christian humanism,<sup>143</sup> but are addressing the subject of morally imperfect individuals, the pressing question for both thinkers will be: how far, and to what extent, do the consequences of sin rid human beings of any prospect of improving their plight by their efforts as moral agents? As we have seen, Baius casts aside the idea that a human being can be a *tabula rasa* moral agent (at least independently of the *caritas* of God), while Soto considers it possible to articulate a Thomist account of practical reasoning and human action, while noting that the constraints of a distinctive Christian anthropology.

As the early modern period developed, the concerns which typified the approach of Baius and Soto were no longer shared by many later thinkers who sought to recast the picture of fallen nature on display here, and in doing so helped to construct the picture of moral agency which philosophers debate today. Yet, what we can learn from the period before and immediately after the Council of Trent is that Roman Catholic thinkers, just like their Protestant opponents, were hard at work making sense of human nature by means of an anthropology constructed from a reading of the texts of biblical revelation. For Baius and Soto, the moral condition of individuals was illuminated by recourse to the ideas of grace and fallen nature, concepts which would continue to play an important, if diminishing role, as early modern moral philosophy came into its own.<sup>144</sup>

<sup>143</sup> See the account of human nature and society advanced by Juan Luis Vives (1492–1540) in *De concordia et discordia in humano genere* (1529), in Vives (1782–1790), v, pp. 380–8. Of further interest are Vives’s remarks in his prefaces to Cicero’s *De officiis* and *De legibus*, in which he expounds his Stoic view on *oikeiosis* and natural law, and concludes that, *prima facie*, these must have been Christian works. Only historical-philological arguments, then, prevent Vives from assuming that these texts are pseudepigraphs written by a Christian author who attributed them Cicero. Vives (1984), pp. 9–10, says: ‘that no human wisdom would have been able to reach that which is written in *De legibus* and *De officiis* with its own powers and without a peculiar beneficence and gift from God’; see esp. p. 10, nn. 2–5.

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# On the Anatomy of Probabilism

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Scholastic probabilism is a late and revolutionary product of the long-standing scholastic interest in moral decision-making in uncertainty. A deeper interest in this field arose around 1200, when medieval legal thought gained enormous importance and scholastic theories of conscience were brought into practice. For the scholastics, moral uncertainty was the result of the rational defensibility of both sides of a question. It was usually assumed that we should follow the side which is supported by weightier reasons. At the end of the sixteenth century, however, this dogma was challenged from within the scholastic tradition. The new doctrine of scholastic probabilism favoured a threshold model of rational, action-related deliberation. If an alternative was sufficiently supported by reason to be held true from some acceptable point of view, it could be chosen as a premise for action, even if the agent or authorities assumed that there are better reasons on the other side. Probabilism gained considerable ground in early modern times; but it did not survive the intellectual cataclysm of the scholastic tradition in the eighteenth century as an important doctrine of moral decision-making. Today, probabilism is familiar only to a few specialists in moral theology and early modern casuistry.

I shall argue that this neglect is unwarranted. Contemporary ethics should restore to probabilism some of its former notorious prominence. There is something in the probabilistic blend of medieval and early modern ideas of moral decision-making in uncertainty which is still disturbing. The scholastic probabilists created a novel blend of thought, and it soon became apparent that the emergent mixture was dangerous. Later, the dangers of probabilism were largely forgotten in the wake of the demise of scholasticism. But by then some of the new ideas which had led to probabilism had become part of the mainstream of modern ethics by other routes. The study of probabilism can thus inform us about serious genetic defects in modern ethics.

The study of these defects presupposes some knowledge of the structure and anatomy of probabilism. Therefore, the present investigation will play a mainly preparatory role by providing a rough sketch of the anatomy of scholastic probabilism. Unfortunately, this enterprise has its

difficulties. Many subtle but important distinctions were introduced during the heyday of probabilism. Quite often the historical record renders it difficult to decide which of these were important and which were not. Even within a very narrow understanding of importance, I shall definitely not be able to touch on all important aspects of probabilism. This paper deals with a selection of themes, but I hope an informative selection. Last but not least, I shall not completely dispense with chronological order. The evolution of probabilism followed a pattern, and this pattern can be used to gain insight into the anatomy of the doctrine.

With these premises in mind, I shall proceed in the following order. Section 1 will deal with the invention of probabilism by Bartolomé de Medina. Section 2 will discuss the spread of probabilism until the Thirty Years War, and especially the role played by the decision-making principle: ‘In doubtful situations the lot of the owner is better’ (*in dubiis melior est conditio possidentis*). At the end of Section 2 we will be able to distinguish between an information-centred and a liberty-centred form of probabilism. Section 3 investigates the connection between probabilism and early modern scepticism. Section 4 returns to liberty-centred probabilism and points out its importance for the present debate about the shortcomings of modern moral philosophy. Section 5 is concerned with equi-probabilism, a late form of probabilism. I shall argue that equi-probabilism is not the most mature and well-balanced form of probabilism, but that it marks a transition to a different ethical mind-set.

## MEDINA’S PROBABILISM

In 1577 Bartolomé de Medina, a Dominican theologian and professor in Salamanca, coined the key formula of scholastic probabilism. He rightly and proudly assumed that he was departing from an established consensus. Medina’s revolutionary step is expressed in one sentence: ‘If an opinion is probable, it may be followed, even if the opposite opinion is more probable.’<sup>1</sup> Probabilism broke with tradition because medieval theories of rational and morally legitimate action (or choice of opinions) assumed that opinions with a higher degree of probability should be preferred.<sup>2</sup> But there was also much common ground between probabilism and older approaches

<sup>1</sup> Medina ‘Scholastica commentaria’, q. 19, a. 6, p. 464: ‘Si est opinio probabilis, licitum est eam sequi, licet opposita probabilior sit.’ My own translations into English, as here, are indicated by the sign (\*). A full-stop inside inverted commas means that a complete sentence is quoted; a fullstop outside means that the quotation is truncated. I have left most of the original language as it is, except for expanding abbreviation.

<sup>2</sup> For some surveys of the medieval scholastic treatment of moral uncertainty see Deman (1936); Lottin (1948); Kantola (1994); Stone (2000); Franklin (2001).

to uncertain moral action. In both contexts ‘probable’ meant that a proposition was sufficiently supported by reason to be held true by a rational person. Hence, only reasons relevant to truth could generate probability. This traditional Aristotelian-scholastic concept of probability implied that both sides of a question could be probable. In particular, the greater probability of a proposition did not exclude the probability of its negation. This may sound strange to modern ears, but it can easily be understood if one abstracts from modern mathematical notions of probability. Incompatible probable propositions arise, for example, if an impartial observer assumes that both sides of a question can with reason be held true by rational persons. Ethical debates are full of such cases, but they are not unknown to science. Medina, of course, never asks the reader to hold opposite sides of a question to be true *at the same time*.

The reasons for ascribing probability may be known to the person deliberating or may derive from the rational force of the authority or expertise of others. Furthermore, Medina uses the same concept of opinion as medieval scholastics. To them, having an opinion meant assenting to a proposition, combined with some anxiety that it might not be true.<sup>3</sup> Note that the security of an opinion is not mentioned in Medina’s formula of probabilism. For the scholastics, security or safety served as a measure of distance from sin. A safe opinion (*opinio tuta*) could be followed without any risk of sin. In comparative usage, the safer opinion (*opinio tutior*) was an opinion which led to a sin of smaller magnitude if things went wrong. Preference for security was considered a duty in medieval theories of moral decision-making in uncertainty, but only in cases with equally strong reasons for all alternatives.<sup>4</sup> Assuming that one opinion is more probable than another precludes this situation. As a result, Medina did not need to mention security in his formula of probabilism. Later probabilists, however, explicitly assumed that a probable opinion might be preferred to a more probable *and* safer one.

Further insight into the meaning of probabilism can be gained by inspecting the context of Medina’s formula. It appears in a commentary on

<sup>3</sup> See Guillaume d’Auvergne’s thirteenth-century statement in ‘De fide’, lib. I: ‘opinio ... est apprehensio alterius partis contradictionis, cum formidine reliquae’.(\*)

<sup>4</sup> Such situations were classified as cases of doubt (*dubium*) in the Middle Ages. In such cases the rule ‘In doubt the safer side is to be preferred’ (*in dubiis tutior pars est eligendum*) applied. For the scholastic concept of doubt see Guillaume d’Auxerre (thirteenth century) ‘Summa aurea’, lib. II, tract. 30, cap. 3, fol. 105, col. 3: ‘Dubium enim tale est quod habet equales rationes ad hoc quod sit et quod non sit.’(\*) The scholastic concept of doubt has an Aristotelian background; see Aristotle’s remarks in the *Topics*, 145<sup>b</sup>17: ‘Likewise also an equality between contrary reasonings would seem to be a cause of perplexity; for it is when we reflect on both sides of a question and find everything alike to be in keeping with either course that we are perplexed [Zekl’s German translation has ‘sind wir im Zweifel’/‘we are in doubt’ instead of ‘we are perplexed’] which of the two we are to do.’

Thomas Aquinas's 'Prima Secundae', q. 19, art. 6. Question 19 is the *locus classicus* for matters of conscience in the Thomist tradition. It had been an object of lively discussion ever since the renaissance of Thomism in the late fifteenth century. Therefore, when dealing with question 19, Medina could look back on a long tradition of commentary. He discusses the old case of a confessor wondering how to treat a penitent who has done something considered licit by many expert theologians, but regarded as illicit by the confessor himself. It is furthermore assumed that while the view of the confessor is probable, the opposite view is more so. Consider the case of a merchant. The merchant has traded in grain futures, as we would say today. It was controversial in the scholastic tradition whether certain futures contracts were morally licit or not. Suppose the confessor believes that the arguments for illicitness predominate. In contrast, most experts in law or business ethics assume that the contract is licit. There are, however, enough reliable experts who support the confessor's view to make his position appear rationally tenable. Scholastic commentators on the conduct of confessors would therefore ascribe probability to both sides of the case.

Traditionally, scholastic theologians demanded that the confessor should follow the course which is supported by better reasons according to the best expert judgement. This implicitly presupposes that the confessor knows about the expert opinions. In such circumstances, he is not supposed to follow his own (possibly idiosyncratic) view but rather to treat the penitent according to established standards. Medina cites the solutions to the confessor case put forward by four renowned authorities: Domingo de Soto, Silvester Prierias, Conrad Summenhart and Thomas de Vio (Cardinal Cajetan). Three of the four insist without qualification on following the more probable opinion. But note that we are speaking about following an opinion, not about holding it to be true. 'Following an opinion' simply means 'acting according to an opinion', which does not necessarily entail assenting to the truth of that opinion.<sup>5</sup> According to scholastic sources, it was Cajetan who first made this distinction explicit.<sup>6</sup> In the early sixteenth

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<sup>5</sup> This important point helps to defuse some epistemological problems which are often believed to be devastating for probabilism. Note that for a probabilist it is not necessary to hold to be true a proposition which has less support from reason than its negation. Nor must a probabilist be able to govern belief at will. It merely has to be assumed that we can withhold assent from controversial propositions if they and their negation are both sufficiently probable to be held true by a rational observer. The analysis of the epistemological premises and implications of probabilism forms an interesting area of research, which I can not enter into here.

<sup>6</sup> Cajetan makes the distinction in a letter to Konrad Koellin from 1521. The letter can be found in Blic (1930), pp. 50ff. Kantola (1994), p. 116, emphasizes the role of Cajetan in establishing the speculative/practical distinction for moral judgements. He cites Blic (1925),

century, he distinguished between speculative and practical doubt. The gist of this distinction was that it is possible to remain speculatively in doubt, that is, in doubt (which precludes assent) about the truth of a proposition, yet to follow it in one's actions. The scholastics assumed, however, that one could not act licitly without assenting to the truth of a proposition which states the licitness of the action in question. This kind of assent was called the practical judgement of conscience. In other words, Cajetan pointed out that one could satisfy the formal requirements of sound moral reflection by remaining in speculative doubt about the right answer to a question but believing in the licitness of acting as if one answer were true. The whole edifice of Catholic casuistry after Cajetan rests on this possibility.<sup>7</sup>

Now, let us return to the traditional solution to the confessor's case. Medina acknowledges the authority of the four theologians opposing him and admits that their arguments seem 'optimal'. Nevertheless, he prefers a different solution: his formula of probabilism. The reasons which Medina adduces for this step are revealing. He emphasizes the heavy psychological burden placed on people who seek optimal moral knowledge. Medina, in other words, recognizes the costs of information gathering and tries to ensure that the burden of morally necessary information-gathering is bearable. This idea became one of the pillars of probabilism.<sup>8</sup> In general, probabilists regarded it as sufficient to establish the probability of an opinion. To do more might be meritorious, but could not normally be required. Thus, according to a first possible understanding of probabilism, we may follow, after sufficient inspection, any opinion which is probable. It may be possible that, all things considered, the opposite opinion would be more probable. Nobody, however, has a duty to consider all things.

Medina's text also contains a second justification of probabilism. This justification is based on differences between one's own opinion and those of others with relevant knowledge of the issue at stake—authorities, experts, peers and so on. The case of the confessor underlines this point, as does Soto's example of the judge. Soto says that a judge may argue for a less probable juridical opinion in academic debate, but demands that he must prefer the more probable side in court.<sup>9</sup> Medina, on the other hand,

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p. 316, who called this move a 'tournant decisif' in the development of the scholastic theory of moral decision-making under uncertainty.

<sup>7</sup> The understanding and application of Cajetan's distinction has its difficulties, as late scholastics recognized. There is a systematic discussion of these problems and of various scholastic attempts to solve them in Martin Bresser's 'De conscientia libri VI', lib. III, cap. 7.

<sup>8</sup> See Sanchez 'Opus morale', lib. I, cap. 9, fund. 5, n. 14; Suárez 'De bonitate', disp. XII, sec. VI, n. 8; Busenbaum 'Medulla', lib. I, cap. 2, dub. 2.

<sup>9</sup> See Soto 'De iustitia et iure', lib. III, q. 6, a. 5, ad 4.

assumes that a judge may prefer the less probable side even in court, as long as it is probable. But note that he restricts his solution to those cases where probability is not entirely based on objective testimony. It may also be based, for example, on juristic commentaries or on a survey of expert opinion. In these cases, a judge may follow a less probable opinion. There seem to be two possible motivations for such a decision. The judge can prefer a less probable opinion himself, going against a majority of authorities. Or he may be influenced by political, institutional or economic pressures to embrace the less probable side. Both kinds of motivation can be found in probabilistic analyses of cases of conscience. Consequently, probabilism not only diminished the burden of information-gathering costs but also enabled decision-makers to exploit differences between their own opinions and those of others with relevant expertise. In this way, probabilism considerably increased the flexibility of moral choice.

What does this flexibility tell us about the probabilists' attitudes? I do not want to speculate on this question, which can be approached from many angles. It should, however, be emphasized that probabilism did not simply serve the purposes of the mighty over the powerless or the morally frivolous over the virtuous. Like Hegelianism, probabilism had leftist and rightist uses. It not only served the consciences of the rich and mighty but also legitimated claims of the poor and the persecuted.

## PROBABILISM BEFORE THE THIRTY YEARS WAR

To the best of my knowledge, the history of the first fifty years of probabilism has been most fully analysed by Albert Schmitt in his *Zur Geschichte des Probabilismus. Historisch-kritische Untersuchung über die ersten 50 Jahre desselben* of 1904. Schmitt's work contains ample evidence that most discussions among probabilists had their roots in the decades before the Thirty Years War. Later theoretical developments were less fundamental and paved the way towards the dissolution of probabilism.

One of the most surprising developments in the career of probabilism was its rapid acceptance among Catholic moral theologians. Probabilism was already widespread in the 1590s. Ironically, during these years it was the opponents of probabilism who were criticized as 'novelty mongers' (*neoterici*).<sup>10</sup> This can be explained by the fact that probabilists often provided new solutions for old cases. In the eyes of his peers, Medina merely spelled out what was implicit in the older tradition.

Another reason for the rapid spread of probabilism was the wide acclaim given to Medina's arguments. Imposing narrow limits on the costs

<sup>10</sup> See Sanchez 'De Sancto matrimonii sacramento', tom.I, lib II, disp. 41, q. 3, n. 31.

of moral information-gathering seemed appropriate to many casuists. Many theologians also approved of the new flexibility brought to traditional rules of conscience. Some theologians, such as Gabriel Vazquez, developed a conservative brand of probabilism.<sup>11</sup> Vazquez used probabilism mainly to justify obedience to authorities, even if the opposite side was acknowledged to be more probable. At the same time, new and radical versions of probabilism arose. These new versions were rooted in principles of human liberty. Over the course of time, these became the most principled and philosophically interesting forms of probabilism. They claimed that agents were free to follow a probable opinion even if the opposing opinion was regarded as more probable by the agent himself. An agent possessed this freedom, not because of the approval of external authorities, but because the human will possessed an inherent right to incline towards any probable alternative. This freedom of decision could be restricted by moral laws. But the proponents of moral restrictions bore the burden of proving that such restrictions existed. If a moral opinion was probable, the existence of a law which prohibited following it had not been sufficiently proved and freedom therefore prevailed. Tomás Sanchez, who had an immense influence on later probabilists, expressed these thoughts in the following words: ‘The will is justly said to possess its freedom, and whoever wants to impose an obligation restricting freedom has to bear the burden of proof.’<sup>12</sup>

It is interesting that the notion of dominion (*dominium*) also appears in this context, as in the following, almost ‘Hobbesian’ sentence by Antonius Terillus: ‘The will has natural dominion in everything, if it is not forbidden by law.’<sup>13</sup> Recent research on the historical roots of the idea of subjective rights has centred precisely on the concept of dominion. It should come as no surprise then, that Daniele Concina, one of the staunchest critics of probabilism, accused the probabilists of introducing a *ius libertatis*, a human liberty right: ‘The probabilists say that law repeals the right of liberty’.<sup>14</sup>

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<sup>11</sup> See Gabriel Vazquez ‘In Primam Secundae’, q. 19, disp. 62, cap. 4.

<sup>12</sup> Sanchez ‘Opus morale’, lib. I, cap. 10, q. 1, n. 11.: ‘voluntas dicitur possidere vere suam libertatem, & volenti obligationem imponere privantem libertate, incumbit eius probandae onus.’(\*)

<sup>13</sup> Terillus ‘Fundamentum’, q. 23, n. 46, p. 425 in margin: ‘Voluntas habet naturale dominium in omnia, nisi lege prohibeantur.’

<sup>14</sup> Concina ‘Theologia christiana’, Tom. I, lib. II, diss. II, cap. 7, §1, 1: ‘Lex tollit jus libertatis, inquit probabilistae.’

### The ‘possidentis’ principle

Why did theologians such as Tomás Sanchez believe in human freedom within the limits of law? Sanchez founded his probabilism on an old principle of property law: when in doubt, the lot of the owner is better (‘in dubiis melior est conditio possidentis’). The ‘possidentis’ principle, as I call it, was derived from a rule of Roman and medieval law which helped to decide cases involving doubtful ownership of goods.<sup>15</sup> According to it, a bona fide possessor of a thing may not be deprived of it as long as the unlawfulness of his possession is not sufficiently established. Note that the use of the scholastic term ‘doubt’ in a rule for making decisions signified an equal balance of reasons on both sides. Therefore, not every kind of uncertainty could be used to invoke the ‘possidentis’ principle.

We need to pay attention to this detail when tracing the astonishing career of the ‘possidentis’ principle in the sixteenth century. From its beginnings in property law, the ‘possidentis’ principle was applied to ever wider areas of moral conduct until it served as a general principle of liberty.<sup>16</sup> At the outset it was apparently not used as a rule of conscience. But by the end of the sixteenth century it had become the cornerstone of probabilism. I have written about the career of the ‘possidentis’ principle in greater detail elsewhere.<sup>17</sup> Hence, a short sketch of its expansion should suffice here. From the early sixteenth century onwards, the ‘possidentis’ principle was used in the context of war and conquest. Francisco de Vitoria explicitly uses it in his *De iure belli* when dealing with the question of whether Spain could wage a just war with France over the possession of Burgundy.<sup>18</sup> Vitoria assumes that both sides have weighty claims for the possession of Burgundy. But as long as the claims of neither side predominate, France, at that time the possessor of Burgundy, could not legitimately be attacked.

Later members of the School of Salamanca applied the ‘possidentis’ principle to the conquest of America. They assumed that no prince could legitimately start a war of doubtful legitimacy. Most Spanish intellectuals agreed that the justice of the conquest of America was doubtful at best. The Conquista, however, was not regarded as a premeditated war. The ethical counsellors of the Spanish Crown argued that Spain had initially planned a peaceful colonization of the New World for the mutual profit of Spain and

<sup>15</sup> See Friedberg ‘Corpus iuris canonici’, reg. iur. 65 in VI<sup>o</sup>: ‘In pari delicto vel causa potior est conditio possidentis.’

<sup>16</sup> See Sanchez ‘De Sancto matrimonii sacramento’, tom.I, lib II, disp. 41, q. 3, n. 31: ‘Sed verius est in quacumque materia potioem esse in dubio possidentis conditionem: quia possessio est titulus omnibus virtutibus’.

<sup>17</sup> See Schüssler (2002).

<sup>18</sup> See Vitoria ‘De iure belli’, q. 4, dub. 3, punctum 8.



the Indians.<sup>19</sup> Yet things had somehow taken a turn for the worse, without the Spanish Crown committing any major fault. In consequence, Spain could not be held liable for the ensuing bloodshed in America. Moreover, it had not willingly started a war in the face of obvious doubts about its legitimacy. The real question, as framed by the Spanish ethics committees, was therefore: whether a prince may continue to wage a war of doubtful legitimacy in which he suddenly finds himself entangled, without any guilt on his own part. Juan Guevara, professor at Salamanca, related this question to doubts about the lawful possession of a thing, and especially a thing like America:

This was the case of Charles V, who began to doubt his right to own the New World. But if, in examining the case, a doubt remains and equal reasons contend on either side, a prince who took possession in good faith may not be attacked by another and may retain the entire thing which he possesses.<sup>20</sup>

In the sixteenth century, the ‘possidentis’ principle was applied not only to the possession of countries but also to the that of persons. Domingo de Soto cited the ‘possidentis’ principle in his argument for the need to obey to orders even if they were of uncertain legitimacy.<sup>21</sup> He argued for military obedience on the assumption that soldiers were possessions of a prince and that, when in doubt, an owner retained the right to use his possessions.<sup>22</sup> For a similar reason, slaves whose lawful enslavement was in doubt could be acquired and sold. A bona fide slave owner retained the right to use his possession until the unlawfulness of enslavement could be proved beyond doubt. But note again that doubt in scholastic usage indicates an equal balance of reasons. If it could be established that any reasonable person must presume the illegitimacy of slavery, the ‘possidentis’ principle would no longer apply. Bartolomé de Las Casas used this argument in his campaign against the enslavement of American Indians.<sup>23</sup>

The examples of obedience and slavery show that in the sixteenth century the ‘possidentis’ principle was often used to restrict the freedom of individuals, as we would understand it today. Therefore, the principle was

<sup>19</sup> See Ramos (1984b); Höffner (1972); Justenhoven (1991: 58ff.); Gillner (1997).

<sup>20</sup> Guevara in Baciero (1984), p. 448: ‘Tal fue el caso de Carlos V que empezó a dudar de su derecho a la posesión de las Indias. Pero si examinando el asunto, la duda persiste y militan iguales razones por una y otra parte, el príncipe que empezó poseyendo con buena fe, no puede ser atacado por el otro y puede retener íntegramente la cosa poseída.’ (\*)

<sup>21</sup> See Schüssler (2000).

<sup>22</sup> Soto ‘De bello’, art. 1, dub. 7, concl. 5: ‘Probatur primo quia quando alter coniugum aequale habet dubium tenetur obedire possidenti et reddere debitum illi petenti. Ergo et milites habentes aequale dubium. Consequentia probatur quia quemadmodum coniux possidetur ab alio coniuge dubio, ita etiam milites possidentur a rege.’

<sup>23</sup> See Las Casas ‘Indiosklaverei’, p. 85.

double-edged, but its liberating edge nevertheless became increasingly important. The same Domingo de Soto who regarded princes as owners of their subordinates argued that in cases of doubt as to whether a vow had been made, one should decide in favour of the person who might possibly be obliged.<sup>24</sup> He assumed that a vow of doubtful validity was not binding. As reason for holding this view, Soto postulated the right to retain one's freedom: 'The lot of the owner is better and that a person should remain free, which means in his own possession.'<sup>25</sup> This solution was frequently cited by probabilists. Furthermore, it was generalized so that the freedom to make decisions was treated as part of a person's possessions.

But not all scholastic theologians applauded this development. Critics of probabilism insisted on a restricted understanding of the 'possidentis' principle. They maintained that the principle was valid only within the traditional context of property law, but not in relation to all moral issues. Partly for this reason another principle became prominent: the 'lex dubia' principle ('lex dubia non obligat'). This principle assumes that a law or an obligation of doubtful validity is not binding. In other words, no one has to follow a moral rule or to honour an obligation whose validity or existence remains doubtful. Francisco Suárez made this idea the cornerstone of his probabilism.<sup>26</sup>

The rise of the 'possidentis' principle and its sister principle 'lex dubia non obligat' tell an important story about the anatomy of probabilism. Medina's probabilism can be described as an *information-centred* probabilism. It was concerned with mitigating the costs of information-gathering and with weighing personal against public information. In contrast, the approach of Sanchez and Suárez was based on principles of personal liberty. This kind of probabilism can be labelled *liberty-centred* probabilism. We find both forms during the peak period of probabilism in the seventeenth century.

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<sup>24</sup> Schmitt (1904), p. 41, sees this as an important step in the career of the 'possidentis' principle.

<sup>25</sup> See Soto 'De iustitia et iure', lib. VII, q. 3, a. 2: 'Melior siquidem est possidentis conditio, et hominem manere liberum, censetur manere in sua possessione.' (\*)

<sup>26</sup> Suárez 'De bonitate', d. XII, sec. VI, n. 8.: 'praeterea existimo illam rationem sufficientem: quamdiu est iudicium probabile, quod nulla sit lex prohibens, vel praecipiens actionem, talis lex non est sufficienter proposita, vel promulgata homini: und cum obligationis legis sit onerosa, et quammodo odiosa, non urget, donec certius de illa constet, neque contra hoc urget aliqua ratio, quia tunc revera non est contraria pars tutior in ordine ad conscientiam, neque ibi est aliquod dubium practicum, nec periculum.'

## PROBABILISM AND THE SCEPTICAL CRISIS

The late sixteenth and the early seventeenth centuries were the heyday of scholastic probabilism. It was also the golden era of early modern scepticism. Sextus Empiricus's work was translated and published, Montaigne and Charron formulated their sceptical world views, French libertines came together in influential circles and Descartes was infected with a scepticism which he later struggled to refute. Richard Popkin and Charles Schmitt have coined the phrase 'sceptical crisis' or 'Pyrrhonist crisis' to describe this upsurge of interest in scepticism.<sup>27</sup>

At first sight, it is by no means clear how early modern scepticism and scholastic probabilism could possibly be related. The chronological coincidence of their rise and decline seems surprising, but does not prove that there was any relation between them. But then, second thoughts arise. Probabilism removes moral restrictions. So, too, does Pyrrhonist scepticism. Both doctrines mitigate religious conflicts by loosening the connection between belief and action.<sup>28</sup> It is interesting that both doctrines achieve this result by increasing the epistemological-cum-moral flexibility of decision-making. Apparently, scepticism and probabilism served similar functions in a time plagued by dogmatic religious strife.

And there are even deeper similarities. A pair of evenly balanced scales is the symbol of Pyrrhonism. This symbol represents the refusal of assent and an even balance of reasons on both sides of a question. Withholding assent and accepting doubt are also characteristic features of probabilism. Cajetan's distinction between the speculative and practical level of reflection justifies abstention from assent on the speculative level and action according to a proposition which is not held to be true. Therefore, probabilism seems to be a species of scepticism, and the internecine scholastic battles over probabilism appear as skirmishes in the famous early modern sceptical crisis.

Some early modern critics of probabilism supported this view, explicitly speaking of probabilism as a form of scepticism. Samuel Rachel, for instance, accused probabilism of wavering in the same way as the Academic scepticism of the ancient school of Arcesilaos and Carneades. Vincent Baron referred to the probabilist Juan Caramuel y Lobkowitz as a 'new Carneades'; and Vincent Contenson linked probabilism and

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<sup>27</sup> On the early modern sceptical Crisis see Laursen (1992); Popkin (2003); Copenhaver and Schmitt (1992), pp. 239–260; Schmitt (1972).

<sup>28</sup> Note that Pyrrhonism and probabilism do not necessarily mitigate conflicts in general. They can be used to justify Machiavellian strategies in power politics or the primacy of reason of state. Richelieu employed 'spin doctors', some of whom inclined towards Pyrrhonism and probabilism, for this very purpose: see Church (1972). But their arguments tended to disapprove of religious fervor as cause of war.

Academic scepticism on the grounds that both recommended following the probable course in action.<sup>29</sup> Nevertheless, all things considered, probabilism was not a form of scepticism. The probabilist Antonius Terillus found the label of scepticism sufficiently unattractive to attempt an explicit refutation.<sup>30</sup> He pointed out that Academic scepticism negated any possibility of true belief and disapproved of assent altogether. Probabilists, however, did not despair of attaining knowledge in general but only in certain cases, and they called for assent on the practical level of moral reflection. Therefore, probabilists were not Academic sceptics. Their aims were more practical and epistemologically limited.

But what about Pyrrhonism? Pyrrhonism, the second brand of ancient scepticism, was never central to scholastic discussions about probabilism. This comes as a surprise if we consider the prominence of Pyrrhonism in the sixteenth and seventeenth centuries. Apparently, however, the spread of early modern Pyrrhonism did not make a strong impression on contemporary scholastics. When they discussed scepticism, they continued to talk about the Academic variety. They thus remained true to their medieval predecessors, who spoke of Academic scepticism only sparingly, but never even mentioned Pyrrhonism.<sup>31</sup> This silence creates no problem for probabilism. Probabilism is neither a form of Academic nor of Pyrrhonist scepticism. Pyrrhonism assumes that all arguments are equally good or bad. It postulates an equal balance in all questions of reasons relevant to the truth. Probabilism, on the other hand, presupposes the possibility of unequal probabilities and of an unequal balance of reasons on different sides of a question.

This leaves us with the observation that different intellectual traditions produced separate doctrines with similar functions in the second half of the sixteenth century and the first half of the seventeenth. Selective interest in the sceptical side of a more universal crisis of uncertainty, of which the rise of both scepticism and probabilism is a part, uncovers only a fragment of a

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<sup>29</sup> See Rachel 'Examen probabilitatis', cap. 1, p. 5: 'Si quis enim hujus doctrinae [sc.: probabilismi] regulas inspexerit & perusitaverit, de rebus maximi momenti & quibus nixatur vita salusque, plane Academico more disceptant ac fluctuant'. For Baron see Deman (1936), p. 512. Furthermore, see Contenson 'Theologia mentis', Tom II, lib. VI, diss. III, spec 2, p. 835: 'Non potuit. S. Doctor clarius mentem suam aperire, quam lib. 3 contra Academ., cap. 16 ubi Academicorum commune axioma, quod ipsissima est probabilistarum doctrina, refert: "Cum agit", inquebat, "quisque quod ei probabile videtur, non peccat, nec errat."'.

<sup>30</sup> See Terillus 'Regula morum', pars I, q. 30: 'Utrum & in quo probabile benignae sententiae ab Academicorum probabili discrepet'.

<sup>31</sup> See Schmitt (1972); Popkin (2003), and Stadelmann (1929), p. 74, on medieval knowledge of scepticism. In contrast to medieval scholastics, their early modern heirs sometimes at least mentioned Pyrrhonism; but, as far as I can see, it played no role in their discussions of scepticism.

larger historical picture. For a fuller understanding of the picture we need to take probabilism seriously.

### **LIBERTY-CENTRED PROBABILISM AND MODERN MORAL PHILOSOPHY**

After the discussion of the anatomical similarities and differences between scepticism and probabilism, we may return to a closer inspection of liberty-centred probabilism, which is, philosophically, the most promising form of probabilism. The label liberty-centred probabilism underlines the importance of the principles of ‘possidentis’ and of ‘lex dubia’. Both emphasize that moral precepts are restrictions on our freedom of action and that doubtful precepts are not binding. Liberty-centred probabilism also renounces the specific epistemological duty of choosing the most probable moral alternative. Thus, the ‘possidentis’ and ‘lex dubia’ principles defend the liberty to act as one thinks fit within the limits of—as the probabilists thought—an adequately conceived morality and theory of epistemological choice. In modern terms one might speak of the negative liberty of an actor, that is, liberty from interference, being strengthened by the basic principles of liberty-centred probabilism. Some philosophers despise any liberty which is merely negative, but their qualms need not concern us here. My task is to elucidate the philosophical structure of probabilism, not to evaluate its moral attractiveness.

The freedom of choice engendered by liberty-centred probabilism should not, after all, be overstated. It does not necessarily coincide with the personal or political freedom postulated by modern human rights doctrines. This was emphasized above, when I said that slave-masters, but not slaves, were favoured by the juristic application of the ‘possidentis’ principle. One should also take into account that a loosening of epistemological ties can increase the relative force of other duties. Some early modern theologians used this deontic effect to strengthen duties which otherwise would have been overridden by the precept requiring us to choose the more probable alternative. At first glance, this runs counter to the assumption that there is a liberty-centred form of probabilism. But although liberty of choice is not by necessity an intended consequence of this strategy, it employs principles of negative freedom and therefore can legitimately be called liberty-centred. Furthermore, ideas and principles have their own life. By using liberty-centred principles for authoritarian purposes, conservative probabilists opened the door to new developments which they could not control for long.

It should also be recognized that a second, laxist species of probabilists also existed. These laxists, or benevolent counsellors of conscience, as they might have thought of themselves, cared a great deal for the worldly good of their clients. In everyday cases of conscience they tried to alleviate the burden of morality in order to render the good life easier for ordinary people (and to attract them to Catholicism by means of this strategy). The good life, of course, had a religious underpinning even for laxists. But their baroque interpretation of this basis differed considerably from the ideas of Aquinas or Aristotle as far as the virtues were concerned. Thus, a laxist understanding of liberty-centred probabilism comes close to libertinage and modern conceptions of negative liberty.

The 'possidentis' and 'lex dubia' principles not only show that probabilism is liberty-centred but also that it is a late and radical offspring of a quasi-judicial conception of ethics. In this conception, moral claims resemble juridical ones. They are external to the aims and preferences of decision-makers. This view of morality differs both from Aristotelian ethics and from Christian models of the good life. Of course, even the most lawyerly of early modern theologians felt bound to take these models into account. Therefore, they had to look for compromises. The rivalry of ethical paradigms in early modern theology was eased by the traditional distinction between counsel and precept. Decision-makers were counselled to follow ideas of the good life. But they were obliged to follow moral precepts, and thus the quasi-judicial view of morality became the prevalent one for hard-nosed casuists.

Today, theologians quite often lament this early modern trend. They welcome the modern de-juridification of moral theology. It is important to bear in mind, however, that the quasi-judicial conception of ethics did not completely disappear. It became part of contractarian or liberal ethical theories and remains at the core of what is often typified as 'modern moral philosophy'. This is a label which critics have attached to certain paradigms of modern ethics. Elizabeth Anscombe, who is to a great extent responsible for sparking the present attack on modern moral philosophy, subsumed Kantianism and utilitarianism under this label.<sup>32</sup> Her conception of modern moral philosophy emphasizes the so-called 'negative' liberty of moral agents to define arbitrary aims for their lives within the limits of moral restrictions. Therefore, morality is seen merely as a set of law-like constraints on action. Anscombe concludes that this conception of morality produces nonsense if the idea of a divine lawgiver who enforces lawful behaviour is removed from ethics. And she assumes that exactly that has happened in modern secular ethics.

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<sup>32</sup> See Anscombe (1997).

My analysis of probabilism shows that modern moral philosophy did not begin with Kant or Bentham. The very properties which Anscombe ascribes to modern moral philosophy were largely present in late scholastic moral thought and especially in probabilism. Moreover, liberty-centred probabilism should be recognized as an ancestor of liberalism. C. B. Macpherson has shown that an early modern conception of possessive individualism lies at the roots of modern liberalism.<sup>33</sup> I have dealt with this subject more fully elsewhere,<sup>34</sup> but from what I have presented so far it should be clear that liberty-centred probabilism captures some of the basic ideas of possessive individualism. The very name of the ‘possidentis’ principle and its background in property law make this connection obvious. It was the scholastics of the sixteenth century, not the English proto-libertarians of the seventeenth century, who first established the model of an individual as possessor of himself. Moreover, the generation of this model did not require seventeenth-century capitalism. All that was needed was the globalization of trade and politics which began at the end of the fifteenth century.

Taking this into account, we can identify several historical waves of hostility towards the kind of quasi-juridical, liberty-centred ethics which we now refer to as modern moral philosophy. One wave culminated at the end of the seventeenth century and the beginning of the eighteenth. Later on, quasi-juridical ideas regained power in ethics when Kant and Bentham came onto the philosophical stage. The recent resurgence of Neo-Aristotelianism marks another turn of the tide. Much could be gained from a closer look at these historical tides; but at present I want to deal with more systematic questions. Since probabilism is an ancestor of modern moral philosophy, the problems it creates cannot be easily shrugged off. They are not just the problems of an arcane doctrine which, after the demise of scholastic casuistry, has gone for good. Instead, probabilism exemplifies certain deep-rooted problems of modern moral philosophy.

The reigning principles in probabilism are the ‘possidentis’ and the ‘lex dubia’. Both insist that the burden of proof for the legitimacy of moral claims or moral blame rests on the side of the claimant. In the light of this premise, the notorious pluralism of moral opinions, so well known already to the scholastics, renders the legitimation of moral restrictions very difficult. Many opponents of probabilism therefore fear moral anarchy if it is considered licit. This observation may help to redirect the critique of modern moral philosophy. Many of its critics concentrate on the absence of a divine lawgiver. It is, however, not convincing to claim that without a divine law giver the concepts of duty and obligation lose their (semantic)

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<sup>33</sup> See Macpherson (1973).

<sup>34</sup> See Schüssler (2002).

meaning. Although traditional definitions of these terms include the notion of a sanctioning actor, a change of meaning may account for their present use. After all, the concept ‘atom’ as used in chemistry does not become meaningless simply because it meant something different when it first came into use. One may instead claim that the retreat of the divine lawgiver from ethics undermines the force of moral imperatives. Rational egoists will see no reason for moral restraint if no external sanctioning power is present. But then, it is not only modern moral philosophy or quasi-juridical ethics which suffer from this defect. It is hard to see how rational egoists could be convinced by ideas of the moral good or virtue. Thus, the question of a sanctioning or restricting power concerns all ethical theories in the same way.

The promotion of moral anarchy in situations of moral uncertainty, on the other hand, seems to be a problem peculiar to modern moral philosophy. And maybe modern moral philosophy might therefore want to dissociate itself from the quasi-juridical treatment of uncertain moral claims embodied by probabilism. It should be clear, however, that this will prove no easy task. Modern moral philosophy assumes that moral norms are restrictions on the aims and life-plans of individuals, which can otherwise be freely chosen. Modern moral philosophy also maintains that in order to bind, moral restrictions have to be convincingly justified. In uncertainty, therefore, the burden of moral proof rests on the claimant. This was also the central tenet of probabilism. As a result, there seem to exist strong ties between probabilism and modern moral philosophy. To ban probabilism from the range of eligible rational approaches to ethical decision-making implies a break with the core assumptions of modern moral philosophy. After such a step, we would have to face the question of why we did not abandon modern moral philosophy altogether. As indicated, some moral philosophers would happily accept this suggestion. But for those who want to retain modern moral philosophy, probabilism harbours a challenge.<sup>35</sup>

## **EQUI-PROBABILISM**

The argument of the last section points ahead to a programme for further inquiry. But before embarking on this programme, we should look once again at the history of probabilism. The notion of a close connection between probabilism and a quasi-juridical view of morality, which I have

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<sup>35</sup> Much more could be said here, and many important details of the relationship between probabilism and modern moral philosophy are absent from my account. This is not, however, the place to raise them.



assumed to exist, seems to be refuted by the historical development of probabilism. After the Thirty Years War a new era of probabilism began. To my mind, the most important features of this new era were the parallel rise of a very radical soft-probabilism and of a very radical doctrine of risk-aversion in decision-making, which soon came to be referred to as tutorism. Soft-probabilists such as Caramuel, who was called the prince of the laxists (*princeps laxistarum*), assumed that it is only the certain truth of a moral opinion which makes it mandatory to embrace it.<sup>36</sup> Late scholastics distinguished between different degrees of certainty. Its weakest form, moral certainty, represented a certainty which was beyond reasonable doubt, but which did not entail logical necessity.<sup>37</sup> The counter-opinion of a morally certain one cannot by any (moral) possibility be probable. Asking for precepts to have moral certainty thus means that decision-makers are free to follow opinions which may be probable and not only clearly probable ones. It was this relaxation of probability in soft-probabilism which attracted most fire from the opponents of probabilism.<sup>38</sup> And the number of opponents rose sharply in the second half of the seventeenth century. Blaise Pascal was merely the most prominent of these critics but not—at least in relation to probabilism—the most philosophically interesting of them.<sup>39</sup>

Pascal and his Jansenist friends inclined towards a radical doctrine at the other end of the laxism-rigorism scale. This doctrine states that in all cases of uncertainty the safer side is to be preferred. Text-books of Catholic moral theology refer to this doctrine as tutorism. It is very important to note that Jansenist tutorism was very different from medieval admonitions to prefer the safer option. In medieval casuistry the safer side had to be

<sup>36</sup> See Caramuel ‘Dialexis’, prodromus, n. 194: ‘In omni causa alias incerta (quaecumque illa sit: aut ad iustitiam, aut ad aliam quacumque virtutem pertineat) manutenendum est, qui possidet, donec superveniat ratio certa & sufficiens; ob quam a possessione expellatur.’ On the extremely interesting Caramuel see Schmutz (2000).

<sup>37</sup> See Lugo ‘Disputationes scholasticae’, disp. I, sec. XIII, § 4, n. 311: ‘Evidentia ergo, seu certitudo moralis tunc invenitur, quando de re aliqua non possumus prudenter non solum dubitare, sed nec etiam formidare.’ Usually three forms of certainty were distinguished by early modern scholastics: metaphysical, physical and moral certainty (see Lugo ‘Disputationes scholasticae’, disp. I, sec. XIII, § 4, n. 311, n. 317; disp. II, sec. I, n. 40–45; Suárez ‘De fide theologica’, disp. VI, sec. V, n. 6). Note that a triadic distinction of certainty was already present in Buridan ‘In Metaphysicen’, lib. II, q. 1, fol. 9 but without the expression *certitudo moralis*. This expression was probably first used by Jean Gerson; see Grosse (1994), p. 83, and Knebel (2000), p. 55.

<sup>38</sup> Soft-probabilism is my term. Contemporary sources speak of authors who accept opinions which have weak claims to probability. This development seems to date back to the 1630s but was made prominent by Francesco Bardi and Tomaso Tamburini in the early 1650s and independently by Juan Caramuel y Lobkowitz. For some basic problems in the approach, see the discussion in Cardenas ‘Crisis theologica’, diss. IV.

<sup>39</sup> See Pascal *Lettres provinciales*.

preferred if the reasons for and against the two sides of a question were on a par. Only then was there proper doubt (*dubium*) in the technical sense of the term in medieval law and in guides for confessors. By contrast, the tutorism of the later seventeenth century called for risk-aversion in all cases of uncertainty. Therefore, it was far more radical than its medieval predecessor. Indeed, it was so radical that it found very few proponents apart from the Jansenists and their followers.<sup>40</sup>

The distinction between modern tutorism and its medieval counterpart is important because doctrines of casuistry are commonly classified according to their increasing levels of laxity. The spectrum begins with tutorism and proceeds via probabiliorism to probabilism and soft-probabilism.<sup>41</sup> This classification scheme reflects the anatomy of probabilism and of other doctrines of moral uncertainty only in the period following the Thirty Years War. In earlier casuistry, strict tutorism and soft-probabilism were virtually non-existent.

If the second half of the seventeenth century saw a radicalization of casuistical doctrines at both ends of the spectrum, a mitigating trend was not missing for long. Tutorism, soft-probabilism and sometimes probabilism itself were accused of being too radical. This critique was not restricted to academic debate, but culminated in powerful political and ecclesiastical attacks. Jansenists and (later) Jesuits, the standard bearers of probabilism and tutorism, faced waves of persecution. At the same time, the *via media*, the traditional Catholic way of compromise, was increasingly urged on decision-makers as the correct manner of dealing with uncertainty. But what did *via media* mean in the context of moral uncertainty? A new doctrine, called equi-probabilism, provided an answer.

Equi-probabilism states that an opinion has to be preferred if it is considerably more probable than its counter-opinion. If the probability of two rival opinions is only slightly different, the less probable opinion may also be chosen. Christoph Rassler seems to have invented equi-probabilism in his *Norma recti* of 1713.<sup>42</sup> He was followed by Eusebius Amort and

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<sup>40</sup> As a concept, radical tutorism is present in some late sixteenth-century classifications (published later) of doctrines for dealing with uncertainty (see Suárez 'De bonitate', d. XII, sec. VI, n. 7.; Azor 'Institutiones morales', lib. II, cap. 16, q. 2). Initially, however, no one seems to have suggested that this extreme position should be applied in practice. A movement towards its application, however, was started by the Jansenists or their supporters. See Arnauld 'Logik', Teil IV, Kap. 16, p. 349, and Rachel 'Examen probabilitatis', cap. 9: 'Prudentia te obligatum esse ostendit, ut tutiorem licet minus probabilem opinionem sequeris'.

<sup>41</sup> See the classical spectrum of doctrines in Döllinger/Reusch (1889: 4). Probabiliorism is a doctrine which demands to follow either the side with the greatest probability or the safest side.

<sup>42</sup> See Rassler *Norma recti*, praefatio: 'Similiter inter ipsos etiam probabilistas aliqui quidem Strictiores sunt, alii vero Remissiores, quorum scilicet illi in opinione minus tuta, ut fas sit

finally in the mid-eighteenth century by Alfonso de Liguori, who became famous for his equi-probabilism. It seems obvious why equi-probabilism is a candidate for a *via media* solution. The doctrine is an attractive blend between probabilism and probabiorism. It gives greater probability its due, while safe-guarding a restricted domain of free choice. All the prominent equi-probabilists recognized the attractiveness of this compromise and explicitly advertised the doctrine as a *via media* approach.<sup>43</sup>

It is important to recognize, however, that the equi-probabilistic compromise abandoned the quasi-juridical perspective in ethics and moral theology. The breaking-point can be found in equi-probabilism's way of quantifying probabilities. Early probabilists measured probability by distinguishing between equal probability and greater probability in pairs of propositions. But equi-probabilism presupposed a quantitative measure of differences in probability. Therefore, it is easy to believe that the probabilistic revolution of the seventeenth century, which led to the modern quantitative theory of probability, played some part in the creation of equi-probabilism. Yet I have not been able to detect any textual basis for this assumption. Equi-probabilists measured degrees of difference in probability in terms of psychic inclination towards assent.<sup>44</sup> This inclination was treated like a kind of quantitative physical force which resulted from

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illam sequi, probabilitatem requirunt saltem aequalem, vel quasi aequalem illi, quam obtinet tutior, ita scilicet, ut operans in neutram illarum notabiliter magis se sentiat inclinari'. Eberle (1951) discusses and supports the contention that Rassler was the inventor of equi-probabilism.

<sup>43</sup> The connection between equi-probabilism and the *via media* approach is evident in the titles of early equi-probabilistic treatises. See the full title of Rassler's treatise: *Norma recti, seu Tractatus theologicus, in quo tum de objectiva, tum etiam de formali Regula Honestatis, ac praecipue de Recto Usu Opinionum probabilium magna accuratione ita disseritur, ut & rigore lenitas, & lenitas rigor salubriter temperetur, ostendoso scilicet, Quod in concursu opinionum utrinque probabilium circa honestatem, vel licentiam alicujus actionis partem minus tutam, seu faventem libertati, fas sit in operando sequi non tunc solum, cum eadem operanti magis probabilis apparet; Sed etiam, quando aequalem praesefert probabilitatem cum opposita tutiore, stante pro lege: non tamen etiam, quando habere videtur notabiliter minorem*. Amort's book is called *Theologia moralis inter rigorem et laxitatem media*; and Liguori wrote a *Breve dissertazione dell' uso moderato dell' opinione probabile*. Pressure to follow the *via media* seem to have increased after the Thirty Years War. Note the changes which Alexander VII forced his former friend Caramuel to make in the second edition of his *Theologia moralis fundamentalis* of 1656. The move to a middle position is explicitly mentioned: 'Editio secunda multo auctior. In qua, reiectis plurimis sententiis extremis (laxis), quas merito nec Veritas, nec Theologorum Prudentia admittit: & coire iussi multis Opinionibus Mediis (benignis) Fundamentales Assertiones ponuntur'; cited Lombraña (1989), p. 270.

<sup>44</sup> See the summary of Rassler's position in Eberle (1951), p. 18, and the passage from the preface to Rassler *Norma recti* cited n. 42 above.

weighing the evidence. No aleatoric reasoning was employed to justify the weighing up.

The idea that probabilism could be based on a psychic force towards assent does not fit well with the older juridical approach to probability. Psychic forces tell us something about an individual's dispositions, but nothing about his entitlement to withhold assent or to act accordingly. One may be normatively entitled to withhold assent, while psychically unable to do so. A full-scale incursion of psychology into normative doctrines of moral decision-making in uncertainty therefore destroys their quasi-juridical character. In consequence, equi-probabilism should not be seen as a final step towards a morally balanced and mature probabilism. It did not supersede older forms of probabilism or render them invalid. Equi-probabilism simply abandoned the strictly quasi-juridical approach in ethics. Thus, it proved to be part of the anti-juridical campaign in ethics, which was successful during much of the eighteenth century but was itself superseded by the new ethics of Bentham and Kant, which again possessed important quasi-juridical features.

## FINAL REMARKS

We have traced some stages in the historical development of probabilism. Its spectacular early career ended with the Thirty Years War. By then, information- and liberty-centred justifications of probabilism had been worked out. After the Thirty Years War a polarization of casuistical doctrines occurred. New radical doctrines of moral decision-making in uncertainty emerged: soft-probabilism arose on the laxist side, and Jansenist tutorism on the rigorist side. The battle between their supporters ended with the victory of a third party. Compromising equi-probabilists advertised a *via media* between the extremes. The rise of equi-probabilism in the eighteenth century marks the end of the quasi-juridical scholastic approach to moral decision-making in uncertainty.

Moral theology never returned to this approach. But secular ethics saw a renaissance of quasi-juridical thinking when modern moral philosophy was formed at the end of the eighteenth century. Bentham and Kant, the founders of utilitarianism and Kantianism, incorporated different aspects of the quasi-juridical approach into their theories. But neither of them did justice to probabilism. Kant's caustic remarks on probabilism show that he despised the doctrine and accused it of fostering moral anarchy.<sup>45</sup> He did

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<sup>45</sup> See Kant AA 6: 4, 2, §4; AA 8, p. 268; Reflexion 7180 in AA 19 and AA27, p. 171: 'Dieser moralische Probabilismus ist ein Mittel, wodurch sich der Mensch betrügt und überredet recht nach Grundsätzen gehandelt zu haben. Es ist nichts ärger und abscheulicher,

not bother looking for stronger arguments against probabilism. But, in fact, it is not so easy to get rid of probabilism. If we accept a quasi-judicial perspective in ethics and the idea that morality merely imposes restrictions on freedom of action, we are not completely free in dealing with uncertain restrictions. The quasi-judicial approach implies that the burden of proof rests on the side of those who want to restrict freedom of action. As long as it remains probable that no valid restriction exists, agents remain free. One crucial question is whether modern moral philosophy can abandon this assumption without betraying its own foundations. Probabilism could thus come back with a vengeance.

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als sich ein falsches Gesetz zu erkünsteln, nach welchem man unter dem Schutz des wahren Gesetzes Böses tun kann.’

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## Casuistry and the Early Modern Paradigm Shift in the Notion of Charity

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The question of how to behave under the torture so as not to incur moral censure is an intriguing test case of moral reasoning. Consider that from the sixteenth to the eighteenth century European penal codes held torture to be an indispensable means of criminal investigation. As for the inquisitor, his only reason to query an extorted confession was its lack of circumstantiality.<sup>1</sup> Thus, the defendant's behaviour under the torture was a point of major concern. Not surprisingly, this posed no trifling problem for Christian casuistry. The crucial circumstance was, of course, the person's supposed innocence. What a confessor should advise the defendant in this case became a topic of dispute in the sixteenth and seventeenth centuries. While a sceptic like Pierre Charron (d. 1603) took it for granted that Seneca was right to assume that torture made the innocent lie,<sup>2</sup> the majority of moral theologians expected the confessor to prevail on the person to persist in telling the truth. If she did not protest her innocence, she sinned *mortally* and, consequently, had to face eternal damnation. This dogma clearly supported the credibility of torture—and there are reports that it did have a tremendous effect on the behaviour of individuals accused in witch trials.<sup>3</sup> A minority of theologians, however, allowed the innocent person to escape further trials by falsely charging herself—'Yes, I am Satan's confederate'—on the grounds that accepting one's own capital punishment would not be followed by eternal damnation as well. In what follows, I shall survey the reasons why the majority held that perseverance in telling the truth was an obligation. Then, I shall inquire into the shift of premises which was the requisite condition for making the minority position possible and thus undermining the credibility of torture. I conclude that something critically important to understanding the development of moral reasoning, as well as criminal law theory,<sup>4</sup> happened in Salamanca during the

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<sup>1</sup> See articles 53–56 of the German penal code of 1532 (Carolina). The twelve articles, which make up the 19th title (*Des Jugemens et Procez verbaux de Question et Torture*) of the French penal code of 1677, do not even mention this reason. See Bornier (1725), pp. 313–27.

<sup>2</sup> Charron (1646), p. 24: '... etenim innocentes mentiri cogit dolor'. See already Aristotle, *Rhet.* 1377A2–7.

<sup>3</sup> Spee (1632), pp. 132–33.

<sup>4</sup> See Seelmann (2001), with further literature.



sixteenth century. The great American historian of philosophy John P. Doyle, after having finished a historical survey on this topic, recently concluded: ‘The often despised casuistry of late Scholastic moral treatises may deserve another look.’<sup>5</sup> Casuistry was not *just* casuistry, but very often a stage for the clash of principles.

## I

To begin with, then, what was the reason for regarding the innocent person’s self-incrimination as a mortal sin worthy of punishment by eternal damnation? There were different arguments, which need to be carefully distinguished, since many theologians endorsed one, while rejecting the other.

The first argument was advanced by the Dominican Cardinal Cajetan in 1517: no one is allowed to act in a way detrimental to her reputation, for detracting from one’s own reputation is equivalent to suicide. Why is this so? There are two reasons. Firstly, self-incrimination is contrary to charity. One is obliged by charity not to make worse use of oneself than of another person. With respect to another person, however, it would constitute murdering her reputation. Secondly, self-incrimination is contrary to justice, since everyone bears an obligation towards the community to which she belongs. Thus, a person who commits suicide is denied an honest burial on the grounds that she injured her political community. In the same way, the spiritual community of the Church is injured if one of its members detracts from it. Once it is acknowledged that self-incrimination is a mortal sin, the particular circumstance, that is, torture, cannot make a difference, since if it did, any breach of the Ten Commandments might prove to be a venial sin.<sup>6</sup>

Although Cajetan’s communitarianism must have had the strongest possible appeal for Thomists,<sup>7</sup> it was precisely this part of his argument which was bluntly rejected by another Dominican in 1554. This was, indeed, a revolution. Domingo de Soto (d. 1560) was the leader of the famous School of Salamanca; and forty years later we are told by the Jesuit Luis Molina (d. 1600) that the principle behind Soto’s rejection had

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<sup>5</sup> Doyle (1997), p. 111. The two Thomists referred to are Cardinal Cajetan and Francisco de Vitoria.

<sup>6</sup> Vio (1897), p. 135: In Iam–IIae q. 73 art. 2; Vio (1537), s.v. ‘restitutionis casus’. Similarly Mair (1509), f. 91ra.

<sup>7</sup> See Thomas Aquinas: *Summa theologiae* II–II q. 64 a. 5; Ioannes Capreolus (1906), p. 499b (quoting Pierre de la Palu, O.P.).

become a commonplace among theologians.<sup>8</sup> This principle was that every person is the master or proprietor of her own reputation: ‘Homo est dominus suae famae.’ In other words, as Soto and his followers put it: my reputation does not belong to the same order as my life, so that self-incrimination is not equivalent to suicide; instead, my reputation is simply part of my property. It is something external. Therefore, every person may rightly dispose of her reputation in the same way that she disposes of her money.<sup>9</sup> Soto and the Jesuit Leonard Lessius (d. 1623) did not fail to apply this principle to the issue at stake: if I incriminate myself in order to shorten the duration of my pains, I do not commit a mortal sin. Lessius even dropped a qualification, found in Soto, Diego de Covarruvias (d. 1577) and Pedro de Aragón (d. 1592), regarding accusations of so-called ‘enormous’ crimes such heresy.<sup>10</sup> According to the great Jesuit moralists—Lessius, Molina, Juan de Lugo (d. 1660)<sup>11</sup>—there is no exception to the rule that one may dispose of one’s own reputation without running the risk of mortal sin. An interesting corollary to this principle can be observed in the Jesuit Lessius as well as in several Thomists. It states that if a family’s daughter has consented to the loss of her virginity, the seducer is not liable, since the girl had the right to dispose of her own body: ‘Puella est domina sui corporis.’<sup>12</sup> It was not the Spaniards who found this tenet shocking. Rather, it was left to the French philosopher Pascal to be upset by it and to

<sup>8</sup> Molina (1733), p. 373a: ‘Communis ... sententia... affirmat, hominem dominum esse sui honoris ac famae, quae omnino est amplectenda.’ In which sense somebody is said to be the master of her reputation, is spelled out by Suárez (1856-78) 11, 557b/58a (*De iustitia Dei* 3.21).

<sup>9</sup> Soto (1573), ff. 83<sup>va</sup>–84<sup>ra</sup>: ‘Homo dominium obtinet honoris sui et famae, nempe ut possit illis veluti pecuniis uti... Scio equidem multos, etiam ex nostris, ut Caietanus, diversam... sequi sententiam, semper mihi tamen haec gratius arrisit... Hunc articulum... adhibere operaepretium duximus, qui esset plurium aliorum locorum huius nostri operis fundamentum.’; *ibid.*, f. 83<sup>va</sup>: ‘Opinio ergo nostrae contraria [i.e. Caietani] collocat honorem et famam in ordine vitae, nos autem in ordine bonorum exteriorum. Fundamentum opinionis huius [sc. Caietani] est, quod perinde censet de hominis fama atque de eius vita...’; *ibid.*, f. 140<sup>va</sup>: ‘At quamvis non sim nescius hanc vulgo opinionem veridicam existimari, eius tamen fundamenti demonstratio adhuc semper desideratur, quia nusquam probatur.’ Covarruvias (1588), II, p. 13a (*Variarum resolutionum* 1.2.8): ‘Ita liberum arbitrium habet homo super famam, ac super pecuniam, aliasque res exteriores... Nec par ratio est vitae et famae, nam propriae vitae nemo dominus est...’ Landau (2001), pp. 409ff., has highlighted how important and influential an author Covarruvias was.

<sup>10</sup> Soto (1573), f. 140<sup>vb</sup>; Aragón (1590), p. 143b. As for the latter, see Barrientos García (1978), pp. 247ff.

<sup>11</sup> Lugo (1642), pp. 393b–394a (14.10.169–70).

<sup>12</sup> Lessius (1617), 87a/b (2.10.1.9). Similarly, Covarruvias (1588), I, p. 509b (*In Regulam Peccatum* de reg. iur. lib. 6 relectio). See also Thomas Aquinas: *IV Sent.* dist. 28 q. 1 art. 3 ad 1.

adduce it as evidence of what he taught his contemporaries to abhor as ‘Jesuit morals’.<sup>13</sup>

Back to torture. Even thinkers who readily granted Soto’s premise, however, objected to his conclusion for different reasons. In order to see why this was so, we must distinguish between two cases: in one case, the person’s false self-incrimination might save her life; in the other, capital punishment, that is, death, would result. Soto and Lessius explicitly discussed the second case.<sup>14</sup>

Cajetan’s point with regard to the first case was restated in the following way by Gregory of Valencia (d. 1603). Every person, to be sure, enjoys property rights in her own reputation. Self-detraction, however, remains morally bad. The idea is that our reputation in the minds of other people is to be regarded as one of the main external motives for the exercise of virtue. To rob oneself of this stimulus is, therefore, blameworthy, since this contradicts the charity which one owes to oneself.

Molina, in turn, thought that Cajetan was mistaken when he described self-detraction as a sin against charity. This would be true, and hence the preservation of my own reputation would be a duty towards myself, if I were obliged not to use myself in a worse manner than I use another person, that is, if charity were centred on the obligation which I bear towards myself. This, however, is not true. Since I must not care primarily about myself, self-detraction cannot be considered a sin against charity.<sup>15</sup> This is a major point which needs some further comment and to which I shall return shortly.

With regard to the first case, Molina was almost alone in his day in rejecting the conclusion of Soto and Lessius. In his view, I am, in a very strict sense, not allowed to lie. Molina showed himself to be a tough critic of ethical consequentialism. In his unqualified rejection of lying, he was a strong Augustinian and a forerunner of Kant, whose famous rejection of all

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<sup>13</sup> See Knebel (1991), p. 163. Pascal’s attack was rejected by an anonymus Jesuit: ‘Adversus anonymum opusculum, in quo LIII oppositionum capita contra Theologiam moralem Iesuitarum exponuntur et refutantur’, contained in Fabri (1672), p. 427b; B. Stubrock: ‘Notae in notas Wilhelmi Wendrockii ad Ludovici Montaltii litteras’, in *ibid.*, pp. 529b–30a.

<sup>14</sup> Lessius (1617), p. 95b (2.11.7.41): ‘Dico Quinto, Ad vitanda tormenta valde gravia, quibus merito possis celerem mortem praeoptare, non peccas mortifere, si crimen falsum tibi imponas, quamvis certo ob id sis morte plectendus...; favet enim multis miseris, qui alioquin non solum corpore, sed etiam animâ perirent...’ Spee (1632), pp. 198–99: ‘... inprimis negant optimi Theologi mortale esse, si quis ad evitanda gravia tormenta sibi ipsi falsum crimen imponat, propter quod morte plectendus sit. Ratio: quia dominus suae famae est, nec mentitur perniciose, cum non teneatur tantis tormentis, quae ipsi sunt morte graviora, vitam conservare: unde nec postea tenetur revocare, cum non retractando nemini faciat iniuriam. Vide Lessium, et quos citat lib. 2 *de Iust. et Iur.* cap. 11 dub. 7 n. 41.’

<sup>15</sup> Molina (1733), p. 467b.

casuistry would lead him to infer that I may not lie, even if I were questioned by a killer.<sup>16</sup>

With regard to the second case, Molina combined his Augustinian move with another consideration: I am not allowed to kill myself, since suicide is a mortal sin. The result was, as he himself stated in so many words, that I am not allowed to give in. Even the cruellest torture does not provide any justification for false self-incrimination. I am obliged to revoke every act of confession, even repeatedly, thus making myself a martyr to my own innocence. The confessor's business is to prevail on the defendant to act accordingly.

Molina's harsh position shows that, quite apart from the issue of reputation, the crucial taboo in the reasoning of the Christian natural law tradition around 1600 was not to be guilty of one's own death, either directly or indirectly. According to Molina, this taboo would be violated if I, as an innocent person, were not ready to suffer *all* the pains which a defendant who persists in denying her guilt can expect. Not only Molina, but also Soto and Lessius, explicitly stated that, whether or not I am the master of my own reputation, I am certainly *not* the master of my own life: 'Homo non est dominus suae vitae.' If I am not the master of my life, but rather God is, then I am obliged to preserve my life. I am the custodian of my life.<sup>17</sup> Indeed, the hostile reaction to Cajetan was partly due to the fact that his arguments against self-incrimination seemed to be prejudicial to self-preservation. Even if I, argued Lessius, were *not* the master of my reputation, I would be obliged to subordinate the preservation of my reputation to the preservation of my life, since I may possibly regain the former, but not the latter.

If my autonomy is limited by the duty to preserve my life, the question arises: to what extent exactly is it limited? As a means of clarifying this point, a favourite topic of moralists since Thomas Aquinas was the casuistry of what somebody facing capital punishment is expected to do.<sup>18</sup> Godfrey of Fontaines (d. 1306) stated that, not only must a murderer *not* be expected to accuse himself, he is not even allowed to accuse himself.<sup>19</sup> Granted, however, that there is a difference between the guilty and the innocent, an effort was made to preserve this difference by saying that the guilty *may* say the truth, while the innocent *must* say it.<sup>20</sup> A related question

<sup>16</sup> For Kant on the background of the Protestant tradition, see Kittsteiner (1988).

<sup>17</sup> Soto (1573), f. 83<sup>ra-b</sup>: 'Homo non est suae vitae dominus... Nullam ob causam, quovis colore censeatur iusta, potest se vitâ privare... Constitutus ergo iure naturali ac divino homo est suae vitae custos, porro quam sustentare tenetur, non autem dominus.'

<sup>18</sup> Thomas Aquinas, *Summa theologica* IIa-IIae q. 69.

<sup>19</sup> Godefridus de Fontibus (1932), V, pp. 132–134 (*Quodl.* XII q. 16): 'Utrum homicida interrogatus a iudice debeat veritatem confiteri dato quod sit ignotus.'

<sup>20</sup> Lugo (1642), pp. 395a–397a (14.10.176–81).

was: do prisoners, especially those sentenced to death, have a moral right to escape? Indeed, did they have an obligation to do so?<sup>21</sup> From the thirteenth to the sixteenth century, both questions were for the most part answered in the affirmative. Some members of the School of Salamanca went so far as not only to permit a jailbreak, but to worry about how to excuse a prisoner who, after having escaped, returned to jail.<sup>22</sup> If even convicted murderers were in some way placed under an obligation to save their lives, one can imagine that the most indulgent teachers of natural law were not inclined to discharge an innocent person from this obligation easily. According to Lessius, I am therefore obliged to try hard to protect my life when under torture. The taboo would be violated if I chose death over *light* pains, that is, it would be a mortal sin to give up my life without sufficient reason to do so.

There *might*, after all, be sufficient reason to do so.<sup>23</sup> This was the revolutionary message of Soto, Lessius, Gregory of Valencia, Adam Tanner, the famous Friedrich von Spee, Tommaso Tamburini and a great many more professors of casuistry up to the eighteenth century, who would become notorious on account of their ‘Jesuit morals’.<sup>24</sup> I say ‘revolutionary’ since the credibility of evidence produced by torture would be undermined and could not be upheld if the pains of the tortured person were accepted as a valid excuse for their false self-incrimination. While the divide between life and reputation, though interesting enough, proved to be insufficient to discredit torture—as is shown by the example of Molina—the crucial idea for achieving this goal was that the heterogeneity of life and reputation had to be subordinated to a superior consideration which would make it possible for me to give up my life in order to avoid severe pain. If torture is to be discredited, I must not only be allowed to place my

<sup>21</sup> Doyle (1997), p. 113.

<sup>22</sup> Covarruvias (1588), II, pp. 12a–14a (*Variarum resolutionum* 1.2.7–8).

<sup>23</sup> Soto (1573), f. 140<sup>vb</sup>: ‘Etiam si mortis periculum immineat, non tenetur homo tanto cruciatu vitam servare, sed potest brevior sibi permittere mortem, ut tam acerbam effugiat.’ Lessius (1617), p. 96a (2.11.7.42): ‘.... crimen fatendo, brevi morte longam mortem redimit, vel potius multas mortes unica simplici commutat: talia enim tormenta pati, est longa quadam et multiplici morte mori’. This opinion was eventually endorsed by the Roman Inquisition: ‘Ad evitanda gravia tormenta reus potest sibi imponere falsum crimen, sine noxa mortalis culpae, etsi inde morte plectendus sit. *Ita Theologi passim*’: ‘Instructio circa Iudicia Sagarum Iudicibus eorumque Consiliariis accommodata, Romae primum 1657, iterum pro bono publico Cracoviae 1670 permissu Superiorum edita’, f.20<sup>v</sup>. This instruction originated from 1625. See Decker (2002), pp. 463–64, 471–73.

<sup>24</sup> See, e.g., Gonet (1681), p. 282b: ‘Haec assertio [sc. ad tormenta damnaque gravia vitanda posse quemlibet sibi ipsum falsum crimen imponere, etiamsi mors sit sibi secutura] manifestum errorem continet, et humanae menti incutit horrorem.’ The proposition ‘Quod liceat ad evitandam mortem vel gravia damna falsum sibi crimen imponere, ac se ipsum gladio linguae perimere’ was one of the subjects under discussion in the quarrels about morality which went on in the mid-eighteenth century. See Mannhart (1759), pp. 240–41.

life before my reputation, but I must also be allowed to place the ending of my pain before both my life and my reputation. Moreover, the act of lying which necessarily occurs in these circumstances must not be regarded as a moral obstacle. My lie must be taken to be an innocent one. That is how most members of the School of Salamanca, in fact, took it.<sup>25</sup> So, to sum up, there was only one way for the use of torture to be discredited within the framework of Christian theology: by qualifying the duty of self-preservation. Such a qualification was precisely the achievement of so-called Jesuit morality, since traditional scholastic ethics had opposed every move to weaken the claims of self-preservation. Even in relation to Jesuit authors, the issue of the prehistory of human rights is often addressed in terms of the rights of those in subjection vis-à-vis those who have dominion over them, in terms of the recognition of a natural right to life and of a right to self-defence—in short, in terms of the expansion of individual self-assertion.<sup>26</sup> I object to this view: it is part of the story, but not the whole story. The whole story must include the late scholastic endeavour to overcome the ethics of self-assertion.

In order to substantiate this claim, I shall now turn to what might seem the main objection to it: the incontestable part which Christian charity played in scholastic ethics. Did not charity from the very outset counter the claims of self-assertion? Did not charity recommend instead self-denial? Did not even Molina reject Cajetan's emphasis on the claims of charity in order to block self-incrimination? What I shall argue for is an early modern paradigm shift in the notion of charity—a shift which was closely connected to the casuistry of the correct behaviour under torture.

## II

We might assume that there is an eternal tension between the claims of self-preservation and the claims of Christian charity. This assumption would, however, be mistaken. If we examine theological systems from, say, St Bonaventure and Thomas Aquinas up to the seventeenth century, it turns out that theologians did not worry at all about how to reconcile these respective claims. Quite the contrary. Self-preservation was regarded as the first duty to be deduced from the virtue of charity. Charity was incorporated into the tradition of natural right: our natural inclination to

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<sup>25</sup> Covarruvias (1588), II, p. 13b: 'Quod si haec infamatio fiat cum mendacio, erit veniale peccatum, quia saltem est mendacium officiosum, quod omnes fatentur...' See also Soto (1573), f. 140<sup>vb</sup>.

<sup>26</sup> See, e.g., Doyle (2001), pp. 117ff.

self-preservation is not only a rational inclination,<sup>27</sup> it is, as such, in complete harmony with Christian charity.<sup>28</sup> In order to understand the importance of this tenet, we have to bear in mind that scholastic treatises on charity did not confine themselves to dealing with the most important Christian virtue. Charity, our love for God, was not regarded merely as one virtue among others. Rather, the role which it played was also a formal one. According to Thomas Aquinas, charity is a certain attitude, a *modus agendi*, which supervenes on actions of quite different types and which confers on them their moral value.<sup>29</sup> Treatises on charity, therefore, were the stage for major decisions.

In seventeenth-century Catholic theology two competing paradigms of charity clashed: the traditional natural law paradigm and another one which spelled out the implications of Christ's Sermon on the Mount. And this clash occurred within the Jesuit Order itself. If we fail to see this, we will be unable to account for a good deal of the trouble which seventeenth-century Catholicism got into.

Francisco Suárez (d. 1617) is a representative example of the natural law paradigm. According to Suárez, the *ordo caritatis* depends on the obligation which I bear towards myself. My first duty is to myself.<sup>30</sup> The only point left open for discussion is whether this holds true generally, so that other individuals are subservient even in my striving for temporal happiness, or whether it holds true only in relation to my striving for eternal happiness. The former position was that of Gregory of Valencia,<sup>31</sup>

<sup>27</sup> Godefridus de Fontibus (1932), IV, p. 105 (*Quodl.* VIII q. 11): '... unusquisque tenetur iure naturae vitam suam sustentare', quoted in Virpi Mäkinen's contribution to this volume. Soto (1573), f. 113<sup>rb-vr</sup>: 'Quando dictum est inclinationem naturalem ad vitae conservationem ferri, atque eius amorem esse naturalem, intelligitur *secundum rationem*: ob idque facere contra illam inclinationem peccatum est, non solum inhumanum, verum et contra totum fundamentum naturae.'

<sup>28</sup> Thomas Aquinas, *Summa theologiae* II-II q. 26 a. 4c: 'Homo ex charitate debet magis seipsum diligere, quam proximum.' Bonaventura (1887), pp. 644–645: 'Dicendum, quod secundum ordinem caritatis amor salutis propriae praeponendus est amori salutis alienae... secundum etiam quod consonat et dicitur iudicium rationis rectae et instinctus naturae... Ad illud quod obiicitur, quod amor caritatis superveniens tollit curvitatē naturae, dicendum, quod quaedam est curvitas naturae, quae sonat in vitium et corruptionem; quaedam, quae respicit ipsius naturae intrinsicam inclinationem. Prima est, qua quis diligit se plus quam Deum; secunda est, qua quis diligit se plus quam proximum.' Godefridus de Fontibus (1932), V, pp. 132–134: '... propter amorem naturalem quem habet unusquisque ad seipsum, cui etiam amor caritatis non repugnat, tenetur quilibet se conservare in esse quantum potest sine iniuria alterius.'

