



Justice and Prudence: Political Virtues in Gerald Odonis's Expositio cum quaestionibus super libros Ethicorum

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Zi'Ang Chen. Justice and Prudence: Political Virtues in Gerald Odonis's Expositio cum quaestionibus super libros Ethicorum. History, Philosophy and Sociology of Sciences. EHESS - Paris, 2020. English. <NNT : >. <tel-04238540>

HAL Id: tel-04238540

<https://hal.science/tel-04238540v1>

Submitted on 12 Oct 2023

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Doctorat

Discipline : Études politiques

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Justice and Prudence

***Political Virtues in Gerald Odonis's Expositio cum
quaestionibus super libros Ethicorum***

Thèse dirigée par: Sylvain Piron

Date de soutenance : le 26 juin 2020

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REMERCIEMENTS

This doctoral thesis is a fruit of the collective labour of many an individual and institution. I would like to express my sincere gratitude above all to my supervisor, Prof. Sylvain Piron, for guiding me through my doctoral research and my academic life in Paris, for his immense knowledge, for his inspiration, and for the time he dedicated to making this thesis possible.

I would also like to thank profoundly my *rapporteurs*, Dr. Matthew Kempshall and Prof. Irene Zavattero, for agreeing to be my examiners and for writing the initial report on my thesis. I am especially indebted to Dr. Kempshall, my Master degree supervisor, with whom the journey into the world of medieval scholastics all began.

My deepest gratitude also goes to the members of my *comité de thèse*, Prof. Christophe Grellard and Prof. Christopher Schabel, for their invaluable comments and suggestions on the early drafts of my thesis, as well as for Prof. Schabel's help with the transcription and dating of the text.

I am indebted to all my teachers during my most formative years, especially to Prof. Hannah Skoda, Dr. Catherine Holmes, and Prof. Marc Stears at the University of Oxford, to Mr. Sandy Norton and Mr. Duncan Brett at Glenalmond College, and to Ms. Ulaan, Ms. Li, and Ms. Wang at No. 35 Middle School of Baotou.

This thesis would not have been possible without the institutional support of the *École des hautes études en sciences sociales*, where I am especially grateful to Madame Nadja Vuckovic, as well as of the University of Oxford. I also thank the librarians at the *Bibliothèque Nationale de France*, the *Bibliothèque Mazarine*, the Bodleian Library, Oxford, the Huntington Library, CA, and the National Library of Austria, for allowing me access their vast resources and for providing me with invaluable insight and directions.

Finally, I would like to express my gratitude to my friends and family, for their love and never-wavering support, especially to Annabella Massey and William Prescott, who read drafts of my thesis, to Paul Champion and Eva Kandoul, who corrected the parts in French, and to my parents, who are an ever-giving fountain of love and the rock of my life.

RÉSUMÉ ET MOTS CLÉS

Cette thèse doctorale étudie la question de la valeur morale de l'individu et de son existence relative au cadre sociétal et institutionnel, sur la base de l'*Expositio super libros ethicorum* de Guiral Ot. Écrit pendant la première moitié des années 1320, il s'agit du premier commentaire complet écrit par un théologien franciscain sur l'*Éthique à Nicomaque* d'Aristote. Le commentaire offre un point de vue sur le paysage intellectuel du XIV^e siècle, sur l'état des savoirs et de l'éducation, sur la réception d'Aristote, et sur les pensées morales et politiques. Cette œuvre illustre les traditions intellectuelles des frères mineurs et des commentateurs aristotéliens dont hérite Guiral ainsi que son originalité vis-à-vis de celles-ci. Cette thèse explore les circonstances intellectuelles et politiques entourant la composition du commentaire de Guiral et elle tente d'ancrer ce commentaire philosophique dans son propre contexte historique. Cette thèse porte principalement sur les questions discutées dans les livres V et VI, relatives aux vertus de la justice et de la prudence, ainsi que sur les questions trouvées dans le prologue concernant le sujet, la structure et la fin de la science morale. Dans le schéma médiéval de la philosophie morale, la justice et la prudence constituent les deux piliers des vertus cardinales. La justice est conçue comme une vertu de la volonté et elle joue un rôle central dans la tradition franciscaine du volontarisme moral ; c'est aussi une vertu inexorablement liée au droit et au légalisme, et par conséquent à l'administration gouvernementale et au système judiciaire, thèmes que Guiral a particulièrement approfondis dans son œuvre. Selon Guiral, la prudence représente bien plus qu'une simple notion propositionnelle issue d'un raisonnement syllogistique ; elle est la raison et la liberté intellectuelle qui sous-tendent fondamentalement l'indépendance morale et volontaire de l'individu par rapport aux raisons institutionnelles. Guiral situe l'individu au cœur de toutes les considérations morales et politiques. Il dérive ainsi les principes et la structure de l'éthique de l'expérience de l'individu dans sa société. Dans son commentaire, Guiral démontre une compréhension profonde du volontarisme et du subjectivisme individuel : la liberté volontaire du sujet moral et l'humanité de la personne dépassent toujours la raison institutionnelle et l'être collectiviste.

Mots clés : *Éthique à Nicomaque*, Aristote, vertus politiques, Guiral Ot, justice, prudence, droit, franciscain.

ABSTRACT AND KEYWORDS

The present thesis aims to address the questions on the moral worth of the individual and his existence within a societal and institutional setting by examining Gerald Odonis's *Expositio super libros Ethicorum*. Written in the early 1320s, it is the first full-length commentary on Aristotle's *Nicomachean Ethics* produced by a Franciscan theologian. It provides a prism into the intellectual landscape of the fourteenth century, on the state of scholarship and education, on the reception of Aristotle, and on the currents of moral and political philosophy. Odonis's *Ethics* commentary bears witness to both our author's originality and the intellectual traditions that he inherits from both the Minorites and the Aristotelian commentators. The present thesis explores the intellectual and political circumstances surrounding the composition of Odonis's commentary text, and attempts to anchor the philosophical commentary to its proper historical context. The thesis focuses primarily on Odonis's questions in Books V and VI on the virtues of justice and prudence, as well as questions raised in the prologue concerning the subject, structure, and purpose of moral science. In the medieval scheme of moral philosophy, justice and prudence constitute two pillars of the cardinal virtues. Justice is accepted as a virtue of the will, and plays a central part in the Franciscan tradition of moral voluntarism; it is also a virtue inexorably linked with law and legality, and hence to government administration and the judicial system: themes upon which Odonis reflects deeply in his writing. For Odonis, prudence represents far more than mere propositional knowledge derived from simple syllogistic reasoning; instead, it is the reason and intellectual freedom that fundamentally underpins the moral and voluntary independence of the individual against reasons of the institution. Odonis places the individual at the core of every moral and political consideration, and understands the scheme and structure of the moral science through the perspective of an individual's moral experience in society. In his commentary, Odonis displays a profound sense of voluntarism and individual subjectivism: the voluntary freedom of the moral subject and the humanity of the person always surpass the reason and being of the collectivised institutions.

Key words: *Nicomachean Ethics*, Aristotle, political virtues, Gerald Odonis, justice, prudence, law, Franciscan.

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LIST OF ABBREVIATIONS

<i>ExEth</i>	Gerald Odonis, <i>Expositio cum quaestionibus super libros ethicorum Aristotelis</i> , Venice, 1500.
<i>TdC</i>	Gerald Odonis, <i>Tractatus de contractibus</i> , ed. R. Thornton, (PhD dissertation), EHESS, Paris, 2019.
<i>SupCor</i>	Gerald Odonis, <i>Super primam epistolam ad Corinthios</i> , Bordeaux, Bibliothèque municipale, Ms. 60.
<i>ST</i>	Thomas Aquinas, <i>Summa Theologiae</i> , ed. Benzinger Brothers, New York, 1947; English trans. Fathers of the English Dominican Province.
<i>SLE</i>	Thomas Aquinas, <i>Sententia libri ethicorum</i> , ed. Leonina, 1969.
<i>AMSE</i>	Albertus Magnus, <i>Super Ethica: commentum et quaestiones</i> , ed. W. Kübel (<i>Opera omnia</i> , vol. XIV, two parts), Aschendorf, 1968-1987.
<i>RBSE</i>	Radulphus Brito, <i>Quaestiones super libros ethicorum</i> , ed. I. Costa, Turnhout, 2008.
<i>NE</i>	Aristotle, <i>Nicomachean Ethics</i> , trans. R. Crisp, Cambridge, 2000.
<i>Pol</i>	Aristotle, <i>Politics</i> , trans. S. Everson, Cambridge, 1996.
<i>Ord</i>	John Duns Scotus, <i>Ordinatio (Opera omnia vol. I-XIV)</i> , Vatican, 1950 - 2013.
<i>ColHex</i>	Bonaventure, <i>Collationes in Hexaëmeron</i> , trans. ed. J. Hammond, St. Bonaventure, NY, 2018.

CHARTING THE SOCIAL PATH OF AN INDIVIDUAL – A GENERAL INTRODUCTION

When Immanuel Kant coined the notion of ‘unsocial sociability’, he was not merely summarising and developing a debate that had plagued philosophical discourse over centuries, but also making an astute observation on the contradictions of humanity.¹ The conundrum arises out of an attempt to bridge the fault line between two facets of human existence: on the one hand, there is the free-willing and free-thinking individual, the person, isolated from all else by his subjective consciousness of the self; and on the other, the collective, the societal, the institutional – a simply inalienable fact of one’s life. It cuts deep into human nature, into the chasm between the self and the others, between the private and the collective. The subjective existence of the individual is paramount. *Cogito ergo sum*, Descartes’s underlining principle of human existence rests squarely with man’s cognitive subjectivity. The greater question is how the subjective *one* relates to the surrounding *many*. Thomas Hobbes considers society as an absolute necessity for man’s very survival, as it replaces the state of nature and the war of all.² Arthur Schopenhauer’s famous porcupine analogy presents society as drawing men together on account of necessity, but driving men apart on account of their mutual revulsion.³ The baseline is, without society, a person is no more able to exist than a fish without water – in Aristotelian terms, ‘he must be either beast or god’.⁴

But there must be more beyond this baseline of necessity and survival. The societal and the collective brings far more than mere human existence to an individual – a family serves more than the purpose of procreation; a community more than the nourishment of its members; a government more than the protection of its citizens, and not to mention friendship; a voluntary bond between free individuals that goes far beyond an ability to co-exist. Kant presents his notion of *unsocial sociability* as a process and a trial, through which humanity, individually and collectively, matures: ‘The means which nature

¹ Immanuel Kant, *Idea for a Universal History with a Cosmopolitan Purpose*, Fourth Proposition, trans. Nisbet, *Kant: Political Writings*, Cambridge, 1970, p. 44; for more on the Fourth Proposition, see Allen Wood, ‘Kant’s Fourth Proposition: The unsociable sociability of human nature’, in A. Rorty & J. Schmidt (eds.), *Kant’s Idea for a Universal History with a Cosmopolitan Aim*, Cambridge, 2009, p. 112-128.

² Thomas Hobbes, *Leviathan*, ed. R. Tuck, Cambridge, 1996, xiii.

³ Arthur Schopenhauer, *Parerga and Paralipomena*, trans. Payne, Oxford, 1974, vol. II, p. 651–2.

⁴ *Pol*, I, 1253a.

employs to bring about the development of innate capacities is that of antagonism within society'.⁵ The best result of such unsocially social struggle is man's moral self-realisation into a version of humanity that 'attains a civil society which can administer justice universally.'⁶ Hegel, going a step further, considers that the individual must be realised by the institution as a finishing school: freedom, right, and morality all come into being through the institutions of family, civil society, and state.⁷ The societal and collective are more than providers of nourishment and security, but a vehicle towards a higher plane of humanity. How tempting it is to conclude that humanity's apotheosis consists of the integration of the individual into the communal, the merging of one's own will into the general will, and the abdication of the self in favour of the collective!

Yet, the unprecedented violence of the twentieth century is ample testimony of the abject failure of institutions and societies, as well as the failure of individuals within them. Eric Hobsbawm terms the twentieth century the 'Age of Extremes', Isaiah Berlin calls it the 'most terrible century in Western history', and Hannah Arendt observes in it the 'banality of evil'. There, it is the silence, concord, and acquiescence of the individuals, whose reason and judgement should be the last bulwark against totalitarian brutality, that gave birth to an all-crushing leviathan of state machinery. It turns out, just as society and institutions can be a venue for one's moral actualisation, they can equally be a vehicle of one's plunge into the nadir of moral abyss. As Solzhenitsyn so masterfully documented and so irrefutably argues, no one can escape the corrupting effect of an evil-bent institution, and the abdication of one's rationality and moral agency does not exculpate one from being an enabler of such regimes.

Whilst Francis Fukuyama proclaimed an 'end of history' as the curtain of the Cold War comes down with a 'triumph of the West' that is characterised by the coronation of liberal democracy as the normative form of government, and liberal individualism as its underpinning political anthropology,⁸ three tumultuous decades have since proved that history is merely entering a new age, with shockwaves of the past barely abating. With novel means of communication and expression, voices have become louder and more diverse than ever before. The *unsocially social* human individual is now confronted with a bewilderingly fragmented and complex society. The madding crowd becomes

⁵ Kant, *Idea for a Universal History*, p. 44.

⁶ *Ibid*, p. 45.

⁷ See David Duquette, 'Hegel: Social and Political Thought', *Internet Encyclopedia of Philosophy*, <https://www.iep.utm.edu/hegelsoc/>.

⁸ Francis Fukumaya, 'The End of History?', *The National Interest*, 16, 1989, p. 3-18.

ever more present and overreaching, and one has precious little opportunity to confront oneself and to learn ‘how to sit quietly in a room’. If the three decades since the so-called ‘end of history’ has taught humanity anything, it is the primordial importance of mastering one’s own subjective agency in ever-more complex modern society.

Never has there been a moment in history where society is so fully governed by institutions: across the entire developed world and in much of the rest, vast bureaucratic machineries and their associated agents provide necessities, maintain order, enforce obligations, and punish wrongdoings for all who fall under its power and jurisdiction. Beneath the surface, an extensive body of law and regulation provides rules and norms for the institutional mechanisms, and frames such governance with its very mode of existence. It appears that a simple path is to follow the momentum of the institutional machinery, to conform to its reason and judgement, and to assent to its values and commands. Indeed, such is the Hegelian vision of humanity’s institutional perfection – one’s natural capacities of reason and morality must be systematised into the institutional. However, such abdication of one’s own rational agency not only risks one’s being devoured by the great political leviathan - as Solzhenitsyn warns with his words written in blood – but also goes fundamentally against the introspective and individualist unsociability of humanity. ‘The unexamined life is not worth living’,⁹ and, as Sartre proclaims, only the individual himself is responsible for such examination to find the purpose of his existence.¹⁰ The renunciation of individual reason is therefore the renunciation of one’s very own humanity. One is not fully human if one is devoid of his own independent rational judgement; and one cannot be fully part of a community or an institution if he is no more than a cog in the greater machinery. What Aristotle states almost two and half millennia ago still resonates with our age: ‘the good citizen ought to be capable of both; he should know how to govern like a freeman, and how to obey like a freeman - these are the virtues of a citizen.’¹¹

Clearly, the tandem between the individual and the community is not a concern unique to the moderns. One finds its first traces in the ancient debate over *theoria* and *praxis*, over the perfection of the self through a life of intellectual contemplation, and the perfection of the many through a life of public activity. While the Romans such as Cicero and Seneca seem to be, on the whole, more devoted to the life of public activity, the Greeks are more ambivalent. Plato extols the virtue of a life in pursuit of philosophy, but also calls for the *polis* to be ruled by a philosopher-king. Aristotle charts the path of

⁹ Plato, *The Apology of Socrates*, ed. N. Denyer, Cambridge, 2019, 38a, 5-6.

¹⁰ See Jean-Paul Sartre, *L’être et le néant: essai d’ontologie phénoménologique*, Paris, 1980.

¹¹ *Pol*, III, 1277b, 9-10.

eudaimonia through a socialised life of virtue, but finally turns towards a life of contemplative happiness in the two final books of his *Nicomachean Ethics*. However, one theme is consistent among the ancient philosophers: one's own virtue is the basis through which he can make others or even the entire city virtuous – the virtue of the moral subject is the beginning of the virtue of a society.

Aristotle coins the famous aphorism that man is by nature a political animal. While not the first to observe the fundamental social characteristics of humanity, he turns a page in the history of political philosophy to consider that such sociabilities of men have profound political consequences, and all studies of politics should be, and should start with, the political animal - in other words, the study of man as a social being. Aristotle's division of the 'political science' into two parts amply testifies this thought process: the moral science that studies the individual and social side of humanity through the discussion of happiness, virtue, and friendship, and the book of *Politics* that studies the nature of political communities and political institutions. The dichotomy is addressed: institutions should adapt to the virtue of those who are subject to such institutions. Like Plato before him, Aristotle considers the body of citizenry a determinant factor in a society's political life. After all, the book of *Politics* is consequential to the books of *Ethics*. However, Aristotle does not present a simple causal relationship where the virtue of the *demos* determines the political institutions; instead, they are symbiotic - what Aristotle tries to argue is that even the best form of politics cannot salvage a malicious people, and the most virtuous body of citizenry cannot be simply corrupted by the corroding forces of tyranny.

However, the question of the relationship between virtue and institutions remains unresolved. If the best flute is to be given to the best flautist for his virtue in flute playing, then by the same logic the best post in government should be given to the best governor for his virtue in governance. What arises here is a particularly modern problem. Aristotle considers that the possession of moral and intellectual virtues is tantamount to excellence in governance. In Book VI of the *Nicomachean Ethics*, Aristotle speaks of the virtue of practical wisdom (*phronesis*), by which a virtuous man makes the virtuous decisions in both his private and societal affairs. The connection is made here: to be practically wise is to have all moral virtues; thus, the most virtuous man is also the most practically wise, and therefore the most qualified for governance. However, this equivocation between morality and politics cannot be translated to a modern context without further qualifications. Even Aristotle himself acknowledges the shortcomings of this proposition, and hints for a professionalisation of governance: a city is best governed with law, by magistrates learned in the affairs of the city and in the law. Of course, the magistrates also need to have a degree of practical wisdom to become guardians of the law, but it is doubtful how virtuous they need to be. After all, Aristotle has an arithmetic understanding of justice - justice is not much more than a simple application of mathematical principles. One may understand

Aristotle's ambiguity as an accommodation to an imperfect reality of human governance, where the perfectly virtuous man is difficult to find, and, in whose absence, institutions run by magistrates should predominate. Or else, perhaps Aristotle is simply unsure: morality is important, but so are the institutions.

Writing in the fourth century B. C., Aristotle was confronted with a radically different social and political structure, and yet the question is still valid. One and half millennia later, a Franciscan with the name of Gerald Odonis would find himself confronted with the same problems in a fundamentally different setting. By this time - the dawn of Renaissance, the threshold of modernity - Aristotle had already become a venerated authority - the 'Philosopher', as the medieval scholastics came to call him. With the *Ethics* and *Politics*, Aristotle presents an astute observation of human nature, a penetrative analysis of institutions, and a masterful synthesis of the two sides of man's social and political existence in the space of two books, which would come to inform and inspire generations of scholars in their study of humanity, such as our own Gerald Odonis. On the *Nicomachean Ethics*, Odonis gave a lecture series, provided exegeses, raised and answered questions, and turned it all into a vast tome of commentary text, which would continue to influence students of ethics until well into the sixteenth century, as well as to serve as the subject-material of enquires made by this present thesis.

The *Expositio cum quaestionibus super libros ethicorum* is an independent and self-contained work that reflects the intellectual ingenuity of its author, but it is also a product of its time, where ancient authorities were sought as a source of truth and wisdom. The present thesis aims to address the questions on the moral worth of the individual and his existence within a societal and institutional setting by examining Odonis's *Ethics* commentary. Odonis's *Expositio* provides a prism into the world of late medieval intellectual landscape of western Europe. Being a member of one of the most extensive and influential institutions that is the Franciscan Order and, by extension, the Catholic Church, Odonis is well-placed to embark on a philosophical exploration of the nature of humanity and the operations of societal and political institutions. The work itself is a reflection of the tenacious relationship between an individual and institutions: Odonis, as scholar well-versed in the learning of the classical antiquity as well as medieval scholastic theology, has the task of putting his own studies and intellectual ingenuity onto the comprehension and incorporation of Aristotle's *Ethics* into the Franciscan cultural milieu as well as into the medieval commentary tradition. The end result bears witness to both our author's originality and the intellectual traditions that he has inherited from both the Minorites and the Aristotelian commentators.

My studies have primarily focused on Odonis's question commentary on Books V and VI, more specifically, on the virtues of justice and prudence, as well as questions raised in the prologue on the subject, structure, and purpose of ethics. Justice and prudence are of crucial importance in Aristotle's scheme of moral science, and equally central to Odonis's conception of the nature of the person and his relation to his society and institutions. Justice is considered the complete virtue and the only moral virtue that concerns man's relationship with others, i.e. a virtue that brings the individual into the societal and political. Prudence (or *phronesis*), on the other hand, is the intellectual virtue that underpins every single moral virtue, and is equated by Aristotle to political science. For Aristotle, prudence concerns both the individual and the political edifice.

In the medieval structure of ethics, justice and prudence are granted the status of cardinal virtues. Justice becomes universally accepted as a virtue of the will, and plays a central part in the Franciscan tradition of moral voluntarism: as the rectitude of the will, justice makes the will's volition righteous. As a virtue that is inexorably linked with law and legality, justice also breaks new philosophical ground in the later Middle Ages with the expansion of government bureaucracy and the judicial system. All these are reflected in Odonis's writing. Prudence, as the first of cardinal virtues, becomes for many the exercise of Aristotelian practical syllogism - the application of the universal into the particular. For Odonis, however, prudence represents far more than mere propositional knowledge derived from simple syllogistic reasoning; instead, it is the reason and intellectual freedom that fundamentally underpins the moral and voluntary independence of the individual against reasons of the institution. Overall, as we shall see through the course of the present study, Odonis places the individual front and centre of each and every moral and political consideration, and understands the scheme and structure of the moral science through the perspective of an individual's moral experience in society. In his commentary, Odonis displays a profound sense of voluntarism and individual subjectivism: the voluntary freedom of the moral subject and the humanity of the person always surpass the reason and being of the collectivised institutions.

Part I of this thesis offers a long introduction to Odonis's commentary. It starts with a contextual exploration on the medieval notion of the individual and the institution, before presenting the life and works of Odonis in chapter II. The *Expositio cum quaestionibus super libros ethicorum aristotelis* is then surveyed in greater detail, including its structure and format, the circumstances of its composition, its manuscript tradition, as well as the two fifteenth-century incunable editions. Chapter III follows with a brief summary of Aristotle's *Nicomachean Ethics*, with a particular focus on the virtues of justice and prudence, as well as the medieval reception of the *Ethics* as Aristotle's most controversial work. Chapter IV expands further into the general attitude of medieval scholastics

towards the *corpus aristotelicum*, before zooming in onto the Franciscan tradition of their appraisal, absorption, as well as critique of Aristotle. Chapter V then focuses down on Odonis's commentary text itself to examine Odonis's own attitude towards the Philosopher. The chapter is broken down into three sections, each dealing with a controversy involved in understanding Aristotle in a Christian context: whether the pagan philosopher speaks of truth, whether Aristotle's notion of happiness contradicts the Christian notion of happiness, and what the subject-matter is in the moral science.

Part II principally examines Odonis's commentary on Book V of the *Ethics*, focusing on the virtue of justice and related questions. While Aristotle divides justice in lawfulness and fairness, Odonis's commentary is clearly more far preoccupied with the notion of justice as lawfulness (*iustitia legale*), as reflected by the number of questions raised on lawfulness compared with that on fairness. As such, the present thesis concentrates on the former, as it readily crystalises Odonis's thoughts on the interplay of justice, law, legitimacy, society and politics. Chapter I lays down the conceptual framework by comparing Odonis's notion of justice of Odonis with that of Aristotle and the other scholastics. Chapter II explores the relationship between justice and law, covering questions 2, 3, 11, 15, 16 of Book V. Chapter III considers the notion of legal justice as the complete virtue, exploring the differences and identity between legal justice and aggregate virtue with text from questions 4, 5, and 8. Chapter IV then turns our attention to the virtue of friendship (*amicitia*) and looks beyond Book V, analysing Odonis's own understanding of the notion of friendship as a societal competence (or courtliness); this chapter takes its textual material from question 15 of Book I, question 39 of Book IV, and questions 2-5 and 8 of Book IX. Chapters V and VI focus on two broad and practical *topoi*: governance and judiciary, where the virtue and justice of an individual is confronted with the reason and justice of the institution. The question of governance is primarily examined through question 11, on whether the best man or the best law should rule a city, where Odonis's answer is a resolute affirmation on the superiority of the rule of man. The subject of judiciary considers the virtue of equity against a context of procedural justice and a possible perversion of justice for fear, for corruption, or simply for a *due procedure*. Odonis again argues for the supremacy of the individual judgement based on virtue, reason, and equity, in disregard of the institution of legal edifice. Chapter VI is examined with questions 19, 20, and 23.

Part III directs our attention to the virtue of prudence (*prudentia* or *phronesis*). It is the basis of one's individual and independent moral judgement and the foundation of Odonis's reading on the virtue of justice. Prudence, as the perfection of the practical intellect, reaches into every aspect of man's life and is the principle of one's moral worth, goodness, and most importantly, one's voluntary freedom. Part III again starts with a conceptual study on Odonis's definition of prudence. Chapter I takes

material from questions 4, 5, 6, 9 of Book VI and studies nature and teleology of prudence, as well as the related concepts of praxis and the practical mind, where the practical mind commands all voluntary and elective human actions, i.e. praxis. The following section studies the acts of prudence from deliberation, through judgement, to the final command, incorporating Odonis text from questions 15 and 16. Chapter II explores the unitary nature of prudence with a focus on question 14 of Book VI, which manifestly reflects Odonis's belief that all moral experience is essentially subjective and projected from the individual. Chapter III considers the relationship between prudence and other virtues: with wisdom, and with moral virtues. Odonis in questions 12 and 16 of Book VI presents the case for the superiority of prudence over wisdom, and of the practical mind over the scientific mind. Prudence is, after all, ordered towards human happiness, while wisdom is ordered towards a comprehension of truth. In question 17, Odonis argues for a thesis of virtue's independence from each other, except the cardinal virtues, which are necessarily connected through prudence.

The thesis concludes with a *coda* and offers a short conclusion. The *coda* aims to push the present study further and to reflect on what Odonis might have said on the topic of poverty and property. The *coda* cites material from both within the commentary and from his *Tractatus de contractibus*, and comes to the conclusion that Odonis espouses John XXII's approach to the poverty debate while holding a mostly classic view on property.

Overall, this thesis takes the position that Odonis displays a high level of human-centrism, individual subjectivism, and voluntarism in his *Ethics* commentary, where the individual and humanity are placed at the very centre of the moral science. No institution can replace the individual, who must be his own moral agent, and whose reason and virtue would always surpass that of the collective and the institutional.

PART I: GERALD ODONIS'S ETHICS COMMENTARY - TEXT AND CONTEXT

I. THE INDIVIDUAL AND INSTITUTION IN THE LATER MIDDLE AGES

The emergence of the Franciscan Order in the thirteenth century is one of the most dramatic rises of a medieval institution. When Francis of Assisi first started the movement with his followers, he searched for a deeper and more personal connection with Christ, against all the distractions of the material world. While the Francis's movement was at its very root intensely personal and introspective, it soon became institutionalised with the Order's rapid expansion. The tension between the individual and the institution was manifest in the early years of the Order. A case in point is the history of Francis's *Rule* - the fact that a movement starting with a single individual and his few followers would now need an official *Rule* testifies the Order's need for institutionalised administration and discipline. The 1221 *Regula non bullata*, as the earliest surviving *Rule* text, which was also rejected by pope Honorius III, demonstrates a fierce and uncompromising commitment to the founding principles of absolute poverty, humility, and penitence – an effort that Bert Roest considers as an attempt 'to maintain the pristine quality of evangelical perfection in a quickly growing order that had to accommodate itself to new tasks.'¹² Two years later, the *Regula bullata* of 1223 became much more concise (with twelve chapters compared to the twenty-four of 1221) and more legalistic and administrative – i.e. more institutional - in nature.¹³ Francis made every effort to preserve and discipline the central principles of the Order – the *Admonitiones* admonished the Minorite brothers to an absolute adherence to evangelical perfection, and the *Testamentum* forbade any discussion and interpretation of the *Rule*. The journey towards evangelical perfection - poverty, humility, and obedience – is an internal task for an individual, but the institutional mechanism of regulation and discipline is equally at work.

¹² Bert Roest, *Franciscan Literature of Religious Instruction before the Council of Trent*, Leiden, 2004, p. 123.

¹³ *Ibid*, p. 121-24.

In many ways, the Franciscan movement truly embodies the age's psychological tension between the individual and the institution. The narrative of Saint Francis is that of a lone champion of faith in a world of material wealth and moral corruption, who renounces his family, his society, his path of life laid out for him. He defies all conventions of rich, honour, dignity, and humiliates himself, in search of a goal purer, higher, personal, and internal. However, Francis's quest for a direct and personal connection with Christ without the intermediary of the ecclesiastical authorities was accompanied by a deep respect for the Church structure as well as the theological authorities of the scholastics.¹⁴ Such respect for the institutional was reciprocated by the Church, which openly embraced and then officialised the Order of the Minorites. Successive popes – Innocent III, Gregory IX, Nicholas III, Celestine V, etc. – commended and even championed the Franciscan pursuit of evangelical perfection, amidst a general thirteenth-century movement of spiritual renewal and *imitatio Christi*. As a movement and an institution, the Franciscan Order was also collectivist to its very core, united around the doctrine of poverty – it generated, time and again, boundless energy in pursuit of the ideal of evangelical perfection, while at the same time, the pursuit of the highest apostolic poverty fractures the order into many divergent voices and opinions, of which the apocalypticism, the spiritual movement, and the poverty debate are all ample testimony. It is a society in itself, with its own institutional structures, disciplines, and inevitably, conflicts, factions, decay and corruptions. The Franciscan idea of freedom rests on the supreme and unfettered liberty of the will, where the Franciscan vow of poverty and obedience are the highest manifestations of the will's freedom. However, the institutional demand of obedience may sometimes overwhelm the individual quest for evangelical poverty. Pope John XXII once says regarding the affairs of the Order: 'Poverty is great, unity is greater, but obedience is the greatest'.¹⁵ For the papacy, the institution trumps the individual.

Therefore, it is perhaps a most propitious context within the Franciscan Order to discuss the philosophy of political virtue. Nevertheless, the Minorites are not the sole example of an age that sees a proliferation of new institutional organisms. The fiscal and administrative reforms carried out by the Church, especially those under the pontificate of John XXII, and during the iteration in Avignon at large, serve to consolidate the Catholic Church into an international bureaucratic machinery. Secular authorities of France, Italy, and England also play a crucial role in the formation of territorial

¹⁴ Sylvain Piron, 'An institution made of individuals. Peter John Olivi and Angelo Clareno on the Franciscan experience', 1, in A. Fitzpatrick and J. Sabapathy (eds.), *Individuals and Institutions in Medieval Scholasticism*, forthcoming.

¹⁵ *Quorundam Exigit*: Magna quidem paupertas, sed maior integritas, bonum est obedientia maximum, si custodiatur illaesa; see Malcolm Lambert, *Franciscan Poverty: The Doctrine of the Absolute Poverty of Christ and the Apostles in the Franciscan Order, 1210-1323*, London, 1961, p. 214.

states, in the organisation of centralised governmental and bureaucratic institutions, and in the shifting gravity of the masses' loyalty to the sovereign state. Thomas Ertman describes this as the 'birth of the Leviathan', and Joseph Strayer traces the roots of the modern world in the medieval formation of statehood and bureaucratic institutions.¹⁶

All at the same time, a sense of individualism in academic philosophy as well as social experience arises during a period of rapid formation and transformation of institutions. One case in point is again the Franciscan Order. Despite being a tightly organised institution, many Franciscans scholastics, from Olivi through Scotus to Ockham, have a cognitive philosophy that is intensely individualist: the Franciscan tradition of voluntarism and the freedom of the will grants a subjective agency to every individual person to choose how to act, regardless of the dictate of reason and society at large. Sylvain Piron argues that, for certain Franciscans, such as Peter of John Olivi and his followers, the institution of the *order* is nothing more than the sum of its individual members, bound together by a common purpose.¹⁷ Collin Morris argues that western individualism is far from a common experience of humanity, but is unique among the great cultures of the world; even within the cultural sphere of Europe, such individualism is not always manifested - classical philosophy has the *polis* as the natural unit of society, and early Christianity always emphasises the collectivity of the Church rather than individual Christians.¹⁸ Therefore, as Morris argues, the pivotal moment is to be found in the later Middle Ages, where the experience of early humanism cultivates the experience of individualism, and the emphasis on the human turns man's gaze to the interior.¹⁹ Morris proposes a thesis that such a shift from corporatism to individualism in the twelfth and thirteenth centuries is ultimately a result of the combination of the interior nature of Christianity and the humanism of classical texts.²⁰ The rising tide of personal piety in the twelfth century makes ready a look inward, and the newly accessible classical texts provide medieval scholars with tools and materials for the quest of the individual humanity.

While Morris argues for a much broader compendium of elements that made the unique European experience possible, Walter Ullmann seeks to pinpoint an exact key factor that would transform the entire European intellectual landscape, and proposes a thesis of 'Aristotelian revolution':

¹⁶ See Thomas Ertman, *Birth of the Leviathan: Building States and Regimes in Medieval and Early Modern Europe*, Cambridge, 1997, esp. p. 1-25; Joseph Strayer, *On the Medieval Origins of the Modern State*, Princeton, 2005, p. 1-84

¹⁷ Piron, 'Institution made of Individuals', 3.

¹⁸ Collin Morris, *The Discovery of the Individual, 1050-1200*, Toronto, 1987, p. 1-3.

¹⁹ *Ibid*, p. 3, and p. 7-9.

²⁰ *Ibid*, p. 10-18.

The influence of Aristotle from the second half of the 13th century onwards wrought a transmutation in thought that amounts to a conceptual revolution. In fact and in theory the Aristotelian avalanche in the 13th century marks the watershed between the Middle Ages and the modern period.²¹

Although Ullmann's position is far from uncontroversial, it is clear that the translation of and studies on Aristotle's *Ethics* and *Politics* bring novel elements into the European social and political mindset. Individualism is now not limited to a path of *imitatio Christi* and a life's pilgrimage for salvation, but can also be a life of self-actualisation and of virtuous happiness. Georg Wieland argues, somewhat in response to Ullmann's thesis, that:

These philosophical claims are not easy to accept. The problem does not lie in the conception of a natural virtue.... and so the reception of the Aristotelian concept of virtue was not a revolutionary step. The difficulty lay rather in the assertion that the goal of human life, no less than virtue, was a topic for philosophy.²²

What accompanied this rise of individualism is an increased attention paid to the 'profane' among learned circles. Sometimes, such newly developed interest in the present life detracts from one's attention to the sacred, and obscures the focus on the divine truth. While neither the Bible nor the Augustinian traditions of Christianity tell men to ignore the virtue and vice of this life, the mortal life is always firmly subjugated to that of the after and eternal. The secularism found in the philosophy of Aristotle redirects men's intellectual attention to the possibilities within the present life, to the virtue and happiness to be pursued for its own sake, as well as to the path of the eternal union with God.

However, Aristotle is no exponent of early modern individualism, and his moral and political philosophy is always framed within a social and civic context. Therefore, any brand of individualism inspired by Aristotle cannot escape the Philosopher's own communitarian presumptions. For Aristotle, both moral virtues and life's happiness pivot upon society. Any talk of virtue, if one is to adequately

²¹ Walter Ullmann, *Medieval Political Thought*, Harmondsworth, 1975, p. 159.

²² Georg Wieland, 'The Reception and Interpretation of Aristotle Ethics', in N. Kretzmann, A. Kenny, J. Pinborg, and E. Stump (eds.), *The Cambridge History of Later Medieval Philosophy: from the Rediscovery of Aristotle to the Disintegration of Scholasticism 1100-1600*, Cambridge, 1982, p. 657.

understand Aristotle's intentions, cannot be divorced from the community at large. Indeed, any individual that tries to assert his independence and individuality must find himself confronting the collective of some kind. Caroline Bynum, in response to the discovery-of-individual thesis, argues that the late medieval focus is instead on the *self* - the 'I' as the subjective agent with an interior cognitive mechanism, as opposed to the 'individual' understood as separated from the group and corporate.²³ Such notion of the self is in turn defined in terms of the exterior and the group. In fact, the later Middle Ages saw the rise of collective identities as much as that of the 'self'. She concludes:

Thus, if the twelfth century did not 'discover the individual' in the modern meaning of expression of unique personality and isolation of the person from firm group membership, it did in some sense discover—or rediscover—the self, the inner mystery, the inner man, the inner landscape. But it also discovered the group, in two very precise senses: it discovered that many separate 'callings' or 'lives' were possible in the Church, and it elaborated a language for talking about how those groups defined themselves and how individuals became part of them (the language of 'conforming to a model').²⁴

The late medieval man may have more complex internal psychological landscape to explore, he nonetheless cannot be extricated from the societal and the collective. Ethics and moral virtues are never the preoccupation of one singular individual himself. Quentin Skinner identifies the virtue discourse in late medieval and Renaissance political thought as essentially civic in nature - virtue is a requirement for civic liberty, and civic liberty is the prerequisite of a self-governing republic, and such self-governance is a form of individualism, differentiated from the universal claims of the imperial and papal.²⁵

It is then at this historical moment that we must situate Gerald Odonis's commentary on Aristotle's *Ethics*, and his discussions on the political virtues of justice and prudence. Assessed against a corporatist context of institutions - the University of Paris, the mendicant order of the Minorites, the text displays many traces of such institutionalism. Yet, the content is in many aspects manifestly individualist: the free moral agent that is man as the subject of the enquiry, the interior gaze of the

²³ Caroline W. Bynum, 'Did the Twelfth Century Discover the Individual?' *Journal of Ecclesiastical History*, 31, 1980, p. 4.

²⁴ *Ibid*, p. 15.

²⁵ See Quentin Skinner, 'Introduction', in M. van Gelderen and Q. Skinner (eds.), *Republicanism: A Shared European Heritage*, Cambridge, 2002, p. 1-6; idem, *Foundations of Modern Political Thought*, vol 1, *The Renaissance*, Cambridge, 1978, p. 50.

cognitive moral philosophy, and the voluntarism that renders virtue and vice an intensely individual choice. Odonis writes about ethics, about the morality of a free agent, but never loses sight of the social and political.

II. GERALD ODONIS AND HIS EXPOSITIO CUM QUAESTIONIBUS SUPER LIBROS ETHICORUM

1. Gerald Odonis: A Short Biography

Few of the medieval personalities have the posthumous fortune, or misfortune, to be casted as a villain in the grand historical narrative of the Franciscan Order, and then to become the subject of a renewed scholarly interest for his intellectual ingenuity since the latter decades of the twentieth century. The seventeenth-century Franciscan historian Luke Wadding makes no secret of his disdain for Odonis in his *Annales Minorum*, condemning him as an enemy of the *sanctissimus* Michael of Cesena, and a collaborator of the Pope in tempting the Order into grave sin.²⁶ The French historian Charles Langlois largely echoes Wadding's verdict in his survey on the life and works of Odonis published in 1927.²⁷ Much has changed in the outlook of scholarship since Langlois's time. Numerous articles, monographs, and editions have been produced. The *Vivarium* volume of 2009 (47), edited by William Duba and Christopher Schabel, represents a major milestone in the recognition of Odonis as an important scholar, amassing a number of studies on various aspects of his thought, including his works on physics, metaphysics, logic, economics, as well as the ethics.

Like many of the scholastics, little is known about Odonis's personal life, especially the earlier, formative years, but we have sufficient evidence to sketch a rudimentary picture.²⁸ It can be established with a degree of certainty that Odonis was born in the village of Camboulit in the modern French department of Lot in c. 1285, a decade after the death of two towering thirteenth-century intellectuals - Thomas Aquinas and Bonaventure. He joined the Franciscan Order at a young age, starting his education in the nearby Franciscan *studium* in Figeac, the closest city to his native village. His pathway into the Franciscan Order was most likely facilitated by his familial background - he was a relative of the Franciscan Bertrand de la Tour (c.1265-1332), who was also a native of

²⁶ Luke Wadding, *Annales Minorum*, second edition, Rome, 1733, vol. 7, p. 40. §VI, and p. 121-122, §X-XII.

²⁷ Charles Langlois, 'Guiral Ot, Frère Mineur', *Histoire littéraire de la France*, 36, 1927, p. 203-225.

²⁸ Apart from Wadding and Langlois, a few modern studies have touched on the life of Odonis. See, for example, Bonnie Kent, *Aristotle and the Franciscans: Gerald Odonis' Commentary on the Nicomachean Ethics* (PhD. Dissertation) Columbia University, NY, 1984; also the articles in *Vivarium*, 47, 2009, esp. William Duba and Christopher Schabel, 'Introduction', p. 147-163.

Camboulit, elected a cardinal in 1320, and who became the interim Vice Minister General of the Franciscans following the Michaelist rebellion in 1328.²⁹ Odonis clearly demonstrated great aptitude for scholarly studies, as he was later sent to Paris by the provincial *studium* to study theology.³⁰ By 1316, Odonis had already finished his bachelor education in Paris and had started teaching in the Franciscan convent in Toulouse. Charles Langlois shows in his article ‘Guiral Ot, Frère Mineur’ that Odonis’s name appeared for the first time in a document of dated to February 13 of 1316 of the Franciscan chapter of Aquitaine that mentioned ‘Gerald Baccalaureus’, bearing the first written evidence that marks Odonis’s path of life.³¹ A citation to the papal bull *Cum inter nonnullos* (issued on 12 November 1323) in his commentary on the *First Epistle to the Corinthians*, which is dated to the Toulouse period, means that Odonis was in Toulouse until at least summer of 1324.³² He was lecturing the *Sentences* at the University of Paris as a bachelor in the theology faculty in 1327-28, and possibly from 1326 as well,³³ and there he incepted as Master of Theology before 10 June 1329.³⁴ This was the date on which Odonis was elected the Minister General of the Friar Minorites in Paris, succeeding his relative, Bertrand de la Tour, and the deposed Michael of Cesena, to the top position of the Order.³⁵

There is no doubt that Odonis was an associate of Pope John XXII, but it remains unclear what exactly was the nature of their relationship, and more crucially, when exactly did Odonis come into the aegis of John. In 1326, the cardinals elected Jacques Duèze to the Holy See after a long interregnum in the wake of Clement V’s death in 1314. Despite his old age, he would go on to occupy the pontificate as the boundlessly energetic John XXII for the next eighteen years, a period which saw a significant

²⁹ For the life and work of Bertrand de la Tour, see Patrick Nold, *Pope John XXII and his Franciscan Cardinal: Bertrand de La Tour and the Apostolic Poverty Controversy*, Oxford, 2003.

³⁰ Similar to the Dominicans, thirteenth-century Franciscans had tradition of sending their most capable students from the provincial *studia* for further studies in theology faculty of Paris. For details of Franciscan education, see Sylvain Piron, ‘Franciscan *Quodlibeta* in Southern *Studia* and at Paris, 1280-1300’ in C. D. Schabel (ed.), *Theological Quodlibeta in the Middle Ages: The Thirteenth Century*, Leiden, 2006; and Neslihan Senocak, *The Poor and the Perfect: The Rise of Learning in the Franciscan Order, 1209-1310*, New York, 2012.

³¹ Langlois, *op. cit.*, p. 213; Duba and Schabel, ‘Introduction’, p. 148-9.

³² *SupCor*, cap. 3, f. 26v: Item, *Extra*, "Cum inter nonnullos", dicit dominus papa quod per theologiam probantur articuli fidei...; for the dating of this commentary, see Duba and Schabel, ‘Introduction’, p. 151.

³³ For the dating of Odonis’s *Sentences* lectures and commentary, see Christopher Schabel, ‘The *Sentences* Commentary of Gerald Odonis, OFM’, *Bulletin de Philosophie Médiévale*, 46, 2004, p. 124-5.

³⁴ Duba and Schabel, ‘Introduction’. p. 149.

³⁵ For a study on the circumstances of Odonis’s election, see Patrick Nold, ‘Pope John XXII’s Annotations on the Franciscan Rule: Content and Contexts’, in *Franciscan Studies*, 65, 2007, p. 295-324.

expansion of papal court in Avignon and a sustained centralisation effort that carried out legal, administrative, and fiscal reforms within Church. His drive to expand the power of the papacy both within and outside the Church made him numerous enemies, most famously Louis of Bavaria, and entangled him in various doctrinal controversies, of which the clash with the Franciscan Order on the issue of poverty was perhaps one of the best known. John was trained as a canon lawyer, and his reforms on canon law and Church finances reflect his professional background. Yet, he never hesitated to engage with, and even to create, theological debates, and was consequently involved in a number of doctrinal disputes, and was accused of heresy on account of both his intervention on poverty and his opinion on the beatific vision. Of John's interest in theology, Patrick Nold characterises him as an 'amateur theologian', based on his own admission that he was not a master of theology and received no advanced training.³⁶ Sylvain Piron, however, comes to a further conclusion, suggesting that, by 1321-22, John, as a lawyer by training, had realised that many of the problems facing the Church and many of his proposed reforms could not be sufficiently addressed without resorting to theological arguments.³⁷ In his study on John XXII's court in Avignon and his relationship with the theologians, Piron lists a total 106 names that advised the Pope during his Pontificate, and an overwhelming majority of them were theologians.³⁸ Odonis features among them as one of the twenty-two theologians whom John XXII consulted on the doctrine of the beatific vision. A native of Cahors, John XXII would come to represent a series of Avignon popes with southern French origins, and this geographical affinity is also present in the composition of the Sacred College. Yves Renouard writes that 113 out of 134 cardinals created between 1309 and 1378 were French, and three quarters of them were from Languedoc.³⁹ Such were Odonis and his relative Bertrand de la Tour.

Several events offer clues for our examination of Odonis's relationship with the pope. Patrick Nold demonstrates that Bertrand worked closely with John XXII over the poverty controversy against the Michaelists, and argues that he probably offered the most important contribution to the poverty debate at the onset of the crisis in 1322-23.⁴⁰ Thus we can follow the breadcrumbs and suggest Odonis probably came under papal patronage through his relation with Bertrand. Odonis did not contribute to John's consultation of 1322, which should not be surprising, considering Odonis's relatively junior position within the hierarchy. Later, Odonis sided with John XXII over the poverty debate in 1325,

³⁶ Nold, *op. cit.*, p. 142.

³⁷ Sylvain Piron, 'Avignon sous Jean XXII, l'Eldorado des théologiens', *Jean XXII et le Midi*, Privat, *Cahiers de Fanjeaux*, 45, 2012, p. 384-85.

³⁸ *Ibid.*, p. 364-73.

³⁹ Yves Renouard, *La papauté à Avignon*, Paris, 1954.

⁴⁰ Nold, *op. cit.*, p. 176-77.

as described by Wadding, who presented him as a *Pontifici familiaris* and *conterraneus*, and suggested that Michael of Cesena already suspected, in 1325, that Odonis would succeed him as Minister-General.⁴¹ If we are to trust Wadding, then it would transpire that Odonis was probably John's candidate in 1325 already. Certainly, it is not difficult to imagine the pope contemplating a replacement at the top of the Minorites – a series of bulls on the doctrine of poverty (e.g. *Quia nonnunquam* of 1322, *Quia quorundam* and *Cum inter nonnullos* of 1323) pitched the papacy in direct confrontation with the Franciscan leadership, and the conflict was escalated to the papal-imperial level by Louis of Bavaria's *Sachsenhausen* in support of the Spiritual Franciscans. By the time the Chapter General was convened in Lyon in 1325, where Odonis openly sided with John XXII, politics and opinions within the order were deeply fractured. Wadding may well be painting Odonis with the broad strokes of a traitor of the Franciscan ideal for his own personal ambition,⁴² but we should be confident in tracing Odonis's papal patronage to at least 1325, through his family connection and probably also through local solidarity.⁴³ Whatever relationship Odonis had with John XXII, his election to the position of Minister General in 1329 was certainly influenced by, or even at the instigation of, papal intervention.

A more revealing event took place in 1333, when Odonis debated with Parisian masters on the subject of the beatific vision and argued in favour of John XXII's position, which was causing many to accuse the pope of heresy, and which was a position contrary to Odonis's own in his earlier *Sentences*

⁴¹ Wadding, *Annales*. vol.7 p. 40. §VI: Celebrata sunt hoc anno Lugduni comitia generalia, quae tamen prius Minister generalis Caesenae indixerat Parisiis habenda. Timuit Lutetiam convocare Patres, suspicatus, uti objecit Gerardus Odonis ejus in generalatu successor; Pontificem per suum Nuncium acturum cum Carolo Rege, ut sua auctoritate, qua propter plurima in Ordinem collata beneficia, pollebat apud Rectores ejusdem, vel potentia cogeret eosdem ad revocandam declarationem de paupertate Christi, quam in capitulo Perusino ediderunt. Liberius itaque res Ordinis peragendas ratus Lugduni, ibi comitia celebravit. Gerardus hic Pontifici familiaris, Caesenati infensus multa proposuit Patribus, quae minime probaverunt; illud praesertim, quod praeceptum de non recipienda ullatenus pecunia per se vel per interpositam personam abraderetur e regula: *ut hac ratione*, inquit, *caveretur conscientiae Fratrum, qui difficile hoc observant, et tollerentur tot scandala et contentiones, quae circa paupertatis observantiam inter Fratres excitabantur*. Sacram et intactam voluit constantissime Caesenae cum Fratribus normam vivendi a sancto Institute praescriptam, et indignabunde tulerunt Gerardi conatum. 'Ibidem decretum, ut in Provincia Hiberniae quatuor Prioribus Custodis quinta adjiceretur, et Corcagiensis nuncuparetur'.

⁴² Wadding laments the misery that 'ambition' brings to the Franciscans while presenting an account of Odonis's attempt to change the *Rule* of the Order in 1331 in order to please the pope, see Wadding, *Annales*. vol. 7 p. 121-122. §X-XII

⁴³ Michael of Cesena, on the other hand, was an outsider to the Languedoc-Aquitaine circles that dominated Avignon, and his Italian connections might have also linked him to the Imperial cause. Louis of Bavaria no doubt made overtures to him at some point, probably in 1327, but possibly earlier. For more, see David Burr, *The Spiritual Franciscans: From Protest to Persecution in the Century after Saint Francis*, University Park, PA, 2001, p. 275-7.

commentary.⁴⁴ Here, the relationship between a theologian and a lawyer Pope was at work. Wadding suggests that Odonis did this either for monetary gain or for the genuine search for truth - but either way, Odonis's action gravely upset the scholastic authorities as well as King Philip VI.⁴⁵ The fact that Odonis contradicts his earlier position on the beatific vision and argues in favour of the Pope suggests that this was a politically-motivated act. John later retracted his position, citing the fact that he was *not* a theologian by training and ceded to the academic authority of the Parisian masters. Odonis, however, had no excuses but to shoulder the blame and the humiliation. Bonnie Kent identifies this as a turning point of Odonis's career as the Minister General, where the support he had within the Order started evaporating, to the extent that an attempt was made in 1337 to depose him.⁴⁶ Kent suggests that it is only after this event that Odonis gave the impression that he was a 'creature' of the pope and cemented his posthumous notoriety.

After the death of John XXII, Odonis continued to enjoy papal patronage; however, his rewards as a *Pontifici familiaris* seems underwhelming. He demonstrably had serious difficulties governing the Minorites. Pope Benedict XII intervened in 1337 to stop his deposition as Minister General, a post which he finally relinquished in 1342, where Pope Clement VI appointed Odonis as Patriarch of Antioch and Bishop of Catania. Such appointments are, upon closer examination, not entirely felicitous – the Patriarch of Antioch had been purely titular since the fall of the Crusader Kingdoms, and the Bishopric of Catania, while lucrative, was far away and removed from the centres of ecclesiastical power. It is telling that Odonis, by now around the age of sixty, did not visit Catania for the first five years. In 1347, Clement sent Odonis on a diplomatic mission to Sicily to visit Queen Elizabeth and King Louis the Child. A year later, in 1348, Odonis died in Sicily, victim to the plague that only just reached western Europe.⁴⁷ As a Franciscan, his earlier career witnessed the bitterest internal strife and the most serious existential challenge that shook the very core of the Order, but finally rode the waves of events and rose to the top as the Minister General. Yet his tenure as the head

⁴⁴ On the Odonis and his position on the beatific vision, see William Duba, 'The Beatific Vision in the *Sentences* commentary of Gerald Odonis', *Vivarium*, 47, 2009, p. 348-363; for the text of Odonis's Paris debate, see Christian Trottmann, *Guiral Ot. La vision de Dieu aux multiples formes: quodlibet tenu à Paris en décembre 1333*, Paris, 2001.

⁴⁵ Wadding, *Annales*, vol.7, p. 145. §X: Accidit itaque, ut sub hujus anni finem, vel sequentis initium, Gerardus Generalis Minister Pontificis conterraneus ... ex suggesto praedicaret eadem Joannis sententiam, sive id fecerit spe mercedis, sive veritatis indagandae desiderio. Male hoc habuit Parisienses Doctores, mendicantium Ordinum magistros, et maxime Regem Philippum, qui acriter hominem reprehendit, eumque induxit, ut aperte praedicaret se controvertendo non asserendo ita dixisse.

⁴⁶ Kent, *Aristotle and Franciscans*, p. 29-32.

⁴⁷ Wadding, *Annales*, vol. 8, p. 22. §II.

of the Minorites was tumultuous, his political legacy controversial, and his intellectual output neglected for centuries.

During the sixty or so years of his life, Odonis produced a considerable body of writings. Charles Langlois has done a comprehensive survey of Odonis's work, and this, along with the summary made by Duba and Schabel in the introduction to the *Vivarium* tome, serves as an invaluable guidebook to identifying the written legacies of Odonis. Charles Langlois's verdict that Odonis is 'Nullement théologien, esprit fort peu tourné à la spéculation' has perhaps played a part in the fact that Odonis and his work remained relatively obscure until the last quarter of the twentieth century.⁴⁸ However, as Duba and Schabel observe, and as the trends of recent scholarship show, Odonis is certainly a far more interesting writer than Langlois cared to admit. The *Vivarium* volume (vol. 47, issue 2, 2009) showcases a wide range of studies that touches on many different facets of Odonis's scholarly output. It is not the task of this thesis here to replicate an exhaustive survey of Odonis's writings, but rather to present some of his most significant works. Aside from his commentary on the *Nicomachean Ethics*, which will be discussed in more details later, Odonis wrote two *Sentences* commentaries during his time in Toulouse and in Paris respectively, of which only the Parisian commentary survives, and is dated to the period of 1326-28. Duba and Schabel have judged that the Toulouse commentary was written by the academic year of 1316-17.⁴⁹ The Toulouse period seems to be particularly prolific, where Odonis also wrote an *Expositio cum quaestionibus* on the *First Epistle to the Corinthians*, probably written in 1324-25, as well as a commentary on the *Galatians*.⁵⁰ Typical to a fourteenth-century scholastic, Odonis's interest extends far beyond the realm of theology. He also counts among his work an economic treatise that was completed in Toulouse, *Tractatus de contractibus*, intended as a guide to his fellow friars for practical use at confessions, and is dated by Giovanni Ceccarelli and Sylvain Piron to 1315-17.⁵¹ His voluminous writings on logic and metaphysics also mostly date to his Toulouse period.⁵² Evidence also shows that Odonis lectured on the *Decretum* at the law faculty

⁴⁸ Langlois, *op. cit.*, p. 212-13.

⁴⁹ Duba and Schabel, 'Introduction', p. 152, & p. 149. See also Chris Schabel's survey of Odonis's *Sentences* commentary, Schabel, 'The Sentences Commentary of Odonis', p. 115-161.

⁵⁰ For a survey of both texts, see Christopher David Schabel and Ziang Chen, 'Aristotle's *Ethics* in Guiral Ot's Commentary on I *Corinthians*', in preparation.

⁵¹ Giovanni Ceccarelli and Sylvain Piron, 'Gerald Odonis' Economic Treatise', *Vivarium* 47 (2009), p. 174-176.

⁵² L. M. de Rijk has edited the philosophical writings into two volumes, on logic and metaphysics respectively. See L. M. de Rijk (ed.), *Giraldus Odonis, O.M.F.: Opera philosophica*, two volumes (Leiden, 1997 and 2005); also, de Rijk, 'Works by Gerald Ot (Gerardus Odonis) on Logic, Metaphysics and Natural Philosophy Rediscovered in Madrid, Bibl. Nac. 4229', *Archives d'Histoire Doctrinale et Littéraire du Moyen Age*, 60, 1993, p. 173-193.

of the University of Toulouse, which customarily invited conventual scholars for lectures during vacations.⁵³ It was also in Toulouse that Odonis lectured on the signs of the Last Judgement, of which an auditor's redaction survives (BnF, lat. 8023, f. 59 etc.).⁵⁴ Later, after his election as Minister General, Odonis wrote a treatise on the subject of the beatific vision in support of the position of pope John XXII based on a *quodlibet* debate he held in Paris.⁵⁵ Of his later works, however, the *Cathecismum scolarium novellorum*, completed in 1338, is perhaps the most significant for the purpose of our studies here. Charles Langlois offers a detailed description of the *Cathecismum* but the only manuscript witness was unfortunately destroyed along with the library that housed it, the Bibliothèque Municipale of Chartres.⁵⁶ It is a didactic work aimed for the education of the prince, the young Andrea of Hungary, to which the work was dedicated. It very much follows the convention of this genre in instructing the prince the importance of virtue and intellectual development.⁵⁷ Langlois, after his examination of the text, concludes with his characteristic dismissal: 'Espérons que ce Manuel jusqu'à présent inconnu, et où il n'y a rien d'intéressant, ne trouvera jamais d'éditeur.'⁵⁸ Whatever the judgement of Langlois, it is a great misfortune that the sole manuscript was lost to the ravages of twentieth-century history. It would have allowed for a comparison on the ethical and political thought of Odonis in two different periods of his life based the present study on his *Ethics* commentary. However, even if we cannot assess Langlois's verdict on this particular text, to which we have no access, it is likely that he has overlooked its importance and ingenuity, just as he has unfairly dismissed Odonis's writings on logic, physics, and ethics. Langlois describes the intellectual output of Odonis in Toulouse as immature writings - the works of a young man.⁵⁹ He may have a point in the sense that there are few surviving written legacies from later in the Franciscan's life to permit a study on his intellectual trajectory. But at least, we may a glimpse through Langlois's quotations, Odonis seems to be mostly consistent in his emphasis on the virtue of the prince as a paramount quality in politics.

⁵³ Charles Langlois quotes the incipit passage of Odonis's lecture on the Last Judgement, see Langlois, *op. cit.*, p. 213: Ad evidenciam xv signorum nota secundum lectorem fratrum Minorum con-ventus Tholosani, quando in vacationibus domini legebat decretalem scolariis Tholosanis, ut est moris, vocatum fratrem Geraldum Odonis.

⁵⁴ *Ibid*, p. 213.

⁵⁵ See most notably, Duba, 'The Beatific Vision', p. 348-363.

⁵⁶ Duba and Schabel, 'Introduction', p. 153.

⁵⁷ Langlois, *op. cit.*, p. 219-222.

⁵⁸ *Ibid*, p. 222.

⁵⁹ *Ibid*, p. 218.

Even with the incomplete body of writing to which we have access, both the recent studies and the present research on his Ethics commentary can conclude that Odonis demonstrated a great intellectual capacity and a high degree of originality.

2. *Expositio cum quaestionibus super libros ethicorum Aristotelis*: Text and Context

2a) Literature Survey

Within this sizeable corpus of writing, Gerald Odonis's commentary on Aristotle's *Nicomachean Ethics* is certainly the best known and the most influential. It is also for this reason that Odonis is known as the *Doctor Moralis*. Evidently, Odonis is highly esteemed within the scholastic traditions for his contribution to the study and propagation of the moral science. Odonis is the first Franciscan to write a full-length commentary on the *Ethics*, a feat which represents both a continuity of the broader Aristotelian commentary tradition starting from the early thirteenth century, and an important addition to the Franciscan *corpus*, which hitherto lacks its own treatise on the moral philosophy and a systematic commentary on Aristotle's *Ethics*. The text is known in a variety of titles, and the present thesis has settled for the *Expositio cum quaestionibus super libros ethicorum Aristotelis* as the full title, which best encapsulates the format and content of the text, and will henceforth refer to it as either the *Expositio* or simply Odonis's commentary. It is abbreviated as *ExEth* in footnotes.

Charles Langlois, after a brief survey of the work, comes to the conclusion that 'L'auteur a trouvé moyen de ne rien dire, en tant de phrases, qui soit de nature à instruire la postérité des choses de son temps.'⁶⁰ Recent studies have fortunately concluded that there is more merit to the *Expositio* than Langlois cares to admit. The text yields highly interesting material pertinent for the study of thirteenth- and fourteenth-century Franciscan moral philosophy, as well as being a valuable treatise on ethics in its own right. James Walsh's discovery that John Buridan's own and better known *Ethics* commentary is much indebted to Odonis, presented in detail in his 'Some Relationships between Gerald Odo's and John Buridan's Commentaries on Aristotle's *Ethics*' (1975) marks perhaps the starting point for a new current of scholarly interest in Odonis's own commentary.⁶¹ An extensive body of studies exists on Buridan's commentary, which was immensely popular, surviving in over one hundred manuscripts, with more expected to be identified in Central Europe, and was printed five

⁶⁰ *Ibid*, p. 217.

⁶¹ James Walsh, 'Some Relationships between Gerald Odo's and John Buridan's Commentaries on Aristotle's *Ethics*', *Franciscan Studies*, 35, 1975, p. 237-275.

times before the eighteenth century.⁶² Walsh finds that, in the first six books of Odonis, who poses 172 questions, and of Buridan, who poses 142 questions, seventy-one questions are ‘match-ups’ - questions posed by both commentators with either the exact wording or at least the same sense.⁶³ Beyond the questions raised, Walsh demonstrates that Buridan borrows substantially from Odonis in the main text of his questions, from initial arguments and final rebuttals, to the main considerations in the central body of answers.⁶⁴ I refer the reader to the article of James Walsh as it is pointless to enumerate all statistics of his findings here. The other finding of Walsh worth pointing out is that Buridan apparently has a relatively high regard for Odonis, citing him explicitly in Book IX, and adopts a generally similar philosophical outlook.⁶⁵

Bonnie Kent’s 1984 doctoral thesis *Aristotle and the Franciscans: Gerald Odonis’ Commentary on the Nicomachean Ethics* builds upon Walsh’s findings but covers Odonis’s text in much greater depth and scope, and so far, it remains the only full-length study on Odonis’s commentary. On account of the limited accessibility to Kent’s dissertation - the thesis is unpublished, and Kent’s later book, *Virtues of the Will* (1995), largely omits Odonis and focuses instead primarily on his Franciscan predecessors - it is worth a brief summary here.⁶⁶ Kent’s primary purpose, as the title of her thesis suggests, is to situate Odonis’s *Ethics* commentary within the Franciscan intellectual background, comparing Odonis with his predecessors and contemporaries who are normally taken as the benchmark of the Franciscan school of thought: Bonaventure, William de la Mare, Walter of Bruges, Richard de Mediavilla, John Duns Scotus, Peter of John Olivi, Francis of Meyronnes, and William of Ockham. Kent first questions whether we can reasonably speak of a Franciscan intellectual tradition. The Franciscans cited above, whose works span over a period of more than half a century, do not seem to be in much agreement in philosophical disciplines such as metaphysics and epistemology, so much so that Kent characterises the Franciscan tradition at the start of the fourteenth century as one of intellectual diversity.⁶⁷ However, on the subject of ethics, Kent considers that there is a degree of consistency among the Franciscans. But it is also worth noting that prior to Odonis, there is no

⁶² David Lines, ‘Sources and Authorities for Moral Philosophy in the Italian Renaissance: Thomas Aquinas and Jean Buridan on Aristotle’s Ethics’, in J. Kraye and R. Saarinen (eds.), *Moral Philosophy on the Threshold of Modernity*, Dordrecht, 2005, p. 15-18.

⁶³ Walsh, ‘Some Relationships’, p. 248.

⁶⁴ *Ibid*, p. 251-255.

⁶⁵ *Ibid*, p. 256.

⁶⁶ Text reproduced by University Microfilms International, Ann Arbor, 1988.

⁶⁷ Kent, *Aristotle and Franciscans*, p. 21-22; these are also the subjects that Kent would later treat in greater depth in her monograph *Virtues of the Will* without, however, much reference to Odonis’s *Ethics* commentary.

systematic Franciscan treatise on the moral science, and any Franciscan discussion on the ethics is mostly limited to a select few of *topoi* such as the primacy of the will, the issue of incontinence, the location of moral virtues, and the connection between virtues, all of which can be readily tied back to the voluntarism that distinguishes the Franciscan school of moral psychology.⁶⁸

In the main body of the text, Kent examines the Franciscan tradition on their attitude to Aristotle, their voluntarism, their view on the theme of incontinence, on justice and obligation, on the location and connection of moral virtues. Against this context, she assesses Odonis's consistency and deviation from this intellectual heritage. Kent comes to two principal conclusions. Firstly, contrary to common belief, the medieval Franciscans, even including Peter of John Olivi, are not truly hostile to Aristotle. Any impression that either Bonaventure or William de la Mare is anti-Aristotelian can be quickly dispelled by a closer reading of the Franciscan authors: what the early Franciscans oppose is not Aristotle *per se*, but the Thomist and Averroist readings of Aristotle.⁶⁹ What marks Odonis out is merely his insistence that none of Aristotle's teaching (at least in the *Ethics*) is wrong and none of his own opinion is contrary to that of the Philosopher. The second conclusion is that Odonis is a staunch voluntarist in his ethics, staying closely within the path of the Franciscan tradition in moral psychology. Kent observes:

Despite Odonis's effort to reconcile his views with the Philosopher's, his commentary contains few innovations in basic doctrine. Indeed, one is hard pressed to find a position in it that does not have some precedent in the writings of earlier Franciscans.⁷⁰

The difference between Odonis and his Franciscan predecessors is perhaps one of form rather than substance: the genre of an Aristotelian commentary naturally lends itself to, obviously, commenting Aristotle and using Aristotelian material in the arguments. While the other Franciscans resort principally to theology to frame their ethical discussions, Odonis uses Aristotle as the primary authority.⁷¹ As an overall verdict, Kent presents a picture of intellectual conservatism and continuity:

For the most part, Odonis emerges as a rather conservative Franciscan moralist. Despite his interest in Aristotle's thought, he never repudiated his predecessors' teachings in favour of

⁶⁸ *Ibid*, p. 22.

⁶⁹ *Ibid*, p. 609, and p. 63-84.

⁷⁰ *Ibid*, p. 609-11.

⁷¹ *Ibid*, p. 614.

the Philosopher's. He evidently did not set out to make Franciscan ethics Aristotelian. If anything, he set out to make Aristotle's ethics Franciscan.⁷²

Throughout Kent's work, however, considerations on the *Expositio* only occupies a minor portion of the text, which is devoted for the most part, in terms of the volume of the content, to assessing and establishing the Franciscan context. Her chapters typically run as follows: firstly identifying a theme of enquiry, such as voluntarism, which takes up chapters II and III, spanning over 140 pages; then examining the Franciscan thinkers on the identified theme, from Bonaventure to Ockham, to form an intellectual background; finally analysing Odonis's position and comparing it with this established intellectual background. On the theme of voluntarism, less than thirty pages are devoted to Odonis, while the rest of the two chapters surveys the other Franciscans.

The strength of Kent's work lies in her close reading and firm grasp of the post-Bonaventurean intellectual context within the Minorites, and as a result, she is able to align Odonis's thoughts with the philosophical threads already existing among the Franciscans. *Aristotle and the Franciscans* is therefore a study in Franciscan intellectual history of traditions, heritage, innovation, and continuity. Odonis's text offers a perspective rather than a focus. It is perhaps telling that when Kent turns her thesis into a book in 1995, the study on the broader Franciscan context is advanced to a much greater depth and scope, while the study on Odonis is reduced to a bare minimum.

While Kent's thesis remains the only full-length study on Odonis's *Expositio*, other scholars have recently published studies that draw significantly from Odonis's text. Risto Saarinen follows a similar line in his study on *akrasia* in medieval thought and places Odonis in the voluntarist tradition of late medieval moral thought.⁷³ Odd Langholm examined Odonis's *Ethics* question on usury (Book IV, question 20) in an exploration of Odonis's economic thought.⁷⁴ Joel Kaye, similarly surveys and cites Odonis's works in his works on medieval economic philosophy.⁷⁵ However, it is worth noting that, so far, including Kent's doctoral thesis, none of the works on the *Expositio* gives Odonis's text a primary focus. Langholm and Kaye draw attention to the economic aspects of the commentary, while

⁷² *Ibid*, p. 620.

⁷³ Risto Saarinen, *Weakness of the Will in Medieval Thought*, Leiden, 1994, p. 147-160.

⁷⁴ Odd Langholm, *Economics in the Medieval Schools: Wealth Exchange, Value, Money and Usury according to the Paris Theological Tradition 1200-1350*, Leiden, 1992, p. 511-12.

⁷⁵ See, Joel Kaye, *Economy and Nature in the Fourteenth Century: Money, Market Exchange, and the Emergence of Scientific Thought*, Cambridge, 1998, p. 128-38.

Kent concentrates mainly on Odonis's moral psychology of voluntarism and the cognitive implications in his ethics.

Therefore, much remains to be studied on Odonis's *Ethics* commentary, and the present thesis aims to fill a minor part of that gap in contemporary scholarship. Given its 181 questions and 145 lectures that altogether fill 202 double-column folios of the 1500 Venice edition, there is ample material to fill several doctoral dissertations, and the present thesis can aim to shed light on but a small part of Odonis's voluminous *chef d'oeuvre*. I will build on the cognitive approach of Kent and Saarinen as well as the economic concern of Langholm and Kaye, and I will explore in greater depth the political and legal aspects of the text. The thesis will tackle two themes in Odonis's commentary through a political, legal, and cognitive perspective: the virtues of justice and prudence. Thus, it aims to contribute to a more complex reading of Odonis's commentary. While Langlois may be right that Odonis can at times be extremely verbose in his expression and nebulous in his meaning, many of his opinions stand out against the intellectual current of his age, especially against the traditions established by Albertus and Aquinas. Compared to the other turn-of-the-century works on the *Ethics*, Odonis certainly numbers among the most original.

2b) Dating Odonis's *Expositio*⁷⁶

Any attempt at dating Odonis's *Ethics* commentary will have to remain hypothetical, as there is no explicit chronological marking point offered by the text itself or the manuscripts to anchor the composition to a specific year. However, a body of textual and inter-textual evidence has convinced me to date the *Expositio* to the period of 1320-25, with a possibility of narrowing it down further to 1323-25.⁷⁷ Although by no means precise, this already narrows down the window of possibility offered by previous scholars. Bonnie Kent dates the text to 1322-1329, composed in Paris,⁷⁸ and Camerin Porter offers a similar dating to the period between the 1320s and 1326-28.⁷⁹ At the baseline, the composition of the commentary is no doubt prior to 1329, the year where Odonis was elected Minister General, a position whose administrative responsibility greatly diminished his scholarly

⁷⁶ Much of the material in this section is also revised and published in Schabel and Chen, '*Ethics* in Ot's Commentary on I Corinthians'.

⁷⁷ For a fuller discussion on this likely hypothesis, see *infra* Coda: Odonis on Poverty and Property.

⁷⁸ Kent, *Aristotle and Franciscans*, p. 33.

⁷⁹ Camerin Porter, 'Gerald Odonis 'Commentary on the *Ethics*: A Discussion of the Manuscripts and General Survey', *Vivarium*, 47, 2009, p. 246-7.

output. The Salamanca manuscript, S⁸⁰ (Colegio de S. Bartolomé, 1869), which dates to the fourteenth century, incipits by referring to Odonis as a *bachelor* of theology:

Incipit scriptum super librum Ethicorum fratris Geraldi Odonis Ordinis Fratrum Minorum bachalarii in theologia.⁸¹

A fifteenth-century Vienna manuscript, W (Österreichische Nationalbibliothek, Palatinus 5433), although produced much later, also incipits with:

Gerardus Odonis de Ordine Fratrum Minorum, baccalarius in theologia legens Sententias Parisius A.D. 1326, scripsit super secundo Sententiarum opus valens cuius principium.⁸²

This can perhaps be taken as extraneous proof that Odonis was known to have written his *Ethics* commentary during his tenure as a bachelor, i.e. prior to his inception as Master of Theology in Paris.

We can push the *terminus ante quem* to 1327, or even 1326, based on the fact that Odonis lectured on the *Sentences* in Paris in 1326-27 or 1327-28. Having already lectured on the *Sentences* in the theology faculty in Paris, Odonis is unlikely to go back to teach *Ethics* afterwards. This effectively places Odonis's *Ethics* commentary antecedent to his Paris *Sentences* commentary. Christopher Schabel, in an preliminary survey of the *Sentences*, identifies forty questions that are common to both texts, over half of which are in fact verbatim.⁸³ Thus, it is likely that Odonis used material he produced while commenting on the *Ethics* when revising his *Sentences*, effectively transferring his writing from a specialised work of moral science to a broader and more general genre of *Sentences* commentary.

A morsel of evidence is offered Langlois suggests that the *Ethics* commentary was written in Paris. The fourteenth-century Mazarine manuscript, R (Bibliothèque Mazarine 3496) explicits with:

⁸⁰ The alphabetic numeration of manuscripts corresponds to that offered by Porter, *op. cit.*, p. 248-9.

⁸¹ *Ibid*, p. 255.

⁸² *Ibid*, p. 257. However, it should be noted that this manuscript is dated to the fifteenth century, thus not completely reliable for its biographical information, and, as Porter states, it does not actually contain Odonis's commentary, but instead that of John Buridan.

⁸³ See Schabel, 'The *Sentences* Commentary Odonis', p. 115-161.

Explicit scriptum supra librum Ethicorum a fratre Giraudo Odonis, minore, de conventu Pruviniensi.⁸⁴

‘Pruviniensi’ is written over an erasure, and this leads Langlois to hypothesise that it should probably be ‘Parisiensi’, also leads Kent to her dating of 1322-29, based on the assumption that Odonis should be in Paris during this period. However, the evidence is flimsy and stands alone without any corollary from other manuscripts. Moreover, the deteriorated state of the Mazarine copy (R) makes it inaccessible at the moment for further verifications.

Therefore, we will have to explore alternative channels in order to narrow down the window of possibility. We find an extraneous temporal marking point in Odonis's commentary on the *First Epistle to the Corinthians* (henceforth abbreviated as *SupCor*), which is written in Toulouse, and during or after the academic year of 1323-24.⁸⁵ In his commentary on I *Corinthians*, Odonis cites the papal bull *Cum inter nonnullos* (promulgated on 23 November 1323): *Item, Extra, "Cum inter nonnullos", dicit dominus papa quod per theologiam probantur articuli fidei...*⁸⁶ It can be established with certainty that *Corinthians* commentary was written in Toulouse, as the Assisi manuscript (ms. 71) explicits with: *Expliciunt Reportationes super primam Epistolam in Corinthios fratris Gherrardi Odonis, lectoris Tholose ac magistri in theologia*.⁸⁷ Therefore, the question becomes whether the *Ethics* commentary was written after the *SupCor*, i.e., during 1324-26, or before, i.e., during c. 1320-1325.

Without further probing the texts, it should be said that Odonis is unlikely to undertake such an immense project as lecturing and writing on the entirety of the *Ethics* while obviously also preparing for his Paris *Sentences* lectures during the period of 1324-26. While this is *not* impossible, it is far more likely that the *Ethics* commentary was written before his *SupCor*. This hypothesis can be supported by evidence yielded through a comparative reading of both texts.

While comparing Odonis's two commentaries, it transpires immediately that there is close affinity between them. Seven out of the eight longest questions in *SupCor* have close, or even verbatim,

⁸⁴ Langlois, ‘Gurial Ot’, p. 205, 216-17; see also, Kent, *Aristotle and Franciscans*, p. 33.

⁸⁵ Schabel and Chen, ‘*Ethics* in Ot’s Commentary on I *Corinthians*’.

⁸⁶ *SupCor*, cap. 3, f. 26v.

⁸⁷ Langlois, ‘Guiral Ot’, p. 214.

parallels in the *Ethics* commentary.⁸⁸ This is significant, considering that, while Odonis raises 122 questions on I *Corinthians*, only fifteen of them are longer than one column in Assisi ms. 71. A textual comparison between the two versions of these questions gives mostly inconclusive results - at times the *Ethics* version of the same question has supplementary material, at times vice versa, but most of these discrepancies are not significant enough to alter the overall structures, arguments, and conclusions, nor do they follow a consistent pattern to warrant any conclusions on their chronological order.

Let us therefore zoom into the only question where the two versions differ in any substantial way. Odonis asks the classic question on whether philosophy contradicts faith in both the *Ethics* commentary (I, q. 31: *utrum intentio Aristotelis de positione felicitatis concordet vel repugnet veritati et fidei Christianae*⁸⁹) and *SupCor* (Prologue, q. 6: *utrum philosophia aduersetur fidei*). The two questions share the same arguments, albeit presented in a different sequence. While the *Ethics* commentary, having made the distinction between happiness of merit (which can be attained in the present life) and happiness of reward (which is only tenable in the afterlife), considers the position of philosophy on the subject of happiness as entirely consistent with Christian faith, the *SupCor* text, in contrast, undermines this thesis with a supplementary conclusion at the end. Having reinforced his conclusions and addressed the objections, Odonis adds an epistemological note: the teaching of philosophy contradicts that of the faith in particular (*in speciali*, as opposed to *in generali*), as it derives its sources from human experience and natural intellect (*ingenium*), whereas the doctrines of the faith cannot be comprehended through natural intellect, but are only revealed to man.⁹⁰ Therefore, Odonis arrives at the final conclusion that the teaching of philosophy is in accord with faith in a general sense, but it contradicts faith in a particular sense.

⁸⁸ For more details on the length of the questions, see Schabel and Chen, ‘*Ethics* in Ot’s Commentary on I *Corinthians*’.

⁸⁹ Cf. *infra*, Part I, chapter V, sections 1 [Two Truths] and 2 [Two Happinesses].

⁹⁰ *SupCor*, prologus, q. 6, f. 6v-7r: Secundo dico quod doctrina Philosophi sumpta in speciali contradicit fidei Christianae. Quod probō: illa doctrina quae solum innititur humanae experientiae et ingenio naturali contradicit fidei; philosophia est huiusmodi; ergo etc. Maior patet, quia fides Christiana praedicat Deum esse incarceratum, passum, et talia, sed hoc non capit ex se ratio humana. Non enim videtur sibi quod Deus voluerit se tantum humiliare et tantam vilitatem in se sustinere. Etiam non videtur quod Deus, qui est impassibilis et immortalis, fieret passibilis et mortalis. Ad argumenta in oppositum, cum dicitur, “omnia consonant vero”, concedo. Tu dicis quod omnia dicta sunt vera: verum est in generali, sed non in speciali. Ad secundum, “quae sunt revelata” etc., dico, sicut dicit glossa, quod quaedam sunt apta ad cognoscendum per se hominibus in hac vita, et ista cognitio est rerum corporalium, et ista fuit a Deo philosophis revelata. Alia vero, quae non poterat de supernis haberi, exponitur ingenio naturali, nec ex studio talis fuit sanctis hominibus revelata.

Why this extra article? One possible explanation may be that Odonis wants to limit the discussion to moral philosophy in his *Ethics* commentary by omitting any theological material. Already, this is a weak argument: as a theologian by training and lecturing at a Franciscan convent, Odonis has no reason to avoid theological discussion, even in the context of a supposedly ‘philosophical’ text. In fact, the very existence of the question *per se* is evidence enough to counter this hypothesis. Furthermore, as we see elsewhere in his *Ethics* commentary, Odonis does not hesitate to bring forth theological material and subjects when the occasion arises. The more likely scenario is that Odonis inserted the final epistemic discussion *after* he had lectured on the *Ethics*, in order to refine and complement his teaching on the *Ethics* with a theological dimension, as well as to moderate his seemingly radical stance that Aristotle is entirely consistent with the Christian faith. After all, this final paragraph seems to be laid down in haste. It is unusual for Odonis to gloss over such a crucial distinction with such brevity, given his propensity for long-winded discussions and nuanced distinctions, all while considering the central importance of the question of faith *versus* philosophy in Paul’s first epistle to the *Corinthians*.

A second clue for placing the composition of the *Ethics* commentary prior to that of I *Corinthians* is also the result of an inter-textual comparison, this time between a pair of questions that cannot be considered properly as parallels. Question 37 of chapter I in *SupCor* (*quomodo accipitur hic sapientia*),⁹¹ which takes up 37 lines in *A*, presents a mereology of prudence and its acts, with a four-by-four structure, where prudence has four acts, with four corresponding virtues, and each of these acts has four additional related virtues. An identical mereology of prudence is also found in *Ethics* VI, question 15, (*utrum eubulia, synesis, gnome sint partes prudentiae an virtutes ab ipsa distinctae*),⁹² but this four-by-four scheme is part of a much longer question, which takes a little less than four-and-half columns in the Venice incunabulum, and which addresses the question of the relationship between prudence and its constituent virtues. On the surface, one may regard the short *SupCor* iteration as a precursor to the far more elaborate arguments found in the *Ethics* questions. Two problems undermine this assumption, however. First, while the question itself is pertinent to the biblical passage of I *Corinthians* 1:19-20 – how the term *sapientia* should be understood in this context – the expansion into the mereology of prudence has no relationship to Paul’s teaching. Second, the four-by-four scheme of prudence and its acts is an extremely elaborate structure in its own right: prudence has four acts, to inquire, to judge, to command, and to apply, with four corresponding virtues, *synesis*, *eubulia*, *praeceptum*, and *deinotica*; each of these four acts also has four associated virtues:

⁹¹ *SupCor*, cap. 1, q. 37, f. 15v-16r.

⁹² Cf. *infra*, Part III, chapter 1, section 5 [The Prudential Process].

to inquire has *docilitas*, *memoria*, *eustochia*, and *ratio*; to judge has *intelligentia*, *sensus*, *circumspectio*, and *cautela*; to command has *certitudo*, *persuasio*, *obauditio*, and *constantia*; and finally to apply has *providentia*, *diligentia*, *vigilantia*, and *solicitudo*.⁹³ Given that such a scheme for prudence is in no way prevalent among thirteenth- and fourteenth-century theologians, it is hardly conceivable that Odonis would have proposed the structure without having already thought deeply about it. Furthermore, as we shall see later in Part III, this four-by-four scheme forms the crux of Odonis's understanding of prudence as the supreme and universal virtue. The implication is that the mereology of prudence and its acts is an integral part of a much larger system of discussions regarding Book VI of the *Ethics*. The initial elaboration very likely happened in his *Ethics* commentary, and the *SupCor* iteration seems but a summary and repetition of the *Ethics* version.

A third piece of the jigsaw comes from the fact that many of the long questions raised on I *Corinthians* have only tenuous links with the biblical context, which inclines us, again, to consider that these questions are lifted out of an external context, namely, Odonis's *Ethics* commentary, and transposed here with barely any alterations. Question 4 of chapter V, I *Corinthians* (*utrum liceat iudici iudicare contra veritatem sibi notam sequendo proposita et probata*) addresses the passage where Paul admonishes against sexual sins and claims to pass judgement even without being present physically. It is with a giant leap that Odonis should come to the question of judge's conscience against the juridical order. The disjuncture becomes more apparent in chapter IV, where four of the five questions have parallels in the *Ethics* commentary but none of them can be inexorably anchored to the I *Corinthians* text. Question 2, *utrum magnanimus sit superbus*, deals with the relationship between magnanimity and arrogance, which, on the surface, follows Paul's teaching against arrogance; yet, in the question text itself, Odonis sidelines arrogance and discusses instead magnanimity and humility, with passages almost verbatim from *Ethics* IV, question 28. The following question 3, *utrum omne mendacium sit peccatum*, deals with lying, but nowhere in chapter IV does Paul speak of lying or honesty. Question 4 deals with irascibility, which Paul does not touch. The last question speaks of mansuetude, which Paul mentions by asking whether he should come forth with a rod of discipline or with charity and mansuetude. Odonis takes the mere appearance of the term as a cue to launch into a discussion on the virtue of mansuetude and its relationship with clemency, an exercise that is entirely focused on moral philosophy with little regard to the biblical passage at hand. To put the heterotopia of Odonis's *SupCor* questions in a broader context, we should perhaps compare his commentary with that of Aquinas, who is, arguably, the most likely theologian to give his biblical commentary an Aristotelian bend. As it turns out, the Angelic Doctor has very little interest in linking

⁹³ Cf. *ibidem*.

the biblical text to the *Nicomachean Ethics*, judged by the fact that Aquinas cites the *Ethics* five times in the entire text, and focuses on the subject of sacraments rather than moral virtues.⁹⁴

Therefore, it is unlikely that these questions can be in any way endogenous to the I *Corinthians* commentary, but are more probably taken from an external text. Instead of engaging with the biblical passages and doctrinal issues at hand, Odonis seems to take the opportunity to deviate from the Bible into discussions of ethics with a reiteration of material that he already has at his disposal. It appears, therefore, that most of the long questions, and all of the questions with *Ethics* parallels, have been transposed into the I *Corinthians* commentary from an external text, i.e., his *Ethics* commentary.

One should be able to conclude with a fair degree of certainty that Odonis's *Expositio super libros Ethicorum* was written in Toulouse before his commentary on I *Corinthians*. Thus, we are able to narrow down the window to the first half of the decade, between 1320 and 1325, given that the *Corinthians* commentary can be as late as 1325-26.

Now it is more difficult to establish a *terminus post quem*. A flimsy argument can be proposed based on the close affinity of the two texts, where questions are taken frequently verbatim from one to the other. It is therefore likely that I *Corinthians* was commented very shortly after Odonis finished his *Ethics* commentary, thus pushing the probable date towards the latter half of the 1320-1325 scale. A more concrete argument, however, can be made after an examination on the *Ethics* commentary's relationship with the papal bulls, more specifically with John XXII's first and second versions of *Ad conditorem canonum*, dated respectively to December 1322 and to the intervening period prior to November 1323. A more detailed discussion is offered in the *Coda*, but here I summarise it briefly. Odonis, in his question 22 of Book V (*utrum epieikes sit directivum iuris naturalis*), deviates from the conventional Franciscan position and also from his own earlier argument, and proposes the thesis that private property may be instituted in the state of innocence by positive law. While this issue is not touched by *Ad conditorem canonum*, natural law and state of innocence form the basis of Bonagratia of Bergamo's legalist doctrine on poverty, which the second iteration of *Ad conditorem canonum* addresses. We may understand Odonis's stance as a doctrinal overture to the papacy while remaining ambivalent on the question of property in the state of innocence – he remains faithful to the conventional Franciscan teaching that property is instituted after the Fall, but also appears

⁹⁴ For a survey on Aquinas's I *Corinthians* commentary, see Daniel A. Keating, 'Aquinas on 1 and 2 Corinthians: The Sacraments and Their Ministers', in T. G. Weinandy, D. A. Keating, and J. Yocum, *Aquinas on Scripture: An Introduction to His Biblical Commentaries*, London, 2005, p. 128-148.

receptive to arguments of the contrary. If this hypothesis stands, then we will be able to date the composition of the *Ethics* commentary with more precision to 1323-25.

However, while we may confidently date the text as prior to the I *Corinthians* commentary, the connections with *Ad conditorem canonum* here are much more tenuous. Therefore, I should conclude by dating Odonis's composition of the *Ethics* commentary to 1320-25, with a likely possibility of narrowing it down to 1323-25.

2c) Manuscripts and Incunabula

Camerin Porter has done the invaluable work of providing a survey of the text's manuscript tradition.⁹⁵ The alphabetic numeration of manuscripts provided below (and above) corresponds to that presented by Porter in her article. So far, eighteen manuscripts have been identified to contain all or part of Odonis's *Ethics* commentary, located in an array of European libraries, which suggest a wide dissemination of the text in the medieval and early-modern centres of learning. It is worth noting, however, that most of the manuscript witnesses whose origins can be ascertained come from conventual settings. Aside from the two witnesses currently housed at the Franciscan libraries of Assisi (A) and Padua (D), three other manuscripts (FTZ) are almost certainly of Franciscan provenance, two more (MN), can be traced back to the Dominican convents, and one (Q) is currently housed in a Benedictine library (Subiaco).

There is little surprise that Italy has the greatest concentration of the identified manuscripts, and this confirms David Line's argument that Odonis's commentary had been especially influential during the Renaissance in the Italian schools.⁹⁶ Assisi houses the ms. 285 (A) at the Biblioteca del Sacro Convento. Two (F and N) are located in Florence: Biblioteca Medicea Laurenziana, Plut. XIII Sin.3 (F), and Biblioteca Nazionale Centrale, Conv. soppr. I.3.25 (N). F is dated to the fourteenth century and was in the Franciscan library of Santa Croce, which, likely to be the manuscript's original owner, is itself one of the oldest libraries of Florence. It was transferred to the present location under the reign of Grand Duke Peter Leopold of Tuscany on 16 October 1766 into the Pluteus collection. N is also dated to the fourteenth century and forms part of the library's *Conventi soppressi* collection,

⁹⁵ For details of the survey, see Porter, 'Odonis' Commentary', p. 248-261.

⁹⁶ David Lines, *Aristotle's Ethics in the Italian Renaissance (ca. 1300-1650): The Universities and the Problem of Moral Education*, Leiden, 2002, p. 112.

which contains 2232 manuscripts from the suppression of monasteries in Tuscany in 1808.⁹⁷ It probably originated from the Dominican convent of San Marco in Florence, whose collection was transferred to the Biblioteca Magliabechiana, which later became the Biblioteca Nazionale Centrale di Firenze in 1860.

One further manuscript, D, is identified in Padua, housed in the Franciscan library of Saint Anthony's: Biblioteca Antoniana, XVIII 389, dated to the fourteenth or fifteenth century. Another witness, Q, is located in Subiaco at the Benedictine monastery's Biblioteca Statale Monumento Nazionale di Santa Scolastica (26.XXIV), dated to the fifteenth century.⁹⁸ The City of Vatican houses three manuscripts in the Apostolic Library - GHC: Pal. lat. 1027 (G); Urb. Lat. 1369 (H), which contains mainly the commentary of Walter Burley and only a small fragment of Odonis's commentary across three folios; and Vat. lat. 2168 (C), dated to 1439, copied by a Nuremburg scribe named Johannes Rosengart de Slezia.

North of the Alps, there are two manuscripts in Paris: RP. The Bibliothèque Mazarine 3496 (R), dated to the fourteenth century, comes into the present collection from the College of Navarre, and is bound together with Aristotle's *Rhetorics* edited by Giles of Rome, and with Walter Burley's commentary on Aristotle's *Politics*. Both facts suggest that this was a teaching text on Aristotle. The Bibliothèque Nationale de France lat. 16127 (P), which comes to the BNF's collection in the nineteenth century. One manuscript (B) is found in the municipal library of Boulogne-sur-Mer (BV 111), dated to the third quarter of the fifteenth century. As with most of the manuscript collection in the Boulogne library, this witness most likely comes from a monastic setting. In Germany, the Tübingen Universitätsbibliothek houses the manuscript Mc. 378 (U), donated in 1539 by Konrad Hager, who was a student at Tübingen as well as Leipzig, and later became the Pastor of Renningen and Canon of St Moriz in Rottenburg, and who was in most likelihood not a Franciscan.⁹⁹

The Österreichische Nationalbibliothek in Vienna houses the manuscript Palatinus 2383 (W), dated to the second half of the fourteenth century.¹⁰⁰ It was acquired by the Faculty of Arts of the Old

⁹⁷ 'Conventi soppressi', <<https://archives.cendari.dariah.eu/index.php/conventi-soppressi>>.

⁹⁸ The monastery's connection with the Franciscans is long-established. It hosted Francis of Assisi in 1223-24, and later accommodated the expelled Angelo Clareno.

⁹⁹ Hedwig Röckelein, *Die lateinischen Handschriften der Universitätsbibliothek Tübingen: Teil 1 Signaturen Mc 1 bis 150*, Tübingen, 1991, p. 31.

¹⁰⁰ Friedrich Simader, *Bücher aus der mittelalterlichen Universität Wien und ihrem Umfeld. Online-Datenbank*, Vienna, from 2007, <<http://www.onb.ac.at/sammlungen/hsschrift/kataloge/universitaet/>>.

University of Vienna in the fifteenth century, evidently as a teaching text, and numbers among many books on the *Ethics* acquired by the University over this period, but no further information is available on how exactly it came to the Faculty's possession.¹⁰¹ The manuscript was later transferred to the library of the College of Jesuits, possibly as a founding endowment, and then became part of the Österreichische Nationalbibliothek collection at the suppression of the Jesuit Order in 1773.¹⁰² It is a curious fact that the ONB Vienna also houses two other manuscripts attributed to Odonis, but they are in fact the commentary of Buridan: Cod. 5149 and Cod. 5433.¹⁰³ This certainly suggests a confusion among the fifteenth-century Viennese artians regarding Odonis and Buridan, and may also be used to testify the similarities between the two masters.

A number of witnesses are found in Spain (MSLTZ). Ms. 6546 (M) in the Biblioteca nacional, Madrid, dated to the fifteenth century, is bound with Walter Burley's *Ethics* commentary, and identified as such in the library catalogue. It come from the Dominican convent of Santo Tomás of Ávila. Another manuscript is identified as the Ms. 1869 (S) in the Colegio de S. Bartolomé, Salamanca. The fourteenth-century ms. 7.5.14 (L) in the Biblioteca Colombina, Seville, lacks notes about the dates and details of the manuscript's purchase, which suggest that it is not part of the library's original collection amassed by Hernando Colón between 1496 and 1539. Therefore, it is probably a later addition after the ownership of the library passed into the hands the Cathedral of Seville. The mss. 15 (T) and 71 (Z) in the Archivo Catedral Capítular of Tarazona are evidentially both of Franciscan origins: in T, below the *Explicit* a later hand adds *Ad usum fratris de est (sic), Ordinis Minorum*; and in Z, which can be possibly dated to at least 1370, a hand indicates that the manuscript was for the use of a certain William Aldomar O.M.F., and a later hand points to a deacon named Ferdinand Peter Calvieso.¹⁰⁴

Out of the eighteen identified manuscripts, the HMQUZ, are fragments, while the others are full commentaries. Not enough research has been done on the manuscripts to suggest a clear picture of

¹⁰¹ For further information about books bequeathed to the Arts Faculty of Vienna on the subject of ethics, see Simader, *ibid.*

¹⁰² *Ibid.*

¹⁰³ Porter, *op. cit.*, p. 250.

¹⁰⁴ See Porter, *op. cit.*: 'Explicit ergo liber Ethicorum cuius expositionem et sententiam ego frater Guillelmus Aldomar Ordinis Minorum . . . conventus Servarie ad rogamina aliquorum dominorum iurisperitorum de dicta villa super aliquibus partibus dicti libri aliquialiter secundum mentem domini magistri Geraldí Odonis olim eiusdem ordinis generalis ministri . . . ad laudem et gloriam omnipotentis Dei cui est honor et gloria per infinitam secula seculorum Amen. Deo gratias Amen. anno domini MCCCCLXX'. p. 258-9.

the text's manuscript transmission, but the survey above can perhaps give us some initial impressions. The fact that there are eighteen extant or fragmentary manuscripts surviving means that Odonis's commentary enjoyed a considerable degree of popularity across western Europe, even before printed versions became available at the end of the fifteenth century. Based on the variety of manuscript provenance, we can already establish that Odonis's commentary was widely read during the fourteenth and fifteenth centuries, not only by the Franciscans, but also the Dominicans and Benedictines, as well as being used as a teaching text at (presumably the Arts faculties of) the old universities.

Aside from the manuscripts, there are two incunable editions of the commentary (XV), which together survive in more than one hundred ninety-two copies, with a wide circulation in Europe and beyond. To put it into perspective, the much more influential *Ethics* commentary by John Buridan was printed three times during the same period, and these three editions together exist in one hundred forty-four identified copies.¹⁰⁵ Taking into account of the possibility that many of the printed copies may not have survived to our time - the relatively small number held in France of both Odonis and Buridan may suggest a failure of survival rather than an absence of scholarly interest - or that they may not exist in identifiable public collections, it is safe to argue that, until at least the early sixteenth century, Odonis's commentary was highly popular as a teaching and referential text for the studies of moral philosophy.

The first incunabulum edition, X, was printed Brescia on 30 April 1482 by Bonifacius de Manerva, and edited by Gratianus Brixianus.¹⁰⁶ This seems to be the only surviving incunabulum of Bonifacius de Manerva, and little is known about the publisher.¹⁰⁷ The editor, however, deserves a little digression. Gratianus Brixianus was a Padua-based conventual Franciscan theologian active at the

¹⁰⁵ A search for John Buridan's *Ethics* commentary on the *Incunabula Short Title Catalogue* yields three distinct editions, all printed in Paris, with a total 144 distinct copies held in libraries across Europe and North America, see <https://data.cerl.org/istc/_search?query=buridanus+ethica&from=0>.

¹⁰⁶ James E. Walsh, *Catalogue of the Fifteenth-Century Printed Books in the Harvard University Library: Volume III Books Printed in Italy with the Exception of Rome and Venice*, New York, 1994, p. 240; in the Huntington Library incunabulum which I consulted, a colophon below the *Explicit* reads: 'Impressa Brixie ad expensas Sp. domini Bonifaciis de manerva. M.cccc.lxxxii. die ultimo aprilis.' Hain 10968, Huntington Library, San Marino, CA.

¹⁰⁷ Both the Bodleian Library and the British Library list Odonis's *Expositio* as the only entry under Bonifacius de Manerva, and the book *Printing at Brescia in the Fifteenth Century* by Robert Alexander Peddie (London, 1905) also lists it as the only book produced by the said printer. See <http://incunables.bodleian.ox.ac.uk/places/record/46?concise=no&calling_page=profile>; <https://data.cerl.org/istc/_search?query=data.imprint.imprint_place%3ABrescia&size=10&mode=default&from=0>.

end of the fifteenth century, and better known for his Venetian editions of Duns Scotus's *Lectura* and *Ordinatio*.¹⁰⁸ The Brescia incunabulum, as with its Venetian counterpart, was probably sold primarily to monasteries and university faculties. The book was undoubtedly an immense success and enjoyed a wide circulation, presently held by at least eighty-five institutions in more than ninety-four copies.¹⁰⁹

A second edition of Odonis's commentary, V, was printed in Venice on 14 July 1500, by Simon de Luere for Andrea Torresani, de Asula, father-in-law of Aldus Manutius. The publishers deserve a brief note. Aldus Manutius was a humanist scholar learned in both Latin and Greek, and the founder of the celebrated Aldine Press of Venice, known for being the first major printer of Greek texts in western Europe. Andrea Torresani himself was a business partner of Aldus's but also had his own press. Martin Davies, in his book on Aldus Manutius, describes Andrea Torresani as such: 'He played very safe in the texts he chose to print, earning a contemporary reputation for extreme personal meanness.'¹¹⁰ If Davies is correct in his assessment of Torresani - which is probably typical of men in late the fifteenth-century Venetian printing business, where, as Nicholas Baker suggests, each individual book was a singular *ad-hoc* venture that carried its own risks and opportunities - then we can probably deduce that the printer sought to capitalise on a book with a proven record of commercial success.¹¹¹ The Brescia edition certainly sold well, and the international academic and monastic market was of the most stable and lucrative for any book printer.¹¹² The modern-day survival of V also testifies Odonis's popularity as a commentator of the *Ethics* as well as the success of Andrea Torresani's commercial decision. It is held by eighty-eight institutions in at least ninety-eight copies.¹¹³

For both editions, Italy (excluding the Vatican City) has by far the largest holdings. Thirty-seven copies of X, and thirty copies of V are located in Italy. Outside of Italy, Germany, Austria, the British Isles, and the Iberian Peninsula all have considerable collections. Given the ready accessibility of the

¹⁰⁸ Nelson H. Minnich, *The Decrees of the Fifth Lateran Council (1512–17): Their Legitimacy, Origins, Contents, and Implementation*, Routledge, 2017; Hugo Hunter, *Nomenclator literarius theologiae Catholicae II: 1109-1563*, Innsbruck, 1906, 1102 n1.

¹⁰⁹ The *Incunabula Short Title Catalogue* identifies 83 holding institutions with 94 copies, <<https://data.cerl.org/istc/io00028000>>.

