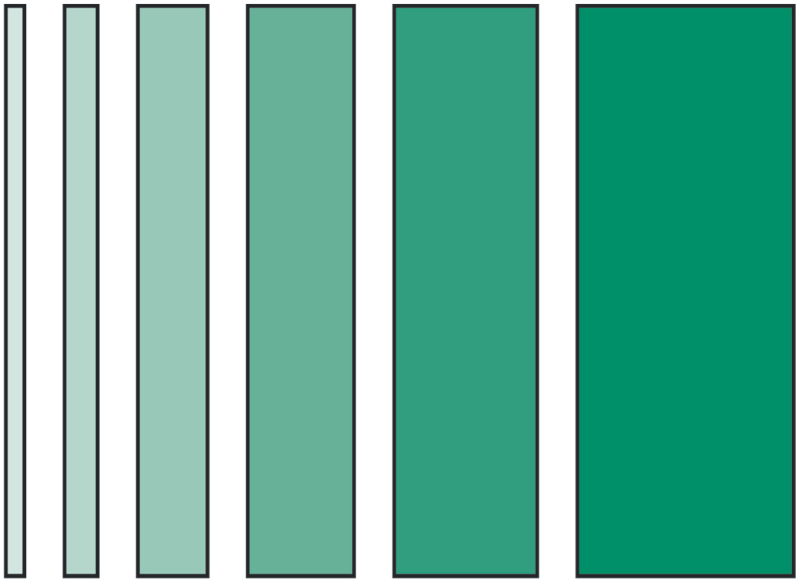
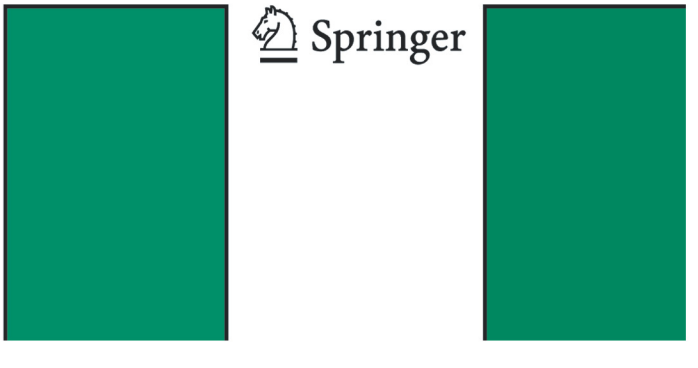


The New
Synthese
Historical
Library
Volume 57

Moral Philosophy on the Threshold of Modernity

edited by
Jill Kraye
and Risto Saarinen



Springer

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.[25] 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.[26] 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

[25] 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^{vb}.

[26] See, e.g., Doyle (2001), pp. 117ff.

self-preservation is not only a rational inclination,[27] it is, as such, in complete harmony with Christian charity.[28] 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.[29] 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.[30] 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,[31]

---

[27] 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$^{rb–va}$: '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.'

[28] Thomas Aquinas, *Summa theologica* 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 dictat iudicium rationis rectae et instinctus naturae... Ad illud quod obiicitur, quod amor caritatis superveniens tollit curvitatem naturae, dicendum, quod quaedam est curvitas naturae, quae sonat in vitium et corruptionem; quaedam, quae respicit ipsius naturae intrinsecam 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.'

[29] Thomas Aquinas, *Summa theol*. I–II q. 109 a. 4.

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

[31] 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.[32] 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.[33] 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*![34]

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'.[35] While the sacrifice of my life in the natural law paradigm appears to be

---

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.

[32] Soto (1573), f. 114va: '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.'

[33] 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 pinguiorem 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 praeferri 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....'

[34] 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.'

[35] 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.[36] 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 Fénélon 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.[37] 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

---

[36] 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]...'

[37] Durandus a S. Portiano (1571), f. 341$^{r–v}$ (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 Rempublicam 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;[38] even by around 1650 it had by no means disappeared.[39] 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.[40] 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.[41] 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.[42] Gregory of Valencia is quite explicit: in his view, combining charity and self-destruction was simply inconceivable.[43] So it would not be sufficient to

[38] 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^{vb} (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.'

[39] 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.

[40] 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.'

[41] 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. 114ra: '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 complicet repugnantiam... Immo et minimum veniale peccatum licere admittere pro salute spirituali totius mundi, contradictionem involvit.'

[42] 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.'

[43] 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,[44] 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.[45] Durandus for his part

---

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).

[44] 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.'