<sup>29</sup> Thomas Aquinas, *Summa theol.* I-II q. 109 a. 4.

<sup>30</sup> Suárez (1856-78) 12, p. 713b (*De charitate* 9.3.7): 'Dicendum est ergo, caeteris paribus, non esse dubium, quin secundum ordinem caritatis sit melius subvenire sibi quam aliis.' From a lecture delivered in Rome in 1584.

<sup>31</sup> Gregory of Valencia (1603), pp. 597B–599D: 'Secundum *bona spiritualia*, quae quis et sibi et proximo teneatur velle ex charitate, magis debet quisque seipsum diligere, quam

the latter of Soto.<sup>32</sup> By making self-preservation a paramount duty, the natural law paradigm appears two-faced. On the one hand, it favours communist ideas, for in cases of emergency, property rights are cancelled.<sup>33</sup> On the other hand, it favours what would otherwise appear to be pure egoism. Suppose, for instance, my creditor and I are starving, and I still happen to have some bread which he lent me. Then, I am neither obliged to return it to him, nor permitted to eat it myself. Rather, I am *obliged* to eat it myself: *Beati possidentes!*<sup>34</sup>

In contrast to this tradition, the new spirituality advanced by François de Sales (d. 1622) and strongly promoted by the Jesuit moralist Louis Bourdaloue (d. 1704) defined charity in terms of ‘disinterestedness’.<sup>35</sup> While the sacrifice of my life in the natural law paradigm appears to be

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quemvis proximum... Secundum *bona temporalia*, quae quis sibi et proximo teneatur velle et etiam aequalia inter se sint, semper tenetur quis magis seipsum diligere, quam quemlibet proximum sibi parem aut se inferiorem... Nam quisque tenetur se diligere secundum haec etiam bona, quatenus illorum adminiculo potest ipse consequi beatitudinem, cuius est capax; proximum autem quatenus in hoc ipso est ei quadam societate coniunctus: Sed multo maior ratio est illa diligendi seipsum, quoad hoc etiam bona, quam illa altera ratio diligendi proximum, cum arctius sit vinculum unitas et identitas, quam unio seu coniunctio.’ Similarly Oviedo (1651), p. 313a.

<sup>32</sup> Soto (1573), f. 114<sup>va</sup>: ‘Ordo charitatis qua homo tenetur non plus proximum quam seipsum diligere, attendendus est secundum vitam spiritualem..., sed quantum ad temporalia non est ille ordo necessarius.’

<sup>33</sup> See Deuringer (1959), pp. 135ff. Aragón (1625), p. 458: ‘Conservatio propriae vitae est de iure naturali, appropriatio autem rerum est facta iure humano, ergo quando appropriatio rerum obstat conservationi vitae, non est observanda; atque ex consequenti, qui in extrema necessitate sui vel alterius accipit necessarium, non accipit alienum, sed commune, quod per acceptionem fit proprium; et sic non tenetur illud restituere, adhuc si perveniat ad pinguorem fortunam.’ Sbogar (1725), p. 243a–b: ‘Ius naturale indulget et praecipit conservationem sui omni meliori modo quo fieri potest; ergo... Caius non peccavit non reddendo [sc. depositum]. Tum quia ius naturale debet praeferrri iuri civili; sed restituere in hac circumstantia est tantum de iure civili et gentium, non restituere ad conservandam propriam vitam est de iure naturali, quia in extrema necessitate desinit res esse propria alicuius, sed fit communis ac primi occupantis...’

<sup>34</sup> Aragón (1625), p. 438: ‘Si ego et creditor simul veniamus in extremam necessitatem, tunc non teneor dare panem creditori, sed mihi. Hanc conclusionem tenet Caietanus infra quaest. 62 art. 5 ... Et probatur... In extrema necessitate melior est conditio possidentis.’

<sup>35</sup> Bourdaloue (1871), pp. 293–301: ‘Quelle est la véritable charité? c’est celle qui ne cherche point ses intérêts propres: *Charitas non quaerit quae sua sunt* [1. Cor. 13:5] ... Le coeur de l’homme suit naturellement l’intérêt... Le Sauveur du monde... nous a fait un commandement de charité bien différent de celui que la loi naturelle et divine imposait à tous les hommes... Et quel a été ce caractère distinctif?... Ce caractère a été le désintéressement... Parmi les préceptes de la charité exprimés dans le Decalogue, Dieu ne fit aucune mention de l’amour de nous-mêmes, quoique absolument un amour de nous-mêmes honnête et réglé soit un précepte... de droit naturel et de droit divin... Bien loin de nous exciter à avoir de l’amour pour nous-mêmes, il pensait dès lors à nous faire dans la loi de grâce ce grand commandement, de nous haïr et de nous renoncer nous-mêmes.’ See also Sales (1895), p. 64f.



precarious at best, the same action would be praised in the Gospel paradigm.<sup>36</sup> The clash of the two paradigms became notorious in the quarrel over *amour pur* at the end of the century, when Bossuet championed the natural law paradigm and Fénelon the Gospel paradigm of charity.

Now, my thesis is that what has been labelled ‘Jesuit morals’ is nothing other than a variant of the natural law paradigm, after it was obscured by the success of the Gospel paradigm of charity. For two variants of the natural law paradigm can be clearly distinguished: a tough account and a soft one. According to the tough account, self-denial is a mortal sin against charity. The soft account considers this to be an exaggeration. The soft account is the doctrine which was developed in sixteenth-century Salamanca and which led to ‘Jesuit morals’. In order to grasp the features of the soft account, we have to turn first to the tough account.

Two Dominicans, Durandus a Sancto Porciano (Durand de Saint Pourçain) (d. 1334) and Petrus Paludanus (Petrus de Palude; Pierre de La Palu) (d. 1342), were its champions. They rejected the idea that I might be permitted to sacrifice my life for the welfare of the community. As the welfare of the community includes private welfare, I may *risk* my life, but only on the proviso that I have a chance to escape. There is absolutely no obligation to die for the community. On the contrary, the preservation of the community depends on the survival of the individuals which belong to it.<sup>37</sup> In the later Middle Ages Durandus’s position became pervasive and continued to be regarded as the majority opinion until as late as the end of

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<sup>36</sup> Bourdaloue (1871), p. 298a: ‘Après tout est-il du précepte de la charité de renoncer positivement à toute sorte d’intérêt? Oui, Chrétiens... Renoncer à sa propre vie,... il y a une étroite obligation de le faire pour la charité... Nous devons aussi être prêts de donner notre vie pour nos frères. Telle est la résolution du Saint-Esprit même, où il n’y a ni équivoque ni obscurité. Il ne dit pas que nous le pouvons, il dit que nous le devons: *Et nos debemus* [Joan. 8; 16]...’

<sup>37</sup> Durandus a S. Portiano (1571), f. 341<sup>r-v</sup> (IV *Sent.* dist. 17 q. 6): ‘Quilibet homo tenetur plus diligere seipsum quam alium hominem vel quamcunque communitatem in qua ipse non includitur... Et ideo quamvis fortis debeat eligere fortiter pugnare pro defensione reipublicae non obstantibus periculis, quae sunt in factis bellicis, non tamen debet eligere mori, sed oppositum. Et si mors contingat, debet ei displicere tanquam nociva sibi et reipublicae. Et confirmatur, quia simile est de uno cive et de quolibet alio, et de omnibus simul. Sed nihil est dictu quod omnes cives debeant eligere mortem pro defensione reipublicae, quia cum respublica principaliter consistat in vita civium, mors omnium eorum non esset conservatio reipublicae, sed totalis subversio, et mors cuiuslibet est eius diminutio. Unde mors civium unius vel omnium non promovet Rempubicam nec conservat, sed subvertit vel minuit... Verum est, quod debet se exponere periculo de quo verisimiliter praesumitur evasio possibilis et defensio reipublicae. Quod autem propter hoc debeat eligi mors, non est verum....’ This position was endorsed by Valencia (1603), p. 601A.

the sixteenth century;<sup>38</sup> even by around 1650 it had by no means disappeared.<sup>39</sup> Our information concerning its success is all the more credible given that even the champions of the soft account were not reluctant to preach tough egoism in relation to spiritual welfare. Suppose I had to make a choice: either I will be saved and 100 people will go to hell, or vice versa. In this case, I would be obliged—obliged *by charity*—to choose my own salvation.<sup>40</sup> In most cases, this position was described as the consequence of the rejection of consequentialism: even if the salvation of the whole world depended on my committing a venial sin, I must not commit this venial sin.<sup>41</sup> Nevertheless, there was a deeper motive. It is revealed in the reaction to Ioannes Capreolus (d. 1444), who was, as far as I can tell, the only prominent dissenter in the late Middle Ages.<sup>42</sup> Gregory of Valencia is quite explicit: in his view, combining charity and self-destruction was simply inconceivable.<sup>43</sup> So it would not be sufficient to

<sup>38</sup> Aragón (1625), p. 399a: ‘Propter haec argumenta Paludanus in 4. d. 15 q. 1 aperte dicit nullo modo esse licitum negligere propriam vitam pro conservanda vita proximi: *quem communiter sequitur fere maior pars Neotericorum.*’ I was unable to verify this 1584 reference to de Palude; but see perhaps Petrus de Palude (1493), f. 80<sup>vb</sup> (IV *Sent.* dist. 17 q. 1 a. 6): ‘Si quis autem non credens vitam aliam, ubi non tenetur se exponere morti, ne consentiret peccato gravi, eligeret mortem sustinere..., peccaret.’

<sup>39</sup> Half a century later, however, things look different, due to the success of the School of Salamanca. Granado (1629), p. 406: ‘... Aragon... ait hanc opinionem placere maiori fere parti recentiorum, sed certe plerique, quos ego legerim, oppositum sentiunt.’ Oviedo (1651), p. 314a, still, however, bears witness to it: ‘Pro utraque parte sunt plures et gravis notae Doctores.’ The tough variant seems to have been endorsed by, e.g., Cardinal Bellarmine and the highly regarded Martín de Azpilcueta.

<sup>40</sup> Arriaga (1649), p. 535: ‘Demus hunc casum, quod vel ego solus salvandus essem et centum alii perituri, vel hi e contrario salvandi et ego solus periturus..., si in mea potestate esset eligere unum ex his duobus, tenerer omnino citius meam salutem eligere quam illorum centum, nec deberem curare illud maius gaudium Beatorum.’

<sup>41</sup> Petrus Tartaretus (1583), III, p. 195b: ‘In infinitum autem teneor me diligere, quia teneor me plus diligere, quam infinitos homines, si essent, quia si diceretur mihi, vel infiniti homines damnabuntur, vel peccabis, non debeo peccare, quia plus debeo me diligere, quam alios.’ These Sorbonne lectures were completed in 1506. Soto (1573), f. 114<sup>ra</sup>: ‘Nullatenus licet aut vitam spiritualem... amittere, aut minimam eius iacturam facere pro salute spirituali totius mundi... Memini enim quosdam hoc in dubium revocare, nihilominus conclusio adeo per se nota est, ut contraria manifestam complicitet repugnantiam... Immo et minimum veniale peccatum licere admittere pro salute spirituali totius mundi, contradictionem involvit.’

<sup>42</sup> Ioannes Capreolus (1905), pp. 370–71: ‘Quilibet enim debet potius velle quod tota natura humana vel tota civitas electorum habeat gratiam et gloriam, sine ipso, quam si ipse solus haberet gratiam et gloriam; dum tamen sua privatio non veniret ex culpa sua, quia in hoc derogaretur universaliori bono, scilicet Deo... Utrum autem deberet quis velle potius se solum Deum offendere, quam si tota residua communitas humana Deum offenderet? - dicitur quod non.’

<sup>43</sup> Alioqui tenderet inclinatio charitatis in destructionem, et non in perfectionem sui ipsius... Repugnaret hoc inclinationi et naturae charitatis, quae tamquam fundamentum sui praesupponit in animo hominis rectam habitudinem et ordinem erga beatitudinem tanquam

describe Durandus's position as a sort of individualism. Granted that his individualism provided a more consistent reading of the natural law paradigm of charity than Cajetan's communitarianism, the core of the problem still remained: how was it possible to explain the overwhelming self-evidence of the natural law paradigm of charity within a Christian context?

I cannot deal with this subject adequately here. Taking into consideration certain passages from St Augustine about the priority of self-love,<sup>44</sup> we might suppose that we are dealing with the *Entmythologisierung* of the ethics of heroism which flourished in pagan culture: *bene est pro patria* (or *pro amico*) *mori*. The scholastic reaction to the attempted restoration of this type of ethics is telling. About 1500, such a renaissance was championed by some theologians at the Sorbonne, who held that if we had to make a choice between death and a life of ignominy, we should choose death. According to Petrus Tartaretus, this holds true even under the pagan premise that there is nothing to be hoped for beyond the happiness of our civic life. A short, glorious moment is preferable to the always uncertain expectation of a long life of ignominy.<sup>45</sup> Durandus for his part

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erga finem ultimum, quem possit aliquis assequi, et ad quem teneatur etiam contendere... (Valencia 1603, 598, against Capreolus). - That's the issue at stake in the quarrel about the *amour pur*: 'Le sacrifice conditionnel du salut semble à Bossuet un pur galimatias, pour Fénelon c'est la pierre de touche même de l'authenticité de son amour' (Hillenaar 1967, 194).

<sup>44</sup> Augustine, *De mendacio liber unus*, in *PL*, ed. Migne XLV, col. 494: 'Si pro illius [sc. proximi] temporali vita suam ipsam temporalem perdat, non est iam diligere sicut seipsum, sed plus quam seipsum, quod sanae doctrinae regulam excedit.' Holl (1928), p. 87: 'Wenn er das Gebot [sc. der Nächstenliebe] näher auslegt, schiebt er ständig die Selbstliebe zwischen die Gottes- und Nächstenliebe ein. Sie ist der Beziehungspunkt, von dem aus die beiden andern Stücke ihre innere Verbindung und ihr Maß erhalten... Das innerste Wesen der Nächstenliebe, ihr Sinn als Wille zur selbstaufopfernden Gemeinschaft, blieb ihm verborgen.'

<sup>45</sup> Petrus Tartaretus (1583), p. 385a: 'Unusquisque secundum rectam rationem magis debet appetere mori, quam turpiter vivere... Tenendo quod anima est mortalis, difficultas est, an secundum rectam rationem quis posset eligere mortem pro defensione reipublicae. Ad istud respondetur, quod sic, et ponitur talis propositio: Statuta mortalitate animae, credendo sc. animam esse mortalem, quilibet secundum rectam rationem tenetur exponere vitam pro defensione reipublicae. Istud sic probatur... Felicitas politica est bene et virtualiter et moraliter agere. Tunc sic: Quilibet secundum rectam rationem tenetur exponere vitam suam ad habendum actum perfectissimum felicitatis politicae; sed velle exponere vitam suam pro defensione reipublicae, ubi res publica alias non posset salvari, est facere actum perfectissimum felicitatis politicae; ergo exponenda est vita etc. Et quando dicis, exercendo istum actum moritur, dico quod verum est, et gloriosissime moritur. Licet iste actus gloriosus sit quasi momentaneus, tamen melius est illi istum actum habere, quam fugam turpem in longa vita, de qua longa vita unusquisque dubius est. Ex quo sequitur quod iste actus sic gloriosus est magis eligendus, quam vita turpis. Et sequitur ultra qualiter bonum publicum est praefendum bono particulari, et sic praefendum, quod totum bonum

had maintained that, from the pagan point of view, it is unreasonable to choose death over life, since death would simply be non-existence.<sup>46</sup> To *be* is always better than not to be. Yet from what perspective does this assessment seem plausible? A nice distinction found in Paduan Aristotelianism provides us with a hint. Virtue is, of course, preferable to existence in some respects: death, for instance, is *morally* better than a life of ignominy. *Physically*, however, existence is preferable to virtue, since the former is a substance, the latter merely an accident. In other words, from an ontological point of view, physical being takes first place, while the ethical point of view is in itself secondary.<sup>47</sup> Aristotelian theologians stuck to the ontological point of view. They opposed humanism and, later on, the Gospel paradigm of charity because they perceived a blurring of boundaries here. Therefore, it was not individualism, but rather the notion of ‘substance’ which gave the natural law paradigm of charity its self-evidence within a Christian context.

Let us now turn to the soft account. The shift from the tough to the soft account can be understood in terms of the same comparison between ontology and ethics. Thinkers influenced by the School of Salamanca used the following argument to defend their departure from the proposition that to sacrifice oneself is a mortal sin: someone who sacrifices her life for another person does not sin against the priority of self-love, for she indeed loves herself, namely, in relation to her own *moral* or superior being.<sup>48</sup> Within the natural law paradigm of charity, the softening of the obligation to preserve one’s own life was accompanied by a distinction between *physical* and *moral* being. The purpose of this distinction was clearly to qualify the ontological point of view.<sup>49</sup>

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proprium est perdendum, pro conservatione boni communis.’ A similar position is taken by his colleague Mair (1509), f. 94<sup>vb</sup>.

<sup>46</sup> Durandus (1571), f. 341<sup>rb</sup>: ‘... quia assequitur mortem non credens, nec sperans alicubi vitam, non efficitur melior nec minus malus quam esset, si viveret qualitercunque, quia efficitur omnino non ens secundum opinionem quam habuerunt Philosophi gentiles de morte; ergo talis mors non potest eligi secundum rectam rationem.’

<sup>47</sup> Vernias (1482), f. 4<sup>vb</sup>: ‘Licet virtus sit magis eligenda ipso esse et vivere in genere moris – in genere enim moris eligibilis est mori quam turpiter vivere ... –, in genere vero naturae est totum oppositum, quia in illo genere eligibilis est esse et vivere quam virtus, cum unum sit substantia, aliud vero accidens. Cum ergo unicuique sit magis essenziale genus naturae quam genus moris, sequitur, quod simpliciter sit melius esse et vivere... quam virtuosum esse.’ He was arguing against Coluccio Salutati, whose pamphlet of 1399 had stirred the famous *disputa delle arti*, particularly regarding the ranking of law and medicine. Vernias sided with the faculty of medicine against the humanism of the lawyers.

<sup>48</sup> Amico (1650), p. 272a: ‘Nam qui suam vitam pro aliena exponit ad conservandam honestatem alicuius virtutis, magis alium quam seipsum non diligit, sed potius seipsum magis secundum esse virtutis quam secundum esse naturae, quod licitum est, cum sit bonum altioris ordinis.’ See the earlier Aragón (1625), p. 399b.

<sup>49</sup> See Knebel (2000), pp. 488–519.

The soft account went through different stages. They can be described by means of the time-honoured stock example of two shipwrecked people and a board which can carry only one of them. Today we are tempted to regard it as a hypocritical instance of abhorrent ‘Jesuit morals’ when Francisco Oviedo (d. 1651), in his treatise on charity, tries hard to persuade his readers that an individual is not *obliged* to struggle for her life against another person, but may instead renounce it.<sup>50</sup> Once more, however, we are mistaken. In fact, there was a time when, outside the Augustinian tradition,<sup>51</sup> virtually no one had any qualms about my killing an aggressor as a matter of lawful self-defence. It was not the compatibility of my survivalism with charity which seemed problematic, but rather how I might relinquish my right to self-defence.<sup>52</sup> Therefore, it was a substantial step forward when I was no longer held to be *obliged* to struggle. Oviedo is absolutely right when he tells us that this lesson was taught by the School of Salamanca.<sup>53</sup> This is confirmed by Doyle, who, in his treatment of the casuistry of escaping from jail, observes that the founder of this school, Francisco de Vitoria (d. 1546), departed from the Thomist tradition in that

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<sup>50</sup> Oviedo (1651), p. 315b: ‘Insuper est valde mihi probabile, mihi licere iam in mortis periculo constituto propriam vitam non defendere, ne proximo impediam suam defendere. Ex quo infero casu quo duo pariter naufragentur..., cuilibet eorum licere alteri permittere, ut tabulam... sibi arriperet, et hac ratione mortem pati... Licet teneat per se loquendo propriam vitam defendere, non videtur ad id teneri impediendo alii defensionem propriae vitae.’

<sup>51</sup> Augustine (1956), p. 13 (*De libero arbitrio* I.38), had distinguished between the lawfulness and the morality of my killing the aggressor: ‘Quapropter legem quidem non reprehendo, quae tales permittit interfici, sed quo pacto istos defendam qui interficiunt non invenio.’ Grotius (1734), p. 125 (*De iure belli ac pacis* II, i, 13, 2, quoting Soto, Lessius et al.) deplored the fact that lawyers as well as theologians almost unanimously deviated from Augustine’s position. The erudite Augustinian Enrico Noris (1673), p. 735D, however, qualified this view: ‘... non solus fuit in ea sententia Augustinus, sed habuit sectatores et theologos et iurisconsultos’. He regards the opinion of Augustinus Triumphus de Ancona (c. 1280) as a landmark in the specifically Augustinian tradition on this issue (p. 735C). Noris, who shares this opinion, explains it as follows (pp. 736D, 738A): ‘Augustinus occisionem aggressoris inde esse malam probat, quia oritur ex cupiditate servandi vitam, quae non debet amari, sed contemni... Cum quis aggressorem occidit, non ratio, sed cupiditas illi dominatur.’ His opposition to Thomas Aquinas is clearly articulated (p. 737A).

<sup>52</sup> See, e.g., the commentary (c. 1440) of Alonso Tostato (Salamanca), later bishop of Avila, on the bloody chapter Josua XI, Q. 11, quoted by Molina (1733), p. 35b.

<sup>53</sup> Oviedo (1651), p. 314a: ‘Opposita sententia, videlicet licere ob vitam proximi tuendam propriam non defendere, seu mortem permittere plausibilis est apud modernos.’ The authors quoted are: Francisco de Vitoria O.P., Domingo de Soto O.P., Antonio de Córdoba O.F.M. (d. 1578). Suárez (1856-78) 12, p. 712b (*De caritate* 9.3.4): ‘Potest quis sine peccato mortali in necessitate etiam extrema se postponere, ut simili necessitati cuiusvis alterius proximi etiam extranei subveniat.’ At the beginning of the seventeenth century, the whole of Iberian moral theology was thought to hold this position; see Lorca (1614), p. 719: ‘... et recentiores omnes, qui hoc tempore de iustitia et iure vel summas casuum scripserunt’. Baldelli (1646), p. 416b: ‘Cordubensis... concedit, posse aliquem cedere iuri suo de vita tuenda, quando subest rationabilis causa... Et hoc idem communiter asserunt etiam alii.’

he no longer acknowledged an *obligation* to flee on the part of a person condemned to death.<sup>54</sup>

The second step would entail voluntarily conceding the board in my possession to another person. Whether I was allowed to do so was a big issue in seventeenth-century casuistry. Even the School of Salamanca, which championed the soft account, was divided on this point. The crucial distinction was between an active and a permissive manner of self-sacrifice, that is, between positively killing myself and merely allowing myself to die.<sup>55</sup> There were some—Lessius, for instance—who blurred this distinction;<sup>56</sup> while others—for example, Soto, Suárez and Oviedo—maintained that I was not allowed to give up the board in my possession.<sup>57</sup> Thus, even if it was granted that I could renounce self-preservation without sinning against charity, it was not altogether clear whether I could sacrifice my life.

Were there no circumstances, then, in which I would not only be permitted but actually *expected* to sacrifice my life? The champions of the soft account did not deny that there were such circumstances, since life, as Soto said, is not to be regarded the highest good.<sup>58</sup> When, however, they

<sup>54</sup> Doyle (1997), p. 107.

<sup>55</sup> Soto (1573), f. 114<sup>va</sup>: ‘positive se occidere’ / ‘permittere se mori’.

<sup>56</sup> Lessius (1617), p. 70b (*De iust. et iure* 2.9.6.27–31): ‘Etsi non liceat seipsum directe occidere, licitum tamen est quando iusta causa subest, aliquid facere vel omittere, unde certo scitur secuturus interitus indirecte... Sexto, In naufragio potes alteri permittere tabulam nondum a te occupatam (*imo etiam occupatam*) et committere te undis, etsi non sit spes evadendi...’ Baldelli (1646), p. 417a: ‘Et quod dicimus de tabula tempore naufragii, tam est intelligendum, quando tabula est iam occupata et accepta ab uno, isque eam dimittit et tradit alteri, quam si nondum sit accepta et occupata..., quia revera parum refert, quod tabula iam sit in manu et actualiter apprehensa, vel sit ante oculos, et statim possit manus ad illam extendi.’

<sup>57</sup> Suárez (1856-78) 12, pp. 713b–714a (*De caritate* 9.3.7): ‘Exemplum vulgare est de duobus naufragiis, quorum alter posset tabulam accipere..., licite enim alteri tabulam relinqueret. Non ita vero, si iam ipse tabulae insedisset: quia eo pacto non solum sibi non prospiceret, sed directe se proiiceret in mare, ac adeo positive cooperaretur suae neci: quod non satis animadvertunt aliqui nostrae conclusioni [sc.: Non tenetur homo in necessitate, etiam extrema vitae, sibi semper potius subvenire, quam proximo alicui] adhaerentes, dum in allato exemplo utrumque casum aequiparant, cum longe aliud sit utrumque pariter periclitari, aut alterum tantum, altero iam beneficio tabulae in tuto sufficienterposito.’ See also Soto (1573), f. 114<sup>va</sup>; Oviedo (1651), pp. 314f.

<sup>58</sup> Soto (1573), ff. 113<sup>vb</sup>–114<sup>rb</sup>: ‘Quaestio [sc. utrum liceat vitam, pro defensione amici, aut cuiuscunque virtutis, exponere] est egregia: neque solum Philosophis digna, verum et Theologis: tametsi non pro eius dignitate viderim ex professo disputatam... Licitum est et saepissime officium vitam corporalem exponere, non solum pro vita spirituali amici, verum et pro temporali... Ratio... conclusionis sic efformatur: *Vita nihil altius est, quam quoddam temporale bonum quod non est supremus finis, in quo nostra consistit felicitas*; sed est tantum medium ad ipsam consequendam...; bonum autem utile licitum est in defensionem alterius boni exponere, quod pars est nostrae felicitatis, etiam si per se consideratum minoris

tried to formulate this possibility, they were anxious to avoid any flaw in the ethical construction.

If self-denial was to be regarded as virtuous, the first thing to be observed was the purity of the intention. The intention must not be disinterestedness, but rather the opposite. I must have some ‘interest’ in my act of self-denial<sup>59</sup>—‘interest’ in the very sense that would be so utterly despised in the Gospel paradigm of charity. When I weigh everything up, the motive of my sacrifice must not be some good of the same kind and quantity, for instance, my friend’s life as such. Rather, there must be a gain, either in form of a higher good, for example, providing other people with an edifying example, or in form of a lesser evil, for example, discharging myself from the burden of an existence whose preservation would be too costly.<sup>60</sup>

Secondly, if self-preservation is to be subordinated to higher duties, a system of loyalties comes into play. Although the Spanish teachers of natural law did not ignore the idea of a cosmopolitan unity of all human beings,<sup>61</sup> what they derived from human solidarity was at most the *permission*, not the *obligation*, to risk one’s own life in cases of emergency.<sup>62</sup> On the other hand, one friend was said to bear such an

esset pretii... Vita autem amici mei est proprium meum bonum, ad meam etiam felicitatem pertinens; ergo...’

<sup>59</sup> Sforza Pallavicino (1649), pp. 44f.: ‘Animadvertere debemus unicuique insitum esse amorem necessarium sui ipsius... Quocirca possumus quidem desiderare nobis interitum, ut bonum, hoc est, ut finem miseriarum...; at non possumus non amare nos, et non cupere nobis cumulum omnium bonorum... Ideoque unusquisque amat alium minus quam se; et quando videtur contrarium fieri, ut dum quis pro alio moritur, ideo est, quia amans putat se miseriorem fore superstitem sine alio, quam mortuum. Quare non tam amat alium, ut amicum, cui vult bonum, quam, ut ipsum bonum, quod sibi vult.’

<sup>60</sup> Soto (1573), f. 114<sup>tb</sup>, quoted n. 58 above. Valencia (1603), pp. 599E–600D: ‘... nunquam licere exponere vitam pro vita alterius privati ex amore quidem charitatis, quo scilicet quis alterius vitam magis amet, quam propriam... Est alius duplex modus, quo posset nihilominus quispiam licite oppetere mortem pro servanda vita alterius. Unus modus est, si id fiat non proprie ex amore vitae alterius, sed amore potius virtutis et ad aliorum exemplum... Qua in re [sc. inter amicos] is, qui mortem oppetet, non magis amabit vitam corporalem alienam quam propriam, sed potius magis seipsum, quam alterum secundum bonum illud spirituale consistens in dignitate ipsa virtutis amicitiae, in qua volet eo facto excellere... Alter modus... est..., si quis non ex amore proprie, quo vitam alienam suae vitae anteponat, sed quia nolit cum tanta difficultate conservare vitam propriam, ipse potius mortem velit oppetere, quam ut alter moriatur...’

<sup>61</sup> Suárez (1856-78) 5, p. 169 (*De legibus* 2.19.9): ‘Humanum genus quantumvis in varios populos et regna divisum, semper habet aliquam unitatem non solum specificam, sed etiam quasi politicam et moralem, quam indicat naturale praeceptum mutui amoris et misericordiae, quod ad omnes extenditur, etiam ad extraneos, et cuiuscumque nationis.’ Cf. Doyle (1999), p. 105. The modern natural law school followed Suárez; see, e.g., the lengthy quotation in Henniges (1673), pp. 126–127.

<sup>62</sup> Soto (1573), f. 114<sup>tb-va</sup>: ‘Iure naturae omnes mortales sumus eiusdem corporis membra; ergo sicuti membrum eiusdem corporis unum pro alio exponitur, ut invicem se custodiant,

obligation in relation to another, as did the citizen in relation to the community and the subject in relation to the prince. The argument in the main followed humanist patterns, partly in open rejection of Durandus's defeatism.<sup>63</sup> Whether the examples provided came from the ethics of heroism,<sup>64</sup> or from military discipline—the illicitness of desertion<sup>65</sup>—the progressive softening of the natural rights paradigm of charity did not necessarily promote the spirit of Christ's Sermon on the Mount. Rather, the new trend promoted reason of state.<sup>66</sup>

Now, there is no special relationship between two shipwrecked persons. Consequently, even the soft interpretation of the natural law paradigm acknowledged no title by which self-denial could be described as *imperative*. Oviedo, in 1651, considered the idea that I might enjoy a spiritual profit (*emolumentum spirituale*) from sacrificing myself in favour of some stranger to be quite mad.<sup>67</sup> The Jesuit schoolman Diego Granado (d. 1632),<sup>68</sup> when advancing this idea in his 1629 treatise on charity, had argued exclusively on the basis of values such as humility and self-abnegation. He had not resorted to supererogatory works of worldly

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sic licitum est inter homines... Sed quid in re non dubia moramur? Vox populi vox naturae est, et tamen nulla fuit, seu barbara natio, seu sancta..., in qua non egregiae laudi daretur, ac detur, quodqui homine in periculo mortis coniectum viderit, eidem se offerat periculo, ut proximi vitam, dum possibile apparet, eripiat.'

<sup>63</sup> Lorca (1614), p. 718: 'Deceptus autem est Durandus existimans non posse contingere, ut mors privati hominis conferat ad conservationem totius reipublicae; saepe enim evenire potest, v.g. si fiat incursus hostium, et unus aut aliqui occurrant illis, ut interim occludatur aditus, vel aliter provideatur securitati urbis...'

<sup>64</sup> As in Lorca (1614), p. 718.

<sup>65</sup> Lessius (1617), p. 70b (*De iust. et iure* 2.9.6.27): 'Miles potest et tenetur non deserere stationem in periculo communi, etsi certus sit se occidendum...'

<sup>66</sup> High treason, for instance, was considered to be as serious a crime as apostasy; Molina (1733), p. 460b: 'Neque ad evadenda quaecumque tormenta, neque ad mortem ipsam evadendam, fas est detegere secreta Reipublicae... Conclusionem hanc affirmant Sotus... et Navarra... Probari autem potest, quoniam pro salute Reipublicae quivis civis tenetur exponere propriam vitam, ad idque a Republica potest sub lethali culpa obligari.'

<sup>67</sup> Oviedo (1651), p. 317a: '... respondeo actionem illam nullum emolumentum spirituale, sed potius nocumentum homini allaturam. Exemplum adductum de eo, qui tempore pestis vitam exponit, ut aegrotis inserviat, ad rem non est, quia hic ex honestissima causa operatur, quae in alio desideratur. Ad quartum respondeo Christianam humilitatem inclinare, ut quivis se omnium minimum iudicet, cum hoc tamen bene stare, ut inclinet ad propriam vitam non exponendam pro vita cuiusvis extranei...'. Similarly Castro-Palao (1690), I, p. 397a–b (*Opus morale* 6.1.8.4–7). In this context, it is noteworthy that the School of Salamanca regularly qualified the duty to give alms by considerations of political economy, since the life of a single beggar is not as significant as the conservation of a great fortune: Báñez (1586), p. 724D, quoted by Deuringer (1959), p. 111; Oviedo (1651), pp. 347ff. The same idea is also found in Melchor Cano O.P., Bartolomé de Medina O.P., Pedro de Aragón O.S.A., Francisco Suarez S.J., Gilles Coninck S.J., Rodrigo de Arriaga S.J. et al.

<sup>68</sup> See Olivares (1987).



heroism.<sup>69</sup> I take Granado, on the one hand, and the strong rejection he encountered, on the other, to be symptoms of the crisis which the old natural law paradigm of charity was undergoing. Its dissolution continued during the first half of the seventeenth century, both outside and inside the Jesuit Order. Two Jesuit schoolmen are particularly worthy of note. In Salamanca, Juan Martínez de Ripalda (d. 1648) defended what would later become known as *amour pur* in relation to eternal happiness: I may choose another person's eternal happiness over my own.<sup>70</sup> Even more straightforwardly, Francesco Amico (d. 1651), whose distinction between physical and moral being I have already mentioned, stated that charity makes me prefer not to save my soul at the expense of the rest of humankind.<sup>71</sup> This is basically the same idea as in Dostoyevsky's famous tale of the tiny onion which would have rescued the greedy woman, if she had not shaken off the other reprobates who clung to her.

In the first part of this talk I showed what was indispensable, in the framework of scholastic ethics, for torture to be discredited, namely, discarding the imperative of self-preservation. In the second part I analysed the progressive dissolution of the scholastic concept of charity which had been constructed on this imperative of self-preservation. By the mid-seventeenth century, the only choice left was between the soft account of

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<sup>69</sup> Granado (1629), pp. 407–408: 'Nihilominus probabilior sententia est, bonum esse velle re ipsa pati iacturam propriae vitae corporalis pro tuenda vita corporali amici *vel extranei*... Probatur ratione, quia... maximum spirituale emolumentum provenit ipsi homini et multis aliis ex eo, quod in tempore, quo pestis grassatur, velit quis succurrere aegrotis et eis inservire...; non minor autem utilitas et aedificatio esset, si videremus quempiam adeo contemptorem sui, ut non dubitaret mori pro liberando abiecto ac plebeio quodam homine a morte. Confirmatur, quia humilitas christiana inclinatur quemlibet, ut se existimet minimum omnium et minus dignum vita temporali quam alios... Sed dices..., etiam in tuenda vita propria corporali est magna utilitas spiritualis: exercetur enim actus charitatis, quae maxime inclinatur in conservationem proprii subiecti. Respondeo hoc optime probari, licitum esse conservare vitam propriam contempta aliena, sed non suadere esse illicitum contemnere vitam propriam pro conservanda aliena, quia in hoc etiam elucet maximum charitatis opus.'

<sup>70</sup> ... Ergo possum licite malle salutem proximi, quam meam (Martínez de Ripalda 1873, 312–13: *De virt. theol.* 37.86–91). He also quotes Granado 1629, 401 for this opinion.

<sup>71</sup> Amico (1650), p. 269a–b: 'Sed contra: Charitas maxime inclinatur ad diligendum Deum, et ad ea magis, quae magis placent Deo, ut constat; fieri autem potest, ut aliquod bonum proximi magis placet Deo, quam bonum proprium nostrum: ergo tunc charitas magis inclinabitur ad diligendum tale bonum proximi, quam proprii subiecti. Minor probatur: Si Deus alicui habenti charitatem proponeret hunc casum, ut vel per actum dilectionis Dei sibi promereretur aeternam gloriam, ab eadem gloria omnibus angelis et hominibus exclusis, vel potius per actum dilectionis proximi, reliqui omnes essent aeterna gloria coronandi, se solo, absque suo tamen peccato, ab eadem excluso: procul dubio in tali casu charitas potius inclinaretur ad diligendum proximum, quam seipsum... Ergo non semper charitas magis inclinatur ad dilectionem proprii subiecti, quam alieni.' This work received its approbation in 1641, i.e., before dispute over Jansenism could have exerted any influence on the author's position. Incidentally, Amico was a firm anti-Jansenist.

the old paradigm and the new Gospel paradigm of charity. In order to show how this transformation of charity brought about a re-evaluation of the behaviour of an innocent person under torture, I shall close the case with some observations on one of the greatest champions of what Pascal abhorred as ‘Jesuit morals’: the Belgian Leonard Lessius, whose best-seller *De iustitia et iure* first appeared in 1605.<sup>72</sup>

### III

Lessius unquestionably played a paramount part in the process of softening the natural law paradigm of charity. In relation to this issue, he was well in advance of other leading Jesuits such as Molina or even Suárez. On the other hand, he guarded against a line of argumentation which would have shattered the natural law paradigm, as it was, in fact, shattered by Granado and Amico. How then did Lessius proceed in order to defend the position that self-incrimination was not a mortal sin, even if I am about to kill myself by such a lie?

First, he says, there are reasons which exonerate a person from the obligation of self-defence, and among these reasons are excruciating pain. For instance, I am not bound to consent to having a limb amputated.<sup>73</sup> This argument obviously depends, as Molina was quick to point out, on a failure to draw a distinction between an active and permissive manner of forfeiting one’s life.<sup>74</sup>

Secondly, if self-incrimination were wrong, it would be so either in view of morality or in view of lawfulness. But neither is the case. It is not morally bad, since no one is injured to such a degree that justice or charity would oblige me to spare that person to my own detriment.<sup>75</sup> Again, the injury done to me is not worse than the pains which I would continue to suffer. By yielding to pressure, I release myself from a long and lingering death, or rather I exchange many deaths for a single one, since to suffer

<sup>72</sup> For literature on Lessius, see Stone and van Houdt (1999).

<sup>73</sup> Lessius (1617), p. 96a (*De iust. et iure* 2.11.7.41): ‘Probatur primo, quia non tenetur homo cum tanto cruciatio vitam tueri, ne alius eam eripiat, sicut non tenetur permittere sibi tibiam abscindi, cum tanto dolore...’

<sup>74</sup> Molina (1733), p. 464a: ‘Quamvis homo non teneatur cum tanto cruciatio, quantus est, quod tormentis infertur, conservare propriam vitam adhibendo remedia..., nihilominus aliud est, non conservare vitam eis remediis, illaque non adhibere, quibus conservetur; et aliud longe diversum est, praebere causam obiectivam ac meritoriam mortis.’

<sup>75</sup> According to Lessius’s business ethics, it does not go against the virtue of charity to promote one’s own interests, even though this would cause one’s neighbour to suffer an equal loss. See Stone and van Houdt (1999), p. 389, referring to Lessius (1617), p. 213b (*De iust. et iure* 2.21.5.43). This excellent paper elucidates Lessius’s approval of ‘strategic mendacity’.

such pain is to endure a lengthy and multiple death.<sup>76</sup> Nor does self-incrimination constitute a violation of lawfulness, since I do not force anyone taking an active part in my trial to neglect his duties. A lie in a lawsuit is not generally illicit—it is not illicit, for example, for me to yield in order to shorten the legal process. Again, the public authorities are not injured, since they would regard my lie as harmless. Indeed, they would be moved to pity if they knew of my affliction.<sup>77</sup> This stirring up of pity in the authorities, incidentally, would be the explicit aim of Lessius's greatest follower, the Jesuit Friedrich von Spee, in his *Cautio Criminalis*, where the use of torture in witch trials is condemned.

Thirdly, in using torture, one either proceeds legally—this was not generally the case: in the *Cautio Criminalis* von Spee would also urge the observance of the *Carolina*—or one does not. If not, the blame for false self-incriminations must be placed instead on the inquisitor. If the inquisitor proceeds legally, he is not injured, since I am not obliged to give evidence of my innocence while enduring such torment.<sup>78</sup> It is noteworthy that this apparent truism was extremely controversial. It was concern that the inquisitor should not be injured which induced the Jesuit Juan de Lugo, forty years later, to side with Molina against Lessius.<sup>79</sup> Protestant theologians went so far as to say that the defendant's false statements injured the inquisitor even when the procedure was illegal, since the public authorities always represent God.<sup>80</sup>

Lessius deals with two objections. The first one invokes the notion of a 'moral suicide', that is, when someone's accidental death must be imputed to the person herself. Lessius rejects this objection, since there is nothing accidental in the present case; instead, there is a just purpose: to end her pain. Moreover, would anyone blame a virtuous woman for having committed suicide by choosing death at the hands of her tormentor over rape?<sup>81</sup>

<sup>76</sup> Lessius (1617), p. 96a: (*De iust. et iure* 2.11.7.41–42): '... atqui non est [sc. mendacium] perniciosum, quia neque alteri adfert aliquod malum, quod tanti sit, ut ille ex charitate aut iustitia teneatur illud cum tanto incommodo suo avertere, uti suppono. Neque etiam sibi infert malum, quod notabiliter praeponderet ipsis tormentis; nam crimen fatendo, brevi morte longam mortem redimit, vel potius multas mortes unica simplici commutat: talia enim tormenta pati, est longa quadam et multiplici morte mori.'

<sup>77</sup> Ibid. (*De iust. et iure* 2.11.7.42): 'Neque etiam facit iniuriam Iudici aut Reipublicae..., sed potius commiseratione moverentur, si scirent.'

<sup>78</sup> Ibid. (*De iust. et iure* 2.11.7.43): '... non tenetur Iudici cum tantis tormentis suam innocentiam probare.'

<sup>79</sup> Lugo (1642), p. 396a–b (*De iust. et iure* 14.10.178–81).

<sup>80</sup> Meisner (1655), pp. 260ff., who sharply criticizes the School of Salamanca, particularly Soto, Covarruvias, Lessius, Gregory of Valencia; Uffelmann (1676), pp. 201ff.

<sup>81</sup> Lessius (1617), p. 96a: (*De iust. et iure* 2.11.7.44–45): 'Respondeo, Nego illum se interficere..., quia iustam causam habet, ob quam se interficiendum exponit... Imo si honesta

This argument is particularly revealing. The qualification of the duty of self-preservation puts morality and pain on the same level as admissible motives for sacrificing oneself. Once life and reputation were disentangled, the transformation of charity made it possible to establish an equivalence between morality and pain.

The second objection argues that I might be allowed, on the same grounds, to accuse other people as well. This argument is also rejected. I am the master of my *own* reputation, not that of other people. I may only relinquish my own rights. Another person's reputation is the firm limit for any exercise of my right to forgo self-preservation. This point is explained further by considering the following case. A false statement, involving perjury, is extorted by means of torture. Am I obliged to revoke it afterwards? According to Lessius, I am not obliged; I may stick to my false statement and go to the gallows with a good conscience. Perjury must only be confessed; it need not be revoked. Things are different, however, if my perjury includes an accusation of other people. In that case, I am obliged to revoke it.<sup>82</sup> To stick to such a perjury is a mortal sin which even the smartest casuistry of how to behave rightly under torture cannot explain away. It was Lessius's merit to have circumscribed the horror of dying in mortal sin to this precise point. His merit shines forth all the more since, despite his great authority in moral theology, younger casuists persisted in turning the proposition the other way round: if it is murder to accuse other people falsely, then it is also murder in relation to myself, since I am no more the master of my own life than of their lives.<sup>83</sup>

Nevertheless, the proposition that I am not the master of my own life had been once and for all challenged by the School of Salamanca. As things stood, even their adversaries could not help leaving it up to the penitent herself to decide whether or not to embrace the message from

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persona rogaret eum, qui illa nefando modo vellet abuti, ut ipsam potius interficeret, non censeretur homicida sui...: ergo neque hic est homicida sui, fatendo tale crimen. Quod confirmatur; quia si rogaret Iudicem, ut se interficiat potius, quam ita torqueat, non censeretur homicida sui.'

<sup>82</sup> Ibid. (*De iust. et iure* 2.11.6.48): 'Dico Sexto, Qui hoc modo vi tormentorum fassus est crimen falsum, ob quod erit morte plectendus, non tenetur illud postea revocare, quamvis antea periurio illud confirmasset, si prudenter metuit se rursus ad tormenta raptum iri (uti ordinarie fieri solet), sed potest sine peccato mortifero in eo persistere et mori... Secus est de periurio, quod in detrimentum alterius cedit, hoc enim debet revocari.' A similar point is made by Tanner (1627), p. 1012.

<sup>83</sup> Laymann (1709), p. 426a: 'Si enim is qui crimen falso affinxit alteri, ob quod supplicio extremo afficietur, omnium sententia homicida est: cur non etiam qui sibi affinxit? cum neque suae, neque alienae vitae dominus existat.'

Salamanca which allowed her to quit the terrors of this world without having to dread that by doing so she would incur the terrors of the next.<sup>84</sup>

Lessius's opinion represented one possible extreme within the broad range of late scholastic moral theology. Moreover, in recent years, historians of political economy have discovered a manifesto of liberalism in his business ethics. Still, we should be cautious in reading the liberal agenda back into Lessius.<sup>85</sup> When we understand the role which the taboo of self-preservation played in sustaining the credibility of torture within a Christian context, we may well be induced to infer that the fading of this taboo *eo ipso* must have discredited torture. This, however, is not the case. Lessius himself absolutely believed in the indispensability of torture. In comparison with other moral theologians, he must even be said to have extolled this means of criminal investigation. The innocent people who fell victim to torture did not make him uneasy. In his view, we had to put up with this fact.<sup>86</sup> This is not surprising, given that he enjoys the undesirable reputation of having been perhaps the most influential authority in modern scholasticism to support the belief in witchcraft.<sup>87</sup> If Lessius cannot be seen

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<sup>84</sup> Ibid.: 'Reus conformare se potest sententiae probabili Doctorum negantium, in hoc casu obligationem retractandi sub peccato mortali incumbere... Quamquam contraria sententia speculativa vera mihi videtur...'. Lugo (1642), p. 395a (*De iust. et iure* 14.10.174): 'Haec sententia [sc. non peccare mortaliter confitentem falsum crimen ad vitanda gravissima tormenta] probabilis quidem est, et propter Auctores quos habet, potest eam practice amplecti, qui velit... Contraria tamen videtur verior...'. It must be stressed, however, that Lessius himself by no means regarded his own opinion as purely probable. Stone and van Houdt (1999), pp. 382–86, argue convincingly that Lessius adopted probabilism. Nevertheless, it does not follow from the fact that a probabilist was ready to concede that his adversaries' opinions remained probable that he regarded his own opinion as not true but merely probable as well. Such scepticism belonged to the later, more refined stage of probabilism which gave rise to disputes from the 1640s onward. Lessius's style of moral theology does not differ in essence from the scholastic style of physics: one looked for arguments in support of one's own conclusion and tried to find objections and distinctions in order to confute the adversary's argument.

<sup>85</sup> I agree with the conclusion of Stone and van Houdt (1999), pp. 392–94 (contra Peter Koslowski).

<sup>86</sup> Lessius (1617), p. 293a (*De iust. et iure* 2.29.17.151): '... eam (sc. torturam) adhiberi posse ad confessionem, est consentaneum rationi naturali: si enim non posset, improbi audacter et impune peccarent, damna et iniurias aliis inferrent, quando putarent se testibus, vel externis indiciis non convincendos... Accedit, quod pleraque maleficia gravissima non possent puniri, quia paucis vel nullis consciis committuntur, cum tamen id ad bonum Reipublicae sit necessarium: alioquin omnia sceleribus et sceleratis essent plena. Nec obstat, interdum fieri ut innocens torqueatur; quia in rebus humanis non omnia incommoda vitari possunt. Etiam interdum fit ut innocens damnetur: non ideo omne indicium tollendum.'

<sup>87</sup> Ibid., pp. 493–96 (*De iust. et iure* 2.44.3.13–25), where the lawyer and witch-hunter Martin Delrio (1551–1608), Lessius's Louvain colleague, was given unlimited credit. Delrio (1617), p. 948B, in turn, appreciated Lessius (*De iust. et iure* 2.44.6). Lessius was the source, e.g., for Clainer (1611); Hell (1624); Castro-Palao (1690), III, pp. 271b–272a (*Opus morale* 17.1.9.6–7); Baldelli (1646), pp. 684–688.

as a beacon of enlightenment, are we therefore to infer that a remarkable expansion of human autonomy was due to the wish to make life easy for the inquisitor in witch trials? ‘Easy’, that is, in the sense that he at least no longer had to feel guilty about robbing the innocent person of her peace of mind? In any case, it was not till 1631 that Lessius’s arguments led one of his partisans, Friedrich von Spee (d. 1635), to the conclusion that torture must be abolished.

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## Poverty and Power: Franciscans in Later Medieval Political Thought\*

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Was there a contribution to late medieval political theory which can be regarded as specifically Franciscan? Recent developments in this field have made the answer to this question more difficult than it was in the past. For Michel Villey and George de Lagarde, it was still obvious to connect Franciscan theologians (at least since the time of Scotus) to a supposed crisis of scholastic systems of thought and the beginnings of a new approach to political problems.<sup>1</sup> Nowadays historians tend to question the necessary connection between a so-called Franciscan voluntarism and specific positions in political theory.<sup>2</sup> In addition, the category itself of a Franciscan school has undergone a thorough-going revision; moreover, many scholars feel increasingly uneasy about the very concept of 'voluntarism' as applied to Franciscan thinkers, while a specialist in Ockham's political thought, such as John Kilcullen, has overtly denied that the *Venerabilis Inceptor* himself can be considered a voluntarist.<sup>3</sup>

One can, furthermore, point to the fact that Franciscan authors took very different stances in the field of political theory and, as a matter of fact, fought in opposite camps in the political discussions of the thirteenth and fourteenth centuries.<sup>4</sup> At the same time as Michael of Cesena's rebellion,

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<sup>1</sup> See Villey (1964), a 'classic' article, and de Lagarde (1963), especially pp. 281–289, which is very representative; see also Grossi (1972), an influential piece which belongs to the same trend in historiography.

<sup>2</sup> See, e.g., Tabarroni (1999).

<sup>3</sup> Kilcullen (1993); I read it, however, at his web site: <http://www.humanities.mq.edu.au/Ockham/wwill.html/> (site visited 31 March 2004).

<sup>4</sup> For an innovative survey of the debates concerning papal power from Aquinas to Ockham, see Miethke (2000).

other members of the order, such as Francis of Meyronnes and Alvarus Pelagius,<sup>5</sup> were staunch supporters of the papacy and its claims in the temporal sphere. Belonging to the Order of the Friars Minor was not the only decisive factor in shaping a thinker's political theory. After all, choice in the political field is not necessarily determined by theoretical presuppositions, but very often depends on more contingent factors: purely deductive patterns fail to capture the complex 'realities of power', as Joseph Canning and Otto Gerhard Oexle put it in the title of their recent book.<sup>6</sup> Therefore, in attempting to argue that a specific Franciscan heritage not only existed but also exerted an influence on the political thought of the late Middle Ages, I shall not treat this heritage as if it were a well-defined doctrine, necessarily implying a choice in the political struggles of those times and to which every Franciscan had to commit himself. I shall rather suggest that the categories developed by Franciscan theologians, with the aim of justifying the existence of their order and their interpretation of Christian perfection, shaped some of the 'conceptual tools' which were available to thinkers—especially Franciscans—who were ready to employ them in approaching problems of political theory. This does not mean that every Franciscan author necessarily used them in the same way and with identical results for political theory, or that their use was necessarily limited to members of the order. Nevertheless, there are some striking similarities which deserve our attention. In my exposition I shall therefore refrain from defining a Franciscan doctrine *in abstracto*. Instead, taking an historical approach, I shall examine some crucial moments in the ongoing construction of the 'conceptual tools' which constituted what I have tentatively called the 'Franciscan heritage' in the field of political thought.

## EXIIT QUI SEMINAT

Along with many specialists who have studied the history of the idea of natural rights,<sup>7</sup> I am convinced of the seminal importance of the bull *Exiit qui seminat* issued by Pope Nicholas III in 1279. More than many influential treatises, this official document, issued as a defence of the Franciscan way of life, linked some basic theoretical tenets to the identity of Franciscan friars.<sup>8</sup> Making extensive use of Bonaventure's *Apologia pauperum*, but very probably also taking into consideration some

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<sup>5</sup> On Francis of Meyronnes, see Rossmann (1972); for his political works, see de Lapparent (1940–2) and Baethgen (1959). On Alvarus Pelagius, see Miethke (2000), pp. 177–183.

<sup>6</sup> Canning and Oexle (1998).

<sup>7</sup> Brett (1997), especially p. 19.

<sup>8</sup> See the analysis in Tabarroni (1990), pp. 23–32.

suggestions of the young Peter John Olivi,<sup>9</sup> *Exiit* placed the very existence of Franciscan friars beyond the limits of positive law. As is well known, this bull authoritatively stated that Franciscans renounced *proprietas, possessio, ususfructus, ius utendi*, contenting themselves with the *simplex usus facti*. In other words, they abdicated every type of *ius* for which one could make a claim in court. Their use of goods was therefore situated completely outside the realm of positive law. On the other hand, countering the objection that the absolute poverty of the Friars Minor was potentially equivalent to suicide, Nicholas III remarked that a friar, according to the *ius poli*, possessed a right to sustain his mortal life, by the same natural law which allowed every human being to use what he needed in order to survive.<sup>10</sup> The defence of Franciscan poverty contained in *Exiit* therefore implied several assumptions regarding the relations existing between mankind and the goods of this world. A Franciscan who wanted to be faithful to Nicholas III's ideas and hence to the 'manifesto' of his own order needed to look for theories of property which were consistent with those basic assumptions. First of all, it seems that he would have been inclined to support an account of the origin of property which made a sharp distinction between the realm of positive law and that of natural law; otherwise, it would be almost impossible even to imagine that a person could reduce himself to a *status* in which positive laws were not relevant, while maintaining a right to the necessities of life.<sup>11</sup>

A source of inspiration was, in fact, available and very probably had already influenced the formulation of *Exiit*. A trend in patristic thought, which played an important role in the *Decretum* and therefore in the entire tradition of canon law, maintained that private property existed only because of original sin and that, according to the natural order, mankind should possess everything in common. It was only after the Fall, as a result of iniquity, that humans started to distinguish between 'mine' and 'yours'

<sup>9</sup> On its relation to Bonaventure's *Apologia pauperum*, see Elizondo (1963); for Olivi, see Burr (1989), pp. 38–56, and Lambertini (1990), pp. 153–169.

<sup>10</sup> Nicholas III (1891), col. 1113 (to be corrected with the help of *Seraphicae legislationis textus originales*, pp. 192-3): 'Nec quisquam ex his insurgat erronee, quod taliter propter deum proprietatem omnium abdicantes, tanquam homicidae sui vel tentatores dei, vivendi discrimini se committant ... Et quidem, ubi (quod non est aliquatenus praesumendum) haec cuncta deficerent, sicut nec ceteris, sic nec ipsis fratribus iure poli in extremae necessitatis articulo ad providendum sustentationi naturae, via omnibus necessitate extrema detentis concessa praeccluditur, quum ab omni lege extrema necessitas sit excepta non talem abdicationem proprietatis omnimodae renunciationem usus rerum cuiquam videatur inducere. Nam quum in rebus temporalibus sit considerare praecipuum proprietatem, possessionem, usumfructum, ius utendi, et simplicem facti usum, et ultimo tamquam necessario egeat, licet primis carere possit vita mortalium ...'

<sup>11</sup> The seminal importance of this idea was recognized by, e.g., Tarello (1964), especially pp. 245-246, 341.

and began to establish rules regulating their post-lapsarian condition. Many scholars have shown how canonists tried more or less successfully to harmonize this traditional doctrine with the justification of private property.<sup>12</sup> The idea, however, that in the state of innocence everything was held in common made it difficult for thirteenth-century thinkers to claim that property was a ‘natural’ phenomenon without any qualification, even when, especially under the influence of Aristotle’s critique of Plato in the second book of the *Politics*, they became persuaded that natural reason could be used to argue in favour of the division of property and against common possession. It is probably sufficient to recall that Thomas Aquinas in his *Summa theologiae* did his best to weaken the force of this tradition, distinguishing between the naturalness of property and the naturalness of the practical arrangements of property. In a very famous passage he stated that property was not contrary to natural law, while its actual division among men rests on positive law.<sup>13</sup> On the other hand, he maintained that positive laws are merely consequences or specifications of natural law principles.<sup>14</sup> Such an account could hardly be reconciled with the assumptions of *Exiit*, especially since it allowed for no opposition between natural and positive law.

It would seem that for a Franciscan it would have been extremely convenient to draw on the canonistic tradition in its original form, in order to emphasize the gap between the state of innocence and the post-lapsarian state. In his eighth *Quaestio de perfectione evangelica*, Olivi (not by chance involved, somehow, in the preparation of the papal bull) paved the way for this radical interpretation, quoting one of the most relevant canonist texts: the canon *Dilectissimis*. From this passage of the *Decretum* he derived the view that mankind, in the state of innocence, had only use in common and no property or right of use peculiar to an individual or to a group. According to Olivi, it would be insane to claim that ‘in statu innocentiae appropriarentur res et iura rerum uni personae vel determinatis collegiis’.<sup>15</sup>

<sup>12</sup> On this canon law tradition, see Weigand (1967), especially, pp. 307–336; and Töpfer (1999), especially pp. 164–185.

<sup>13</sup> Thomas Aquinas (1948), IIa–IIae, q. 66, a. 2, p. 347: ‘dicendum quod communitas rerum attribuitur iuri naturali, non quia ius naturale dictet omnia esse possidenda communiter et nihil esse quasi proprium possidendum, sed quia secundum ius naturale non est distinctio possessionum, sed magis secundum humanum conductum, quod pertinet ad ius positivum, ut supra dictum est; unde proprietas possessionum non est contra ius naturale; sed iuri naturali superadditur per adinventionem rationis humanae’; for a recent discussion, see Töpfer (1999), pp. 228–245.

<sup>14</sup> See Thomas Aquinas (1948), Ia–IIae, q. 95, a. 2, p. 481: ‘... sciendum est, quod a lege naturali dupliciter potest aliquid derivari, uno modo, sicut determinationes quaedam aliquorum communium ...’.

<sup>15</sup> Peter John Olivi, *Quaestiones de perfectione evangelica*, VIII, in Schlageter (1989), pp. 125–126: ‘Rectitudo etiam innocentiae eius altitudinem clamat. Nam secundum Clementem,

The divisions of property which exist nowadays are merely the consequence of iniquity, which proceeds from corruption. Olivi therefore chose to stress the dramatic change brought about by original sin. In his opinion, the fullness (*altitudo*) of natural liberty and rectitude was diminished by the introduction of *dominium*, whether individual or communal.<sup>16</sup> As a matter of fact, the weakness of fallen mankind made it useful to allow property; in itself, however, the law of nature commanded the opposite. Having recourse, here, to the traditional doctrine of *dispensatio*, Olivi wrote that ‘utilius fuit dispensari in praecepto naturae’.<sup>17</sup> Instead of attempting to explain the continuity between the pre- and post-lapsarian condition of humanity, he adopted an explanatory pattern which maintained that a command of natural law could be suspended, although he recognized that this suspension was ‘useful’ for mankind in its fallen state.

Insisting that ownership, whether individual or communal, originated, not in any continuity with natural law, but rather after a dramatic break with it, might be a very useful way of supporting the idea of absolute poverty; however, it left many problems unresolved. To mention just one of the most important of these: if natural law was suspended, how did the division between ‘mine’ and ‘yours’ come into existence? As is apparent, this question could lead to a further investigation into what type of authority, or more generally, what power established the ‘divisio rerum’.

A very traditional answer was that this primordial division was brought about illicitly and through violence. God, however, decided to tolerate it for the sake of fallen mankind and issued laws which regulated property and prohibited theft. Such an account can be found, for example, in Vincent of Beauvais’s *De morali principis institutione*.<sup>18</sup>

Other authors, among them Bonaventure, followed a similar line of thought, explaining that natural law was in this respect modified and, in the fallen state, allowed what was prohibited before. In the state of innocence community of property was natural, while in the fallen state it was natural that something should be privately owned.<sup>19</sup>

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et habetur Causa XII quaestione I, “Communis usus omnium quae sunt in hoc mundo, omnibus hominibus esse debuit” sed secundum eum iniquitas tam originalis quam actualis divisiones rerum quae nunc sunt, fieri fecit”; see also *ibid.*, pp. 99 and 179.

<sup>16</sup> *Ibid.*, p. 168: ‘...licet per divitias aliquod dominium acquiramus, non tamen aliquid de illo quod spectat ad naturalem rectitudinem, immo aliquo modo altitudo naturalis libertatis contrahitur et coartatur per dominium divitiarum communium vel propriarum’.

<sup>17</sup> *Ibid.*, p. 168: ‘post lapsum utilius fuit hanc paupertatem non cadere sub praecepto ac per consequens utilius fuit dispensari in praecepto naturae quo secundum istam paupertatem omnia debebant esse communia’.

<sup>18</sup> Vincent of Beauvais (1995), pp. 17–18. See Töpfer (1999), pp. 326–328.

<sup>19</sup> Bonaventure, *In Secundum librum Sententiarum*, d. 44, q. 2, a. 2, p. 1009: ‘omnia esse communia, dictat secundum statum naturae institutae; aliquid esse proprium, dictat

Thomas Aquinas, while maintaining that property was not contrary to natural law, explicitly stated that the practical arrangements of property happen ‘secundum humanum conductum’, that is, according to agreements among men. Such agreements, however, should be regarded as a kind of addition to natural law and, hence, consistent with it.<sup>20</sup>

These different, although not entirely incompatible, accounts of the origin of property were among those available to Franciscan authors in the years after the publication of *Exiit*. It would be very interesting to know how they reacted. Surprisingly, I have been unable to identify any Franciscan author in the first decades after *Exiit* who adopted an original stance with regard to these problems. Richard of Mediavilla, who broached a related problem in his *Commentary on the Sentences*, relied on Aquinas’s solution.<sup>21</sup> It might seem that, feeling safe under the shield of the papal bull, Franciscans did not display any interest in this discussion. It is still possible, however, that this impression depends merely on a lack of information. By contrast, it is well known that secular theologians engaged in a critical analysis of the assumptions underlying the defence of the Franciscan Order. Among them, Godfrey of Fontaines, as Virpi Mäkinen has recently shown,<sup>22</sup> was the most penetrating critic of the Franciscan position: ‘Godfrey of Fontaines argues that man has an obligation toward himself, namely to his or her self-preservation. Following from this obligation, man has *dominium* and a certain right (*quoddam ius*) in the common goods that can not be lawfully renounced.’<sup>23</sup> In Godfrey’s eyes, the Franciscan position was untenable. The most relevant difference lay precisely in the relationship between the principles of natural law and the positive law. Both Godfrey and his Franciscan adversaries would have agreed on the thesis that it is not licit to renounce the natural law right to the necessities of life. The disagreement, however, consisted in the fact that for the Franciscans such a principle did not prevent any individual from abdicating every right which could be legally relevant. In order to defend

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secundum statum naturae lapsae ad removendas contentiones et lites’; see Flüeler (1992), pp. 44–48, and Rossini (1997).

<sup>20</sup> See n. 13 above.

<sup>21</sup> See, e.g., Richardus de Mediavilla, *Super quatuor libros Sententiarum Quaestiones*, III, d. 37, art. 3, q. 4, p. 456, where—discussing theft in the case of necessity—he answers an argument based on *Dilectissimis*: ‘proprietas non est contra ius naturae, immo ei consona pro statu naturae lapsae, quia ex hoc temporalia sollicitius, et ordinatius et quietius procurantur. Ex corruptione naturae homines negligunt communia et minus ordinate tractant ea et respectu earum magis habent occasionem rixandi’. See also, *ibid.*, I, II, d. 44, art. 2, q. 2, p. 530: ‘Respondeo quod dominatio tripliciter potest accipi. Uno modo largissime, scilicet prout aliquis dicitur dominus illius rei, qua utitur sua voluntate, et talis dominatio fuisset in statu innocentiae’; see Langholm (1992), pp. 327–341.

<sup>22</sup> Mäkinen (2000) and (2001), especially pp. 124–139.

<sup>23</sup> Mäkinen (2001), p. 127.

their own views, therefore, the Franciscans needed to develop a theory in which a right in the realm of natural law was not automatically also a right in the realm of positive law.<sup>24</sup>

## SCOTUS AND AURIOL

If Franciscans appear to have been rather reluctant to take a stance on this issue in the years following the publication of *Exiit*, this situation changed dramatically with Scotus. His account of the origin of political power and property, contained in the fourth book of his *Commentary on the Sentences* (both in the *Ordinatio* and in the *Reportata Parisiensia*), is both original and distinctively Franciscan.<sup>25</sup> In the first place, he does not limit himself to saying that in the pre-lapsarian state ‘everything was held in common’, but instead specifies that natural law prescribed *common use*.<sup>26</sup> Secondly, he stresses the extent of the change brought about by original sin, not maintaining that natural law was somehow reshaped, nor that some rational rule was added to it, but rather stating that the command of natural law concerning commonality was revoked after the Fall.<sup>27</sup> At first sight, this might seem only a slight terminological modification, since Scotus accepted the traditional belief that after the Fall mankind needed the division of property, since otherwise the strong and the evil would oppress the weak. This impression would be false, however, because Scotus’s emphasis on the fact that natural law was revoked in this respect calls for a totally different legal basis for property: before the Fall, in fact, there was no ownership at all, whether private or common, but only commonality of use. The *Doctor Subtilis* argues at length that neither natural law nor divine law can be held responsible for the division of property.<sup>28</sup> This implies that private property in itself (not only in its practical arrangements) is based

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<sup>24</sup> Unfortunately, I do not know of any Franciscans who tried to counter Godfrey on this point. My knowledge is limited to two Franciscan works which attacked him because of his criticism of the theory of Franciscan poverty and which focused instead on the issue of perfection: the mysterious *De perfectione statuum* and William of Alnwick’s *quaestio*, which should, however, be dated to after Scotus. For both texts see Lambertini (1999), pp. 163–186.

<sup>25</sup> See *Ordinatio*, IV, d. 15, q. 2, in John Duns Scotus (1989), pp. 28–211. For other relevant texts of Scotus, see Lambertini (2000), pp. 111–139. See also Bottin (1997).

<sup>26</sup> John Duns Scotus (1989), IV, d. 15, q. 2, p. 34.

<sup>27</sup> *Ibid.* p. 36: ‘istud praeceptum legis naturae de habendo omnia communia revocatum est post lapsum.’

<sup>28</sup> *Ibid.*: ‘Tertia conclusio est quod revocato isto praecepto legis naturae de habendo omnia communia, et per consequens concessa licentia appropriandi et distinguendi communia, non fiebat actualiter distinctio per legem naturae, nec per divinam’; ‘per legem nature non, ut videtur esse probabile, quia non apparet quod illa determinet ad opposita’.

exclusively on positive law.<sup>29</sup> Having stated this, Scotus was compelled to explain how a political authority able to promulgate laws had come into existence, thereby bringing to light the profound connection between the origin of private property and of political power. It is in this context that he developed his famous description of the ‘original consent’ from which the first form of government originated, whether constituted by only one person or by a group.<sup>30</sup> There is no need here to expand on this point, nor to describe in detail the different ways in which Scotus thought that such a government could come about and, consequently, promulgate the first laws.<sup>31</sup> For my present concern, it is important merely to stress that, according to Scotus, both property and political power began to exist after the Fall, when some principles of natural law were revoked and human initiative was permitted to look for the best solution in the new situation. After the Fall mankind was also provided with prudence; and the exercise of this virtue was not limited to the deduction of natural law from first principles, since some of these applied only to the pre-lapsarian state. Human beings understood that ‘they could not be well governed without some form of authority’ and solved this problem by means of an agreement.

It is certainly not my intention to suggest that Scotus was a ‘forerunner’ of modern contract theory. For my purposes, it is sufficient to establish that he conceived of the political order as a purely human sphere, which could not be reduced to either divine or natural law, but was instead dependent on the decisions, agreements and consent of the members of a society.<sup>32</sup>

On the one hand, Scotus’s theory leaves open the possibility of a total renunciation of property on the part of a Franciscan friar, who, according to this account, simply renounces an institution created by human initiative,

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<sup>29</sup> Not even the Roman law principle of ‘quod nullius iuris est, primo occupanti conceditur’ belonged to natural law; see John Duns Scotus (1989), IV, d. 15, q. 2, p. 38, and John Duns Scotus (1639), IV, d. 15, q. 4, n. 12, p. 723. See also the comments by Langholm (1992), pp. 406–407.

<sup>30</sup> John Duns Scotus (1989), IV, d. 15, q. 2, p. 40: ‘Utpote si ad civitatem aliquam aedificandam vel inhabitandam concurrerunt extranei aliqui, videntes se non posse bene regi sine aliqua auctoritate, poterant consentire, ut vel uni personae vel communitati committerent illam communitatem: et uni personae vel pro se tantum—et successor eligeretur sicut ipse—vel pro se et tota sua posteritate.’

<sup>31</sup> John Duns Scotus (1639), IV, d. 15, q. 4, n. 10, p. 723: ‘In civitate enim, vel terra, congregabantur primo multae gentes extraneae et diuersae, quarum nulla tenebatur alteri obedire, quia nullus habuit auctoritatem super alium, et tunc ex mutuo consensu omnium propter pacificam conseruationem inter se habendam potuerunt eligere unum ex eis principem, cui in omnibus solum, dum ille viveret, ut subditi obedirent, vel quod sibi et suis succedentibus legitimis subessent, secundum conditiones, quales vellent, sic, vel sic, ut diuersi modo tenent principatum.’

<sup>32</sup> For this reason, I can only agree in part with Parisoli (1991), pp. 134–135.



and not by nature or God.<sup>33</sup> On the other hand, Scotus does not present this radically human origin of property as a defect or as implying a lack of legitimacy. It is important to underline this point, because in the very years during which Scotus was lecturing on the *Sentences* in Paris, Giles of Rome was developing, with a rather different purpose in mind, a theory of the origin of property deriving from an agreement among men. In his *De ecclesiastica potestate*, Giles argued that, immediately after the Fall, ‘mine’ and ‘yours’ rested on a covenant and pact made by men. Only afterwards were such pacts fixed in law. According to Giles, however, this account of the origin of private property implied that property rights ultimately rested on the authority of the Church, because it legitimated the *communicatio* among men which was a necessary condition for the existence of agreements concerning property.<sup>34</sup> This complex argument was just one of the many *rationes* put forward by Giles in his attempt to prove that no *dominium* (conceived both as property and as political power) could be considered just unless it was legitimated by the authority of the Church.<sup>35</sup> Augustinian authors such as Giles are not my primary concern here; but this comparison reveals how one of the conceptual tools implemented by Scotus could also be embedded in a work which had a very different aim. In a recent book, Luca Parisoli argues that Scotus was, in fact, a papalist.<sup>36</sup> Although this is not impossible,<sup>37</sup> his supposed papalism does not surface in his theory of the origin of property, while Giles’s main purpose in his own account of the same phenomenon was precisely to prove papal

<sup>33</sup> In Lambertini (2000), pp. 111–139, I refer to the quotations of *Exiit* in Scotus’s texts concerning property and economic ethics.

<sup>34</sup> Giles of Rome (1929), lib. II, cap. 12, p. 103: ‘Sciendum ergo, quod primitus non fuit de iure hec possessio huius et illa illius, quod aliquis posset dicere: hoc est meum, nisi ex convencione et pacto quod habebant ad invicem ... sufficit enim scire, quod non poterat aliquis illorum iuste appropriare sibi aliquam partem terre, nisi ex pacto et convencione habitis cum aliis, ita quod prima appropriacio fuit secundum pacta et convenciones vel secundum assensum in divisionibus terrarum ... . Sed postea, ut diximus, multiplicatis iam hominibus, oportuit huiusmodi convenciones et pacta multiplicari, ut fieret possessio terrarum et agrorum non solum secundum particionem, prout fit in filiis eiusdem patris, sed secundum empcionem, donacionem, commutationem vel aliis modis qui sub convencione vel animorum consensu cadere possunt’; *ibid.*, p. 104: ‘Leges ergo et iura continent omnia per que potest quis dicere: hoc est meum, quia continent contractus licitos, convenciones et pacta, et continent alia, per que quis iudicatur iustus possessor rerum ...’

<sup>35</sup> See the excellent outline of Giles’s position in Miethke (2000), pp. 94–101.

<sup>36</sup> Parisoli (2001), pp. 193–212. His claim rests, however, mainly on *De perfectione statuum*; but, as he is well aware, Scotus’s authorship of this work is far from certain: see Parisoli (1999), p. 54, pp. 69–73, and Lambertini (2000), pp. 163–186.

<sup>37</sup> After, all, we know nothing about his political opinions, except for the fact that he refused to sign Philip the Fair’s appeal against Boniface VIII; see Longpré (1928) and also the reassessment in Courtenay (1996).

superiority.<sup>38</sup> Scotus limits himself to showing that property and political power can be traced back to human initiative. ‘Human’ does not, however, mean that what men did after the Fall necessarily derived from their nature. On the contrary, it lays emphasis on the fact that men had to use their *prudencia* to find a solution which had not been foreseen in either divine or natural law.