¹¹⁰ Martin Davies, *Aldus Manutius: Printer and Publisher of Renaissance Venice*, London, 1995, p. 13.

¹¹¹ Nicolas Baker, *Aldus Manutius: Mercantile Empire of the Intellect*, Los Angeles, 1989, p. 10-11.

¹¹² Davies, *Aldus Manutius*, p. 8-9.

¹¹³ The *Incunabula Short Title Catalogue*, <<https://data.cerl.org/istc/io00029000>>.

incunabula, it is hardly surprising that, so far, most of the scholarship on Odonis's *Ethics* commentary has been based on the two incunabula, especially V, which can be consulted online via Gallica.¹¹⁴

The Venice incunabulum, V, is also used by the present thesis as the primary source of text. All folio and column numbers are given in reference as such. (X has no folio numeration.) My limited paleographical skills and time have not allowed me to carry out a thorough comparison of the incunabula with the manuscripts. I have checked samples of the V against G and P. While there are numerous discrepancies, V follows G and P closely, and is generally a superior and reliable text with fewer mistakes, as far as I am able to judge. Bonnie Kent has checked V against W, arriving at a similar conclusion.¹¹⁵ I have also carried out a systematic collation between V and X. The two editions conform each other almost word by word; discrepancies are few and far between; where V and X disagree in terms of Latin grammar, V is almost invariably correct and X erroneous. Aside from differences in punctuation, which is unreliable and inconsistent in both, and common orthographic variations (such as, most frequently, between 't' and 'c'), all disagreements between X and V are marked out in the footnote where the Latin text is cited.¹¹⁶

Furthermore, X and V share some obvious errors, as well as certain orthographical oddities. In terms of orthography, both X and V have 'yconomicum', 'epyekes', 'epyekeia', i.e. non-standard spelling of Greek terms. In terms of shared errors, I list, non-exhaustively, several exmples, all of which are found in Book V. In question 2 of Book V (93vb), both X and V have: *Iniustificatio est ante tantum quam operatum sit non est iustificatio* (it should clearly be '*iniustificatio*') *sed iniustum*. Both misquote the *Decretum* in question 15 of Book V (109vb): ... *ex principio Decretorum, ubi dicitur quod ius naturale est quod in lege et in evangelio continetur, quo quisque iubetur alii facere, quod sibi non* (add.) *vult fieri, et prohibere alii inferre, quod sibi nolit inferri*.

All of the above would suggest that Torresani used X as his primary source material, and edited out certain obvious errors. It is likely that Torresani had an additional manuscript, as there are several incidences where the discrepancy goes beyond simple editorial corrections. For example, in Question 5 of Book V (96va), the Venice incunabulum has a phrase which is entirely missing in X: *Haec enim*

¹¹⁴ See Porter, *op. cit.*, p. 249. Bonnie Kent and Robert Saarinen used the Venice edition, Odd Langholm used the Brescia edition, and Joel Kaye used both.

¹¹⁵ Kent, *Aristotle and Franciscans*, p. 10.

¹¹⁶ I use V as the base text, and all discrepancies from V found in X are marked out as such: a (b, X); where both X and V are erroneous, it is marked such: a <b, sic both X and V>.

necessario insunt eidem habitui. Unfortunately, I have not been able to identify this manuscript. Overall, therefore, although V is far from perfect, it is a generally reliable text that shows sound editorial discretion, and entirely serviceable for our present study.

2d) Textual Schemata

The Venice incunabulum, consists of 202 large folios, with the text laid out on both sides in double column. An index of questions and, an alphabetic table of positions and arguments summarized in succinct phrases precede the text. The main body of the text is arranged in a tripartite order, which mirrors the structure set out by Albertus Magnus: each section starts with the passage of Aristotle, which here is taken from Moerbeke's recension of the Latin translation, then it is followed by a literal reading of Odonis, called *lectio*, and finally the *quaestiones* that Odonis raises concerning the passage at hand. The format of *sententiae cum quaestionibus* offers the Odonis the advantage of a close engagement with both the text of Aristotle in his literal exposition, and the contemporary ethics debate at hand in his questions, which go beyond the material of the *Ethics*. In many ways, the literal exposition lays the foundation, offering paraphrases, summaries, and clarifications of Aristotle's text, but it is the questions that serve as a bridge between Aristotelian text and the fourteenth-century intellectual world, where Aristotelian material is solicited, reformulated, and finally channeled to address late medieval philosophical controversies. The questions are very much the core of Odonis's commentary, where he has the freedom to construct his own argumentation without being constrained by the format of Aristotle's text.

The commentary is, almost certainly, like many other texts of the later middle ages, a redaction of Odonis's teaching material. Its structural similarity to Albertus Magnus' own commentary, which is clearly associated to Albertus's period of Aristotle lectures in Cologne, would seem to support this hypothesis.¹¹⁷ A literary *lectio* of Aristotle's text followed by a set of questions inspired by elements of the passage also closely mirrors the classroom proceedings of a late medieval *studium*. After all, the reputation of Odonis as the *Doctor moralis* may not rest exclusively on his writings on Aristotle's *Ethics*, but also his own pedagogic expertise. Although Odonis probably did not lecture on ethics in the arts faculty in Paris, it is entirely possible that he did so at the Franciscan *studia* of Toulouse and Paris, where the works of Aristotle were taught extensively to young friars by the end of the thirteenth

¹¹⁷ Jean Dunbabin, 'Two Commentaries of Albertus Magnus on the *Nicomachean Ethics*', *Recherches de théologie ancienne et médiévale*, 30, 1963, p. 233-4.

century.¹¹⁸ As Bonnie Kent remarks many times, Odonis's commentary is no radical departure from the Franciscan tradition, but instead an attempt to 'Franciscanise' the *Ethics*. Teaching would certainly give this exercise of intellectual assimilation an appropriate purpose - established Franciscan thoughts are reformulated with the language of Aristotle and supported by the texts of the *corpus aristotelicum*.

Yet, in such a commentary genre where the *quaestiones* are the preferred vehicle for the author to channel his own thoughts with a large degree of textual liberty, it is worth remarking that Odonis raises far more questions in the first books of the *Ethics* than in the final ones, and such disparity is important. We cannot know for sure why this is the case, but a working hypothesis may well be that Odonis simply ran out of time to fill the latter books with questions. As established above, the commentary was likely composed shortly before Odonis started lecturing on the *Sentences* in Paris, which shifted the focus of his academic work. Then in 1329, he was elected Minister General, where administrative duties and the internal political strife of the Order soon took over his academic preoccupation. Thirty-two questions are asked in Book I, twenty-six in Book II, and twenty-five in Book III. Book IV, which deals with moral virtues, is the most provocative for Odonis, at least in terms of the number of questions raised - forty-five questions are asked here. Odonis raises twenty-three questions in Book V, and a further seventeen questions in Book VI. After Book VI, the questions dry out. Book VII sees one single question, Book VIII has none, Book IX asks eight questions (six of which are on duty and obedience), and Book X again offers a pure literary commentary without question discussions to follow any *lectio*.

The proliferation of questions in the first books can certainly be taken as evidence to demonstrate Odonis's personal interest in the issues discussed: the nature of virtue, its relationship to good and evil, moral virtues, intellectual virtues, etc. However, the absence of questions in the later books should not be taken by equal measure to show that Odonis is not interested in the fields of discussion, nor are they proof that the later books do not provoke scholarly interest in the late Middle Ages. In fact, on the contrary, concepts such as *akrasia*, discussed in Book VII, and friendship, discussed through Books VIII to IX, are among the most contested issues facing late medieval discourses of ethics. While it is frustrating that Odonis fails to address many of the questions normally raised in the context of the last books of the *Ethics*, his commentary has certainly provided more than enough material for our present investigation into his ethico-political thought.

¹¹⁸ Senocak, *Poor and Perfect*, p. 210-212.

Another frustration that may arise from the study of the text is the conspicuous absence of any explicit citations to contemporary authors. Therefore, it is extremely difficult to establish an intertextual relationship between Odonis's commentary and other late thirteenth-century and early fourteenth-century scholastics. There is no satisfactory response to this, especially considering that explicit citations are increasingly becoming the norm in scholastic writings by the start of the fourteenth century. References to the most significant *Ethics* commentaries of Albertus Magnus and Thomas Aquinas are notably absent. Albertus's commentary is without a doubt an influence over Odonis's own, not only in terms of the similarity in format,¹¹⁹ but also, in the fact that some of Odonis's positions mirror closely those adopted by Albertus and against the Thomist tradition, such as identifying man as a free agent for the first subject (*subiectum primum*) of the moral science, and in proposing a unitary reading of prudence instead of a tripartite division between the personal, economic, and political. The absence of Aquinas is also conspicuous, as a large number of questions raised by Odonis can find their direct counterparts in Aquinas's *Summa*, and Odonis frequently argues against the Thomist position. Kent states that the principal antagonist in Odonis's commentary is Aquinas, and I consider her proposition largely coherent with my own findings.¹²⁰ As the later chapters of this thesis will show, Odonis's arguments differ consistently from those of Aquinas. Again, we can only hypothesise why Odonis does not give any explicit citations. Walsh suggests that perhaps Odonis does not deem it worthy of mentioning the Dominicans at a time of increasing intellectual polarisation between the mendicant schools.¹²¹ Kent argues that the canonisation of Aquinas in 1323 may have also played a part,¹²² as Odonis may not want to manifestly confront Thomist teachings. Either way, such logic cannot be applied to the number of other near-contemporaneous authorities, such as the secular masters, and other Franciscan sources. More likely, however, Odonis wants his commentary on the *Ethics* to stand out and stand against the test of time, to be a work that can be understood in a few centuries' time without knowing all the early fourteenth-century polemics. If this was his aim, he partially succeeded.

None of the Franciscan authorities features as part of Odonis's explicit references. This makes the task of identifying the Odonis's Franciscan intellectual inheritance much more complex - in fact, as we have seen, Bonnie Kent dedicates her entire thesis to situating Odonis within the Franciscan

¹¹⁹ It should perhaps be noted that of all the *Ethics* commentaries produced in the intervening years between Albertus and Odonis, only one other example adopted the *expositio cum quaestionibus* format - the BNF lat. 14698, possibly by James of Douai, see Georg Wieland, 'Reception and Interpretation', p. 664.

¹²⁰ Kent, *Aristotle and Franciscans*, p. 625-626.

¹²¹ Walsh, 'Some Relationships', p. 258-9.

¹²² Kent, *Aristotle and Franciscans*, p. 98-99.

intellectual milieu. The Franciscans will be discussed with greater details in section ‘Aristotelian Studies in a Franciscan Context’, but a few notes should be made here on the question of citation and intellectual influence. The only reference that approaches any explicitness is made to Duns Scotus, referred to simply as *quidam Doctor* in his discussion of praxis in Question 4 of Book VI.¹²³ Odonis’s argument closely parallels that of Scotus, who discusses the same question in the prologue his *Ordinatio*.¹²⁴ It is certain that Odonis is familiar William de la Mare, whose *Correctorium corruptorii fratris Thomae* is the text of reference in the Franciscan *studia* for the studies of Aquinas’s writings. William’s *Correctorium* is a text that opposes the Thomist and Averroist interpretation of Aristotle, which is very much also the purpose of Odonis’s own *Expositio*. Specifically, for example, Odonis’s understanding of the connection of cardinal virtues is almost exactly the same as that of William.¹²⁵ Another established influence is Peter of John Olivi, whose works were condemned twice by the Order; therefore, any citation in favour of Olivi would have been toxic for an establishmentarian scholar like Odonis. Sylvain Piron and Giovanni Ceccarelli have demonstrated that Odonis owes a great intellectual debt to Olivi in his economic thought. Therefore, while Odonis may differ from Olivi politically and indeed philosophically, he probably has great esteem for the latter’s economic thought.¹²⁶

On the explicit references, the task of identification is much more straightforward. Odonis draws from a wide range of sources, including the ancient and late antique authorities, the Scripture, patristics, twelfth-century texts, as well as a body of legal materials. Both James Walsh and Bonnie Kent have done a detailed survey, and I shall not repeat them here.¹²⁷ Nonetheless, a few observations need to be drawn.

¹²³ *ExEth*, VI, q. 4, f. 122ra: Sexto quia operatio intellectus nostri non est praxis. Immo quidam doctor in descriptione praxis ponit quod est operatio alterius potentiae quam intellectus probans hoc, quia sistendo in actibus intellectus, nulla est extensio ad praxim. Quamvis sit extensio unius considerationis ad aliam, sicut principiorum ad conclusionem.

¹²⁴ *Ord.* prologus, pt.5: Dico igitur prime quod praxis ad quam cognitio practica extenditur est actus alterius potentiae quam intellectus, naturaliter posterior intellectione, natus elici conformiter intellectioni rectae ad hoc ut sit rectus. Primo conditio apparet, quia stando praecise in actibus intellectus nulla est extensio intellectus, quia non extra se tendit nisi ut actus eius respicit actum alterius potentiae. Etsi dicas unum actus intellectus extendi ad alium, directum per illum, non propter hoc secundus est praxis, ut modo loquimur, nec primus cognitio practica, quia tunc logica esset practica, quia dirigit in actibus discurrendi. See also, Kent, *Aristotle and Franciscans*, p. 40-42.

¹²⁵ See below, Part III, Chapter III, section 2: ‘Prudence and Moral Virtues’.

¹²⁶ See Piron and Ceccarelli, ‘Gerald Odonis’s Economic Treatise’, p. 168-9; on Odonis’s use of Olivi, see also Odd Langholm, *Price and Value in the Aristotelian Tradition: A Study in Scholastic Economic Sources*, Bergen, 1979, p. 154.

¹²⁷ See Walsh, ‘Some Relationships’, p. 257-8; Kent, *Aristotle and Franciscans*, p. 34.

The *Scripture* is by far the most cited source throughout the commentary, invoked seventy-three times in total, and unsurprisingly Saint Paul features most prominently among the Biblical authors. Another preponderance in Odonis's citations is the use of Saint Augustine, invoked twenty-seven times and primarily taken from *De civitate Dei* and *De trinitate*, as well as works considered authored by Augustine in the late Middle Ages, such as *De spiritu et anima*. Bonnie Kent considers the relatively large number of references to Augustine expected, as the Franciscans are typically considered as the most receptive to Augustinism in the later Middle Ages.¹²⁸ Odonis uses Augustine's authority mostly to in support of his own position, and it can be generalised that Odonis stands with Augustine on many of the doctrinal points raised through the *Ethics* reading. But there are several instances where Augustine is pitched against Aristotle, and a compromise is reached without repudiating either. A case in point can be found in Question 10 of Book V, where Odonis asks whether committing injustice carries more good and less vice than suffering injustice.¹²⁹ Aristotle is understood to argue for the proposition, while Augustine is cited in opposition.¹³⁰ Rarely does Odonis refute the authority of Augustine outright, but this does happen. In Question 10 of Book VI, where Odonis discusses the differences between prudence and skill (*Utrum prudentia differat ab omni arte*), Augustine's definition of prudence that prudence is the skill of living well and righteously is cited at the beginning, but then dismissed in favour of Aristotle's definition.¹³¹

Aside from Augustine, a number of other Patristic authorities can be cited, such as Jerome, Ambrose, and Gregory. Together with the Scriptural and Augustinian citations, this gives Odonis's commentary a broadly theological outlook. It also means that it certainly is never intended to be a purely 'secular'

¹²⁸ Kent, *Aristotle and Franciscans*, p. 35.

¹²⁹ *ExEth*, V, q. 10, f. 101va-b: *Utrum faciens iniustum habeat plus de bono et minus de malo quam iniustum patiens?*

¹³⁰ *ExEth*, V, q. 10, f. 101vb: *Non autem de malo paenali et bono sibi opposito, quia de illo malo dicit Augustinus quod si diligenter consideremus, inueniemus eos maiora supplicia sustinere qui faciunt quam eos qui sustinere, videntur in sermone de Innocentibus. Item nec de malo culpabili et bono sibi opposito, quia ibidem de illo dicit Augustinus, quod nemo habet iniustum lucrum sine iusto damno; ubi lucrum ibi et damnum, lucum in archa damnum in conscientia. Quare nullo modo videtur verum quod iniustum faciens habeat minus de malo quam ille qui est patiens.*

Oppositum tamen dicit philosophus hic et in sequenti capitulo. Pro intentione Augustini est praemittendum unum pro intentione vero Philosophi alterum. Et post haec est ad quaestionem respondendum.

¹³¹ *ExEth*, VI, q. 10, f. 127ra: *Primo quoniam ars non differt ab arte bene recteque vivendi; sed prudentia est ars bene recteque vivendi. Sic enim virtus a veteribus deffinita est, ut dicit Augustinus De Civitate, libero eodem, capitulo 21: nulli (+ autem, X) virtuti haec diffinitio magis competit quam prudentiae. Quare ars non differt ab ea, nisi ut superius ab inferiori.*

And later, *ibid*, 127va: *Dicendum ergo ad primum in oppositum, quod illi veteres, de quibus loquitur Augustinus, male definiverunt virtutem, sicut et Socrates et sequaces sui, quos reprobatur Aristotelis infra eodem, capitulo 18.*

and ‘philosophical’ reading of the *Ethics*, completely divorced from the Christian intellectual context of a divine truth and man’s salvific path. Commentating as a theologian and probably also aimed at educating future theologians within the Franciscan *studia*, this should be hardly surprising. However, it is evident that neither is Odonis trying to interpret Aristotle through an exclusively Augustinian framework, which considers the present life and humanity unworthy - indeed, such a starting point would defeat the entire purpose of studying the *Ethics*.

Odonis invokes several ancient and late antique non-theological authorities, including Plato, Cicero, Andronicus, Cato, Seneca, Boethius, and Macrobius. Except for Aristotle, Cicero stands out as the most prominent of the ancients, cited twenty times in total, on a range of *topoi* such as moral virtues, natural law, prudence, wisdom, etc., reflecting Cicero’s importance as the most preeminent authority on moral philosophy in the later Middle Ages after Aristotle. Odonis’s use of Cicero perhaps typifies his approach to non-theological sources. Many of Cicero’s positions and definitions are juxtaposed, compared, and often reconciled with those of Aristotle, and are used both in proposition and opposition to Odonis’s own stance. In the *Prologus*, Odonis uses Cicero as a point of erudition that expounds the importance of virtue ethics:

Virtue conforms to nature and right reason, as Cicero says in his *Rhetorics*, ‘Virtue is the habit of the soul in a way befitting to the reason of nature’. (*De inventione* II.159)¹³²

In contrast, in Question 15 of Book VI, Odonis cites Cicero’s tripartite division of prudence (into memory, providence, and understanding),¹³³ only to refute it later in favour of Aristotle’s taxonomy of counsel, judgement, and discernment (*eubulia*, *synesis*, and *gnome*).¹³⁴

¹³² *ExEth*, Pr, f. 1ra: Virtus praeterea conformis est naturae et conformis rationi rectae, dicente Tullio in rhetorica sua, quod virtus est habitus animi modo naturae rationi consentaneus.

¹³³ Cicero, *De inventione*, II.53

¹³⁴ *NE*, VI, 1142a; *ExEth*, VI, q. 15, f. 133vb: Primo quia secundum Tullium 2 *Rhetoricae*, omnes partes prudentiae sunt tres, scilicet memoria per quam animus repetit illa quae fuerunt, providentia per quam aliquid futurum prospicitur ut caveatur vel effectus mancipetur, intelligentia per quam ea quae sunt prospicimus ut sciamus, memoria per quam ea quae fuere mente recolliguntur. Sed eubulia, synesis, et gnome non sunt providentia, intelligentia, memoria. Quare nec sunt partes prudentiae.

But later, *ibid*, 134vb: Per hoc dicendum ad primum in oppositum, quod prudentia, intelligentia, et memoria, non sunt tres virtutes ab invicem distinctae, nec a prudentia, quia stultum esset dicere.

Another significant aspect of Odonis's citations is his heavy use of legal material, which has provoked particular interest in both James Walsh and Bonnie Kent. This thesis will dwell upon the legal thought of Odonis later in much greater detail and depth in Part II. For the moment, it is worth considering the general outlook of these legal citations. Bonnie Kent counts forty-two references to legal authorities in total, of which the majority comes from the *Corpus iuris civilis* - one from the *Institutes*, twenty-one from the *Digest*, and two more from Accursius's *Glossa Ordinaria*; two citations to the *Authentica Habita* are identified; the rest – sixteen citations – are to the *Decretum*.¹³⁵ I have made a slightly different count, based on a more generous criterion: the number of references to the *Institutes* and *Authentica* concurs with that of Kent, but I have made twenty-five counts of citations to the *Digest*, and twenty-six to the *Decretum*, plus seven counts of *Liber Extra* (Kent counts two), which conforms to the count of James Walsh, and which should be included as a legal authority.¹³⁶ Despite the relatively large number, the references of *Decretum* are overwhelmingly clustered in question 20 of Book V - a question concerning legal procedures – where I have accounted sixteen references to the *Decretum* as well as four citations to the *Liber Extra*. In comparison, Odonis's invocations of Roman Law is much more evenly spread, found in a total of nine questions (IV.20, V.1, 2, 5, 11, 15, 16, 20, and 22). James Walsh concludes that, based on the relatively large number of references to legal authorities, Odonis's commentary is characterised by what he calls 'moral legalism'.¹³⁷ Bonnie Kent contests this claim, and argues that the significant number of citations from legal sources does not in itself constitute an overall legalist orientation of his *Ethics* commentary.¹³⁸ Kent states that, firstly, forty percent (according to her count) of all these citations are from canon law, which is theological rather than legal; secondly, these references are overwhelmingly clustered in Book V, which naturally lends itself to legal discussions. Legal sources are cited only 6 times outside of book V, and often in support of the views that he rejects; within Book V, only 9 questions involve citation of legal sources, and 4 of them Odonis cited legal sources only for the views he would come to reject - the prevailing authority is almost always Aristotle; in another 4 questions Odonis cites legal sources both for and against his own opinion, but never was such legal authority the sole source to support Odonis's own view. She concludes:

¹³⁵ Kent, *Aristotle and Franciscans*, p. 34.

¹³⁶ Walsh, 'Some Relationships', p. 258.

¹³⁷ Walsh, 'Some Relationships', p. 257-8; see also, idem, 'Teleology in the Ethics of Buridan', *Journal of the History of Philosophy*, 18, 1980, p. 267.

¹³⁸ Kent, *Aristotle and Franciscans*, p. 36-37.

When legal authorities do prevail, they do not do so on their own. Law is always cited in conjunction with the Bible and virtually always in conjunction action with Aristotle. So while Odonis's citations of legal authorities argue for a legalist orientation, his actual use of those authorities argues against it.¹³⁹

There are several problems in Kent's preliminary examination of the legal citations. Firstly, many of the *Decretum* citations concern the nature and division of law - and in the case of question 20 of Book V, legal procedures - rather than theological issues, and the same can be said of Odonis's citations of *Liber Extra*.¹⁴⁰ Therefore it is an oversight to dismiss canon law citations as irrelevant in the legal discussion. Secondly, there is a number of extra-legal references, such as the *Scripture* and Cicero, that concern legal questions. Thirdly, and perhaps most significantly, the usage of such legal references, whether in proposition or in opposition of Odonis's own views, does not in itself diminish the legalist characteristic of the text - Odonis shows a clear and manifest interest in many topics of legal philosophy. Kent redresses this issue in her chapter on Justice and Obligation, but there, her focus remains on Odonis's moral psychology. Odonis's writings on law will be discussed in much greater detail later in this thesis in Part II. But from the citations and the topics of questions, there should be no doubt that Odonis takes a considerable interest in law and legal philosophy.

A body of non-Latin material of peripatetic authorities are also used by Odonis. In the Prologue, Book I, and Book VI, Eustratius of Nicaea (d. 1120) features prominently in the commentary. It would be a natural path for Odonis to look to Eustratius, since Eustratius's commentary on Books I and VI are translated by Robert Grosseteste together with the text of the *Ethics*, and both Albertus Magnus and Thomas Aquinas have used Eustratius extensively in their own commentaries. The Byzantine commentator offers a Christian outlook of Aristotle's *Ethics*, equating the final end of human life found in Aristotle to the Christian concept of the mystical union with God, and conflating the contemplative life with a monastic life - two equivocations which have undoubtedly a profound influence in later Latin commentaries.¹⁴¹ As a theologian, Eustratius offers a template for Odonis, if not via the intermediaries of earlier Latin commentators, on how to appropriate Aristotle to the Christian intellectual currents, even though Eustratius is more often than not used to provide

¹³⁹ *Ibid*, p. 37.

¹⁴⁰ For details on V.19, see below, Part II, chapter IV, 1: 'Should a judge follow the truth or the juridical order?'.

¹⁴¹ H. P. F. Mercken, 'The Greek commentators on Aristotle's *Ethics*', in R. Sorabji (ed.), *Aristotle Transformed: The Ancient Commentators and Their Influence*, London, 1990, p. 416-17.

arguments that Odonis wishes to refute.¹⁴² Arabic peripatetic sources are another fixture of late medieval Aristotelian commentaries. From time to time, Odonis invokes several such authorities as Avicenna (d. 1037), Algazel (d. 1111), and Averroes (d. 1189).

Out of the authorities cited by Odonis, it should come at little surprise that the *corpus aristotelicum* is the source to which Odonis resorts the most. They are not simple cross references to the *Nicomachean Ethics*, nor are they limited to the Book of *Politics*, which is what Aristotle himself does. Instead, Odonis draws from the entire known body of Aristotle's text, and cites from such diverse works as *De anima*, *Physics*, *Metaphysics*, *Posterior Analytics*, *On Generation and Corruption*, etc. There is no doubt that Odonis has a thorough grasp of the available corpus of Aristotle's works, and this mastery of Aristotle is further evinced by his pervasive and effective use of Aristotelian logic and analytics. One would argue that, very much similar to Aquinas, the purpose of Odonis's commentary was not simply a clarification of Aristotle's *Ethics* as a self-contained work independent of other Aristotelian texts, but an attempt to understand the *Ethics* within the context of the entire *corpus aristotelicum*, situating the concepts and arguments of the *Ethics* within the framework of Aristotelian logic and metaphysics, and understanding and explaining the text with an Aristotelian vocabulary and syllogism. Yet, as we have asserted above, Odonis's commentary is not an exercise of reconstructing Aristotle in purely Aristotelian terms. Very much similar to his predecessors such as Avicenna, Eustratius, Albertus Magnus, and Thomas Aquinas, Odonis undertakes the project of bringing a text that sprung out of a completely alien social and intellectual context into the contemporary philosophical discourse. In the process, Odonis clearly attempts to remain faithful to Aristotle, sometimes perhaps even more faithful to Aristotle than Aristotle himself, drawing methods and material across the entire *corpus aristotelicum*, but the underlying purpose of the exercise remains closely intertwined with the intellectual assumptions of the early fourteenth century.

The contemporary relevance and the close reading of Aristotle's text are hence probably part of the reasons why Odonis's commentary remains the text of reference for *Ethics* teaching well into, and possibly beyond, the sixteenth century. We have already seen that Odonis is a crucial influence in John Buridan's *Ethics* commentary. Charles Langlois has identified frequent citations of Odonis's commentary by Guillaume de Vaurillon in his *Super sententias*, and by Pietro Pomponazzi in his *Defensorium de animae immortalitate*.¹⁴³ More recent studies by David Lines have further

¹⁴² For the influence of Eustratius of Nicaea on Albertus Magnus and Thomas Aquinas, see *ibid*, p. 477-80.

¹⁴³ Langlois, 'Guiral Ot', p. 217.

demonstrated that Odonis, along with Aquinas and Buridan, numbers among the most important texts of Aristotelian ethics in early Renaissance Italy.¹⁴⁴ The extensive availability of identified manuscripts and the wide circulation of the Brescia and Venice editions can equally testify its substantial influence on posterity. While it is beyond the scope of this thesis to trace down exactly how later theologians and philosophers come to borrow, analyse, and criticise Odonis's *Expositio*, it is important to establish with firmness that the text does not stand as an isolated event in the history of moral philosophy, but rather a knot that ties together both the threads of antecedent intellectual currents and students and masters that come after him.

¹⁴⁴ Lines, *Aristotle's Ethics in the Italian Renaissance*, p. 467-68; also idem, 'Sources and Authorities for Moral Philosophy in the Italian Renaissance: Thomas Aquinas and Jean Buridan on Aristotle's Ethics', in J. Kraye and R. Saarinen (eds.), *Moral Philosophy on the Threshold of Modernity*, Dordrecht, 2005, p. 14-18.

III. THE NICOMACHEAN ETHICS OF ARISTOTLE

Before we can examine Odonis's commentary in more details, it is necessary to undertake a brief survey of Aristotle's text itself, as well as the late medieval Aristotelian commentary tradition, of which our text is a part.

1. Happiness and Virtue

The *Nicomachean Ethics* is perhaps the single most influential work in the history of moral and political thought.¹⁴⁵¹⁴⁶ Written by Aristotle in the middle of the fourth century B.C., it follows Socrates and Plato in considering virtue as the most important part of man's well-being. The *Nicomachean Ethics* sets out looking for the ultimate purpose of human life. What is clear to Aristotle is that there is an order and hierarchy that organises various human acts and reasonings. Everything is aimed towards some sort of end, but all these acts and reasoning, and all these ends, must be subordinated to one final end. This final end then must be the highest purpose of human life. Man always strives for what is considered to be good. Yet, certain goods may be easily attainable, while others less so, and certain goods cannot be attained without one's having already attained other goods. The science that understands the relationship and ordering between all these human goods would therefore be the master science, i.e. that of politics, and it is also the aim of this master science to find out what is the final end and highest good in human life. Aristotle calls this final good *eudaemonia* (a word typically translated as either 'happiness' or 'felicity', and rendered as *felicitas* in Grosseteste's Latin version; these terms will be used interchangeably in the thesis). In explaining his concept of *eudaemonia*, Aristotle distinguishes two senses of 'good': 'things good in themselves, and things good for the sake of things good in themselves.' (*NE*, I, 1096b) All human goodness, such as pleasure, honour, friendship, virtue, etc, can be said to be good in both senses: they are good in

¹⁴⁵ A wealth of scholarly material exists on Aristotle's concept of happiness. The seminal works include Henry Sidgwick, *The Methods of Ethics* (1874), Cambridge, 2011; W. D. Ross, *Aristotle: A Complete Exposition of His Works and Thought* (Cleveland, 1959); John Cooper, *Reason and Human Good in Aristotle*, Cambridge, MA, 1975; Nicholas White, *Individual and Conflict in Greek Ethics*, Oxford, 2002; Richard Kraut, *The Blackwell Guide to Aristotle's Nicomachean Ethics*, Malden, MA, 2006; etc.

¹⁴⁶ For the text of the *Ethics*, I am primarily using the translation of Roger Crisp: Aristotle, *Nicomachean Ethics*, Cambridge, 2000.

themselves, but they are also good for other ends. However, such goods differ in their degrees of perfection, or completeness. Aristotle states:

We speak of that which is worth pursuing for its own sake as more complete than that which is worth pursuing for the sake of something else, and that which is never worth choosing for the sake of something else as more complete than things that are worth choosing both in themselves and for the sake of this end. And so that which is always worth choosing in itself and never for the sake of something else we call complete without qualification. (*NE*, I, 1097a)

Here Aristotle establishes an order of goods - a less perfect good is ordered towards a more perfect good. Hence, it can be logically derived that all goods must be ordered, directly or indirectly, towards one final good that is 'complete without qualification', as such perfection would not be ordered towards anything else. Such perfection is *eudaemonia*:

Happiness in particular is believed to be complete without qualification, since we always choose it for itself and never for the sake of anything else. Honour, pleasure, intellect, and every virtue we do indeed choose for themselves (since we would choose each of them even if they had no good effects), but we choose them also for the sake of happiness, on the assumption that through them we shall live a life of happiness whereas happiness no one chooses for the sake of any of these nor indeed for the sake of anything else. (*NE*, I, 1097b)

The concept of *eudaemonia* is understood from another perspective. The good that is simply perfect would not have any other good added to it to make it better. The perfect good lacks nothing, and when man is in the state of *eudaemonia*, he is thought to lack nothing. Thus, the perfect good should be completely self-sufficient. When considered among many other goods, such perfect good is therefore the most worthy of choice. Aristotle argues:

For now, we take what is self-sufficient to be that which on its own makes life worthy of choice and lacking in nothing. We think happiness to be such, and indeed the thing most of all worth choosing, not counted as just one thing among others. Counted as just one thing among others it would clearly be more worthy of choice with even the least good added to it. For the good added would cause an increase in goodness, and the greater good is always more worthy of choice. Happiness, then, is obviously something complete and self-sufficient, in that it is the end of what is done. (*NE*, I, 1097b)

However, Aristotle here leaves blank a conceptual paradox of happiness's self-sufficiency. If one's happiness lacks nothing, it does not necessarily follow that such self-sufficient happiness cannot be improved to become *even better* by adding other goods to it. The definitional constraint is such that the reader of Aristotle is left confused as to whether Aristotle speaks of one final perfection of happiness that can take one unique form, or one of many possible perfections. One's happiness can always be improved by other human goods - one's intellectual happiness can always be improved by material wealth, even though it can be argued that material wealth should be ordered towards one's intellectual perfection. Equally, the concept of happiness as complete without qualification can raise similar questions: can one perfection be different from another perfection, or are all perfections identical? In a word, is the idea of 'happiness' limited to one singular expression or does it lend itself to a plurality of forms? Aristotle's conceptual ambiguities would later become a major point of contention in the moral philosophy of the scholastics. In modern Aristotelian scholarship, there are two major schools of interpretations: the 'inclusivist', or the 'Hegelian view', argues that happiness encompasses all human goods, and all human goods are ordered towards this one and only form of happiness in a single unitary hierarchy; the 'dominant' school argues, on the other hand, that happiness is merely one dominant good among many other human goods, and as such it can be increased and improved through the combination with other goods.¹⁴⁷ In the Middle Ages, however, the conceptual ambiguity of 'happiness' would be brought into a theological context - if such happiness is thought to be the final end, then how does one account for the discrepancy between the fact that the final end of a Christian is obviously his union with God, while the Aristotelian the discussion is purely secular?¹⁴⁸ If one accepts Aristotle's intellectual constraints as pagan philosopher, and therefore unable to reveal the truths concerning man's salvation, then how does one account for the limitations and deficiencies of the concept of perfection as discussed in the *Ethics* regarding the higher divine truths?¹⁴⁹ These problems will be addressed in greater depth in the following sections of the thesis.

¹⁴⁷ For a summary of the two schools of interpretation, see for Nicolas White, 'Conflicting Parts of Happiness in Aristotle's *Ethics*', *Ethics*, 105, 1995, p. 258-65; and also for a more specifically medieval context, Anthony Celano, *Aristotle's Ethics and Medieval Philosophy: Moral Goodness and Practical Wisdom*, Cambridge, 2016, p. 2-5.

¹⁴⁸ A general overview of the problems faced by the *Nicomachean Ethics* in the Middle Ages can be found in Georg Wieland, 'Reception and Interpretation', p. 657-68; and idem, 'Happiness: The Perfection of Man', both in *The Cambridge History of Later Medieval Philosophy*, p. 673-88.

¹⁴⁹ Peter of John Olivi perhaps represents an extreme end of the spectrum in the medieval reception of Aristotelian philosophy, although he was no means the only person who questioned the value and truth of non-Christian philosophers. See Sylvain Piron, 'Le métier de théologien selon Olivi. Philosophie, théologie, exégèse et pauvreté', in C. König-Pralong,

Having established that *eudaemonia* is the good that is complete and without qualification, as well as the good that lacks nothing, Aristotle places such good in a civil context and explores the inherent nature of man's perfect happiness. It is important to note that, for Aristotle, the discussion of morality is always founded on an assumption of man's sociability. The moral science does not apply to man who lives a solitary life - indeed, he who lives in complete isolation from society is thought to be either a god or a beast. Humanity, properly speaking, always implies society and social relations. Thus:

We are applying the term 'self-sufficient' not to a person on his own, living a solitary life, but to a person living alongside his parents, children, wife, and friends and fellow-citizens generally, since human being is by nature a social being. (*NE*, I, 1097b)

It is in this social context that we must understand Aristotle's argument that what is good is located in man's action.¹⁵⁰ Human good by necessity implies an idea of exteriority. One who is indisposed to action cannot be considered good or happy in anyway, even if he may interiorly possess the highest level of intelligence and a noblest soul. The sociability of human nature demands action to establish relationships among members of any given human community. On the other hand, the chief action of humanity that distinguishes man from plants and animals, is acted in relation to man's intellect or reason, which is the principle that differentiates man from plants and animals. Therefore, human good means acting well, and such good actions must be effectuated in accordance with reason. Aristotle says:

We take the characteristic activity of a human being to be a certain kind of life; and if we take this kind of life to be activity of the soul and actions in accordance with reason, and the characteristic activity of the good person to be to carry this out well and nobly, and a characteristic activity to be accomplished well when it is accomplished in accordance with the appropriate virtue; then if this is so, the human good turns out to be activity of the soul in accordance with virtue, and if there are several virtues, in accordance with the best and most complete. (*NE*, I, 1098a)

O. Ribordy, T. Suarez-Nani (eds.), *Pierre de Jean Olivi - Philosophe et théologien*, Freiburg, 2010, p. 25-41; also Kent, *Aristotle and Franciscans*, chapter II, esp. p. 84-98.

¹⁵⁰ See G. E. R. Lloyd, *Aristotle: The Growth and Structure of His Thought*, Cambridge, 1968, p. 213-22.

Hence, it follows that human good consists in acting well in accordance with reason, and when such action is done well and according to reason, it is said to be done *virtuously*. Therefore, human happiness contains two parts in tandem: the external action, and the internal quality of virtue. Actions, manifested exteriorly, are by their nature contingent and subject to circumstances; whereas virtue, residing interiorly, is a quality that remains constant and directs man's actions in a contingent world. Virtue is thus thought to be a habit, both in the sense that it is unchanging, and in the sense that it is habituated - a virtuous habit needs to undergo a process of habituation to reach a state of completeness and perfection. This formation of virtue is, in turn, a result of a repetition of virtuous actions:

Virtues arise in us neither by nature nor contrary to nature, but nature gives us the capacity to acquire them, and completion comes through habituation.... Virtue, however, we acquire by first exercising them. (*NE*, I, 1003a)

On the one hand, the concept of virtue is closely associated with the idea of 'excellence' in ancient Greek thought, and Aristotle compares the acquisition of virtue to the acquisition of skills:

The same is true with skills, since what we need to learn before doing, we learn by doing; for example, we become builders by building, and lyre-players by playing the lyre. So too we become just by doing just actions, temperate by temperate actions, and courageous by courageous actions. (*NE*, II, 1103a-b)

There is little doubt that Aristotle, in describing the formation of virtue, reveals here a degree of circularity in his proposition: virtue is acquired through repeatedly undergoing virtuous actions, but such virtuous actions are directed by virtue. In absence of a quality of virtue, an action cannot be considered virtuous, even though it may be a good and just act, because such action is good and just merely by accident, instead of being inspired by the right reason. Hence, when an action is not virtuous, a habit of virtue cannot be acquired.

Aristotle offers several ways out of this apparently circular logic. One such argument concerns the virtue of *phronesis*, or to adopt the medieval Latin translation, prudence. The role of *phronesis* will be discussed extensively in the next section as well as in Part III. For now, briefly, *phronesis* is a virtue that unifies all virtues, and provides man with guidance in each particular case regarding to how to act, without his necessarily possessing the relevant virtue. Therefore, in the absence of the relevant virtue, one can still act well and justly in accordance with reason. The solution of *phronesis* may seem to break the circularity, but in reality the argument has simply transferred the problem into

the acquisition of *phronesis* - as a virtue, it nonetheless needs to be habituated through prudent actions. Hence, we are back into the chicken-and-egg question.

The other solution offered by Aristotle is based on education. Such education may be carried out by one's family, friends, or the state, and it serves as a mould to produce a virtuous product by obliging man to effectuate virtuous acts without being properly virtuous, and a virtuous habit may be acquired in the educational process: 'What happens in cities bears this out as well, because legislators make the citizens good by habituating them, and this is what every legislator intends.' (*NE*, II, 1103b) This would appear to be a sound solution, until we take the next logical step in pursuit of argument: it is assumed that the legislator is virtuous, is capable of translating his virtues into law, and that the laws are able to promulgate virtue. All these assumptions are questionable in themselves: the first one of these, the virtue of the legislator, brings us back to square one of how any given individual becomes virtuous. Michael Pakaluk argues that Aristotle's moral theory assumes that the starting point of ethical deliberation is situated in a mature social-political context, where men have already formed a sophisticated *polis*, where laws and rules are already in place and are therefore exonerated from deliberating the ethical validity of the fundamental laws and purpose of the polity:

For Aristotle, an individual does not begin ethical deliberation thinking about what is best for him and then somehow reasoning to why he should be just or why he should enter into political society or obey its laws; rather, an individual's ethical deliberation – a consideration of what kind of person one should be, and of the best use of the time at one's discretion – takes place in the context of political justice and law as already having force. These have force because an individual can reasonably come to regard himself, precisely as being the individual he is, as part of a larger whole whose good takes precedence over his own, if both cannot be attained.¹⁵¹

While Pakaluk may have rightly discerned Aristotle's original intentions - the *Nicomachean Ethics*, as Roger Crisp suggests, is a body of ethical teaching and advice for young men who hope to make a career in the public life in contemporary Athens and beyond, where legal and political institutions were already in place and thus one is not obliged to consider the very virtuous nature and purpose of such institutions.¹⁵² However, to adopt such an assumption is overlook Aristotle's own scope of enquiry. Aristotle clearly demonstrates an interest in deliberating the ethical validity of law and

¹⁵¹ Michael Pakaluk, 'Aristotle', in S. Golob (ed.), *Cambridge History of Moral Philosophy*, Cambridge, 2017, p. 49.

¹⁵² Crisp, 'Introduction', p. viii.

political institutions, as can be found in Book V of the *Nicomachean Ethics* as well as much of the Book of *Politics*. As G. E. R. Lloyd observes, the study of ethics grows naturally into the study of politics which is the study of human society as a whole, its institutions, its laws, and its customs.¹⁵³ Furthermore, such assumption is certainly not, for our purpose, reflected in the later medieval commentaries. In fact, the likes of Thomas Aquinas and Gerald Odonis write extensively on the nature of law its relationship with the moral science.

What is clear, however, is that Aristotle's concept of virtue has both an interior nature and an exterior political or societal aim. Virtue is both an internal state of the soul, and manifested in its actions, since one's virtue and morality can only be understood through a social context, and such social context is established through social interactions. Virtues are to be actualised in a one's civic life. In Aristotle's virtue theory, therefore, the philosopher builds two fundamental pillars of ethics: the principles within, and the actions without, neither of which can be dispensed in the attaining happiness.

2. Justice and *Phronesis*

The *Nicomachean Ethics* is supposed to be a complete catalogue of virtues (as well as vices), as well as other human goods such as friendship, pleasure, and contemplation, which are intimately linked with the concept of virtue. Out of the Philosopher's list, two virtues stand out in particular: justice and *phronesis*, or prudence.¹⁵⁴ They are unique Aristotelian contributions to the discussion of ethics, and occupy a crucial place in Aristotle's moral philosophy, not only because they form part of what later would be called the 'cardinal virtues' (justice, prudence, temperance, and fortitude), but also because they are in themselves important pillars that support the entire structure of the *Ethics*. Justice, while not an invention by Aristotle, is divided in the *Nicomachean Ethics* into two distinct yet interrelated understandings: justice as fairness (or distributive justice) and justice as lawfulness (or legal justice). By definition, the virtue of justice always concerns another: 'justice is the only virtue considered to

¹⁵³ Lloyd, 'Growth and Structure', p. 242-3.

¹⁵⁴ *Phronesis* in Aristotle's Greek is commonly translated as 'practical wisdom' in the modern editions, but rendered as *prudencia* in Grosseteste's Latin version. There are obvious differences between the two terms, especially considering the term *prudencia* is also lumped together with the tradition of Roman moral philosophy, most notably the Stoics, where concepts of *prudencia* significantly different from Aristotle's *phronesis*. For the time being the two terms will be used interchangeably and regarded as mere differences in translation. However, more on the conceptual history of prudence will be explored later in the thesis in Part III.

be the good of another, because it is exercised in relation to others: it does what is beneficial for another, whether he is in office over one or he is a fellow-citizen.’ (*NE*, V, 1130a) Aristotle argues that justice, understood as lawfulness, is the complete virtue:

Justice in this sense, then, is complete virtue, not without qualification, but in relation to another person. For this reason, it is often held that justice is the greatest of the virtues... (*NE*, V, 1129b)

It may come as a surprise to the uninitiated reader how this rather legalist definition of justice can be tantamount to the entirety of virtues. Aristotle’s reasoning, however, demonstrates a convoluted reading of the relationship between the virtue of justice and law:

The laws have something to say about everything, their aim being the common interest either of all the citizens, or of the best, or of those in power, or of some other such group. So, in one sense, we call anything just that tends to produce or preserve happiness and its constituents for the community of a city.

Law requires us to do the acts of a courageous person - not, for example, to desert out post, run away or throw down our weapons - as well as those of a temperate person - such as not to commit adultery or wanton violence - and those of an even-tempered person - not to hit or slander anyone, for instance. And similarly it demands actions in accordance with the other virtues, and forbids those in accordance with the vices, correctly if it is correctly established, less well if it is carelessly produced. (*NE*, V, 1129b)

Renford Bambrough offers a linguistic solution - Aristotle’s distinction between legal justice and particular justice suggests a confusion in the ordinary use in the Greek language, which lumps together two different but evidently related concepts.¹⁵⁵ Bambrough goes on to argue that, for Aristotle, the distinction between legal justice and complete virtue lies in the perspective of consideration - moral virtue is considered *statically*, while legal justice is considered *dynamically*, as in in relationship to external actors.¹⁵⁶ Broadly, Bambrough presents a satisfactory solution to a conceptual quandary, and the static-dynamic dichotomy can be taken as a starting point in studying Aristotle’s idea of justice. However, a careful reading would soon identify more problems, as this does not sufficiently address the circularity of Aristotle’s argument: lawfulness is virtuous because

¹⁵⁵ Renford Bambrough, 'Aristotle on Justice: A Paradigm of Philosophy', in R. Bambrough (ed.), *New Essays on Plato and Aristotle*, vol III, London, 1965, p. 160.

¹⁵⁶ *Ibid*, p. 160-61.

law commands virtuous acts. Two problems arise. Firstly, Aristotle seems to be offering a shortcut to a virtuous life and an abdication to each person's own moral agency when he ascribes a perfection of virtue to lawfulness. Granted, Aristotle limits such perfection to a state 'in relation to another person'. Yet, as we have established, virtue is always understood and exercised societally. Secondly, law becomes an unquestionable source of virtue. Aristotle himself challenges this assumption, stating that the moral force of the law would diminish if the law is not adequately made. However, even if one assumes that Aristotle talks about an ideal state, where the law is perfectly adapted to commanding virtue and forbidding vice, he still leaves out the question of how law itself can be virtuous. Hence, it would cause no consternation that the question of the relationship between law and justice should feature prominently in the later medieval discussions of moral philosophy, especially by the likes of Aquinas and our own text here of Odonis.

Phronesis, or practical wisdom, generates no less intellectual contention in Aristotelian scholarship.¹⁵⁷ The concept of *phronesis* remains one of the most controversial in modern *Ethics* discussions, and one should expect to find the virtue of prudence to be equally contentious. The academic interest in *phronesis* of course arises from its own structural importance as a pillar of Aristotle's entire ethical theory, but also from Aristotle's very own skimpiness and lack of clarity in his text, where the concept is advanced with many possible contradictory readings. Aristotle describes *phronesis* as the virtue of the practical intellect, and the end of *phronesis* as 'living life well as a whole'. (*NE*, VI, 1140a) Therefore, like justice, *phronesis* seems to encompass the entirety of man's life as well as all other virtues. Aristotle gives *phronesis* many attributes without offering a synthesis to unite and harmonise all these different facets. On the outset, *phronesis* seems to working in tandem with moral virtues:

Again, our characteristic activity is achieved in accordance with practical wisdom and virtue of character; for virtue makes the aim right, and practical wisdom the things towards it. (*NE*, VI, 1144a)

In Aristotle's virtue theory, *phronesis* provides the 'right reason' in a virtuous action. Thus, the argument seems to follow that, practical wisdom is crucial in the formation of other virtuous habits, since it provides the right reason needed for one to make the right action. Aristotle says:

¹⁵⁷ See, for example, C. D. C. Reeve, *Aristotle on Practical Wisdom: Nicomachean Ethics VI*, Cambridge, MA, 2013; for a more medieval focus, see Anthony Celano, *Aristotle's Ethics*.

So, as there are two states, cleverness and practical wisdom, in the part of the soul related to belief, so there are two in the part related to character - natural virtue and real virtue; and of these real virtue does not develop without practical wisdom.

This is why some people say that all the virtues are forms of practical wisdom, and why Socrates was partly right and partly wrong in his inquiry. He was wrong to think that all the virtues are forms of practical wisdom, but correct in saying that they involve practical wisdom. (NE, VI, 1144b)

As mentioned above, the concept of *phronesis* seems to be Aristotle's solution to the action-habitation circularity of virtue. *Phronesis* cultivates man's natural capacity and makes him virtuous through each and every act of virtue, carried out in accordance with (*secundum*), and involving (*circa*), right reason. At the end of Book VI, Aristotle makes for a theory of connection between virtues:

Moreover, on these lines one might also meet the dialectical argument that could be used to suggest that the virtues exist in isolation from one another. ... This is possible in respect of the natural virtues, but not in respect of those on the basis of which a person is said to be really good; for he will possess all of them as soon as he acquires the one, practical wisdom. (NE, VI, 1144b-1145a)

Yet, the circularity resurfaces when Aristotle argues that 'one cannot be practically wise without being good.' (NE, VI, 1144b) Moral good is a necessary condition for *phronesis*, because the practical intellect itself needs a moral standard to judge against. Again, the crux of the problem is how *phronesis* is formed as a virtue. Aristotle precludes the possibility for one to be practically wise without already possessing moral goodness, but at the same time, no one can acquire moral virtue without *phronesis*. All virtues are necessarily related to *phronesis*, which in turn depends on the existence of moral virtues. Aristotle offers this dialectic relationship without further elaboration. This conundrum will be addressed time and again by late medieval commentators as well as their successors, as we shall see in the case of Odonis.

Overall, Aristotle's *Nicomachean Ethics*, as the foundational text for both western moral philosophy and political thought, offers its readers and commentators many intellectual starting points whence further discussions of ethics can be made. Two concepts advanced in the *Ethics* are perhaps the most consequential: happiness as the end of human life, and the idea of virtue as a habit. Such concepts would come to gain considerable traction in the Middle Ages and beyond. However, the medieval reception of Aristotle is not a simple and straightforward affair. The later Middle Ages faces a

completely different social and intellectual context, where Aristotle's naturalism in moral and political philosophy would confront a multiplicity of challenges.

3. The Medieval Reception of the *Ethics*

R. A. Gauthier famously speaks of a 'règne de l'*Éthique à Nicomaque* sur la morale médiévale', singling it out as the most influential text in medieval discussions of moral philosophy.¹⁵⁸ However, it is also worth noting that the wholesale reception of Aristotle, in West Europe at least, did not materialise until well into the second millennium. For much of the Middle Ages, knowledge and interest in Aristotle's ethics and natural philosophy was extremely rare. While Aristotelian texts and studies continued in the Greek and Perso-Arabic intellectual circles, the corresponding scholarship in West Europe did not start gathering pace until the twelfth century. The so-called Twelfth-Century Renaissance no doubt ushered in a new phase in the quest for knowledge, as well as a renewed interest in Europe's classical past, laying out the bedrock for later studies on Aristotle.

Prior to the Robert Grosseteste's translation, the *Nicomachean Ethics* existed in a secondary and piecemeal fashion. Many were aware of it, and glimpses of Aristotle's moral philosophy could be gained through the writings of Cicero and Boethius. In the first half of the twelfth century, Book II and part of Book III of the *Ethics* were translated from Greek into Latin, traditionally called the *Ethica vetus*.¹⁵⁹ Book I and the rest of Book III were translated shortly after, constituting the *Ethica nova*. Studies on moral philosophy inspired by Aristotle had, therefore, started long before the complete translation appeared. Many of the twelfth-century and early thirteenth-century commentaries and scholastic discussions were based on the two versions of the *Ethics* available to them, and therefore they were not aware of Aristotle's discussions of justice, *phronesis*, friendship and contemplative happiness in the later books.¹⁶⁰ Irene Zavattero observes that the early commentaries mostly ignored

¹⁵⁸ Aristote, *Éthique à Nicomaque*, eds. R. A. Gauthier and J. Y. Jolif, in 4 vol., Paris, 2002, t. 1.1, p. 120.

¹⁵⁹ Charles de Miramon, 'Réception et oubli de l'*Éthica vetus*. Salerne et Bologne (1150-1180)', <<https://halshs.archives-ouvertes.fr/halshs-00555606/document>>, p. 3.

¹⁶⁰ Irene Zavattero, 'Moral and Intellectual Virtues in the Earliest Latin Commentaries on the Nicomachean Ethics', in I. P. Bejczy, *Virtue Ethics in the Middle Ages: Commentaries on Aristotle's Nicomachean Ethics, 1200-1500*, Leiden, 2008, p. 31.

the social aspect of Aristotle's ethics.¹⁶¹ Most of the early arts masters considered the role of virtue as regulating the relationship between man and things that are superior to him (the task of intellectual virtues) and things which are inferior to him (the task of moral virtues), but overlook the aspect of virtue that regulate man's place and relationship to society.¹⁶² With only the *Ethica vetus* and *Ethica nova* available, it is obviously impossible to form a systematic view of Aristotle's moral philosophy, especially considering that the *Nicomachean Ethics* forms a coherent whole with each part tightly knit together. Much of the discussion, hence, focused on resolving apparent discrepancies between Aristotle's virtue theory and Christian concepts of virtue. One example of early virtue debate is on the relationship between acquired virtue and infused virtue - where Aristotle argues that virtue can be attained by human effort alone, the Augustinian-Christian tradition insists that virtue cannot be completed without charity and divine grace.¹⁶³

The full Latin version of the *Nicomachean Ethics* only became available to western scholars in the 1240s. Robert Grosseteste, Bishop of Lincoln and a contemporary of Alexander of Hales, worked with native Greek speakers to translate the entirety of the *Nicomachean Ethics*, along with other works such as John of Damascus and Pseudo-Dionysius.¹⁶⁴ This translation would be later revised by William of Moerbeke to become the standard text for late medieval studies on Aristotle. It was used by Albertus Magnus, Thomas Aquinas, as well as Gerald Odonis.¹⁶⁵

The appearance of the complete text of the *Ethics* had a profound effect on the scholastic scene. Out of all works of Aristotle, the *Ethics* posed the most problems to the traditional Augustinian-Christian thought. The idea that happiness can be attained in the present life through virtue, and that such happiness is the ultimate end of human life, runs directly contrary to Augustine's teaching that true happiness does not exist but in the afterlife - 'all men are necessarily miserable as long as they are mortal.'¹⁶⁶ Therefore, any attempt to bring the *Nicomachean Ethics* into the mainstream scholastic discussion will have to reconcile such evident discrepancies.

¹⁶¹ *Ibid*, p. 33.

¹⁶² *Ibid*, p. 42-44.

¹⁶³ *Ibid*, p. 33-36.

¹⁶⁴ Lewis, Neil, "Robert Grosseteste", *The Stanford Encyclopedia of Philosophy* (Summer 2013 Edition), E. N. Zalta (ed.), <<https://plato.stanford.edu/archives/sum2013/entries/grosseteste/>>.

¹⁶⁵ Miramon, 'Réception', p. 3-4.

¹⁶⁶ Augustine, *De civitate Dei*, IX, 15; see also, Tobias Hoffmann and Jörn Müller, "Christian Aristotelianism"? Albert the Great and Aquinas', *Cambridge History of Moral Philosophy*, p. 172.

In 1250-52, Albertus Magnus, a Dominican theologian, became the first scholastic to write a full-length commentary on the newly translated *Ethics*. He had been sent from Paris to head the newly established *studium generale* of the Dominicans in Cologne, and there worked and lectured extensively on the *corpus aristotelicum*. The commentary takes the form of *expositio cum quaestionibus* - this is also the style adopted by Odonis's own work - which allows for both a close reading of the text and a broader discussion on controversies and problems raised by reading the text while placing it in a wider intellectual context through the *quaestiones*. Albertus later wrote a second commentary in 1262, which incorporates the Aristotelian learning of other fields as well as the newly available translation of the *Politics*. Tobias Hoffmann and Jörn Müller (2017) argue that while Albertus was innovative in his accommodation of Aristotelian moral philosophy within the Christian mindset, his approach was still that of a Platonist, albeit with an 'Aristotelian disguise'.¹⁶⁷ Albertus made the distinction between civil happiness and contemplative happiness, arguing that the former is subordinated to the latter, while contemplative perfection is a substantial realisation of the civil perfection. However, at the same time, such civil perfection is not a necessary condition for contemplative happiness - in a language of mind-body dualism, Albertus conceives virtue more as that of the 'purged mind' (*virtus purgati animi*), a concept that originated with Plotinus and diffused by Macrobius during the Middle Ages.¹⁶⁸ Nonetheless, such 'Aristotelian disguise' does not mean Albertus's work is insignificant. Quite the contrary, as the first scholastic text that deals with the entirety of the *Nicomachean Ethics*, the two commentaries of Albertus serve to bring the *Ethics* into the focal point of medieval moral and political thought, setting out a standard of reference for posterior discussions. His work on the *Ethics* should also be seen in the broader context of his entire scholarly *opus*, which marks a decisive moment in the history of scholasticism. Honoured as the *Doctor Universalis*, Albertus's work extends to the entirety of Aristotle's known corpus, providing encyclopaedical summaries and paraphrases of Aristotle, and he has long been considered the Universal Doctor responsible for starting momentum of Christian reception of Aristotle.¹⁶⁹ Albertus draws on the difference in the methods of enquiry and the subject-matter between theology and philosophy, and sets out to consider them as separate human domains, both of which can be pursued for its own sake.¹⁷⁰

¹⁶⁷ Hoffmann and Müller, 'Christian Aristotelianism', p. 171-3.

¹⁶⁸ *Ibid*, p. 173.

¹⁶⁹ See, for example, Markus Führer, 'Albert the Great', *The Stanford Encyclopedia of Philosophy* (Summer 2018 Edition), <<https://plato.stanford.edu/archives/sum2018/entries/albert-great/>>.

¹⁷⁰ *Ibid*.

This movement of Aristotelian reception and the division between philosophy and theology is carried further by Thomas Aquinas. Aquinas was a student of Albertus, and came to Cologne with his master in 1248, where he was to serve as *magister studium* until 1252, before taking up a teaching post in Paris. Albertus's influence on Aquinas is well documented, and they clearly had a close intellectual relationship. Aquinas edited Albertus's lecture notes in Cologne, and later wrote his own commentary on the *Ethics* in 1271-2 in the form of a literal exposition - *Sententia libri ethicorum*.¹⁷¹ The commentary focuses on the text itself, providing paraphrases, clarifying key concepts, as well as trying to situate Aristotle into the contemporary thirteenth-century philosophical framework. Terence Irwin suggests that Aquinas is more preoccupied with 'discovering the truth' than with 'understanding Aristotle' with reference to the original intentions of the Philosopher.¹⁷² Jean-Pierre Torrell considers Aquinas's commentary adequately called a '*sententia*', i.e. a summary of the work rather than a doctrinal exposition.¹⁷³ Indeed, Aquinas later returns to the *Ethics* in the form of a *tabula libri Ethicorum*, in preparation for the second part of his magisterial *Summa theologiae*.¹⁷⁴ Apart from being one of the most influential theological and philosophical texts of the Middle Ages, the *Summa* demonstrates how Aquinas masterfully uses the material and method of Aristotle in his scholarly pursuits. Freed from the structure and textual constraints of his literary commentary, the *Summa theologiae* is perhaps a much better prism into Aristotle's influence on Aquinas.

The influence of Albertus notwithstanding, Aquinas nonetheless offers a thesis of moral science with notable differences from that of his teacher. Georg Wieland notes that Aquinas draws a much sharper distinction between theology and philosophy than Albertus, further separating the two disciplines.¹⁷⁵ Hoffman and Müller summarise Aquinas's moral philosophy as essentially that of the relationship between the universal precepts of natural law and the individual human acts.¹⁷⁶ While Aquinas considers the idea of civic happiness as an incomplete happiness, he nonetheless takes on Aristotle's ethical naturalism, and thinks that it is man's natural inclination to acquire happiness through living a virtuous life, and such happiness of the present life is in turn ordered towards the eternal happiness.

¹⁷¹ R. A. Gauthier first dated Aquinas's *Ethics* commentary to 1271-12, see R. A. Gauthier, 'La date du commentaire de saint Thomas sur l'*Ethique à Nicomaque*,' *Recherches de Théologie Ancienne et Médiévale*, 18, 1951, p. 66-105 ; Wieland, 'Reception and Interpretation', p. 662.

¹⁷² Terence Irwin, 'Historical Accuracy in Aquinas's Commentary on the *Ethics*', In T. Hoffmann, J. Müller, M. Perkams (eds.), *Aquinas and the Nicomachean Ethics*, Cambridge, 2013, p. 14.

¹⁷³ Jean-Pierre Torrell, *Saint Thomas Aquinas*, vol. I, Washington D. C., 1996, p. 228.

¹⁷⁴ *Ibid*, p. 229-230.

¹⁷⁵ Wieland, 'Reception and Interpretation', p. 662.

¹⁷⁶ Hoffmann and Müller, 'Christian Aristotelianism', p. 174-8.

Matthew Kempshall, in his book on the concept of the common good, labels this the ‘hierarchy of ends’, where one good is ordered towards another, ultimately forming a chain that ends with the eternal happiness and man’s union with God.¹⁷⁷ Yet, within this hierarchy of ends, civic perfection, as an end in itself, can still form a self-contained system of scholarly enquiries, making it possible for an independent discipline of moral science that is understood and comprehended without the extraneous considerations of man’s spiritual life and his eternal happiness. Overall, Aquinas tries to present a scientific and systematic reading of Aristotle, attempting to answer the questions left blank by the Philosopher, following the tradition of systematisation of knowledge and learning established since the twelfth century.¹⁷⁸ Michael Pakaluk, in his assessment of Aquinas’s work, argues that Aquinas indeed goes beyond the practical arguments and methods of Aristotle, constructing a moral science that draws liberally from Aristotle’s metaphysics and natural philosophy.¹⁷⁹ He concludes that Aquinas has approached Aristotle ‘as part of a project that he regards as primarily speculative, accounting for the truth of things, and not merely practical, aiming at the good. Ironically, it was precisely because Aquinas aimed to see ethics *sub specie aeternitatis* i.e. within sacred doctrine as he understood it, that he strove to develop Aristotelian ethics in such a way as to rationalise it thoroughly and embed it in the best natural philosophy and philosophical framework of his time.’¹⁸⁰

Such systematic constructions of a moral science and liberal extrapolations from the other works of Aristotle make Aquinas stand out in the thirteenth-century intellectual landscape. Numerous passages of the *Secunda pars* of his *Summa* discuss virtues that pertain to man without theological references, while also framing such discussions with an Aristotelian language of argumentation. After Aquinas, it became normal, and even expected, for scholastics to situate discussions of nature, morality, and politics completely within a natural and secular linguistic framework. Walter Ullmann and Gaines Post both propose a thesis of the ‘Thomist revolution’, where it is forcefully argued that Aquinas’s appropriation of the Aristotelian material and method effectively revolutionised the scholastic scene of western Europe.¹⁸¹ Such revolution made it possible, and even desirable, to consider the studies of nature and super nature as belonging to separate realms, and thus creating the intellectual space for a

¹⁷⁷ Matthew Kempshall, *The Common Good in Later Medieval Political Thought*, Oxford, 1999, p. 76-101.

¹⁷⁸ For more on the twelfth-century intellectual tradition, see Richard Southern, *Scholastic humanism and the unification of Europe*, Oxford, 1995.

¹⁷⁹ Michael Pakaluk, ‘Structure and Method in Aquinas’s Appropriation of Aristotelian Ethical Theory’, in Hoffmann, Müller, Perkams (eds.), *Aquinas and the Nicomachean Ethics*, p. 36-51

¹⁸⁰ *Ibid*, p. 51.

¹⁸¹ See Walter Ullmann, *The Individual and Society in the Middle Ages*, London, 1976; and Gaines Post, *Studies in Medieval Legal Thought*, Princeton, 1964, chapter xi.

secular and natural perspective, to be approached with human reason rather than with the help of grace and divine revelation. On the other hand, the union of Aristotle and Christianity in the works of Aquinas makes it possible to discuss *man* in two different facets: one is a natural being in relation to the physical world at large, and in relation to the moral and mental world within; and the other as a created being understood in terms of his relationship to God. Such distinction made it possible to have non-theological discussions of morality and moral virtues on an individual level, as well as studies of the secular state and man's relationship with such secular state without references to the role of theology.¹⁸²

After Aquinas, there is a limited number of commentaries on the *Ethics*. The paucity may be explained by three hypotheses. The first is an extraneous consideration - simply, whatever was written may not have survived the wreckage of time. Works that are obscure and insufficiently disseminated are most vulnerable to the vicissitudes of history, particularly in the context where the works of Albertus and Aquinas had become the standard texts of reference at the expense of lesser known offerings. A second reason may be that, as Aquinas masterfully demonstrated, discussions of Aristotelian concepts of morality and virtue do not necessarily have to be limited to the genre of text commentary. Even within genres that are theological by nature, such as the *Summa* and, increasingly prevalently, the *Sentences* commentary, a growing number of theologians took on philosophical issues and discussed them with Aristotelian methods and material. In fact, Anthony Celano points to an intellectual stagnation and an excessive reverence for tradition that inhibited the output of original and innovative *Ethics* commentaries in the later middle ages:

The medieval commentators attempt to understand Aristotle in a way that does not oppose their own moral principles, but the practice of exposition of the text and the reverence for the traditional inhibited innovation and creativity in their commentaries on the *Nicomachean Ethics*. The more profound contributions to moral philosophy in the later medieval period do not appear in commentaries on Aristotle's text, but rather in theological works, such as *Summae*, Commentaries on *Sentences* and Quodlibetal Questions, of Henry of Ghent, John Duns Scotus and William of Ockham, among others.¹⁸³

¹⁸² For a discussion of this thesis, see Colin Morris, *The Discovery of the Individual 1050-1200*, Toronto, 1987, p. 160-167.

¹⁸³ Celano, *Aristotle's Ethics*, p. 232.

Related to the choice of genre is the fact that such commentaries are frequently the product of university lecturing on the *Ethics*, as in the case of both Albertus and Odonis. While there were numerous classes on Aristotle in Paris, Oxford, and beyond, the particular book of *Ethics* was not a regular text to be studied until the second half of the fourteenth century by the arts faculties.¹⁸⁴ This may explain the relative paucity of surviving commentaries prior to mid-fourteenth century, especially those written in full-length and with both expositions and questions.

A third explanation may be found in the two condemnations 1270 and 1277 of the University of Paris, which were principally aimed at the radical Aristotelians. But, as John Wippel argues, the crux resided with the tension between the very secular outlook of Aristotle and the existing Christian intellectual current.¹⁸⁵ Bonaventure, for example, pointed out in his *Collationes in Hexaëmeron* that the errors of Aristotle are the rejection of divine ideas, of divine knowledge of individuals, of divine knowledge of contingents, as well as the rejection of eternal reward or punishment of one's moral life.¹⁸⁶

The 1270 and 1277 condemnations, although primarily a theological debate, did also touch on the questions of ethics. Articles 202–205 of the 1277 condemnation concerned Christian morality, and a further seven articles (213–219) touched the issue of ethics on human immortality as well as reward and punishment in the life to come. It is a mooted point among modern scholars how much the 1277 condemnation really changed the trajectory of scholasticism. Luca Bianchi and R. A. Gauthier, for example, see 1277 as a turning point in medieval scholasticism.¹⁸⁷ Commentators before the condemnations were more or less at liberty to express whatever was on their mind regarding the text of Aristotle, whereas commentaries after the condemnations started being more formulaic, rigid, and largely regurgitations of established ideas. A case in point may be the question commentary in BnF Lat. 14698, written shortly after 1277. This commentary conspicuously avoids positions which conflict with Christian doctrine.¹⁸⁸ Iacopo Costa, on the other hand, counters this assumption and demonstrates in his study on late thirteenth-century *Ethics* commentaries that the influence of the

¹⁸⁴ Wieland, 'Reception and Interpretation', p. 657.

¹⁸⁵ John Wippel, "The Condemnations of 1270 and 1277 at Paris," *The Journal of Medieval and Renaissance Studies*, 7, 1997, 169–201; and idem, "Thomas Aquinas and the Condemnation of 1277," *The Modern Schoolman*, 72, 1995, p. 233–72.

¹⁸⁶ See John Wippel, 'Aquinas and the Condemnation of 1277', p. 237.

¹⁸⁷ Luca Bianchi, "1277: A Turning Point in Medieval Philosophy?," in Jan A. Aertsen and Andreas Speer (eds.), *Was ist Philosophie im Mittelalter?*, Berlin, 1997, p. 90–110; also R. A. Gauthier, 'Trois commentaires « averroïstes » sur l'Éthique à Nicomaque', *Archives d'histoire doctrinale et littéraire du Moyen Âge*, 16, 1947–48, p. 187

¹⁸⁸ Wieland, 'Reception and Interpretation', p. 664.

1277 condemnations did not go beyond the formal and superficial.¹⁸⁹ It may have pushed the theologians slightly further one way or another, but did not alter the overall intellectual landscape, especially that of the commentary tradition on *Ethics*.¹⁹⁰ However we may assess the impact of the 1277 condemnation on subsequent scholastic endeavours, it is certain that, on the one hand, such condemnations failed to substantially undermine the dominance of Aristotle in the arts faculties of Paris and beyond, or to replace the Philosopher from the body of core texts. On the other hand, the writings of Albertus and Aquinas remained the most significant works on the *Ethics* until, and arguably beyond, Odonis's time.

Overall, however, several *Ethics* commentaries have been identified and dated to the period intervening Aquinas and Odonis. R. A. Gauthier surveys, for example, the *Vatican Commentary* (le *Commentaire du Vatican*) and identifies it as a student book that contains a collage of texts from different authors.¹⁹¹ The commentary by Giles of Orleans survives in an extant manuscript witness as BnF lat. 16089.¹⁹² Iacopo Costa examines the two anonymous commentaries contained in the manuscript BnF, lat. 14698, and dates them both to the period after 1277.¹⁹³ Costa has also identified Radulphus Brito, a secular master who commented on almost the entire *corpus aristotelicum*, as the author of two anonymous sets of questions contained in separate manuscripts.¹⁹⁴ The first one was probably written in 1295, edited by Costa and published in 2008 as *Quaestiones super Ethica*; and the second was likely to have been written the year after. Anthony Celano finds Brito's commentary largely a repetition of the positions of Aquinas.¹⁹⁵ A selective comparison between Brito and Odonis made by the present thesis largely confirms Celano's verdict: Brito's commentary never entirely breaks out of the established framework of references, but merely shifts from one authority's opinion to the other.¹⁹⁶ However, this assessment may not be true for the other works of Brito. In fact, Mora-Márquez and Costa consider Radulphus to be a crucial link between thirteenth- and fourteenth-

¹⁸⁹ Iacopo Costa, 'L'*Ethique à Nicomaque* à la faculté des arts de Paris avant et après 1277', *Archives d'histoires et littéraires du Moyen Age*, 79, 2012, p. 71-144.

¹⁹⁰ *Ibid*, p. 101-4.

¹⁹¹ See Gauthier, 'Trois commentaires', p. 198-222.

¹⁹² *Ibid*, p. 222-4.

¹⁹³ Costa, 'L'*Ethique à Nicomaque* à la faculté des arts de Paris', p. 44-7

¹⁹⁴ Ana Maía Mora-Márquez and Iacopo Costa, "Radulphus Brito", The Stanford Encyclopedia of Philosophy, <<https://plato.stanford.edu/archives/spr2018/entries/radulphus-brito/>>.

¹⁹⁵ Celano, *Aristotle's Ethics*, p. 220-235.

¹⁹⁶ For further details on the comparisons between Odonis and Brito, see, for example, the discussion on the rule of law, the virtue of prudence, and the relative merit of active and contemplative life.

century philosophy, and his work on intentions can be fairly considered as the ‘pinnacle of the development of thirteenth-century Aristotelian logic’.¹⁹⁷ Even with the *Ethics* commentary, Costa has argued that Brito’s work represents the most important link between the arts and theology faculties, where the master offered a theological exegesis of Aristotle’s text.¹⁹⁸ Certain ideas of his moral philosophy are also found in the contemporary *Ethics* commentaries of the Anonymous of Erlangen (ms. Universitätsbibl. 213), the Anonymous of Erfurt (ms. Amplon. F. 13), and Giles of Orleans.

One should also include the 1334 commentary written by Walter Burley in this survey, despite its being completed after that of Odonis. A secular master like Brito, Burley became Master of Arts in Oxford by 1301 and Master of Theology in Paris by 1324. It is noteworthy that Burley was also in Toulouse at the same time as Odonis, holding a quodlibetal disputation in 1322, and the two of them of them probably had exchanges with each other.¹⁹⁹ Burley’s commentary on the *Ethics*, however, does not match his competence in the other fields of scholastic learning. Costa, having surveyed the text, concludes that while Burley’s *Ethics* reading touched on almost all of the major issues raised in contemporary ethics debate, it is ‘not a philosophically original work. Moreover, it is an “antiquated” commentary: faithfulness to Aquinas’s commentary, not only in the *expositio littere*, but also in some main doctrinal problems, is dominant.’²⁰⁰ Although Burley had exchanges with Odonis, it difficult to establish the extent to which one influenced the other. Costa states that Burley evidently made no use of the Franciscan commentary, although he was probably aware of it.²⁰¹

As we have established above with the case of Aquinas, the influence of the *Ethics* in late Medieval discussions of moral and political philosophy is not restricted to the textual commentaries, but rather, it seeped into many other genres such as *Sentences* commentaries, the *Summa*, specialised treatises, as well as the *speculum principis*, to name but a few. Nor was it delimited by disciplinary boundaries. Instead, ideas and arguments from the *Nicomachean Ethics* found their way to a variety of other disciplines, most notably theology and jurisprudence, but also in medicine, rhetoric, and poetry. In fact, the very idea of a division of academic disciplines was only at its very embryonic stage, and masters in universities were at liberty to discuss whichever topic they liked, as can be amply testified

¹⁹⁷ Mora-Márquez and Costa, ‘Radulphus Brito’.

¹⁹⁸ Iacopo Costa, ‘Le théologien et l’*Éthique* à Nicomaque. Sur les usages théologiques de la morale aristotélicienne au XIV^e siècle’, *Médiévales*, 63, 2012, p. 76-81.

¹⁹⁹ Duba and Schabel, ‘Introduction’, p. 149.

²⁰⁰ Iacopo Costa, ‘The Ethics of Walter Burley’, in A. D. Conti (ed.), *A Companion to Walter Burley, Late Medieval Logician and Metaphysician*, Leiden, 2013, p. 346.

²⁰¹ *Ibid*, p. 346.

by the diverse subject-matters of the *Quodlibet* literature. It is also precisely within this intellectual context that one must approach Odonis's own commentary. Iacopo Costa and Aurélien Robert consider it a unique phenomenon in the late-thirteenth-century University of Paris, where interdisciplinary exchanges started becoming the norm:

Alors que les disciplines universitaires s'établissent plus fermement d'un point de vue institutionnel dans les universités, on assiste à un phénomène relativement nouveau, c'est-à-dire à des échanges inédits entre les disciplines, mais aussi, paradoxalement, à certaines refontes des frontières disciplinaires lorsqu'il s'agit de sujets sensibles. L'éthique se situe précisément sur cette ligne de crête. Théologiens, juristes, mais aussi médecins, rhéteurs et poètes ont cherché dans les dix livres qui composent le traité d'Aristote la réponse à des questions fondamentales concernant l'anthropologie, la politique, la justice ou encore les rapports amicaux et amoureux, infléchissant parfois le sens du texte dans des directions opposées.²⁰²

An important consequence of the unprecedented cross-over between academic disciplines is that all disciplines looked to Aristotle, and especially the *Nicomachean Ethics*, to redefine the parameters of their own domains. Harold Dexter Hazeltine, following Walter Ullmann's 'Thomist Revolution' thesis, argues that studies of Aristotle fundamentally transformed the law schools in the late thirteenth century under the aegis of the Commentators, who drew liberally from Aristotle as well as the so-called 'philosophical jurist-theologians.'²⁰³ Jurisprudence in the late thirteen century went from a largely practical discipline focusing on the bodies of laws to a discipline with profound philosophical underpinnings. The role of Thomas Aquinas herein is undeniable - his ethico-theological enquiries into the fundamental questions of law channeled discussions of ethics, politics, as well as theology into the field of legal studies. Yet, it was the material of Aristotle, especially his *Nicomachean Ethics*, that raised the questions on the nature of law in the first place. In a recent article, Emanuele Coccia, while not entirely in agreement with Hazeltine's line of argument by stating that the boundary between law and morality in the Middle Ages had always been blurry, and that law and morality were

²⁰² Iacopo Costa and Aurélien Robert, 'Reconfigurations du discours éthique à la fin du Moyen Âge', *Médiévales*, 63, 2012, p. 7.

²⁰³ Harold Dexter Hazeltine, 'Introduction', in Walter Ullmann, *The Medieval Idea of Law: As Represented by Lucas de Penna*, Abingdon, 2010, p. xix-xxiii.

merely two different discourses of the same reality, still confirms the intimate association between late medieval legal studies and the appropriation of Aristotle's *Ethics*.²⁰⁴

More prominent, however, is the entanglement between ethics and theology. While it is well known that theologians such as Albertus and Aquinas lend themselves readily to embracing Aristotelian material, it is during the later thirteenth century and the fourteenth century that theology and ethics became more intimately wedded. Costa and Robert state:

À travers l'étude de ces témoignages, on peut constater l'entrée progressive dans les commentaires à l'*Éthique à Nicomaque*, au XIV^e siècle, de questions théologiques comme la vision béatifique, les rapports entre grâce et charité, ou encore le péché d'usure.²⁰⁵

As we have mentioned above, Costa considers Radulphus Brito's commentary as a crucial step that linked together the faculties of arts and theology at the turn of the century. Costa demonstrates in his study that, from the start of the fourteenth century, a series of theological *topoi* were introduced into study of Aristotle's *Ethics*: Brito discusses the relationship between the Aristotelian idea of happiness and the Christian concept of beatitude, and Gui Terrena, who wrote a commentary around 1312, situates the Christian idea of charity in the philosophical and linguistic context of Aristotle virtue ethics.²⁰⁶ Odonis's very own commentary is also examined by Costa in his study and is described as the 'l'un des sommets de l'exégèse médiévale de l'*Éthique* d'Aristote'.²⁰⁷ Focusing his studies on Brito, Terrena, and Odonis, Costa astutely observes the phenomenon of a cross-over between disciplines in the first part of the fourteenth century. However, a challenge to Costa's argumentation is that medieval disciplinary boundaries had always been fluid, not simply for the lack of proper streamlining of subject-matters in academic institutions, but also because most of the Aristotelian commentators and philosophers in the later Middle Ages were theologians by training. Both Albertus and Aquinas were first and foremost Dominican theologians, belonging to a religious order that had religious preaching as its primary *raison d'être*. Radulphus Brito became a Doctor of Theology in Paris. Gui Terrena was a Carmelite scholastic, having studied with Godfrey of Fontaines. Odonis had his intellectual formation in a Franciscan convent before progressing to the faculty of theology in

²⁰⁴ Emanuele Coccia, 'Téatologie de la morale, ou de l'éthique au Moyen Âge', *Médiévales*, 63, 2012, p. 16-18

²⁰⁵ Costa and Robert, 'Reconfiguration du discours éthique', p. 10.

²⁰⁶ Costa, 'Le théologien et l'*Éthique à Nicomaque*', p. 76-85 ; see also, idem, 'Gui Terrena commentateur de l'*Éthique à Nicomaque*', in A. Fidora (ed.), *Guido Terreni, O. Carm. (†1342) : Studies and Texts*, Turnhout, 2015, p. 3-17.

²⁰⁷ Costa, 'Le théologien et l'*Éthique à Nicomaque*', p. 85.

Paris. When the *corpus aristotelicum* first became available, it was indeed the theologians who formed the vanguard in studying these texts.

IV. THE PHILOSOPHER AND THEOLOGIAN: ARISTOTELIAN STUDIES IN THE LATER MIDDLE AGES

1. Approaching Theology with Philosophy

Scholastics of the twelfth century had already discussed the use of philosophy in service of understanding God, Creation, and Salvation. In short, the *Ethics* was but one of the many Aristotelian texts that drew the attention of late medieval theologians, who resorted to Aristotle and other philosophers for methods and conceptual tools in their own theological endeavours. The recast between philosophy and theology started in, if not earlier than, the twelfth century, and by the middle of the thirteenth century, the study of philosophy had already become compulsory in centres of theological learning. In 1250-51 the University of Paris passed a statute making the regency in arts a prerequisite for inception in theology, and this was soon followed by the University of Oxford; then in 1254-55, the University of Paris formally revised its curriculum to include Aristotle's works on natural philosophy, such as the *Physics*, *Metaphysics*, and *De Anima*.²⁰⁸ Therefore, it comes as no surprise that when the *Nicomachean Ethics* was translated into Latin, it immediately seized scholarly attention of the theologians of Paris and beyond.

Andreas Speer posits that an important development of the late thirteenth century is the separation between philosophy and theology, and more importantly, the consolidation of theology as a discipline in its own right.²⁰⁹ Speer's argument, however, does not contradict Costa and Robert's thesis that there was a *refontement* between the disciplines, where methods and concepts of philosophy seeped into the studies of jurisprudence, medicine, and theology. Instead, Speer argues that it is precisely because theology took up philosophy as a method of enquiry, that theology can now be considered as a separate and self-contained discipline with its proper methodology.

Previously, prominent intellectual currents, such as the Stoic tradition propagated by Hugh of Saint Victor, maintained that philosophy, as the *amor sapientiae*, had in its subject-matter all things human

²⁰⁸ Senocak, *The Poor and the Perfect*, p. 210.

²⁰⁹ Andreas Speer, 'The Vocabulary of Wisdom and the Understanding of Philosophy', in Hamsesse and Steel (eds.), *L'élaboration du vocabulaire philosophique au Moyen Âge: Actes du colloque international de Louvain-la-Neuve et Leuven, 12-14 septembre 1998*, Turnhout, 2000, p. 267-270.

and divine - in other words, philosophy was considered the complete science; on the other side, the Augustinian school, followed for example by Thierry of Chartres, distinguished between the intellectual comprehension of the eternal, and the rational discursive understanding of the temporal, and subordinated the latter to the former - only the contemplation of the eternal, i.e. theology, can be called wisdom (*sapientia*) in the proper sense, while knowledge of the temporal can only be described as *scientia*.²¹⁰ Therefore, however the medievals had understood philosophy and theology, their relationship was that of inclusion, rather than distinction. This was to change in the second half of the thirteenth century. Aquinas, in his *Sentences* commentary on Book III distinction 35, takes on an Aristotelian schema. He argues that firstly, wisdom is knowledge with a highest certitude of all truths, both human and divine; and, importantly, wisdom, as an intellectual virtue, needs to be acquired through learning and studies.²¹¹ Therefore, wisdom of the divine cannot rely on revelation and grace alone, but also the mastery of philosophy as an epistemic instrument. For Aquinas, therefore, the discipline of theology no longer lies within the Augustinian distinction between illuminated intellectualisation of the divine and the rational discursive reasoning of the temporal.²¹² Instead, the divine can and should be understood through rational reasoning.

Aquinas is hardly the only scholastic that envisaged a philosophical approach to theology. Bonaventure, while traditionally considered by scholars as the medieval Augustinian *par excellence*, also adopts the Aristotelian format and conceded that a certain part of theology can and should be approached with natural human intellect. In what Andreas Speer considers as an ‘Augustinian reformulation within an Aristotelian framework’, Bonaventure, in his *Disputed questions on the knowledge of Christ*, makes the distinction between two types of knowing: *cognitio certitudinis* and *cognitio sapientialis*.²¹³ While the divine intellect alone can achieve the perfection of *cognitio certitudinis*, the human intellect, albeit imperfect, always strives for more certainty and more similitude to the divine intellect. The state of intellectual perfection can only be reached by man through the participation of the divine intellect. However, insofar as Bonaventure argues that the human intellect alone cannot acquire true wisdom and salvation without divine illumination, it can still utilise its rational reasoning to reach a form of intellection, albeit imperfectly, of the divine truth. Theology, therefore, can be an academic discipline in its own right with the participation of human

²¹⁰ Augustine, *De Trinitate*, XII, 14-15; see also, Speer, ‘Vocabulary of Wisdom’, p. 260-261; and idem, ‘Contemplation of Philosophy: A Historical and Systematic Approach’, in R. Hofmeister Pich and A. Speer (eds.), *Contemplation and Philosophy: Scholastic and Mystical Modes of Medieval Philosophical Thought*, Leiden, 2018, p. 82-3.

²¹¹ Aquinas, Speer, ‘Vocabulary of Wisdom’, p. 266.

²¹² *Ibid*, p. 267.

²¹³ *Ibid*, p. 271-4.

reason alone, although such approach would never produce a knowledge of the highest level of certainty and perfection.

Towards the fourteenth century, the concept of theology as a science became a regular point of interrogation within scholastic circles. Henry of Ghent, for example, poses a series of questions in his *Quodlibet* on the nature of human knowledge, and asks whether scientific methods can be applied to theology.²¹⁴ Durand of Saint-Pourçain, as shown recently in a study by Stephen Brown, also raises the question in the prologue to his *Sentences* commentary on whether theology is science.²¹⁵ Durand addresses the crucial question on the scientific characteristic of theology: while the truth and certainty of the *Scripture* is beyond doubt, how can a discipline that is fundamentally based on an epistemology of faith and divine illumination be considered as a science? Durand proposes two criteria to qualify science: certainty and evidentiality. Theology, for Durand, is a ‘reasoned knowledge of the sacred Scripture’, whose certainty surpasses the certainty that can be achieved with human reason. In this regard, Durand follows both Bonaventure and Godfrey of Fontaines, placing the discipline of theology beyond the scope of scientific enquiries. Durand makes the distinction between declarative theology and deductive theology: declarative theology consists of the first principles found in the *Scripture*, and is regarded as the immutable and evident truth; deductive theology contains secondary conclusions based on such first principles - ‘A habit of the things which are deduced from the articles of the faith and the words of Sacred Scripture as conclusions drawn from first principles, and this third mode is the one commonly employed when we speak of “theology” at the present time.’²¹⁶ Obviously, theology considered as ‘declarative’ cannot be scientific, because its comprehension does not involve discursive reason. Deductive theology, on the other hand, cannot be considered as scientific either - although deductive theology elicits rational understanding of the divine truth, its first principles are nonetheless based on faith and revelation. Importantly, the conclusions of deductive theology are not properly speaking secondary derivations from the first principles of faith, but rather arguments and conclusions in support of the first principles. Such conclusions are brought forth not by demonstration, but by probable persuasions.²¹⁷ In all, while Durand’s conclusion maybe a rejection of Aquinas and the use of Aristotelian material in theological enquiries, the question itself is fundamentally peripatetic in its inspiration and methodology: the examination on the nature of

²¹⁴ Steven Marrone, *Truth and Scientific Knowledge in the Thought of Henry of Ghent*, Cambridge, MA, 1985, p. 9

²¹⁵ Stephen Brown, ‘The Early Durand of Saint-Pourçain on the Scientific Character of Theology’, In A. Speer, F. Retucci, T. Jeschke, G. Guldentops (eds), *Durand of Saint-Pourçain and His Sentences Commentary: Historical, Philosophical, and Theological Issues*, Leuven, 2014, p. 171.

²¹⁶ *Ibid*, p. 176-180.

²¹⁷ *Ibid*, p. 180-183.

science is presented by Aristotle in both his *Posterior Analytics* and the Book VI of *Nicomachean Ethics*, and Durand's definition of science as certain and evidential, as well as his epistemic distinction between knowledge based on faith and revelation and knowledge derived from human reasoning are indisputably Aristotelian.

Etienne Gilson speaks of the 1277 condemnations as a termination of the honeymoon between theology and philosophy.²¹⁸ But as we can see with the example of Durand, amongst many other theologians, Aristotelianism had already impressed an indelible mark on the method of academic enquiries. Bishop Tempier may have served to solicit an increased level of scepticism and criticism of the *corpus aristotelicum* and altered the trajectory of Aristotelian learning, but the Paris condemnations certainly did not curb the popularity of the studies and appropriation of Aristotle's texts, of which our present commentary by Odonis is ample testimony.

2. Aristotelian Studies in a Franciscan Context

While the *corpus aristotelicum* continued to gain traction among late medieval scholastics, the condemnations led by Bishop Tempier demonstrates that studies and use of Aristotle's texts can be highly controversial, despite its prominence in the arts faculty curricula. On the one hand, the Dominicans, under the aegis of Albertus Magnus and Thomas Aquinas, became the primary exponents of Aristotelian learning. The Franciscans, on the other hand, had a much more complex relationship with the Philosopher.

While from its very foundation, the Dominicans placed preaching and combatting heresy at the centre of its *raison d'être*, and therefore highlighting the importance of learning in intellectual formation of the friars. The Dominicans had already established an educational structure by 1228 in its constitution, while the first Franciscans, in contrast, did not have such concerns.²¹⁹ When Francis of Assisi started the movement, it was first and foremost based on the pursuit of poverty and humility, and stayed away from the burgeoning scholastic world centred in the universities. Learning was regarded as a source of worldly pride and a deviation from the Franciscan ideals of humility and simplicity. Francis himself said that the true vocation of a Friar Minor requires nothing more than a tunic, a cord, and

²¹⁸ Etienne Gilson, *History of Christian Philosophy in the Middle Ages*, New York, 1955, p. 456.

²¹⁹ Senocak, *The Poor and the Perfect*, p. 18.

breeches.²²⁰ Francis's founding companions also considered learning as an existential threat to the ideals of the Order, as studying would require expensive books and libraries to house these books, directly contrary to the vow of poverty. However, all this was to change. During the course of the thirteenth century, the Order underwent what Lawrence Landini termed a process of 'clericalisation', where the Franciscans became dominated, both in terms of numbers and in terms of administrative power, by men of clerical background as opposed to lay friars.²²¹ The Minorites showed an increasing interest in recruiting men with university background. Neslihan Senocak argues that Landini may have overestimated the number of clerical friars in the order, and presents a picture of complex diversity in terms of the Order's social and educational origins.²²² However, what is unmistakable is the intellectual tenet of the Order shifted quietly from the renunciation to the pursuit, albeit with humility, of learning.²²³

As a result, discord grew within the Order regarding the friars' scholarly activities. Certainly, the influx of university men and scholastics into the Order both reflected and propagated the growing importance of learning. Anthony of Padua, who profoundly influenced the intellectual trajectory of the Order, was a canon regular in Lisbon before joining the Franciscans. Canonised shortly after his death in 1231, he was a man of scholarship and made to become an exemplary Franciscan. Shortly after, the decision of Alexander of Hales to become a Friar Minor in 1236 brought the Order its first Master of Theology in the University of Paris. Henceforth, the Franciscan theologians played an increasingly influential role in Paris and beyond. In 1260, the Narbonne constitution drew up the educational structure of the Order, and consolidated its two chairs of Theology in Paris and Oxford.²²⁴

Yet, even as the leadership of the Order took tentative steps towards attracting scholars and towards its own intellectualisation, the learning and use of material from pagan authors remained a highly contentious issue. At a time when the intellectual world outside the Order was fascinated by the newly available texts of Aristotle, the Franciscans themselves lacked a well-defined official stance towards the Aristotelian currents. The attitude towards Aristotle among the Minorites can only be described as one of diversity: Alexander of Hales and his students were ready to study Aristotle without reservation; Bonaventure was more hesitant but sent young friars to study philosophy nonetheless;

²²⁰ *Ibid*, p. 93.

²²¹ Lawrence C. Landini, *The Causes of the Clericalization of the Order of Friars Minor, 1209– 1260, in the Light of Early Franciscan Sources*, Chicago, 1968; see also, Senocak, *op. cit.*, p. 76-80.

²²² Senocak, *op. cit.*, p. 79-82.

²²³ *Ibid*, p. 82.

²²⁴ *Ibid*, p. 164-5.

William de la Mare warned against the autonomous use of Aristotle in theology. In fact, the Franciscan Chapter General had no official regulation regarding the teaching of Aristotle until 1279.²²⁵ The tardiness of such regulation may partially be explained by the fact that, until the 1260s, many scholars joined the Franciscans having already undergone their intellectual formation in the arts and even in the theology faculties, therefore not needing further teachings on Aristotle. Such is the example of Alexander of Hales, as well as later masters such as Roger Bacon. Nevertheless, the ever-deepening involvement of the Franciscans in the Paris and Oxford theology faculties meant that the Order could no longer overlook the education of its own novices. In order to have a voice in contemporary scholastic circles, the philosophical approach to a systematic theology was indispensable, and Aristotle featured prominently as the source and inspiration of philosophical enquiries. Over the course of the thirteenth century, many Franciscan masters, such as Alexander of Hales, Bonaventure, Richard of Mediavilla, John Duns Scotus, as well as Peter of John Olivi, used and debated Aristotelian materials. Regardless of what the Franciscans thought of the Philosopher, the *corpus aristotelicum* was there to stay, and an intellectual dialogue between the Friars Minor and the outside world required an Aristotelian method and vocabulary as a standard of reference.

However, while it is commonly believed that the Franciscans were the principal force of resistance in the history of Aristotelian reception, the intellectual diversity among the Minorites means that it is impossible to ascertain a coherent or at least monolithic Franciscan position regarding Aristotle. The fact that the Order had no official doctor, in the fashion of the Dominicans with Thomas Aquinas, is probably both cause and consequence of the diverse positions and opinions found amongst the friars. One may suggest Bonaventure or Duns Scotus as Franciscan masters who typify the Order's intellectual tradition, but Duns Scotus was critical of Bonaventure on many fronts of theology and philosophy, and there is a significant chasm between their approaches to Aristotle.²²⁶ Then we have several outlier cases such as Roger Bacon, whose enthusiasm for Aristotle's natural philosophy and dim view of the contemporary approach to learning and education, both at the universities and the Franciscan *studia*, puts him somewhat at the margin of the Order. There is also Peter of John Olivi on the other end of the spectrum, who demonstrates a fluent mastery of the *corpus aristotelicum* but

²²⁵ Piron, 'Le métier de théologien', p. 31.

²²⁶ For a most authoritative study of Bonaventure's intellectual output, see Etienne Gilson, *La philosophie de Saint Bonaventure*, Paris, 1924; a more brief overview of the scholarship on Bonaventure's philosophy and his attitude towards Aristotle can be found in Robert Roch, 'The Philosophy of St Bonaventure - A Controversy', *Franciscan Studies*, 19, 1959, p. 209-226; the best monograph for a general look on John Duns Scotus is Richard Cross, *Duns Scotus*, Oxford, 1999.

also manifests at times a vehement scorn against pagan philosophers, Aristotle included.²²⁷ While Olivi sees himself as a follower of Bonaventure and occupying very much the mainstream of the Franciscan tradition, Olivi's work was censured within his own Order, for doctrines such as *usus pauper* and his Joachimism, which place him at loggerheads with the Franciscan establishment; hence, Olivi can be hardly considered representative of the overall Franciscan intellectual milieu. Thus, we are back to square one.

In order to have a more wholistic view of the positions of Franciscans, one should perhaps, in scholastic fashion, make several distinctions within the Franciscan approach to the Philosopher: the knowledge, use, and engagement with Aristotle, the level of truth assigned to Aristotle, and the place of Aristotelian philosophy in the grand scheme of truth and salvation. To start, one would be hard pressed to find a Franciscan after Alexander of Hales to be ignorant of Aristotle's writings. Alexander was the first schoolman to write after the entire corpus of Aristotle had been known to the scholastics. Besides his commentary on the first three books of the *Nicomachean Ethics*, his *Summa theologiae* also incorporates Aristotelian material. Raphael Huber attributes to him the honour of the first successful attempt at bringing Aristotle to theology:

The *Summa* of Alexander of Hales must be looked upon as the first successful attempt at applying to speculative theology the philosophy of Aristotle. But, besides Aristotle, Alexander studied Augustine. It is this combination of Aristotle and Augustine which makes for the glory of Alexander. Others later might have superseded him; but Alexander was the first to strive to reconcile both.²²⁸

However, the evident use and engagement with Aristotle on the part of Alexander of Hales does not in itself make him an Aristotelian. Instead, he remained hesitant regarding the degree of truth found in Aristotle, and considered theology as the true wisdom instead of a science that could be studied and comprehended through human intellect. He ascribed to Aristotle a valid but limited place in theology and men's attainment of a true knowledge of God. For Alexander, although the Aristotelian notion of natural reason can arrive at a knowledge of the existence of God, it cannot attain a full

²²⁷ See David Burr, 'Petrus Ioannis Olivi and the Philosophers', *Franciscan Studies*, 31, 1971, p. 57-8.

²²⁸ Raphael Huber, 'Alexander of Hales, O.F.M. (ca. 1170-1245): His Life and Influence on Medieval Scholasticism', *Franciscan Studies*, 5, 1945, p. 362.

knowledge of the essence of God.²²⁹ When it comes to the role of human reason in divine wisdom, Alexander argues:

All sciences are definitive, divisible, and collective, but the Sacred Scripture is not thus; therefore, the Sacred Scripture is no science. All arts and sciences are understood through manifested messages, but the Sacred Scripture is understood through mystical messages; therefore, it is neither science nor art.

I shall (thus) respond to the question: the Sacred Scripture is not understood in the way of art or science according to the comprehension of human reason, but through the disposition of divine wisdom towards the instruction of the soul in things pertinent to salvation.²³⁰

Timothy Johnson argues that Alexander established the tradition, among the early Franciscans, that theology, as wisdom properly speaking, is by its nature mysterious and cannot be understood without divine illumination, and this tradition was later inherited and developed by Bonaventure.²³¹

Bonaventure succeeded John of Parma as the Minister General, when the latter, a Master of Theology himself, was dismissed by Pope Alexander IV for his excessive Joachimite tendencies. Bonaventure defended the position that Christian wisdom is a 'gratuitous, affective encounter with the Holy Spirit that exceeds the delight of reason noted by Aristotle and prepares the a dwelling place for the divine.'²³² Etienne Gilson also considers Bonaventure a staunch anti-Aristotelian, but Bonaventurean scholars such as Fernand van Steenberghen and Patrick Robert both argue that Bonaventure's attitude to Aristotle is really that of great esteem, respect, and sympathy.²³³ In his 1973 study 'Dossier pour l'études des rapports entre Saint Bonaventure et Aristote', Jacques Guy Bougerol counts 1015

²²⁹ Alexander of Hales, *Summa universae theologiae*, I, pars 1, inq. 1, tra. 2, q. 2, cap. 2, art. 1.

²³⁰ Alexander of Hales, *Summa universae theologiae*, I, q. 1, cap. 4, art. 1: Item, omnis modus scientiae est definitivus, divisivus, collectivus; sed modus sacrae Scripturae non est huiusmodi; ergo non est scientialis.

Item, omnis modus artis et scientiae est per sermones manifestos; modus sacrae Scripturae est per sermones mysticos; ergo non est artificialis vel scientialis.

Respondeo: Dicendum quod non est modus sacrae Scripturae artis vel scientiae secundum comprehensionem rationis humanae, sed per dispositionem divinae sapientiae ad informationem animae in hiis quae pertinent ad salutem.

²³¹ Timothy J. Johnson, "'Wisdom Has Built Her House; She Has Set up Her Seven Pillars": Roger Bacon, Franciscan Wisdom, and Conversion to the Sciences', in M. J. P. Robson (ed.), *The English Province of the Franciscans (1224-c.1350)*, Leiden, 2017, p. 299-300.

²³² *Ibid*, 300.