[45] 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 praeferendum bono particulari, et sic praeferendum, 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.[46] 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.[47] 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.[48] 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.[49]

---

proprium est perdendum, pro conservatione boni communis.' A similar position is taken by his colleague Mair (1509), f. 94^{vb}.

[46] Durandus (1571), f. 341^{rb}: '... 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.'

[47] Vernias (1482), f. 4^{vb}: 'Licet virtus sit magis eligenda ipso esse et vivere in genere moris – in genere enim moris eligibilius est mori quam turpiter vivere ... –, in genere vero naturae est totum oppositum, quia in illo genere eligibilius est esse et vivere quam virtus, cum unum sit substantia, aliud vero accidens. Cum ergo unicuique sit magis essentiale 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.

[48] 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.

[49] 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.[50] Once more, however, we are mistaken. In fact, there was a time when, outside the Augustinian tradition,[51] 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.[52] 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.[53] 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

---

[50] 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 tenear per se loquendo propriam vitam defendere, non videtur ad id teneri impediendo alii defensionem propriae vitae.'

[51] 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).

[52] 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.

[53] 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.[54]

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.[55] There were some— Lessius, for instance—who blurred this distinction;[56] while others—for example, Soto, Suárez and Oviedo—maintained that I was not allowed to give up the board in my possession.[57] 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.[58] When, however, they

---

[54] Doyle (1997), p. 107.

[55] Soto (1573), f. 114va: 'positive se occidere' / 'permittere se mori'.

[56] 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.'

[57] 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 utrunque pariter periclitari, aut alterum tantum, altero iam beneficio tabulae in tuto sufficienter posito.' See also Soto (1573), f. 114va; Oviedo (1651), pp. 314f.

[58] Soto (1573), ff. 113^{vb}–114^{rb}: '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[59]—'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.[60]

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,[61] what they derived from human solidarity was at most the *permission*, not the *obligation*, to risk one's own life in cases of emergency.[62] 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... .'

[59] 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.'

[60] Soto (1573), f. 114^{rb}, 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... .'

[61] 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.

[62] Soto (1573), f. 114$^{rb–va}$: '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.[63] Whether the examples provided came from the ethics of heroism,[64] or from military discipline—the illicitness of desertion[65]—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.[66]

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.[67] The Jesuit schoolman Diego Granado (d. 1632),[68] 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

---

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.'

[63] 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... .'

[64] As in Lorca (1614), p. 718.

[65] 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... .'

[66] 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.'

[67] 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.

[68] See Olivares (1987).

heroism.[69] 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.[70] 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.[71] 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

---

[69] 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 inclinat 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 inclinat 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.'

[70] ... 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.

[71] Amico (1650), p. 269a–b: 'Sed contra: Charitas maxime inclinat 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 inclinabit 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 inclinaret ad diligendum proximum, quam seipsum... Ergo non semper charitas magis inclinat 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.[72]

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.[73] 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.[74]

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.[75] 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

---

[72] For literature on Lessius, see Stone and van Houdt (1999).

[73] Lessius (1617), p. 96a (*De iust. et iure* 2.11.7.41): 'Probatur primo, quia non tenetur homo cum tanto cruciato vitam tueri, ne alius eam eripiat, sicut non tenetur permittere sibi tibiam abscindi, cum tanto dolore... .'

[74] Molina (1733), p. 464a: 'Quamvis homo non teneatur cum tanto cruciatu, 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.'

[75] 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.[76] 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.[77] 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.[78] 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.[79] 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.[80]

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?[81]

---

[76] 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.'

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

[78] Ibid. (*De iust. et iure* 2.11.7.43): '... non tenetur Iudici cum tantis tormentis suam innocentiam probare'.

[79] Lugo (1642), p. 396a–b (*De iust. et iure* 14.10.178–81).

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

[81] 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.[82] 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.[83]

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

---

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.'

[82] 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 rursum 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.

[83] 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.[84]

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.[85] 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.[86] 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.[87] If Lessius cannot be seen

---

[84] 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.

[85] I agree with the conclusion of Stone and van Houdt (1999), pp. 392–94 (contra Peter Koslowski).

[86] 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.'

[87] 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.

REFERENCES

Amico, Francesco SJ. (1650) *Cursus theologicus*, IV: *De Fide, Spe, Charitate*, Anvers (3rd ed.).

Aragón, Pedro de OSA. (1625) *Commentaria in Secundam Secundae D. Thomae de Fide, Spe, et Charitate*, Venice (2. ed., first ed. 1584).