Some of the implications of Scotus’s position can be seen in Peter Auriol’s treatment of the origin of slavery, as Christoph Flüeler pointed out some years ago, although his position does not entirely coincide with that of the *Doctor Subtilis*.<sup>39</sup> In his *Commentary on the First Book of the Sentences*, Auriol openly criticizes, without mentioning them by name, those Arts Masters who, in commenting on Aristotle’s *Politics*, attempt to trace back the phenomenon of *servitus* to purported natural differences existing among individuals. Auriol objects to this position on the grounds that every relationship which is relevant in the political sphere requires a mutual obligation (*mutua obligatio*). He knows that such an obligation can sometimes be wrested through violence; nevertheless, he insists that the political order does not directly mirror nature, but rather consists of a web of more or less spontaneous agreements.<sup>40</sup> In the same spirit, although not in the same terms, Scotus had denied some years before that what he calls *servitus extrema* could be considered a natural law institution, founded on

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<sup>38</sup> William of Sarzano, writing more than a decade later, can be seen as an example of a Franciscan theologian who supported an extreme form of papalism. He, however, devotes little attention to the origin of property in the post-lapsarian state, taking it simply for granted, and bases his case for papal superiority on the thesis that no authority can be just unless it is legitimated by religious authority. See his *Tractatus de potestate Summi Pontificis*, c. VII, in Capitani and Dal Ponte (1971), pp. 1040–1: ‘Nam, licet comunis usus omnium que sunt in hoc mundo comunis omnibus esse debuerit, tamen per iniquitatem alius hoc dicit esse suum, et alius istud, et sic inter mortales est divisio facta, XII, questione I, Dilectissimis, et vocat ibi iniquitatem consuetudinem Juris gencium, equitati naturali contrariam, vel ipsam possidendi et habendi proprium sollicitudinem, ut ibi in glosa dicitur, et habetur distinctione VIII, Capitulo Differt. Cum igitur bona ecclesiastica sint bona comunia...satis rationabile est investigare et querere ad quem vel ad quos spectet eorum proprietas et dominium...’; *ibid.*, c. XIII, p. 1071 ‘Potest ergo patenter monstrari quod a mundi principio potestas eligendi Regem et dominum, aut de jure nulla et damnabilis fuit...aut fuit cum sacerdotis auctoritate’. On William of Sarzano, see now Miethke (2000), pp. 150–151.

<sup>39</sup> Flüeler (1994); on Auriol’s political ideas, see de Lagarde (1958), pp. 274–301; Tabarroni (1999), p. 214.

<sup>40</sup> Peter Auriol (1596), d. 30, p. 671: ‘Sed manifestum est, quod non sufficit primum ad fundandum dominium et servitutum; licet enim intellectu pollentes, et corpore deficientes sint apti nati naturaliter dominari hiis, qui e contrario sunt corpore pollentes, et intellectu deficientes, ut Philosophus dicit I Polit., nihilominus ultra hoc requiritur mutua obligatio. Non enim omnes qui tales sunt naturaliter de facto servi et domini sunt. Patet ergo quod dominium mutuum exigit obligationem. Talis autem obligatio vel est voluntaria, vel violenta.’

the natural differences among individuals. This kind of *servitus* belongs only to the sphere of positive law because it contradicts the liberty granted to everyone by the *lex naturae*.<sup>41</sup>

With such examples to hand, we can better appreciate Andrea Tabarroni's suggestion that Franciscan political thought was deeply influenced by the idea that political relationships could be conceived in terms of relations put into place by a promise. Franciscan theologians since the time of Olivi, interpreting such phenomena along the lines of their analysis of the importance of the vow of poverty, tended to understand society as a web of mutual obligations. The fact that social relations depended on decisions taken by human beings did not imply, however, that social bonds rested on the uncertain ground of the will of individuals who could change their minds at their own discretion, in so far as *obligationes* and vows acquired a sort of existence which transcended individuals.<sup>42</sup>

## BETWEEN JOHN XXII AND OCKHAM

Some developments in the dispute which arose between the leadership of the Franciscan Order and the Papacy in the 1320s are of special interest for my present purpose, since in this historical context the pope was both an adversary of the Franciscan theory of poverty and a strong defender of papal claims in the temporal sphere, especially in relation to the Empire. In the previous phases of the controversy, papal authority had acted as a sort of last resort to which the opposing parties could appeal and, in most, though not all, cases had intervened in favour of the Friars Minor. This time, the papacy had, from the very beginning, sided with one of the parties, a circumstance which contributed to the blending together of problems related to poverty, issues concerning authority in the Church and political conflicts.

When in 1322 John XXII lifted the ban imposed by *Exiit* and reopened the discussion of Franciscan poverty, many Friars Minor took part in the debate. Bonagratia of Bergamo, procurator of the order, in his treatise *De paupertate Christi et Apostolorum*, defended the Franciscan position, maintaining that original sin was responsible for the passage from the commonality of *usus facti* to the division of property. Property did not belong to the realm of natural law, but rather to that of positive, human regulations. This was why, Bonagratia observed, it was licit to renounce it

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<sup>41</sup> Scotus allows as well for a different kind of *servitus*, which he calls *servitus* or *subiectio politica* and which can also reflect natural differences among human beings; see Flüeler (1992), pp. 72–81.

<sup>42</sup> Tabarroni (1999), pp. 220–222.

completely.<sup>43</sup> Although a jurist, and not a theologian, Bonagratia chose to align himself with Scotus by emphasizing the change brought about by original sin. Before the Fall, man had lived in a perfect state according to natural and divine law; after the Fall, he wrote, leaning on Augustine's authority in the canon *Quo iure*: 'Proprietates vero et possessiones et dominia rerum sunt a iure humano.'<sup>44</sup> Francis of Meyronnes also intervened in the debate in order to defend the Franciscan position. In his still unpublished treatise, known as *Determinatio paupertatis*, he argued at length in favour of the radically human origin of positive law. In particular, he maintained that the division of property did not go back to the beginning of mankind, but rather was introduced afterwards, *processu temporis*, in order to keep in check negative human qualities such as negligence, avarice, contentiousness, lack of confidence. Christ, the Apostles and other perfect men, however, were not subject to these laws, but lived instead according to natural justice.<sup>45</sup>

In the years which followed, such substantial agreement with the positions taken by Bonagratia, Michael of Cesena and the others who adhered to their position did not prevent Francis of Meyronnes from adopting a political theory which diverged dramatically from theirs. In his later works he preferred, in fact, to draw on the hierarchical theology of Dionysius the Pseudo-Areopagite to support papal claims of a *plenitudo potestatis* also *in temporalibus*.<sup>46</sup> He admitted that many kingdoms, and even the Roman Empire, originated from the consent of the people. This feature, however, only proved that they possessed a lower degree of dignity than both the Church, whose power was of divine origin, and those kingdoms which depended directly on papal authority.<sup>47</sup>

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<sup>43</sup> Bonagratia of Bergamo, *Tractatus de paupertate Christi et Apostolorum*, in Oligier (1929), p. 503: 'Certum est autem quod omni iuri privato, quod alicui competat ex humano iure, potest quis renunciare et illud a se penitus abdicare; unde Esau, ex quo semel renuntiaverat iuri primogeniture, ad illud redire numquam potuit...' For this attitude towards the validity of obligations, see Tabarroni (1999), p. 220.

<sup>44</sup> Bonagratia of Bergamo, *Tractatus de paupertate Christi et Apostolorum*, in Oligier (1929), p. 503.

<sup>45</sup> I refer to the copy of Francis of Meyronnes's treatise preserved in MS Florence, Biblioteca Medicea-Laurenziana, S. Croce, Plut. 31 sin., 3, ff. 86<sup>ra</sup>-93<sup>va</sup>; see esp. f. 91<sup>va</sup>: 'divisio rerum non fuit a principio hominibus comunicata sed processu temporis fuit per homines introducta primo ad hominis negligentiam removendam...'; see Langholm (1992), pp. 420-429.

<sup>46</sup> His most important political treatises are published in de Lapparent (1940-2) and Baethgen (1959). For Francis of Meyronnes's use of Pseudo-Dionysius the Areopagite, see Luscombe (1991).

<sup>47</sup> Francis of Meyronnes, *Quaestio de subiectione*, in de Lapparent (1940-2), pp. 75-92, at p. 88: 'Secundum preconium est fundatum in talis principatus origine, quia quicumque aliqui duo principatus ita se habent quod unus est originatus ab inferiori, et alius a superiori, cum nobilitas in politicis attendatur in origine, ille est dignior qui ordinatur a superiori;

The debate over apostolic and Franciscan poverty, which had been opened by the pope, ended with a bitter defeat for the order—a result which John XXII seems to have carefully calculated.<sup>48</sup> In 1328, after some years of uncertainty, during which the leadership of the Franciscan Order still hoped to work out a compromise with John,<sup>49</sup> Michael of Cesena rebelled. The vast majority of Franciscans sided with the pope. Michael and the small group of supporters who fled with him from Avignon invested their energies in a full-scale attack on the pope's position, trying to persuade the whole of Christendom that he had fallen into heresy and that they therefore had to engage in a defence of the Franciscan theory of poverty, drawing on the traditions of the order. As the debate on poverty became more and more embroiled with political issues, they met these new challenges by returning to their Franciscan legacy. At the beginning, Michael and Bonagratia seemed rather reluctant to link their attempt to overthrow John to the ongoing debate between emperor and pope.<sup>50</sup> The connection became unavoidable, however, when John published his response, entitled *Quia vir reprobus*. Certain of the objections to the Franciscan position which John raised in this long bull, which resembles a theological treatise more than a papal document, were immediately relevant to political theory. Leaving aside exegetical technicalities concerning the way Christ and the Apostles had possessed the things which they used, it is possible to highlight two important moves in John's reasoning. First of all, he denied that in the state of innocence man had no *dominium*; on the contrary, before the Fall, Adam was already an owner in the fullest sense of the word. The only change which occurred after original sin was the division of the property which had previously been held in common. The Franciscan idea that by renouncing all forms of *dominium* the friars acquired a status which was similar to the pre-lapsarian condition of humanity was completely discarded as devoid of any reasonable foundation. Moreover, in the same passage, the pope insisted on the divine origin of all *dominium*.<sup>51</sup> His second move was founded on the notion of the universal lordship of Christ.<sup>52</sup> John interpreted this theological doctrine to mean that Christ as a man was the temporal

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omnes autem reliqui potestatus [?] principatus qui non sunt violenti et tyrannici sunt primo originati a consensu subjecti populi, ut patet de romano Imperio. Iste autem originatur a superiori conferente dignitatem temporalem, scilicet vicario qui in terris tenet locum Dei...'; *ibid.*, p. 90: 'ceteri autem principatus sunt mere politici et fidelibus et infidelibus sunt communes, ut patuit ab initio'.

<sup>48</sup> Tabarroni (1990), pp. 83–87.

<sup>49</sup> Wittneben (2003), pp. 192–279; see also Piron (2002).

<sup>50</sup> See, e.g., Dolcini (1981); Lambertini (2002b).

<sup>51</sup> Töpfer (1999), pp. 433–436.

<sup>52</sup> On Christ's kingship, see Leclercq (1959), especially pp. 157–169.

king of the universe; therefore, he could not be considered 'poor' in the proper sense of the word.<sup>53</sup>

The strategy of *Quia vir reprobus* contributed to demonstrating that certain tenets of the Franciscan position concerning poverty could be brought to bear on issues of political theory. The total absence of ownership in the state of innocence and the human origin of the division of property, together with the idea of Christ's absolute poverty, proved to be incompatible with John XXII's views concerning not only the Franciscan Order but also the power of the Church. Confronted with this new challenge, the Franciscan polemicists gathered around Michael of Cesena were compelled to come to terms with political issues as well. They chose to corroborate further the main tenets of their position, putting forward new arguments and clarifying their basic assumptions. In this way, however, their polemics with the pope took on the aspect of a clash between two incompatible views as to the nature of power, inside and outside the Church.<sup>54</sup>

The *Improbatio* of Francis of Ascoli (also known as Francis of Marchia) was probably the first refutation of *Quia vir reprobus* composed by the Franciscans who followed Louis the Bavarian in Germany. Francis's aim was, of course, first and foremost to defend absolute poverty; but the new issues introduced into the debate by the pope compelled him to touch on matters which were relevant to political thought.<sup>55</sup> Concerning the origin of *dominium*, Francis adopted the traditional Franciscan position, which had been reiterated by Bonagratia in the Pisan *Appellationes*, reasserting the existence of a profound discontinuity between the pre-lapsarian and post-lapsarian state of mankind. Only after the Fall, on the basis of the *ius positivum* made necessary by sin, did human beings distinguish *diversa dominia*. While conceding to the pope that a sort of *dominium* also existed before the Fall, he nonetheless insisted that it was of a completely different nature. In the state of innocence human beings shared the use of things without excluding anyone. After the Fall, even common property was restricted to a particular group, and 'others' were necessarily prevented from using it. As Francis put it, before the Fall mankind enjoyed a *dominium libertatis*, but afterwards they had to content themselves with a

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<sup>53</sup> John XXII, *Quia vir reprobus*, in Gál and Flood (1996), pp. 594–6: 'Quod autem dominium rerum temporalium habuerit, sacra Scriptura tam in Testamento veteri quam in Novo in multis locis testatur ... Item, quod Salvator fuerit dominus omnium temporalium, videtur ... regnum et universale dominium habuit Iesus in quantum Deus ab aeterno, eo ipso quod Deus genuit eum, et in quantum homo ex tempore, scilicet ab instanti conceptionis suae, ex Dei datione, ut patet ex praedictis.' See Lambertini (2000), pp. 249–268.

<sup>54</sup> Lambertini (2002).

<sup>55</sup> Lambertini (2001).

*dominium coactae potestatis*.<sup>56</sup> Moreover, repeating what he had already maintained in his *Commentary on the Fourth Book of the Sentences*, he stated that *dominium* after the Fall was exclusively of human origin.<sup>57</sup> I do not need to expand here on his detailed refutation of John's thesis concerning Christ's lordship—his interpretation of Jesus's famous words 'Regnum meum non est de hoc mundo' could be in itself the subject of an entire paper. One argument put forward by Francis does, however, merit our attention: the *Doctor Succintus* argued that Christ could not possibly have been a temporal king, because at the same time in Palestine there was a legitimate, though pagan, ruler, and the Gospels offer evidence that Christ acknowledged the emperor's authority. Francis's main intention was to reaffirm that Christ had no jurisdiction and could be—properly speaking—described as 'poor'. His statement, however, committed him to a specific position in the political debates of his day.<sup>58</sup> Along the same lines, the *Appellatio magna*, signed by Michael of Cesena in Munich on 26 March 1330, argued against the universal temporal kingship of Christ *in quantum homo*, remarking that it would lead to the absurd consequence that the pope had unlimited power over all the kingdoms on earth.<sup>59</sup>

Although until now very few scholars have taken it into consideration, the *Improbatio* is an important source for Ockham's *Opus Nonaginta Dierum*. Many elements of Ockham's later political theory are already present, though in an embryonic stage, in Francis of Ascoli. It is well known, in fact, that in his *Opus Nonaginta Dierum* Ockham presents his own account of the origins of *dominium*, which can to some extent be considered a refined version of the view found in Francis's *Improbatio*. In chapter 14 Ockham distinguishes between *dominium* before the Fall, when

<sup>56</sup> Francis of Ascoli (1993), pp. 153–154: '...primeum ius seu dominium nature, institutum ante lapsum, fuit alterius generis et condicionis a quocumque dominio seu iure per iniquitatem introducto, siue proprio siue communi, quia illud fuit dominium ... perfectionis naturalis; istud vero est dominum servilis necessitatis et coacte potestatis...'; see Potestà (2002).

<sup>57</sup> Lambertini (2000), pp. 189–212, and (forthcoming b).

<sup>58</sup> Lambertini (2002a).

<sup>59</sup> *Appellatio magna monacensis*, in Gál and Flood (1999), pp. 624–866, at pp. 666–667: 'Item, ex superius dicta adsertione sequitur manifeste quod omnes reges et principes terrae qui sua regna et dominia temporalia non tenent nec recognoscunt a Romano pontifice, Christi vicario, ipsa iniuste detinent et occupant et iniusti possessores sunt censendi, et per consequens quod eis, secundum errorem huiusmodi, non sit oboediendum, quia omnis qui tenet seu possidet aliquod temporale dominium, illud iniuste detinet et possidet nisi ipsum ab universali et principali domino recognoscat. Sequitur etiam quod Romanus pontifex possit libere et absolute pro libito voluntatis suae omnia regna et principatus terrae transferre et dare ac conferre quibus placuerit, et diminuere, augere et dividere certosque terminos eis praefigere secundum suae voluntatis arbitrium.' Although signed by Michael of Cesena, the *Appellatio* was probably a collective work; see Becker (1966); Wittneben (2003), pp. 353–399.

the whole of creation spontaneously submitted to mankind, and post-lapsarian *dominia*. Our first parents had everything at their disposal, but possessed no *potestas appropriandi*, that is, they were not allowed to take possession of anything which they had for their use. Only after the Fall was *potestas appropriandi* granted to mankind; the division among many *dominia propria* was the result of such a *potestas*.<sup>60</sup> Ockham makes a careful distinction between the three main stages by which *dominia* came into existence, instead of the two which were envisaged by Francis. On the other hand, he remains faithful to the principle that this division goes back to human initiative, although it does not seem to contradict God's will, once mankind had lost its original innocence. Relationships among *propria dominia* are regulated by human, positive laws: for Ockham, as for many earlier Franciscan thinkers, this implied that it was possible to abdicate such rights and to regain a condition which was similar, though not identical, to the state of innocence. In such a situation, natural law, which in this respect had been limited by positive laws, would once again prevail, although only in the case of necessity. This idea, too, goes back to the canonistic tradition, according to which necessity had the power to suspend the validity of positive laws, so that, to recall the most famous example, theft in the case of necessity was not theft.<sup>61</sup> As we have seen, Nicholas III in *Exiit* drew on this idea in order to defend the claim that a friar, even though he had renounced all rights, was still entitled to receive the necessities of life. Franciscan apologists repeated this argument time and again, as a means of denying that their choice, if taken seriously, would be equivalent to suicide. Ockham was very careful to point out that the supremacy of natural law in the case of necessity in no way established a right in the positive sense. It belonged to a different sphere, which functioned as a sort of control, preventing human laws from causing, for example, a human being to starve.<sup>62</sup>

With regard to Christ's lordship as well, Ockham followed in Francis's footsteps, but was much more determined to broach the awkward issue of the political implications of this doctrine.<sup>63</sup> He rejected John XXII's theory of Christ's temporal kingship not only on the basis of the legitimacy of

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<sup>60</sup> William of Ockham (1963), *Opus Nonaginta Dierum*, c. 14, p. 439: 'Et ita fuit triplex tempus: scilicet ante peccatum, in quo tempore habuerunt dominium, quale numquam aliqui habuerunt postea. Secundum tempus fuit post peccatum et ante rerum divisionem; et in illo tempore habuerunt potestatem dividendi et appropriandi sibi res, et si talis potestas vocetur dominium, potest concedi quod habuerunt dominium commune rerum. Tertium tempus fuit post divisionem rerum, et tunc inceperunt dominia propria, qualia nunc sunt mundanorum.' See Miethke (1969), p. 470 and ff.; Brett (1997), pp. 50–68; Töpfer (1999), pp. 440–450.

<sup>61</sup> On this issue, see Couvreur (1961).

<sup>62</sup> Tabarroni (2000).

<sup>63</sup> For a detailed discussion of this issue, see Lambertini (2003b).



pagan rulers, but also because it would lead to false consequences. Among these false consequences Ockham explicitly listed the fact that the pope, as Christ's successor, would enjoy a *plenitudo potestatis* in the temporal sphere. He therefore needed to counter a whole series of traditional pro-papal arguments in favour of what he judged an absurdity, but which was one of the main tenets defended by his adversaries.<sup>64</sup> In this way we can see how Ockham, at the beginning of the 1330s, was already developing elements of a political theory out of his defence of the Franciscan position. The milestones of this theory were the human origin of the social and political order and its autonomous legitimacy.

The most coherent and systematic account of Ockham's political thought is probably represented by his *Breviloquium de principatu tyrannico*, composed a decade later. In the third book the *Venerabilis Inceptor* restated his ideas concerning *dominium* before the Fall and the *potestas appropriandi* which mankind possessed in its post-lapsarian state. After the Fall, both the original *dominium* and the *potestas appropriandi* were gifts of God. Together with the *potestas appropriandi*, God also granted to mankind a *potestas instituendi rectores*. With this important addition, arguing along lines which are strongly reminiscent of Scotus, Ockham made clear the close connection in the Franciscan tradition between property and political power, which he here refers to as jurisdiction. In the following chapters he also explained that if God gave to man the faculty of appropriating things and of designating rulers, this implied that he directly intervened in history only in exceptional cases, assigning, for example, the promised Land to his people, or appointing a king. Normally, however, such things happened *ex ordinatione humana*. Pagan and infidel kingdoms were also fully legitimate by the same *potestas instituendi rectores*, which was given not only to believers but, as already mentioned, to all mankind.<sup>65</sup>

Drawing on his Franciscan heritage, Ockham succeeded in defending the autonomy of the temporal order in a way which should not be considered equivalent to analogous attempts, such as those of John of Paris or Marsilius of Padua. For Ockham, the autonomy of the temporal sphere was not based on nature, as it was in *De regia potestate et papali*, where John of Paris argued that the kingdom of France was autonomous using arguments which proved the natural superiority of monarchy as a

<sup>64</sup> William of Ockham (1963), c. 93, pp. 686–689; see Miethke (1969), pp. 530–533, and (2000), pp. 288–295.

<sup>65</sup> William of Ockham (1997), III, 8, pp. 180–181: 'Duplex potestas praedicta, scilicet appropriandi res temporales et instituendi rectores iurisdictionem habentes, data est a Deo immediate non tantum fidelibus, sed etiam infidelibus, sic quod cadit sub praecepto et inter pure moralia computatur: propter quod omnes obligat tam fideles quam etiam infideles.' On Ockham's political thought, see McGrade (1974) and Miethke (2000), pp. 285–286.

constitutional form.<sup>66</sup> According to Ockham, the autonomy of secular powers was rooted in human initiative, the result of a free gift from God.

On the other hand, Ockham could not concur with his fellow refugee Marsilius, who tried to deny the status of law, in the proper sense, to both divine and natural law, arguing that only positive law was relevant to the issue at stake.<sup>67</sup> Ockham did not share this attitude, because in his opinion human law did not represent the absolute horizon of human action, but could be transcended in some circumstances. I have mentioned many times the example of the free choice of a Franciscan friar, because it represents, in my view, the seminal paradigm of his reasoning. But Ockham's entire political thought was characterized by the opposition between rule and exception. He never tired of pointing out that a certain rule holds unless it must be temporarily suspended, in the case of necessity, for the sake of the common good. So, for example, it was the emperor's duty and right to defend the orthodox faith; but if he failed to do so, other people, even simple Christians, had to take his place for the good of the Church. There cannot be much doubt that Ockham was applying here the same pattern of thought which he used to justify the friars' recourse to natural law, even when it went beyond or against positive law.<sup>68</sup>

## CONCLUSION

As I pointed out at the beginning of this paper, from the historian's point of view we are not entitled to say that Ockham's political thought represents *par excellence* the Franciscan contribution to medieval political thought. I prefer to say that, devoting his attention to political theory in particular historical circumstances, Ockham chose to draw on the apologetic tradition of his own order and, by doing so, showed how some basic 'conceptual tools' of the Franciscan position could play a decisive role in shaping a

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<sup>66</sup> John of Paris (1969), c. 1, pp. 75–76: 'Est autem tale regimen a iure naturali et a iure gentium derivatum. Nam, cum homo sit animal naturaliter politicum seu civile ut dicitur I Politicorum, quod ostenditur secundum Philosophum ex victu, vestitu, defensione, in quibus sibi solus non sufficit, et etiam ex sermone qui est ad alterum, qui soli homini debetur, necesse est homini ut in multitudine vivat et tali multitudine, quae sibi sufficiat ad vitam, cuiusmodi non est communitas domus vel vici sed civitatis vel regni, nam in sola domo vel vico non inveniuntur omnia ad victum vel vestitum et defensionem necessaria ad totam vitam sicut in civitate vel regno.' On John of Paris's political thought, see Miethke (2000), pp. 116–126; the debate over whether he was or was not a supporter of a 'mixed' form of monarchy is not relevant here; but see Blythe (1992), pp. 139–157.

<sup>67</sup> Dolcini was the first to study in detail the disagreements between Marsilius and Ockham; see Dolcini (1981) and (1995), pp. 28–29. One should not, however, neglect de Lagarde (1937), especially p. 450.

<sup>68</sup> See Tabarroni (2000).

political theory. He thought of the political order according to the pattern of ownership: this implied that political institutions, as arrangements of property, were not derived from natural law, but instead had their origin in a web of agreements among men, who had received from God the power to shape them. This meant that these human institutions did not, in principle, need any legitimation from outside (in this case, from religious authority). At the same time, precisely because it rested on positive law, the political order did not constitute the ultimate anthropological dimension. Natural law, which in the state of innocence would have regulated human life, in the present state was still in force as a form of control.

There was probably no such thing as a Franciscan political theory; but certain distinctively Franciscan features, which could have an impact on political thought, can be identified. On the other hand, these Franciscan roots did not prevent Ockham's ideas from exerting an influence outside his own order. Indeed, in the age of the great 'Reformkonzilien', intellectuals not belonging to Franciscan groups, such as Pierre d'Ailly and Juan de Segovia, are known to have made intensive use of Ockham's political writings.<sup>69</sup> To my surprise, I noticed that even a fierce opponent of Franciscan privileges and of the Franciscan way of life, such as Jean Gerson, had recourse to ideas which retained a Franciscan flavour.<sup>70</sup> These come to light when, in *De vita spirituali anime*, he criticizes Richard FitzRalph's position concerning *dominium* and grace.<sup>71</sup> Against the latter's contention that *dominium* depends on grace, Gerson drew on the idea that *dominium civile* was a purely human institution made necessary by sin, which was common also to infidels and which, unlike original *dominium*, could be renounced. As an example of the legitimacy of such a renunciation, he recalled those who had abdicated every *civile dominium* and *haereditaria appropriatio in proprio et in communi*.<sup>72</sup>

At the very beginning of the fifteenth century, when the struggles which contributed to shaping the conceptual tools of the Friars Minor apparently belonged to the distant past, the Franciscan heritage still exerted a sometimes silent but nevertheless important influence on the *maîtres à penser* of a lacerated Christianity, who were once again confronted with the problems of poverty and power.

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<sup>69</sup> Oakley (1964); Mann (1994).

<sup>70</sup> Tierney (1988), especially p. 96; Posthumus Meyjes (1999), pp. 182, 293–298.

<sup>71</sup> On this issue, see Dawson (1983) and Lambertini (2003a).

<sup>72</sup> On this issue in Gerson, see Lambertini (forthcoming a) and also Brett (1997), pp. 76–87.

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# The Franciscan Background of Early Modern Rights Discussion: Rights of Property and Subsistence

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## INTRODUCTION

Concerning the assertion of the natural rights of subsistence, John Locke (1632–1704) wrote in the chapter on property in his *Second Treatise of Government*:

Whether we consider natural Reason, which tells us, that Men, being once born, have a right to their Preservation, and consequently to Meat and Drink, and such other things, as Nature affords for their Subsistence: Or Revelation, which gives us an account of those Grants God made of the World to Adam, and to Noah, and his Sons, 'tis very clear, that God, as King David says, Psal. CXV.xvi. has given the Earth to the Children of Men, given it to Mankind in common.<sup>1</sup>

Many surveys of the history of moral philosophy locate the emergence of individual rights in the age of seventeenth-century capitalism and thus focus on such philosophers as Thomas Hobbes (1588–1679) and John Locke.<sup>2</sup> However, a Dominican theologian, Jacques Almain (c. 1480–1515), had already stated that right to the subsistence is a basic human right:

The natural dominion belonging to man from God's gift cannot be abdicated absolutely with regard to all things or, similarly, with regard (in every eventuality) to a specific kind of food and drink. After Adam's sin it was fitting to add over and above this dominion the civil dominion of property and, similarly, that of jurisdiction, by which those exercising it have execution of the material sword and from which ecclesiastical are not in the last exempt by divine right.

The first part of this conclusion is that a natural dominion pertains to men from God's gift. As proof of this, it is assumed that natural dominion is a faculty or immediate power of taking up inferior things for one's sustenance, according to the dictate of natural law. Now by natural law

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<sup>1</sup> Locke (1960), p. 327 (II. 25). For the medieval foundations of Locke's theory of natural rights, see Swanson (1997).

<sup>2</sup> See Tully (1980) and MacIntyre (1966).



everyone is bound to converse himself in existence. From this obligation there arises in everyone a power of taking inferior things to use for their own sustenance; this power is called natural dominion. Its title is necessity. – No human right can derogate from this dominion, since the right of a superior law is not abrogated by an inferior right.<sup>3</sup>

In this passage from his *Question at vespers*, Almain defines the concept of natural dominion (*dominium naturale*) as a faculty (*facultas*) or immediate power (*potestas*) of taking up inferior things for one's sustenance. Furthermore, in defining natural dominion, he describes the basic elements of a subjective concept of right which is understood as a part of the individual and his or her personal power of action.<sup>4</sup>

Thomas Aquinas (1224–1274) had understood the basic account of *dominium naturale* in the same way as Jacques Almain. Aquinas also used the same mode of argument, but framed the issue in different terms. In his *Summa theologiae*, he posed the question of whether it is natural for man to possess material objects, replying that:

We can consider a material object in two ways. One is with regard to its nature, and that does not lie within human power, but only the divine power, to which all things are obedient. The other is with regard to its use. And here man does have natural dominion (*dominium naturale*) over material things, for though his reason and will can use material objects for his own benefit.<sup>5</sup>

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<sup>3</sup> Almain (1706), II, pp. 961–962: ‘Dominium naturale, quod homini convenit ex dono Dei, simpliciter est inabdicabile, quantum ad cuncta; similiter et quantum ad certam speciem cibi et potus in omni eventu: cui dominio, post peccatum, conceniens fuit superaddere dominium civile proprietatis, similiter et Jurisdictionis; quo fugentes, executionem gladii materialis habent, a quo Ecclesiastici, Jure divino, minime eximuntur. Prima hujus Conclusionis Pars est, quod Dominium naturale hominibus competit ex dono Dei. Pro cujus probatione supponitur, quod dominium naturale est facultas, seu potestas propinqua assumendi res inferiores ad sui sustentationem, secundum dictamen Legis naturalis. Lege enim naturali quilibet tenetur se conservare in esse: ex qua obligatione, in quolibet oritur potestas res inferiores sumendi in usum, ad sui conservationem; quae potestas dominium naturale vocatur, cujus titulus est Necessitas; de quo dominio dicitur: In necessitate omnia sunt communia, et istud dominium quoscumque Dominos simul compatitur. Ad istud dominium, apud quosdam, pertinet potestas alterum invadentem occidendi, servato moder animae inculpatae tutelae. Huic dominio, nullun Jus humanum derogare potest, cum Jure inferiore non abrogetur Jus superioris Ex istis sequuntur aliqua corollaria.’ For the translation see Almain (1997), pp. 14–15.

<sup>4</sup> On Almain's ideas on rights as a continuation of the Gersonian tradition, see Brett (1997), pp. 116–122.

<sup>5</sup> See Thomas Aquinas (1888–1906), 2a 2ae q. 66. a. 1, resp., p. 64: ‘Utrum naturalis sit homini possessio exteriorum rerum. Respondeo dicendum, quod res exterior potest dupliciter considerari: uno modo quantum ad ejus naturam, quae non subjacet humanae potestati, sed solum divinae, cui omnia ad nutum obediunt. Alio modo quantum ad usum ipsius rei, et sic habet homo naturale dominium exteriorum rerum, quia per rationem et voluntatem potest uti rebus exterioribus ad suam utilitatem.’ Although Thomas's argument seems to have been traditional, some scholars have found new ideas in this text: Tuck

As a Dominican, Almain probably knew Aquinas's theory, while his basic mode of argument seems to have been taken from the latter's analysis of *dominium naturale*. Almain's vocabulary is elaborated from his contemporary discussion of natural, individual rights. Aquinas's argument, by contrast, is based on the objectively understood law of nature. According to him, man has no *prima facie* right to property, nor to common possessions or private property.

The citation from Almain in addition shows that his rights language did not differ from that used by Locke. Both scholars employed typical early modern terminology concerning individual rights, which included the idea that everyone has a natural, inalienable and God-given right (*ius*) to his or her own person, sustenance and property. Understood subjectively, these inalienable, individual and God-given rights derived from the duty of self-preservation.

Recent studies have demonstrated that the emergence of individual rights was the continuation of a centuries-old tradition. Indeed, the discussion of the basic rights every human being has in his or her life started long before both Locke and Almain. There are, in fact, several historical contexts concerning the early history of individual rights in Western European thought. As Brian Tierney has shown, one important context is the revival of jurisprudence at the end of the eleventh and the early twelfth century, especially in the commentaries on Gratian's *Decretum* by the twelfth-century decretists.<sup>6</sup> Another significant context is the discovery of the New World.<sup>7</sup> In between these were the long-lasting controversies over Franciscan poverty, which went on from the 1250s to the 1340s and which can be divided into three independent debates.<sup>8</sup>

The first was the so-called secular-mendicant controversy in the Faculty of Theology at the University of Paris from the 1250s to the 1270s. This controversy had its origin in university policy but soon expanded to have an impact on the issue of Franciscan poverty.<sup>9</sup> During this controversy the secular masters, especially William of Saint-Amour (d. 1272) and Gerard of Abbeville (d. 1270), questioned the theological, moral, and legal foundations of the Franciscan ideal of poverty. The most significant

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(1979), pp. 19–20, sees the notion of *dominium utile*; Feenstra (1971), p. 215, highlights the importance of the two notions, *dominium* and *potestas*, in discussing Thomas's teaching in this connection.

<sup>6</sup> For the decretists' contribution to the development in the history of individual rights, see Tierney (1997).

<sup>7</sup> See Tierney (1997), especially chapter XI 'Aristotle and the American Indians' and chapter XII 'Rights, Community, and Sovereignty'.

<sup>8</sup> For the Franciscan contribution to the subject, see Mäkinen (2001).

<sup>9</sup> The main source for the conflict is *Chartularium Universitatis Parisiensis* (1889–97). The conflict has been studied extensively; see Rashdall (1936); Leff (1967); Lambertini (1990) and (1993); and Traver (1995).

Franciscan figure during this controversy was Bonaventure of Bagnoregio (1217–1274), a professor in the Faculty of Theology and later General Minister of the Order (1257–1274).<sup>10</sup>

The second controversy concerning Franciscan poverty centred around the annual quodlibetal disputations held in the Faculty of Theology at the University of Paris from the 1270s to the 1290s,<sup>11</sup> which gave rise to an interesting group of texts. The importance of the quodlibetal disputations for our subject is beyond question, since the discussion could centre on any problem proposed by any listener whatsoever; and quodlibetal questions often covered contemporary topics untouched in any other work of the Parisian masters—in our case, several subjects concerning the problems of Franciscan poverty. The quodlibetal questions of Henry of Ghent and Godfrey of Fontaines can be seen as the aftermath of the secular-mendicant controversy in the Faculty of Theology at Paris.<sup>12</sup>

The debate between Pope John XXII (1316–1334) and the Franciscan Order from the 1320s to the 1340s was the third controversy which touched on the issue of Franciscan poverty issue.<sup>13</sup> The controversy had its historical roots in the so-called *usus-pauper* controversy in the late thirteenth century, a matter too complicated to go into here. The debate was triggered by the Franciscans' claim that 'Christ and his apostles possessed nothing, either individually or in common.'<sup>14</sup> In 1321 the Inquisition in Provence took this claim into careful consideration; and in 1322 John XXII condemned it and declared the entire Franciscan Order to be heretics.

The voluntarist concepts and rationalistic ideas on natural rights theories which arose within these specific historical settings also had a certain influence on the development of individual rights theories.<sup>15</sup> Each of these historical and philosophical contexts demanded renewed consideration of fundamental questions about rights.

There are many studies which maintain that individual rights did not exist before the seventeenth century. Yet, despite these views, recent scholarly research has shown that if we wish to find the beginning of the concept of individual rights, we have to turn to the Middle Ages—how far and to what extent remains a matter of debate calling for further legal,

<sup>10</sup> For William of Saint Amour and Gerard of Abbeville's role in the conflict, see Lambertini (1990), pp. 10–24, 64–78; Traver (1995), pp. 163–240; Mäkinen (2001), pp. 34–53.

<sup>11</sup> For the quodlibetal disputations as a practice at the universities, see Weijers (1995).

<sup>12</sup> On the significance of quodlibetal disputations for the issue of Franciscan poverty, see Mäkinen (2001), pp. 105–139.

<sup>13</sup> For general studies on the controversy over Franciscan poverty in the early fourteenth century, see Lambert (1961); Leff (1968); Tabarroni (1990); Miethke (1969); and Mäkinen (2001).

<sup>14</sup> For the so-called *usus-pauper* controversy, see Burr (1989).

<sup>15</sup> See Brett (1997).

historical and philosophical investigation. Questions concerning the difference between ‘active’ and ‘passive’ rights, and between ‘objective’ and ‘subjective’ rights, are likewise the subject of much scholarly discussion.<sup>16</sup>

My main aim in this paper is to show that the controversies concerning Franciscan poverty in the late thirteenth and early fourteenth centuries contributed to the emergence of early modern ideas on individual rights. I shall do this by considering the legal and philosophical arguments advanced for and against the Franciscan ideal of poverty. I shall defend my thesis by considering two crucial questions which were posed during this discussion: (1) is it possible to use a thing without having dominion, ownership, possession or usufruct of it; and (2) is it possible for a human being to give up rights in this life? These two questions lead us to the emergence of individual rights: the development of subjectively understood property rights and the right of subsistence, the two basic human rights everyone should have in this life.

### **IS IT POSSIBLE TO USE A THING WITHOUT HAVING DOMINION, OWNERSHIP, POSSESSION OR USUFRUCT OF IT?**

The most fundamental idea of Franciscan poverty relevant to our subject was their claim to give up all property rights. The Franciscan Rule of 1223 states this determination regarding the material means of Franciscan life as follows: ‘Let the friars not appropriate anything for themselves, neither a house, a place, nor anything else.’<sup>17</sup> This passage in the Rule, originally put forward as a religious ideal of evangelical poverty, produced a variety of legal interpretations, formulated both by popes and by the Franciscans themselves.<sup>18</sup> Commentary on the question of poverty inevitably involved discussion of property rights. It all started with Pope Gregory IX’s doctrine of Franciscan poverty as a use (*usus*) of things without ownership (*proprietas*) or dominion (*dominium*). According to Pope Innocent IV, ownership or dominion of the goods used by the Franciscans either

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<sup>16</sup> In her study, Brett (1997) analyses various views concerning the understanding of objective and subjective rights from the Middle Ages to Hobbes.

<sup>17</sup> Francis of Assisi (1993), c. 6: ‘Fratres nihil sibi approprient nec domum nec locum nec aliquam rem.’

<sup>18</sup> The main papal interpretations concerning the *Regula Bullata* are Gregory IX’s *Quo elongati* (1230), Innocent IV’s *Ordinem vestrum* (1245) and Nicholas III’s *Exiit qui seminat* (1279).

remained with the Church in general and in the hands of the pope in particular, or else remained with the grantor or the donor.<sup>19</sup>

In the mid-thirteenth century, when Franciscan friars started to employ the *usus-dominium* distinction, they took it to mean that they had to live without all rights to property and in the absence of any legal standing. The idea of using things without any right to do so was considered philosophically and legally problematic and led to the formulation of definitions, in texts on law, theology and philosophy, of what was meant by ‘the use of things’. It was characteristic of these discussions that the question of what kinds of thing were capable of being owned was considered important. The distinction between *usus* and *dominium* weighed in heavily, especially in the case of consumables such as food, oil or wine.<sup>20</sup>

The question concerning the distinction between use and dominion in relation to consumables was first posed by the secular masters William of Saint-Amour and Gerard of Abbeville, as part of discussions of the legal basis of Franciscan poverty which were carried on during the secular-mendicant controversy. In his *Contra adversarium*, Gerard used the following argument against the Franciscan ideal of use:

To say that you have only the use of them [i.e., utensils], and that the dominion pertains to those who have given them until they are consumed by age, or until the food is taken into the stomach, will appear ridiculous to everyone, especially since, among human beings, use is not distinguished from dominion in things which are utterly consumed by use.<sup>21</sup>

Gerard thus maintained that it was not possible to establish *usus* in things consumed by use (*res quae usu consumuntur*) without having *dominium* over them.<sup>22</sup> This was also a recognized civil law notion. The reasons were based on the law of *ususfructus* and of *usus*, which included the principle that the substance of a thing should remain untouched.

In his *Apologia pauperum contra calumniator* (1269), Bonaventure defends the Franciscan rule of poverty against Gerard’s criticism:

In order to silence these and other malicious, deceitful and captious objections, we should understand that since four things are to be considered in relation to temporal goods—ownership, possession, usufruct and simple

<sup>19</sup> See Gregorius IX (1964), pp. 20–25; and Innocent IV (1759), pp. 400–402.

<sup>20</sup> For the historical origins of the basic legal concepts used in the Franciscan poverty discourse—*ius*, *dominium*, *proprietas*, *possessio*, *ususfructus* and *usus*—in Roman law, see Thomas (1976); Buckland (1966); Kaser (1955–9).

<sup>21</sup> Gerard of Abbeville (1938–9), liber II, pars 4, 133: ‘Dicere vero, quod usus tantum vester est, dominium eorum, qui dederint, quousque vestustate consumantur, aut ciborum, quousque in ventrem reconditi fuerint, omnibus ridiculum videbitur, maxime cum eorum, quae per ipsum usum penitus consumuntur, ab usu dominium nullatenus inter homines distinguatur.’

<sup>22</sup> For Gerard of Abbeville’s criticism of the Franciscan ideal, see Mäkinen (2001), pp. 34–53.

use—and since the life of mortals is possible without the first three but necessarily requires the fourth, no profession may ever be made which renounces entirely the use of all kinds of temporal goods. But that profession, which implies a wilful vow to follow Christ to the extremities of poverty, most fittingly calls for renunciation of dominion over anything whatsoever and must be content with the limited use of things belonging to others and conceded to it.<sup>23</sup>

This is perhaps the most precise statement which Bonaventure makes in his writings concerning the distinction between *dominium* and *usus*. The friars must renounce ‘*dominium* over anything (*res*) whatsoever (*universaliter*)’ and were only allowed the simple use of goods (*simplex usus*). He employs the concept of *dominium* here to mean all alternative property rights over things (*iura in re*): *proprietas*, *possessio*, *ususfructus* and *usus iuris*. The concept of *dominium* thus covered all property rights over things: *proprietas*, *possessio*, *ususfructus*, and *usus iuris*.<sup>24</sup> Bonaventure seems to have appropriated the contemporary lawyers’ notion of *dominium*, which meant any right over a thing (*ius in re*). Since *dominium* was now such a broad concept, it was important to specify that *proprietas* meant ownership, that is, the right of property.<sup>25</sup>

In the above citation, Bonaventure skilfully demolishes Gerard’s criticism by describing the Franciscan ideal of using goods as *simplex usus*, simple use. He does not discuss the distinction between *dominium* and *usus iuris* in any detail (as Gerard had done), speaking instead about *simplex usus*, which, as distinct from the concept of *dominium*, was a non-technical legal term. Accordingly, friars did not even have the right to use goods; they had only non-legal permission to make simple use of them. His distinction between *dominium* and *simplex usus* also indicates that Bonaventure took account of the precise legal situation.<sup>26</sup>

<sup>23</sup> Bonaventure (1898), c. 11 n. 5 (VIII, 312a): ‘Ut igitur praefatis et his similibus cavillationibus malignis et subdolis imponatur silentium, intelligendum est, quod cum circa res temporales quatuor sit considerare, scilicet proprietatem, possessionem, usumfructum et simplicem usum; et primis quidem tribus vita mortalium posit carere, ultimo vero tanquam necessario egeat: nulla prorsus potest esse professio omnino temporalium rerum abdicans usum. Verum ei professioni, quae sponte devovit Christum in extrema paupertate sectari, concedens fuit universaliter rerum abdicare dominium arctoque rerum alienarum et sibi concessarum usu esse contentam.’ For the translation see Bonaventure (1966), p. 241; however, I have modified it in various places, in particular by translating *cavillationes* as ‘captious objections’ rather than ‘sophisms’.

<sup>24</sup> This type of terminology also regularly occurs in philosophical and theological texts of the thirteenth century; see Coleman (1991).

<sup>25</sup> Cf. Lambertini (1990), p. 97.

<sup>26</sup> The distinction between *dominium* and *simplex usus* was not, however, an innovation of Bonaventure. Hugh of Digne had explicitly employed the notion of *simplex usus*, as distinct from *proprietas* and *dominium*, in his commentary on the Rule: see Hugh of Digne (1979), c. 6, pp. 146, 148–149.

In Bonaventure's view, simple use was necessary for life, implying a deliberate vow to follow Christ. Simple use concerned consumables such as clothing, shoes, food, dwellings, victuals and various types of utensils such as books. Since this was a non-legal use of goods, a mendicant was only permitted to take goods such as books into his hands; but he could not take them possessively into his hands, for instance, by carrying them with him and using them over a period of days. According to Bonaventure's interpretation, the simple use of goods granted to Franciscans did not allow them, for example, to buy, exchange or lend anything since they had no rights over anything. They only consumed things whose ownership belonged to another, the Roman Church in general and the pope in particular.

Bonaventure also defended the distinction between use and dominion by drawing on legal principles derived from Roman law. In his *Apologia pauperum*, he first gives support to the distinction by comparing friars to little children or even lunatics who were *alieni iuris*, under the control of a superior and guardian—in the case of Franciscans, the superior was, of course, the pope.<sup>27</sup> As a little child, a Franciscan friar was also incapable of owning or even possessing property. Second, Bonaventure maintains that since, in a legal sense, friars lacked the intention (*animus*) of possessing or owning anything, they could not make any legal contracts or alienate or exchange the property which they simply used.<sup>28</sup> Third, he refers to the law of personal fund (*peculium*). This states that a son of the household can use his father's goods as a personal fund, *peculium*, without being their proprietor or legal possessor.<sup>29</sup> Similarly, friars used property which belonged to the pope and to the Roman Church. Therefore, Bonaventure reasons that since it was possible to establish a *peculium* in things consumed by use, the Franciscans' case was also admissible in law.

Bonaventure's notion of *simplex usus*, as distinct from the concept of *dominium*, was later elaborated by Pope Nicholas III (1277–1280) in his bull *Exiit qui seminat* of 1279 into the notion of *usus facti*, factual use. It

<sup>27</sup> Bonaventure (1898), XI, 9 (VIII 313a): 'Furiosus et pupillus sine tutoris auctoritate non possunt incipere possidere, quia affectionem tenendi non habent, licet res suo sorpore contingant, sicut si dormienti aliquid in amnu ponatur.' See also *Digest* 41.2.1.

<sup>28</sup> Bonaventure (1898), XI, 9 (VIII 313 a-b): 'Patet igitur per haec verba legis expressa, neminem posse proprietatem sive dominium, immo nec possessionem acquirere, nisi vere, vel interpretative animum acquirendi habeat. Cum igitur Fratres Minores animum acquirendi non habeant, quin potius voluntatem contrariam, etiam si res corpore contingant; nec dominium nec possessionem acquirunt nec rerum huiusmodi possessores vel domini dici possunt.' See also *Digest* 38.2.49; 29.2.20; and 41.2.1.

<sup>29</sup> Bonaventure (1898), XI, 7 (VIII 312b): 'Nec obstat quod adversaries obiicit de rebus, quae usu consumuntur, quod in eis proprietates non separatur ab usu. Hoc enim fallit in peculio profectio filiifamilias, ubi filiusfamilias usum habeat, et tamen proprietates nec ad momentum residet penes ipsum.'

was his view that factual use meant legally indifferent permission to use the necessities of life. The Franciscan use of things, the factual use, also involves a *votum*—in this case, an active act of will not to own or possess anything. The notion of *usus facti* remained almost unchanged until William of Ockham.

Turning now to the controversy between the Franciscan Order and Pope John XXII in the 1320s, we notice that the question over the use of goods without any right to them, in other words, the distinction between *usus facti* and *dominium*, became one of the most important points of contention. As a lawyer, the pope naturally focused his criticism on the terminology of property rights. He regarded the distinction between *dominium* and *usus facti* to be legally impossible in relation to consumables. He gave the same legal reasons as the secular master Gerard of Abbeville in the mid-thirteenth century, using Roman law and referring to the contract of *mutuum*, a loan for consumption. John XXII also reasoned that the substance of consumable goods deteriorated when they were consumed, so that all the profit would go to the user, not to the owner.<sup>30</sup>

John XXII then argued against the Franciscan case by drawing on moral statements concerning human actions. He defined *usus facti* as a bare act of using (*actus utendi*), which involved at least the right of using a thing (*ius utendi*). In his view, the Franciscans' factual use of consumables, without any kind of right over them, constituted using them up (*abusus*). The friars' way of life was thus neither just, nor based on right and, consequently, illicit. In his bull *Quia quorundam mentes*, John XXII writes that:

It is impossible that an extrinsic human act is just if the person has no right to do it: rather, such a use is not just but necessarily unjust. Likewise, it is absurd and erroneous that an act of someone who has no right to do it is more just and more acceptable to God than [an act] of someone who has a right ...<sup>31</sup>

By stating that an act which involves using something without any right is not just, John XXII condemned as immoral the Franciscan way of life by means of simple and factual use. There were, however, two weak points in his reasoning. First, he moved from 'not just' to 'unjust' without realizing

<sup>30</sup> John XXII (1888), pp. 85–86; (1839a), p. 1140. For Pope John XXII's criticism of Franciscan poverty, see Mäkinen (2001), pp. 163–173.

<sup>31</sup> John XXII (1839b), p. 1148: 'Impossibile enim est, actum humanum extrinsecum esse iustum, si exercens actum ipsum nullum ius habeat illum exercendi: immo non iustus seu iniustus necessario convincitur talis usus. Item, est absurdum et erroneum, quod actus alicuius, non habentis ius actum huiusmodi faciendi, sit iustior et Deo acceptior, quam habentis, quum concludat actum iniustum iustior et Deo acceptiorem existere, quam sit iustus.'



that this was a fallacy. Furthermore, he equated positive law and its rights with natural law and its rights.

William of Ockham continued the Franciscan discussion and defended their ideal of poverty in his *Opus nonaginta dierum* of c. 1332. He, too, made a distinction between *dominium* and *usus facti*; however, he explained the notions of both *usus facti* and of *ius* in a new way. According to him, factual use is the act of using some external thing, for example, an act of inhabiting a place, eating, drinking, riding, wearing clothes and the like.<sup>32</sup>

For Ockham, a right was a licit power of using and was distinct from the *usus facti*, which was a mere act of using (*actus utendi*), not a right. Factual use was a bare act of using an object in which the user does not attribute anything to a right or *dominium* in the act of eating, drinking or wearing.<sup>33</sup>

### IS IT POSSIBLE FOR A HUMAN BEING TO GIVE UP ALL RIGHTS IN THIS LIFE?

In medieval society, the social and economic status of a person was determined by the privileges he or she had. Individuals who had many privileges—for example, the right to exact taxes and customs—enjoyed a higher social status than those with only a few privileges. The lowest group in the society, the poor (*miserabiles personae*), had one privilege—the right to beg. The mendicant friars were, therefore, quite soon seen as immoral people who took alms from the real poor in need.

During the secular-mendicant controversy, William of Saint-Amour discussed in particular the moral justification of poverty as practised by the mendicants. In his disputation *De quantitate eleemosynae* (1255), he questioned friar's right to mendicancy and tried to establish limits to almsgiving. He posed the question of whether it was permitted to give up all one's possessions, retaining nothing for one's own use.<sup>34</sup> His answer was that the act of giving up all temporal possessions, without any care for the future, exposes a person to the danger of several sins, including flattery, lying, stealing, perjury and homicide, since he was then required to beg for his sustenance.<sup>35</sup> William observed that one could easily avoid such sins if

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<sup>32</sup> William of Ockham (1940), c. 2, p. 302: 'De usu facti dicunt quod usus facti est actus utendi re aliqua exteriori sicut inhabitare, comedere, bibere, equitare, vestem induere et huiusmodi.'

<sup>33</sup> *Ibid.*, c. 4, pp. 335–336; William of Ockham (1963), c. 58, p. 551.

<sup>34</sup> William of Saint-Amour (1995), pp. 295–342.

<sup>35</sup> *Ibid.*, p. 328.

one retained some temporal possessions. He thus stressed the need to keep a minimum amount of wealth in order to support oneself. According to William, mercy should be proportional to the human condition. Those with only one tunic should not be compelled to divide it with others, for then they all would be unclothed.<sup>36</sup> Zacchaeus, who gave half of his possessions to the poor, while retaining enough for his own sustenance (Luke 19:2–8), was for William an example of proper almsgiving.<sup>37</sup>

Bonaventure defended the friars' ideal of mendicancy against William of Saint-Amour's criticism by stating that there were two perfect professions of poverty: in the one, a man renounces all private and personal *dominium* over temporal goods and is sustained by things which he does not own but which are shared with a community; in the other, he renounces all *dominium* over temporal goods, both private and common, and is sustained by things which are not his but someone else's. In the latter case, his sustenance is kindly and justly provided by an outsider.<sup>38</sup> Bonaventure claims that those living in a situation of collective ownership have, by their own right, the power to engage in a legal action. The members of a collective can, for example, reclaim their ecclesiastical goods and be defendants in claims. These legal powers were associated with the *dominium* they had in common.<sup>39</sup> Because the Franciscans have renounced *dominium* (equivalent to *ius*) and, furthermore, use things as *alieni iuris*, they are not able to sue or intervene legally in relation to those things which they only consume.

Pope Nicholas III confirmed the Franciscan doctrine of poverty in his bull *Exiit qui seminat* (1279). The friars received their livelihood either from things which were freely offered, or for which they humbly begged or which were acquired by labour.<sup>40</sup> He developed this notion:

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<sup>36</sup> Ibid., p. 325–326.

<sup>37</sup> Ibid., p. 325–326. William of Saint-Amour's way of associating wealth with morality was common to theologians in the thirteenth century. But his ideas on the 'merits of wealth', in contrast to the poverty of the friars, implied a notion of the social and even individual benefit provided by wealth—a point which the humanists later took up in their support of secular values against ascetic monks and mendicant friars. For the humanists' ideas on poverty and property, see Baron (1938), pp. 1–37, and McGovern (1970), pp. 226–253. McGovern, however, did not notice that the humanists' ideas were already implicit in the anti-mendicant writings of such secular masters as William of Saint-Amour and Gerard of Abbeville in the 1250s. Aristotle's *Nicomachean Ethics* (translated by 1255) also had a certain impact on the notion of the social and political benefits provided by wealth.

<sup>38</sup> Bonaventure (1898), VII, 4 (VIII 273a).

<sup>39</sup> Ibid., X, 16 (VIII 310a).

<sup>40</sup> Nicholas III (1897), a. 2, p. 192: 'vel de iis quae offerentur liberaliter, vel de iis quae mendicantur humiliter, vel de iis quae conquiruntur per laboritium sustententur: qui triplex vivendi modus in Regula providetur expresse'.

And, indeed, where these [manners of life] all fail, which is not in some way to be presumed, the way to provide by the law of heaven for the sustenance of nature in a situation of extreme necessity which is granted to all those caught in extreme necessity is not closed off to the friars, just as it is not to others, since extreme necessity is exempt from every law.<sup>41</sup>

The text of the bull considers the case of extreme necessity with a traditional argument already to be found in the canon law and the writings of mendicant theologians such as Bonaventure and Thomas Aquinas. The case was an interesting one since it touched on the problematic relation between the Franciscan ideal of poverty as a total renunciation of property rights and the usual teaching on natural rights at that time. Neither Bonaventure nor Nicholas III discussed or even perceived any problem with this.

The same moral justifications of the friars' mendicancy are later found in the criticisms put forward by secular theologians, especially Henry of Ghent and Godfrey of Fontaines. In quodlibetal disputations held from the 1270s to 1290s, they focused mainly on the question of whether it was possible for a human being to give up all rights in this life, as the Franciscans claimed to do. Godfrey, in several quodlibets, treats the issue as a legal one, but also uses philosophically interesting arguments—mainly influenced by the voluntarist tradition. Aristotelian ethics and the new translation of the *Politics* also exerted some influence on his ideas.<sup>42</sup>

In his *Quodlibet XII*, question nineteen (written in 1288), Godfrey attacks the claims which Nicholas III had made in *Exiit qui seminat*:

From this it follows, however, that no one can in this way renounce temporal goods, since in extreme necessity anyone has the right to use temporal goods to the extent which is sufficient for his sustenance. No kind of perfection whatsoever will demand or permit someone to renounce this right and *dominium*. Thus, a person who cannot renounce the use of some thing should not [do so]. Similarly, in such a case he cannot or should not renounce the *dominium* or faculty or right of using those things.<sup>43</sup>

Godfrey contrasts the Franciscan ideal of poverty with the practical situation of someone who is in a state of extreme necessity, although he

<sup>41</sup> Ibid., a. 2, p. 193: 'Et quidem ubi, quod non est aliquatenus praesumendum, haec cuncta deficerent, sicut nec ceteris, sic nec ipsis Fratribus, jure poli in extremae necessitatis articulo, ad providendum sustentationi naturae, via omnibus extrema necessitate detentis concessa praecluditur, cum ab omni lege extrema necessitas sit excepta.'

<sup>42</sup> For Godfrey of Fontaines's ideas on rights, see Mäkinen (2001), pp. 124–137.

<sup>43</sup> Godfrey of Fontaines (1904–37), Quodlibet XII, q. 19, p. 143: 'Ex hoc autem sequitur quod nullus potest sic renuntiare bonis temporalibus quia in extrema necessitate quilibet habeat ius utendi bonis temporalibus quantum sufficit ad eius sustentationem. Nec qualisquamque perfectio exigit vel permittit quod aliquis huic iuri et dominio renuntiet. Qui enim usui alicuius rei renuntiare non potest, nec debet; similiter etiam dominio et facultati vel iuri utendi illa re in tali casu renuntiare nec potest nec debet.'

does not mention the Franciscans by name. He argues that people have a natural right of subsistence in cases of extreme necessity and cannot give up such a right.

The principle of extreme necessity was already a standard doctrine of medieval moral theology and canon law by the end of the twelfth century.<sup>44</sup> According to canon lawyers, a person in extreme need—that is, someone who is facing the prospect of certain, but not necessarily immediate, death—may rightfully take another’s property to sustain his or her life. Moreover, a person in such need was not guilty of theft. Earlier theologians had made similar remarks: for example, Thomas Aquinas in his *Summa theologiae*. These theologians and canon lawyers had not, however, characterized the principle of extreme need as a natural right: some spoke of it as a right, while others did not.<sup>45</sup>

In his *Quodlibet VIII*, question eleven, Godfrey states the idea of individual right:

Furthermore, since by natural right each person is obliged to maintain his life, which is not possible without using external goods, each person by the law of nature has dominion and a certain right in the common exterior goods of this world which she cannot lawfully renounce.<sup>46</sup>

Godfrey explains here that not only the poor but also each person has an obligation towards herself, namely, for her self-preservation. Following from this obligation, everyone has *dominium* and a certain right (*quoddam ius*) in common goods which cannot be lawfully renounced.

## CONCLUSION

The texts analysed here have shown that the controversies concerning Franciscan poverty stimulated the emergence of individual rights in at least two senses. First, in a legal sense, the Franciscans’ lack of legal standing, the fact that they lived without any property rights, prompted a discussion which focused on the question of subjective property rights. Second, in a moral philosophical sense, the Franciscans’ claim to give up all rights led to the concept of the individual, inalienable right of subsistence which belonged, not only to the poor, but to every human being when in extreme

<sup>44</sup> The principle of extreme necessity was developed by canonists from the statements of the *Decretum*: D. 86 c. 21 and D. 42 c. 1. For the development of this principle, see Swanson (1997).

<sup>45</sup> See Tierney (1997).

<sup>46</sup> Godfrey of Fontaines (1904–37), *Quodlibet VIII*, q. 11, p. 105: ‘Immo etiam propter hoc quod unusquisque tenetur iure naturae vitam suam sustentare, quod non contingit nisi de bonis exterioribus, ideo etiam iure naturae quilibet habet dominium et quoddam ius in bonis communibus exterioribus huius mundi, cui iuri etiam renuntiare non potest licite.’

need. According to Godfrey of Fontaines, no one can give up this right, even for religious reasons. This was perhaps one of the first formulations of the individual right to subsistence in the history of moral philosophy—long before Jacques Almain and John Locke. William of Ockham developed the idea further in his writings against Pope John XXII. But although Ockham played a central role in the development of individual rights, it is not wholly correct to state that he was the first medieval thinker to espouse a theory of individual rights.<sup>47</sup> From the viewpoint of the history of ideas, this also suggests, as contemporary historians and philosophers have argued, that the evolution of individual rights in European thought began much earlier than Ockham.

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<sup>47</sup> Cf. McGrade (1980).

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# Justification through Being: Conrad Summenhart on Natural Rights

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Conrad Summenhart (c. 1458–1502) was a German theologian whose academic career dates from the early years of the University of Tübingen, at the end of the fifteenth century.<sup>1</sup> Summenhart's major work was a massive thesis of casuistic moral theology: *Opus septipartitum de contractibus pro foro conscientiae et theologico*. As the title makes clear, this was a work comprised of seven treatises. The main part of the work concentrated on analysing contemporary economic transactions from the viewpoint—and with the tools—of casuistic moral theology. It began, however, with a preliminary treatise, which was intended to prepare the reader for the actual casuistic arguments of the other six treatises. This first treatise embodied Summenhart's view that before the reader was ready to enter into casuistic analysis, he needed to familiarize himself with what amounted (primarily) to a theory of subjective rights. In this way the work located individual rights at the centre of applied ethical reasoning.<sup>2</sup>

At the heart of Summenhart's theory was the concept of a subjective right. In this paper my intention is to shed some light on this elementary concept. Before entering into Summenhart's writings, I shall first devote some attention to the preceding medieval discourse on rights which forms the relevant background to Summenhart's theory.<sup>3</sup>

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<sup>1</sup> Summenhart (born in Calw c. 1458) studied philosophy in Heidelberg and Paris, and theology in Tübingen. In 1489 he received his degree in theology and three years later (at the latest) he was acting as *ordinarius*, occupying the chair for the *via antiqua*. Summenhart—who had also been the dean of the faculty of philosophy and was the rector of the university for four occasions—died in 1502. See Feld (1992).

<sup>2</sup> The *Opus septipartitum* is best known for its progressive views on political economy; see Ott (1957) and Noonan (1954), pp. 233–5, 340–4. The work was first published in 1500. There were several editions during the sixteenth century, and it was also known under the titles *Septipartitum opus de contractibus* and *De contractibus licitis atque illicitis*. I have used the 1513 Hagenau edition.

<sup>3</sup> There are some interesting recent studies concerning medieval and early modern discussions on rights; see Brett (1997); Tierney (1997); and Mäkinen (2001). Brett and Tierney also discuss Summenhart; see Brett (1997), pp. 34–43; and Tierney (1997), pp. 242–252.



The medieval discourse on rights was not uniform, since rights were discussed in several different contexts. Perhaps the most common practice—particularly among those theorists who had received their education in law schools—was to speak of rights within the theoretical context of justice. The standard medieval definition of justice was documented in the corpus of Roman law and dates back to the Roman lawyer Ulpian. According to this formulation, which had been widely held in ancient times, justice was seen as ‘the constant and everlasting will to give everyone their right (*ius suum*)’.<sup>4</sup> Here, the Latin term *ius* found its meaning in the broader context of justice, in which ‘right’ was seen as an outcome of the act of justice. Portius Azo, who taught law at Bologna early in the thirteenth century, is a prominent example of this kind of terminological approach. In the chapter ‘De iustitia et iure’ of his *Summa*, Azo quoted Ulpian’s definition of justice and explained that the expression *ius suum* should be understood as denoting a man’s due share or desert (*hominis meritum*).<sup>5</sup> A man’s right, his *ius suum*, consisted of what rightfully belonged to him. When we ask in this context what the term *ius* signifies, it seems clear that no single answer can be given. This is because to have *ius suum* is to have one’s due share, and what this share actually is varies from one context to another. As Azo concluded: ‘*ius* is derived from justice and has various significations’. The content of *ius suum* might vary from legal benefits to burdens and obligations and could not conveniently be captured by a single designation.<sup>6</sup>

In addition to being a subject of academic debate, the terminology of rights was featured in more specific and practically oriented discussions. Claiming and defending rights was a part of medieval legal life. The middle of the thirteenth century saw the beginning of a debate which was specific in its nature, but went on to have a general influence on later discussions of rights. The target of this particular debate was the juridical definition of the ideal apostolic way of life, which had been developed within the Franciscan mendicant order. The Franciscans were not claiming rights for themselves; on the contrary, they were defending the legitimacy of renouncing all rights to material property. They saw themselves as the voluntary poor who were imitating the apostolic way of life exemplified by the earthly existence of Christ and his apostles. The statement which set the tone for this entire debate was that the Franciscans—seen both as individual brothers and as a

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<sup>4</sup> *Digest* 1.1.10; *Institutes* 1.1.1.

<sup>5</sup> Azo (1566) ‘De iusticia et iure’, p. 1047: ‘Est autem iusticia constans et perpetua voluntas ius suum cuique tribuendi, ut ff. eo. l. iusticia. ...Vel dic, suum ius, id est hominis meritum.’

<sup>6</sup> *Ibid.*, 1048: ‘Ius ergo derivatur a iusticia et habet varias significaciones.’ In his commentary Azo identifies six (more or less) independent significations, including, e.g., right as a specific art or artefact (*ars boni et equi*), right as the law (*lex*), right as obligation (*obligatio*) and right as power (*potestas*); see *ibid.*, pp. 1047–8.

religious order—had given up *de iure* all the things of this world but had continued—with legitimacy—to use *de facto* all those things which they needed for their daily life and profession. The status of simple users without any rights or dominion in this world was an essential part of the self-understanding of the Friars Minor; yet, at the same time, it was a juridically peculiar position, and one that was liable to provoke opposition.<sup>7</sup>

The debate over Franciscan poverty was significant in that it articulated a specific answer to the question: what does the Latin term *ius* signify? On the Franciscan side, the fundamental question was whether, or in what sense, material things could be used without having rights in the things (*iura in re*). This question was, naturally, dependent on another one: what is a right, that is, what do we mean by the term *ius* in the context of using material things? Early in the fourteenth century this related question was raised and given a specific answer. The Dominican master Hervaeus Natalis (d. 1323) was among the first respondents. In his anti-Franciscan tract, *De paupertate Christi et apostolorum* (c. 1322), Hervaeus stated firmly that the term *ius* meant ‘nothing else but to have power in a thing by which one can licitly use a thing or alienate a thing’.<sup>8</sup> Although this answer was conditioned by the specific case of the Franciscans, which concerned using material things for daily needs, the actual description of a right as a licit power of acting was broad enough to outlive its original context. Long after the question of Franciscan poverty had withered away as a theme for discussion, the language associated with it continued to be used by later theorists whose interest in rights was of a more general or conceptual nature. Conrad Summenhart was one of those later theorists. We find a continuum from fourteenth-century disputants such as Hervaeus Natalis and William Ockham (c. 1285-1347), who wrote within a Franciscan

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<sup>7</sup> The most influential legal formulation of the Franciscan position was given in the *Apologia pauperum* of Bonaventure (1898), cap. XI, p. 312: ‘... intelligendum est, quod cum circa res temporales quatuor sit considerare, scilicet proprietatem, possessionem, usumfructum et simplicem usum; et primis quidem tribus vita mortalium possit carere, ultimo vero tanquam necessario egeat: nulla prorsus potest esse professio omnino temporalium rerum abdicans usum. Verum ei professioni, quae sponte devovit Christum in extrema paupertate sectari, condecens fuit universaliter rerum abdicare *dominium* arctoque rerum alienarum et sibi concessarum usu esse contentam.’ For Bonaventure’s view and the Franciscan poverty dispute from the 1250s through 1320s, see Mäkinen (2001). For the fourteenth-century developments in the dispute, see Hervaeus (1937–8), pp. 209–219; and Walsh (1981), pp. 349–451.

<sup>8</sup> Hervaeus took *ius* to be equivalent to the terms *dominium* and *proprietas* in this respect; see Natalis (1937–8), p. 235: ‘... sciendum quod ista nomina, *dominium*, *ius*, et *proprietas*, idem dicunt in re. Nichil enim aliud dicunt quam habere potestatem in aliqua re per quam possit licite re aliqua uti vel rem aliquam alienare, et hoc vel per donationem vel per venditionem vel per quemcumque alium modum.’ For a concise overview of Hervaeus’s terminology of rights, see Tierney (1997), pp. 104–108. For the context of *De paupertate Christi et apostolorum*, see Hervaeus (1999), pp. 1–19.

context, to later theorists such as Jean Gerson (1363-1429) and the Italian Dominican master Antoninus Florentinus (1389–1459), whose writings served as source material for Summenhart.<sup>9</sup>

During the debate over Franciscan poverty, the description of a right as a licit power of acting was adopted by both sides. Despite its wide acceptance, however, the association of right with power was not acceptable to all writers. A specific strain of criticism was introduced by the Augustinian Richard Fitzralph (c.1300-60) in the middle of the fourteenth century, at the time when the Franciscan dispute was already coming to an end. In his *De pauperie salvatoris* (c.1356), Fitzralph suggested that the connection between ‘right’ and ‘power’ was problematic, and that ‘right’ should instead be associated with the term ‘authority’. He adduced two arguments which supported his allegation. First, the notion of a right could not be associated with power because ‘right’ and ‘authority’, according to Fitzralph, belonged solely to rational creatures, while even animals had powers or faculties. Second, the term power did not have a positive normative connotation. The point here was that power could be either licit or illicit, whereas the Latin term *ius* had been associated, throughout its history in Latin (religious) language, with justified activity.<sup>10</sup>

Fitzralph’s main aim was to emphasize that *dominium* was a matter of authority and not a matter of power. In order to make his point clear he

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<sup>9</sup> The description of *ius* in Ockham (1940), chapter 2, p. 304, runs parallel to that of Hervaeus, except that Ockham—more expressly than Hervaeus—understood the term power in the sense of power-of-acting or active potency. Interestingly, Hervaeus’s description of *ius* made an appearance in Antoninus Florentinus’s *Summa theologica* (part III, chap. 3, sig. f4<sup>r</sup>), written in 1450s. Jean Gerson followed Ockham’s line of thinking in his interpretation of *ius*. For the views of Gerson and Summenhart, see below; for the views of Ockham and Antoninus, see, e.g., Brett (1997), pp. 50–68, 107–111.

<sup>10</sup> Fitzralph made this point in the course of justifying his own definition of *dominium originale*, man’s original lordship over the rest of God’s creation. He defended his decision to define *dominium originale* by using *auctoritas* instead of *potestas* as the generic term. *De pauperie salvatoris* is written in the form of a dialogue between Richard and John. Fitzralph (1890), lib. II, cap. IV, p. 338: ‘Iohannes. Attendo cur verbum mortale est positum. Cur auctoritatem seu ius ponis potius quam potestatem in hac descriptione, non video. Ricardus. Auctoritas seu *ius* soli rationali convenit creature; potestas sive facultas irrationabilibus competit ex sua institutione primaria; quoniam iuxta supra posita verba de Genese, Ut sint vobis in escam, et cunctis animantibus, animalia terre, ad confirmandum sue naturalis institutionis excursus ad consumendum res eis ad hoc ab Auctore omnium deputatis, suo naturali modo habent congenitum irreprehensibilem facultatem: preter hoc quod *ius* sive auctoritas solum esse videtur respectu illius quod non obviat ratione; non ita de potestate videtur, cum sit scriptum, *Qui potuit transgredi et non est transgressus, et facere mala et non fecit*, Eccli. xxxi. 10; et Luc. xxii. 53, *Hec est hora vestra et potestas tenebrarum*: et 2 Cor. ix. 18, *Ut non abutar potestate mea in evangelio*; et *Data est ei potestas sicut habent scorpiones*, Apoc. ix. 3: et multa alia sic in sacris litteris exprimuntur. De auctoritate vero sive auctore seu iure, non recolo Scripturam affirmantem quod simpliciter nominentur sive dicantur ad malum sive in malo peccati.’

articulated the categorical difference between *auctoritas* and *potestas* in a way which made his critique effective against any attempt to define the term 'right' using the idiom power-of-acting as the generic notion. His particular dissatisfaction with the term 'power' seemed (partly at least) to lie in the fact that it was a term which characteristically belonged to descriptive language, whereas the term 'right' was a normative term. Now, if we define 'right' using the descriptive term 'power', we then need to have an explanation of how we can get from power to right, in other words, how we can get from 'is' to 'ought'. The transition is crucial when we are speaking of natural rights and powers; and this was also the context of Fitzralph's critique. To say that a right is a licit power does not explain the transition; rather, it leaves the matter untouched and unresolved.<sup>11</sup>

How can we get from 'is' to 'ought'? I may have a power to do many things; but when do I have a right to do them? What justifies the power-of-acting? It is interesting to approach Summenhart's theory of rights with this question in mind for two reasons. First, his interest in rights was of a conceptual nature, which increased the generality of his conclusions. Second, his writing on natural rights articulated an explanation of this sort of transition from power to right. His explanation was not entirely original, however. His rationale was firmly and openly based on Jean Gerson's writings on the subject. Broadly speaking, it can be said that Summenhart developed his theory of rights using language which had formerly been employed by Gerson.<sup>12</sup>

Summenhart's concept of a subjective right was based on two parallel descriptions of *ius* which had been formulated by Gerson during his literary career. In his major work *De potestate ecclesiastica*, written during the heyday of conciliarism in 1417, Gerson explained the signification of the term *ius* by means of two related notions. First, right signified a faculty or power of acting. Secondly, this power was said to fall to the right-holder

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<sup>11</sup> The bottom line in Fitzralph's critique was his emphasis on the categorical difference between authority and power. To his mind, the term 'power' did not connote the authoritative status of righteous rationality, which was the essence of *dominium*. Thus, using 'power' as the generic term for *dominium* would not have illustrated the hierarchical structure, that is, it would not have encapsulated the categorical difference between men and animals: men are superior rational beings who have *dominium*; animals are inferior beings who are under their *dominium*. For Fitzralph's doctrine of dominion, see Betts (1969), 160-175.