²³³ See Roch, 'A Controversy', p. 222-4.

citations of Aristotle, and concludes that from 1245 to 1273, Bonaventure has at least a florilegium of Aristotle at his disposition.²³⁴ More recently, in his the introduction to his English translation of the *Collationes in Hexaëmeron*, Jay M. Hammond considers it crucial to recognise Bonaventure's continued engagement with Aristotle in order to adequately interpret his work.²³⁵ Bonaventure took the decision of sending Franciscan friars to Paris to study Aristotle. As a result, the newer generation of Franciscan masters, such as Richard of Mediavilla and Matthew of Aquasparta, became well-versed in Aristotelian philosophy and used Aristotelian material and methodology extensively in their writings. Sylvain Piron postulates that Bonaventure decided to send Franciscans to be educated of Aristotle in order to bridge the gap between the Minorites and other orders, especially the Dominicans.²³⁶ Bonaventure's hostility is directed at the radical Aristotelian interpretation of the Averroists at the Paris arts faculty, such as Siger of Brabant and Boethius of Dacia, rather than against the works of the Philosopher *per se*.²³⁷ In fact, in his *Hexaëmeron* (Vis. I, Col. 7), Bonaventure enumerates Aristotle's errors regarding the eternity of the world, happiness in this life, and the unicity of the intellect, but then excuses each of these errors on the ground that Aristotle speaks as, and limits himself to the role of, a philosopher.²³⁸

It can be suggested that Bonaventure, while opposing the strand of Aristotelianism found amongst the Averroists, lacks a coherent and systematic method of using and interpreting Aristotle for his own. His 'Aristotelianism' extends only insofar as he uses the writing of Aristotle and repurposes it for his own arguments. Andrea Speers concludes that Aristotle's influence is external and arbitrary, which supports the hypothesis that Bonaventure used the florilegium rather than the complete texts of Aristotle.²³⁹ The works of the Philosopher is frequently cited, but often manipulated into a reading that would befit his own thread of argument. One such case can be found in the *Collationes in Hexaëmeron*, a passage where Bonaventure talks about the importance of virtue for the Franciscan

²³⁴ See William Duba, 'Auctoritates and Aristoteles in Peter Auriol', in J. Hamesse and J. Meirinhos, *Les Auctoritates Aristotelis, Leur utilisation et leur influence chez les auteurs médiévaux. État de la question 40 ans après la publication*, Barcelona - Madrid, 2015, p. 155.

²³⁵ Jay M. Hammond, 'Introduction', in Bonaventure, Jay M. Hammond (trans. ed.), *Collations on the Hexaemeron: Conferences on the Six Days of Creation, the Illumination of the Church*, St. Bonaventure, NY, 2018, online access via Scribd: <https://www.scribd.com/read/391671560/Collations-on-the-Hexaemeron-Conferences-on-the-Six-Days-of-Creation-The-Illuminations-of-the-Church#n_search-menu_341922> (henceforth, *ColHex*).

²³⁶ Piron, 'Le métier de théologien', p. 34-35.

²³⁷ See Kent, *Aristotle and Franciscans*, p. 63-70.

²³⁸ *ColHex*, Vis. I, Col.7, n.2.

²³⁹ Speers, 'Vocabulary of Wisdom', p. 265.

life, referencing Aristotle but places the Philosopher firmly within a Biblical language of mystical analogy and revelation:

The foundation of virtue is faith, and we place faith as the centre (*medium*). Here the ethicist says, that the centre is ‘as right relation (*ratio*) determines.’²⁴⁰ But such is faith. Faith is *like the morning star in the midst (medio) of a cloud*. To this the Christian ascends, taking up the waters of baptism and enters into darkness; such darkness is faith with a light in an enigma.²⁴¹

A follower of Bonaventure, William de la Mare may be a more illuminating example on the Franciscan attitude to Aristotle, given that his *Correctorium fratris Thomae*, a text that points out the errors of Thomas Aquinas, was used in conjuncture with Aquinas’s texts in the Franciscan *studia* from 1282. Here again, as with Bonaventure, the antagonist of William’s *Correctorium* does not seem to be Aristotle *per se*, but rather, the Thomist interpretation of Aristotle. Bonnie Kent argues that:

What one finds (in the *Correctorium*), however, is not criticism of Aristotle’s teachings, but a careful dissociation of Aristotle’s teachings from Thomas’s. In Williams’s eyes, the condemnation of 1277 supports Aristotle. It is Thomas that it opposes.²⁴²

One quick look through the text will locate many references to the Philosopher, whose writing is cited to refute the positions of Aquinas. The *Nicomachean Ethics* and Avicenna’s commentary alone are referenced thirteen times in opposition to Aquinas’s arguments. Certainly, just like in Bonaventure, Aristotle is hardly the most prominent authority - Aristotelian citations are dwarfed by references to the *Scripture* and Augustine. But William clearly demonstrates a knowledge of, and an engagement with, the *corpus aristotelicum*, and refuses to cede the right and authority of interpreting Aristotle to Aquinas and the Dominicans.

In article thirty-four of the *Correctorium*, William de la Mare attacks Aquinas’s position that the intellect is a higher power than the will, and asserts classic position of the Franciscans that the will holds supremacy over the intellect.²⁴³ The argument cites several of non-Aristotelian authorities, most

²⁴⁰ See *NE*, VI, chapter 13.

²⁴¹ *ColHex*, Vis. I, Col.1, n. 33.

²⁴² Kent, *Aristotle and Franciscans*, p. 84.

²⁴³ See William de la Mare, *Correctorium fratris Thomae*, art. 34.

prominently Augustine, but also the *Scripture*, Anselm, and Chrysostom; Aristotle and ‘the Commentator’ (Avicenna) are cited in support of William’s position - one example:

Again, the Philosopher in *Topics* 3.1, about the more good and the more useful, says, ‘What all choose is better than what not all choose, and what many choose than what fewer choose.’ But all things desire the good, as he himself says in the same chapter and in *Ethics* 1.1. Yet not all things desire the true, speaking per se, but only rational things. Therefore the good is better than the true; therefore it is the object of a power that is better.²⁴⁴

Yet, Aristotle is clearly never the predominant authority. If the *Correctorium* is not a treatise against Aristotle, it is certainly not a text that champions Aristotelian philosophy above all else.

One often attributes a narrative of an Aristotelian turn among the Franciscans during the later decades of the fourteenth century, especially to the crucial decades of 1260s-1270s.²⁴⁵ While this thesis has a degree of validity in the way that prominent later Franciscans such as John Pecham, Richard of Mediavilla, Roger Bacon, and John Duns Scotus, not to mention our own Odonis, all display strong Aristotelian tendencies in both their methods and their positions, one should also recognise the fact that early Franciscan authorities such as Alexander of Hales, Bonaventure, and William de la Mare all have extensively used Aristotle’s texts, and regarded Aristotle as a prominent, if not irrefutable, authority. In this perspective, there is no radical break towards the end of the thirteenth century from the earlier Franciscan tradition. None of the later Franciscans would go as far as saying Aristotle is completely without error, or that human reason armed with Aristotelian philosophy can entirely replace divine revelation in attaining the perfect truth. What happened is a gradual shift of positions towards an increased receptivity of Aristotelian ideas.

John Pecham, in his *Canticum pauperis* (composed c. 1269-71), compares favourably the wisdom of the Franciscans to the most celebrated ancient philosophers: in poverty they are akin to the Socratics, in humility like the Platonists, in seriousness similar to the Academicians, and in their relentless search for knowledge the Franciscans are compared to the Peripatetics.²⁴⁶ Another Franciscan master, Roger Bacon is arguably the greatest exponent of Aristotelian learning of the Order during the thirteenth century. Entering the Order as a fully-fledged intellectual, and remained somewhat on the margin, Bacon is keen to break the intellectual rigidity and stagnation of the Church, especially the

²⁴⁴ William de la Mare, *Correctorium*, art. 34, n.6.

²⁴⁵ See, for example, D. E. Sharp, *Franciscan Philosophy at Oxford: The Thirteenth Century*, London, 1930.

²⁴⁶ John Pecham, *Canticum pauperis*, 139-40; see also, Johnson, ‘Roger Bacon’, p. 294.

stale education of the mendicants.²⁴⁷ In his *Opus maius* (1267), Bacon argues that the Church suffers four malaises: reliance on weak and worthless authority, established custom, the ignorant masses, and the masking of ignorance under the guise of apparent knowledge.²⁴⁸ Bacon also proposes a quartet of source of authorities in the search for truth and wisdom: the Church, the saints, the philosophers, and the scientists.²⁴⁹ He fuses theology and philosophy into one and same quest for wisdom, and gives Aristotle a prominent role in his epistemology. Timothy Johnson asserts that Roger Bacon ‘neither separates philosophy and theology into separate and distinct realms of truth, as in the case of Boethius of Dacia, nor does he dismiss outright the authority of the philosophers. Bacon is interested in the unity of wisdom’²⁵⁰

If Bacon’s overt enthusiasm for Aristotelian learning was a marginal position within the Order, John Duns Scotus’s measured Aristotelianism was far more widely followed. Indeed, the *Doctor Subtilis* has undoubtedly been a great influence on Odonis.²⁵¹ In the field of moral philosophy and cognitive ethics, Scotus has no hesitation when it comes to invoking Aristotle. It is perhaps telling that Scotus frames many of his questions with terms of the contemporary peripatetic debates and uses Aristotle as the primary source of authority in these questions. In the Book III of his *Ordinatio*, Scotus discusses such current Aristotelian ethical questions as the location of moral virtue, the connection between moral virtues, the relationship between moral virtue and divine gift, etc. In questions which do not lend themselves readily to theological discussions, Scotus tends to use Aristotle as the primary authority both for and against his own position. A case in point can be found in his discussion on the connection between moral virtues.²⁵² The question is clearly aimed against Henry of Ghent, who argues that moral virtues can have four degrees, the first two of which do not have a necessary connection with another moral virtue, while the latter two degrees are necessarily connected.²⁵³ Scotus uses Aristotle both to explain Henry’s opinion, and to support his own position that there is no necessary connection between virtues - an opinion that notably goes against the grain of Aristotle’s own thesis. Besides the citations, much of Scotus’s language mirrors that of Aristotle and assumes the fundamentals of Aristotle’s ideas, speaking of virtue as a perfection and habit, linking virtue with delectation, as well as an extensive use of syllogism. It is evident that Scotus is endowed with a wealth

²⁴⁷ Johnson, ‘Roger Bacon’, p. 302.

²⁴⁸ Roger Bacon, *Opus maius*, vol. III, 1-35; see also, Johnson, ‘Roger Bacon’, p. 302.

²⁴⁹ Roger Bacon, *Opus maius*, vol. III, 11-13.

²⁵⁰ Johnson, ‘Roger Bacon’, p. 306.

²⁵¹ See above, II.2, on Odonis’s citations.

²⁵² *Ord.* III. dist. 36.

²⁵³ *Ord.* III. dist. 36, nn. 11-15.

of knowledge on Aristotle, and is well-disposed towards using Aristotelian material, without the heavy distortions of his predecessors.

However, this does not mean Scotus accepts all of Aristotle's positions. Mary Beth Ingham argues for a Christian humanism of Scotus, where his philosophical focus turns away from the Aristotelian notions of human self-fulfillment through desire and satisfaction, but instead develops other Aristotelian notions of fulfillment through friendship and self-mastery with the power of the will.²⁵⁴ In other respects, Scotus differs from Aristotle and holds opinions closer to Augustine and Bonaventure. Scotus is ready to turn away from Aristotle in his epistemology, which is of central importance in his own philosophical system. Steven Marrone observes that Scotus is prepared to disband the rigid Aristotelian theory of knowledge to accommodate the revealed truth.²⁵⁵ The knowledge of the Apostles, for example, lacks sufficient evidence to satisfy Aristotelian criteria for scientific truth, but it is the most certain truth in the way that the truth of God is not fully evident to the human intellect. This position, despite many other differences, certainly brings Scotus closer to the principles advanced by Bonaventure, whose recognition of the limitations of human intellect and natural reason are to reverberated through to Odonis's own time.

Yet, Scotus was not without his own critics, and certainly did not dominate the Franciscan intellectual landscape. One posthumous critic would be Peter Auriol, who attacks the positions of not only Scotus, but also Bonaventure and Aquinas,²⁵⁶ and who is very possibly at Toulouse contemporaneously with Odonis.²⁵⁷ Just like Scotus, Auriol displays an extensive knowledge of Aristotle and readiness to use substantial writings of the Philosopher in his own arguments. Just like almost all of his predecessors and contemporaries, Auriol mauls deeply over the validity of Aristotle's teachings in Christian epistemology, and occupies a position that perhaps demonstrates more affinity towards Aristotle than most of the earlier Franciscans. William Duba, in a recent article, labels Peter Auriol's approach 'compatibilist', not only in terms of the relationship between Christian faith and Aristotle, but also

²⁵⁴ Mary Beth Ingham, 'Duns Scotus's Christology: Foundations for Franciscan Christian Humanism', in Robson (ed.), *The English Province of the Franciscans*, p. 333-4.

²⁵⁵ Steven Marrone, 'Scotus at Paris on the Criteria for Scientific Knowledge', in Brown, Dewender, Kobusch (eds.), *Philosophical Debates at Paris in the Early Fourteenth Century*, Leiden, 2009, p. 386-7.

²⁵⁶ See Gilson, *History of Christian Philosophy*, p. 477.

²⁵⁷ See Duba and Schabel, 'Introduction', p. 149.

between faith and the Averroist approach to Aristotle.²⁵⁸ While short of claiming Aristotle to be infallible and the Averroists completely truthful, Auriol certainly goes further than the likes of Mediavilla and Scotus, and brings us closer to Odonis's own claim that Aristotle's writing is nothing but truth. Having examined Auriol's writing, Duba comes to the observation that, unlike many of his predecessors, Auriol is extremely concerned with understanding Aristotle in its proper context, and calling to the entire corpus of Aristotle's writings to make sense of particular passages.²⁵⁹ This is certainly a practice similar to Odonis, who takes pains to reference across the works of Aristotle, and focuses time and again on the *intentio Philosophi*. Duba writes in the article:

At least for the period starting with Scotus, one of the major points of philosophical discussion at the University of Paris was: what was Aristotle's position? Among bachelors and masters of Theology at the highest level, Aristotle was not a monolithic authority, but rather a battleground. The printed *Commentary on the Sentences* shows Auriol's arrival on the battlefield, deploying Michael Scot and Averroes' Aristotle against the partisans of the Moerbeke-media approach. On such a field, applying an authority without reference to context is extremely dangerous; indeed Auriol calls Scotus out for just such a manoeuvre.²⁶⁰

William Duba's observation can also be used to summarise this brief survey of Franciscan reception to Aristotle. From the time of Alexander of Hales until Odonis, Franciscan writings on Aristotle are always preoccupied with pointing out the errors of other contemporary schools of Aristotelianism, and with seeking to occupy a ground and find a voice for their own approach to the Philosopher.

However, one would be mistaken to consider that the *corpus aristotelicum* had attained an unassailable canonical status within the Franciscan Order by Odonis's time. While prominent Franciscan masters broadly displayed respect, receptiveness, and even affinity towards Aristotle, the Philosopher's works were far from universally accepted. Even after 1279, with the regulation of the teaching of Aristotle within the Franciscan education structure, the *corpus aristotelicum* remained a point of contention within the Order. The early companions of Francis, such as Brother Leo, were deeply hostile to this new style of learning. Later, Observant Franciscans saw the study of Aristotle

²⁵⁸ Duba, 'Auctoritates and Aristotelis in Peter Auriol', J. Hamesse and J. Meirinhos (eds.), *Les Auctoritates Aristotelis, Leur utilisation et leur influence chez les auteurs médiévaux. État de la question 40 ans après la publication*, Barcelona - Madrid, 2015, p. 160.

²⁵⁹ *Ibid*, p. 179.

²⁶⁰ *Ibid*, p. 179.

and Averroes as a betrayal of the very essence of Franciscan identity – the pursuit of worldly knowledge, and the adjoint material requirement for the purchase and storage of expensive books, run contrary to the Franciscan tenets of humility and poverty. Peter of John Olivi, of the first generation of friars who were entirely educated within Franciscan Order, staunchly opposed the notion that Aristotle should be taken as an infallible source of intellectual authority. Or as David Burr describes it, Olivi was opposed to the 'cult of Aristotle'.²⁶¹ For Olivi, the problem of pagan philosophers is not so much the strength - or the lack of strength thereof - of their argumentation. In fact, Odonis considers the Aristotle to be mostly correct in regard to natural philosophy, less so in moral philosophy, but completely wrong when it comes to the knowledge of God. Aristotle's, or by extension, the pagan philosophers', flaw lies in the fact that they do not share the Christian faith, have to based their knowledge on sensual experience, and therefore are inevitably blind to the revealed truths of God.²⁶² Olivi generally dismisses the study of philosophy for its own sake, because any learning of worldly philosophy, if not directed for the purpose of knowing God, is futile and dangerous.²⁶³ Although Olivi's intellectual contribution remained on the margin of the Franciscans during his lifetime and was twice censured, his rejection of Aristotle represents, as Sylvain Piron posits, a force of intellectual resistance within the Franciscan Order to an old scholastic tradition of incorporation and harmonisation, which seeks to legitimise the reading of pagan philosophers in the sense of their intuition for Christian truth. This is a tradition that had dominated the approach to philosophy since Abelard, and, as we have seen, prospering during and beyond Olivi's own time.²⁶⁴

Although by no means the sole, or even the primary, cause of the internal disputes, education and scholarship came to be one of the focal points of the Spiritual movement. During 1310-12, Ubertino da Casale in his complaints to the Pope made education and philosophy the key areas of abuse and corruption within the Order.²⁶⁵ For Ubertino, the problem Franciscan education is more than an administrative matter. Rather, the studies of pagan philosophers diminish the spiritual piety of the novices, which would be better cultivated with the study of the *Scripture* and the works of saints. At the same time, Ubertino complaints of the fact that many friars see learning as an instrument for career advance, rather than for the pursuit of divine truth:

²⁶¹ Burr, 'Olivi and Philosophers', p. 58-9

²⁶² *Ibid*, p. 52.

²⁶³ *Ibid*, p. 44-8.

²⁶⁴ Piron, 'Métier de théologien', p. 44-5.

²⁶⁵ Senocak, *op. cit.*, p. 192.

We are founded in the most innocent simplicity, which Christ calls a dove. But this simplicity shuns prolonged pagan studies, and cunning curious words with duplex meanings, sophistical contentions of useless opinions, and the appearance of the false name of science, as the apostle says, but it studies with total devotion the sacred pages and the sayings of the saints.²⁶⁶

Angelo Clareno, the other ‘spokesperson’ of the Spiritual movement, is equally antagonistic to the Order’s excessive affinity to Aristotle. Clareno argues that reading pagan works will only come in the way of man’s union with God, impeding man’s spiritual journey with errors and heresy.²⁶⁷ Although Clareno is marginalised and then expelled from the Order, he is certainly not wrong in identifying the study of philosophy and most of all the study of Aristotle as a source of deviation. The late thirteenth and early fourteenth centuries saw a proliferation of ‘academic heresy’, ranging from the condemnation of ‘Averroism’ to the *fraticelli*.²⁶⁸ This can be partially explained by the fact that ecclesiastical authorities were particularly active in guarding the perception of orthodoxy against potential encroachments, underlined by an urgent need to maintain the unity of the Church at a moments of weakness. Yet at the same time, one should not deny the problematic nature of a philosophical approach to theology, particularly in the Franciscan context. Senocak points to the fundamental chasm within the Franciscan Order between the founding ideals of humility and purity and the intellectual growth and ambitions of the later Franciscans.²⁶⁹ It is a tension that plays out between the foundational idealism and the practical realities of a fantastically successful movement and institution. Such tension is, of course, not limited to the issue of learning and appropriation of *corpus aristotelicum*, but more prominently, it erupts over the poverty debate, which would eventually lead to the rebellion of Michael of Cesena and his followers, and would pave the way for Gerald Odonis to become the new Minister General of the Friars Minor.

However, it would be erroneous to situate Odonis’s commentary - a text produced based on his lectures in 1324-26 - as an affirmation for the use of Aristotelian texts and methods within the

²⁶⁶ Ubertino da Casale, *Responsio*, 73: Et quia statim post noviciatum student in scripturis paganis et postea in questionibus, ut plurimum magis curiosis quam devotis, et parum in dictis sanctorum et textu biblie comparative, spiritum devocionis extinguunt, cited by Senocak, *op. cit.*, p. 211.

²⁶⁷ Senocak, *op. cit.*, p. 211.

²⁶⁸ See J. M. M. H. Thijssen, ‘Academic Heresy and Intellectual Freedom at the University of Paris, 1200-1378’, in J. Drijvers, and A. MacDonald (eds.), *Centres of learning : Learning and location in pre-modern Europe and the Near East*, Leiden, 1995, p.218-229.

²⁶⁹ Senocak, *op. cit.*, p. 189-194.

Franciscan Order, specifically to contravene the Spiritual movement and the restive Michaelists. Instead, it would perhaps be more appropriate to situate Odonis within the long Franciscan tradition of utilising and interpreting Aristotle to make it work for the Franciscan school of thought. The section ‘*Expositio*: Text and Context’ above has explored the background of Odonis’s composition of the *Expositio*, and it is useless to repeat it here, save for the hypothesis that the Order certainly needed an authoritative and, most of all, ‘Franciscan’ work on Aristotle’s *Ethics*. Bonnie Kent argues that instead of making Franciscan philosophy Aristotelian, Odonis has in mind of making the *Nicomachean Ethics* ‘Franciscan’, seeing that Odonis’s key positions regarding the freedom of the will and the principle of obligation remain firmly within the Franciscan traditions of Bonaventure, Scotus and even Ockham.²⁷⁰ Yet, this ‘Franciscanisation’ of Aristotle’s *Ethics* goes far beyond the perimeter set out by many of his predecessors. Indeed, Odonis’s own claim that *positio Philosophi* is simply and completely true would no doubt scandalise many of the earlier authorities of the Minorites.

The following chapter will, therefore, look deeper into this claim, and examine Odonis’s own attitude towards Aristotle.

²⁷⁰ Kent, *Aristotle and Franciscans*, p. 626.

V. ODONIS AND ARISTOTLE

1. Two Truths

In his *Expositio*, Odonis's approach to Aristotle stands out from his *confrères* in two principal ways: that Aristotle's work is, with a few exceptions, discussed almost exclusively in a secular context, and that Odonis adamantly claims that Aristotle's teaching is 'truth' and completely consistent with the articles of Christian faith. The first difference brings Odonis closer to Albertus Magnus, Thomas Aquinas, and other commentators of the *Ethics*, and can be partly attributed to the dictate of the genre. Odonis is very likely following an established tradition of writing on the *Ethics* without considering the variants brought by the rewards and punishments of an afterlife - human good is discussed without references to God or salvation. Only in his own prologue does Odonis use the word *beatitudo*, while in the rest of the commentary the term *felicitas* is used, as was common in the Paris arts faculty writings of the time.²⁷¹ Despite the heavy scriptural and theological references, Odonis manages to keep theology and discussions of salvation and God from the most part of his commentary.

The second difference is perhaps more striking. None of Odonis's *confrères* goes far enough to speak of the Philosopher as entirely consistent with faith. The Franciscans realise the intellectual limitations of pagan philosophers, who, without the aid of divine illumination, cannot hope to arrive at the final, complete truth. Bonaventure carefully points out the errors of Aristotle, Olivi's attitude varies from cautiously favourable to downright hostile, and even Scotus from time to time breaks away from Aristotle's teachings in favour of a more 'Augustinian' approach. This seems to bring Odonis closer to the tenets of the 'Latin Averroists' of the late thirteenth century, men whom his predecessors have so abhorred, and whose stance the 1277 condemnations of Bishop Tempier specifically target. In his *De aeternitate mundi*, Boethius of Dacia states adamantly that there is no contradiction between faith and philosopher - *nulla est contradictio inter fidem et philosophum* - although Boethius does not explicitly mention Aristotle, it is only logical to assume Aristotle would feature prominently on Boethius's list of philosophers.²⁷²

²⁷¹ See Anthony Celano, 'Boethius of Dacia on the Highest Good', *Traditio*, 43, 1987, p. 205-6.

²⁷² Boethius of Dacia, *De aeternitate mundi*, ed. N. G. Green-Pedersen, Copenhagen, 1976, p. 356; see also, Speers, 'Double Truth Question', p. 192.

However, the positions of both Odonis and the Danish Boethius are far more nuanced than what a first glance at their de-contextualised statements may suggest. As Andreas Speers demonstrates, Boethius of Dacia is no advocate for a scientific Christian faith.²⁷³ Instead, Boethius claims that *fides non est scientia* - faith is not a science based on reason and argument alone, but an act of believing.²⁷⁴ Bishop Tempier's accusation of the doctrine of two separate truths of philosophy and faith is ill-founded, as least for the case of the Danish Boethius, for whom there is no question that Aristotle is truth and the faith is also truth, but the point is that the two truths are entirely consistent with each other - a philosopher would not challenge the truth of the faith, nor a would Christian with proper training and education destroy the principles of philosophy.²⁷⁵

In the first book of the *Ethics*, Odonis investigates the truth of Aristotle with a question to the same effect (Book I Question 31): Is the position of the Philosopher on happiness concordant or contradictory to the truth and faith of Christianity?²⁷⁶ After listing several obvious contradictions between Aristotle and the teaching of Christian faith, such as worldly possessions and successes, man *versus* God as the origin of happiness, and the happiness of death, Odonis declares that 'the position of faith is true and the position of the Philosopher is also true'.²⁷⁷ However, Odonis does not arrive at a conclusion of two separate truths, which would lead him into the collection of articles condemned in 1277. Instead, a tacit invocation of Aristotle is put in place, which is a move that typifies Odonis's approach and argumentation in the whole of the commentary. Aristotle argues that 'everything that is true must in every respect agree with itself.'²⁷⁸ Odonis states: no truth is contrary to truth, and it follows that Aristotle, as truth, is not contrary to faith, which is also truth.

For Odonis, the truth of Aristotle is a given proposition, which is a surprising opinion to hold, since the truth of the Philosopher was far from certain at the start of the fourteenth century - and, dare we

²⁷³ Speers, 'Double Truth Question', p. 192.

²⁷⁴ *Ibid*, p. 192.

²⁷⁵ *Ibid*, p. 192.

²⁷⁶ *ExEth*, I, q. 31, f. 20va: Utrum intentio Aristotelis de positione felicitatis concordet vel repugnet veritati et fidei Christianae.

²⁷⁷ *ExEth*, I, q. 31, f. 20va-b: Primo quia dicit felicitatem vel haberi vel inquinari ex carentia prolis, vel pulchritudinis, vel substantiae temporalis; fides autem dicit oppositum. Secundo quia dicit felicitatem ab homine; fides autem dicit eam esse a Deo. Tertio quia dicit mortuum non esse felicem, et non vivere, et non operari; fides autem dicit oppositum. ... Sed in oppositum est, quia nullum verum repugnat vero, ut dictum est supra; sed positio fidei est vera et positio Philosophi vera. Ipse namque per veras rationes demonstravit ipsam esse veram. Quare ista non repugnat illi.

²⁷⁸ Aristotle, *Posterior Analytics*, I. 32.

say, no philosopher is ever *completely* truthful from an epistemological point of view. The commentary text itself yields evidence against this claim as well: Odonis, albeit on rare occasions, argues against the positions of Aristotle, such as on the merit of the rule of law, on the connection of moral virtues, and on the relative superiority of wisdom and prudence. Elsewhere, Chris Schabel has also demonstrated that Odonis holds a position akin to that of Plato and against that of Aristotle on the issue of the plurality of worlds.²⁷⁹ However, the curious fact is that Odonis never manifestly confronts the positions of Aristotle. As Schabel notes in his article, although Odonis sides with Plato and against Aristotle, he never explicitly declare Aristotle erroneous - instead, Odonis situates Aristotle within the realm of cosmic possibilities and suggests that it is within God's power to make the universe one way or another.²⁸⁰ Neither does Odonis launch overt attacks on Aristotle in his *Ethics* commentary, despite obvious differences between Odonis's and Aristotle's positions.

Therefore, it is of great interest to ask why Odonis makes it one of his first principles in the *Ethics* commentary that Aristotle speaks of the truth. As we have touched on briefly in Part I, the Franciscans lacked their own intellectual authority on the *Ethics*, compared with their arch-rival the Dominicans. It was of crucial importance, by the early decades of the fourteenth century, that the Franciscans should produce their own seminal work on moral philosophy in order to affirm their position as an intellectual powerhouse amongst the scholastics. Odonis's proposition that Aristotle's teaching is *veritas* may be seen as a pre-emptive attempt to claim a ground of authority over the interpretation of the Philosopher's text: if the *corpus aristotelicum* is completely true, then any secondary conclusions or interpretations that Odonis may come to would be based on a valid epistemological foundation. Odonis inherits a legacy of Franciscan masters pointing out the errors of other schools in their reading of Aristotle, but such academic practice is certainly less effective without systematically building up a positive interpretation of Aristotle themselves. While Odonis has Aquinas and his followers in mind as his antagonists, it is not sufficient to simply point out the errors and reproduce William de la Mare's *Correctorium*. What Odonis achieves here with his *Expositio* is to shift Franciscan intellectual foci from piece-meal readings of the *Ethics* to a wholistic comprehension of the entire *opus*. By granting the *Ethics* the status of philosophical truth, Odonis claims an intellectual ground that has been hitherto left unoccupied by the Franciscans, and finds a starting block to construct what would be, as Odonis conceives it, the Minorites' own authoritative textbook on *Ethics*.

²⁷⁹ See Chris Schabel, 'Gerald Odonis on the Plurality of Worlds', *Vivarium* 47, 2009, esp. p. 337-340.

²⁸⁰ *Ibid*, p. 338-9.

2. Two Happinesses

An important aspect of Odonis's approach to Aristotle is how he defines the Philosopher's sphere of competence. The discrepancies between Aristotle and the Christian faith are undeniable. Therefore, any theologian who attempts to apprehend Aristotle's works would need to identify where exactly Aristotle is correct and authoritative within the greater truth of Christianity. Nowhere is such task more urgent than in the *Nicomachean Ethics*, which concerns the same objective as Christian faith - the ultimate end of human life and human happiness.

As we have seen, Odonis states that the Philosopher speaks of truth, but he also concedes that Aristotle's truth is limited. Aristotle's truth is not the complete truth, and nor does Aristotle pretend to be speaking of the complete truth on moral science. Odonis grants the Philosopher the status of truth, insofar as the Philosopher is understood to be speaking of temporal matters and of the good and happiness of this life. In question 30 of Book I, Odonis sets up a framework of a duality of happiness. The classic question is asked: whether happiness can be attained in this life amidst man's varying fortunes.²⁸¹ Here Odonis divides happiness into two: happiness of merit (*felicitas meritoria*), and happiness of reward (*felicitas praemiatoria*), in the sense of the eternal happiness rewarded to man after his death. For happiness of merit, Odonis cites *Matthew* chapter 5, which he quotes in brief:

Blessed are the poor (in spirit), blessed are the meek, blessed are those who mourn, blessed are those who are persecuted (for the sake of justice)...²⁸²

Yet, such happiness is built on the basis of human suffering, which would seem to run contrary to Aristotle's thesis that human happiness is a matter of positive self-actualisation and the mastery of one's faculties towards the deeds of virtue - how can man be happy if he suffers? Aristotle cites the example of Priam:

For there are many vicissitudes in life, all sorts of chance things happen, and even the most successful can meet with great misfortunes in old age, as the story goes of Priam in Trojan

²⁸¹ *ExEth*, I, q. 30, f. 20va: Utrum inter fortunas huius vitae possit haberi felicitas.

²⁸² *Matthew*, 5:3-10; Odonis's quote is much abbreviated, and one may also point out that he omits *in spiritu*, leaving only *Beati pauperes*; the full passage from Odonis: *ExEth*, I, q. 30, f. 20va: De meritoria dicitur *Matthaeo* 5 capitulo: Beati pauperes, Beati mites, Beati qui lugent, Beati qui persecutionem patiuntur et similia.

times. No one calls someone happy who meets with misfortunes like these and comes to a wretched end. (*NE*, I, 1100a)

Odonis reconciles Jesus's sermon and Aristotle's claim with another distinction - evil suffered involuntarily (*mala poenalia*) and evil of sin (*mala culpabilia*). The poor, the mournful, the persecuted, they are nonetheless happy because they suffer such misfortunes involuntarily. From an Aristotelian perspective, happiness is achieved through man's own agency, and such external misfortunes cannot stop man from being an agent of virtue, of virtuous deeds, or of his own happiness:

Happiness of merit does not exclude evil suffered involuntarily, as it is clear in the authorities cited, where certain evil is implied, such as 'blessed are those who mourn'. But it does exclude all evil of sin, in other words it would not render a man who is simply good.²⁸³

Yet, such happiness is obviously incomplete. Man, who may be happy, still suffers. But, as Odonis argues, happiness of merit is the kind of happiness that can be had in this life.²⁸⁴ The perfect, complete, happiness of reward cannot be attained in this life, because man in this life cannot be freed from misfortune and evil suffered involuntarily. On happiness of reward, Odonis says:

'Blessed are those who dwell in your house, ever singing your praise!'... Happinesses (of reward and of merit) differ from one another. Happiness of reward excludes all evil suffered involuntarily, and all evil of sin, and comprises of all good of which man is worthy, as well as the good through which he is made worthy. It fulfills all desire joy.²⁸⁵

Such happiness is only to be had after one's death, in one's union with God. In comparison, happiness of merit applies strictly to this life, and this is where the frontier of Aristotle's authority is. The Philosopher speaks of this life, and this life only; beyond, Aristotle is silent, as there he has no intellectual authority. Happiness is tenable, as we see in question 30, as long as we are speaking of

²⁸³ *ExEth*, I, q. 30, f. 20va: Meritoria vero non excludit mala poenalia, ut patet in auctoribus inductis, in quibus implicantur aliquae paene sicut ibi: Beati qui lugent; sed excludit omnia mala culpabilia. Aliter non redderet hominem simpliciter bonum.

²⁸⁴ *ExEth*, I, q. 30, f. 20va: Hiis ergo praemissis ad quaestionem dicenda sunt duo. Primo quod felicitas praemiatoria, quae simpliciter est felicitas, non potest haberi hic. Secundo quod altera potest haberi.

²⁸⁵ *ExEth*, I, q. 30, f. 20va: De praemiatoria dicitur: Beati qui habitant in domo tua, Domine, in saecula saeculorum laudabunt te. Differunt autem istae felicitates, quoniam praemiatoria excludit omnia mala poenalia et culpabilia, et includit omnia bona quibus homo est dignus, et ita bona per quae dignus est. Item complet omne desiderium et gaudium.

happiness of merit - one that is nonetheless subject to the vicissitudes of fortune and external forces. Therefore, Odonis asserts, Aristotle's concept of happiness is incomplete. However, such incomplete notion of happiness is nonetheless correct within Aristotle's incomplete understanding, and does not contradict the truth of the complete happiness of reward. In question 31, Odonis asks whether the teachings of Aristotle are consistent with the truth of the faith, and he offers the solution:

It should be said that Aristotle talks about happiness of merit and not happiness of reward, and about the happiness of this life and not the life beyond. In this assumption, I can say that the position of Aristotle is consistent with everything of Christian faith. I state that every point of Aristotle is consistent with the Christian faith which concerns such happiness of merit of this life ... This should be evident, because Christian faith places such happiness in this life and in this life only, and the position of the philosopher posits such happiness and not the life beyond. Thus, concerning happiness of merit, Aristotle is consistent with every truth and with the Christian faith.²⁸⁶

Such distinction between happiness of merit and of reward, together with Odonis's assertion that Aristotle's teachings are true and consistent with Christian faith, delineates an intellectual space for Odonis to discuss ethics, virtue, and moral psychology without recourse to the *Scripture* or theology. On the other hand, this distinction also addresses the obvious discrepancy between the teachings of Aristotle and articles of faith - a discrepancy that Odonis invokes at the beginning of this question:

Second, Aristotle says that happiness comes from man; faith says happiness comes from God.

Third, Aristotle says that death is not happy, not living, and not active; faith says otherwise.

²⁸⁶ *ExEth*, I, q. 31, f. 20vb: Dicendum quod Philosophus loquitur de felicitate meritoria, non de praemiatoria, de felicitate vitae huius, non de felicitate alterius. Et secundum hoc dico quod positio eius concordat per omnia fidei Christianae. Quod declaro sic: omnis positio concordat fidei Christianae, quae ponit felicitatem meritoriam in hac vita, talem quae non excludit mala poenalia, sed excludit mala culpabilia, quae non includit omnia bona, quibus homo dignus est, et includit bona per quae dignus est, quae non implet desideria, nec habet completa gaudia. Istud apparet (*om.* 'istud apparet', *X*), quia fides Christiana talem felicitatem ponit in vita ista et nullam aliam; sed positio Philosophi talem ponit felicitatem et nullam aliam. Ergo quantum ad illa concordat per omnia veritati et fidei Christianae. See also, Costa, 'Le théologien et l'Éthique', p. 86-7.

If he is speaking of happiness of merit, he says that happiness (of merit) is not desirable on account of anything else; faith says otherwise about happiness of merit: happiness is desirable for the sake of eternal life.²⁸⁷

Odonis may well be the first theologian to formally coin the distinction between happiness of merit (*felicitas meritoria*) and happiness of reward (*praemiatoria*). The ideas underpinning this novel distinction are certainly not new, and Odonis introduces the distinction in a matter-of-fact fashion as if it is an *endoxa* among theologians: ‘theologians distinguish between two kinds of happiness’.²⁸⁸ Odonis may deny that there are two different truths between philosophy and faith, but he follows a long tradition of distinguishing between the level of happiness that man can achieve in the present life, without divine grace, and the level of happiness of the life beyond death, attainable through God.

For a medieval reader, Aristotle does not deny the possibility and existence of a happiness that comes from God, but instead chooses to limit his discussions on the realm pertaining human behaviour, which can be separated from divine intervention, and known separately as such. Odonis's distinction is obviously grounded in Aristotle's text. Aristotle himself hints at a disciplinary separation between happiness as a gift of God and happiness ‘in human terms’. There is indeed a sort of happiness that is acquired through extra-human means, i.e., as a gift of gods. However, such happiness of divine provenance is not a subject-matter considered by Aristotle’s present studies in the science of ethics, and it is thus dismissed outright. Musing over man’s attainment of happiness in Book I, he firstly says:

If there is anything that the gods give to men, it is reasonable that happiness should be god-given, especially since it is so much the best thing in the human world. *But this question would perhaps be more suited to another inquiry.*²⁸⁹ Even if it is not sent by the gods, however, but arises through virtue and some sort of learning or training, it is evidently one of the most divine things. (*NE*, I, 1099b)

²⁸⁷ *ExEth*, I, q.31, f. 20va: Secundo quia dicit felicitatem ab homine; fides autem dicit eam esse a Deo. Tertio quia dicit mortuum non esse felicem, et non vivere, et non operari; fides autem dicit oppositum. Item si loquatur de felicitate meritoria, dicit quod felicitas non est appetibilis propter alterum; fides autem dicit oppositum de felicitate meritoria, quia dicit illam appetibilem esse propter vitam aeternam.

²⁸⁸ *ExEth*, I, q. 30, f. 20va: Dicendum quia apud theologos distinguitur duplex felicitas: una meritoria, altera praemiatoria.

²⁸⁹ My italics.

The Book of *Ethics* is a study on human and the humanly possible, and this focus persists throughout. The definition of happiness offered by Aristotle in the *Nicomachean Ethics* is endogenous - it is an end of human life, achieved through one's own agency and own virtuous activities. For a medieval reader who attempts to bring truth out of the Philosopher, such definition does not preclude an exogenous happiness from and through God. In the conclusion of his discussion, Aristotle reaffirms the *humanity* of happiness:

What is to prevent us, then, from concluding that the happy person is the one who, adequately furnished with external goods, engages in activities in accordance with complete virtue, not for just any period of time but over a complete life? Or should we add that he will live like this in the future and die accordingly? The future is obscure to us, and we say that happiness is an end and altogether quite complete. This being so, we shall call those of living who have and will continue to have the things mentioned, but blessed *only in human terms*.²⁹⁰ (*NE*, I, 1101a)

This passage would no doubt provoke many readers to wonder what Aristotle thinks, if at all, of an exogenous kind of happiness, where man is said to be blessed *not only in human terms*. The Philosopher gives this question no consideration in the book of *Ethics*, nor, for that matter, anywhere else in the *corpus aristotelicum*. Indeed, while the 'gods' loom in the background of Aristotle's discussions of ethics and politics, the divine being never constitutes a concrete element in his ethical and political reasoning, which remain almost purely human. Further, given Aristotle's hylomorphism, it follows naturally that he does not give much consideration to the idea of a life of the soul beyond death. There is no happiness after death, not because the soul cannot be blessed after death, but because happiness, for Aristotle, is inherently connected to man's activity, and unaffected by his posthumous vicissitudes:

Should we call no one happy, while they are alive, but rather, as Solon advises, wait to see the end? Even if we must assume this to be right, is it really the case that he is happy when he is dead? Or is this not quite ridiculous, especially for us, claiming as we do that happiness is some kind of activity? But if it is not that we call the dead person happy, and Solon meant not this, but that we can at that stage safely call a person blessed in so far as he is now beyond the reach of evils and misfortunes, even this claim is open to dispute. (*NE*, I, 1100a)

²⁹⁰ My italics.

But what of a happiness beyond death? Odonis argues that Aristotle does not concern himself with happiness of reward and limits his discussion to this life only. For a Christian theologian, it goes without saying that the soul continues to exist after one's bodily death, and that the salvation of the soul - its path to heaven and its union with Christ - is a central tenet of the Christian faith. Thus, any reader of Aristotle is inevitably confronted with the question of the life there-after.

On this question, Odonis seems to follow the path trodden by Albertus Magnus and Thomas Aquinas. Both R. A. Gauthier and Iacopo Costa find significant conformity on Odonis's part.²⁹¹ Albertus argues that Aristotle talks of two kinds of happiness: civic and contemplative. Putting Aristotle's statement in its proper context, Albertus considers that the Philosopher in Book I of *Ethics* is only talking about civic happiness - *felicitas* that is considered in a social and this-worldly context.²⁹² Although civic happiness is a necessary condition for eternal happiness, as Albertus affirms, it does not accompany men to the life beyond.²⁹³ The other kind of happiness, the contemplative, is only presented in Book X, and therefore, for Albertus, has nothing to do with the discussions about sort of happiness in Book I. On the life beyond, Albertus simply insists, in a manner later followed by Odonis, that the Philosopher has no authority, because he cannot possibly know.²⁹⁴ Albertus provides his own solution, in perfectly Aristotelian terms:

It must be said that civic happiness is the activity of prudence, according to which one enters the substance of other virtues that pertain to the inferior potences, and determines the virtuous

²⁹¹ Gauthier, 'Trois Commentaires Averroistes', p. 263-4; Costa, 'Le théologien et l'Éthique', §27-28.

²⁹² Albertus Magnus, *Commentarii in quartum librum Sententiarum*, dist. 49B, art. 6, p. 674-6: Aristoteles in primo *Ethicorum* Solonem Atheniensem reprehendit, quia post mortem dixit esse beatitudines...; Ad aliud dicendum quod Solon iste fuit legislator et praetor Atheniensium: et dixit felicitatem civilem impediri ab infortuniis mortuorum: et de hoc reprehenditur ab Aristotele, quia falsum est. Sed non reprehenditur de hoc quod aliquam felicitatem dicebat esse post mortem; see also Gauthier, 'Trois commentaires', p. 254.

²⁹³ Albertus Magnus, *Ethica* (second commentary), ed. Borgnet, *Opera omnia*, vol. VII, Paris, 1841, lib. I, tract. VII, cap. XV, p. 129: Prudentia igitur perfectior aliis est. Adhuc in civilibus perfectum non est, cui omnia civilia non subjiuntur ad ordinandum et disponendum ad optimum, sive civilia sint essentialiter facientia ad beatitudinem, sive subjective, sive organice, sive in exterioribus, sive in interioribus.

²⁹⁴ *AMSE*, I, lect. XI, num. 58, p. 57-58: Concedimus, quod felicitas civilis non est secundum terminum vitae, sed in vita hominis; sed per hoc non excludimus, quoin felicitas contemplativa divina non sit in vita; See also, Gauthier, 'Trois commentaires', p. 254-5.

mean. Therefore, in the separated soul, there cannot be such (civic) happiness. If there is any happiness (in the separated soul), it would be the contemplative.²⁹⁵

Certainly, Albertus understands Aristotle to be arguing that civic happiness ends with one's bodily death, while leaving open the question of contemplative happiness. Aristotle may be right regarding the happiness of the contemplative life among the living, but he has no means of knowing or studying the separated soul, i.e. the state of the soul after one's death - that would be a question reserved exclusively for the theologians.²⁹⁶ The life beyond, and the separated soul, Albertus claims, are not knowable through philosophy.²⁹⁷ Such knowledge can only be attained through a higher light - infused by God, rather than acquired through man's natural intellect.

While Albertus speaks of two kinds of happiness - the civic and the contemplative, and grounds the former to this life and the contemplative to the life beyond, his student, Thomas Aquinas, follows a slightly different path. Although Aquinas agrees with Albertus on the literal meaning of Aristotle - that man's happiness is not diminished posthumously through the changes of the extrinsic fortune, he nevertheless questions Albertus's assumption that contemplative happiness should be the ultimate perfection.²⁹⁸ Instead of a division between *felicitas civilis* and *felicitas contemplativa*, Aquinas distinguishes, very subtly, between *felicitas* and *beatitudo*. In his *Sententia libri ethicorum*, the term *felicitas* is used as the normative, following Grosseteste's translation of *eudaimonia* into *felicitas*. In this *Summa theologiae*, on the other hand, Aquinas employs the term *beatitudo* as the normative, and *felicitas* is used only when Aquinas quotes Aristotle or speaks in Aristotelian terms.

²⁹⁵ AMSE, I, lect. XI, num. 59, p. 59: Dicendum, quod felicitas civilis est operatio prudentiae, secundum quam intrat in substantiam aliarum virtutum, quae sunt in potentiis inferioribus, determinans eis medium; et ideo in anima separata non potest esse talis felicitas, etsi felicitas aliqua, scilicet contemplativa.

²⁹⁶ Gauthier, 'Trois commentaires', p. 255.

²⁹⁷ AMSE, I, lect. XIII, num. 80, p. 71: de eo quod nullam communicationem habet in operationibus quae fiunt a nobis et circa nos nihil potest per philosophiam sciri, quia intelligentias et causam primam per motus et effectus cognoscimus. Sed animae separatae sunt talis... Dicendum quod animae defunctorum remaneant post mortem non potest per philosophiam sufficienter haberi. Et supposito quod remaneant, de statu earum et qualiter se habeant ad ea quae circa nos fiunt, omnino nihil sciri per philosophiam potest. Sed haec cognoscuntur altiori lumine, infuso, non naturali, quod est habitus fidei. Sed tamen contra ea quae fide determinata sunt nihil potest demonstratio, eo quod fides non contra irrationem, quia nulla Veritas alii discordat, sed est secundum rationem, Psalmus : mirabilis facta est scientia tua. Et ideo eget lumine fidei, et concedimus rationes ad hoc; see also, Gauthier, 'Trois commentaires', p. 258-9.

²⁹⁸ Gauthier, 'Trois commentaires', p. 255-7.

This differentiation between *felicitas* and *beatitudo* is no mere semantic nuance that changes in conformity to genre and context. For Aquinas, there are intrinsic differences between the concepts of *felicitas* and *beatitudo*. *Felicitas* is the happiness that can be obtained in the present life without reference to God - the kind of happiness that Aristotle speaks of in the *Ethics*. *Beatitudo*, however, is closely associated with God - the *beatitudo hominis*, and the life after.²⁹⁹ Regarding the same passage as Albertus does above, Aquinas states in his *Ethics* commentary:

But because these things seem not to measure up in all respects to the conditions required for happiness above, he adds that those we call happy are men subject to change in this life, who cannot attain perfect beatitude. Since a natural desire is not in vain, we can correctly judge that perfect beatitude is reserved for man after this life.³⁰⁰

Yet Aquinas fails to lay out exactly how *felicitas* and *beatitudo* are related and distinct from one another. It seems that *felicitas* is an imperfect version of *beatitudo*, a stage in man's long pilgrimage towards salvation and blessedness. In the *Summa*, on a question of whether happiness (*beatitudo*) can be lost, he writes:

If we speak of imperfect happiness (*beatitudine imperfecta*), such as can be had in this life, in this sense it can be lost. This is clear of contemplative happiness (*felicitate contemplativa*), which is lost either by forgetfulness, for instance, when knowledge is lost through sickness; or again by certain occupations, whereby a man is altogether withdrawn from contemplation.

This is also clear of active happiness (*felicitate activa*): since man's will can be changed so as to fall to vice from the virtue, in whose act that happiness principally consists.

....

²⁹⁹ *SLE*, I, lect. 10, num. 120, p. 35: Si autem dicatur in aliquo alio felicitas consistere, aut hoc erit aliquid quo homo redditur idoneus ad huiusmodi operationem, aut erit aliquid ad quod per suam operationem attingit, sicut Deus dicitur esse beatitudo hominis.

³⁰⁰ *SLE*, I, lect. 16, num. 202, p. 60: Sed quia ista videntur non usquequaque attingere ad conditiones supra de felicitate positas, subdit quod tales dicimus beatos sicut homines, qui in hac vita mutabilitati subiecta non possunt perfectam beatitudinem habere. Et quia non est inane naturae desiderium, recte aestimari potest quod reservatur homini perfecta beatitudo post hanc vitam. Ultimo epilogat dicens, quod de his in tantum dictum sit.

But if we speak of that perfect Happiness (*beatitudine perfecta*) which we await after this life...³⁰¹

It appears that, for Aquinas, imperfect happiness (*beatitudo imperfecta*) is indeed equivocal to *felicitas*, which needs to be perfected by divine grace. The Aristotelian notion of happiness (*felicitas*) is the frontier of the humanly possible, the limit which man would reach in his mortal life without the illumination and gift of God. Again, like Albertus, Aquinas restricts the competence of Aristotle to the human and secular.

Taking a more theological perspective, Aquinas makes another distinction in his *Summa* between the happiness that man can attain in the present life, and true, perfect beatitude. However, this distinction does not necessarily coincide with that between *beatitudo* and *felicitas*. When asking whether man can be happy (*beatus*) in this life, Aquinas states that what can be attained in the present life is a ‘participation of happiness’ (*participatio beatitudinis*).³⁰² This notion is different from Aquinas’s concept of *felicitas*. A *participatio beatitudinis* is the sort of happiness that a pious Christian can achieve in the present life, seen from the point of man’s salvation and union with God. Aquinas argues:

The imperfection of participated Happiness is due to one of two causes. First, on the part of the object of Happiness, which is not seen in Its Essence: and this imperfection destroys the nature of true Happiness. Secondly, the imperfection may be on the part of the participator,

³⁰¹ *ST*, I2ae, q. 5, art. 4: Respondeo dicendum quod, si loquamur de beatitudine imperfecta, qualis in hac vita potest haberi, sic potest amitti. Et hoc patet in felicitate contemplativa, quae amittitur vel per oblivionem, puta cum corrumpitur scientia ex aliqua aegritudine; vel etiam per aliquas occupationes, quibus totaliter abstrahitur aliquis a contemplatione. Patet etiam idem in felicitate activa, voluntas enim hominis transmutari potest, ut in vitium degeneret a virtute, in cuius actu principaliter consistit felicitas. Si autem virtus remaneat integra, exteriores transmutationes possunt quidem beatitudinem talem perturbare, inquantum impediunt multas operationes virtutum, non tamen possunt eam totaliter auferre, quia adhuc remanet operatio virtutis, dum ipsas adversitates homo laudabiliter sustinet. Et quia beatitudo huius vitae amitti potest, quod videtur esse contra rationem beatitudinis; ideo philosophus dicit, in I Ethic., aliquos esse in hac vita beatos, non simpliciter, sed sicut homines quorum natura mutationi subiecta est. Si vero loquamur de beatitudine perfecta quae expectatur post hanc vitam, sciendum est quod Origenes posuit, quorundam Platoniorum errorem sequens, quod post ultimam beatitudinem homo potest fieri miser. Sed hoc manifeste apparet esse falsum dupliciter.

³⁰² *ST*, I2ae, q. 5, art. 3: Respondeo dicendum quod aliqualis beatitudinis participatio in hac vita haberi potest, perfecta autem et vera beatitudo non potest haberi in hac vita.

who indeed attains the object of Happiness, in itself, namely, God: imperfectly, however, in comparison with the way in which God enjoys Himself.³⁰³

Aquinas thus offers two perspectives with two overlapping but different distinctions between notions of imperfect and perfect happiness: one on the happiness that can be attained in the present life through man's own agency with virtue and natural reason, and the other on the happiness of the present life of a Christian.

It is in this context that we should understand the affirmations of Gauthier and Costa that Odonis follows the tradition set out by Albertus and Aquinas. All three of them ground Aristotle's discussions in the *Ethics* within the present life, without allowing for the possibilities of divine grace. Yet, although the formality of Odonis's distinction between the two happinesses follows closely that of Albertus and Aquinas, there are several important differences. For Odonis, the defining distinction between happiness of merit and happiness of reward is the good comprised by the two kinds of happiness. Happiness of merit is the good *through which* man is *made* worthy, while happiness of reward is the good *of which* man is worthy.³⁰⁴ Plainly speaking, happiness of merit, as the term suggests, is a reward for man's own merit. It is an active sense of happiness because it is the good that one acquires for himself through his virtue and virtuous acts. For a state of happiness of merit, man needs to be virtuous, and free from committing sin, as sin would tarnish the state of such happiness. It is a direct consequence of man's own actions:

Such happiness includes the good through which the happy man is made worthy of all the good rewarded. It is evident, because the Philosopher said above that the happy man does the good deeds well and constantly, according to the virtues, and such a man is worthy of reward.

³⁰³ *ST*, I2ae, q. 5, art. 3: Ad secundum dicendum quod participatio beatitudinis potest esse imperfecta dupliciter. Uno modo, ex parte ipsius obiecti beatitudinis, quod quidem secundum sui essentiam non videtur. Et talis imperfectio tollit rationem verae beatitudinis. Alio modo potest esse imperfecta ex parte ipsius participantis, qui quidem ad ipsum obiectum beatitudinis secundum seipsum attingit, scilicet Deum, sed imperfecte, per respectum ad modum quo Deus seipso fruitur.

³⁰⁴ *ExEth*, I, q. 31, f. 20vb: Quod declaro sic, omnis positio concordat fidei Christianae quae ponit felicitatem meritoriam in hac vita, talem quae non excludit mala poenalia, sed excludit mala culpabilia, quae non includit omnia bona, quibus homo dignus est, et includit bona per quae dignus est, quae non implet desideria, nec habet completa gaudia...

If those who fight and win in the Olympiads are worthy of the crowns, those who act well and ceaselessly throughout their life are worthy of much more.³⁰⁵

Happiness of reward, on the other hand, is accorded in one's life beyond death. It's complete and perfect, and fulfils every desire and joy of man. It is evident that such happiness is not attainable to man in the present life, and impossible without God's grace. Aristotle's silence on eternal beatitude makes him perfectly convergent with the teachings of Christian faith. Odonis asserts:

Faith says that happiness of merit does not come after death. Instead, only happiness of reward comes after death. Aristotle, consistent with the faith, said that the happiness he spoke of does not come after death. He was silent on happiness of reward because he did not know about it, and it is better to be tacit on things unknown than to remiss something and speak without proof.³⁰⁶

Nonetheless, for Odonis, Aristotle's ethical philosophy provides a first preparatory step towards happiness of reward. Although Odonis does not explicitly lay this out, it logically follows that, to be worthy of the rewards, man himself needs to be made worthy in the first place. To attain a perfect happiness after one's death, one needs to attain a happiness of merit in the present life. By speaking of what *can* be attained in this life, Aristotle is also talking about what *needs* to be attained for the eternal life. It is an imperfect form of happiness, yearning to be perfected through the participation of God's grace. Explaining the relationship between the happiness of merit of Aristotle and the happiness of reward of Christian faith, Odonis affirms:

Anything that is desired as a means to something else can be understood in two ways: firstly, because this other thing is different in species or kind, or secondly, because this other thing is of the same species, and the imperfect original desires the perfect other, just as to love God

³⁰⁵ *ExEth*, I, q. 31, f. 20vb: Quarto quod talis felicitas includat bona per quae felix dignus est omni bono praemio. Patet, quia dicit supra secundum virtutes operatur bonum et bene et semper, sed talis dignus est omni praemio. Si enim qui pugnant et vincunt in olimpiadibus coronatione digni sunt, multo magis illi qui in tota vita sua operantur bonum et bene et indesinenter.

³⁰⁶ *ExEth*, I, q. 31, f. 21ra: Ad tertium dicendum quod fides dicit felicitatem meritoriam non esse post mortem sed solam praemiatoriam. Philosophus autem veritati fidei concordans dicit felicitatem de qua loquimur non esse post mortem, de praemiatoria vero quia eam non noverat tacuit. Melius reputans tacere de incognitis quam aliquod remere et sine probatione dicere.

in this life is desirable even though it is imperfect, because to love God in the eternal life is perfect.

Thus, I say that the Philosopher intended that the act of the most perfect virtue, in which he places the essence of happiness, is not desirable as a means to another act, or as a means to a habit, or as a means to anything else born inherently in man. Therefore, he intended to affirm that the work of the most perfect virtue is desirable as a means to something else in the second way: that the very work itself, which is less perfect, is desirable as a means to a greater perfection. This does not contradict Christian faith, for indeed the act of charity is the highest good of this life, but it will be even better in the eternal life, where it will be the enjoyment in the final end.³⁰⁷

We mentioned above that Odonis may well be the first theologian to coin the distinction between *felicitas meritoria* and *felicitas praemiatoria*. John Buridan and several later commentators make use of Odonis's distinction between the *meritoria* and *praemiatoria*, but I have not been able to find any usage prior to Odonis.³⁰⁸ The search to verify Odonis's originality in minting the terms is frustrated by the text's customary lack of explicit citations. We may need to enlist help from an additional source. In his commentary on the *First Epistle to the Corinthians*, where Odonis raises the same question in the prologue - *utrum philosophia adversetur fidei* - and makes the same distinction between happiness of reward and of merit, the citations are the same (to *Matthew* and *Psalms*) as in the *Ethics* commentary, with an additional reference to Augustine's *Sermon innocentiae* and the

³⁰⁷ *ExEth*, I, q. 31, f. 21ra: Propter quod sciendum quod aliquod appeti propter alterum potest intelligi dupliciter. Primo modo propter alterum alterius speciei vel generis. Alio modo propter alterum eiusdem speciei, quia ipsammet imperfectum appetitur propter ipsammet perfectum, sicut amare Deum in hac vita appetitur tanquam imperfectum propter amare Deum in aeterna vita in qua erit perfectum.

Modo dico quod Philosophus intendit quod operatio perfectissimae virtutis in qua posuit essentiam felicitatis non est appetibilis propter operationem aliam, vel propter habitum, vel propter aliquod alterum natum inhaerere homini. Non tamen intendit negare quin operatio perfectissimae virtutis erit appetibilis. Secundo modo propter alterum, quia ipsa operatio minus perfecta est appetibilis propter ipsam maxime perfectam. Hoc autem non repugnat fidei Christianae, quoniam operatio caritatis in vita ista est optima, sed melior erit in aeterna vita, ubi erit principaliter fructiva ultimo fine.

³⁰⁸ See, C. H. Kneepkens, 'The Reception of Boethius's *De consolazione*', in E. Bonnefous, and A. Galonnier (eds.), *Boèce Ou La Chaîne Des Savoirs*, Louvain-la-Neuve, 2003, p. 724-6.

example of Paul the Apostle to explain how a happy person in this life can still suffer evil.³⁰⁹ Yet again, Odonis points to no near-contemporary sources, but instead carefully assembles citations from the *Scripture*, Augustine, as well as Aristotle to structure his distinction between happiness of merit and of reward – a practice suggesting that Odonis is formulating a thesis of his own.

A quick comparison between the two versions of the question also clearly indicates the orientations and underlining considerations of Odonis. While the *Corinthians* version is abundantly furnished with citations from the *Scripture*, Patristics (Augustine and Ambrose), and the *Ordinary Gloss*, the *Ethics* version refers sparsely to the Bible and offers only the authority of Aristotle to support his arguments. The *Corinthians* version has an additional proposition concerning the difference between experiential knowledge, which is that offered by Aristotle and philosophy, and revealed knowledge, which comes from God alone.³¹⁰ Earlier, Odonis concedes that Aristotle's truth is limited to the happiness of the present life, beyond the boundaries of which the Philosopher has no certain knowledge. The stripping away of theological material in the *Ethics* version of this question is evidence again of Odonis's secular focus in general. Even in a question that intrinsically calls for a discussion of theology and revealed truth, Odonis chooses, in his *Ethics* commentary, to attest the philosophical truth of Aristotle within the boundaries of the happiness of merit and of the present life.

Therefore, to conclude, although Odonis limits Aristotle's authority to the present life, to happiness of merit that is tenable with human acts and human agency alone, he nonetheless considers it a necessary preparation for the eternal life thereafter. The *Nicomachean Ethics* is a worthy guidebook

³⁰⁹ *SupCor*, Pr. q. 6, f. 5r: Ad evidentiam, primo sciendum quod felicitas est duplex, quaedam meritoria, quaedam vero praemiatoria. De meritoria dicitur *Matthei* 5, beati qui lugent, beati qui persecutionem patiuntur, et caetera. De secunda in *Psalm*o, beati qui habitant in domo tua Domine.

Ad cuius evidentiam sciendum quod illae duae felicitates in aliquo concordit, et in aliquo non. Felicitas enim praemiatoria excludit omnia mala poenalia, ut dicit Augustinus in *Sermone innocen*tiae, erit tempo quando nulli bono erit male, nec nulli malo erit bene. In hoc autem discordat felicitas meritoria ab ista, quia meritoria secum compatitur mala poenalia, sicut patet de Apostolo Paulo, qui dignus erat omni felicitate, et tamen multa mala patiebatur, sicut patet Apostolorum, fere per totum. Et in auctoritate allegata cum dicitur beati qui lugent, certum est quod lucto est aliqua paena, quam secum non compatitur beatitudo praemiatoria, quia dicitur quod absterget Deus omnem lacrimam ab oculis sanctorum, et caetera, apparet ulimto.

³¹⁰ *SupCor*, Pr. q. 6, f. 6v: Secundo dico quod doctrina Philosophi sumpta in speciali contradicit fidei Christianae. Quod probo, illa doctrina quae solis inititur humanae experientiae et ingenio naturali contradicit fidei; philosophia est hoc, ergo et caetera. Maior patet quia fides Christiana praedicat Deum esse incarceratum, passum, et talia. Sed hoc non capit ex se ratio humana, non etiam videtur sibi quod Deus voluit se tamen humiliare et tantam vilitatem in se sustinere, et non dicitur quod Deus qui est impassibilis et immortalis sicut passibilis et mortalis.

to attain *felicitas* in this life, as a Franciscan or otherwise. He may differ from his Franciscan predecessors in stating that Aristotle is without error, yet the substance of his approaches is not a radical departure from the Franciscan traditions, nor even, one would say, from the common contemporary practice at large. Odonis affirms the truth of Aristotle, but at the same time he applies qualifications and sets boundaries for such truth, and proposes taxonomical devices to reconcile literal and explicit contradictions between articles of faith and teachings of the *Ethics*.

3. The Individual as the Subject

If Odonis's declaration that Aristotle is without error in the *Ethics* is an act of intellectual conformity in the guise of a revolutionary departure, then on the question over the aim and subject of the *Ethics*, he certainly comes much closer to the Franciscan tradition of ethical voluntarism as exemplified by Olivi, Scotus, and Ockham. Odonis follows closely the doctrine of the supremacy of the will and its absolute freedom and contingency, while all his discussions are profusely weaved with the language and methodology of Aristotelian logic and metaphysics.

In the first two questions raised in the Prologue to his commentary, Odonis looks to pin down the subject of ethics: whether human good or human action is the primary subject (*subiectum primum*) of this science, and whether man as a free being (*homo ut liber*) is the primary subject of this science?³¹¹ Odonis follows up with two more questions concerning the nature and division of the moral science, asking whether it is the only science that is practical, and whether the moral science can be appropriately divided into ethics, which concerns the individual, economics, which concerns the household, and politics, which concerns the city.³¹² In anticipation of a more detailed examination of Odonis's arguments in these questions, his position can be quickly summarised as such: it is man as a free agent that is the subject of the moral science; human good and human actions cannot be the subject of this science, but fall under it, and are therefore the material of the moral science; the moral science is indeed the only practical science, because it is ordered towards the perfection of the

³¹¹ *ExEth*, Pr, q. 1, f. 1rb: Utrum bonum humanum sive operatio humana sit subiectum primum in hac scientia; 2: Utrum homo ut liber.

³¹² *ExEth*, Pr, q. 3, f. 1vb: Utrum haec scientia sola sit practica; 4: Utrum sit sufficienter divisa in ethicam yconomicam et politicam.

practical intellect; and finally the moral science cannot be divided into three separate parts, because the subject of the moral science - the free man - cannot be divided into three separate parts.

Seeing this, one may be tempted to ask why Odonis should be so pre-occupied with identifying the subject, the material, and the taxonomy of the moral science. Our commentator here goes far beyond a mere observation of scholastic formalities and devotes long and profuse arguments to counter the opposition and to support his own stance. It is certainly a reflection of the late medieval scholastic tendency to a metaphysical approach to the subject-matter of any academic discipline. Odonis is far from the only master to question the subject of Aristotle's *Ethics*. Indeed, as we shall see, it is a question raised by Albertus, Aquinas, and other commentators such as Brito and Burley. Nor is the question of subject restricted to the discipline of moral philosophy; rather it seems to be a ubiquitous practice in the domain of Aristotelian learning.³¹³ It is of primordial importance that, when approaching a scientific discipline such as the ethics, the scholar should know exactly what he is dealing with, what the objects of the science are, and with what methodology it ought to be approached. While the Aristotle is himself the first to propose a systematic division of scientific disciplines, he is nonetheless far from clear or coherent in demonstrating the underpinning metaphysical typology of such divisions. After all, Aristotle makes only declarative statements about such questions before quickly moving on to defining the more crucial aspects of his ethical enquiry such as the end of moral science. Aristotle does not explicitly make human good the subject of moral science, but says:

Surely then, knowledge of the good must be very important for our lives? And if, like archers, we have a target, are we not more likely to hit the right mark? If so, we must try at least roughly to comprehend what it is and which science or faculty is concerned with it.

Knowledge of the good would seem to be the concern of the most authoritative science, the highest master science. And this is obviously the science of politics, because it lays down which of the sciences there should be in cities. (*NE*, I, 1094a)

The knowledge of what is good falls under the consideration of Aristotle's moral science, but he clearly does not care whether its subject-matter is in fact the *subject* or the *matter*. The moral enquiry discusses the entirety of human life, both for the individual and, most of all, for the collective civic

³¹³ See, for example, Marco Forlivesi, 'Approaching the Debate on the Subject of Metaphysics from the Later Middle Ages to the Early Modern Age: The Ancient and Medieval Antecedents', *Medioevo*, 34, 2009.

body.³¹⁴ Aristotle envisages a study into the mores of a city as a whole, and places individual citizens in such social settings. The perfection of common good is ‘nobler’ and ‘more godlike’ than the perfection of individual good. It is in this context that he states that ‘a young person is not fitted to hear lectures on political science, since our discussions begin from and concern the actions of life, and of these he has no experience.’³¹⁵ Ethics cannot be probed speculatively as if in a theoretical science, and one can only become a proper student of the moral science once one has experienced the joys and challenges of life fully. Aristotle states: ‘the end of the study is not knowledge, but action.’³¹⁶

However, such delineation of the subject-matter is clearly insufficient for the medieval scholastics. Aristotle focuses on the search for the highest good of human life, placing it as the end of moral science. While it is obvious that man is the agent of moral actions, and it is through virtuous actions that man attains the final good, Aristotle does not designate precise metaphysical positions to man and his actions in the grand scheme of his ethics enquiry, and thus leaves the question open for his later medieval commentators.

Addressing the question of the subject of the moral science, Odonis references Eustratius of Nicaea, but clearly also has Albertus Magnus and Thomas Aquinas in mind.³¹⁷ Indeed, the fact that Odonis, in the very first question of the text, evaluates and subsequently rejects the claim that human good and human actions are the subject of the moral science, seems to be aimed directly at Albertus’s position of the double subject, and Aquinas’s affirmation of human actions as the primary subject. It is perhaps worth noting that Eustratius, Albertus, and Aquinas are all in fact saying different things, and human good and actions are, again, obviously different.

Albertus proposes a straightforward argument that human happiness is the primary subject of the moral science, while human actions are also the subject, but in a derived sense. Overall, the question is rather simple, for Albertus is relatively unconcerned about the metaphysical analysis of the concept

³¹⁴ *NE*, I, 1094b: And we see that even the most honourable of faculties, such as military science, domestic economy, and rhetoric, come under it. Since political science employs the other sciences, and also lays down laws about what we should do and refrain from, its end will include the end of the others, and will therefore be the human good. For even if the good is the same for an individual as for a city, that of the city is obviously greater and more complete thing to obtain and preserve.

³¹⁵ *NE*, I, 1095a.

³¹⁶ *NE*, I, 1095a.

³¹⁷ *ExEth*, Pr, q. 1, f. 1rb: Primo per Eustratium dicentem, quod subiectum ethicae est melioratio secundum unum hominem, haec autem melioratio est bonum humanum.

of subject. Albertus arrives essentially at the same conclusion as Eustratius, although the Greek Commentator is not explicitly acknowledged here. In the prologue to his first commentary, Albertus raises the question and provides a solution that the subject of the *Ethics* can be determined by looking at what is intended by the science, and what determines all other things in this science. In both cases, the subject is said to be happiness (*felicitas*):

Solution: It is to be argued that just as in the first philosophy, the subject (of ethics) can be doubly assigned. Either that which is primarily intended by the science. Thus, God is said to be the subject of divine science, even though God is not determined in anyway by this science, while all other things are determined by God; or that, according to which, things are determined in this science - it is the subject of this science. Thus, we say that the subject of this science is happiness, which is primarily intended, and because of which all other things, such as virtues, are determined.³¹⁸

Having established happiness as the primary subject, Albertus goes on to propose that the choice-worthy is also the subject in a derived, intermediate sense. The moral science, while intending on happiness, also intends on human choices, defined as those originated with the deliberative will. Any choice is essentially active, and concerns human acts - the end of a choice is to act, and actions are therefore the choice-worthy (or unworthy of choice). Actions, understood as a form of choice and the deliberation of the will (*forma eligibilitatis et deliberatio voluntatis*), are the principles that determine the parts of moral science, i.e. human mores.³¹⁹

In comparison, Aquinas provides a more metaphysical argument to support his thesis that it is human actions that are the subject of the ethics. In doing so, he demonstrates a deeply intellectualist approach to moral anthropology. Aquinas proceeds his arguments by establishing three branches of philosophy: natural philosophy, rational philosophy (i.e. logic), and moral philosophy. Aristotle affirms that the

³¹⁸ *AMSE*, Prologus, num. 4, p. 3: Solutio: Dicendum, quod sicut in prima philosophia subiectum potest dupliciter assignari, scilicet id de quo principaliter intenditur - et sic dicitur esse subiectum Deus, unde et scientia divina dicitur, quamvis de eo non determinetur in qualibet partes eius, sed alia omnia determinatur propter ipsum - vel id de quo communiter determinatur in scientia, et sic ens est subiectum eius; ita etiam dicimus, quod felicitas est subiectum huius scientiae, de qua principaliter intenditur, et alia propter ipsam determinantur sicut virtutes.

³¹⁹ *AMSE*, Prologus, num. 4, p. 3: Possumus tamen aliter dicere secundum praedeterminata, quod eligibile, quod est circa operationes humanas, egrediens a voluntate deliberante, est subiectum huius scientiae, de quo determinatur in qualibet parte eius, et hic dicitur mos humanus. Secundum vero quod forma eligibilitatis et deliberatio voluntatis cadit supra felicitatem sive moralem sive contemplativam, accipit rationem moris.

purpose of wisdom is to order, and thus, according to Aquinas, the purpose of each branch of philosophy is to understand the proper order of things under their relative remit. These things, which are to be ordered, are the primary subject of each branch of philosophical enquiry.³²⁰ The order of natural things pertains to natural philosophy, with natural things as its subject; the order of the acts of reason pertains to rational philosophy; and the order of voluntary actions pertains to moral philosophy.³²¹ Just as natural things are the subject of natural philosophy, voluntary human actions are the subject of moral philosophy:

Accordingly, it is proper to moral philosophy, to which our attention is at present directed, to consider human operations, insofar as they are ordered one another and to an end.³²²

However, this does not mean that Aquinas has an externalist focus on manifested actions alone - the centre of enquiry lies as much with the cognitive process as with the external action. While man's moral virtues are established through actions that are externally effectuated, any enquiry of mores and virtue cannot be completed without probing the internal cognitive process. Again, similar to Albertus, Aquinas asserts that only actions which originate from reason and the will are the subject of ethics:

I am talking about human operations, those springing from man's will following the order of reason. But if some operations are found in man that are not subject to the will and reason, they are not properly called human but natural, as, clearly appears in operations of the vegetative soul. These in no way fall under the consideration of moral philosophy.³²³

³²⁰ *SLE*, I, lect. 1, num. 1, p. 3: Sicut philosophus dicit in principio metaphysicae, sapientis est ordinare. Cuius ratio est, quia sapientia est potissima perfectio rationis, cuius proprium est cognoscere ordinem. Nam etsi vires sensitivae cognoscant res aliquas absolute, ordinem tamen unius rei ad aliam cognoscere est solius intellectus aut rationis. Invenitur autem duplex ordo in rebus.

³²¹ *SLE*, I, lect. 1, num. 2, p. 4: Nam ad philosophiam naturalem pertinet considerare ordinem rerum quem ratio humana considerat sed non facit; ita quod sub naturali philosophia comprehendamus et mathematicam et metaphysicam. Ordo autem quem ratio considerando facit in proprio actu, pertinet ad rationalem philosophiam, cuius est considerare ordinem partium orationis adinvicem, et ordinem principiorum in conclusiones; ordo autem actionum voluntariarum pertinet ad considerationem moralis philosophiae.

³²² *SLE*, I, lect. 1, num. 2, p. 4: Sic igitur moralis philosophiae, circa quam versatur praesens intentio, proprium est considerare operationes humanas, secundum quod sunt ordinatae adinvicem et ad finem.

³²³ *SLE*, I, lect. 1, num. 3, p. 4: Dico autem operationes humanas, quae procedunt a voluntate hominis secundum ordinem rationis. Nam si quae operationes in homine inveniuntur, quae non subiacent voluntati et rationi, non dicuntur proprie

The subject is limited to actions which are carried out through the will and reason, because it is only through these actions that man can be judged good or otherwise, and it is also only through these actions can man achieve happiness in the present life. Aquinas admits that man, as a rational being, may also be considered as the subject in a derived sense because all such moral actions are essentially human.³²⁴ Therefore, humanity and human morality are, for Aquinas, ultimately determined by human reason, which in turn commands absolutely the human will. While the subject of the moral science is human action, Aquinas is really speaking of actions that are based on human reason.

Odonis takes the opposite approach and offers a radical departure from his predecessors. The proposition that human good should be the primary subject is quickly dismissed - Odonis argues that human good falls instead under the *consideration* of the science, and is therefore its material (*materia*).³²⁵ He counters Aquinas's claim more forcefully, arguing that 'the works of nature is not the primary subject of natural science, and therefore the acts of man are not the subject of moral science.'³²⁶ Digging deeper, Odonis attacks the fundamental premises, upon which Aquinas builds his thesis that actions are the subject of moral science. In the third argument cited in opposition, Odonis lays out the logical premise of Aquinas opinion:

Third, the subject here is that which is the origin and cause (*de quo et ex quo*) of (moral) reasons, because it is the origin and cause with which reasons examine properties and locate mediums. These reasons seem to pertain solely to the subject. The reasons of this science have their origin and cause in human actions, as it is said in the Prologue. Therefore, the human action in common is here the subject.³²⁷

humanae, sed naturales, sicut patet de operationibus animae vegetabilis, quae nullo modo cadunt sub consideratione moralis philosophiae. Sicut igitur subiectum philosophiae naturalis est motus, vel res mobilis, ita etiam subiectum moralis philosophiae est operatio humana ordinata in finem, vel etiam homo prout est voluntarie agens propter finem.

³²⁴ *SLE*, I, lect. 1, num. 3, p. 4.

³²⁵ *ExEth*, Pr, q. 1, f. 1va: Ad secundum dicendum quod bona et iusta de quibus scientia ista intendit sunt materia huius scientiae, non subiectum primum, sed tanquam subiecti primi passiones vel effectus.

³²⁶ *ExEth*, Pr, q. 1, f. 1va: Sed oppositum videtur, quia naturalis operatio non est subiectum in scientia naturali, quare nec moralis erit subiectum in morali.

³²⁷ *ExEth*, Pr, q. 1, f. 1rb: Tertio quia illud est hic subiectum de quo et ex quo fiunt hic rationes, quia rationes probant de illo de quo fiunt proprietates eius et ex illo ex quo fiunt accipiunt media. Haec autem ad solum subiectum pertinere videntur; sed rationes huius scientiae fiunt de humanis actibus et ex hiis, ut dicitur in eodem prohemio. Quare actus humanus in communi est hic subiectum.

Odonis then proceeds to take the argument apart, arguing that the part that bears forth moral reasons does not necessarily constitute the primary subject of the enquiry. The object of philosophical ordering, such as human action in the moral science, cannot at the same time be the primary subject. Instead, human actions, just as human passions and human experience, are the objects under observation by the moral philosopher, and therefore constitute the material (*materia*) of this science. Odonis argues:

(Moral) reasons are caused by human actions just as they are caused and originated by human passions - they arise out of effects of the subject, rather than having the subject (directly) as the origin or cause. Such (actions and passions) are the cause and origin of moral reason, as much as that which is better known to us through experience. As Aristotle says here, the young are not the ready audience for this science.³²⁸

To put it in Thomist terms, the moral science orders not only human action, but also human passion; yet it would be clearly wrong to include human passions as a primary subject. Aquinas would obviously deny that the ordering of passion is tantamount to the ordering of voluntary actions in moral philosophy, because passion ultimately works with reason - the intellect can be clouded and corrupted by the potency of passion, and the search for moral truth and rectitude is essentially the search for the right reason, immune to the corrupting powers of passion. Odonis, on the other hand, does not grant human reason the superiority over passions. Passion, just as the external acts of man, are to be ordered by moral philosophy.

Odonis then provides two primary propositions to support his thesis that human acts and human good are the material, rather than the primary subject, of the moral science. Firstly, he argues that human actions fall under the consideration of the moral science, and are therefore its material. Secondly, he argues that acts cannot be the primary subject, because ethics, as a scientific discipline, cannot have its subject as its own conclusion. Moral philosophy searches for human good and for the right action to attain such good, and therefore such actions are the conclusion of this science, and it follows that actions cannot be the primary subject.

³²⁸ *ExEth*, Pr, q. 1, f. 1va: Ad tertium dicendum quod de actibus humanis fiunt rationes, sicut de passionibus et ex eis, sicut ex effectibus subiecti non sicut de subiecto vel ex subiecto, quia de ipsis et ex ipsis fiunt rationes tanquam de illis et ex illis quae magis nobis nota sunt per experientiam, ut dicitur in illa parte quae allegatur,. Quare iuuenis inexpertus non est auditor idoneus huius scientiae.

I respond firstly that human good and human action are the material of this science. Secondly, I say that it is not its subject.

Firstly, it is clear that all that falls under the consideration of a science should be its material, which is the subject's mode, passions, principles, effects, or whatever attributed to it. All these pertain to the scientific consideration, see Book I of *Posterior Analytics*. Human acts fall under the consideration of this science not only *per se*, but also as the man and his potences, forces, affections, passions, deeds, habits, dispositions, perfections and imperfections, statuses and dignities, conditions and mores, praise and blame, licit and illicit, duty and what is not due, etc., which all happen together in the circumstances of human life.

The second argument is proved as follows. No science proves its own subject from another subject, for if so, then it would consider the subject to be passion, and this cannot be appropriate, see Book I, *Posterior Analytics*. This science proves in chapter 9 of Book I, *Ethics*, human action comes from man as the subject of his own acts, therefore such action is not the subject of this science. It is clear to assume through the demonstration of the philosopher that it can be formed thus. ... A whole that is one *per se* may have singular parts with their own acts, but still has certain acts of its own (as a whole), distinct from the acts of the parts. The singular parts of man have their own acts, as the philosopher says of the eye, the hand, and foot, but this man still has acts of his own. After this, it is proved in the same place that this act is the superior and nobler act of the potency of man. Therefore, it can be clear that human work is not the subject of this science, in whichever way it is understood.³²⁹

³²⁹ *ExEth*, Pr, q. 1, f. 1va: Respondeo primo quod humanum bonum et humana operatio sunt materia huius scientiae. Secundo dico quod non subiectum eius.

Primum patet quoniam omnia quae cadunt sub consideratione scientiae sunt eius materia circa quam vel per modum subiecti vel passionum eius vel principiorum eius vel effectuum eius vel quomodolibet attributorum ad ipsum. Haec enim omnia sunt scientificae considerationis, primo *Posteriorum*. Sed operationes humanae cadunt sub huius scientiae consideratione nec solum ipse, immo ipse homo et hominis potentiae et vires, affectiones et passionem et operationes, habitus et dispositiones perfectiones et imperfectiones, status et dignitates, conditiones et mores, laus et vituperium, licitum et illicitum, debitum et indebitum, et cetera quae concurrunt inter circumstantias humanae vitae.

Secundum probatur, quoniam nulla scientia probat suum subiectum de alio subiecto. Tunc enim consideraret subiectum ut passionem, quod est inconueniens ex primo *Posteriorum*; sed haec scientia probat, primo *Ethicorum* capitulo 9, operationem humanam de homine ut de subiecto talis operationis sibi propriae; ergo ipsa operatio non est subiectum huius scientiae. Assumptum patet per demonstrationem Philosophi, quae sic formari potest: Omnem totum *per se* unum, cuius singulae partes habent operationes sibi proprias, habet etiam operationem aliquam sibi propriam distinctam ab operibus

Odonis then proceeds to define the subject in Question 2. Against the opinions offered by Eustratius and Albertus, and especially in contrast to Aquinas's thesis of rationality, Odonis underlines the *subjective* nature of the subject, considering freedom to be the primordial determinant in this question, and argues that the subject of the moral science to be the free man, i.e. a man that is a free agent of his moral actions.

To support his position, Odonis provides two arguments. Having already defined human good and human actions as the material under the consideration of moral philosophy, Odonis posits that the principle with which the material is considered constitutes the subject of the science. In moral science, the free man is the principle of moral actions, being the agent, provenance, and determinant of such acts:

Firstly, just as natural science has the principle and subject of natural things and acts, the moral science similarly has the principle and subject of moral things and acts. ... Therefore, in moral science the subject will be either the principle or the subject of moral things and acts. The free man is the principle and subject of first moral actions.

We should understand that natural beings which are considered in natural science have their principle in themselves and not in us. Moral things (which the moral science studies) have the free principle, i.e. the intellectual principle with choice (*prohaeresis*), i.e. with the elective appetite, as in Book 6 of *Metaphysics*.³³⁰

partium; sed partes singulae hominis habent operationes sibi proprias, ut inducit Philosophus de oculo, manu, et pede; ergo et ipse homo habebit operationem sibi propriam. Post hoc autem probatur ibidem quod est superioris et nobilioris potentiae hominis. Quare patere potest cuilibet quod huiusmodi operatio non est subiectum huius scientiae, quocumque modo ipsa sumatur.

³³⁰ *ExEth*, Pr, q. 1, f. 1vb: Primo quia sicut se habet scientia naturalis ad principium, et subiectum rerum et operationum naturalium, sic moralis ad principium, et subiectum rerum operationum moralium; hoc patet per simile. Sed naturalis scientia habet pro subiecto primo principium rerum et operationum naturalium vel earum subiectum, principium quidem secundum opinionem dicentem quod natura est subiectum primum scientiae naturalis, sed subiectum secundum ponentes quod ens mobile vel corpus mobile sit subiectum eius. Ergo in morali scientia subiectum erit vel principium vel subiectum rerum et operationum moralium. Homo autem ut liber est principium et subiectum primarum operationum moralium. Ad quod intelligendum debemus advertere quod naturalia ut considerata in naturali scientia habent principium naturale in seipsis non in nobis. Moralia vero de quibus est moralis habent principium liberum, scilicet intellectivum cum prohaeresi, idest cum appetitu electivo, ut dicitur 6 *Metaphisicae*.

In Odonis's analysis, there is a clear confluence between the concept of the *subject* and that of *subjectivity*. The *principium liberum*, which is the underlining principle of man's *subjectivity*, is the determinant element here in Odonis's definition of the moral subject. This is a theme that would recur time and again in the text of the commentary. For Odonis, the 'free principle' is equivalent to the intellectual or elective appetite, i.e., the will. The study of the moral science is in essence a study of the free will.³³¹ Although, in the context of the ethics, the will cannot be studied in isolation from the other human faculties, it is clear that the will is the principle of all moral acts, and therefore absolutely central to the realm of ethical enquiry. This stance certainly places Odonis in close affinity with his Franciscan *confrères* in their ethical voluntarism, and against the Thomist school of moral rationality.

The second argument arises from the reading and structure of Aristotle's text itself. The principle whose passions are probed first of all, is the subject of this science,³³² and as Aristotle would proceed throughout his book of *Ethics*, it is the passions of man that are first probed:

Secondly because in whatever science the first subject is always that with which the first passions are examined in that science. In the moral science, these first occurrences are examined about the free man, therefore the free man is the subject in the moral science.

Evidently, human passions are under consideration here. Through the examination of human passions, for example, man is understood to have his own acts and can be made happy in his own acts, see Book I of *Ethics*. Equally, (with the examination of human passions), man is to be made virtuous or evil, deranged or studious, through habituation and his innate being ordered towards virtues, Book II of *Ethics*. Equally, Book III studies acting voluntarily without violence or ignorance and having in one's own power to become good or bad, depraved or studious. Equally, the moral science studies human being as the conjugal animal in the domestic science, as the civil animal in political science. Therefore, it appears that the entire moral sphere revolves around man as the primary subject.³³³

³³¹ This can be contrasted to Aquinas's thesis, which essentially considers the study of ethics as a study of the human reason.

³³² Aristotle, *Posterior Analytics*, I.

³³³ *ExEth*, Pr, q. 2, f. 1vb: Secundo quia in quacumque scientia, illud est subiectum primum de quo probantur passionibus primae in illa consideratae, patet ex primo *Posteriorum*. Sed in morali scientia, probantur de homine ut libero passionibus primae in ea consideratae. Ergo est subiectum in ea.

Odonis has his eyes firmly on the man as the agent of all moral actions and the master of his passions. The approach here is therefore an anthropological one - it studies the nature of man as the source of all moral reasoning, volition, and actions, in sharp contrast to Aquinas's methodology of rationality that investigates the work of human reason and its relationship with man's moral actions. A person may be understood in different contexts, such as in relationship to himself, to his family, and to the city, but he is nonetheless the same moral entity. By pinning the subject to the free and subjective person, and consequently, to the undetermined determinant that is the intellectual appetite, Odonis lays the groundwork for much of his original readings of Aristotle's text that would manifest an individual subjectivism and moral voluntarism. The will is placed front and centre of the moral universe, and is the first principle for all moral actions, regardless of the social context and the rational capacities of the agent-subject in question.

It is then in this light that we must approach Odonis's thesis, posited in Question 4, that the moral science should not be divided into the ethical, economic, and political, for the personal, domestic, and civic, respectively. This position goes against the norm that had been established by the later Middle Ages.³³⁴ Aristotle himself suggests this tripartite division in *Eudemian Ethics*. The division proposed by Eustratius also serves to formalise the triad as his commentary was translated alongside Aristotle's original text by Robert Grosseteste. Eustratius argues that the man as an individual is the concern of ethics, the household that of economics, and the state that of politics. This division is to have a profound influence in later medieval moral education and Aristotelian commentary. The triad of ethics, economics, and politics had become the accepted structure in the arts faculty curricula in the thirteenth century.³³⁵

Bonaventure also followed the tripartite scheme to divide moral philosophy into the *monastica*, *oeconomica*, and *politica*, based on the argument that each branch is concerned with the rectitude of

Assumptum patet accipiendo passiones hic consideratas, ut verbi gratia sumatur iste habere propriam operationem et posse fieri felicitatem in propria operatione, haec probantur de homine primo *Ethicorum*. Item fieri virtuosum vel vitiosum pravam vel studiosum per assuefactionem et innatum esse ad virtutes, 2 *Ethicorum*. Item agere voluntarie sine violentia et ignorantia et habere in potestate sua fieri bonum vel malum, pravam vel studiosum, 3 *Ethicorum*. Item esse animal coniugale in economica. Item esse animal civile in politica et sic breviter apparet quod totum morale negotium resolvitur ad hominem tanquam ad subiectum primum.

³³⁴ Jill Kraye, 'Moral Philosophy', in E. Kessler, C. B. Schmitt, Q. Skinner (eds.), *The Cambridge History of Renaissance Philosophy*, Cambridge, 1998, p. 303-4.

³³⁵ *Ibid*, p. 303.

ordering in the sphere of the personal, the household, and the civic.³³⁶ Albertus and Aquinas are but two exponents of this tripartite division that dominated the arts faculties, and reflect the broader intellectual currents in compartmentalising the study of moral science into three separate realms. Albertus provides a simple justification for this division, stating that man can be considered in two ways - in relation to himself and in relation to others, while the latter can in turn be divided into the relation to his household and the relation to his city, thereby giving three branches of the moral science.³³⁷ In this way Albertus comes close to making man the subject of the moral science, since it is the different societal facets of man that constitutes the different branches of moral philosophy.

Aquinas proposes the same division of the moral science, and, again, grounds it on a tightly formulated metaphysical basis. For Aquinas, what is significant here is the difference in number, and the relationship between the parts and the whole - between the individual and the household, which has more members, and the city, which has all the citizens as its members. The three domains of the moral science - *monastica*, *economica*, and *politica* - differ from each other as parts from whole, and are distinguished by the different ends to which they are ordered. The city contains the household, and the household contains the individual, but their morals and ends are not necessarily the aggregate of the constituent parts, nor are the morals and ends of the constituent part align completely with that of the whole. Aquinas claims:

It must be known moreover that the whole, which the multitude of citizens or the family constitutes, has only one unity of order, and within this order there is nothing that is one absolutely. A part of this whole, therefore, can have an act that is not the act of the whole, as a soldier in an army has an activity that does not belong to the whole army. However, this whole does have an act that is not proper to its parts but to the whole—for example, an assault of the entire army. Likewise the movement of a boat is a combined action of the crew rowing the boat. There is also a kind of whole that has not only a unity of order but of composition, or of conjunction, or even of continuity, and according to this unity a thing is one absolutely; and therefore there is no act of the part that does not belong to the whole. For in things all of one piece the motion of the whole and of the part is the same. Similarly in composites and in conjoined things, the act of a part is principally that of the whole. For this reason it is

³³⁶ See Christopher Cullen, *Bonaventure*, Oxford, 2007, p. 91.

³³⁷ *AMSE*, Prologus, num. 3, p. 3: homo dupliciter potest considerari: vel secundum se vel in comparatione ad alterum, et in comparatione ad alterum dupliciter: vel ad domesticos coniunctos vel ad omnes communiter qui sunt sub eadem civitate...

necessary that such a consideration of both the whole and its parts should belong to the same science. It does not, however, pertain to the same science to consider the whole, which has solely the unity of order, and the parts of this whole.³³⁸

The personal, familial, and political are all united under the title of the moral science because one constitutes part of another. Yet they are sufficiently different for the Angelic Doctor to be talking about the triple division. Unlike the underlining reasons of Albertus, who proposes the triad because a man is considered differently in relation to different societal institutions, Aquinas divides moral philosophy according to the different ends that each branch serves - the personal (*monastica*) is ordered towards the good of the individual person, the familial (*economica*) towards the good of the domestic household, and the political towards the good of the city.³³⁹ Moral philosophy is easily divisible in this way because its primary subject is human actions, which can be simply divided and categorised into the triad as the end of each action can be straightforwardly identified: there are things one does for his own private good, things that one does for the good of his family, and those for the common good of the city.

Matthew Kempshall has delineated the philosophical challenges of such division on the part of Aquinas, namely how *exactly* the individual good relates to the common (household or political) good.³⁴⁰ It is a question of great controversy whether Aquinas's distinction serves to subsume the individual completely to the common good, or to guard the good of the individual against the encroachment of the common good. Aquinas's understanding treads on the balance between the idea

³³⁸ *SLE*, I, lect. 1, num. 5, p. 4: Sciendum est autem, quod hoc totum, quod est civilis multitudo, vel domestica familia habet solam ordinis unitatem, secundum quam non est aliquid simpliciter unum; et ideo pars huius totius potest habere operationem, quae non est operatio totius, sicut miles in exercitu habet operationem quae non est totius exercitus. Habet nihilominus et ipsum totum aliquam operationem, quae non est propria alicuius partium, sed totius, puta conflictus totius exercitus. Et tractus navis est operatio multitudinis trahentium navem. Est autem aliud totum quod habet unitatem non solum ordine, sed compositione, aut colligatione, vel etiam continuitate, secundum quam unitatem est aliquid unum simpliciter; et ideo nulla est operatio partis, quae non sit totius. In continuis enim idem est motus totius et partis; et similiter in compositis, vel colligatis, operatio partis principaliter est totius; et ideo oportet, quod ad eandem scientiam pertineat consideratio talis totius et partis eius. Non autem ad eandem scientiam pertinet considerare totum quod habet solam ordinis unitatem, et partes ipsius.

³³⁹ *SLE*, I, lect. 1, num. 6, p. 4: Et inde est, quod moralis philosophia in tres partes dividitur. Quarum prima considerat operationes unius hominis ordinatas ad finem, quae vocatur monastica. Secunda autem considerat operationes multitudinis domesticae, quae vocatur oeconomica. Tertia autem considerat operationes multitudinis civilis, quae vocatur politica.

³⁴⁰ See Kempshall, *Common Good*, chapter 3.

of the common good that Aristotle considers to be greater and more godlike, and the Christian theological end-goal of an individual's union with God.³⁴¹ On a metaphysical principle, it is clear that the part is subsumed to the total, and the good of the individual should be ordered towards the good of the greater collectivity; yet Aquinas also shows the theological considerations that, when answering the celebrated question, a life of contemplation is superior to that of activity, first and foremost because the contemplative life is the perfection of oneself.³⁴² In so doing, Aquinas consistently creates a problem for himself to reconcile the private and the social aspects of man's moral life, and keeps having to justify the existence of actions that are purely private and personal, and those that are societal.

Such is the context of Odonis's question 4 of the Prologue, which addresses many of the problems of Aquinas's analysis, but also takes aim at the wider acceptance of the concept of *ethica monastica*. Odonis denies outright that there can be any ethics that concerns purely and precisely one individual person *qua* individual, and therefore there cannot be a division of the ethics into the traditional triad, as if the personal, familial, and political are three compartmentalised spheres of human life.³⁴³

The idea of an *ethica monastica* can only be valid when considering the solitary life - a life deprived of all social contacts and living completely self-sufficiently.³⁴⁴ While Aristotle himself does not consider this mode of living and denies its humanity by arguing that such a man, living in complete

³⁴¹ *Ibid*, p. 78-80.

³⁴² *ST*, II2ae, q. 182, art. 1: Respondeo dicendum quod nihil prohibet aliquid secundum se esse excellentius quod tamen secundum aliquid ab alio superatur. Dicendum est ergo quod vita contemplativa simpliciter melior est quam activa. Quod philosophus, in X Ethic., probat octo rationibus. Quarum prima est, quia vita contemplativa convenit homini secundum illud quod est optimum in ipso, scilicet secundum intellectum, et respectu propriorum obiectorum, scilicet intelligibilium, vita autem activa occupatur circa exteriora.

³⁴³ *ExEth*, Pr, q. 4, f. 2rb: Hiis igitur praemissis ad questionem dicenda sunt tria. Primum quod moralis possibilis tradi non est sufficienter divisa in illas tres partes ut iam visum est.

³⁴⁴ Even for a life of complete solitude, Odonis argues that there is no need for a separate moral science specifically for such a way of life, firstly because the teachings of the standard, social version of ethics will largely suffice, and secondly, because a solitary life is more divine, and therefore there is no need for a moral science to guide one's actions.

See *ExEth*, Pr, q. 4, f. 2rb: Haec autem monastica non tenetur fuisse traddita per philosophos, cuius ratio duplex est. Una quia visum est eius quod documenta in ethicis generaliter tradita sufficiant pro regimine illius solitariae vitae, quae tamen sic generaliter supposita non sufficeret pro regimine vitae domesticae vel civilis. Alia ratio quia illum modum vivendi putaverunt magis divinum quam humanum, unde Eustratius ait, si in moribus conversari et solitudinem habitare eligat aliquis, vitam eligens diviniorem valde pax vel nihil arte ministrante indigebit.

solitude, is either a god or a beast, and therefore outside the scope of his enquiry,³⁴⁵ the medieval scholastics have the real-life example of monks, hermits, and holy men to make such solitary way of life a realistic possibility. However, neither Albertus nor Aquinas is really speaking of men who are cut off society - instead, the idea of *ethica monastica* applies to the sphere of human action that is ordered towards a private, personal end, and concerns the individual person alone. It is this argument that poses problems for Odonis, for when living in society, no one can be separated from the civic and the domestic. As Odonis has already established, the subject of the moral science is one, and that is the free man. The material of the moral science is the relationship between the free man and the wider social world, and every volition, every action, and every virtue or vice is an interaction between the man and his social settings. Odonis states:

Third, the ethical science treated in the book of *Ethics* is not to be called monastic science as if it deals with only the morals of one person (as we have proved above). No teaching that is concerned precisely with the life and morals of one man can be more concerned with the virtues necessary for living civically than with other ways of life. The teachings of the book of *Ethics* speak of many virtues of civic life rather than other ways of life. It concerns prudence, justice, fortitude, magnificence, liberality, friendship, truth, and agreeableness.³⁴⁶

In Odonis's argument, one sees both the unitary and social nature of the individual as the subject. The moral science cannot have a division of *ethica monastica* because the solitary man does not feasibly exist, or at least, such man does not fall into the purview of the moral science, which, as established by Odonis, has human actions as its material of enquiry, and all human actions, understood as the voluntary actions of the will, are by necessity impossible to be divorced from a social context. Such actions have virtues as end and principle, and any teaching on virtue cannot concern one solitary person alone. Odonis argues:

³⁴⁵ *Pol*, I, 1253a: The proof is that the state is creation of nature and prior to the individual is that the individual, when isolated, is not self-sufficing; and therefore he is like a part in relation to the whole. But he who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god.

³⁴⁶ *ExEth*, Pr, q. 4, f. 2rb-va: Tertium (tertio, *X*) quod ethica (hetica, *X*) in libro *Ethicorum* tradita non est dicenda monastica ac si ageret de moribus solum unius hominis. Quod probatur primo sic, nulla doctrina agit praecise de vita et moribus unius hominis, quae agit de virtutibus magis necessariis homini ut civiliter viventi quam aliter viventi; sed doctrina libro *Ethicorum* agit de multis virtutibus magis necessariis homini ut civiliter viventi quam aliter viventi. Istud apperet quoniam agit de prudentia, de iustitia, de fortitudine, de magnificentia, de liberalitate, de amicitia, de veritate, et eutrapelia.

Secondly, no teaching that concerns any aspect of any virtue, be it virtue's generation, growth, well-being, action, definition, or mode, speaks precisely of the morals of one single person. For indeed certain virtues are required of men as part of a community or a member of a household, on which instruct the teachings of civic life. The teachings of the book of *Ethics* deal with all these in the second book, as well as in the third book on will and counsel, choice and intention, which are all communal virtues. Therefore, it follows (that the moral science cannot be thus divided).³⁴⁷

A person may be considered in relation to himself, as a private individual, but he cannot be separated from the social context, either the domestic or the political. The person, as the subject of moral science, and as the individual, cannot be divided into three, because the first principle of the subject - the free and sovereign will - cannot be divided into the private, the familial, and the political.