—— (1590) *In Secundam Secundae D. Thomae Doctoris Angelici commentaria: De Iustitia et Iure*, Salamanca.

Arriaga, Rodrigo de SJ. (1649) *Disputationes theologicae in Secundam Secundae D. Thomae. Universi Cursus theologici Tomus quintus, qui continet Tractatus de Virtutibus Theologicis*, Anvers.

Augustine (1956) *De libero arbitrio*, CSEL 74, Vienna: Hoelder-Pichler-Tempsky.

Baldelli, Niccolo SJ. (1646) *Disputationum ex morali theologia libri IV*, Lyons.

Báñez, Domingo OP. (1586) *Commentaria de fide, spe et charitate*, Rome.

Barrientos García, José (1978) *El tratado De justitia et jure (1590) de Pedro de Aragón*, Salamanca: Ediciones Universidad.

Bonaventure (1887) *Opera omnia*, III: *In tertium librum Sententiarum commentaria*, Quaracchi: Typographia Collegii S. Bonaventurae.

Bornier, Philippe (1725) *Conferences des ordonnances de Louis XIV., avec les anciennes Ordonnances du Royaume, le Droit Ecrit et les Arrêts*, II, Paris.

Bourdaloue, Louis SJ. (1871) 'Sermon pour le douzième dimanche après la Pentecôte sur la Charité du prochain', in: *Oeuvres complètes*, II, Bar-le-Duc: Guérin.

Carolina (1960) *Peinliche Gerichtsordnung Kaiser Karls V. von 1532*, ed. G. Radbruch, Stuttgart: Reclam.

Castro-Palao, Fernando de SJ. (1690) *Opus morale*, vols. 1 and 3, Venice.

Charron, Pierre (1646) *De la sagesse*, Leiden (first ed. 1601).

Clainer, Georg SJ. (1611) *Disputatio physica de magia naturali*, Ingolstadt.

Covarruvias, Diego (1588) *Opera omnia*, 2 vols., Venice.

Decker, R. (2002) 'Gerichtsorganisation und Hexenprozessrecht der römischen Inquisition', in: H. Eiden and R. Voltmer (eds.): *Hexenprozesse und Gerichtspraxis*, Trier: Spee, pp. 455–74.

Delrio, Martín SJ. (1617) *Disquisitionum magicarum libri sex*, Mainz (rather: 1624).

Deuringer, Karl (1959) *Probleme der Caritas in der Schule von Salamanca*, Freiburg i.Br.: Herder.

Doyle, John P. (1997) 'Two Thomists on the morality of a jailbreak', in: *The Modern Schoolman* 74, pp. 95-115.

—— (1999) 'Francisco Suárez on The Law of Nations', in: M.W. Janis and C. Evans (eds.): *Religion and International Law*, The Hague: Nijhoff, pp. 103-20.

—— (2001) 'Francisco Suárez, S.J. on Human Rights', in: K. Wegmann and W. Ommerborn and H. Roetz (eds.): *Menschenrechte: Rechte und Pflichten in Ost und West*, Münster, Hamburg, Berlin, London: LitVerlag, pp. 105-32.

Durandus a S. Portiano OP. (1571) *In IV libros Sententiarum commentaria*, Venice (Rpt. Ridgewood: Gregg Press, 1964).

Fabri, Honoré SJ. (1672) *Apologeticus doctrinae moralis eiusdem Societatis,* P.I, Cologne: (2nd ed.)

Godefridus de Fontibus (1932) *Quodlibet XII*, ed. J. Hoffmans, in: *Les Philosophes Belges*, V, 1–2 , Louvain: Institut supérieur de philosophie de l'Université.

Gonet, Jean Baptiste OP. (1681) 'Dissertatio theologica de conscientia probabili', in: *Clypeus theologiae thomisticae*, III, Lyons, pp. 257-307, (6th ed.).

Granado, Diego (Iacobus) SJ. (1629) *In Secundam Secundae S. Thomae Aquinatis Commentarii*, Sevilla.

Grotius, Hugo (1734) *De jure belli ac pacis libri III*, ed. Ch. Wolff, Marburg (1st ed. 1625).

Hell, Caspar SJ. (1624) *Disputatio philosophica de prodigiosis spirituum effectibus*, Ingolstadt.

Henniges, Heinrich (1673) *In Hugonis Grotii De Iure Belli et Pacis libros III observationes politicae et morales*, Sulzbach.