<sup>12</sup> Summenhart's dependence on Gerson's terminology is apparent in the *Opus septipartitum* and has been generally recognized in the scholarly literature. Only recently, however, have the differences between these two writers been noted. Summenhart used Gerson's terminology in an independent way and on occasion arrived at conclusions which would not have been accepted by Gerson. See Brett (1997), pp. 35-36; and Tierney (1997), pp. 242-252.

according to the dictate of primary justice.<sup>13</sup> This description was a slight modification of a previous account of *ius* which Gerson had introduced nearly two decades before, in his early theological work *De vita spirituali animae*. There, the description was similar to the one found in *De potestate ecclesiastica*, with one exception: instead of associating rights with justice, Gerson referred to the dictate of right reason as the origin of rights. Accordingly, he described *ius* as a faculty or power which falls to the right-holder according to the dictate of right reason.<sup>14</sup>

There is an apparent connection between Gerson's description of *ius* and the prevailing medieval conception of justice.<sup>15</sup> In *De potestate ecclesiastica*, he made an explicit connection between rights and justice by quoting Ulpian's definition of justice in order to explain that the origin of rights is found in God's divine justice: 'Indeed, it is God alone who by continuous and lasting will to gives every single creature what is his.'<sup>16</sup> Unlike the lawyer Azo and like-minded writers, however, Gerson had no intention of assimilating man's *ius* with his just and due share. His point was rather to introduce an important specification: the term *ius* signifies specifically a faculty or power of acting; it does not signify, e.g., 'the

<sup>13</sup> Gerson (1706a), consid. 13, p. 250: 'Ius vero sic describitur. Ius est potestas, seu facultas propinqua conveniens alicui secundum dictamen primae iustitiae.' He used the term proximate (*propinqua*) to differentiate rights from mere reactive potencies. A right is an active potency, a power to exercise actions; *ibid*: 'Proinde dictum est in descriptione Iuris, quod est facultas propinqua etc. propter illa que in potentia obedienciali convenire possunt cuilibet creature, quod posse dicere possumus, vel obediencialia, vel logica, secundum quale non dicitur proprie res habere Ius vel Legem ...'

<sup>14</sup> Gerson (1706b), lectio 3, p. 26: 'Ius est facultas seu potestas propinqua conveniens alicui secundum dictamen rectae rationis ...' In the *Opus septipartitum* Summenhart introduced one description after the other and explained that they were equivalent; Summenhart (1513), Tract. 1, q. 1, sig. A6<sup>r</sup>: 'Ius est potestas vel facultas propinqua conveniens alicui secundum dictamen prime iusticie. Et iterum. Ius est potestas vel facultas propinqua conveniens alicui secundum dictamen recte rationis.' *Ibid.*, sig. A6<sup>v</sup>: 'Quarta suppositio, secunda descriptio redit in idem cum prima. Nam in secunda descriptione, tres prime clausule sunt omnino eedem in utraque. Sed et quarta clausula licet secundum vocem aliter ponatur in prima et secunda tamen in re est eadem utrobique, quod sic probatur. Recta ratio accipitur vel pro ea recta ratione que primo originaliter et essentialiter est recta, et tunc idem est quod prima iusticia, et sic ille clausule omnino equivalent in prima et secunda descriptionibus, aut recta ratio accipitur generaliter ad rationem rectam sive illa sit recta ratio essentialiter qualis est in solo deo, sive participative qualis reperitur in creaturis rationalibus. Et tunc illa clausula secunde descriptionis iterum redit in idem cum clausula prime, quia omne dictamen illius rationis recte que est participative recta ratio, reducitur ad rationem rectam que est essentialiter recta ratio, et per consequens reducitur ad primam iusticiam.'

<sup>15</sup> See above p. 184.

<sup>16</sup> Gerson (1706a), consid. 13, p. 250: 'Describitur itaque Iustitia, quae est perpetua & constans voluntas, jus suum unicuique tribuens. Haec autem descriptio competit principaliter Iustitiae divinae in ordine ad suas creaturas. Deus nempe solus est, qui voluntate perpetua & constanti dat unicuique rei quod suum est; suum, inquam, non ex debito rigoris, sed ex liberalissima & dignissima donatione Creatoris.'

penalty of the damned' or 'the punishments of the sinful' or any other possible things which are, by justice, due to man.<sup>17</sup>

With his description of *ius* Gerson placed himself among those theorists who thought that the term could be used to signify the legitimate or licit power of acting. The dictate of right reason had a normative function and was there to separate rights from illicit powers. It is worth noting, however, that *De vita spirituali animae* is a theological work, and in Gerson's theological language the dictate of right reason was given a metaphysical interpretation and was thought to be something more than a mere normative code. It is this interpretation of right reason which provided the explanation needed for the transition from power to right in the context of natural rights.<sup>18</sup>

When Gerson came to explain (in *De vita spirituali animae*) what he meant by the notion of right reason in this context, he made two specifications. He pointed out that if we speak of the essential right reason or the origin of right reason, it is something which we can find only in God, because God's right reason is the essential right reason: the origin of all right reason can be found in God's reason and will.<sup>19</sup> If we find right reason some place outside of God, then it is somehow a consequence of God's activity. This was the idea underlying the next specification which Gerson wanted to make. He said that 'right reason belongs appropriately and by participation only to rational creatures'.<sup>20</sup> Here, we have the idea of rational creatures participating in God's eternal law of reason which had been implanted in medieval thought by Thomas Aquinas. In Gerson's account, the idea of participation was accompanied by the notion that man's right reason was a consequence of God's reasoning. Without God's activity there would be no rational activity in the world. This was a thought which Gerson wanted to follow to its logical conclusion. His point was that without God's activity, without the dictate of his reason and will, there would be no activity in the world, or rather, there would be nothing at all.<sup>21</sup>

<sup>17</sup> Gerson (1706b), lectio 3, p. 26: 'Ponitur in descriptione facultas seu potestas, quoniam multa conveniunt secundum dictamen rectae rationis aliquibus quae non dicuntur jura eorum, ut poena damnatorum, ut punitiones vitiosorum, non enim dicimus aliquem jus habere ad ejus nocumentum ...'

<sup>18</sup> The continuity in regard to understanding the term *ius* indicates that Gerson's approach to rights was not guided by a specific practical problem, but rather his interest was of a theoretical or conceptual nature. He was speaking of the concept of a subjective right.

<sup>19</sup> Gerson (1706b), lectio 3, p. 26: 'Recta ratio & dictamen suum, est primo originaliter & essentialiter in Deo ...'

<sup>20</sup> Ibid., lectio 3, p. 26: 'Recta ratio consequenter & participative solum convenit rationalibus creaturis.'

<sup>21</sup> Ibid., lectio 3, p. 27: 'Propterea non absurde concedi posset nihil alicui competere nisi Jure divino, quemadmodum nulla est facultas aut potestas propinqua conveniens alicui absque dictamine recto divinae rationis ...'

Thus, as the final point in his analysis of right reason as the origin of rights, Gerson came to the conclusion that all creatures have rights in so far as they have faculties and being. It is being which justifies power, not being as such, but being as a consequence of the dictate of God's reason and will.<sup>22</sup>

Gerson's language of rights was egalitarian in a relevant sense. Although he had no intention of treating all creatures as equals—in regard to their being—his theory of basing rights on the state of having existence meant that all creatures who have faculties and powers could be credited with having rights.<sup>23</sup> In the *Opus septipartitum* Summenhart adopted this basic position from Gerson. This is most explicitly illustrated in a paragraph concerning the general right to exist, as well as other rights based on this fundamental one:

From the very fact that God has communicated this gift, that is, existence, to a being, such a being has the right to resist those who want to take the gift away from it. Similarly, the right of animals to take in nourishment in order to preserve their existence is based on the same gift. In this way, the wolf has the right and *dominium* to attack other animals, and birds have the right to collect grain and seeds and such like for their sustenance. In this way, they have right to nest in our gardens: because God gave them potency to engender fledglings and to nourish them, he therefore also gave them the right to the instruments by means of which they can do it properly, and this right is based on a natural gift communicated to them by God.<sup>24</sup>

From the natural ability to do something follows the natural right to do it. This would be a straight deduction from 'is' to 'ought' were there not a hidden premise included: all factual abilities are *prima facie* righteous because they are gifts from God.

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<sup>22</sup> Ibid., lectio 3, p. 26: 'Dicamus igitur, quod omne ens positivum quantum habet de entitate & ex consequenti de bonitate, tantumdem habet de Jure sic generaliter definito. In hunc modum coelum jus habet ad influendum, sol ad illuminandum, ignis ad calefaciendum, hirundo ad nidificandum, immo & quaelibet creatura in omni eo quod bene agere naturali potest facultate ...'

<sup>23</sup> Gerson's inclination towards hierarchical (pseudo-Dionysian) metaphysics has been generally recognized. See, e.g., Pascoe (1973), pp. 17–48. The main point of interest is that Gerson's concept of a subjective right does not imply any hierarchy or superior position. He took an explicit stand against those writers, e.g. Fitzralph, who defined *ius* by means of the idea of hierarchical status or authority.

<sup>24</sup> Summenhart (1513), Tract. 1, q. 4, sig. C4<sup>r</sup>: '... ius repellendi corruptorem sue existentie convenit unicuique rei ratione naturalis doni, scilicet ratione existentie, eoipso enim quod deus alicui rei communicavit hoc donum scilicet existentiam habet talis res ius resistendi eis que ei illud donum auferre vellent. Similiter in eodem dono fundatur animalibus ius accipiendi alimenta quibus conservetur existentia, hoc modo lupus habet ius et dominium invadendi alia animalia, et aves habent ius colligendi grana vel semina et consimilia quibus sustentantur, hoc modo habent ius nidificandi in arboribus nostis, quia deus eis dedit potentiam generandi pullos et eos educandi, igitur etiam dedit eis ius in mediis quibus hoc commode facerent, et illud dominium fundatur in dono naturali eis communicato per deum.'

Summenhart's contribution to the basic theory suggested by Gerson arose from the way he explicitly carried forward this reasoning when discussing man's natural rights in contemporary civil society. The unspoken starting point of Summenhart's analysis was that man differs from animals in that he can not only participate in right reason but also act against its dictates. This means that when the principle of justification through being is applied to man's natural faculties, it must be conditional. The power to act against normative right reason is not a right. The ultimate point, however, is that in this sense the dictate of right reason (understood as the normative code) is not needed to justify man's powers. These have a *prima facie* justification through being. Normative right reason is needed only to exclude illicit powers from the sphere of man's natural rights. This point is significant in principle because it suggests a liberty-based approach to rights in which it is possible to start from the idea that man has a natural right to act as he pleases, although he does not have the right to act against the dictates of right reason.<sup>25</sup>

In the *Opus septipartitum* Summenhart articulated his liberty-based approach using contemporary juridical language. This was important for him because, after all, in this work he was dealing with economic relations which were largely defined by the positive law of society. The rich inheritance of Roman jurisprudence, documented in the Iustinian codification, provided him with a definition which completely suited his purposes. The particular definition was a description of liberty (*libertas*) originally composed by the Roman lawyer Florentinus in the second century AD. According to Summenhart:

*libertas* is a species of right, and a free person has this right with respect to himself, namely, [the right] of acting as he likes. Whence, that right is defined in *Institutes, de iure personarum*, § 1, as one's natural faculty to do as one wants, unless it is prohibited by force or law.<sup>26</sup>

It is striking how well Florentinus's definition matched Summenhart's Gersonian approach. For Summenhart, who thought of rights as faculties, the definition spoke of the natural right to do everything one was able to do

<sup>25</sup> In recent discussions of Summenhart's work, scholars have not fully understood the centrality of liberty in his theory of rights. Cf. Tuck (1979), pp. 25–28; and Brett (1997), pp. 42–43.

<sup>26</sup> Summenhart (1513), Tract. 1, q. 1, A8<sup>v</sup>: '... libertas est quedam species iuris et illud ius habet liber in seipsem scilicet agendi quod libet. Unde diffinitur ius in institutis de iure personarum, § 1. Est naturalis facultas eius quod cuique facere libet nisi quod vi aut iure prohibetur.' Summenhart's view is that the term *ius* can be used in two ways. It can mean subjective right or it can mean law. In the definition of *libertas*, *ius* is taken to mean law.



provided it was not against the law of reason. From his point of view, rights were powers or faculties and not liberties; but liberty was a natural right.<sup>27</sup>

Summenhart followed his introduction of the right of liberty by a section in which he applied the principle to practical problems. In Florentinus's definition man's liberty was conceived in a negative way, inasmuch as liberty had no defined content, and only its borderlines were marked. This formal nature of liberty had implications for the relevance of *libertas* to civil society. In principle, the positive laws of human society could heavily circumscribe individual freedom without actually conflicting with the principle of *libertas*. Clearly aware of this, Summenhart went on to put forward a specific argument concerning man's natural right of liberty in contemporary society and economic life.<sup>28</sup>

Taking advantage of the close conceptual relation between liberty and *dominium*, Summenhart went on to argue that man's liberty in contemporary society was extensive enough to justify the conclusion that he is *dominus* of his own person: that man is his own master. Summenhart's account made it clear that in the legal framework of the discussion this was not merely an innocent claim. He reviewed arguments—based on principles extracted from the text of the Iustinian codification—which did not credit a free man with the status of being master of himself.<sup>29</sup> Summenhart's claim was considered in certain quarters to be problematic because of its emphasis on self-ownership, implied by the idea of *dominium* of one's own person. This association between self-mastery and self-ownership was due to the juridical way of speaking, which was dominated by the text of the Iustinian codification. In Roman law, the idea of *dominium* over a person referred to the context of slavery, in which—as in the context of property in general—the term *dominium*

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<sup>27</sup> Summenhart's interpretation of *libertas* as a natural right was original. Commonly, in medieval legal discourse *libertas* had been taken to have a twofold content, comprising both factual and juridical features. For the lawyers' interpretations of *libertas*, see Weigand (1967), pp. 64–78.

<sup>28</sup> The particular occasion was in question 74, which concerned the so-called personal *census* (also known as *rentes*) issue. The issue was whether it was licit for a person to bind himself (in exchange for money) to the use of another by way of establishing a right of *redditus* in relation to his own person and transferring this right to another. Summenhart (1513), Tract. 4, q. 74, sig. B2<sup>r</sup>: 'Utrum liceat alicui homini singulari et etiam communitati hominum, in se vel sua persona constituere alteri redditum alicuius rei utilis.' The sale of *redditus in persona* seemed in practice to count as a loan at interest, which put the contract under the shadow of moral suspicion. See Munro (2003), 518–524; Noonan (1957), 154–164. The question of the legality of *redditus in persona* had been a common theme in the so-called *De contractibus* literature. Unlike, e.g., Henricus de Hassia (1325–1397) or Henricus Toting de Oyta (1330–1396), however, Summenhart made an explicit connection between *libertas* and *dominium* and approached the case *redditus in persona* as an opportunity to analyse and define the limits of the natural right of liberty in civil society.

<sup>29</sup> For detailed exposition of these arguments, see Varkemaa (1999).

carried a connotation of ownership. It was the master (*dominus*) who had *dominium* over his slaves. Slaves were their master's persons and property, and he could sell them at his own discretion, which was the action that most openly demonstrated the right of *dominus*. Were the free man the master of himself, he should be able to act in a corresponding way.<sup>30</sup>

Summenhart's defence of the individual's self-mastery led him to take a positive stand on the voluntary enslavement of a free person.<sup>31</sup> His method was to counter juristic criticism in a manner which demonstrated the validity of his own position. The corpus of Roman law regulated slavery extensively and also included statements concerning the possibility of purchasing a free man. These specific regulations provided a possible link to Summenhart's view, because they explicitly declared that an adult free man could not be the object of valid purchase. Within the legal framework of discussion, this could be interpreted as circumscribing individual freedom of action. Invoking the law, it could be claimed that a free man is not *dominus* of his own person because of his inability to sell himself into slavery.<sup>32</sup>

In dealing with the juristic opposition, Summenhart referred to the view of an anonymous lawyer, according to which the legitimate sphere of individual action was defined and dictated by the law of the commonwealth.<sup>33</sup> Summenhart refuted this view in favour of a more liberty-based approach. He made explicit use of Florentinus's definition of liberty and built his argument on the elementary idea of man's self-mastery, which was limited only by prohibitions.<sup>34</sup> According to Summenhart, the

<sup>30</sup> As far as Summenhart's view is concerned, we are justified in speaking of self-ownership. It is worth noting, however, that it is self-mastery which is primary in his argumentation and that he is induced to speak of self-ownership primarily because of the juridical context in which he was speaking. For slavery in Roman law, see, e.g., Watson (1987).

<sup>31</sup> Summenhart (1513), Tract. 4, q. 74, sig. B2<sup>v</sup>: 'Septimo, servitus est quedam magna obligatio, capiendo servitatem pro aliquo quod est in ipsa re vel persona que dicitur servire (quod dico propter aliam acceptionem servitutis scilicet pro iure ut patuit questione lxxii). Modo persona libera potest fieri servilis, et hoc dupliciter scilicet invita et etiam volens ...'

<sup>32</sup> Ibid., sig. B3<sup>v</sup>: 'Quarto, quia lege civili prohibetur liber homo vendi et stipulari, quia liber homo non est in commercio nostro. Unde in lectio, si in emptione, § liberum, Digesta, de contrahenda emptione, dicitur, liberum hominem scientes emere non possumus, ergo non potest in commercium adduci, lectio, liber homo, lectio inter stipulantem, § sacram, de verborum obligationibus. § 1.' See *Digest* 18.1.34; 45.1.83; 45.1.118.

<sup>33</sup> Summenhart (1513), Tract. 4, q. 74, sig. B4<sup>f</sup>: 'Ad tertium dicit quidam iurista quod talis venditio sustinetur virtute legis, que lex est domina membrorum humanorum, et sic vult dicere, quod talis non posset se vendere, nisi accedente auctoritate legis autorizanti, sicut in simili aliquis non potest per pactum se obligare ad carcerem, quia non est dominus membrorum suorum, potest tamen obligari ex forma statuti, quia edictum a republica que est domina membrorum humanorum.'

<sup>34</sup> Ibid., sig. B5<sup>f</sup>: 'Ad confirmationem dicendum quod non videtur cur liber homo non possit se obligare ad perpetuo famulandum alicui vel locare perpetuo operas suas alicui sicut potest et ad tempus, loquendo de posse primo modo, id est quod liceat sibi sic se obligare, si enim

regulations in the *Digest* specifically declared that the sale of a free man is invalid as a contract and would not give rise to civil obligations and actions. But although these regulations clearly inhibited a free man from selling himself, they were not direct prohibitions.<sup>35</sup> And because these regulations did not in any way prohibit a free man, they did not affect his self-mastery. Since there was no law explicitly forbidding a man from selling himself into slavery, it could plausibly be maintained that man's natural right of liberty in civil society was extensive enough to justify the conclusion that he was *dominus* of his own person.<sup>36</sup>

Together with recognizing Summenhart's merits in conceptualizing the idea of natural rights, it is noteworthy that the case described above remained the unique instance in *Opus septipariturum*, in which Summenhart appealed to the principle of *libertas* in his moral reasoning. The casuistic moral theological analysis of Summenhart's style was by no means saturated with the principle of *libertas*. Nevertheless, Summenhart's arguments for individual liberty were indeed significant enough to succeed in making a fresh approach to theological ethics in the late medieval moral milieu. Summenhart's reasoning suggested, in particular, that when we are evaluating morally controversial questions we may start our inquiry from the position that man has the right to act as he pleases, so long as he does not act against the dictates of right reason. This was a liberty-based approach to morality, and one that also recognized the limits of man's liberty, and took them seriously.

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liber est facultatem habet facere quicquid libet nisi vi aut iure prohibeatur ut patet ex diffinitione libertatis, modo illud non prohibetur iure divino vel naturali, ut patet nec etiam humano.'

<sup>35</sup> Ibid., sig. B4<sup>v</sup>: '... quia talia iura que hoc videntur prohibere, solum videntur disponere super invaliditate contractus, non autem super prohibitione contractus unde disponunt quod ex illo contractu non oriatur obligatio civilis que pariat actionem, unde emptor non est obligatus venditori civiliter nec etiam venditor emptori saltem scienti, sed non prohibent venditori venditionem.'

<sup>36</sup> Summenhart thought that a free man was not prohibited from selling himself into slavery by either divine law or natural law. As far as natural justice was concerned, he rested on the Aristotelian principle: there is no injustice willingly (*volenti non sit iniuria*). As far as divine justice was concerned, he rested on the theological authority of John Duns Scotus, referring to two passages in his commentary on the *Sentences* and interpreting them as emphasizing man's freedom of action within the limits defined by the Ten Commandments. Ibid., Tract. 4, q. 74, sig. B4<sup>f</sup>: '... et Scotus in IIII dis. 26, q. 1, invalidando quandam rationem cuiusdam doctoris qua volebat probare quod mutuum translationem corporum que sit in contractu matrimoniali, congruum fuit a deo approbari, eo quod corpora illa sunt dei, et sic non deberent contrahentes ea sic transferre sine approbatione domini dicit, quod licet homo ex creatione teneatur deo in omnibus que potest, tamen deus non tantum exigit ab homine, immo dimittit eum libertati sue solummodo ut servet precepta decalogi. Et idem dicit dis. xv. q. I, quod aliquis potest se in servum vendere, licet de hoc non inveniatur specialis approbatio divina, hec ille.'

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# Ethics in Luther's Theology: The Three Orders

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'What is important for my purpose is this positive side, the affirmation that the fullness of Christian life was to be found within the activities of this life, in one's calling and in marriage and the family. The entire modern development of the affirmation of ordinary life was, I believe, foreshadowed and initiated, in all its facets, in the spirituality of the Reformers.'

(Charles Taylor, *Sources of the Self*, Cambridge: Cambridge University Press 1989, p. 218)

The Lutheran Reformation had an ambivalent attitude towards medieval traditions of moral and political thought. Although Luther was very critical of Aristotle's ethics, the *Nicomachean Ethics* continued to be used as a standard textbook in Lutheran universities. The Reformers abolished Roman Catholic canon law, but the new ecclesiastical laws of Lutheran churches borrowed an astonishing amount of material from canon law sources. The medieval political doctrine of 'two swords' was replaced by Luther's view of 'two kingdoms', an idea which in many ways was not so different from it.<sup>1</sup>

In this paper I shall deal with Luther's ethics in its relationship to medieval tradition. I shall not, however, relate this discussion to actual legislation or politics. Instead, I shall focus on Luther's view of the household and politics as the two 'orders' within which discussion of human agency and ethics is meaningful. This view, I shall argue, differs from the way in which human agency is understood within the third 'order', the church. Luther employs many medieval traditions; but he uses them eclectically, adapting them to his own theological purposes. Therefore, we should not speak of Luther's ethics as an autonomous discipline, but rather of ethics within Luther's theology.

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<sup>1</sup> For all of these, see Witte (2002). Althaus (1965) has long remained a standard work on Luther's ethics; for new studies, see the bibliographies in Lohse (1996); Strohm (1996) and Witte (2002).

## THE DIVISION OF ETHICS: THREE HIERARCHIES OR ORDERS

The notion of ‘three hierarchies’ or ‘three estates’ was as important as the ‘two kingdoms’ doctrine for early Lutheran legislation and politics.<sup>2</sup> If we look at Luther in particular, the three estates play a very prominent role. In his *Confession* of 1528, a short outline of his theological doctrine, the three ‘holy orders’—ministry, marriage and political leadership—are established in God’s word as structures for ruling creation. They are ‘instituted’ (*ingesetzt*) by God and have thus become an established structure (*Stift*) of reality.<sup>3</sup> This work had an important influence on the basic Lutheran confessional text, the *Augsburg Confession* of 1530.<sup>4</sup>

The three orders are not limited to the office of ruling, but are normally referred to as the basic institutions of the church (*ecclesia*), the household (*oeconomia*) and the state (*politia*). This tripartite division is traditional and can be found, for instance, in medieval catechistical literature. Luther sometimes refers to the orders as three ‘hierarchies’. The word ‘hierarchy’ is associated with angels, and Luther indeed thinks that it is the particular task of angels to safeguard the existing hierarchies of the created world. The angels are God’s helpers in sustaining the cosmic order and the worldly institutions which have been established by God.<sup>5</sup>

Since the three orders represent basic structures of creation, some Luther scholars have claimed that the tripartite division is even more fundamental for his ethics than the familiar idea of ‘two kingdoms’.<sup>6</sup> It should be noted, however, that although the orders of the household and the state seem to be equivalent to the ‘worldly kingdom’ and the church to the spiritual kingdom, this is not always the case and might be misleading.<sup>7</sup>

Luther, in fact, employs a variety of expressions: order (*Ordnung*, *ordo*, *ordinatio*), hierarchy (*hierarchia*), establishment (*Stift*), right (*Recht*), estate (*Stand*), order of life or form of life (*genus vitae*).<sup>8</sup> The notion of estate in this context is deceptive, because an individual belongs to all three orders at the same time. The orders are not meant to distinguish between different groups within a society, but instead to depict three

<sup>2</sup> Witte (2002) goes into the reception history of this doctrine within Lutheranism.

<sup>3</sup> *WA* 36, p. 504, 30–p. 505, 10. Another prominent place where Luther mentions the three orders is the end of *Von den Konziliis und Kirchen*: *WA* 50, 652–3.

<sup>4</sup> Especially *CA* 27–8. See Maurer (1979), pp. 100–4.

<sup>5</sup> Maurer (1979), p. 101 and Plathow (1994), esp. pp. 52–7. Cf. Lohse (1996), pp. 342–4.

<sup>6</sup> Maurer (1979), esp. pp. 100–4; Bayer (1995), p. 121.

<sup>7</sup> Bayer (1995), pp. 120–3. In *WA* 50, p. 652, 23–4, only the polis (‘die Stad’) is the ‘weltlich regiment’.

<sup>8</sup> *Recht*: *WA* 50, p. 652, 28–9. *Genus vitae*: *WA* 43, p. 21, 3; p. 198, 30; *WA* 40/1, p. 544, 24. For other expressions, cf. below and Maurer (1979), esp. pp. 100–4 and 124–43.

different areas of life within which the same individual is active. Since the three estates reflect the divine order established by God at the creation, they are natural orders. At the same time they are specifically Christian hierarchies.<sup>9</sup>

Luther defines the range covered by each of the three hierarchies as follows:

The first government is that of the home, from which the people come. The second is that of the state, that is, the country, the people, princes and lords, which we call the temporal government. These two governments embrace everything: children, property, money, animals and so on. The home must produce, whereas the city must guard, protect and defend. Then follows the third, God's own home and city, that is, the Church, which must obtain people from the home and protection and defence from the state. These are the three hierarchies ordained by God ... the three high divine governments, the three divine, natural and temporal laws of God.<sup>10</sup>

In this outline family and state clearly belong together as productive and protective basic elements of society. The family is in some sense more fundamental than the state; and Luther probably did not think of the state as a 'creation order', but only as an 'emergency order' which became necessary after original sin.<sup>11</sup> This need not be a very original theological idea, since Aristotle says at the beginning of his *Oeconomics* (1343<sup>a</sup>14–16) that 'oeconomics is prior in origin to politics; for its function is prior, since a household is part of a city'.

It is also notable that the church is not seen in this outline as something in opposition to culture but rather is understood as the third created order. While all three orders are fundamentally theological, they are also fundamentally natural in the sense that they pertain to external, visible reality and provide moral guidance for our earthly life.

It is also obvious that the doctrine of three orders is influenced by the tripartite division of medieval Aristotelian ethics. Medieval commentators on Aristotle understood his *Nicomachean Ethics* as individual ethics, whereas his *Politics* and *Oeconomics* provided a medieval social ethic. Luther's teacher in Erfurt, Bartholomäus Arnoldi of Usingen, concludes that moral philosophy consists firstly of individual ethics (*ethica monastica*) taught in the *Nicomachean Ethics*, secondly of political ethics

<sup>9</sup> Schwarz (1978), pp. 18–19.

<sup>10</sup> *WA* 50, p. 652, 12–18, 33–4. Translation from Witte (2002), p. 93 (who, however, cites the wrong page numbers).

<sup>11</sup> E.g., *WA* 40/3, p. 220, 13: 'Oeconomia enim fons est Reipublicae.' *WA* XLII, p. 79, 5–8. 'Post Ecclesiam etiam Oeconomia constituitur, cum Adae additur socia Heua. ... Politia autem ante peccatum nulla fuit.' Bayer (1995), pp. 119–22.

(*ethica politica*) taught in *Politics* and thirdly of household ethics (*ethica oeconomica*) taught in Aristotle's *Oeconomics*.<sup>12</sup>

Luther thus replaced *ethica monastica* with the ecclesial order. One is tempted to think that his general dislike of Aristotle's ethics prompted him to replace it with a truly theological ordering of life. Consequently, the ecclesial order in Luther's doctrine is not concerned with individual ethics but rather with the adequate ordering of church life. In this way, he replaced traditional individual ethics with something which goes beyond ethics. This is not, however, the whole picture. We shall see below how Luther, in some central passages, relates the ecclesial order to the actions and works of individual people in the church, in other words, to a sort of ecclesial ethic. So, when he discusses the church as one of the three orders, he does not have a comprehensive ecclesiology in mind; instead, he is thinking of that *genus vitae* which pertains to the external practice of piety and to the doing of good works in the church.<sup>13</sup>

Yet another link which connects the ecclesial order to Aristotelian individual ethics has been discerned in the medieval view that ethics provides a person with self-knowledge, *cognitio sui*. Reinhard Schwarz has argued that the Lutheran notion of faith as *cognitio Dei* can perhaps be interpreted as a counterpart of this individual knowledge. Aristotle's view of prudence (*phronesis*) as the virtue of good moral judgement is relevant here. Ethics is not a theoretical science (*scientia*), since, for Aristotle, science pertains to immutable and universal truths. Prudence as an ethical virtue is an individual person's ability or skill to apply knowledge in a variety of practical situations. Medieval commentators on the *Nicomachean Ethics* therefore speak of prudence as practice-related knowledge (*cognitio*). The life of faith in the Lutheran church is, likewise, often characterized in terms of freedom and astuteness rather than immutability. Christian service devotes attention to manifold needs and varying circumstances in a way which resembles Aristotelian prudence.<sup>14</sup> I shall return below to Luther's view of prudence.

### THE THREE ORDERS AS *ORDINATIONES DEI*

Up to now I have simply reported the current state of scholarship with regard to the three orders or hierarchies. I think, however, that one very important perspective has been neglected by previous scholars: the late medieval notion of *ordinatio Dei*, a topic which for the most part has been

<sup>12</sup> Schwarz (1978), pp. 21–2. For the tripartite division of ethics, see also Kraye (1988).

<sup>13</sup> Cf. *WA* 43, p. 198 (quoted below).

<sup>14</sup> So Schwarz (1978), pp. 32–4.



considered in relation to the distinction between *potentia absoluta* and *potentia ordinata*. This distinction says that God can do anything in terms of absolute power, but that He has limited His own omnipotence by creating the world according to certain permanent orders. Moreover, God has promised some things to human beings and even made a covenant or a testament with them. The acts of creating, promising and making a covenant involve a voluntary self-limitation of divine power and are discussed in terms of *potentia ordinata*. 'Ordinance' (*ordinatio*) in this context means the self-limiting act of God; 'order' is the structure emerging as a result of the act of *ordinatio*.<sup>15</sup>

In late medieval theology this vocabulary was very prominent in discussions of grace and justification. Recent scholarship has pointed out that while this vocabulary was employed in order to refute Pelagianism, it was open to some Pelagian interpretations. The distinction between God's absolute and ordained power underlines both His sovereign omnipotence and the fact that grace is fundamentally and completely based on God's free act of acceptance. Semantically, however, the vocabulary of ordained power presupposes two subjects: in order for there to be a covenant or an agreement, two parties must be involved. Although God freely establishes the contractual relationship, the human being is in some way taken to be a contractual partner in this relationship.<sup>16</sup> It is interesting that Gabriel Biel, for instance, thought that such a contractual relationship could not exist between God and a sinner, but only between God and a justified person capable of employing *liberum arbitrium*.<sup>17</sup>

The late medieval nominalist language of covenant, testament and donation or gift does not, however, presuppose two subjects in the sense of negotiability. God, by means of his sovereignty, establishes the covenant, makes the testament or gives the gift. In Pierre d'Ailly, for instance, there are two covenants: one which God made at the creation, making promises to Adam and Noah, and another established as the new covenant, the church. Whereas the former operates with natural causality in sustaining the

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<sup>15</sup> For general introductions to this topic see Hamm (1977) and Courtenay (1980), (1984) and (1987), pp. 210–16 (with reference to Ockham's ethics). Most recently on Ockham's politics, see Lambertini (2000), pp. 269–88. Oberman (1963), pp. 90–119, focuses on Gabriel Biel's ordinance ethics. Maurer (1979), p. 125, realizes how important the idea of ordinance is for Luther; but although he considers some medieval parallels, he is not aware of *potentia ordinata* and therefore concludes: 'Es zeigt sich, dass Luthers Ordnungsdenken nicht von den mittelalterlichen Traditionen bestimmt ist, die man nach seiner Anküpfung an die Hierarchienlehre vermuten könnte; weder neuplatonisches noch aristotelisches Ordnungsdenken sind grundlegend oder massgebend. Vielmehr wird alles, was über die Obrigkeit als göttliche Stiftung ausgeführt wird, aus dem reformatorischen Verständnis der Schrift gewonnen.' Cf. Lohse (1996), p. 363.

<sup>16</sup> Hamm (1977), pp. 388–9; Greschat (1970).

<sup>17</sup> Hamm (1977), pp. 403–4.

creation, the latter also involves subsequent theological causalities, such as the divine act of acceptance. But in both covenants human beings remain recipients.<sup>18</sup>

The *absoluta – ordinata* distinction has for the most part been considered in theological contexts; but it has proved fruitful in other areas as well, for example, in late medieval monetary theory, political theory and natural science.<sup>19</sup> Given the biblical background of covenant terminology and the great variety of its late medieval applications, it is no wonder that the idea of divine ordinance is prominent in Luther's discussion of the three orders. I want now to look more closely at Luther's use of this terminology, bearing in mind that the three orders have more relevance to his mature thought of the 1530s and 1540s.

In his *Greater Commentary on Galatians* (1531), Luther makes the hermeneutic remark that we can infer from created things to divine matters, provided that we know that the created things express a divine ordinance:

You have often heard from me that civil and domestic ordinances (*ordinationes Politicae et Oeconomicae*) are divine, because God Himself has established and approved them, as He has the sun, the moon and other created things. Therefore, an argument based on an ordinance of God or on created things is valid so long as it is used properly ... [W]here there is a divine ordinance in a created thing, it is good to base an argument on it and to transfer it to divine matters ... These are divine ordinances: that fathers should give things to their children and that children should obey their fathers. Therefore, such arguments are good, since they are based on a divine ordinance. But if arguments are based on depraved human feelings, they are evil and have no validity at all. Such is the argument of Scotus: 'I love a lesser good; therefore, I love a greater good even more ... I am saying this to prevent anyone from objecting that an argument from human matters to divine ones is not valid.'<sup>20</sup>

From this passage we see that the ordinances refer only to permanent structures which reflect God's established rule. Luther explains that when the Apostle Paul speaks 'in a human way' (Galatians 3:15), he is referring

<sup>18</sup> So Courtenay (1984), pp. 116–18.

<sup>19</sup> Courtenay (1980), pp. 192–4; Lambertini (2000), pp. 269–88.

<sup>20</sup> *WA* 40/1, p. 460, 22–p. 461, 26: 'Saepe a me audistis quod ordinationes Politicae et Oeconomicae sint divinae, quia Deus ipse ordinavit et approbavit eas, ut solem, lunam et alias creaturas. Ideo argumentum ab ordinatione vel a creaturis sumptum valet, modo eo recte utamur. ... [U]bi ordinatio divina est in creatura, bene potest ab ea sumi argumentum, et transferri ad divinum. ... Ista autem divinitus ordinata sunt, ut patres dent filiis, ut filii obedient patribus. Ideo tales argumentationes bonae sunt, cum sumuntur argumentationes ab ordinatione divina. Si autem ab humanis affectibus depravatis sumuntur argumentationes, malae sunt et omnino non valet. Qualis est argumentatio Scoti: Minus bonum diligo, ergo plus diligo maius. ... Haec ideo dico, ne quis cavilietur argumentationem ab humanis ad divina non valere.' Cf. *WA* 43, p. 21, 3: 'Sunt enim [Oeconomia et Politia] vitae genera divinitus ordinata et instituta.'

to the concepts of testament and of promise which by way of analogy can also be applied to the divine ordinances.<sup>21</sup>

In his late *Lectures on Genesis* Luther very often refers to all three ordinances, explaining their emergence and the difference between them. The church as an order was instituted when God gave the first order or command to Adam not to eat from the tree of knowledge. The household was created with Eve.<sup>22</sup> Abraham is depicted as an example of piety in all three ordinances.<sup>23</sup> The church originated from Abraham's seed—this is God's promise and covenant.<sup>24</sup> Luther's hermeneutic approach in the *Lectures on Genesis* pursues the idea that the expositor can ascribe a specific divine plan to biblical verses which allude to the ordinances.

One way to achieve a deeper understanding of ordinances is to analyse them with the help of the four Aristotelian causes. This type of analysis, which distinguishes between the efficient, final, formal and material causes of a thing, was enriched in medieval theology by introducing the concept of instrumental cause and by distinguishing between primary and secondary causes.<sup>25</sup> Let us now look at one text in which such an analysis is employed.

Luther's *Exposition of Psalm 127* (1532) is, in fact, a lengthy treatise on politics and household ethics written from a distinctly theological perspective. His main thesis is that, although a philosophical ethics is able to outline the formal and material causes of these ordinances, their efficient and final causes can only be understood by means of theology.<sup>26</sup> Luther's theological explanation is that God is the real and effective cause in both the state and the household. Humans are God's co-workers in the sense of instrumental causes.<sup>27</sup> The final cause entails regarding everything as God's

<sup>21</sup> *WA* 40/1, p. 462, 17–21.

<sup>22</sup> *Ibid.*, 42, pp. 79–80.

<sup>23</sup> *Ibid.*, 43, p. 198, 28–31. Cf. Forsberg (1984).

<sup>24</sup> E.g., *WA* 42, p. 627, 41–2: 'Est enim amplissima et ver magnifica promissio, quod pacto confirmat Deus, ex Abrahae semine nascituram Ecclesiam ...' In *Lectures on Genesis* one can hardly avoid the terminology of *pactum*, *promissio*, *testamentum*, since the words are there in the biblical text.

<sup>25</sup> Courtenay (1984), pp. 97–102. For *causa instrumentalis* see Thomas Aquinas, e.g. *Summa theologia* I q. 45 a. 5 c; I–II q. 66 a. 3 ad 3; III q. 62 a. 1 c; for *causa prima – secunda*: I q. 19 a. 8 c; I–II q. 19 a. 4 c.

<sup>26</sup> *WA* 40/3, 202, pp. 30–3: 'Nam materialem et formalem causam solum tum Politiae, tum Oeconomicae norunt, finalem autem et efficientem causam non norunt, ho est, nesciunt, unde veniant Politia et Oeconomia et a quo conserventur, item quo tendant.' Cf. Bayer (1995), p. 142 and the analysis of Ebeling (1982), pp. 333–431, esp. 351–3) of this and other similar passages in Luther.

<sup>27</sup> *WA* 40/3, p. 210, pp. 31–5: 'Hic igitur Psalmus videtur quasi compendium et epiphonema eius libri esse, quo docet, et quae sit efficiens causa Politiae et Oeconomiae, sive Reipublicae, sive rei familiaris, et ad quem finem gubernatio ista tendere debeat: Nempe

gift and thus finally pertaining finally to God's glory.<sup>28</sup> Luther's exposition teaches us that in all our earthly work we should see ourselves as instruments of God. If we are successful, it is God's gift; if we fail, it is also God's will. In this sense God is the primary cause, whereas humans as instruments are the secondary cause.<sup>29</sup>

In a somewhat puzzling way this exposition resembles late medieval discussions on grace. An individual does his or her best, and God freely grants them success or failure. Divine acceptance is not causally necessitated by the individual's own efforts or merits, but instead remains a free act of God.<sup>30</sup> So, we have a kind of covenant in which God remains totally free, but the individual is granted the status of secondary co-worker. It is well known that Luther rejects this kind of 'two subjects' covenant theology with regard to justification;<sup>31</sup> however, he seems to view it more positively in the context of the non-soteriological ethics of state and household, given the over-arching importance of God as first, efficient and final cause.

Sinful human nature, Luther continues, tries to bend the divine ordinance so that humans see the rule of household and state as resulting entirely from their own activity. Awareness that these ordinances are a gift thus gets lost. The right way to think about the orders is in terms of receiving and accepting a gift.<sup>32</sup> The household and the state are not given to us in order that we may think of ourselves as their originators. Humans, as instruments, remain co-workers, who labour as secondary causes and whose labours produce fruit but not merit.<sup>33</sup>

Luther employs the analysis of causality and the terminology of ordinance and gift in order to downplay human activity in doing earthly good. This resembles the anti-Pelagian language of ordinance in William of Ockham or Gabriel Biel. The language of ordinance, however, leaves some room for human freedom in earthly affairs. This is shown by the

quod tantum simus ministri et cooperatores Dei, nec simus causa efficiens, sed instrumentalis causa, per quam Deus operatur et facit illa.'

<sup>28</sup> *WA* 40/3, p. 211, 24–5: 'Eodem modo de finali causa docet, ut intelligas omnia esse donum Dei et pertinere ad gloriam et cultum Dei, non ad nostram pacem, voluptatem, gloriam etc.'

<sup>29</sup> *Ibid.*, p. 214: 'Faciam enim, quantum in me est: Si succedit, agnoscam donum tuum et tibi agam gratias; si non succedit, patiar aequo animo, tu enim es prima causa, ego sum secunda causa, tu es creator et fac totum, ego tantum sum instrumentum.'

<sup>30</sup> Cf. Hamm (1977); Courtenay (1980) and (1984).

<sup>31</sup> See e.g. Hamm's remarks (1977), pp. 377–90.

<sup>32</sup> *WA* 40/3, p. 222, 35–p. 223, 23: 'Ergo cum conditae sint Politiae et Oeconomiae, cum leges et artes divina ordinatione cum homine concreatae sint, natura fere his abutitur in eo quod dicit: Ego faciam, ego gubernabo ... De dono debet dum gratiarum actione dicere: Hoc accipi; sed superbe et blasphemie dicit: Hoc feci.'

<sup>33</sup> *WA* 40/3, 236, 30–237,25.

vocabulary: a human being is a co-worker, a secondary cause, one who accepts and receives. The notions of 'secondary cause' and of 'instrumental cause', which both occur in Thomas Aquinas, are among the stronger types of causality in the elaborate scholastic framework of distinctions between causes. As instances of natural and effective causality, they are stronger than the nominalist, non-natural 'covenant causality', in which something is accepted on the basis of the value assigned to it by the one who does the accepting.<sup>34</sup>

In coming to this conclusion, it is not my intention to twist Luther's argument, which obviously attempts to stress God's overall rule in politics and the household. What I want to say is that the language of 'instrumental cause' pertains only to the earthly kingdom. Luther clearly cannot say that a human being is able to act in the spiritual kingdom, the church, as an instrumental or secondary cause in overcoming sin and in doing good works. That would be Pelagian. It is nevertheless proper to say that in the household and in politics humans are active in the sense that they function as the secondary and instrumental causes of bringing about good in these ordinances, in which humans act, or are acted upon, within the limits of natural causality. Given that God is the *prima causa*, Luther can stress the need for hard work within both the household and the state, as well as appealing to us to be industrious within the ordinances.<sup>35</sup>

The specific nature of human agency within the three orders becomes even more visible when Luther explains why the church must be kept distinct from politics and the household. In his *Exposition of Isaiah 9:4* (1543/44) he says that the household and politics are 'external ordinances' which pertain to the external human being, not to spiritual matters. They are divine ordinances, but as such are related to productivity and corporeal life.<sup>36</sup> The church, however, deals with the spiritual realm. It is not subjected to earthly magistrates. It must be 'diligently and prudently' distinguished from politics.<sup>37</sup> Making this distinction is not easy for Luther, since in many other places he classifies all the divine ordinances together as promises of God or as instances of exemplary piety.<sup>38</sup> But, in the

<sup>34</sup> See Courtenay (1984), pp. 97–102.

<sup>35</sup> E.g., *WA* 50, p. 652 (see below).

<sup>36</sup> *Ibid.*, 40/3, p. 646, 37–41: 'In oeconomia agrum exercemus, domum gubernamus, familiam regimus. Hae ordinationes divinae quidem sunt, sed tamen externae. Non pertinet oeconomia ad regnum coeleste, sed tamen ea opus est, dum hic vivimus. Sic et politicis ordinationibus opus est iisque secundum externum hominem sumus subiecti.'

<sup>37</sup> *Ibid.*, pp. 646, 17–20 and 647, 1.

<sup>38</sup> E.g., *WA* 43, p. 198, 28–33: 'Prudenter igitur inspiciamus divinas ordinationes et exempla sancti Patriarchae Abrahae, qui de omnibus rebus Ecclesiae abunde nos docuit, et specimen pietatis suae praebuit non solum in Ecclesiastico vitae genere, tanquam Propheta Dei, sed etiam in Politicis et oeconomicis. Oportet enim esse gubernatores in hac vita, nec est posita Ecclesia ad subvertendam oeconomiam et politiam, sed ad instaurandam.' In an even more

commentary on Galatians, he writes: ‘God has various ordinances, laws, forms of life, modes of worship in the world; but these do nothing to bring forth grace or to achieve eternal salvation.’<sup>39</sup> Luther here distinguishes between the three ordinances by stating that, whereas household ethics pertains to the family and politics to ruling the state, the church takes care of our knowledge of Jesus Christ so that we may conquer sin, do righteous deeds and exercise mutual charity. These good works are not, however, works of the church unless they proceed out of faith and love.<sup>40</sup>

This remarkable ‘definition’ of ecclesial order is not a dogmatic one, nor does it identify the so-called marks of the church (*notae ecclesiae*). Rather, it defines the divine ordinance of the church as a *genus vitae*, a community of living and doing, parallel to the definitions of the household and of politics in terms of external labour. Since Luther and Lutheranism seldom describe the nature of the church in terms of ethics and activity, this definition is remarkable. The last sentence is, however, crucial and gives the definition a specific Lutheran quality. We cannot identify spiritual works externally but only as works of faith. Faith and love identify a Christian’s spiritual activity. The ecclesial order is ‘spiritual’.<sup>41</sup>

One reason for this distinction is obviously that describing household ethics and politics in terms of the language of ordinance and of covenant leaves some freedom for human agency and ascribes to it an ‘external’ or ‘natural’ character. Since in the spiritual realm this would be Pelagian, the works of faith must proceed in a different manner. What we get is a twofold view of human agency. Whereas in the household and the state our activities must be seen both in terms of divine ordinances and as human actions, in the spiritual realm human agency is even more strongly theological. In addition to the divine ordinances and divine causality,

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unified manner in *WA* 43, p. 226, 24–30: ‘Quia promissio Dei abunde in Christo exhibita et patefacta est. ... Habemus sermonem Dei, Eucharistiam, Baptismum, decalogum, coniugium, politicas ordinationes et oeconomiam.’

<sup>39</sup> *WA* 40/1, p. 544, 23–6: ‘Habet quidem Deus varias ordinationes, leges, genera vitae, cultus in mundo, sed ista nihil faciunt ad promerendam gratiam et ad consequendam vitam aeternam.’

<sup>40</sup> *WA* 40/3, p. 647, 35–p. 648, 7: ‘... distinctio et propria cuiusque status definitio, quod oeconomia pertineat ad gubernationem liberorum ac familiae, ut parentes regant domum, ut politici principes gubernent rempublicam, subditi obediant. Item: ut in Ecclesia doceatur cognitio Filii Dei, ut credentes omnes consentiant in eundem Infantem nobis datum et natum, ut occidamus peccatum, ut adiuvemus et sublevemus fratrem lapsum, ut subveniamus egenis, ut faciamus opera vitae contra mortem, opera iustitiae contra peccatum, opera consolationis contra conscientiae anxiam, contra diabolum et desperationem, ut exerceamus inter nos mutuam charitatem, ut non scindamus concordiam, ut largiamur eleemosynas etc. Haec pertinent ad Ecclesiam. Sed haec opera non sunt propria Ecclesiae opera, nisi fluant e fide et charitate.’

<sup>41</sup> *WA* 40/3, p. 648, 35–37: ‘Prophetae ergo praedixerunt Ecclesiam fore regnum distinctum a mundi regno, non politicum nec oeconomicum, sed spirituale.’

Luther wants to say that human agency is properly ecclesial only if it proceeds out of faith and love. A pagan ruler can make a properly political decision without knowing the divine ordinance and divine causality. Only a person who has true faith, however, can perform a 'properly ecclesial' action. In other words, the language of ordinance and covenant is not sufficient to describe Christian life in the church, though it is adequate when it comes to the household and the political sphere. Moreover, instead of natural causality, one must employ a theological causality, a causality of faith and love.

This might explain the fact that Luther in practice does not often define the church in terms of order, although he repeatedly defines both the household and the state as ordinances. For him, these are primarily external and related to activity in this world. The church, however, has so many inward and spiritual aspects that its function as an 'order' is only one element of its deeper nature. 'Ordinances' of the church might sometimes be merely secondary for Luther.<sup>42</sup>

In his *Von den Konziliis und Kirchen* (1539) this interplay is visible in an exemplary manner. After outlining his famous dogmatic view of the 'seven marks of the church', Luther discusses whether ethics can be one such mark. His answer is negative, since good works are also done by non-Christians and since we cannot infer 'backwards' from works to faith. Therefore, good works are not a 'certain' mark or sign of *ecclesia*.<sup>43</sup> But they can nevertheless be 'external signs' in the sense that a true church should exercise sanctification among its members. This is not only because of the moral law, but in order that the works of the Spirit can become visible.<sup>44</sup> The church, however, cannot be identified on the basis of external morality.

Luther concludes this work by referring to Psalm 127 and the three hierarchies.<sup>45</sup> Interestingly, he characterizes the three orders in this context in terms of doing. The first two ordinances give us a paradigm of the good life in which we must actively struggle to preserve it. The household calls for many kinds of active work. The society or the state also offers many tasks which must be fulfilled. These two ordinances require all our human powers. The third order, the church, requires in addition such good works of perfection as are beyond human capacity. But because the church is the order of the Holy Spirit, these requirements are not to be fulfilled through

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<sup>42</sup> E.g., *ibid.*, 40/1, p. 673, 27–34: '... permittit Evangelium ordinationes fieri in Ecclesia de feriis, de temporibus, de locis etc. ... Sed hoc fine permittit talia constitui, ut omnia in Ecclesia fiant decenter et secundum ordinem, 1. Cor. 14. Non ut servantes tales ordinationes mereantur remissionem peccatorum etc.'

<sup>43</sup> *Ibid.*, 50, p. 643, 27–37.

<sup>44</sup> *Ibid.*, p. 643, 6–26.

<sup>45</sup> *Ibid.*, p. 652, 12–17 (quoted above).

human activity. Human activity in the church is either sweet and light, if it takes place through the Spirit, or a terrible and utterly impossible, if it is conceived in terms of human agency.<sup>46</sup>

In this sense the three orders represent a graduated moral hierarchy. Whereas its requirements can to some extent be met in both household and in the state, the ultimate order of human conduct, the church, requires a perfection which lies completely beyond human capacity. When people do good works in the church, they do not do them in the same way they do hard work in the two other orders. Instead, proper ecclesial activity is sweet and light, since it takes place within a spiritual framework.

So, whereas the language of *ordinationes Dei* helps us to understand the ethics of the household and the state, it does not allow us to grasp the deeper nature of spiritual activity. There is a fundamental distinction between the co-worker model in the earthly realm, on the one hand, and spiritual or theological activity, on the other hand. Before the nature of this ‘theological action’ (*opus theologicum*) can be clarified, something needs to be said about the concept of prudence in Luther.

## PRUDENCE IN LUTHER

I quoted above Reinhard Schwarz’s observation that the Aristotelian view of prudence at a first glance displays some similarities to Lutheran individual ethics, which stresses Christian freedom and the astute and flexible service of Christian love. If we pursue this comparison further, we see, however, that prudence remains a very ambivalent notion for Luther. In his early *Lectures on Romans* (1515/16), Luther remarks that in Romans 8:7 the phrase ‘scientia carnis’ should instead be translated as ‘prudentia carnis’, since Paul is not dealing with theoretical wisdom but rather with practical reason as related to action. Carnal prudence is always directed towards choosing one’s own good and avoiding the common good.<sup>47</sup> Only spiritual prudence can choose good and avoid evil.<sup>48</sup>

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<sup>46</sup> Ibid., p. 652, 18–32: ‘Das sind drey Ierarchien, von Gott geordent, und dürffen keiner mehr, haben auch gnug und uber gnug zu thun, das wir in diesen dreien recht leben wider den Teuffel. Denn sihe allein das Haus an, was da zu thun ist, Eltern zihen, regirn und versorgen, das wir gnug zu thun hetten mit dem Hausrecht, wenn sonst nichts mehr zu thun were. Darnach gibt uns die Stad, das ist weltlich regiment, auch gnug zu thun, ... das wir uberaus reichlich an diesen zweien rechten zu lernen, zu leben, zu thun und zu leiden haben. Darnach ist das dritte recht und Regiment, wo das der Heilige Geist regirt, so heisset Christus ein tröstlich, süsse, leichte bürden, Wo nicht, so ists nicht allein schwer, saur und schrecklich, sondern auch unmöglich, Wie Paulus sagt Rom. 8: Impossibile legis.’

<sup>47</sup> Ibid., 56, p. 361, 5–22. Cf. Työrinoja (2002), pp. 139–40.

<sup>48</sup> *WA* 56, p. 362, 28–31.



Aristotelian scholastics generally thought that even a sinful person recognizes the common good in a universal sense. Human beings only sin in their estimation of particular and concrete circumstances. This doctrine is related to Aristotle's practical syllogism, which consists of a universal major premise, indicating the end as the common good, and a particular minor premise, indicating the means of reaching the end. Luther, however, radicalizes the sinfulness of humanity, teaching that humans seek only their own individual good. As result of sin, a person is completely bound to himself (*incurvatus in se*) and therefore sees the individual good as the goal of human agency. A person might pursue some particular good means, but the overall end is sinfully egoistic and in this sense carnally prudent.<sup>49</sup> In the context of Romans 8:7 Luther makes an extensive list of all earthly goods. He remarks that God gives them all as a gift but that carnal prudence perverts them so that, as Augustine said, we use the things we should enjoy and enjoy the things we should use.<sup>50</sup>

Because prudence always seeks an individual good and cannot serve the common good, Luther refers to it negatively in theological contexts as carnal prudence. But in other contexts, where the issue is earthly well-being, removed from the spiritual dimension, prudence can exercise a partially positive function. A well-known example, often repeated by Luther, is the question of whether it is better to have a morally bad ruler who is prudent or a morally good ruler who does not have prudence. Luther always defends the view that one should prefer a bad ruler who is prudent, since a society is ruled through the skill of prudence. A person who lacks prudence cannot rule a state at all, so that everything becomes the prey of evil people. A prudent but bad person does not rule the state in order to achieve the common good. Nevertheless, he rules all people and in so doing at least prevents chaos and anarchy.<sup>51</sup>

This example is connected to Matthew 10:16, where Jesus says that his disciples should be 'prudent as serpents'. For Luther, this means that a serpent has an evil overall intention but that it may nonetheless be astute with regard to the means.<sup>52</sup> So, even this positive use of prudence is coloured by a residual ambivalence. This is also the case when Luther discusses ruling a state by means of the light of natural reason. Such reason is a very great gift of God and, if it works properly and prudently, can achieve magnificent things. In an almost Aristotelian manner Luther admits that with reason one can rule, pass legislation and institute laws, give good counsel and, generally speaking, administer public affairs in human

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<sup>49</sup> So, e.g., Työrinoja (2002), pp. 138–42 and, more extensively, Raunio (1998) and (2001).

<sup>50</sup> *WA* 56, p. 361, 22–p. 362, 15.

<sup>51</sup> *Ibid.*, 20, p. 553, 21–8. For some parallel passages see the register: *ibid.*, 67, p. 545.

<sup>52</sup> *Ibid.*, 42, p. 376, 13–15.

society.<sup>53</sup> As a theologian, however, Luther must immediately add that although reason ‘in suo genere’ provides this light, actual success in earthly things is granted by God alone.<sup>54</sup>

In the *Greater Commentary on Galatians* Luther remarks that the ‘justice of law’ must be judged and taught according to prudence. This justice should not, however, be confused with justification of the sinner. In so far as they are justified before God (*iustitia passiva*), Christians live without law; but within the limits of earthly reality they are in the domain of ‘active justice’, that is, legislation and the ‘rule of the law’ in matters of society. The *paterfamilias*, whose duty is to teach and maintain this law, must be both faithful and prudent if this doctrine of law is to remain within its proper limits.<sup>55</sup> Luther adds that active justice can only exercise its earthly duty as God’s instrument after passive justification by faith has taken place.<sup>56</sup>

In spite of his residual ambivalence with regard to human prudence, we may conclude that whenever Luther says something positive about prudence, he relates it to the activity of the *paterfamilias* and *paterpoliticus* in their role as civil rulers in society. The virtue of prudence has some positive use in social ethics or in the two earthly orders of family and state, although it is also constantly vulnerable to egoistic carnal prudence within these orders. A real and unequivocally good prudence is present in those rulers who, instead of trusting their own inclinations, allow themselves to be ‘instruments of God’s work’.<sup>57</sup> Because good prudence is subject to two different principles, it can perhaps be said, as Reinhard Schwarz suggests, that in the end it is the *cognitio Dei*, not *cognitio sui*, which determines the content of good prudence.<sup>58</sup> But since Luther almost always treats human prudence in terms of carnal prudence, the notion of prudence as such has almost no positive part to play in any overall explanation of Luther’s ethics.

A similar perspective can be observed in Luther’s use of the so-called golden rule: ‘In everything do to others as you would have them to do to you’ (Matthew 7:12). The golden rule is prominent everywhere in Luther’s theological ethics; but it is not prominent either as an expression of the so-called *ordo caritatis*, which claims that we should love better things more,

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<sup>53</sup> Ibid., 40/3, p. 612, 32–613, 3: ‘Si ad votum et sententiam omnia succederent, si consilia eius tam feliciter ac bene caderent, quam sunt prudenter et sapienter cogitata, tum sane magnum et praeclarum quiddam praestaret. Potest regna et respublicas condere, legibus utilibus ea sepere et stabilire, bonis consiliis, salutaribus praeceptis moderari et gubernari, multa praescribere ad conservationem rerumpublicarum et societatis humanae utilissima.’

<sup>54</sup> Ibid., 40/1, p. 613.

<sup>55</sup> Ibid., 40/1, pp. 43–5.

<sup>56</sup> Ibid., pp. 45–6.

<sup>57</sup> Ibid., 43, pp. 513–14, esp. p. 513, 2–4.

<sup>58</sup> Schwarz (1978), p. 34.

or as an expression of natural reason only. On the contrary, Luther's use of the rule is conditioned by his criticism of the medieval *ordo caritatis* and by his insistence that love as a divine gift is the model for truly Christian love.<sup>59</sup>

Antti Raunio has recently discussed these features of the golden rule in Luther. The following conclusions are based on his findings. Although Luther views the golden rule both as a rule of inference for human conduct and as an expression of the 'natural moral law', his theological pre-conditions make it a concept which differs considerably from Aristotelian prudence. Good decisions cannot be made on the basis of evaluating the objects of one's love, since this love is always contaminated by the individual's egoism. Instead, we need a rule which proceeds from the deficiencies and needs of one's neighbour and which seeks to remedy them through the divine gift of love. But this kind of individual ethic is not prudential in the usual sense. Unlike Aristotelian prudence, it presupposes both human sinfulness and a theological ontology in which the giving and receiving gifts constitutes the basic structure of reality. Divine grace may illuminate this structure for an individual, who can then recognize the golden rule as a command to spread the divine gift of love to his or her community. How this can be done is a question which probably needs a strong concept of natural reason, but at the same time the gift-based and need-based foundations of the golden rule remain a strictly theological theory.<sup>60</sup>

In sum, it seems that prudential reason is in some way operative in the hierarchies of family (*oeconomia*) and politics (*politia*), although humans should leave its use to God. This view of the hierarchies again resembles the covenant model, in which everything is granted by God as a gift, a testament and the fulfilment of a promise. The individual is prudent when he or she recognizes the gift-structure inherent in the golden rule, as well as in the ordinances of the family and the state.

In the ecclesial ordinance, which for Luther comprises both the individual's perspective (*ethica monastica*) and the theological life of faith, the issue is more complicated. Both the covenant model and the instrumental causality of human beings begin to look Pelagian when related to spiritual matters. We must therefore give further consideration to the nature of a genuinely 'theological action' (*opus theologicum*).

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<sup>59</sup> So Raunio (1998) and (2001).

<sup>60</sup> Cf. Raunio (1998), esp. pp. 105–8, 121–2 and (2001), esp. pp. 302–5, 327–55.

## THEOLOGICAL ACTION

As we have seen, it is only spiritual prudence which can pursue the common good. The interesting question is now, of course, how this good action in fact emerges? Reijo Työrinoja has recently considered the nature of specifically spiritual, or theological, action in Luther. In the following I shall relate my discussion to his remarks.

In *Greater Commentary on Galatians* Luther makes a distinction between theological and philosophical language. When we speak of doing and acting in theology, the words should not be understood in their plain, Aristotelian sense. In a theological context they are ‘new words’ which have a ‘new signification’. Whereas Aristotelians employ a ‘moral grammar’, theologians should employ a distinctly ‘theological grammar’ which alone can provide a proper understanding of theological issues.<sup>61</sup>

Luther’s distinction between philosophical and theological language is a complex matter which cannot be dealt with at length in this context.<sup>62</sup> We must be content here with a rather intuitive and pragmatic analysis of the distinction, according to which theological terms and propositions resist any reduction to their philosophically proper meanings. The theological meaning can only be contextual and is found within the totality of biblical or theological doctrine.

When, for instance, the statement that a good tree bears good fruit is metaphorically applied to a Christian’s actions, the word *facere* cannot be analysed in an Aristotelian manner, since we are dealing with a genuinely ‘theological deed’ or ‘theological action’ (*opus theologicum*). A theological action is a deed done in faith (*opus fidele*). Faith gives the human intellect the right form, which it cannot achieve without it, since without faith the egoistic form prevails. The divine is present in theological human action in the same way that it is in the two natures of Christ.<sup>63</sup> ‘Doing’ in theology therefore means something different from ‘doing’ in philosophy and ethics. In philosophy, it means that the action follows from right reason and a well-disposed will. In theology it means that the action is a product of

<sup>61</sup> Työrinoja (2002), pp. 147–8. *WA* 40/1, p. 411, 24–30 and p. 418, 19–24.

<sup>62</sup> Recent studies include Streiff (1993); Rieske-Braun (1999) and Dieter (2001), esp. pp. 378–430.

<sup>63</sup> *WA* 40/1, p. 417, 12–26: ‘Permittamus igitur Spiritui sancto, ut loquatur in Scripturis vel de fide abstracta, nuda, simplici, vel de concreta, composita, incarnata; Omnia sunt fidei quae operibus tribuuntur. Non enim moraliter, sed Theologice et fideliter sunt opera inspicienda. Sit ergo in Theologia fides perpetuo divinitas operum et sic perfusa per opera, ut divinitas per humanitatem in Christo. ... Est ergo fides Fac totum (ut ita loquar) in operibus; ... ad obiecta adversariourum qui commiscunt Philosophiam et Theologiam et ex moralibus operibus Theologica faciunt, recte et facile respondere possitis. Theologicum opus est fidele opus. Sic homo Theologicus est fidelis, item ratio recta, voluntas bona est fidelis ratio et voluntas.’ Työrinoja (2002), pp. 151–2.

faith.<sup>64</sup> In justification by faith, the faith becomes 'informed' by Christ, so that Christ is, in a sense, the form of faith. Accordingly, the divine principle in theological action is Christ present in this faith as its form.<sup>65</sup>

Thus faith, or Christ, is the sole and formal cause of the sinner's existence as a justified person. Faith is, theologically speaking, the divine moment of the deeds performed by the justified person. This formal cause is attributed to the material human being who is said to act in faith.<sup>66</sup> We might interpret this to mean that, although a good action in this theological sense 'formally' takes place as an act of Christ, 'materially' it remains a human act. Luther, however, is reluctant to analyse any further the philosophical issue of the subject of such action. Elsewhere he remarks that the question of Christian righteousness should be discussed in theology without focusing on the person himself. Such a focus is necessarily subject to the 'law', that is, to the natural or philosophical way of perceiving theological issues. One should instead focus on Christ and think of Christ and oneself as a unity.<sup>67</sup>

Theological language, therefore, can show that some philosophical analyses are inadequate, but it cannot be employed as a philosophical tool in solving the philosophical issue of agency. One must in this sense be content with the answer that the individual actions of Christians should be understood as *opera theologica* in which faith and Christ's presence in this faith suffice to overcome egoism and consequently are able to determine the aim of the action. Spiritual prudence works in this way.

## CONCLUSION: A COVENANT MODEL IN LUTHER'S SOCIAL ETHICS?

What role does Aristotelian ethics play in Luther's theology? It is clearly the negative counterpart against which Luther develops his theological ethics. At the same time, however, Aristotelian issues to some extent determine Luther's agenda. He derives his vocabulary and distinctions from

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<sup>64</sup> *WA* 40/1, p. 418, 12–21 'Sunt igitur ista vocabula: Facere, operari, tripliciter accipienda, Substantialiter seu naturaliter ... moraliter et Theologicice. In substantiis seu naturis et moralibus, ut dixi, accipiuntur ista vocabula in suo usu. In Theologia vero fiunt plane nova vocabula acquiruntque novam significationem. ... Habent enim [hypocritae] facere, quod fluit ex recta ratione et bona voluntate morali seu humana. Ideo opus eorum est plane morale seu rationale, non fidele aut Theologicum quod includit fidem.'

<sup>65</sup> *Ibid.*, p. 229, 15–30; p. 417, 29–p. 418, 11. Cf. Mannermaa (1989).

<sup>66</sup> *WA* 40/1, p. 417, 26–9: 'Ut fides in universum sit divinitas in opere, persona et membris, ut unica causa iustificationis quae postea etiam tribuitur materiae propter formam, hoc est operi propter fidem.'

<sup>67</sup> *Ibid.*, p. 282, 16–23. Cf. Työrinoja (2002), p. 152.

medieval Aristotelians. He is obliged to discuss the threefold division of ethics into individual, household and political ethics. He must deal with the role of prudence in action theory. His treatment of justice, or righteousness, presupposes that philosophers understand justice in an Aristotelian sense. For these reasons, Luther scholars need to have a solid knowledge of the Aristotelian tradition.

Recent studies on Luther's knowledge of Aristotle show that he not only acquired a theological Aristotelianism but also studied Aristotle in the humanist translations of Johannes Argyropoulos. Early in his career, Luther even attempted to offer some original and rather elaborate answers to the problems posed by Aristotle's physics. His later attacks on Aristotle's ethics and action theory were thus not based on second-hand knowledge. Instead, they need to be read against the humanist tradition of the early sixteenth century, which was critical of scholasticism in general and medieval dogmatic Aristotelianism in particular.<sup>68</sup>

Rather than speaking of Luther's ethics as an autonomous discipline, we must speak of ethics within the framework of his theology. Even the two-thirds of his ethics which is not strictly related to faith, namely household and political ethics, can only partially be understood by philosophy, that is, in relation to their formal and material cause. The efficient and final causes of *oeconomia* and *politia* are found only in God and can only be explained theologically.

The most adequate definition of Luther's own contribution to ethics probably lies in his understanding of the golden rule in terms of the divine gift of love, which is the only way to overcome the pervasive egoism of every human being. From this core conviction Luther develops his criticism of both Augustinian *ordo caritatis* and Aristotelian prudence. But it is nevertheless interesting that Luther distinguishes between the three 'ordinances' or 'orders of life' in a quasi-scholastic manner. Whereas individual human agency in the church remains so vulnerable to egoism that we cannot even use the language of philosophy when speaking about it, social action in the household and the state can be discussed employing the vocabulary of ordinance, covenant and causation.

With regard to *politia* and *oeconomia*, the language of divine ordination is the theological tool which corrects the misunderstandings of Aristotelian philosophy. If we understand the household and the state as divine ordinances, we come to know something of their real efficient and final causes. The philosophical analysis of causality can then proceed with human agents as the natural causes of worldly events in the state and in the family, provided they are only secondary and instrumental causes in the light of theology. In pragmatic terms, human co-operation in these two

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<sup>68</sup> Dieter (2001) brings together our knowledge of young Luther's attitude towards Aristotle.

ordinances is predominantly negative, since the best results are achieved when individuals submit their wills to the will of God. But, theoretically speaking, the self-binding act of divine ordinance opens up the possibility of co-operation between God and human kind. For this reason, human agency in the home and in society can be described as hard work by individuals in the service of domestic fairness and civil justice—a description which in theological terms would seem Pelagian.

These insights provided by the terminology of ordinance are the main findings of this study. Taking account of this terminology sheds new light on some frequently discussed problems in Luther's social ethics. But, of course, it also raises new questions. I shall mention only two. First, is there any explanation as to why egotism does not pervert social action as dramatically as it does individual action? Theoretically speaking, we might imagine that since social action is intended to benefit many people at the same time, it may be successful to some extent, even though the individual ruler might place his own benefit above that of others. The example of the prudent pagan ruler may offer support for this interpretation. I have not, however, been able to verify or to falsify this explanation.<sup>69</sup>

Second, the language of gift giving can also be seen in a new light when explained in terms of divine ordinance. Like a testament and a promise, a gift is also a one-sided action of God.<sup>70</sup> At the same time, however, it is an act which involves two partners. Although the other partner, the human being, does not actually do anything, he or she still receives the promise, testament or donation. The language of gift giving is very prominent in Luther's soteriology and is commonly employed by him in strictly anti-Pelagian contexts. But does not the very idea of a gift presuppose a 'two subjects' framework which may result in an affirmation of some human freedom or some mutual exchange within the soteriological partnership? Certain Luther scholars have argued that this is indeed the case.<sup>71</sup> The gift is, however, such a traditional and widely used theological topic that it cannot be reduced to an aspect of the language of ordinances. An awareness of this terminology in Luther may, nevertheless, help us to understand the nature of the gift in his theology.

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<sup>69</sup> In *WA* 59, pp. 45, 11–17 and 46, 2–3, Luther remarks that seemingly altruistic political actions are nevertheless egoistic.

<sup>70</sup> E.g., *ibid.*, 40/1, p. 463, 13–15: 'Neque enim aliud est Testamentum quam promissio, ... Testamentum autem non est lex, sed donatio.'

<sup>71</sup> Holm (1998) and esp. (2001). For Ockham, a gift is something freely given, that is, the giver is not under any obligation. See Courtenay (1987), p. 212.

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# The Reason of Acting: Melanchthon's Concept of Practical Philosophy and the Question of the Unity and Consistency of His Philosophy

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## I

Any examination of Philipp Melanchthon's commentaries on practical philosophy—not only on Aristotle's *Ethics* and *Politics*, but also on Plato's *Laws*—has to be seen within a twofold framework, which itself plays a crucial role in understanding his practical philosophy. In the first place, Melanchthon's commentaries on Aristotle's practical philosophy seem to be among his most influential writings. There were five traditions of these commentaries: as early as 1529 he published the first two books of Aristotle's *Ethics* in his *Enarrationes aliquot librorum ethicorum Aristotelis*, which were published again three years later, accompanied now by the third and fifth books.<sup>1</sup> In the meantime, he published in 1530 his *Commentarii in aliquot politicos libros Aristotelis*, covering the first three books of the *Politics*.<sup>2</sup> In 1538 he issued his *Philosophiae moralis epitome*, the first systematic textbook of practical philosophy.<sup>3</sup> His *Ethicae doctrinae elementa*, which appeared in 1550, was based on lectures delivered in 1548.<sup>4</sup> And finally, ethical problems such as oaths, the question of excommunication and the difference between political and spiritual power were examined in his *Quaestiones aliquot ethicae* of 1552.<sup>5</sup> During the sixteenth century there were at least 53 imprints of Melanchthon's textbooks and commentaries on Aristotle's *Ethics* and *Politics*—clear evidence for the overwhelming success of his writings in this field.

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<sup>1</sup> CR 16, 277–416.

<sup>2</sup> CR 16, 417–452.

<sup>3</sup> CR 16, 21–164.

<sup>4</sup> CR 16, 165–276.

<sup>5</sup> CR 16, 453–494.