Here, however, Odonis encounters a recurrent problem of medieval moral philosophy, made particularly acute by Aristotle's text: if all moral actions are social, all moral goods are public, how does the individual fit into the moral landscape? Any moral agent is inevitably intertwined with the social context, and yet as a Christian, one is responsible for himself on his path towards the ultimate union with God. While Odonis does not explicitly tackle the question, it should follow that, just as a free man as the subject is indivisible with regard to the private, familial, and political spheres of life, a free man should be indivisible with regard to his social and spiritual lives. The subject of ethical science is as much a social being as a follower of Christ, having an end both in the *felicitas* of this world and the *beatitudo* of the next. Odonis asserts in question 31 of Book I that Aristotle speaks truth of the present life and everything that is attainable within it, but is ignorant of the life beyond death and the path of beatitude. Yet, this does not necessarily disqualify virtue ethics from man's path to salvation. Indeed, in the very beginning of the commentary, Odonis also states that happiness, both in the sense of *felicitas* and *beatitudo*, is achieved through virtue. The study of moral science is, therefore, a vital step towards the union with God:

³⁴⁷ *ExEth*, Pr, q. 4, f. 2va: Secundo quoniam nulla doctrina agens de generatione et augmento salute et operatione diffinitione et modo cuiuscumque virtutis agit praecise de moribus unius hominis. Aliquae enim virtutes requiruntur personis communibus et patribusfamilis, de quibus civilis doctrina ageret. Sed doctrina libro *Ethicorum* agit de hiis omnibus in secundo *Ethicorum*, et in tertio de voluntario et consilio, electione et intentione, quae sunt omni virtuti communia. Quare sequitur ut prius.

Happiness (*felicitas*), or beatitude (*beatitudo*), is known through knowing virtue, and such happiness (or blessedness) is the most desirable good among all desirable things for all men; and it is not known to all men, as Augustine said in *De Trinitate* 13, chapter 4: 'It is wonderful, however, since the will to obtain and retain blessedness is one in all, whence comes, on the other hand, such a variety and diversity of wills concerning that blessedness itself; not that anyone is unwilling to have it, but that all do not know it.'³⁴⁸

Augustine, here cited by Odonis, reasons that most men do not have happiness, not because they are evil, malicious, or even unfaithful to God, but because they do not know of such happiness. Odonis uses Augustine to justify the spiritual purpose of the study of ethics: the knowledge of blessed happiness can only be attained through virtue. Therein is precisely the value of the moral science for man and his path to salvation. Odonis cites Augustine in agreement, but also plants the individual firmly in the voluntarist tradition. The free man, as the subjective agent of virtue and virtuous acts, needs the right order of the will to know the most desirable end and to will it. The value of the individual, however much he is indivisible from his social context, is the very principle of freedom that he possesses. A person with a free, undetermined will is by necessity always an acting agent in the inherently complex social and moral landscape. It is the juxtaposition as well as the separation between a social anthropology and a voluntary psychology that makes Odonis's *Ethics* schema work and marks his departure from the previous commentators while remaining faithful to the Franciscan tradition of voluntarism. This image of a man endowed with free will navigating the world of moral philosophy is a *topos* that would recur time and again in Odonis's commentary. While the sphere of moral actions and virtues is always social and external, one nonetheless retains his agency and moral merit with the freedom principle - the will that is the ultimate power to move man to action.

³⁴⁸ *ExEth*, Pr, f. 1rb: Cognitione quippe virtutis cognoscitur felicitas seu beatitudo, quae inter cuncta desiderabilia est bonum per omnes homines desideratissimum, licet non per omnes vere cognitum, unde Augustinus 13 *De Trinitate* capitulo 4, admirans ait, mirum autem est cur capescendae atque retinendae beatitudinis una sit voluntas omnium, unde tanta rursus existat varietas et diversitas voluntatum, non quod aliquis eam nolit, sed quia non omnes eam noverunt.

PART II: JUSTICE

Having already established the context of Odonis's commentary on the *Ethics* as well as Odonis's own stated aims and purposes of his writings, we must now investigate his moral philosophy in more details. Part II zooms in, therefore, onto Odonis's writings on the virtue of justice.

It is in the discussion on the virtue of justice that Odonis demonstrates a high level of intellectual ingenuity compared to both his Franciscan predecessors and the Aristotelian commentators of his time. What marks Odonis out in his conception of the virtue of justice, or indeed his virtue ethics as a whole, is the combination of the Franciscan idea of virtue as a state of the will, and the Aristotelian position of virtue as a behavioral quality - the balance between the internal state and the external state, between the personal and the societal. Odonis shares neither the Augustinian pessimism of human nature, nor the Thomist faith in human rationality; instead, what manifests in his commentary, especially in his discussion of justice, should be described as a certain 'Franciscan Humanism' - a belief that man is ultimately capable of a virtuous life through his own accord, empowered by the decisions he makes through his own free will. Odonis's analysis of justice offers particularly interesting insights into both the philosophy of our Franciscan master and the medieval world at large. Through justice, there is an inextricable connection between the two worlds that Odonis is trying to bring together in his commentary - justice is a key concept of classical philosophy epitomised by Plato and Aristotle, and justice is one of the primary guidelines offered by the Christian faith to Christ's followers.

Odonis's writings on justice also manifests his underlying assumptions on the nature of the individual moral agent and his role within the institutional machinery. In his commentary on Book V, Odonis places the discussion of natural law and human positive law front and centre. The discussion of legal philosophy forms the core of Odonis's reading of justice. What we find here, however, is a humanism that pits the individual against the overwhelming legal machinery. In an argument over the merits of a free and moral individual *vis-à-vis* a polished and systematic legal institution, Odonis always argues for the virtuous potential of the subject-agent's moral freedom.

Part II is divided into six chapters, progressing from the fundamental to the complex, from the theoretical to the practical. Chapter I starts with a conceptual enquiry into Odonis's very own definition of the virtue of justice. Chapter II builds on the findings on Odonis's concept and raises the questions over justice's relationship with the law, both in the sense of *ius* and of *lex*. Law and justice are obviously intimately linked concepts, not only in a semantic relation, but also in Aristotle's own claim that legal justice (or justice as lawfulness) is the complete virtue. Chapter III therefore examines Odonis's interpretation of this claim, and thereby attempts to further our understanding of Odonis's philosophy of both morality and law. Chapter IV takes the reader away briefly from the theme of justice to look at the concept of friendship, which is an indispensable component in our broader understanding of justice as a societal virtue. Finally, chapters IV and V tackle two practical questions found in Odonis's text, again revolving on the *topos* of the relationship between justice and law, and between the individual and the institution: is the governance of law superior to the governance of man, and should a judge go against juridical procedures in the pursuit of justice? The final section offers a conclusion.

I. JUSTICE AS A VIRTUE

1. Aristotle and the Concept of Justice

The Greek term for justice, *dikaiosune*, is inherently ambiguous. The root *dikaios* should not only be construed narrowly as what is just, but what is righteous and morally good in general. Plato's discussion of justice offers a perfect example of a broad reading of the term, which is understood as what is right and harmonious.³⁴⁹ Justice is both a quality of society, understood socially, and a quality of a person's soul, understood psychologically. A just society has every social element in proportion and harmony, where each person is rightly attributed to a place best fitted to his aptitude. A just person, in his turn, has the three parts of his soul in proportion and harmony with each other. Therefore, for any individual, justice is the foundation of all virtues - wisdom is justice of rational soul, courage is justice of the spiritual soul, and temperance is the justice of the appetitive soul.³⁵⁰ In all, what is just, both for a person and for a society, is what a right and harmonious relationship between its parts. Justice is, in this sense, a complete goodness for society, and a complete virtue for an individual.

Although we find much common ground between Plato and Aristotle, who wants to offer the best flute to the best flautist, the Stagirite is clearly not satisfied with Plato's definition, which seems overly broad and general. Given that justice has such a vital place in the well-being of society and individuals, it needs to be understood thoroughly and precisely. Aristotle dedicates the entirety of the fifth book of *Ethics* to the virtue of justice, and starts by presenting the *endoxa* of justice, 'as commonly known', as the habit that 'disposes people to do just action, act justly, and wish for what is just.'³⁵¹ The *endoxa*, described as *intentio commune* by Odonis, does little to elucidate the connotation of the concept of justice.³⁵² It is first, and foremost, a personal virtue. There is a just person, doing a just thing, and possesses the virtue of justice. David O'Connor points out that the Aristotelian notion of justice as a personal virtue is, obviously, at odds with what the modern society

³⁴⁹ See Bertrand Russell, *History of Western Philosophy*, London, 2004, Book I, part II, 14.

³⁵⁰ Plato, *Republic*, trans. R. Waterfield, Oxford, 2008, 428a-444e.

³⁵¹ *NE*, V, 1129a.

³⁵² Instead of developing a concept of justice from first principles, Aristotle chooses to work with the common semantic connotations of the term *dikaiosune* and *dikaios* by streamlining these different senses of justice. In Moerbeek's translation, it is rendered as 'Videmus omnes talem habitum volentes dicere iustitiam...'.

considers as justice - a quality of social structures and institutions, instead than a quality of personal morality.³⁵³ This description can also be used, incidentally, to differentiate Aristotle from Plato. While Plato considers justice to be both a quality of a political system and an individual, the Stagirite thinks of it only as a personal habit and a psychic state. This *endoxa*, however, is not philosophically satisfactory. Justice (*dikaiosune*) is defined *in terms of* what is just (*dikaios*), and yet what is just remains manifestly unclear. The aporia then shifts to the definition of what is *just*. Instead of looking for an overarching concept of ‘the just’, Aristotle offers a bifurcated reading with two different *endoxa*. Justice is understood either as what is lawful (*legale*) and what is fair (*equale*):

Let us acquire some grasp, then, of how many ways there are in which a person is said to be unjust. Both the lawless person and the greedy and unfair person seem to be unjust. Obviously, then, both the lawful and the fair person will be just; and thus the just is the lawful and the fair, and the unjust is the lawless and the unfair. (*NE*, 1129a)

Yet, for Aristotle, justice as lawfulness (or as Odonis refers to it, legal justice) and justice as fairness are not two mutually exclusive species of justice - quite the contrary, there are profound connections and extensive overlaps between the two. What is lawful is fair, and what is fair is instructed by law:

Since, as we saw, the lawless person is unjust and the lawful just, it is clear that whatever is lawful is in some way just; for the things laid down by the legislative science are lawful, and each of these we describe as just. The laws have something to say about everything, their aim being the common interest either of all the citizens, or of the best, or of those in power, or of some other group. So, in one sense, we call everything just that tends to produce or to preserve happiness and its constituents for the community of a city.

Law requires us to do the acts of a courageous person... as well as those a temperate person... (*NE*, 1129b)

Here arises the first problem of Aristotle’s typology for his medieval audience. Although the Philosopher’s thought is very clear - justice is understood in two ways - he does not offer a clear distinction between the two species of justice, or a thorough analysis on their relationship. The

³⁵³ David O’Connor, ‘Aristotelian Justice as a Personal Virtue’, *Midwest Studies in Philosophy*, 13, 1998, p. 417.

nebulous links between the two species of justice arise from Aristotle's negative language - justice is described negatively, demarcated by what is unjust:

But what is unfair is not the same as what is unlawful, but differs as part from whole (since everything that is unlawful is unfair, but not everything that is unfair is unlawful.) (*NE*, 1130b)

The logic would seem to follow that lawfulness is part of fairness, hence subjecting law to the broad sense of morality.³⁵⁴ However, Aristotle does not explicitly endorse this contrariety. Instead, he argues that justice as lawfulness is the complete virtue, since law commands everything that is virtuous, forbids every vice:

(Law) demands actions in accordance with the other virtues, and forbids those in accordance with vices, correctly if it is correctly established, less well if it is carelessly produced. Justice in this sense, then, is complete virtue, not without qualification, but in relation to another person. (*NE*, 1129b)

Hence, the scope of legal justice seems to be greater than that of fairness. This would appear counter-intuitive, especially given the Greek philosophical context, where Plato never grounds concept of justice to the notion of legality.

Obviously, there are significant similarities between the two interpretations of justice – for both Aristotle and Plato, justice involves rendering to those what they deserve, be it freedom, wealth, honour, or social status. In Book V, Aristotle considers the first aspect of justice as ‘a principle of distribution according to merit’:

For everyone agrees that justice in distribution must be in accordance with some kind of merit, but not everyone means the same by merit; democrats think that it is being a free citizen, oligarchs that it is wealth or noble birth, and aristocrats that it is virtue.

So the just is a sort of proportion. (*NE*, 1131a)

³⁵⁴ If non-A is part of non-B, then B is part of A.

But Aristotle also goes far beyond the idea of proportionate distribution, and considers justice in a far more dynamic manner than that for which Plato allows. Justice is a virtue of social transactions, economic or otherwise - a just person makes right what is wrong in such social transactions (rectification), and pays back what he owes (reciprocity). Aristotle states:

The other kind of justice is rectificatory, which is found in both voluntary and involuntary transactions. It belongs to a different species from that above (*i.e. justice of distribution*).

...

What is just in transactions is nevertheless a kind of equality, and what is unjust a kind of inequality, in accordance, however, not with that kind of proportion, but with arithmetical proportion. (*NE*, 1131b-1132a)

And:

Some hold that reciprocity is just without qualification.

...

Reciprocity, however, fits neither distributive nor rectificatory justice... since often they conflict.

...

When people associate with one another for the for the purpose of exchange, however, this kind of justice - reciprocity in accordance with proportion, not equality - is what binds them together, since a city is kept together by proportionate reciprocation. For people seek to return either evil for evil - otherwise they feel like slaves - or good for good - otherwise no exchange takes place, and it is exchange that holds them together. (*NE*, 1132b)

What is more perplexing, however, is Aristotle's concept of justice as lawfulness, and his assertion that legal justice is equivalent to the complete virtue. While justice is the social virtue *par excellence* - 'the only virtue considered to be the good of another'³⁵⁵ - it is also important to keep in mind that justice as a virtue is always an internal habit. At any rate, it is impossible to disentangle the just person

³⁵⁵ *NE*, V, 1130a; see also, O'Connor, 'Aristotelian justice', p. 418.

from his social interactions - Aristotle's virtue ethics always has a social dimension. The discussion of justice is where Aristotle reveals the internal tension between the personal and the societal.

When referring to justice as lawfulness, the Stagirite probably has in mind an idealist vision of law - a law, or a system of laws, that governs the entirety of the city's moral life. One always needs to bear this in mind when reading Aristotle's claim in *Politics* that the city is better governed by laws than by man, since the law is sufficient and extensive in forming virtuous citizens and in promoting the common good. However, this position risks delegating the individual's freedom and judgement to the judgement and dictates of the law. After all, if one can become wholly virtuous simply by obeying the law, then it would defeat the entirety of Aristotle's virtue theory and his idea that virtue is a habit of the mind - the complete virtue is *certainly not* a simple obedience. Further, as we see in *Politics*, Aristotle's idea of law appears somewhat positive, instituted by the lawgiver for a political community. It is difficult to envisage in practical terms a system of law that fosters every single virtue in a citizen: law can command a person to march into battle, but it can hardly make him intrinsically courageous; law can institute the practices of alms-giving or even redistributive taxation, but it can not make a citizen intrinsically generous. In short, there is a general discrepancy between the competence of law and the sphere of morality.

An externalist interpretation attempts to bridge the gap. Crisp argues that, in justice, Aristotle seems to be more concerned with righting the wrong in the external state of affairs, rather than looking for a balanced disposition of the mind in the same way as the other moral virtues.³⁵⁶ This corresponds to the remit of legal justice, which corrects what is wrong in the external acts and draws them back into the virtuous mean, through exhortation, command, and coercion. In this sense, justice as lawfulness can be understood as the whole virtue because it can deliver the external acts of every virtue without a man's being virtuous himself.

However, this externalist interpretation would come into odds with Aristotle's general principle that virtue is a habit of an individual. David O'Connor points to Aristotle's idea of justice as an 'intrapersonal virtue', just like any other intrapersonal virtue.³⁵⁷ It differs from other virtues merely in its being oriented towards the interpersonal. However, this reading renders the role of law becomes even more problematic: although law commands every virtue and forbids every vice, its power does

³⁵⁶ Crisp, 'Introduction', p. xxii.

³⁵⁷ O'Connor, 'Aristotelian justice', p. 419-23.

not extend to the inner person - law corrects the external acts but does not moderate man's internal desires. Justice is the virtue that is understood in relation to another person, but the question remains of how the external commands of law can make a person intrinsically virtuous.

In brief, Aristotle's text presents any attentive reader a plethora of problems which remain controversial even to this day. Such intellectual ambiguities challenge both the moderns and medievals alike. Now, we should turn our focus to the scholastics and their approach to Aristotle's concept of justice.

2. The Concept of Justice: Jurists and Theologians

While assessing the definition offered by Aristotle, Odonis has available to him several alternative readings of justice, and he is faced with the task of reconciling the definition offered by the Justinian *Codex* as well as that of Augustine to what is presented by Aristotle. The Roman law definition is, perhaps more than that of Aristotle, the very concept of justice that first conjures up in the mind. Aquinas confronts head-on the validity of Aristotle's definition against that of the *Codex*; Odonis, similarly, examines whether Aristotle stands up to the definition offered in Roman law. Taken from the writing of Ulpian, the *Codex* goes:

Justice is the constant and perpetual will of rendering to each person what is his due.³⁵⁸

Of course, Ulpian would hardly have the medieval notion of placing justice, as a virtue, in the will, nor the concept of the will as a faculty of the soul that propels man into action, let alone the Franciscan idea of the will as the ultimate unmoved mover, the principle of man's freedom. Yet, this coincides with Aristotle's idea of *willing* what is just, and has thus leads Odonis, together with most other scholastics, to consider justice as a virtue of the will. For Ulpian, and consequently the civilian lawyers, the pursuit of justice is task administered relentlessly through the legal system by jurists and lawyers, and it serves to bring to each person what is rightly theirs. In this sense Ulpian follows the same path as Aristotle in thinking that justice is about the administration of a fairness of wealth, honour, dignity, and punishment, and it concerns the relationship between one another and the

³⁵⁸ *Inst*, I, and again *Digest*, I. 1. 10.

commonweal as a whole, since rendering to each person his due is only valid based on the assumption that, without justice, there would be men who have more, or less, than what is his due by right (*ius suum*).

Augustine's definition of justice, however, offers a more theological and interior reading:

Justice is love serving God alone, and consequently governing aright everything subject to man.³⁵⁹

In comparison, Augustine's understanding of justice is far more internal.³⁶⁰ Inspired by Plato's idea of justice as harmony and proportion, Augustine relates justice exclusively to God and to oneself. Man's love and service for God is the prerequisite for justice, and thus only in God can man become truly just. The idea that justice is love for God and that everything proceeds henceforth goes far beyond the administrative concept presented by Roman law. Augustine's justice is a state of the interior. He asserts, in the Platonic fashion, that, for a man to be just, there must first and foremost be 'right order within man himself'.³⁶¹ Odonis does not cite Augustine's definition directly; nonetheless, as we shall see, the idea of justice as *amor* can be traced throughout Odonis's commentary on Book V.

A far more evident influence is, as we have established in Part I, Aquinas. The Dominican Doctor's wording of the question (whether justice is fittingly defined as being the perpetual and constant will to render to each one his right?) is closely mirrored by that of Odonis (whether justice as commonly known is here fittingly described?).³⁶² Odonis obviously starts from a different standpoint from that of Aquinas. While Aquinas questions the validity of the jurists' definition against that of Augustine and Aristotle, Odonis questions the definition of Aristotle against that of the jurists. This clearly betrays a ready acceptance of Aristotle's thesis on Aquinas's part that any virtue, including the virtue of justice, is a habit. Aquinas problematises the notion of justice as a 'constant and perpetual will' in

³⁵⁹ Augustine, *De moribus Ecclesiae*, xv: Iustitia est amor Deo tantum serviens, et ob hoc bene imperans ceteris, quae homini subiecta sunt.

³⁶⁰ See Mary Clark, 'Augustine on Justice', *Revue d'Études Augustiniennes et Patristiques*, 9, 1963, p. 87-88.

³⁶¹ Augustine, *De civitate Dei*, XIX, 4, 37-68.

³⁶² *ST*, II2ae, q. 58, art. 1: Quid sit iustitia? ... Videtur quod inconvenienter definiatur a iurisperitis quod iustitia est constans et perpetua voluntas ius suum unicuique tribuens.

ExEth, V, q. 1, f. 93rb: Utrum iustitia secundum communem intentionem sit hic convenienter descripta?

the jurists' definition, and suggests that, in order to fit the jurists with both Augustine and Aristotle, *voluntas* should be understood as *actus*, whose constancy and perpetuality makes it into a habit. *Voluntas* is mentioned by the jurists only affirm that any just act must be voluntary, rather than to equate justice to the will. Aquinas argues:

The aforesaid definition of justice is fitting if understood aright. For since every virtue is a habit that is the principle of a good act, a virtue must needs be defined by means of the good act bearing on the matter proper to that virtue. ...

Now in order that an act bearing upon any matter whatever be virtuous, it requires to be voluntary, stable, and firm, because the Philosopher says that in order for an act to be virtuous it needs first of all to be done "knowingly," secondly to be done "by choice," and "for a due end," thirdly to be done "immovably." Now the first of these is included in the second, since "what is done through ignorance is involuntary". Hence the definition of justice mentions first the "will," in order to show that the act of justice must be voluntary; and mention is made afterwards of its "constancy" and "perpetuity" in order to indicate the firmness of the act.

Accordingly, this is a complete definition of justice; save that the act is mentioned instead of the habit, which takes its species from that act, because habit implies relation to act. And if anyone would reduce it to the proper form of a definition, he might say that "justice is a habit whereby a man renders to each one his due by a constant and perpetual will": and this is about the same definition as that given by the Philosopher who says that "justice is a habit whereby a man is said to be capable of doing just actions in accordance with his choice."³⁶³

³⁶³ *ST*, II2ae, q. 58, art. 1: Respondeo dicendum quod praedicta iustitiae definitio conveniens est, si recte intelligatur. Cum enim omnis virtus sit habitus qui est principium boni actus, necesse est quod virtus definiatur per actum bonum circa propriam materiam virtutis. Est autem iustitia circa ea quae ad alterum sunt sicut circa propriam materiam, ut infra patebit. Et ideo actus iustitiae per comparisonem ad propriam materiam et obiectum tangitur cum dicitur, ius suum unicuique tribuens, quia, ut Isidorus dicit, in libro Etymol., iustus dicitur quia ius custodit.

Ad hoc autem quod aliquis actus circa quamcumque materiam sit virtuosus, requiritur quod sit voluntarius, et quod sit stabilis et firmus, quia philosophus dicit, in II Ethic., quod ad virtutis actum requiritur primo quidem quod operetur sciens, secundo autem quod eligens et propter debitum finem, tertio quod immobiliter operetur. Primum autem horum includitur

Aquinas's attempt to reconcile the jurists' definition with that of Aristotle certainly plays into the medieval tradition of assigning justice to the will. Saint Anselm famously states that 'justice is the rectitude of the will'.³⁶⁴ Aquinas subscribes to this tradition, and places the virtue of justice in the will in his question on its subjective location, having argued that it cannot be a virtue of the cognitive power, i.e. the intellect, but a virtue of the appetite:

The subject of a virtue is the power whose act that virtue aims at rectifying. Now justice does not aim at directing an act of the cognitive power, for we are not said to be just through knowing something aright. Hence the subject of justice is not the intellect or reason which is a cognitive power. But since we are said to be just through doing something aright, and because the proximate principle of action is the appetitive power, justice must needs be in some appetitive power as its subject.³⁶⁵

In turn, justice can only be in the intellective appetite, because the sensitive appetite cannot relate to another:

Now the appetite is twofold; namely, the will which is in the reason and the sensitive appetite which follows on sensitive apprehension, and is divided into the irascible and the concupiscible. Again the act of rendering his due to each man cannot proceed from the

in secundo, quia quod per ignorantiam agitur est involuntarium, ut dicitur in III Ethic. et ideo in definitione iustitiae primo ponitur voluntas, ad ostendendum quod actus iustitiae debet esse voluntarius. Additur autem de constantia et perpetuitate, ad designandum actus firmitatem.

Et ideo praedicta definitio est completa definitio iustitiae, nisi quod actus ponitur pro habitu, qui per actum specificatur, habitus enim ad actum dicitur. Et si quis vellet in debitam formam definitionis reducere, posset sic dicere, quod iustitia est habitus secundum quem aliquis constanti et perpetua voluntate ius suum unicuique tribuit. Et quasi est eadem definitio cum ea quam philosophus ponit, in V Ethic., dicens quod iustitia est habitus secundum quem aliquis dicitur operativus secundum electionem iusti.

³⁶⁴ Anselm of Canterbury, *De veritate*, in *Opera Omnia*, ed. F.S. Schmitt, 1946, vol. I, cap. 12, p. 194: iustitia igitur est rectitudo voluntatis propter se servata.

³⁶⁵ *ST*, II2ae, q. 58, art. 4: Respondeo dicendum quod illa potentia est subiectum virtutis ad cuius potentiae actum rectificandum virtus ordinatur. Iustitia autem non ordinatur ad dirigendum aliquem actum cognoscitivum, non enim dicimur iusti ex hoc quod recte aliquid cognoscimus. Et ideo subiectum iustitiae non est intellectus vel ratio, quae est potentia cognoscitiva. Sed quia iusti dicimur in hoc quod aliquid recte agimus; proximum autem principium actus est vis appetitiva; necesse est quod iustitia sit in aliqua vi appetitiva sicut in subiecto.

sensitive appetite, because sensitive apprehension does not go so far as to be able to consider the relation of one thing to another; but this is proper to the reason. Therefore justice cannot be in the irascible or concupiscible as its subject, but only in the will: hence the Philosopher defines justice by an act of the will, as may be seen above.³⁶⁶

Matthias Perkams argues that, for Aquinas, justice seems to be concerned more with the external acts than with man's passions.³⁶⁷ In Thomist human psychology, passions are regulated by the sensitive appetite, and virtues that moderate man's passions, such as courage and temperance, are subjectively located in the sensitive appetite. The will, on the other hand, is the instigator of external acts - the mover that moves man into action. The rectitude of the will, therefore, is not the rectitude of one's decisions, for decisions are taken by the interplay of the intellect and the sensitive appetite, but rather the rectitude of one's external actions. Perkams disentangles Aquinas's understanding of justice from that Aristotle, and affirms:

For Aquinas, justice is linked essentially with questions about the rules by which human actions should be directed. This is important from a systematic point of view. The treatment of justice provides an opportunity to transcend the more strictly defined realm of virtue ethics and forge a link to the ethics of actions, which is not central to Aristotle, who focuses mainly on virtuous behaviour as a member of one's own political community.³⁶⁸

Aquinas's concept of justice suffers from several problems. If justice is a habit of the intellective appetite, then evidently the domain of justice must be limited to those acts over which the will is competent. However, since Aquinas considers that actions follow the dictate of reason, and unjust actions are results of a corrupted intellect, it seems that the will is ultimately dominant over nothing

³⁶⁶ *ST*, II2ae, q. 58, art. 4: Est autem duplex appetitus, scilicet voluntas, quae est in ratione; et appetitus sensitivus consequens apprehensionem sensus, qui dividitur per irascibilem et concupiscibilem, ut in primo habitum est. Reddere autem unicuique quod suum est non potest procedere ex appetitu sensitivo, quia apprehensio sensitiva non se extendit ad hoc quod considerare possit proportionem unius ad alterum, sed hoc est proprium rationis. Unde iustitia non potest esse sicut in subiecto in irascibili vel concupiscibili, sed solum in voluntate. Et ideo philosophus definit iustitiam per actum voluntatis, ut ex supradictis patet.

³⁶⁷ Matthias Perkams, 'Aquinas's Interpretation of the Aristotelian Virtue of Justice and His Doctrine of Natural Law', in Istvan P. Bejczy, *Virtue Ethics in the Middle Ages: Commentaries on Aristotle's Nicomachean Ethics, 1200-1500* (Leiden, 2008), p. 137.

³⁶⁸ Perkams, 'Aquinas's Interpretation of Justice', p. 139.

but the execution of the intellect's judgements.³⁶⁹ If so, then justice, as the general virtue, can only be understood in a superficial manner: all voluntary actions concern morality, and all actions need to be executed by the will; however, the will is not responsible over any of these actions because the will follows the command of the intellect. This renders justice a virtue of the external acts, disconnected from the internal psychological faculties. This is clearly erroneous. In fact, Aquinas's argument for justice as the virtue of the will is extremely weak. As we have seen above, the proof proceeds negatively, eliminating the parts of the soul where justice cannot be located, and finally leaving it to the intellectual appetite. The Angelic Doctor offers no positive proof other than simply stating that the Philosopher says so.

In comparison, the Franciscan tradition understands justice as a much more internal virtue. Bonaventure also cites Saint Anselm on justice as the rectitude of the will, but also considers justice the complete virtue, that governs every aspect of a person's life.³⁷⁰ All commands of the *Decalogue* can be reduced to a single command: 'Do justice', as justice governs man's relation with God, with one's neighbours, and with oneself. While Bonaventure is clearly aware of Robert Grosseteste's complete translation of the *Nicomachean Ethics*, this idea that justice is the complete virtue clearly has little relation to Aristotle's insistence that justice as lawfulness is the complete virtue. Instead, his discussion of justice resembles more closely that of Plato and Augustine, where justice is, as a cardinal virtue and in the literal sense of *cardinale*, a virtue upon which the rest of man's moral life hinges. Bonaventure underlines justice's competence over acts of distribution and fairness, but nonetheless always discusses it in conjunction with the other cardinal virtues, which are inseparable from one another. In his *Hexaëmeron*, Bonaventure states:

From this it is called virtue, because it is the strength of the mind to do the good and avoid evil. Temperance modifies, prudence rectifies, justice orders, fortitude stabilises. And they are all intertwined. For it is necessary that temperance be prudent, justice be strong; also that prudence be sober, just, strong, etc.³⁷¹

It is clear from the many passages on justice and the cardinal virtues that Bonaventure makes little direct use of *Nicomachean Ethics*, although he broadly follows the *topoi* of Aristotelian discussions

³⁶⁹ For Aquinas's intellectualism, see, for example, Bonnie Kent, *Virtues of the Will*, p. 156-174.

³⁷⁰ Bonaventure, *De decem praeceptis Domini*, coll. 1. n. 21 (V510); see also, Cullen, *Bonaventure*, p. 99-100.

³⁷¹ *ColHex*. VI. vis. I. part 3. 14.

such as defining justice as a virtue regarding others. While later Franciscans, for whom the *Ethics* had become an unavoidable text, would come to delve much deeper into the subject-matter, Bonaventure already lays the intellectual foundation for the Franciscan strand of ethical voluntarism. Against the dominant philosophical current of locating different virtues in the different parts of the soul - a thesis to which Aquinas subscribes - Bonaventure argues that all four cardinal virtues, and by extension, all acquired virtues, must be all located in the free part of the soul.³⁷² The Seraphic Doctor is yet to develop a sophisticated theory of the freedom of the will, and considers that the free part of the soul is shared by both the will and the intellect; however, the basis is already in place - all moral virtues, and especially the cardinal virtues, are subjectively in the rational, rather than the sensitive, part of the soul, because the rational part is man's principle of freedom.

John Duns Scotus takes the argument to another level with a new set of paradigms, which would come to influence many an argument of Odonis. Having distinguished between natural powers and free powers of the soul, and identifying the will as a free power, Scotus firmly grounds all moral virtues in the will:

Just as the habit of prudence is generated in the intellect either by the first elicited act or by several elicited acts, so too right virtue is generated in the will, inclining it to right choosing, either through the first right act of choice consonant with the dictate of right reason, or by many right choices³⁷³

Justice, as a cardinal virtue, is therefore also subjectively located in the will, which alone has the capacity of free choice. While the location of Scotus's virtue does not *per se* make his concept of justice more interior, it does mean that moral virtues all share one mental faculty and justice is not the sole virtue that is concerned with the execution of one's acts. Instead, justice, or the rectitude of the will, disposes man to act justly through its regulation of the mental faculties within. Scotus argues:

Just as the will is bound to have rectitude in its own act, therefore, so it is required to have it in all the exterior acts in which it cooperates as moving cause. Thus, by moving the inferior potencies rightly, their acts become right by a participated rectitude, and so also in the

³⁷² Bonaventure, *Sentences*, III, dist. 33. q. 3; see also, Kent, *Virtues of the Will*, p. 212-3.

³⁷³ *Ord*, III, dist. 33, num. 43 (40): tamen sicut in intellectu, vel per primum actum, vel per plures actus elicitos, recte generator habitus prudentive, ita etiam per ipsum rectum eligere consonum recte, rationi, vel recto dictamini rationis, vel per multas tales electiones generatur in voluntate virtus recta, inclinans ipsam ad recte eligendum.

opposite way, by not moving them rightly, the rectitude the will ought to give them is lacking and they are not right. And thus, by moving them in an unrighteous way, the will deprives them of that rectitude.³⁷⁴

The will itself has, in turn, two inclinations. Scotus again cites Saint Anselm and attributes two affections to the will: the *affectio commodi* (the affection for the advantageous) and the *affectio iustitiae* (the affection for justice).³⁷⁵ Although, for Scotus, the affection for advantage can only will for the benefit of the self, it does not necessarily follow that the *affectio commodi* is the animalistic instinct in the human soul. The *affectio commodi* is not a purely Aristotelian concept of the natural instinct let loose without the guidance of reason. Scotus identifies the love for God with the *affectio commodi*, a natural part of human inclination, since God is the absolute good and lacks all evil and undesirability.³⁷⁶ The *affectio iustitiae*, on the other hand, pertains to objects that are not oriented to the agent himself. Scotus insists that only beings with both affections are free in the truest sense.³⁷⁷ Freedom is manifested in choice – therefore, it is only when one has both affections that the will is compelled to make a choice. Whether the will follows the *affectio commodi* and choose self-interest or the *affectio iustitiae* and chooses justice (with the possibility of self-sacrifice), the will nonetheless makes a free choice:

³⁷⁴ *Ord*, II, dist. 42, ad quaes. 2: Secundo dico, quod licet peccatum non possit esse formaliter nisi in voluntate vel in actu eius, materialiter tamen potest esse in istis actibus dictis, scilicet cogitatione, sermone et opere, quia secundum Anselmum ubi supra, voluntas est motor in toto regno animae, et omnia obediunt sibi; sicut ergo voluntas tenetur habere in actu suo rectitudinem, sic tenetur habere illam in aliis actibus exterioribus, ad quos cooperatur, ut motor. Sicut igitur movendo non recte, sunt actus earum non recti, quam rectitudinem debet voluntas illis dare, et ita movendo eas non recte, privat eas illa rectitudine. See also, Alain Wolter, ‘Introduction’, William Frank (ed. trans.), *Duns Scotus on the Will and Morality*, Oxford, 1997, p. 38.

³⁷⁵ *Ord*, III, dist. 26, num. 110: Hoc etiam probatur, quia in voluntate, secundum Anselmum, assignantur duae affectiones, scilicet affectio iustitiae et affectio commodi...

It should be noted that although Scotus cites Anselm, the distinction between the two affection of the will is first coined by Hugh of Saint Victor in his *De sacramentis*, liber I, pars 7, cap. 11, entitled: *De appetitu iusti et appetitu commodi*. For more on the Victorian school of influence on Franciscans, see Sylvain Piron, ‘Franciscan et victorins. Tableau d’une réception’, in Dominique Poirel (ed.), *Ecole de Saint Victor à Paris : Influence et le rayonnement du Moyen Age à l’époque moderne*, Turnhout, 2010, p. 521-545.

³⁷⁶ Wolter, *Will and Morality*, p. 40.

³⁷⁷ Douglas Langston, *Conscience and Other Virtues: From Bonaventure to MacIntyre*, University Park, 2001, p. 56.

The affection of justice is nobler than the affection of advantage, understanding not only acquired and infused affection but also innate affection, which is congenital freedom, according to which the will can will some good that is not ordered to itself. But according to the affection of advantage it can will nothing save in order to itself – and it would have this if it was precisely intellective appetite following cognition without liberty, as sense appetite follows sense cognition. From this I wish to get only the following: since ‘to love something in itself’ is a freer act and more communicative than ‘to desire it for oneself’, and since the former act agrees more with the will insofar as it has at least the innate affection of justice, while the latter agrees with the will insofar as it has the affection of advantage, the consequence is that just as these affections are distinct in the will, so the habits inclining toward them will be distinct in the will. I say therefore that charity perfects the will insofar as it is affected by the affection of justice, and that hope perfects it insofar as it is affected by the affection of advantage; and so there will be two distinct virtues, not only because of the acts, which are ‘to love’ and ‘to desire’, but also because of what is susceptible of them, which is the will insofar as it has the affection of justice and of advantage.³⁷⁸

Scotus considers the *affectio iustitiae* as nobler than the *affectio commodi*, and in the voluntarist context, a choice made in accordance with the *affectio iustitiae* is *freer* than that made purely for one’s own advantage. Therefore, justice becomes not only an inclination of the will, but also the manifestation of its freedom. It is important to note, however, that the *affectio iustitiae* is not a virtue, but a mere inclination that is innate to the will. While the double-affection thesis is a significant departure from Aristotelian ethics, Scotus nonetheless follows a strain of Aristotle’s thought in that the affection for justice is a natural human capacity to be perfected into the *virtue* of justice through man’s repeated actions.

³⁷⁸ *Ord*, III, dist. 26, num. 110: Nobilior est affectio iustitiae quam commodi, non solum intelligendo de acquisita et infusa, sed de innata, quae est ingenita libertas, secundum quam potest velle aliquod bonum non ordinatum ad se. Secundum autem affectionem commodi, nihil potest velle nisi in ordine ad se, - et hanc haberet si praecise esset Appetitus intellectivus sine libertate sequens cognitionem intellectivam sicut appetitus sensitivus sequitur cognitionem sensitivam. Ex hoc volo habere tantum quod, cum ‘amare aliquid in se’ sit actus liberior et magis communicativus quam ‘desiderare illud sibi’, et conveniens magis voluntati in quantum habet affectionem iustitiae saltem innatae, alius autem conveniat voluntati in quantum habet affectionem commodi, sequitur quod sicut istae affectiones sunt distinctae in voluntate, ita etiam habitus inclinantes ad actus illos erunt distincti in voluntate. Dico ergo quod caritas perficit voluntatem in quantum est affecta affectione iustitiae, et spes perficit in quantum est affecta affectione commodi; et ita erunt distinctae virtutes non tantum ex actibus qui sunt ‘amare’ et ‘desiderare’, sed etiam ex susceptivis, quae sunt voluntas in quantum habet affectionem iustitiae et commodi.

In another question, Scotus returns to the Aristotelian paradigm of justice as a virtue that concerns others. However, Scotus does not follow Aristotle's scheme of the double division of justice into the fair and the lawful. Instead, he attributes justice additionally to friendship and obedience, saying:

Now justice needs to be subdivided according to what follows.

Here one must note that, in one's ordering to another, one can be disposed rightly first by sharing oneself with another as much as one can, or by sharing with him something else or one's own possessions.

The virtue that inclines to the first is friendship, whereby one gives oneself to one's neighbour as far as one can give oneself, and as far as one's neighbour can receive. And this is the most perfect moral virtue, because the whole of justice is more perfect than the virtues that relate to oneself, and this friendship is most perfectly justice.

But if one shares something else with one's neighbour, this is either extrinsic goods or intrinsic goods. To share intrinsic goods, insofar as these belong to the support of individual human life, from the extrinsic goods that men need is called 'commutative justice'³⁷⁹; and it is the one that people more frequently call justice, to the extent something equivalent is exchanged. But if one shares with one's neighbour something necessary for life in community, either this is rule, which belongs to the presiding magistrate, and this species of justice lacks a name but it can be called presiding justice or lordly justice. Or one shares with one's neighbor the justice of subjection, and this species of justice is called obedience.³⁸⁰

³⁷⁹ A note on translation: *iustitia commutativa* is here translated as 'commutative justice', but the equivalent in Aristotle's text is rendered elsewhere, as per modern convention of Aristotelian scholarship, as 'rectifactory justice'.

³⁸⁰ *Ord.* III, dist. 34, num. 58-60: *Iustitia vero subdividenda est, propter ea quae sequuntur. Ubi sciendum est quod in ordine ad alterum potest aliquis primo recte se habere, communicando se illi quantum potest se communicare, vel communicando illi aliquid aliud; virtus inclinans ad primum est amicitia, qua quis dat se ipsum proximo, quantum potest se dare, et in quantum potest proximus habere eum; et haec est perfectissima virtus moralis, quia tota iustitia est perfectior bis quae sunt ad se ipsum, et haec est perfectissima iustitia.*

Si autem communicet sibi alterum, aut sunt bona extrinseca aut intrinseca pertinentia ad victum humanum. De bonis extrinsecis, quae indigent homines commutare, dicitur iustitia commutativa, et haec frequenter dicitur iustitia pro tanto, quia et commutatur aliquid aequivalens. Si autem communicet sibi aliud necessarium adiunctum, aut est regimen, et hoc

The discussion here has a distinct Augustinian flavour of considering justice in terms of love for oneself, and for one's friends or neighbours. God here is not discussed as Scotus is in the process of discussing the moral virtues as opposed to grace and beatitude, but any reader can easily fill in the gaps and conclude that, by necessity, justice, as the rectitude of the will, would dispose man to love God. While Scotus does not manifestly deny the validity of Aristotle's scheme of division of the virtue of justice, and indeed he takes up the Aristotelian term of *iustitia commutativa*, he does not heed for Aristotle's concept of justice as lawfulness. Neither does he seem to care much for the Philosopher's principle of reciprocity, which is in turn replaced as giving oneself entirely and thoroughly to one's friend. Although such friend may be expected to reciprocate in equal measure, as indeed Aristotle states that 'goodwill is said to count as friendship only when it is reciprocated' (*NE*, 1155b), it is not explicitly stated in such terms by Scotus. However, Scotus does pick up the Aristotelian *topos* when he equates friendship with perfect justice. Aristotle does not consider friendship to be absolutely equivalent to justice, but rather:

Friendship seems also to hold cities together, and lawgivers to care more about it than about justice; for concord seems to be something like friendship, and this is what they aim at most of all, while taking special pains to eliminate civil conflict as something hostile. And when people are friends, they have no need for justice, while when they are just, they need friendship as well; and the highest form of justice seems to be a matter of friendship. (*NE*, 1153a)

Scotus is clearly prepared to take Aristotle's appraisal of friendship as the highest form of justice much further. He places justice and friendship into a triad with beatitude, and at the centre of this triad is Scotus's thesis of the freedom of the will and the will's own affection for justice. Justice, as the rectitude of the will, disposes man to friendship, not only with his neighbours, but most importantly, with God himself. It is thus only in perfect justice, which is a habit of the will that disposes man to a friendship with God, that man can find beatitude. In a question over whether the rectitude of the will is required for beatitude, Scotus says:

We say therefore that the reason why rectitude of will is required in blessedness is because blessedness itself or enjoyment is nothing other than love of friendship, but not love of

convenit praesidenti, et haec species iustitia, est innominata; potest tamen dici praesidentia vel dominatio iusta; aut communicat et subiectionem iustam, et haec demoninatur a subiici, et potest vocari obedientia.

concupiscence. When the will, therefore, moves to act according to an affection for justice, it is necessarily right, because, just as it loves the highest good for its own sake, so it should love all other things in order to the highest good. So, properly speaking, rectitude of will is not required in blessedness, but rather blessedness is itself the most correct will of those who intuit God.³⁸¹

While Scotus's discussion of justice does not necessarily follow Aristotle's scheme of virtue typology *ad litteram*, he nonetheless places the virtue firmly as a habit that orders the internal faculties of the soul into the *rectitudo voluntatis*, which not only disposes man to love himself, to love his friends, but most importantly, to love God. Scotus manages to take the Aristotelian *topos* of justice as friendship and bring it into the Augustinian maxim that justice is to love and to serve God. This would have profound reverberations in Odonis's writing on justice. Although Odonis does not bring beatitude into his discussion - having limited the scope of Aristotle's competence to the moral life of this world - friendship is a central tenet in Odonis's concept of legal and political justice.

3. Odonis on the Definition of Justice

It is against this context that we should approach Odonis's writing on justice. Odonis opens his commentary on Book V tackling the conceptual challenges presented by Aristotle's text. He raises questions concerning the proper definition and relationship of concepts of *iustitia* and *ius*.³⁸² In his discussion of justice, Odonis disbands with the Augustinian and Scotian scheme of considering justice in relation to man's love of God. Instead, he works his way through the Aristotle's own reasoning. Justice, as a virtue that disposes men to do just things, is defined by what is just. It is therefore of vital importance to discover what exactly is *just*, and how the notion of *ius* constitutes the virtue of justice beyond the obvious linguistic connection.

As we have seen above, the connection between justice and the will is well established, both in the Thomist tradition and among the Franciscans, further reinforced by the Latin translation of *volens iusta*, as well as the Roman Law notion of justice as *voluntas* (as already discussed above by Aquinas). In Question 1 of Book V, Odonis dissects and re-organises the definition offered by Aristotle,

³⁸¹ Scotus, *Summa theologica*, Ia.IIae, q. 4. art. 4; also, *Oxoniensis*, IV, dist. 49, q. 5.

³⁸² The definition is rendered into Latin as a habit 'a quo operativi iustorum sunt, et a quo operantur et volunt iusta.'

analyses it against the jurists's definition, and provides an updated reading of the concept of justice. Odonis posits that Aristotle's reading - 'justice is a kind of state, namely, that which disposes people to do just action, act justly, and wish for what is just' - presents a full scientific definition of justice. Succinctly, Aristotle's *endoxa* has managed to identify its subject, substance, object, and acts in one phrase:

Let it be said that justice is here appropriately described. Any appropriate description would describe the genus, the object, the subject, and the act (of a virtue). Having examined the proposition, this habit is indeed the essential genus of human justice. Just things are the object of justice. He who wills, i.e. he who has rational appetite, is the subject; the volitions are its substance; to will and to act are the acts - willing is elicited, i.e. in the unmoving interior by the will to will, and acting is commanded in the transient exterior.³⁸³

Like both Bonaventure and Scotus before him, Odonis is adamant that justice, or any other virtue, should reside in the principle of freedom within man, and this principle of freedom is the intellective appetite. In a way, Odonis closely follows Aristotle's intention of justice as a virtue that links the interior habits of an individual, such as temperance and fortitude, to the external acts in a social setting. Justice transits the internal act of the will to the external act. This connection is paramount to Odonis's exposition of justice, and by extension, of moral virtues generally. Merely carrying out just deeds is not sufficient for the virtue of justice. One is required to act *justly*, i.e. the act needs to be carried out with an act of willing, freely and virtuously.

The disjuncture between act and habit is further elaborated in Question 4. Odonis distinguishes two kinds of acts of virtue: to act virtuously as a virtuous person, and to act the deeds of virtue non-virtuously. With the former, the presence of the related virtue is required: one can no more act temperately without having the virtue of temperance. With the latter, an act of virtue may be carried out, but not by through the related virtue, but elicited by ulterior motives, such as external command or the sense appetite:

³⁸³ *ExEth*, V, q. 1, f. 93rb: Dicendum ergo cum eo quod est convenienter descripta, quia unaquaeque res describitur convenienter, si describitur per essenziale genus suum, per obiectum, per subiectum, per actum. Sed sic est in proposito quoniam habitus est essenziale genus humanae iustitiae. Illa vero quae sunt iusta sunt eius obiectum vel obiecta, volens autem qui, scilicet, habet rationalem appetitum est eius subiectum, vel voluntates eius substantia, velle autem et operari sunt eius actus, unus elicitus, scilicet velle interius voluntati immanens, et alios (alius, *X*) imperatus exterius transiens.

Compelled by the inclination of one virtue concerning a general matter, any person can act as a non-virtuous person can act, either by reason of a command, or by reason of any general desire or appetite. A non-virtuous person can act non-virtuously all the deeds of virtue, because he is able to act following the inclination of one certain virtue generally, by command or desire, the acts of all virtues.³⁸⁴

The desire or appetite alone, including the intellectual appetite (the will), is capable of generating any virtuous deed without the presence of the related virtue. But the existence of such virtuous deeds does not mean the existence of the relevant virtue. The aim of the ethical science is, of course, the formation of the interior virtue rather than the mere effectuation of the external acts, and Odonis is clearly more concerned with the inner state. Here, he addresses the concern that Aristotle is seemingly preoccupied with regulating the exterior aspects of man's life by bridging the discrepancy by linking the external acts of man to the will and virtue. At the start of the question, Odonis raises an objection that the Philosopher falsely describes justice as *active*:

The description should be proved as false, because not every justice is active, for instance the justice of innocence. It is clear that an inactive person should not be lauded for an active habit, in so far as he is in a state of inactivity. One who does not (actively) take possessions of another is lauded for the virtue of justice, as we have discussed above in the treatise on liberality. Therefore, justice is not universally an active habit.³⁸⁵

The objection focuses on the external acts, or the external inaction, but fails to address the process of volition or nolition within the soul. Odonis points out in his response to the objection that justice takes place within, and the act of willing *not to do* certain acts still constitute an act. He writes:

³⁸⁴ *ExEth*, V, q. 4, f. 95rb-va: Secundum autem probatur, quia secundum inclinationem unius virtutis existentis circa materiam generalem potest unusquisque operari, illa quae potest unus non virtuosus, vel ratione imperii, vel ratione alicuius generalis desiderii vel appetitus. Sed unus non virtuosus potest operari non virtuose omnia virtutum opera, quare illa omnia poterit operari secundum inclinationem alicuius virtutis generaliter imperantis vel desiderantis omnia virtutum opera.

³⁸⁵ *ExEth*, V, q. 1, f. 93rb: Quod autem descriptio sit falsa probatur, quia non omnis iustitia est operativa, puta iustitia innocentiae, quod apparet. Quia nullus non operans ut non operans laudatur de habitu operativo; sed non accipiens alienum laudatur de iustitia ut supra tractatu de liberalitate. Quare iustitia non est universaliter habitus operativus.

‘To act’ should not always be understood positively as an external action. To abstain from venereal acts is called an act of chastity or temperance, not because it is effectuated by something external, but because it is acted out by an interior act of the soul, which prohibits the external action. In this way, justice works by refusing to take what does not belong to oneself, because the interior soul chooses and commands that one should not accept the extraneous. In this way every justice is universally active.³⁸⁶

The essence of justice thus rests with the soul, and only incidentally with external actions - that is, when the will wills or nills, and manifests its volition or nolition externally through actions. Consequently, Odonis proves to be receptive to the definition of justice proposed in the *Digest*, where the underlining role of the will makes it congenial to Odonis’s own reading. He presents it as an alternative formulation to that offered by Aristotle of essentially the same concept. The *Digest* posits four essential elements of justice: constancy, perpetuality, what is due (*ius*)³⁸⁷, and universality.

It can be said that everything in this (Roman Law) description can be reformulated in other words under the other (i.e. the definition of Aristotle). There is one exception, i.e. the mention of constancy, which is not due *per se* for justice, but an annex to it, just as one virtue can be the annex of another virtue, and it is in this way that justice is said to be constant, because constancy is annexed to it. Perpetuity can be put under the name of habit, because ‘habit is the quality which is difficult to change’ (Book of *Predicaments*, categories iv). Thus, habits of moral virtues are the most permanent, see Book I, and law (*lex*) sums up the perpetuity for the permanence of something difficult to change. What is due (*ius*) is summed here under the name of the just man or just things, as said in the literal exposition. Universality is designated here through the notion that it is distributive to everyone, and it is summed within the

³⁸⁶ *ExEth*, V, q. 1, f. 93va: Ad quartum dicendum quod operari non semper sumitur positive ut intelligantur poni semper opera exteriora. Abstinere namque ab actibus venereis, dicitur opus castitatis et temperantiae, non quod ponatur exterius aliquod opus, sed quia ponitur opus interius in anima prohibens opus extra. Et hoc modo operatur iustitia non accipiendo aliena, quia interius eligit et imperat quod extra alienum non accipiat. Et hoc modo omnis iustitia est universaliter operativa.

³⁸⁷ *Ius* here is translated as ‘what is due’ following the common translation of this passage in Roman law. However, I have generally translated *ius* in Odonis’s text as ‘the law’. For a detailed discussion, see below.

indefinite mode, insofar as it is often summed in the indefinite material of justice for the universal.³⁸⁸

Arguably, Odonis's attempt to merge the two concepts of justice into one coherent whole delivers a result that is tenuous at best. Yet, it provides another perspective of his understanding of justice. Odonis considers that the jurists' definition pertains more to the concept of justice as lawfulness, but nonetheless consistent with the general Aristotelian notion. In so doing, Odonis reframes the distributive and administrative reading of justice from the Roman law into a psychological state and an interior virtue in the Aristotelian sense. The merger between the two sources of authority also means that the ideas of law and lawfulness developed by Roman and medieval jurisprudence is wholesale brought into the discussion of justice.

³⁸⁸ *ExEth*, V, q. 1, f. 93va: Potest etiam dici quod omnia in illa descriptione posita sub aliis verbis ponuntur in ista uno excepto, scilicet constantia, quae non debetur iustitiae per se, sed annexum, quia scilicet una virtus alteri est annexa. Et hoc modo iustitia dicitur constans, quia est ei annexa constantia. Perpetuitas vero ponitur hic sub nomine habitus, quoniam habitus est qualitas de difficili mobilis, ut habetur in *Praedicamentis*. Et iterum quoniam habitus virtutum moralium sunt permanentissimi, ut supra libro primo. Unde lex sumpsit perpetuitatem pro permanentia de difficili permutabili. Ius autem sumitur hic sub nomine iusti vel iustorum ut dixi in expositione litterae. Illa vero universalitas quae designatur ibi per signum distributivum, cuique sumitur sub modo indefinito, quoniam saepe in materia iustitiae indefinita sumitur pro universali.

II. JUSTICE AND LAW

James Walsh does not describe Odonis's commentary as an expression of 'moral legalism' without merit. I have made sixty-three counts of references to legal texts in Odonis commentary, including one reference to the *Institutes*, twenty-five to the *Digest*, two to Accursius's *Glossa Ordinaria*, two to the *Authentica Habita*, twenty-six to the *Decretum*, and seven to the *Liber Extra*. Bonnie Kent, based on a more stringent criterion, counts forty-two.³⁸⁹ Indeed, it is difficult to overstate Odonis's enthusiasm for legal philosophy and juristic concepts - the entire Book V commentary is populated with questions and thoughts over topics such as the division of law, the relationship between law and justice, the administration of law, etc. Given that during the precedent decade, much of the dispute between the Franciscan Order and the papacy focused on conceptual nuances of juristic terms such as *ius*, *usus*, *dominium*, it should be hardly surprising that Odonis, as a promising scholar, should be deeply drawn to such topics.³⁹⁰

1. *Ius* and *iustum*

Having established Odonis's position that justice is an interior habit of the will and a bridge between one's psychological state and external acts, we must now consider the object of justice - *iustum*, and its relationship with *ius*, which is far more complex than a mere equivocation or a semantic derivative. The complication is due in part to the multiple influences to which Odonis is exposed. The term *ius* is often translated variantly, as 'law', 'right', 'what is morally right', 'what is due', etc., reflecting the inherent richness and ambiguity of the word.

I have translated *ius*, where it is found in Odonis's text, as 'law'. I refer the reader to the section on 'natural law and positive law' for a detailed discussion on Odonis's concept of *ius*. But for now, the choice of translation deserves a short digression. For our Franciscan master, the notions of command (*praeceptum*) and duty (*debitum*) occupy a central position in the understanding of *ius*. *Ius* is both what is imposed from the exterior and what is comprehended by the interior. Furthermore, there is a strong positivist undertone in Odonis's discussion of *ius*, even for the generally non-positive concept

³⁸⁹ Kent, *Aristotle and Franciscans*, p. 34.

³⁹⁰ See Brian Tierney, *Liberty and Law*, p. 100-102.

of *ius naturale*. Therefore, it would be a far cry to translate *ius* as ‘right’, a concept which implies a subjective potency. Brian Tierney discusses a similar problem when approaching the concept of *ius* in Bonagratia’s writing, and concludes that Bonagratia’s idea of *ius* should be understood as ‘law’ instead of ‘right’, on account of its overwhelming emphasis on the notion of *praeceptum*.³⁹¹ The legal philosopher James Bernard Murphy offers a *Begriffsgeschichte* of *ius* and *lex*, and argues that the use of *ius*, rather than *lex*, shows a more holistic understanding of law - *ius* is in general used to refer to the entire body of law or the entire notion of the legal structure complicated with a moral dimension, and Murphy proposes to translate *ius* as ‘the law’ to refer to the abstract whole.³⁹² Odonis’s own understanding and use of *ius* is nuanced and yet systematically distinct from the term *lex*, and in my opinion broadly follows Murphy’s scheme of distinction. Overall, while it is impossible to translate entirely the nuances of Latin, I consider ‘law’ as a suitable translation of *ius*. Nonetheless, in all such instances, the Latin is given in parenthesis.

Thereon, Odonis sets out an in-depth analysis on how *ius* is philosophically related to justice. Already in question 1, justice is defined by what is just (*iustum*), and what is just is derived from the precept of *ius*. Therefore, *ius* is ultimately the origin of justice. Odonis argues that following the command of *ius* is tantamount to doing justice - he writes:

The commands of the law (*ius*) are three - living honestly, harming no one, and giving everyone his due. All just things come after the precepts of the law, and to guard them is to do justice.³⁹³

What transpires in this brief quote is the external and preceptive nature of *ius* and justice. *Ius* is presented as a command (*praeceptum*) from a universal and constant source of morality or legality, exogenous to man’s moral psychology, while justice is one person’s reception and reflection to such command, knowingly and voluntarily. *Ius* is causally prior to justice, as an external standard of morality is prior to the internal participation of this standard.

The preceptive and external nature of *ius* is fully analysed in question 2, which enquires the relative

³⁹¹ Tierney, *Natural Rights*, p. 152-3.

³⁹² Murphy, The Lawyer and the Layman: Two Perspectives on the Rule of Law', *The Review of Politics*, 68, 2006, p. 108-113.

³⁹³ *ExEth*, V, q. 1, f. 93va: iuris praecepta sunt tria, scilicet honeste vivere, alterum non laedere, ius suum cuique reddere. Haec autem omnia sunt iusta post iuris praecepta et ea servare est iustitiam facere.

priority between *ius* and justice. Odonis divides *ius* into four parts: the precept, that which is due (*debitum*) from the subject (i.e. the free man), a recognition of such duty either in writing or in the mental notion, and finally the act that is due from such precept.

The law (*ius*), be it natural law, law of nations, civil law, divine law, or human law, or by whatever name it is called, has four parts. First is the precept of the lawgiver. Second is what is due of the subject. Third is the writing either in the form of letters in a book, or the mental writing in the soul, showing the precept and the duty. Fourth is the act that is conjoined and due.³⁹⁴

Taken together, this is a process of transforming the universal command of natural or human law into a particular and concrete action in the form of the work that is due - *opus debitum*. While Odonis presents four parts of *ius*, there are really only two pillars: the external command, and man's apprehension of this command.

'The law (*ius*) commands, and justice follows.'³⁹⁵ In his reply to objections, Odonis presents a further explanation on how the law (*ius*) and justice work together. The law (*ius*) is said to *praecipere*, while justice is said to *iuvare*:

The law (*ius*) and justice work together, just as positive law (*lex*) and grace (work together). Positive law (*lex*) binds men but does not command men, grace or virtue does not bind men but directs men. Similarly, the law (*ius*) binds by commanding, but it does not direct men, while justice as the habit of the will does not bind men, but directs men to follow its precepts.³⁹⁶

³⁹⁴ This quardriplex of *ius* is analysed from another perspective in the section on natural and positive law. *ExEth*, V, q. 2, f. 93va: Pro solutione quaestionis praemittenda sunt duo, primo quod ius vel naturale vel gentium vel civile vel divinum vel humanum, vel quocumque nomine censeatur habet quatuor partes, quarum quaelibet interdum vocatur ius. Prima est praeceptum legislatoris. Secunda est debitum subditi. Tertia est scriptura litteralis in libro, vel mentalis in anima ostendens et praecepta et debitum. Quarta est opus iniunctum et debitum.

³⁹⁵ *ExEth*, V, q. 2, f. 93vb: Ad quartum autem dicendum quod ius praecipit et iustitia exequitur.

³⁹⁶ *ExEth*, V, q. 2, f. vb: Ius enim et iustitia cooperantur, sicut lex et gratia. Lex enim hominem ligat et non iuvat; gratia vero vel virtus hominem non ligat sed iuvat. Simili modo quia idem est ius ligat praecipiendo, sed non iuvat cooperando. Iustitia vero ut est habitus voluntatis hominem non ligat praecipiendo, sed hominem iuvat praecepto consequendo.

Although both verbs (*praecipere* and *iuvare*) can mean ‘to command, to order’, *praecipere* is the command that comes from the source of absolute authority, a first cause of a precept: a legislator, be it God, nature, or the competent human legislative authority, *praecipit*, and what he *praecipit* becomes the *praeceptum*.³⁹⁷ *Iuvare*, on the other hand, can have several additional nuances. Firstly, it is semantically related to *ius*, *iustitia*, and Odonis may be using the term *iuvare* to imply an act of judgement within the act of command, an application of the universal precept to the particular *iustum*. The second nuance comes from the classical use of *iuvare* to describe the action where the Roman citizens’ assembly approves the laws passed by the legislator. The analogy between the body-politic and the human soul is common in the later Middle Ages, especially among the political voluntarists: the proposals of the legislator are analogous to the judgement of reason, while the approval of the citizens’ assembly, the power that ultimately moves the law and that is independent of the reasons of the legislator, is analogous to the volition of the will. This corresponds neatly to Odonis’s reading of the relationship between *ius* and *iustitia*, where the command of *ius* is received and approved (or disapproved) by the virtue of within the will. Therefore, the law (*ius*) binds man with its precept, and justice orders man following the precept of *ius*.

As a command exogenous to man’s moral psychology, the precept of *ius* must be understood by the intellect in order to formulate the *opus debitum*. The interiorisation of the external command through one’s cognitive process forms the second pillar in Odonis’s understanding of *ius*. This cognitive process of transforming the universal of *ius* into the particular of an act due is the necessary condition for a person to be said to have justice:

The dictate of reason is prior to the good that is due, that is incumbent for me to act upon, and that is directed towards justice. If I did something without having understood the precept and the duty, then I would not be able to place and order this act towards justice.³⁹⁸

³⁹⁷ The comparison to grace and law is revealing, and we will discuss the theme in much greater depth in the following passage below, concerning legal justice. While grace is a state which man must attain in order to reach beatitude, it does not force man to anything, but rather directs him and facilitate his passage to God. The path of grace is defined not by grace itself, but by God’s divine commands. Therefore, although grace and virtue may be an inner state, it ultimately has its source and commands from the exterior - the laws.

³⁹⁸ *ExEth*, V, q. 2, f. 93vb: Istud autem rationis dictamen prius est illo bono debito et per me operabili et referribili ad iustitiam. Si enim facerem aliquod opus quod non praeintelligerem ut praeceptum et ut debitum, non possem referre vel ordinare ipsum ad iustitiam.

The notion of *iustum* requires reason's participation in the external law (*ius*), receiving the precept and duty, and translating it into reason's dictate so that one understands what is the particular act that is required of him. The cognitive process of understanding the precept of *ius* and its corresponding duty is thus of great significance in the formation of the internal virtue of justice.³⁹⁹ Once the precept and duty of *ius* are comprehended by the intellect and formulated into the notion of *iustum*, it is then for the will to enact the *iustum* into a just action (*iustificatio*). Otherwise, without the external act, a just thing remains a just thing, and not a just act:

An unjust act is not an unjust act before it is carried out, but merely an unjust thing. Similarly, a just act is to be understood thus: without action, it is a just thing in its nature or in its order. The very same just thing, when it is acted out, becomes a just act, but before it is acted out, it is not a just act, but a just thing.⁴⁰⁰

Therefore, a just act must be voluntary so as to be properly called *iustificatio*. Following the Aristotelian thesis of the cultivation of virtue, it is through the repeated enactment of *iustificatio* that justice is formed.

Odonis therefore arrives at the conclusion that 'the four parts of *ius* is prior to the just act, which is in turn prior to justice, which is understood by Aristotle as a habit acquired through just acts...' ⁴⁰¹ In so doing, he grounds the entire cognitive process of justice within the soul of an individual - a just act is the result of the intellectual cognition and free volition, following the precept of *ius*, a reformulation of an external command into an internal duty before manifesting it as an external act.

Yet, given Odonis's prior concern with the distinction between acting virtuous deeds non-virtuously and acting *virtuously*, one is left to wonder whether the just act produced by the four-part process is enacted *justly*, given that the both what is just (*iustum*) and what is due (*debitum*) are an instruction

³⁹⁹ Central to this cognitive process is the role of practical reason and prudence. An in-depth discussion of prudence is provided in Part III.

⁴⁰⁰ *ExEth*, V, q. 2, f. 93vb: Iniustificatio est ante tantum quam operatum sit non est iustificatio <iniustificatio, sic in both *X* and *V*>, sed iniustum. Similiter autem et iustificatio sic videlicet quod iustum est natura vel ordine sine operatione. Illud autem idem iustum, cum operatum est iustificatio, est ante tantum quam operatum fuerit non est iustificatio sed iustum.

⁴⁰¹ *ExEth*, V, q. 2, f. 93vb: Sic ergo patet quod illa quattuor sunt priora iustificatione. Iustificatio autem prior est iustitia, secundum quod philosophus sumit iustitiam pro habitu acquisito ex operationibus iustis, quas ipse vocat iustificationes. Quare universaliter iustitia posterior est iure.

received exogenously. This is one of the problems of circularity presented by Aristotle's text. The habit of virtue and the act of virtue are in a circular relationship: virtuous acts are required in order to form a virtuous habit, and yet one cannot act virtuously without the virtuous habit. Odonis's argument here seems to be of a similar circularity: justice is the virtue that bids man to act *justly*, and yet it is causally posterior to the mental notion of what is just and the exterior act of *iustificatio*. One may offer two possible exits out of the apparent circularity of Odonis's analysis here. First is Odonis's voluntarism, and second the exteriority of the precept.

The voluntarist argument is that virtuous deeds can be executed by the will without the presence of a virtue. Odonis maintains that 'justice is not a virtue that concerns what is unqualifiedly good (*bonum simpliciter*), but concerns what can be acted upon voluntarily.'⁴⁰² With the free and indeterminate will, one can act just deeds without the presence of the virtue of justice. This follows the Scotian thesis that the will is capable of prudence without virtue, but cannot attain virtue without prudence. On the question of whether moral virtues are located in the will, Scotus writes:

As to the question, one can say that although the will without a habit is able to do right and morally good acts, and not only this but also that the intellect can make right judgments without any intellectual habit (indeed the first right act of the intellect and the first right action of the will precede the habit, even as to any degree of habit, because from these right acts is generated whatever of a habit is first present).⁴⁰³

To put this in another perspective, the will is able to will a virtuous act without willing *virtuously*, and this single, contingent act of virtuous deed is achieved through the judgement of prudence. Justice is, after all, posterior to the intellectual cognition of the precept and the free volition of the just act. Such just acts may not be realised *justly* - i.e., out of the habit of justice - but are nonetheless possible as part of this cognitive-volitive chain. Importantly, the notion of what is just does not come from the virtue of justice, but rather from the exterior command of *ius*, processed and internalised by the intellectual cognition of practical reason. The exteriority of *ius* certainly breaks the circularity of virtue formation, and serves as the first cause of *iustum* and consequently of justice.

⁴⁰² *ExEth*, V, q. 2, f. 93vb: Iustitia vero inquantum virtus non est de bono simpliciter, sed de bono operabili voluntarie.

⁴⁰³ *Ord*, III, dist. 26, num. 43: Ad quaestionem potest dici, quod licet voluntas sine habitu posset in actum rectum etiam moraliter bonum, nec tantum hoc, sed et intellectus potest in rectum iudicium sine omni habitu intellectuali; primum enim actus rectus intellectus, et prima actio voluntatis praecedunt habitum, etiam secundum, quemcumque gradum...

Aristotle may have intended the virtue of justice as primarily ordered towards external affairs of man, a kind of correction that pulls the disorderly and disproportionate exterior back to the virtuous mean. Odonis, however, re-construes Aristotle's notion of justice into a combined consequence of the exterior command of *ius* and the internal process of cognition and volition. The external act is but a final step of the cognitive chain, an output of the internal justice. In this sense, Odonis provides a psychological platform for Aristotle's concept of justice - justice takes the command of *ius* and renders it into a reasoned and voluntary act. Now having explored the cognitive-volitive process of *iustum*, we must now delve deeper into the concept of *ius*.

2. Natural Law and Positive Law

We have cursorily discussed above the choice of translating *ius* as 'law'. What transpires in the previous section on *ius* and *iustitia* is that the notion of command and duty are central to Odonis's understanding of *ius*. By implication, the virtue of justice is at its core an interaction between an external standard of morality and man's internal intellection of this standard. *Ius*, thus rendered as 'law', is the foundation upon which one builds the virtue of justice. The present section continues to examine the very concept of law (*ius*) in Odonis's text.

Odonis does not offer his own definition of law, nor does he question Aristotle's definition of law in the same way as he questions Aristotle's definition of justice. In *Nicomachean Ethics*, Aristotle posits that 'law requires men to live in accordance with each single virtue and forbids men to live in accordance with each form of vice.' (*NE*, 1130b) Later, in the Book of *Politics*, the Philosopher offers a more cognitive definition: 'law is reason, unaffected by desire.'⁴⁰⁴ With these, one can already sketch the most fundamental characters of law: law is preceptive in the way that it commands and forbids; and law is rational, in the way that it is connected to reason and the cognitive capabilities of both the lawmaker and the subjects of law. This dual theme is reflected recurrently in Odonis's writing, who quotes these passages liberally in his questions concerning law, justice, and reason. Law is inextricably linked with justice as its object; at the same time, law is the dictate of reason, a form of manifested rationality.

⁴⁰⁴ *Pol*, III, 1287b.

Two more sources feature prominently in Odonis commentary on Book V: the *Corpus Iuris Civilis* and the *Corpus Iuris Canonici*. Yet, neither offers an explicit definition of law as *ius*. The *Institutes* posits that there are three commands of law: to live honesty, to harm no one, and to render everyone his due,⁴⁰⁵ then it starts discussing the three parts of law - natural law, law of nations, and civil law. In the *Decretum*, Gratian, citing Isidore of Seville, defines the concept of *ius* as the general name of *lex*, it is called *ius* because it is just, and it is consistent with *lex* and *mos*, and *lex* is the species of *ius*.⁴⁰⁶ Hence, *ius* really consists of two parts - *lex* and *mos*. *Lex*, as Gratian puts, is the written constitution, while *mos* is the long-endured custom, instituted by mores, supplementing the deficiencies of written law.⁴⁰⁷ Taken together, the two primary bodies of jurisprudence available to Odonis are in agreement with the relationship between law and justice, which may seem obvious since the term *ius* and *iustitia* share a common etymological origin. This echoes Aristotle's idea that what is lawful is simply just.

However, such apparent lexical connection had not always been translated into a systematic study of law until the late eleventh century with the rediscovery of the Justinian *Codex* and the composition of the *Decretum*. Walter Ullmann argues that there was no science of jurisprudence until the advent of the school of Commentators in the second half of the thirteenth century.⁴⁰⁸ While the Glossators were mostly preoccupied with the exposition and clarification of Roman law, the *Ultramontani* of France, and the Italian Commentators, with the former profoundly influencing the latter, took the task of philosophising the universal and fundamental principles of law.⁴⁰⁹ Aristotle and Aquinas play a pivotal role in this transformation of legal science.⁴¹⁰ Aristotle's discussion of law in his books of

⁴⁰⁵ *Institutes*, I. I. 3.

⁴⁰⁶ *Decretum*, dist. 1, c. 2: *Ius genus, lex species eius est. Ius generale nomen est; lex autem iuris est species. Ius autem est dictum, quia iustum est. Omne autem ius legibus et moribus constat.*

⁴⁰⁷ *Decretum*, dist. 1, c. 3-5.

⁴⁰⁸ Walter Ullmann, *Medieval Idea of Law: As Represented by Lucas de Penna*, Abingdon, 2010, p. 1-5.

⁴⁰⁹ See Clifford Backman, *The Worlds of Medieval Europe*, Oxford, 2015, p. 255-57; see also, Paul du Plessis, 'Jacques de Révigny', in O. Descamps and R. Domingo (eds.), *Great Christian Jurists in French History*, Cambridge, 2019, p. 73-8.

⁴¹⁰ O. F. Robinson, T. D. Fergus, and W. M. Gordon, *European Legal History: Sources and Institutions*, London, 1994, p. 62: 'The willingness of the *Ultramontani* to argue independently of the texts may well owe something to the study of Aristotelian doctrine and to the work of St. Thomas Aquinas. Aquinas reconciled Aristotelian and Christian thought and gave a new importance to the creative role of reason in establishing legal rules where no definite guidance existed from divine or Natural law. He thus gave reason a more positive role than had been allowed to it by St. Augustine, whose approach had tended to dominate thinking up to the thirteenth century.'

Ethics and *Politics* makes it obvious that law should be understood within the broader framework of morality in general, and a reflection of the discussion of the virtue of justice in particular. Aquinas, on the other hand, demonstrates with his 'Treatise on Law' how the study of jurisprudence can be treated in a philosophical manner with scholastic methods of argumentation.⁴¹¹ Joseph Canning also points to the decades around the turn of century as a crucial period in the history of jurisprudence, where the post-Glossators 'produced a complex conception of the city or kingdom seen as a corporation: it was at one and the same time a body of a plurality of human beings and an abstract unitary entity perceptible only by the intellect.'⁴¹² It is within this intellectual context that Odonis finds himself as he approaches the fifth book of *Ethics*. The University of Toulouse had, by his time, established a tradition as a centre of the *Ultramontani* in the study of civil and canon law alongside Orléans.⁴¹³ Its close proximity to the Avignon papal curia also means that legal opinions from the masters at Toulouse were regularly solicited by the Papacy in the first decades of the fourteenth century.⁴¹⁴ Aquinas has left an indelible mark on the history of legal science after him, and most notably a strong impression on Odonis, who, despite his frequent disagreements, appears to be in concord with Aquinas on a number of fundamental principles concerning law and legal justice.

Thirteenth-century legal philosophy inherited a system of normative structure: the medieval jurists considered society to be governed by such fundamental norms as natural law, divine law, and *ius gentium*, which altogether act as the standard to gauge the validity of human laws.⁴¹⁵ John Finnis credits Aquinas as the first mature exponent of a theory of positive law in the Christian West against this context of normative structure.⁴¹⁶ Aquinas notices not only the positive characters of statutory law commonly observed in civil societies, but also the positive aspects of natural and divine law. For Aquinas, 'law (*lex*) is an ordinance of reason for the common good promulgated by one who has care

⁴¹¹ H. D. Hazeltine, 'Introduction' to Ullmann, *Medieval Idea of Law*, p. xxi.

⁴¹² Joseph Canning, 'Law, Sovereignty, and Corporation Theory', in J. H. Burns (ed.), *Cambridge History of Medieval Political Thought: c. 350 - c. 1450*, Cambridge, 1988, p. 473.

⁴¹³ D. H. Hazeltine suggests that legal authorities such as Jacques de Révigny and Pierre de Belleperche both lectured in Toulouse, but I have not been able to locate the evidence, nor is this concurred by other biographies; see Hazeltine, 'Introduction', p. xviii.

⁴¹⁴ Cyril Eugene Smith, *The University of Toulouse in the Middle Ages: Its Origins and Growth to 1500 A.D.*, Milwaukee, 1958, p. 76-7.

⁴¹⁵ Canning, 'Law, Sovereignty', p. 454.

⁴¹⁶ John Finnis, *Aquinas: Moral, Political, and Legal Theory*, Oxford, 1998.

for the community'.⁴¹⁷ The term '*lex*' is used here, as throughout Aquinas's *Treatise on Law*. The Roman jurists refer to *ius* as the entire body of law or the concept of law, which includes normative laws such as natural law and *ius gentium*, and *lex* as a statute, with an intrinsically positive character.⁴¹⁸ Aquinas, however, heeds no such distinction. *Ius* is used sparingly and does not constitute a consistent lexical usage in Aquinas's work to make for a systematic distinction between the two terms. Aquinas's persistent deployment of *lex* may, on the other hand, highlight his underlining conception of law's positivity. In his definition, there are two crucial elements of law that testify Aquinas's idea of how laws are instituted: firstly, a law (*lex*) is promulgated, and secondly, such promulgation is carried out under the authority with relevant jurisdiction. Explaining the need for law's promulgation, Aquinas argues that, so as law should have binding force, it needs be applied to the citizens who are to be ruled by it; such application of law is done through inducing a notion of the law into the law's subjects, and such is the process of law's promulgation.⁴¹⁹ There is a clear moment of the institution of law, and a clear authority which posits and promulgates it. This definition is not limited to human law, which Aquinas considers as but one species of *lex*, but to all laws.

For the Roman jurists, both natural law and law of nations have a force that is primeval and transcends the contingent nature of human societies - they are normative. Ulpian states that:

The law of nature is what nature teaches to all animals, it's not a law specific to mankind but to all animals... Out of this comes the union of man and woman which we call marriage, the procreation of children, and their rearing... *Ius gentium*, the law of nations, is that which all human peoples observe...⁴²⁰

⁴¹⁷ *ST*, I2ae, q. 90, art. 4: Et sic ex quatuor praedictis potest colligi definitio legis, quae nihil est aliud quam quaedam rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet, promulgata.

⁴¹⁸ James Bernard Murphy, 'The Lawyer and the Layman: Two Perspectives on the Rule of Law', *The Review of Politics*, 68, 2006, p. 105-110.

⁴¹⁹ *ST*, I2ae, q. 90, art. 4: Respondeo dicendum quod, sicut dictum est, lex imponitur aliis per modum regulae et mensurae. Regula autem et mensura imponitur per hoc quod applicatur his quae regulantur et mensurantur. Unde ad hoc quod lex virtutem obligandi obtineat, quod est proprium legis, oportet quod applicetur hominibus qui secundum eam regulari debent. Talis autem applicatio fit per hoc quod in notitiam eorum deducitur ex ipsa promulgatione. Unde promulgatio necessaria est ad hoc quod lex habeat suam virtutem.

⁴²⁰ *Digest*, I. 1.

Here Ulpian highlights the universality of natural law and law of nations. Natural law is common to both animals and mankind, applying without exception to all living beings regardless of its particularities - there is no natural law specific for mankind, since men are ultimately animals and are therefore governed by such laws. Similarly, law of nations is universal in the sense that it does not vary from one nation to the next, and that it transcends specific characteristics of each individual human community for which the Roman jurists surely accounts. The universality of natural law finds resonance in Aristotle's invocation that fire burns in Greece just as it burns in Persia. Such laws are also normative and pre-political. They govern animals and human alike even without a political structure, or at least without the type of political structure known to the Romans jurists. Both these characteristics of natural law and law of nations - the extra-human universality and pre-political nature - mean that it is impossible for the Roman lawyers to conceive of a legislator for such laws.

Civil law, on the other hand, is particular to a given society, made by the people of this society for its own government, as per the Justinian *Codex*.⁴²¹ Papinian adds that civil law has five forms: statutes, plebiscite, senate decrees, imperial decrees, and authoritative juristic pronouncements.⁴²² Civil law is therefore limited in its jurisdiction, applying solely within the remit of the law-making authority. All five forms of civil law are instituted by a certain authority with law-making power in the Roman political structure. The distinction between the positive civil law and the normative basis of natural law and law of nation is abundantly clear.

Therefore, the question for the medieval readers of Roman law would be what the origins for such laws are. Walter Ullmann points out that the *Corpus Iuris Civilis* is by no means a philosophical work aimed at theorising the fundamental principles of law, but rather a clarification and systematisation of the existing body of Roman law.⁴²³ Hence, there should be no surprise that the jurists should have left such fundamental philosophical issues untouched, and this is where the medieval scholastics come in to fill the vacuum.

For Aquinas, the answer is simple. Such extra-human laws come from divine providence, wherein God is the legislator and divine reason as the underlining rationale of law. Aquinas divides law into eternal law, natural law, human law, and divine law, and hints that these laws are all invariably posited.

⁴²¹ *Institutes*, II, 1.

⁴²² *Digest*, I. 7.

⁴²³ Ullmann, *Medieval Idea of Law*, p. 2-3.

‘Law (*lex*) is the dictate of practical reason of the prince who governs a perfect community.’⁴²⁴ The whole of the universe is governed by divine reason, with God as its ruler. Such governance has the nature of law, and are eternal by essence.⁴²⁵ Although eternal law (*lex aeterna*) is universal to the entire cosmos, it is nonetheless posited by God. Aquinas then goes on to define natural law (*lex naturalis*). He rejects the jurists’ opinion that natural law governs commonly men and animals, and argues that natural law is the imprint of divine reason on the rational intellect, a reflection of the divine providence in the rational creature through its participation in the divine light:

Now among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law (*lex aeterna*) in the rational creature is called the natural law (*lex naturalis*).⁴²⁶

Therefore, only human can comprehend natural law properly speaking. Irrational creatures, on the other hand, can only partake, irrationally, in divine reason; thus, they have something of natural law by mere similitude. In short, natural law is effectively a reflection of eternal law on human behaviour, perceived and understood by man’s natural reason. Although it appears to require one’s active participation in the process of understanding and internalising natural law, Aquinas does not seem to be giving man a subjective agency in this process - man’s natural intellect receives the *impressio divinae luminis*. Again, God plays the role of the lawgiver. The law of nature may be primeval, and yet it is still posited by God through his eternal divine reason.

⁴²⁴ *ST*, I2ae, q. 91, art. 1: nihil est aliud lex quam quoddam dictamen practicae rationis in principe qui gubernat aliquam communitatem perfectam.

⁴²⁵ *ST*, I2ae, q. 91, art. 1: Manifestum est autem, supposito quod mundus divina providentia regatur, ut in primo habitum est, quod tota communitas universi gubernatur ratione divina. Et ideo ipsa ratio gubernationis rerum in Deo sicut in principe universitatis existens, legis habet rationem. Et quia divina ratio nihil concipit ex tempore, sed habet aeternum conceptum

⁴²⁶ *ST*, I2ae, q. 91, art. 2: Unde cum omnia quae divinae providentiae subduntur, a lege aeterna regulentur et mensurentur, ut ex dictis patet; manifestum est quod omnia participant aliquantulum legem aeternam, in quantum scilicet ex impressione eius habent inclinationes in proprios actus et fines. Inter cetera autem rationalis creatura excellentiori quodam modo divinae providentiae subiacet, in quantum et ipsa fit providentiae particeps, sibi ipsi et aliis providens. Unde et in ipsa participatur ratio aeterna, per quam habet naturalem inclinationem ad debitum actum et finem. Et talis participatio legis aeternae in rationali creatura lex naturalis dicitur.

Thus, one may argue that for Aquinas, all laws ultimately have their provenance in God: eternal law is the divine reason, natural law is the reflection of eternal law on rational men, and all human laws in turn are said to be derived from natural law. Contrary to the Roman jurists who assemble a plethora of sources for the body of law, Aquinas accounts for a single supreme authority in law-making and in law's legitimacy. Just as Aquinas considers all things are ordered towards God, all things seek the good that is ultimately in God, all laws are derived fundamentally from God.

Odonis shares much of Aquinas's idea of law's positivity, but disagrees with Aquinas on several key points. On a lexical front, Odonis offers a clear and consistent distinction between the terms of *ius* and *lex*. Odonis uses *ius* to refer to the concept and the entire body of law, the abstract norms and orders that govern both the universe and human acts, as well as the idea of what is just and right. Odonis refers to *ius politicum*, as a separate body of law (including both the written and the unwritten, the human and the divine, the contingent and the eternal) that governs the city, as opposed to *ius economicum*, which governs the household.⁴²⁷ Equally, Odonis speaks of *ius naturale*, *ius divinum*, *ius humanum*, *ius legale*, etc.⁴²⁸ *Lex*, on the other hand, receives a limited usage, mostly referring to law that has been clearly instituted and are contingent by nature.⁴²⁹ In question 16, Odonis distinguishes *lex* from *ius gentium*, arguing that *ius gentium* is not *lex*, and *lex* tends to move away from the dictates of *ius gentium*, as a particular determination moves away from the universal law shared by all human groups.⁴³⁰ It is particularly illuminating that in the question on the merits of rule of law and rule of man, *lex* is used throughout, and Odonis argues in favour of the rule of the best men over *bonae leges*. One may indeed argue that Odonis occupies a stance that supports and admires the system and concept of *ius*, understanding it as simply the premise of justice and the force of reason that governs the universe and human society, but rails against the use and development of *lex*, thinking of it as a rigid system of written rules which is invariably imperfect and frequently stands in the way of justice.

⁴²⁷ See *ExEth*, V, q. 15, f. 109va: *Utrum ius politicum sit aliud a iure dominitavo et paterno et ab uxorio.*

⁴²⁸ See *ExEth*, V, q. 3, f. 94vb: *Utrum iustitia sit convenienter divisa in legalem et equalem sive particularem.*

⁴²⁹ Odonis uses *lex* mostly in question 11, 103rb-104ra — *Utrum expedientius sit civitatem regi bona lege sine bono homine quam bono homine sine bona lege*; and question 20, 115vb-116rb — *Utrum iudici liceat contra veritatem sibi notam iudicare sequendo proposita et probata.*

⁴³⁰ *ExEth*, V, q. 16, f. 110ra: *Ad quantum etiam dictum est quod ius gentium apud philosophos diceretur naturale. Lex autem dicit istud ius recedere, idest, distare a iure naturali, quod est naturalis instinctus, aut quod est communis bestiis et feris silvestribus, ut apparet ibidem.*

From the lexical usage, Odonis has a clear distinction between law that is sempiternal or innate within men - *ius*, and the law that is posited by a legislative authority - *lex*. *Ius* may be the overarching term for the law, but *lex* is specifically something that is posited at a specific moment in time, with a contingent determination, for the governance of a particular jurisdiction. Not only is *lex* different from natural law, but it is also *expected* to deviate from natural law. This conceptual difference can be illustrated with several distinctions made by Odonis. He speaks of *lex* as the singular exemplar of the collective body of *ius legale*, which is defined against natural law as unequivocally positive. Odonis clarifies this distinction by following Cicero's division of the law (*ius*) into natural, customary, and legal. *Ius legale*, as written law legislated by human authorities, is therefore a sub-division of *ius*:

It must be said that justice can be divided according to the division of law (*ius*), or according to the subject-matter of law. Either way is appropriate. Cicero divides law into natural, customary, and legal law (*ius legale*). Natural law is defined as law that is not generated by an opinion, but a force innate to men. Customary law is derived from natural law, and is made greater by frequent use. Legal law is what is written down.⁴³¹

In question 16 on whether *ius politicum* can be appropriately divided into *ius naturale* and *ius legale*, Odonis cites in objection the argument that political law is essentially civil law - a body of law that is legislated by human authorities.⁴³² In response, Odonis argues, *ius politicum*, synonymous to *ius civilis*, is to consist of both natural law and legal law, with nature and human legislative authorities

⁴³¹ Later, in Question 16, Odonis condenses this tripartite division into two: natural and human, while customary law is categorised as human, because it has its force through human use and human institution. *ExEth*, V, q. 3, f. 95ra: Tullius enim divisit eam secundum divisionem iuris, dividens ius in ius naturale, et in ius consuetudinis, et in ius legis. Ius autem naturale diffiniens dicit quod est ius quod non opinio genuit, sed quaedam innata vis hominibus inservuit. Ius autem consuetudinis est ius leviter a natura tractum, et per usum alitum et maius factum. Ius autem legis est ius quod in eo scripta quod primo expositum est ut observetur continetur.

⁴³² *ExEth*, V, q. 16, f. 109va: Primo quia nullum ius civile est naturale, cum haec iura sint contra se invicem divisa, ut in *Decretis* dicitur in capitulo 'ius autem'. Sed omne ius politicum est civile ut patet ex nominis interpretatione, politicum enim graecae, civile dicitur latinae. Quare nullum ius politicum est naturale.

as its two sources.⁴³³ It is called political only because it governs the city of free and equal men, rather than the household, which is governed by *ius economicum*.⁴³⁴

Odonis then goes on to distinguish between the two provenances of political law in an attempt to streamline the typography of various Roman law and canon law concepts listed in the objections at the start of the question. Every law (*ius*), in terms of its legitimacy, is either ante-positive or post-positive:

It should be known that any law has its force either prior to the institution of all the positive law and the introduction of customary law; or it does not, but takes its force from the posited law, or from the established custom. The first mode is universally called natural law among philosophers, and the second mode is called legal law.⁴³⁵

With this distinction, Odonis recognises natural law as having its force prior to any act of legislation or the institution of customs. However, natural law is not to be juxtaposed to other ante-positive laws such as eternal law, divine law, law of nations, etc. Instead, natural law subsumes all other forms of ante-positive law, which all together constitutes the totality of natural law.

Instead of Aquinas's singling out natural law as the reflection of divine providence on rational intellect and hence particular to human only, Odonis understands natural law in a way that incorporates the idea of the Roman jurists while still accounting for the role of divine and human

⁴³³ *ExEth*, V, q. 16, f. 110va: Ad primum igitur in oppositum dicendum quod ius civile apud iuristas dicitur proprium alicui civitati, et hoc modo ius civile non est naturale apud philosophos; aut dicitur ius civile vel politicum, ius quo civitas utitur inter cives. Et hoc modo aliquod ius civile potest esse naturale et aliquod non naturale, quia civitas utitur utroque. Quare ius politicum seu civile commune est ad utrumque.

⁴³⁴ In question 15, Odonis explains the difference between *ius politicum* and *ius economicum*: *ius politicum* governs human relations between those who are free and equal, while *ius economicum* governs intrinsically unequal relationships within a household - that of the father and the son, the man and the wife, and the master and the slave - *ExEth*, V, q. 15, f. 108vb: Item ius politicum ordinat personas aequales penes principari et subici, quia nullus principatur aut subicitur alteri, aliud autem triplex ius ordinat personas naturaliter inaequales, ut probatur primo *Politicae*, quia paterfamilias principatur et uxori, et proli, et servis, ut allegatum est in proponendo.

⁴³⁵ *ExEth*, V, q. 16, f. 109rb: Est ergo sciendum quod unumquodque ius vel habet vim ante omnem legem positam, et ante omnem consuetudinem introductam, vel non, sed accipit vim ex lege iam posita, aut ex consuetudine introducta. Si primo modo vim habeat sic apud philosophos universaliter dicitur ius naturale. Si secundo modo vim habeat sic etiam apud philosophos universaliter dicitur ius legale.

reason. Natural law should be considered in three ways. Firstly, in its most expansive sense, it is the overarching divine law that governs all the living and the inanimate. It is the primeval reason of all things, and the law which God made, and with which God governs the universe. In the second sense, citing the *Digest*, natural law is what is taught by the natural instinct of all animals. In the third sense, natural law is the judgement of human reason, which includes *ius gentium*, equated to Paul's concept of the law written in men's heart.

Natural law can be understood in three ways:

Divine law, which governs all living and inanimate, rational and irrational - this is the primeval reason of all things which God made and with which God governs;

Instinct of nature, which governs all animals in their copulation, procreation, and education of their offspring. This law is in the nature of all animals, and teaches all living beings.

The judgement of human reason, as reason rules the human race. In the beginning of *Decretum* it is said that the human race is ruled by nature in two ways - law of natural reason and mores. The Apostle (*Romans* 2:14) said: 'when the gentiles who do not have written law, naturally do things which are contained in law (*lex*), they have laws onto themselves.'⁴³⁶ This shows that the work of written law is in their heart. This is the same as *ius gentium*. The species of natural law are six: religion, piety, observance, grace, truth, and vindication (see above Book IV, chapter 2, question 2).⁴³⁷

⁴³⁶ *Romans*, 2:14: cum gentes quae legem scriptam non habent, naturaliter ea quae legis sunt faciunt, ipsi sibi sunt lex, ostendentes opus legis scriptum in cordibus suis.

⁴³⁷ *ExEth*, V, q. 16, f. 109vb: Ius autem naturale adhuc accipitur tripliciter, uno modo pro iure divino quo reguntur omnia animata et inanimata, rationalia et irrationalia. Et hoc ius est primaeva rerum ratio, secundum quam Deus omnia condidit et condita cuncta gubernat. Unde Boethius ait: 'O qui perpetua mundum ratione gubernas. Terrarum coelique sator', et caetera, 3 de *Consolatione*.

Alio modo accipitur pro instinctu naturae, quo reguntur animalia perfecta, quae propagant sibi filios, ex quo inest perfectis animalibus maris et feminae coniunctio, filiorum procreatio, et procreatorum educatio. Et hoc ius ipsamet animalium natura omnia animalia docuit. Videmus enim caetera animalia, etiam feras silvestres, istius iuris paritia censer, ut ff. de Iusticia et Iure, libro 1, ss. ius naturale.

Alio modo accipitur pro naturali iudicio rationis humanae, quo tantum regitur humanum genus. Unde in principio *Decretorum* dicitur quod humanum genus duobus regitur, naturali scilicet iure, idest naturali ratione, et moribus. De isto

Odonis unfortunately does not provide an explicit exposition on how the three senses of natural law are interlaced with one another in the same way as Aquinas does with the relationship between eternal law, natural law, and human law. Yet, Odonis presents an order of natural laws, starting from the most expansive and the most universal, i.e. eternal divine law, to the most limited and most particular, i.e. the judgement of human reason. While divine law is the full divine reason, and the law of natural instinct can be said to be a reflection of divine law on the appetites of animals in the same way as Aquinas puts it, the role of divine reason in Odonis's idea of natural human law is more difficult to ascertain. Divine reason governs the universe as a whole, including all the rational creatures in it. Hence, one may see natural human law as merely a more particular determination of divine law in the context of human social and moral life. Yet, Odonis grants a greater subjective agency to the judgement of reason. Compared to Aquinas's argument that natural law is the participation of human reason in the divine provenance, Odonis does not consider natural law as being merely 'impressed' upon men by divine reason. Human reason plays at least a participative part in the cognitive process.

Odonis provides a further illustration of man's cognitive process in Question 2 of Book V, as we have discussed briefly in the section above: whether justice is naturally prior to law.⁴³⁸ Arguing that *ius* is both the object of justice and causally prior to it, Odonis describes the working of *ius* in four parts:

1. The precept of the legislator;
2. What is due of the subject;
3. The scripture either in the form of letters in a book, or the mental writing in the soul, showing the precept and the duty;
4. The conjoined and due act.⁴³⁹

enim iure naturali sic sumpto, dicit Apostolus quod cum gentes quae legem scriptam non habent, naturaliter ea, quae legis sunt, faciunt ipsi sibi, sunt lex, ostendentes opus legis scriptum in cordibus suis, *Ad Romanos* 2. Ius igitur hoc tertio modo sumptum idem est quod ius gentium. Huius autem iuris species sunt sex, scilicet, religio, pietas, observantia, gratia, veritas, et vindicta, quae fuerunt supra expositae 4 libro, capitulo 2, quaestione 2.

⁴³⁸ *ExEth*, V, q. 2, f. 93va: Utrum iustitia sit naturaliter prior iure.

⁴³⁹ *ExEth*, V, q. 2, f. 93va: Primo quod ius vel naturale, vel gentium, vel civile, vel divinum, vel humanum, vel quocumque nomine censeatur, habet quatuor partes, quarum quaelibet interdum vocatur ius. Prima est praeceptum legislatoris. Secunda est debitum subditi. Tertia est scriptura litteralis in libro, vel mentalis in anima, ostendens et praecepta et debitum. Quarta est opus iniunctum et debitum.

In the following passage, Odonis reaffirms that each of the four parts is, in this order, the cause and prerequisite of the following part. The quartet of *praeceptum*, *debitum*, *dictamen rationis*, and *iustum* makes for a complete cognitive process of the works of *ius*:

Precept is prior to what is due, as cause is prior to the caused - it is impossible to obey God before God gives me a command.

Duty is prior to the dictate of reason that manifests the precept and duty - it is impossible for reason to show me what should be done if it is not due not commanded.

The dictate of reason is prior to the good due and to be acted upon and ordered towards justice. If I did something without having understood the precept and duty, then I would not be able to place and order this act towards justice. The act due is a just thing (*iustum*). Therefore, the precept is before just action.⁴⁴⁰

As we have outlined in the precedent section '*Ius* and *iustitia*', Odonis speaks of the relationship between the precept and what is due in a way that presupposes an external command and subjective reaction - the precept comes from a legislator, while the duty comes from a subject-agent in obedience to the precept. Yet, both the precept and the duty need to be comprehended and internalised, and here comes the importance of human reason. For a statutory law, the understanding and internalisation happen through written words, while for natural law, it is a mental scripture in the soul, a phrase that recalls St Paul's concept of law in man's heart, as cited above. Odonis equates the written or mental word to the dictate of reason, which participates in the work of law through its cognition of both the general precept and duty into a notion of the just thing. Human reason is here presented as the crucial link between the universality of a precept and the habit of justice.

⁴⁴⁰ *ExEth*, V, q. 2, f. 93vb: Assumpta patent ex ordine illorum quatuor. Praeceptum enim prius est debito, sicut causa causato; ex hoc enim quod Deus praecipit, ego debeo et teneor obedire et non econverso, nec obedire possum vel debeo antequam datum sit mihi praeceptum. Debitum autem est prius illo rationis dictamine ostensivo praecepti et debiti; non enim est possibile quod ratio ostendat mihi debitum quod non est debitum, vel praeceptum quod non est praeceptum. Istud autem rationis dictamen prius est illo bono debito, et per me operabili et referribili ad iustitiam; si enim facerem aliquod opus quod non praeintelligerem ut praeceptum et ut debitum, non possem referre vel ordinare ipsum ad iustitiam. Hoc autem opus ut iustum, et sic praeceptum prius est iustificatione.

Following this argument, it seems that all laws, when spoken of in relation to justice and to human act, need to have reason's participation in them, otherwise they would not be fully law. The third sense of Odonis's natural law affirms that man, or at least human reason, has a cognitively active role to play - natural human law cannot be imposed by God without the act of human cognition, which understands and internalises the precept of natural law into something that pertains to human acts.

There is an assumption that all laws, be it civil law, or natural law, or divine law, or whatever the nomenclature, always and necessarily presupposes a legislator. 'Divine law has God as its legislator, natural law has nature, and human law has men.'⁴⁴¹ Thus, all laws are posited, albeit by different legislative forces. As we have seen above, both divine law and natural law (spoken presumably in the second and third sense of natural law as per Question 16) are ultimately manifestations of the divine providence in different spheres of governance, and God is the primary legislator. More significantly, the idea that every law presupposes a legislator means that every law comes from a positive legislative force. *Ius* does not come innately to the universe; instead, it is set out and laid down by God and later by human legislative authorities. One cannot imagine a universe or a human community existing in harmony governed by an endogenous normative structure that appeared spontaneously without a legislative force.

This raises a question over the nature of such acts of legislation: if laws are posited, then how does one reconcile the universality of eternal and natural laws with the contingent act of law-making? At least in his commentary on the *Ethics*, Odonis does not concern himself with the question on the contingency of God's Creation. But Chris Schabel has demonstrated that Odonis is receptive to the possibility of a plurality of worlds.⁴⁴² Admittedly this is different from arguing for a contingent Creation. Yet a brief comparison to Duns Scotus and William of Ockham could perhaps help, as he inherits for the most part the voluntarist traditions of the Franciscan Order. Both Scotus and Ockham argue for a reading of a contingent Creation, as God's will is completely free and the world could have been made in a completely different manner. Ockham goes further and posits that all moral precepts are essentially contingent when considered in terms of the absolute necessity of the existence

⁴⁴¹ *ExEth*, V, q. 2, f. 93va: *Ius enim neccesario praesupposit legislatorem, puta vel Deum, sicut ius divinum, vel naturam, sicut ius naturale, vel hominem, sicut omnia humana iura, quaecumque sint illa.*

⁴⁴² Schabel, 'Odonis on the Plurality of Worlds', p. 337-40.

of God.⁴⁴³ Although Odonis supports the primacy of the will and its absolute freedom in willing and nilling, he argues that virtues, while residing in the will, cannot act without reason. This certainly distances him from a theory of radical contingency of the will, and may also underline a thesis of natural law's universality and moral necessity. In this sense, for Odonis, the positive character of such laws stops at the fact that they are posited. A law's having been instituted by God does not necessarily mean it is contingent and arbitrary. After all, a law that is posited can nonetheless be general and normative, on which particular determinations can be made by secondary legislative authorities.

Therefore, one can confidently conclude that in Odonis's distinction between the ante-positive and post-positive laws in the form of *ius naturale* and *ius legale*, while the latter is clearly posited and enacted by well-defined legislative authorities, the former has nonetheless strong positive characteristics. The difference between the two bodies of law is therefore not their positivity or the lack thereof, but rather their respective universality and particularity. *Ius naturale*, while posited by God and nature, with the participation of human reason, has an intrinsic universal moral force, with or without human institution. *Ius legale*, however, derives its binding force exclusively through the act of legislation, which cannot transcend the particular human society whence it arose, and hence remains limited in its scope and force.