Hillenaar, Henk (1967) *Fénelon et les jesuites*, The Hague: Nijhoff.

Holl, Karl (1928) 'Augustins innere Entwicklung', in: *Gesammelte Aufsätze zur Kirchengeschichte* , III, Tübingen: J.C.B. Mohr, pp. 54-116.

Ioannes Capreolus OP. (1905-06) *Defensiones theologiae D. Thomae*, eds. C. Paban and Th. Pègues, vols. 5-6 , Tours: Gattier (rpt. Minerva**,** 1967).

Kittsteiner, Heinz-Dieter (1988) 'Kant and Casuistry', in: E. Leites (ed.), *Conscience and Casuistry in Early Modern Europe*, Cambridge: University Press, pp. 185-213.

Knebel, Sven K. (1991) 'Naturrecht, Folter, Selbstverzicht. Spees *Cautio Criminalis* vor dem Hintergrund der spätscholastischen Moralphilosophie', in: D. Brockmann and P. Eicher (eds.), *Die politische Theologie Friedrich von Spees*, Munich: Fink, pp. 155-89.

—— (2000) *Wille, Würfel und Wahrscheinlichkeit. Das System der moralischen Notwendigkeit in der Jesuitenscholastik 1550-1700*, Hamburg: Felix Meiner.

Landau, Peter (2001) 'Spanische Spätscholastik und kanonistische Lehrbuchliteratur', in: F. Grunert and K. Seelmann (eds.), *Die Ordnung der Praxis. Neue Studien zur Spanischen Spätscholastik*, Tübingen: Niemeyer, pp. 403-25.

Laymann, Paul SJ. (1709) *Theologia moralis*, Mainz (first edition 1626).

Lessius, Leonard SJ. (1617) *De iustitia et iure ceterisque virtutibus cardinalibus*, Venice (9 th ed., 1st ed. 1605).

Lorca, Pedro de O.Cist. (1614) *Commentaria et Disputationes in Secundam Secundae D. Thomae*, Madrid.

Lugo, Juan de SJ. (1642) *Disputationes de iustitia et iure*, I, Lyons.

Mair, John (1509) *Quartus Sententiarum*, Paris.

Mannhart, Franz Xaver SJ. (1759) *Ingenua Indoles Scientiae Mediae, Probabilismi, ac Gratiae Efficacis*, Augsburg.

Martínez de Ripalda, Juan SJ. (1873) *De virtutibus theologicis, sive de fide, spe et caritate* (= *De ente supernaturali* T.8), Paris: Vivés (first edition 1652).

Meisner, Balthasar (1655) *Philosophia sobria P.III: Problemata ethica et politica in controversiis papisticis subinde occurrentia*, Jena (first edition 1623).

Molina, Luis de SJ. (1733) *De iustitia et iure*, IV, Cologne (first edition 1609).

Noris, Enrico OSA. (1841-) *Vindiciae Augustinianae*, in: *PL Migne* 47, Paris: Migne, pp. 573-883, (1st ed. 1673).

Olivares, Estanislao SJ. (1987) 'Diego Granado (1571-1632). Datos biográficos. Sus escritos. Estudios sobre su doctrina. Bibliografía', *Archivo Teológico Granadino* 50, pp. 111-84.

Oviedo, Francisco de SJ. (1651) *Tractatus theologici, scholastici et morales de Virtutibus Fide, Spe, et Charitate*, Lyons.

Petrus de Palude OP. (1493) *In Quartum Sententiarum*, Venice.

Petrus Tartaretus (1583) *Lucidissima Commentaria seu Reportationes in tertium* [et *quartum*] *librum Sententiarum Ioannis Duns Scoti*, ed. B. Manente, 2 vols., Venice.

Sales, François de (1895-1964) *Les Vrayes entretiens spirituels* (first edition 1629), in: *Oeuvres*, Annecy: J. Niérat, VI.

Sbogar, Jan Maria CRM. (1725) *Theologia radicalis*, Prague (3rd ed., 1st ed. 1698).

Seelmann, Kurt (2001) 'Die gelehrte Strafrechtsliteratur in der spanischen Spätscholastik. Skizze eines Forschungsprojektes', in: F. Grunert and K. Seelmann (eds.), *Die Ordnung der Praxis. Neue Studien zur Spanischen Spätscholastik*, Tübingen: Niemeyer, pp. 302-12.

Sforza Pallavicino, Pietro SJ. (1649) *Assertiones theologicae*, I, Rome.