An investigation of this tradition of Aristotle's practical philosophy would be misleading, however, if it concentrated only on Melanchthon's commentaries and textbooks. For during the sixteenth century there was also a wide-ranging ethical and political discussion based on the *Corpus Aristotelicum*, which was more intense and broader in extent than the first reception of Aristotle's ethical and political writings in the thirteenth and fourteenth centuries, as Charles Schmitt pointed out a few years ago.<sup>6</sup> There were at least 120 commentaries and textbooks on Aristotle's ethics published in the sixteenth century, indicative not merely of a vigorous discussion, going beyond confessional boundaries, but also of a greater interest in Aristotle's *Ethics* and *Politics* than is documented for the entire preceding millennium. This phenomenon cannot be explained solely by the progress of the new print industry but rather has to be examined within the context of the culture of early modernity by answering the question: what are the reasons for this widespread interest in Aristotle's writings on practical philosophy? Although Melanchthon might be considered, at least when it comes to ethics and politics, as having played an outstanding role in this second reception of Aristotle, his writings need to be seen against this wider background. To do what I am proposing would require a vast research project, which, of course, cannot be accomplished in this paper. Yet it is necessary to emphasize that Melanchthon's writings on Aristotle's practical philosophy need to be examined in light of the second reception of the *Corpus Aristotelicum* in the early modern period.

The second framework for exploring Melanchthon's practical philosophy concerns a systematic question which has not yet been investigated—the question of the unity and consistency of his philosophy. As is well known, Melanchthon wrote textbooks and commentaries on almost all disciplines of the *Corpus Aristotelicum*: natural philosophy, psychology, dialectics, rhetoric, ethics and politics. But there is one treatise on which he never wrote a commentary: the *Metaphysics*, which Aristotle wanted to be considered the perfection and conclusion of his natural philosophy. This is an important indication of Melanchthon's understanding of philosophy, which has to be understood without metaphysics. But beyond this, it raises the issue of the unity and consistency of his understanding of philosophy, if we are not to understand his philosophical works as occasional writings, which almost by chance are concerned with philosophical problems, without being at the core of his thinking. Melanchthon's understanding of Aristotelian philosophy has been characterized in different ways: it has been labelled a 'harmonizing' or 'eclectic Aristotelianism', or has been seen as an attempt to formulate a new Protestant and humanist Aristotelianism—that is, when his concept of

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<sup>6</sup> Schmitt (1983), p. 70.

philosophy has been taken seriously at all, as for instance in the classic monographs by Wilhelm Dilthey, Heinrich Maier and Peter Petersen.<sup>7</sup> My own thesis, which I shall present in this paper, is that the core of Melanchthon's philosophy was his doctrine of intellect, which led to an intellectualist and anthropological sharpening of his understanding of philosophy. In the second part I shall discuss his doctrine of intellect in the perspective of the unity and consistency of philosophy with regard to practical philosophy by comparing his concept of ethics and politics with that of two major thinkers of the Middle Ages: Albert the Great and Thomas Aquinas. In this way I hope to clarify the status of practical philosophy in Melanchthon's thought.

## II

The thesis that the doctrine of the intellect was at the very centre of Melanchthon's understanding of philosophy seems by no means obvious if we look at past scholarship on him. Here I want to point out a feature which can be found in all of his philosophical writings. Melanchthon's commentaries normally begin with the theological and basically philosophical remark that all sciences are a mirror of God in which God wants to be recognized. So, in the introductory chapters of his natural philosophy, in which he deals, among other issues, with the question of the certainty of God's recognition in this discipline, he begins by saying: 'God wanted some sciences to be certain and secure for the guidance of life—as Plato said, the pleasing glory of God was dispersed into sciences, which, if they were uncertain and insecure, would neither show God nor would they be laws of life.'<sup>8</sup> In his *Ethicae doctrinae elementa* of 1550, we find following epistemological principle: 'Firstly, the knowledge of those virtues'—as expounded in Aristotle's *Ethics*—'is a testimony to God's existence. For the eternal and indestructible distinction between good and bad in the human mind testifies that nature has not been created by chance but rather by the eternal mind of a master-builder. Secondly, it teaches what God is like. For when we distinguish between good and bad, then we recognize that God is wise, free, true, just, beneficial, sincere and merciful.'<sup>9</sup> For Melanchthon, engagement in the arts and sciences is not

<sup>7</sup> Dilthey (1986); Maier (1909), pp. 1-139; Petersen (1921).

<sup>8</sup> CR 13, 185: 'Vult Deus artes aliquas vitae rectrices, imo ipsum quoque aliquo modo monstrantes, certas et firmas esse, ut dixit Plato, gratam Dei famam in artibus sparsam esse, quae si prorsus incertae essent, et nihil firmi continerent, nec Deum monstrarent, nec vitae leges essent.'

<sup>9</sup> CR 16, 166: 'Prima: Quia earum notitia testimonium est, quod sit Deus. Nam aeternum et immotum discrimen honestorum et turpium in mente, testatur, hanc naturam non esse casu

simply a pedagogical duty, but above all a theological one: since God himself, in his existence and being, is manifest in sciences, sciences had to be treated with regard to their theological significance. That is, scientific knowledge is always at the same time a recognition of God. If, however, God can be recognized within these sciences, why do we need revelation and a discipline such as theology? We know from the condemnation of certain doctrinal positions in Paris 1277 that this question was one of the most momentous challenges which arose from the adoption of Aristotelian writings by Western theologians.

In order to avoid this challenge, Melanchthon usually starts his investigations of Aristotelian writings by dealing with two epistemological principles which are concerned with the basic distinction between theology and philosophy. As he remarks in his introduction to natural philosophy, the distinction between those doctrines must not be blurred: there is an immense difference between physics, on the one hand, and the Gospel, God's revealed promise of salvation, and those things which transcend human capacities, on the other.<sup>10</sup> In his ethics, Melanchthon refers to this epistemological principle: 'The law of morality is the eternal and indestructible wisdom and rule of justice in God ... The Gospel, however, is the disclosure of penitence, revealing sins, and the promise of the remission of sins and of reconciliation, justice and eternal life, which are given freely by the son of God, the knowledge of whose promise is by no means inborn in human beings but rather was proclaimed from the secret bosom of the eternal father and stands above and beyond the sight of all creatures.'<sup>11</sup> This epistemological principle, which Melanchthon took over from Luther's distinction between law and Gospel, replies to the challenge which first arose around 1277 by maintaining that the theology of revelation is related

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ortam, sed ab aliqua aeterna mente architectatrice. Secunda: Quia docet, qualis sit Deus. Cum enim discernimus honesta et turpia, intelligimus, Deum esse sapientem, liberum, veracem, iustum, beneficum, castum, misericordem etc.'

<sup>10</sup> CR 13, 190: 'Denique etsi inter physicam et doctrinam Evangelii, et promissionem a Deo patefactam, ac longe positam supra captum humanum, ingens discrimen est, nec genera doctrinarum confundenda sunt ...'

<sup>11</sup> CR 16, 168: 'Lex moralis est aeterna et immota sapientia et regula iustitiae in Deo ... Evangelium vero est praedicatio poenitentiae, arguens peccata, et promissio remissionis peccatorum, et reconciliationis, iustitiae, et vitae aeternae, gratuita propter Filium Dei, cuius promissionis notitia nequaquam nobiscum nascitur, sed ex arcano sinu aeterni patris prolata est, supra et extra conspectum omnium creaturarum.' For Melanchthon's moral philosophy of 1538, see (CR 16, 21f): 'Quid est Philosophia moralis? Est notitia praeceptorum de omnibus honestis actionibus, quas ratio intelligit naturae hominis convenire, et in civili consequentia vitae necessarias esse, quaesitis fontibus praeceptorum arte et demonstrationibus, quantum fieri potest. Sed eruditissima definitio est haec: Philosophia moralis est pars illa legis divinae, quae de externis actionibus praecipit ... Nam proprius Evangelii locus est promissio, qua Deus propter Christum promittitur nobis gratis remissionem peccatorum, et reconciliationem et donationem Spiritus sancti et vitae aeternae.'

to the divine order of salvation, above all to soteriology, while philosophy is always solely concerned with the possibility of inner-worldly knowledge. The philosophical knowledge of God only has to do with the recognition of his existence and being, but never with the revelation of his will for our salvation.

These two epistemological principles led to two notable consequences for Melanchthon's understanding of philosophy: on the one hand, any philosophical knowledge was a mirror of the recognition of God; on the other hand, any philosophical knowledge is related only to the possibility of inner-worldly knowledge, which is insufficient and irrelevant for revelation for and theology of salvation. Whatever is concerned with men's salvation belongs always and only to the theology of revelation. After having clarified the epistemological distinction between philosophy and theology, however, one question becomes much more urgent: how can philosophical knowledge—always ranked below the theology of revelation—be explained at all. How are human minds capable of attaining knowledge of sciences which must also be mirrors for the recognition of God?

Since the patristic era, the classical topos for this question was the doctrine of the similarity between God and human beings. In the context of this discussion, which I can only mention here,<sup>12</sup> Melanchthon's own understanding is close to the interpretation of the Church Fathers and the scholastic theologians who answered this question by combining St Paul's remarks in his letter to the Romans (1:23 and 3:23) with the Platonic and Neoplatonic theory of 'prototype image'. The crucial question which had arisen was the extent to which man's similarity to God had been lost or merely weakened by the Fall. Starting with Irenaeus of Lyon, it became a common practice to distinguish between the 'image' (*imago*), characterizing an anthropological structure of human minds which was not destroyed by the Fall, and the 'image' (*similitudo*), a similarity to Christ which had been lost through the Fall and which could also be lost through mortal sins. In scholastic theology, as presented by Bonaventure or Thomas Aquinas, the 'image' was understood as a similarity of human beings to God in terms of their intellect and will which was not destroyed by the Fall. Martin Luther, however, identified 'imago' and 'similitudo'. His fear that the human reason might take power away from God led him to conclude that the 'imago', man's permanent structural similarity in intellect and will with God, had also been lost through original sin. In relation to the issue of the epistemological status of human reason after the Fall, Melanchthon formulated a compromise. On the one hand, it was clear to him, as it had been to Luther, that the Fall had destroyed the original image of human beings as 'imago Dei'. On the other hand, by means of his theory of the

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<sup>12</sup> For a further examination, see Frank (1995).

‘natural notions’ inscribed in human minds, he continued the patristic-scholastic belief in a permanent structural similarity of men to God. This theory of ‘natural notions’ was crucial for Melanchthon’s understanding of philosophy. Since God himself had inscribed these theoretical and practical notions in human minds as images of his own mind, it was by means of these philosophical principles that human minds were able to participate in God’s own mind. ‘These notions’, as Melanchthon emphasized in his psychology, ‘are rays of divine wisdom’ in the human mind.<sup>13</sup> In this way he explained that when the human mind acquires any knowledge, which is possible only by means of these philosophical notions, it touches infinity and recognizes it ‘per participationem’. These two basic theological and philosophical positions—the doctrine of the image and Plato’s doctrine of participation (*methexis*)—are the foundations of Melanchthon’s doctrine of the intellect, which I shall now examine with regard to his concept of practical philosophy.

His most comprehensive and systematic exploration of the doctrine of intellect, which is at the centre of his psychology, is to be found in the chapter ‘De potentia rationalis seu Mente’ in his *De anima*.<sup>14</sup> He starts with those epistemological principles which characterize his understanding of philosophy: psychology is a mirror for the recognition of God,<sup>15</sup> because inscribed in the human mind are not only the knowledge of God, but also philosophical principles or ‘notitiae naturales’,<sup>16</sup> which are the structural features of the image of God. According to Melanchthon, the doctrine of intellect itself belongs to the rational faculty of the human soul,<sup>17</sup> which consists of two parts: intellect and will,<sup>18</sup> that is, the *potentia cognoscens et appetens*. The intellect, for him, is the ‘the faculty of the soul which recognizes, recollects, judges and thinks about particulars and universals, which possesses certain engrafted and inborn principles of knowledge or principles of all the major sciences and which also possesses the capacity to reflect, by means of which it understands and judges its own actions and is

<sup>13</sup> MSA 3, 327: ‘Talis est igitur Deus, ut hunc ordinem velit, et hae notitiae radii sunt sapientiae divinae.’

<sup>14</sup> CR 13, 137–163.

<sup>15</sup> Ibid. 137: ‘Etsi penetrari acie humanae mentis rerum natura non potest, tamen vult Deus eam ab hominibus aspici, ut in ea consideremus testimonia de ipso, quae ostendunt et esse Deum, et qualis sit.’

<sup>16</sup> Ibid. 138: ‘Sicut autem homo conditus est, ut in eo luceat notitia Dei, et ut ei Deus communicet suam sapientiam et bonitatem, ita mentem humanam voluit evidentissimum de ipso testimonium esse. Cui et insita est lux, qua esse Deum agnoscimus, et insitae sunt notitiae, discernentes honesta et turpia.’

<sup>17</sup> Ibid. 139: ‘Est igitur propria hominis potentia rationalis, ut nominant, quae est summa vis humanae animae.’

<sup>18</sup> Ibid.: ‘Duae sunt potentiae in hac summa parte, ut sic dicam: Intellectus et voluntas.’

able to correct its errors.'<sup>19</sup> The actions of the intellect are concerned with the knowledge of particulars, in their distribution and classification, in their faculty of drawing conclusions, in memory and judgement. The object of the knowledge of the intellect is, as Melanchthon remarks : 'being in the broadest sense, that is, God and the totality of all things are the object of the intellect, for the recognition of which we have been created'.<sup>20</sup>

Regarding the epistemological aspect of knowledge, that is, the question of how the intellect attains knowledge of things, whether based on sense experience (as Aristotle maintained) or on a priori principles of knowledge (as Plato held), Melanchthon's concept of 'natural notions' once again plays a decisive role. He expressly defends this concept against the tradition of knowledge based on experience, as presented by Aristotle. In relation to the old fashioned controversy between Aristotelians and Platonists, Melanchthon states: 'It is simpler and more correct to hold the view that there are some principles in the human mind which are inborn, such as numbers, the knowledge of *ordo* and of proportions, the understanding of consequences in a syllogism. Similarly, principles of geometry and of natural and moral philosophy.'<sup>21</sup> Melanchthon does not accept the consequences of the basic epistemological premise of Aristotle: 'Let us not be confused by the commonly held view that "Nihil est in intellectu, quin prius fuerit in sensu" ("there is nothing in the intellect which was not previously in the senses"). Unless this is understood in the proper way, it would be totally absurd, since universal notions and the judgement of the mind were not previously in the senses.'<sup>22</sup> Melanchthon's epistemology therefore has nothing in common with Aristotle's position. According to his doctrine of intellection, the *intellectus patiens* receives all sense impressions, which then become the conceptions of the mind (*noëmata*). His understanding of the intellect is basically characterized by a Platonic apriorism: all knowledge is a conceptualization based on 'natural notions' which are inscribed in the *potentia cognoscens*.

The second part of the soul, according to Melanchthon's doctrine, is the will, which he describes in an Aristotelian way as the *pars animae*

<sup>19</sup> Ibid. 142: 'Est potentia cognoscens, recordans, iudicans et ratiocinans singularia et universalia, habens insitas quasdam notitias nobiscum nascentes, seu principia magnarum artium, habens et actum reflexum, quo suas actiones cernit et iudicat, et errata emendare potest.'

<sup>20</sup> Ibid. 143: 'Quod est obiectum intellectus? Ens quam late patet, hoc est, Deus et tota rerum universitas est obiectum intellectus, ad cuius agnitionem conditi sumus.'

<sup>21</sup> Ibid. 143f: 'Sed simplicius et rectius est retinere hanc sententiam, esse aliquas notitias in mente humana, quae nobiscum natae sunt, ut numeros, ordinis, et proportionum agnitionem, intellectum consequentiae in syllogismo. Item principia geometrica, physica et moralia.'

<sup>22</sup> Ibid. 144: 'Nec turbemur vulgari dicto: Nihil est in intellectu, quin prius fuerit in sensu. Id enim nisi dexte intelligeretur, valde absurdum esset. Nam universales notitiae et diiudicatio non prius fuerunt in sensu.'



*intellectivae appetens*. Its actions are *velle* and *nolle*.<sup>23</sup> It is, however, crucial for the status of practical philosophy that the principles of ethical and political knowledge are based not in the ‘*pars voluntativa*’ of the soul but rather in the *potentia cognoscens*, that is, in the intellect. As he explains in his interpretation to St Paul’s letter to the Romans (1:19f), ‘Paul names as truth the true notions of God and the law. These rays of divine wisdom shine in the *potentia cognoscens*.’<sup>24</sup> This means that the basic knowledge of practical philosophy is located in the intellective, not the voluntative, part of the soul: the law of nature, as a knowledge of the divine law (*notitia legis divinae*), is impressed into the intellective part of the soul, as are all the principles of the theoretical disciplines. Practical philosophy is clearly centred in the doctrine of the intellect. It is a theoretical discipline like all other sciences: their principles consist of ‘natural notions’ impressed into the *potentia cognoscens*, and the same is true of its practical principles, such as the law of nature and the laws which are deduced from it. For moral philosophy, which Melanchthon understands as synonymous with Aristotelian ethics, is the ‘explanation of the laws of nature, which assembles demonstrations according to the usual procedure in the sciences, as far as human reason is able to make judgements; its conclusions are the definitions of virtues or precepts concerning the discipline which should rule in all human beings, in agreement with the Decalogue, to the extent that it speaks about external discipline’.<sup>25</sup>

What conclusion can we draw from our observations that even practical philosophy is centred in Melanchthon’s doctrine of intellect, making it a theoretical discipline, and that the doctrine of intellect is at the core of his understanding of philosophy? What does it mean for the status of practical philosophy as a theoretical discipline which deals with reflections concerning the life of individuals (ethics) as well as of the political order (politics)? In order to answer these questions, I want to discuss two major medieval concepts of practical philosophy, which arose during the period of the first reception of Aristotle’s philosophical writings in the thirteenth century.

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<sup>23</sup> Ibid. 153: ‘Sed in hoc Aristotelico sermone, voluntatem nominamus potentiam seu, ut ita dicam, partem, animae intellectivae appetentem, quae potentia superior est adpetitu sensuum ... Actiones eius sunt: velle ac nolle.’

<sup>24</sup> MSA 3, 329: ‘Nominat (Paulus) autem veritatem notitias veras de Deo et de lege. Hi radii sapientiae Die lucent in potentia cognoscente ...’

<sup>25</sup> CR 16, 167: ‘Quid est philosophia moralis? Est explicatio legis naturae, demonstrationes ordine in artibus usitato colligens, quantum ratio iudicare potest, quarum conclusiones sunt definitiones virtutum, seu praecepta de regenda disciplina in omnibus hominibus, congruentia cum decalogo, quatenus de externa disciplina concionatur.’

### III

First, as scholars of medieval philosophy have shown in some recent publications, even for theologians such as Albert the Great or Thomas Aquinas, the doctrine of intellect framed the core of their understanding of philosophy, that is, philosophy was to be understood in terms of an anthropological sharpening.<sup>26</sup> But the key point was that they understood practical philosophy as a theoretical philosophy. A first and important summary of such an anthropologically sharpened philosophy can be found in an early work of Albert the Great, *De quindecim problematibus*, probably written shortly before the condemnations in Paris:<sup>27</sup> 'In philosophy it has been determined that man is solely intellect and that understanding is the proper and natural activity of man, which, if it is not hindered, is man's highest happiness.'<sup>28</sup> This remark shows the major features of Albert's anthropology: man is essentially reason; intellectual knowledge is his proper faculty, which constitutes human perfection. Such an anthropological sharpening must have consequences for the understanding of philosophy. In Albert's commentary on the *Metaphysics*,<sup>29</sup> there is no doubt that the philosopher—without any theological instruction—can reach his perfection through philosophy alone, a philosophical perfection, of course, which consists of a state of contemplation in accordance with his reason. 'The intellect of man, by means of continually extending itself to spheres higher than itself, finally reaches the contemplation of the heavenly of divine entities and in perfect contemplation of these he is like the sun.'<sup>30</sup> This sentence already contains Albert's complete philosophical programme. Since the intellect is tied to space and time, physics and mathematics are the preconditions for the sciences; for 'true wisdom', however, they are only the first steps and instruments. According to Albert, the divine discipline among all theoretical disciplines is metaphysics, which is at the same time the foundation for the objects of all other disciplines. For, as Albert adds, there is something divine in human beings through which they can transcend

<sup>26</sup> See Libera (1990); Brunn (1985); Craemer-Ruegenberg (1980) and (1981); Wieland (1999).

<sup>27</sup> See Wieland (1999).

<sup>28</sup> 'De XV probl.': 'In philosophia determinatum est, quod homo solus est intellectus et quod intelligere propria et connaturalis est operatio hominis, quae sic non sit impedita, summa est hominis felicitas.' (Ed. Colon. XVII/1, 34, 62–65).

<sup>29</sup> See Wieland (2000).

<sup>30</sup> *Metaphysica* XI 1, 9: 'Et intellectus hominis continue extendendo se a seipso superius, tandem per contemplationem caelorum devenit in contemplationem divinorum et in illis perfecte contemplans stat sicut sol.' (Ed. Colon. XVI 2: 473, 4–7)

space and time. And metaphysics itself ‘is the perfection of the divine intellect in us’.<sup>31</sup>

The core of Albert’s explanations of the priority of theoretical knowledge and the possibility of a philosophical perfection is his doctrine of the faculties of the soul, which characterizes the human soul as essentially rational. Albert adopted this *intellectus adeptus* doctrine from al-Farabi,<sup>32</sup> who discussed his theory of the *intellectus adeptus* in the second book of his *De intellectu et intellecto*. Here, in interpreting Aristotle’s understanding of the intellect, he explained that if the intellect recognizes the intelligible as such, it becomes the *intellectus adeptus*. According to Albert, the *intellectus adeptus* is the state of perfect knowledge. As he explains in *De anima*, the intellect in this state of perfection does not need any mediation of sense experience. ‘Then it [i.e., the soul] no longer needs the faculties of the sensitive soul—just as someone who seeks a vehicle, as Avicenna says, in order to take him home, no longer needs the vehicle when he arrives at his home.’<sup>33</sup>

To be sure, this theoretical sharpening of the doctrine of the soul’s faculties, above all his examination of Al-Farabi’s doctrine of the *intellectus adeptus*, turns Albert’s philosophy into an explanation of human perfection. He describes the aim of philosophy thus: ‘Then man is perfected in order to perform that activity which is his activity, insofar as he is a human being. And this is the activity which God performs, and this is perfectly, through himself, contemplating and understanding separate substances.’<sup>34</sup> Albert’s position on the perfection of men has important consequences for practical philosophy. Even if, according to him, men are essentially framed by their reason and are destined to the perfection of happiness, their actions in relation to individual happiness (ethics) and to political happiness (politics) are tied to the conditions of human actions, that is, they occur in space and time. How, then, can practical philosophy

<sup>31</sup> Ibid.: ‘Inter theoreticas autem excellit haec divina, quam modo tractamus, eo quod fundat omnium aliarum subiecta et passiones et principia, non fundata ab aliis. Et ipsa est intellectus divini in nobis perfectio, eo quod est de his speculationibus quae non concernunt continuum vel tempus, sed simplices sunt et purae ab huiusmodi esse divinum obumbrantibus et firmatae per hoc quod fundant alia et non fundantur; admirabiles ergo sunt altitudine et nobiles divinitate.’ (Ed. Colon. XVI 2: 3, 18–26)

<sup>32</sup> *De intellectu et intellecto; De intellectu adeptus*, Lib. II, De Intellectu et Intelligibili, cap. 8. See Daiber (1993); Galston (1990).

<sup>33</sup> *De anima* III tr. 2 c. 19: ‘Cum autem iam habeat scientiam, vocatur intellectus adeptus, et tunc non indiget amplius virtutibus sensibilis animae, sicut qui quaerit vehiculum, ut dicit Avicenna, ad vehendum se ad patriam, cum pervenerit ad patriam, non indiget amplius vehiculo.’ (Ed. Colon. VII/1, 206, 49–54)

<sup>34</sup> Ibid., III tr. 3 c. 11: ‘Et tunc homo perfectus est ad operandum opus illud quod est opus suum, in quantum est homo, et hoc est opus, quod operatur deus, et hoc est perfecte per seipsum contemplari et intelligere separata.’ (Ed. Colon. VII/1, 222, 6–9)

reach an absolute perfection and at the same time take into account human contingency? Albert saw the consequences clearly. They determined his approach to his commentary on the *Ethics*, written in the middle of the thirteenth century, as well as his to his paraphrases of the *Politics*, dating from the end of his life.

In his commentary on the *Ethics* examines this question in relation to Aristotle's discussion of whether happiness is the final objective of all actions (*operatum existens finis*).<sup>35</sup> In his interpretation, Albert distinguishes between an absolute and a relative final objective. The absolute final objective is God; but this, he points out, is not the question which has to be examined from an ethical perspective.<sup>36</sup> In ethics we determine the relative final objective, civil happiness (*foelicitas civilis*). The highest fulfilment, however, is the *foelicitas contemplativa* of the philosopher. But one must, of course, immediately add that, according to Albert, even civil happiness has to be related to the highest fulfilment, which the *foelicitas contemplativa*.<sup>37</sup> Men attain their perfection as human beings through philosophy, above all through metaphysics. For Albert, therefore, philosophers rank higher than politicians, who are committed to the political sphere. Since man is able to reach the world of the divine, which is his ultimate destination, by virtue of his intellect, he should not be totally wrapped up in the political sphere. Consequently, Aristotle's definition of man as a political being has to be understood as relating only to the inferior realm, necessary for the life, but in no way to his intellect.<sup>38</sup> Albert talks about the perfection of the *foelicitas contemplativa* of the philosopher. And he answers the question by emphasizing the continuity of the theoretical activity based on the perfection of the *habitus* which is sufficient for philosophical contemplation.

These basic considerations also shape Albert's paraphrases of Aristotle's *Politics*. Here too he emphasizes the priority of *foelicitas*

<sup>35</sup> *Nicomachean Ethics* 1097b 21.

<sup>36</sup> *Super Ethica* I 7: 'Dicendum, quod summum dicitur dupliciter: vel simpliciter, et sic est unum tantum, quod est deus; et sic non quaeritur hic.' (Ed. Colon. XIV 1: 32, 74–76)

<sup>37</sup> *Ibid.*, 33, 4–11: 'In quantum autem attingit intellectualitatem, sic actus eius est contemplatio, et sic finis eius et optimum est contemplativa felicitas. Et sic secundum duos ordines suo sunt summe bona hominis, quorum tamen unum ordinatur ad alterum, scilicet civilis ad contemplativam, quia omne regimen, quod est per civilem, quaeritur propter quietem, in qua libere possit esse contemplatio.'

<sup>38</sup> Ed. Colon. XIV 2: 761, 68–82: '... quod illa quae sunt ad utilitatem vitae, immediatius referuntur ad felicitatem civilem, tamen ibi non est status sed haec ulterius ordinantur ad contemplativam, ut supra dictum est... quod quantum ad perfectionem naturae philosophi sunt excellentiores illis qui sunt in potestate, sed illi sunt excellentiores quantum ad regimen multitudinis... quod homo est politicum naturaliter quantum ad inferiorem sui partem, secundum quam indiget necessariis, sed non quantum ad intellectum, neque politicum neque coniugale, secundum quem tamen est illud quod est hominis, in quantum est homo.'

*contemplativa* by pointing to the *intellectus adeptus*, which gives all philosophers a grounding in immortality. And Albert explains his position by using a Platonic argument: ‘everything which exists in something else exists in it according to the faculty of that being in which it exists, and not according to the faculty of that being which [as such] exists in it’.<sup>39</sup> If the indestructible truth exists in the intellect, then it is necessary that the intellect itself is indestructible.<sup>40</sup> Albert saw the consequences of his doctrine of the intellect for politics. In contrast to *foelicitas contemplativa*, the state of the highest perfection of philosophers, politics has to be related to civil society, but only according to those virtues which naturally make man a political animal (*animal civile*). Therefore, in his explanations of the second chapter of Book 7 of Aristotle’s *Politics*, where Aristotle himself discusses the question of which is the better way of life, in accordance with the ideal state, the *vita contemplativa* or the *vita civilis et politica*, Albert once again gives priority to the theoretical way of life of philosophers: ‘The reason is that politicians strive for the perfection of moral virtue and of civil happiness. Philosophers, however, strive for the perfection of intellectual virtue and of contemplative or intellectual happiness.’<sup>41</sup>

Albert’s considerations about the priority of the theoretical way of life, framed by his doctrine of the *intellectus adeptus*, have two far-reaching consequences, which, in his view, determine the status of practical philosophy. First, not surprisingly, Aristotle’s programme for achieving the highest possible happiness of all citizens in the best state—in other words, the possibility for the majority of human beings to attain happiness—has to be seen as relative, which means an even greater emphasis on the happiness of philosophy.<sup>42</sup> This position is not, however, without ambivalence. As Georg Wieland stresses,<sup>43</sup> in the face of such a theoretical sharpening of the notion of contemplative happiness, Albert has to cope with a basic problem: one cannot stop at civil happiness which merely satisfies the necessities of life; yet what about those individuals who are not used to philosophizing and therefore are unable to taste the mature fruit of philosophical effort, which, in his scheme of things, is higher than the happiness which can be attained by politicians?

<sup>39</sup> *Pol.* I, 1, 6: ‘Quia dicit Aristoteles in VI Ethicorum, quod unumquodque quod in aliquo est, est in eo secundum potestatem ejus cui inest, et non secundum potestatem ejus quod inest ...’

<sup>40</sup> *Ibid.*: ‘... et ideo si incorruptibilis veritas est in intellectu adepto, oportet quod et ipse incorruptibilis sit.’

<sup>41</sup> *Pol.* VII, 2, 634: ‘Et ratio est, quia politici contendunt ad perfectionem virtutis moralis et felicitatem civilem: Philosophie autem contendunt ad perfectionem virtutis intellectualis et felicitatem contemplativam sive intellectualem.’

<sup>42</sup> See Wieland (1999), p. 28f.

<sup>43</sup> *Ibid.*, p. 28.

Thomas Aquinas, the most prominent student of Albert, did agree with the consequences of Albert's understanding of practical philosophy. In contrast to his teacher's divinization of the intellect, Thomas's concept of practical philosophy shows a greater focus on the conditions of human life in relation to actions. This can also be seen in his doctrine of intellect, which is consequently characterized by an orientation toward man's corporeality, linked to Aristotelian hylemorphism.<sup>44</sup> Unlike Albert's idea of philosophical contemplation, Thomas says that the intellect, in order to act, requires sense impressions, which are always the result of sensual, that is, corporeal, actions.<sup>45</sup> Perfect happiness cannot be therefore attained by transcending contingent reality, and this means that it cannot be reached in man's lifetime. This emphasis on corporeality has an even greater impact on Thomas's definition of ethics. According to him, man can only reach imperfect happiness by means of virtuous actions. But this happiness remains imperfect since human beings cannot reach perfect happiness in the present life.<sup>46</sup>

In light of these two concepts of practical philosophy—that of Albert, based on the divinization of the intellect, and that of Thomas, grounded in the soul's corporeality—what can we say about Melanchthon's determination of the status of practical philosophy?

#### IV

Different as these two thirteenth-century concepts of practical philosophy are, it is necessary to lay stress on one major feature which they share: both are explicit attempts to construct a philosophical ethics and politics, that is, a practical philosophy. Both concepts are established within a philosophical framework, even though they have theological implications such as the question of immortality. The two concepts are guided by different interpretations of Aristotle's doctrine of intellect as the highest part of man's soul. While Albert's interpretation is framed by his reception of the Arabic doctrine of the *intellectus adeptus*, which leads to his idea of *foelicitas contemplativa* as an inner-worldly perfection attainable by human beings and which gives priority to the contemplation of philosophers, Thomas's interpretation is framed by the Aristotelian unity of body and

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<sup>44</sup> Ibid., 26f.

<sup>45</sup> Thomas Aquinas, *Summa Theologiae* I–II qu. 4 a. 5: 'Operatio autem intellectus in hac vita non potest esse sine phantasmate, quod non est nisi in organo corporeo.'

<sup>46</sup> *In Ethicam* I lec. 16: 'Homines qui in hac vita mutabilitati subiecti non possunt perfectam beatitudinem habere.'

soul, or hylemorphism, which leads to his idea that the happiness attainable in man's lifetime is always imperfect.

Looking at Thomas's concept of ethics, restricted as it is to man's corporeal life, one might consider that his interpretation is more appropriate to 'la condition humaine'. Nevertheless, both these concepts which arose during the first reception of Aristotelianism in the thirteenth century are based on explicitly philosophical considerations. This constitutes the major difference between them and Melanchthon's concept of practical philosophy. His ethics and politics, as summarized in his moral philosophy textbook of 1538, are based on resolutely theological, not philosophical, arguments. So in considering the final objective of this discipline, he argues as theologian, maintaining that it is the explanation of the law of nature,<sup>47</sup> in other words, that the disciplines of ethics and politics are part of the *lex divina* which governs the external actions of men.<sup>48</sup> Moreover, his essentially theological perspective can be seen in his discussion of man's 'final objective'. For Aristotelians, it was always the explanation of inner-worldly happiness. Melanchthon, however, considers this question from a strictly theological viewpoint. In the chapter 'Quis est finis hominis?', a question which also played a central role for theologians in the Middle Ages, Melanchthon's theological perspective is obvious. After having mentioned the epistemological principles which I examined at the beginning of this paper, he states: 'Since moral philosophy is a part of the divine law, as was stated above, man's final objective is entirely the same according to the divine law and to the true philosophy, namely, to recognize God, to obey him and to proclaim and illuminate his glory, as well as to protect human society for the sake of God.'<sup>49</sup> No philosophical definition such as happiness in man's lifetime can be considered the final objective of man or of practical philosophy; instead, it has to be seen as recognition of God and obedience to him. Melanchthon's fundamentally theological definition of practical philosophy means that for him, strictly speaking, there is no *practical philosophy* at all, but rather a *practical theology*, consisting of the instruction to recognize God and the order to obey divine laws. Melanchthon, therefore, continues, in line with the epistemological considerations which frame his understanding of philosophy: 'The image of God is impressed on the human mind, so that this image shines in it and God may be recognized. For this image must

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<sup>47</sup> CR 16, 167.

<sup>48</sup> Ibid., 21.

<sup>49</sup> Ibid., 28: 'Cum philosophia moralis sit pars legis Dei, ut supra dictum est, prorsus idem finis est hominis secundum legem divinam, et secundum veram philosophiam, videlicet agnoscere Deum, eique obedire, et eius gloriam patefacere et illustrare, et tueri societatem humanam propter Deum.'

display its prototype. Therefore, it is the final objective of man to recognize God and to proclaim his glory.<sup>50</sup>

Melanchthon's essentially theological understanding of happiness is also apparent in the remarks which follow on Aristotle's views on this topic. Since, as he explains, the notion of God does not shine forth sufficiently in the corrupt nature of mankind, Aristotle discusses the final objective of men in a different way: for him, it is the right action (*recta actio*) of the highest faculty of the human soul, which is the action of virtue or of the virtues.<sup>51</sup> He adds that Aristotle's view was based on a consideration of the order and dignity of the soul's faculties. 'if, however, he had sought the scale of actions, he would have revealed that the highest action is to recognize and obey God, and he would have seen that virtue has to be related to this final objective, that is, to the recognition of God.'<sup>52</sup> Continuing in this theological vein, Melanchthon says that all students should understand that man is not his own final objective, but rather human beings were created for the sake of God. So, virtue *per se* is not the ultimate end in which the human mind may rest; for virtue needs to be related to recognition of and obedience to God. In order to emphasize the theological orientation of his practical philosophy, he introduces a distinction between the *finis principalis*, that is, recognition of and obedience to God, and *finis minus principales*, that is, virtuous actions.<sup>53</sup>

Melanchthon also explains Aristotle's own definition of man's final objective within this theological framework. In the chapter 'Quae est ratio sententiae Aristotelis?', he says that, for Aristotle, the proper action of any nature is determined by its final objective; virtuous action has to be seen as the proper action of man and therefore his final objective.<sup>54</sup> Concerning Aristotle's definition of man's final objective, Melanchthon says that, although his demonstration is based on principles of natural philosophy, it needs to be explained by means of those principles of natural philosophy which are established in nature by divine instruction—in other words, the law of God. And the law of God consists of all *leges naturae* and *leges divinae*, all the practical principles which are inscribed in man's *potentia cognoscens*, because these are established in nature by divine instruction.<sup>55</sup>

<sup>50</sup> Ibid.: 'Homini enim impressa est imago Dei, ut in ea luceat et agnoscat Deus. Imago enim debet ostendere archetypum. Ergo finis hominis est agnoscere Deum, et patefacere eius gloriam.'

<sup>51</sup> Ibid. 30.

<sup>52</sup> Ibid.: '... sed si quaesisset actionum gradus, invenisset summam actionem esse agnoscere Deum et obedire Deo, et vidisset virtutem referendam esse ad illum finem, videlicet, ad agnitionem Dei.'

<sup>53</sup> Ibid. 30f.

<sup>54</sup> Ibid. 31.

<sup>55</sup> Ibid.: 31: 'Ideo enim leges naturae sunt leges divinae, quia divinitus in natura ordinatae sunt.'



The consequences of Melanchthon's theological account of practical philosophy are rather sobering for the philosopher. For it means nothing less than that ethics and politics seem to be reasonable only from a theological perspective. Considered philosophically, they have no foundation. One might object that even for theologians Melanchthon's solution is not satisfactory. Independently of the fact that this concept of ethics leads to an ethical turn within theology itself, that is, to the command to recognize God and obey his laws, his concept of ethics has to be regarded as an ethics in the context of Christian theology, which makes it, in principle, specific rather than general. In this sense, ethics can demand acknowledgement only within the context of Christian theology. This is the point where Melanchthon the theological moral philosopher cannot himself do without philosophical considerations. For the laws of nature, which are images of the *lex divina* inscribed in human mind at the creation and which remained indestructible even after the Fall, are philosophical principles of mind, comprising all the practical notions inscribed in the *potentia cognoscens* as well as all theoretical principles. This means that without elements borrowed from Platonic epistemology, which philosophers had labelled 'innate ideas', Melanchthon's theological ethics cannot reach its goal without losing its claim to general acknowledgement, rather than being merely a specific ethics within the context of Christian theology. Looking further ahead: the philosophical implications of Melanchthon's theological ethics proved to be untenable in more far-reaching discussions. John Locke, in his *Essay concerning Human Understanding*, demonstrated that such inborn principles of ethics and theology were unfounded. By doing so, he made Melanchthon's philosophical understanding of practical philosophy obsolete.

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## Natural Philosophy and Ethics in Melanchthon

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The aim of this paper is to investigate those instances in the thought of Philipp Melanchthon where philosophy of nature and moral philosophy come together.

The philosophy of nature constituted the very substance of Melanchthon's understanding of philosophy. This is due to the fact that he eliminated metaphysics from his philosophical system. As a consequence, he was obliged to transfer all man's knowledge of things by means of their causes to a physical consideration of the phenomena. He divided his philosophy into three sections: logic, philosophy of nature and ethics.<sup>1</sup> He then subdivided the second section—philosophy of nature—into two sections: physics, or the nature of the cosmos, and anthropology, or the nature of man. But he also treated the third section—ethics—as a part of physics.<sup>2</sup>

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<sup>1</sup> Melanchthon (1961a), *De corrigendis*, p. 34, line 1: 'Artium genera omnino tria sunt, λογικόν, φυσικόν, προτρεπτικόν.' Cf. Melanchthon (1843), *Declamatio*, col. 348: 'Integre complexus est [scil. Aristoteles] artes Dialecticen, Physicen et Ethicen.'

<sup>2</sup> Melanchthon (1961c), *Epitome*, p. 163: 'Deinde et illud hominis eruditi est, hoc loco considerare, quod doctrina moralis oriatur ex physicis ...' Ibid., pp. 152–3: 'Inter cetera crimina Socrati obiectum est, quod, cum studia hominum traduxisset ad disputationes de moribus, aspernaretur naturae inquisitionem et physicen improbaret. Hanc calumniam gravissime refutat Xenophon, ac testatur eum non abduxisse homines a Physicis, sed ad ea adiunxisse potius hanc eruditorem doctrinam de moribus, neglectam a ceteris, cum quidem et haec pars utilissima vitae, methodo atque arte opus haberet. Etsi enim communia praecepta de moribus vulgo nota sunt, ac pleraque nascuntur nobiscum: tamen ad multa officia iudicanda, et ad perspiciendum verum discrimen iustarum et iniustarum actionum, et ad fontes earum intelligendos, arte et quadam eruditore doctrina haud dubio opus est. Inspicienda est natura hominis, considerandum, quis sit ordo partium, quod munus a natura singulis attributum; denique causae propriae actionum quaerendae sunt. Socrates ipse, cum de providentia apud Xenophontem disputaret, vestigia divinitatis in natura colligit et monstrat, ut persuadeat non solum esse deum, sed etiam deo curae esse res humanas. Harum disputationum fontes sunt in physicis.' Ibid., p. 159: '*Estne concessus usus huius doctrinae Christianis?* Respondeo: Manifestum est philosophiam moralem esse explicationem legis naturae. Est autem lex naturae vere Lex Dei, Romanos 1 (19.20). Quare

According to Melanchthon, the integration of ethics into the philosophy of nature is required primarily for two reasons. In the first place, it is not sufficient in ethical doctrine simply to propose a list of precepts, whether set out in the Ten Commandments or in Hesiod:<sup>3</sup> philosophy must show that ethical precepts are demanded by nature itself and are based in nature.<sup>4</sup> Secondly, the philosophical knowledge of man's nature by means of its causes requires co-operation between natural philosophy and moral philosophy on a point of great importance: the natural end of man, that is, his final cause. Indeed, the end determines the entire physical organization of a human being. This end is conceived as the good which is proper and appropriate to human nature, to which man naturally tends and which he should ultimately achieve. Ethics has its origin in a hypothesis formulated by natural philosophy: that human nature, like all other natures, must have an end of its own. But the philosophy of nature is not able to indicate what this end is. The principal task of moral philosophy, then, is defining what the good proper to human nature really is.<sup>5</sup>

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sicut lege naturae aut Lege Dei uti licet, ita licet uti philosophia, quod ad externam et civilem consuetudinem vitae attinet.'

<sup>3</sup> Melanchthon (1963), *Scholia*, p. 234: 'Est enim quaedam doctrina et paedagogia privatim formandis ad humanitatem moribus hominum opus, in quem usum primum poemata, qualia sunt Hesiodi et Homeri et similia scripta sunt. Postea diligenter natura hominis inspecta Philosophi causas illorum praeceptorum quaesiverunt et formas virtutum ordine descripserunt, ut in Officiis Ciceronem, in Ethicis Aristotelem fecisse videmus.' Melanchthon (1961c), *Epitome*, pp. 162–3: '*Quid interest inter leges magistratum, paraeneticos libellos et integras disputationes philosophorum* — Leges magistratum et paraeneticus libelli continent nuda praecepta sine causis et rationibus. At philosophia quaerit demonstrationes et causas praeceptionum in natura positas; ut autem in aliis artibus primum summae traduntur, quae continent τὸ ὅτι, postea causae quaeruntur seu διότι, ita in doctrina de moribus prodest primum discere paraeneticos libellos, qualis est praecipue Decalogus, deinde alii huius generis, ut Hesiodi aut Phocylidis. Postea facilius intelliguntur demonstrationes.'

<sup>4</sup> Melanchthon (1961c), *Epitome*, p. 158: 'Et ut artes sunt naturae explicatio, ita demonstrationes in philosophia morali sunt explicatio naturae hominis.' Melanchthon (1965), *Commentarii*, p. 282: 'Tradiderunt [*scil.* philosophi] enim methodos, quaesiverunt fontes et causas praeceptorum in natura, distribuerunt ordine virtutum genera affinia et pugnancia, ut non sit mirum hos, qui in evangelio nihil tradi iudicant nisi praecepta morum, longe praeferre philosophorum libros evangelio, in quo illa neque ordine neque satis distincte tradi videntur. Sed philosophi sunt artifices harum disputationum de moribus. Apostoli aliud majus negotium tractant, videlicet evangelium de beneficiis Christi.' *Ibid.*, p. 283: 'Neque enim Apostoli, cum praeter evangelium tradunt legem de moribus aliam legem docent, quam quae reperitur apud ethnicos. Una est enim lex Dei de moribus, quae et in decalogo perescripta est et traditur a magistratibus et philosophis.' *Ibid.*, p. 302: Christians must know 'praecepta de moribus et politicis rebus pertinere ad rationem, sicut ars medicorum aut architectonica ad rationem pertinet'.

<sup>5</sup> Melanchthon (1961c), *Epitome*, p. 163: 'Est autem prima quaestio de fine, quia sicut physica quaerit alias causas hominis, ita philosophia moralis proprie quaerit de fine hominis:

We can now examine Melanchthon's definition of moral philosophy:

What is moral philosophy? It is the knowledge (*notitia*) of the precepts concerning all the virtuous actions which reason understands as appropriate to man's nature and necessary in the civil relations of life. [Man attains this knowledge] after having sought, as far as possible, [to establish] the sources of these same precepts, with the aid of the art [of moral philosophy] and of demonstrations. The most scholarly definition, however, is: moral philosophy is that part of the divine law which gives precepts about external acts.<sup>6</sup>

In this definition there are two dominant concepts. The first is that the object of moral philosophy is the study of the actions imposed on man by moral precepts. The formal aspect under which those actions are investigated is that of their appropriateness to human nature and of their necessity or suitability for social life. 'Action', therefore, is studied insofar as it is the natural achievement and perfection of human beings. Human reason conducts this study by means of its own independent natural light. The second concept contained in the definition is that the moral law, which is the object of moral philosophy, is not the divine law in its entirety, but rather a part of that law: the particular aspect of divine law which is now accessible to human reason by means of its own powers and which demands from man only that which is in his natural power—the execution of the external actions imposed on him by the law.

## MELANCHTHON AND THE ARISTOTELIAN TRADITION OF ETHICS

Melanchthon's definition stresses an aspect of human moral action which Thomas Aquinas had also emphasized when he said that 'there are actions

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ergo ad naturam hominis cognoscendam opus est etiam doctrina morali, quia integra cognitio cuiuslibet rei, quantum fieri potest, flagitat inquisitionem omnium causarum.'

<sup>6</sup> Ibid., p. 157: "Quid est Philosophia moralis?" Est notitia praeceptorum de omnibus honestis actionibus, quas ratio intelligit naturae hominis convenire et in civili consuetudine vitae necessarias esse, quaesitis fontibus praeceptorum arte et demonstrationibus, quantum fieri potest. Sed eruditissima definitio est haec: Philosophia moralis est pars illa legis divinae, quae de externis actibus praecipit.' It is worth noting that Melanchthon defines a moral human act in terms of an external action, to which Ockham had denied all proper moral significance. See G. Biel (1984), *Collectorium*, Liber II, Distinctio 42, quaestio unica ('Utrum actus exterior, qui a voluntate imperatur, habet bonitatem vel malitiam propriam, propter quam magis quam solus interior voluntati imputatur'), articulus 2, conclusio I, p. 697, D1: 'Quantum ad secundum articulum est conclusio prima: Nullam propriam bonitatem moralem habet actus exterior, propter quam magis imputatur voluntati quam solus actus interior, secundum Occam ubi supra'. See also Ockham (1980), *Quodlibet* I, q. 20, p. 99: 'Utrum actus exterior habeat propriam bonitatem moralem et malitiam.' For the contrary opinion of Thomas Aquinas, see *Summa theologiae*, I<sup>a</sup> II<sup>ae</sup>, q. 20, a.4, *sed contra*.

which are appropriate to man in the order of nature and not only because they are imposed by a positive law'.<sup>7</sup> Man's ethical acts are not a response to an injunction which is completely detached from any inner relation to the achievement of a good objectively appropriate to his nature. The human will is not confronted with a *dictamen*, an order of reason which imposes itself on it, independently from any reference to the specific value of the good it proposes for man's nature. Our will in its obedience to the precept is not totally indifferent, in its own nature, to objective good or evil. All this seems to me to indicate that Melanchthon was entirely opposed to the Ockhamist tradition on a point which is essential for moral philosophy: the nature of human action. His rejection of the Ockhamist understanding of human will and of human action is explicit and unequivocal. It is clear that, in his ethical doctrine, he is nearer to the Aristotelian scholastic tradition as represented, for instance, by Thomas Aquinas, than to Ockham.<sup>8</sup>

Melanchthon for the most part adopts Aristotle's concept of ethics. He sees that Aristotle, in describing man, developed his ethical philosophy in order to attribute to man the action which was proper to him, that is, his *finis*, an end and a good of his own in the exercise of his specific moral activity. In doing so, he sought in nature itself the causes of the virtues and of the order of human actions.<sup>9</sup> Melanchthon explained moral philosophy in

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<sup>7</sup> See Thomas Aquinas (1926), *Summa contra gentiles*, L.III, cap. CXXIX, p. 394: 'Praeterea Homines ex divina Providentia sortiuntur naturale iudicium rationis, ut principium propriarum actionum. Naturalia autem principia ad ea ordinantur quae sunt naturaliter. Sunt igitur aliquae operationes naturaliter homini convenientes, quae sunt secundum se rectae et non solum quasi lege positae.' The contrary opinion of Ockham is well known. See Thomas Aquinas (1966), pp. 237–8: 'Le bien ne se définit plus par la plénitude de l'être, par la perfection convenant à l'homme; il signifie la conformité des actes d'un être libre avec un précepte extérieur. Faire le mal, c'est faire l'opposé de ce à quoi l'on est obligé (II Sent. qu. 4 et 5).'

<sup>8</sup> Melanchthon (1550), *Commentarius*, ff. 139<sup>r</sup>–140<sup>r</sup>: 'Primum autem repudio opinionem recentium quorundam qui negant bonum esse obiectum voluntatis in appetendo, et contendunt voluntatem vere et sine simulatione velle posse malum, nulla ratione boni. Habeo eruditas causas cur hoc somnium rejiciam. Etsi est aliqua voluntatis libertas, tamen sic ordinata est, ut velit bonum. Hoc si quis non admittit, evertet totam rationem finium, nec magis causa erit cur voluntas acquiescat in Deo, quam in Tauro Phalaridis. Verum omitto confutationem, ac constituo obiectum movens voluntatem in hac infirmitate, et in iis, qui non gubernantur luce Evangelii. His igitur, ut Catoni aut Ciceroni, obiectum est voluntatis, in appetendo bonum finitum, quatenus ratio aut sensus decernit, id esse bonum humanae naturae aut societati. Rursus in fugiendo malum contrarium illi bono, obiectum erit. Hinc potest iudicari, quo usque humanae appetitiones sine Spiritu sancto progrediantur. Nam illius boni species sunt honestum civile, bona utilia, vita et vitae commoda. Item iucundum, ut voluptates, quae aut sensus aut ratio expetit. Intra hanc bonorum regionem versantur appetitiones'.

<sup>9</sup> Melanchthon (1961b), *Oratio*, p. 130: 'Tandem hominis et animalium descriptiones addit: et ut homini proprias actiones attribuat, adiicit ethica, in quibus virtutum causas et ordinem

this same spirit. In his ethical doctrine, he took into consideration: (1) the natural inclinations and dispositions to act which are present and observable in human beings; (2) the organs, instruments and bodily members which perform an ethical act; (3) the faculties, either sensitive or intellectual, which command the bodily members in human beings to perform an ethical act; and, finally, (4) the ethical act itself as a physical act of man, involving *totus homo*, that is, man in his entirety.

In what follows I shall try to show the use which Melanchthon made of the philosophy of nature in his exposition of the necessary conditions for the exercise of external acts in man.

### CONSIDERATION OF THE COSMIC INFLUENCES ON MAN'S BODY

Like all other natures, human nature possesses some predispositions to action. Scientific and philosophical knowledge of human nature also demands a knowledge of those predispositions. Studying the origin of these inclinations as we find them in the bodily, sensitive part of man, Melanchthon sees them as coming not only from heredity, but also from the heavens. According to him, the first influence exerted by nature on man which is relevant for moral philosophy is a cosmic one. In particular, the stars contribute to the shaping of man's inclinations to action from the time of his conception in the womb and at his birth.

The scholastic philosophical tradition had not neglected the study of the relation of the heavens to the sublunar world. Melanchthon's tenets concerning this aspect of cosmology must be seen as a continuation and a further development of the traditional considerations of the cosmic powers of the heavens as formulated in scholastic philosophy. Celestial nature had already been viewed as an instrument of God for the government of inferior, elementary things. Thomas Aquinas affirms that inferior bodies are governed (*reguntur*) by God through celestial bodies,<sup>10</sup> and that the heavens

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in natura quaerit. Nec ego nego plurima apud Platonem Ethica reperiri sapientissime cogitata. Sed sermones sunt ambigui ...'

<sup>10</sup> Thomas Aquinas (1926), *Summa contra gentiles*, L.III, cap. LXXXII: '*Quod inferiora corpora reguntur a Deo per corpora coelestia ... Corpora ergo caelestia sunt universalioris virtutis quam corpora inferiora. Universales autem virtutes sunt motivae particularium, sicut ex dictis patet. Corpora igitur caelestia movent et disponunt corpora inferiora.*' Compare Melanchthon's way of explaining, by means of astrology, the ethical inclinations of individual human natures in the 1546 horoscope for the son of Baumgartner: Melanchthon (1839) *Bomgartnero*, cols. 134–5: 'Genesin Filii tui consideravi, et video ἠθικὰ satis bona esse. Magna autem felicitas est ἠθῆ bona esse, etiamsi corpori aut fortunae minitantur sidera. Et Deus non est stoicus, sed mitigat causas secundas ut sumus experti tu et ego.'

give movement to and confer particular aptitudes on earthly bodies. This would probably not be of overwhelming importance for ethics, if it were not for the fact that those natural dispositions and inclinations also apply to man and affect man's nature not only in its universal definition but also in its concrete existence. Such bodily dispositions to action are in themselves of a concrete, particular nature and differ from one man to another, since they are essentially genetic.<sup>11</sup>

Melanchthon is well aware that moral philosophy, when dealing with human acts, is concerned with concrete, individual natures. He knows that in the order of real action, every act is singular and individual, as is every extant nature. More than any other thinker of his time Melanchthon tried to arrive at a kind of philosophical knowledge of the individual nature of man and of his individual dispositions and inclinations to act. This is why he introduced into his philosophy of nature some essential elements of astrology, an innovation which he regarded as a personal achievement. In doing so, however, he followed and developed a general trend in natural philosophy which was for the most part shared by the followers of Aristotle. Two points need to be taken into consideration. The first is that astral influences do not affect human responsibility on the higher level of the free choice of the will in performing a human act. This aspect is connected, for Melanchthon, with the fact that moral philosophy does not deal with the entirety of God's law but only with a part of it: the portion of natural and divine law which is accessible to human reason and which is commensurate to natural human forces. The second point which needs to be considered is that the heavens can exert their influences effectively on the

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<sup>11</sup> Melanchthon (1961c), *Epitome*, p. 176: 'Physici quaerunt talium inclinationum causam in temperamento, quod aliqua ex parte efficiunt stellae, sed tamen accedit motus divinus'. Melanchthon (1846a), *Initia*, co. 324: 'Cum autem in temperamentis insignes qualitates sunt bonae aut malae, plerumque ab astris oriuntur...'. Melanchthon (1838), *Praefatio*, col. 820: 'Postquam autem dictum est, temperamentum et inclinationes ab astris oriri, iam prudentes cogitent, magnam quidem partem haec initia actionum comitari, ut dicitur: Naturae sequitur semina quisque suae. Sed tamen cum sint tantum partiales causae, actiones aliunde regi possunt. Ac necesse est, eos, qui disciplina quadam regere vitam et mores volunt, scire triplices esse diversissimas actionum humanarum causas. Usitatissima est voluntas, quae aut assentitur, aut repugnat temperamentis...'. Ibid., col. 823: 'Ad hanc autem responsionem deinde haec addenda est, ne nunc quidem stellas scelerum causas esse, quia, etsi inclinationes ab eis oriuntur, tamen haec non sunt integrae actionum causae; sed voluntas praecipua causa est actionum, quae quidem et potest et debet frenare inclinationes. Non enim fatalem necessitatem constituimus, nec cogi Neronem a stellis ad tanta scelera dicimus, sed accersivit ipse sibi hos furores volens, et indulgentem cupiditatibus, magis magisque incitavit diabolus. Ac multo fit deterior Nero, quam qualem natura quamvis infausta, finxerat.' Likewise, Melanchthon (1846a), *Initia*, cols. 212–13: 'Ac regula tenenda est contraria Stoicis, voluntatem hominis posse non obtemperare obiectis et inclinationi.'



bodily, sensitive and organic parts of a human being. Melanchthon regarded this action of the stars as one of the main causes of individual temperaments, qualities, inclinations and dispositions, which exist in each person as a diversified impulse to act and which provide a positive or negative preparation for ethical behaviour.

The inclinations to moral action present in the bodily and sensitive parts of man raise a problem in Reformed theology. Man's personal temperament is located in the realm of concupiscence and the passions. We know that concupiscence is not in perfect accord either with reason or with God's law. In Lutheran theology, this situation of inner discord in man was considered to be sinful in itself. The assessment of the power and activity of the heavens appears to have changed from the medieval scholastic tradition to Lutheran thought. It seems that Melanchthon could no longer appeal to the saying which astrologers had formulated in order to show that the stars were not cause of sin: '[celestial] influences dispose, but do not oblige, us to sin'.<sup>12</sup> In Reformation theology, the inclination to sin is in itself sinful. So, if the stars incline us to sin, they are the causes of sin. Given his intention to make astrology, under certain conditions, a part of physics, Melanchthon had to explain how he could continue to defend the goodness of nature, of creation and of God himself, as his predecessors in philosophical speculation about the heavens had done. He did so by saying, with Luther, that the inclinations imposed on our corporal qualities by the stars are good in themselves. They become bad in man because they are received into a matter which has been corrupted by original sin.<sup>13</sup> This answer, however, had no philosophical value. Philosophically, Melanchthon maintained that the saying which affirmed that the stars do not oblige us to sin was still true in relation to the ethical doctrine of the

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<sup>12</sup> Martin Luther, *Decem praecepta Wittenbergensi praedicata populo*, in Luther (1883–), I, p. 404: 'Sed pulcherrime solvunt [*scil.* Astrologi] obiecta dicentes *Influentiae non necessitant, sed inclinant ad peccatum* etc. quasi non sit idipsum impiissimum sentire, quod deus fecerit creaturam ad inclinationem peccati, et non potius ad erectionem iusticiae, ut omnia cooperentur in bonum, non in malum, hominibus. Aut quasi ullus hominum necessitate pulsus peccet, et non potius semper inclinatione. Quis invitum dicet peccare? Omnis mala inclinatio non extra nos sed in nobis est. Sicut Christus: De corde exeunt cogitationes malae. Non quod intrat in homine etc. Et B. Jacob: unusquisque tentatur a concupiscentia sua abstractus et illectus, quae non fato sed origine peccati venit. Omnia enim quae foecit Deus, bona sunt: ideo ex natura sua non possunt nisi ad bonum inclinare. Quale est unumquodque, tale et operatur. Quod autem ad malum serviunt, non est natura sed iniuria eorum, sicut Paulus ait: Omnis creatura subiecta est vanitati non volens. Illi autem naturam eorum faciunt vanitatem. Volentes ex institutione Dei illa habere, ut ad peccandum inclinent.'

<sup>13</sup> Melanchthon (1838), *Praefatio*, col. 822: 'Si hominum natura mansisset integra fulsisset in nobis lux divina, gubernatrix omnium motuum, et stellae in materia non contaminata alias actiones habuissent. At nunc in his sordibus infoeliciores sunt actiones et extincta est illa lux, quae rexisset humanos motus.'

Reformation. In fact, moral philosophy deals only with external acts and with the limited degree of liberty demanded by that part of God's law which is now accessible to human reason.<sup>14</sup>

All this leads to my first conclusion: Melanchthon's judgement on the morality of external acts coincides with the doctrine of scholastic philosophy on human voluntary acts. The two views are founded in the natural knowledge of God's law which man has today, independently from any special revelation received from God. Furthermore, the two doctrines are founded on the same limited degree of human freedom now extant in human nature, which is confined to the liberty to perform external acts.

My second conclusion is that in considering the mutual relations between natural philosophy and ethics, Melanchthon is particularly sensitive to a problem which had inevitably troubled the Christian philosophy of nature since its inception. It arises from the Christian doctrine of the historic and successive existence of two states of nature: the original state, which has been lost, and the present state, which is the only one we now experience and on which philosophy is constructed.<sup>15</sup> This

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<sup>14</sup> In fact, we find in Melanchthon a double answer to the problem of inclinations coming from the stars: the one we have just seen, concerning the relation of concupiscence to original sin as *peccatum manens*; and the another in light of the requirements of *iustitia civilis*, a type of justice which, while forbidding a wrong external act, demands that man avoid actual sin and refrain from surrendering to concupiscence through the practice of discipline. See Melanchthon (1938), *Praefatio*, col. 822: 'Basilius in enarratione capitulis de rerum creatione, siderum effectiones tollit hoc argumento. Si a sideribus vitiosae inclinationes aut scelera orirentur, Deus causa esset humanorum vitiorum ac furorum.' Melanchthon (1846a), *Initia*, col. 209, notes that if there was no freedom of choice available to human will, God would drive man to sin: 'Iam si nulla esset libertas voluntatis humanae, et nulla humanarum actionum contingentia, voluntates peccassent et peccarent, quia sic impelleret aut cogeret Deus, aut certe quia deus vellet peccatum. Haec cum nequaquam admittenda sint, sine ulla dubitatione, aliqua est libertas voluntatis, et contingentia aliqua humanarum actionum'. Ibid., cols. 211–12: 'Ac regula tenenda est contraria Stoicis, voluntatem hominis posse non obtemperare obiectis et inclinationi.' This is the interpretation which astrologers gave to the dictum, applying it to free external acts. See Pico della Mirandola (1522), *Disputationes in Astrologiam*, lib. IV, cap. VIII, p. 536: 'Sed solent cum hic urgentur dissimulare quod sentiunt, et de arbitrij libertate multa fundantes, cavendum praecipere, ne cogi putemus a stellis nostram libertatem, a quibus solum propensionem invitamentumque aliquod habemus, quod vel sequi vel declinare nostrae sit electionis.' To save *aliqua libertas*, Melanchthon also evokes the plurality of the causes intervening in the production of an human act: see n. 11 above.

<sup>15</sup> This problem of the double status of nature entails the further problem of the mutability of natural law. Melanchthon does not admit any mutability of the *summae leges*, that is, the precepts concerning duties deriving from our knowledge of God in his unity; see Melanchthon (1850), *Enarrationes*, col. 391: 'Secundo sciendum est, quasdam leges simpliciter immutabiles esse, videlicet summas, quae praecipunt de agnitione unius Dei.' On other issues, such as, for instance, private property vs community of goods, reason may see the necessity of adapting to the present status of nature and decide that private ownership is a *lex naturae*: ibid., cols. 387–8: 'Indita est homini notitia, ubi voluntates in

vision of the history of humanity is due to a special revelation from God. It has a parallel, however, in the pre-Christian thought of the Greco-Roman classical world. Poets such as Virgil and historians such as Tacitus had affirmed that at the beginning of human history there had been a golden age of harmonious justice, from which humanity had gradually but inevitably fallen into its present existence, marked by individual egoism and the loss of the beneficial anarchy which had originally characterized it.<sup>16</sup> Melanchthon, in constructing his philosophical thought, only takes into account nature as it presently exists. This is also true, in principle, of scholastic philosophy. Nevertheless, the vague feeling that mankind was originally differently disposed to perform moral acts is always present in Melanchthon, even unconsciously, as a kind of reference point by which the present state of fallen humankind can be compared to the ideal original state, of which man's nature bears some vestiges. In his ethical doctrine this happens, for instance, in relation to the inborn notions (*notitiae*), especially the notion of God (*notitia Dei*). Here, the light given to the human mind is described as 'shining' in the state of pure nature, but as 'obscured' in the state of fallen nature.<sup>17</sup> Likewise, in the interpretation of the Ten Commandments, the light shed by the Gospel requires internal participation

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quaerendis rebus et in communicatione non sunt similes, ibi dominia rerum distinguenda esse, et res legitimis contractibus pro rebus seu pretio aequali comunicandas. Sic philosophi hanc notitiam ex causis quaerendi et comunicandi sumptam vocant legem naturae, etsi alii hanc partem vocant ius gentium, quod philosophi non discernunt a iure naturae. Est enim communis notitia, de qua omnium gentium sani homines consentiunt. Quod vero dicunt, iure naturae res esse communes, ordo notitiarum considerandus est. Utrumque videt mens, in natura incorrupta res posse communes esse. Ubi vero causae quaerendi et comunicandi non sunt similes, ut in hac naturae corruptione, ibi mens relicto priore syllogismo amplectitur alterum, congruentem ad praesentem naturae imbecillitatem, is igitur nunc est lex naturae.'

<sup>16</sup> Melanchthon (19863), *Scholia*, p. 234: 'Hinc a sapientibus viris quos Deus excitavit ad respublicas constituendas, leges etiam derivatae sunt, iuxta quas iudicia exercerentur, res dividerentur, punirentur maleficia. Has non dubitat Paulus vocare divinam ordinationem, vides manifestis scripturae sententiis has philosophiae partes probari.'

<sup>17</sup> Melanchthon (1550), *Commentarius*, pp. 130–1: '*An notitiae principiorum nobiscum nascuntur?* Si integra esset humana natura, arderet ac luceret in nobis illustris notitia Dei, essent excitatiores κοινὰ ἔννοιαι quam nunc sunt, facileque iudicari posset, eas nobiscum nasci. Cum enim ad imaginem Dei conditi simus, fulsisset in nobis Dei notitia et discrimen honestorum et turpium. Nam has noticias imago complectitur, ut postea dicam. Sed cum haec imago deformata sit lapsu Aadae, ingens caligo secuta est. Manserunt tamen vestigia quaedam et notitiae subobscurae, a quibus artes oriuntur.' Perfect obedience to God is required from man according to the *notitia* of God given to him creation; but in philosophical thought we obey God according to the *discrimen honestorum et turpium* known by the light of reason; see Melanchthon (1846c), *Erotemata*, col. 649: 'Natura humana intelligit Deo obediendum esse in faciendis honestis, et vitanda turpitudine...' It is only this kind of obedience which is now inscribed in the human mind as a practical principle of moral philosophy.

of the heart in the law of God and a consequent act of loving God; but, as the Commandments are now perceived by the light of reason, only a participation in the external act is demanded.<sup>18</sup> It is also true in the

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<sup>18</sup> It is important, when reading Melanchthon, to establish the meaning of *notitia* in any given instance. Indeed, the meaning may shift in the same passage from one context to another, that is, from a shining notion to an obscure one. This also happens when he speaks of natural law as identical to divine law. In order to avoid any confusion between Law and Gospel, it is of the utmost importance to determine in each case whether he is speaking of natural law according to the light of reason (*discrimen honestorum et turpium - externa delicta*) or according to the light of evangelical revelation (*perfecta oboedientia cordis - immundities cordis*). See Melanchthon (1961c), *Epitome*, p. 157: ‘*Quid interest inter Philosophiam et Evangelium?*... Haec est enim solida et praecipua laus philosophiae moralis, intelligere quod vere sit pars legis divinae, et ut Paulus inquit Romanos I. Ius Dei (Rom. 1.32). ... Porro lex Dei est doctrina, quae praecipit nobis, quales nos esse oporteat, et quae opera erga Deum et homines praestanda sint, seu est *doctrina requirens perfectam oboedientiam erga Deum*.’ Ibid., p. 158: ‘*Ceterum philosophia pars est legis divinae. Est enim ipsa lex divina* ab ingeniosissimis hominibus animadversa atque ordine explicata. Constat autem legem naturae vere esse legem Dei de his virtutibus, quas ratio intelligit. *Nam lex divina hominum mentibus impressa est, sed in hac imbecillitate naturae obscurata est, ut non satis perspici possint illa praecepta, quae iubent statuere de voluntate Dei, et de perfecta oboedientia cordis praecipunt. Sed manet iudicium de honestis actionibus exterioribus, idque nobiscum nascitur, quod ipsum tamen est lex naturae et pars legis divinae. Nec habet humana natura ullam dotem praestantiozem hac notitia, hoc est discrimine honestorum et turpium. Hoc est evidentissimum vestigium Dei in natura, quod testatur homines non exiisse casu, sed ortos esse ab aliqua aeterna mente, quae discernit honesta et turpia. Quod si natura hominis esset integra, tum vero in hac notitia luceret Deus et mens hominis praedita magis perspicua notitia, multo esset illustrior imago Dei. Magna dignitas est hominis, quod mentes humanae sunt velut speculum, in quo fulget sapientia Dei, videlicet sapientia legis. Nam praecipue Deus per hominem voluit innotescere. Magna igitur laus est philosophiae moralis, quod est pars legis divinae et sapientia Dei, etiamsi non est evangelium.*’ See also Melanchthon (1965), *Commentarii*, p. 81: “*Qui cum sciant ius Dei.*” In fine observandum est, quod ait Gentes nosse ius Dei. Significat igitur illam *notitiam naturalem*, quam vocant *ius naturae* esse *ius divinum*. Accusat autem utrosque, videlicet hos, qui *externa delicta* habuerunt, et illos, qui, etsi non habuerunt externa delicta, tamen habent *immunda corda* et consensentia idolatriae aut aliis peccatis. Ita in *predicatione poenitentiae legem interpretamur*, ut intelligatur non solum argui *externa delicta*, sed praecipue *immunditiam et impietatem cordis*.’ The same applies to the *finis bonorum* and *summum bonum*: see Melanchthon (1550), *Commentarius*, f. 139r: ‘*Quod est objectum? Ut objectum intellectus esset Ens quam late patet, Deus et rerum universitas, si hominis natura integra esset, ita voluntatis idem esset obiectum, et inter appetenda et amanda, summum esset Deus, ut testatur lex divina Diligas Deum ex toto corde. Ad hoc objectum amandum et fruendum conditi sumus eoque vocasset nos in mentibus, ut dixi, noticia Dei fulgens, hunc fontem quaesivisset natura humana inde orta. Perspicuum igitur fuisset Deum esse homini finem bonorum, nec exiissent philosophorum certamina, de fine bonorum, et tot ambages ac labyrinthi opinionum. Expetivisset igitur humanus animus Deum, ut summum bonum, deinde res bonas caeteras eo ordine, quem Deus tradidit, virtutem, vitam, vitae commoda propter Deum, agnovisset se Deo servire in usu legitimo harum rerum, et Deum autorem celebrasset.*’ There is also a double conception of justice: philosophical, concerning external works; and theological, concerning works *ex corde*: see Melanchthon (1965), *Commentarii*, p. 268: ‘*Et docet [scil. Paul in Rom. 10.5] quid sit iustitia legis formaliter, et quid sit iustitia*

interpretation of man's personal or domestic justice, which, seen from the angle of original justice, demands the full harmony of all man's faculties according to their natural order; but in human nature as now experienced is limited to their co-operation in the performance of an external good act.<sup>19</sup>

This double way of envisaging the same reality of human nature—one side which is visible to reason with its present powers, and another which is obscure and about which man cannot securely speculate by means of the natural light of reason—is valuable both in scholastic and in Reformed thought. It defines what man can actually do and what he should do. The difference between the scholastic and Reformed thought consists mainly in their way of conceiving God's judgement on this situation, which affects human nature, especially in the case of regenerated man.<sup>20</sup>

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fidei. Non agitur de praemiis nec refert, utrum haec sententia civiliter de corporalibus praemiis aut aliter de praemiis aeternis intelligatur. Nam lex debet utroque modo intelligi: *politice de externis operibus et theologice de operibus vere ex corde factis in renatis.*' (My emphasis).

<sup>19</sup> Melanchthon (1961c), *Epitome*, StA III, 192, 5–11: 'Si enim natura hominis non esset corrupta vitio originis, omnes affectus obedirent legi Dei, et iudicio rectae rationis. Nam ad hanc obedientiam homines conditi sunt, sicut ad volatum aves ..., verum quia corrupta est vitio originis humana natura, amisit firmam et illustrem Dei notitiam, et virium inter se harmoniam, et oboedientiam.' Ibid., StA III, 177, 12–16: 'Ideo Deus vult omnes homines legibus coerceri et regi, et vix quisquam tam monstrosus est, in quo non sint aliquae στοιργαί φυσικάί, quae sunt bonae inclinationes communiter insitae hominibus ad plerasque virtutes.' Ibid., StA III, 192, 20–23: 'Hanc causam vitiosorum affectuum ostendit doctrina christiana, quae hoc magis amari debet, quia philosophia, cum admiretur naturae imbecillitatem, tamen causam non eruit.' The 'political' government exercised by the will over the bodily members in some rare cases, thanks to the providential intervention of God, approaches, on a natural level, this ideal harmony; see Melanchthon (1846b), *Liber*, col. 130: 'Secunda gubernatio in homine, quae nominatur πολιτική, cum non tantum externa membra per locomotivam coercentur, sed ipsum cor congruit cum recta ratione, et honesta voluntate, motum persuasionem. Ut cum filius Thesaei Hippolytus abstinere a noverca Phaedra. Consentaneum est enim, eum corde abhorruisse ab ea, cogitantem incestam consuetudinem non esse leve scelus, et puniri atrocibus poenis. Cumque talis consonantia est recti iudicii, voluntatis, cordis et externorum membrorum, ea actio iuste nominatur virtus. Sed rara est in hac hominum infirmitate. Et sicubi est talis virtus, ut in Scipione, non est sine singulari motu divino, sicut honeste dictum est a Cicerone: Nulla excellens virtus est sine adflatu divino.' As in the case of the *storgai* and good inclinations, the heroic virtue achieved thanks to the providential intervention of God does not transcend the natural possibilities of human nature and does not fulfil the requirements of fear and love of God demanded by the first table of the Decalogue. In this sense, acts of perfect virtue are still actions concerning moral philosophy and external discipline.