Odonis divides *ius legale* into two categories according to the source of legislation. There is divine law, instituted by God, and which cannot be part of natural law, nor the conclusions of natural reason. Such precepts are essentially arbitrary determinations, and are instituted by God at clearly defined moments. Hence, they manifestly derive their binding force from the act of legislation rather than from the universal reason of the divine providence.

It should not be understood that all divine law is natural as the beginning of the *Decretum* seems to believe, where it is said that natural law is what is contained in the law and in the Gospel, where one is commanded to do to others what he wishes to be done to himself, and prohibited from doing what he does not want to be done to himself. Law (*lex*) commands man to be circumcised, and the Gospel commands man to be baptised, and yet neither

⁴⁴³ On the political thought of William of Ockham, see, for example, Roberto Lambertini, 'Poverty and Power: Franciscans in Later Medieval Political Thought', p. 151-160: Ockham considers that the entire social and political order is of human origins, because of the contingency of human will and the mutability of natural law.

circumcision not baptism is natural law. There is positive divine law (*ius*), because it is posited by the law of God (*lege Dei*).⁴⁴⁴

The other category contained under *ius legale* is human law, which is in turn divided into law that is human *simpliciter*, i.e., civil law, and law that is not, i.e., canon law, which is derived from and ordered towards divine law.⁴⁴⁵ Civil law is further divided, in a fashion that somewhat misconstrues the original text of the *Digest*, from which Odonis surely takes the idea: laws made in a city ruled by a multitude in the fashion of a *policratia* are called *plebiscita*; laws made by the virtuous and prudent few in an aristocracy are called *senatus consulta*; laws made by the prince in a kingdom are of three types, *edita*, *constitutiones*, or *decreta principum*; and finally the opinion of the judges has sometimes the force of law, and such laws are called *responsa prudentum*.⁴⁴⁶

Since Odonis defines *ius legale* with its positivity, it is worth investigating the different legislative authorities. We have already considered God as the giver of the universal normative precepts of natural law, and God's legislative power clearly extends beyond laying down such universal precepts and into the realm of laws which pertain to particular human communities. God, whose divine reason

⁴⁴⁴ *ExEth*, V, q. 16, f. 109vb: Nec est intelligendum quod omne ius divinum sit naturale, sicut forte credunt aliqui ex principio *Decretorum*, ubi dicitur quod ius naturale est quod in lege et in evangelio continetur, quo quisque iubetur alii facere, quod sibi non (*sic*) vult fieri, et prohibere alii inferre, quod sibi nolit inferri. Lex enim praecipit hominem circumcidi, et evangelium praecipit baptizari; constat autem quod nec circumcisio nec baptismus sunt de iure naturali. Est ergo ius divinum positivum, quia lege Dei positum. (*N. B.* Both the Venice and Brescia incunabula have 'quod sibi non vult fieri', a clear misquote from the *Decretum*.)

⁴⁴⁵ *ExEth*, V, q. 16, f. 109vb: Ius autem humanum est duplex. Unum simpliciter humanum, scilicet ius civile, quod saeculares homines posuerunt. Aliud non simpliciter humanum, scilicet ius canonicum, quia quamvis posuerunt ipsum homines, tamen quia de iure divino extractum est, et in obsequium divini iuris ordinatum; ideo non est simpliciter humanum.

⁴⁴⁶ *ExEth*, V, q. 16, f. 109vb-110ra: Ius autem civile habet quattuor genera conditorum, scilicet genera quattuor hominum condendi iura potestatem habentium. Quia cum civitas regitur per multitudinem popularem, sicut in *policratia*, tunc plebs condidit iura, quae dicuntur *plebiscita*. Ubi vero regitur per aliquod paucos prudentes et virtuosos, sicut in *aristocratia*, tunc *senatus* condit iura, quae dicuntur *senatus consulta*. Ubi vero regitur per unum principem, ut in regno, tunc princeps condit iura, quae dicuntur *edita*, vel *constitutiones*, vel *decreta principum*, ut ff de constitutione principis, libro 1. Ubi vero aliqua causa descinditur non ex ordinaria potestate plebis, vel seniorum, vel regis, sed ex compromissaria, sicut sit per arbitros, tunc prudentes arbitri condunt, iam quando dant sanissima et aequissima iudicia, quae dicuntur *responsa prudentum*; aliquando quidem *responsa prudentum* sunt recepta tanquam iura, non propter potestatem iurisdictionis, sed propter excellentia dicretionis et aequitatis. Haec autem quattuor genera civilis iuris distinguunt, ff de iusticia et iure, libro 'ius autem civile'.

is law, deliberates on both the universal and the particular, and therefore has the power of setting up laws for both. One may simply refer to the thirteenth-century theological concept of God's absolute and ordinary powers to support the thesis of God's legislation for particular groups: while God has the ordinary power to lay down rules and order the universe and men, he also has the absolute power to make particular determinations as a demonstration of, or a dispensation from, the fundamental laws set up with God's ordinary power.⁴⁴⁷

Odonis's taxonomy of civil law is a result of combining the divisions of the jurists found in the Justinian *Codex* and the typology of Aristotle's forms of political structures. It was standard practice for the body of Roman law to accept a plurality of legislative authorities co-extensive within the Roman body-politic, as per the ancient Roman metaphor of *ius* as a reservoir of water fed by a plethora of *fontes iuris*.⁴⁴⁸ However, Odonis does not seem to share the theoretical possibility of a plurality of lawmaking authorities in a given polity, and attributes one type of civil law to each of Aristotle's proposed forms of government, instead of the co-extensive legislative institutions as outlined in Roman Law. While Aristotle recommends a mixed form of constitution in his *Book of Politics*, a type of government structure dominated by the middle class of the city and blending the features of monarchical, aristocratic and democratic rules, Odonis is clearly not contemplating the possibility of such political edifice, at least on a legislative level. The only co-extensive legislative authority that Odonis has envisioned alongside the main governing force is the prudent judges with their *sanissima et aequissima iudicia*, whose legislative authority is only sometimes accepted by the law.⁴⁴⁹

Hence, one may regard Odonis's notion of law-giving power as somewhat sovereignist, where there is one supreme law-making authority within a body-politic. This thought is certainly consistent with Odonis's idea of the natural-law system, where there is ultimately only one source of legislation in the form of God. Positive law's reflection on the natural-law system is certainly not lost to Odonis, who, in the context of the hierarchy of the judicial power, states that 'A prince is like God in his land

⁴⁴⁷ Kenneth Pennington, *The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition*, Berkeley, 1993, p. 107-117.

⁴⁴⁸ See Murphy, *Philosophy of Positive Law*, p. 2-5.

⁴⁴⁹ Odonis argues for an absolutist notion of the prince with supreme legislative and judicial power. More on this later in the discussion on the power of the prince.

and should be able to judge as God in his land.⁴⁵⁰ The Roman idea of *fontes iuris* fed by a multitude of legal sources is transformed instead into a unitary system where the political community is governed by a sole law-making power.⁴⁵¹

While it is clear that Odonis envisions a well-defined source of political and legislative authority within any given polity, organised in a unitary power structure with a sole source of legislation, one may still raise the question of where law derives its force from and how such binding force of law comes to be.

One interpretation would be that Odonis equates the source of law to the force of law in an absolute positive structure. The prince makes law, and the prince *is* law. For Odonis, the prince is the supreme judge in his own land. Odonis does not explicitly state in Question 20 that the prince is also the lawgiver, but this does corroborate to what we have discussed above, where the sovereign should be the sole lawmaker in any given political community. Furthermore, it is certainly consistent with contemporary trends. Both Aquinas and Brito have posited the idea, in the context of a discussion on the virtue of equity, that only the prince has the normative power of derogation, because he is the giver and guardian of law.⁴⁵² Odonis also cites the concept of the prince as the living embodiment of law - *ius animatum*.⁴⁵³ The deeds, words, and will of the prince are all a manifestation of what is just and have the force of law. Therefore, the prince himself is the very force of law.

This absolute legal positivism is, of course, not an idea original to Odonis. Kenneth Pennington has offered an extensive account tracing the genesis of legal absolutism during the later Middle Ages, and demonstrates that it has become common place by the second half of the thirteenth century for the jurists, both canonists and civilians, to accept the idea of the legal sovereignty of the prince, on

⁴⁵⁰ *ExEth*, V, q. 20, f. 115rb-va : Primo quoniam ille qui est quasi deus in terris, debet quantum potest sicut deus iudicare in terris; tali namque principi maxime iniungitur illud quod generaliter fidelius iudicatur.

⁴⁵¹ The power of the prince is an important and convoluted issue. Odonis devotes a whole question on this topic (V11) and carefully explores the various aspects of the relationship between the prince and the law. It is a topic that deserves a separate and in-depth analysis. See below on the rule of man and rule of law.

⁴⁵² *ST*, II2ae, q. 120, art. 1-2; *RBSE*, V, q. 130, p. 467-9

⁴⁵³ Odonis most likely took the term from Accursius's *Ordinary Gloss*, dist. 1, 3, 22: 'imperator qui est lex animata in terris'; the concept also has Cinus as its primary exponent; see also Pennington, *Prince and Law*, p. 130-131; and Ernest Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology*, Princeton, 1997, p. 128-31; the term also has Aristotelian origins, where the judge is referred to as 'justice personified': 'iudex enim vult esse velut quid iustum animatum...', *NE*, V, 1132a.

the conceptual basis of *princeps solutus legibus*. Hostiensis and, later, Johannes Andreae, further formulate the argument that the will of the prince is the law, and legislates, changes, or derogates from the law at will.⁴⁵⁴ Law is considered in this sense to derive its force from simple positivity - it is endowed with its binding power at the moment of its institution because it is instituted by the competent authority.

A thesis of simple positivity would lead to two challenges. The first is a need for a further inquiry on the power and legitimacy of the law-making authority - since law derives its force simply from the fact that it is posited, then the question would be where the power of the lawmaker comes from. This question concerns the power of the prince and will be treated separately later. The second challenge to a simply positivist thesis is that, similar to the question raised by the positivity of natural law, given that the law is made at the will of the prince, is such law inherently contingent and arbitrary, with no underpinning necessity and no intrinsic moral force? In other words, how does positive law relate to the necessary precepts of natural law?

It is undoubtedly a theoretical possibility that law is entirely contingent, since the will that makes the law is contingent, and the absolute power of the prince would mean that he is at liberty to make any law. However, this would contradict the idea of law as a normative principle. Odonis certainly has the generality and universality of law in mind when he is comparing the rule of law and the rule of man in Question 11.⁴⁵⁵ On the other hand, the idea of law's absolute contingency would also contradict one's civic experience: although civil law may vary from one political community to another, there always seems to be a certain rationale behind such law.

Aquinas famously answers the question with his idea that positive law has natural law as its source. While some scholars, such as Thomas Gilby, describe Aquinas's idea of positive law as accidental and imposed, rather than essential and inherent, Aquinas has no appetite for a law that is completely contingent and independent of natural law principles.⁴⁵⁶ Although, for Aquinas, law must work as an independent and parallel structure to that of morality, it is still deeply entrenched in morality and natural law. Every human positive law is said to be derived from natural law in one of the two senses:

⁴⁵⁴ Pennington, *Prince and Law*, p. 77-90.

⁴⁵⁵ See, for example, *ExEth*, V, q. 11, f. 103va: Nono quia lex est securior et minus confidendum est de homine quam de lege. Unde dicit Philosophus quod paucissima committenda sunt iudicibus.

⁴⁵⁶ Murphy, *Philosophy of Positive Law*, p. 18-20.

either it is a secondary conclusion of the first principles of natural law, or it is the particular determination of the general precepts of natural law:

Consequently, every human law has just so much of the nature of law, as it is derived from the law of nature. But if in any point it deflects from the law of nature, it is no longer a law but a perversion of law. But it must be noted that something may be derived from the natural law in two ways: first, as a conclusion from premises, secondly, by way of determination of certain generalities.⁴⁵⁷

In this sense, human law would always be endowed with a natural moral force. While Aquinas does acknowledge that for certain laws, such as the ceremonial precepts of the Mosaic Law, it is impossible to trace their force to natural morality, all human laws must be derived from natural law in one way or another. However, Aquinas also remarks that, while the first kind of derivation gives human law its force through natural law, the second kind of derivation endows legal force through the human act of legislation. Aquinas writes:

Accordingly, both modes of derivation are found in the human law. But those things which are derived in the first way, are contained in human law not as emanating therefrom exclusively, but have some force from the natural law also. But those things which are derived in the second way, have no other force than that of human law.⁴⁵⁸

However, Murphy notes that Aquinas's first means of derivation of human law is not properly speaking positive - a secondary conclusion of the moral premises is still necessary, and regardless of their being posited by a human authority or not, would still have its force through natural law.⁴⁵⁹ Only

⁴⁵⁷ *ST*, I2ae, q. 95, art. 2: Respondeo dicendum quod, sicut Augustinus dicit, in I de Lib. Arb., non videtur esse lex, quae iusta non fuerit. Unde in quantum habet de iustitia, in quantum habet de virtute legis. In rebus autem humanis dicitur esse aliquid iustum ex eo quod est rectum secundum regulam rationis. Rationis autem prima regula est lex naturae, ut ex supradictis patet. Unde omnis lex humanitus posita in quantum habet de ratione legis, in quantum a lege naturae derivatur. Si vero in aliquo, a lege naturali discordet, iam non erit lex sed legis corruptio. Sed sciendum est quod a lege naturali dupliciter potest aliquid derivari, uno modo, sicut conclusiones ex principiis; alio modo, sicut determinationes quaedam aliquorum communium.

⁴⁵⁸ *ST*, I2ae, q. 95, art. 2: Utraque igitur inveniuntur in lege humana posita. Sed ea quae sunt primi modi, continentur lege humana non tanquam sint solum lege posita, sed habent etiam aliquid vigoris ex lege naturali. Sed ea quae sunt secundi modi, ex sola lege humana vigorem habent.

⁴⁵⁹ Murphy, *Philosophy of Positive Law*, p. 93-4.

the second means of derivation can be properly called positive law, as it is a particular determination of the general precept of natural law. Yet, such law, despite having been determined by human reason and particular to a given circumstance, it is still a precision within the scope allowed by natural law. The precise point of determination is human, and the determination derives its force from human institution, but the underlining rationale is still consistent with the dictate of morality.

On the other end of the spectrum is Durand of Saint-Pourçain, a contemporary to Odonis. Durand proposes a different thesis on the relationship between positive and natural law in his *Tractatus de legibus*.⁴⁶⁰ Contrary to the arguments of Aquinas and most commonly accepted idea that human law is founded upon natural law, Durand posits that human law and natural law have no causal relationship. In what Brian Tierney considers as an anticipation to the early modern debate on the law's foundation on public utility, Durand maintains that human law is based on the principle of public expediency, and therefore does not have, and does not require, any intrinsic moral force to it.⁴⁶¹ Human law is consistent with natural law only on a superficial level: it is the precept of natural law to do what pleases God, and God is pleased when men act towards promoting the common good, which is the end of human law. In other words, it is the dictate of natural law that men should institute positive law that promotes the common good. Yet, the exact commands of human law need not bear any relationship with the command of natural law.

Odonis is not impervious to this question either. We find his position to be somewhat between Aquinas's thesis and that of Durand. As it has been discussed above, Odonis's theory of human positive law assigns a sovereigntist law-making power to the prince, who is free to make the law as he wishes. Human law derives its force from the act of authoritative legislation. However, Odonis also offers a few provisions that effectively tie such contingent law-making power to the generality and necessity of natural law. In the first instance, the prince that rules over a polity is by necessity a virtuous man. Thus, as the *ius animatum*, the prince makes laws as the expression of his virtue. In Question 5, Odonis posits that legal justice is *essentially* the same as the sum of all moral virtues, and

⁴⁶⁰ Of course, it needs to be pointed out that the *Tractatus de legibus* is attributed to Durandus, but not with absolute certainty. Nonetheless, it provides an interesting perspective on the purpose and justification of law. Brian Tierney offers a more extensive exposition on the *Tractatus* in his essay 'Public Expediency and Natural Law: A Fourteenth-Century Discussion on the Origins of Government and Property', in idem, *Rights, Law and Infallibility in Medieval Thought*, Aldershot, 1997, p. 168.

⁴⁶¹ Tierney, 'Public Expediency' p. 169-171.

laws made by the best man in the city is the expression of the reason of his prudence.⁴⁶² A prince determines the law through the use of his practical reason. This certainly assures that no law is contingent in the absolute sense - instead, it is determined by a habit of the practical intellect which discerns the particular needs and necessities required of particular situations. Yet, Odonis still allows for a considerable degree of legislative freedom: the virtue of prudence is the perfection of the practical intellect works closely with the contingent will and is not constrained by the universal reasons. By implication, laws made by the prudent and virtuous sovereign would be informed by reason and the universal demands of natural law, as well as determined freely by the will through prudential reason.

Odonis further illustrates his theory of the relationship between natural law and human law in his question about the directive role of the virtue of equity over natural law: whether the virtue of equity directs natural law (*ius naturale*).⁴⁶³ Here he makes a distinction between two types of natural law. One is immutable and inviolable, which are natural law's precepts and prohibitions. The other is mutable and replaceable, which are natural law's counsels, concessions, and permission:

The dictate of natural law (*naturalis legis vel iuris*) orders something by prohibiting what is evil without qualification. Natural law prohibits to live in vice, commands all that is due, counsels and persuades what is honest, concedes what is useful, such as in the state of innocence all is held in common, and permits what is expedient, and such as in our time, because of the malice of men, goods are held in private. Therefore, it should be said that natural law does not accept correction and direction in things which are prohibited and commanded. But natural law does take mutation, correction, and direction in things counselled, conceded, and permitted.⁴⁶⁴

⁴⁶² *ExEth*, V, q. 5, f. 97vb, arguing that in legal justice, the citizens need not only have the habit of obeying, but also of ruling: Si enim ille esset prudens et bonus princeps, ille utique esset bonus homo; et si alii essent per omnia obedientes isti bono principi, ipsi essent boni cives. Non tamen propter hoc essent boni homines simpliciter pro eo quod non operarentur bona, secundum propriam rationem suae prudentiae. For details, see the section below on legal justice.

⁴⁶³ *ExEth*, V, q. 22, f. 117rb: Utrum epieikes sit directivum iuris naturalis.

⁴⁶⁴ *ExEth*, V, q. 22, f. 117va: Pro solutione quaestionis, praemitto quod dictamen naturalis legis vel iuris ordinat aliqua prohibendo, sicut simpliciter mala. Prohibet enim vivere secundum vitia, ut supra eodem libro, capitulo 2 et capitulo 5; prohibet furtum et adulterium, quae statim nominata convoluta sunt cum malitia ut supra libro 2 capitulo 6. Item ordinat aliqua praecipiendo, sicut omnia debita, puta 'omnia quae vultis ut faciant vobis homines, haec eadem vos facite illis',

Natural law prohibits vice and commands everything that is due of man – this is the immutable part of natural law. On this, no human law or human authority can contradict it: no law can make licit what is simply illicit, and no law can licitly prohibit one from doing what is commanded by natural law as due.⁴⁶⁵ Where natural law concerns the evil or good without qualification, human positive law cannot contradict it - this is an argument that resonates with Aquinas. However, it is also important to note that Odonis, like Durand of Saint-Pourçain, does not argue for a causal relationship between preceptive natural law and human positive law. Natural law, even in its precepts and prohibitions, are not necessarily legislated into human positive law, which only needs to be uncontradictory. In fact, Odonis argues that even if the precept of natural law is written down, it is still natural law as it derives its force from natural law, i.e. prior to human institution of such law.⁴⁶⁶ The act of human legislation that translates natural law into statutory form does not make it positive. Natural law remains natural law, whatever form it takes.

The second genre of natural law, or the ‘softer’ part of natural law, which are the permissions, concessions, and counsels of natural law, are subject to change and can be superseded by human legislation.⁴⁶⁷ This differs considerably from Aquinas’s position that human law must be derived from natural law. For Odonis, while no human law can licitly contradict the preceptive parts of natural law, the permissive, concessive, and conciliatory parts of natural law are not further *determined* by human law for the particulars, but are instead mutated, corrected, or superseded. Yet it still does not go as far as Durand’s opinion where law is legislated solely on the principle of public expediency. Odonis argues that in the ‘softer’ parts of natural law, human legislation can deviate from and contradict

Matthei 7. Item aliqua consulit et suadet, sicut honesta, puta quod una sola sit uxor unius. Item aliqua concedit ut utilia, puta quod in statu innocentiae, omnia essent communia. Item aliqua permittit ut expedientia, quae aliquando accidunt in malis et propter mala, puta quod tempore isto propter malitia hominum bona sunt propria.

Hiis ergo praemissis, dicendum primo quod ius naturale in rebus prohibitis et praeceptis nullam recipit correctionem vel directionem. Secundo quia in rebus consultis et suasis honestati, et concessis utilitati, et permissis expedientiae ac necessitati, recipit mutationem correctionem et directionem.

⁴⁶⁵ *ExEth*, V, q. 22, f. 117va: Sed quod est illicitum, quia simpliciter malum semper agnoscet esse malum, quia semper dictabit esse illicitum; sed omne, quod est iure naturali simpliciter prohibitum, est prohibitum, quia simpliciter malum. Quare nullo iure poterit fieri licitum.

⁴⁶⁶ *ExEth*, V, q. 16, f. 110va: Ad secundum vero dicendum quod ius naturale in scriptis redactum semper remanet naturale et nunquam sit legale, secundum quod philosophi accipiunt ius legale pro illo quod nullam habet vim ante legem. Unde apud theologos istud praeceptum honora patrem tuum, non dicitur legale quamvis sit scriptum in lege, sed dicitur morale, quia de natura et vi morum est debitum honorare patrem suum.

⁴⁶⁷ Cf. note above, on the mutations of natural law.

natural law, and should be guided by the virtue of equity. Yet here, the question would be how one goes about demarcating the boundary between ‘hard’ and ‘soft’ natural law. Odonis states that, while the precepts and prohibitions concern things which are intrinsically good or evil, the intermediary ground of human action is guided by natural law in an exhortative manner. Natural law counsels what is honorable, concedes what is useful, and permits what is expedient.⁴⁶⁸ Compared to the immutable qualities of the intrinsically good or evil, *honestas*, *utilitas*, and *expedientia* are fluid concepts, subject to the changes of practical circumstances. Therefore, positive human law can be said to be related to natural law in the way that it is counselled, permitted, or conceded by natural law, and yet such positive law itself does not require an intrinsic force of natural law. Instead, positive law derives its force from simple positivity.

In this sense, except for the part of positive law that confirms and legalises what is commanded and prohibited by natural law, human positive law is only loosely related to natural law. While it receives the guidance of reason and morality, the legislator is ultimately free to make laws one way or another concerning the human acts that are found within the intermediate ground between what is intrinsically good and what is intrinsically evil. Nonetheless, this must be understood in a broader context that Odonis is inherently sceptical of the effectiveness of positive law in governing a civil society justly and in cultivating virtuous citizens. While the virtue of equity dictates that natural law should be changed and superseded by human positive law for the purpose of justice and common good, the virtue of equity also dictates that human law should be muted or simply set aside when the adherence to the artificial precepts of human law would violate justice. The preceptive and prohibitive principles of natural law come back to limit and correct the exercise of human positive law. The circle is closed. At the centre of the relationship between natural law and human law is the virtue of equity, exercised by the equitable man. After all, man as a free moral agent is the primary subject (*subiectum primum*) of this enquiry of the moral science, and man is the source of all moral acts. For Odonis, instead of forming its own independent scientific discipline governed by different first principles, the discussion of laws and legal justice falls firmly within the remit of ethics. In Odonis’s analysis of law, it is ultimately the just and prudent person that makes and administers the law, in the pursuit of justice and common good.⁴⁶⁹

⁴⁶⁸ Cf. note above, on the permutations of natural law

⁴⁶⁹ Jurisprudence was starting to be regarded as a separate scientific discipline by the end of the thirteenth century. Radulphus Brtio argues that legal justice is different from other virtues because it falls under the remit of legal science,

III. LEGAL JUSTICE

The absolute positivity of human law and its tenuous relationship with natural law means that there is no necessary association between law morality. This clearly poses a challenge to Aristotle's statement that legal justice is the complete virtue. How Odonis resolves the apparent contradiction the object of our enquiry in this chapter. He links the concept of legal justice back to the concept of *ius*, all while severing any connections with human positive law. For Odonis, it is beyond any doubt that Aristotle is correct, and that the virtue of legal justice is the complete virtue. But in order to be a complete virtue, it needs to transcend the dictate and limits of law. Because human positive law is inevitably limited, and should not be used as an infallible standard for justice. Here, the idea of legal justice plays a pivotal role in linking natural and positive law, in making for a perfectly virtuous man, and in ensuring the delivery of justice.

1. A Conceptual Challenge

Aristotle maintains that law 'demands actions in accordance with the other virtues, and forbids those in accordance with the vices.' (*NE*, 1129b) Therefore, when justice is understood as lawfulness, it is really the complete virtue. What Aristotle intends with identifying justice as the complete virtue can be understood in two perspectives. Firstly, he clearly envisions an idealist and inclusive system of law that reaches into every aspect of morality and that cultivates virtuous citizens through its commands and prohibitions. Thus, law is equivalent to the entirety of morality, regulating every aspect of man's life. Abiding to law means following all commands of morality. It is in this extensive system of law can lawfulness be equivocated to complete virtue.

The second perspective comes from Aristotle's political naturalism. Man is naturally a political animal, and hence must be understood within a social and political context. While the other moral virtues are primarily ordered towards regulating one's own dispositions, justice is the virtue with a

independent of the moral science. Durand of Saint-Pourçain also maintains that the legal science is different from moral science because law is based on the first principle of expediency and utility, while the moral science is based on the first principles of universally understood moral premises in the form of natural law.

social dimension ordered towards another person. In other words, justice is the virtue that guides man through his social and political life in his dealings with the others, and consequently it is the complete virtue because one can only become fully virtuous by participating in the social and political life of the city.

This reading, however, would certainly fail to satisfy the medieval scholastics. Differences between the ancient Greek and late Medieval European societies aside, there are problems posed by the Latin translation of Aristotle's original Greek text. While Aristotle uses *nomos* to denote law, and *nomikon dikaion* for justice as lawfulness, or legal justice, they are rendered into Latin respectively as *ius* and *iustitia legale*, two terms laden with significance prior to the translation of the *Ethics*. The bifurcation of terminology and their rich semantic history present profound challenges to the scholastic commentators working within the medieval Latin linguistic context. Aristotle's concept of *nomos* should be understood rather narrowly as the law made by a human legislative authority, and indeed the Philosopher has never contemplated that law, as applicable to human society, can be natural or divine in the same way as his medieval commentators would come to think.⁴⁷⁰ Therefore, while Aristotle has to construct a relationship between *nomos* and *dikaion*, for the medieval scholastics the connection between *ius* and *iustitia* is evident and intrinsic.⁴⁷¹

Ius, either broadly construed as what is right or what is just, or more specifically understood as the body or the concept of law, is external to man. Thus, its relationship to virtue, as an interior habit of the soul, should be tenuous. Moreover, it would be difficult for medieval scholastics to conceive of a legal system, with perhaps the sole exception of divine law, that has its reaches into every aspect of man's moral life. It may be the *intention* of law to command every virtue and prohibit every vice, but the *practical* limitations of law mean that no law, through its coercive power, can regulate and foster every virtue within man. Therefore, it is difficult to conceive of justice as a virtue that is complete and the sum of all other moral virtues. From the other perspective, the Aristotelian imperative for participation in public life is not universally accepted in the Middle Ages, as can be testified in the secular-mendicant dispute as well as the debate on the relative merit of the active and contemplative

⁴⁷⁰ It is common to equate Aristotle's concept of *nomos* and justice as lawfulness to positive law. However, this point is far from settled within the Aristotelian scholarship. For a more thorough analysis of Aristotle's idea of law, see Tony Burns, *Aristotle and Natural Law*, London, 2011.

⁴⁷¹ Cf. section on *ius*, *iustum*, *iustitia*.

life. It is not evident that, in order to reach a state of perfection, man necessarily needs to take part in public life and thus develop the virtue of justice.

Therefore, the problem is how exactly legal justice should be understood as the complete virtue. Albertus Magnus offers a solution: since legal justice is ordered towards the common good, it is nobler and more complete than the specific virtues which are ordered towards the private good; it occupies a higher rank in the hierarchy of virtues, where the superior virtues would include the inferior ones.⁴⁷² Legal justice therefore includes all other virtues because it is ordered most immediately to the common good. This superiority and inclusivity of Albertus's concept of legal justice has several implications on his political thought. For Albertus, the objective of positive law is the common good and to make citizens live a virtuous life. Thus, the first and foremost concern of any legislator should be how to command members of the political community to become virtuous men. By extension, Albertus accepts quite literally Aristotle's idea that law commands every virtue and forbids every vice, and argues that everything concerning morality falls within the purview of the legislator's authority.⁴⁷³

Aquinas broadly follows the lines of Albertus's argument, and posits an inclusivist theory of legal justice. Legal justice is the total virtue, and it orders the actions of the individuals towards the common good. Its identity with particular virtues comes from the fact that particular virtues are also capable

⁴⁷² *AMSE*, V, lect. III. num. 375, p. 319: Unde iustitia, quae erit circa hanc materiam, erit specialis et quoad materiam et quoad formam, et est illa quae opponitur avaritiae. Et quia huiusmodi forma est perfectio rationis, quae est ordinativa communicationum et distributionum secundum dictas proportionem, haec forma non est obligata ad aliquam materiam determinatam, quia ratio est universale regens omnium inferiorum potentiarum, et ideo haec forma poterit adaptari in omnibus actibus aliarum virtutum, secundum quod referuntur in communitatem, ut non relinquere aciem et huiusmodi, quae sunt elementa civilitatis, et tunc erit quaedam specialis forma iustitiae et material generalis. Et sic erit iustitia legalis per conformitatem ad legem specialis quaedam virtus propter formam iustitiae specialem, sed erit iustitia generalis propter materiam generalem. Cf. Kempshall, *Common Good*, p. 118.

⁴⁷³ *AMSE*, V, lect. II, num. 372, p. 315-16: Praeterea, sicut in secundo dictum est, intention legislatoris est cives bonos facere; sed non sit aliquis bonus nisi per omnia quae pertinent ad virtutes, sive sint propria sive communia sive intrinseca sive extrinseca; ergo videtur, quod de omnibus sit lex.

Solutio: Dicendum, quod omnes virtutes quantum ad usum attingunt communitatem, quamvis quantum ad essentiam et quantum ad materiam vel aliter sint propriae. Et secundum quod attingunt communitatem, sic est ordinabile a legislatore. Et ideo praecipit, ut aliquis non relinquat aciem in bello, quae pugnat pro salute communitatis, quia hoc est opus fortitudinis relatam ad communitatem, et similiter est de aliis. Et sic lex omnia praecipit communia et propria, secundum quod attingunt communitatem, et etiam interiora, secundum quod sunt causa exteriorum. See also Kempshall, *op. cit.*, p. 118-121.

of being ordered towards common good, since every individual is, ultimately, a part of the political community. Therefore, justice not only regulates the action towards public good, but also the actions directed towards the individual himself.⁴⁷⁴ Aquinas writes:

It follows therefore that the good of any virtue, whether such virtue direct man in relation to himself, or in relation to certain other individual persons, is referable to the common good, to which justice directs: so that all acts of virtue can pertain to justice, in so far as it directs man to the common good. It is in this sense that justice is called a general virtue. And since it belongs to the law to direct to the common good, as stated above, it follows that the justice which is in this way styled general, is called "legal justice," because thereby man is in harmony with the law which directs the acts of all the virtues to the common good.⁴⁷⁵

The political consequence of Aquinas's inclusive theory of legal justice is that the law and the legislator should not only be ordered towards the common good, but also towards the private virtue of citizens. However, when it comes to the practical application of legal justice into the legal system of the city, Aquinas, unlike Albertus, is reluctant to make individual virtue a legal imperative. While in theory, the overarching concern of the common good dictates that all citizens should be virtuous individuals, in practice the competence of law is limited and cannot possibly command every citizen to become a good person. Therefore, despite Aquinas's best effort, there remains a chasm between the idea that legal justice is the complete virtue and the necessarily limited purview of the authority of law.

⁴⁷⁴ Kempshall, *op. cit.*, p. 116-122.

⁴⁷⁵ *ST*, II2ae, q. 58, art. 5: Secundum hoc igitur bonum cuiuslibet virtutis, sive ordinantis aliquem hominem ad seipsum sive ordinantis ipsum ad aliquas alias personas singulares, est referibile ad bonum commune, ad quod ordinat iustitia. Et secundum hoc actus omnium virtutum possunt ad iustitiam pertinere, secundum quod ordinat hominem ad bonum commune. Et quantum ad hoc iustitia dicitur virtus generalis. Et quia ad legem pertinet ordinare in bonum commune, ut supra habitum est, inde est quod talis iustitia, praedicto modo generalis, dicitur iustitia legalis, quia scilicet per eam homo concordat legi ordinanti actus omnium virtutum in bonum commune.

2. Odonis: Legal Justice as Aggregate Virtue

Odonis tries to fill in the blanks left by Aristotle by reformulating both the concept of *ius* and of legal justice while remaining faithful to the broad strands of Aristotle's ideas. In this process, he offers an analysis that is significantly different from the theses posited by Albertus and Aquinas. We have established above that, for Odonis, *ius* is not only prior to justice and to *iustum*, which is the object of justice, it is also the necessary causation and the first principle of justice. With this subtle conceptual shift from the *lex* used by Albertus and Aquinas to the broader and more diverse connotations of *ius*, Odonis gives the notion of legal justice a much broader scope than mere human legislation.

Odonis discusses the concept of legal justice from three perspectives: how it is different from particular justice, how it is identical to other moral virtues, and how it is different from such moral virtues in its being ordered towards one another. In Question 3 of Book V, Odonis follows Aristotle, and divides justice into lawfulness (*legale*) and fairness (*equale*), the latter of which Odonis also equates with Aristotle's concept of particular justice, and they become synonymous in this commentary text.⁴⁷⁶ Before launching his main argument, however, Odonis sets out the premise that 'the division of justice should be had in accordance with the division of *ius*.'⁴⁷⁷ Yet, the division along the species of *ius* would certainly challenge the authority of Aristotle - Cicero divides *ius* into natural, customary, and legal, based on the sources of authority of *ius*. Should one follow this division, then justice would be divided into natural justice, customary justice, and legal justice. Odonis posits that, while Cicero's division of *ius* according to its species is appropriate, one can also appropriately divide justice according to the subject-matter (*materia*) of *ius*, and this is exactly what Aristotle has done.⁴⁷⁸ Legal justice, rather than having its own proper subject-matter, takes all just acts of every virtue as its subject-matter, while for particular justice, the subject matter is limited to its own acts. Thus, legal

⁴⁷⁶ *ExEth*, V, q. 3, f. 95vb: Et sic patet qualiter debeat intelligi divisio iustitiae in legalem et particularem, quia duae divisiones sunt necessariae.

⁴⁷⁷ *ExEth*, V, q. 3, f. 95va: Tertio quia omnis conveniens divisio iustitiae debet fieri secundum divisionem iuris, sicut Tullius, in fine secundi libri suae Rhetoricae, dividens primo iustitiam secundum tria genera iuris, scilicet naturalis, consuetudinalis, et legalis. Haec autem divisio non sit secundum aliquam divisionem iuris, cum nusquam ius inveniatur divisum in ius legale et aequale. Quare non videtur divisio conveniens.

⁴⁷⁸ *ExEth*, V, q. 3, f. 96va: Dicendum igitur quod iustitia potest dividi secundum divisionem iuris, vel secundum divisionem materiae iuris. Et utroque modo potest esse conveniens divisio.

justice is a general virtue that regulates and orders all other virtues, as it takes these virtues' acts as its subject-matter; particular justice, on the other hand, is a specific virtue, with its own acts, in the same way as temperance and fortitude are specific virtues in their own right.

Aristotle divides justice according to the subject-matter (*materia*). It should be known that he wanted and had to divide according to the division of subject-matter, otherwise he could not appropriately say that, of the acts of justice concerning just things, some concern every subject-matter of the just acts, while others concern one particular subject-matter which is limited to oneself. If the act concerns every subject-matter, then it is legal justice, which acts on every subject-matter of each virtue, which is proved according to the Philosopher, since all lawful acts and acts commanded by the law are carried out by this legal justice. All acts of virtues are lawful, since they are commanded and ordered by the law, thus all acts are done through this justice. If there is justice that concerns one particular subject-matter, then it is a special virtue, which has the specific subject-matter, such fortitude when facing danger, or temperance of touch and taste.⁴⁷⁹

Odonis decouples *iustitia legalis* from *ius legale*, despite their obvious semantic connection. *Ius legale* should not be taken as the prior and causal principle to *iustitia legale* in the same fashion as *ius* should be considered as a causal principle to justice. As we have seen above, while discussing positive and natural law, Odonis considers *ius legale* simply as law that is written down, i.e. human positive law, as opposed to natural law or customary law, following the Ciceronian division. In Question 15, Odonis further clarifies the division of *ius* into *ius politicum* and *ius economicum*, which govern different spheres of man's life:

In terms of the subject-matter, political law orders principally parts of the city, while the other three (paternal law, conjugal law, master's law) order parts of the household. City and

⁴⁷⁹ *ExEth*, V, q. 3, f. 96va: Aristoteles autem divisit eam secundum materiam, ubi sciendum quod ipse intendens dividere iustitiam secundum divisionem materiae voluit et debuit, quoniam aliter convenienter non potuit dicere quod iustitiarum operantium circa iusta, alia operatur circa omnem (omni, X) materiam iustorum operum, alia vero circa unam particularem materiam sibi limitatam. Si circa omnem, sic est iustitia legalis, quae operatur in omni materia cuiuscumque virtutis, quod probatur secundum Philosophum, quoniam omnia opera legalia et a lege iussa aguntur ab hac legali iustitia; sed omnia virtutum opera sunt legalia, quoniam a lege sunt iussa et imperata, quare omnia aguntur ab hac iustitia. Si vero sit iustitia circa unam particularem materiam, sic est quaelibet alia virtus specialis, quae habet materiam specialem, sicut fortitudo pericula, et temperantia tangibilia et gustabilia.

household differ from each other not only in their size, but also in species, as shown in Book I of *Politics*. Therefore, that which orders the city is called political law (*ius politicum*), and those three laws that order the household are together called household law (*ius economicum*).⁴⁸⁰

Taken Odonis's two separate typologies together, one can already envision an extensive range of subject-matters under the remit of legal justice. Instead of Albertus's and Aquinas's top-down model of using law to enforce morality, Odonis's concept of legal justice takes the precepts of both natural law and human legislation as its interior notion for what is just. Similarly, neither is legal justice limited to the sphere of one's public life, but it reaches into the deeper level of one's domestic familial life as well. Justice is not only a virtue that governs how man conducts himself in the city, in relation to his fellow citizens and ordered towards the common good, but also a virtue that regulates man's most intimate relations, even though such relations may not be free and equal.

Therefore, legal justice can be said to be the complete virtue in terms of its subject-matter. Yet, the question arises on how legal justice can have the acts of all moral virtues as its subject-matter without essentially replacing these virtues. On this front Odonis offers two solutions. One, that legal justice is unique in the way that it is intrinsically ordered towards another, while other virtues may only be considered as ordered towards another *per accidens*. The other, that particular moral virtues make a person more perfect with proper intention and better-ordered appetite.

3. Legal Justice and Moral Virtues

In Question 8, Odonis inquires whether legal justice is distinguished in the way that it is ordered towards another: *utrum legalis iustitia distinguatur a particulari et ab aliis virtutibus per esse ad alterum?* Odonis points out in the objection that, legal justice is certainly not the sole virtue that is ordered towards one another. Particular justice, or justice as fairness, is also ordered towards one another. The same can be said of many other virtues.

⁴⁸⁰ *ExEth*, V, q. 15, f. 108vb: In materia quidem quoniam ius politicum ordinat principaliter partes civitatis, aliud autem triplex ius ordinat partes domus. Civitas autem et domus specie differunt, non solum magnitudine et parvitate ut probatur primo *Politicae*; et ideo illud ius quia civitate ordinat dicitur politicum, istud autem triplex ius quia domum ordinat dicitur economicum.

In opposition, as Aristotle shows in chapter 11, particular justice also concerns the good of another. Therefore, there is no difference between legal justice and particular justice.

It seems that the virtue of magnificence does not concern the man himself, but rather, concerns all merchandises; by extension, it seems that magnificence is more concerned with the good of another than the good of oneself.⁴⁸¹

If legal justice can have the acts of other moral virtues as its subject-matter, then such acts can be ordered towards another in their own right. By extension, all moral virtues are capable of being ordered towards another. Thus, it would seem superfluous to have a separate virtue to regulate acts which individual moral virtues are capable of regulating in their own right.

To address this problem, Odonis firstly concedes that all moral virtues are capable of being ordered towards another *in addition to* being ordered towards the individual himself. For a virtue to be ordered towards another (*esse ad alterum*), it can happen in three ways - to be put concisely:

1. A virtue through its act may be ordered towards another, in the way that chastity is acted upon both one's own body, but also one's wife and children;
2. A virtue through its benefit may be ordered towards another, in the way that a temperate man, through his sobriety, may benefit the commonweal;
3. A virtue through its perfectibility may be ordered towards another, in the way that a perfected man may come to order and perfect another man.⁴⁸²

Odonis gives the idea of *esse ad alterum* a broad reading. A virtue may be ordered towards another not only in the way that it acts directly upon this third person, but also indirectly, either by benefiting another through one's own virtuous deeds, or by perfecting another, in the way the perfect orders the

⁴⁸¹ *ExEth*, V, q. 8, f. 99va: Sed oppositum arguitur quia quod de ipsa dicitur, scilicet, quod est alienum bonum, etiam de iustitia particulari, dicitur infra capitulo 11. Quare per hoc non differt legalis iustitia a particulari iustitia.

Item hoc idem videtur magnificentia, quae sumptus magnos facit, non circa se sed circa omnia negotia, et per consequens videtur quod magnificentia sit alienum bonum, magis quam proprium.

⁴⁸² *ExEth*, V, q. 8, f. 99va: Dicendum ergo quod virtutem moralem esse ad alterum potest intelligi triplici ex causa, scilicet, vel ratione operationis, quae transit in alterum, vel ratione commodi, quod redundat ad alterum, vel ratione perfectibilis, quod est ad alterum inquantum est perfectibile.

imperfect as a perfectible. Virtue can be directed towards another person not only in one's physical and day-to-day exchanges with the others, but also in more implicit manners further down the chain in a complex and interlinked social structure of a city. Therefore, a man of virtue may have much more far-reaching and profound impact on his fellow citizens in a political community.

How does legal justice fit into all this? Aristotle conceives justice as a virtue that bridges the interior state of man's virtue to the external affairs of his public life, and legal justice as a rectification effectuated of one's exterior acts by the force of law. For Odonis, however, legal justice certainly goes far beyond the limits and scopes of human positive law. Given that all moral virtues are capable of being ordered towards another (*referibile*) in complex and subtle ways beyond the mere *acting upon* another, and it is within this complexity of interpersonal connections within the political community that one requires legal justice to regulate such altruistic relations. Legal justice is the only virtue that is ordered towards another in its very essence.⁴⁸³ Odonis quotes Eustratius to distinguish between legal justice and moral virtue, stating that:

It is proved that legal justice, in its being ordered towards one another in the three ways, is different from a particular virtue. Because according to the intention of the Philosopher and the exposition of Eustratius, a particular virtue causes only the perfection and goodness of the virtuous subject that has virtue, and the virtuous act carried out according to this virtue, as it appears in his description. One is said to be virtuous if he perfects his own good and does the good deeds.⁴⁸⁴

A virtue *qua* virtue has only the virtuous acts and the goodness of the virtuous subject-agent himself, but a virtue *qua* justice is a virtue that causes not only the goodness of the subject-agent himself, but also the goodness and perfection of another. Odonis writes:

⁴⁸³ *ExEth*, V, q. 8, f. 99vb: In nulla vero istarum descriptionum includitur simpliciter esse ad alterum hominem. Iustitia vero in sua nominis ratione includit et importat esse ad alterum.

⁴⁸⁴ *ExEth*, V, q. 8, f. 99vb: Quod autem legalis iustitia per esse his tribus modis ad alterum differat a virtute in genere probatur, quia secundum intentionem Philosophi, et secundum expositionem Eustratii, virtus ut virtus in genere, non importat nisi perfectionem et bonitatem subiecti virtuosi habentis virtutem, et operis virtuosi peracti secundum virtutem, ut patet per eius descriptionem. Dicitur enim virtus qui habentem bene perficit et eius bonum opus et bene reddit, supra libro 2.

None of the above-mentioned virtues is ordered towards one another without qualification. Justice, however, includes and denotes being ordered towards one another, as manifested through its very name. Therefore, universally, a virtue is called a virtue, if it is a habit and perfection; but if it is a habit active towards another or is procurative of the good of another, then it is called justice. Legal justice, by virtue of its being ordered towards another, is not universally different from other virtues in species. According to its specific reasons, it includes the active being towards another, and the commutative being of one's own good towards another. The act of temperance differs in terms of whether the good is properly one's own or not one's own, just as good and bad differ from each other. Similarly, in the treatise on magnanimity, to be strong towards the weak is unmanly, but to be strong towards the robust and healthy is virtuous. Therefore, in every virtue, just as in this one singular virtue, we find that whether acts and actions are virtuous is not determined through the acts themselves, but through their relationship to one another. Therefore, the virtues in their species include being ordered towards one another, which they do not include in their genre *per se*, just as science includes in its own reason being ordered towards the knowable, but not in its reason of habit, nor in the reason of virtue, nor in the reason of quality, which are then called the genres of its being superimposed subalternately. Therefore, it is said that liberality is a virtue, according to which there is the perfection and the good of the liberal man. It is also said that justice is a virtue, according to which there is the good of the poor and needy.⁴⁸⁵

For Odonis, even though many moral virtues can be acted towards the good of another person, they are not in their essence ordered towards other men's good. Justice is the only virtue that is intrinsically

⁴⁸⁵ *ExEth*, V, q. 8, f. 99vb: In nulla vero istarum descriptionum includitur simpliciter esse ad alterum hominem. Iustitia vero in sua nominis ratione includit et importat esse ad alterum, ut fuit supra expositum. Et ideo universaliter quaelibet virtus, ut est habitus et perfectio habentis, dicitur virtus eius, ut autem est operatrix ad alterum vel procuratrix alieni boni, dicitur iustitia eius. Quod autem legalis iustitia per esse ad alterum non differat universaliter a virtutibus in specie, patet quoniam secundum rationes specificas includit esse operativum ad alterum et esse communitativum sui boni ad alterum, ut patet inductive. Operatio namque temperantiae differt sicut bonum et malum cum transit in suam vel in non suam, similiter fortem esse ad imbeciles est invirile, ut supra tractatu de magnanimitate. Esse autem fortem ad robustos et validos est virile, et sic de singulis inducendo invenimus, quod in omnibus virtutibus sit determinatio actuum et operationum, per ad quos opum vel non opum, et quibus opum et quibus non opum. Quare virtutes in specie includunt esse ad alterum, quod tamen non includunt in genere, sicut scientia includit in ratione sua esse ad scibile, non tamen in ratione habitus, nec in ratione virtutis, nec in ratione qualitatis, quae tamen dicuntur esse genera eius subalternatim supposita. Dicitur ergo liberalitas est virtus secundum quod est perfectio, et bonum hominis liberalis. Et dicitur est iustitia secundum quod est bonum pauperis et egeni.

ordered towards one another. Therefore, legal justice takes the acts of virtue which are ordered towards another as its proper subject-matter, and directs man towards the mean in such actions, while particular virtues can be and are only ordered towards one another *per accidens*.

Yet, Odonis maintains that legal justice, as the complete virtue, does not replace other moral virtues. In Question 4, it is posited that if a virtue α is distinct from another virtue β , then α may elicit man to act the deeds of β , but it cannot make man act β *virtuously*.

To act the acts of all virtues can be understood in two ways:

1. To act virtuously, in the way that a virtuous person acts, such as to do just things justly, and do temperate things temperately;
2. To act virtuous acts non-virtuously, in the way that a non-virtuous person does virtuous acts, such as to do temperate things without being temperate, liberal things without being liberal.

Considering this, two arguments shall be proposed:

1. No virtue that is distinct from other virtues can act all the virtuous acts virtuously;
2. It can act all the virtuous acts non-virtuously.⁴⁸⁶

Odonis here gives three virtues that may dispose man to the acts of other virtues without their being necessarily virtuous: the love of God, or charity, the love of self, or *philantia*, and the love of common good, or the virtue of law abidance (*virtus obeditiva legi*):

Anyone can act, according to the inclination of one virtue concerning the general matter, those things which a non-virtuous person can act, either through the reason of being commanded, or through the reason of any general desire or appetite. A non-virtuous person can act non-virtuously all the deeds of virtues, because, by command or by desire, he will be

⁴⁸⁶ *ExEth*, V, q. 4, f. 95rb: Dicendum autem quod operari opera omnium virtutum potest intelliigi dupliciter. Uno modo operari virtuose, sicut virtuosus operatur, puta operari iusta iuste, et temperata temperate, et liberalia liberaliter. Alio modo operari virtuosa non virtuose, sicut operatur virtuosa non virtuosus, puta operari temperata non temperate, et liberalia non liberaliter. Et secundum hoc dico duo. Primum quod nulla virtus, una ab aliis distincta, potest haec omnia operari virtuose. Secundo quod potest ea omnia operari non virtuose.

able to act following the inclination of a certain virtue generally, all the acts of virtues. Such inclinations include charity, *philantia*, or obedience, out of different motives. These are general motives which induce us to the acts of all virtues, for the love of god, love of the self, and love of law and common good.⁴⁸⁷

Each of these virtues, or these three orders of love, may dispose man towards the acts of other moral virtues, and anyone motivated by such love can carry out virtuous deeds even without having been properly disposed by such virtues in the first instance. Yet, Odonis maintains, this does not mean that charity, *philantia*, or law abidance can replace moral virtues or render them superfluous. Instead, they need to be fortified with moral virtues to make man's intentions right and keep man's appetite regulated.⁴⁸⁸ With love alone, one can never be perfectly or completely virtuous.

However, Odonis does not make an explicit link between the three orders of love and the virtue of justice. Hence, one is left to wonder whether Odonis equates love with justice in the same way that Augustine or Scotus does. It would certainly follow the logic established by Odonis so far: since legal justice is distinct from other moral virtues, it cannot elicit man to act truly virtuously. However, this would raise a further problem that, if legal justice can elicit man to act deeds of virtue non-virtuously, then it cannot be called the complete virtue, otherwise it would follow that all three virtues listed above - charity, *philantia*, and law abidance - can also be called the complete virtue. This is clearly against the intention of both Aristotle and Odonis himself. Odonis has argued that legal justice cannot be understood as simple obedience to law, because obeying the dictate of law is following the reason and prudence of another person. There is the virtue of obedience, but there is no virtue of the moral objective intended by such law and the legislator:

⁴⁸⁷ *ExEth*, V, q. 4, f. 95rb-va: Secundum autem probatur, quia secundum inclinationem unius virtutis existentis circa materiam generalem, potest unusquisque operari illa quae potest unus non virtuosus, vel ratione imperii, vel ratione alicuius generalis desiderii vel appetitus; sed unus non virtuosus potest operari non virtuose omnia virtutum opera. Quare illa omnia poterit operari secundum inclinationem alicuius virtutis generaliter imperantis vel desiderantis omnia virtutum opera. Cuiusmodi possunt esse caritas, et *philantia*, et obedientia ex diversis motivis et desideriiis. Sunt enim quaedam motiva generalia, quae nos inducunt ad omnium virtutum opera, puta amor Dei, amor nostri, et legis et communis boni.

⁴⁸⁸ This certainly echoes the argument that Odonis made earlier that man can, in the absence of virtues, carry out virtuous deeds. In Question 2 Odonis discussed such possibility through the perspective that reason and will together can translate the precept of natural and divine laws into just actions. Here in Question 4, Odonis demonstrates that man, through the love for God or the love for himself, two qualities with which man is naturally endowed, can effectuate virtuous deeds without necessarily having been habituated in such virtue.

If others render to the good prince all their obedience, then they would be good citizens, but they are not on this account good men without qualification, since they are not doing the good works through the reason of their own prudence, but through the judgement of the prudence of another, just like the irrationals. This is not sufficient for the good of man, nor for the good of an unqualifiedly good citizen. As shown in 3 *Politics*, no one can be a good citizen while not knowing how to rule.⁴⁸⁹

Generally, by following the virtue of love, man's act, regardless of which virtue whose purview it accidentally falls within, is ordered towards love. An act out of charity only generates charity, and an act out legal obedience only generates legal obedience. Therefore, none of these three orders of love can be called the complete virtue, even though they dispose man towards acting the deeds of other moral virtues.

Such virtue can be generated out of whichever good deed motivated by, and effectuated for, the end of this virtue. Other particular virtue will not be generated, as Aristotle says on the subject of vice, that he who fornicates for money but not for carnal desire is greedy but not licentious. Hence the licentious acts thus motivated generate a vice other than that of licentiousness. Within the deeds of temperance, an act of abstinence motivated by obedience generates the virtue of obedience, but not temperance.⁴⁹⁰

Therefore, legal justice clearly differs from these three orders of love. Here Odonis distances himself from Augustine, but treads a line very similar to that of Scotus. Justice is not love, or at least it is not love only. Neither the love for God, as posited by Augustine, nor the affection for justice, as argued by Scotus, is sufficient to make man truly virtuous. However, following a Scotian argument, love, or

⁴⁸⁹ *ExEth*, V, q. 5, f. 97rb: Si enim ille esset prudens et bonus princeps, ille utique esset bonus homo. Et si alii essent per omnia obedientes isti bono principi, ipsi essent boni cives, non tamen propter hoc essent boni homines simpliciter pro eo quod non operarentur bona, secundum propriam rationem suae prudentiae, sed secundum opinionem alienae prudentiae, sicut irrationabilia. Haec autem non sufficit ad bonitatem hominis, nec ad bonitatem civis simpliciter boni, quia ut habetur a Philosopho 3 *Politicae*, nullus est simpliciter bonus civis, qui deficiente principe principari nesciret.

⁴⁹⁰ *ExEth*, V, q. 4, f. 95va: Ad tertium autem dicendum quod talis virtus posset generari ex quibuscumque operibus bonis factis ex motivo et propter finem illius virtutis, et non generabitur alia virtus particularis, sicut dicit Philosophus de vitio, quod qui fornicatur propter pecuniam, non propter carnis concupiscentiam, est avarus, non autem luxuriosus. Et sic ex operibus luxuriae propter motivum et finem generatur aliud vitium et non luxuria. Sic etiam dico quod ex operibus temperantiae, puta ex abstinentiis propter solam obedientiam factis generabitur virtus obeditiva, et non temperantia.

man's affection for justice, is sufficient to elicit man to act out virtuous deeds, without his being virtuous himself.

4. Legal Justice and the Common Good

Hence, legal justice is the complete virtue not in the way that it disposes man to effectuate virtuous deeds, but in its very identity with moral virtues. Then, we must probe the question on the relationship between legal justice and the common good. Both Albertus and Aquinas consider legal justice in the perspective of the common good, and Odonis follows this theme of argument, albeit from a different point of view. In Question 5, Odonis further expounds on the relationship between legal justice and moral virtues, asking 'whether legal justice is a habit distinct from all other moral virtues or it is at once all virtuous habits and the aggregation of all moral virtues?'⁴⁹¹ We have already established that, for Odonis, legal justice cannot be a virtue distinct from all other moral virtues. It may be different in the way that it is ordered through its *esse ad alterum*, yet this does not make legal justice a specific virtue in the same way that particular justice or temperance are specific virtues.

In Question 5, Odonis follows the argument of the Eustratius and posits that a virtue can be perfect in one of the three ways:

(Eustratius) also says here that a virtue can be considered perfect in three ways. Firstly, the virtue of courage sustains the man in battle over the gravest danger, and this should be called the perfect virtue with similitude to natural courage, in the same way that Achilles is said to be courageous. Secondly, a virtue is said to be the perfect aggregation of all virtues, which is simply and only called the perfect virtue. Thirdly, a virtue may be said to be perfect for its lawfulness, and this is the subject of our present enquiry. This perfect lawfulness is the same as the aggregation of all existing virtues, as Aristotle has said above. Thus, Eustratius senses

⁴⁹¹ *ExEth*, V, q. 5, f. 96ra: Utrum legalis iustitia sit aliquis unus habitus ab habitibus virtutum moralium distinctus, an ipsa sit simul omnes habitus virtuosos et omnium virtutum moralium aggregatio.

that legal justice is simply the aggregation of all moral virtues, and is different from them only *secundum quid*.⁴⁹²

Odonis argues that, therefore, the aggregate virtue and legal justice must be identical, since they are both the perfect virtue - a state of perfection lacks nothing, and two perfect things are by necessity identical - and that they are only different *secundum quid*. Thus, legal justice is complete in the sense that it is the aggregation of all virtues, in addition to the fact that it has all the acts of all moral virtues as its material. In its being, legal justice is the sum-total of all moral virtues; in its potency, it is the entirety of virtuous acts.

Odonis illustrates the *secundum quid* difference with the analogy to the citizen and the individual person. Legal justice is the virtue of the perfect citizen, while the aggregate virtue is the virtue of the perfect individual. The citizen and the person are in their essence the same, but only different when they are understood in different contexts, i.e., a difference *secundum quid*.

Legal justice is the virtue of a citizen as a citizen, perfects a citizen as a citizen, and renders a citizen good as a citizen. The aggregate of all virtues is the virtue of a good person as human, perfecting the man as a man, and yielding good of man as a man, and it can be said the virtue in the singular.

A citizen is different from a man, because man is understood absolutely without relations to others, while a citizen is understood relatively with habitude to others. A citizen is said of any human society, as it is apparent in *Politics* III, where Aristotle asks whether the virtue of a good man and of an upright citizen is the same; if not, then a man and a citizen are in some ways different from each other. Thus, legal justice and aggregate virtue are in some way different.

⁴⁹² *ExEth*, V, q. 5, f. 96rb: Secundo per eundem dicentem ibi quod tripliciter dicitur virtus perfecta. Uno modo fortitudo, quae sustinet in bellis maxima peribula, et dicitur perfecta ad similitudinem fortitudinis naturalis, secundum quam Achilles fortis dicebatur. Alio modo dicitur perfecta omnium virtutum congregatio, quae simpliciter et solum dicitur virtus perfecta. Alio domo dicitur perfecta virtus secundum legalitatem, de qua nunc est sermo, quae eadem est congregationi ex omnibus virtutibus existenti, ut praedictus Aristoteles dicit. Ex quibus expraesce patet quod Eustratius sensit istam legalem iustitiam, de qua Philosophus esse simpliciter omnium virtutum moralium congregationem et differre ab ea secundum quid, ut postea explicabitur.

Aristotle points out this difference along the lines of the differences of the perfectible things, and says that, the total virtue that is towards another, and that has the citizen *qua* citizen as its perfectible, is called justice. The virtue according to which is such absolute habit with the reason of the perfectible absolute subject, which is man *qua* man, is called virtue, which includes all virtues as is said above.⁴⁹³

Yet, such different contexts do not make an individual into two persons, nor give him two different humanities. Legal justice produces the perfect citizen, and virtue produces the perfect individual. Therefore, both really have the same perfectible subject, and are only different in a qualified sense. Odonis gives a long-winded passage on the identity between the virtues of a man and the virtues of a citizen, and it can be summarised as follows: a perfect citizen and a perfect individual *simpliciter* are only different in the way they are ordered - a citizen is ordered towards the city, and the perfection of the citizen is the common good of the city; the individual is ordered towards himself, and the perfection of the individual is the perfect virtue of a singular person. Legal justice, as the virtue of the citizen, is ordered towards the common good, while the aggregate virtue, being the perfection of the individual *qua* individual, is ordered towards one's private good. Therefore, legal justice and the aggregate virtue are of the same being, but simply ordered towards different ends.⁴⁹⁴

⁴⁹³ *ExEth*, V, q. 5, f. 96va: Assumpta probatae <probatur, also 'probate' in *X*> quoniam legalis iustitia est virtus civis ut civis est, et perficit civem ut civis est, et reddit bonum civem ut civis est. Virtutum autem aggregatio virtus est hominis ut homo est, cum perficit hominem ut homo est, et reddit hominem bonum ut homo est, et pro tanto potest dici virtus in singulari, quia est ultimum de potentia in bene esse hominis ut hominis. Constat autem quod civis et homo differunt, quia homo dicitur absolute sine relatione ad alterum, civis autem dicitur relative cum habitudine ad alterum; civis enim dicitur urbis, vel civitatis, vel communis, vel alicuius societatis humanae civis. Patet etiam quoniam frustra quaereret Philosophus, 3 *Politicae*, utrum sit eadem virtus boni viri et civis studiosi, nisi vir et civis inter se qualicumque modo differunt. Quare et legalis iustitia et virtutum aggregatio aliquo modo differunt. Hanc differentiam secundum differentiam perfectibilium assignat Philosophus, dicit quod haec tota virtus secundum quod est ad alterum, sicut eius perfectibile, quod est civis ut civis, dicitur iustitia. Haec autem secundum quod est talis habitus absolutus ratione subiecti perfectibilis absoluti, quod est homo ut homo, dicitur virtus, quae scilicet includit omnes virtutes, ut dictum est.

⁴⁹⁴ *ExEth*, V, q. 5, f. 96va-b: Tertiam conclusionem probo quadrupliciter. Primo quia illi habitus sunt essentialiter idem qui non differunt nisi per ea, quae debentur uni et eidem simplici habitui. Tales enim habitus non possunt ponere in numero habituum contra se invicem, tunc enim different per aliqua, quae non debentur et non possunt similiter inesse eidem habitui; sed huiusmodi iustitia et virtus non aliter differunt. Quare essentialiter idem sunt.

Assumptum probo, quoniam illa quae non differunt nisi per esse talem habitum, et per esse ad talem habitum, et per esse ad alterum, vel per esse ad felicitatem hominis, et per esse ad felicitatem communis, illa inquam non differunt nisi per ea quae debentur, et necessario simul insunt eidem habitui. Haec enim necessario insunt eidem habitui. (*om.* 'Haec enim...

Therefore, the subject, the object, and the perfection of legal justice and aggregate virtue are identical in their essence. They are different only in the way that one is ordered towards the common good, while the other is ordered towards one's private good. Odonis maintains that the happiness of the city is the same as the happiness of the individual. While it may be a common position for the medieval scholastics to equivocate common good with the private good, the position cannot be made without further explanations. Odonis cites Aristotle from *Politics* and argues:

The virtue of the good man and the virtue of the upright citizen is the same in the governance of free and equal men. Aristotle says that the virtue of an upright citizen is to know and be able to rule well and be ruled well, and both are the virtue of the good man. Out of this he concludes that the virtue of the good man and virtue of an upright citizen are the same. Legal justice is the virtue of the upright citizen, and every virtuous habit summed up at once is the virtue of the good man. Thus, legal justice is the same virtue when every virtue is taken together.⁴⁹⁵

habitu', X) Sumpto enim habitu virtutis, qui est ad alterum, certum est quod ille idem habitus, qui est ipse habitus, etiam est ad alterum et sic ambo ista simul eidem insunt.

Item ille habitus, qui est ad felicitatem communitatis, est etiam ad felicitatem habentis, quia nullus habitus potest immediatius attingere ad felicitatem alicuius alterius, quam ad felicitatem habentis habitum. Quare illa, quae non differunt nisi per tales differentias, non differunt nisi per illa, quae uni et eidem habitui simul insunt. Sed habitus legalis iustitiae et habitus virtutis universaliter sumptae pro illa virtutum aggregatione, non differunt nisi per istas differentias, dicente Philosopho, quod haec sunt eadem esse, autem non idem, sed secundum quod ad alterum, sic est iustitia, secundum autem quod est talis habitus, sic est virtus. Constat autem quod ipsa iustitia est aliqualis habitus, et cum hoc est ad alterum. Quare per consequens, ista non differunt nisi per illa, quae uni et eidem habitui simul insunt.

Vel arguitur formando rationem dicendum quod iustitia non differt essentialiter ab aliquo, a quo non differt nisi sicut a seipsa. Sed huiusmodi iustitia non differt a virtute nisi sicut a seipsa. Differt enim a virtute, ut dicit Philosophus, quia ut est ad alterum, est iustitia, ut autem est talis habitus est virtus. Sed hoc modo iustitia differt a seipsa. Hae enim differentiae sunt in ipsa, quia cum hoc, quod ipsa est ad alterum ipsa, est etiam habitus talis perficiens sebiectum suum habens eam; et hoc modo ipsamet dicitur virtus. Quare iustitia non differt essentialiter a virtute universaliter sumpta.

Hoc etiam confirmatur per exemplum hominis et civis, quia cum idem homo sit homo et civis, impossibile est hominem et civem differre, sicut differunt duo homines per duas humanitates. Sic etiam cum unus et idem habitus sit habitus, et sit ad alterum, impossibile est quod iustitia, quae dicit esse ad alterum, et virtus, quae dicit esse habitum, differant, sicut habitus plures ab invicem distincti.

⁴⁹⁵ *ExEth*, V, q. 5, f. 96vb: Tertio quia virtus boni viri et virtus boni civis studiosi est eadem virtus in principatum liberorum et smilium hominum, ut probatur 3 *Politicae*. Dicit enim ibi Philosophus, quod virtus civis studiosi est scire et posse bene

The virtue of the good man and the virtue of the good citizen are the same, as Odonis has well established. He goes on to argue that the virtue of the citizens is the source of the virtue of a city as a whole, and maintains that the happiness of the city depends on the virtues of the citizens, not only *qua* citizens, but also *qua* private individuals in their private virtue.

Moral virtues together lead to a good man and produce happiness of man. There is no additional intention or choice added to this sum of virtue by legal justice when it produces the good citizen and the good of the city, as long as the city depends on the good of one citizen.⁴⁹⁶

It is impossible for a citizen to order his virtue towards the common good of the city without already having his private good as an individual. It is only in attaining private good can one's act be ordered towards perfecting the common good:

The habit which is ordered towards the happiness of the community is also ordered towards having happiness, because no habit can attain happiness of anyone immediately other than attaining a habit of having happiness...⁴⁹⁷

As the virtue of the private man and the virtue of the upright citizen are essentially the same, any habit that is ordered towards the common good is necessarily also ordered towards the private good. Odonis seems to suggest that the only way one can attain common good and the virtue of legal justice is to direct oneself towards one's private good, for private good and common good are consistent. The ends of legal justice and aggregate virtue are thus identical in the way that common good cannot

principari et bene subiici, et etiam ambo haec sunt virtus etiam boni viri. Ex quo concludit quod virtus boni viri et virtus studiosi civis est eadem virtus. Sed legalis iustitia est virtus civis studiosi, et omnis habitus virtuosus simultanee sumptus est virtus boni viri. Quare legalis iustitia erit eadem virtus cum omni virtute simultanee coaccepta.

⁴⁹⁶ *ExEth*, V, q. 5, f. 97rb: Est enim sciendum quod morales virtutes simul sumptae sunt natae reddere bonum hominem simpliciter, et producere ad hominis felicitatem. Item nullo eis addito, nulla quidem intentione vel electione eis addita, ipsamet simul sumptae sunt natae reddere simpliciter bonum civem, et ipsum producere ad civis et ad civitatis felicitatem. Pro quanto talis felicitas dependet ex bonitate unius civis.

⁴⁹⁷ *ExEth*, V, q. 5, f. 96va-b: Item ille habitus, qui est ad felicitatem communitatis, est etiam ad felicitatem habentis, quia nullus habitus potest immediatius attingere ad felicitatem alicuius alterius, quam ad felicitatem habentis habitum. Quare illa, quae non differunt nisi per tales differentias, non differunt nisi per illa, quae uni et eidem habitui simul insunt.

be had without private good, and the private good of an individual is in essence the common good of a citizen.

Yet, the common good is greater than the private good, despite their identity in being. Odonis here does not propound a systematic theory of the common good, but simply cites Aristotle's Book I of the *Ethics* to argue for the superiority of legal justice in the hierarchy of virtues:

The more common the good, the better and more divine, see prologue in Book I. Legal justice is more common, because it includes the end of the more common and more universal things. The end of this justice is the happiness of the city or of the great community, while the end of virtue is the happiness of a man.⁴⁹⁸

Legal justice is nobler and more splendid (*nobilior et praeclarius*), because its goal is more common and more divine. A virtuous man who makes another man virtuous is better than a virtuous man simply speaking, and the perfection of another requires the perfection of oneself. By extension, a virtuous man who makes the entire city better is superior to a virtuous man who makes his own life perfect⁴⁹⁹.

Among all virtues, the perfection that perfects and benefits one's friend is the more splendid and more noble. Such is justice, therefore justice is nobler and more splendid.

I prove it as follows. The simple good of a citizen in the best city where there is governance of the free and equal men is nobler and more glorious than the simple good of a private person, because to be a citizen presumes being a person, and adds the respect to the community.

⁴⁹⁸ *ExEth*, V, q. 5, f. 96va: Secundo quia bonum quantum communius tanto melius et divinius, supra libro primo, in prohemio. Sed bonum legale iustitiae est communius, quia finem communiorem et universaliorem includit, sicut enim dictum est, finis huius iustitiae est felicitas civitatis vel magnae coomunitatis, finis autem virtutis est felicitas hominis ipsam habentis. Quare talis iustitia nobilior et praeclarius est virtute illo modo sumpta.

⁴⁹⁹ This argument can be applied to the context of the secular-mendicant debate on the relative merit of the contemplative life and the active life. While the contemplative life is normally accepted as superior since it illuminate to man the divine truth and makes man closer to God, and the active life is considered better only in the context of one's worldly happiness, the argument of Odonis here can certainly be used to strengthened the opposite argument in that, if one already has perfect virtue, then the active life is superior because one perfects not only himself, but also others. Such position is taken by Durand of Saint Pourçain, Cf. *Scriptum super VI libros Sententiarum*, III, dist. 35, q. 1-2; For a more detailed discussion, see the section on prudence and wisdom.

Similarly, the good of the citizen includes the good of a private person, and adds the respect to the common good. That which is to be feared and respected more amply is greater. The good citizen has as much import as the good man, but he is, by virtue of being a good citizen, greater in his capacities towards the common good. Therefore, the good citizen is greater in goodness and nobility than the good man, as understood absolutely. Justice makes the good citizen, and virtue makes the good man. Thus, justice renders a just man more nobly and gloriously than virtue renders a good man.⁵⁰⁰

Legal justice is directed towards the service of others, of the city, and of the common good, and is therefore greater in nobility and splendor than virtue *simpliciter*. It should be noted that, however, the superiority of legal justice does not make it quantitatively or qualitatively more than the aggregate virtue, nor does the fact that legal justice serves the common good undermine its identity with the aggregate virtue. As Odonis remarks, a citizen in the service of his city is the same being as the individual who perfects himself. Further to this argument, Odonis adds that legal justice does not function with a reason different from that of the aggregate virtue. Thus, legal justice should not be understood as the sum of the aggregate virtue plus the common good, where the implication would be that legal justice has a supplementary reason of the common good in his works. Rather, the perfection of the citizen is ‘amplius in habitudine et nobilitate’ (*amplius in habitudine et nobilitate*). As Odonis has posited time and again, the distinction arises simply from their respective orientation.

However, when it comes to the practical civic life, Odonis adds an important qualification to the relationship between legal justice and virtue. Citing Book III of *Politics*, ‘legal justice and whole moral virtue can only be identical in a city where there is governance among free and equal men.’⁵⁰¹

⁵⁰⁰ *ExEth*, V, q. 5, f. 96va: Secundam conclusionem probo dupliciter. Primo quia inter virtutes, illa perfectio est praeclarior et nobilior, quae perficit et reddit subiectum suum ut suum, nobilius et clarius; sed sic est de iustitia. Quare ipsa est nobilior et praeclarior.

Assumptam probo, quia civis simpliciter bonus in optima civitate, ubi est principatus liberorum et similium hominum, est nobilior et praeclarior homine simpliciter bono. Quia civem esse includit hominem esse, et cum haec addit respectum ad communitatem; et similiter bonum civem esse bonum hominem esse includit, et cum hoc addit respectum ad commune bonum, quod autem timendum et ad hoc amplius est maius. Sed secundum hoc bonus civis importat tantum quantum bonus homo, et cum hoc amplius in habitudine ad commune bonum. Quare bonus civis est maior in bonitate et nobilitate, quam bonus homo absolute sumptus. Iustitia vero, ut dictum est, facit civem bonum, virtus autem hominem bonum. Quare iustitia reddit subiectum suum, ut suum, nobilius et clarius, quam virtus reddat suum, ut suum.

⁵⁰¹ *ExEth*, V, q. 5, f. 96vb: Tertio quia virtus boni viri et virtus boni civis studiosi est eadem virtus in principatum liberorum et similium hominum, ut probatur 3 *Politicae*.

Odonis does not provide an elaboration on this specific point, therefore we need to delve into Aristotle's original text to understand the role of the form of governance here in the relationship between legal justice and aggregate virtue. Aristotle defines the citizen as such:

He who has the power to take part in the deliberative or judicial administration of any state is said by us to be a citizen of that state; and speaking generally, a state is a body of citizens sufficing for the purpose of life. (*Pol*, III, 1275b, 19-22)

Yet, since the city is a composite whole, composed of individual citizens, each fulfilling a different function in society, then it cannot be possible that the perfection of each citizen *qua* citizen should be the same. Aristotle uses the analogy of a ship: a ship is composed of individual sailors, each in charge of a different function of the ship; therefore the perfection of a rower with regard to his role in the ship cannot be identical to the perfection of the watchman. They may both be perfectly virtuous men in regard to their own lives, but on the boat they serve different purposes and thus have different perfections. Following this analogy, in a city, the perfection of the citizens with regard to their role in the city cannot be exactly identical with each other, since each citizen serves a different function. However, the perfection of these citizens *qua individuals* can be the same, as perfection is a state that lacks nothing. Hence, it follows that the perfection of a citizen *qua* citizen is not the same as the perfection *qua* individual.⁵⁰² Such perfections are only identical in the person of the ruler, who is a wise and good man, and whose perfection is the same as that of the perfect individual. By implication, it is only in ruling that a citizen can hope to achieve the goodness required of every function within the city and attain the complete perfection as a citizen. Yet, only in a polity that is composed of free and equal citizens, can all citizens have the opportunity of ruling; and only in a polity of the free and equal, is the virtue of obedience the same as the virtue of ruling, for one learns how to rule through learning how to obey.⁵⁰³

Such consideration of Aristotle's text would have several implications on our reading of Odonis's concept of legal justice and its identity with the aggregate virtue. Legal justice can only be said to be the complete virtue in a polity where the relationship between the citizens is one that is between the free and equal, and where the perfection of the ruler is the same as the perfection of those who are ruled, because, following Aristotle's definition of a citizen, all take part in the governance of the

⁵⁰² *Pol*, III, 1276b.

⁵⁰³ *Pol*, III, 1277b, 9-10.

city.⁵⁰⁴ The perfection of legal justice and its identity to the aggregate virtue is reached through the act of ruling.

This may represent a jump in Odonis's logic in his formulation of legal justice. So far, Odonis seems to be only concerned with one's public life, or more granularly, one's relations with others, both individually and socially, within the setting of a political community. Legal justice is said to be simply *ad alterum*, and the triad of virtue's being *ad alterum* - acting upon another, rendering the benefit for another, or perfecting another - demonstrates the complex and nuanced network of social relations in Odonis's writing. Although legal justice is ordered towards the common good, one does not have to take public office to order his action to the common good. In fact, if public office were a necessary condition for ordering oneself to the common good, then it would be impossible for most of the citizens in any medieval political structure to order their private good towards the public good. Therefore, one must understand Odonis's qualification as adding an extra dimension to legal justice, and the final steps towards its perfection. Thus, only the perfect legal justice can be said to be identical to the perfect aggregate moral virtue, since in perfection one lacks nothing, and in the perfection of legal justice, one does not lack the virtue of governance.

In this light, we should finally come to the relationship between legal justice and law. Odonis states clearly that legal justice is not simply obedience to law, although such obedience may come from the love for the common good.⁵⁰⁵ Instead, the scope and reaches of legal justice go far beyond the purview of law. As we have seen above, legal justice is the justice that takes the acts of all other moral virtues as its subject-matter, and it is the sum-total of all moral virtues, ordered towards one another, and by implication, towards the common good. It translates the precept of *ius* through man's internal cognition and volition into an external just act. In other words, it is the virtue of the whole morality, understood when morality concerns the others.

⁵⁰⁴ The cityscape of the fourteenth century is a topic that needs to be treated separately. Even if Odonis unreservedly accepts Aristotle's definition of the citizen, it would still seem to denote completely different things in the late medieval society, especially the major urban centres. The rise of the urban professions and the self-governing bodies, such as trade guilds, mendicant orders, universities, etc, would mean that a far greater proportion of the urban population took part in 'ruling', influencing the city's governance in one way or another. Therefore, one does not need to interpret Odonis's concept of a governance 'between free and equal' as a form of pure democracy, but rather a medieval norm of a city of free men, and equal in their proportion. For more on this, see Joel Kaye, *History of Balance*.

⁵⁰⁵ *ExEth*, V, q. 4, see above.

While law commands obedience through its coercive force, an individual would only acquire the virtue of law-abidance, through his act of observance to law. The perfect virtue of legal justice does not obey the law simply because the law commands obedience, but obeys the law in respect to the intention of the lawgiver.⁵⁰⁶ Thus, it does not follow that Odonis denies the value of law. Instead, the virtue of legal justice enables man to use his reason and prudence to judge his actions with the intention of the law, rather than unquestioningly follow the letters of law, since blindly following the precept of human positive law is equivalent to following the reason and prudence of another person. The lawgiver may have perfect virtue both as an individual and as a legislator, but mere obedience to his laws would not foster virtuous citizens beyond making them act virtuous deeds. Citing Aristotle, Odonis argues that a perfectly virtuous citizen should have the virtue of obedience as well as the virtue of ruling.⁵⁰⁷ In a *policratia*, the perfection of a citizen is formed through his participation in ruling as well as in obeying, as both the virtue of governance and the virtue of obedience are directed towards the common good, and legal justice cannot be complete without either of them.

⁵⁰⁶ *ExEth*, V, q. 5, f. 97ra: Si vero dixeris quod non tantum nec directive tantum praeceptive (non tantum directive nec tantum praeceptive, *X*) sed obeditive, sic quod huiusmodi iustitia sit habitus obeditivus legi, amore communis boni. Hoc est iterum minus rationabile, quia tunc sequitur, quod iustitia legalis non esset simpliciter virtus moralis, nec praeclara, nec perfecta, pro eo quod talis habitus obeditivus legi est simpliciter virtus subditi, cuius non est virtus nec prudentia, sed opinio vera, ut habetur 3 *Politicae* capitulo 2 in fine. Sed cum opinione vera sine prudentia, nulla potest esse moralis virtus perfecta et maxime tam praeclara, ut infra per totum libro 6. Quare illa obedientia, vel ille habitus obeditivus legi non est legalis iustitia, quamvis sit bonus habitus, ut habetur supra libro primo de illo, qui per se facienda non intelligit, sed intelligenti obedit.

⁵⁰⁷ *ExEth*, V, q. 5, f. 96vb: Dicit enim ibi Philosophus, quod virtus civis studiosi est scire et posse bene principari et bene subiici, et etiam ambo haec sunt virtus etiam boni viri. Ex quo concludit quod virtus boni viri et virtus studiosi civis est eadem virtus. Sed legalis iustitia est virtus civis studiosi, et omnis habitus virtuosus simultanee sumptus est virtus boni viri. Quare legalis iustitia erit eadem virtus cum omni virtute simultanee coaccepta.

IV. JUSTICE AND FRIENDSHIP

Odonis follows Aristotle in considering justice as a virtue that is ordered towards the others in its formal being. Overall, justice is a virtue that is relational - it makes right what one does when such action relates to one's fellow members of society. Thus, legal justice becomes the total virtue precisely because it has one's societal actions as its material, while the moral science is probed through the prism of the moral agent's social experience. Odonis's discussion of justice, therefore, leads us naturally to examine another habit that orders man's social life - friendship. As a mode of interpersonal connection, friendship is integral to the understanding of justice and the fundamentals of political anthropology. Coming from a conventual setting within a closely-knit community, Odonis's own background may have also informed his writings.

While Aristotle himself remains unsure whether friendship should be considered a virtue, for Odonis, *amicitia* is a moral virtue in the fullest sense, as we will see in Book IV, Question 39. Our Franciscan commentator follows Aristotle and identifies friendship based on virtue as the perfect and unqualifiedly true form of friendship. But thereon, Odonis departs significantly from Aristotle's original understanding. Odonis presents friendship through the perspective of a subjective social experience, where it becomes the quality with which one navigates one's societal existence. Instead of an inter-personal relation or a state of affection, Odonis's concept of friendship is that of a social skill, a personal quality with which one becomes adept with communal life, a virtue with which one identifies what to do with regard to different people in different social circumstances. It is a charisma of sorts, or to situate it in the proper medieval context, a quality of courtesy or a courtly virtue.

1. Aristotle on Friendship

Aristotle dedicates Books VIII and IX of the *Ethics* to the theme of friendship, or *philia*. While the Stagirite attempts to refocus his audience's attention from human good, virtue, and rational choice to the concept of *philia*, his aporetic method means that, again, his audience and readers are not dealing with a coherent and systematic treatise on the topic. Aristotle starts Book VIII equivocating on whether friendship is a virtue - 'it is a virtue or involves virtue' (*NE*, 1155a). Although there is consensus among modern scholars that Aristotle's friendship is not a virtue by his own standards, the

question no doubt deeply intrigued the medieval commentators.⁵⁰⁸ Aristotle seems to exclude friendship from the virtues by juxtaposing the two terms in a later passage,⁵⁰⁹ and does not place friendship as a mean between two vices as he would for a moral virtue. He defines the perfect form of friendship as a rational choice to love a good person by willing him good things, and such love should be mutual, be a habit, be active, and be equal:

Friendship in the fullest sense, then, is that between good people, as we have said a number of times already. For what is worthy of and of choice seems to be what is good or pleasant without qualification, and what is worthy of love and choice for each person seems to be what is good or pleasant for him; and a good person is worthy of love and of choice for another good person on both these grounds.

Affection seems to be a feeling, but friendship is a state. For affection occurs no less towards soulless things, while mutual friendship involves rational choice, and rational choice comes from a state, and it is a state, not a feeling, that makes people wish good things to those they love, for their sake. ... Each, then, both loves what is good for himself, and returns like for like in what he wishes and in giving pleasure: friendship, people say, is equality, and both of these are found most of all in the friendship of good. (*NE*, 1157b-1158a)

With a perfect form of friendship outlined, Aristotle additionally introduces other forms of friendship, and thus extends his discussion on the topic to a much wider arena of one's societal life: friendship of utility and friendship of pleasure are considered to be friendship by similitude; Aristotle also considers friendship of inequality that pervades families and polities. Moreover, friendship is not limited to the interpersonal relation between one individual and another, but also understood as an overall structure of a community:

For there seems to be some kind of justice in every community, and some kind of friendship as well. At any rate, people address as friends their shipmates and fellow soldiers, and similarly those who are members of other kinds of community with them. And the extent of

⁵⁰⁸ See Bénédicte Sère, *Penser l'amitié au Moyen Âge: Étude historique des commentaires sur les livres VIII et IX de l'Éthique à Nicomaque (XIIIe-XVe siècles)*, Turnhout, 2007, p. 68-75.

⁵⁰⁹ *NE*, VIII, 1157b: Just as with virtues some are called good in respect of a state of character, others in respect of an activity, so it is with friendship.

their community is the extent of their friendship, since it is also the extent of their justice. (NE, VIII, 1159b)

Broadly speaking, friendship comprises all social relations - men are friends insofar as they can be considered communally. Such friendship is inclusive, but also tenuous, as its existence depends on the existence of the community. On the other end of the spectrum, perfect friendship between good men is exclusive but tenacious.

Naturally, such (perfect) friendships are rare, because people of this kind are few. Besides, they require time and familiarity. (NE, VIII, 1156b)

Therefore, while Aristotle speaks of perfect friendship as good and delectable *per se*, he entertains no illusions that such friendship would be commonplace. On the other hand, however, he is also acutely aware of the importance of friendship in a larger, looser, and impersonal sense. It becomes an imperative, for Aristotle, that one should love one's fellow human beings, and express such love through his rational choices.

Philia occupies an extremely important place in the grand scheme of Aristotelian moral philosophy. By the end of Book VII, Aristotle's virtue theory is clear and mostly complete. Loraine Smith Pangle summarises the first seven books of the *Ethics* as demonstrating 'two peaks' of man's moral life: the greatness of soul and justice.⁵¹⁰ However, it seems that neither of these peaks alone can be sufficient for man's happiness. For this, Aristotle goes back to his famous first principle that man is naturally a social animal. Although justice is essentially ordered towards others, Pangle notes, the pursuit of justice pure and simple cannot render a man truly happy, for the happiness of humanity goes far beyond mere law abidance and fairness in one's societal dealings.⁵¹¹ A righteous and virtuous person is not necessarily a happy person - being virtuous and just is not sufficient to achieve the state of happiness. One also requires friendship, which 'is an absolute necessity in life'. (NE, VIII, 1155a) Against the grand scheme of moral philosophy, Pangle places Aristotle's notion of friendship as 'the highest summit of moral life, on which virtue and happiness may finally be united':

⁵¹⁰ Loraine Smith Pangle, *Aristotle and the Philosophy of Friendship*, Cambridge, 2002, p. 6.

⁵¹¹ *Ibid*, p. 7.

If the life of a great-souled man lacks clear content, if putting himself in the service of his inferiors seems slavish, and if actions aimed at winning honor from them seem undignified, the pursuit of serious friendship is a worthy outlet for his energies and talents. Friendship likewise completes and goes beyond justice, or even renders justice unnecessary. The goodness shown in noble friendship seems higher than justice, not only because its object is so worthy but because it is entirely dependent on one's own character and choice and is not defined and compelled by law.⁵¹²

Ultimately, a life of virtue needs to be socialised with the community for happiness to be complete. Pangle considers that Aristotle's notion of friendship ultimately rests on one's self-interest, and with a goal of accomplishing one's own *eudaimonia*. A friend is loved therefore for ulterior ends such love may bring. From an individual's perspective, the socialisation that is friendship takes place with the firm view of self-interest. One may derive pleasure, utility, or even virtuous good from a friendship, but the fruits of friendship is always centered towards the subjective self. Aristotle himself states that:

The origin of relations of friendship towards our neighbours, and of the characteristics by which we distinguish the various kinds of friendship, seems to be in our relations to ourselves. (*NE*, IX, 1166a)

Pursuing the relationship between friendship and happiness, Pangle argues that even the best and most perfect friendship can be understood as instrumental to a life of contemplative perfection.⁵¹³ It is not so much the companionship itself that makes one happy; but rather, it is the pleasure and activity that are elevated by friendship that makes for happiness, and such activity and pleasure ultimately reflects to one's own virtue and love for the self.

Stephen Salkever, on the other hand, does not contend himself with an instrumentalist reading of friendship.⁵¹⁴ Instead, he argues that Aristotle intends to place *philia* at the centre of the moral universe, with a role that is not only instrumental, but constitutive to happiness.⁵¹⁵ Communal living is not only a necessity, but also an integral part of human goodness. Happiness does not only consist

⁵¹² *Ibid*, p. 7.

⁵¹³ *Ibid*, p. 197-8.

⁵¹⁴ Stephen Salkever, 'Taking Friendship Seriously: Aristotle on the Place(s) of *Philia* in Human Life', in von Heyking and Avramenko, *Friendship and Politics: Essays in Political Thought*, Notre Dame, 2008, p. 66-8

⁵¹⁵ *Ibid*, p. 57, and p. 65-6.

of the well-being of one individual, but the collective *eudaimonia* of the city. Salkever takes this view from Aristotle's argument on the importance of friendship in politics:

Friendship seems also to hold cities together; and lawgivers to care more about it than about justice; for concord seems to be something like friendship, and this is what they aim at most of all, while taking special pains to eliminate civil conflict as something hostile. And when people are friends, they have no need for justice, while when they are just, they need friendship as well; and the highest form of justice seems to be a matter of friendship. (*NE*, VIII, 1155a)

Aristotle understands that the organic social structure is maintained not only by legal and political infrastructures, but by the various inter-personal relations that are together called friendship. Salkever reads this passage as that friendship *per se* cannot replace law and justice. However, even considered in the scenario of perfect friendship, justice is still present - friendship between good and virtuous men does not preclude justice; rather, justice does not need to be pursued specifically because it is already present. In the scenario of imperfect friendship, where society is composed of a variety of close or distant relationships, friendship depends on and complements law and justice:

The perspective of justice and law enables us to see ourselves as others (relative strangers) see us..., while *philia* enables us to see certain familiar others as we see ourselves (that is, as separate humans beings).⁵¹⁶

Salkever convincingly argues that Aristotle considers friendship to be supportive of justice but also to go beyond justice.⁵¹⁷ Justice consists of doing the right and virtuous act towards other people, through abidance to law and distributive fairness. Obviously, friends of virtue should act towards each other virtuously, friends of utility fairly, and friends in the large sense of citizenry in accordance to law, but friendship demands far more than the obligations of justice. Aristotle lists three principal acts of friendship: good will, which Aristotle describes as a kind of fondness and a first principle of friendship (*NE*, IX, 1166b-1167a); concord, which is a positive agreement on what is best between friends (1167a); and benefaction, as an actualisation of one's love for another (1167b-1168a). Clearly, friendship is both psychological and active. It goes beyond justice, which is a love for just and virtuous things, and points to the love of one's fellow humans.

⁵¹⁶ *Ibid*, p. 66.

⁵¹⁷ *Ibid*, p. 68.

Therefore, *philia* is constitutive to happiness not only from a communal perspective, but also from an individual's point of view. Aristotle maintains:

But if we consider things more from the point of view of nature, a virtuous friend would seem worthy of choice by nature for a good person, since, as we have said, what is good by nature is for the good person good and pleasant in itself. (*NE*, IX, 1170a)

Friendship is part of a naturalness that forms the very basis of humanity, and by equal measure integral to Aristotle's naturalism in his moral and political thought - what is natural to man cannot be merely instrumental to an ulterior end, but rather a delectable end in itself.

2. Interpreting Friendship: from Cicero to Scotus

Cicero features as the third most-cited authority in Odonis's commentary after Aristotle and the Scripture, and exerts, as we shall see below, a profound influence on both Odonis and other medieval commentators over the topic of friendship. Although Cicero, in his *Laelius de amicitia*, makes few explicit references to Greek authorities and certainly none to Aristotle, there are important elements within the Ciceronian philosophy of friendship that are clearly inspired by the Peripatetic school. Pangle describes the Cicero as treating friendship in 'a thoroughly Aristotelian spirit'.⁵¹⁸ The definition offered by Laelius in *De amicitia* unites several key components of Aristotle's theory on friendship - concord, goodwill, reciprocity, and affection:

For friendship is nothing else than an accord in all things, human and divine, conjoined with mutual goodwill and affection.⁵¹⁹

Striking a cord similar to that of Aristotle, Cicero highlights the naturalness of friendship,⁵²⁰ while stating that true friendship must be based on virtue, can only exist between virtuous men, and is

⁵¹⁸ Pangle, *op. cit.*, p. 104.

⁵¹⁹ Cicero, *Laelius de amicitia*, 20: Est enim amicitia nihil aliud nisi omnium divinarum humanarumque rerum cum benevolentia et caritate consensio.

⁵²⁰ However, contrary to Aristotle, Cicero's considers the natural basis of friendship as an affectionate inclination devoid of utilitarian calculations; see Cicero, *De amicitia*, 27: Quapropter a natura mihi videtur potius quam ab indigentia orta amicitia, adplicatione magis animi cum quodam sensu amandi quam cogitatione, quantum illa res utilitatis esset habitura.

therefore few and far between.⁵²¹ A life lived in pursuit of virtue is a central tenet of the moral philosophy of Cicero and the Stoics, and it is only logical that we should see Cicero connect true friendship with virtue. Indeed, *amicitia* is the most honourable gift that a human can have after wisdom, which, in the Stoic tradition, connects both the knowledge of universe and the truth of morality.⁵²² Walter Nicgorski argues that, for Cicero, wisdom is necessary for assessing and ascertaining friendship - after all, 'without virtue, friendship cannot exist at all'.⁵²³ It follows naturally therefore that friends are to be loved for their virtue and goodness:

Now they are worthy of friendship who have within their own souls the reason for their being loved. A rare class indeed!⁵²⁴

And:

For there is nothing more lovable than virtue, nothing that more allures us to affection, since on account of their virtue and uprightness we feel a sort of affection even for those whom we have never seen.⁵²⁵

While Cicero concurs with Aristotle in postulating a concept of true friendship based on virtue between *boni viri* and elevates it to the forefront of man's moral life, he nonetheless fails to share Aristotle's extensive reading of *philia* in the communal and political sense, and instead considers friendship only as a private and personal connection between individuals. Cicero explicitly rejects the

⁵²¹ *Ibid*, 18: Sed hoc primum sentio, nisi in bonis amicitiam esse non posse; 30: Ut enim quisque sibi plurimum confidit, et ut quisque maxime virtute et sapientia sic munitus est, ut nullo egeat suae omnia in se ipso posita iudicet, ita in amicitia expetendis colendisque maxime excellit. Quid Enim? Africanus indigens mei? Minime hercule! ac ne ego quidem illius; sed ego admiratione quadam virtutis eius, ille vicissim opinione fortasse non nulla, quam de meis moribus habebat, me dilexit; auxit benevolentiam consuetudo. Sed quamquam utilitates multae et magnae consecutae sunt, non sunt tamen ab earum spe causae diligendi profectae.

⁵²² Cicero, *De amicitia*, 20: qua quidem haud scio an excepta sapientia nihil melius homini sit a dis immortalibus datum. Divitias alii praeponunt, bonam alii valetudinem, alii potentiam, alii honores, multi etiam voluptates. Beluarum hoc quidem extremum, illa autem superiora caduca et incerta, posita non tam in consiliis nostris quam in fortunae temeritate. Qui autem in virtute summum bonum ponunt, praeclare illi quidem, sed haec ipsa virtus amicitiam et gignit et continet, nec sine virtute amicitia esse ullo pacto potest.

⁵²³ Walter Nicgorski, 'Cicero's Distinct Voice on Friendship: *De Amicitia* and *De Re Publica*', in von Heyking and Avramenko, *Friendship and Politics*, p. 94.

⁵²⁴ Cicero, *De amicitia*, 79: Digni autem sunt amicitia, quibus in ipsis inest causa, cur diligantur. Rarum genus.

⁵²⁵ Cicero, *De amicitia*, 28: Nihil est enim virtute amabilius, nihil, quod magis adliciat ad diligendum, quippe cum propter virtutem et probitatem etiam eos, quos numquam vidimus, quodam modo diligamus.

possibility of friendship in a professional community, and never goes so far to describing the relations enjoyed by citizens amongst themselves as friendship or love.⁵²⁶ In his *De amicitia*, there is no attempt to link friendship with the notion of political justice. While Cicero thinks justice is the first and foremost virtue upon which man's moral life is anchored, the relationship between friendship and justice stops at the point that friendship should be rooted in virtue, i.e. friendship exists between good and just men, and friends should only do, and ask for, what is just and honourable to one another. *Philia*, for Cicero, does not quite hold the city together, nor is it a necessity for all arenas of man's societal life. Nicgorski notes that friendship plays an important role in Cicero's teaching of micropolitics, considered against a background of Republican Roman politics where power and leadership are forged through alliances.⁵²⁷ However, it is a far cry from Aristotle's notion of *philia* as a binding force between all members of any community.

What does bring Cicero's concept of friendship into the public and political arena, is the principle of truth that underlines every virtuous friendship. One should note, however, that such truth exhibited by leaders of a political community is compared and juxtaposed to the truth manifested in virtuous friendships. Among enemies of truth, there is flattery. For Aristotle, flattery is not in itself opposed to truth, but merely an excessive desire to please others, as per Book IV,⁵²⁸ or a symptom of an unequal friendship, as per Book VIII.⁵²⁹ Cicero, on the other hand, directly opposes flattery to truth, and analogously, tyranny to friendship:

A troublesome thing is truth, if it is indeed the source of hate, which poisons friendship; but much more troublesome is complaisance, which, by showing indulgence to the sins of a friend, allows him to be carried headlong away; but the greatest fault is in him who both scornfully rejects truth and is driven by complaisance to ruin.

⁵²⁶ Cicero, *De amicitia*, 64: Itaque verae amicitiae difficillime reperiuntur in iis, qui in honoribus reque publica versantur; ubi enim istum invenias, qui honorem amici anteponat suo? Quid? haec ut omittam, quam graves, quam difficiles plerisque videntur calamitatum societates, ad quas non est facile inventu qui descendant.

⁵²⁷ Nicgorski, *op. cit.*, p. 102-4.

⁵²⁸ *NE*, IV, 1126b: ... some people seem obsequious; in an attempt to please us, they praise everything and are never obstructive, thinking that they must not cause any pain to those they meet.

⁵²⁹ *NE*, VIII, 1159a: The masses, because of their love of honour, seem to wish to be loved more than to love, which is why they like flattery. For a flatterer is a friend who is inferior, or who pretends to be such and to love more than he is loved...

Therefore, in this entire matter reason and care must be used, first, that advice be free from harshness, and second, that reproof be free from insult. But in showing complaisance — I am glad to adopt Terence's word, *obsequium* — let courtesy be at hand, and let flattery, the handmaid of vice, be far removed, as it is unworthy not only of a friend but even of a free man; for we live in one way with a tyrant and in another with a friend.⁵³⁰

Truth is therefore integral to friendship, and flattery part of the vice that erodes true *amicitia*. A friendship where one is willing to lie and the other is willing to hear falsehood is not a friendship.⁵³¹ Such truth of friendship is then applied to the public arena, and considered as essential to just and virtuous political leadership. Laelius pitches the flattery and falsehood of Gaius Papirius against the sincerity and truth of Scipio, arguing for the power and importance of truth in public life. The flatterer may try to be a friend with the public, but such friendship can never be good and honest. The truth-teller, by upholding virtue and justice, may not be a friend of the crowds, but is a veritable leader.⁵³²

Cicero, in his philosophy of friendship, not only presents *topoi* that concur with the teachings of Aristotle, but also brings together elements that Aristotle treats separately. Flattery poisons friendship by eroding truth, which is the basis of friendship. Aristotle, on the other hand, does not make an unequivocal connection between flattery and friendship. Instead, he describes a virtue at the mean between flattery and belligerence, and considers it similar to, but essentially different from,

⁵³⁰ Cicero, *De amicitia*, 89: Molesta veritas, siquidem ex ea nascitur odium, quod est venenum amicitiae, sed obsequium multo molestius, quod peccatis indulgens praecipitem amicum ferri sinit; maxuma autem culpa in eo, qui et veritatem aspernatur et in fraudem obsequio inpellitur. Omni igitur hac in re habenda ratio et diligentia est, primum ut monitio acerbitate, deinde ut obiurgatio contumelia careat; in obsequio autem, quoniam Terentiano verbo lubenter utimur, comitas adsit, adsentatio, vitiorum adiutrix, procul amoveatur, quae non modo amico, sed ne libero quidem digna est; aliter enim cum tyranno, aliter cum amico vivitur.

⁵³¹ Cicero, *De amicitia*, 98: Nulla est igitur haec amicitia, cum alter verum audire non vult, alter ad mentiendum paratus est.

⁵³² Cicero, *De amicitia*, 95-96: Contio, quae ex imperitissimis constat, tamen iudicare solet, quid intersit inter popularem, id est adsentatorem et levem civem, et inter constantem, severum et gravem. Quibus blanditiis C. Papirius nuper influebat in auris contionis, cum ferret legem de tribunis plebis reficiendis! Dissuasimus nos; sed nihil de me, de Scipione dicam lubentius. Quanta illa, di immortales, fuit gravitas, quanta in oratione maiestas! ut facile ducem populi Romani, non comitem diceret.

friendship.⁵³³ He also proceeds to discuss the habit of veracity that lies between boastfulness and self-deprecation, but again does not link it to *philia*.⁵³⁴ Separately, Aristotle does compare friendship with truth, but in a context of a discussion on the various ends of life to be pursued. For the Stagirite, while friendship is a delectable good in itself, truth is a higher end:

For one might love both, but it is nevertheless a sacred duty to prefer truth to one's friends.
(*NE*, I, 1096a)

Aristotle does not elaborate on how truth and friendship can come into conflict with one another, and certainly does not travel the length to bring platitude into the discussion. The trail of argument will be picked up by his later commentators.