Soto, Domingo OP. (1573) *Libri X de iustitia et iure*, Venice (1st. ed. 1553-54).

(Spee, Friedrich von SJ.) (1632) *Cautio Criminalis, seu De Processibus contra Sagas* Frankfurt a.M. (2nd ed.).

Stone, Martin W.F. and Houdt, T. van (1999) 'Probabilism and its methods: Leonardus Lessius and his contribution to the development of Jesuit casuistry', *Ephemerides Theologicae Lovaniensis* 75, pp. 359-94.

Suárez, Francisco SJ. (1856-78) *Opera omnia*, Paris: Vives.

Tanner, Adam SJ. (1627) *Theologia scholastica*, III, Ingolstadt.

Uffelmann, Heinrich (1676) *De iure quo homo homini in sermone obligatur liber unus, in quo... Iesuitarum novorumque Casuistarum portentosa de aequivocationibus, amphiboliis, et mentalibus reservationibus doctrina refellitur*, Helmstedt.

Valencia, Gregorius de SJ. (1603) *Commentarii theologici*, Lyon, III.

Vernias, Nicoletto (1501) *Prooemium* (1482), in: Walter Burley, *In Physicam Aristotelis expositio et quaestiones*, Venice (rpt. Hildesheim: Olms, 1972).

Vio, Thomas de (Caietanus) OP. (1897) *Commentaria in Secundam Secundae D. Thomae*, in: *S. Thomae Aquinatis Opera omnia*, IX, Rome: Typographia Polyglotta.

—— (1537) *Summula Caietana*, ed. J. Daniel, Florence, Lyons.

Poverty and Power: Franciscans in Later Medieval Political Thought*

Roberto Lambertini
(University of Macerata, Italy)

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.[1] Nowadays historians tend to question the necessary connection between a so-called Franciscan voluntarism and specific positions in political theory.[2] 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.[3]

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.[4] At the same time as Michael of Cesena's rebellion,

* With minor modifications, this text reproduces the paper read in Strasbourg. I would like to thank all participants in the workshop, but especially Virpi Mäkinen, Annabel Brett, Sten Ebbesen, Lauge O. Nielsen and, above all, Christoph Flüeler, for their very helpful comments. The research on which this paper is based was made possible by the Alexander von Humboldt Foundation and by the research group led by Prof. Paolo Prodi (Cofin 2000). I have limited footnotes to the essentials, referring to other publications for more extensive bibliography.

[1] 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.

[2] See, e.g., Tabarroni (1999).

[3] Kilcullen (1993); I read it, however, at his web site: http://www.humanities.mq.edu.au/Ockham/wwill.html/ (site visited 31 March 2004).

[4] For an innovative survey of the debates concerning papal power from Aquinas to Ockham, see Miethke (2000).

J. Kraye and R. Saarinen (eds.), Moral Philosophy on the Threshold of Modernity, 141–163.

other members of the order, such as Francis of Meyronnes and Alvarus Pelagius,[5] 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.[6] 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,[7] 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.[8] Making extensive use of Bonaventure's *Apologia pauperum*, but very probably also taking into consideration some

[5] 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.
[6] Canning and Oexle (1998).
[7] Brett (1997), especially p. 19.
[8] See the analysis in Tabarroni (1990), pp. 23–32.

suggestions of the young Peter John Olivi,[9] *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.[10] 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.[11]

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'

---

[9] 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.

[10] 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 praecluditur, 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 ...'

[11] 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.[12] 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.[13] On the other hand, he maintained that positive laws are merely consequences or specifications of natural law principles.[14] 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'.[15]

---

[12] On this canon law tradition, see Weigand (1967), especially, pp. 307–336; and Töpfer (1999), especially pp. 164–185.

[13] 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 condictum, 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.

[14] 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 ...'.

[15] 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.[16] 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'.[17] 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*.[18]

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.[19]

---

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.

[16] 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'.

[17] 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'.

[18] Vincent of Beauvais (1995), pp. 17–18. See Töpfer (1999), pp. 326–328.

[19] 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 condictum', 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.[20]

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.[21] 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,[22] 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.'[23] 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

---

secundum statum naturae lapsae ad removendas contentiones et lites'; see Flüeler (1992), pp. 44–48, and Rossini (1997).

[20] See n. 13 above.

[21] 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 solicitius, 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., l. 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.

[22] Mäkinen (2000) and (2001), especially pp. 124–139.

[23] Mäkinen (2001), p. 127.