<sup>20</sup> As for the Christian value of moral activity in regenerated man, Melanchthon's solution, in light of the Gospel, is to reabsorb all moral actions made in the light of natural law, into the worship of God. God considers these acts in such a person as *bona opera*. See Melanchthon (1961c), *Epitome*, p. 160: 'Porro cum pii fidem et agnitionem Christi et timorem Dei addunt ad hanc diligentiam in regendis moribus, eamque praestant propter Christum, et referunt ad ornandam gloriam Christi, ita hi mores fiunt bona opera et cultus Dei. Et hoc loco vetus regula docenda est, quae docet peccata contra legem naturae esse

This duality in envisaging man's nature, however, should not be seen a case of the double truth: one theological, the other philosophical. The fact that God's law in its integrity surpasses what human nature can now know and do does not cancel the existence of an aspect of God's law which concerns man's external acts, as required by moral philosophy. Man's obligation to conform his actions to the law of God according to his nature—a bodily nature constituted of external members designed for good actions and good works—is true wherever God's law is found, even in original justice or in the justice of faith. It is a law of human nature expressed in the fact that man is composed of spirit and body. Melancthon's development of the doctrine of the external act makes it clear that man has a differentiated access to the one truth. The inferior, partial knowledge of truth, permitted by reason, is not destroyed by the superior form of knowledge; instead, it is purified and integrated into it as a legitimate aspect or a vestige of creation. This partial access to divine truth preserves its own rights and functions, even when the revelation of the Gospel comes to complete our knowledge of divine law by preaching penitence to all men.<sup>21</sup>

### **ETHICAL OBEDIENCE TO GOD AS FOUNDED ON NATURAL PHILOSOPHY**

We come now to a consideration of the relation established between man and God on the basis of our submission to God's law through external

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peccata mortalia, sicut facta contra expressa mandata Dei. Ex his liquet hanc doctrinam de moribus et concessam esse Christianis, et utilem ac plenam dignitatis esse, cum lex naturae sit lumen divinitus insitum animis et vestigium quoddam ac testimonium in natura nostra et longe antecellat ceteras artes.' For the scholastics, moral activity as such was the basis for a supernatural meritorious operation, given that bad concupiscence, although deriving from sin and driving us to sin, was not considered to be mortally sinful, at least in regenerated man.

<sup>21</sup> The Gospel itself is conceived of by Melancthon as also bestowing on us the beginning of a restoration of nature (*instauratio naturae*). Man's original vocation to the sovereign and infinite good (*summum bonum*), which was proposed to him as his own end at creation, becomes again a real aim for man's knowledge and desire. The Gospel thus restores, in its full meaning, the natural end of man; see Melancthon (1550), *Commentarius*, f.140<sup>v</sup>: 'Discedamus igitur a scholis philosophorum et sciamus nobis vocatis ad Evangelii agnitionem objectum esse voluntatis, bonum infinitum et caetera suo ordine appetenda, vocamur enim ad instauracionem naturae et proponitur nobis filius Dei Dominus noster Jesus Christus, qui testatur Deum non esse ociosum, sed vere nos curare, recipere in gratiam, exaudire, liberare. Cum sic agnoscimus Deum, incipimus eum amare, in eo acquiescere, ab eo bona expectare, ei obedire, et in recte factis ipsum intuemur, virtutem eo amplectimur, ut ipsi obtemperemus, ac ab ipso gubernari nos petimus.'

human acts. Our ethical relation to God is founded on arguments furnished by the philosophy of nature, since Melanchthon considers physics to be the backbone of all philosophy.<sup>22</sup> Everything which was traditionally regarded as the proper subject of metaphysics and natural theology is regarded by him as the object of physics.

In his definition of the *summum bonum*, the sovereign good of man, Thomas Aquinas had appealed to a passage in Aristotle's *Metaphysics* (I.iii, 938<sup>a</sup>) describing how men became philosophers. It was their natural curiosity to discover the causes of the phenomena of experience all the way back to their first cause which gave birth to philosophy.<sup>23</sup> On the other hand, in Thomas's doctrine, causality implies participation of the cause by the effect and, consequently, a similarity of the effect to the cause. Thomas concludes that the good which is proper to each existing finite being is, in the final instance, its own assimilation to God according to its nature's participation in him as the *prima causa*, the first cause.

Melanchthon develops this same double insight of causality and similarity deriving from the Aristotelian tradition as a means of explaining the nature of our ethical relation to God. On a natural level of being and action in natural philosophy, our relation to God is apprehended as a primary one (traditionally, a metaphysical one), preceding all other subsequent relations which man may go on to establish in human society.

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<sup>22</sup> In Melanchthon's thought, man's philosophical relation to God is conceived of as leading him to a kind of philosophical religion which enables him to practice a certain reverence towards God but cannot establish an immediate contact with him; see Melanchthon (1961c), *Epitome*, p. 62: 'Philosophi leges naturae colligunt inspectis causis et effectibus propriis hominis, ut causae ostendunt esse Deum, Deum esse conditorem generis humani, Deum esse iustum, punientem atrociter delicta, Deo tanquam auctori esse obediendum. Hae notitiae pariunt qualemcumque reverentiam humanam seu naturalem erga Deum, quae apud philosophos etiam religio vocatur. Fateri enim eos oportet primam esse virtutem reverentiam erga Deum, etiamsi de his virtutibus, quibus immediate cum Deo agimus, philosophia non potest praecipere, quemadmodum opus est ... de his virtutibus concionatur Evangelium'. For Thomas Aquinas likewise, man's immediate relation with God presupposes an intervention by God himself transcending the natural order.

<sup>23</sup> Thomas Aquinas (1926), *Summa contra gentiles*, L.III, cap. XXV: "Quod intelligere Deum est finis omnis intellectualis substantiae." Cum autem omnes creaturae, etiam intellectu carentes, ordinentur in Deum sicut in finem ultimum; ad hunc autem finem pertinent omnia in quantum de similitudine eius aliquid participant: intellectuales creaturae aliquo specialiori modo ad ipsum pertinent, scilicet per propriam operationem intelligendo ipsum. Unde oportet quod hoc sit finis intellectualis creaturae, scilicet intelligere Deum.' The lines which follow seem almost to suggest some elements of Melanchthon's *prima societas*, to be discussed below: 'Ultimus enim finis cuiuslibet rei est Deus. ... Intendit igitur unumquodque sicut ultimo fini Deo coniungi quanto magis sibi possibile est. Vicinius autem coniungitur aliquid Deo per hoc quod ad ipsam substantiam eius aliquo modo pertingit, quod fit cum aliquis cognoscit de divina substantia, quam dum consequitur eius aliquam similitudinem. Substantia igitur intellectualis tendit in divinam cognitionem sicut in ultimum finem.'

To clarify this point, Melanchthon appeals to Cicero, who defines the inner relation of man to God as creating the *prima societas*, man's first association: the first social relation which man has is his association with God.<sup>24</sup> Responding to the possible objection that man's first society is instead his association with his fellow men, Melanchthon answers, interpreting the thought of Cicero, that God, as the cause of man, is nearer to man than man is to other men, who are all the effects of the same cause. In the familial society as well, a son is nearer to his father—that is, to his cause—than to his brothers, who are the effects of the same cause as he is.<sup>25</sup>

Melanchthon then explains what this mutual society of God and man consists of philosophically. He says that it consists 'of the acknowledgement [on the part of man] of his author, that is, of his cause, and in the recognition of [his] similarity [to him]'.<sup>26</sup> Establishing that man's first society is with God gives rise to the idea of a natural pact (*foedus*) between God and man. This pact is constructed on the basis of the doctrine of external acts and of our natural knowledge of the mind of the divine architect, accessible to our own minds by means of causality and similarity. This pact is conceived of as regulated by God's request that man obey him and his law and order. On the other hand, God commits himself to protecting human society, empires and the political order, as long as they respect the natural order, and to rewarding individual men for respecting the law or punishing them for failing to respect that part of his law of which they have natural knowledge in their present condition.<sup>27</sup>

<sup>24</sup> Melanchthon (1961b), *Oratio*, p. 133: 'Primam, inquit Cicero, homini cum Deo societatem esse. Quid enim dici potest eruditius, quid de hominis dignitate splendidius, quid ad deplorandam miseriam humanam accommodatius?'

<sup>25</sup> Ibid.: 'Sed cur primam societatem inquit homini cum Deo esse? An non propior est homo homini? Sapienter Cicero videt prius esse Causae effectum adiungendum, quam similes effectus inter se conferendos: propior est filius patri, quam fratri.'

<sup>26</sup> Ibid.: 'Sed qua in re constituta est societas inter Deum et homines? In duabus rebus, in agnitione auctoris seu causae, et agnitione similitudinis.'

<sup>27</sup> Melanchthon (1850), *Enarrationes*, cols. 385–6: 'Est igitur prima lex naturae: Mens humana agnoscit Deum esse aeternam mentem, conditricem bonarum rerum, et Deo obediendum esse iuxta discrimen bonorum et turpium. Huius legis multae sunt demonstrationes. Primum enim esse Deum, et curare humana, nec casu res oriri aut occidere, testatur pulcherrimus ordo naturae, qui sine mente et consilio aliquo existere non potuit, et physica ratio ostendit in serie causarum necessario perveniri ad unam primam causam, intelligentem, immensae potentiae. Deinde, cum mens intelligat naturam humanam a Deo ortam esse, intelligit nos subjectos esse causae, seu conditori, ac deberi ei obedientiam. Item, cum non frustra ordinaverit in mente hominis discrimen honestorum et turpium, et sit custos huius ordinis. Atrociam enim scelera punit atrocibus poenis, manifestum est eum postulare obedientiam. Item, cum videat mens similitudinem esse divinae et humanae naturae in cognitione, intelligit naturalem societatem esse Dei et hominum, et ordinem societatis servandum, ita ut nos obtemperemus, et Deus det bona, et econtra, ut puniamur non otemperantes. Ita Cicero sapienter dixit: Primam esse homini cum Deo societatem.' Thus far Melanchthon has explained what the *prima lex naturae* is. The



It is natural philosophy which provides the ethical doctrine formulated by Melanchthon with the basic principle that man is an *exemplum Dei*, an exemplary image of God, just as any effect is an image of its cause. This implies the existence in man of an internal harmony, philosophically knowable, which imitates the harmony existing in divine nature, given its simple unity of essence. Man must also be an image or *exemplum* of God in his concupiscible part, which produces human sentiments and affects (feelings and emotions), since in God, too, there are true sentiments and affects, such as true love, joy or anger. Human nature has to conform itself to the example of divine nature by an internal participation in the order which exists objectively between all its faculties according to divine law. This is, according to Melanchthon, the profound sense of the political power by which, in Aristotelian philosophy and in Melanchthon himself, reason exercises its *imperium*, or rule, persuasively and not despotically over the subordinate powers and appetites in man, until an external act is produced through an accord between reason, will, heart and affects. This idea has his counterpart in the idea of domestic justice which Melanchthon found in Aristotle.<sup>28</sup>

Our task is now to show how, by referring to notions from natural philosophy, the conditions for such a harmony and unity between the different faculties can be shown to exist in man's nature.

### THE SPECIFIC MATTER NECESSARY FOR THE PRODUCTION OF AN EXTERNAL ETHICAL ACT

In human beings, an external ethical act cannot be executed unless we receive a previous inclination to action from our sensitive part. On the other hand, an external act is not merely mechanical. It is an act of obedience to the superior faculties. Reason presents to the will the object to be imposed on the bodily members for execution. The external act is the effect of a co-

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*societas* is derived from this physical context of the natural law. Melanchthon (1961b), *Oratio*, p. 133: 'Deinde multo magis movetur agnitione similitudinis. Quantum decus est, quod mens humana velut tabula est depicta ad similitudinem divinae? Et societatis officia apparent. Deus alit ac custodit genus humanum, retinet politias dum colunt iustitiam, et atrocita scelera punit, periura, tyrannides, latrocinia, incestas libidines. Haec cum videamus, societas intelligitur. Quamquam autem cernitur societas et causae societatis ac beneficia et poenae sunt in conspectu, tamen nos miseri saepe obliiti hoc foedus iura societatis violamus, quae mutua officia sanxerunt, ut Deus nobis tribuat, nos obtemperemus'.

<sup>28</sup> He requires from everyone a double form of discipline: one private or domestic, the other civil or social; see Melanchthon (1835), *Burenio*, col. 851: 'Scimus Deum velle genus humanum disciplina domestica et civili, legibus et suppliciorum metu regi, ut multa dicta caelestia testantur.'

operation between the superior and the inferior parts of man. The problem which Melanchthon encounters here is a classic one in philosophy: how can the superior, spiritual faculties of man influence the bodily faculties and members which execute the act? How is it possible for the bodily members to be connected to reason, as is implied in an external act?

Melanchthon knows that this problem cannot be completely solved by the light of reason we now possess. He does not, however, renounce the effort of attempting to indicate the direction in which we should look for a solution to the problem. He seeks a kind of matter in which human beings have a natural aptitude to perform the higher actions proper to them, such as thinking, judging, impressing local motion on bodily members. It is natural philosophy, in the context of human anthropology, which must provide him with the notion of such a matter.

When studying man's body, Melanchthon raises the following question: 'What type of matter is the machine of human body composed of, and for what uses was it built?'<sup>29</sup> This question is an essential one in Melanchthon's philosophical thought, since he has attributed to moral philosophy the task of showing how ethical acts are founded on nature and are to be studied in nature. Given that there are different functions in the human body, the question implies that there must be a matter which possesses a plurality of qualities which render it capable of performing a plurality of functions.

To find out what this qualitative plurality of human matter consists of, Melanchthon looks at the way the human semen develops into a foetus in the womb. From this observation, he is able to show how the matter from which a human being originates diversifies itself according to the different members which gradually appear in his formation. As always in his natural philosophy, Melanchthon is attentive to the qualities affecting the matter. Here again, in discussing the human semen, he looks for the temperament of the qualities included in it: wetness, dryness, coldness and heat. According to Aristotle, he says, the heat which is a quality in the semen is not like the heat produced by fire, which is destructive. It is instead a quality which gives life and is analogous to celestial light.<sup>30</sup> In this way, Melanchthon comes to the notion of a matter existing in man similar to the matter of celestial bodies, which possess only one quality: light. He has thus placed in the human body the quality of light, in which some thinkers,

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<sup>29</sup> Melanchthon (1846b), *Liber*, p. 106: 'Quamquam autem huius mirandae aedificationis ratio non potest reddi, tamen ipsa machina humani corporis diligentissime aspicienda est, et considerandum, quae pars ex qua materia et ad quos usus condita sit.'

<sup>30</sup> Melanchthon (1846a), *Initia*, cols. 399–400: 'Memorable est autem quod Aristoteles dicit de calore in semine, hunc calorem non esse igneum, sed cognatum coelesti, seu ut ipse loquitur, ἀνάλογον coelesti calori, qui vivificus est. Nam igneus consumptivus est.'

especially in the Renaissance, had recognized a metaphysical unifying function.<sup>31</sup> Melanchthon remarks that even God is ‘an essence of light’.<sup>32</sup>

He envisages this quality of light as especially concentrated in the human brain, the nerves and the spirits.<sup>33</sup> In this description of the celestial matter in man, we have the organs necessary for external human acts: the brain, which is the seat of divine wisdom in man and where the superior activity of judgement takes place; the nerves, which take their origin from the brain and which are necessary for the locomotion of the external members; and, finally, the human spirits,<sup>34</sup> which, enlightened by the brain,<sup>35</sup> become the organs of the highest human actions and are even capable of unifying the human heart and the will in order to produce an external act.<sup>36</sup> When this happens, the external act testifies to man’s vocation to an internal unity, which he must strive after according to his own nature.<sup>37</sup>

<sup>31</sup> Marsilio Ficino (1976), *Liber de Sole*, cap. X, p. 971: “Sol primo creatus, et in medio coelo.” Quaeritur inter haec, quid potissimum primo Deus creavit? Respondet Moses, lucem. Merito enim ab ipsa divina luce plusquam intelligibili, statim emanat Lux omnium simillima Deo. Lux quidem intelligibilis in mundo supra nos, incorporeo, id est purissimus intellectus. Lux autem sensibilis in mundo corporeo, id est, lux ipsa solaris.’

<sup>32</sup> Melanchthon (1846b), *Liber*, col. 169: “De imagine Dei in homine.” Sunt et in Sole quaedam de Deo significationes. Nam et Deus est lucida essentia, quamquam spiritus est.’

<sup>33</sup> Melanchthon (1846b), *Liber*, col. 106: ‘Cum autem epar, et cor et coetera membra formentur ex sanguine, venae, arteriae, cartilagine, ossa, panniculi, πλευρὰ, ligamenta, ex crassiore seminis parte, simul pars subtilissima seminis, et plena optimi spiritus, quasi colata et expressa ex crassiore massa, sursum pellitur in ampullam tertiam, ut inde cerebrum formetur, et ex cerebro nervi.’

<sup>34</sup> Ibid., col. 54: ‘Est autem spiritus vitalis lucidissima et vivifica flamma, similis naturae coelesti, quae calorem et vitam in totum corpus perfert, et praecipuarum actionum organum est.’

<sup>35</sup> Ibid., col. 88: ‘Spiritus animalis est ex eodem genere spirituum, qui nati sunt in corde, pars transmissa ad cerebrum, ubi virtute cerebri fit lucidior, et conveniens temperamento cerebri, et in nervos infusa velut lumen, ut eos impellat, et actiones sensuum et motum localem cieat.’

<sup>36</sup> Ibid., col. 57: ‘Secunda utilitas [*scil.* cordis], quod spiritus geniti in corde, cum postea cerebri vi temperantur, fiunt instrumenta proxima actionis in cerebro et in nervis, et cient cogitationem, sensum et motum. Cum autem vita sine cogitatione, sensu et motu similis morti esset, intelligi potest magnam esse cordis utilitatem, cum fons sit spirituum, qui harum summarum actionum proxima instrumenta sunt.’

<sup>37</sup> Ibid., col. 130: ‘Secunda gubernatio in homine est ea quae nominatur πολιτικῆ, cum non tantum externa membra per locomotivam cohercentur, sed ipsum cor congruit cum recta ratione, et honesta voluntate, motum persuasione. Ut cum filius Thesei Hyppolitus abstinet a noverca Phaedra. Consentaneum est enim, eum corde abhorruisse ab ea, cogitantem incestam consuetudinem non esse leve scelus, et puniri atrocibus poenis. Cumque talis consonantia est recti iudicii, voluntatis, cordis et externorum membrorum, ea actio iuste nominatur virtus. Sed rara est in hac hominum infirmitate. Et sicubi est talis virtus, ut in Scipione, non est sine singulari motu divino, sicut honeste dictum est a Cicerone: Nulla excellens virtus est sine adflatu divino.’

## CONCLUSION

At the end of this paper, I must express my admiration for the philosophical and Christian wisdom of Melanchthon. He has protected himself against any deistic or illuministic interpretations of Christianity, which would necessarily ignore the notion that the ethical law and the consequent philosophical religious relation established by man to God are founded on only one part of divine law. But to ignore this notion, as to ignore his distinction between Law and Gospel, is not only a bad interpretation or a distortion of Melanchthon's doctrinal system, but a destruction of it. Since man is composed of spirit and body, Melanchthon takes account of the constant claims of the Reformation for a participation of the whole man—heart, emotions and spirit—in the law of God. He distinguishes, however, God's judgement of man, unknown to human reason, from what man knows in philosophy of God's will and law for humankind.<sup>38</sup> With his analysis of moral philosophy as a part of God's law, Melanchthon has laid the foundations of what we would today call an ecumenical movement in the field of law and action. In all his writings and throughout his life, Melanchthon launched an appeal to react energetically against what he considered to be the danger always hanging over human society: that of becoming a society which ignores God and law. His appeal was directed to

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<sup>38</sup> The fact that Melanchthon divided divine law as natural law into two parts led him to conceive a double order of actions in man: the philosophical order governing external action; and the order established by evangelical revelation, which demands *mundities cordis*. He sees them as separate and related at the same time. The relation between them, according to him, is that between a root and its fruits. He envisaged both of them in the light of the Gospel, which preaches penitence and the remission of sin. He left, however, to moral philosophy and to man as such the dignity of having as their proper object the external act accomplished in agreement with the moral law: The Gospel condemns both the *externa delicta* and the *immundities cordis*. The *externa delicta*, which are also condemned by reason, are then opposed to the *immundities cordis*, which reason alone does not condemn. They are included in God's universal condemnation, which embraces, under the name of *iniustitia*, all sins against God and men; see Melanchthon (1965), *Commentarii*, p. 69: 'Porro evangelium non tantum arguit externa delicta, quae etiam ratio arguit, sed arguit immunditiam cordis in omnibus hominibus. Ideo sic dicit: "Revelatur ira Dei de coelo" h.e. praedicatur in evangelio "super omnem impietatem et iniustitiam hominum". Hebraismus est transposita particula "omnem", q.d. super impietatem et iniustitiam omnium hominum. Postea enim clare dicit se accusare omnes. "Impietas" significat vitia, quae proprie cum prima tabula pugnant, h.e. contemptum et odium Dei. Et significat non tantum externa delicta, sed immunditiam naturalem in cordibus, quae vacant naturaliter timore Dei, fiducia Dei, dilectione Dei etc. "iniustitia" generale est complectens peccata contra Deum et homines.' Ibid., p. 112: 'Ac loquitur Paulus non solum de actualibus delictis, sed de naturali immunditie, de radice et fructibus.'

all those who acknowledge both a divine mind as the author of man and the cosmos and a provident lawgiver. This is why I consider Melanchthon to be a Reformer who speaks to all of us today.

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## Ethics in Early Calvinism\*

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The various assessments of ethics in early Calvinism could scarcely be more different. On the one hand, Calvin's early Lutheran opponents had already pointed to the danger of a *moralistischen Überfremdung* in the Reformed rediscovery of the biblical message of free grace—an accusation which would later be frequently repeated,<sup>1</sup> and which was popularized by Stefan Zweig's harsh criticism of what he saw as a dangerous moralistic tendency in light of the experience of dictatorship in his novel *Castellio gegen Calvin oder Ein Gewissen gegen die Gewalt*.<sup>2</sup> On the other hand, we find an emphasis on a particular ethical competence, based on Ernst Troeltsch's rather too sharply drawn contrast between Calvinism and a Lutheranism which he understood to be still trapped in the medieval world. While he saw Luther and Lutheranism as being entirely—and quietistically—focused on an inner holiness of justification, Troeltsch understood the idea of justification to have a different function in Calvinism: 'statt des Charakters der Seligkeit in Gottes sündenüberwindender Gnade den Charakter der Erwählungsgewißheit und der handelnden Kraft'.<sup>3</sup> Even though Troeltsch's picture of Luther and sixteenth-century Lutheranism is inaccurate, representing rather the reality of Lutheranism in the nineteenth century,<sup>4</sup> he did have a precise awareness of the particular significance of ethics in early Calvinism. Luther saw his first task to lie in the reinstating of preaching according to the Gospel. Early Calvinism—and partly also those elements of the Lutheran Reformation which were shaped by Philipp Melanchthon—was grounded

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<sup>1</sup> See, e.g., Bockmühl (1987), p. 433 ('Tendenz zur Gesetzlichkeit').

<sup>2</sup> First published in 1936.

<sup>3</sup> Troeltsch (1994), p. 618; and cf. Schneckenburger (1855), pp. 63–108 and 158; Hundeshagen (1963), pp. 349–357; Weber (1991), p. 129f.

<sup>4</sup> Karl Holl and others soon rejected the portrayal of Luther and Lutheranism as quietist and focused instead on an inner sense of justification; see Holl (1927b), pp. 1–110, at 102–107; idem (1927a), 155–287; Elert (1958), especially I.5, p. 357f.; II, p. 6f., 41–44.

in the conviction that the *reformatio doctrinae* must also be complemented by a *reformatio vitae*. The Reformation of doctrine as it had been promulgated by the earliest reformers in the fight against ‘papist superstition’ must be succeeded by a reformation of life. This opinion, formulated by Wilhelm Zepper, Professor at the Reformed Hohe Schule in Herborn in his treatise *Von der Christlichen Disziplin* (published in 1596),<sup>5</sup> is representative of the self-understanding of many followers of Calvinism.

In recent decades, building on the work of Heinz Schilling and Wolfgang Reinhard, researchers have rightly come to see the process of confessionalization of society as fundamental to and characteristic of the early modern period.<sup>6</sup> Such analyses have generally emphasized the common role played in the development of the early modern (territorial) state by the three main confessions which established themselves in Continental Europe. It is important to recognize this, but it is also necessary to guard against the danger of understanding the confessions in such a way as to minimize their differences and treat them all as equivalent. It is, therefore, necessary to inquire into the specific characteristics of each confession and to seek to determine the unique circumstances which helped to mould each confession. Did the different confessions influence culture in different ways? Did they shape society to different degrees, or have different implications for the definition of the collective mentality? These questions form the background to the following discussion of the particular character of Calvinist ethics and of the traditions out of which it arose.

I shall present the discussion in four stages. First, I shall sketch the role played by Calvinism in defining the relationship between the experience of crisis and the desire for order at the end of the sixteenth century. Secondly, I shall present the theological decisions which were fundamental to Calvinist ethics. Thirdly, I shall investigate Calvinism’s deep connections to the milieu of humanist jurisprudence and its consequences for ethics. Finally, I shall discuss the ways in which Calvinist ethics, rooted in Aristotelianism, was transformed by the adoption of Neostoic ideas.

## **CRISIS AND THE DESIRE FOR ORDER: CALVINISM AND ZEITGEIST**

Calvinism attained its characteristic shape during the second half, or perhaps the last third, of the sixteenth century in France. The transition

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<sup>5</sup> Zepper (1980); see also Münch (1986), pp. 291–307, at 296f.; cf. also idem (1978), pp. 196–207; Weerda (1964), pp. 162–189.

<sup>6</sup> Cf. Schilling (1988), pp. 1–45; idem (1986); Rublack (1992); Reinhard and Schilling (1995); cf. also Schindling (1997), pp. 9–44.



from the medieval order, based on interactions between different estates but essentially rooted in personal relationships, to the early modern territorial state was further advanced in France than in other parts of Europe. The civil wars of the late 1560s accelerated the collapse of the old order; and towards the end of the century, Henri IV was able to establish a new absolutist order. The fundamental changes to the traditional structures of authority which resulted from this transformation were generally experienced as a deep crisis.<sup>7</sup>

The sixteenth-century worldview was founded on the idea of a hierarchically structured order in which every detail was worked out and all parts were mutually interdependent.<sup>8</sup> This worldview expressed the way in which the cosmos, created by God, was realized in nature, in the life of society and in individual people with their own hierarchy of body and soul. The divinely created order was regarded as continually under threat from human sin. In contrast to the modern understanding of progress, this worldview could envisage change only as either a falling away from an all-inclusive hierarchical order, resulting in the eruption of chaos, or as renewal, Renaissance or Reformation. Inevitably, the changes which occurred in the structures of authority at the beginning of the modern period were seen as a profound crisis in this received order. Calvinism was formed in this intellectual and social context, and a number of essential characteristics of Calvinist ethics need to be understood in terms of it.

When studying the ethical writings of early Calvinism, one's eye is caught by the constant bemoaning of moral decline and the destruction of the received order. This lament over the corruption of moral behaviour permeates the work of Lambert Daneau, the most important Calvinist writer on morals and the author of the first systematic discussion of ethics in early Calvinism.<sup>9</sup> The essential nature of his judgement is expressed above all in his formulation 'corruptissimi huius saeculi mores'.<sup>10</sup> This does not refer to morals and morality in the narrow sense, but rather, on the one hand, to the decline of individual morality and of the moral sense in society and, on the other, to questions of legal order and state authority.<sup>11</sup> Of the terms used by

<sup>7</sup> See Strohm (1996), pp. 542–594; also, for the general context, Salmon (1975).

<sup>8</sup> See especially Jouanna (1977); Mousnier (1969), especially pp. 60–69.

<sup>9</sup> See Strohm (1996), pp. 562–576; for Daneau see nn. 23–26 below.

<sup>10</sup> Cf. the subtitles of the treatise *De ludo aleae*, Daneau (1579), cols 214–222: 'libellus adversus corruptissimi huius seculi mores omnino necessarius'; cf. also Daneau (1596), book VI, chap. 4, 426; on the French terms 'moeurs' and 'corruption des moeurs' see also Matoré (1988), p. 151f.

<sup>11</sup> Daneau's frequent use of the terms 'anarchia' and ἀταξία to describe his situation refer primarily to this latter dimension; see, e.g., Daneau (1596), II.6, p. 118; *ibid.*, II, p. 140; *ibid.*, III, pp. 225, 229, 248. Like many of his contemporaries, he understood these terms as describing something which was opposed to a successful life. Despite the threatening treatment of Protestants by rulers, who were generally antagonistic towards

Daneau to describe the crisis, the idea of *dissolutio* and related Latin or French phrases play a key role. The struggle against *dissolutio* and the motto ‘contre la dissolution de ce temps’, with which he begins one of his moral treatises,<sup>12</sup> inform all his ethical writings.<sup>13</sup>

The widespread experience of crisis was accompanied by a strong desire for order. Indeed, one can almost say that the ethics of early Calvinism was shaped by a passion for order. Daneau expresses this eloquently with the phrase ‘nihil pulchrius ordine’ (‘nothing is more beautiful than order’).<sup>14</sup> The same words open Johann Heinrich Alsted’s *Encyclopaedia* of 1630, a work of more than 2,500 folio pages.<sup>15</sup> At the beginning of this seven-volume encyclopedia are thirty-eight tables, in which the content of all the sciences is presented with the help of a series of dichotomous classifications.<sup>16</sup> The explanation of how to use these tables

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them, Daneau, following ancient tradition, held tyranny to be more acceptable than anarchy: *ibid.*, I.6, p. 52; cf. also *ibid.*, I, p. 66: ‘Omni enim tyrannide, omni corrupto civitatis statu deterior est Anarchia.’

<sup>12</sup> See Daneau (1574).

<sup>13</sup> The introductory section of the anonymous *Traite de l'estat honneste des Chrestiens en leur accoustrement* (1580), pp. 9–11, sketches a dark picture of the ruinous state of the present. The term ‘dissolutio’ is used three times to characterize this situation. In Daneau’s introduction to biblical hermeneutics, he says that the interpreter should be aware of the contribution a passage can make to the struggles against the ‘dissoluti hominum mores’: Daneau, *Methodus*, (1579), p. 33f. He uses the term most frequently in his late *Politica*: Daneau (1596).

<sup>14</sup> Daneau prefaces his commentary on 1 Timothy with a letter of dedication addressed to Wiliam of Orange. In it, he shows clearly that the idea of a hierarchically structured order which shapes all areas of life is fundamental for his thinking. He regards such an order as of the highest value and the God-given prerequisite for the preservation of life; Daneau, *Commentarius*, (1577), sigs ¶ i<sup>r</sup>-¶ ij<sup>v</sup>: ‘Vetus est illud, Princeps Illustrissime, etiam ab Aristotele usurpatum, Nihil esse in ipsa rerum universitate pulchrius ordine. Quid enim vel oculis iucundum, vel menti etiam ipsi et animo hominis gratum obversari potest, quod sit confusum, et nulla partium apta separatione distinctum? Certe quocunque non tantum oculos, sed omnes animi sensus converterimus, si quae in eos incurrunt, neque ordine digesta, neque apto situ inter se cohaerentia, neque convenienti loco et modo collocata a nobis apparebunt: ea neque utilitatem, neque venustatem aliquam habere statim pronuntiabimus, tantumque ab illis oculorum, animique intuitum avertemus, quantum ea nos ad se rapiunt, quae commoda, propriaque ratione, et dispositione distinguuntur. Hoc in Regno, hoc in Rep[ublica], hoc in oppidis, hoc in pagis, hoc in privatorum aedibus, hoc in hortis, et cultis sedibus, hoc in solitudine, hoc in rebus quae natura gignuntur, hoc in artificijs quae hominum industria efficiuntur, verum esse ipsa rerum experientia, et publica mortalium omnium, non tantum piorum, sed etiam profanorum hominum vox testatur: denique Mundus ipse, pulcherrimum Dei opus, ab ordine κόσμος nominatur.’

<sup>15</sup> Alsted (1989). This work was compiled in the turbulent period of the Thirty Years War, during which the town of Herborn not only suffered frequent occupations but was also burnt to the ground; see Schmidt-Biggemann’s foreword to Alsted (1989), p. VIII.

<sup>16</sup> Cf. Alsted (1989), pp. 1–26. Note, however, that Alsted criticizes an excessive readiness to understand everything in terms of dichotomies (‘διχοτομία supersticiosae’): *idem* (1983), p. 2.

starts with the words ‘ordine nihil pulchrius’. This is followed by a praise of *ordo* and a statement of the essential value of order in all areas of life:

Anyone who is not blinder than Teiresias cannot fail to see that nothing is more beautiful, nothing more fruitful than *ordo*. Since everything in the all-encompassing theatre of this world is given its eminence by *ordo*, it is like the soul of all those things. *Ordo* serves as the sinews of the mystical body of the church of God. *Ordo* is the strongest bond in the political commonwealth and in the family.<sup>17</sup>

The passionate desire for order engendered by the experience of crisis also helped to determine the content of Christian ethics. The struggle against any form of ‘letting oneself go’ and any uncontrolled surge of the emotions emerges as a central theme, for such behaviour endangered the continued existence of order. Games, festivals and dancing were understood not only as problematic ‘interruptions of order’ but as genuine threats to the social order.<sup>18</sup> In particular, luxury of every kind, by definition a defamation of what was proper and hence also of order, was heavily criticized. The struggle to enforce strict observance of a detailed

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<sup>17</sup> Alsted (1989), p. 1: ‘ORDINE nihil pulchrius, nihil fructuosius esse nemo non videt, nisi forte Tiresia sit coecior. Ordo siquidem in amplissimo hujus mundi teatro rebus omnibus conciliat dignitatem, et ipsarum est velut anima. Ordo in Ecclesia DEI est nervus corporis mystici. Ordo in rep. et familia est vinculum firmissimum. Ordo denique in schola, praeterquam quod est gluten societatis scholasticae, rebus docendis et discendis animam inspirat. Facit enim ad rerum intelligentiam expeditam, et plurimum confert ad memoriae facilitatem simul ac diuturnitatem, sive impressionem, sive recordationem, sive ipsam redditionem intueare: quae tria requiruntur in bona memoria. Haec itaque absque dubio praestat ordo methodicus, quem vocant. Inprimis vero id praestat, quando rerum discendarum synopsis exhibetur certis tabellis, quas non abs re dixeris memoriae matres. Ita enim usuvenit, ut rei amplissimae idea possit animo comprehendi quam facillime, et quam diutissime in memoria conservari. Quae cum ita sint, existimavi me recte facturum, si universae hujus Encyclopaediae methodum perpetuis tabulis adumbrarem, inque iis quasi ossa et nervos disciplinarum delinearem, adeoque illarum quoddam quasi sceleton exhiberem. Tu, lector benevole, spiritum, sanguinem, et carnes pete ex ipsismet systematibus, et ita exple sceleton osseum et nervosum, ut habeas corpus succiplenum.’

<sup>18</sup> Cf., e.g., Daneau (1574); idem, *Deux traittez de S. C. Cyprian* (1566).

dress code also took on central importance,<sup>19</sup> for these regulations offered a visible manifestation of the strictly hierarchical order.<sup>20</sup>

Such experiences of crisis and the consequent desire for order were not restricted to Calvinism in France during the final third of the sixteenth century. Similar developments could soon be observed in Germany. A recent study of the phenomenon of *Polizey* indicates a process of modernization moving from Western to Eastern Europe.<sup>21</sup> Calvinist ethics, with its strong endeavour to direct human behaviour—including the deepest desires of the heart—according to the rule of divine law, must be understood in the context of the contemporary tendency towards the detailed regulation of all areas of life. This soon began to affect the other confessions as well. Nevertheless, the ethical programme developed earliest, and probably in its most stringent form, within Calvinism. Calvinism made a more radical break with tradition and, as such (like Ramism and Neostoicism) was a particularly pure incarnation of the *Zeitgeist*.<sup>22</sup> Calvinism fulfilled the needs of those who were no longer living

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<sup>19</sup> See, e.g., Daneau, *Deux traictes de Florent Tertullian* (1580). In the foreword to his translation of Cyprian's works on this theme, Daneau states his intention that his work should help to prevent the collapse of morals and curb the tendency to let oneself go, both of which he diagnoses as permeating all levels of French society, and that at least the Reformed Church should seek to condemn such proclivities; Daneau, *Traite de S. C. Cyprian* (1566), p. 35: 'Ce qu'aujourd'huy nous experimentons par trop en nos Eglises reformees: tellement qu'il nous conuient restablir et releuer, comme ce saint Pere, ce que nous voyons corrompu entre nous, comme entre autres choses, ceste ci l'est bien fort: assauoir, la dissolution, lasciuete, brauerie et somptuosité des habits, fards et attiffemens des femmes, tant filles que marieer, tant de Cour qu'autres, et n'y a nation plus desreiglee aujourd'huy que la Françoisse en ceci.' Cf. also n. 13 above.

<sup>20</sup> See Strohm (1996), pp. 626–637.

<sup>21</sup> For the first European-wide investigation of the phenomenon of *Polizey*—the construction of internal administration by means of instruction and order, which characterizes the early modern state from the late Middle Ages until the fall of the Ancien Régime—see Stolleis (1996). In the foreword to this volume, Stolleis points to significant differences between European republics and cities and also between the city and the countryside. He observes a process of modernization moving from Western to Eastern Europe; *ibid.*, p. VII: 'Westeuropa schreitet seit dem Spätmittelalter voran, Nord-, Mittel- und Südeuropa haben erste Schwerpunkte im 16. und 17. Jahrhundert, während Ostmittel- und Osteuropa erst in der Mitte des 18. Jahrhunderts zu einer entsprechenden "polizya" in Theorie und Praxis gelangen.' Cf. Schilling (1999).

<sup>22</sup> It is not possible to discuss here the range of meanings in the term *Zeitgeist*, which Herder's critical discussion of the ahistorical thought of the Enlightenment has succeeded in elevating to a philosophical term. What is important in the present context is that it can be understood as implying that at the cutting edge between mentality, or the tools of thought, on the one hand, and theological or philosophical theoretical constructions, on the other, people shared experiences and ways of thinking apart from which these theoretical constructions cannot be understood. For the term *Zeitgeist*, see Kreppel (1968), pp. 97–112, especially 97–102; cf. also Hegel (1964), p. 612ff.; Löwith (1958), pp. 220–227; Litt (1935), p. 45f.

in the safe structures of the medieval period but who had not yet begun to live in the modern order. This is an important reason for the attractiveness and effectiveness of Calvinism at the beginning of the modern age. In the second half of the sixteenth century and the early seventeenth, no other confession spread as fast as the Calvinist form of Protestantism. In 1620, however, the catastrophic defeat of Frederick V, Elector of the Palatine and so-called 'Winter King', in the battle of the White Mountain brought the spread of Calvinism in central Europe to an abrupt halt.

## FUNDAMENTAL THEOLOGICAL DECISIONS

### Systematizing

In 1577 a work appeared in Geneva under the title *Ethices Christianae libri tres*.<sup>23</sup> Its author was Lambert Daneau, the successor of Théodore de Bèze as professor of theology at the Genevan Academy.<sup>24</sup> The work was partly written in response to the suggestion of Bèze and others who recognized an urgent need for a comprehensive exposition of Christian ethics.<sup>25</sup> Daneau's *Ethices Christianae libri tres* is the first systematic presentation of ethics in early Calvinism—or, indeed, in Protestantism.<sup>26</sup> Here for the first time a

<sup>23</sup> Daneau, *Ethices libri* (1577). On this work, see Strohm (1996) and (1999b), pp. 230–254.

<sup>24</sup> We have little information about Daneau's early life, but see (also for his biography) Félice (1971), especially pp. 1–23; Fatjo (1976), pp. 1–3, and (1981), pp. 105–120, especially 105–107.

<sup>25</sup> Cf. Daneau's comment in a letter to Bonaventura Vulcanius, 10 October 1576: 'Ecce enim, dum quibusdam meas in Legem Dei commentationes communico, tantum precibus suis apud me effecerunt ut Ethicen christianam scriberem tribus libris comprehensam ...', published in: De Vries de Heekelingen (1923), p. 384. See also Daneau to Hieronymus Zanchius, 9 March 1577: 'Ego importunis quorundam precibus adductus disputationem de Ethices praeceptis. Eustachio commisi, quam ad te, ubi reperero qui se hoc onere in mei gratiam velit premi, mittam', published in Zanchius (1613), pp. 72–442, at 419). Cf. also Théodore de Bèze to Josias Simler, 19 September 1575: 'Et certe gaudeo meos collegas Danaeum et Golartium tibi esse amicitia conjunctos, ac te vehementer precor ut illos ad scriptionem quoque cohorteris. Vides enim quam paucos hodie habeamus in recte et solide scribendo exercitatos, quibus tamen nobis opus esse video', published in Meylan (1960–2001), XVI, p. 209.

<sup>26</sup> See Schweizer (1850), p. 23: 'Danaeus ist der erste Protestant, welcher die christliche Ethik als ein besonderes Ganze[s] wissenschaftlich dargestellt hat.' Cf. also Wuttke (1861), p. 187: 'Die wirkliche theologische Ethik der evangelischen Kirche wurde als besondere Wissenschaft zuerst von dem gelehrten Reformirten Danaeus ... in seiner *Ethica christiana* ... ausgeführt.' See also Gass (1886), pp. 117–123; Luthardt (1893), p. 100: 'überhaupt die bedeutendste ethische Arbeit des 16. Jahrhunderts'; Guillot (1896), p. 17: 'Il est l'auteur de la première morale réformée'; Troeltsch (1994), p. 691: 'Begründer der selbständigen calvinistischen Ethik'; Léonard (1982); Sinnema (1993), pp. 10–44, especially 21: 'the first

commentary on Aristotelian ethics, similar to that undertaken by Philipp Melanchthon, is combined with an exegesis of the Decalogue to produce a comprehensive and systematic framework.

Daneau's attempt to offer a systematic account of Christian ethics must be seen in the context of the encyclopedic endeavours which began to be popular towards the end of the sixteenth century.<sup>27</sup> The attempts by Calvinist authors to present all the knowledge of their time, systematically ordered and starting from the centrality of the Word of God, played an important role in this process. Apart from Daneau, Johann Heinrich Alsted particularly deserves to be mentioned in this context.<sup>28</sup>

Besides his Christian ethics, Daneau also published a 'Christian Physics' (initially in 1576),<sup>29</sup> a presentation of Christian dogmatics in several volumes (1583–1588),<sup>30</sup> a 'Christian Politics' (1596)<sup>31</sup> and a 'Geography' (1580),<sup>32</sup> which summarized the knowledge of the known world. True, it was already possible to find an understanding of the importance of the sciences and of the precise presentation of theology in the work of Calvin; but Calvin was primarily an exegete.<sup>33</sup> In comparison to Melanchthon's presentation of different fields of knowledge for use as teaching aids in schools,<sup>34</sup> Daneau's work is characterized by a strong degree of systematization and of methodological rigour. All knowledge was to be measured according to the Word of God and ordered from that vantage point. This project was influenced by the encyclopedic enterprises of the latter third of the sixteenth century, which also arose from the search for order in a world which seemed to have been derailed.<sup>35</sup> As can also be

independent Reformed work of ethics'; Reibstein (1958), p. 308: 'der Systematiker des französischen und internationalen Calvinismus'.

<sup>27</sup> On the development of encyclopedic knowledge, see Diemer (1968); Dierse (1977); Schmidt-Biggemann (1983); Hotson (2000) and (2001).

<sup>28</sup> Cf., in addition to the *Encyclopaedia* of 1630 (n. 15 above), Alsted (1620); see also idem (1626). For Ramist influence on Alsted, see Schmidt-Biggemann (1983), pp. 100–139. On Alsted see also Michel (1969); Klein and Kramer (1988).

<sup>29</sup> Daneau, *Physica* (1576); *Physices pars altera* (1580); *Physique* (1581).

<sup>30</sup> Daneau, *Christianae isagoges* (1583); *Isagoges Christianae pars altera* (1584); *Christianae Isagoges pars quarta* (1584); *Isagoges Christianae pars quarta* (1586) and (1588).

<sup>31</sup> See n. 10 above.

<sup>32</sup> Daneau, *Geographia* (1580).

<sup>33</sup> See Strohm (2001), pp. 310–343, especially 312–314.

<sup>34</sup> Schmidt-Biggemann (1983), p. 82, has rightly rejected Otto Ritschl's derivation of the concept of system from Melanchthon—see Ritschl (1906)—and pointed instead to the Ramist background of this development.

<sup>35</sup> The aim of 'Christian physics' was to demonstrate the God-given, hierarchical order in nature. In 'Christian politics' this order formed the basis for the life of society. 'Christian ethics' aimed to focus the whole of human behaviour, including the innermost urges of the heart, on divine law.

seen in the simplifying classifications of Ramist logic, which developed in close association (both chronologically and in terms of content) with Calvinism, this was an attempt to use a systematic investigation of knowledge in its entirety in order to construct a vision of the endangered order—in other words, to constitute order through meaning.<sup>36</sup>

Daneau's systematic presentation of Christian ethics rests on two pillars: firstly, human beings, born again in the Holy Spirit and thereby constituted as subjects of right action; and, secondly, the law of God. The first book of the *Ethices Christianae libri tres* offers a theory of human action and, based on this, a doctrine of the virtues.<sup>37</sup> The second book consists of an extensive exegesis of the Decalogue, which seeks, by drawing particularly on Roman law, to give concrete examples of each commandment in all spheres of life.<sup>38</sup> The third book attempts to bring together the doctrine of virtue and the exegesis of the Decalogue by relating individual virtues and depravities to various aspects of the Ten Commandments.<sup>39</sup>

### Human beings as subjects of right action through the Holy Spirit

At least in part because of his encounters with the so-called enthusiasts, Luther was generally reluctant to use pneumatological arguments rooted in the theology of the Spirit. In contrast, such arguments played a leading role in Calvinist theology and ethics, beginning with Calvin. Calvinist criticism of both Roman *superstitio* and the imperfect renewal through Lutheran theology (with the exception of Melanchthon, who was generally acquitted of these charges) was at the centre of its confessional identity. Against *superstitio*, understood as a mixing of God and the world, emphasis was placed on the existence of God as Spirit and on God's transcendence.<sup>40</sup> True worship was primarily the spiritual and spirit-filled worship of God.<sup>41</sup>

<sup>36</sup> Cf. Strohm (1999a), pp. 352–371.

<sup>37</sup> See Daneau, *Ethices libri* (1577), ff. 1<sup>r</sup>–125<sup>v</sup>.

<sup>38</sup> *Ibid.*, ff. 126<sup>r</sup>–331<sup>r</sup>.

<sup>39</sup> *Ibid.*, ff. 331<sup>v</sup>–374<sup>r</sup>.

<sup>40</sup> The emphasis on God's nature as Spirit, central to the whole Reformed tradition, found its quintessential expression in the prohibition of images; *Confessio helvetica posterior IV*, in: Müller (1999), pp. 174–5: 'Quoniam vero Deus spiritus est invisibilis et immensa essentia, non potest sane ulla arte aut imagine exprimi, unde non veremur cum scriptura, simulacra Dei, mera nuncupare mendacia. Reicimus itaque non modo gentium idola, sed et Christianorum simulacra.' Cf. also *Genfer Katechismus*, Qu. 145–148; Calvin (1559), I.11f.; II.8.17; IV.9.9; *Heidelberger Katechismus*, Qu. 97f.

<sup>41</sup> Calvin emphasized this even in the first edition of his *Institutio*; Calvin (1536), I, p. 43: 'Primum ergo mandatum, unum esse Deum tradit, praeter quem nulli alii dii cogitandi aut

This emphasis on the theology of the Spirit was made directly relevant to ethics by the stress on being born again in the Spirit of God. The term *regeneratio* already had a central role in Calvin's *Institutio*,<sup>42</sup> for Daneau and for other theologians of early Calvinism, being born again, chiefly the work of the Holy Spirit, was the starting-point of ethics.<sup>43</sup> Being born again was understood as a consequence of the work of the Holy Spirit, but also, recognizing the life-long need for salvation, as a continuing process which touched the whole life of the reborn individual.<sup>44</sup> The Holy Spirit thus became the cause of all good actions; indeed, it was the Holy Spirit which constituted human beings as ethical subjects, that is, as doers of good actions.<sup>45</sup> This solved the problem posed by the radicalizing of the concept of sin within Reformation circles, which had given rise to the belief that human beings were by nature unable to do good deeds. At the same time—and this was a particular characteristic of Daneau's systematic ethics—it enabled the consideration of ancient philosophical discussions of the specific character of human actions in contrast to those of other living

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habendi sint. Istud qualis ipse ille sit, docet, et quo cultus genere honorandus, ne quid illi carnale affingere audeamus, aut ipsum sub nostros sensus subiicere, quasi stolido nostro capite comprehendere possit, aut ulla specie repraesentari. Huc advertant qui execrabilem idololatriam, qua multis antehac saeculis vera religio submersa subversaque fuit, misero praetextu defendere conantur. Imagines, inquit, pro diis non reputantur.'

<sup>42</sup> In the 1559 edition, the last Latin edition of the *Institutio* to appear during his lifetime, Calvin uses the noun 'regeneratio' approximately 70 times.

<sup>43</sup> Cf. Strohm (1996), pp. 446–485.

<sup>44</sup> Daneau, *Ethices libri* (1577), I.14, f. 67<sup>r</sup>: 'Certe ... is modus est duplex, ordinarius nimirum, et extraordinarius.' Ibid.: 'Modus autem extraordinarius, per quem renascimur, est is, in quo hominum ministerium non intervenit: sed est huiusmodi, qualis in Paulo converso, et a Deo ipso vocato describitur, nimirum quum ante externam ullam verbi Dei praedicationem a nobis auditam, iam Christum didicimus, ipso Dei Spiritu per se id agente, et eum nobis revelante, quod quum fit, miraculo non caret vocatio et fides nostra.' To speak of the reborn implies a single act in the past, but throughout their lives believers are dependent on the regenerative work of the Spirit if they are to reach even a partial victory in their struggle against the passions of the flesh; *ibid.* I.23, f. 111<sup>f</sup>: 'Ac quidem quum ea virtus, atque honesta voluntas ita in nobis est, ut cum foeda carnis libidine et cupiditate non tantum luctetur, sed etiam eam vi Spiritus Dei in nobis agentis vincat, et superet, is status animi ἐγκράτεια, quemadmodum antea saepe diximus, appellatur.' All human impulses remain bad if they are not ruled by God; *ibid.*, I.24, f. 123<sup>v</sup>: 'Sunt enim cordis humani infiniti motus, recessus et affectus, qui certo numero omnes colligi non magis possunt, quam arena maris: sed si illi a Spiritu Dei regantur, sunt honesti, et virtutes: sin carnis nostrae sensu ducantur, vitiosi: et vitia sive peccata dicuntur.'

<sup>45</sup> Daneau, *Ethices libri* (1577), I.14, ff. 122<sup>v</sup>–123<sup>f</sup>: 'Principium enim actionum nostrarum honestarum est ... ipse Dei Spiritus nos regenerans, et voluntatem nostram e prorsus mala bonam, beneque affectam efficiens et commutans. Itaque commutati iam bene velle incipimus, et bene consultare. Itaque fit hoc modo etiam homo ipse suarum actionum principium.'



beings. Such arguments now served to describe the actions of those who had been born again in the Spirit.

Calvinism's emphasis on the Spirit and its development of a theology of rebirth meant that it was quicker than the other two confessions to contribute to modern understandings of the subject, which reached their peak a century later in the Pietist theology of rebirth. Early Calvinism's emphasis on the Spirit also provided the grounds for Max Weber's focus on the Calvinist tendency towards inner-worldly asceticism.<sup>46</sup> Luther had already provided the essential impetus in this direction by his marked differentiation of the two regiments and his development of a work ethic. The Calvinist struggle against superstition and its emphasis on the transcendence of God, however, reinforced an understanding of the world as merely the raw material of human actions.

### **The law of God as the starting-point for ethics**

The second starting-point of Calvinist ethics, as set out in the second book of Daneau's *Ethices Christianae libri tres*, was the law of God, summarized in the Decalogue. In his belief that the *usus legis in renatis* ('the use of the law in those who have been born again') was the most important task of the law, Calvin diverged from Luther.<sup>47</sup> Luther had seen the primary purpose of the law as its demonstration of human sinfulness, which was a necessary preliminary to hearing the Gospel. He paid little attention to the role of the law in the life of those who had been born again, for fear that this could come to be understood as necessary for salvation. Early Calvinism, by contrast, unhindered by such theological scruples, referred to a multiplicity of biblical examples which supported the development of ethics. In this way, Daneau derived a comprehensive material ethics from his exegesis of the Decalogue. He was helped not only by a wide range of biblical texts but also by the propositions of Roman law. For example, his explication of the commandment against stealing ranged from a condemnation of the watering down of wine, through questions of legal contracts, to the ethical problems of so-called 'sea usury' (*foenus nauticum*), a theme which, on account of the high risks involved and hence high interest rates, had been particularly controversial in Roman law.<sup>48</sup>

Daneau's exegesis of law is characterized not only by its focus on the regimentation of external actions, but also by the endeavour to radicalize the claim of law to include the obedience of the heart. The Decalogue is

<sup>46</sup> Cf. Weber (1991), pp. 115–165.

<sup>47</sup> As already expressed in the *Institutio* of 1539, III, CO 1, col. 433.

<sup>48</sup> See Daneau, *Ethices libri* (1577), II.15, ff. 248<sup>r</sup>–271<sup>v</sup>, especially 266<sup>v</sup>.

understood as a spiritual law, as it is in the Sermon on the Mount, and its call for obedience extends to the deepest instincts of the heart. Daneau sees the commandment against covetousness<sup>49</sup> as a sort of summary of the Decalogue and of the whole of divine law.<sup>50</sup> This double focus on the detailed regimentation of external action and on the innermost instincts of the heart gave to Calvinist ethics its particular severity.

### **The life of the creature should increase the glory of the Creator**

In Max Weber's understanding of Calvinism, the *syllogismus practicus*, that is, the search for visible proof of one's own election through the attainment of prosperity, was a decisive element in determining action.<sup>51</sup> The *syllogismus practicus*, however, plays no part in Daneau's *Ethices Christianae libri tres*. Instead, he portrays human beings as have been created so that they might increase the glory of the Creator, and he teaches

<sup>49</sup> Cf. *ibid.*, II.17, ff. 302<sup>v</sup>–312<sup>v</sup>.

<sup>50</sup> *Ibid.*, f. 307<sup>r</sup>: 'Est enim in tota hac Lege decimum et ultimum, et ordine et iure.' The commandment against covetousness had particular value and played a special role because it focused on the hidden depths of the human heart and thus, with Romans 7:7, gave rise to knowledge of the fact of sin; *ibid.*, f. 303<sup>r</sup>: 'Quanta sit huius Legis divinae prae omnibus aliis legibus dignitas et praestantia, sive eae politicae sint, sive naturales et philosophicae. Id quod optime ex hoc praecepto intelligemus, quanquam numero decimum, et in tota hac lege ultimum est. Eo igitur pertingit haec Lex, ut abdita cordis humani scrutetur, et pravus illius cogitationes et concupiscentias damnet. Id quod certe alia nulla Lex praeter hanc unam facit aut sancit. Itaque ait Paulus Roman. 7. versu. 7. non nossem Concupiscentiam esse peccatum, nisi Lex dixisset, *Non concupisces*.' Daneau gives three further reasons for placing the commandment against covetousness at the end of the Decalogue. First, it makes sense to move from what is known to what is unknown; *ibid.*, f. 307<sup>r</sup>: 'Est autem hoc peccati genus, quod in concupiscentiis versatur, ignotius vulgo iis, de quibus supra dictum est, [d est], homicidio, furto, adulterio.' Secondly, a movement from more serious and obviously wrong crimes to hidden and more subtle sins makes it easier for us to be freed from them; *ibid.*, f. 307<sup>r-v</sup>: 'Secundum, quod postquam lex ea peccata exposuit, quae in factis vel certa constitutaque voluntate versantur, nunc de iis agit, quae solae concupiscentiae dicuntur, ut ordine a turpioribus gravioribusque vitiis incipientes ad obscuriora et magis tecta bene vivendo perveniamus, nosque ita facilius expurgemus.' Finally, placing the commandment against covetousness at the end expresses the status of the Decalogue as a spiritual law laid down by a spiritual lawgiver; *ibid.* f. 307<sup>v</sup>: 'Prima ducta est ab ipsius legislatoris natura, est autem Deus, qui cum sit Spiritus, similem sui legem dedit, nimirum spiritalem, id est, quae ad intima usque humani cordis penetraret, eaque perscrutaretur, et tractaret: non ea tantum, quae oculis, aut humano iudicio damnantur, et perspici possunt. Itaque haec Lex dicitur spiritalis. Roman. 7. vers. 14.'

<sup>51</sup> See especially Weber 1991, 332–337; of the extensive literature on this theme, see recently: Schellong (1995), pp. 74–101; Lehmann (1996).

that the Creator had a right to this.<sup>52</sup> This—alongside his understanding of rebirth in the Holy Spirit and his concept of law as unbroken by the dialectic of Law and Gospel—forms the foundation of his ethics.<sup>53</sup>

As Ernst Troeltsch rightly recognized in his discussion of Calvin,<sup>54</sup> this intentional orientation of all human action towards the *gloria Dei* was an important driving force in the ethics of early Calvinism. The whole of life

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<sup>52</sup> God's legal claim to the lives of human beings is fulfilled when one worships him and when one contributes to the furtherance of his glory. Daneau argues this primarily on the basis of the theology of creation; Daneau, *Ethices libri* (1577), I.17, ff. 84<sup>v</sup>–85<sup>r</sup>: 'Est autem hic actionum nostrarum non tantum universarum, id est, totius vitae nostrae, sed etiam singularum, id est, cuiusque in ea operis nostri finis summus sive summum bonum, sola Dei veri, vivi, immortalis, aeterni, et rerum omnium, quae conditae sunt, conduntur, et condentur, creatoris et sustentatoris laus et gloria, quae a nobis ipsa per se et propter se expetenda et spectanda est. Quare et omnia et singula opera nostra debent ad solam unius illius veri Dei, et in sacro verbo patefacti gloriam a nobis referri, si illa bona, honesta, sancta, et legitime ad suum scopum collimantia esse volumus'; cf. also the thought that at the Last Judgement a person's life will be judged according to what he or she has contributed to the glory of God: Daneau (1588), III.6, f. 105<sup>r</sup>. The Creator has the right to interfere, unhindered, in the lives of his creatures; Daneau, *Ethices libri* (1577), I.17, f. 85<sup>r</sup> (referring to Col. 1:16; Acts 17:28): 'Nam uti a Deo condita sunt omnia, uti ab eo sumus, et movemur in singulis actionibus omnes, ita illius causa, et ad ipsius gloriam conditi sumus, et moveri atque agere debemus.' This is true for all people without exception; *ibid.*: 'Atque eo pertinet quod omnes hominum ordines, omnis sexus, aetas ad Deum laudandum invitatur.' The aim of the creation of human beings, in whom the treasure of divine righteousness and mercy is most richly manifested, is the increase of the *gloria Dei*; cf. Daneau (1588), II.2, f. 24 [*recte* 32]<sup>v</sup>). *Ibid.*, f. 31<sup>v</sup>: 'Homo Deum opificem suum agnoscere debuit et colere praeter quam qui domus ad Dei gloriam creata sunt ... Ergo ad Dei gloriam Homo conditus fuerit, necesse est.' *Ibid.*, f. 24 [*recte* 32]<sup>v</sup>: 'Caeterum quae primi Hominis creandi causa fuit, eadem quoque caeterorum etiam nunc procreandorum ratio est, et a nobis statui debet, ut nos ad unius Dei gloriam nasci gignique intelligamus.' See also his severe criticism of idolatry, based on the decreasing of the *gloria Dei*: in Daneau, *Ethices libri* (1577), II.8, f. 142<sup>r</sup>. The Church was created for the particular purpose of increasing the *gloria Dei*, since after the Fall this was not otherwise possible; Daneau (1588), II.2, f. 31<sup>v</sup>: '... Hodie tamen, et post corruptum hominem Ecclesia dicitur esse populus praecipue a Deo ad suam gloriam conditus.' For the focus on the increase of the glory and praise of God as a *leitmotiv* in Calvin's ethics, see Leith (1989); for the legal background and the implications of Calvin's concentration on the majesty and sovereignty of God, see Beyerhaus (1910), pp. 52–129; Bohatec (1950), p. 326; Baur (1965), pp. 7–24; Lecercf (1929), pp. 256–270, especially 258f.; Le Gal (1984), pp. 73–76.

<sup>53</sup> Daneau adopted, for instance, the belief found in the works of Pseudo-Cyprian, which he had translated, that games of chance were idol worship and an offence against the glory of God because they encouraged players to trust in luck rather than in God. The devil introduced games of chance into the world in order to destroy the order of the world: Pseudo-Cyprian, *De aleatoribus* VIII, CSEL 3 III,100, ll. 12–20; *De aleatoribus* IX, CSEL 3 III,102, l. 2f.; Daneau, *Deux traittez de S. C. Cyprian* (1566) and (1574). The unbreakable connection between idolatry and disorder, or the decline of morals and authority, was an important factor even in his earliest published work, a translation of Tertullian's *De idololatria*. It shaped his entire *oeuvre*; cf., for instance, Daneau, *Traite de Florent Tertullian* (1565).

<sup>54</sup> See Troeltsch (1994), p. 622.

was to be oriented towards the one decisive aim of increasing the glory of God, and this had consequences for all areas of human life. Apart from its effects on material ethics, this focus on one, comprehensive aim led to a sharpening of the claims on human beings. Every action must be done in such a way as to serve the larger goal, which was the only reason for the existence of creation and of human life.<sup>55</sup>

## CALVINIST ETHICS AND HUMANIST LAW

The conviction that human beings were created in order to increase the glory of the Creator and that the Creator had a right to this response indicates the juridical background of Calvinist ethics. A significant majority of early Calvinist authors had spent their formative years engaged in the study of humanist law.<sup>56</sup> Daneau, who studied in Orleans and Bourges, centres of humanist jurisprudence, from 1553 until 1559 and who was became a Doctor of Law, is a typical example. His later theological works show clear indications of this early training.

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<sup>55</sup> Daneau formulated this connection clearly in his discussion of gambling. We will be expected to justify not only our life as a whole, but each action in every moment; Daneau, *De ludae aleae* (1579), I, col. 215a: 'Atque ut, unde tota res altissime potest accessi, ordiamur ex eo loco, ex quo commodissime debet, quaerunt et viri quidem graves, utrum homini pio et Christiano sit ullo modo concedendum, ut aliquo ludi genere sese recreet. Neque vero, cum de eo disputant, carere ratione prorsus videntur. Afferunt enim haec, primum, Reddendam esse Deo rationem a nobis non solum de hac universa vita: sed etiam de singulis ipsius vitae nostrae actionibus et momentis.' The question of whether one was allowed to spend time playing futile games which produced no result had to be answered in light of the fundamental decision to dedicate one's life to increasing the *gloria Dei*; *ibid.*, referring to 1 Cor 10:31: 'Nam quaecumque facimus, ita debemus agere, ut in ipsius Dei gloriam ... fiant. Cum autem ludendo tempus vitamque terimus, illudne obsecro a nobis in Dei gloriam intuentibus agi dici potest?' From there, once he had again emphasized the creation of human beings for the glory of God (*ibid.*, col. 216a), Daneau was able to come to a limited justification of playing such games as a way of improving the health of both body and soul, which was necessary in order to work effectively towards the increase of the *gloria Dei*; *ibid.*: 'Nec enim Dei gloriam non spectasse dicendus est is, qui cum se oblectat, id agit, ut integris viribus maiorique postea et animi et corporis contentione redeat ad illud summunus, ad quod a Deo ipso vocatus est, inserviatque et Reipub[licae] et familiae commodius, quia firmiori corporis valetudine utitur.' Directing one's entire existence—individual acts in every area of life—towards this aim was indicative of a move to a comprehensive understanding of discipline.

<sup>56</sup> For more detail (including references and literature) see Strohm (1996), pp. 219–225; cf. also Bonet-Maury (1889), pp. 86–95, 322–330, 490–497. For Calvin's legal training and its consequences for his theology, see Beyerhaus (1910), pp. 26–84; Hall (1966), pp. 202–216; Le Gal (1984), pp. 66–76; Reid (1992), pp. 57–72; Monheit (1988), pp. 106–210; Millet (1992), pp. 43–55.

Daneau's compendium of Christian theology appeared in 1595, the year of his death. This work closes not with eschatology, but rather with a section discussing the correct worship of God,<sup>57</sup> which ends with a warning against idolatry, supported by texts from Roman law.<sup>58</sup> It was no coincidence that he chose to conclude his summary of Christian doctrine with this topic, which had also provided the starting-point of his theological work: his first publication after his move from law to theology had been a translation of Tertullian's *De idololatria*.<sup>59</sup> Here the rigid classification of the various situations in daily life in which Christians might find themselves confronted by the danger of idolatry clearly suited the former lawyer.<sup>60</sup> His concentration on questions concerning the correct veneration of God grew out of his legal interests, while his understanding of this veneration (worship) as *spiritual* was part of Daneau's humanist heritage.

For Daneau, the Bible was an absolutely essential charter of divine, as distinct from human, law, the latter having reached its ideal formulation in Roman law. In contrast to Calvin, the character of Holy Scripture as a

<sup>57</sup> See Daneau (1595), book VI, ff. 148<sup>r</sup>–156<sup>v</sup>.

<sup>58</sup> Cf. the chapter 'De idololatria quae vero Dei cultui adversatur': *ibid.* VI.5, ff. 155<sup>v</sup>–156<sup>v</sup>. Not only human behaviour, but also aspects of the search for theological knowledge, must be directed towards the proper service of God; *ibid.* VI.1, f. 148<sup>r</sup>: 'Q. *Cur hanc* tractationem superioribus omnibus subjicis? R. Quoniam totius superioris Dei cognitionis verissimus finis et scopus est Deum verum vere colere, Luc. 12. v. 47. Ioan. 17. v. 3. 1. Ioan. 2. v. 3. 4. idcirco haec de vero Dei cultu disputatio superiori prorsus est subnectenda'; see also *ibid.* I.1, f. 3<sup>r</sup>. The reference to Tertullian (*ibid.*, VI.5, f. 155<sup>v</sup>) indicates the influence of Roman juridical religion, but Daneau also makes this background to his theological thought explicit. The section closes with a discussion of the law 'Iulia maiestatis'. This ancient Roman law, preserved in the Digest and in the Codex Iustinianus (see *Cod. [Corpus iuris civilis]*, II] 9.8; *Dig. [ibid.]*, I] 48.4), does not allow any confusion between true service or worship of God and the service of idols or false gods. *Ibid.* VI.5, f. 156<sup>v</sup> (referring to *Dig. [Corpus iuris civilis]*, I] 48.4.4.1 and *Dig. [ibid.]* 48.4.6): 'Nam quod aiunt nonnulli honorem, qui imagini mortuae tribuitur, redundare in prototypum ipsum vivum, falsum est, quum ea quae sunt prototypo tribuenda, et illi propria, imagini eius tribui non possint: sed toto genere imago mortua, et Prototypum vivum differunt. Et quid excipitur, qui principis statuam violat, principem ipsum violat, eatenus est verum, quatenus lex humana interpretatur, id fieri in contemptum principis ipsius, quum imago violatur. Sic lege Iulia Majestatis ab Ethnicis damnatur, qui in contemptae imperatoris in illius imaginem lapides iactarit: sed in his imaginibus id cessat. Nunquam autem vel ab ipsis adeo Ethnicis praeceptum fuit, ut quisquam coram effigie Imperatoris transiens, aut iuxta eam sedens caput aperiret, illam salutaret et foveret. At Dei lex execratur huiusmodi in imagine cultum Numinis.' Further clear references to Roman law can be found in Daneau (1595), III.12, f. 66<sup>r</sup>; *ibid.* III.13, f. 70<sup>r</sup>; *ibid.* IV.4, f. 87<sup>r</sup>.

<sup>59</sup> See n. 53 above.

<sup>60</sup> Daneau wrote this work not only from the perspective of a servant of the Word of God, but also from that of a Doctor of Law. After his move to theology, he did not stop thinking of himself as a lawyer. Even after he became a pastor in the Reformed Church in 1562, he continued to try to publish the commentaries on civil law which he had written before his appointment: see Daneau to Pierre Daniel, 7 March 1565, published in Félice (1971), p. 274.

witness to God's salvific role for his people rather sinks into the background. The first biblical book on which Daneau wrote a commentary was 1 Timothy.<sup>61</sup> He interpreted this epistle as a collection of those propositions of ecclesiastical law which are essential for the external, legal order of the Church. His description of how Tertullian, known in the early church as a lawyer, became a theologian is also telling: with a clearly autobiographical slant, Daneau presents Tertullian as having moved from the study of Roman civil law—that is, human law—to the study of divine law, in which he made soon good progress.<sup>62</sup>

Daneau's six years of training in Roman law taught him a particular approach to legal and legislative texts which also shaped his biblical exegesis. He was particularly interested in those aspects of texts which regulated life or which had ethical dimensions. In his *Methodus Sacrae Scripturae tractandae*, a treatise on the method of interpreting the Bible, he followed contemporary legal hermeneutics in distinguishing three approaches to the text.<sup>63</sup> In addition to explaining rhetorical figures and the structure of the argument, it was necessary to inquire into the *locus theologicus* of a biblical text. Fundamental to this question was the content of the text as a promise of salvation; but Daneau also focused on its implications for the improvement of morals.<sup>64</sup> This tended to blur the

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<sup>61</sup> See n. 14 above.

<sup>62</sup> Daneau, *Augustini de haeresibus* (1576), f. 206<sup>v</sup>: 'Tertullianus quis fuerit, notius est ex Hieronymo, Augustino, Historia ecclesiastica, et ipsius adeo Tertulliani scriptis, doctisque in ea Beati Rhenani commentarijs, quam ut explicari debeat. Carthaginensis fuit, Patre proconsulari et centurione natus, iuris civilis studijs primum addictus, in iisque clarus habitus, quemadmodum etiam Euseb. lib. 2. Histor. cap. 2. tradit, quando etiam hodie in corpore Pandectarum a Triboniano ex diversis Iurisconsultis collectarum extant quaedam scriptorum et responsorum Tertulliani fragmenta docta et erudita. Sed ex perpetuo ipsius stylo et dicendi genere summum fuisse Iurisconsultum apparet.' See Eusebius, *Hist. eccl.* II.2.4, SC 31.53.

<sup>63</sup> Daneau, *Methodus* (1579), p. 12: 'Haec fere mea est ratio et methodus ... . Tribus igitur locis, iisque solis uti consuevi, quibus omnia superiora facile et breviter complector. Hi autem loci sic a me nominantur, Locus Rhetoricus, Locus Dialecticus, Locus Theologicus: quos tres, quantum quidem fas est, atque suscepta materia patitur, etiam in cuiusque sacri versiculi tractatione censeo adhibendos atque coniungendos.' In his work of 'juridical hermeneutics', *Iurisconsultus, sive de optimo genere iuris interpretandi*, p. 60, the lawyer François Hotman, of whom Daneau had a high opinion, also distinguishes three approaches to the text: 'Triplicem omnino Iuris interpretandi rationem invenio: quarum prima Grammaticorum, altera Dialecticorum, tertia Iurisconsultorum propria est.'

<sup>64</sup> In the *locus theologicus*, the contrast between the reborn and those who are not reborn is most apparent in the reminder that dimensions of the text which focus on the reform of life and the improvement of morals must be emphasized; Daneau, *Methodus* (1579), p. 33: 'Atque hic locus in exho[r]tationibus ad bene vivendum occurrit frequentissime, estque imprimis necessarius.' In the course of the final stage of exegesis, that is, in the clarification of the situation about which the Scriptures speak, particular attention should also be paid to the errors of the Church and the decline of human morals; *ibid.*, p. 33f: 'Quod si ad thesin

distinction between the *locus theologicus* and the third approach used in legal hermeneutics: the legal question of what a text said about the good or the just, or what it might contribute to attaining *aequitas*.<sup>65</sup>

The extent to which Daneau's legal training influenced his biblical interpretation is even more apparent in his *Ethices Christianae libri tres* of 1577. To cite just one example, his detailed exegesis of each of the Ten Commandments is partly structured around an ancient principle drawn from Roman law. The *Institutiones*, part of the Justinian codification and the most important legal teaching resource in the late Middle Ages, are organized according to a scheme based on a particular definition of law: 'Omne autem ius, quo utimur, vel ad personas pertinet vel ad res vel ad actiones.'<sup>66</sup> With certain modifications, this principle also defines the exegesis of prescriptions and prohibitions which makes up the largest part of Daneau's material ethics: the laws against killing, adultery, theft and

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extendi doctrina poterit, colligendum erit ex loco a te suscepto et tractato πόρισμα i. corollarium generale, quod pro ratione et usu Ecclesiae persequendum erit, id est, quantum vel dissoluti hominum mores, vel iam nascentes in Dei Ecclesia errores, id fieri postulant atque patiuntur.' In addition, Daneau includes in his guidelines for exegesis two 'commandments', one of which requires that the moral meaning of the text be adequately considered. Those who have the responsibility for exegesis and preaching should take particular care that the individual aspects of their teaching are accompanied by living reminders of how the people might change their lives; *ibid.*, p. 33f.: 'Addenda tamen duo quaedam restant, in quibus debet esse peculiaris Pastorum concionantium cura et cogitatio. Ac primum quidem ut vivas exhortationes ad singulas suae doctrinae partes adiungant, ut non tantum sana doctrina ab illis pie tradatur: sed ad eius praxin homines commoveantur. Sic enim et vitae turpitudine corrigetur, et Deus pie coletur, et charitas Christiana vigeat, id est, temperanter, pie et iuste a Christianis vivetur, ut ait Paulus [Tit. 2:12], quae est summa omnium exhortationum, quae fiunt a piis pastoribus. Atque haec ex variis exhortationum locis, qui passim in Prophetarum concionibus occurrunt, (si modo Pastores recte et diligenter eos notauerint) illi consequentur.' Daneau's second consideration of the fundamentals of hermeneutics, his *Brevis methodus totius S. Scripturae interpretandae*, appears at the beginning of his commentary on Matthew's Gospel, *In Evangelium Domini nostri Iesu Christi secundum Matthaenum commentarii brevissimi, in quibus tamen et doctrina, et methodus huius Evangelii, itemque aliorum in eodem argumento, perspicue traditur et explicatur*. It shows the same dominance of ethical interests in exegesis (see especially *ibid.*, pp. 5–7). For this theme see also Fatio (1976), p. 73: 'On notera qu'ici aussi le but ultime de l'exégèse est la prédication morale.'