The second-century Peripatetic Aspasius, whose commentary on the Book VIII of the *Ethics* is translated by Grosseteste alongside the principal text of Aristotle and therefore accessible to scholastics from the mid-thirteenth century onwards, puts one and one together and describes friendship unequivocally as the mean between flattery and belligerence. At the beginning of his commentary, Aspasius ponders whether friendship should be considered as a virtue, and makes direct reference to Aristotle's teaching in chapter 6 of Book IV:

In fact, it is possible to call love (*philia*) one of the virtues just like courage and moderation and each of the character-based virtues. For, indeed, it too is about feelings and actions like the rest (of the virtues), since there are loving actions and loving is a kind of feeling. Furthermore, (love) might be called a mean between flattery and some nameless disposition, such as a certain fierceness or churlishness that is (characteristic) of a person who is not naturally inclined to converse in a pleasing way. In fact, the flatterer goes to excess in wishing to be extremely pleasing; the friend practises it (being pleasing) in an intermediate way, being pleasing when one should, and not being so when one should not; while the one utterly deficient in being pleasing is classed under deficiency. It is perhaps also possible to understand differently the one who exceeds and the one who falls short (of the mean): the

⁵³³ *NE*, IV, 1126b: It is quite clear that the states we have mentioned (flattery and belligerence) are blameworthy, and that the mean - on the basis of which a person will accept the right things, and in the right way, and likewise reject them - is praiseworthy. It has not been given a name, but it seems most like friendship...

⁵³⁴ *NE*, IV, 1127b: People who disclaim minor everyday qualities are called humbugs and are more contemptible... And it is the boastful person, because he is the worse, who appears to be the contrary of truthful.

former is the kind who engages in loving madly and excessively, ... the latter is completely unfeeling and neither can nor wishes to love; while the friend engages in loving in an intermediate way.⁵³⁵

The logical conclusion of juxtaposing flattery with friendship, and on the other end, belligerent aggression, is to highlight the conversational aspect of friendship - instead of platitude and aggression, a friend should 'converse in a pleasant way'. While indeed Aristotle in Book IV construes the vices of flattery and belligerence with references to both 'discussions and actions' (*NE*, IV, 1126b), in Book IX the activity of conversation is only mentioned in passing, where the primary action of friendship is the 'perception of being', which is realised through both conversation *and* living together:

... and if the good person is related to his friend as he is related to himself (because his friend is another self); then, as his own being is worthy of choice for each person, so that of his friend is worth choosing in the same way, or almost the same way.

Someone's being we saw to be worth choosing because he perceives that he is good, and perception like this is pleasant in itself. He ought therefore at the same time to perceive the being of his friend, and this will come about in their living together and exchanging words and thoughts; ... (*NE*, IX, 1170b)

While the activity of conversation has been picked up by later commentators and scholars as crucial to the exercise of friendship,⁵³⁶ and Aristotle himself describes the amelioration of humanity through nature, habit, and discursive reason (*logos*) in *Politics* (1132a-b), admittedly Aristotle does not elaborate the role of conversation in friendship, nor does he discuss the very concept of exchanging

⁵³⁵ Aspasius, *Aspasius' Commentary on Book 8 of Aristotle's Ethics*, 158, in David Konstan (trans. ed.), *Aspasius, Anonymous, Michael of Ephesus: On Aristotle Nicomachean Ethics 8-9*, London, 2001, p. 13; Konstan translates *philia* mostly as 'love', which obviously is closer to the Greek original, but may cause mild confusions to readers who are used to the more standard translation as 'friendship'.

⁵³⁶ See for example, Salkever, *op. cit.*, p. 73-5; also Hannah Arendt, 'On Humanity in Dark Times: Thoughts about Lessing', in *Men in Dark Times*, San Diego, 1955, p. 24-5, speaking of Greek philosophy in general: 'When, for example, we read in Aristotle, that *philia* friendship among citizens is one of the fundamental requirements for the well-being of the City, we tend to think that he was speaking of no more than the absence of factions and civil war within it. But for the Greeks the essence of friendship consisted in discourse. They held that only the constant interchange of talk united citizens in a *polis*... We humanize what is going on in the world and in ourselves only by speaking of it, and in the course of speaking of it we learn to be human.'

of words and ideas anywhere else in Books VIII or IX. Therefore, it always remains a mooted point how important conversation is in the context of *philia* compared to the acts of goodwill, concord, benefaction, and affection in general.

Grosseteste accompanies his translation of Book IX with the commentary of the twelfth-century Byzantine scholar and colleague of Eustratius, Michael of Ephesus, who, while commenting on this passage cited above (1170b), also picks up on the theme of conversation. Aristotle's 'perception of being' serves to recognise the good within another man, where such good is delectable and choice-worthy; and this perception is realised through both living together and conversation. Michael of Ephesus writes:

To exist is choice-worthy on account of one's perceiving oneself as being good; thus, the co-perception of the goodness of one's friend is also pleasing and choice-worthy to him. He is likely to get such a co-perception from living together 'and sharing words' - those that are uttered - 'and ideas' - the thoughts that are signified by such words. In the case of irrational animals, (Aristotle) says, to live together is to graze in the same place, but in the case human beings, it is to share the best and noblest actions and words and ideas.⁵³⁷

Michael's interpretation is not a radical departure from Aristotle. Instead, he merely extrapolates from the rest of the *corpus aristotelicum* to elevate the faculty of speech as exclusively characteristic to human, and the activity of conversation as crucial to the attainment of friendship and human goodness through the perception of delectable good, for human virtue and nobility are expressed through speech and exchanged through conversation. Friendship is not merely 'living together' and being pleased with one another, but far more importantly, the existential essence of friendship should be discursive. This brings us back to the question of truth in friendship, for truth and falsehood can only be construed discursively. Flattery and dishonesty, which Cicero so abhors, and which corrodes the very foundations of friendship, are in this context a linguistic activity. Therefore, combining the commentaries of Aspasius and Michael, as a medieval commentator may well be doing when confronted with both alongside Aristotle's main text, one can easily arrive at the conclusion that friendship should be understood first and foremost as a habit of pleasant, honest, and edifying conversation.

⁵³⁷ Michael of Ephesus, *Michael of Ephesus' Exegesis of the Ninth Book of the Ethics*, 519, in David Konstan, *op. cit.*, p. 201-2.

Let us now return to the opening passage of Aspasius's commentary and investigate the status of friendship and its relationship to justice. Aspasius thinks, as we can see, that friendship is a virtuous mean of societal aptitude, of being appropriately pleasant to others and loving others moderately. This passage of Aspasius signals a shift towards understanding friendship as a state of character or morality, lying in the middle of two vicious extremes. Although he denies that friendship should be considered a virtue, and argues instead that friendship is *connected with* justice, Aspasius models it closely to the structure of a moral virtue:

But insofar as love seems to be a thing characteristic of a virtuous man and to belong to those only who are perfectly good, love would seem (rather) to be connected with virtue. It is possible to assign it to one of the virtues, (namely) justness. For justness is a kind of distributive equality and love confers equality upon friends. For it is necessary that those who are really friends be equal, and thus it (love) would be a part of justness. This is why he called (love) either a virtue or connected with virtue.⁵³⁸

Friendship is connected to justice because it makes for fairness and equality between friends; thus it is a narrower sense of justice, only to be found among specific people. Then it becomes incumbent to inquire how Aspasius addresses Aristotle's axiom that friends have no need for justice. He writes, rather convolutedly:

Of these the most just is the civic, which is something similar to the loving (kind), for it accords with the equality of the partners. ... Perhaps one might also in this way understand that of all just things the most just is that toward friends. For toward these one must above all maintain the loving (relationships) that are called just. He has (now) made it clear that love is not only just but also noble.⁵³⁹

Justice is a necessary condition for friendship, because it requires a just person to be able to maintain friendship and dispense fair and equitable things to his friends. Aspasius thus makes friendship an annex and extension of justice. *Philia* is not virtue *per se*, but it is a nobler crystallisation of virtue.

⁵³⁸ Aspasius, *Ethics* 8, 158. p. 13.

⁵³⁹ *Ibid*, 160. p. 15.

Bénédicte Sère notes in her monograph on friendship that the multifarious notion of *philia* found in Aristotle's aporetic analysis is more or less reduced by the medieval scholastics to a discussion on friendship of virtue alone, while the species of friendship of utility and friendship of pleasure are subsumed under the true and perfect friendship of virtue.⁵⁴⁰ However, such monolithic approach to *amicitia* does not illuminate the *quaestio vexata* any more clarity: is friendship a virtue or not? Albertus, Aquinas, and Odonis all invariably raise the question, against differing contexts, and they offer various answers.

Albertus Magnus presents a reading not far off that of Aspasius.⁵⁴¹ Friendship is firstly made to seem like a virtue, only for Albertus to deny later its status as a virtue in the real sense. The solution he offers is that friendship should be understood in two different ways: when it is taken to be ordered towards communal life, then friendship is a moral virtue; when it is considered as a connection between one individual and another, which Albertus considers to be the real meaning of *amicitia*, then it is an effect of virtue, rather than a virtue itself. Of friendship considered in a communal context, Albertus writes:

If it (friendship) is considered as ordered towards something in the communal life, then it is indeed a moral virtue. This can be understood in two ways. One that it orders words and deeds so as to live pleasantly even against misfortune in communal life; and such is a habit that mediates between blandishment and quarrelsomeness, as is described in Book IV. However, such habit as described here is not properly-speaking virtue, for it is without passion, and it works in the same way towards people known, as well as people unknown (to the subject). A second way that it is a habit that mediates the passions of affections, i.e. love. This is a moral virtue indeed, which Cicero names goodwill.⁵⁴²

⁵⁴⁰ Sère, *op. cit.*, p. 68.

⁵⁴¹ For a discussion on Albertus Magnus, see *ibid.*, p. 69-71.

⁵⁴² *AMSE*, VIII, lect. I, num. 692, p. 592: Si enim consideretur, prout ordinat aliquem in communi vita, sic erit quaedam moralis virtus. Et huiusmodi potest esse duplex : aut secundum quod ordinat in dictis et factis, ut delectabiliter aliis convivat miseriis communis vitae ; et sic est quidam habitus adjunctus medius inter blanditorem et litigiosum, ut dictum est in quarto, sed talis habitus, ut ibidem dicitur, non est proprie amicitia, quia est sine passione et eodem modo operatur ad notos et ignotos. Aut secundum quod mediat in passionibus affectionum, scilicet amationibus, et sic est moralis virtus, quam Tullius dicit benevolentiam.

What transpires in this passage is that, while both what Aristotle describes in Book IV and the habit that mediates love and passion seem to be virtues, the former is not fully a virtue, and the latter is not fully friendship. For Aspasius, friendship is not truly virtue because it is connected to justice and is part of justice; for Albertus, it suffices to simply cite the reasons given by Aristotle to deny that this should be a virtue or even the veritable friendship.⁵⁴³ What is truly friendship, Albertus argues, is an effect of virtue:

If friendship is considered to be following every virtue, then it is an effect of each virtue. Such is true friendship, which tends to others the honourable good that is within oneself, and this is a habit adjunct to the intellectual habits as well as to continence.⁵⁴⁴

Having examined the passages cited above, Sère comes at the conclusion that, for Albertus, real friendship should be understood in the interpersonal sense, as both a consequence of moral virtue, and a habit of the intellect that perfects one's relation with others.⁵⁴⁵ Having undergone much equivocation, Albertus therefore finally arrives at a solution that friendship, when considered in the most proper sense, is *not* a virtue, but instead, a consequence of virtue. However, there is no denial that friendship is *per se* a delectable good. Being consequential to moral virtues does not diminish the intrinsic value in the pursuit of friendship *per se*. Albertus states that friendship is necessary to a good life, not only in activity, but also in contemplation - the search for truth is a collective endeavour, 'otherwise one cannot perfectly grasp truth and thus he would not be happy'.⁵⁴⁶

⁵⁴³ *NE*, IV, 1126b: It differs from friendship, in that it does not involve feeling and affection for those with whom one associates: this person accepts the right things not because he is a friend or an enemy, but because his character is as it is. For he will act in the same fashion towards strangers and those he knows, towards people with whom he is familiar and those with whom he is not...

⁵⁴⁴ *AMSE*. VIII, lect. I, num. 692, p. 592: Secundum autem quod consequitur omnem virtutem, est effectus omnis virtutis, et haec est vera amicitia, quae facit tendere in alterum propter honestum, quod est in illo ; et sic est de habitibus intellectualibus adjunctis sicut et continentia.

⁵⁴⁵ Sère, *op. cit.*, p. 71.

⁵⁴⁶ *AMSE*. VIII, lect. I, num. 693, p. 593: oportet tamen, ut amicos habeat et socios, cum quibus veritatem inquirat, alias non potest perfecte veritatem intelligere et sic non erit felix.

In comparison, Thomas Aquinas appears far more assertive on the status of friendship: ‘Friendship is a kind of virtue inasmuch as it is a habit of free choice’.⁵⁴⁷ To address Aristotle’s ambivalence, Aquinas adds a qualification of reciprocity and plurality to friendship:

The reason is that friendship is a kind of equality precisely as it requires mutual love. This seems to be an addition above the mode of virtue, for in any virtue the act of the virtuous man is enough. But in friendship the act of one is not sufficient but the acts of two mutually loving one another must concur. For that reason the Philosopher did not state absolutely that it is a virtue but added “or at least accompanies virtue,” because it seems to add something above the notion of virtue.⁵⁴⁸

For Aquinas, Aristotle hesitates to equivocate *amicitia* with virtue only because virtue concerns the self, while *amicitia* needs at least two people to take form. While in the commentary on the *Ethics*, Aquinas may feel obliged to address Aristotle’s ambivalence, he has no such qualms in his *Summa*. In the *Summa*, Aquinas follows the established structure of bifurcation and considers friendship in two different ways: one considered in the context of Book IV, as affability; the other in the context of Book IX, and equated to charity. Both forms of friendship are virtues. Friendship considered as affability is the mean between two vices - flattery and quarrelsomeness.⁵⁴⁹ In a language that echoes the charity side of friendship, Aquinas writes:

The precepts of the law are about acts of virtue. Now it is written (*Ecclus.* 4:7): ‘Make thyself affable to the congregation of the poor.’ Therefore affability, which is what we mean by friendship, is a special virtue.⁵⁵⁰

⁵⁴⁷ *SLE*, VIII, lect. 1, num. 1538, p. 442: Et prima ratio quare de amicitia sit tractandum, est, quia consideratio virtutis pertinet ad moralem philosophum; amicitia autem est quaedam virtus, inquantum scilicet est habitus electivus, ut infra dicitur.

⁵⁴⁸ *SLE*, VIII, lect. 5, num. 1605, p. 458: quia amicitia quaedam aequalitas est, inquantum scilicet requirit mutuam amationem. Et hoc videtur addere super modum virtutis; nam in qualibet virtute sufficit actus virtuosus. Sed in amicitia non sufficit actus unius, sed oportet quod concurrant actus duorum mutuo se amantium; et ideo philosophus supra non dixit absolute quod esset virtus, sed addidit: vel cum virtute, quia videtur aliquid addere supra rationem virtutis.

⁵⁴⁹ *ST*, II2ae, q. 114, art. 1: Deinde considerandum est de amicitia quae affabilitas dicitur; et de vitiis oppositis, quae sunt adulatio et litigium.

⁵⁵⁰ *ST*, II2ae, q. 114, art. 1: Sed contra, praecepta legis dantur de actibus virtutum. Sed Eccli. IV dicitur, congregationi pauperum affabilem te facito. Ergo affabilitas, quae hic amicitia dicitur, est quaedam specialis virtus.

Considered thus, friendship is a societal aptitude. Aquinas describes friendship as affability as a virtue that orders one's relations with others, and that tends towards the pleasant and appropriate words and deeds. This affability obviously requires an object of one's friendship, but it does not necessarily speak of a sense of reciprocity and mutuality found in an interpersonal relationship. However, similar to Albertus and by extension to Aspasius, Aquinas refuses to grant this reading of friendship as perfect or true *amicitia*, and friendship as affability can only be called *amicitia* by similitude.⁵⁵¹ The reason Aquinas gives is similar to that presented by Aristotle himself and by Albertus: affability concerns merely the external acts, while veritable friendship should be an internal state of love and affection.

Aquinas then goes on to affirm that, *amicitia ut affabilitas* is a part of justice. Daniel Schwartz understands Aquinas to be separating two forms of 'debt', or obligation (*debitum*) that each person owes others in the scheme of justice - the legal and the moral.⁵⁵² Friendship constitutes a form of obligation - what one ought to do in order to be pleasant to others; yet this obligation is not expressly codified as in a legal obligation, but rather a moral obligation. In this way, friendship falls under the remit of justice as an annexed virtue, but it is not complete justice.⁵⁵³ More precisely, friendship as affability is a requisite by natural equity - Aquinas writes:

Now as man could not live in society without truth, so likewise, not without joy, because, as the Philosopher says (*Ethic.* viii), no one could abide a day with the sad nor with the joyless. Therefore, a certain natural equity obliges a man to live agreeably with his fellow-men; unless some reason should oblige him to sadden them for their good.⁵⁵⁴

⁵⁵¹ *ST*, II2ae, q. 114, art. 1: Aliam vero amicitiam ponit quae consistit in solis exterioribus verbis vel factis. Quae quidem non habet perfectam rationem amicitiae, sed quandam eius similitudinem, inquantum scilicet quis decenter se habet ad illos cum quibus conversatur.

⁵⁵² See Daniel Schwartz, *Aquinas on Friendship*, Oxford, 2007, p. 16-17

⁵⁵³ *ST*, II2ae, q. 114, art. 2: Respondeo dicendum quod haec virtus est pars iustitiae, inquantum adiungitur ei sicut principali virtuti. Convenit enim cum iustitia in hoc quod ad alterum est, sicut et iustitia. Deficit autem a ratione iustitiae, quia non habet plenam debiti rationem, prout aliquis alteri obligatur vel debito legali, ad cuius solutionem lex cogit, vel etiam aliquo debito proveniente ex aliquo beneficio suscepto, sed solum attendit quoddam debitum honestatis, quod magis est ex parte ipsius virtuosi quam ex parte alterius, ut scilicet faciat alteri quod decet eum facere.

⁵⁵⁴ *ST*, II2ae, q. 114, art. 2: Sicut autem non posset vivere homo in societate sine veritate, ita nec sine delectatione, quia sicut philosophus dicit, in VIII *Ethic.*, nullus potest per diem morari cum tristi, neque cum non delectabili. Et ideo homo tenetur ex quodam debito naturali honestatis ut homo aliis delectabiliter convivat, nisi propter aliquam causam necesse sit aliquando alios utiliter contristare.

Therefore, friendship is part of justice in the sense that it is a command of natural justice that man should live agreeably and appropriately with others, because one is justly obliged with pleasant words and acts towards others. Even with connection to justice, Aquinas's understanding of *amicitia ut affabilitas* is still external and behavioural.

Friendship as charity, on the other hand, takes a form closer to that described by Aristotle in Book IX.⁵⁵⁵ It is ultimately an affection and follows other virtues.⁵⁵⁶ Aquinas adds to Aristotle's notion of *philia* an extra layer of Christian charity. In his discussion on the relationship between *amicitia* and *caritas*, Aquinas qualifies friendship with the Aristotelian notions of goodwill and reciprocity,⁵⁵⁷ but also extends the exclusive nature of true and virtuous friendship of Aristotle to an extensive body of recipients in the same fashion as charity: not only to one's friends, but also one's enemies.⁵⁵⁸

Certainly, Aristotle speaks of an extensive notion of friendship that exists within any human community, but Aquinas is clearly conflating the tenets of friendship to the theological virtue of charity. Bénédict Sère notes the inherent conflict between the exclusivity of *amicitia* and the inclusivity of *caritas*, and argues that Aquinas attempts to combine the two concepts in order to arrive at a harmonised conclusion where friendship and charity are mutually complementary.⁵⁵⁹ Aquinas states that charity is 'a certain friendship', and friendship (*amicitia*) consists chiefly in loving

⁵⁵⁵ ST, II2ae, q. 23, art. 1: Sed contra est quod Ioan. XV dicitur, *iam non dicam vos servos, sed amicos meos*. Sed hoc non dicebatur eis nisi ratione caritatis. Ergo caritas est amicitia.

⁵⁵⁶ ST, II2ae, q. 114, art. 1: Quarum una consistit principaliter in affectu quo unus alium diligit. Et haec potest consequi quamcumque virtutem. Quae autem ad hanc amicitiam pertinent, supra de caritate dicta sunt.

⁵⁵⁷ ST, II2ae, q. 23, art. 1: Respondeo dicendum quod, secundum philosophum, in VIII Ethic., non quilibet amor habet rationem amicitiae, sed amor qui est cum benevolentia, quando scilicet sic amamus aliquem ut ei bonum velimus. Si autem rebus amatis non bonum velimus, sed ipsum eorum bonum velimus nobis, sicut dicimur amare vinum aut equum aut aliquid huiusmodi, non est amor amicitiae, sed cuiusdam concupiscentiae, ridiculum enim est dicere quod aliquis habeat amicitiam ad vinum vel ad equum. Sed nec benevolentia sufficit ad rationem amicitiae, sed requiritur quaedam mutua amatio, quia amicus est amico amicus. Talis autem mutua benevolentia fundatur super aliqua communicatione. Cum igitur sit aliqua communicatio hominis ad Deum secundum quod nobis suam beatitudinem communicat, super hac communicatione oportet aliquam amicitiam fundari.

⁵⁵⁸ ST, II2ae, q. 23, art. 1: Et hoc modo amicitia caritatis se extendit etiam ad inimicos.

⁵⁵⁹ Sère, *op. cit.*, p. 258-260.

others.⁵⁶⁰ Here, however, Aquinas runs into the same problem as with friendship as affability - charity is unidirectional, but true friendship requires reciprocity. Addressing the conundrum, he writes:

Friendship extends to a person in two ways: first in respect of himself, and in this way friendship never extends but to one's friends: secondly, it extends to someone in respect of another, as, when a man has friendship for a certain person, for his sake he loves all belonging to him, be they children, servants, or connected with him in any way. Indeed so much do we love our friends, that for their sake we love all who belong to them, even if they hurt or hate us; so that, in this way, the friendship of charity extends even to our enemies, whom we love out of charity in relation to God, to Whom the friendship of charity is chiefly directed.⁵⁶¹

Through charity, one becomes friends with God, and through God man extends his love to all others. The reciprocity of this love is then assumed: every other charitable person extends his own love towards the others through the mediation of God. Thus, we have in charity a sense of mutuality among all humanity.

Is it clear that, by the time Aquinas finished his *Summa*, there are two distinct readings of the term *amicitia* - one as a social aptitude for living pleasantly with others, and the other as mutual love that follows other virtues. While all commentators we have surveyed here agree that friendship as a social habit should not be considered as a virtue properly speaking, there seems to be more divergence on the status of friendship as love, and especially in the case of Aquinas, on how *amicitia* relates to its theological twin *caritas*.

⁵⁶⁰ *ST*, II2ae, q. 27, art. 1: Sed contra est quod philosophus dicit, in VIII Ethic., quod magis existit amicitia in amare quam in amari. Sed caritas est amicitia quaedam. Ergo caritas magis consistit in amare quam in amari.

⁵⁶¹ *ST*, II2ae, q. 23, art. 1: Ad secundum dicendum quod amicitia se extendit ad aliquem dupliciter. Uno modo, respectu sui ipsius, et sic amicitia nunquam est nisi ad amicum. Alio modo se extendit ad aliquem respectu alterius personae, sicut, si aliquis habet amicitiam ad aliquem hominem, ratione eius diligit omnes ad illum hominem pertinentes, sive filios sive servos sive qualitercumque ei attinentes. Et tanta potest esse dilectio amici quod propter amicum amantur hi qui ad ipsum pertinent etiam si nos offendant vel odiant. Et hoc modo amicitia caritatis se extendit etiam ad inimicos, quos diligimus ex caritate in ordine ad Deum, ad quem principaliter habetur amicitia caritatis.

3. Odonis on Friendship as a Virtue

When it comes to examining Odonis's writing on friendship, several problems arise, and they all pivot around the fact that Odonis raises no questions in Book VIII, where Aristotle himself lays down the fundamentals regarding friendship. What results is an incomplete, or at least unbalanced collection of writings that does not fully address the issues that commonly concern his fellow commentators. Odonis raises a question on the relationship between friendship and truth in Book I (Question 15: *Utrum veritas sit praeferenda amicitiae*), a question on the status of friendship as a virtue in the context of Book IV (Question 39: *Utrum habitus medius inter placiditatem et discoliam, quem Philosophus vocat amicitiam, sit virtus*), and a series of questions concerning man's obligations to various people in Book IX. Therefore, what is missing is any direct responses to the key notions of Aristotelian friendship as per Books VIII and IX - friendship as an interpersonal relation built with love upon a foundation of utility, pleasure, and goodness. In the literary exposition that follows the Aristotle's text, on the other hand, Odonis says very little in addition to his paraphrases and explanation of structure of argumentation. What results from this imbalanced approach is that Odonis presents the concept of friendship as an exclusively societal virtue, based on one's subjective experience of navigating his communal life, not unlike the approach Aquinas adopts in his reading of *amicitia ut affabilitas*. What follows in Book IX is therefore a complexity of obligations that is commanded by the virtue of friendship concerning different people in various social circumstances.

As with the previous commentators, we need to start by addressing Odonis's consideration of friendship as a virtue. In the very beginning of Odonis's commentary, friendship is listed as one of the chief goods in man's life considered as a social being. From the onset, we see that Odonis does not share his predecessors' preoccupation with narrowly defining moral virtue that concerns only the individual himself. Instead, moral virtues, just as friendship, is always societal and interactive. In a refutation against the division of ethics into *ethica monastica*, *ethica economica*, and *ethica politica*, Odonis enumerates various *topoi* of 'good' considered by Aristotle and argues that none of them strictly concerns the individual moral subject-agent alone, but always his relationship with the wider society:

But the teachings of the book of *Ethics* speaks of many virtues of civil living rather than other ways of living. It concerns prudence, justice, fortitude, magnificence, liberality, *friendship*, truth, and agreeableness.⁵⁶²

What is clear is that, against a broader assumption that the entire book of *Ethics* concerns man's societal life, *amicitia* does not *per se* occupy a special place for simply being relational. All other moral virtues, including those which are traditionally considered as concerning only the self, are ultimately virtues of one's civic life. As we have discussed with some detail in section 'Individual as the Subject', Odonis's moral anthropology is deeply rooted in the axiom of human sociability, and nothing can be considered ethically without reference to this social nature. As a result, all moral virtues are inherently societal. While Aristotle introduces the idea of *philia* as one that socialises man's own private virtue and links every person to society intimate or distant, there is no need for Odonis to grant *amicitia* such special role, since other moral virtues are already working on man's societal interaction. While friendship remains a chief good and a central *topos*, it is only enumerated as one among the many.

It is in this light that we shall approach Odonis's question on the definition of friendship raised in Question 39 of Book IV: 'whether the habit that lies at the mean between flattery and aggression, which is called friendship, is a virtue?'⁵⁶³ Odonis answers the question with an emphatic affirmative. In so doing, he outlines a virtue that is far removed from the notion of an interpersonal relation based on mutual benevolence and affection as we find in Aristotle's Books VIII and IX, but one that is a societal aptitude in a similar fashion presented by Albertus and Aquinas based on Book IV. It is a subjective habit that regulates one's societal life and interaction with others. Odonis counters Aristotle's claim that such habit (as discussed in Book IV) is nameless by offering various different names. Through this myriad of nomenclature, we should certainly read Odonis's idea of *amicitia* more in the line of a personal quality and charisma, and interpret it properly as a courtly virtue.

⁵⁶² *ExEth*, Pr, q. 4, f. 2va: Istud apperet, quoniam agit de prudentia, de iustitia, de fortitudine, de magnificentia, de liberalitate de amicitia, de veritate, et eutrapelia; for a more detailed discussion of this passage, see Part I section V.3, 'Individual as the Subject'.

⁵⁶³ *ExEth*, IV, q. 39, f. 87vb: Utrum habitus medius inter placiditatem et discoliam, quem Philosophus vocat amicitiam, sit virtus. Note that 'discolia' is translated by Crisp as 'bad-temperedness', and by R. A. Gauthier as 'acariâtre'; here it is rendered as 'aggression'.

Responding to the question, Odonis firstly reiterates the necessity of societal life and rehashes the statement that no one can live without society.⁵⁶⁴ Societal life here is construed rather narrowly, as consisting primarily of the act of communication of deeds and speeches (*communicatio sermonum et rerum*). Acting and speaking with others is the active manifestation of man's inherent desire for society. Odonis writes:

One necessarily needs the social community of family and city. In such a community, the communication of deeds and speeches are necessary. On this topic, as the Philosopher says, the faculty of speech is given to men, and such communication forges the household and the city. Therefore, communication is necessary to man, for both his being and his well-being.⁵⁶⁵

The virtue of friendship is, therefore, the perfection of man's societal communication. Communication of deeds and speeches is a necessity for man's civic life, and there needs to be a virtue to perfect it. Odonis's syllogism is again at work here: [major] every human *praxis*, i.e., an action of moral worth, needs a virtue; [minor] the act of societal communication is indeed one of such *praxis*, since man can be praised or blamed for his societal dealings; [conclusion] a virtue exists to make his communication good and perfected.⁵⁶⁶ Thereon, Odonis describes a virtue that dispels both flattery and aggression, which lie at the two extremes of man's societal aptitude:

The habit at the mean salvages, rectifies, and makes for good communication, because every habit that dissuades man from quarrel, induces peace, and directs the human appetite to the

⁵⁶⁴ *ExEth*, IV, q. 39, f. 87vb: Probatur ex primo *Politicae*, ubi probatur quod homo naturaliter indiget communitate sociali domestica et civili, plus quam apes et quaecumque alia animalia. Homo enim ab aliis separatus est vel deus vel bestia, ut habetur ibidem, pro eo quod non vivit ut homo. Et ideo ait Philosophus quod incivilis homo, vel est pravus, perior homine, vel melior homine. Cum enim homo ut habetur ibidem non sit sibi sufficiens per naturam.

⁵⁶⁵ *ExEth*, IV, q. 39, f. 87vb: Necessario indiget communitate sociali domestica et civili. Sed tali communitati est necessaria communicatio sermonum et rerum. Ad hoc enim ut ait Philosophus sermo datus est hominibus et talis communicatio facit domum et civitatem. Quare talis communicatio necessaria est hominibus, et ad esse, et ad bene esse.

⁵⁶⁶ *ExEth*, IV, q. 39, f. 87vb: Quod autem tali communicationi virtus sit necessaria ad hoc, quod sit bona, probatur. Quia virtus est necessaria cuicumque humanae operationi, quae potest bene et male fieri, ut supra capitulo de liberalitate, circa principium. Sed talis communicatio potest fieri bene et male, ut ostendit Tullius in principio suae *Rhetoricae*. Quare tali communicationi ad hoc, quod fiat bene, est aliqua virtus necessaria.

good communication of deeds and speeches brings forth communication that is sound, righteous, and good.⁵⁶⁷

What Odonis is speaking of here is clearly a communicative virtue. While it concerns the relation of one person with another, it is fundamentally a virtue taken from the point of view of the moral agent on the appropriate and agreeable behaviour that he should adopt towards others. *Amicitia*, instead of being friendship, should be more appropriately rendered as ‘friendliness’. Odonis echoes Aquinas’s discussion on the same question on the status of *amicitia* as virtue by referring to the friendly man as ‘affable’, but also shows the influence of Aspasius on placing friendship between excessive love and distress. In the final segment of Odonis’s *solutio*, he presents friendship as such:

There is an elective habit of living together and conversing with others, as it is necessary to live and converse with others with pleasure or distress. This habit lies at the mean between more or less pleasure and between more or less distress, between always being pleasant while never distressing and always distressing and never pleasant, between flattery and aggression - this habit renders one decent and affable to all, pleasant to all in hope of goodness, either not distressing, or in certain cases moderately distressing on account of avoiding evil. Following this habit, we converse differently to different people, we choose to love simply the highest good, we halt from distress, we prefer the minor distress of greater good in after to the present pleasure of the good and useful.⁵⁶⁸

Odonis’s discussion leads to two conclusions: that friendship is indeed and undoubtedly a virtue, and that such virtue pertains to the individual’s societal aptitude. The first conclusion directly contradicts

⁵⁶⁷ *ExEth*, IV, q. 39, f. 88ra: Quod autem habitus medium communicationem salvet, et rectificet, ac bonam reddat, patet quia omnis habitus declinativus litis, et inductivus pacis, et directivus humani appetitus ad bene communicandum in rebus sermonibus reddit communicationem illam salvam, rectam, et bonam. Sed talis habitus est huiusmodi. Quare et caetera.

⁵⁶⁸ *ExEth*, IV, q. 39, f. 88ra: Est enim habitus electivus conviviendi et colloquendi hominibus, quibus oportet et sicut oportet convivere ac colloqui ad delectationem et contristationem, medians inter plus et minus delectare, et inter plus et minus contristare, inter delectare nunquam contristando et contristare nunquam delectando, inter placiditatem et discoliam reddens hominem omnibus hominibus decenter affabilem, omnibus in spe boni delectabilem vel non contristabilem, vel in quibusdam casibus, propter fugam mali moderate contristabilem, secundum quam personis differentibus differenter colloquimur, secundum quem delectare simpliciter sumptum eligimus et contristare renuimus, secundum quem delectationi praesenti aliter bonae ac utili praeferimus parvam contristationem bonorum maiorum in posterum perituram.

all the authorities we have cited above, where *amicitia* thus understood is no more than a similitude of virtue - even Aristotle himself states explicitly that this habit is *not* friendship.

The second conclusion is more intriguing. As we have seen above, while it is common to understand *amicitia* as a societal aptitude, an alternative reading based on Books VIII and IX is normally also provided in juxtaposition and presented as *amicitia vera*. Odonis, throughout his question text, makes no reference to the other books and proffers no possibility of an alternative reading. This, coupled with the complete absence of questions raised in Book VIII and the lack of directly relevant questions in Book IX, as well as any explicit and coherent discussion on an alternative reading in his literary commentary, would seem to suggest that *amicitia* as societal aptitude is the only understanding Odonis wishes to present.

In his response to initial objections, Odonis rams it in with a list of alternative names of *amicitia* in a response to Aristotle's statement that the habit he describes 'has not been given a name' (*NE*, IV, 1126b) - Aristotle has not given it a name because it goes by many different names, but in reality it is what Aristotle calls *amicitia/philia*.⁵⁶⁹ Thence, he pushes the concept of *amicitia* much further to include qualities that are not mentioned in either Aristotle or the medieval commentators, and firmly into a semantic context of courtliness. This virtue is named by Homer as sociability (*socialitas*), who also considers the unsociable man as aggressive (*discolus*), for being aggressive would deprive man of his sociability. It is called by the contemporaries as affability, clearly in a nod to Aquinas; but Odonis also refutes this terminology as it does not capture the entirety of *amicitia*, but is merely a first condition. Our commentator then follows it up with 'urbanity' (*urbanitas*) and 'courtliness' (*curialitas*), clearly qualities pertaining to certain circles, where particular manners and rules of behaviour are observed. Indeed, 'those who move in courts know above all else how to live and converse gracefully with anyone.' But it is also called 'charm' (*lepiditas*), or 'delightfulness' (*iocundus/iocunditas*), for a charming man is 'gentle, sweet, graceful, and respectable' (*mollis et*

⁵⁶⁹ *ExEth*, IV, q. 39, f. 88ra: Ad primum ergo dicendum, quod haec virtus non est determinate unico nomine nominata. Sed quilibet nominat eam secundum videre suum. Et ratione huius deputat eam innominatam Philosophus, quia non habet unicum nomen apud omnes. Ipse vero nominavit eam amicitiam, quoniam ad amicitiam quae est inter amicos multum accedit quantum ad exteriorem convictum. Homerus vero videtur eam vocasse socialitatem, vocans insocialem hominem discolum, ut habetur primo *Politicae*, quasi privatum socialitate in ista virtute. Multi autem nostri temporis vocaverunt eam affabilitatem, est enim affabilitas prima conditio eius ut visum est. Tamen non est ipsa.

dulcis, gratus et acceptabilis in convictu), and a delightful person is 'joyous' (*laetus*).⁵⁷⁰ But what is the most proper name for *amicitia*, Odonis maintains, is *facetia*, a term in itself pregnant with meaning. He makes three references:

But it is most properly called with the old term '*facetia*', as the facetious man is said to be at the mean between flattery and aggression. Pseudo-Boethius commends this virtue in his book *De Disciplina Sclorum*, saying that (Julius Caesar) comes to Paris and sees the facetious rites of the Gauls, because in truth the Gallic nation, superior to all nations with their facetious life, is ready and more resourceful in the most pleasurable *facetia*. Someone in a poetic form edited a booklet which is called *Facetus*, where he gives much advice on *facetia* in the very beginning, and he says: 'He who wishes to be facetious in life and mores, should read and learn from me, what my muse teaches.' The term is also used (by Augustine), reciting the story of the facetious joke, see *De Trinitate* XIII, 3, (6).⁵⁷¹

Indeed, the entire *dicendum ad primum* section seems like Odonis's gloss on the word *amicitia*, equating it with various alternatives such as *socialitas*, *affabilitas*, *urbanitas*, *curialitas*, *lepiditas*, *iocunditas*, and finally, *facetia*. Altogether, they describe a person who cannot be described simply as 'friendly' or even 'pleasant', but one of great societal sophistication in both manners and speech, capable of being charming and agreeable to all walks of people, and lives his communal life with a

⁵⁷⁰ *ExEth*, IV, q. 39, f. 88ra: Fuit etiam haec virtus aliquando vocata urbanitas ad differentiam rusticanitatis, quia viventes in urbe sciebant grate convivere et colloqui, viventes autem in rure sicut indocti ruditer et ingrate caeteris convivebant et colloquebantur. Vocantur etiam hodie vulgatiter curialitas per eandem rationem, quia qui versantur in curiis sciunt prae caeteris gratiose convivere et colloqui quibuscumque. Unde cum aliquem vocamus curialem, intendimus ipsum laudare de ista virtute sicut ipsam habentem, et oppositum vocamus incurialem hominem discolum et in convictu tediosum et onerosum. Vocata est etiam aliquando lepos vel lepiditas, quia homo dicitur lepidus cum est mollis et dulcis, gratus et acceptabilis in convictu. Vocatur etiam per eandem rationem iocunditas et habens eam iocundum non quidem ex eo quo ispe sit formaliter iocundus et letus. Sed quia talis est virtualiter, quia homines sibi colloquentes et conviventes reddit iocundos et letos.

⁵⁷¹ *ExEth*, IV, q. 39, f. 88ra: Sed propriissime vocata est antiquitus facetia, unde dicitur facetus medius inter discolum et placidum, et de ista commendat Gallicos Boetius in libro de *Disciplina Sclorum*, dicit quod venit Parisius ad videndum facetos Gallorum ritus, quia secundum veritatem natio Gallicana super omnem nationem ad vitam facetam est prompta et magis abundat in ista gratissima facetia. Quidam autem more poetica de facetia edidit unum libellum, qui dicitur *Facetus*, in quo dat multa generalia facetia documenta in principio, qui namque ait, 'Moribus et vita siquis <quisquis, sic in both X and V> vult esse facetus. Me legat et discat, quae mea musa docet.' Quod nomen utitur Augustinus, recitans cuiusdam mimi facetissima urbanitatem, 13 de *Trinitate*, capitulo 3.

joyous refinement. C. Stephen Jaeger ties all these qualities together under the late medieval notion of courtliness, a tradition found first in the Latin clerical texts in the context of medieval courts and monasteries.⁵⁷² Jaeger distinguishes two readings of the notion of courtliness, one is ethical, with which man guards his ethical principles in the world of the court; the other social, where man adopts certain external manners for the pursuit of life at court.⁵⁷³

What interests us here is how Odonis should push the concept of *amicitia* all the way through to entertain the notion of courtliness. While *philia* in the context of Book IV and the subsequent medieval commentaries of *amicitia* does imply a certain social aptitude of agreeableness, no other commentator else explicitly equivocates the concept of *amicitia* to courtly virtues. Although Aquinas uses the term *affabilitas*, which invokes certain courtly implications, it nonetheless treads closely with Aristotle's original thesis of loving and being loved - the affable man loves others moderately, and is loved by others. The terms of *curialitas*, *lepiditas*, *iocunditas*, however, denote much more explicitly to the idea of courtliness, with which one navigates life and social relations at court with ease and pleasure.⁵⁷⁴ Similarly, *facetia*, which is frequently translated as 'wittiness', also implies a sophistication of speech and manners. Jaeger presents the notion *facetia* as the collection of all courtly virtues, a way of speaking and jesting that at once charming and instructive.⁵⁷⁵ It is clear that Odonis intends to read the concept of *amicitia* along the lines of a courtly amiability, whose essence is not so much about virtuous affection and the love for others on account of their goodness, as per Aristotle's original intentions, but rather a virtue of refined and sophisticated mannerism.

However, it would be mistaken to think that Odonis equates *amicitia* entirely to the superficial notion of courtly manners. Raised within a context of virtue ethics, such societal aptitude, or courtesy, needs be guided by ethical principles. After all, it is the mean between flattery and aggression - one ought not, for the sake of courtly decorum, to seek to please all, ignoring the demands of justice and morality. The notion of *urbanitas* is a prime example of how the concept of courtly, or 'urbane' manners does not rest on the external and superficial behaviour, but is instead rooted deeply within one's moral self. Ciceronian in inspiration, it is a term that denotes not only an elegance in speech, but also plants such elegance within the internal nobility of the speaker. Similarly, out of the three sources cited by Odonis

⁵⁷² See C. Stephen Jaeger, *The Origins of Courtliness: Civilizing Trends and the Formation of Courtly Ideals, 939-1210*, Philadelphia, 1985, chapter 8.

⁵⁷³ *Ibid*, p. 127.

⁵⁷⁴ See *ibid*, p. 152-161.

⁵⁷⁵ *Ibid*, p. 162.

on the notion of *facetia*, while the description of the Gauls by Pseudo-Boethius may be construed as outwardly wit and sophistication, the references to the anonymous poem *Facetia* and to Augustine are clearly far more concerned with one's internal morality. Of the verse *Facetia*, Jaeger evaluates it as a didactic poem about morality without the constraints of formal ethics: 'It simply brings together a series of observations on the skilled conduct of a good and proper life, loosely organized according to classes and ages of men.'⁵⁷⁶ The reference to Augustine (*De Trinitate*, XIII. 3. 6) also deals with the articulation of truth in an intelligent and persuasive way. This brings us back to the very beginning of Odonis's *solutio* to the question: *amicitia* is, above all, a virtue of communication. While he subsequently qualifies such communicative virtue with terminology commonly found to describe life at court, this does not necessarily mean that Odonis is restraining *amicitia* to the clerics and aristocrats who attend court. Instead, he is merely enumerating synonyms used by other authors. These 'others' are those who wield the power of the pen, and frequently, such people are courtiers. What is important to note is that when Odonis speaks of *curialitas*, he presents it as the ability to live and converse with whomever (*quibuscumque*) - *amicitia* is not only the capability of being pleasant and agreeable to a king or a lord, but also the societal aptitude beyond court. Overall, *amicitia* is an all-round societal virtue - while it is especially prized at a courtly atmosphere, it is general virtue that is needed for every man's societal life.

Therefore, I will argue that we should approach the questions Odonis raised in Book IX with a reading of friendship as a virtue of societal aptitude rather than of the love for virtue and goodness. In Book IX, Odonis raises eight questions in total. What is interesting is that, while *philia* remains the topic of discussion in Aristotle's original text, all eight questions concern the *topos* of obligation towards others. Aside from Questions 1 and 7,⁵⁷⁷ which discuss obligation in the framework of retribution and therefore does not directly concern one's duty towards others *for the sake* of such people, all other questions enquire one's obligations towards others based *simply* on these persons' societal relations with the agent. With a brevity rarely found in Odonis's commentary text, Questions 2-4 deal with one's obligation of obedience to one's father and prince in the familial and civic spheres of life.⁵⁷⁸

⁵⁷⁶ *Ibid*, p. 166.

⁵⁷⁷ *ExEth*, IX, q. 1, f. 167rb: Utrum aestimatio faciendae retributionis pertineat ad dantem vel ad recipientem; q. 7, f. 169ra: Utrum propter malitiam benefactoris neganda sit recompensatio retributionis.

⁵⁷⁸ *ExEth*, IX, q. 2, f. 168rb: Utrum in opere civili sit magis oboediendum principi quam patri; q. 3, f. 168rb: Utrum in opere domestico magis patri quam duci; q. 4, f. 168va: Utrum patri in opere domestico sit magis oboediendum quam principi in opere civili.

Question 5 concerns one's obligation to assist his friend, and Question 6 his father.⁵⁷⁹ Question 8 pulls all together and asks whether one's obligations to others are the same.⁵⁸⁰ When *amicitia* is understood as a societal aptitude and a virtue of communication, necessary in man's life of living and conversing with others, we can better comprehend Odonis's intention of raising these questions in Book IX. While Odonis does not explicitly link *amicitia* to *iustitia*, the connection between these two virtues is well-established, as we have shown above, since they are both in their formal reason ordered towards others, instead of the self. We know that, for Odonis, the concept of 'what is due' (*debitum*), or obligation, is absolutely central to the notion of justice, where the precept of *ius* is understood as *debitum*, and then executed into an action that can be deemed just. A true and virtuous friendship thus also understands its duties to others, so that one may be pleasant, agreeable, and courtly in one's communal life. Obligations are the other side of *amicitia*, and with this the notion of *amicitia* is complete - far removed from Aristotle's original intention but coherent within Odonis's text itself, it is on the one hand a subjective capacity of sophistication and refinement in society, and on the other hand a just and prudent judgement of one's objective obligations towards different individuals in different situations.

Therefore, what seems on the surface as simple and straightforward answers to Aristotle's aporia of paternal obedience should be understood in a wider framework of one's societal obligations. In chapter 2 of Book IX, Aristotle asks: 'should someone always defer to his father and obey him in everything'? (*NE*, IX, 1164b). The question is raised to illustrate the importance of rational choice and deliberative judgement in matters of friendship and social relations. Yet Odonis plunges headlong into solving Aristotle's conundrum, and raises three questions (IX, 2-4, see footnote above), treating separately the domestic and civic spheres: whether one ought to obey his prince rather than his father in civic matters? whether one should obey his father rather than his prince in familial matters? whether one has a greater obligation to obey his father in familial matters than to obey his prince in civic matters? Odonis answers, associating one's societal obligation directly to *ius*:

In response to the first question, it should be said that there is greater obligation to obey the prince than to obey the father in civic matters. Because the honour we owe to our father is

⁵⁷⁹ *ExEth*, IX, q. 5, f. 168va: Utrum in extrema necessitate sit subveniendum ei qui est amicus propter identitatem generis magis quam ei qui est amicus propter bonitatem virtutis; q. 6, f. 168vb: Utrum filius magis teneatur liberare patrem suum a latronibus cum periculo sui quam eum qui se liberavit in casu simili.

⁵⁸⁰ *ExEth*, IX, q. 8, f. 169ra: Utrum honor debitus Deo et honor debitus patri et debitus matri et debitus principi et debitus seni et debitus sapienti sint universaliter distincti.

not the same as that which we owe to the prince. The honour of obedience in civic matters appropriate and owed to the prince, who presides over civic matters, just as the father presides over familial matters, see above Book VIII, chapter 10. Therefore, in civic matters, one ought to obey his prince rather than his father.⁵⁸¹

On familial matters:

In response to the second question, it should be said that there is greater obligation to obey the father than to obey the prince in familial matters, supposing that such prince, who is disobeyed, does not bring forth violence. The reason is: there is greater obligation to obey each prince in his own principality than to obey anyone else. The father naturally rules over his sons in the house as if a prince, see above Book VIII, chapter 11. The prince, on the other hand, does not rule over the household, except for, accidentally, when the household is considered as part of the city, see *Politics* I. Therefore, in the household and in familial matters, there is a greater obligation to obey the father than the prince.

This is because, the law (*ius*) that is prior, more natural, and more necessary, is not overruled by the law (*ius*) that is posterior, less natural, and less necessary. The law of the household, with which the pater presides over his sons, is prior, more natural, and more necessary, than the law of the city, with which the prince presides over the familial household, just as the family is prior, more natural, and more necessary than the city, see above, Book VIII, chapter 11. Therefore, the law of the household, with which father rules over his sons, is not overruled by civil law, with which the prince accidentally presides over the familial household, nor, by extension, is there a greater obligation to obey the prince than the father in familial matters.⁵⁸²

⁵⁸¹ *ExEth*, IX, q. 2, f. 168rb: Ad primum dicendum quod in opere civili obediendum est principi magis quam patri. Cuius ratio est: quia ut hic dicitur retributiones faciendae (faciendum, *X*) patri et principi sunt distinctae. Unde non debemus patri honorem, quem debemus duci. Sed obediendialis honor in opere civili congruit et debetur principi, qui praeest in rebus civilibus, sicut pater in domesticis, ut supra libro 8, capitulo 10. Quare in opere civili magis est obediendum principi quam patri.

⁵⁸² *ExEth*, IX, q. 3, f. 168rb-va: Ad secundum dicendum quod in opere domestico magis est obediendum patri quam principi, supposito quod princeps inobedienti violentiam non inferret, quia unicuique principi in principatu proprio magis est obediendum quam alteri; sed pater in domo naturaliter est principatuius filiorum, ut supra libro 8, capitulo 11. Princeps autem non principatur in domo, nisi per accidens in quantum sua domus est pars civitatis, ut habetur primo *Politicae*.

And finally, when paternal obedience in familial matters is contradictory to princely obedience in civic matters:

A civil matter is greater than a familial matter, as it is more common and more divine, see Book I, chapter 1, and because the city is more perfect than the household, just as the whole is more perfect than its part, see *Politics*, Book I, and because the authority of the prince in civil matters is greater than that of the father in familial matters, for indeed prince is the universal guardian of justice, see above Book V, chapter 11. Therefore, one has a greater obligation to obey the prince in civic matters than to obey his father in familial matters, where the two forms obedience should contradict one another.⁵⁸³

Odonis further elaborates such interpersonal obligations regarding different societal relations, and answers Question 8 - whether the honour we owe to God, to our father, to our mother, to the prince, and to the wisemen is universally distinct from one another - with a resolute affirmative.⁵⁸⁴ Friendship's obligations are certainly not limited to obedience, but a series of distinct ways, in which one should honour distinct groups of people. Odonis writes:

In such manner we should show honour to the elderly, through a magnitude of power; honour to the prince, through a magnitude of virtue; honour to the wiseman, through a magnitude of benefaction. And thus, we should show honour to our parents, whose honours are also distinct

Quare in domo et in rebus domesticis magis est obediendum patri quam principi. Item quia ius prius, et naturalius, et magis necessarium, non tollitur per ius posterius, minus naturale, et minus necessarium; sed ius domesticum, quo pater praeest filiis, est prius, naturalius, et magis necessarium, quamvis civile, quo princeps civilis praeest familiae domesticae, sicut domus est prior, naturalior, et necessarior civitate, ut supra libro 8, capitulo 11. Quare ius domesticum quo principatur pater filiis non tollitur iure civili, quo princeps accidentaliter praeest familiae domesticae, nec per consequens obediendum est principi magis quam patri in rebus domesticis.

⁵⁸³ *ExEth*, IX, q. 4, f. 168va: Ad tertium dicendum quod in opere civili magis est obediendum principi, puta dicenti vade ad prolium, quam in opere domestico patri, puta dicenti vade in agrum. Cuius ratio est: quia opus civile melius est opere domestico, quanto communius et divinius, ut supra libro 1, capitulo 1; et quia civitas perfectior est domo, sicut totum parte sua, ut habetur primo *Politicae*; et quia auctoritas principis maior est in civilibus quam patris in domestico, tanquam ilius qui est universalis custos iusti, ut supra libro 5, capitulo 11. Quare in rebus civilibus magis obediendum est principi quam in domesticis patri, in casu ubi obedientiae repugnarent.

⁵⁸⁴ *ExEth*, IX, q. 8, f. 169ra: Ad septimum autem dicendum quod honores illi, scilicet divinus, paternus, maternus, senilis, viri sapientis, et duci (ducis, X) sunt distincti.

from one another in accordance with that which the father and mother relate to the benefaction (they gave us). For our father is the principal actor of in all things, and our mother the secondary, we honour them with a universal magnitude of age, i.e. of strength, goodness, and benefaction. Thus, we show honour to God, because God is before all things in eternity, above all things in strength, between all things in wisdom and virtue, and gives all goodness through benefaction. In all these celebrations of greatness, we can express them variously in accordance with the various magnitude which we intend to manifest.⁵⁸⁵

Taken separately, such list of obligations and honours due to different people in different societal relations may be understood as a mere enumerative list. However, when read in the context of *amicitia*, understood by Odonis as a societal aptitude and courtliness, it follows logically that, in a virtuous communal life that is organised around the *communicatio sermonum et rerum*, one should possess not only a subjective potency of personal charisma as his societal aptitude, but also follow a series of obligations of obedience and honour to be a truly courtly and urbane person.

This series of obligations comes, ultimately, from the notion of *ius*. If one seeks to act virtuously in friendship, then it inevitably turns itself to the demands of justice, which is the virtue that is ordered towards others. Odonis deploys the language of *ius* and *debitum* to describe the obedience and honours due in various societal relations, and thus frames *amicitia* within the broader discussion of justice. Odonis argues that the obedience to the prince in civic matters is greater than the obedience to the father in familial matters, because the justice of the city is greater than the justice of the family. It would be of great interest to see Odonis present a detailed discussion on the relationship between friendship and justice. However, such text is not to be found, either in the questions raised, or in the literal *expositio*. But from what we know, it appears that Odonis is unlikely to agree with the modern reading that Aristotle's *philia* both complements and reaches beyond the virtue of justice - instead, for Odonis, *amicitia* is a facet of justice. It orders one's societal interaction with others, with regard to various kinds of societal relations. Just like justice, *amicitia* concerns man's societal life, his just

⁵⁸⁵ *ExEth*, IX, q. 8, f. 169rb: Et sic exhibemus honorem senilem, vel magnitudine potestatis; et sic honorem ducis, vel magnitudine virtutis; et sic honorem viri sapientis, vel magnitudine beneficii; et sic honorem parentalem, qui distinguitur in paternum et maternum, secundum quod pater et mater aliter et aliter se habent ad istud beneficium. Pater enim se habet ut agens principale in omnibus, mater vero ut secundarium, vel universali magnitudine aetatis, scilicet et potestatis, et bonitatis, et beneficii. Sic exhibemus honorem divinum, quia Deus et est ante omnia secundum aeternitatem, supra omnia secundum potestatem, intra omnia secundum sapientiam et virtutem, et dat omnia bona per beneficium. In hiis autem magnificationibus possumus uti signis variis secundum varias magnitudines quas significare intendimus.

communicatio sermonum et rerum, and his just and dutiful distribution of obedience, honour, and benefactions.

In order to probe further into the relationship between *amicitia* and justice, we need to look at two further aspects of friendship's obligations: one's obligation to his virtuous friendship, and his obligation to truth. In Question 5 of Book IX, Odonis distinguishes between two kinds of friends - friendship of same birth (*amicus propter identitatem generis*) and friendship of virtue (*amicus propter bonitatem virtutis*), and wonders whether man has a greater obligation to one kind of friend than the other.⁵⁸⁶ While Odonis here comes closer to Aristotle's notion of *philia* in Book VIII, the discussion is nonetheless framed in the language of *debitum*: one has a greater obligation to help a friend of virtue than a friend of similar birth, or by extension, any other friend (broadly construed as any other social relation).⁵⁸⁷

The argument is two-fold. Firstly, one has a greater obligation to act on account of a superior kind of friendship than on account of an inferior kind of friendship. The friendship of virtue is clearly superior, as such friendship also includes pleasure, utility, and identity that goes beyond mere consanguinity.⁵⁸⁸ Secondly, one has a greater obligation to come to the aid of one who is simply better and better than the helper himself.⁵⁸⁹ While Odonis follows Aristotle's reasoning in marking out the perfect and virtuous friendship as something that is good without qualification and altogether delectable, he does not mention the act of love, affection, or even benevolence that should exist between such friends or

⁵⁸⁶ *ExEth*, IX, q. 5, f. 168va: Utrum in extrema necessitate sit subveniendum ei qui est amicus propter identitatem generis magis quam ei qui est amicus propter bonitatem virtutis.

⁵⁸⁷ *ExEth*, IX, q. 5, f. 168va: Dicendum ergo quod magis subveniendum est ei qui est amicus propter bonum virtutis, quam ei qui est amicus propter identitatem (ydemptitatem, *X*, *idem infra*) generis.

⁵⁸⁸ *ExEth*, IX, q. 5, f. 168va: Primo quia magis est operandum secundum illam amicitiam, quae similiter copulat bonitatem, dilectionem, et utilitatem, quae includit identitatem, aequalitatem, et similitudinem, quae maxime habet pacem permanentiam et intransmutabilitatem, quam secundum aliquam aliam, quia nulla alia potest isti aequiperari. Sed amicitia propter bonum virtutis quae dicitur bonorum amicitia est huiusmodi, non tamen illa quae consanguineorum est. Quare magis est operandum secundum illam, quam secundum istam. Operantes autem secundum eam subveniemus amico virtuoso magis quam consanguineo. Quod autem bonorum amicitia copulet bonitatem, dilectionem, et utilitatem habetur, supra libro 8, capitulo 4.

⁵⁸⁹ *ExEth*, IX, q. 5, f. 168va: Ex parte amatorum probatur sic, quia illi magis subveniendum est qui simpliciter est melior, et subvenienti melior. Sed amicus virtuosus est simpliciter melior, ut supponit quaestio.

as the motivation for coming to their aid.⁵⁹⁰ Nor, as we have seen, does this species of friendship occupy any central place of discussion in the broader scheme of Odonis's passages on *amicitia*. What a friendship of virtue means here, is a greater obligation towards the good and delectable person, who is also a friend. Although the term *debitum* is not used in this question, there is nonetheless a strong underlying assumption of duty manifested with the pervasive use of the gerund construction *subveniendum est*.

Here, the notion of *amicitia* may not be appropriately understood as a societal aptitude, but more closely to the notion of an interpersonal relationship as per Aristotle's Book VIII. Friendship of virtue is a special species of *amicitia*, with an importance that deserves the highest obligation from partaking parties. However, to say this is not to overlook the obvious contradictions within Odonis's own writing. Leaving aside the possibility of a second way of reading *amicitia* as a personal relation, as opposed to a societal aptitude, linking friendship with obligation brings the contradictory conclusion that, since the friend of virtue is simply the social relation that brings the most and purest good, then one has the greatest obligation towards such friend over anyone else - over one's father, prince, etc. However, as Odonis has established in Questions 2-4 and again 8, obligations owed towards different social parties are distinct from one another. Such distinction is not rooted within a hierarchy of good, but rather an acknowledgement of the complexity of societal relations, where one needs to rely on his practical judgement and prudence to delineate his exact *debitum*. Such contradiction arises, evidently, from Odonis's lack of detailed and systematic writing on the notion of friendship as an interpersonal relation based on delectation and affection. Bénédicte Sère, having studied Odonis's *expositio literae*, also identifies the principle that one has a highest obligation to his *proximi*.⁵⁹¹ Sère suggests that the term *proximus* and *amicus* are interchangeable in the text of Odonis, and together they imply a sense of physical distance between friends - friends should be close in the physical sense, separated by no great distance. While I disagree with Sère's understanding of *proximus* as purely spatial - Odonis uses the term *proximus* elsewhere in the commentary and it should rather be read as 'neighbour' or simply friends, denoting the 'others' as opposed to the 'self' - her argument demonstrates from another angle that, even for the closest of relations, Odonis still frames it in the language of obligation

⁵⁹⁰ *ExEth*, IX, q. 5, f. 168va: Item ait quod amicus est simpliciter bonus, et amico bonus. Tales enim amici sunt simpliciter boni, et ad invicem boni, et similiter delectabiles et utiles, ut supra libro 8, capitulo 4.

⁵⁹¹ Sère, *op. cit.*, p. 288-290.

Yet, even with a friend of virtue, one still has a greater obligation to truth. In Question 15 of Book I, where Odonis asks whether truth is preferable to friendship (*utrum veritas sit praeferenda amicitiae*), he pits the demands of friendship against man's obligation to truth, and argues firmly that one's obligation to truth should always prevail over his obligation to friendship.⁵⁹² Odonis qualifies the terms of question, stating that here the negation of *veritas* in favour of friendship does not include ignorance, where truth is absent involuntarily, especially in the case of the scientific truth, which may not be known to all. Instead, the focus is principally on the moral truth, with which one may praise or condemn the moral deeds of man - truth that can be 'voluntarily suppressed.'⁵⁹³

Firstly, let it be known that the deprivation of truth can happen in twelve ways: falsehood, taciturnity, duplicitousness, mendacious jest, officiousness, perniciousness, erroneousness, perjury, contention, boastfulness, irony, and hypocrisy.⁵⁹⁴

Each of these acts above is a voluntary suppression of truth, and none of them ought to be done for the sake of friendship. Odonis singles out friendship of virtue and honesty, which cannot be directly undermined by one's obligation to truth, since truth does not contradict the demands of virtue and honesty.⁵⁹⁵

Here, rather than taking his inspiration from Aristotle, Odonis demonstrates a Ciceronian influence, who states that truth should inhere in every virtuous friendship.⁵⁹⁶ While Aristotle argues that one should prefer truth to one's friends, he manifestly does not make truth and friendship into a pair of ontological contrarians; instead, what Aristotle wishes to convey is that truth, and especially the scientific truth of first principles, should be sought through contemplation above all else, even at the expense of such delectable goods as friendship:

⁵⁹² *ExEth*, I, q. 15, f. 10vb: Dicendum ergo ad quaesitum quod veritas est praeferenda amicitiae, et amicitia veritatis amicitiae hominis.

⁵⁹³ *ExEth*, I, q. 15, f. 10va: Notandum autem quod praesens quaestio non potest quaerere de prima veritatis iactura, scilicet de falso, quoniam illud est involuntarium per ignorantia. Hoc autem quaeritur de iactura veritatis voluntaria, quae per homines potest eligi.

⁵⁹⁴ *ExEth*, I, q. 15, f. 10va: Sciendum ergo primo quod iacturae veritatis in genere sunt 12, scilicet falsus, taciturnitas, duplicitas, mendacium iocosum, officiosum, pernitiosum, mendosum, periurium, contentio, iactantia, ironia et hypocrisis.

⁵⁹⁵ *ExEth*, I, q. 15, f. 10vb: Notandum tertio quod honor veritatis non potest esse directa iactura vel lesio honestae amicitiae.

⁵⁹⁶ Cf. *supra*, Part II, chapter IV, 2, 'Interpreting Friendship: from Cicero to Scotus'.

It will presumably be thought better, indeed one's duty, to do away with even what is close to one's heart in order to preserve the truth, especially when one is a philosopher. For one might love both, but it is nevertheless a sacred duty to prefer the truth to one's friends. (*NE*, I, 1096a)

It is in Cicero, however, that we find an inherent symbiosis between friendship and truth - truth is an absolute necessity for friendship, and falsehood inevitably destroys friendship. Odonis in Question 15 presents a similar line of argument: truth is consistent with virtuous friendship; friendship based on falsehood, however, even for the sake of public expedience, always points towards ruin and destruction:

A friendship that suppresses truth cannot salvage a city unless through violent means, because such friendship is unnatural and violent, and because no violence can be carried on to perpetuity. Such safety brought out by violence cannot endure, because it will result in greater ruin of the commonweal and of the city once such violence ceases.⁵⁹⁷

Nonetheless, Odonis's argumentation does not completely depart from Aristotle. Even a friendship of virtue may be undermined by one's obligation to truth, not directly, but indirectly. Here Odonis invokes again the three-fold division of friendship found in Book VIII - friendship of utility, friendship of pleasure, and friendship of virtue - and lays down the premise that friendship of virtue, as the perfect form, includes the benefit of both utility and pleasure.⁵⁹⁸ Therefore, while man's obligation to truth cannot undermine the virtue and honesty within friendship directly, it can nevertheless contradict friendship's utility and pleasure by 'damaging the temporal possessions or causing grief'.⁵⁹⁹

⁵⁹⁷ *ExEth*, I, q. 15, f. 10vb-11ra: Ad secundum dicendum quod amicitia veritatem laedens saluare non poterit civitatem nisi violenter, cum talis amicitia sit innaturalis et violenta. Et quia nullum violentum perpetuum, talis salus violenta durare non poterit, quin maiore ruinam in sua cessura rei publicae ac civitati praestabit. Quare talis amicitia praeferenda non est veritati.

⁵⁹⁸ *ExEth*, I, q. 15, f. 10vb: Secundo notantum quod amicitia honesta, quae simpliciter est amicitia vera, includit in se delectabilem et utilem, ut infra dicetur capitulo 8.

⁵⁹⁹ *ExEth*, I, q. 15, f. 10vb: Tamen in casu posset esse indirecta iactura, puta quia damnificaret in temporalibus, vel contristaret in effectibus. Et in hoc casu intelligitur singuliter quaestio.

Odonis goes on further to affirm the inviolable superiority of truth over man's obligation to friends, even when the very life of a friend is at stake. He addresses in a *dubium*:

If someone is demanded to lie in order to save the life of a friend, it is questioned whether this is a lie or not. It should be said that in his case he should remain silent, for it is not licit to lie, as said above.⁶⁰⁰

The preservation of truth is regarded as a first principle of the moral science, and no societal obligation can legitimately challenge the man's duty to the moral truth.

Such obligation to truth should be understood as ultimately an obligation to justice. For the preservation of truth at the expense of friendship, one makes a practical judgement on an action that concerns another. One may indeed consider the obligation to truth as part of the dictate of *amicitia* - no one can truly possess the virtue of courtliness and urbanity without holding on to the moral principle of *veritas*, and Odonis states that 'friendship with truth is preferable to friendship with people'.⁶⁰¹ Certainly, the goodness of truth transcends man's need for societal aptitude and social ethics, yet this does not mean the obligation to truth should deprive man of his social life. The renunciation of societal life for contemplative truth is not a thesis that Odonis wishes to advance - indeed, as we have established so far, societal life is central to one's moral goodness. Odonis's argument is very much the contrary - the discussion on the inviolable superiority of truth is rooted firmly within a societal context, and each action that man takes to preserve or undermine truth is taken in relation to another. The obligation to truth effectively argues for a principle of man's social life - that truth should always prevail no matter one's capacity for sociability and obligation towards social relations. It is in this sense that we should understand this obligation to truth as part of the broader demand of justice, since truth, just as justice, concerns not only the self, but also one another.

Bénédicte Sère argues in her study on friendship that Odonis considers *amicitia* with an eye firmly fixed on the notion of charity, and arrives at a broad conclusion of a general theological inclination in Odonis's discussion of *amicitia* and of the ethics as a whole - the perfect friend should be like

⁶⁰⁰ *ExEth*, I, q. 15, f. 10vb: Secundum dubium: si quis requaesitus cum suo mendacio possit saluare vitam amici, quaeritur an sit mendacium aut non. Dicendum quod in tali modo tacere debet, mentiri vero non licet, sicut dictum est supra.

⁶⁰¹ *Cf. supra*, *amicitia veritatis* (praeferenda) *amicitiae hominis*.

Christ, and the perfect friendship is indeed sanctity.⁶⁰² She is right in both theses, but another perspective needs to be offered to her already nuanced analysis. Sère argues that the underlying consideration of Odonis on charity is read through the theological references found in Odonis's discussions *amicitia*. However, the link is more direct and explicit in Question 15 of Book I, where Odonis references Paul's sermon on charity in I *Corinthians*, 13: 'For indeed the Apostle said that "Love (*caritas*) does not delight in evil, but rejoices in the truth", see I *Corinthians*, 13(:6).'⁶⁰³ Rather than an implicit connection as per Sère, the equation between *amicitia* and *caritas* is in fact explicit. In the *Corinthians* reference, Odonis substitutes *amicitia* directly with *caritas*. Unlike other commentators, no comparison is made by Odonis between friendship and charity, and therefore it is difficult to ascertain how much Odonis truly considers the two terms as equivocal. Yet, taken directly from the sermon in I *Corinthians*, Paul's description of charity is closely mirrored by Odonis's notion of friendship:

Love is patient and kind; love does not envy or boast; it is not arrogant or rude. It does not insist on its own way; it is not irritable or resentful; it does not rejoice at wrongdoing, but rejoices with the truth. Love bears all things, believes all things, hopes all things, endures all things.⁶⁰⁴

There is no surprise that Odonis should understand Aristotle's notion of *philia* in a way congruent to the theological virtue of charity. As we have established in section 'Two Truths' in V.1 of Part I, Aristotle's position concerning the present life is truthful and does not contradict the broader truths of Christian faith. *Amicitia* is congruent to charity, in the way that friendship is what can be attained in the present life through one's own endeavours, while the virtue of charity is a higher goal that needs to be reached through God's grace.

The equation between *amicitia* and *caritas* testifies for Sère's second thesis - that Odonis has Christ and friendship with Christ as the ultimate model for *amicitia*. While Sère presents this as evidence

⁶⁰² Sère, *op. cit.*, p. 288, 291-93.

⁶⁰³ *ExEth*, I, q. 15, f. 11ra: Ad duo sequentia similiter dicendum, quod amicitia de qua loquitur Philosophus numquam adversatur veritati, nec veritas ei. Immo dicit Apostolus quod caritas non gaudet super iniquitate, congaudet autem veritati, primae *Corinthiorum*, 13.

⁶⁰⁴ I. *Corinthians*, 13:4-7: Caritas patiens est, benigna est. Caritas non aemulatur, non agit perperam, non inflatur, non est ambitiosa, non quaerit quae sua sunt, non irritatur, non cogitat malum, non gaudet super iniquitate, congaudet autem veritati: omnia suffert, omnia credit, omnia sperat, omnia sustinet.

for Odonis's theological inclination in his discussion of friendship and the *Ethics* commentary as a whole, I would like to argue the contrary. The biblical references in Odonis's writing on friendship, and of the *Ethics* commentary at large, is evidence for an attempt to take theological material away from its proper doctrinal context and use it for purposes and arguments that are fundamentally non-theological. The model of Christ is used, not in reference to his divinity, but to his humanity. In Question 15 of Book I, the passage in *Corinthians* is referenced, not for the purpose of discussing charity, but to prove the point raised by Aristotle (or that Odonis thinks to be raised by Aristotle). Equally, as we shall see in the section below 'Odonis on the Rule of the Best Men - *Solutio*' (Part II. V.4), the reference to Christ as the perfect prince does not take place in a theological context of the discussion concerning the Kingdom to come, but rather in a secular context that underscores the very humanity of Christ, as opposed to the inhumanity of law. In this way, Odonis ethicises theology, rather than theologises ethics.

4. Friendship: A Brief Summary

We can never know how much Odonis's personal experience within the Franciscan Order has shaped his writing on friendship. In the closely-knit communities of Franciscan convents and *studia*, where Odonis spent most of his formative years, and the larger, far more diverse and worldly environment of the University of Paris, where Odonis studied and later lectured, socialising is an inevitable fact of life, and we should not assume that the need for a societal aptitude is lesser in a conventual setting than in lay communities. Either among the Franciscans or within the University of Paris, Odonis is situated in a milieu that is imbibed with learning in both the profane classics and the theological, surrounded by scholars almost invariably of bourgeois or aristocratic origin. There is no great difficulty in arriving at a notion of *amicitia* as urbanity and courtliness with staunch moral principles.

Odonis leaves many aspects of Aristotle's discussion on friendship under-explored, and presents his readers with an *amicitia* that is heavily skewed towards that of a societal aptitude. Aristotle considers *philia* as a good on a par with, if not higher than, the good brought about by virtue and justice, since it is inherent within human nature to live one's life socially, to entreat others with affection, and to love others for their goodness. Odonis, on the other hand, glosses over such vital elements of Aristotle's *philia* as equality, affection, exclusivity, etc., and presents *amicitia* as a necessary virtue for one's social life, because - note Odonis's double negative - no one can live outside of society.

Amicitia, while necessary and fundamental to man's livelihood, especially in his *communicatio sermonum et rerum*, fails to transcend the boundary of moral necessity into the higher planes of *philia*'s delight and happiness intended by Aristotle. Odonis's *amicitia* manifests itself as a cognitive capacity in acting out what ought to be done for one's courtliness and urbane agreeableness, and what must be done for one's societal obligations that together construct and maintain man's societal network.

Every act of friendship, be it an act of courtliness or an act of social obligation, is an act that is ordered towards the others. Even if one ultimately has an obligation to truth at the expense of friendship, the obligation to truth entails nonetheless an act ordered towards one another. While Aristotle intends friendship to both complement justice and reach beyond justice, Odonis takes the relationship between the two virtues the other way around. Legal justice is the complete virtue that concerns absolutely every aspect of man's moral life, because, by definition, no act of moral worth can be considered without reference to people other than the moral agent; friendship, on the other hand, is a special species of justice. It is a just relationship between different parties, maintained by each moral agent's societal aptitude in socialising with others and by the obligations rendered towards one another.

Odonis does not follow the precedence set by the previous Aristotelian commentators in distinguishing between two readings of friendship or distinguishing between friendship and charity. Instead, our Franciscan master seems to equivocate *amicitia* with *caritas*. What this achieves is not quite constructing a theological cladding over the discussion of *amicitia*, but rather a philosophical elaboration of theological material. Charity is understood as friendship, rather than the other way around. Overall, the *Doctor moralis* presents *amicitia* as a moral virtue for man's societal life, but also a conduit through which the goodness of friendship in this life may be channeled to the theological virtue of charity with the divine grace of God.

V. SHOULD A CITY BE RULED BY THE BEST LAW OR BY THE BEST MEN?

In the previous chapter, we have reiterated Aristotle's position multiple times that 'friendship seems to hold cities together', and that 'when people are friends, they have no need of justice.' (*NE*, VIII, 1155a) Undoubtedly, friendship occupies a primordial position in Aristotle's scheme of civic governance. Here Aristotle juxtaposes and compares *philia* with justice, but what interests us is a broader construction of this dichotomy in the form of question on the mode of governance - is a state better governed with the exhortative forces of virtues and moral obligations, or with the coercive forces of law? Since Odonis's notion of legal justice goes beyond the purview of human positive law, and extends to the entirety of human morality and the aggregation of moral virtues, it becomes interesting to see how Odonis compares the system of laws with the system of subjective morality and moral justice. This chapter zooms in to Odonis's question on whether a city should be ruled by the best men or by the best laws. The enquiry will continue in the next chapter, where we will explore Odonis's understanding of the role of the legal edifice in the pursuit of justice and moral goodness.

1. The Philosophical Context - Aristotle

Odonis raises few questions of direct practical relevance in his commentary, and one of them investigates the relative merit of the rule of man and the rule of law in the governance of a city. To fully understand Odonis's position, it is necessary to spell out what Aristotle thinks of the role of law in relation to the governance of man in a political community. For Aristotle, law is an equalising instrument that corrects what is wrong or unequal in the society's transactions. As such, the function of law is almost purely mathematical. In his discussion on rectifactory justice, where Odonis's Question 11 is raised, Aristotle ascribes to law the function of re-establishing a *quantitative* equality where inequality is resulted from men's interactions within one another:

What is just in transactions is nevertheless a kind of equality, and what is unjust a kind of inequality, in accordance, however, not with that kind of proportion, but with arithmetical proportion. (*NE*, V, 1131b)

Where one party receives less than what is his due, or is injured in any other way, rectificatory justice takes away the excess from the injuring party and renders it to the injured party. In the administration of rectificatory justice, the law has a relatively simple and straightforward task: it treats the outcome alone and seeks the equality of such outcome alone. Extraneous factors are swept aside in its consideration - the virtues and vices of the parties are not considered in law's equalisation of outcomes.⁶⁰⁵ Aristotle demonstrates this in a mathematical language, maintaining that such equality can be easily identified by the application of quantitative reasoning:

What is equal is a mean between the greater and the less according to arithmetical proportion, because when a certain amount is subtracted from one of two equals and added to another, the other exceeds the first by double that amount... (*NE*, V, 1132a)

A virtuous person would not receive a compensation superior to what is due quantitatively, nor be punished less severely than a vicious person, since virtue does not alter objective quantity of inequality, but simply disposes man towards conducting such transactions in equitable manners in the first place. Law in this sense does not reward the good and punish the evil, but simply and firmly has its object as the equality of acts and their outcomes. Therefore, for Aristotle, the law is certainly the best instrument for rectificatory justice. Law, as a general and universal principle, is best utilised when simply applying to a one-dimensional judgement of human affairs, without being distracted and distorted by the infinitely complex realities of men and the political community at large.

The task of the judge, as a minister of justice, is consequently simple. When Aristotle says that the judge is 'justice personified'⁶⁰⁶ - rendered into Latin as *iustum animatum* - he is not speaking of the judge as a source of what is just and the arbitrary legislator envisaged by Roman law and the medieval Glossators, but rather as the dispenser of justice, a human face of the otherwise impersonal and mathematical mechanisms of law.⁶⁰⁷ Aristotle makes the semantic link between the Greek terms for justice and division - *dikaios* and *dichaios*, which may not be immediately obvious to a Latin audience:

⁶⁰⁵ *NE*, V, 1132a: The law looks only to the difference made by the injury, and treats the parties as equals, if one is committing injustice, and the other suffering it - that is, if one has harmed and the other been harmed. So the judge, since this kind of injustice is an inequality, tries to equalise it.

⁶⁰⁶ *NE*, V, 1132a (bis): This is why, when people are in dispute, they turn to a judge. To appeal to a judge is to appeal to what is just, because a judge is meant to be, as it were, justice personified.

⁶⁰⁷ *NE*, V, 1132a.

And when the whole has been equally divided in two - when the parties have equal shares - then they say that they have what belongs to them. It is for this reason that it is called just (*dikaaios*), because it is a division into two parts (*dicha*), just as if one were to call it divided into two (*dichaios*), and the judge (*dikastes*) is a divider (*dichastes*). (*NE*, V, 1132a. bis)

In rectifactory justice, the role of the judge is limited to the application of a mathematical principle of equal division. Instead of utilising his moral virtues, equity, and practical wisdom, a judge follows the reason of law and effectuates the execution of justice in accordance with law. Being ‘justice personified’, the judge is a living equaliser of inequalities.

It is against this reading that Odonis starts to question the relationship between the reason of man and the reason of law, and consequently asks whether the governance of man is preferable to the governance of law. The way that Odonis arrives from an analysis of rectifactory justice to the question of the best governance is out of the ordinary, since the same question is discussed, albeit briefly, by Aristotle later in Book V. Aristotle states that:

This is why it is not a person that we allow to rule, but rather law, because a person does so in his own interests and becomes a tyrant. The magistrate, however, is a guardian of what is just, and so of what is equal as well. If he is just, he seems not to have more than his share, since he does not assign to himself a greater share of what is unqualifiedly good, unless it is in proportion to his deserts. (*NE*, V, 1134b)

Following his discussion on rectifactory justice, Aristotle envisages that the city is better governed with the rule of law, dispensed by the magistrates, because a political community is best served when justice is preserved, and a governance of men without the rule of law means that there is no higher reason to stop men from rendering to themselves more than what they deserve. The corruption of justice means the disequilibrium of the city, and consequently leads to a perverted state of politics. The governance of law is therefore indispensable for the assurance of justice and the protection against man’s passions and desires.

The question of the governance of man and law is explored in much greater details and more comprehensively in Book III of *Politics*, and much of Aristotle’s argument here finds its way into

both Odonis's text and other scholastics.⁶⁰⁸ Aristotle maintains that, although men may be better at deliberating particular cases while law deals only with the general and universal, the rule of law is still superior. Aristotle provides four principal arguments in support of this thesis. Starting with the premise that, although each individual person may be imperfect and incomplete in their reason and judgement, together, the multitude are better judges of music and poetry than any individual, however wise this individual may be. In the same way, collective reason of the multitude is better at judging the affairs of the city than the reasons of one or a few individuals, as in the case of kingship or aristocracy. Furthermore, the many are more incorruptible than the few, since individual persons can be easily swayed by their passions and desires, while the many cannot conceivably be swayed by a passion or engrossed with an error all at the same time.⁶⁰⁹ Law is the reason of the multitude, in the sense that, with customary law, which is the reason of not any individual person, but of the city as a whole, it is used and refined by all in the community over a long period of time, and it pertains to the most important matters of the state. Aristotle considers the use of customary law superior to the rule of man and to the written laws.⁶¹⁰

As the reason of the multitude, or as written word legislated by law makers, law is a manifestation of pure reason and is unaffected by appetite:

Therefore he who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man rule adds an element of the beast; for desire is a wild beast, and passion perverts the minds of rulers, even when they are the best of men. The law is reason unaffected by desire. (*Pol*, III, 1287a, 29-33)

The rule of law is thus far more secure and consistent than the rule of man, as God and reason are immutable and unperturbed by appetite. As such pure reason, law also educates the magistrates and guardians of law to judge well.⁶¹¹ It performs a formative role in civic governance, not only in the

⁶⁰⁸ For Aristotle's full discussion on this question, see *Pol*, III. chapters 15-17.

⁶⁰⁹ *Pol*, III, 1286a, 10-35.

⁶¹⁰ *Pol*, III, 1287b, 5-8: Again, customary laws have more weight, and relate to more important matters, than written laws, and a man may be a safer ruler than the written law, but not safer than the customary law.

⁶¹¹ *Pol*, III, 1287a, 20-28: On the same principle, even if it be better for certain individuals to govern, they should be made only guardians and ministers of the law. For magistrates there must be - this is admitted; but then men say that to give authority to any one man when all are equal is unjust. There may indeed be cases which the law seems unable to

way of providing a standard of measure against which justice is to be dispensed, but also in educating men with the reason of politics and harmonises the different proportions of the city. Aristotle posits that the state is a plurality by nature, but is united into a community by education, which is realised through philosophy, customs, and laws.⁶¹²

Finally, the impersonal force of law also means that it is more extensive than men, for ‘it is by no means easy for one man to superintend many things; he will have to appoint a number of subordinates.’⁶¹³ The rule of men would require personnel to attend to every single detail of governance, which is an impossibility in a human society with its infinite complexities. Law, on the other hand, is more extensive in the way that it governs universally, and has its force through both governmental coercion and through its intrinsic reason. The judges and magistrates are only needed in the rare particular cases where law cannot determine, or cannot determine justly.

Aristotle allows for one exception in his discussion on the rule of man and rule of law. The rule of law is preferred as a normative mode of governance. However, should there be one or several persons whose virtue and goodness far exceed the rest of the citizens, then these men should rule *absolutely* because of their superiority:

If, however, there be someone person, or more than one, although not enough to make up the full complement of a state, whose excellence is so pre-eminent that the excellence or the political capacity of all the rest admit of no comparison with his or theirs, he or they can be no longer regarded as a part of a state, for justice will not be done to the superior, if he is reckoned only as the equal of those who are so far inferior to him in excellence and in political capacity. Such a man may truly be deemed a God among men. Hence we see that legislation is necessarily concerned only with those who are equal in birth and capacity; and that for men of pre-eminent excellence there is no law - they are themselves law. (*Pol*, III, 1284a, 4-14)

determined, but such cases a man could not determine either. But the law trains officers for this express purpose, and appoints them to determine matters which are left undecided by it, to the best of their judgement.

⁶¹² *Pol*, II, 1263b, 37-40: The state, as I was saying, is a plurality, which should be united and made into a community by education; and it is strange that the author of a system of education which he thinks will make the state virtuous, should expect to improve his citizens by regulations of this sort, and not by philosophy or by customs and laws...

⁶¹³ *Pol*, III, 1287b, 9-20.

Such men, by virtue of their pre-eminence, are not part of the political community anymore. Instead, they transcend it. They should rule the city like gods. Such rule is absolute because no law can be applied to them and no justice can be done to those who are superior; they are themselves law. Just as the best flute should be given to the best flautist, the power of governance should be given to those who are far superior to the rest of the city in their virtue and political competence.⁶¹⁴

Hitherto, we see that Aristotle formulates two models of ideal governance. The normative model posits that the rule of law is superior for its untainted reason and its extensiveness, while the exception model claims that the pre-eminently virtuous men should rule, and rule *absolutely*. How exactly one qualifies the superiorly virtuous man who is fit to rule as law and above law is a recurrent mooted point in Aristotelian scholarship, and such ambiguity is also reflected in the writings of medieval scholastics.⁶¹⁵

2. Philosophical Context - Aquinas, Auvergne, Brito, and Giles of Rome

In his commentary on the *Ethics*, Thomas Aquinas follows Aristotle's idea that the polity is better ruled by law than by man, citing the ills of a man ruling with his passion, the disturbance of the just mean, as well as the descent of the lawless rule into tyranny:

First he says that because injustice consists in this that a man attributes to himself too many of the benefits and too few of the burdens, it follows that in good government of the multitude we do not permit that men should rule, that is, according to whim and human passion but that the law, which is a dictate of reason, should rule man, or that man who acts according to reason should rule. The explanation is that if a prince follows human passions he will do this for himself; he will take more of the good things and less of the burdensome and so become a tyrant, although this is contrary to the concept of a prince. A prince was given the office to

⁶¹⁴ Aristotle carries on discussing such scenarios, and cites the examples of certain democratic states ostracising and exiling such men for fear of being overwhelmed by their power, and the story of the Argonauts abandoning Hercules. See chapter 13 of *Politics* III.

⁶¹⁵ For a more detailed discussion on the question of *who* should claim absolute political power, see R. G. Mulgan, 'A Note on Aristotle's Absolute Ruler', *Phronesis*, 19, 1974, p. 66-9.

observe justice, and consequently equality, which he passes over when he usurps for himself too many beneficial and too few onerous things.⁶¹⁶

Aquinas envisages a society governed by absolute reason, and law is the better instrument of such governance compared to man. As we have seen above, law is the equaliser of the different proportions of the city, and man's passion perverts the harmony and equilibrium between such proportions. James Blythe in his book on the mixed constitutions in the Middle Ages states that Aquinas is an 'unswerving champion of the law'.⁶¹⁷ However, this does not mean that Aquinas excludes a monarchical form of government - instead, argues Blythe, Aquinas clearly favours a mixed constitution where the king shares power with an oligarchy and a democracy under the common constraints of law, in order to preserve the balance of power.⁶¹⁸

Peter of Auvergne, a disciple of Aquinas and who continues Aquinas's unfinished commentary on the book of *Politics*, also finds himself as an exponent of the rule of law. Auvergne tackles the question directly in his commentary on Book III of the *Politics*, and renders a more systematic account of his thoughts on the problem. Although Auvergne arrives at the same conclusion as Aristotle, he travels through a different path of argumentation. Auvergne surveys both sides of the argument, stating that while law is not perverted by passion and is incorruptible, man 'attains right reason to a greater degree and *per se*', whereas law only attains reason *per accidens*.⁶¹⁹ However, Auvergne states further that even the best man (a man with the highest virtue) is still susceptible to passion, as 'if sensation is present, there will also necessarily be appetite. Appetite is susceptible to passion... no matter how perfect the best man may be, he is nevertheless susceptible to passion.'⁶²⁰ Therefore, in a

⁶¹⁶ *SLE*, V, lect. 11, num. 1009, p. 301: In recta gubernatione multitudinis non permittimus quod homines principentur, scilicet secundum voluntatem et passiones humanas, sed quod principetur ratio, id est lex quae est dictamen rationis, vel homo qui secundum rationem agat, quia, si princeps sequatur passiones humanas, faciet hoc sibi, scilicet, quod plus accipiet de bonis et minus de malis, et ita fiet tyrannus, quum hoc sit contra rationem principis. Ad hoc enim princeps institutus est ut custodiat iustitiam, et per consequens aequalitatem quam praeterit, dum sibi usurpat plus de bonis et minus de malis.

⁶¹⁷ James M. Blythe, *Ideal Government and the Mixed Constitution in the Middle Ages*, Princeton, 1992, p. 49

⁶¹⁸ *Ibid*, p. 49.

⁶¹⁹ Peter of Auvergne, 'Commentary and Questions on Book III of Aristotle's *Politics* (Selections)', in A. S. McGrade, J. Kilcullen, M. S. Kempshall (eds.), *Ethics and Political Philosophy* (vol. II of *Cambridge Translations of Medieval Philosophical Texts*), Cambridge, 2001, p. 251.

⁶²⁰ Peter of Auvergne, 'Commentary on *Politics*', p. 252.

theoretical model of the perfect state, the best men should rule, since men have the potential to attain a highest reason and be most close to God, but in practical terms, the rule of law is preferred.

Although one may consider the thesis that the rule of law is superior *per accidens* as a concession to the imperfect nature of men and political expediency, it is nonetheless difficult for a late thirteenth-century master to imagine the rule of man without at least the aid of written law or at least bound by other forms normative structure. Aristotle states that ‘the best men must legislate’, and cites the example of Agamemnon to illustrate that even the absolute prince cannot govern without resorting to the instrument of law.⁶²¹ Auvergne entertains no illusion that a perfectly virtuous but legally unhinged prince could ever be preferable to the rule of law: ‘since a human being can deviate from a correct end whereas law cannot, it is clear that it is just for the law to exercise lordship and not a human.’⁶²² Meanwhile, Auvergne is fully with Aristotle in recognising the deficiencies of law: ‘there can be laws that tend to the power of the few or the many’.⁶²³ He is as realistic about the flaws of law as he is about the impossibility of the perfect men. At the end, Auvergne arrives at a rather compromised conclusion: the rule of law is preferred in the domain where law determines, namely the universals, and the rule of man is preferred in the singulars. This is a position very much akin to the solution offered by Aristotle, in the way that where law cannot determine, it is up for the magistrates educated in law to rule and govern.

The legalist tradition is followed by Radulphus Brito in his question commentary on the *Ethics*.⁶²⁴ Like Peter of Auvergne, Brito considers the case for both sides, and largely follows the pattern set by Aquinas and Auvergne.⁶²⁵ He concurs with Auvergne that the governance of the best man is intrinsically better (*per se*), but goes further and argues that it is better because governance by man is more immediate, both in terms of immediacy to the first principle of ruling, i.e. reason, and in terms

⁶²¹ *Pol*, III. 1286a 22; 1287b 9-15.

⁶²² Peter of Auvergne, ‘Commentary on *Politics*’, p. 223.

⁶²³ *Ibid*, p. 224.

⁶²⁴ *RBSE*, V, q. 124, p. 455-7.

⁶²⁵ Anthony Celano argues that Brito’s ethics commentary mostly inherits accepted positions, especially that of Aquinas. This can be testified by his responses to several the questions, as well as the brevity with which he deals with most of his questions. Unsurprisingly, the Thomist influence was extremely strong by the end of the 13th century, where Brito’s commentary was composed, and here we see Brito largely repeating the argument offered by Auvergne on the same question. See Anthony Celano, *Aristotle’s Ethics*, p. 231.

of immediacy to those who are governed.⁶²⁶ However, all men are subject to the sways of passion and it is extremely rare to find a man not perturbed by his passions in his governance.⁶²⁷ Therefore, the governance of law is better *per accidens*. Brito reaches the conclusion stating that governance should be entrusted to law as much as possible, since the law provides a universal basis of reason.

Giles of Rome, however, offers a different response to the *quaestio vexata*.⁶²⁸ An Augustinian at the University of Paris, and a contemporary to Auvergne, Giles raises the question in his *De regimine principum* (1277-80). Matthew Kempshall argues that Giles's work combines elements of rhetorics and a political treatise, so as to convince the audience of the principles of good conduct and to provide guidelines on political and ethical matters.⁶²⁹ As a political text rather than an academic work, it was immensely popular and it is likely that Giles's position may have influenced Odonis's response to the same question. In Book III chapter 29, Giles argues that it is ultimately better for a kingdom to be ruled by the king than by the law, and supports his thesis by bringing the distinction between natural law and positive law into the discussion. Giles states:

A king is an intermediary between natural and positive law, in that no one rules rightly unless he acts as right reason dictates, because reason ought to be the rule of human deeds.⁶³⁰

⁶²⁶ *RBSE*, V, q. 124, p. 456: Primo quod melius est per se et simpliciter ciuitatem regi optimo viro quam optimis legibus. Secundo dico quod per accidens melius est ipsam regi optimis legibus quam optimo viro. Et ad declarationem vtriusque istorum est intelligendum quid est regere: regere enim est aliqua in suum finem debitum ordinare, et ideo ille qui regit oportet quod cognoscat finem et illa que deducunt ad illum finem et quod sciat ea ad illum finem deducere; modo istud pertinet ad rationem, et ideo rationis vel alicuius per rationem principaliter est regere secundum rationem, et ideo viri discreti et prudentes debent eligi ad regendum.

⁶²⁷ *RBSE*, V, q. 124, p. 457: Secundum declaratur: quia sicut apparet II Politice, impossibile est vel nimis difficile animam humanam esse separatam a passionibus; modo aliquis propter passiones potest perueri in iudicio secundum illas passiones, quia sicut dicitur I Rethoricorum, amor et odium peruertunt iudicium. Tunc arguo: melius est per accidens ciuitatem regi illo quod non potest aliquo modo perueri passionibus quam eo quod potest istis passionibus perueri in iudicando; modo leges non possunt passionibus perueri, sed optimus vir potest istis perueri, quia difficile est ipsum separari a passionibus; et ita per accidens, inquantum optimus vir est subiectus passionibus, melius est ciuitatem regi optimis legibus quam optimo viro.

⁶²⁸ For the full text of the question, see Giles of Rome, 'Which is the better way of ruling: a political community or a kingdom? Is the rule by the best king better than the rule by the best law?', in McGlade, KilCullen, and Kempshall (eds.), *Ethics and Political Philosophy*, p. 212-15.

⁶²⁹ Kempshall, *op. cit.*, p. 130-137.

⁶³⁰ Giles of Rome, *Rule of Princes*, in McGlade etc. (eds.), *Ethics and Political Philosophy*, p. 213.

The rule of a king is only just and legitimate in so far as he follows natural law, which is superior to the rule of a king and binds the king. The rule of natural law is the rule of God and intellect - a prince who rules according to natural law is to rule with the providence of God. But the king should rule above positive law, because the king is the source of positive law, both in the sense that he institutes such laws, and in the sense that the binding force of positive law rests on the power and authority of the king. Giles's solution echoes the currents of late thirteenth-century legal theories of the jurists who accord the prince with absolute power over positive law, but still imposes a transcendental structure over the king, who falls under the authority and guidance of natural law. In the realm of human law, the king has both the ordinary and absolute powers:

It is advantageous for a king (and for anyone else who is ruling by means of right reason or the natural law which God imprints in the mind of every human being) to control positive law, to be above legal justice, and not to observe the law where it should not be observed.⁶³¹

But such powers are only correctly used when it is wielded with the dictates of natural law. Kenneth Pennington illustrates the point that even with the increasingly popular notion of a prince *legibus solutus*, the 'absolute' ruler is nevertheless constrained by natural and divine law - 'the jurist never abandoned their atavistic beliefs in limited princely power: they had no place in their souls for a Leviathan.'⁶³² Giles can be said to have developed the second argument of Aristotle, where the supremely virtuous man would break the normative mould and rule above law, and indeed the entire *De regimine principum* is aimed at educating the prince to become the paragon of virtue in a civil society. The king rules like God in his own kingdom not only because of his absolute power and legislative authority, but also because he is (or ought to be) the personification of virtue.

3. Odonis on the Rule of Law

While there is no doubt that Odonis is familiar with Aquinas's arguments concerning the merit of the rule of law, he is also likely to be aware of the position of both Peter of Auvergne as well as that of Giles of Rome, based on his extensive references to Aristotle's *Politics*. Although the question arises

⁶³¹ Giles of Rome, *Rule of Princes*, p. 214.

⁶³² Pennington, *Prince and Law*, p.119.

from a reading on Aristotle's theory of rectifactory justice, Odonis offers an analysis far beyond issues underlined by Aristotle's concept of the role of law as equalising inequalities and that of the judge as divider into equals. In comparison with his predecessors, Odonis here presents one of the most extensive and in-depth examination of the problems at hand, and offers a solution that not only favours a rule of the best man - one that possesses the quality of *potentia, prudentia, iustitia* - but also accords the ruler immense power and authority that far surpasses anything imagined by the above-mentioned authors. When approaching the question, the reader should always note that Odonis is indeed interrogating the governance of *lex*, a term consistently used by Odonis to denote human positive law.⁶³³ Thus, the perspective offered by the question is of course limited, and the relationship between the rule of law and rule of men must in turn be understood in the broader discussion surrounding the concepts of *ius* and justice.

Odonis starts Question 11 surveying the arguments *in favour* of the rule of law, and presents an exhaustive synthesis of articles from most of the legalist traditions of his time. Characteristically of Odonis, however, no contemporary authorities are cited, although many of the arguments listed in Question 11 are also used by other scholastics, most notably Aquinas and Auvergne. Instead, Odonis takes the references straight from the ancient sources of Aristotle, the Bible, Papias, and the more recent *Authentica*.

Echoing the distinction between a better governance *per se* and a better governance *per accidens*, Odonis builds up his introductory observations and states that both the governance of law and the governance of men are feasible and expedient forms of politics:

The reason why law should have a servant who carries the sword for the punishment of transgressions is to make for the strict observation of law. And provided that this servant of law is not a good man, he is still a good minister as far as the service of law is concerned: such are many judges in the kingdom of France. On the other hand, given a good and prudent man as governor of a city without written law, he still rules in accordance with right reason and prudence, and serves justice with his sword.⁶³⁴

⁶³³ See section on natural law and positive law.

⁶³⁴ *ExEth*, V, q. 11, f. 103rb-va: Sic intelligendo causam quod lex habeat ministrum qui portans gladium in ultionem transgressorum legem stricte faciat observari. Et quod iste legis minister non sit bonus homo, tamen est bonus minister

Law binds - it governs with coercive force, punishing transgressions and exacting strict observance. Here, Odonis seems to be suggesting that the governance of man precludes the possibility of man governing *with* law. The ruler does not have recourse to any legal instrument, but instead he exacts punishment and enforces coercion through his own power. Therefore, having established that both modes of governance are expedient and even indeed desirable, should there be the *best* men or the *best* laws, the question comes down to which one is superior to the other in achieving the ends of the state.

Odonis starts his list of objections with the well-rehearsed argument that, unlike man, law is free from passion and desire, unaffected by emotions:

By the reason of Aristotle in Book II <III> of *Politics*, man is impassioned, and law is free from passion, for man can be saddened, angered, insulted, moved, but law cannot. Therefore, for the reason of governance, law is more expedient than man.⁶³⁵

Taken directly from Book III of *Politics*, this is perhaps the best-known exposition on the necessity and advantage of the rule of law, as we have seen above in Aquinas, Auvergne, as well as Brito. Aristotle conceives law as an entity of reason and divine intellect that is attainable only by the wisest men. Law transcends human imperfection, and its superiority arises ultimately from its force of reason and universality. For the medieval scholastics, however, the rule of law is advantageous because of its inhumanity. Law is better than man precisely because *lex*, although arising out of human reason, and legislated by human authority, does not share the weaknesses of its maker. Law is created to govern without the perversion of passion and desires.

quantum ad hoc, quales sunt multi iustitiiarii in regno Franciae. Ex alia vero parte sit bonus et prudens homo rector civitatis sine lege scripta secundum propriam rationem et prudentiam regens, habens etiam ministrum cum gladio executorem iustitiae.

⁶³⁵ *ExEth*, V, q. 11, f. 103va: His autem sic se habentibus arguitur quod expedientius sit sic regi lege quam homine, primo ex ratione Philosophi, secundo <3> *Politicae*, quia homo est passionatus, lex autem non est passionata. Homo namque quandoque tristatur, irascitur, indignatur, et affectatur, lex autem nunquam. Quare pro regimine, lex expedientior est quam homo.

Following the same strain of thought and citing *Ethics X*, Odonis presents the second article that law is not pre-occupied with the human need for subsistence (*onerosus*).⁶³⁶ Both mentally and materially, law is unbound to the conditions of man, whose sins and weaknesses cloud his intellect and oblige him to toil for his life. Law in this sense is freed from such impediments, and is able to work solely on the governance of human society.

Invoking Aristotle again, Odonis goes on to assert that law is more common, and therefore more god-like than man, since what is more common is more god-like:

Law is more god-like than man. The good that is more common is more god-like. In governance, law is more common than man, for once a law is promulgated, it speaks to everyone, and exhorts every person, but man cannot achieve this. Therefore, law is more divine, and by implication, more expedient.⁶³⁷

In this respect, law is more extensive as its power pervades every member of the city. In Question 4 of Book V, Odonis makes for an explicit link between the love for common good and obedience to law, because law is ordered towards the common good.⁶³⁸ Here, he does not explicitly present the complementary reasoning, but as we know from Albertus and Aquinas, it follows that what is closer to God should govern what is less god-like, as everything is ordered towards God.

Law is also more just than man, because of its indifference and universality - a point which is discussed by Aristotle in the context of rectifactory justice and raised again in Book VIII of *Politics*.⁶³⁹ Odonis explains that law is above litigations, an ailment that plagues late medieval political authorities, where the governance of men deliberates each case of dispute and legal appeal

⁶³⁶ *ExEth*, V, q. 11, f. 103va: Secundo quia homo multipliter est onerosus, et ex conditione humana, et ex necessitate sua, requaerit enim victum, vestitum, exactiones facit, stipendia recipit; lex autem non est onerosa, ut libro 10, capitulo 11. Quare ut prius.

⁶³⁷ *ExEth*, V, q. 11, f. 103va: Tertio quod lex divinius est homine, quia bonum quanto communius tanto divinius, ut supra libro primo in prohemio. Lex autem communior est homine in regendo, omnes enim postquam est promulgata simul alloquitur et omnes simul hortatur; homo vero non potest. Quare lex est divinius et per consequens expediendior.

⁶³⁸ See section on legal justice

⁶³⁹ *ExEth*, V, q. 11, f. 103va: Quarto quia lex est iustior homine, quia enim est indifferentior ad partes litigantes, et universalius ad cives, ipse est iustior, ut habetur ex 13 <3> *Politicae*; lex autem est indifferentior. Impossibile quippe videtur quod aliquis homo aequaliter diligat omnes qui inter se sunt partes, et tamen lex aequaliter respicit omnes. Quare ipsa est iustior et per consequens expeditior.

individually and thus with an inevitable consequence of inconsistency and relative injustice. Man is therefore unable to judge every person equally because there are those who are more powerful and hence more likely to obtain a judgement in their favour. The rectifactory role of law would, on the other hand, make for a universal application of equality, and treats all men, regardless of their station and wealth, or to their virtue and vice, equally and universally. Yet, in its universality, law is also more commodious, in the sense that it has due measure for the provision of all in society.⁶⁴⁰ Referencing the imperial *Authentica*, Odonis posits that the most sacred law does not permit men to live in poverty or die with anxiety. The commodiousness of law complements its universality: the powerful are not treated with greater favour, nor are the poor and weak neglected by it. Law is therefore just in both senses: law's indifference rights what is wrong and renders to all what is due in the city's transaction, and pulls both the powerful and the powerless towards the just mean.

In the sixth article in support of the superiority of law, Odonis invokes Papias and asserts that law is more rational than man, for law is reason *per se*, and rationality is at its very essence.⁶⁴¹ Law without reason would cease to be law, as irrationality is fundamentally contrary to law's ontology. Odonis quotes Cicero, who states that 'law is the mind, the soul, the counsel and feeling of a city.'⁶⁴² Any city necessarily expresses itself with law. On the other hand, a man who ceases to be rational is still human, and he can only be called rational when he utilises his rational faculties. Surely, only reason should be allowed to govern, rather than the irrational man. Odonis follows this up with the argument that law is more perfect in its commands (*in precipendo perfectior*), because it (Odonis repeats Aristotle's maxim) commands man to live according to every virtue and forbids every vice. The function of law is therefore far more extensive than the governance of man, which cannot possibly cover everything in everyone's life.

Consequently, as Odonis puts in the eighth article: law is more capable and more effective at making virtuous citizens, not only in the sense that it is far more extensive in its commands and prohibitions,

⁶⁴⁰ *ExEth*, V, q. 11, f. 103va: Quinto quia lex est commodior, leges enim sacratissime non permittunt hominem in paupertate vivere, nec in anxietate mori, ut in *Authentica*, de haeredibus et Falcidia, § finale. Quare ut prius.

⁶⁴¹ *ExEth*, V, q. 11, f. 103va: Sexto quia lex est rationalior homine. Homo enim non est rationalis, nisi quia rationem habet et quia utitur ratione, potest enim aliquando usum rationis perdere manens homo. Lex autem est rationalis quia ipsamet est ipsamet ratio. Unde ait Papias quod lex est mens et animus, consilium et sententia civitatis; sic quod ipsa manens lex non potest esse non recta et non rationalis. Quare ut prius.

⁶⁴² Cicero, *Pro Cluentio*, 146: Mens et animus et consilium et sententia civitatis posita est in legibus. Most likely, however, this is taken by Odonis from Isidore of Seville's *Etymologiae*, II.29.13.

bidding men to effectuate all virtuous acts and avoid all vicious things, but also in its efficiency through its coercive force.⁶⁴³ Aristotle posits that law is necessary in making men good because it has the force of public authority, since the paternal authority is not sufficient through its commands and exhortations, because it lacks strength and compulsive force: ‘For The masses heed necessity rather than argument, punishment rather than what is noble.’ (*NE*, X, 1180a) Without the external force of correction and education, man cannot be brought up virtuously and therefore cannot become virtuous. Since the end of the common good is the life of virtue of its citizens, and law is directly and effectively ordered towards this end, it is clear that law, rather than man, should govern.

Odonis follows up with the argument that law is more secure and more trustworthy than man. This is no doubt a partial conclusion from the previous articles, and should certainly be understood as such. Law is more secure and trustworthy precisely because of its lack of humanity. The universality and extensiveness of law allow for as many things as possible to be entrusted to the governance of law, while as few things as possible are to be committed to the hands of men where law cannot determine.⁶⁴⁴

Finally, Odonis closes his *arguitur* summary of the articles in favour of the rule of law by citing Saint Paul (*Romans* 7:14), and states that law is superior to man in its ‘sanctity, justice, goodness, and spirituality’.⁶⁴⁵ Law is the sacred reason mandated by God, and is therefore the manifestation of the divine intellect. Saint Paul talks of the sanctity of law in the context of the weakness of the flesh, and man’s inherent sinfulness: ‘For in my inner being I delight in God’s law; but I see another law at work in me, waging war against the law of my mind and making me a prisoner of the law of sin at work within me.’⁶⁴⁶ It is certainly a leap of logic to equate Odonis’s concept of *lex* to Paul’s idea of

⁶⁴³ *ExEth*, V, q. 11, f. 103va: Octavo quia lex in faciendo bonos cives potentior et efficacior est homine. Dicit enim Philosophus quod si est aliquem futurum bonum hominem, vel bonum civem, oportet nutriri bene et assuefieri, deinde in bonis adinventionibus vivere. Sed ad haec paterna quidem praeceptio non habet coactum, nec totaliter alicuius viri unius, nisi forte esset rex vel similis. Lex tamen habet ad hoc potentiam coactivam. Quare ad faciendum bonum virum vel civem, ipsa est potentior homine, et per consequens expedientior.

⁶⁴⁴ *ExEth*, V, q. 11, f. 103va: Nono quia lex est securior, et minus confidendum est de homine quam de lege. Unde dicit Philosophus quod paucissima committenda sunt iudicibus. Sed omnia possibilia sunt determinanda per leges, 2 *Politicae*. Quare expedientius est regi lege quam homine.

⁶⁴⁵ *ExEth*, V, q. 11, f. 103va: Decimo quia lex praefertur homini bono in sanctitate et iustitia, bonitate et spiritualitate. Unde Paulus Apostolus praefert eam sibiipsi, dicens quod lex quidem sancta et mandatum sanctum, et bonum. Scimus enim quod lex spiritualis est, ego autem carnalis sum, *Ad Romanos*, 7. Quare ut prius.

⁶⁴⁶ *Romans*, 7:22-23.

the law of God, and yet the appeal to the authority of the Apostle certainly reinforces the point that the ideal governance should transcend the sin and weaknesses of humanity. Ultimately, the legalist argument compares the rule of law as a rule of a divine intellect.

In all, when limiting the discussion to *lex* - positive law legislated by human authorities, there is much inconsistency and circularity in the argument. Although Odonis appeals frequently to Aristotle's authority, this reading of the superiority of law is in its very essence a thesis with the assumption of human sins and weakness in the context of Christianity with a strong hint of Augustinianism. The rule of law is preferable because of its inhumanity, and yet the crux is that *lex*, by its very own definition, at least according to Odonis, is intrinsically human. It is an instrument made by man and therefore inherits man's many imperfections. Although law, once legislated, may stand alone and govern with competence, it nevertheless requires human magistracy and inevitably needs to differ to human judgement due to its universality, which is an imperfection in itself. Saint Paul's idea of the governance of the law of God is thus certainly incompatible with the framework of the present discussion, for divine law is not legislated by human authority. Therefore, the rule of law, however much power is endowed to it, is ultimately human and can never shed its humanity. Aristotle's solution to the problem is that law, as the reason of the multitude, is less fallible than the reason of one or several individuals, and yet this point is not reflected in Odonis's summary. Both Auvergne and Brito have conceded that the rule of law is only a better arrangement *per accidens*, an expedient solution to the imperfections of men, whose rule, in an idealised world, is intrinsically better. Odonis fully realises this problem, and addresses it thoroughly in his *solutio*.

4. Odonis on the Rule of the Best Men - *Solutio*

Having provided a thorough survey of the arguments advocating the rule of law over the rule of men, Odonis then presents his own opinion to the debate in the *solutio*. The rule of the best man is more expedient than the rule of law, and Odonis starts by positing two theses which broadly address the objections listed at the beginning: law is dead words written on dead skin, but man is alive and is thus more suited to govern living beings; man is the cause of law, and the cause has more potency and efficiency than the caused when ordered towards the same end.

Firstly, when it comes to good acts, a living being is better than an inanimate being. Living beings can act well, but the inanimate cannot. For indeed it was written: ‘What is dead cannot exalt in thee, Lord, but we, who live, bless thee.’ (*Psalm* 113, 25-26) A good and righteous man in a city is justice personified (*ius animatum*) as it is said (by Aristotle), but law is an inanimate justice (*ius mortuum*), written on dead skin. Therefore, for good governance, good man is better and more expedient than good law.

Secondly, for any good actions, the cause is more efficient than its own effect, because ‘something always holds better of that because of which it holds’, see I (chapter 2), *Posterior Analytics*. Yet, man is the cause of law, and good man the cause of good law. Indeed, man makes law, and law does not make man. Therefore, for good governance, good man is better than good law.⁶⁴⁷

Man, as the living, rational, and free agent, has the capacity to achieve much more than written law. Rather than resorting to the impersonal and inhuman reasons of law, the city, as a living organism composed of living beings, is much better governed by the best men, despite their many flaws. Contrary to his scholastic contemporaries, Odonis considers the rule of man superior precisely because of its humanity. Man, through his humanity, may become infinitely intimate to God, and is capable of greater virtue than law can ever achieve. Underneath both, of course, there is man’s potential for love - for the love of God, for the love of self, and for the mutual love between the rulers and the citizens. In this respect, we find Odonis firmly grounded in the voluntary tradition of the Franciscans, where man is free and virtuous because of his will, rather than his reason. If one is virtuous because of his reason, then surely he would not match the law in its rationality; however, law, being ‘dead words written on dead skin’, cannot command a free will and thus is incapable of virtue. In Question 5, Odonis states that law is the reason and prudence of the legislator, and as such

⁶⁴⁷ *ExEth*, V, q. 11, f. 103va: Primo quoniam ad bene agere, melior est res animata et viva, quam res mortua. Vivi enim bene agunt et non mortui. Unde scriptum est, non mortui laudabunt te domine, sed nos qui vivimus benedicimus domino. Bonus autem homo rector civitatis existens est ius animatum, ut hic dicitur. Lex autem est ius mortuum, in mortua autem pelle descriptum. Quare ad bene regere, bonus homo est melior et expedientior bona lege.

Secundo quoniam ad bene agere, causa est efficacior effectu suo, quia ‘propter unumquodque tale et ipsum magis tale’, primo *Posteriorum*. Sed homo est causa legis, et homo bonus causa est legis bonae; homo quidem legem condidit non lex hominem. Quare ad bene regere, bonus homo melior est bona lege.

law can only be called virtuous and rational by similitude.⁶⁴⁸ Thus, as the cause of law, man is superior to his effects. Law is made by man to govern, and can never truly escape its creator's humanity. Law is only good when the lawmaker is good, and as such its force and effectiveness derives exclusively from the legislator's very own human nature.⁶⁴⁹ He who makes law is by necessity more competent in governing than the instrument he creates for the same purpose.

Odonis frames his discussion within one specific benchmark: the superiority of law or man is judged solely on whether it is more effective in attaining the end of the state - to have just, prudent, and good citizens:

This can be proved that a regime is more expedient for the state if the regime is more efficient for the end and happiness of the state, and such regime is that of good man, because it is more expedient than the regime of good law. This assumption is proved thus: the end and happiness of a state is for there to be just, happy, prudent, and good citizens. With citizens thus habituated, the other things necessary for the state can be easily achieved. For this end, the rule of good man is better than the rule of good law.⁶⁵⁰

Governance is not only about correcting the inequalities of the city and maintaining the equilibrium of different proportions, nor is it limited to the protection of citizens against malignant forces or disorder, as postulated by Marsilius of Padua, nor with a goal of public utility or expediency, as maintains Durandus of Saint Pourçain; instead, the end of governance is the citizens' virtue. In other words, the question that which one is more expedient ultimately boils down to which one is more

⁶⁴⁸ *ExEth*, V, q. 5, f. 97rb: Si enim ille esset prudens et bonus princeps, ille utique esset bonus homo. Et si alii essent per omnia obedientes isti bono principi, ipsi essent boni cives, non tamen propter hoc essent boni homines simpliciter pro eo quod non operarentur bona, secundum propriam rationem suae prudentiae, sed secundum opinionem alienae prudentiae, sicut irrationabilia. Haec autem non sufficit ad bonitatem hominis, nec ad bonitatem civis simpliciter boni, quia ut habetur a Philosopho 3 *Politicae*, nullus est simpliciter bonus civis, qui deficiente principe principari nesciret. See section on legal justice.

⁶⁴⁹ See section on natural law and positive law, especially on the source of positive legislation.

⁶⁵⁰ *ExEth*, V, q. 11, f. 103vb: Hoc autem probatur. Quia illud regimen est civitati expedientius quod est ad finem et felicitatem civitatis efficacius; hoc autem est regimen boni viri. Quare ipsum expedientius est regimine bonae legis. Assumptum probatur. Quoniam finis et felicitas civitatis est esse cives iustos, prudentes, et bonos. Hoc autem habito, caetera civitati necessaria faciliter habentur. Sed ad hoc efficacius est regimen boni viri quam bonae legis.

conducive to a virtuous life of the citizens. For this purpose, Odonis argues, the rule of man is superior ‘in three ways: through its power, prudence, and justice.’⁶⁵¹

No doubt, Odonis envisages a governance of the best and most virtuous man, supposing that such men do exist, much in the way that Aristotle conceives of the absolute rule of heroic men who are preeminent in their goodness compared to the rest of the political community. One may venture to hypothesise that Odonis has the rule of virtuous and saintly king in mind, a notion which was not uncommon during the early fourteenth century. Louis XI was canonised in 1297, and widely venerated as an ideal monarch both in terms of political prowess and moral rectitude, while the French kings that reigned over first part of the fourteenth century paled in comparison.

Being a native of France, having spent a number of years in Paris, and a staunch ally of pope John XXII, who worked relentlessly to consolidate papal power, Odonis would have found himself very familiar with the form of governance where a sovereign prince considers himself to rule absolutely above the constraints of law. The notion of the prince as *ius animatum* has also gained considerable traction, especially among the canon and civilian lawyers, by the turn of the century. Yet, no explicit references to contemporary social or political realities are made in their ethical and political writings. We must contend with the fact that Odonis expounds his opinion purely within a theoretical framework. What he articulates here in support of superiority of the rule of man is also philosophically consistent with the rest of his work. The best man, who is, and ought to be, perfect, is better at governing than law not only through his justice and practical reason, but also, most importantly, through the perfective acts of his virtue of legal justice in fashioning just, prudent, and good citizens.

With the end of governance clearly defined, Odonis directs his arguments astutely to demonstrating the superiority of the rule of the best man in achieving this end. In the first instance, the best men are more powerful (*potentior*) than the best law in making good citizens.

⁶⁵¹ *ExEth*, V, q. 11, f. 103vb: Quod apparet ex tribus ad hoc necessariis, in quibus bonus homo excaedit legem bonam, quae sunt potentia, prudentia, iustitia.

The good man is more powerful than good law, because beyond the precepts of law and of man, there are four motivating factors that constitute the entire power of making man good, i.e., fear, love, exhortation, and example.⁶⁵²

And he follows:

Now good man and good law are on a par in terms of fear and terror of punishment, because both the ministry and the sword can serve up punishment. Yet, where there is a good man as the ruler of the state, he would have paternal love towards the citizens and citizens love towards him; he would be the living exhortation and an example of good actions. Law, on the other hand, has neither mutual love with the citizens nor living exhortation, nor can it act as an example of good actions. Therefore, without comparison, good man is more powerful than good law towards the making of good and just citizens in these three aspects.⁶⁵³

Odonis fully realises that the power of governance is not solely limited to the coercive force, but in the ability to make others carry out things intended by the rulers voluntarily. Aristotle posits that ‘the masses heed necessity rather than argument, punishment rather than what is noble’ (*NE*, X, 1180a), but also maintains that, it is better for a person to do what is virtuous *virtuously* rather than out of fear for punishment. Odonis takes up the point and argues that, in terms of coercive power and the level of fear that is inspired in the citizens, the governance of man and governance of law are the same. Here, Odonis does not invoke the argument of Giles of Rome that the force of law ultimately rests on the authority of the prince. But as we see in Question 2, the causal relationship is made amply clear that all human laws rest on the precept of the legislator, and its reinforcement is ensured through the force of human magistracy. As the cause of the caused, the force of man is clearly superior to the coercive force of law.

⁶⁵² *ExEth*, V, q. 11, f. 103vb: Quod enim bonus homo sit potentior bona lege probatur, quoniam ultra praecepta legis et hominis, sunt quattuor motiva, quae continent totam potentiam faciendi homines bonos, scilicet metus et amor, exhortatio et exemplum.

⁶⁵³ *ExEth*, V, q. 11, f. 103vb: Nunc autem bonus vir et bona lex pares sunt in metu et timore paene, quia utrique ministrum et gladium habet ultorem. Sed bonus vir rector civitatis existens habet ad cives amorem paternum, et cives ad ipsum habet etiam et hortationem vivam, et exemplum bonorum operum. Lex autem nec amorem mutuum, nec exhortationem vivam, nec exemplum bonorum operum habet. Quare sine comparatione, vir bonus ratione istorum trium potentior est lege bona ad faciendum cives bonos et iustos.

However, evidently, coercive force and obedience alone do not make good persons or good citizens, but only the virtue of legal obedience. It is of utmost importance that citizens should act virtuously out of their own accord. For this purpose, the power of governance also comes in the forms of love, exhortation, and example. In all these three respects, the rule of man has more efficacy than the rule of law. Law is incapable of loving its subjects, nor are those subject to law capable of loving law. As expounded in Question 4, one can love God, love himself, and love the public good, and by consequence find what is commanded by law delectable, but one can never love law intrinsically. Law is inept in its exhortation, because its precepts are universal, and its voice is distant. Law is incapable of setting examples, because one cannot imitate law.

On the other hand, the governance of man, who is, above all, *ius animatum*, is profoundly more powerful than law in its love, its exhortations, and its example. A ruler is capable of great love for his subjects, and his subjects are well able to love and honour him in return. In this sense, Odonis considers that a governance is not merely the authority reigning over the subjects with fear and coercion, but also a friendship of based on mutual love. Out of the love for his subjects, the ruler governs to make the citizens virtuous, and out of love for the ruler and the common good, the citizens obey and strive to attain such virtues. The rule of the best men is also more powerful in its exhortation and example. Odonis cites Saint Jerome, who states that ‘what is transfused to the ears of the student has a greater effect.’⁶⁵⁴ Teaching in person has a greater efficacy in transmitting the commands and exhortations than teaching through the silence of the words of law. Similarly, a living virtuous person can be a daily example to those who aspire to be equally virtuous, because men want to imitate the actions of those who are more honourable. Law has only precepts, but no external acts. Yet, it is only through acts that men can become virtuous, and act henceforth *virtuously* at their own accord.

We see that for Odonis, the concept of *ius animatum* goes far beyond what is contemplated by the medieval jurists, who understood the notion as an expression of legal sovereignty. In the jurist conception, *ius animatum* means the prince is the source of law, and the will of the prince is law. The thirteenth-century jurist Cinus of Pistoia, for example, considers the prince to be *lex animata* in the way prince is above law, incorruptible, and legally irreproachable.⁶⁵⁵ Earlier, the Bolognese jurist Odofredus also states that *imperator est lex animata in terris*, and reigns supreme on earth above law

⁶⁵⁴ Saint Jerome, *Ad Paulinum* 2: Habet nescio quid latentis energiae viva vox, et in aures discipuli de auctoris ore transfusa fortius sonat.

⁶⁵⁵ Pennington, *Prince and Law*, p. 130-131.

and without the acknowledging a higher temporal authority.⁶⁵⁶ Jacques Krynen observes that the French jurists of the late thirteenth century attribute to the prince a sovereign law-making power.⁶⁵⁷ In Odonis, however, *ius animatum* has not only the legal sense that the sovereign is in his own right the source of law and the foundation of legal authority, but also, more importantly, an Aristotelian dimension of moral perfection: the sovereign is ‘justice personified’. The ruler, through his humanity and living essence, exudes love, exhortation, and example, and is *ius animatum* in the way that he, in his very own person, demonstrates what is right, just, and virtuous. Law, on the other hand, cannot achieve power of man in making men virtuous.

Odonis’s second theme in favour of the rule of man is that the rule of the best men exceeds the rule of law in its prudence. In Book VI, Odonis exalts prudence - the cognition of particulars - as the supreme virtue and more meritorious than the virtue of wisdom - the cognition of universals. The parallels can certainly be transferred here in the comparison between man and law. Law deals with the universal, but fails at the particular and contingent. Man, on the other hand, endowed with the virtue of prudence, is therefore ‘more extensive, more intensive, and more perfectible’ than law:

Man is also more prudent. Both the prudent man and good law given in accordance with prudence have the knowledge and skill of living well, but the knowledge and skill of the prudent man is superior to that of good law, because the governance of man is more extensive, more intensive, and more perfectible.⁶⁵⁸

The arguments here are well rehearsed by both Aristotle and other scholastics. Through the virtue of practical wisdom, man is able to judge all cases, whereas law fails to remit justice in particular cases which go beyond the universal reason of law - hence the rule of man is more extensive.⁶⁵⁹ The prudent and virtuous man is also able to adopt a particular solution to a particular problem, each best suited

⁶⁵⁶ *Ibid*, p. 151.

⁶⁵⁷ Jacques Krynen, *L'empire du roi: idées et croyances politiques en France, XIIIe-XVe siècle*, Paris, 1993, p. 78.

⁶⁵⁸ *ExEth*, V, q. 11, f. 103vb: Quod autem sit prudentior probatur. Quia et vir prudens et lex bona secundum prudentiam datam continent notitiam et artem bene vivendi cum notitia, vel ars prudentis viri excaedat legalem notitiam gratia, scilicet extensive et intensive et perfectionaliter.

⁶⁵⁹ *ExEth*, V, q. 11, f. 103vb: Extensive quidem quia lex non potest extendi ad omnes casus qui possunt evenire, nec legislator eos potuit praevidere, nec de omnibus legem ponere, ut infra eodem, capitulo 17. Tunc autem ubi lex deficit, recursus est ad arbitrium boni viri, et sic arbitrium boni viri excaedit legem extensive.

for a given circumstance.⁶⁶⁰ Taken together, man's prudence and, consequently, his ability to adapt to singular contingencies are of crucial importance in the education of citizens. Just as citizens learn better through the personal exhortations and imitate the person example of the sovereign ruler, the particular needs of citizens can be individually addressed by the prince. Finally, the rule of men is more perfectible than the rule of law. Odonis reiterates the argument that mere law-abidance does not make one virtuous. One may effectuate virtuous deeds out of obedience to law, i.e., acting out of his *notitia legale*, but he is not necessarily acting *virtuously*:

Man is more perfectible than law. A good and prudent man has certain experiential or perfect knowledge that only exists with the good man, but never with the bad man, see Book VII, chapter 16. Every legal knowledge can exist in the good man as much as in the bad man. For this reason, the knowledge within man is more perfect than the knowledge of law, and hence good man is more prudent than law, i.e., more prudent than whoever that has only the legal knowledge.⁶⁶¹

In a rather circular fashion, Odonis argues that in making good and virtuous citizens, the rule of man achieves a superior perfectible because virtuous citizens carry out noble and good deeds voluntarily through their own accord.

The tension between the universal reason of law and the prudence of men is, of course, a perennial issue in the debate on the rule of law. While the consensus is that law and men should complement each other through their universality and prudence to produce the most just and equitable results, the crux, however, is which mode of governance should predominate. Aristotle maintains that law is able of determining most of cases of human acts, and there are but few things that need to be committed to the judgement of prudent men, who are themselves trained with the rationale of law. The underlying assumption is that most human affairs can be scientifically understood and simply determined by the

⁶⁶⁰ *ExEth*, V, q. 11, f. 103vb: Intensive etiam excaedit eam, quia sermones legis sunt universales et non particulares, ut eodem capitulo; sermones vero boni viri possunt esse particulares, ut patet ad sensum. Sermones vero particulares efficaciores sunt in agibilibus quam univerales, ut supra libro 2, et 3 *Politicae*. Quare notitia prudentis viri excaedit legalem notitiam intensive.

⁶⁶¹ *ExEth*, V, q. 11, f. 103vb: Item perfectionabiliter, quoniam vir bonus et prudens habet quandam experimentalem notitiam vel perfectam, quod nulli possunt inesse nisi homini bono, nunquam autem homini malo, ut infra libro 7, capitulo 16. Omnis autem legalis notitia potest inesse tam bono quam malo, quare ista est perfectior quam illa, et per consequens vir bonus est prudentior lege in quocumque habente solam legalem notitiam.

competent law. However, for Odonis, this is not an accurate depiction of the human condition. While he acknowledges that law is efficient with the universal while men are better with the particular, Odonis clearly leans towards the particular end of the spectrum in conceiving of human society as infinitely complex, where contingency and particularity are the normative. True to the Franciscan voluntary tradition, the human world according to Odonis is one that is fundamentally indeterminate, because human acts effectuated by the will are by necessity contingent. As such, the governance of man is preferred, and even necessary, to rule in a political community that is weaved together by contingent human behaviour.

Odonis then develops what he has formulated earlier in a final argument that men are more just than law.

The good man is more just than just law, and this is proved with arguments. Firstly, concerning the justice in common, a law is said to be just to the extent that it prescribes just deeds, but a man is said to be just to the extent that his commands, deeds, choices, and volitions are all of just works, see Book V, chapter 1, and in Book I of the *Magna Moralia* on justice. Therefore, a good man is more just than a good law.

Secondly, a law given in common may fail in a particular case. But a good man who is called equitable according to the justice that is called equity, will direct and correct the common sense of law, see chapter 4 on equity. Equity cannot be expressed by law, and thus a good man is more just than good law for the reason of equity. Manifestly, a good and prudent man working as the governor of a city is superior to good law in the three aspects of power, prudence, and justice.⁶⁶²

⁶⁶² *ExEth*, V, q. 11, f. 103vb-104ra: Quod autem vir bonus sit iustior lege iusta probatur dupliciter. Primo quidem de iustitia in communi, quoniam lex dicitur iusta, tantum quia praeceptiva est iustorum operum; vir bonus autem dicitur iustus, et quia praeceptivus, et quia operativus, et quia electivus et volitivus iustorum operum, ut supra 4, capitulo primo, et in primo *Magnorum Moraliū* capitulo de iustitia. Quare vir bonus iustior est lege.

Secundo quia lex in communi data pro aliquo casu particulari peccabit; sed vir bonus qui dicitur epieikes secundum illam iustitiam, quae dicitur epieikeia, dirigit et corrigit communem sententiam legis, ut infra 2, capitulo de epieikeia; haec autem epieikeia non potest explicari per legem. Quare vir bonus iustior est lege bona ratione huius epieikeiae; quare manifestum est quod vir bonus et prudens rector civitatis existens excaedit legem bonam in tribus, scilicet potentia, prudentia et iustitia. (Both *X* and *V* have the orthography ‘epyekes’, and ‘epyekia’.)

As a living being, the *ius animatum*, a just ruler has justice not only in his reason and his precepts, but also in his acts, his choices, and what he wills. As Odonis has established in Question 2 of Book V and elsewhere, justice is not only the external acts, but a complete cognitive process. Therefore, a just man is just throughout the cognition-action chain: he needs not only receive and understand the precept of *ius*, but also actively will the act of justice and carry it out. In contrast, law is only just in its reason and precept. The second part of the argument on why man is more just rests on the concept of equity, a virtue closely associated with prudence. Equity enables man to judge particular cases where the law fails, but law, through its universality and indiscrimination, is incapable of being equitable. As we see in Odonis's discussion on the virtue of equity and on the *ordo iustitiae*, while the intention of the law and the lawgiver is always the pursuit of justice and the education of virtuous citizens, the rule of law will inevitably fail to deliver justice without the equity and prudential reason of the human judge.

Having closed the main body of argument, Odonis finally addresses the objections. While certain articles in favour of the rule of law have been already refuted in the *solutio*, there are several other responses that are not covered in the main argument but nonetheless elucidate Odonis's thoughts on the nature of governance. One such argument addresses the much-rehearsed Aristotelian maxim that man is impassioned, while law is unimpeded by passion and desire. Here Odonis offers his most interesting argument. Going against the grain of Aristotelian thought, and again reinforcing the merit of humanity, Odonis posits that the rule of man is more congruent precisely because of man's passion. In the first instance, living beings are best governed by living beings, and impassioned men are best governed by other impassioned men. Men, who are astutely aware of their own weaknesses, look for other men who share their weakness. Instead of the pure reason and inhumanity of law, a virtuous person may exceed the populace in his goodness and wisdom, but he is nonetheless fundamentally flawed and weak, and shares the human nature with all other citizens. He is therefore of equal status in the eyes of God, and he must go through the same journey to attain a life of virtue and salvation like any other man.

In response to the first objection, it must be said that it is more expedient to impassioned men towards an impassioned goal by an impassioned means, because the soul of the impassioned man, upon hearing a party that does not follow passion, would say to himself: that which issues the command is not versed in passions, for otherwise it would not say thus, and he would despite such commands.

If, however, another impassioned man prescribes this to himself, seeing that the commanding person is impassioned but nonetheless conquers his passions, he will be encouraged to conquer his passion in a similar fashion. It is for this reason that Aristotle calls those who do not live a social life but promise to teach about politics as Sophists, see Book X, final chapter. It is certain that neither law nor any passionless being can live socially, and it is on this account that the Apostle, speaking in the voice of impassioned men, says: 'For we do not have a high priest who is unable to empathise with our weaknesses, but we have one who has been tempted in every way, just as we are—yet he did not sin' (*Hebrews*, 4:15). Law cannot empathise, and it is not better to for law to rule without good man.⁶⁶³

Odonis in Book VI identifies prudence as the superior virtue to wisdom, precisely because, in order to become a prudent man, one has to grow through his experience in personal and political life, to conquer and master his passions, and to come to terms with his very own humanity. Wisdom, on the other hand, does not require one to experience the complexities of the human world and the mastering of his appetite. The impassioned man is able to empathise with those who are under his governance, since he goes through the same journey of life to attain virtue and salvation. The subjects, on the other hand, are better disposed towards such governance, and can therefore share the mutual love, heed the exhortations, and follow the example of the ruler. The invocation of Christ as the prince who shares humanity's weakness echoes a repeated theme that the prince should rule like God, and Odonis goes further, combining the Aristotelian maxim with the medieval notion of *imitatio Christi*, where the sovereign rules like God not only in the way that he personifies justice and rules above law, but also in the way that he should be the most eminent example of a life in the way of Christ, whose very own humanity and the conquering of temptations and death give him the power of salvation for all Christians.

⁶⁶³ *ExEth*, V, q. 11, f. 104ra: Ad primum ergo dicendum quod expedientius est regi homines passionatos ad rem passionatam per rem passionatam, quoniam animus hominis passionati, audiens sibi dici partem non passionatam non secuturis passionem, dicit intra se: 'Iste praecipiens non erat expertus passiones, quia non ita diceret,' et ideo ipse contemnet (contempnet, X).

Si vero alius homo passionatus hoc sibi praecipiat, videns quod praecipiens vincit passiones, animatur et ipsum ad vincendum similiter. Et ideo Philosophus illos vocat Sophistas, qui non civiliter conversantes promittunt docere politicam, infra libro 10, capitulo finale. Certum est autem quod nec lex, nec res aliqua non passionata civiliter vivit, et idcirco Apostolus in persona passionatorum civum loquens ait: Non enim habemus pontificem qui non possit compati infirmitatibus onerosis, tentatum (temptatum, X) autem per omnia absque peccato, *Ad Hebraeos*, 4. Lex autem non potest compati, nec propter hoc est melior ad regendum, per se sumpta, sine viro bono.

To conclude the discussion on Odonis's idea of best governance, we have delineated an intellectual path of ethical humanism that traverses both the realm of Aristotelianism and Augustinian Christian thought. Odonis frames his thesis in Aristotelian terms, identifying the purpose of governance as the education of good and just citizens, endowing the governance of men with superior reason, prudence, and justice. But ultimately, such arguments rest on profoundly Christian ideas of the weakness of men as well as the infinite potential of humanity. The best men, through the mastering of their passion and the conquering of their sins, is far more virtuous and more fit to govern than even the most just laws written by human authorities. Odonis understands human society and politics as one that is ultimately complex and contingent, consisting of complex and contingent individuals. Yet, it is fundamentally comprehensible and governable, not through the universal reasons of law and science, but through man's very humanity itself.

VI. JUDGE AND THE ORDER OF JUSTICE

Odonis eschews a system of governance through human positive law - *lex*, but instead subscribes to the notion of an all-encompassing and perfect system of *ius*. Thereby, the good ruler, as *ius animatum*, is superior to the dead words of legislated law. Following the discussions of the previous chapter, it would be of great interest to see how Odonis applies the relationship between law and justice. The system of positive law constitutes the basis of a governing institution, a legal edifice, but as every institution, it is composed of individuals endowed with a free will and capable of their own private virtues as well as the complete legal justice. While Question 11 on the merit of rule of man and rule of law rings the triumphant bell for the virtue of humanity over the restraints of an institution that is designed to eliminate the supposed short-comings of humanity, Odonis's discussions on the virtue of equity within a legal system further confirms his ethical humanism, standing against the rigidity and imperfections of human positive law.

1. Should a Judge follow the Truth or the Juridical Order?

In Book V Question 20, *utrum iudici liceat contra veritatem sibi notam iudicare sequendo proposita et probata*, Odonis asks whether the judge can go against the proofs and hearings of the court and judge according to what is known to him through extra-juridical means. The question opposes the objective 'truth' against the information yielded by juridical hearing and courtly proofs. At the onset, it would be useful to understand what Odonis means by 'truth' - *veritas sibi nota*, and its supposed antithesis - *proposita et probata*.

Odonis takes the question from the text of Aristotle, where the Philosopher talks about the justice and injustice of the judgement delivered by an arbiter. An arbiter may give an unjust judgement, either knowingly or through ignorance. For Aristotle, the reasoning is rather straightforward - if the arbiter gives a judgement in ignorance, then he does not judge unjustly as far as legal justice is concerned, while if he gives an unjust judgement knowingly, then he has acted unjustly. An arbiter, as a virtuous

man, simply knows what is just and what is unjust, and would act accordingly.⁶⁶⁴ For Odonis, however, the question is more complicated. While Aristotle distinguishes legal justice and justice *simpliciter*, Odonis correspondingly distinguishes knowledge acquired through legal means and knowledge acquired *simpliciter*. Odonis is not concerned with the case where a judge is completely ignorant of the truth and makes an unjust judgement; rather, our commentator is interested in a scenario where the court, as a legal institution, is ignorant of the truth, but the judge himself, as a private person, knows the truth.

A closer format of discussion of this very issue can be traced to the twelfth century. Peter Abelard asks in his *Scito te ipsum* whether a judge should sentence an apparently guilty man when in private the judge knows him to be innocent.⁶⁶⁵ Abelard does not intend this question as an analysis of legal philosophy, but rather as a demonstration on the perfect divine justice and the fallibility of human juridical procedure. Abelard's answer is to reverberate through the later Middle Ages: although manifestly unjust, the judge, as a public authority, should nonetheless render a guilty verdict.⁶⁶⁶

Odonis weaves an institutional layer on top of an otherwise relatively simple question. This additional complexity to Aristotle's original text reflects the development of an increasingly sophisticated judicial system in western Europe and the corresponding legal and juridical norms. What for Aristotle is a simple question of knowing and not knowing, for Odonis it becomes a question of the sources of knowledge and proof, the basis of legal judgement, and how far such legal judgement can deviate from true justice. A dilemma arises, and Odonis rightly observes this contradiction in his discussion of the question: either a judge may follow the court hearing and legal probations set out within legal institutions and juridical norms, thus going against his own conscience (what he knows to be true). This ultimately violate the spirit of law and the intention of the lawgiver by giving a judgement that deviates from true justice. Or, the judge may follow his own conscience, deliver a judgement based on what he knows to be true, while at the same time violating the juridical order (the due process).

⁶⁶⁴ *NE*, V, 1136b: Again, if the distributor gave judgement in ignorance, he does not act unjustly as far as legal justice goes, nor is his judgement unjust, except in a sense (legal justice and primary justice being different). But if he knew what he was doing when he judged unjustly, then he himself is also greedy, either for favour or for revenge. The person who has judged unjustly for these reasons, then has more than his share, quite as though he has a share of the unjust award: when he judges on that condition about land, he took not land but money.

⁶⁶⁵ Peter Abelard, *Scito te ipsum*, in D. Luscombe (ed.), *Peter Abelard's Ethics*, Oxford, 1971, p. 38-40.

⁶⁶⁶ Abelard, *Scito te ipsum*, p. 40-44; see also, John Sabapathy, *Offices and Accountability in Medieval England 1170-1300*, Oxford, 2014, p. 259.

Odonis's answer comes with no surprise: the violation of the order of justice is a lesser offence than the violation of justice itself; therefore, a judge should always judge according to the truth known to him, in spite of the legal proceedings and juridical norms, for 'it is not licit for a judge to in any case to judge against what he perceives as truth with certitude'⁶⁶⁷:

It is a lesser evil to judge against the judicial order for the sake of truth than to guard the judicial order in violation of truth. There is no greater scandal than abandoning truth. On the question of scandal, it is said that it is more useful to let scandal arise than to relinquish the truth. But such scandal cannot be frequent, for it happens rarely.⁶⁶⁸

Odonis has shown a consistent scepticism towards the system of written law and the institutionalised legal proceedings. One can read Odonis's answer to Question 20 as part of a broader critique to contemporary legal practice. It is a telling fact that Odonis considers the legal edifice and juridical norms as merely a matter of formality, an *ordo iustitiae* to be set aside when it obstructs the path to justice. Yet, a great part of the legal innovation of the late middle ages was precisely the establishment of legal norms and with it the concept of 'due process'. Kenneth Pennington points out that the judicial proof and the concept of due process that arose during the eleventh and twelfth centuries underpin a fundamental restructuring of the justice system based on rationality.⁶⁶⁹ The judicial judgement is guided by a system of written laws, framed in the language of legal reasoning, and contained within juridical norms. As Aristotle states that law is reason free from passion, the system of positive law should also be the embodiment of systematic natural reason unadulterated by human emotions, desires, and whims.

Yet, it is precisely this legal innovation towards an all-encompassing framework of written law and juridical order that Odonis is arguing against. In the beginning of the question, Odonis lists all together six arguments in support of the notion that a judge should always follow the judicial proceedings, in spite of his own knowledge and conscience:

⁶⁶⁷ *ExEth*, V, q. 20, f. 114vb: Secundum autem est, quod iudici non licet in aliquo casu iudicare contra veritatem certitudinaliter sibi notam, quantumcumque oppositum sit probatum.

⁶⁶⁸ *ExEth*, V, q. 20, f. 115vb: Ad sextum autem iam dictum est quod minus malum est contra ordinem iuris pro veritate iudicare, quam servato ordine contra veritatem et iustitiam iudicare, et de scandalo dictum est quod utilius scandalum nasci praemittitur quam veritas relinquatur. Istud autem non potest esse scandalum frequens quia est raro contingens.

⁶⁶⁹ Pennington, *Prince and Law*, p. 132-3.

- i. The judge should only judge in accordance with the knowledge acquired by him in his capacity as a judge, and not with the knowledge acquired by him through channels outside his official capacity;
- ii. Resorting to the authority of Saint Ambrose and the *Decretum*, Odonis reinforces argument and states that a judge should only judge what is heard in court;
- iii. Again, in reference to canon law, a man may not be excommunicated from the holy communion based on knowledge acquired privately;
- iv. It is warranted by law (*Deuteronomy* 17) that an innocent man can be condemned to death by two or three witnesses;
- v. Odonis likens court hearings and legal proceedings to public good and knowledge acquired by the judge in his private capacity to private good, and public good is to be preferred to private good, hence the public knowledge is to be privileged over private knowledge;
- vi. An innocent man condemned to death is a lesser evil compared to a guilty man who is acquitted, remaining free to harm others.⁶⁷⁰

⁶⁷⁰ *ExEth*, V, q. 20, f. 114vb: Primo quia iudex tenetur iudicare secundum illam notitiam, quam habet ut iudex, non ut persona privata, nec secundum eam, quam habet in alio foro, ut habetur extra de officio ordinarii, 'si sacerdos'. Sed iudex habet, ut iudex, hanc notitiam sibi factam per proposita et probata, non tamen illam, quam habet ut persona privata. Quare licet ei, immo tenetur iudicare secundum proposita et probata contra veritatem, quam novit ut persona privata.

Secundo quia patet Ambrosius, bonus iudex sicut audit iudicat, ut in corpore *Decretorum* 3, q.7, can. 4, 'iudicet'. Quare bonus iudex iudicat secundum proposita non secundum ea, quae sunt aliter ei nota.

Tertio quia iudex non debet mutare iudicium propter illa notitiam, propter quam non debet vitare in communicatione sacramentali excommunicatum, sed propter notitiam, quam habet ut privata persona, non debet vitare excommunicatum, ut causa 6, q.2, can. 'si tantum', et can. 'placuit', et 2, q. 1, can. 'multii corriguntur'. Quare ut prius.

Quarto quia hoc licet iudici quod est cautum lege. Sed cautum est lege condemnare ad mortem virum innocentem, si convictus fuerit testimonio duorum vel trium sic quod in ore duorum vel trium testium peribit qui interficietur, *Deuteronomium* 17. Quare iudex qui est lex animata, ut supra eodem libro, capitulo 7, poterit taliter convictum ad mortem condemnare.

Quinto quia sicut bonum commune praefertur bono particulari, tanquam melius et divinius, ut supra libro primo in prohemio. Sic pro bono <probatio, sic in both *X* and *V*> communis, quae sit in forma iudicii, praeferenda erit probationi particulari, quam habet iudex ut persona privata. Quare iudex iudicare debet secundum illam non secundum istam.

Sexto quia de duobus malis, minus malum est eligendum, ut habetur 3 *Topicorum*. Sed minus malum est innocentem convictum, quam nocentem non convictum condemnare propter scandalum quod esset tantum, ut universaliter omne iudicium putaretur iniustum pro eo, quod homines non immerito estimant illum esse nocentem, qui in iudicio convincitur esse nocens. Quare ut prius.

Arguments i, ii, iii, and iv are all various aspects of an argument for a robust system of legal proceedings. Although the authorities cited here are drawn from either the *Scripture* or from the *Decretum*, it is likely that Odonis has adopted these arguments directly from the same question raised by Thomas Aquinas in his *Summa* - whether it is lawful for a judge to pronounce judgement against the truth he knows, on account of evidence to the contrary.⁶⁷¹ Aquinas here takes a much more legalist stance and resorts to the validity of the legal institutions instead of the truth known to the judge and his conscience:

It is the duty of a judge to pronounce judgment in as much as he exercises public authority, wherefore his judgment should be based on information acquired by him, not from his knowledge as a private individual, but from what he knows as a public person. Now the latter knowledge comes to him both in general and in particular — in general through the public laws, whether Divine or human, and he should admit no evidence that conflicts therewith — in some particular matter, through documents and witnesses, and other legal means of information, which in pronouncing his sentence, he ought to follow rather than the information he has acquired as a private individual. And yet this same information may be of use to him, so that he can more rigorously sift the evidence brought forward, and discover its weak points. If, however, he is unable to reject that evidence juridically, he must, as stated above, follow it in pronouncing sentence.⁶⁷²

There are two principal arguments of Aquinas: first that rendering a judgement is a public function, and the judge is exercising this public function as a person of public authority. Therefore, the judge should rely exclusively on the information available to him through public means and disregard all knowledge acquired through private means. Secondly, such public information consists of, on the one hand, the general knowledge of the public laws of God and man, and, on the other hand, the particular

⁶⁷¹ *ST*, II2ae, q. 67, art. 2: Utrum liceat iudicium ferre contra veritatem quam novit, propter ea quae sibi proponuntur.

⁶⁷² *ST*, II2ae, q. 67, art. 2: Respondeo dicendum quod, sicut dictum est, iudicare pertinet ad iudicem secundum quod fungitur publica potestate. Et ideo informari debet in iudicando non secundum id quod ipse novit tanquam privata persona, sed secundum id quod sibi innotescit tanquam personae publicae. Hoc autem innotescit sibi et in communi, et in particulari. In communi quidem, per leges publicas vel divinas vel humanas, contra quas nullas probationes admittere debet. In particulari autem negotio aliquo, per instrumenta et testes et alia huiusmodi legitima documenta, quae debet sequi in iudicando magis quam id quod ipse novit tanquam privata persona. Ex quo tamen ad hoc adiuvari potest ut districtius discutiat probationes inductas, ut possit earum defectum investigare. Quod si eas non possit de iure repellere, debet, sicut dictum est, eas in iudicando sequi.

knowledge regarding the case in hand acquired through documents, witnesses, and evidence through other legitimate means. Even if the judge has private knowledge contrary to evidence and proofs of the court, he must still challenge it through legal and public means, by a rigorous examination of the evidence and a thorough search for any errors. However, if the judge cannot challenge the evidence *de iure*, then the order of justice must be observed.

Aquinas's confidence in the legal system is consistent with his own taxonomy of the ethical science. The delineation of public authority and public function from the private person corresponds precisely to his distinction between the public, familial, and private spheres with regard to the moral science.⁶⁷³ Private good is ordered to public good, private moral science is distinct from and serves as a preparation for public political science, and man's private prudence is inferior to man's public political prudence.⁶⁷⁴ Similarly, the virtues required for a judge to exercise his public authority are distinct from the virtues required for a private judgement. In placing his faith in the *ordo iustitiae*, Aquinas not only argues for institutional safeguards against legal abuses, but also aims to subject the judicial system to a higher standard by requiring the judges to follow public reason and exercise their public virtues - 'In matters touching his own person, a man must form his conscience from his own knowledge, but in matters concerning the public authority, he must form his conscience in accordance with the knowledge attainable in the public judicial procedure.'⁶⁷⁵ In a sense, Aquinas inherits the Aristotelian essence in his faith of the entire political edifice.

Aquinas's position typifies the common approach to the debate - the public authority of law and legal procedure always prevails, even it is manifestly unjust. As we have seen above, Peter Abelard, who first throws the question into the ring, holds the same opinion. The medieval jurists invariably consider the verdict from the courtly procedures should be upheld.⁶⁷⁶ Odonis's own *confrère*, Richard of Mediavilla, raises the same question in 1296 and concurs with the principal tenets of Aquinas's argument: the judgement of the public authority should be preserved for the sake of common good,

⁶⁷³ Kempshall, *op. cit.*, p. 77-81.

⁶⁷⁴ *ST*, II2ae, q. 48, art. 1

⁶⁷⁵ *ST*, II2ae, q. 67, art. 2: Ad quartum dicendum quod homo in his quae ad propriam personam pertinent, debet informare conscientiam suam ex propria scientia. Sed in his quae pertinent ad publicam potestatem, debet informare conscientiam suam secundum ea quae in publico iudicio sciri possunt, et cetera.

⁶⁷⁶ For a more detailed discussion on the position of the jurists, see Antonio Padoa-Schioppa, 'Sur la conscience du juge dans le *ius commune* européen', in J.-M. Carbasse and L. Depambour-Tarride (eds.), *La conscience du juge dans la tradition juridique européenne*, Paris, 1999, p. 95-129.

and the judge, knowing the truth, should make the utmost effort to bring justice through legal and public means.⁶⁷⁷

Two thirteenth-century authorities stand out on this question. Alexander of Hales, in his *Summa universae theologiae*, asks whether a judge can judge according to his conscience (*utrum iudex possit iudicare secundum suam conscientiam*).⁶⁷⁸ Alexander proposes the *solutio* that the judge should follow his conscience, but takes care to make the distinction and to state that the judge should only follow his *conscientia iuris* but not his *conscientia facti*.⁶⁷⁹ Therefore, Alexander here is not confronting the

⁶⁷⁷ Richard of Mediavilla, *Quodlibet III*, q. 26, ed. A. Boureau, *Richard de Mediavilla: Troisième Quodlibet*, Paris, 2017, p. 320-333 (cited selectively): Respondeo quod iudex sententians scienter contra veritatem de qua certus est in conscientia sua, quam tamen nescit ut iudex, sed tanquam singularis persona, forte quia solus factus vidit, si in foro iudicii probatur contrarium, per probationes ita efficientes quod in foro iudicii eas infringere non potest, non peccat sententiando contra id quod scit esse verum in conscientia. Immo dico quod bene facit quod tenetur terminare causam dando diffinitivam sententiam secundum allegata.

Tamen tenetur esse valde sollicitus in fovendo illam partem quam in conscientia sua scit esse secundum veritatem, ne propter defectum advocatorum vel patrocinii debiti defectum pereat et si ad hoc deventum fuerit quod contra illam veritatem fuerint probationes ita efficaces in exteriori foro quod non possint repelli, debet laborare ante diffinitivam sententiam, per omnes vias si quas invnit licitas <ita> quod innocens qui in exteriori foro convictus est liberetur. Si autem nullam talem invenire potest, debet causam alii committere si potest sine scandalo et, si non potest, tunc credo quod teneatur dare diffinitivam sententiam secundum allegata que in foro exteriori valere iudicantur. Et hoc potest declarari per multiplicem auctoritatem et per rationem et per exemplum.

...

Ad hoc etiam est ratio. Iudex enim magis tenetur sollicitus esse pro salute boni communis quam pro salute singularis persone, maxime cum in quantum iudex sit publica persona et pro defensione boni communis statuatur; cum etiam bonum commune sit nobilius quam bonum singularis persone, secundum quod trahi potest ex sententia Philosophi primo *Ethicorum*, cap. 1. Sed si iudex sententiaret pro aliquo convicto in iudicio quem tamen, ut persona privata, scit innocentem, quamvis hoc esset ad bonum innocentis, tamen esset ad malum communitatis, quia populus scandalizaretur via innocentis oprimenti et noxios dimittendi iniquis iudiciis aperiretur. Posset enim dicere iniquus iudex, quod in conscientia sua scit eum esse reum et, quando propter privatum amorem vel per munera vellet dimittere noxium, diceret quod in conscientia sua scit eum esse innocentem et sic via malefaciendi iniquis iudiciis esset aperta.

⁶⁷⁸ Alexander of Hales, *Summa universae theologiae*, III, pars 2, inquis. 3, tract. 2, sect. 2, q. 1, tit. 1, dist. 1, memb. 2, cap. 2, art. 2, num. 418; Latin-German edition available in M. Basse (ed.), *Summa theologica halensis: De legibus et praeceptis – Lateinischer Text mit Übersetzung und Kommentar*, Berlin, 2018, pp. 1100-1106.

⁶⁷⁹ Alexander of Hales, *Summa universae theologiae*, III, pars 2, num. 418, p. 1102: Dicendum quod est conscientia iuris et est conscientia facti. Conscientia iuris est quae formatur ex lege divina conscientia facti quae formatur ex ipsa facti opinione vel scientia. Dicendum ergo quod iudex non debet iudicare secundum conscientiam facti, sed secundum

truth known simply to the judge against the proofs yielded through juridical proceedings, but rather, truth known to the judge through legal channels and verified with care legal examinations against simply facts. Such truth of conscience is not truth of facts, but truth of judgement.⁶⁸⁰ Although Alexander states that the judge should follow his conscience, such conscience is nonetheless educated by and bound to the legal reason and legal proceedings. Odonis later cites Alexander of Hales in his Paris *Sentences* lecture on the same question.⁶⁸¹ Although he states at the very beginning of the question that he agrees with Alexander, his arguments, which are essentially identical to the *Ethics* version, differ drastically from his Franciscan predecessor.

It is to Henry of Ghent that Odonis's own solution comes much closer. Henry raises a slightly different question, in the sixteenth question of his second *Quodlibet*, held in 1277.⁶⁸² The question is presented as thus: whether a prince can licitly hold property of a man, rendered guilty by public justice, while in reality knowing this man to be innocent.⁶⁸³ The crux of Henry's argument unfolds thus: he distinguishes between two types of law - divine (or natural) and human; divine law is inviolable, and the prince should also follow human law in so far as it is good and just; however, the prince does not always have to follow the dictate of human law, especially when it contradicts the demands of divine law.⁶⁸⁴ Knowing the condemned man to be innocent, the prince should act so that he does not lead

conscientiam iuris, excluso errore, quia contingit esse errorem circa utramque conscientiam, iuris scilicet et facti. Iudicare autem secundum conscientiam iuris rectam, non erroneam, est iudicare secundum allegata diligenter discussa.

⁶⁸⁰ Alexander of Hales, *Summa universae theologiae*, III, pars 2, num. 418, p. 1102-04: Ad illud ergo quod primo obicit, dicendum quod iudicare iudicii veritatem aliud est quam iudicare veritatem. Veritas enim est respectu facti vel rei, quae est vel non est; veritas vero iudicii est respectu convictionis vel probationis legitima facti vel rei. Ex illa igitur lege non concluditur quod iudex debeat iudicare secundum conscientiam veritatis facti, sed secundum veritatem iudicii, id est convictionis et probationis legitima facti; unde dicitur: *Iudicabunt iudicii veritatem, et facies quaecumque dixerint iuxta Legem*.

⁶⁸¹ Gerald Odonis, *Commentarium super quartum librum Sententiarum*, dist. 16, q. 4, Paris BNF, ms. Lat. 3068, f. 45ra-46ra: *Utrum iudici liceat iudicare contra veritatem sibi notam sequendo probate*; edited text in preparation in Schabel and Chen, 'Ethics in Ot's Commentary on I Corinthians'.

⁶⁸² For dating, see R. Wielockx, 'Introduction', idem. *Henrici de Gandavo: Quodlibet II*, Leuven, 1983, p. xviii-xix.

⁶⁸³ Henry of Ghent, *Quodlibet II*, q. 16, ed. R. Wielockx, Leuven, 1983, p. 101: *Utrum princeps licite possit tenere bona alicuius sibi per publicam iustitiam adjudicata propter culpam illi impositam, quem in rei veritate scit esse innocentem*.

⁶⁸⁴ Henry of Ghent, *Quodlibet II*, q. 16, p. 102-4 (cited selectively): *Dicendum ad hoc quod duplex est lex: divina et humana. Lex divina lex naturae est, quae iubet innocentem non puniri, quae custodienda est a quolibet erga Deum per pacem conscientiae, nihil agendo quod est contra conscientiam, quia secundum Apostolum 'Omne quod non est ex fide,*

others into sin, and ultimately persevere with truth lest truth be lost.⁶⁸⁵ In short, the prince's obligation to divine law, truth, and justice prevails over his obligation to human positive law and the juridical order.

Emily Corran describes Henry's approach to the question as that of a theologian rather than of a jurist: concerns over sin and truth are elevated to trump all else, and the considerations of legal procedures and the authority of law are relinquished to secondary importance.⁶⁸⁶ We can say much the same regarding Odonis - as amply demonstrated in chapter V, Odonis holds no veneration for the legal edifice.

Odonis states that he follows Alexander of Hales, but in reality holds a position resembling more that of Henry of Ghent, and contrary to both Aquinas and the jurists. However, even between Odonis and Henry of Ghent, there are stark divergences. The difference in the questions' set-up notwithstanding,

peccatum est.' Lex humana est, quae populis regendis publice instituta est, quae, ut dicit Augustinus I *De libero arbitrio* : 'Saepe minoribus malefactis dedit licentiam, ne maiora committerentur', ut occidendi volentem occidere. ... Quae custodienda est erga proximum, et hoc a quolibet, ne faciat quod lex publica prohibet...

Et ita, quia quaecumque prohibet, si lex bona sit, illa simpliciter mala sunt vel etiam si simpliciter mala non sunt, bonum est tamen ea esse prohibita, ideo quaecumque huiusmodi lex prohibet, ab omnibus sunt cavenda, propter quod dicit Seneca : 'Sapiens non perturbat publicos mores'. Non tamen quaecumque permittit, illa sunt licita et facienda...

Secundum haec ergo respondendum est ad propositam quaestionem quod princeps (per quem intelligo praelatum Ecclesiae), in quantum ad ipsum pertinet, minister est legis publicae ad iustitiam eius exsequendam, sed subditus est legi divinae et astrictus ad ei, quantum in se est, obtemperandum. ...

In talibus ergo, in quibus princeps necesse habet ratione officii sui legi obtemperare, sine peccato potest et debet exsequi legis edictum, quia, si lex bona sit et iusta, legi divinae contraria esse non potest, quia a divina lege omnis lex humana bona et iusta ortum sumit. ...

⁶⁸⁵ Henry of Ghent, *Quodlibet II*, q. 16, p. 105-9: Si autem est in casu propositae quaestionis. Cum enim lex publica ordine iuris quemquam convictum de crimine sententialiter in certa summa pecuniae principi obnoxium condemnat, accipere pecuniam huiusmodi sibi adiudicatam in potestate principis relinquit nec praecepto alio ad eam accipiendam ipsum compellit. In hoc ergo casu opus est principi ut semetipsum in hoc facto regulam divinae legis dirigat...

Unde si scandalizentur auditors quia magister docet veritatem opportunam ad docendum, non debet dimittere propter scandalum, quia veritas doctrinae esset in periculo. Si etiam reus et amici eius scandalizentur quia iudex profert contra eum iustam et opportunam sententiam, non debet dimittere propter scandalum, quia veritas iustitiae esset in periculo. Si scandalizentur parentes quia post votum non exeas religionem vel nubere non vis, non debes votum dimittere propter scandalum, quia veritas vitae esset in periculo. Sic est in proposito. Recedere enim a proposito restituendi alienum retinendum contra conscientiam et ius divinum, est in periculo, immo in subversionem veritatis vitae.

⁶⁸⁶ Emily Corran, *Lying and Perjury in Medieval Practical Thought: A Study in the History of Casuistry*, Oxford, 2018, p. 125.

Odonis probes the question is much greater nuance and offers a more systematic solution than does Henry.

To start with, Odonis does not consider the juridical epistemology superior to the knowledge and truth acquired through extra-judicial means - in this case, in the judge's capacity as a private person. Instead of Aquinas's deference of the court and juridical epistemology, Odonis does not distinguish between the public and private spheres, and argues for one single standard - truth of greatest certitude. Odonis starts his *responsio* with a distinction of the certainty of knowledge in order to clarify the concept of *veritas sibi nota*. If what is known to the judge is mere conjecture, i.e. suppositions and presumptions, then the judge should of course rely on the evidence yielded through judicial means - *testium probatione claras et iuramento firmatas*.⁶⁸⁷ Odonis agrees that in this case, juridical means of probation does provide a baseline of certainty, and such knowledge should always be preferred to any notion of dubious certainty. It is set up to safeguard the truthfulness and rationality of the legal proceedings and consequently the justice of the resulting judgement. Anyone can have an opinion and his own conjectures, but it is difficult to have certain truth - *facilius habentur mille iudices quam unus testis*.

Should, however, the judge know the certain truth, and such truth of utmost certitude is contrary to the juridical probations, then he should disregard the legal probation and courtly proceedings, and judge in accordance with truth. This is the crux of the entire question, and Odonis provides five articles of argument to support this, the first three of which are mostly theological in nature, while the last two appeal to legal and moral sciences.

- i. In *Exodus* 23, the *Scripture* commands that one should not follow the crowd and commit evil, nor acquiesce to the judgement of the many and err from truth. If a judge adjudicates against the truth known to himself, but rather follows the many false

⁶⁸⁷ *ExEth*, V, q. 20, f. 114vb: Hic primo respondendum est ad quaesitum, et secundo dandum est consilium pro quaesito. Distinguo de notitia: quoniam est notitia probabilis opinionis praesumptionis vel suspicionis; et est notitia certitudinalis visionis, puta cum vidit factum, vel audivit dictum, de quo quaeritur. Et secundum haec dicenda sunt duo. Primum quod iudex potest et debet iudicare contra illud quod ipse suspicatur praesumit vel opinatur esse verum, dum tamen oppositum fuerit ei legitimo modo probatum. Secundum autem est, quod iudici non licet in aliquo casu iudicare contra veritatem certitudinaliter sibi notam, quantumcumque oppositum sit probatum.

testimonies, then he acquiesces to the judgement of the many. With this the judge goes against the divine command, and this is illicit.⁶⁸⁸

- ii. Referencing Augustine, Odonis states that it is impossible to do good and act rightly in things which are intrinsically evil. Therefore, even if a judge follows the *ordo iustitiae* and cannot be faulted in that respect, condemning the innocent is still intrinsically evil, and therefore there is no escape from reproach and sin;⁶⁸⁹
- iii. The condemnation a just man is contrary to the love of God, because God forbids it; contrary to the love of neighbours, who in this case is the condemned man; and contrary to the love of self, because it is better to suffer for the sake of truth than to receive false flattery;⁶⁹⁰

⁶⁸⁸ *ExEth*, V, q. 20, f. 155ra: Secundam igitur conclusionem probo. Primo quidem auctoritate omnipotentis Dei, qui quaestionem istam expraesce determinare videtur dicens, non sequeris turbam ad faciendum malum, nec plurimorum acquiesces sententiae in iudicio ut a veritate devies, *Exodus*, 23. Constat enim quod iudex acquiesceret plurimorum sententiae, si ad multorum falsorum testium sententiam, contra veritatem sibi notam, iudicaret, et cum hoc a veritate, quam novit contra divinum imperium, deviaaret. Quare simpliciter est illicitum.

⁶⁸⁹ *ExEth*, V, q. 20, f. 115ra: Secundo quia illa quae confestim nominata, convoluta sunt cum malitia, et quae secundum se sunt mala, nullo modo contingit bene fieri vel recte dirigi. Sed in illis necesse est semper peccare et nunquam recte agere, ut tradit expraesce Philosophus, supra libro 2 capitulo 6, et Augustus, libro *De mendacio*, ut diffuse probatur in *Sententiis* libro 2, distinctione 40. Ait enim Augustus, ea quae constant (constat, *X*) esse peccata, nullo bono esse obtentu nullo quasi bono fine, nulla velut (velud, *X*) bona intentione facienda sunt, ea quippe opera hominum, si causas habuerint bonas, nunc sunt bona nunc sunt mala. Cum vero opera ipsa peccata sunt, quis dicat causis bonis esse facienda vel peccata non esse, vel, quod absurdus est, iusta esse peccata; quis hic dicat nisi qui res humanas moresque conatur, et legem subvertere. Patet igitur quod ea quae convoluta sunt cum malitia, et quae secundum se sunt mala, sunt et peccata, nullo modo contingit bene fieri. Sed innocentem et iustum scienter condemnare est secundum se malum, et cum malitia convolutum. Quare nullo modo potest bene fieri qualiscumque probatio intercedat.

Quod autem istud sit secundum se malus probatur. Tum quia est opus impium dicente Deo, innocentem et iustum non occidas, quia adversor impium, *Exodus* 23, quasi dicat quod qui facit istud est impius, et ideo adversor ipsem qui talia facit, tum quia est opus veritati et aequitati naturali contrarium. Veritas autem est magna prae omnibus. Omnis terra veritatem invocatur coelum etiam ipsam benedicit, et omnia opera moventur et tremunt veritatem et non est cum veritate quicumque iniquum, ut ait Zorobabel, 2 Esdre, 10 capitulo.

⁶⁹⁰ *ExEth*, V, q. 20, f. 115ra: Tertio quia, si iustum condemnare liceat scienter iudici propter falsa testimonia, vel hoc licebit amore Dei, vel amore sui, vel amore proximi. Non quidem amore Dei, quia, ut ait Beda, qui veritatis et caritatis iussa spernunt Deum utique, qui caritas et veritas est, produnt maxime cum non infirmitate vel ignorantia peccant, causa 11, q. 3, can. 'abiit'. Hoc autem modo est in casu proposito. Item non amore sui, quia melius est homini pro veritate supplicium pati, quam pro adulatione beneficium recipere, eadem causa et quaestione, cau. 'nemo'. Item nec amore proximi, quia unus, scilicet innocens, damnificatur temporaliter et alter spiritualiter, qui, quamvis miser esset mala

- iv. Truth cannot be contrary to truth; if the judge does not have a veritable probation against the truth known to him personally, then he must follow his conscience;⁶⁹¹
- v. A judge cannot be compelled by the witnesses and probations into falsehood; furthermore, a judge is the active agent in a court judgement, rather than a passive recipient.⁶⁹²

It may be apparent that Odonis is first and foremost concerned with misleading or downright false testimonies, which would otherwise pervert the truth during the trial and result in an unjust sentence. Yet, it is worth noting that the falsehood of witnesses is not the only variable in a juridical proceeding that may lead to a perverted judgement. Odonis is equally concerned with the abstract notion of the *ordo iustitiae* as a whole. The rules and norms of the legal institutions may not always result in a just verdict, since it does not always provide evidence and probation of the highest degree of certitude. Odonis argues, the validity of knowledge should be evaluated disregarding its external attributes. Just as the clergy is not intrinsically superior to the laity, the evidence yielded by the court is not intrinsically superior to that acquired by a private citizen:

Again, when two things are compared according to two aspects, they should be understood *caeteris paribus*, otherwise there would be no comparison. For example, one cannot say who is better between a clergyman and a layman, because a perfect layman is better than an imperfect clergyman. Similarly, in the present case, I say that the knowledge acquired by the judge as a judge should be preferred to the knowledge acquired by the judge as a private

voluntate, miserior tamen efficitur potestate, qua desiderium malae voluntatis impletur, ut ait Augustinus, 13 *De trinitate*, capitulo 5. Quare iudici ex nullo bono amore licet scienter condemnare iustum et innocentem.

⁶⁹¹ *ExEth*, V, q. 20, f. 115ra: Quarto quia nullum ante iustam veram quam probationem iudicare aut damnare debemus, ut distinctione 86 can. 'si qui', et causa 2, q. i, 'Deus omnipotens', et 11, q. 3, 'eorum et cunctis', et 30, q. 5, 'nullum'. Si iudex contra veritatem sibi notam, nullam probationem veram ante habere potuit, ut constat sibi quia nullum verum est contra verum, cum omnia vera vero consonent, ut supra libro 1, capitulo 7. Quare nullum contra veritatem sibi notam iudex iudicare aut damnare debet.

⁶⁹² *ExEth*, V, q. 20, f. 115ra-b: Quinto quia non plus potest cogi iudex per testium assertionem ad faciendam rem iniustam, quam pars per probationem et sententiam. Argumentum ad hoc quia tam magis est in potestate iudicis quam partis, ut dicit hic Philosophus; sed pars non potest cogi per probationem aliquam, nec per sententiam ad faciendum rem iniustam, quare nec iudex. Quod enim pars cogi non possit, patet in casu, si enim alicui adiudicetur uxor propter probationem testium, quae in rei veritate uxor eius non est, nec esse potest propter impedimentum notum isti et non iudici, iste certus de impedimento nec propter probationem, nec propter sententiam, nec propter excommunicationem recipiet illam in uxorem, vel maritali affectione tractabit, quia nec debet secundum iura et sanctorum consilia.

person – this should be admitted *caeteris paribus*. But if this knowledge is not worthy of being called knowledge, but error and deception, then it would be false and iniquitous. If the knowledge is true and certain, then no one of a sound mind would reject this for falsehood, and those who do would be damned by God.⁶⁹³

The juridical epistemology is not to be automatically trusted. Therefore, the *veritas* known to the judge transcends the probation and proceedings of the court, should they be found contradictory to each other. The *ordo iustitiae* may be able to protect the judge from juridical reprobation, since in legal terms, the judge has done nothing wrong; but in the eyes of God, to whom a judge is ultimately answerable, the *ordo iustitiae* does not shield the judge from sin. From a theological perspective, one's salvation is certainly greater than the need to follow a juridical procedure.

In comparison, Aquinas is almost unqualifiedly confident in the validity of the *ordo iustitiae* and the knowledge yielded through juridical epistemology. According to Aquinas, the public function of the judge is superior to the private function of a person, and thus the knowledge acquired through public enquiries should always be considered more meritorious and more truthful than that acquired through private means. The existence of law as a universal precept is precisely to curb the very human nature, which is susceptible to the sways of passion and corruption. Aquinas divides juridical knowledge into two categories: generally, the public laws of God and men, and particularly, what is yielded in the court through documentation, witnesses, and other legal means of information.⁶⁹⁴

Now the latter knowledge (knowledge that the judge knows as a public person) comes to him both in general and in particular — in general through the public laws, whether Divine or

⁶⁹³ *ExEth*, V, q. 20, f. 115va: Iterum cum aliqua comparantur sub duabus differentiis debent intelligi caetera paria, alias nulla esset comparatio, ut si queratur qui est melior, clericus vel laicus, non potest dici quod clericus sit melior nisi supponendo in ceteris paritatem, quia melior est unus perfectus laicus quam unus imperfectus clericus. Similiter, in proposito dico quod si notitia quam iudex habet ut iudex praeferenda sit notitiae quam habet ut persona privata, concedendum est caeteris paribus. Sed si notitia illa non meretur dici notitia, sed error et deceptio, quia falsa et iniqua. Ista vero sit vera et certa, nemo sanae mentis dicet quod illa isti sit praeferenda et illi quidem qui hoc dicerent maledicti sunt a deo dicente.

⁶⁹⁴ Note that what Aquinas considers as ‘leges publicas vel divina vel humana’ does not include natural law, as shown in *ST*, I2ae, q. 91, art. 4: Respondeo dicendum quod praeter legem naturalem et legem humanam, necessarium fuit ad directionem humanae vitae habere legem divinam. Aquinas gives a strong positive flavour to what he considers as divine law, legislated by God in order to direct men to the path of salvation, and to complement the shortcomings of human law with regard to man's spiritual wellbeing.

human, and he should admit no evidence that conflicts therewith — in some particular matter, through documents and witnesses, and other legal means of information, which in pronouncing his sentence, he ought to follow rather than the information he has acquired as a private individual.⁶⁹⁵

A judgement is the application of the universal precepts of divine and human law to the particular case at hand. Aquinas, however, most starkly excludes the natural law, or principles of morality, from the legal information. One may suggest that Aquinas envisages a self-contained positive legal system parallel to that of moral judgement. James Bernard Murphy argues that, for Aquinas, both positive law and morality have the same purpose of promoting human good, and yet it is necessary that they should work in substantially different ways. The remit of positive law is limited to the manifested external acts, and should not usurp the deeper reaches of morality.⁶⁹⁶ Although Aquinas insists that positive law is always ultimately derived from natural law, and any positive law that deviates from natural law is evil and illicit, once a positive legal system is established, it would start functioning without the interference of natural morality. In this case, legal probation is governed and determined by established laws, and the judge's conscience, however close to the truth it may be, should still submit to the authority of the legal system. The safeguarding of the *ordo iustitiae* is not only obligatory because the law says so, but also paramount for the existence of the entire legal edifice, and by extension, for the wider common good.

Compared to Aquinas's deference to the legal edifice and his faith in the juridical institutions, Odonis apparently occupies the anti-legalist end of the spectrum. Evidently, Odonis agrees with the principle that justice should be delivered in court, but he departs radically from the position of Aquinas in thinking that the pursuit of justice should not accept the institutional and procedural constraints of the court. Positive law and the juridical system are of no value when they can be simply cast aside assuming that the prudent and virtuous judge knows better. However, Odonis's scepticism towards the legal edifice has deeper roots. The judicial system is not a self-contained structure that runs parallel to natural morality and dictates of virtue and justice. It is deeply tangled with society at large, just as man's public life is inexorably linked with one's private virtues. Consequently, the legal

⁶⁹⁵ *ST*, II2ae, q. 67, art. 2: Hoc autem innotescit sibi et in communi, et in particulari. In communi quidem, per leges publicas vel divinas vel humanas, contra quas nullas probationes admittere debet. In particulari autem negotio aliquo, per instrumenta et testes et alia huiusmodi legitima documenta, quae debet sequi in iudicando magis quam id quod ipse novit tanquam privata persona.

⁶⁹⁶ Murphy, *Philosophy of Positive Law*, p. 54-6.

system is not impervious to interventions and directions of natural law, and the juridical epistemology is not shielded from the examination of extra-juridical means of knowing. Odonis critiques a judicial system that constrains the judge from pursuing justice. Instead a judge should go out of his way to ensure that justice is delivered, despite the institutional and procedural constraints. Judges are held against the single standard of justice, and answerable ultimately to God. A judge is not any average person who happens to be charged with public duty and vested with public authority; instead, he is a member of the *boni viri*, the best men of the civil society, and the paragons of virtue. One simply needs to invoke to Odonis's question on whether the best men or the best law should rule the city to see Odonis's confidence in a polity ruled by the moral elites.

A question that one may ask here is whether Odonis envisions a certain kind of judicial activism. Of course, our understanding of this term must be placed within the historical perspective - Odonis's judges are facing a legal context where judicial norms are still being established, and judicial arbitration is competing against other arbitrary methods and authorities. The legal system was in constant flux and the legal philosophy was still heavily dependent on the writings of Aristotle and Roman jurists. Therefore, what Odonis faces is a legal edifice in the process of formation. This may help understand Odonis's thesis that a judge's conscience and truthful private knowledge always trumps the information from legal proceedings.

Yet, it cannot conceal the fact that, even in the fourteenth-century context, Odonis's vision for judges' discretion and judicial activism is remarkable. The very concept of 'judicial process' is a key instrument in the late thirteenth-century jurists' attempt to curb the absolute power of the prince and to bring him under the law.⁶⁹⁷ Yet, for Odonis, as for most of his contemporaries when discussing the judicial system, the judge is not only the prince, but all the members of the judicial body. In the section where Odonis offers his *consilium*, he distinguishes between the judges of lower order and the prince.⁶⁹⁸ The lower judges are advised to refer the cases to their superiors if they cannot justly adjudicate the cases at hand. Nonetheless, they can also justly disregard the *ordo iustitiae* should they find the truth to be contrary to the legal proceedings. The sovereign prince, on the other hand, is above

⁶⁹⁷ Pennington, *Prince and the Law*, p. 132-162.

⁶⁹⁸ *ExEth*, V, q. 20, f. 115rb: Primum declaro quia cuicumque committitur actus quem non potest convenienter agere debet illum committenti remittere quia per idem est secundum iura non posse convenienter agere et non posse agere... Primo quoniam ille qui est quasi deus in terris debet quantum potest sicut deus iudicare in terris, tali namquam principi maxime iniungitur illud quod generaliter fidelius iudicatur.

law and the legal edifice, rules *quasi deus in terris*. Therefore, the prince should judge simply on the truth and purity known to him.

If the judge has no superior in his lands, such as the king of France, or the pope, or the emperor lately, I advise him to judge simply according to truth, and to punish severely the witnesses testifying the opposite.⁶⁹⁹

Therefore, compared to Aquinas and his followers who advocate for a self-contained legal system, whose authority should be respected and whose precepts obeyed in absolute terms, Odonis frames the legal edifice as something auxiliary to the judges' pursuit of justice. While it is expedient to have laws, the universal precepts of human law would inevitably err and fail to deliver justice. In contrast, judges, who are not only learned in law, but are also paragons of virtue, would make better judgements with their own virtue and prudence in accordance to truth known to them with certainty.

2. On the Perversion of Legal Judgement

Although Odonis is a great champion of the prudent and virtuous judges, he is not unperturbed by the possibility that the verdict of a judge may be perverted for various reasons. In the Question 21 of Book V, Odonis asks whether a corrupted judge or a man who corrupts the judge commits a greater offence (*Utrum corruptus ferens iniustam sententiam pro parte corrumpente delinquat gravius quam corrumpens*). Again, what interests us here is not quite what Odonis provides as the, but the many implications of his arguments. Odonis offers an extremely nuanced answer, and singles out several different possibilities.

Before proceeding to the proper *solutio*, Odonis sets out two premises. Firstly, citing Gregory from the *Decretum*, human judgement may be corrupted in four ways, i.e. fear, greed, hatred, and love;⁷⁰⁰ he distinguishes the former two from the latter two: fear and greed are the corruption that involve

⁶⁹⁹ *ExEth*, V, q. 20, f. 115rb: Si vero non habet superiorem in terris, sicut rex Franciae, vel Papa, vel olim imperator, consulo quod simpliciter pro veritate sententiet, et quod graviter puniat testes oppositum asserentes.

⁷⁰⁰ *Decretum*, causa 11, q. 3, can. 78.

another party, while corruption through love or hatred concerns solely the judge himself, therefore out of the remit of the question at hand:

Human judgement can be corrupted in four ways, as Gergory says in XI, question 3, chapter 4 (of *Decretum*): fear, greed, hatred, and love. In fear and greed the judge is concerned with himself, in hatred and love the judge is concerned with others. With fear and greed, the judge is said to be corrupted by a party that either threatens something terrible, or promises something desirable, such as money, and the judge hands over an unjust and iniquitous judgement. With love and hatred, the judge is not said to be corrupted by an another, but by himself. Therefore, in the first two cases (of fear and greed), the judge is said to be explicitly corrupted, but he is not properly speaking corrupted in the latter two cases (love and hatred).⁷⁰¹

Odonis has analysed the influence of love and hatred, or generally speaking, passions, in a number of passages elsewhere, such as discussed above on the topic of the rule of law and rule of man. Odonis affirms that to rule is to conquer passion, and a man who is worthy of being a judge would necessarily have the virtues to regulate their passions. Additionally, in Question 21 of Book III, where Odonis asks whether the judgement of reason is more corrupted by habit or by passion, he gives a resolute answer that vicious habits corrupt man's judgement more than perverted passions.⁷⁰² A man who is worthy to rule and to judge is a man with virtuous habits that safeguard him from the sways of passion. In the second premise, Odonis states that corruption through greed is a graver sin than corruption through fear, for two reasons: sinning by greed is more voluntary than sinning by fear, and sinning by greed is out of industry, while sinning by fear is out of infirmity:

⁷⁰¹ *ExEth*, V, q. 21, f. 116ra: Primo ergo praemitto quod humanum iudicium quatuor modis pervertitur, ut ait Gregorius XI, quaestione iii, capitulo quatuor, scilicet timore et cupiditate, odio et amore. In primis duobus iudex respicit ad seipsum. In aliis duobus ad alterum. In primis duobus casibus, dicitur iudex corrumpi per partem quae vel comminatur aliquid terribile, vel dat seu promittit aliquid concupiscibile. Sic quod vel illud terribile, vel illud concupiscibile, puta pecunia trahit iudicem ad ferendum iniustum et iniquum iudicium. In duobus autem aliis casibus iudex non dicitur corrumpi per partem, sed per seipsum huc vel illuc affici per odium vel amorem, et ideo quaestionem recipio in primis duobus casibus, ubi est expressa corruptio, et non in aliis, ubi non dicitur proprie corruptio.

⁷⁰² *ExEth*, III, q. 21, f. 50rb-va: Dicendum supposito quod intentio habitus et vehementia passionis sint pares quod habitus malus magis corrumpit rationem quam passio mala, quia unumquodque malum appetitus, intantum corrumpit indicium intellectus, inquantum facit apperere intellectui opus malum esse conveniens homini, et opus bonum esse disconveniens homini. Sed caeteris paribus, ut dictum est, habitus malus magis causat talem apparentiam quam passio mala. Quare magis corrumpit quam passio.

A judge corrupted by greed sins more gravely than he that is corrupted by fear, for two reasons. Firstly, out of two sins of the same kind, that which is more voluntary is more reproachable and degenerate, see treatise on temperance, chapter 2. Corruption by greed is more voluntary than corruption by fear, and therefore it is more reproachable and more degenerate. Secondly, sinning deliberately (*ex industria*) is worse than sinning out of infirmity, see Isidore of Seville, *De sumo bono*, II. 17. Sinning out of fear is infirmity, but sinning out of greed and the acceptance of money sins deliberately (*ex industria*). Therefore, sinning out of greed is more blameworthy and worse.⁷⁰³

Odonis proceeds therewith to provide the *solutio*. Firstly, he deals with fear, arguing that a judge corrupted by fear is more redeemable and commits a lesser offence than the agent of fear. Such a judgement is the result of two competing wills - the will of the judge and the will of the corrupting party - and is a mixture of voluntary and involuntary. Since the judge does not have an absolutely free will in delivering his judgement for fear of violence or death, he cannot be held absolutely accountable for the perverted judgement.⁷⁰⁴ Equally, the fact that the judge is corrupted by the fear of death renders his otherwise mortal sin venial.⁷⁰⁵ Secondly Odonis deals with greed, and appears ruthless in his condemnation for judges who commit injustice out of greed. A judge is the guardian of human mores and common good, with power to preserve or subvert common good. A judge who is corrupted by greed undermines the entire commonweal. Equally, from a juridical perspective, a

⁷⁰³ *ExEth*, V, q. 21, f. 116ra: Secundo praemitto quod iudex cupiditate corruptus gravius peccat quam metu corruptus, quod probo dupliciter. Primo quia duorum peccatorum eiusdem generis, illud quod est magis voluntarium est exprobrabilius et deterius, ut supra tractatu de temperantia, capitulo finale. Sed cupiditas et peccatum cupiditatis est magis voluntarium opus quam timorum et quam opus timoris, quare est exprobrabilius et deterius. Secundo quia peccatum ex industria magis est quam peccatum ex infirmitate, ut ait Isido, libro 2, *De sumo bono*, capitulo 17. Sed peccatum ex metu sit ex infirmitate, ut ibidem habetur, peccatum vero ex tali cupiditate et acceptione pecuniae peccatum est ex industria, quare peius et deterius.

⁷⁰⁴ *ExEth*, V, q. 21, f. 116ra: Nunc igitur ad quaestionem dico primo, quod iudex timore corruptus minus peccat quam pars ex timoris incussione corrumpens. Primum probatur primo, quia duorum ad idem opus malum concurrentium, ille plus peccat cuius voluntas praevallet, et cuius voluntatem alter sequitur. Sed in isto casu, voluntas partis timorem inferentis praevallet, et iudex territus voluntatem partis sequitur non suam, quoniam operatio iudicis territi est mixta ex voluntario et involuntario, ut supra libro 3, capitulo 2. Quare iudex minus et pars plus peccat.

⁷⁰⁵ *ExEth*, V, q. 21, f. 116ra: Secundo quia qui, peccando, tenet modum per quem peccatum mortale interdum sit veniale, minus peccat quam ille, qui tenet modum per quem aggravatur peccatum; sed iudex timore corruptus tenet modum, scilicet timoris cadentis in constantem virum, per quem peccatum mortale interdum sit veniale, ut supra libro 3, et eodem capitulo.

judge cannot sell what is not his by right - by accepting money, the judge essentially sells an unjust judgement, illicitly:

Firstly, according to the conditions of the of the party and the judge, he who has more power to subvert the human affairs, mores, and laws through his evil will, sins more than he who cannot will whatever he wishes. The judge through his evil will can subvert everything, because he is the guardian of human affairs, mores, law, and universally of every justice and just man. The judge therefore sins against such good and just things entrusted to him by accepting money, and therefore he sins more gravely than the other party, because to him all things are entrusted.

Second, according to the conditions of sales and purchase, it is universally a greater sin to sell something that does not belong to the seller than to buy something that does not belong. Selling something that does not belong to the seller is against the nature of commerce, while we always buy things which do not belong to us. In this case, the judge sells what is not his, and the party buys what is not theirs, but what belongs to the other party. Therefore, the judge sins more gravely than the buyer. This is like Giezi and Syracus, Giezi sells what is not hers, while Syracus buys from someone to whom the goods do not rightfully belong.⁷⁰⁶

Here Odonis illustrates two possible shortcomings of a judicial system that gives the judges considerable discretion. The judge shoulders more responsibility and has a direct and personal involvement in the cases at hand, and is thus more susceptible to fear, greed, as well as sways of

⁷⁰⁶ *ExEth*, V, q. 21, f. 116ra-b: Secundum probatur, primo ex conditionibus partis et iudicis, quia duorum ad idem opus peccati concurrentium ille qui sua mala voluntate res humanas mores et leges potest subvertere plus peccat, quam ille qui non potest quantumcumque velit; sed iudex sua mala voluntate haec omnia potest subvertere, cum ipse humanarum rerum morum et legum, et universaliter omnis iuris et iusti sit custos, sicut dicitur de principe supra eodem capitulo 11. Quare iudex contra tot bona, tot iura, tot iusta, sibi tradita veniens pro pecunia, plus peccat quam pars ipsum corrumpens, quia sibi sunt omnia ad custodiendum tradita non tamen parti.

Secundo ex conditione venditionis et emptionis, quia universaliter maius peccatum est in genere peccati vendere rem non suam, quam emere rem non suam. Vendere namque non suum est contra naturam venditionis ex toto genere; sed emere non suum non est contra naturam emptionis, cum semper emamus ea quae nostra non sunt, quamvis sit peccatum emere ab eo, cuius non est res. Sed iudex in casu isto vendit rem non suam, et pars emit rem non suam, quia rem alterius partis. Quare peccatum iudicis maius est quam peccatum partis, quamvis pars graviter peccet emendo a iudice, cuius res non est. Ex hoc sequitur correlarium, quod maius peccatum est Giecia (Giezia, X), idest venditio spiritualium, quam Syracum, idest emptio eorum, quia Giecia vendit bona non sua, Syracus vero emit bona non sua ab eo, cuius iuris non sunt.

passion. In contrast, in a legal system where judgements are direct applications of law and delivered impersonally (assuming that the law is sufficiently detailed and adapted for most cases), such legal abuses can be prevented. Odonis does not seem to be offering an institutional solution here, which comes with no surprise since Odonis remains consistently sceptical of legal institutions. The only meaningful measure against legal abuses is the court of conscience and the ultimate divine judgment. As declared in Question 21, a judge who knowingly condemns the innocent faces the eternal wrath of God, and his abuse of power would result in an even more severe condemnation. This position is again repeated in Question 22, that a man whose responsibility is the safeguarding of human mores and laws sins more gravely when he willingly subverts such mores and laws.

One should note the theological language used by Odonis in question 21. Although the question itself takes the legal term *delinquere*, throughout his response text Odonis uses the term *peccare*, indicating that the ultimate punishment and prevention for judicial abuse is the law of God and divine judgment. Yet, it is telling that Odonis here skips the possible temporal measures against such abuses and resorts directly to the spiritual. Admittedly, this is out of the remit of the question, which merely compares the gravity of offences committed by the corrupting party and the corrupted judge. However, given Odonis's habitual thoroughness, it is surprising that Odonis does not offer a more temporal and immediate solution against the corruption of judges, especially considering Odonis's ideal legal edifice is entirely dependent on the virtues and prudence of the legal profession. Of the judges in a political community, all, except the sovereign prince, are subject to the power of their superiors, and many measures may be taken against such abuses. The absence of this discussion may yet again illustrate Odonis's unswerving faith in the rule of virtuous men - the assumption that such *boni viri* possess the moral and intellectual virtues to be capable of dispensing justice, and that they are answerable to God and divine judgement, is sufficient to safeguard the wellbeing of the political edifice and prevent abuse of power.

The other source of corruption - fear, demands an analysis from a different perspective. Evidently, virtues of the judge come into play: a judge should have the virtue of fortitude to stand against the threat of death and violence. Indeed, the ultimate act of the virtue of fortitude is to set aside one's life for justice. No doubt, it is not an act of fortitude should he be corrupted by fear. Committing an injustice through fear is nonetheless still committing injustice. Yet, as Odonis argues, the greater sin lies with the agent of fear, who is the first cause of this perverted judgment, and does this through violence. It is a simple thesis to understand that a judge commits a venial sin when he is gripped by the fear of death; but the example cited by Odonis suggests that the argument can be also applied

when a judge is in fear of civil disorder. Citing *John* 19, Odonis argues that Pontius Pilate is deemed less guilty than the crowd who demanded Jesus's crucifixion, for Pilate did so out of fear. From the biblical passage, it is not immediately clear whether Pilate feared for his own death or for civil disorder, but the latter is the far more likely explanation.⁷⁰⁷

Here, a question must be raised on how far the fear for civil disorder, or in other terms, the preservation of the common good, can justify a perverted judgement. Odonis introduces another variable to the legal judgement, and this same variable can be considered in the larger framework of political rule as well. In Question 20, the contention rests on the dichotomy between the epistemology of legal probation and the judge's conscience, between due legal process and judicial discretion. The fear for civil disorder and the desire for the preservation of peace and common good render the considerations far more complicated. Can a judge commit injustice in the name of preserving common good? Pilate can find Jesus guilty neither through the due judicial process, nor through the truth known to him in his conscience, and yet he still sentences Jesus to the cross for the sake of preserving civic order. Knowingly sentencing an innocent man to death becomes a lesser sin when the judge's hand is forced by the threat of violence:

According to Augustine, this is why those who hand Christ over to Pilate sin more gravely than Pilate, who crucified the one he was handed over. Augustine says: 'he is a greater sinner who maliciously delivers up to the power the innocent to be slain, than the power itself, if it slays him through fear of another power that is greater still', see *Tractates on the Gospel of John*, 19 (tract. 116, 5).⁷⁰⁸

On this issue, Odonis seems ambivalent. On the one hand he concedes that sometimes necessity dictates that evil should be done, for the fear of greater evil: the *ordo iustitiae* should be disregarded if doing so would preserve true justice, acquitting a guilty man is holier than sentencing an innocent man, etc. On the other hand, Odonis is vehemently opposed to yielding to the judgment of the crowd, and argues that there is no way that something intrinsically evil can be carried out in a manner which

⁷⁰⁷ *John*, 19: 7-8 Responderunt ei Judaei: Nos legem habemus, et secundum legem debet mori, quia Filium Dei se fecit. Cum ergo audisset Pilatus hunc sermonem, magis timuit.

⁷⁰⁸ *ExEth*, V, q. 21, f. 116ra: Et haec est sententia Augustini reddentis rationem quare maius peccatum habuit, qui Christum Pilato tradidit, quam Pilatus (Pilato, X), qui sibi traditum crucifixit. Ait enim Augustinus: plus peccat qui potestati innocentem occidendum livore tradit, quam potestas ipsa, si cum timore alterius maioris potestatis occidit, super *Ioannem*, capitulo 19.

makes it good and righteous.⁷⁰⁹ In short, necessity and fear for violence and disorder do not justify what is intrinsically unjust, but may alleviate the severity of the sin. However, seeing from the other side of the coin, civil disorder is an intrinsic evil, while knowingly convict an innocent is also an intrinsic evil. The common good may be greater than the private good, but Odonis also insists that such a judgement is against the *amor proximi*, as it fundamentally undermines the political edifice upon which the common good rests. One may search in vain for where Odonis draws the clear line, as he does not explicitly probe this question. Either way, Odonis is surely far from a Machiavellian defence of extraordinary measures for the sake of political and public utility.

⁷⁰⁹ *ExEth*, V, q. 20, f. 115ra: Secundam igitur conclusionem probo. Primo quidem auctoritate omnipotentis Dei, qui quaestionem istam expresse determinare videtur dicens, non sequeris turbam ad faciendum malum, nec plurimorum acquiesces sententiae in iudicio ut a veritate devies, *Exodus*, 23. Constat enim quod iudex acquiesceret plurimorum sententiae, si ad multorum falsorum testium sententiam, contra veritatem sibi notam, iudicaret, et cum hoc a veritate, quam novit contra divinum imperium, devia- ret. Quare simpliciter est illicitum. Secundo quia illa, quae confestim nominata, convoluta sunt cum malitia, et quae secundum se sunt mala, nullo modo contingit bene fieri vel recte dirigi.

JUSTICE: A BRIEF CONCLUSION

In Part III we have surveyed Odonis's writings on the virtue of justice. What we find is that Odonis places the individual moral agent at the centre of his moral thought and above the constraints of the collective and the institutional. Despite Odonis's claim that all of Aristotle's moral philosophy is truthful, he contradicts both the literal sense and the intentions of Aristotle in multiple key points. While Aristotle conceives of justice as primarily a virtue that regulates man's external dealings with others and with society at large, and a corrective force for the disequilibrium in social transactions, Odonis marks himself out by considering justice more as an internal psychological habit that is ultimately manifested exteriorly through just or unjust actions. Odonis firmly plants the virtue of justice in the will, which manifests man's moral and psychological freedom. In so doing, Odonis breaks away from the Franciscan tradition exemplified by Bonaventure and Scotus in considering justice as a form of love for God. Instead, justice as a virtue is understood through Aristotelian terms - it is a habit of acting *justly*.

What is crucial in understanding the virtue of justice is the transformation of the external notion of *ius* into a just action effectuated by man. As we see with Odonis's discussion on natural law, as well as on human positive law, the source of law's command is always external, but such command needs to be internalised, comprehended, and transformed into the notion of what is to be done in order to fulfill such command. This is the cognitive-active chain of justice. The virtue of justice cannot exist without right reason, because the cognitive process of internalising the external command necessarily involves the participation of reason. The precept of *ius* is thus transformed from something external, impersonal, and universal, into something that is internal, personal, and particular. It then becomes incumbent upon the will to effectuate the notion of what is just into a just action. Throughout this process, although the source of *ius* is external, the participation the moral agent is the subjective force that makes justice happen - man does not passively obey what is commanded of them either by natural law or positive law; instead, man actively takes part in cognition-action chain of justice, eliciting both reason and the will to induce justice. Therefore, what ultimately makes man just is not the institutional force of law or universal reason, but the subjective force of the moral agent.

Odonis thus understands justice's relationship with law. Law dictates the universal but justice is always concerned with the particular. However, even the universality of law has particular and contingent origins. Odonis displays an unmistakable tendency of legal positivism in his reading of

both natural law and human law. Although *ius naturale* has the force of law prior to any human legislation, it nonetheless originates with the ultimate legislator - God, whose reason can be universal as well as contingent. Odonis does not go all the way to discuss the contingency of the Creation and laws that govern such created universe. However, he does make the argument that except for the precepts and prohibitions which concern the absolute good and the absolute evil, all the rest of natural law can be derogated and superseded by human reason and equity. Similarly, all human laws are positive and contingent, and can thus be equitably derogated and superseded for the sake of justice and moral good. Again, we see the moral agent's subjective force transcending the institutional framework of both natural and human law. While natural law is legislated through the reason of God, human positive law is erected by the human legislator, who is by necessity a subjective moral agent with a will of contingency. The origin of positive law is humanity. Hence, all positive law can be derogated, corrected, superseded, or outright ignored by a moral subject-agent equipped with the virtue of justice, equity, and prudential reason.

This is why Odonis argues that the rule of best man is superior to the rule of best law. Against conventional wisdom, Odonis presents a case of optimism in the moral capacity of humanity. For all the arguments of law's lack of humanity, law is ultimately made by men and inevitably shares the weaknesses of its maker. When the end of a state is to cultivate just and virtuous citizens, it is clearly more effective and more morally worthwhile for the best men to govern the citizens immediately than to govern intermediately with the instrument of law. The justice of man cannot be matched by the justice of law, because no law can be inherently virtuous since law can never be a moral agent. Similarly, we see Odonis arguing for the personal discretion of the judge against the constraints of legal procedures. Procedural justice, which is ultimately a consequence of positive legislation, can be readily disbanded for the pursuit of unqualified justice.

The mutual love between the prince and the citizens inheres in the governance of the best men. Although Odonis does not point such mutual affection directly towards the concept of friendship, a social and political bond based on love is nonetheless one of the very fundamentals of Aristotle's moral scheme. Odonis's interpretation of friendship, however, tends towards one of societal aptitude. Friendship is a virtue that orders man's communal life, how one should act and speak in various social situations. It is therefore a part of justice, as it relates to one another. Odonis's reading of friendship should be best understood as that of 'courtliness' - a refinement of behaviour and speech, but also living a social life underpinned by staunch moral principles, following a series of social obligations, rendering to each social partner his due. Odonis's understanding of friendship does not ascend the

height of Aristotle's *philia*, which supports but also reaches beyond justice. Instead, with our commentator, *amicitia* is a manifestation of justice, specifically in one's societal interactions.

Odonis follows Aristotle in equivocating legal justice with the complete virtue. However, this is not to say that one can be completely virtuous by simply observing the law. Far from it, Odonis intends legal justice to be a human reflection of the entirety of *ius* - of what is just. Instead of following the reason and judgement of others, which is the obedience to law, man can only be just and virtuous through his own agency. Odonis argues that legal justice and complete virtue are not different in any way other than their formal reason - the perfect virtue concerns the good of the individual moral agent while legal justice concerns the common good of the state as a whole. However, this does not mean simple virtue should be subsumed by legal justice as private good is subsumed by the common good. Instead, Odonis equates the two: the good of the individual is the same as the good of the community, and the virtue required of a good individual is the same as the virtue required of a good citizen. Within these inseparable moral spheres, the subjective agent is always placed at the very centre of Odonis's understanding of ethics and morality.

Thus, we see the human-centrism in Odonis's moral philosophy. Throughout Odonis's discussion of justice, the moral forces of law and institutions are always secondary to the initiative and potency of the individual moral agents. Justice is not found in laws, in commands, in obedience, or in being part of institutions - one can never be just and virtuous by following the reason and virtue of others. Instead, justice is found within the self, within the psychological process of understanding what is morally right and transforming this comprehension into a just act. There is moral force within humanity itself.

PART III: PRUDENCE

Through Odonis's discussion on the various aspects of the virtue of justice, we have arrived at several conclusions regarding Odonis's political anthropology. Man, as the free and voluntary agent of moral actions, occupies the very centre of the epistemic system of justice. A just man is not only someone who is well disposed towards others in his societal dealings, but also one who is at harmony with himself, whose will is ordered towards rectitude. Odonis details a cognitive chain of perception, action, and habituation in his analysis of justice - the universal moral precept of *ius* is perceived and transformed into a notion of what one should do - *iustum*, before the notion of the just thing is effectuated by the moral agent into a just act - *iustificatio*, whence the virtue of justice proceeds through habituation. In this process, the universal is translated into the particular, the general into the contingent. At the centre of the transformation, is the free moral agent, who alone can judge on the particular and make the contingent decision based on his knowledge of the universal commands of moral principles and law. Odonis displays a human-centrism in his moral, legal, and political thought: the external command of *ius* has to be received and understood by the moral agent before any moral act can be decided upon and carried out, and in this process, man is not the passive receiving end that slavishly carries out the command of natural, divine, or human law - instead, he participates in the construction of *iustum* and *iustitia*. In law and justice, therefore, the most important stage takes place within the moral agent, who interprets the precept of law and acts it out in a particular circumstance.

The free principle of morality, i.e., man endowed with a free will, underlines Odonis's conviction that man is superior to positive law in governance - law does not have humanity, whereas the possibility of virtue and goodness in man is boundless. For Odonis, the reality of this world's social and ethical affairs is infinitely complex, a system of chaos rather than a system of universality. Therefore, such reality requires a free man's sound judgement of the contingent and particular, based on the universals, but not dictated by the universals. However, what Odonis does not touch upon in Book V is how man becomes capable to translate the universal into the particular. There is, conspicuously, a missing link in this miraculous transformation of an external command into a moral act, an overlooked mechanism with which the free will executes the general and universal principle into an act of justice.

The underlining link is prudence.⁷¹⁰

Odonis's discussion on the virtue of prudence and adjunct issues again abundantly demonstrates our Franciscan commentator's intimate understanding of Aristotle's text as well as his intellectual originality. On the surface, Odonis carries on much of the Franciscan tradition of considering the connection between cardinal virtues, the subjective location of moral virtues in the will, and the superiority of the will over the intellect. But much of this continuity rests on the basic principles, while Odonis opens up new fronts which are not covered by his Franciscan predecessors, and which prove to be deeply influential to posterity such as Buridan. For one, Odonis brings in the Stoic reading of prudence and combines the Stoic tradition with the theses of Aristotle;⁷¹¹ he argues for a unitary nature of the virtue instead of a distinction between the personal, economic, and political, just as he argues for a unitary nature of the moral science; the *Doctor moralis* also posits for a commanding practical mind over the speculative mind, and consequently, the superiority of prudence over wisdom. Odonis does not raise any questions in Book X, where Aristotle famously discusses the merits of active life *versus* the contemplative life, but one can infer that Odonis would give the upper hand to the active life, not for reasons that one who is both actively and contemplatively happy is better off perfecting others with an active life, as many of his contemporaries would argue, but for that the perfection of active life is inherently superior to the perfection of the contemplative.