<sup>65</sup> Cf. Hotman (1559), pp. 89–126. Because Hotman understands jurisprudence to be a part of moral philosophy, the boundaries between such exegesis of law and the moral formation of life are fluid; *ibid.*, p. 12f.: 'Moralem [philosophiam], quae revera hoc erat digna nomine, hoc est, non ad vanas quasdam et inanes verborum conversationes, sed ad mores et actionem usumque pertinebat, singulari quodam studio a Romanis excultam fuisse, vel hinc licet intelligatur, quod in Iure civili praeclare et sapienter instituendo tantopere elaboravit. Praeclare namque Ulpianus, Iurisconsultos ait veram, ac non fucatam philosophiam amplexos esse.'

<sup>66</sup> *Inst. [Corpus iuris civilis, I] 1.2.12*. For the structural scheme see also Troje (1969), pp. 63–88, especially 73–77, 82f.

speaking falsehoods. Further classifications—for instance, different people or groups of people, such as men and women,<sup>67</sup> the sane, the mentally ill, or children,<sup>68</sup> persons *sui iuris* and persons *alieni iuris*, such as slaves, sons and wives,<sup>69</sup> or private persons and office holders—are entirely derived from Roman law. Daneau refers to the individual cases cited in the *Corpus iuris civilis* as examples of a wide range of concrete applications of Roman law. After the Bible, the *Corpus iuris civilis* is the source most frequently quoted by Daneau in his discussion of Christian ethics. In general, however, the proverbial humanist *Moralismus*, which led humanists to regard jurisprudence as a part of moral philosophy, was also present in Calvinist ethics.<sup>70</sup>

### THE INFLUENCE OF NEOSTOICISM ON ARISTOTELIAN ETHICS

The final third of the sixteenth century exhibited a further development characteristic of Calvinist ethics, in contrast to the Lutheran and Tridentine Catholic ethics. This was the use of philosophical arguments, in particular of Stoic ideas transmitted by Cicero, to complement the reigning reception of Aristotelian thought. For Daneau, Aristotle was and remained the single most important ethical thinker, despite his ignorance of human sin, shared by all pagan philosophers. After the Bible and the *corpus iuris civilis*, Aristotle's *Nicomachean Ethics* and Cicero's *De officiis* are the most frequently cited sources in Daneau's *Ethices Christianae libri tres*. Aristotelian philosophy both offered a comprehensive theory of human behaviour and action in contrast to that of other living beings, and defined the framework within which questions of the goal of good actions and of the *summum bonum*, the supreme good, could be considered. This background accounts for the particular power of the appeal to Stoic tradition which is found in the work not only of Daneau but also of many of

<sup>67</sup> Daneau, *Ethices libri* (1577), II.13, f. 201<sup>v</sup>: 'Ac personarum quidem ad quas pertinet hoc praeceptum, aliae sunt Mares, aliae sunt Foeminae. Utrique vetantur occidere. Ratione enim sexus non excusantur.'

<sup>68</sup> Ibid.: 'Item hominum, alij sunt Sanae mentis, alij sunt Furiosi, et Infantes, qui nondum capaces sunt rationis. Infans et furiosus non tenetur, nisi per dilucida intervalla necauerit, quia rationis iudicio caret. l. 12. D. Ad l. Cornel. de Sicar. [*Dig. (Corpus iuris civilis)*, I] 48.8.12.'

<sup>69</sup> Ibid.: 'Praetera hominum alij sunt Sui iuris, alij Alieni, ut Servus, Filius, Uxor. Sunt enim hi in potestate domini, patris et mariti.'

<sup>70</sup> See Mortari (1956), pp. 17–38; Kisch (1972), pp. 34, 53–54; Burmeister (1974), p. 192–3; Troje (1977), pp. 615–795; Strohm (1996), pp. 204–5, 236–252 and, for the continuing influence of humanist moralism in Daneau's work, 21–78.



his contemporaries. As with the ethics of the early Church, the reception of Stoic thought expressed itself in the form of a strict asceticism. Both the life of the individual and that of the state were shaped by the struggle to allow reason to triumph over the dangerous emotions. Order, discipline and reason determined the success of all of human life. Daneau follows Cicero's criticism of Aristotle's belief that the soul is necessarily affected by the passions and that, therefore, only a moderate measure of reason can be expected.<sup>71</sup> According to Cicero, and with him Daneau, it is not possible here to speak of moderation, for such moderation is, in reality, disobedience to reason and thus depravity. To speak of a moderate response is to make the same mistake as a person who falls off a cliff and believes himself or herself able to halt his fall in mid-air.<sup>72</sup> For Daneau, as for Cicero, passions are dangerous as soon as they arise, for even the weakest passion represents the loss of a degree of reason.<sup>73</sup>

Although Daneau sought to distance himself both from a sweeping condemnation of all emotions and from the Stoic ideal of apathy, the emotions still received the same verdict as the passions.<sup>74</sup> The question of the extent to which their power had been broken came to be the criterion for measuring the level of virtue. In his discussions of the specific situations and concrete examples of Christian ethics, Daneau therefore includes much of the negative attitude towards emotions found in Stoic moral philosophy. An example of this is his repeated affirmation of the rigorous sexual ethics of the Roman Stoic Musonius, to whom he refers in preference to Plato, Aristotle and other ancient philosophers.<sup>75</sup>

Daneau's use of the fundamental Stoic opposition between reason, order and discipline, on the one hand, and emotions, passions and chaos, on the other, was made possible by two fundamental decisions. Firstly, the Pauline opposition of *pneuma* and *sarx*, spirit and flesh, is partly identified with the opposition of reason and passion. And secondly, reason and the

<sup>71</sup> Cicero, *Tusc. disp.* IV.20.46 : 'Haec tamen ita disputant, ut resecanda esse fateantur, evelli penitus dicant nec posse nec opus esse, et in omnibus fere rebus mediocritatem esse optimam existiment'; cf. Daneau, *Ethices libri* (1577), I.9, ff. 97<sup>v</sup>-98<sup>r</sup>.

<sup>72</sup> See Cicero, *Tusc. disp.* IV.17.39 and IV.18.41.

<sup>73</sup> Cicero takes up Zeno's definition of the passions against Aristotle and the Peripatetics. According to this Stoic view, the passions are movements of a spirit which has turned away from reason and opposes nature, or, in short, an overly vehement attraction, that is, one which goes beyond the reasonableness of nature; *ibid.*, IV.21.47: 'Definitio perturbationis, qua recte Zenonem usum puto. Ita enim definit, ut perturbatio sit aversa a ratione contra naturam animi commotio, vel brevius, ut perturbatio sit adpetitus vehementior, vehementior autem intellegatur is, qui procul absit a naturae constantia'; cf. *ibid.*, IV.18.42.

<sup>74</sup> See Daneau, *Ethices libri* (1577), I.15, f. 69<sup>r</sup>; *ibid.*, II.15, f. 268<sup>r</sup>; *ibid.*, III.7, f. 373<sup>v</sup>; cf. also *idem* (1588), I.11, f. 15<sup>v</sup>; *ibid.*, II.7, f. 40<sup>r-v</sup>; *ibid.*, II.13, f. 50<sup>r</sup>; *idem* (1595), III.2, f. 38<sup>r</sup>; *ibid.*, ff. 42<sup>v</sup> and 43<sup>r</sup>.

<sup>75</sup> Cf. Daneau, *Ethices libri* (1577), II.14, ff. 233<sup>v</sup>, 235<sup>r</sup>, 237<sup>r</sup>.

law of God were regarded as interchangeable when dealing with the emotions and passions. Obedience to the law of God was thus seen as essentially equivalent to the assertion of reason over and against the passions. It became one of the primary aims of Christian ethics to implement discipline and order according to this understanding.<sup>76</sup>

This model is closer to Stoic than to Aristotelian ethics; for, given Daneau's understanding that God's law required perfect obedience, he could not but view Aristotle's ideal of moderation and the golden mean as insufficient. In the context of the biblical doctrine of creation, he does speak of the moderation of certain emotions, but the emphasis is always on the struggle to overcome or extinguish the passions. The detailed systematic structure he learned from Aristotle offered him a framework within which the pugnacious spirit of the Stoa could be expressed in terms of a comprehensive system of discipline.

The increased attractiveness of Stoic ethical traditions to which Daneau's *Ethices Christianae libri tres* bears witness is representative of the Calvinism of the time. Also representative is the dominance of Neostoicism in Daneau's later political ethics, the *Politices Christianae libri septem* of 1596.<sup>77</sup> Aristotle was no longer understood to be the single most important ethical theoretician. In an age of rapid change, widely experienced as profound crisis, Aristotelian ethics, focused as it was on the *polis*, could no longer be regarded as adequate. The appeal of Stoic philosophy was not only strengthened by its recommendation of withdrawal from an external world shaken by crisis to a safe inner world. It was also particularly well suited to the epoch because it was a philosophy of crisis, which after the end of the order of the ancient *polis* could argue from a higher cosmic order. In contrast to Aristotelian ethics, trapped in the world of the ancient *polis*, Stoic ethics had turned decisively towards an ethics of the individual. Moreover, its leading theme of the rule of reason over dangerous emotions offered a useful model for reaching both inner peace of the soul and political stability.<sup>78</sup>

<sup>76</sup> As a Reformed theologian, Daneau understood the rule of sin, which was expressed in terms of the clouding of human reason and the human will's total lack of freedom to do good. He attempted to deal with the problems which this presented for understanding reason as the measure of good actions—or, indeed, for the development of a Christian ethics—by his fundamental choice of approach (see §2.2 above). The active subject of reasonable knowledge and of good actions was the human being who had been reborn through the work of the Spirit. According to the Pauline opposition of spirit and flesh, the Spirit becomes the true and final opponent of the passions and lusts of the flesh.

<sup>77</sup> For bibliographical details see n. 10 above. For the dominance of Neostoicism, see Strohm (1996), pp. 166–194.

<sup>78</sup> Günter Abel has pointed to the relationship between the renaissance of the Stoa, or the spread of Neostoicism, and the experience of crisis. See especially Abel (1978), p. 2f.: 'Mit Lipsius kommt es zu einer bewußten Erneuerung besonders des römischen Stoizismus im

## CONCLUSION

It was decisive for the character of early Calvinist ethics that it did not begin to be formed until the second half of the sixteenth century. For this reason, it was more deeply anchored in the *Zeitgeist* of the end of the century than the ethics of the other confessions, which were more closely bound up with tradition. This difference manifested itself in four ways. In the first place, there was the orientation of Calvinist ethics towards a God-given order in church and society, a reaction to the radical changes to traditional structures of authority which were widely experienced as a crisis. Secondly, it could be seen in the relationship of this ethical approach to the encyclopedic endeavours and methods which found particular expression in the rapid spread of Ramism. Thirdly, this approach to ethics was characterized by its close relationship to the milieu of humanist jurisprudence, from which was drawn the ‘new élite’ of legal thinkers, trained in Roman law, which in the course of the establishment of the early modern territorial state would take the place of the clergy. Fourthly, the particularity of this tradition was expressed in its broad reception of Neostoic thought, which sought to react to the crisis of change in Western Europe with rationalization, internalization and the strengthening of the authority of the state. This was the basis of the ‘modernity’ of Calvinism and also of its astonishing appeal during the decades which followed.

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Interesse einer die Sicherung des Individuums voraussetzenden Verwirklichung des Ideals der Apathie und Ataraxie angesichts der Leben und Existenz des einzelnen Menschen bedrohenden Situation der Bürgerkriege, des Ordnungsschwundes, der Krise.’ Abel has, therefore, rightly criticized the accounts by Dilthey and Cassirer of the renaissance of Stoicism in the early modern period on the grounds that they focused exclusively on the emancipatory dimension, which they valued very highly. They therefore concentrated on the contribution to the modern autonomy of human beings made by the Stoic focus on nature, its anthropocentrism and the participation of human reason in the universal *Logos*. Against this trend, it must also be recognized, however, that, in the face of the contemporary experience of crisis, the call for discipline and order—indeed, the entire tendency of Neostoicism towards order and discipline, which always favoured norm over drive when the two came into conflict—was just as important (see *ibid.*, p. 15f.). Cf. also Strohm (2000), pp. 190–194 (further literature is cited there).

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*ne doit voir ni assister à aucuns ieux de battelage, ni aux spectacles publics. Plvs vne epistre du mesme autheur touchant ce mesme argument, s. l. [La Rochelle].*

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- (1581) *Physiqve francoise, comprenant en treize liures ou traittez, assauoir l'vn d'Aristote, onze de Basile, et vn de Iehan Damascene, le discours des choses naturelles tant celestes, que terrestres, selon que les philosophes les ont descrites, et les plus anciens Peres ou Docteurs Chrestiens, les ont puis apres considerees, et*

*mieux rapportées à leur vrai but. Le tout nouvellement traduit de grec en françois par Lambert Daneav. Plus deux cartes, l'une contenant la description du ciel: l'autre de la terre, s. l. [Geneva].*

- (1583) *Christianae isagoges ad Christianorum theologorum locos communes, libri II, cum praefatione Theodori Bezae, s. l. [Geneva] (2nd ed. Geneva, 1588).*
- (1583) *In Evangelium Domini nostri Iesu Christi secundum Matthaeum commentarii brevissimi, in quibus tamen et doctrina, et methodus huius Evangelii, itemque aliorum in eodem argumento, perspicue traditur et explicatur, s. l. [Geneva].*
- (1584) *Christianae isagoges pars quarta, quae est De Ecclesia, eiusque legitima administratione, ac potestate: ut et vera ecclesia agnosci: et ex Dei verbo regi possit. Denique hic, quae de praefectorum ecclesiae legitima vocatione, disciplinae ecclesiasticae veteri forma, et usu: excommunicatione, caeterisque huiusmodi rebus hodie tam anxie quaeri solent copiose tractantur, s. l. [Geneva] (2nd ed. 1587).*
- (1584) *Isagoges Christianae pars altera seu secunda, in qua de angelis tum bonis, tum malis, ac daemonibus agitur, caeteraque tractantur, quae in hoc argumento quaeri, ac disputari a Christianis, atque etiam ethnicis scriptoribus solent, Geneva (2nd ed. 1587; 1588).*
- (1586) *Isagoges Christianae pars quarta [sic!]: Quae est de salutaribus Dei donis erga ecclesiam. In qua et de bonis ecclesiasticis et de electione Dei, sacramentis, et vita aeterna agitur, reliquisque capitibus, quae sequens index continet, Geneva (2nd ed. 1591).*
- (1588) *Isagoges Christianae pars quinta, quae est de homine, ubi quae de hominis pii et Christiani officio, tum, qua privatus, tum qua magistratus est: de primi hominis statu: de eiusdem lapsu: de anima: de peccato originali: de libero arbitrio: et libertate Christiana, caeterisque similibus quaeruntur, breviter explicata sunt, et in quatuor libros tributa, s. l. [Geneva].*
- (1595) *Compendium sacrae theologiae, seu erotemata theologica, in quibus totius verae theologiae Christianae summa breviter comprehensa est, Montpellier.*
- (1596) *Politicae Christianae libri septem, s. l. [Geneva].*
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# Aristotelianism and Anti-Stoicism in Juan Luis Vives's Conception of the Emotions

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Juan Luis Vives (1493–1540) is perhaps best known as an educational and social theorist, as well as for his spirited attack on scholastic logic.<sup>1</sup> His contribution to philosophical psychology is, however, also worthy of consideration. On account of his insights into human nature and conduct the Valencian humanist has occasionally even been called ‘the father of modern psychology’.<sup>2</sup> Vives’s philosophical reflections on the human soul are mainly concentrated in *De anima et vita* (1538).<sup>3</sup> This treatise, which belongs to the late and philosophically more interesting and mature stage of his intellectual career, is divided into three books: on the soul of animals; on the rational soul; and on the emotions (*de anima brutorum, de rationali, et de affectionibus*). The enormous importance Vives attached to the exploration of the emotions, to which almost half of the treatise is devoted, is reflected in the fact that he regards ‘that philosophy which provides a remedy for the severe diseases of the soul’, not only ‘the foundation of all morality, private as well as public’, but also ‘the supreme form of learning and knowledge’.<sup>4</sup>

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<sup>1</sup> For a general study of Vives’s thought, see Noreña (1970).

<sup>2</sup> The first one to ascribe this epithet to Vives seems to have been Watson (1915). In the view of Gregory Zilboorg (1941), p. 194: ‘Vives was not only the father of modern, empirical psychology, but the true forerunner of the dynamic psychology of the twentieth century.’

<sup>3</sup> There is still no critical edition of Vives’s *De anima et vita*. The most commonly used text is the one included in the edition of Gregorio Mayans y Siscár: Vives (1782–90). References to this edition are preceded by the letter M. For an edition which can be called critical in the limited sense that it compares Mayans’s text with the first edition of 1538, see the edition of Mario Sancipriano: Vives (1974). References to this edition are preceded by the letter S. All quotations from *De anima et vita* are taken from Sancipriano’s edition. On the lack of critical editions of Vives’s works see Ijsewijn (1981).

<sup>4</sup> S, p. 86; M, III, pp. 299–300: ‘Adde, quod est de affectibus speculatio, quæ tertio libro continetur, fundamentum universæ moralis disciplinæ, sive privatæ, sive publicæ’; and M, I, p. 17: ‘Summum in litteris omnibus atque eruditione est ea Philosophia, quæ ingentibus

Vives considered himself to be the first to deal with the investigation of the emotions in an adequate manner. In his view, this study was neither conducted nor transmitted with sufficient care by the ancients. Although they are not introduced as two opposed views, the positions of Aristotle and of the Stoics are mentioned as examples of this deficiency: ‘The Stoics, who Cicero claims to have followed, corrupted the whole subject with their quibbling. Aristotle dealt with this matter in the *Rhetoric* only to the extent that he though was sufficient for a politician.’<sup>5</sup> In spite of the fact that unresolved attempts to harmonize Stoic conceptions with Augustinian views can be discerned in Vives’s moral philosophy, he firmly rejected the Stoic view on the passions.<sup>6</sup> Moreover, although his attitude towards Aristotle’s philosophy is far from straightforward, there is no doubt that he was deeply critical of his ethics. In the sixth book of *De causis corruptarum artium*, for example, he argues at length that Aristotle’s ethics, on account of the worldly conception of happiness and virtue, is—unlike Platonism and Stoicism—completely incompatible with Christian religion.<sup>7</sup> Vives’s criticism of Aristotle’s contribution to the subject of the emotions, however, seems to leave no room for doubt that he based his assessment principally on the *Rhetoric*.<sup>8</sup> The present paper aims to show that the Peripatetic tradition nonetheless constitutes one of the most important sources of inspiration for Vives’s conception of the emotions and his rejection of the Stoic theory of the passions.

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animi morbis remedium adfert.’ The most comprehensive study of Vives’s analysis of the emotions is Noreña (1989).

<sup>5</sup> S, p. 454; M, III, p. 421: ‘estque tractatio hæc non satis diligenter a veteribus sapientiæ studiosis vel animadversa, vel tradita. Stoici, quos Cicero secutum se profitetur, omnia hæc argutijs suis perverterunt. Aristoteles in *Rhetoricis* tantum de materia hac exposuit, quantum viro politico arbitratus est sufficere.’

<sup>6</sup> It has been argued that a basic tension pervading Renaissance thought was that between what can broadly be termed Stoicism and Augustinianism. Augustine incorporated several Stoic doctrines into his own thought, and at first glance, the affinity between these two ethical systems might have seemed impressive. Stoicism was commonly regarded as fundamentally compatible with Christianity, and many Stoic ethical doctrines were adopted by Christian writers. Nonetheless, at a deeper level, these traditions were radically opposed to each other, and the tension between them constituted a frequently recurring element in Renaissance humanism. See, e.g., Bouwsma (1975). Vives’s *De concordia et discordia in humano genere* (1529) constitutes, in the view of Noreña (1989), p. 47, an example of ‘the humanist attempt to harmonise Stoic metaphysical and ethical conceptions with Augustinian religious views’.

<sup>7</sup> M, VI, pp. 208–22. For Vives’s attitude towards Aristotle’s philosophy in general see Noreña (1970), pp. 166–73; Margolin (1976); Trujillo (1993).

<sup>8</sup> For the *fortuna* of Aristotle’s *Rhetoric* in the Renaissance see Green (1994a) and (1994b).

## ARISTOTELIANISM AND ANTI-STOICISM IN LATE ANTIQUITY AND THE RENAISSANCE

Aristotle regarded emotions not only as natural responses to the way things appear to us but also as constituents of the good life. In the *Nicomachean Ethics*, where the doctrine of virtue as a mean is applied to passions as well as actions, emotions are described as valuable and necessary parts of moral conduct. On Aristotle's account, the virtuous person not only does the right thing but is affected in the way which reason instructs and has emotions 'at the right times, with reference to the right objects, towards the right people, with the right aim, and in the right way' (1106<sup>b</sup>21–23). For example, to feel anger on the right grounds, against the right persons, at the right moment and for the right length of time, is in his view praiseworthy. Those, on the other hand, who do not get angry at the things at which it is right to be angry are considered foolish (1125<sup>b</sup>26–1126<sup>a</sup>6).

The position of the Peripatetics changed somewhat during the Hellenistic period. In this new account, the emphasis was on the moderation of passions rather than on the fact that they should be felt in a manner appropriate to the specific situation.<sup>9</sup> This modification, however, constituted a polemic against Stoic interpretations of the Aristotelian tenet that virtue is a mean between two vices (1107<sup>a</sup>2), rather than a contrast to the Stoic ideal of freedom from passions (*apatheia*). The definition of virtue as a mean state of the passions was an attempt to counter an interpretation of the doctrine of the mean which reduced virtue to moderate vice, instead of seeing it as a way of avoiding opposed vices.<sup>10</sup>

A standard version of this position is presented in Plutarch's *De virtute morali*, where the monistic psychology of the Stoics is rejected on the grounds that, in addition to the activity of reason (*to logistikon*), there is also an emotional element (*to pathêtikon*) in the human soul. In Plutarch's opinion, emotions are natural and should not be eradicated but instead educated. A good or reasonable emotion (*eupatheia*) arises when reason, rather than extirpating the emotion, moderates it so that in the soul of the temperate person it helps the virtues.<sup>11</sup> As we shall see, Plutarch's conception of emotions and his criticism of Stoic ethics were a major influence on Vives.

Opposition to the Stoics gave rise to a controversy between proponents of a moderate degree of passion (*metriopatheia*), on the one hand, and

<sup>9</sup> See Annas (1993), pp. 60–1, and especially Gill (1997), pp. 6–7.

<sup>10</sup> See Becchi (1975).

<sup>11</sup> Plutarch, *De virtute morali*, 442A, 449B and 451C–D.

advocates of complete freedom from passion (*apatheia*), on the other.<sup>12</sup> This controversy—concerning which Renaissance authors could find information in the writings of Cicero, Seneca and many others—remained an important feature of the disputes over the nature of the passions.<sup>13</sup> In his *Dialogus consolatorius*, Giannozzo Manetti (1396–1459) describes the issue in the following way:

Most erudite and friendly men, we saw that this controversy of ours was formerly more fully debated by—and not yet resolved by—the Stoics and Peripatetics, the greatest leaders of ancient philosophy. For the Stoics, harsher than the other philosophers, say that grief and other perturbations of the mind are evils of opinion, not of nature. The Peripatetics, truly a little more humane, argue that sicknesses of the mind at first arise from nature but that they are worsened afterwards by opinion. Which of these positions was true is worthily debated among us. Our Angelo indeed approves the *sententia* of the Stoics. I, however, follow and approve the position of the Peripatetics, which accords more truly with human life.<sup>14</sup>

In contrast to the extreme ethical stance of the Stoics, many Renaissance authors preferred the more moderate Peripatetic position, arguing that it provides a more realistic basis for morality, since it places the acquisition of virtue within the reach of normal human capacities. The *Dialogus consolatorius*, which was composed after the death of Manetti's son Antonino, recounts a conversation between Manetti and his brother-in-law Angelo Acciaiuoli, in which they discuss the appropriateness of grief after the loss of a son. Acciaiuoli's argument—almost entirely derived from Seneca's *De consolatione ad Marciam*—is that grief is a product of the human mind; Manetti, on the contrary, maintains that emotions are natural and legitimate.<sup>15</sup>

Even Coluccio Salutati (1331–1406), who had given the highest praise to the Stoics, felt himself forced to reconsider the psychological validity of the Stoic theory after the death of his sons Piero and Andrea. His disillusionment with Stoic ethics derived from the realization that it was beyond his power to feel no grief at all in the face of such a bereavement. To Francesco Zabarella (1360–1417), who in a letter of consolation had urged him to remember that grief is pointless since death is not an evil, he replied that Aristotle had maintained that death is the most terrible thing of all and that 'the authority of Aristotle and the moderation of the Peripatetics

<sup>12</sup> See Dillon (1983); Striker (1996), pp. 293–99; Sorabji (2000), pp. 194–210.

<sup>13</sup> See, e.g., Cicero, *Tusculanae disputationes*, IV.37–50; and Seneca, *Epistulae*, 85 and 116. There are, however, interesting cases, such as Francesco Filelfo (1398–1481), whose discussion of emotions in *De morali disciplina* shows no awareness of the difference between the Stoic and the Peripatetic doctrines. See Kraye (1981).

<sup>14</sup> Quoted from McClure (1991), p. 100. There is a misprinted line in the final sentence of the passage quoted above in Manetti (1983), p. 46. See instead De Petris (1977), p. 93.

<sup>15</sup> See De Petris (1977) and (1979); McClure (1986), pp. 451–6 and (1991), pp. 98–104.

are superior to that severity, or rather hardness, and unattainable ideal of the Stoics'.<sup>16</sup>

The same kind of criticism is also discernible in Vives's *De anima et vita*, where the reader is urged to 'forget the Stoics, who through the petty cavils of their school, tried without success to transform into stones what nature had shaped as human beings'.<sup>17</sup> In this repudiation, however, one can also observe a further criticism: the arguments of the Stoics amount to no more than a deeply misleading juggling with words. In Vives's assessment, they 'babble with a most annoying and endless loquacity, trying to define everything by reducing it to subtle trickery'.<sup>18</sup> The view that the Stoics coin new words and, deviating from the common usage, deliberately distort the meaning of generally accepted terms, was quite common during the sixteenth century; it can be found, for example, in Philipp Melanchthon (1497–1560), Pier Vettori (1499–1585) and Francesco Piccolomini (1523–1607).<sup>19</sup>

This charge goes back to Cicero's *De finibus bonorum et malorum* and also constitutes the starting-point of Augustine's analysis of the passions in *De civitate Dei*.<sup>20</sup> Accepting Cicero's allegations, Augustine argues that the dispute between Stoics and Peripatetics is merely terminological, since both parties maintain that passions are experienced by everyone and ought to be submitted to the control of reason. To prove his point he refers to an episode narrated in the *Noctes Atticae* of Aulus Gellius about the reactions of a Stoic philosopher in a sea-storm.<sup>21</sup> Gellius's report deals with an important aspect of Stoic psychology concerning the existence and importance of affective reactions which are not subject to rational control. The Stoics conceded that even the sage would experience physical responses such as pallor or trembling despite his firm belief that there is nothing to fear, and they called these reactions first motions or pre-passions (*propathēiai*).<sup>22</sup> Richard Sorabji has argued that Augustine misunderstood Gellius's exposition and failed to grasp the crucial distinction between passions, such as fear, and involuntary first motions, such as trembling.<sup>23</sup>

<sup>16</sup> Salutati (1891–1911), III, p. 463. See also Witt (1983), pp. 355–67; McClure (1986), pp. 444–51 and (1991), pp. 95–8.

<sup>17</sup> S, p. 558; M, III, p. 461: 'Sed Stoicos dimittamus, qui se, quos natura homines condiderat, scholasticis cavillatiunculis saxa volerunt reddere: nec sunt tamen assecuti.'

<sup>18</sup> S, p. 84; M, III, p. 299: 'Stoici molestissima loquacitate infinita deblaterarunt, dum omnia cupiunt definire, et ad subtiles redigere captiunculas.'

<sup>19</sup> See Krays (1988), p. 363; (2001–2) and (2002).

<sup>20</sup> Cicero, *De finibus bonorum et malorum*, IV.20.56–IV.28.80; and Augustine, *De civitate Dei*, IX.4.

<sup>21</sup> See Aulus Gellius, *Noctes Atticae*, XIX.1.

<sup>22</sup> See Inwood (1985) pp. 175–81; Sorabji (2000), pp. 66–75.

<sup>23</sup> For a detailed account of Augustine's alleged misunderstanding, see Sorabji (2000), pp. 372–84.

Augustine nonetheless concluded that there could not be any disagreement between Stoics and Peripatetics:

For what does it matter whether it is more appropriate to call them goods or advantages, when Stoic and Peripatetic alike tremble and grow pale with the fear of losing them? They do not call them by the same names, but they hold them in the same esteem.<sup>24</sup>

Vives would have been very familiar with Augustine's criticism, not least because he produced a critical edition of *De civitate Dei* with a philological commentary.<sup>25</sup>

### VIVES'S CONCEPTION OF THE EMOTIONS

Vives's account of the emotions in *De anima et vita* opens with a discussion of our conative powers as part of our natural endowment. To protect themselves from corruption, created things were granted a natural inclination to self-preservation, while for the sake of well-being they received a faculty of seeking the good and avoiding evil.<sup>26</sup> Among the acts of our conative faculties, Vives distinguishes between the motions which precede and those which follow the conclusions of judgement. Whether the former belong to the natural inclination to self-preservation, and the latter to the faculty of seeking the good and avoiding evil, is not clear. The former are nevertheless regarded as natural impulses which arise from a change in the condition of the body, such as the desire to eat when we are hungry and to drink when we are thirsty, the feeling of sadness when we are sick or oppressed by black bile, the exhilaration when pure and clear blood streams around our heart and the vexation caused by being beaten.<sup>27</sup>

<sup>24</sup> Augustine, *De civitate Dei*, IX.4; for translation see Augustine (1998), p. 364.

<sup>25</sup> See Watson (1913); Rivera de Ventosa (1977) and (1986).

<sup>26</sup> It is worth noting that Vives's reference to different faculties of the soul is not based on any metaphysical claims and should not be understood as implying any ontological commitments. As Valerio Del Nero (1992), p. 211, has also pointed out, the novelty of Vives's approach consists, on the contrary, 'nella progressiva eliminazione dell'analisi degli aspetti metafisici della struttura dell'anima in favore delle sue manifestazioni fenomeniche'. In one of the most frequently quoted passages from *De anima et vita*, Vives even remarks: 'Anima quid sit, nihil interest nostra scire: qualis autem et quæ eius opera, permultum'. See S, p. 188; M, III, p. 332.

<sup>27</sup> S, p. 456; M, III, p. 422: 'Sunt quidam animorum motus, seu impetus verius naturales, qui ex affecto corpore consurgunt: ut edendi cupiditas in fame, bibendi in siti, mœror in morbo, vel premente atra bili, exhilaratio in liquido et puro sanguine circa cor, offensio ad plagam; ij iudicio antevortunt.' See also S, p. 494; M III, p. 436–7: 'Ad esse pertinent necessitates vitæ tuendæ ac propagandæ, quæ naturales nuncupantur, cibus, potio, medicina, ignis, tectum, indumentum: qui appetitus potius dicuntur, quam cupiditates, in quibus impetu

Emotions (*affectus sive affectiones*), on the other hand, are defined as 'the acts of those faculties which nature gave to our souls to follow good and avoid evil, by means of which we are led to the good and move away from or against evil'.<sup>28</sup> Emotions are natural faculties granted to us for the sake of our self-preservation and well-being. The emotional faculty (*facultas affectionum*) was placed in the soul by God to prevent us from being inactive, and its functions can be compared to spurs and brakes (*stimuli ac fræni*) which urge and restrain action.<sup>29</sup> Fear, for example, was given to us in order to make us avoid whatever is harmful.<sup>30</sup> Even the first natural seed of pride was originally something good, given to us so that, considering the excellence of our origin, we might love ourselves, regard ourselves worthy of heavenly things and desire them.<sup>31</sup> Erasmus (c.1466–1536) favours a similar approach in his *Moriae encomium*, declaring that emotions function like spurs or goads (*calcaria stimulative*), inciting us to perform good deeds.<sup>32</sup> In this connection it may also be noted that in *De ira* Seneca attributes to Aristotle the view that anger is a spur (*stimulus*) and a goad to virtue (*calcar virtutis*).<sup>33</sup>

Vives furthermore points out that there is no simple terminology concerning the emotions. The term 'emotions' (*affectus*) can refer to the natural faculties, their acts and the habits which arise from those acts.<sup>34</sup> This distinction, stemming from Aristotle's *Nicomachean Ethics* (1105<sup>b</sup>19–

rapitur animus tacito naturæ stimulo punctus, atque incitatus transilit iudicium neque illi auscultat.'

<sup>28</sup> Ibid.: 'Ergo istarum facultatum, quibus animi nostri præditi a natura sunt ad sequendum bonum, vel vitandum malum, actus dicuntur affectus sive affectiones, quibus ad bonum ferimur, vel contra malum, vel a malo recedimus.'

<sup>29</sup> S, p. 460; M, III, p. 424: 'Et quandoquidem animus erat habiturus in corpore, indita est animanti ab admirabili artifice Deo facultas hæc affectionum, ut quibusdam veluti stimulis excitaretur animus, ne iacens penitus obrutusque mole corporis, veluti segnis asinus torperet perpetuo, bonisque suis indormisceret, et in eo quod illi valde expediret cessaret; itaque varijs tanquam calcaribus hinc inde subinde excitatur: alias autem cohibetur freno, ne ruat in noxia. Homini etiam ijdem isti non desunt stimuli ac fræni, qua parte est animans, cui sunt eisdem de causis necessarij.'

<sup>30</sup> S, p. 688; M, III, p. 508: 'Datus est homini metus, ut caveat nocitura, priusquam se illi applicent.'

<sup>31</sup> S, p. 720; M, III, p. 520: 'Naturale illud semen primum superbiæ, unde in tantam degeneravit maliciam, non erat malum: nempe ut se homo excellenti conditione progenitum reputans, amaret se, dignumque maximis ac veris bonis censeret; nempe cœlestibus, quæ magno animo appeteret.'

<sup>32</sup> *Moriae encomium* in Erasmus (1969–), IV.3, p. 106.

<sup>33</sup> Seneca, *De ira*, I.7.1 and III.3.1.

<sup>34</sup> S, p. 460; M, III, p. 423–4: 'Cæterum affectionum non est simplex appellatio; nam facultates naturales in animo dilatandi sui ad bonum, et contrahendi a malo, affectus sunt: et earum actiones in animo eodem censentur nomine; consuetudines quoque, quæ ex actionibus invaluerunt, quæ *hexeis* Graeco verbo nominantur, hoc est habitus.'



29), was quite common among scholastic philosophers.<sup>35</sup> It is, however, more likely that Vives's most direct source was Plutarch's *De virtute morali*, where the distinction is spelled out in the following way:

For these three things the soul is said to possess: capacity, passion, acquired state. Now capacity is the starting-point, or raw material, of passion, as, for instance, irascibility, bashfulness, temerity. And passion is a kind of stirring or movement of the capacity, as anger, shame or boldness. And finally, the acquired state is a settled force and condition of the capacity of the irrational, this settled condition being bred by habit and becoming on the one hand vice, if the passion has been educated badly, but virtue, if educated excellently by reason.<sup>36</sup>

A similar structure is also discernible in Vives's account. In the chapter devoted to anger and vexation, for example, he maintains that the natural faculty of anger was given to us in order to make us desire lofty things; so that when we see ourselves rejected and despised for our base and mean actions, we suffer and strive to redeem ourselves by engaging in worthy deeds.<sup>37</sup> The act of this faculty, on the other hand, is described as a motion of the soul against a present evil and is considered as a harsh and distressful agitation of the soul, which arises when we see our own goods disdained.<sup>38</sup> Irascibility is either the habit which arises from these acts or can depend on natural disposition.<sup>39</sup>

At first glance, Vives's definition of the emotions seems to have been formulated within the frameworks of Aristotelian teleology and the Christian doctrine of divine providence. His approach should also, however, be seen in the light of ancient discussions pertaining to the emotional part of the soul. Raymond Clements and Carlos Noreña have claimed that Vives was influenced by the theory of the Stoic Posidonius, as reported in Galen's *De placitis Hippocratis et Platonis*.<sup>40</sup> But Plutarch's *De*

<sup>35</sup> Not a single medieval author is mentioned or quoted in *De anima et vita*. Although Vives spent five years at the University of Paris, it is most unlikely that he learned anything about scholastic theories of the emotions during that period. For Vives's scholastic background, see González y González (1987).

<sup>36</sup> Plutarch, *De virtute morali*, 443D–E; for translation see Plutarch (1939), p. 35.

<sup>37</sup> S, p. 616; M, III, p. 483: 'Tributa est homini ira ad appetitum rerum excellentium, ut quum videat se, ac doleat, ob viles abiectasque actiones reijci ac contemni, det operam, ut se ab illis vindicet, transferatque ad præclaras, quæ contemni iure non possint.'

<sup>38</sup> S, p. 466; M, III, p. 426: 'Motus in malum præsens, ira'; S, p. 598; M, III, p. 475: 'Ira est concitatio animi acerba, quod bona sua videt contemni, quæ ipse putat non esse contemnenda, in quo et semetipsum censet contemni; cuique enim precium atque æstimatio ex suis bonis'; and S, p. 604; M, III, p. 478: 'Et ut est ira dolor, quod bona sua, quæ putat non aspernenda, contemnuntur.'

<sup>39</sup> S, p. 598; M, III, pp. 475–6: 'Ira est motus, iracundia habitus, vel ingenium naturale.'

<sup>40</sup> See Clements (1967), p. 232; Noreña (1989), pp. 143–4 and 147. Although he did not abandon psychological monism, Posidonius recognized different capacities (*dunameis*) in the soul and maintained that in addition to the activity of reason (*to logistikon*), there is also

*virtute morali*, in which the emotional part (*to pathêtikon*) of the soul is described as a faculty (*dunamis*), seems a more likely source of inspiration.<sup>41</sup>

## EMOTIONS VS PASSIONS

In Vives's view, the acts of the emotional faculty, 'no matter how quick and hasty they might be, always follow the conclusions of judgement'.<sup>42</sup> As he himself stresses, the terms 'good' and 'evil' in his definition of the emotions mean, not what is really good or evil, but rather what each person judges to be good or evil.<sup>43</sup> Consequently, the more pure and elevated the judgement is, the more it takes account of what is really good and true, admitting fewer and less intense emotions and becoming disturbed more rarely. Immoderate and confused movements, on the other hand, are the result of ignorance, thoughtlessness and false judgement, since we judge the good or evil to be greater than it really is.<sup>44</sup> The self-love which derives from pride, for instance, when it is mixed with ignorance, blinds us and makes us think that we are the best and the most worthy of everything good.<sup>45</sup>

These considerations of the different degrees of emotion bring us to another important distinction in Vives's account: that between different kinds of emotions in accordance with their intensity. He compares the motions of the emotional faculty with those of the sea:

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an emotional aspect (*to pathêtikon*) in the soul, whose movements (*pathêtikai kinêseis*) are an essential component of the passions. These affective movements, which Galen erroneously identified with passions (*pathê*), were conceived as natural reactions to appearances, and their existence was regarded as an essential aspect of human nature. For detailed accounts of Posidonius's theory, see Fillion-Lahille (1984), pp. 121–99; Cooper (1998); Gill (1998); Sorabji (1998) and (2000), pp. 93–132 and 255–60.

<sup>41</sup> Plutarch, *De virtute morali*, 443C–D.

<sup>42</sup> S, p. 456; M, III, p. 422: 'reliqui omnes quantumcunque celeres et prærapidi, iudicij sententiam sequuntur; non enim movetur animus, nisi præiudicatum sit bonum esse, aut malum, id quod est obiectum.'

<sup>43</sup> Ibid.: 'Bonum et malum in præsentia id voco, non tam quod revera tale est, quam quod quisque sibi esse iudicat.'

<sup>44</sup> S, pp. 462 and 464; M, III, p. 425: 'quo est autem purius iudicium, et celsius, eo pauciores et magis leves affectus admittit: tanto scilicet accuratius despicit, quid quaque in re sit bonum et verum; ita fit ut commoveatur tum rarius, tum lentius. Nam ingentes illæ agitationes et præturbidæ ab ignorantia sunt, et inconsideratione aut a falso: quod bonum malumve maius censemus esse, quam revera sit.'

<sup>45</sup> S, p. 708; M, III, pp. 514–5: 'Infixæ sunt huius mali radices nostris pectoribus; quoniam ex eo amore nascitur, qui inditus est naturaliter cuique sui ipsius; is enim, ut est admistus ignorantia, excæcatur, efficitque ut quisque sibi videatur optimus, ac proinde bonis quibuscunque dignissimus.'

Just as in the motions of the sea one is a soft breeze, one stronger and another vehement, stirring up in a terrible storm the whole sea from the depths, along with the sand and the fishes; so in the motions of the soul some are light, so that you might almost call them beginnings of a rising motion, some more intense and others shake up the whole soul and drive it away from the seat of reason and condition of judgement. These are real disturbances and unrestrained motions, since now the soul is hardly in control of itself, becoming instead subject to an alien power, blinded and unable to see anything. The former you might rightly call emotions, while the latter are the commotions and agitations which the Greeks call *pathê*, that is, passions, since the whole soul suffers as if from a blow and becomes agitated.<sup>46</sup>

Vives's distinction between emotions and passions seems to correspond to the approach taken by the proponents of a moderate degree of passion (*metriopatheia*). In this respect, the distinction between *êthos* and *pathos*—stemming from the Greco-Roman rhetorical tradition—is of particular interest.<sup>47</sup> In the *Rhetoric*, Aristotle associates *êthos* with the presentation of the character of the speaker and *pathos* with the production of an emotional reaction in the audience (1356<sup>a</sup>1–21). In Cicero, however, the distinction between *êthos* and *pathos* has become associated with two different styles of speech:

There are, for instance, two topics which if well handled by the orator arouse admiration for his eloquence. One, which the Greeks call *êthikon* or 'expressive of character', is related to men's nature and character, their habits and all the intercourse of life; the other, which they call *pathêtikon* or 'relating to the emotions', arouses and excites the emotions: in this part alone oratory reigns supreme. The former is courteous and agreeable, adapted to win goodwill; the latter is violent, hot and impassioned, and by this cases are wrested from our opponents; when it rushes along in full career it is quite irresistible.<sup>48</sup>

A further development in the distinction between *êthos* and *pathos* is to be found in Quintilian's *Institutio oratoria*, a work with which Vives was very

<sup>46</sup> S, p. 462; M, III, p. 424: 'At vero, quemadmodum in maris motibus est alius auræ tenuis, alius concitator, alius vehemens, quique horrida tempestate mare omne a fundo verrat cum arena ipsa et piscibus: sic in his animorum agitationibus quædam sunt leves, quas velut initia quædam dixeris surgentis motus, aliæ sunt validiores, aliæ animum universum concutiunt, deque rationis sede ac statu iudicij depellunt; quæ vere sunt perturbationes, et impotentia: quod quasi iam animus sui non sit compos, sed in alienam potestatem reciderit: et cæcitates, quod nihil despiciat; nam primas illas, affectiones rectius dixeris; alteras, commotiones, seu concitationes, quæ Græci *páthê* nominant, quasi passiones; patitur enim animus universus illo velut ictu et agitur.'

<sup>47</sup> See, e.g., Gill (1984); Wisse (1989). Vives's interest in rhetoric and the emotions dates back to the very beginning of his career; and he also lectured on this topic in Paris in 1514. See Vives (1991).

<sup>48</sup> Cicero, *Orator*, 37.128; for translation see Cicero (1962), pp. 401 and 403.

familiar.<sup>49</sup> In this case the distinction has a bearing on two different kinds of emotions, weak and strong respectively:

Emotions however, as we learn from ancient authorities, fall into two classes; the one is called *pathos* by the Greeks and is rightly and correctly expressed in Latin by *adfectus*: the other is called *êthos*, a word for which in my opinion Latin has no equivalent ... The more cautious writers have preferred to give the sense of the term rather than to translate it into Latin. They therefore explain *pathos* as describing the more violent emotions and *êthos* as designating those which are calm and gentle: in the one case the passions are violent, in the other subdued, the former command and disturb, the latter persuade and induce a feeling of goodwill.<sup>50</sup>

It is not clear which 'ancient authorities' Quintilian was referring to in this passage; however, it has been pointed out that the early Peripatetics not only used difference in degree to distinguish different kinds of emotions but also, within the sphere of rhetoric, worked with a narrow notion of *pathos* which was restricted to strong emotions that affect judgement.<sup>51</sup> Vives's distinction is dictated by similar principles, since what characterizes unrestrained motions, in his view, is the fact that they 'shake up the whole soul and drive it away from the seat of reason and condition of judgement'.

## EMOTIONS AND COGNITION

In Vives's opinion, all emotions, with the exception of the natural impulses which arise from a change in the condition of the body, always follow the conclusions of judgement (*iudicium*), which is defined as a kind of assessment constituted by the assent to or dissent from discursive reason and rational conclusions.<sup>52</sup> He maintains nonetheless that for the sake of self-preservation and well-being, living creatures were also granted perceptual faculties, external as well as internal; for it is sensible knowledge which provides the kind of judgement that urges us to action or

<sup>49</sup> For some remarks on Quintilian's influence on Vives's philosophical psychology see Swift and Block (1974); Conde Salazar (1998).

<sup>50</sup> Quintilian, *Institutio oratoria*, VI.2.8–9; for translation see Quintilian (1939), II, pp. 421 and 423. See also Plutarch, *De virtute morali*, 443C.

<sup>51</sup> See Fortenbaugh (1994).

<sup>52</sup> S, p. 278; M, III, p. 362: 'Iudicium est censura, hoc est approbatio et improbatio rationis, discursus videlicet et clausulæ'; and S, p. 282; M, III, p. 363: 'Itaque si iudicium censeat conclusionem esse veram, illi se applicat, et eam complectitur tanquam sibi congruentem: quæ complexio, assensus, seu opinio, atque existimatio dicitur: sin falsam, aversatur, quæ est dissensio.'

restrains us from it.<sup>53</sup> The term ‘judgement’ is used here in a loose sense; but does not include ‘any form of cognition’, as Carlos Noreña suggests.<sup>54</sup> For example, even in animals the reception of an image in the imagination is not sufficient to produce an emotion, if an estimative act, which in animals plays the role of judgement, is not added.<sup>55</sup> Vives, however, maintains that a rational judgement is not always necessary to arouse an emotion; on the contrary, as happens in most cases, an impression is sufficient if the fantasy (*phantasia*) ‘draws to itself in its confusion a certain species of opinion or judgement’.<sup>56</sup> His belief that the fantasy can ‘draw’ an impression to itself probably rests on the view that different psychological functions have different locations in the brain. In his exposition of the internal senses, the imagination is located in the front ventricle of the brain and the fantasy in the central one.<sup>57</sup> According to Vives, the operation of the imagination, which consists merely in the passive reception of the images imprinted on the senses, is not able to provide the necessary evaluation in order for an emotion to arise. The

<sup>53</sup> S, p. 454; M, III, p. 421: ‘Quocirca cognitio tum sensuum, tum interior omnis, propter iudicandum est animanti addita: iudicium vero, ad nos vel impellendos, vel retrahendos.’

<sup>54</sup> See, e.g., Noreña (1989), pp. 149 and 151.

<sup>55</sup> S, p. 456; M, III, p. 422: ‘non enim movetur animus, nisi præiudicatum sit bonum esse, aut malum, id quod est obiectum: idemque in brutis usu evenit, in quibus non sola imaginatio parit affectum, nisi et existimatio accesserit, quæ illis iudicij cuiusdam locum obtinet.’ In his discussion of the internal senses, Vives describes the estimative faculty (*facultas extimativa*) as a hidden natural impulse, shared by men and animals, which produces judgement out of sensible species. By means of the estimative power, a creature judges whether something is good and useful or dangerous and harmful, rousing thereby the emotional faculty, as when a sheep avoids a wolf, even if it has never seen one before. S, p. 172; M, III, p. 328: ‘Extimativa autem facultas est, quæ ex sensilibus speciebus impetum iudicij parit. Iudicium hoc ad profuturum aut læsurum tendit: quippe ad salutem retulit natura, vel cognitionem sensorum, vel stimulum suum. Itaque iudicatur prius, quale quique in se existimetur: hinc, quam congruens aut damnosum. In priore censura, sequitur animus sensum, vel visum; in posteriore occulto naturæ stimulo agitur, et rapitur impete, ut cum ovis fugit lupum nunquam antea visum, et gallinaceus aquilam vel accipitrem, et homo draconem ac monstra rerum: quin etiam ad primum quorundam hominum aspectum, congressumque, cohorrescimus.’ The example of the sheep perceiving the wolf as dangerous comes originally from Avicenna’s *De anima*. For a discussion of Avicenna’s conception of the estimative faculty, see Black (1993); Hasse (2000), pp. 127–41. For a general survey of developments in the theory of the internal senses after Aristotle see Wolfson (1935); Klubertanz (1952); Harvey (1975).

<sup>56</sup> S, p. 458; M, III, pp. 422–3: ‘sed non semper ad affectum excitandum opus est iudicio illo, quod ex rationum collatione de rebus statuit: illud sufficit, et est frequentius, quod imaginationis movetur visis. Itaque sola phantasia trahente ad se tumultu suo speciem quandam opinionis et iudicij, quod bonum sit, aut malum quod est ei obiectum, in omnes animi perturbationes versamur.’

<sup>57</sup> S, p. 172; M, III, p. 328: ‘Hisce facultatibus diversa attribuit natura instrumenta, et ceu diversas officinas in cerebri partibus; nam in anteriore cerebro dicunt esse sensuum fontem sedemque, ibique imaginationem constitui; in medio phantasiam, et extimativam.’

active working of these images is instead accomplished by the fantasy, which is described as 'marvellously free and disengaged'. The fantasy is able to create whatever it pleases out of the impressions received by the imagination; in other words, it can represent something as either good or evil. Therefore, if it is not controlled and bridled by reason, it can shake up and disturb the soul in the same way as a storm stirs up the sea.<sup>58</sup>

This is basically Aristotle's approach. In the *Rhetoric*, emotions are regarded as spontaneous and natural responses to evaluative impressions or appearances. As Gisela Striker points out, 'it is evident that Aristotle is deliberately using the term "impression" rather than, say, "belief" (*doxa*) in his definitions in order to make the point that these impressions are not to be confused with rational judgements. Emotions are caused by the way things appear to one unreflectively, and one may experience an emotion even if one realises that the impression that triggered it is in fact mistaken.'<sup>59</sup> In order to describe the influence of the fantasy, Vives discusses the example of a married couple feeling miserable and starting to cry when, seated by the fireplace, they discuss the possibility of losing their only son, who, healthy and vigorous, is with them at that moment.<sup>60</sup>

In the chapter devoted to anger and vexation, Vives also discusses the interesting case of fits of anger which arise all of a sudden, so that many think they are natural and precede judgement.<sup>61</sup> In his view, however, these abrupt outbursts neither precede nor depend on the judgement that we have been slighted, but are instead based on the combination of a judgement rooted beforehand in ourselves, which leads us to consider ourselves worthy of honour and respect, and the impression that we have been slighted. Vives's point might perhaps be spelled out in terms of the Aristotelian doctrine of the practical syllogism as expounded in *De motu animalium*.

According to Aristotle, the first premise of the syllogism, which represents a desiderative state and consists of a universal judgement, is 'through the good'. The second premise, on the other hand, is 'through the possible' and consists of a cognitive element containing particular information, obtained from thought or perception, about the possibility of

<sup>58</sup> S, p. 170; M, III, p. 327: 'Phantasia est mirifice expedita et libera; quicquid collibitum est, fingit, refingit, componit, devincit, dissolvit, res disiunctissimas connectit, coniuntissimas autem longissime separat. Itaque nisi regatur et cohibeatur a ratione, haud secus animum percellit ac perturbat quam procella mare.'

<sup>59</sup> Striker (1996), p. 291. See also Sihvola (1996).

<sup>60</sup> S, p. 688; M, III, pp. 507–8: 'coniuges quidam miserabiliter cœperunt lamentari, quod essent ad focum collocuti, quid ipsis fieret, si unicum suum amitterent, qui illis erat sanus, et valens? Sed hoc phantasie regnum late per affectiones omnes patet.'

<sup>61</sup> S, p. 600; M, III, pp. 476–7: 'est alter qui subito quidem existit, et quasi sine tempore ad primum tactum contemptus, ita ut nonnulli naturalem esse ducant, et iudicio antevertere.'

fulfilling the desire in question. The conclusion which results from the two premises is an action that follows with necessity if nothing hinders the agent. It is also important to note that, in Aristotle's view, reason does not stop to consider obvious premises, which explains why something done without calculation can happen so quickly.<sup>62</sup>

In Vives's case the belief that we are good, learned, generous, industrious and pre-eminent, and that people therefore ought to show us honour and respect, might be seen as a desiderative state which corresponds to the first premise. The impression of being slighted constitutes the cognitive element which corresponds to the second premise. Consequently, as soon as some kind of slight becomes manifest, even at distance, anger suddenly blazes up.<sup>63</sup>

The kind of opinion or judgement constituted by an impression can also be compared to the apprehension which, in the Stoics' view, generates emotional movements or first motions. In *De ira*, for example, Seneca gives a careful description of how the first mental agitation which affects us when we think ourselves wronged or harmed, and which does not become a passion without a voluntary act of assent, is induced by the impression (*species*) of a wrong which has been committed. Seneca's account deals with the same aspect of Stoic psychology—the existence and importance of affective reactions which are not subject to rational control—which we encountered in connection with Augustine's discussion of the episode of the Stoic philosopher in a sea-storm, as narrated by Aulus Gellius. According to Seneca, first movements are not passions but rather beginnings preliminary to passions (*principia proludentia adfectibus*). The first motion of anger occurs when we have an impression of a wrong committed; but it is not sufficient to receive the impression in order for the passion to arise, the impression must also be assented to.<sup>64</sup> It is not farfetched to assume that, for Vives, precisely this kind of explanation constituted the quibbling by means of which the Stoics had debased moral psychology.

On the basis of his account, Seneca criticizes the view of Aristotle and his followers, pointing out that certain things are in our power only at the

<sup>62</sup> Aristotle, *De motu animalium*, 7. See also Nussbaum (1978), commentary and essay 4.

<sup>63</sup> S, p. 600; M, III, p. 477: 'alias vero non ex iudicio a contemptu orto subito, sed ex illo quod in animo habemus præceptum; et confirmatum, bonos esse nos, doctos, generosos, industrios, præstantes, oportere nobis honorem exhiberi, et reverentiam, non oportere nos contemni; ex hoc iudicio informato intus atque infixio subito ira incalescit ubi primum contemptus vel procul sese protulit ac ostendit.'

<sup>64</sup> Seneca, *De ira*, II.2.2–5 and II.3.4–5. See also Seneca, *Epistulae*, 113.17–18. For detailed discussions of Seneca's treatment of passions and first motions in *De ira* see Fillion-Lahille (1984); Inwood (1985), pp. 175–81 and (1993); Rist (1989); Sorabji (1998) and (2000), pp. 55–75.

start and that thereafter they sweep us along with a force of their own and do not allow us to turn back. As soon as the mind throws itself into anger, for example, it is bound to be swept along.<sup>65</sup> Cicero, too, accepted the Stoic solution as the most probable and maintained that trying to moderate passions, as the Peripatetics wish to do, is like thinking 'that a man who has flung himself headlong from Leucas can stop his fall when he will'.<sup>66</sup> According to Seneca, the violence of anger does not develop gradually, but instead begins at full strength. If it could be moderated, then it would not be anger and should be called something else, since anger for him is by definition unbridled and ungoverned.<sup>67</sup>

In his account of anger, Vives explicitly challenges Seneca's position, contrasting it with the view of Plutarch: 'Seneca holds that anger arises suddenly in its entirety, which Plutarch rightly contests; for anger grows from its own causes, like fire when it is supplied with tinder.'<sup>68</sup> Vives's source here seems to be *De cohibenda ira*, in which (*pace* Dillon) the remedies through which anger can be made obedient and subservient to reason are discussed.<sup>69</sup> Plutarch stresses the importance of having correct judgements (*krisis*) ready to hand, since it would be impossible to acquire them when anger already has upset the soul.<sup>70</sup> Moreover, the less consistent anger is, the more efficacious the appeal to these judgements will be. In his view, if the arousal of anger is carefully observed, it will be easily stopped. Plutarch's account might seem contradictory in this respect. Anger is first described as something impossible to calm down unless the right judgements have already been made; but then its moderation is discussed as something fully possible. It must, however, be noted that Plutarch is discussing different kinds of anger, because, as he explicitly points out, 'anger does not always have great and powerful beginnings; on the contrary, even a jest, a playful word, a burst of laughter or a nod on the part of somebody, and many things of the kind, rouse many persons to anger'.<sup>71</sup> Depending on the different causes, there are more intense or less intense forms of anger. Motions which are weaker can be the subject of moderation since their growth is slow and can easily be observed. But as soon as anger,

<sup>65</sup> Seneca, *De ira*, I.7.4

<sup>66</sup> See Cicero, *Tusculanae disputationes*, IV.17.37–IV.21.47; for translation see Cicero (1966), p. 371.

<sup>67</sup> Seneca, *De ira*, I.9.3 and III.1.3.

<sup>68</sup> S, p. 604; M, III, p. 478: 'Seneca totam iram subito dicit existere, cui merito Plutarchus refragatur; crescit enim ex suis causis, ut ignis fomento subiecto.'

<sup>69</sup> According to Dillon (1996), p. 189, *De cohibenda ira* 'advocates the extirpation of anger (*aorgêsia*) rather than its mere control, and attacks those (the Peripatetics) who would dignify this passion with the name of "greatness of soul" or "righteous indignation"'.  
<sup>70</sup> Plutarch, *De cohibenda ira*, 453D–454B.

<sup>71</sup> *Ibid.*, 454D. For translation see Plutarch (1939), pp. 101 and 103.



no matter of what kind, is at its height, it ‘shunts off the mind, ... so that the soul can neither see nor hear anything that might help it’.<sup>72</sup>

Plutarch, who was not familiar with Seneca’s *De ira*, criticizes Hieronymus of Rhodes’s assertion that we have no perception of anger when it comes into being, but only when it is already in existence, holding not only that it is possible to observe the development of anger, but also that ‘none of the emotions, at the time when they are gathering and beginning to move, has a birth and increase so easy to perceive’.<sup>73</sup> This is precisely the point which Vives invokes against Seneca; moreover, in Plutarch’s account it is also preceded by a passage in which anger is compared to fire:

And so, just as it is an easy matter to check a flame which is being kindled in hare’s fur or candlewicks or rubbish, but if it ever takes hold of solid bodies having depth, it quickly destroys and consumes ‘with youthful vigour lofty craftsmen’s work’, as Aeschylus has it; so the man who at the beginning gives heed to his temper and observes it while it is still smoking and catching flame little by little from some gossip or rubbishy scurrility need have no great concern about it; on the contrary, he has often succeeded in extinguishing it merely by keeping silent and ignoring it. For he who gives no fuel to fire puts it out, and likewise he who does not in the beginning nurse his wrath and does not puff himself up with anger takes precautions against it and destroys it.<sup>74</sup>

Plutarch’s influence on Vives seems significant in more than one respect. To begin with, his considerations of the different kinds or degrees of emotion might have been an important source of inspiration for Vives’s distinction between the different kinds of emotions in accordance with their intensity. In Plutarch’s view what characterizes unrestrained anger, that is, the emotion at its height, is the fact that it ‘shunts off the mind’ and prevents the soul from obeying any kind of exhortation or admonition. In the passage in which Vives compares the motions of the emotional faculty to those of the sea, he follows Plutarch almost verbatim, pointing out that the distinctive feature of unrestrained motions is that they ‘shake up the whole soul and drive it away from the seat of reason and condition of judgement’.

## THE PHYSIOLOGY OF EMOTIONS

Another respect in which Plutarch’s account might have been influential on Vives is the comparison of anger to fire. In *De anima*, Aristotle notes that

<sup>72</sup> Ibid., 453E–F. For translation see Plutarch (1939), p. 99.

<sup>73</sup> Ibid., 454E–F. For translation see Plutarch (1939), p. 105.

<sup>74</sup> Ibid., 454E–F. For translation see Plutarch (1939), p. 103

the physicist and the dialectician would define anger differently: the latter would call it something like the desire for retribution, the former a boiling of the blood and heat around the heart. In his view, however, the genuine physicist is the one who combines both accounts (403<sup>a</sup>29–<sup>b</sup>9). An interest in both the cognitive and the physiological aspects of psychological and emotional processes is one of the features which sets Vives's approach apart from traditional philosophical psychology and, as Raymond Clements has pointed out, 'perhaps no other lay-author of the Renaissance is so rich with medical lore in his writings as Juan Luis Vives'.<sup>75</sup>

Vives takes an interest not only in the effects produced on the body by emotions—which in the case of anger are disgusting and more suited to animals than to human beings: the change of facial expression, the quivering of the mouth, the impediment of speech and such like—but also in the physiological constitution of emotions.<sup>76</sup> In line with the Galenic tradition, Vives maintains that our rational capacities follow the temperament of the body and that the organs of the rational capacities are located in the brain and consist of thin and very clear spirits exhaled from the pericardial blood.<sup>77</sup> In his view, when we start to feel vexed, the pericardial blood becomes hot, and the heart starts to swell and palpitate. There is, however, no actual anger or vexation until these hot spirits move from the heart and penetrate into the brain. Therefore, no matter how hot the heart is, we remain calm and quiet until this heat reaches the brain.<sup>78</sup> Physiologically speaking, the movements of the emotional faculty consist of animal spirits in motion which converge on the middle ventricle of the brain, that is, the part of the body where the fantasy (*phantasia*) rules. Consequently, we can attribute bodily qualities to the emotions, calling them hot, cold, wet, dry or a mixture of these.<sup>79</sup>

<sup>75</sup> Clements (1967), p. 219. See also Travill (1987).

<sup>76</sup> S, p. 602; M, III, p. 477: 'In corpore vero horrendos edit effectus, et viro indignos. ... inde est etiam mutatio vultus, trepidatio oris, impedimentum sermonis, et alia visu teterrima, belluæ plane, non hominis.'

<sup>77</sup> S, p. 288; M, III, p. 365: 'Sed functionis rationalis organa sunt in cerebro, spiritus quidam tenuissimi et lucidissimi, quos illuc exhalat sanguis cordis; ij sunt organa intima cognitionum omnium.'

<sup>78</sup> S, p. 602; M, III, p. 477: 'Effervescit enim sanguis circa cor initio offensionis, corque ipsum turgescit, unde est frequens illa palpitatio in pectore: sed nondum est ira tamen, nec offensio quousque ardentes illi a corde spiritus cerebrum invaserunt; quantumcunque enim pectus incalescat, sedatus erit homo, et quietus, si calor ad cerebrum non penetret.'

<sup>79</sup> S, p. 458; M, III, p. 423: 'quo fit, ut manifesto ad partem corporis vergant, in quo tantopere dominatur phantasia. Quamobrem affectus omnes in præsentia in easdem illas qualitates tribuemus, ex quibus corporis natura constat: ut alij sint calidi, alij frigidi, alij humidi, alij aridi, alij ex horum aliquibus commisti, nam humani corporis contemperatio, ex his ipsis qualitibus efficitur; et cuius quisque affectus est naturæ ac ingenij, in simili corporis natura facile tum nascitur, tum augetur: in contraria non perinde.'

Plutarch's metaphorical description of anger in terms of fire might therefore have had a profound meaning for Vives, who in this circumstance also criticizes the traditional approach based on the distinction between concupiscible and irascible emotions, pointing out that the kindling in the heart when the soul is excited because of what it takes to be something difficult, happens without anger or vexation, since there is no kind of evil present. Consequently, to attribute the performance of great deeds to the irascible part of the soul corresponds to treating every kindling of the blood as anger, which is an abuse of the term.<sup>80</sup>

The physiological character of emotions gives rise to an interaction between temperament and emotions, since, while the bodily temperament promotes the generation and growth of emotions with similar qualities, emotions influence the quality of the temperament. Whatever affects the temperament of our body also affects our emotional dispositions. Vexation is hot and dry and thrives in similar bodily constitutions.<sup>81</sup> Those whose brain humours are very hot blaze up extremely fast.<sup>82</sup> Cold temperaments are slower to anger, but also more unyielding when angry.<sup>83</sup> In Vives's opinion, we can also observe how some people give up the desire for revenge after a short while. With a formulation which once again reminds us of Plutarch's account, he maintains that their anger is 'quenched instantly, like burning flax'. This depends on a disposition of their lungs and the thinness of the blood around their heart, and it happens because the heat which proceeds from the lungs is extinguished when the anterior cone touches them.<sup>84</sup>

A salient feature of this physiological approach is the belief that by affecting our temperament through diet or life-style, we also influence our emotional dispositions and reactions. The temperament of the body can be affected by internal as well as external circumstances. Diet, age, health and

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<sup>80</sup> S, p. 600; M, III, p. 476: 'quemadmodum etiam est genus quoddam inflammationis in pectore, quum concitat se animus, magnosque ardores ad grande aliquid arduumque efficiendum concipit: quod sine ira atque offensione contingit; nulla enim mali est species obiecta. Irasci tamen vocant omnes, etiam Aristoteles ipse, et grandia opera ad partem irascibilem referunt, abutentes nomine, quod omnem incensionem sanguinis sub ira comprehendunt; est hoc autem inflammatae cupiditatis.'

<sup>81</sup> S, p. 592; M, III, p. 473: 'nam affectus hic ad calidos et siccos refertur: idcirco in similibus constitutionibus corporum, et qualitatibus locorum ac temporum facile invalescit.'

<sup>82</sup> S, p. 602; M, III, p. 477: 'Celerrime igitur exardescunt quibus humores in cerebro sunt praefervidi.'

<sup>83</sup> S, p. 612; M, III, p. 481: 'Lentiores sunt ad iram frigidae temperaturae, sed in ea pertinaciores.'

<sup>84</sup> Ibid.: 'Fervor ille a pulmonibus extinguntur quum illos conus attingit cordis. Quosdam videmus brevissimo tempore facere finem ultionis cupiendae, propter pulmones paratos, et raritatem sanguinis circa cor, qui statim restinguitur, ut stupa incensa.'

the emotions themselves belong to the internal circumstances.<sup>85</sup> The external circumstances which can affect the temperament of the body are time and place. These can be natural—such as the seasons of the year, the hour of the day and our natural environment—or subjective—such as the time and place in which our private and public affairs take place.<sup>86</sup> A wholesome diet for people prone to anger is based on cold food and drink, with added fat for those who are bilious.<sup>87</sup> People who drink water are impetuous and irascible since their spirits are thinner and can be quickly seized by burning anger. Those who drink beer or wine have thicker spirits, which flare up less easily.<sup>88</sup> Anger ceases to rage easily during holidays and celebrations, with games, banquets, merriment, prosperity and success.<sup>89</sup>

## CONCLUSION

Although its importance has not yet been generally acknowledged, Vives's analysis of the emotions was very influential during the late Renaissance. The third book of *De anima et vita* does not provide a systematic theory, but it is nonetheless rich in original insights. Vives's originality lay above all in the importance he attached to observation and experience. In order to emphasize the complexities of our emotional life, he avoided the systematic rigidity of scholastic philosophy, preferring a looser descriptive approach, which, in Wilhelm Dilthey's opinion, 'marks the transition from metaphysical to descriptive and analytic psychology'.<sup>90</sup> Another feature which characterizes the originality of his approach is the interest in the physiological dimensions of psychological and emotional processes. But,

<sup>85</sup> S, p. 458; M, III, p. 423: 'Hæ autem corporis temperationes alias incitantur atque exacuuntur, alias comprimuntur et coërcentur internis atque externis rebus; internæ sunt, affectus ipsi; nam tristitia facit frigidos et aridos, lætitia calidos et humidos. Affectus enim rationem corporis non recipiunt modo, sed præstant; corporis autem sunt cibus et potus, ætates, morbi.'

<sup>86</sup> S, p. 460; M, III, p. 423: 'Hæc sunt externa: tempus naturale, ut quattuor anni partes, et diei horæ: tum nostrum, quo continetur status rerum, seu publice, seu privatim; locus item naturalis, noster.'

<sup>87</sup> S, p. 612; M, III, p. 481: 'Itaque iuvat ratione victus uti moderata: ut cibi ac potiones sint frigidæ, et in biliosis crassæ.'

<sup>88</sup> S, p. 606; M, III, p. 479: 'Aquæ potores vehementes et iracundi sunt, quia tenues habent spiritus, qui cito corripiunt ab incendio iræ. Qui vinum potant, vel cervisiam, crassiores habent, et ad incendendum minus faciles.' In Seneca's view, it is wine which inflames anger, since it increases heat: see Seneca, *De ira*, II.19.5.

<sup>89</sup> S, p. 612; M, III, p. 481: 'Ira defervescit facile festis diebus, celebritatibus, ludis, convivijs, hilaritate, rebus prosperis, et successu.'

<sup>90</sup> See Dilthey (1914), p. 423: 'So bezeichnet Vives den Übergang aus der metaphysischen Psychologie zu der beschreibenden und zergliedernden.' On Vives's descriptive approach see also Sancipriano (1981).

although Vives considered himself to be the first to deal with the investigation of the emotions in an adequate manner, a closer inspection reveals that he pays considerable attention to earlier thinkers and that his account relies heavily on information from a variety of sources.

Although they are not introduced as opposing views, the positions of Aristotle and of the Stoics are mentioned as examples of the insufficient care with which the ancient studied the emotions. The Stoics are said to have corrupted the whole subject with their quibbling, and Aristotle is blamed for having dealt with the emotions in his *Rhetoric* only from an exclusively forensic point of view. Most of Vives's definitions of the single emotions, however, are drawn from Aristotle's *Rhetoric* and Cicero's *Tusculanae disputationes*. The fact that Cicero is associated with the Stoics also suggests that the latter work is one of Vives's principal sources for the Stoic theory of the passions. Moreover, his rejection of Aristotle's contribution to the subject of the emotions clearly indicates that he based his assessment principally on the *Rhetoric*.

The Peripatetic tradition nonetheless constitutes one of the most important sources of inspiration for Vives's conception of the emotions. Plutarch's *De virtute morali*, which is one of the best formulations of the Peripatetic ideal of a moderate degree of passion, together with his distinction between *êthos* and *pathos*, which Vives might also have encountered in Quintilian's *Institutio oratoria*, influenced him, not least in his crucial distinction between passions and emotions. Moreover, Vives's rejection of the Stoic theory of the passions is also indebted to the Peripatetic tradition. In the chapter devoted to anger and vexation, for example, he explicitly challenges the Stoic position, contrasting it unfavourably with the view expressed by Plutarch in *De cohibenda ira*.

What emerges from these considerations is a peculiar asymmetry. In Vives's moral philosophy one can discern unresolved attempts to harmonize Stoic conceptions with Christian views. Nor is there any doubt that he was deeply critical of Aristotle's ethics. He found Peripatetic, in contrast to Stoic ethics, completely incompatible with the Christian religion on account of Aristotle's worldly conception of happiness and virtue. With reference to the emotions, however, Vives's attitude is the opposite. He firmly rejected the Stoic view of the passions, maintaining that it amounted to no more than a deeply misleading juggling with words. Instead, inspired by sources belonging to the Peripatetic tradition, he came to conceive of the emotions not only as natural responses to the way things appear to us, but also as essential constituents of human life.<sup>91</sup>

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<sup>91</sup> This paper is closely connected to my account of Vives's conception of the emotions in Casini (2002). I have benefited from presenting earlier drafts to several audiences, and I

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## The Humanist as Moral Philosopher: Marc-Antoine Muret's 1585 Edition of Seneca

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Paul Oskar Kristeller, the great historian of Renaissance humanism, never tired of reiterating his belief that the *studia humanitatis* stood for 'a clearly defined cycle of scholarly disciplines, namely grammar, rhetoric, history, poetry, and moral philosophy'. In his considered and highly influential view, the intellectual programme of humanism included only 'one philosophical discipline, that is, morals'.<sup>1</sup> This pronouncement needs a good deal of refinement in light of the interest displayed by humanists, from the middle of the fifteenth century onwards, in logic, physics, cosmology and all the other philosophical fields on which the ancient thinkers they revered had written. Nonetheless, it remains true that, within the broader range of philosophical texts they increasingly came to see as within their remit, humanists never lost their predilection for moral philosophy. In order to understand the role which they played in this discipline, it is necessary to make a detailed examination of how, in studying and interpreting ancient works of moral philosophy, their humanist skills and preoccupations meshed with more philosophical concerns.

To the extent that such investigations have been undertaken, they have focused, not unreasonably, on humanist editions, translations and commentaries of the two greatest moral thinkers of antiquity, Plato and Aristotle.<sup>2</sup> Seneca, the chief Roman representative of Stoic moral philosophy, has not so far received much attention in this context, even though three of the most important humanists of the early modern period produced editions of his philosophical works: Desiderius Erasmus (c. 1469–1536), Marc-Antoine Muret (1526–1585) and Justus Lipsius (1547–1606). I have chosen to concentrate here on the French humanist Muret.

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<sup>1</sup> Kristeller (1961), p. 10.

<sup>2</sup> E.g., on Plato see Hankins (1990); on Aristotle see Kraye (1995).

This is partly because his edition of Seneca has been overshadowed in the recent scholarly literature by those of his Dutch predecessor Erasmus and his Flemish successor Lipsius.<sup>3</sup> More importantly, however, I want to argue that Muret's 1585 edition marks an important moment of transition from the 1515 and 1529 editions of Erasmus to the 1605 edition of Lipsius. Muret's position between the two scholars from the Low Countries can be seen not only in relation to quintessentially humanist issues—attitudes towards Latin style and philological methods—but also with regard to assessments of Seneca's Stoic ethics. It therefore provides a useful case study of the humanist contribution to moral philosophy on the threshold of modernity.

The 1585 edition of Seneca was issued in Rome a few months after the death of its editor. The name Muret (Latinized as Muretus) comes from the village, near Limoges, where he was born in 1526. His academic career got off to a promising start in France. In 1547 he taught at Bordeaux, where the young Michel de Montaigne was one of his pupils.<sup>4</sup> By 1551 he was lecturing on the *Nicomachean Ethics* at the Collège du Cardinal Lemoine in Paris,<sup>5</sup> where he formed a friendship with Pierre de Ronsard, publishing a commentary in French on the poet's *Amours* in 1553.<sup>6</sup> The next year, however, he was arrested in Toulouse and condemned to death as both a sodomite and a Huguenot.<sup>7</sup> The combination of accusations was no accident. In the heated atmosphere of the Wars of Religion, French Catholics were inclined to assume that all Huguenots were sodomites and that all sodomites were Huguenots. If Muret was guilty of either charge, it was most likely sodomy. Many years later, when the unrivalled brilliance of his Latin style had earned him the position of official orator of the king of France before the Holy See, he gave a notorious speech in celebration of the St Bartholomew's Day massacre,<sup>8</sup> which would seem to rule out Protestant sympathies. Three years later, moreover, he was ordained a priest of the Roman Catholic Church.

In the present climate, when the practical value of a classical education is constantly called into question, it is worth repeating two anecdotes found in the early biographical accounts of Muret. Though perhaps not strictly

<sup>3</sup> On Erasmus as an editor of Seneca see Jardine (1993), chapter 5; on Lipsius see Morford (1991), chapter 5; and for a comparison of the Seneca editions of Erasmus and Lipsius see Papy (2002). Andersson (2002) deals with Muret's moral philosophy in relation to his commentary on Aristotle's *Nicomachean Ethics* rather than his Seneca edition.

<sup>4</sup> Trinquet (1965).

<sup>5</sup> Mouchel (1997), p. 575.

<sup>6</sup> Ronsard and Muret (1999).

<sup>7</sup> On his life see Dejob (1881); Mouchel (1997); and Lohr (1988), pp. 277–8.

<sup>8</sup> 'Pro Carolo IX. Galliarum rege Christianissimo ad Gregorium XIII. Pont. Max.', in Muret (1789), I, pp. 173–9. On Muret as a Latin stylist see Mouchel (1997) and IJsewijn (1998).

speaking 'vero', they are unquestionably 'ben trovato', for they illustrate how his life was saved, not once, but twice by his knowledge of Latin. In the first place, he was able to escape certain death in Toulouse because, the night before his planned execution, a sympathetic guard handed him a slip of paper inscribed with the Vergilian line: 'Heu! fuge crudeles terras, fuge litus avarum'.<sup>9</sup> Muret took the hint and immediately crossed the border into Italy on foot. He soon fell ill, however, and was forced to put himself in the hands of some local doctors, who mistook him for a tramp on account of his dishevelled clothing. One of the physicians, assuming he was speaking in a language unknown to his humble patient, said to the other: 'Faciamus experimentum in corpore vili', on hearing which, Muret, cured by fear, leapt out of bed and escaped once again.<sup>10</sup>

Despite having left France under a cloud, such was Muret's reputation, particularly as a Latin orator, that he was immediately offered a chair of rhetoric in Venice. In 1559 he joined the entourage of Cardinal Ippolito II d'Este, to whom he dedicated his first collection of *Variae lectiones*. He remained in the service of the Francophile cardinal until 1563, when Pope Pius IV appointed him to the chair of moral philosophy at the University of Rome, La Sapienza, where he lectured on a variety of Greek and Latin philosophical and literary texts until near the end of his life.<sup>11</sup>

The considerable fame which he achieved in his own day was based less on his philological and philosophical activities, though much of his energy went in those directions, than on his much admired Latin style. Montaigne, who was proud to have been taught by him as a schoolboy in Bordeaux and to have played the lead role in a performance of Muret's

<sup>9</sup> Vergil, *Aeneid* III.44. For this anecdote see Dejob (1881), p. 58.

<sup>10</sup> Dejob (1881), pp. 59–60.

<sup>11</sup> For Muret's teaching career at the University of Rome see the 'ruoli della Sapienza' published in Conte (1991), I, pp. 41 ('Anno 1566 ... In Philosophia morali et candidioribus Litteris; scuta 100: D. Marcus Antonius Muretus. Hic benemeritus et necessarius'), 78 ('Anno 1570–71 ... Ad Pandectas enucleandas ... scuta 200: D. Marcus Antonius Muretus. Hic ob excellentiam sui valoris et aptitudinem facundissimam ad unamquamque lectionem legendam ut Arist[otelis] Politicam vel ex authoribus politioribus aliquem legat, summopere desideratur'), 92 ('Anno 1574–75 ... D. Marcus Antonius Muretus. Hic, qui vir gravis et excellens est, semper benemerendo suum munus studiose et sollicitate prosequeundo egrefert, et maxime quando ab infestantibus eius lectio interturbatur. Hic etiam tempore vacantium maxima infirmitate vexatus est, verum auxilio Dei convaluit'), 104–5 ('Anno 1575–76 ... scuta 500: D. Marcus Antonius Muretus. Huius scientia facile sciri potest. Hic non aggressus est nisi post festivitatem sancti Martini, et hoc propter infirmitatem. Verum alias semper benemeritus; etiam domi suae privatas haben[do] lectiones...'), 118 ('Anno 1579–80 ... Rethoricus: lib. Aeneidos. D. Marcus Antonius Muretus. Hic qualis sit ab omnibus facile sciri potest ...'), 123 ('Anno 1582 ... In Rhetorica ... D. Marcus Antonius Muretus: scuta 700'). See also Grendler (2002), pp. 180–81, for the doctorate of law *in utroque jure* which Muret received from the University of Macerata during the Easter vacation of 1572, even though he had never studied or attended lectures there.

Latin drama *Julius Caesar*,<sup>12</sup> said that he was acknowledged in France and Italy as ‘the best orator of his day’.<sup>13</sup> And no less a critic than Joseph Scaliger proclaimed: ‘After Cicero there was no one who could speak and write Latin with greater ease than Muret.’<sup>14</sup>

Muret’s reputation nowadays, at least among historians of humanism, is still linked to his Latin style. This is largely thanks to Morris Croll. In a series of articles beginning in the 1920s, Croll claimed that Muret, though starting out as a textbook Ciceronian, had changed his style in mid-career and was responsible for initiating the anti-Ciceronian movement which reached its full flowering under his disciple Lipsius.<sup>15</sup> Recently, the Croll thesis, at least as it applies to Muret, has been challenged.<sup>16</sup> It has been convincingly demonstrated that Muret remained faithful to the *stylus Tullianus* throughout his life, consistently adopting a balanced, moderate and mature form of Ciceronianism. Like Erasmus in his *Ciceronianus* of 1528,<sup>17</sup> Muret objected not to Cicero but to his fanatical supporters and slavish imitators. A good example of this attitude can be found in Muret’s commentary on the *Nicomachean Ethics*. He takes issue with his compatriots Denys Lambin and Joachim Périon for mindlessly following Cicero by translating the Greek term, τὰ πάθη, passions or emotions, as *morbi* or *animi perturbationes*, diseases or disturbances of the soul. These terms, Muret points out, reflect the Stoic view that emotions were harmful and should therefore be eradicated, instead of the Peripatetic belief that they were useful and need only be moderated. Consequently, while it was perfectly acceptable for Cicero to use these translations in the *Tusculan Disputations*, given that he wanted to defend the Stoic position, it was ill-considered of Lambin and Périon to employ Cicero’s words, which were foreign to Aristotle’s meaning, in their versions of the *Ethics*.<sup>18</sup>

<sup>12</sup> Montaigne (1962), p. 176 (*Essais* I.26): ‘j’ai sostenu les premiers personnages és tragedies latines de [George] Buc[h]anan ... et de Muret ...’; Muret (1995).

<sup>13</sup> Montaigne (1962), p. 173 (*Essais* I.26): ‘Marc Antoine Muret que la France et l’Italie recognoist pour le meilleur orateur du temps’.

<sup>14</sup> *Scaligeriana* (1666), p. 235: ‘Mureto nullus fuit post Ciceronem qui expeditius loqueretur et scriberet Romane’; translated by Morford (1991) p. 77.

<sup>15</sup> Croll (1966), esp. pp. 103–62, a reprint, with a new foreword, of Croll (1924).

<sup>16</sup> Mouchel (1997) and IJsewijn (1998).

<sup>17</sup> Erasmus (1971).

<sup>18</sup> *Commentarius in Aristotelis Ethica*, in Muret (1789), III, p. 262 (commenting on *Nicomachean Ethics* II.5, 1105<sup>b</sup>21): ‘Primum quaeramus, quomodo τὰ πάθη Latine dicantur. Cicero videtur indicare, “morbos”, aut “animi perturbationes”, dici posse. Sed haec Stoica videntur. Peripatetici enim qui τὰ πάθη utilia esse dicunt, et non tollenda, sed ad mediocritatem perducenda, nunquam vocarent ea “morbos” aut “perturbationes”. ... Ut autem Cicero [*Tusculan disputations* III.iv.7] prudenter et artificiose fecit, qui, cum vellet τὰ πάθη impugnare et Stoicorum opinionem defendere, ita interpretatus est hanc vocem, ut ipso nomine significaretur vitiosum quiddam et tollendum potius quam moderandum; ita Perionius et Lambinus, ut homines de verbis solliciti, rerum ipsarum non admodum

But though Muret and Erasmus were broadly similar in their attitudes towards Ciceronianism, they were worlds apart when it came to Seneca's Latin. In the preface to his first edition of the philosopher's works, which came out in 1515, Erasmus claims to be unimpressed by the ancient critics of Seneca's style.<sup>19</sup> There are, to be sure, certain aspects of his writing which Erasmus himself would like to alter: Seneca's lifeless rhetorical appeals, for instance, and the precipitate vehemence of his style; but then, as he sagely concludes, no one is perfect.<sup>20</sup> In his revised 1529 edition of Seneca, Erasmus is far more censorious, dwelling on the affectation of his words and rehearsing in detail Quintilian's complaints about his too concise and abrupt diction.<sup>21</sup>

Muret addressed such criticisms, and worse, in his inaugural lecture for the 1575 course at the University of Rome on Seneca's *De providentia*. This speech was printed in the 1585 edition of Seneca, where it served as an introduction to Muret's notes on this text. He begins by stating that if he wanted to refute Seneca's detractors, he would have to adduce notable arguments from his writings in order to show that he far surpassed all his malicious critics, both in the abundance of his learning and in the refinement of his writing. Seneca's works, however, were unknown to his audience: how few of you, he laments, before today, have even clapped eyes on his writings, let alone read or pored over them. He has therefore decided to give them a foretaste, so that they can judge Seneca's wisdom and eloquence for themselves, asking them only to leave aside any prejudices they may have and to disregard the foolish and thoughtless words of those who attack what they do not understand.<sup>22</sup>

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intelligentes, parum considerate, qui easdem voces hoc loco adhibuerint, quae ad Stoicorum quidem sententiam confirmandam essent aptissimae, a sententia autem Aristotelis alienae.' The translation of τὰ πάθη which Muret prefers, because it is endorsed by 'Seneca, Quintilianus et alii boni Latinitatis auctores', is 'affectus' (p. 263).

<sup>19</sup> See his dedicatory preface to Thomas Ruthall, dated 7 March 1515, in Erasmus (1906–58), II, p. 53: 'Nec ... me magnopere commovent veteres quorundam calumniae ...'; see Suetonius, *De vita Caesarum*, 'Caligula' 53; Quintilian, *Institutio oratoria* X.i.125–31; and Aulus Gellius, *Noctes Atticae* XII.ii.

<sup>20</sup> Erasmus (1906–58), II, p. 54: 'Quanquam est quod ipse quoque mutari malim. Offendunt ... epiphonemata suffrigida, sermonis impetus abruptus ... Verum quis unquam extitit autor tam absolutus ut nihil in eo requireretur?'

<sup>21</sup> See Erasmus's dedicatory preface to Peter Tomiczki, dated January 1529, *ibid.*, VIII, pp. 31–2: 'Primum, habet voces suas velut in hoc affectatas ... [Quintilianus], ni fallor, notat in eo concisum et abruptum dicendi genus.' See Quintilian, *Institutio oratoria* X.i.130.

<sup>22</sup> 'Disputatio habita cum subsequentem Senecae librum interpretatus esset Romae iii. Non. Iunii MDLXXV' (3 June 1575), in Seneca (1585), pp. 218–23, at 218: 'si vituperatores illius confutere vellem, necessario mihi ducenda essent praecipua argumenta e scriptis ipsius, ut ostenderem eum et doctrinae copia et scribendi elegantia longe multumque omnibus obtractatoribus suis praestitisse. Nunc cum apud eos disseeram, quibus Senecae scripta nota non sunt (quotus enim quisque vestrum ante hunc diem ea, non dicam evoluit aut legit, sed

In the preface to the 1575 edition of *De providentia* which he prepared for the use of his students, but which the printers (naturally) failed to get ready in time,<sup>23</sup> Muret writes in a similar vein, though here he makes it clear that it was really Seneca's style that was controversial. 'I have always valued Seneca very highly', he says, 'and have always judged him to be not only a very wise author, which everyone acknowledges, but also a very skilful writer, which foolish people deny.'<sup>24</sup> Muret takes the same line in Book IX of his *Variae lectiones*. Discussing a passage from one of the letters to Lucilius, he blames the dull palates of Seneca's critics for their inability to appreciate the delicacies of his style, which were readily apparent to men of more refined taste.<sup>25</sup>

Five years later, lecturing on Tacitus, Muret once again confronted contemporary objections to Silver Age Latin and once again put the blame on the feeble minds of the faultfinders. This was a favourite tactic of his: in his 1553 commentary on Ronsard's *Amours*, he had argued that the obscurity which some claimed to find in these poems was really a confession of their own ignorance.<sup>26</sup> Muret told his students that when he heard complaints about the obscurity of Tacitus's Latin, he was reminded of an anecdote told by Seneca about an old man who, because his eyesight had grown dim with age, complained every time he entered a room that it was too dark and was in need of more windows.<sup>27</sup> It is not by chance that

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inspexit aut attigit?), puto me commodius esse facturum, si prius hunc libellum, mole quidem, ut videtis, exiguum, sed et orationis et argumenti gravitate, ut sentietis, eximium, vobis proposuero, ac deinde permisero, ut ex eo Senecam, tanquam ex ungui, ut dicitur, leonem aestimantes, de ipsius sapientia et eloquentia arbitrato vestro iudicetis. ... Hoc tantum a vobis peto, ne quid huc praeiudicatae opinionis adferatis, neve permoveamini stultis ac temere iactis vocibus quorundam, qui quae non intelligunt, vituperant.'

<sup>23</sup> See the oration he gave in 1575 introducing a three-day course on Juvenal's *Satire XIII*, in which he explains that he is going to lecture on this poem while waiting for the printers to produce the text of *De providentia*, on which he had originally planned to lecture: 'Aggressurus Satyram tertiam decimam Juvenalis. Oratio ... habita Romae anno MDLXXV', in Muret (1789), I, pp. 291–4, at 291.

<sup>24</sup> See the dedicatory preface to Seneca (1575): 'Semper maximi feci Senecam, semperque de eo, ut de scriptore non tantum, quod omnes fatentur, sapientissimo, sed etiam, quod fatui negant, disertissimo, iudicavi', cited in Niutta and Santucci (1999), p. 82.

<sup>25</sup> *Variae lectiones* IX.8: 'Illustratus locus ex Senecae epistolis', commenting on *Epistolae* LXVII.14, in Muret (1789), II, p. 207: 'multa sunt non publici saporis, quae qui surdiore, ut ita dicam, palato sunt, ingustata praetereunt; cum elegantiores homines, et talium deliciarum intelligentes, mirificam quandam ex eis percipiunt suavitatem'.

<sup>26</sup> See Muret's 'Preface', in Ronsard and Muret (1999), p. 8: 'l'obscurité qu'ils pretendent n'est qu'un confession de leur ignorance'.

<sup>27</sup> See the inaugural lecture for his second course on Tacitus's *Annales*, 'habita Romae pridie Non. Novembris MDLXXX' (4 November 1580), in Muret (1789), I, p. 307: 'Equidem cum istos de obscuritate Taciti querentes audio, cogito, quam libenter homines culpam suam in alios conferant, quantoque facilius omnia alia accusent quam semetipsos. Simul mihi venit in mentem senis cuiusdam, de quo urbane Seneca narrat [*Epistolae* L.2], eum, cum aetatis

Muret, in his defence of Tacitus, called on Seneca. Nor is it coincidental that he chose to lecture on both writers. He was deliberately attempting to open up the university curriculum to Silver Age prose authors, so that they might stand alongside, rather than replace, Cicero.<sup>28</sup> Translated into today's vocabulary, one might say that he was not seeking to abolish the canon but to expand it.

This was an uphill battle in Counter-Reformation Rome, which was as conservative academically as it was in other spheres. But Muret did at least manage to convince one young scholar to turn his attention towards Tacitus and Seneca. When the twenty-one year old Lipsius arrived in Rome in August 1568, he carried with him a letter of recommendation from his Louvain teacher, Cornelius Valerius, to Muret, who duly took the promising youth under his wing. And on Lipsius's return to the Low Countries in April 1570, he carried with him a letter from Muret to Valerius, praising the 'extraordinary qualities' of his student: 'When he left', wrote Muret, 'I felt that part of myself was being torn from me.'<sup>29</sup> Little did he realize that these words would turn out to be literally true; for Lipsius, so Muret later implied, had walked off with some of his intellectual property, in the form of emendations to both Tacitus and Seneca, and had published them as his own.<sup>30</sup> Because of these accusations, we know that during Lipsius's stay in Rome he was studying both Tacitus and Seneca with Muret. The impetus to focus on these authors no doubt came from the older and more established Muret. Lipsius, in his dialogue on the correct pronunciation of Latin, which came out in 1586, a year after Muret's death, portrayed himself in Rome as an eager young tyro and the Frenchman as his wise master,<sup>31</sup> just as in *De constantia*, published two years earlier, he had cast himself as the Stoic *proficiens*, while his older and now deceased friend Langius played the role of the *sapiens*.<sup>32</sup> Like Muret,

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vitio minus commode oculis uteretur, in quodcunque cubiculum ingressus esset, dicere solitum, illud parum luminosum esse, maiores fenestras fieri oportuisse.'

<sup>28</sup> See 'Ingressus explanare M. T. Ciceronis libros De officiis oratio ... habita Romae III. Non. Novembris MDLXXIV' (3 November 1574), in Muret (1789), I, pp. 249–55.

<sup>29</sup> Muret's letter to Valerius, 3 April 1570, is published in Ruysschaert (1947–8), p. 167: 'Redit ad te Lipsius, et redit magno dolore. Ita enim me devinxit sibi, praestantia ingenii et doctrinae, integritate morum, suavitate sermonis et consuetudinis suae, ut, eo discedente, a memetipso mihi avelli viderer'; translated by Morford (1991), p. 57.

<sup>30</sup> For Muret's accusations with regard to his Seneca emendations see his letter to Jean Chifflet, 7 July 1582, published in Ruysschaert, (1947–8), pp. 190–1; the charges relate to Lipsius's *Antiquae lectiones* IV.7 and V.6, in Lipsius (1675), I, pp. 403 and 424. For Muret's accusations regarding the Tacitus emendations see *Variae lectiones* XI.1, in his *Opera*, I, pp. 249–50; see also Ruysschaert (1947–8), pp. 155–62; and Morford (1991), pp. 57–60.

<sup>31</sup> Lipsius (1586). See also Sacré (1996) and Ford (1998).

<sup>32</sup> Lipsius (1584).

Lipsius also lectured on Seneca, giving courses at the University of Louvain from 1593 to 1602 on a variety of treatises, including one on *De providentia* in 1599.<sup>33</sup> But although Lipsius took his cue from Muret, he went much further than his mentor, not only producing editions of both Tacitus and Seneca,<sup>34</sup> but also remodelling his own style on their terse, pointed and epigrammatic Latin.<sup>35</sup> Muret, even though he had a more positive view of Seneca's style than Erasmus and promoted the teaching and study of it, nevertheless continued to write in an essentially Ciceronian manner, as we have seen. It was only with Lipsius that Muret's appreciation of Silver Age Latin was transformed from theory into practice.

In Muret's notes to the 1585 edition of Seneca, which are incomplete, since he died in the course of writing them, matters of style do not play an especially prominent part.<sup>36</sup> The vast majority of his comments concern philological or philosophical issues. One of the philological achievements for which Muret has received credit, most recently in the catalogue of an exhibition on Seneca held in Rome in 1999, is that his edition was the first to restore the *Controversiae* and *Suasoriae* to the philosopher's father, Seneca the Elder.<sup>37</sup> It is true that in earlier editions of Seneca, including both those of Erasmus, these rhetorical works were bundled together unquestioningly with the philosophical ones. The 1585 edition also contains these works; but the Jesuit Francesco Benci, a former student of Muret,<sup>38</sup> stated in the preface that his dead master had considered them to be written by 'Seneca the rhetorician, who is known to have been the philosopher's father'.<sup>39</sup> This fact was known, however, because five years earlier, Lipsius, in the first chapter of his *Liber electorum*, had set out a comprehensive case for it, arguing that on chronological, biographical and stylistic grounds these works should be attributed to Seneca's father and

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<sup>33</sup> Papy (2002), p. 22, esp. n. 43.

<sup>34</sup> His first edition of Tacitus came out in 1574; see Ruyschaert (1949).

<sup>35</sup> See, e.g., Croll (1966), pp. 7–44.

<sup>36</sup> See, however, his note on 'Reddere enim est rem pro re dare', *De beneficiis* VI.5.2: 'Subfrigida vocabuli notatio, quales frequentissimae sunt apud Stoicos, et Stoicorum hac in re imitatores veteres Romanos iureconsultos', in Seneca (1585), p. 56. Erasmus also uses the adjective 'suffrigidus' in relation to Seneca's style: see n. 20 above. See also Muret's note on 'Qui saluatorium publicum exercent', *De constantia* II.iv.2, *ibid.*, p. 313, where he suggests the alternate reading 'Qui hoc salutationum publicum exercet' which he found in a manuscript: 'neque quidquam magis ex consuetudine Senecae, id est, urbanus et elegantius dici potest.'

<sup>37</sup> Niutta and Santucci (1999), pp. 71–3 and 83.

<sup>38</sup> Negri (1966) and Peeters (1998).

<sup>39</sup> Seneca (1585), sig. † 2<sup>v</sup>: 'de Seneca rhetore, quem philosophi patrem constat fuisse'.



namesake.<sup>40</sup> Accordingly, Lipsius left them out of his own 1605 edition of the philosopher Seneca's *Opera*.<sup>41</sup>

Lipsius's critical instincts let him down, however, when it came to Seneca's plays; for he claimed in his *Animadversiones* of 1588 that only *Medea* was written by the philosopher, while the others were written by at least three different authors. As Roland Mayer has shown, it was Lipsius's friend, the Spanish Jesuit Martin Del Rio, who, in his *Syntagma tragoediae Latinae* published from 1593 to 1594, decisively attributed all the plays, with the exception of *Octavia*, to the philosopher, maintaining furthermore that they embodied the same Stoic doctrines which were expounded in the treatises and letters.<sup>42</sup>

In relation to the forged correspondence between Seneca and St Paul, which had enjoyed a vast diffusion in the Middle Ages,<sup>43</sup> it was not Lipsius's critical instincts which let him down but rather his obsessive desire to stay in the good graces of the Mother Church, following his reconversion to Catholicism after many years teaching in the staunchly Protestant University of Leiden. Erasmus had printed these letters in his first edition of 1515 but had secluded them in a section of works which, 'though learned, were completely at variance with Seneca's style'.<sup>44</sup> In his second edition of 1529, Erasmus added a preface to the Seneca–St Paul letters, in which he spelled out his reasons for rejecting their authenticity.<sup>45</sup> This spurious correspondence is not even mentioned, let alone included, in the 1585 edition of Muret. In most respects, as I have been trying to show, Muret stands midway between Erasmus and Lipsius. On this issue, however, it is difficult to see Lipsius's position as an advance on that of Muret. Lipsius's philological acumen led him to dismiss the letters as the product of a half-educated forger who wanted to make laughing stocks of us. His piety, however, prevented him from imputing an erroneous judgement to Pope Linus, Church Fathers such as Jerome and Augustine, and even the twelfth-century bishop John of Salisbury, all of whom had mentioned the correspondence. He claims, therefore, that although the

<sup>40</sup> *Electorum liber I*, in Lipsius (1675), I, pp. 631–4. This work was first published in Antwerp by Christophe Plantin: see *Bibliographie lipsienne: Oeuvres de Juste Lipse* (1886), I, pp. 235–7.

<sup>41</sup> See 'De vita et scriptis L. Annaei Senecae', in Seneca (1605), p. xiii: 'Pater ... a se scriptisque suis etiam notus, L. Annaeus Seneca, quem Declamatoris agnomine (in hoc genere excelluit) a filio fere distinguunt.'

<sup>42</sup> Mayer (1994), pp. 151–74.

<sup>43</sup> For the apocryphal letters see Bocciolini Palagi (1978); for its influence in the Renaissance see Panizza (1976).

<sup>44</sup> Seneca (1515), sig. a1<sup>v</sup>: 'Haec licet erudita, tamen, ut a Senecae stilo abhorrentia, semovimus.'

<sup>45</sup> Erasmus (1906–58), VIII, pp. 40–1.

extant letters were forgeries, Seneca and St Paul had exchanged others, which were now lost.<sup>46</sup>

We have seen that Muret was not the first to attribute the *Controversiae* and *Suasoriae* to Seneca the Elder. Nevertheless, he did make an important philological contribution to establishing the text of these works by supplying the missing Greek words. He was able to fill in these lacunae, as his student Francesco Benci tells us in the preface to the 1585 edition, with the aid of a Vatican manuscript which Pope Gregory XIII had allowed him to borrow and consult in his own home, since his health was poor and he was worn out from over twenty years of university teaching.<sup>47</sup> This information is corroborated by the register of loans from the Vatican Library, which records that on 12 July 1581, Muret was given permission to borrow a manuscript of Seneca's *Declamationes*.<sup>48</sup> Moreover, the actual manuscript has now been identified as Vat. lat. 3872, a ninth-century codex produced in Corbie from which all later witnesses derive.<sup>49</sup>

In the notes to his edition, Muret frequently cites readings which he found in manuscripts. He describes a highly prized manuscript as the 'Liber Siculus' or sometimes 'Siciliensis', but gives no further clues to its identity.<sup>50</sup> Apart from this 'Sicilian book', Muret refers to his manuscript sources simply as 'libri veteres'.<sup>51</sup> This was, of course, standard procedure for Renaissance humanist editors, with the notable exception of Angelo

<sup>46</sup> Seneca (1605), p. xxv: 'Sed heus, Epistolas ad Divum Paulum non memoramus? Quae nunc sunt, non sunt tanti; imo certum est eiusdem auctoris, et Pauli et Senecae, illas esse, et compositas a semidocto in ludibrium nostrum. ... Ergo inter se non scripserunt? Hieronymus, Augustinus atque etiam antiquior utroque Linus Pontifex, asserunt et passiva opinio olim fuit. Atque Io[hannes] Sarisberiensis fortiter: "Desipere videntur, qui non venerantur eum, quem Apostolicam familiaritatem meruisse constat." Itaque reicere hoc totum et calcare non ausim. Fuerint aliquae, sed aliae.' See John of Salisbury (1909), II, pp. 318–19.

<sup>47</sup> See the dedicatory preface by Francesco Benci, in Seneca (1585), sigs † 2<sup>v</sup>–3<sup>r</sup>, at 3<sup>r</sup>: 'complures lacunas, quae erant in Controversiis, etsi non omnes (quis enim hoc mortalium praestet?) explevit ex codice multae aetatis et fidei, de bibliotheca Vaticana, quem ut deferret domum, eoque commode uteretur, interprete Sirleto Cardinali optimo, sanctissimus permisit Pontifex GREGORIUS, qui etiam cum ab eo, anno superiore, multis precibus Muretus iam affecta valetudine, et publice docendo fessus (annos enim unum et viginti Romae docuit) missionem impetrasset, quod iam sibi vivere diceret velle, et perpolire quae habebat informata, ut Senecam et gestu et voce ostendit, Senecae sibi edendi consilium mirifice probari.' For Muret's ill-health in the 1570s see n. 11 above.

<sup>48</sup> Grafinger (1993), p. 7. See also Boutcher (1995); but at p. 199, he wrongly assumes that Benci's phrase 'interprete Sirleto Cardinali optimo' indicates that the manuscript had 'comments by Cardinal Sirleto' rather than that the loan had been arranged 'through the good offices of Sirleto'.

<sup>49</sup> Winterbottom (1986).

<sup>50</sup> E.g., Seneca (1585), pp. 206–8, 212, 310.

<sup>51</sup> E.g., *ibid.*, p. 209: 'liber vetus meus ... veteres libri ... in vetere libro'.

Poliziano and a few of his disciples.<sup>52</sup> For example, Erasmus supplied annotations, containing some philological information, to his second and much improved Seneca edition of 1529. When, in these notes, he cites a reading from a manuscript, he refers to it, unhelpfully, as 'codex manuscriptus' or 'liber manu descriptus' or just 'quidam codex'. On the basis of the readings themselves, however, it has been determined that Erasmus must have had access to Vatican Pal. lat. 1547, a northern Italian manuscript which from the ninth to the late fifteenth century was housed in the monastery of Lorsch.<sup>53</sup> By comparison with his uninformative manuscript citations, Erasmus was very forthcoming about a copy of the 1478 Treviso edition of Seneca's *Opera philosophica* with annotations by the Frisian humanist Rudolph Agricola, whose emendations he clearly valued and cited with pride. So delighted was he to have access to the book that he gave Haio Hermann, who had loaned it to him, two of the three free copies of his own 1529 edition which he had received from his publisher<sup>54</sup>—it seems that publishers in the sixteenth century were just as tight-fisted as they are today. When it came to citing manuscript sources, Lipsius was no better than Erasmus or Muret: he did not identify a single one in the annotations to his 1605 edition. Admitting, in the preface, that he had not done so, he asked: 'What's the point?'<sup>55</sup>

Muret, in addition to reporting manuscript readings, sometimes offers palaeographical explanations for scribal errors. For instance, he made the ingenious suggestion that the phrase 'In superioribus libris', at the beginning of Book V of *De beneficiis*, originally read 'quattuor superioribus libris', but that the 'quattuor' was written in Roman numerals, 'IV', which gave rise to the erroneous 'In'. Modern editors, with better manuscript resources at their disposal, have not accepted the emendation, preferring instead: 'In prioribus libris'.<sup>56</sup>

In the fashion of Renaissance commentators, Muret entertains and educates his readers by providing learned digressions: on the custom of vomiting in antiquity,<sup>57</sup> for instance, or on the correct technique of crucifixion, where he argues that painters and sculptors depict this form of capital punishment wrongly because they fail to realize that it was necessary to use nails, as well as ropes, when binding the victims: 'If they

<sup>52</sup> Grafton (1977).

<sup>53</sup> Reynolds (1986), p. 363.

<sup>54</sup> Erasmus (1906–58), VIII, p. 66: 'Remitto codicem tuum—quo nihil, ut scribis, pulchrius—una cum duobus excusis. Ex pacto mihi debebantur tres; maiorem portionem tibi cedo.' See Jardine (1993), pp. 137–8.

<sup>55</sup> Lipsius, 'Introductio lectoris', in Seneca (1605), sig. A1<sup>v</sup>: 'Non cito passim libros, fateor; quid opus est?' See also Morford (1991), p. 172.

<sup>56</sup> See, e.g., Seneca (1914), p. 116 and (1975), p. 290.

<sup>57</sup> See his note on 'vomitu remetientur', *De providentia* III.13, in Seneca (1585), p. 231.

had hung tied only by ropes’, he asks, ‘how would they die, except by hunger?’<sup>58</sup>

Renaissance humanists also, of course, used such notes for exegetical purposes. In an annotation to Letter XCIII, Erasmus suggested that Seneca’s dismissive comment about the longwinded ‘*Annals* of Tanusius’: ‘you know how heavygoing the book is and what they say about it’, was an allusion to Catullus’s description of the similar sounding *Annals* of Volusius as ‘*cacata charta*’.<sup>59</sup> Muret, in his commentary on Catullus, repeated the suggestion, but without mentioning that it was first made by Erasmus.<sup>60</sup> Consequently, in modern editions of Catullus, it is Muret, not Erasmus, who gets credit for making the connection.<sup>61</sup> Lipsius, on the other hand, was not interested in such matters and passed over the passage from Seneca in silence. He was pursuing a very different agenda from that of Erasmus or Muret. And this is reflected in his very brief ‘*notae perpetuae*’, which were not addressed to a scholarly audience, but rather were intended to make Seneca accessible to everyone—everyone, that is, who could read Latin and afford a folio edition of some 800 pages.<sup>62</sup>

By contrast, Muret, who had no desire to bring Seneca to a wider public, sprinkled his annotations with donnish wit. Like many of his learned readers, Muret was exercised by the problem of plagiarism, in which he was both sinned against and sinning. This concern is clearly expressed in his note on a passage from Book III of *De beneficiis* which, he says, had been taken over wholesale by Macrobius, who had also shamelessly lifted material from Aulus Gellius and Plutarch. ‘He appears to have habitually practised the same art’, writes Muret, ‘which many in our day habitually practise; regarding nothing human as foreign to them

<sup>58</sup> See his note on ‘*crucibus*’, *De beata vita* xix.3, *ibid.*, p. 309: ‘*Quomodo ... mortui essent, nisi forte longa fame, si funibus tantum revincti pependissent?*’ For Lipsius’s views on the use of ropes and nails in crucifixion see Lipsius (1595), pp. 60–2: ‘*iam ad Adstrictionem transeo, quae facta clavis aut funibus, sed plurimum illis*’; he then quotes the same passage from Seneca’s *De beata vita*.

<sup>59</sup> Seneca (1529), ad *Ep.* XCIII.11: ‘*Catullus iocatur in quendam Volusium: “Annales Volusi cacata charta” [36.1]. Hinc illud, “et qui vocentur”.*’

<sup>60</sup> *In Catullum commentarius*, in Muret (1789), II, p. 770: ‘*Annales Volusii*] *Suspicatus sum aliquando, horum annalium mentionem fieri a Seneca, lib. XIV epistolarum, his verbis: ... annales Volusii; scis, quam non decori sint et qui vocentur.* Haec autem postrema verba huc referebam, ubi eos Catullus *chartam cacatam* vocat. Sed tamen hoc non valde asseveranter affirmaverim. Etenim apud Senecam, *Tamusii*, non *Volusii*, legitur.’

<sup>61</sup> See, e.g., C. J. Fordyce’s note to XXXVI.1, in Catullus (1961), p. 179: ‘Following a suggestion of Muretus, Haupt and others identified Volusius with the Tanusius ... who appears in Sen. *Ep.* 93.11, as a type of long-winded writing.’

<sup>62</sup> Lipsius, ‘*Introductio lectoris*’, in Seneca (1605), sig. A1<sup>v</sup>: ‘*ut etiam minora quaedam et semidoctis obvia non neglexerim. Quid ita? Quia Senecam producere et vulgi manibus inserere votum mihi fuit, ideoque consilium vulgo etiam haec adaptare*’.

(‘humani a se nihil alienum putant’), they use what belongs to others as if it were their own.<sup>63</sup>

Another contemporary evil afflicting the scholarly world, according to Muret, was the custom of disparaging the achievements of one's predecessors. A future editor of Seneca will come along, he predicted, and say that everyone who had worked on the text before him was moronic and boneheaded.<sup>64</sup> In fact, it was Muret himself who was guilty of the vice of ingratitude, with the brunt of his insults falling on Erasmus, a copy of whose 1529 Seneca edition we know he owned.<sup>65</sup> In one note he claimed that Erasmus's emendation of a text was so inept that you would have to make a special effort to come up with anything clumsier.<sup>66</sup> In another annotation, he vented his exasperation at the Dutch scholar for further corrupting an already corrupt passage: ‘If only Erasmus had kept his hands off Seneca. More readings could be restored with less effort.’<sup>67</sup>

Contrary to Muret's predictions, the future editor of Seneca turned out to be far more generous towards his predecessors than he himself had been. Indeed, Lipsius, in the preface to his 1605 edition, defended Erasmus, his Low Countries compatriot, against the Frenchman's scornful comments. ‘I pay no heed to that famous man who wishes Erasmus had never laid a hand on Seneca. This is a spiteful desire and one that derives from passion rather than judgement. Speaking with greater justice, I should say, on the contrary, that unless he had gone before and provided explanations, there would be rough and jarring patches in the text, to which we would perhaps even now still be clinging.’<sup>68</sup> Although Lipsius disapproved of Muret's

<sup>63</sup> See his note on ‘Quanquam quaeritur’, *De beneficiis* III.18.1, in Seneca (1585), p. 26: ‘Totam hanc disputationem, de servis, num dominis beneficia tribuere possint, partim ex hoc Senecae loco, partim ex Epist. 47 ... confarcatam Macrobius libro primo [cap. 11] Saturnaliorum pro sua venditavit. Sed et ex Agellio et e Plutarchi Sumposiacis tam multa, nullo pudore, in septimum librum Saturnaliorum suorum transtulit, ut appareat, eum factitasse eandem artem, quam plerique hoc saeculo factitant, qui ita humani a se nihil alienum putant, ut alienis aequae utantur ac suis.’ For the tag see Terence, *Heauton timorumenos* 77. See also Muret's note on *Epistola* XLVII, in Seneca (1585), p. 203: ‘Multa ex hac epistola impudenter compilavit Macrobius libro primo Saturnaliorum.’

<sup>64</sup> See his introductory note to the *Epistolae*, in Seneca (1585), p. 194: ‘Blenos, fatuos, fungos dicet fuisse prae se alios omnes ...’

<sup>65</sup> Nolhac (1883), p. 28.

<sup>66</sup> Commenting on the phrase ‘Inaspro et probo’ in *Epistola* XIX.10.3, in Seneca (1585), p. 199: ‘Quod hic somniavit Erasmus de Aspero et Probo grammaticis, ita ineptum est, ut laboraturus sit, si quis velit quidquam ineptius excogitare.’ See also his note on ‘Immo reddo illi’, *De beneficiis* VII.xix.4, *ibid.*, p. 65: ‘Locum hunc, ut alios sanequam multos, depravaverat Erasmus.’

<sup>67</sup> See his note on ‘Et tutior est vita’, *De beneficiis* IV.xxii.3, *ibid.*, p. 37: ‘Comprehensionem hanc iam ante depravatam ab aliis magis etiam depravavit Erasmus qui utinam a Seneca abstinisset manus. Minore negotio pleraeque restituerentur.’

<sup>68</sup> Lipsius, ‘Introductio lectoris’, in Seneca (1605), sig. A1<sup>r</sup>: ‘Neque enim virum celebrem audio optantem: Ne ille umquam eum attigisset! Malignum votum est et ab affectu, non a

shabby treatment of Erasmus, he nevertheless described him as a man of discriminating intellect and judgement.<sup>69</sup> Death had prevented him from completing his work on Seneca, but there was much that was good and laudable in his edition. Muret's only fault, in Lipsius's opinion, was that he overconfidently substituted his own readings for those found in the manuscripts, making Seneca speak, not according to their authority, but to his sense.<sup>70</sup>

Most sixteenth-century editors were guilty of this vice, including Erasmus: when his knowledge of Latin usage contradicted the manuscript evidence, he did not hesitate to impose his own reading on the text.<sup>71</sup> Lipsius, who himself made few conjectures,<sup>72</sup> was nevertheless correct to point out that Muret freely indulged in *emendatio ope ingenii*.<sup>73</sup> Muret seems to have considered it as valid a way to improve a text as consulting manuscripts, though he was not necessarily prepared to allow other scholars the same liberty. Commenting on the phrase 'nihil sine aere frigidum', 'nothing is cold without air', from Seneca's Letter XXXI, Muret cites a parallel passage from Cicero's *De natura deorum* in order to explain the Stoic belief that air is the coldest of all bodies. This conveniently allows him to lash out at one of his bugbears, Denys Lambin, who, in ignorance of the Stoic doctrine, had recklessly changed 'frigidus' to 'humidus' in his edition of Cicero, even though 'frigidus' was found in all the manuscripts.<sup>74</sup>

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iudicio emissum. Ego aliter et verius enuncio: nisi ille praevenisset et explanasset, salebras et aspera fuisse, ad quae etiam nunc fortassis adhaereamus.'

<sup>69</sup> Ibid.: 'M. Antonius Muretus, elegantis ingenii et iudicii vir'.

<sup>70</sup> Ibid.: 'Bona tamen et laudabilia multa sunt. Unum non attolas, imo non tolere, quod fidenter nimis saepe contra libros rescribit, et Senecam non eorum fide, sed suo sensu, facit loquentem.'

<sup>71</sup> Seneca (1529), p. 7, commenting on *De beneficiis* I.ii.3: 'Nec dubitem affirmare, quamlibet reclamantibus exemplaribus, "redit" a Seneca fuisse scriptum, non "reddet": "Tantum erogatur, si redit aliquid, lucrum est; si non redit, damnum non est." Nam fructus proprie "redire" dicitur ...'

<sup>72</sup> Seneca (1605), sig. A1<sup>v</sup>: 'Pauca sane a coniectura nostra, nisi sicubi ea ita clara est, ut pervicacia sit dubitare.'

<sup>73</sup> See, e.g., his note on 'Tantusque morsus', *De tranquillitate animi* i.9, in Seneca (1585), p. 311: 'Coniectura ductus, legendum putavi "tacitusque morsus"'; his note on 'Amamur', *De beneficiis* IV.v.2, *ibid.*, p. 36: 'Nemo non videt, quanto hoc melius sit, quam quod ante legebatur. "armamur"; on 'Iuvenum otiosorum aures', *Epistola* XX.2, *ibid.*, p. 199: 'Quis putasset quemquam usque eo stultum fore, ut hoc loco, pro "Otiosorum", legeret "Occisorum"? Et tamen ea scriptura omnes libros occuparat.'

<sup>74</sup> See his note on *Epistola* XXXI.5, *ibid.*, p. 221 [*recte* 201]: 'Haec sententia Stoicorum erat, omnium corporum aera frigidissimum esse. ... Balbus apud Ciceronem secundo *De natura deorum* [II.ix.26]: "Ipse vero aer, qui natura est maxime frigidus, minime est expers caloris." Quo in loco operae pretium est cognoscere Lambini temeritatem, vel exempli causa, ut intelligatur, quantum ei fidei haberi debeat. Qui cum in omnibus libris constantissime ita scriptum videret, ignoraretque illam quam dico Stoicorum sententiam, deleta voce "Frigidus", substituit "Humidus" et in notis suis ita scripsit: "Sic legendum est,

In the following note, however, Muret himself proposes an emendation to the same letter which also has no manuscript authority whatever. To his credit, Muret saw the funny side of this. 'We are amazing people', he muses, 'those of us who spend our time emending ancient books. What we condemn in others, we often permit in ourselves. Having just reprehended the emender of Cicero, I am apprehended committing a similar fault. Let us both therefore be thrashed, if we both have erred.'<sup>75</sup> It must be said, however, that many of Muret's emendations were spot on and that his name appears more frequently in the critical apparatus of modern editions of Seneca than that of Erasmus or Lipsius.

It emerges clearly from Muret's edition of Seneca that for a philologist, he was a pretty good philosopher. He knew more about Stoic doctrines not only than Lambin but also than Erasmus. In his notes he provides an ample supply of philosophical information on Stoicism, culled from both Greek and Latin sources.<sup>76</sup> Throughout his career, in fact, Muret displayed a keen interest in philosophy. Even in his early vernacular commentary on Ronsard, he inserted a few philosophical notes: one, for example, on Plato's two horses from the *Phaedrus* and another concerning Aristotle's concept of ἐντελέχεια—the former borrowed, without acknowledgement, from Marsilio Ficino,<sup>77</sup> the latter from Guillaume Budé via Angelo Poliziano.<sup>78</sup> In both Paris and Rome Muret lectured on Aristotle's

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vel libris omnibus invitis." Mirum quin dixerit, "Ipsa Cicerone invito" aut "ipsa veritate reclamante"... Eant nunc qui negant, multum huic homini debere Ciceronem. Non enim hoc tantum loco, sed innumerabilibus aliis eandem illi operam invitis omnibus libris praestitit.'

<sup>75</sup> See his note on 'Laborem si non recuses, parum est; posce', *Epistola* XXXI.6, *ibid.*: 'Mirifici homines sumus, quicunque corrigendis veterum libris operam damus. Quod damnamus in aliis, ipsi saepe numero admittimus. Ne longius abeamus, ego qui modo correctorem Ciceronis reprehendebam, eidem culpa affinis deprehendor. Certe enim in omnibus, quos vidi, libris scriptum erat, "Laborem si non recuses, parum est posse." Vapulemus igitur ambo, si ambo deliquimus.'

<sup>76</sup> See, e.g., his discussions of Stoic ἀπάθεια and the difference between δεῖσθαι and ἐνδεῖσθαι in his note on *Epistola* IX.2 and 14, *ibid.*, p. 197.

<sup>77</sup> See his commentary on poem 21, in Ronsard and Muret (1999), p. 41: 'Le cheval noir.) Par sa Roine il entend sa raison. Par le cheval noir, un appetit sensuel et desordonné, guidant l'ame aus voluptés charneles. Par le cheval blanc, un appetit honeste et moderé, tendant toujours au souverain bien. Cette allegorie est extraite du Dialogue de Platon, nommé Phaedre, ou, de la beauté.' Cf. Ficino's commentary on *Phaedrus* 246A–B, in Allen (1981), pp. 96–100.

<sup>78</sup> See his commentary on poem 69, in Ronsard and Muret (1999), p. 102: 'Ma seule Entelechie) Ma seule perfection, ma seule ame, qui causés en moi tout mouvement tant naturel que volontaire. Entelechie en Grec signifie perfection. Aristote dit, et enseigne, que chacune chose naturelle a deus parties essentielles, c'est à savoir, la matiere, qu'il nomme ὕλη ou τὸ ὑποκείμενον, et la forme, qu'il nomme εἶδος, μορφή, ou ἐντελέχεια. Dit en outre, que cette forme, ou Entelechie, donne essence et mouvement à toutes choses. Tellement que ce qui fait les choses pesantes tendre en bas, et les legeres en haut n'est autre chose que leur entelechie. Ce qui fait que les herbes, arbres, plantes prennent nourriture

*Nicomachean Ethics*. In Rome he also gave courses on Aristotle's *Rhetoric*<sup>79</sup> and on the *Politics*.<sup>80</sup> In another effort to open up the curriculum, Muret lectured in 1574 on Book II of Plato's *Republic*, although the university authorities prevented him from continuing with this text the following year.<sup>81</sup>

Like most Renaissance thinkers, and most people nowadays, Muret regarded Aristotle and Plato as the two greatest philosophers of classical antiquity.<sup>82</sup> In his commentary on the *Nicomachean Ethics*, based on his lecture courses, he enjoined students to accept the splendid and immortal doctrine of Aristotle, the supreme philosopher, upholding it in all disputations on ethical matters and continually directing all their thoughts to it.<sup>83</sup> He himself certainly followed this advice, invariably supporting the

et accroissement est aussi cette forme essentielle qui est en eus. Ce qui fait que les bestes sentent, qu'elles engendrent, qu'elles se mouvent de lieu en autre, n'est aussi que leur entelechie, c'est à dire leur ame. Parainsi ce divin Filosofo (car ainsi me contraint sa grandeur de l'apeler) ce grand Aristote (duquel l'erudition a toujours esté celebrée par les doctes et de nôtre tans, en l'université de Paris, comme a l'envi, clabaudée par les ignorans) voulant definir l'ame, l'a dit estre ἐντελέχειαν σώματος φυσικοῦ ὀργανικοῦ [*De anima* II.1, 412<sup>b</sup>5], en laquelle definition le mot, Entelechie, signifie une forme essentielle, non pas un perpetuel mouvement, comme l'a exposé Ciceron [*Tusculan Disputations* I.x.22], qui et en cet endroit, et en beaucoup d'autres, s'est monstré asses mal versé en la Philosophie d'Aristote.' Cf. Budé (1557), II, p. 12 (*De asse et partibus eius*), whose source was, no doubt, Poliziano (1553), pp. 224–8 (*Miscellanea centuria prima*, cap. 1), on which see Kraye (1983), pp. 83–4.

<sup>79</sup> See his inaugural lecture, 'Cum Aristotelis libros De arte rhetorica interpretari inciperet. Oratio ... habita Romae postridie Non. Martii MDLXXVI' (8 March 1576), and 'Cum pergeret in eorundem Aristotelis libros De arte rhetorica interpretatione. Oratio ... habita Romae postridie Non. Novembris MDLXXVI' (6 November 1576), in Muret (1789), I, pp. 255–68. His Latin translation of Book II was published in 1585.

<sup>80</sup> See his inaugural lecture, 'Explicaturus libros Aristotelis De republica. Oratio ... habita Romae pridie Non. Novembris MDLXXVII' (4 November 1577), in Muret (1789), I, pp. 269–74. Muret owned a copy of the Latin version of Juan Gines de Sepúlveda, which he annotated, crossing out many of the Spaniard's translations and replacing them either with his own or with the Greek text; see Nollac (1883), p. 11.

<sup>81</sup> See the inaugural lecture for his course on Cicero's *De officiis* (cited n. 28 above), pp. 249–50: 'Denuo hoc anno ... denuo Platonem cum Cicerone conjungere ... ut nobilissimus Philosophus, cuius ante me in his scholis nunquam, ut opinor, audita vox erat, paullatim familiarior factus, uberrimis illis sapientiae et eloquentiae suae fontibus ingenia nostra copiosius et abundantius irrigaret. Aliter visum est iis, quorum nutu atque auctoritate nostra omnium studia diriguntur, qui ... omnem a me huius anni operam in uno Cicerone consumi maluerunt.'

<sup>82</sup> See, e.g., his inaugural lecture on Aristotle's *Politics* (cited in n. 80 above), p. 272: 'principes philosophorum, Plato et Aristoteles'.

<sup>83</sup> See his comments on *Nicomachean Ethics* I.9, in Muret (1789), III, p. 231: 'Accipite praeclaram et immortalis memoria dignam summi philosophi Aristotelis sententiam, quam in omnibus huius generis disputationibus teneatis, quam sequamini, ad quam sensus cogitationesque vestras perpetuo dirigatis.' On this commentary see Kraye (1995), esp. pp. 116–117.



Peripatetic side against the Stoics. So, he held, along with Aristotle, that it was only necessary to control the passions;<sup>84</sup> and he described the Stoic belief that they could and should be eliminated as, like so many other doctrines of theirs, totally absurd and in conflict with nature itself.<sup>85</sup> He rejected another key Stoic pronouncement, that virtue was the only good and on its own was enough to enable one to live happily and well, citing the critique of the doctrine presented by the Greek Aristotelian commentator, Alexander of Aphrodisias.<sup>86</sup> As for Platonism, Muret was inclined to give it credit for those Stoic doctrines which he regarded as admirable: the belief that the wise man receives no injuries, for example, derived from Socrates, who had expressed almost the same view in the *Apology* and in Book I of the *Republic*.<sup>87</sup>

Far from being a whole-hearted supporter of Stoicism, Muret was not even a half-hearted one. Although much better informed about Stoic philosophy than Erasmus, he was no more sympathetic towards it—if anything, less so. Erasmus, warning readers of his 1529 Seneca edition about doctrines that they, as Christians, should be wary of, noted that the Stoics regarded their wise man as the equal, if not superior, of the gods, and made him entirely responsible for his own happiness.<sup>88</sup> Muret, in attacking

<sup>84</sup> See his note on *Nicomachean Ethics* II.3, in Muret (1789), III, p. 255: ‘moderandas esse affectiones, non ex homine tollendas’; see also his commentary on Book II of Plato’s *Republic*, *ibid.*, p. 572: ‘Fortes autem qui sunt, iidem plerumque et iracundi esse consueverunt; recteque dictum est a Peripateticis, iram esse fortitudinis cotem.’

<sup>85</sup> See his note on *Nicomachean Ethics* II.3, in Muret (1789), III, p. 254: ‘Ut autem alia pleraque, ita hoc quoque Stoicorum placitum absurdissimum est, et pugnat cum ipsa natura, quae numquam illos animorum motus hominum generi inuisset, si illi eradicandi et euellendi, tanquam prorsus inutiles, essent.’

<sup>86</sup> See his note on ‘Peperceram’, *Epistola* LXXXV, in Seneca (1585), p. 209: ‘Multa colligit, quibus Stoici probabant, virtutem solam satis esse ad bene beateque vivendum; et aliter sententiarum opiniones breviter refutat. Multa de hac Stoicorum sententia apud Ciceronem in libris De finibus et quinto Tusculanae leguntur. Sed extat et summi Peripatetici Alexandri Aphrodisiensis eruditissimus commentariolus, in quo accurate adversus hanc gloriosam et magnificam Stoicorum sententiam disputatur’; see Alexander of Aphrodisias (1887), pp. 159–68.

<sup>87</sup> See his introductory note to ‘In librum quod in sapientem, neque iniuria cadat, neque contumelia’, i.e., *De constantia*, *ibid.*, p. 312: ‘Hoc quod inter admirabilia Stoicorum numerarit aliquis, sapientem nulli iniuriae patere, plane Socraticum est. Nam cum iniuriam accipere non dicatur, nisi qui ab alio laeditur; sapiens autem laedi non queat; consequens est, eum extra iniuriam esse. ... Haec a Socrate et in Apologia, et libro primo de Rep[ublica] in hanc fere sententiam disputantur.’ See also his note on ‘Nemo prudens’, *De ira* I.xix.7, *ibid.*, p. 278: ‘Platonicum.’ Muret thought that Seneca’s *Naturales quaestiones* were largely taken over from Aristotle’s *Meteorology*: see ‘Ad libros Senecae Naturalium quaestionum’, *ibid.*, p. 410: ‘Hi libri, maximam partem, sumpti sunt ex Aristotelis Meteorologicis ...’

<sup>88</sup> Erasmus (1906–58), VIII, p. 31: ‘nusquam magis discrepat [Seneca] a Christiana philosophia quam quum ea tractat quae nobis sunt praecipua. ... [Q]uoties incidit in sapientem illum Stoicum, sic eum attollit ut frequenter diis aequet, nonnunquam et anteponat. Ait sapientem universam felicitatem suam sibi uni debere, diis nihil opus esse,

this same doctrine, is openly abusive, decrying ‘the impious and intolerable arrogance of the Stoics’.<sup>89</sup> In addition to insulting the Stoics, he also enjoyed poking fun at them. Drawing, as he frequently does, on Plutarch, who was no friend of the Stoics, he notes that the doctrine that all virtues and all vices are equal means that it is no more courageous to receive a wound fighting for one’s country than to endure a flea bite, and that it is no more temperate to abstain from a beautiful virgin in the full flower of youth than from an ugly old woman with one foot in the grave.<sup>90</sup>

The problem with the Stoics, as Muret saw it, was that while many of their *sententiae* were worthy of respect, many others were manifestly idiotic. An example of the latter category was the belief held by the early Greek Stoics that everything, including virtues and the good, was not only composed of matter but was actually a living creature. This notion was so ridiculous that you would scarcely believe that a demented old woman dreamed it up. Yet those severe founding fathers of the Stoic sect, those bearded masters, those pillars of wisdom had in all seriousness handed it down as true doctrine. Muret praises Seneca for attempting to refute this Stoic nonsense.<sup>91</sup> He also approves of Seneca’s opposition to the view of

immo deos aliquid debere sapienti. At pietas nobis persuasit etiam passerculos et lilia Deo curae esse, tum hominem nihil habere ex sese boni, sed summam suae felicitatis debere munificentiae Numinis.’ See also Panizza (1987).

<sup>89</sup> See his note on ‘Ferte fortiter, hoc est, quo deum anteceditis’, *De providentia* vi.6, in Seneca (1585), p. 232: ‘Haec vero intoleranda Stoicorum arrogantia est. Parum putarunt, sapientem suum cum deo conferre, etiam anteposuerunt. Haec monstra opinionum perterrefacere nos debent, ne unquam ingenio nostro confisi, quidquam de rebus divinis temere aut statuere aut pronuntiare audeamus’; see also his note on ‘Bonus ipse tempore tantum a deo differt’, *De providentia* I.5, *ibid.*, p. 230: ‘Itaque dicebant, hominem esse mortalem deum; deum vero hominem immortalem. Sed hoc multo quam par est audacius ac superbius dictum est’; and his note on ‘Est aliquid quo sapiens antecedit Deum’, *Epistola* LIII.11, *ibid.*, p. 204: ‘Impia et intolerabilis arrogantia Stoicorum, qui non satis esse ducebant sapientem suum cum Deo ex aequo componere nisi etiam anteponerent.’

<sup>90</sup> See his note on ‘Quoniam utrumque ubi ex virtute fit, par est’, *De beneficiis* VI.xliii.1, *ibid.*, p. 57: ‘Stoici, ut omnia peccata, sic omnia recte facta paria esse dicebant, neque maiorem esse fortitudinem in vulneribus pro patria excipiendis, quam in morsu pulicis fortiter ferendo, neque maiorem temperantiam, si quis a virgine formosa, et ipso aetatis flore constituta, quam si ab informi et capulari vetula abstineret, dum utrumque ex virtute fieret. Auctor Plutarchus [*De Stoicorum repugnantiis* 1039A].’

<sup>91</sup> See his note on ‘Tardius rescribo’, *Epistola* CVI.1, in Seneca (1585), p. 214: ‘Stoicorum multae graves sententiae erant, multae etiam insigniter fatuae. Huius secundi generis est ea, quae hic a Seneca molli, ut aiunt, brachio tractatur: Bonum omne esse corpus. ... Ab hoc principio profecti, ut, ubi falsa aliquid pro vero positum est, necessario multa consimilia consequuntur, eo progrediebantur, ut, et virtutes et vitia, et omnes animi motus non corpora modo sed et animalia esse dicerent’; and on ‘Desideras’, *Epistola* CXIII.1, *ibid.*, p. 215: ‘Nisi certa et manifesta veterum testimonia extarent, vix crederemus sententiam, quae hic a Seneca confutatur et irridetur, cuiquam excordi ac delirae ancilulae in mentem venire potuisse. Quid enim absurdius aut magis ridiculum cogitari potest quam, non modo animum ipsum animal est ... sed et omnes virtutes, omnia vitia, omnes motus animorum, ipsas

Zeno and Chrysippus that the wise man should engage in politics;<sup>92</sup> and he applauds Seneca for regarding the life of scholarship as more beneficial to mankind.<sup>93</sup> Muret, in fact, gives the general impression of rather regretting that such a sensible man as Seneca had ever got caught up in the 'foolish wisdom of the Stoics'. After condemning the Stoic belief that it was legitimate for the wise man to commit suicide, Muret writes: 'I wish that Seneca had kept his distance from this madness or at least had been more moderate and sparing in commending it.'<sup>94</sup>

The Senecan *sententiae* which Muret recommended to his readers were not hard-line Stoic pronouncements, but somewhat hackneyed moral precepts, such as the need for a serious philosopher to regard poverty as of no account.<sup>95</sup> It is revealing that the only time Muret consciously adopts a Stoic attitude, his tone is distinctly humorous. Lamenting the deplorable state of the text of *De ira*, he says that we would be justified in getting very

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denique cogitationes nostras esse animalia? Et hoc tamen severi illi Stoicae disciplinae principes, illi barbati magistri, illa sapientiae columina pro vero ac serio tradiderunt.'

<sup>92</sup> See his note on 'Etiam si non praecepto, at exemplo', *Epistola* LXVIII, *ibid.*, p. 207: 'Stoicorum enim principes, etsi remp[ublicam] sapienti capessendam esse dicebant, ipsi tamen ad eam nunquam accesserunt. Atque hoc nomine in primis eos reprehendit Plutarchus, quod eorum cum vita pugnat oratio.' Elsewhere, however, Muret's noted that Seneca too had been accused of not practising what he preached: see his note on *Nicomachean Ethics* I.8, in Muret (1789), III, p. 215: 'Stoici verbo negligebant opes, sed non constabant sibi; ... et quidam eorum nimium magnum studium posuerunt in congerendis opibus. Quo nomine a quibusdam notatus est etiam Seneca.'

<sup>93</sup> See his note on 'Tu me, inquis', *Epistola* VIII.1, in Seneca (1585), pp. 196–7: 'Videri poterat Seneca disciplinae suae conditoribus contraria docere, cum Lucilio auctor esset, ut se a rebus agendis abduceret, vitaretque omnium prope consuetudinem otiumque, ac solitudinem amaret. Zeno enim et Chrysippus et ceteri Stoicorum duces suadebant, capessendam esse remp[ublicam], neque sapienti esse in otio consenesendum. At Seneca neque se id sibi consilii capere ait, neque cuiquam dare, ut se desidiae atque ignaviae tradat; tantum, ne nos improborum, quae maxima multitudo est, exempla transversos agant, secedendum esse, et excolendum in otio animum, ommissa aliarum rerum omnium cura, intereaque commendanda ac consignanda litteris sapientiae praecepta; quod qui faciunt, multo eorum vita humano generi fructuosior est, quam si forensibus negotiis intenti, levium et nihil ad beatam vitam pertinentium rerum tractatione tempus omne consumerant.'

<sup>94</sup> See his note on 'Post longum intervallum', *Epistola* LXX.1, *ibid.*, p. 207: 'Hoc ... ex illa stulta Stoicorum sapientia est, qua putabant multa evenire posse, propter quae sapiens mortem sibi consciscere deberet. Vellem, Seneca aut ab illa insania abfuisset, aut saltem in ea commendanda parcior ac moderatior fuisset.'

<sup>95</sup> See his note on 'Si vales', *Epistola* XX.1, *ibid.*, p. 199: 'Re et vita, non verbis, philosophandum; et contemnendam paupertatem ei qui serio philosophari velit.' See also his note on the word 'Librorum', in *Epistola* XLV.1, *ibid.*, p. 222 [*recte* 202]: 'Libris non multis opus esse, sed bonis; et in studiis non subtilia quaerenda esse, sed utilia.'

angry indeed at those responsible for its poor condition, if the work itself did not prohibit anger. Let us bear this loss, he says, with equanimity.<sup>96</sup>

Muret, who became a Catholic priest in 1576, was deeply concerned about the relationship of Stoicism to Christianity. On one occasion, commenting on the statement in *De providentia* that a good man is ‘the true offspring’ of God, he writes, echoing various passages from the Bible: ‘They will be sons of God’,<sup>97</sup> and continues: ‘At times you would say that this man had laid his hands on the Holy Scriptures and dipped into them.’<sup>98</sup> Far more commonly, however, he draws attention to the incompatibility of Stoic doctrines with Christian theology. Erasmus, as we have seen, had done the same in his 1529 edition;<sup>99</sup> but Muret was much more forthright in denouncing the views of the Stoics on fate, the origin of evil and the nature of the divinity as dangerously impious, as well as utterly foolish.<sup>100</sup>

This issue was also confronted by Giulio Roscio, another of Muret’s former students, who prepared the index for the 1585 edition. In the preface to this index, Roscio explains that Cardinal Savelli, representing the Holy Office of the Inquisition, had advised him to issue a spiritual health warning, alerting readers to the heretical doctrines they would encounter in Seneca. Roscio therefore provides a list of those topics which Christian readers should approach with caution, including Seneca’s polytheism and

<sup>96</sup> See his note on *De ira*, *ibid.*, p. 276: ‘Hi libri, ut pleraque huius scriptoris, ita mutili decurtatique sunt, ut iusta prope causa fuerit irascendi, quorum id negligentia contigit, nisi ipsimet irasci nos vetarent. Feramus hanc quoque iacturam aequo animo ...’

<sup>97</sup> See his note on ‘Et vera progenies’, *De providentia* i.5, *ibid.*, p. 230: ‘Erunt filii Dei’; cf. Matthew 5:9, Romans 8:16 and 9:26, Galatians 3:26.

<sup>98</sup> *Ibid.*: ‘Dicis interdum hunc hominem litteras sacras attigisse ac degustasse.’ His note on ‘Infrunita et antiqua est’, *De beneficiis* III.xvi.3, *ibid.*, p. 26, is merely lexical: ‘Infrunita est insulsa. Sic in libro De vita beata [xxiii.3]: “Alterum infruniti animi est, alterum timidi et pusilli.” Sic in sacris litteris [Ecclesiasticus 23:6]: “Animo irreverenti et infrunito ne tradas me Domine.”’

<sup>99</sup> See the passage cited in n. 88 above.

<sup>100</sup> See his note on ‘Fata nos ducunt’, *De providentia* V.7, in Seneca (1585), p. 232: ‘In quo insaniebant. In deo enim libera et absoluta rerum omnium potestas est, necessitas nulla ... Ut a tam impiarum opinionum faeditate longissime abesse, ita omnes voces quae illarum suspicionem movere aliquam possint, studiosissime vitare debemus. Si Christiani sumus, utamur et moribus et vocibus Christianis’; his note on ‘Non potest artifex mutare materiam’, *De providentia* v.9, *ibid.*: ‘Stulta haec opinio de origine malorum. Materiam continuisse in se malorum omnium semina; eam autem a Deo non potuisse mutari. ... Non cogitant videlicet, ut cetera omnia, sic materiam ipsam a Deo conditam esse. ... Itaque malorum origo aliunde repetenda et aliter explicanda est’; and his note on ‘Quam stultum est optare’, *Epistola* XLI.1, *ibid.*, p. 222 [*recte* 202]: ‘Impietatis et stultitiae plena haec sententia Stoicorum fuit. Audiebant summo omnium gentium consensu deos bonorum datores vocari. Ipsi autem praeter virtutem, bonam mentem, rationem perfectam, et talia nihil in bonis habendam esse dicebant, et ea divinitus dari negabant; sibi ea quemque suis viribus parere dicebant. Itaque si sibi constare vellent, deos nullius boni datores esse dicerent, necesse erat.’

determinism, his approval of suicide and his dubious position on the immortality of the soul.<sup>101</sup> He goes on to say, however, that this should not lead readers to disdain or skip over other, far wiser, precepts of Seneca, which deserved careful consideration; for Seneca's errors often occurred in close proximity to views that were close to Christian truth. After citing a few parallels between Seneca and the Bible, Roscio writes: 'Those things which we often read in Christian authors constantly crop up in Seneca: the greatest and most powerful God directs everything; the world was created on account of his Goodness' and so on.<sup>102</sup> It is a great pity, he concludes, that this man who lived at the dawn of the Christian era and could have heard Peter and Paul preaching the truth failed to see the light. For had he received baptism, we would have, with only a few changes, a Christian philosopher.<sup>103</sup>

These words seem close in spirit to Lipsius, who in dedicating his 1605 edition to Pope Paul V, stated that Seneca was 'virtually a Christian'.<sup>104</sup>

<sup>101</sup> See 'Iulius Roscius Hortinus Lectori', in Seneca (1585), sigs Zz1<sup>v</sup>-2<sup>r</sup>: 'Ego vero IACOBI SABELLI Cardinalis amplissimi in primis consilium secutus, qui in iis, quae ad pravitatem haereticorum coercendam ac conservandam religionis dignitatem pertinent, vigilantissimus est; operae pretium duxi et de hoc primum admonere lectorem, et eorum errorum, qui apud Senecam reperiuntur exempla quaedam, e quibus alii intelligi possint, indicare. Nam et de divina natura usitato Ethnicorum more loquitur, quasi plures Dii sint, et factorum necessitati nimium saepe tribuit. Tum de mundo an ex tempore vel ex aeternitate sit conditus, non definit; de eodemque utrum corpus an anima sit ambigit. Quam deinde inconstanter de animo humano disputat, quem modo igne tenuiorem, corporeum tam videtur dicere modo Deum ipsum in humano corpore hospitantem appellat, modo animal asseverare non dubitat, eiusque immortalitatem ab omnibus sapientibus receptam in certamen vocat.' See also Niuitta and Santucci (1999), pp. 80, 82.

<sup>102</sup> Seneca (1585), sig. ZZ2<sup>r</sup>: 'Nec interim contemnat alia longe plura sapientissime dicta, eaque non praepropera lectione excurrat; sed diligenter considerata, animoque infixata, exequi re ipsa ac perficere studeat. Nam ut iis quorum exempla protulimus, erroribus in simili argumento cum veritate Christiana coniunctissimas sententias apud Senecam haberi ostendamus, nonne cum dicit, Deum etiam ingratum multa tribuere, alludere ad illud videtur, quod est in Evangelio [Matthew 5:45]: Pluit super iustos et iniustos? Nonne quod Regius propheta dicit [Ecclesiasticus 39:24]: Omnia aperta sunt oculis eius, simillimum est illi, quod Seneca aliis verbis exponit, Deum omnia nosse etiam futura? ... Et illa quae apud nostros saepe legimus, crebra sunt apud Senecam: Deum maximum et potentissimum omnia vehere; fabricandi mundum bonitatem ipsius causam fuisse; eundem providentia, quam Pronean vocant Stoici, opus suum disponere, ac sedentem spectare; fato nec preces, nec vota, nec expiationes, nec libertatem arbitrii ullo modo repugnare; Deum probare homines, et quos amat recognoscere atque exercere; nullam sine eo mentem sanam esse; mortem denique expectandam sine taedio vitae.'

<sup>103</sup> Ibid.: 'Miserandum sane, Virum, qui nascentis religionis nostrae initia spectare, Petrumque et Paulum veritatis praecones audire potuit, fidei fulgorem divinitus tunc mundo illucescentem non respexisse. Nam si sacro ei lavacro ablui datum esset, paucis mutatis, Christianum philosophum haberemus.'

<sup>104</sup> See Lipsius's dedicatory letter to Pope Paul V, in Seneca (1605), sig. \*3<sup>v</sup>: 'En, Annaeum Senecam laudatissimum inter omnes veteres scriptorem, et virtutis studio paene Christianum (ita nostri censuerunt) ...'

The Christian Neostoicism of Lipsius is unlikely, however, to have won approval from Muret. We know that he owned a copy of Lipsius's *De constantia* published in 1584;<sup>105</sup> but if he managed to read the treatise before he died the following year, it left no discernible trace on his edition of Seneca. Nor would Muret, whose philosophical inclinations were towards Aristotle and Plato, have agreed with Lipsius's view that Seneca, in philosophy, especially moral philosophy, had surpassed 'all who have been and will be'.<sup>106</sup> Muret's knowledge of Stoic philosophy, though deeper than Erasmus's, was less thorough than that of Lipsius, who made it his business to collect every scrap of information on the sect surviving from antiquity. Unlike Muret, who believed that Seneca deserved to be read despite his Stoicism, Lipsius valued Seneca in large measure because he offered the most attractive and comprehensive version of Stoic moral philosophy, which he believed was the necessary remedy for the turbulent passions of the civil and religious wars which threatened the peace of mind of his contemporaries. Just as the historical works of Tacitus, in Lipsius's view, could serve as a political textbook for late sixteenth-century Europe, so Seneca's philosophical works, he firmly believed, were an invaluable moral tract for his own times. As with attitudes towards Seneca's Latin style and approaches to the philological problems presented by his writings, so too with the assessment of his moral philosophy, the 1605 edition of Lipsius was the end result of a humanist re-evaluation of Seneca, beginning with Erasmus and carried forward by Muret.

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<sup>105</sup> See Niuitta and Santucci (1999), p. 113 (scheda 50).

<sup>106</sup> 'Iudicium super Seneca eiusque scriptis', in Seneca (1605), p. xi: 'Itaque sententiam pro te, Seneca, audacter ferimus: in Philosophia, ac praesertim Morali eius parte, vicisti qui fuerunt, qui erunt; accipe palmam, non magis quam Herculi clavam (omnes omnia faciant) extorquendam'.

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## **Retracted Chapter: Michael Baius (1513-89) and the Debate on ‘Pure Nature’: Grace and Moral Agency in Sixteenth-Century Scholasticism**

**M.W.F. Stone**

The chapter: Michael Baius (1513-89) and the Debate on ‘Pure Nature’: Grace and Moral Agency in Sixteenth-Century Scholasticism appearing in: *The New Synthese Historical Library Volume 57*, 2005, pp 51-90 has been retracted at the request of the employer of the author at the time of writing, because it contains passages from the previously published manuscripts without acknowledging the source. The previously published manuscripts that have been duplicated in this chapter are:

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