⁷¹⁰ Aristotle's original term *phronesis* has undergone different translations through the millennia. It is translated by Grosseteste as *prudentia* and is therefore referred to by the medieval scholastics as such. A consequence of this medieval translation is that most of the modern scholarship also discusses the medieval reading of Aristotle's *phronesis* in the linguistic framework of *prudence*. However, *phronesis* is most commonly translated by modern editions of Aristotle's *Ethics* as *practical wisdom*, which is obviously a cleaner term for the modern reader compared to the linguistic baggage that *prudence* carries. In this thesis, unless otherwise specified, the three terms, *phronesis*, *prudence*, and *practical wisdom* will be used equivocally, according to different scholarly contexts.

⁷¹¹ On the influence of the Stoic tradition on medieval prudential ethics, see May E. Ingham, 'Phronesis and Prudentia, Investigating the Stoic Legacy of Moral Wisdom and the Reception of Aristotle's Ethics', in L. Honnefelder, R. Wood, M. Dreyer, and M. A. Aris (eds.), *Albertus Magnus and the Beginning of the Medieval Reception of Aristotle in the Latin West: From Richardus Rufus to Franciscus de Mayronis*, Münster, 2005, p. 631-654.

I. FROM *PHRONESIS* TO *PRUDENTIA*: A CONCEPTUAL CHALLENGE

1. Aristotle and *Phronesis*

Let us start with Aristotle's text. Having introduced moral virtues through Books III to V, Aristotle proceeds to analyse the virtues of the intellect in Book VI, where the Philosopher comes up with the concept of *phronesis*. While Robert Grosseteste renders the Greek into *prudentia* in his Latin translation, the modern English cognate *prudence* is rarely used in Aristotelian scholarship, except for discussions of a medieval context. Instead, *phronesis* is commonly rendered as *practical wisdom*, or in French as *sagacité*. While the Greek etymology may not suggest an instant connection with wisdom (*sophia*), but rather with *phrontis/phronein* - to be thoughtful, minded, understanding, etc - the modern rendering makes clear Aristotle's own reading of the term and its close relationship with the virtue of wisdom. Wisdom and *phronesis* frequently appear in Aristotle's text almost in parallel symbiosis.

Aristotle's concept of *phronesis* and its place within moral philosophy is perhaps one of the most controversial topics raised in the *Nicomachean Ethics*. *Phronesis* is a unique virtue, located in a unique part of the soul, but it is inexorably linked with moral virtues. Aristotle starts by distinguishing the two parts of the soul: the part without reason, and the part with reason - the rational soul. Intellectual virtues are said to be located in the rational soul, which is then divided into the scientific and the calculative (or ratiocinative) parts, where the scientific soul contemplates the eternal and immutable, and the ratiocinative part contemplates the mutable, which in turn includes the practical and the productive:

When we had classified the virtues of the soul, we said that some are virtues of character, others of thought. We have discussed the virtues of character; so let us now speak as follows of those that remain, having first made some remarks about the soul.

We said earlier, then, that there are two parts of the soul, one with reason and the other without. We must now make a similar division of the part with reason. Let us assume that there are two sub-parts with reason, one with which one contemplate things whose first principle cannot be otherwise, and other those things whose first principle can be otherwise. ... Let us call one the scientific part, the other the calculative part, since

deliberating and calculating are the same, and no one deliberates what cannot be otherwise.
(*NE*, V, 1139a)

Within this taxonomy of the rational soul, Aristotle presents a collection of intellectual virtues: skill (*techne*), scientific knowledge, *phronesis*, wisdom, and intellect (*nous*).⁷¹² These virtues are in turn divided into those which are concerned with what *cannot* be otherwise, hence belonging to the scientific soul - scientific knowledge and wisdom, and those which are concerned with what *can* be otherwise, hence belonging to the ratiocinative soul - skill and *phronesis*; finally there is intellect (*nous*), which is ‘the state concerned with first principles’.⁷¹³ Skill and *phronesis*, while both belonging to the ratiocinative soul, are further distinguished from one another. Skill is ‘essentially a productive state involving reason’, and the end of skill is the product.⁷¹⁴ *Phronesis*, however, is different. It concerns not the production of things, but practical actions (*praxis*).

It is important to note the way that Aristotle differentiates *action* from *production*. A quick reference to the virtue of justice would shed light on why Aristotle separates production from action - justice ‘disposes people to do just actions, act justly, and wish for what is just’.⁷¹⁵ Production, on its own, has nothing to do with justice, or any moral virtue for that matter. The perfection of the productive state, i.e., the perfection of skill, does not necessarily lead to justice or injustice: a master sword-smith can use his perfect skill to help protect his city from invaders, or equally to aid a tyrant oppress his subjects; similarly, a well-trained doctor may use his skill to cure the sick, or equally to poison the healthy - one may be a perfectly skillful murderer. Clearly, perfect skill only perfects the product, and something else directs the production of swords and medicine to make it just or unjust, where such production becomes an action of moral worth. This virtue is *phronesis*, and it is concerned with man’s moral actions. Therefore, Aristotle defines practical action as that which is of moral worth: practical action (*praxis*) is the act of the practical state (as opposed to the productive state), and the perfection of the practical state is *phronesis*:

⁷¹² *NE*, VI, 1139b.

⁷¹³ *NE*, VI, 1141a, and 1143b: Intellect is also concerned with the last things, and in both directions, there is intellection, not a rational account, of both the first terms and the last. The intellect related to demonstrations is concerned with the first and unchanging terms, while in practical questions intellect is concerned with the last term, which can be otherwise, that is, with the minor premise.

⁷¹⁴ *NE*, VI, 1140a.

⁷¹⁵ *NE*, V, 1129a.

It remains therefore that it (*phronesis*, or practical wisdom) is a true and practical state involving reason, concerned with what is good and bad for a human being. For while production has an end distinct from itself, this could not be so with action, since the end here is acting well itself. (*NE*, VI, 1140b)

Acting well is the immediate end of *phronesis*, and Aristotle makes it clear that the ultimate end of *phronesis* is the overall human good - 'to live well as a whole'. He observes the phenomenon, and then describes those who have *phronesis*, the *phronimos*, as such:

We may grasp what practical wisdom is by considering the sort of people we describe as practically wise. It seems to be characteristic of the practically wise person to be able to deliberate nobly about what is good and beneficial to himself, not in particular respects, such as what conduces to health or strength, but about what conduces to living well as a whole.

An indication of this is the fact that we call people practically wise in some particular respect whenever they calculate well to promote some good end that lies outside the ambit of a skill; so, where living well as a whole is concerned, the person capable of deliberation will also be practically wise. (*NE*, VI, 1140a)

The end of *phronesis* is the complete human good - living well as a whole, or, although Aristotle does not make the explicit equivalence, *eudaimonia*. But it remains a question how the virtue of *phronesis* works to bring us there. Clearly, *phronesis* concerns actions of moral worth, as we have established, and from the passage above, it involves a process of deliberation.

Therefore, it is evident that, unlike other intellectual virtues such as scientific knowledge and wisdom, the essence of *phronesis* is, similar to the moral virtues, a cognition-action chain. C. D. C. Reeve argues that what can be otherwise is man's action - the end of deliberation is a decision to act, or not to act.⁷¹⁶ *Phronesis* involves a mental act of deliberation, and a moral act of external action. But instead of becoming a moral virtue, *phronesis* is described by Aristotle as the 'master science': rather than disposing a person to act courageously, temperately, or justly, *phronesis* disposes one to live well as a whole. While moral virtues regulate man's sense appetite, *phronesis* makes the deliberation on how to attain *eudaimonia* through individual practical actions (*praxis*):

⁷¹⁶ C. D. C. Reeve, *Practices of Reason*, Oxford, 1992, p. 83.

Practical wisdom, on the other hand, is concerned with human affairs, namely, with what we can deliberate about. For deliberating well, we say, is the characteristic activity of the practically wise person above all; but no one deliberates about what cannot be otherwise, or about what has no goal that consists in a good achievable in action. The person unqualifiedly good at deliberation is the one who tends to aim, in accordance with his calculation, at the best of the goods for a human being that are achievable in action. (*NE*, VI, 1141b)

The process of this deliberation - how one decides what the best course towards human good is - has all the characteristics of Aristotelian practical syllogism. It is a combination of the knowledge of the universals and the understanding of the particular, but the understanding of the particular is far more important. In the passage that follows the one cited above, Aristotle details how such deliberation works:

Nor is practical wisdom concerned only with universals. An understanding of particulars is also required, since it is practical, and action is concerned with particulars. This is why some without knowledge - especially those with experience - are more effective in action than those with it. ... And since practical wisdom is practical, one needs both kinds of knowledge, but especially the particular kind. Here too, however, there must be some master science. (*NE*, VI, 1141b)

Reeve interprets Aristotle's duplex scheme as one that is composed of the scientific knowledge of moral principles, and a 'practical perception of the particulars', which is embodied in the concept of *nous*.⁷¹⁷ Although this perception of particulars cannot be demonstrated scientifically, it is nonetheless far more important in the formation of *phronesis* than the knowledge of ethical universals - it brings the understanding of the universal to bear into the particular circumstances.⁷¹⁸ Therefore, while moral universals are relatively simple to comprehend - Aristotle talks of moral virtues in the preceding books with a general and universal language - such knowledge of universals are not necessarily translated into virtuous and good actions. A thorough understanding the principles of distributive justice or reciprocity does not automatically make one the best judge of economic disputes. What is far more important in attaining human goodness is the understanding of the particulars in each individual situation.

⁷¹⁷ *Ibid*, p. 75-79.

⁷¹⁸ *Ibid*, p. 72-3.

This conclusion seems to defeat what Aristotle has been teaching in the preceding books: for all the talks of ethical principles and the moral science, one ultimately has to make his own decisions based on the practical situation. Even Aristotle himself admits that one without knowledge but with experience is often more effective at achieving human good. This problem is certainly reflected in medieval voluntarist thinking, especially that of Duns Scotus, that the virtue of prudence can be had without the presence of other moral virtues. *Phronesis* itself is capable of deliberating the virtuous act and act upon it without the aid of moral virtues and other dispositions of the soul. However, Aristotle himself argues against this position:

Again, our characteristic activity is achieved in accordance with practical wisdom and virtue of character; for virtue makes the aim right, and practical wisdom the things towards it. (*NE*, VI, 1144a)

Instead of making moral virtues redundant, *phronesis* works together with moral virtues to achieve human good. Moral virtues aim for the end of justice, courage, temperance, etc., and *phronesis* keeps man on the path towards these ends through practical syllogism. As the Philosopher states, *phronesis* does not deliberate what cannot be otherwise, and such ends of moral virtues, or the final end, *eudaimonia*, are not to be deliberated and cannot be otherwise. Without moral virtues, *phronesis* would have no target to deliberate. Thus, Aristotle says: ‘Manifestly, then, one cannot be practically wise without being good.’ (*NE*, VI, 1144b) However, it is precisely on this point that Aristotle posits what would later become the *quaestio vexata* of moral philosophy: *phronesis* and moral virtues are necessarily connected.

In the final chapter of Book VI, Aristotle makes the distinction between natural virtue and real virtue, and repeats the central tenet of the entire *Nicomachean Ethics*: man are endowed with natural capacities to become virtuous, and such capacities are natural virtue, but these capacities need to be developed into real virtues. Central to transforming one’s natural capacities into real virtue is, for Aristotle, the guidance of the intellect, and more precisely, *phronesis*:

For both children and animals have the natural states, but without intellect they are obviously harmful. This, at least, does seem an observed fact, that just as a strongly built person, if he is deprived of sight, is apt to stumble heavily when he moves around, because he cannot see, so too with virtue. But if they agent acquires intellect, then his action is quite different: his state, while similar to what it was, will then be real virtue.

So, as there are two states, cleverness and practical wisdom, in the part of the soul related to belief, so there are two in the part related to character - natural virtue and real virtue; and of these real virtue does not develop without practical wisdom. (*NE*, VI, 1144b)

Thus enters Aristotle into a causal circularity. Natural virtues cannot develop into real moral virtues without the help of *phronesis*, but *phronesis* cannot come to be without man's already being good. While *phronesis* is pivotal to the acquisition of moral virtues, it cannot simply be instructed as a universal or demonstrated scientifically, but rather, it needs to be acquired through experience.⁷¹⁹ However, without the guidance of moral virtue, it would seem that one can hardly become a *phronimos* through experience and actions alone. Just like the distinction between natural virtue and real virtue, Aristotle differentiates the state of cleverness and *phronesis*:

There is a capacity that people call cleverness. This is such as to be able to do the actions that tend towards the aim we have set before ourselves, and to achieve it. ...

Practical wisdom is not the same as this capacity, although it does involve it. And, as we have said and as is clear, virtue is involved in this eye of the soul's reaching its developed state. (*NE*, VI, 1144a)

There is clearly a missing link in the process of transforming one's natural cleverness into real *phronesis* in the way that *phronesis* transforms man's natural virtue into real virtue. Aristotle simply states that the development would happen through experience, but fails to detail how experience augments one's cleverness into *phronesis*. Reeve argues that the development of cleverness into *phronesis* is effectuated through *nous*, where *nous* takes the place of moral virtue in making the end right.⁷²⁰ This explanation does not stand up to a more rigorous examination: as both *phronesis* and *nous* are virtues of the intellect, it seems that there is no point in acquiring any moral virtue at all, because with the perfection of the intellect, one may simply be perfectly virtuous. The medieval scholastics offer different solutions: Aquinas, for example, proposes the concept of *synderesis* - the natural intellection of what is right, while the voluntarists argue for the capacity of the will to will what is right without moral virtue. Both arguments will be covered later.

⁷¹⁹ *NE*, VI, 1142a: The reason is that practical wisdom is concerned also with particular facts, and particulars come to be known through experience; and a young person is not experienced, since experience takes a long time to produce.

⁷²⁰ Reeve, *Practices of Reason*, p. 86.

However, what is unmistakable is Aristotle's thesis of the connection between *phronesis* and moral virtues - they are not only symbiotic, but also integral to each other:

This is why some people say that all the virtues are forms of practical wisdom, and why Socrates was partly right and partly wrong in his inquiry. He was wrong to think that all the virtues are forms of practical wisdom, but correct in saying that they *involve* practical wisdom. There is evidence for this in the fact that whenever people now define virtue, they all say what state it is and what its objects are, and then add that it is a state in accordance with right reason. *Right reason is that which is in accordance with practical wisdom*; everyone, then, seems in some way to divine that the state like this, in accordance with practical wisdom, is virtue.

But we need to go a little further. Virtue is not merely the state *in accordance with* right reason, but that which *involves* it. And practical wisdom is right reason about such matters. Socrates, then, thought that the virtues were forms of reason (since he believed all to be forms of knowledge), while we think that they involve reason.

It is clear that we have said, then, that we cannot be really good without practical wisdom, or practically wise without virtue of character. (*NE*, VI, 1144b)

Aristotle's distinction between virtues *in accordance with* reason and *involving* reason is nebulous. It seems that virtue is both external to the rational soul, thus acting *in accordance with* the dictate of reason, and internal to the rational soul, thus acting *involving* reason. The role of *phronesis* here is not only giving a command to the sense appetite on the part of the rational soul, but also actively participating in the process of virtuous acts. It would logically lead to the conclusion that all virtues are inseparable from *phronesis*, and hence by extension inseparable from each other. Aristotle himself states that 'he will possess all of them (moral virtues) as soon as he acquires the one, practical wisdom.' (*NE*, 1145a) On a theoretical level, this makes sense - any moral virtue is said to be good without qualification, and thus represents a harmonious union between reason of the intellect, which is *phronesis*, and the rectitude of one's sense appetite.⁷²¹ Daniel Russell argues that moral virtue in the strict sense (real virtue) must be paired with *phronesis* in order that it may be good without

⁷²¹ For more, see Daniel Russell, 'Phronesis and the Virtues', in R. Polansky (ed.), *The Cambridge Companion to Aristotle's Nicomachean Ethics*, Cambridge, 2014, p. 210.

qualification - in other words, *phronesis* necessarily directs moral virtue towards what is good.⁷²² However, such explanation is far from satisfactory, and the essential connection between moral virtues and *phronesis* also seems to defeat Aristotle's thesis on the habituation of moral virtues. This thesis of connection of virtues would later come to provoke much greater controversy among the medieval scholastics, where Aristotle's assumption that only the social and political elite can become truly virtuous is replaced with a Christian concept of moral and spiritual equality. Not all can have the opportunity to exercise his magnanimity, but surely this does not prevent one from being truly virtuous. The *topos* of virtues' connection runs through late medieval moral philosophy, and finds its way also into Odonis's own text.

Aside from the nebulous nature of the connection between *phronesis* and moral virtues, Aristotle also raises the question of *phronesis*'s relationship with wisdom. While Aristotle considers *phronesis* and the political aspect of *phronesis* as the master science, aimed towards living well as a whole, and hence the ultimate end of *eudaimonia*, he also states in Book X that the happiness of the contemplative life is superior to the happiness of the active life.⁷²³ The former speaks true of the essence of Aristotle's own moral philosophy: a life of virtue consists in action, and it is only through action that man perfects his natural capacities, fulfilling his nature as a political animal, for whom happiness can only be achieved through human community. The latter argument, however, seems to follow a more ancient tradition set out by Socrates and Plato, where the highest activity of life is contemplation, the highest form one that is most godlike and least human. G. H. Gadamer considers the dichotomy as a classic case of opposition between the human and the inhuman:

It can be determined that practical wisdom and not only theoretical reason is the supreme virtue of an intellectual being. So the question remains how do both these perfections and types of knowledge relate to one another. We therefore return again to the ancient problem of the primacy of *theoria* over human *praxis*.⁷²⁴

⁷²² *Ibid*, p. 210.

⁷²³ *NE*, X, 1177b: The activity of intellect, on the other hand, in so far as it involves contemplation, seems superior in its seriousness, to aim at no end beyond itself, and to have its own proper pleasure, which augments the activity; it seems also to possess self-sufficiency, time for leisure, and freedom from fatigue, as far as these are humanly possible. And clearly this activity also involves whatever else is attributed to the blessed person. Thus it will be complete happiness for a human being - if it consumes a complete span of life, because there is nothing incomplete in matters of happiness.

⁷²⁴ G. H. Gadamer, *Nikomachische Ethik VI*, Frankfurt-am-Main, 1998, p. 16; see also, Celano, *Aristotle's Ethics*, p. 23-4; and Miller, *Reception of Ethics*, p. 125.

In Book VI, Aristotle observes that wisdom is not concerned with human happiness, but is rather itself happiness. However, again Aristotle seems to contradict himself. Since it is manifestly true that one can have wisdom without having *phronesis*, then what is the point of working through the trials and tribulations of life to become a *phronimos* if one can be simply happy through learning and contemplation?

From what we have said, then, it is clear that wisdom is scientific knowledge, combined with intellect, of what is by nature most honourable. This is why people say that Anaxagoras, Thales, and people like them are wise, but not practically wise, when they are seen to be ignorant of what is in their own interest; and that their knowledge is extraordinary, wonderful, abstruse, godlike, but useless, because it is not human good they are looking for. (*NE*, VI, 1141b)

On the other hand:

Practical wisdom is concerned with acts that are just, noble, and good for a human being, and these are characteristic of the good person, and we are no more able to do them through knowing about them, since virtues are states of character. (*NE*, VI, 1143b)

Thus, it follows that being wise has nothing to do with being a good person, and therefore not related to happiness, unless, that is, there is another kind of happiness - the conclusion would seem to be that the happiness of the active person perfected through *phronesis* is completely unrelated to the happiness of the wise person perfected through wisdom. This is the understanding of Reeve, who posits a thesis of two kinds of *eudaimonia*: having concluded that wisdom is itself *eudaimonia*, and that *phronesis* both prescribes what leads to *eudaimonia* and is itself *eudaimonia*, Reeve reconciles the seemingly contradictory propositions:

But how can *phronesis* be related to *eudaimonia* in both these ways? There is only one possible answer. There must be two kinds of *eudaimonia*, one being the activation of *phronesis* and the other the activation of wisdom.⁷²⁵

Aristotle makes it clear that *phronesis*, despite its being the master science, does not command wisdom, for *phronesis* is an inferior virtue of presumably the inferior faculty of the ratiocinative mind.

⁷²⁵ Reeve, *Practices of Reason*, p. 96.

In an analogy which causes more confusion than it clarifies, Aristotle compares *phronesis* and *wisdom* as medicine and health - medicine is not health and does not control health, but merely make actions to facilitate the being of health:

Moreover, practical wisdom is not in control of wisdom or the superior part of the soul, just as medicine is not in control of health. For it does not make use of health, but provides for its coming into being; it therefore issues prescriptions *for the sake of* health, but not *to* it. Besides, saying this would be like saying that political science governs the gods, since it issues prescriptions about everything in the city. (*NE*, VI, 1145a)

However, despite Aristotle's claims, commentators both medieval and modern have come to see the centrality of *phronesis* in the entire structure of the *Nicomachean Ethics*. Odonis, for one, considers *prudentia* to be superior to wisdom and therefore commands it. R. A. Gauthier, on the other hand, describes *phronesis* as the *vertu suprême*, while Anthony Celano presents *phronesis* as the primary concept developed in the book of *Ethics*:

In the course of the study of the text I came to the conclusion that Aristotle's primary moral concept was not that of happiness (*eudaimonia*), but one of practical wisdom (*phronesis*). ... I believe that while Aristotle certainly attempted to explain the meaning of human goodness, he had in fact constructed a text concerned primarily with the proper way to attain it, and that practical wisdom governs all activities of the soul that lead to moral and intellectual excellence. Despite Aristotle's clear assertion that the supreme virtue of the human soul is intellectual wisdom, the primary human, and hence moral, virtue is practical wisdom.⁷²⁶

To conclude our preliminary survey on Aristotle's text, the concept of *phronesis* has never ceased fascinating readers of the *Nicomachean Ethics*. It is unique as a virtue of the intellect that directs man's practical actions, but what is more complex is its relationship with moral virtues and wisdom. As the master virtue, *phronesis* is an indispensable prerequisite for any moral virtue and any human good, but at times Aristotle also gives readers the impression that *phronesis* is an accessory to the grander scheme of moral virtues and life of contemplation. While generations of Aristotelian scholars pore over the Philosopher's text for wisdom and inspiration, and volumes of studies continue being produced on this topic, let us now turn our attention back to the text of Odonis and the intellectual landscape of the later Middle Ages.

⁷²⁶ Celano, *Aristotle's Ethics*, p. vii.

2. From *Phronesis* to *Prudentia* - Stoics and Medieval Commentators

In her essay on influence of Stoicism on medieval moral philosophy, Mary E. Ingham identifies what she terms a ‘linguistic problem’: many of the terms found in Grossteste’s Latin translation of Aristotle’s *Ethics* already exist within the common philosophical language of the Roman authors and the Patristics.⁷²⁷ For our context, the Roman Stoics do not always equate *phronesis* with *prudentia* - *phronesis* is understood to be moral wisdom, or the perfection of moral judgement, but also sometimes equated to *sapientia* in general.⁷²⁸ The Stoic concept of *prudence* and moral wisdom, on the other hand, is radically different from that of Aristotle. Aristotle’s notion of *phronesis* directs men to find the virtuous mean in any particular situation, and that human laws are inherently cultural and relative. The Stoics, on the other hand, think that there exists a set of universal moral principles that are imbedded in the universe, and it is the task of the wiseman to know such principles and to apply them in their daily lives.

In *De officiis*, Cicero outlines the first of the four cardinal virtues as ‘the full perception and intelligent development of the true.’ (*De officiis*, I. 5), and places both wisdom and prudence within this category. Where Aristotle considers wisdom as the knowledge of the universal and the immutable, while *phronesis* as the moral truth of the particular and contingent, Cicero does not subscribe to such distinctions. Instead, he understands *phronesis* narrowly, as ‘the practical knowledge of things to be sought for and of things to be avoided’ (*De officiis*, I. 43). For Cicero, moral knowledge or moral perfection is not an application of the universal to the particular, the immutable to the contingent, but simply a wholesome knowledge of the cosmos, and such knowledge is wisdom (*sapientia*). *Prudentia* is conflated with *sapientia*, as both imply a wholistic understanding of the natural and human world.

Again, that wisdom (*sapientia*) which I have given the foremost place is the knowledge of things human and divine, which is concerned also with the bonds of union between gods and men and the relations of man to man. If wisdom is the most important of the virtues, as it certainly is, it necessarily follows that that duty which is connected with the social obligation is the most important duty. (*De officiis*, I. 43)

⁷²⁷ Ingham, ‘Phronesis and Prudentia’, p. 631-2.

⁷²⁸ *Ibid*, p. 632.

Clearly, such knowledge (*perspicientia*) is not confined to natural science alone, nor limited to the knowledge of human society and behaviour, but rather, of the entire human and inhuman spheres. It concerns the truth of what is ‘both naturally and morally right’ (*De officiis*, I. 5). The Ciceronian, or more broadly, Stoic, moral expert is one who is versed in the laws of the whole universe - laws that run through both the natural cosmos and the human world, because humanity is part and parcel of the cosmos.⁷²⁹ Mary Ingham argues that the Stoics do not differentiate between the absolute good and the good for us, neither do they consider moral decision-making as part of a course of the formation of virtue. Instead, the moral proposition rightly articulated has an immediate impact on human impulse, moving it from the logical immediately to ethical.⁷³⁰ Therefore, when Cicero speaks of *prudentia* as ‘the knowledge of the good, the bad, and the neutral’ (*De inventione rhetorica*, II. 160), things are not good or bad in an Aristotelian sense where it is said to be good or bad towards some human end, but rather good or bad according to the eternal and natural laws of the universe.

In an article on transition from Greek *phronesis* to Latin *prudentia*, Sophie Aubert-Baillet gives an account of the theoretical and intellectual dimension of Cicero’s concept of prudence.⁷³¹ Prudence as ‘knowledge’ is not meant to be a mere *cognisance*, but rather a *scientia* - a knowledge that is systematic and whole.⁷³² The term *prudentia* is for long associated with *providentia* - the two terms share evident etymological origins - but Cicero understands *prudentia* to also include *intelligentia* and *memoria* as its three parts. Together, they form a complete intellection of the past, present, and future. For Cicero, prudence contains far more than a simple practical wisdom as proposed by Aristotle - instead, it encompasses the perfect knowledge of the laws of the universe and their human implications. Aubert-Baillet considers that such definition of *prudentia* effectively taps into three traditions: the Aristotelian idea of the practical in man’s societal life, the Stoic tradition of complete moral knowledge, and the Platonic tradition of contemplation:

Cicéron, quant à lui, semble procéder à une resémantisation du terme *prudentia* en s’appuyant sur la décomposition des éléments du substantif *providentia* qui lui a donné naissance. Si le préfixe *pro*-renvoie à la fois à la *φρόνησις* aristotélicienne, dans le champ politique, et à la *πρό-νοια* (ou Pro-vidence) stoïcienne sur le plan cosmologique, la racine de la vision (*uidere*)

⁷²⁹ *Ibid*, p. 635.

⁷³⁰ *Ibid*, p. 635-6.

⁷³¹ Sophie Aubert-Baillet, ‘De la *φρονησις* à la *prudentia*’, *Mnemosyne*, 68, 2015, p. 73-5

⁷³² Cicero, *De inventione rhetorica*, II. 160: *Prudentia est rerum bonarum et malarum neutra- rumque scientia. partes eius: memoria, intellegentia, providentia. memoria est, per quam animus repetit illa, quae fuerunt; intellegentia, per quam ea perspicit, quae sunt; providentia, per quam futurum aliquid videtur ante quam factum est.*

oriente la prudence cicéronienne, dans le domaine éthique, vers une sagesse contemplative d'inspiration platonicienne.⁷³³

Although Cicero's triad of memory, intelligence, and foresight is a unique proposition among the ancient Romans, this scheme of prudence certainly exerts the most influence on the medieval commentators. As the reference text of moral studies at the arts faculty of Paris, it is impossible for scholastics to ignore Cicero's ideas. Aquinas examines Cicero's triad reading of prudence and combines it with the six-fold division of Macrobius.⁷³⁴ Odonis also questions Aristotle's division against that of Cicero, and assimilates the Ciceronian scheme into that of Aristotle.

Arguably, Cicero does not make the distinction between *theoria* and *praxis* in the way that Aristotle does - simply, there is no disjuncture between the eternal and immutable truth of the cosmos and man and the contingent deliberative actions.⁷³⁵ The perfect moral wisdom of prudence means that the knowledge of good and evil should make the course of action instantly obvious and necessary - no act of deliberation is needed because the law of nature necessarily dictates the moral goodness of actions. Therefore, Aristotle's moral theory of *phronesis* certainly presents a challenge to the Stoic thesis of an instant cognisance of the right and wrong by the moral sage, and in consequence, a challenge to the medieval commentators who attempt to reconcile their pre-existent knowledge of Cicero's moral philosophy with the newly translated text of Aristotle. Ingham observes that: 'As this model developed by means of the twelfth-century thinkers, prudence was confused, on the one hand, with the manifestation of natural law in the divine will and, on the other hand, with a type of "moral discernment" of good and evil within a given situation.'⁷³⁶

It is in the context that we should understand Cicero's argument that a life of public service is superior to a life of the pursuit of speculative knowledge. For Cicero, there is no dichotomy between a life in pursuit of *praxis* and a life in pursuit of *theoria*, for the two are in fact inseparable. The Stoic sage with the perfect knowledge of the world would have a moral obligation to serve the public, but public service does not mean abandoning studying and pursuit of knowledge. If anything, a life of public service requires one to pursue moral and scientific truth, while the pursuit of truth helps make better public servants, for both the pursuer himself, and for his students:

⁷³³ Aubert-Baillet, 'De la φρονησις à la *prudentia*', p. 76.

⁷³⁴ *ST*, II2ae, q. 48, art. 1.

⁷³⁵ Ingham, 'Phronesis and Prudentia', p. 653.

⁷³⁶ *Ibid*, p. 653.

All these professions are occupied with the search after truth; but to be drawn by study away from active life is contrary to moral duty. For the whole glory of virtue is in activity; activity, however, may often be interrupted, and many opportunities for returning to study are opened. Besides, the working of the mind, which is never at rest, can keep us busy in the pursuit of knowledge even without conscious effort on our part. More over, all our thought and mental activity will be devoted either to a good and happy life, or to the pursuit of science and learning. (*De officiis*, I. 6)

For Cicero, a life of activity in service of the commonweal is the natural vocation of any wiseman, and a duty prescribed by prudence and justice. Marcia Colish observes this contrast between the Stoics and Aristotle as one which regards the sphere of civic life differently: for Aristotle, civic life is an arena where men make and perfect their virtues, while for the Stoics, the sage has already realised and perfected his virtues, and it is incumbent upon him to serve his duty with public activity.⁷³⁷ In Stoicism, therefore, the question is not so much whether a life of activity or a life of contemplation is a better path towards happiness, but rather what the best path of life is for the wise and virtuous. The answer to that question is, resolutely, a life of activity.

Here we have perhaps the intellectual origin of many later medieval commentators who consider a life of activity is superior to a life of contemplation, despite the Aristotelian assertion that contemplative perfection brings greater happiness, and the Augustinian tradition which puts the contemplation of God as the highest form of life for a Christian. Although Odonis does not answer this question explicitly, he nonetheless places the virtue of prudence over and above that of wisdom, and considers *praxis* superior to *theoria* in the scheme of man's moral life. However, such position is far from common. As we shall see, in the thirteenth and fourteenth centuries, it is far more common to understand prudence as a virtue subordinate to wisdom, and a life of activity inferior to a life of contemplation of God's divinity.

Albertus Magnus considers Cicero's understanding of prudence to include *memoria*, *intelligentia*, *providentia* as too broad. Prudence is not an understanding of life and the world as a whole, of the past, present and the future. Instead, Albertus opts for a much narrower reading of Aristotle's concept of *phronesis* - it is the virtue that governs one's civic and political life, and is concerned with moral

⁷³⁷ Marcia Colish, *The Stoic Tradition from the Antiquity to the Early Middle Ages, I: Stoicism in Classical Latin Literature*, Leiden, 1985, p. 39-40.

virtues only.⁷³⁸ Albertus follows Aristotle's division of the rational soul into the practical and the speculative, and considers these two parts of the intellect ordered respectively towards civic and contemplative happiness.⁷³⁹ Defining prudence as 'an operation or an active habit that concerns human choice, which allows for the ability to do, or to refrain from, an act', Albertus tends much closer to Aristotle's concept than to that of Cicero.⁷⁴⁰ The emphases of this definition - *an active habit*, and *concerning human choice*, are to be inherited by both Aquinas and Odonis, with varying interpretations. However, there are strong traits of Stoic influence on the prudential thinking of Albertus. Ingham observes:

Albert correctly understands that Aristotle does not view practical wisdom in the manner of the Stoics. He knows that at issue here is the nature of that intellectual virtue proper to the practical matters and directive of the human life of virtue. But he is still struggling to integrate Aristotle's discussion of a practical science that deals with contingent, human affairs into the broader Stoic framework involving eternal law and the divine *logos* provided by Cicero and developed through Abelard, William (of Auxerre), and Philip (the Chancellor).⁷⁴¹

For Albertus, while prudence concerns the contingent, it is not a virtue that is limited to only the contingent. For any deliberation of the contingent to take place, a knowledge of the universal is required. Like a Stoic sage, a prudent man must have an intellection of the moral universals before applying such knowledge to the particular cases, drawing particular conclusions from the first principles. However, unlike the Stoics, Albertus does not think this translation of the universals into the particular happens automatically upon the acquisition of moral universals, but rather, it is a habit to be acquired through experience.⁷⁴²

While Thomas Aquinas demonstrates himself to be much more of an Aristotelian than a Stoic in his understanding of prudence as an *active* virtue, he is nevertheless not quite able to shake off the Stoic

⁷³⁸ *AMSE*, VI, lect. VII, num. 515, p. 440: Quod aliquis potest esse prudens dupliciter: aut secundum quid et imperfecte, et sic potest esse aliquis qui seipsum tantum scit regere et non alia, et sic non est dispensativus nec politicus; aut simpliciter et perfecte, et sic potest se regere ex habitu in omnibus quae pertinent ad humanam vitam civiles, sive sint singulares operationes sive sint ad domus regimen pertinentia vel etiam ad regimen civitatis. See Celano, *Aristotle's Ethics*, p. 144-8.

⁷³⁹ Celano, *Aristotle's Ethics*, p. 144.

⁷⁴⁰ *Ibid*, p. 166.

⁷⁴¹ Ingham, 'Phronesis and Prudentia', p. 651.

⁷⁴² Celano, *Aristotle's Ethics*, p. 167.

tradition where *prudentia* is seen as systematic knowledge. Aristotle's own writing certainly does not make this easier for Aquinas - the fact that *phronesis* is a virtue of the intellect and numbered with the likes of wisdom and science naturally directs any reader to associate it with knowledge and universal reason. In his question on whether prudence is located in the intellect or the will, Aquinas follows Aristotle but proposes an argument of Ciceronian inspiration:

Wherefore it is manifest that prudence belongs directly to the cognitive, and not to the sensitive faculty, because by the latter we know nothing but what is within reach and offers itself to the senses: while to obtain knowledge of the future from knowledge of the present or past, which pertains to prudence, belongs properly to reason, because this is done by a process of comparison. It follows therefore that prudence, properly speaking, is in the reason.⁷⁴³

However, the danger of citing the Ciceronian scheme of knowing the past, present, and future completely and perfectly risks defeating the Aristotelian position that *phronesis* concerns the particular and contingent, and reshaping prudence into a virtue of universal cognition. This is clearly not the intention of Aquinas, for in the following questions, Aquinas explicitly rejects any proposition that equates prudence with science or speculative reason. Again, the Stoic definition of prudence is too broad, and fails to reflect the subtle Aristotelian distinction between the practical and the universal. He addresses the Stoic position that prudence is a quest for truth:

Ambrose, and Tully also take the word prudence in a broad sense for any human knowledge, whether speculative or practical. And yet it may also be replied that the act itself of the speculative reason, in so far as it is voluntary, is a matter of choice and counsel as to its exercise; and consequently comes under the direction of prudence. On the other hand, as regards its specification in relation to its object which is the "necessary true," it comes under neither counsel nor prudence.⁷⁴⁴

⁷⁴³ ST, II2ae, q. 47, art. 1: Unde manifestum est quod prudentia directe pertinet ad vim cognoscitivam. Non autem ad vim sensitivam, quia per eam cognoscuntur solum ea quae praesto sunt et sensibus offeruntur. Cognoscere autem futura ex praesentibus vel praeteritis, quod pertinet ad prudentiam, proprie rationis est, quia hoc per quandam collationem agitur. Unde relinquitur quod prudentia proprie sit in ratione.

⁷⁴⁴ ST, II2ae, q. 47, art. 2: Ad secundum dicendum quod Ambrosius et etiam Tullius nomen prudentiae largius sumunt pro qualibet cognitione humana tam speculativa quam practica. Quamvis dici possit quod ipse actus speculativae rationis, secundum quod est voluntarius, cadit sub electione et consilio quantum ad suum exercitium, et per consequens cadit sub ordinatione prudentiae. Sed quantum ad suam speciem, prout comparatur ad obiectum, quod est verum necessarium, non cadit sub consilio nec sub prudentia.

Similarly, Aquinas rejects a proposition of Augustine on the ground that Augustine's idea of *scientia* is too broad, as it includes both knowledge of the immutable universals and the practical contingent, which is clearly contrary to Aristotle's thesis.⁷⁴⁵ Instead, the Angelic Doctor grounds the remit of prudence within human affairs. *Prudentia* is still understood as *sapientia*, but it is the wisdom only in a qualified sense, namely, it is wisdom of things human. Aquinas writes:

Now in the genus of human acts the highest cause is the common end of all human life, and it is this end that prudence intends. For the Philosopher says that just as he who reasons well for the realization of a particular end, such as victory, is said to be prudent, not absolutely, but in a particular genus, namely warfare, so he that reasons well with regard to right conduct as a whole, is said to be prudent absolutely. Wherefore it is clear that prudence is wisdom about human affairs: but not wisdom absolutely, because it is not about the absolutely highest cause, for it is about human good, and this is not the best thing of all. And so it is stated significantly that "prudence is wisdom for man," but not wisdom absolutely.⁷⁴⁶

Aquinas finds it difficult to understand Aristotle's notion of *phronesis* without considering the Stoic sapiential tradition of considering prudence as a form of knowledge of the universal principles, and the notion of a universal and eternal moral principle is in fact what characterises Aquinas's own moral philosophy.

As we have seen, taken by itself, Aristotle's own reasoning of prudence is circular: one cannot be practically wise without the right appetite, and yet one cannot have the right appetite without being practically wise. A sapiential cognition of the universal can break this circularity, and this is exactly

⁷⁴⁵ *ST*, II2ae, q. 47, art. 4: Ad quartum sic proceditur. Videtur quod prudentia non sit virtus. Dicit enim Augustinus, in I de Lib. Arb., quod prudentia est appetendarum et vitandarum rerum scientia. Sed scientia contra virtutem dividitur; ut patet in praedicamentis. Ergo prudentia non est virtus.

... Ad primum ergo dicendum quod Augustinus ibi large accepit scientiam pro qualibet recta ratione.

⁷⁴⁶ *ST*, II2ae, q. 47, art. 2: In genere autem humanorum actuum causa altissima est finis communis totius vitae humanae. Et hunc finem intendit prudentia, dicit enim philosophus, in VI Ethic., quod sicut ille qui ratiocinatur bene ad aliquem finem particularem, puta ad victoriam, dicitur esse prudens non simpliciter, sed in hoc genere, scilicet in rebus bellicis; ita ille qui bene ratiocinatur ad totum bene vivere dicitur prudens simpliciter. Unde manifestum est quod prudentia est sapientia in rebus humanis, non autem sapientia simpliciter, quia non est circa causam altissimam simpliciter; est enim circa bonum humanum, homo autem non est optimum eorum quae sunt. Et ideo signanter dicitur quod prudentia est sapientia viro, non autem sapientia simpliciter.

what Aquinas does here.⁷⁴⁷ However, instead of following the Stoics in pinning down prudence as the knowledge of the universal, which Aquinas already denies, he makes prudence the *application* of such moral universals. To complete the cognitive chain, Aquinas resorts to the notion of *synderesis* - ‘an infallible natural moral awareness that derives its correctness from insight into self-evident principles’, as described by Tobias Hoffmann.⁷⁴⁸ *Synderesis* is what is naturally known to all - the universal moral principles, and prudence is the link between *synderesis* and practical acts. Aquinas defines it thus:

Now, just as, in the speculative reason, there are certain things naturally known, about which is "understanding," and certain things of which we obtain knowledge through them, viz. conclusions, about which is "science," so in the practical reason, certain things pre-exist, as naturally known principles, and such are the ends of the moral virtues, since the end is in practical matters what principles are in speculative matters, as stated above; while certain things are in the practical reason by way of conclusions, and such are the means which we gather from the ends themselves. About these is prudence, which applies universal principles to the particular conclusions of practical matters. Consequently it does not belong to prudence to appoint the end to moral virtues, but only to regulate the means.⁷⁴⁹

The scheme bears clear Stoic inspirations but also illuminates a key part in Aristotle’s teaching of *phronesis*. As we have seen in the section on natural law, there exists for Aquinas universal moral principles independent of human beings, but any notion of natural law involves man’s intellectual participation in such moral principles, which gives man his *synderesis*. Celano regards the notion of *synderesis* as Aquinas’s own addition to make sense of Aristotle’s moral theory, stating that for

⁷⁴⁷ See Tobias Hoffmann, ‘Prudence and Practical Principles’, p. 170-181

⁷⁴⁸ *Ibid*, p. 174.

⁷⁴⁹ *ST*, II2ae, q. 47, art. 6: Sicut autem in ratione speculativa sunt quaedam ut naturaliter nota, quorum est intellectus; et quaedam quae per illa innotescunt, scilicet conclusiones, quarum est scientia, ita in ratione practica praeexistunt quaedam ut principia naturaliter nota, et huiusmodi sunt fines virtutum moralium, quia finis se habet in operabilibus sicut principium in speculativis, ut supra habitum est; et quaedam sunt in ratione practica ut conclusiones, et huiusmodi sunt ea quae sunt ad finem, in quae pervenimus ex ipsis finibus. Et horum est prudentia, applicans universalialia principia ad particulares conclusiones operabilium. Et ideo ad prudentiam non pertinet praestituere finem virtutibus moralibus, sed solum disponere de his quae sunt ad finem.

Aquinas, *synderesis* presents 'an improvement upon Aristotle's doctrine of practical wisdom by providing a secure, eternal, and immutable articulation of absolute moral principles.'⁷⁵⁰

Aquinas's notion of prudence is thus clearly distinct from *synderesis*. Prudence is *not* a natural, innate understanding of moral principles, but rather an application of it. Such application of the first moral principles to particular conclusions happens in three stages, as Aquinas describes: counsel, judgement, and command, of which command is its chief act:

Prudence is "right reason applied to action," as stated above. Hence that which is the chief act of reason in regard to action must needs be the chief act of prudence. Now there are three such acts. The first is "to take counsel," which belongs to discovery, for counsel is an act of inquiry, as stated above. The second act is "to judge of what one has discovered," and this is an act of the speculative reason. But the practical reason, which is directed to action, goes further, and its third act is "to command," which act consists in applying to action the things counselled and judged. And since this act approaches nearer to the end of the practical reason, it follows that it is the chief act of the practical reason, and consequently of prudence.⁷⁵¹

Both elements of counsel and judgement are obviously following Aristotle's lines of reasoning, where the Philosopher states that *phronesis* is related to taking counsel, making judgement, and discernment. Aquinas emphasises the active nature of prudence by placing command as the principal act. The cognitive process of prudential reasoning must result in an action (or the decision not to act), and this is what differentiates prudence from other virtues of the intellect: prudence is concerned with the contingent, and always results in an action.

Accordingly we must say that since prudence is in the reason, as stated above, it is differentiated from the other intellectual virtues by a material difference of objects.

⁷⁵⁰ Anthony Celano, 'The Relation of Prudence and Synderesis to Happiness in the Medieval Commentaries on Aristotle's Ethics', in J. Miller (ed.), *The Reception of Aristotle's Ethics*, Cambridge, 2012, p. 150

⁷⁵¹ *ST*, II2ae, q. 47, art. 8: Respondeo dicendum quod prudentia est recta ratio agibilium, ut supra dictum est. Unde oportet quod ille sit praecipuus actus prudentiae qui est praecipuus actus rationis agibilium. Cuius quidem sunt tres actus. Quorum primus est consiliari, quod pertinet ad inventionem, nam consiliari est quaerere, ut supra habitum est. Secundus actus est iudicare de inventis, et hic sistit speculativa ratio. Sed practica ratio, quae ordinatur ad opus, procedit ulterius et est tertius actus eius praecipere, qui quidem actus consistit in applicatione consiliatorum et iudicatorum ad operandum. Et quia iste actus est propinquior fini rationis practicae, inde est quod iste est principalis actus rationis practicae, et per consequens prudentiae.

"Wisdom," "knowledge" and "understanding" are about necessary things, whereas "art" and "prudence" are about contingent things, art being concerned with "things made," that is, with things produced in external matter, such as a house, a knife and so forth; and prudence, being concerned with "things done," that is, with things that have their being in the doer himself, as stated above.⁷⁵²

It is ample testimony of Aquinas's intellectualist bend as he places the virtue of prudence firmly in the intellect, and considers it the master virtue that connects both the intellect and the sensitive appetites where moral virtues are found, that applies the universal to the particular, and that results in a command to act. In Aquinas's idea of the hierarchy of ends, the command of prudence is clearly closest to the end of practical reasoning, and to human life in general, and therefore it is chief among moral virtues. It is worth noting that Aquinas always considers prudence as the 'wisdom of human affairs'. The Angelic Doctor draws clear distinctions between man's civic life and man's spiritual life. One's happiness in human affairs certainly does not include one's happiness in his spiritual life. Prudence is wisdom of this world, but not wisdom of the life with God. After all, Aquinas's notion of prudence remains civic, and does not extend beyond the remit of one's practical social and political existence. In his conclusion of an analysis on the Albertus and Aquinas's writings, Celano observes that:

Aristotle's faith in the ability of human beings to identify the best practitioners of the ethical life yields to the acceptance of an eternal and universal foundation for all moral decisions. Although Aristotle's authority as the 'Philosopher' of reason remained unchallenged, the Christian commentators of the thirteenth century sought to align their awareness of human perfection with their unwavering belief in the possibility of eternal perfection.⁷⁵³

However, the idea of an innate cognition of the universal does not resonate with all the late medieval intellectual currents. Aquinas's great critique, Scotus, on the other hand, considers that what lies at the foundation of a morally good act is not the innate understanding of moral universals, found in the intellect, but rather, an *affectio iustitiae* found in the will. Therefore, the first moral act is not

⁷⁵² *ST*, II2ae, q. 47, art. 5: Sic igitur dicendum est quod cum prudentia sit in ratione, ut dictum est, diversificatur quidem ab aliis virtutibus intellectualibus secundum materialem diversitatem obiectorum. Nam sapientia, scientia et intellectus sunt circa necessaria; ars autem et prudentia circa contingentia; sed ars circa factibilia, quae scilicet in exteriori materia constituuntur, sicut domus, cultellus et huiusmodi; prudentia autem est circa agibilia, quae scilicet in ipso operante consistunt, ut supra habitum est.

⁷⁵³ Celano, 'Relation of Prudence and Synderesis', p. 153-4.

prudence's applying the universal principle to the practical act, but instead, an act inclined by the will's affection. Consequently, prudence has a less prominent place in Scotus' virtue ethics: moral virtues are located in the will, while prudence is generated in the intellect.⁷⁵⁴ Furthermore, the generation of moral virtues and prudence are separate.⁷⁵⁵ (This obviously ties into the wider debate on the relationship between prudence and moral virtues, which will be covered in greater details below.) What makes a man virtuous is not what he does *necessarily*, which is the dictate of the intellect, but rather what he does *freely*, which is moved by the will through its affections. Man performs a virtuous act not because it conforms to the moral truth in the particular case, as is suggested by Aquinas, but because the will derives pleasure from such acts.⁷⁵⁶

In Scotus's scheme of ethical voluntarism, prudence as an intellectual virtue occupies a much less significant place than the moral virtues of the will. For Scotus, the act of prudence essentially consists of two: to take counsel, and to make practical judgement, or the reason's recommendation. Out of the two, taking counsel is by far the principal part of prudence:

About the gifts I say that in that passage (*Isaiah* 11.2-3) the four cardinal virtues are numbered: Prudence through 'the spirit of counsel', for prudence is properly a habit of counsel, for it is properly a habit of right practical syllogising, and thus to syllogise is to counsel. Hence the habit whereby one is good at counseling is the habit of prudence.⁷⁵⁷

This definition of prudence admits little influence of Aristotle. Understanding prudence as counsel is common to both Aristotle and the Stoics, but considering it as a pure application of syllogism, albeit in human affairs, is a narrow construction of the virtue. Prudence does not command, because simply, the intellect cannot move the will. Prudence is merely knowledge, and knowledge itself cannot command the free will. In response to Aristotle's own statement that prudence is nobler than moral

⁷⁵⁴ See, Douglas C. Langston, *Conscience and Other Virtues: From Bonaventure to MacIntyre*, University Park, 2001, p. 56-61.

⁷⁵⁵ *Ord*, III, dist. 36, num. 72: Quantum ad istum articulum potest dici quod simpliciter rectum dictamen potest stare in intellectu absque recta electione illius dictati in voluntate; et ita cum unicus actus rectus dictandi generet prudentiam, generabitur ibi prudentia absque omni habitu virtutis moralis in voluntate.

⁷⁵⁶ Langston, *Conscience and Other Virtues*, p. 56.

⁷⁵⁷ *Ord*, III, dist. 34, num. 70: De donis dico quod ibi enumerantur quattuor virtutes cardinales. Prudentia per illud *Spiritus consilii*: prudentia enim est proprie habitus consiliativus, quia est habitus proprie 'recte syllogizandi practice', et sic syllogizare est consulere; unde habitus quo aliquis est consiliativus, est habitus prudentiae.

virtues, Scotus argues that prudence is nobler merely by *priority*, because it is causally prior to any moral act of the will, but this does not mean that prudence is superior to moral virtues *per se*:

This response, however, does not seem sufficient, because the nobler power seems to have a nobler act with respect to the same object when each is acting according to the utmost of itself, because then there is no excess on the part of the object (for it is the same in both cases), but only on the part of the powers, and to that extent the nobler exceeds. Therefore, when there is an act of the practical intellect and of the will about the moral good, which is the same object, then if both powers are acting perfectly (the intellect in dictating and the will in choosing) right choice will be simply nobler than right dictating; and consequently the habit generated by choices will be simply more perfect than the habit generated by nobler acts – which I concede.

And as to the Philosopher when he prefers prudence I reply: prudence is in some way the rule of the other virtues, to the extent that it or its act precedes in generation the habit and the act of moral virtue; and in this priority moral acts and habits conform to prudence as to what is prior, and not the other way around. This priority seems in the Philosopher to prove the idea and thereby the dignity of (prudence as) the rule and measure – but not simply.⁷⁵⁸

Even although it numbers among the cardinal virtues, prudence occupies no special place within the classic quartet. As an intellectual virtue, it cannot command the will or its moral virtues, and merely offers the counsel of the intellect to the will, which is perfectly capable of ignoring such counsel. This is obviously in contrast to the intellectualist arguments of Aquinas, where the intellect's judgement through prudential reasoning necessarily results in an act, moved by the will. But this argument is also abandoned by Odonis, who gives prudence a much greater role to play in his moral ethics.

⁷⁵⁸ *Ord.* III, dist. 33, num. 58-59: Tamen ista responsio non videtur sufficere, quia respectu eiusdem obiecti nobilior potentia videtur habere nobiliorem actum, quando utraque agit secundum ultimum sui, quia ibi non est excessus ex parte obiecti (quia idem est), sed tantum ex parte potentiarum, - et eatenus nobilior excedit. Igitur cum circa bonum morale, quod est idem obiectum sit actus intellectus practici et voluntatis, si utraque perfecte agat (haec dictando et haec eligendo), simpliciter nobilior erit electio recta quam dictamen rectum; et per consequens habitus generatus ex electionibus erit perfectior simpliciter habitu generato ex actibus nobilioribus, - quod concedo.

Et ad Philosophum, praeferentem prudentiam, respondeo: prudentia est quodammodo regula aliarum virtutum pro quanto ipsa vel actus eius praecedit generatione habitum et actum virtutis moralis, - et in ea prioritate actus et habitus morales conformantur sibi tamquam priori, et non e converso. Haec prioritas videtur apud Philosophum concludere rationem regulae et mensurae et in hoc dignitatem, - sed non simpliciter.

3. Odonis on Prudence

Odonis's discussion on the virtue of prudence manifests a clear human-centrism in his moral ethics as well as his political thought. While true to the voluntarist tradition of the Franciscans, Odonis here demonstrates that he does not share many of the more radical positions of Scotus. In many ways, it is almost impossible to come up with a radical voluntarism reading of Aristotle's ethics in a commentary format, especially when Odonis almost wholesale accepts the positions of Aristotle as the truth - when the Philosopher presents prudence unequivocally as a virtue of the intellect, it is difficult to twist the argument otherwise. However, in his attempt to make sense of the virtue of prudence, Odonis shows great insight into Aristotle's philosophical text.

In Question 9 of Book VI, Odonis examines Aristotle's definition of prudence that 'it is a true and practical state involving reason, concerned with what is good and bad for a human being.'⁷⁵⁹ (*NE*, 1140b) From this, Odonis takes out three main elements: that prudence involves reason, as its form of being; that it is an active habit, as its end and action; and that it is ordered towards human good, as its material and object.⁷⁶⁰ What follows is a convoluted metaphysical account of triad in the definition. However, several important positions can be distilled.

As an intellectual virtue, an obvious question to raise is how exactly prudence is related to reason. Odonis here analyses the metaphysical relationship. One possible reading is that, being the virtue of the intellect, prudence *is* reason. This proposition certainly has currency, since Aristotle considers that moral virtue should be in accordance with *right reason*, and as prudence helps man find the virtuous mean. Thomas Aquinas also considers that prudence resides with practical reason, and speaks of practical reason as one that 'deals with things to be done for an end', thereby equivocating practical reason to the prudential process.⁷⁶¹

⁷⁵⁹ The Latin translation of this passage goes: Relinquetur ergo Ipsam esse habitum verum cum ratione activum circa hominis bona et mala. Hence, the term 'practical state' and 'active habit' will be used interchangeably.

⁷⁶⁰ *ExEth*, VI, q. 9, f. 126vb: Dicendum ergo cum eo quod definitio ista convenienter est assignata. Si tamen convenienter fuerit intellecta, propter quod tres particulae huius definitionis sunt exponendae: primo quidem ista cum ratione; secundum ista activus; tertio quidem circa humana bona. In prima enim tangitur essentialis forma prudentiae; in secunda finis et opus; in tertia materia et obiectum.

⁷⁶¹ *ST*, II2ae, q. 47, a. 2: Respondeo dicendum quod, sicut philosophus dicit, in VI Ethic., prudentis est bene posse consiliari. Consilium autem est de his quae sunt per nos agenda in ordine ad finem aliquem. Ratio autem eorum quae sunt agenda propter finem est ratio practica. Unde manifestum est quod prudentia non consistit nisi in ratione practica.

However, Odonis considers that equating prudence with reason would too closely conflate it with the rational soul, and it is clearly not correct. Having rejected the proposition that prudence is reason *per se*, and that prudence *follows* reason, Odonis settles for that it *involves* reason, as exactly how Aristotle defines it:

Concerning the first particular, it should be known that, on the relationship between moral virtue and reason, there are three opinions (see below in chapter 17 of the same book): the first states that these virtues are reasons, the second that they are virtues according to reason, and third that they are virtues involving reason. The first gives too much to the moral virtues on reason, the second too little, and the third is in accordance with truth.⁷⁶²

This merely confirms Aristotle's own words, but does little to elucidate how exactly a virtue can *involve* reason, and more importantly, it involves whose reason. In her doctoral thesis, Bonnie Kent wonders whether the sense of obligation (*debitum*) comes from law or from the prudence of man himself, and eventually finds that such sense of what is due in a just act comes man himself, rather than from the external precepts of the law.⁷⁶³ This is important, and Kent considers the fact that Odonis places the origin of man's sense of moral duty within himself is tantamount to defeating the thesis of Odonis as an 'ethical legalist' - law, be it natural law or human positive law, does not have an unquestioned moral authority without an active and virtuous participation of man. This is obviously echoed elsewhere by Odonis that mere obedience to law or to the prince does not make man virtuous, however many acts of virtue such obedience may force one to effectuate.

Odonis here addresses a similar issue - whether the reason of prudence originates with God or is directed by God. In an attempt to analyse the term *cum ratione*, Odonis lists three possible ways that a virtue, especially the virtue of prudence, can involve reason:

Thus, it should be known that 'involving reason' can be understood in three ways: one involving God as the co-active cause, the other involving its proper entity and activity, or thirdly involving its proper action.

⁷⁶² *ExEth*, VI, q. 9, f. 126vb: Sciendum ergo de primo quod de virtute morali et ratione, tres fuerunt opiniones, ut infra eodem libro, capitulo 17. Una quidem dicit virtutes illas esse rationes, alia vero esse secundum rationem, tertia vero esse cum ratione. Primi (primum, X) autem nimis dederunt virtutibus moralibus de ratione; secundi vero parum; tertii vero secundum veritatem ut debuerunt.

⁷⁶³ Kent, *Aristotle and Franciscans*, p. 543-7.

In the first way, appetite involves reason, since it acts with practical intelligence, see *De Anima*, III. These are the two concomitant causes of one and the same motion, and it is in this way that moral virtue involves prudential reason, because both are concomitant causes to the rectitude of good action. For action and non-action are never without (the cause of) intellect, or mind, or mores, see chapter 3.

In the second way, 'involving reason' is that which possesses reason as its essential identity, see chapter 2, and see also Book I, chapter 18. Thus, reason is its entity and activity, and in this way every skill and every science involve habitual reason.

In the third, 'involving reason' is that whose action is reason. It is in this way that science involves reason, because science involves its own consideration, which is truly reason.⁷⁶⁴

Then Odonis rejects the first possibility and argues that *cum ratione* should be understood in the two latter ways for prudence:

It should not be understood that prudence involves reason in the first way, but rather, it should be understood in the two other ways. Because it involves habitual reason as its own entity, and it involves active reason as its own action. In the same way, skill is to be understood, because it is said that skill is the habit involving true productive reason, see chapter 1.⁷⁶⁵

⁷⁶⁴ *ExEth*, VI, q. 9, f. 126vb: Virtus autem moralis non, et ideo est sciendum quod esse cum ratione potest tripliciter intelligi, uno quidem modo sicut cum Deo causa coagente, alio modo sicut cum propria entitate et activitate, tertio modo sicut cum propria actione.

Primo quidem modo est cum ratione appetitus, qui movet cum intelligentia practica, ut habetur 3 *De Anima*. Quare hae sunt duae concausae unius motionis, et hoc modo virtus moralis est cum rationem prudentiali, quia ambae sunt duae concausae rectitudinis in actione bona. Actio enim et contrarium in actione sine intellectu et mente et more non est, supra eodem libro, capitulo 3.

Secundo modo est cum ratione, illud quod est rationem habens per essentialem identitatem, ut supra eodem libro, capitulo 2, et supra libro primo, capitulo 18. Quia ratio est eius entitas et activitas, et hoc modo omnis ars et omnis scientia est cum habituali ratione.

Tertio modo est cum ratione, illud cuius ratio est actio, et hoc modo scientia est cum ratione, quia est cum propria consideratione quae vere est ratio.

⁷⁶⁵ *ExEth*, VI, q. 9, f. 127ra: Primo autem modo non debet intelligi quod prudentia sit cum ratione, sed de (*om. X*) aliis duobus modis, quia est cum ratione habituali, sicut (sicuti, *X*) cum propria entitate, et est cum ratione actuali, sicut cum propria actione, et habet modo intelligendum est de arte, cum dicitur quod ars est habitus cum ratione vera factivus, supra capitulo proximo.

The analogies and parallelisms may be bewildering at first read, but the message encoded in the passages above is that prudence, or the process of prudential reasoning, does not involve the reason and intellect of God as its directive force. The comparison is made with the appetite, which draws in practical intelligence in effectuating a moral action, and Odonis rejects the proposition that prudence draws in the divine reason in deliberating a prudential judgement. In other words, prudence does not *involve* reason of an external party, be it God or laws. Therefore, unlike moral virtues, prudence does not involve a higher reason other than itself. The two remaining propositions explain how prudence is related to reason - it involves reason in its very being, its essence; and it involves reason in its action. This position seems hardly different from the proposition that prudence *is* reason - after all, it remains a question of metaphysical nuance as to whether A involves B as the essence of A, or A is B. Simply understood, prudence *is* not practical reason, but rather, prudence involves practical reason through its very being and through its actions. Again, this differentiates prudence from other moral virtues, which are, for Odonis, located in the will and therefore involves reason external to the will; prudence, on the other hand, involves reason through its own entity.

However, this does not completely distinguish prudence from moral virtues. There is a much more fundamental aspect to Odonis's understanding of prudence, and central to Odonis's entire moral philosophy. He gives an extremely broad reading to the proposition that prudence concerns human good and is ordered towards living life well as a whole. As we have seen, late medieval authors tend to accord prudence a narrower role in the grand scheme of moral philosophy. Both Aquinas and Scotus consider it a syllogistic application of the universal to the particular. While Aquinas gives prudence the additional act of commanding an action, its remit is nonetheless limited to man's civic life. Scotus also places prudence as a virtue inferior to faith. Later, Radulphus Brito confines prudence to the realm of moral acts and man's practical life, concerning *bene vivere* and *bene opere*.⁷⁶⁶ Compared with his predecessors, Odonis understands prudence to have a wider reach. It is concerned with human good, not in a *secundum quid* fashion, but rather *simpliciter*. Prudence's end is the unqualified human good, and by this we should read that it is not only man's happiness in his civic life, but also in his private, familial, and spiritual life - in other words, to live life well as a whole.

On the third particular, it should be known that consideration of human goods can take place in two ways. One, it is ordered unqualifiedly to the human end; or other, it is ordered to the human end with qualification, because it is ordered to a partial end, see chapter 3. The

⁷⁶⁶ RBSE, VI, q. 134, p. 476; see also Celano, *Aristotle's Ethics*, p. 230.

unqualified end is to live life well as a whole, the end with qualification is to live well partially and with qualification. This distinction is found here in the text. Hence, prudence considers human goods, understood as ordered to the human end unqualifiedly, which is to live life well as a whole, as we have here. Domestic providence is ordered to an end with qualification, which is the superabundance and sufficiency of wealth because the end of this domestic prudence is wealth, as in Book I, chapter 1. Therefore, it is clear how the definition of prudence should be understood: that prudence is a habit involving habitual reason, as involving reason as its own entity, and a habit involving active reason, as involving its own active action, i.e., it is directive of moral actions in the particular cases, and orders human goods towards living life well as a whole.⁷⁶⁷

It may not be manifestly demonstrated here in the passage above, but Odonis reads *bene vivere totaliter* rather literally. As the science of ethics concerns this life but not the life beyond, prudence concerns the human good simply speaking of this present life. Here, one may logically raise the question of what exactly constitutes *bonum humanum*. As we have established in Part I, chapter V, such human good, when taken *simpliciter*, is the *felicitas* of the present life, or the happiness of merit. This includes both man's active happiness and his contemplative happiness - both happiness in his civic life, and happiness in his pursuit of truth and wisdom. Odonis uses the example of domestic foresight in this passage above: domestic prudence is ordered towards material wealth, which is a sort of happiness *secundum quid*. However, domestic providence is clearly different from domestic prudence, which is ordered towards the happiness of the household, which is, again as we have seen in the Prologue, identical to the happiness of the individual as well as the happiness of the state. This idea of the unity of prudence, mirroring Odonis's argument of the unity of ethics, will be discussed in greater details in the next chapter on the unity of prudence. For now, we need to understand how

⁷⁶⁷ *ExEth*, VI, q. 9, f. 127ra: De tertia vero sciendum quod consideratio humanorum bonorum potest fieri dupliciter. Uno quidem modo in ordine ad finem humanum simpliciter; alio modo ad finem humanum secundum quid, quia ad aliquem partialem finem, ut supra eodem libro, capitulo 3. Finis autem simpliciter est bene vivere simpliciter; finis autem secundum quid est vivere secundum quid et partialiter. Haec autem distinctio habetur hic ex textu. Prudentia ergo considerat humana bona in ordine ad finem humanum simpliciter, quia ad totum bene vivere simpliciter, ut habetur hic. Providentia vero economica ad finem secundum quid, quia ad superabundantiam et sufficientiam divitiarum, quia finis huius economicae sunt divitiae, ut supra libro primo, capitulo primo. Sic ergo patet: qualiter debeat intelligi definitio prudentiae, quia sic ut dicatur quod prudentia est habitus cum habituali ratione, sicut cum propria entitate, et cum actuali ratione, sicut cum propria actione activus, id est, actionum moralium in singulari directivus ordinans humana bona ad bene vivere totaliter.

far Odonis is willing to go in considering prudence as being ordered towards human good unqualifiedly, and the philosophical implications of such consideration.

4. *Praxis* and the Practical Mind

In order to answer the question, it is worth a detour into Odonis's understanding of two key concepts closely related to prudence: *praxis* and the practical mind. The term *praxis* is mostly discussed by Aristotle in Books I and X. In Book I, *praxis* is the act unique to man, as opposed to plants and animals, while in Book X, *praxis* is contrasted to *theoria* in one's attainment of happiness.⁷⁶⁸ Although Aristotle comes to the conclusion that a life of contemplation in pursuit of *theoria* is superior to that of *praxis*, he nonetheless marks out *praxis* as what defines human being, who is alone able to make choices and decisions. To express in scholastic terms, *praxis* is the essential activity of human. In Book VI, Aristotle links *praxis* with *prohaeresis* (rational choice) and in turn with *phronesis*, placing it under the remit of practical reason. One may also argue that *praxis* is the realisation of *prohaeresis* through prudence.⁷⁶⁹ The Philosopher writes:

The first principle of action - its moving cause, not its goal - is rational choice; and that of rational choice is desire (*appetitus*), and goal-directed reason. This is why rational choice involves not only intellect and thought, but a state of character; for acting well and its contrary require thought and character. (*NE*, 1139a)

Odonis clearly wishes to delve further on the concept, and his discussions bear clear traces of influence of the Franciscan traditions, especially of Duns Scotus, who, discussing *praxis* in the context of whether theology is a practical science, states categorically that *praxis* necessarily involves the will, and is an act of the will.⁷⁷⁰ At this stage, it is logical to raise the question on how exactly *praxis* is related to the will and the intellect. If *praxis* is moved by *prohaeresis*, which is in turn the combined work of both the will (as the intellectual appetite) and practical reason, then it would pertain to both the practical intellect and the will to effectuate a practical action. Aristotle states that 'rational

⁷⁶⁸ See A. W. H. Adkins, 'Theoria versus Praxis in the Nicomachean Ethics and the Republic', *Classical Philology*, 73, 1984, p. 297-302.

⁷⁶⁹ Reeve, *Practices of Reason*, p. 74-5.

⁷⁷⁰ Wolter, *Scotus on the Will and Morality*, p. 32-4.

choice is deliberative desire, the reason must be true and desire correct, if the rational choice is to be good, and desire must pursue what reason asserts' (*NE*, 1139a), but also 'rational choice is either desire-related intellect (*intellectus appetitivus*) or thought-related desire (*appetitus intellectivus*), and such a first principle is a human being.' (*NE*, 1139b)

Odonis in turn gives the concept of *praxis* a detailed exposition in Question 4, constituting of two broad and intimately related propositions: that *praxis* follows rational choice, and more importantly, that *praxis* is elicited by the will. Unequivocally, Odonis writes:

It should be said that *praxis* is human action in accordance with choice, i.e., human action that is within the very faculty of man that commands him. Every such action is *praxis*, and such *praxis* is every action. Every such action is elicited or commanded by the will.⁷⁷¹

This is further explained with a four-fold proposition of equivalences:

- i. All acts that are commanded by both the intellect and the appetite (desire) are *praxis*, and vice versa;
- ii. All acts of virtue or vice are *praxis*, and vice versa;
- iii. All acts concerned with prudence are *praxis*, and vice versa;
- iv. All acts commanded by law are *praxis*, and vice versa.⁷⁷²

⁷⁷¹ *ExEth*, VI, q. 4, f. 122rb: Dicendum ergo cum eo, quod *praxis* est secundum electionem hominis operatio, idest, operatio humana quae est in hominis potestate, cui scilicet dominatur homo. Omnis enim talis operatio est *praxis*, et omnis *praxis* est talis operatio, talis autem est omnis operatio voluntatis elicitata vel imperata.

⁷⁷² *ExEth*, VI, q. 4, f. 122rb: Hoc autem probatur quadruplitter. Primo quia ille actus, cui dominatur intellectus et appetitus, qui est nobis proprius, quem bestiae non communicant, est universaliter et convertitur <convertibiliter – *sic* in both *X* and *V*> *praxis*, ut probatur 6 *Ethicorum*, capitulo 3. Quia intellectus, qui circa talem attendit ea, quae appetitus debet prosequi vel fugere est mens et veritas practica, ut ibidem subdividitur. Sed ille talis actus est secundum electionem hominis, cui dominatur homo, quia ut ibidem habetur. Tale principium est homo suarum operationum, quale principium est appetitus intellectivus. Homo tamen tanquam quod appetitus vero tanquam quo. Quare talis operatio est universaliter et convertibiliter *praxis*.

Secundo quia omnis operatio virtutis vel vitii est *praxis*, et omnis *praxis* est talis operatio. Quod patet, quia ita dicit Eustratius, et quia omnis operatio de qua agit scientia practica est *praxis*, et de omni *praxi* agit scientia practica, agit autem de virtutum omnium et vitiorum operationibus, et de illis solis. Quare hae omnes et solae sunt *praxes*. Sed omnes et solae operationes, quae sunt secundum hominis potestatem, et quibus dominatur homo, sunt operationes virtutum vel vitiorum,

From these propositions one may have interesting and important conclusions. Based on the logical premise that if all of A is B and all of B is A, then set A and set B are identical sets, or $A = B$. Combining all four propositions, which are in a relationship of $A = B = C = D = E$, the notion of *praxis* really becomes the common equivalence of all the other propositions, and one arrives at several conclusions. To put them concisely:

(Acts commanded by both the intellect and the appetite) = (acts of virtue and vice) = (acts of prudence) = (acts commanded by law) = (*praxis*)

If we shift our perspective back to the virtue of prudence, the conclusions would be that *praxis*, or an act of prudence is: (a) an act commanded by both the intellect and the appetite, (b) an act of virtue or vice, and (c) an act commanded by law. Conclusion (b) is derived of the premise that prudence is the habit that concerns every human good or evil (*quia prudentia est habitus operativus et practicus circa omnia humana bona et mala*, see citation above), and conclusion (c) is derived of the premise that law commands every virtue and forbids every vice. The relationship between prudence, law, and justice will be discussed in a later section. What is of real value here is the equivocation between acts commanded by both intellect and the appetite and acts of prudence in conclusion (a).

We have established above that, as a virtue of the intellect, prudence *involves* reason in its essential being and its action. Following the same vein of argument, Odonis should arrive at a conclusion similar to that of Aquinas - an act of prudence is commanded by the intellect. However, a new element of the appetite is introduced here, and Odonis goes so far as to consider that only *praxis*, i.e., acts commanded by both the intellect and the appetite, can be considered proper to human. It is reminiscent of Odonis's argument later in Question 9 that only acts involving both the will and practical reason

ut probatur 3 *Ethicorum*, capitulo 8. Et ex hoc probatur quod nos sumus domini eius, quod est nos fieri bonos vel malos. Quare ut prius.

Tertio quia omnis et sola operatio ad quam extenditur prudentia est *praxis*. Quod patet, quia prudentia est habitus operativus et practicus circa omnia humana bona et mala, de quibus est consilium, ut 6 *Ethicorum*, capitulo 8. Constat autem quod prudentia sit habitus maxime practicus. Sed prudentia extenditur ad omnes et solas illas operationes, quae sunt in potestate nostra, ut habetur ibidem. Quare ille omnes et solae sunt *praxae*.

Quarto quia omnis operatio et sola a lege imperabilis est *praxis*. Quod patet, quia omnis et sola talis operatio est iusta; leges enim dicunt de omnibus, ut 5 *Ethicorum*, capitulo 2. Et secundum omnem virtutem vivere praecipit lex, et secundum omnem vitium prohibet, ut eodem libro, capitulo 5. Sed omnis et sola operatio, cui dominatur homo, est a lege imperabilis. Lex enim nec punit nec praemiatur ea, quae non sunt in potestate nostra, ut 3 *Ethicorum*, capitulo 8. Quare ut prius.

can be considered to have any moral value. However, such parallelism does not work in the case of prudential act: an act of moral virtue involves practical reason as its co-active cause, but prudence does not, and it seems that it would not involve the will in the same way that moral virtue involves the will, since moral virtues are subjectively resided in the will. Therefore, the solution must be searched for elsewhere.

Clearly, prudence, or a prudential act, is closely related to the will. If we follow the classical voluntarist narrative that an act is recommended by the intellect, in this case, prudence, and executed by the will freely, it would perhaps explain *praxis*'s relationship with the will. However, Odonis clearly understands *praxis* in a much broader fashion, just as he does prudence. Addressing precisely the relationship between *praxis* and the will, Odonis turns to a concept central to *praxis* - choice.

In response to the first objection, it must be said choice can be understood in three ways:

- i. Choice understood properly, as a pre-deliberated voluntary act towards the intended end and within our power, see *Ethics* III. 5;
- ii. Choice understood broadly, as a preference to one out of two propositions, be they both possible, or both impossible, be they two different ends or two means towards a same end. If the two propositions are indeed completely impossible - if, for example, one is proposed to choose the between immortality of the human body and the impeccability of the soul, one is still able to prefer and choose one over the other. If the two ends are both possible, such as between natural worldly happiness and eternal happiness, between carnal lust and honourable excellence, one can prescribe this or that, and can choose one or the other. Similarly, one can choose between the two propositions ordered towards the same end, and it is thus Eustratius describes choice in his commentary on Book I.
- iii. Choice understood in a most general manner, as the free determination of previously undetermined faculty, or as the faculty itself that is undetermined towards different appetible objects, such as to sleep or to be awake, or undetermined towards opposite acts concerning the same object, such as to love or to hate, or towards the execution or non-execution of an act, such as to desire or not to desire, to will or not to will. It is in this way that Aristotle uses the word 'choice 'to speak of any free appetite, for

indeed he calls happiness worthy of choice by itself, see Book I, chapter 8. Clearly, it is not worthy of choice in the first way, because happiness is the final end.

Choice according to the first way does not regard the end, as has been said. Neither is happiness choice-worthy in the second way, because it can be chosen and desired even when it has not been compared with other ends. Therefore, happiness is choice-worthy because it is freely desirable.

Now, it should be said that the will is in accordance with human choice, understood in the third or second way. Choice is thus generally understood by Eustratius as described above in *praxis*. Therefore, I concede that the will is *praxis*, and is action in accordance with the choice of man.⁷⁷³

Odonis's triad of choice goes from the most superficial to the psychological: (i) is a thoroughly Aristotelian notion, that a choice is a deliberated act towards a pre-determined end. This also more or less fits what Aristotle intends for the virtue of prudence: that prudence directs individual actions of man in particular and contingent circumstances towards a virtuous end. However, both (ii) and (iii) go far beyond the Aristotelian model of prudence and *praxis*. *Praxis* is not only the choice and action

⁷⁷³ *ExEth*, VI, q. 4, f. 122rb-va: Dicendum ergo ad primum quod electio potest sumi tripliciter. Uno modo proprie, ut est voluntarium praeconsiliatum, de hiis quae sunt ad finem intentum, et quae in potestate nostra sunt, ut describitur 3 *Ethicorum*, capitulo 5.

Alio modo large, ut est duorum propositorum alterius praeoptatio, sive illa sint possibilia, sive impossibilia, sive sint duo fines, sive duo ad finem. Sive quidem impossibilia sint, ut propositis uni homini immortalitate corporis et impeccabilitate animae, potest utique alterum alteri praeoptare, et hoc modo praeeligere. Si vero sint duo fines possibiles, puta mundana felicitas, vel aeterna, vel voluptas carnis, et excellentia honoris, potest utique praestituere hoc, vel illud pro fine, et alterum alteri praeoptare et hoc modo eligere. Similiter etiam de duobus ordinabilibus ad finem, et sic describitur electio ab Eustratio super primo *Ethicorum*.

Tertio modo potest sumi electio generalissime ut est libera potestatis prius indeterminatae determinatio, sive potestas illa sit indeterminata ad diversa obiecta appetibilia, puta ad dormire et vigilare, sive ad oppositos actus circa idem obiectum, puta ad odire et amare, sive ad exercere et non exercere actum, puta ad appetere et non appetere, velle et non velle. Et hoc modo Aristoteles utitur nomine electionis pro quocumque libero appetitu, unde dicit felicitatem propter se eligibilem, primo *Ethicorum*, capitulo 8. Constat autem quod non est eligibilis primo electionis modo, cum felicitas sit finis ultimus. Illa tamen electio primi modi non est de fine, ut dictum est. Nec oportet quod sit eligibilis secundo electionis modo, quia potest eligi et appeti, dato quod nulli fini alteri comparetur. Est igitur eligibilis, quia libere appetibilis. Nunc ergo dicendum quod voluntas est secundum hominis electionem tertio vel secundo modo acceptam. Et sic generaliter sumitur electio per Eustratium in praemissa *praxis* descriptione, concedo igitur voluntatem esse praxem et esse operationem secundum hominis electionem.

of any singular and individual act, but also that of a state, a disposition, or a habit - in other words, it is the choice of an end and the activation of that end. This brings *praxis* much closer to Odonis's idea of the will - since moral virtues reside in the will, it is the will that desires the virtuous end. In (iii), the association between choice and the will is even more manifest: choice is the *free* determination of the undetermined potency. A determination can only be free if it is determined by the free potency, and that is the will. On the other hand, while the entire appetite is undetermined - as Odonis uses the example of to sleep or to be awake, where the sense appetite is undetermined as to which state it should be in - it is obviously the intellective appetite that is of most moral worth. Therefore, *praxis*, or an act of prudence, is in its essence the will's determination of itself.

Odonis, it seems, comes very close to effectively placing prudence, or at least the act of prudence, in the will, instead of the intellect. However, he is also unwilling to explicitly contradict Aristotle's thesis, and one needs to be reminded that Odonis considers prudence to be a virtue of practical reason, and involves reason as its very essence and actualisation. In the beginning of Question 4, Odonis raises the objection citing Scotus (as *quidam doctor*) that an act of the intellect is not *praxis*, and that an act of the intellect can be in accordance with choice.⁷⁷⁴ In his response, Odonis writes:

In response to the sixth objection, it should be said that an act of intellect can very truly be *praxis*, as an act commanded by the will. Because it is clear that man is ruled by his will, and we go forth with the act of intellect because we will it, see Book II of *De Anima*, and thus it can be the an act of moral virtue or vice, for example, an act of gratitude, which inclines man towards remembering the benefits received, or an act of studiousness, which inclines man towards study and inquiry. Hence, prudence can be extended to the act of intellect as long as such act is ordered towards the greater human good. ... Therefore, an act of intellect can very truly be *praxis*.⁷⁷⁵

⁷⁷⁴ *ExEth*, VI, q. 4, f. 122ra-b: Sexto quia operatio intellectus nostri non est praxis. Immo quidam doctor in descriptione praxis, ponit quod est operatio alterius potentiae quam intellectus, probans hoc. Quia sistendo in actibus intellectus, nulla est extensio ad praxim, quamvis sit extensio unius considerationis ad aliam, sicut principiorum ad conclusionem. Haec tamen extensio non est ad praxem aliquam, alias logica esset verissime practica. Sed operatio intellectus hominis potest esse secundum hominis electionem, cui dominatur homo. Quare non omnis operatio, cui dominatur homo, est praxis.

⁷⁷⁵ *ExEth*, VI, q. 4, f. 122va: Ad sextum vero dicendum quod operatio intellectus verissime potest esse praxis, tanquam operatio a voluntate imperata. Quod patet, tum quia dominamur ei, intelligimus namque cum volumus, ut 2 *De Anima*. Tum quia potest esse operatio moralis virtutis vel vitii, puta gratitudinis quae inclinat ad suscepta beneficia memoranda, vel studiositatis quae inclinat animam ad studendum et inquaerendum, tum quia prudentia potest extendi ad operationem

Odonis then goes on to argue that *praxis* does not exist solely in the intellect, but rather, in the transition from intellect to appetite, and from appetite to intellect.⁷⁷⁶ In one direction, it is the intellect giving counsel to the will; in the other direction, it is the will commanding the intellect to deliberate. Either way, the will commands, and the intellect deliberates. In fact, *praxis*, and by extension prudence, is what brings the will and the intellect together. In the prudential process, the will determines itself with the virtue of prudence, and thus involves practical reason.

On the whole, however, Odonis seems to be distancing himself from the more purist voluntarisms of Scotus and Ockham, and brings himself closer to Aristotle's original intention. Although the will commands the intellect, it does so nonetheless with the involvement of practical reason, or with the practical part of the intellect. Odonis has already established that choice is enacted by the will, but choice also follows reason. Although the will is the principle of human freedom, what really makes us human is not necessarily a free and undetermined will, but rather, the capability of choosing. What is unique to human is not his voluntary actions, because voluntary acts can be found in beasts as well, but instead, elective acts:

No force that is found both in us and in beasts is entirely the same force that is found only in us. The Philosopher proves that certain voluntary acts are not choices, because certain voluntary acts are found commonly in both us and beasts. However, the elective act is found only in us, see *Ethics* III, chapter on choice.⁷⁷⁷

intellectus tanquam ad magna hominis bona, tum quia lex imperat huiusmodi operationes, dicitur 'memento dierum antiquorum, cogita generationes singulas', *Deuteronomio* 33 <32:7, sic in both *X* and *V*>, cum suis similibus. Lex etiam punit ignorantias crassas et volitas, ut 3 *Ethicorum*, capitulo 8. Quare operatio intellectus verissime potest esse *praxis*.

⁷⁷⁶ *ExEth*, VI, q. 4, f. 122va: Ad id vero quod dicitur quod sistendo in actibus intellectus non habetur aliqua *praxis*, concedo; sed quando ab intellectu sit transitus ad appetitum, et ab appetitu iterum ad intellectum, non sistitur in solis actibus intellectus, et tunc in eis potest esse *praxis*, verbi gratia, dicit intellectus, bonum et appetendum est computare quo dicto appetitus hoc vult et iubet. Et tertio intellectus considerat et computat, hoc igitur modo non sistitur in actibus intellectus et habetur ratio *praxis* in intellectu, in logica vero non est talis extensio.

⁷⁷⁷ *ExEth*, VI, q. 5, f. 123ra: Assumptum probo, quia nulla vis communis nobis et bestiis est eadem vis totaliter cum vi propria nobis. Ita enim probat Philosophus (Philosophi, *X*) quod aliquid voluntarium non est electio, quia aliquid voluntarium est commune nobis et bestiis. Electivum autem est proprium nobis, 3 *Ethicorum*, capitulo de electione.

What distinguishes the elective from the voluntary is the involvement of reason. If we consider only what is human can be considered of moral value, then it is the elective *praxis*, rather than any voluntary act, that is of moral value, and hence the subject-matter of the moral science.

Odonis places moral value in man's elective act, but also in his practical intellect, and thereby pushes for an equivalence between the practical intellect and the will. In Question 5 of Book VI, which investigates the distinction between the practical and speculative intellect, Odonis makes four broad points on the nature of the practical intellect:

- i. The practical intellect is the appetitive intellect, which is ordered towards intellection, rather than desire or action;
- ii. The practical intellect has a moral excellence not shared by the speculative intellect;
- iii. The cognitive being of the practical intellect is preceptive, exhortative, motive, and active, whereas the cognitive being of the speculative intellect is not;
- iv. The practical intellect is capable of attaining good or evil, while the speculative intellect only attains what is the immutable and invariable.⁷⁷⁸

⁷⁷⁸ *ExEth*, VI, q. 5, f. 123ra-b: Hoc autem probo quadrupliciter. Primo quia sicut se habet olfactus appetitivus et alimentativus ad olfactum non appetitivum nec alimentativum, sic intellectus appetitivus et operativus ad intellectum non appetitivum nec operativum; sed olfactus appetitivus alimenti non est eadem vis vel eadem aptitudo cum olfactu non appetitivo alimenti. Quare nec intellectus appetitivus, qui est intellectus practicus secundum Philosophum (Philosophi, *X*) et secundum Eustratium, 6 *Ethicorum*, capitulo 3, est totaliter eadem vis vel aptitudo cum intellectu speculativo, quod nec appetitivus nec operativus est.

...

Secundo quia nulla aptitudo habet excellentiam eandem aptitudine non habente excellentiam. Sed mens practica unius hominis potest habere excellentiam eius mente speculativa excellentia (excellentiam, *X*) non habente et econverso. Quare haec aptitudo non totaliter est eadem cum illa.

...

Tertio quia nulla vis cognoscitiva, cuius esse cognoscitivum est esse praeceptivum, est totaliter eadem cum vi cognoscitiva, cuius esse cognitum (cognitivum, *X*) non est praeceptivum nec activum. Vis enim cognoscitiva non est nisi cognoscitivum, quare contradictio esset. Unde et idem totaliter et bene esse et non esse praeceptivum est esse et non esse motivum. Sed esse cognoscitivum intellectus practici est esse praeceptivum et deprecativum, motivum et activum. Quod patet, quia eius praecipere, et eius deprecari, et eius movere, et eius agere, nihil aliud est quam cognoscere, ita esse agendum et ita debere agere. Esse autem cognitio mentis speculativae non esse praeceptivum, deprecativum, motivum, vel activum, quia mens nihil movet, 6 *Ethicorum*, capitulo 3; nihil dicit de imitabili vel fugiendo, 3 *De Anima*. Quare mens practica non est totaliter eadem vis cum mente speculativa.

The practical intellect has a moral worth (capable of moral excellence, capable of good and evil) that is normally attributed to the will. Similarly, Odonis speaks of the cognitive being of the practical intellect in a manner that resembles that in which the Franciscans normally speak of the will: that it is preceptive, exhortative, and active. Just as Aquinas considers that command is the chief act of prudence, Odonis considers the essential cognitive nature of the practical intellect - where prudence resides - as preceptive and active. In a sense, this scheme certainly closes the gap between voluntarism and Aristotle's thesis: on the one hand, the Franciscans consider that moral virtues reside in the will, which is the principle and cause of man's moral worth; Aristotle, on the other, gives the task of finding the virtuous mean and practical deliberation to prudence and the practical intellect. Odonis goes beyond the Scotian argument that the task of the practical mind and prudence is no more than a syllogistic application of the universal to the particular, but also one of moral worth and a power to command. The practical intellect is not quite the will, or intellective appetite, but instead, as Odonis cites Eustratius, it is the appetitive intellect.

So Odonis is attempting to build a model of the intellect that mirrors the structure of the soul itself. In Question 6, Odonis states that the appetitive intellect, i.e. the practical intellect, commands the speculative intellect, just like the intellective appetite, i.e. the will, commands the intellect. The appetitive intellect is, therefore, almost the 'will' within the intellect. Question 6 is relatively short, because the principal substances of the arguments have already been expounded in Questions 4 and 5. But it is here that Odonis makes the most explicit quasi-equivocation and indivisibility between the appetitive intellect and the intellective appetite:

Whatever is commanded by intellective appetite is also commanded by appetitive intellect, because the two are indivisible according to Aristotle, and for the same reason, choice is the intellective appetite, or the appetitive intellect, as they move and act indivisibly on external things. Appetite moves nothing without practical intelligence, nor *vice versa*, see 3 *De Anima*. Thus, whatever is commanded by such appetite, is then commanded by such intellect.

Tertio <Quarto, *sic* in both *X* and *V*> quia nulla vis, aliquo modo per malitiam excaecabilis, est eadem vis totaliter cum vi, nullo modo per malitia (malitiam, *X*) excaecabilis; sed mens practica est aliquo modo ad malitiam excaecabilis, ut patet 6 *Ethicorum*, capitulo 16, ubi dicitur quod malitia pervertitur et mentiri facit intellectum circa principia practica, hoc enim vocatur excaecatio, et ideo dicitur excaecavit eos malitia eorum, *Sapientia* 3 <2:21>. Et de tali excaecatione dicitur excaecator populi huius, *Isaia*, 6. Mens autem speculativa nullo modo est per malitiam excaecabilis, quia nec malitia nec passio corrumpit aestimationem, puta illam quae est de trigono, ut 6 *Ethicorum*, capitulo 6. Idem autem intelligendum est secundum Commentatorem et expositores de omni mente speculativa. Quare haec mens non totaliter est illa.

Yet, the intellective appetite commands the speculative mind and all the forces of the soul that are called human. It can indeed command the mind to speculate on such matter and do as such, or that it commands the mind to cease speculating and doing, or that it commands the mind to speculate on another matter and do such. More generally, it is through the intellective appetite that we rule over and command everything that is in our power. Therefore, the practical mind, which according to Aristotle is the appetitive intellect, commands the speculative mind.⁷⁷⁹

On the premise that all that is commanded by the will is also commanded by the practical mind, one arrives at the conclusion that the practical mind commands everything within human power, i.e. both acts of virtue and acts of intellectual speculation. Odonis comes close to stating that the will itself has practical reason, although, by definition, it does not; nevertheless, our commentator certainly admits that the will cannot move without reason, even though it is ultimately an undetermined free principle. However, this proposition does not place Odonis close to the intellectualists such as Aquinas, because practical reason is nonetheless undetermined - it is capable of great good as well as great evil, as there is no moral necessity within practical reason.

Thus, Odonis presents his philosophical basis for the bigger questions of the relationship between prudence and wisdom, as well as between prudence and moral virtues. It is also in this context that we must understand Odonis's unusual position that prudence is superior to, and commands, wisdom, that a life of activity is superior to a life of speculation, as well as the more traditional Franciscan position that prudence is necessarily connected to the cardinal virtues but not the rest of moral virtues.

We see that Odonis gives the concepts of *praxis* and the practical mind a generalist reading. *Praxis* follows choice, and concerns not only man's individual acts, but the choice of general states and the

⁷⁷⁹ *ExEth*, VI, q. 6, f. 123va: Dicendum ergo quod sic. Quod probatur, quia cuicumque principatur appetitus intellectivus ei principatur intellectus appetitivus. Quod patet, quoniam haec duo indivisibiliter se habent intantum ut Aristote, pro eodem habuit electionem esse appetitum intellectivum, vel intellectum appetitivum, ut habetur (habere, X) hic, et indivisibiliter movent, et operantur extra se. Hic enim appetitus nihil movet sine intelligentia practica, nec ista sine illo, ut 3 *De Anima*. Quare cuicumque principatur talis appetitus ei principatur talis intellectus.

Sed appetitus intellectivus principatur menti speculativae et omnibus viribus animae, quae dicuntur humanae, potest enim praecipere menti, quod speculetur de tali materia, et fiet ita vel quod cesset vel quod de alia et fiet ita, et universaliter per istum appetitum nos dominamur et principamur omibus, quae sunt in potestate nostra. Quare mens practica, quae secundum Philosophum (Philosophi, X) est intellectus appetitivus principabitur menti speculativae.

choice of one's ends. In a word, every act and every decision made by man out of his own accord is *praxis*. Such *praxis* is commanded by the practical mind, which is indivisible from the will. The practical intellect is the will's counterpart in the intellect, and rules over the other faculties of the intellect like the will rules over the other faculties of the human soul. Prudence, therefore, as the virtue of the practical intellect, rules supreme within the intellect, and acts indivisibly from the will in enacting man's *praxis*. Having delineated the interaction between the will and the practical intellect through the prism of prudence, let us now consider the prudential process itself.

5. The Prudential Process - Acts of Prudence

Odonis already establishes that an act of prudence is *praxis*, which is a collaborative process that involves both the will and the intellect. Yet, what remains to be seen is the internal process of this prudential action: merely stating that *praxis* draws in both the intellective appetite and the appetitive intellect does not demonstrate the exact nature of the prudential process - one needs to investigate how exactly prudence brings in both the will and the intellect to execute an elective action that so characterises human ontology. Aristotle's text is again disappointingly vague by scholastic standards. Book VI mentions many acts and dispositions that are supposed to be at least concurrent to prudence, without detailing how exactly such acts and dispositions work together with prudence: deliberation, judgement, counsel, discernment, intellection, just to name a few.

Aristotle considers deliberation almost as entirely equivalent to *phronesis*, and this position has certainly inspired many of the later commentators such as Aquinas and Scotus to think of *phronesis* or prudence as primarily an intellectual act of practical syllogism. C. D. C. Reeve also argues that *phronesis* is primarily a deliberative capacity, where deliberation is the primary act.⁷⁸⁰ Aristotle writes:

It is characteristic of practically wise people to have deliberated well, good deliberation will be correctness with regard to what is useful towards the end, about which practical wisdom is true supposition. (*NE*, VI, 1142b)

Aristotle's analysis of deliberation no doubt captures much of the active principle of *phronesis*. Deliberation is a kind of inquiry, but it is not scientific knowledge, nor belief, nor guesswork. Such

⁷⁸⁰ Reeve, *Aristotle on Practical Wisdom*, p. 11-13.

negative definition demonstrates certain characteristics of deliberation: it is not scientific knowledge because it concerns the contingent and mutable; it is not guesswork because it involves reason; it is not belief because the conclusion and object of deliberation is undetermined. Aristotle says:

But excellence in deliberation does involve reason. What remains, then, is that it is correctness in thought, since this is not yet assertion. For belief is not inquiry, but already a kind of assertion, while the person who deliberates, whether he does so well or badly, is inquiring into something and calculating. (*NE*, VI, 1142b)

Deliberation is the use of the ratiocinative mind towards determining the undetermined, and good deliberation is the correctness of achieving something good. Just as *phronesis*, deliberation is aimed towards human good through reasoning of the contingent.

Another act concurrent to *phronesis* is judgement (*synesis*). Here, the Greek term *synesis* clearly has no etymological connection to the virtue of justice, *dikaiosune*, and one certainly should not understand Aristotle's intention as such (although Odonis himself does repeatedly link *synesis* with the term *iudicare*). One would be hard-pressed to find real and concrete differences between judgement and deliberation in Aristotle's account, as they are described in almost the same terms:

Judgement, that is good judgement, in virtue of which people are said to have judgement or good judgement, is not the same as knowledge in general, or the same as belief (since then everyone would have been a person of judgement); nor is it any one of the particular sciences, such as medicine, which has health as its concern, or geometry, which has spatial dimensions. Judgement is concerned not with what is eternal and unchanging, nor with what comes into being, but with what someone might puzzle and deliberate about. For this reason it is concerned with the same things as practical wisdom. (*NE*, VI, 1143a)

Similarly, Aristotle describes discernment (*gnome*), which links the virtue of *phronesis* with the virtue of equity:

What is called discernment, in virtue of which we say that people are discerning and have discernment, is correct judgement of what is equitable. This is indicated by the fact that we say that the equitable person is especially discerning, and that it is equitable to be discerning in certain circumstances. Discernment is correctly discerning judgement of what is equitable; and correct discernment is that which judges what is true. (*NE*, VI, 1143a)

Finally, there is intellection, or intellect (*nous*):

Intellect is also concerned with the last things, and in both directions; there is intellection, not a rational account, of both the first terms and the last. The intellect related to demonstrations is concerned with the first and unchanging terms, while in practical questions intellect is concerned with the last term, which can be otherwise, that is, with the minor premise. For these last terms are the first principles for achieving the end, since universals are arrived at from particulars. We ought, then, to have perception of these, and this is intellection. (*NE*, VI, 1143b)

Unlike the previous three, intellection, on its own, does not seem to be concerned with action. It is the practical syllogism of turning the universal into the particular, and seemingly a purely intellectual act. For Aristotle, a *phronimos* is one who is characterised by these qualities: he is able to deliberate well, to have sound judgement, to be discerning, and to have intellection of things. It is never clear how exactly these qualities are related to *phronesis*, or indeed how they differ from one another. What follows is a thesis central to Aristotle's entire idea of formation of *phronesis* and moral virtues:

This is why these states seem to be natural endowments, and why no one is held to be wise by nature, though he may by nature have discernment, judgement and intellect. An indication of this is our thinking that these qualities are related to one's time of life, and the fact that intellect and discernment belong to a particular time of life, which implies that nature is the cause. (*NE*, VI, 1143b)

We have already surveyed Aristotle's ideas of natural virtue in the scheme of the formation of moral virtues and *phronesis*, and these qualities above do appear to be the natural virtues that together bring about true *phronesis* through one's life's experience. What Aristotle seems to imply here is that, instead of being endowed with all such states at once, as an existential quality, these states appear *naturally* at certain stages in life: as one ages, one *naturally* becomes judicious and discerning, not because one has garnered sufficient experience, but because of the pure biological state of one's mind; or perhaps one can interpret Aristotle's argument here as life's experience is a natural part of man's old age, and in consequence such qualities arrive naturally. Either way, it seems that Aristotle dismisses the contingent man's collection and reaction to his life's experiences.

As we have observed, Aristotle does not share his medieval commentators' preoccupation with mereology and does not intend Book VI as a structural overview of the virtue of *phronesis*. Hence, what properly and exactly pertains to *phronesis* is never spelt out. Albertus Magnus considers that there are three intellectual virtues adjoined to prudence - *eubulia*, *synesis*, and *gnome*, with each concerned with the different acts of prudence, and there are three more adjoined virtues with qualification - *eustochia*, *solertia*, *opinio*.⁷⁸¹ In the following questions, Albertus also explores the relationship between prudence and other potences of the intellect such as *intellectus* and *deinotia*. Aquinas in his *Summa theologiae* understands that Aristotle lists seven parts of prudence: *eubulia*, *synesis*, *gnome*, *eustochia*, *solertia*, *sensus*, *intellectus*.⁷⁸² Besides Aristotle, other ancient authorities differ on the parts of prudence: Cicero, widely cited by the medieval commentators, says that prudence has three parts: *memoria*, *intelligentia*, *providentia*.⁷⁸³ Macrobius, on the other hand, makes it six: *ratio*, *intellectus*, *circumspectio*, *providentia*, *docilitas*, *cautio*.⁷⁸⁴

Aquinas provides a relatively concise and clear solution to the mereology of prudence, dissecting it in three perspectives, which taken together neatly systematises the various parts presented by the ancient authorities: the integral parts, the subjective parts, and the potential parts. The integral parts are divided into two: the cognitive and the preceptive, with the former involving *memoria*, *ratio*, *intellectus*, *docilitas*, *solertia*, and the latter including *providentia*, *circumspectio*, and *cautio*, thereby combining both the Ciceronian parts and the Macrobius parts. For Aquinas, the integral parts of prudence present the mental mechanism of man's prudential process, from perception, to reasoning, and then to action. Docility and shrewdness acquire knowledge, which is then processed with memory and understanding, and a conclusion is reached by reason. Whence enters the preceptive parts, where the command is made with insight, circumspection, and caution. The subjective parts of prudence are dealt with in II2ae, Question 47, namely that of the individual person and that of the multitude. Finally, the potential parts, which are also adjoined virtues, are *eubulia*, *synesis*, and *gnome*.⁷⁸⁵ Here Aquinas

⁷⁸¹ *AMSE*, VI, lect. XIV, num. 556&557, p. 478-80.

⁷⁸² *ST*, II2ae, q. 48, art. 1: Quorum octo quinque pertinent ad prudentiam secundum id quod est cognoscitiva, scilicet memoria, ratio, intellectus, docilitas et solertia, tria vero alia pertinent ad eam secundum quod est praeceptiva, applicando cognitionem ad opus, scilicet providentia, circumspectio et cautio.

⁷⁸³ Cicero, *De inventione rhetorica*. ii, 53.

⁷⁸⁴ Macrobius, *Commentarii in Somnium Scipionis*. i.

⁷⁸⁵ *ST*, II2ae, q. 48, art. 1, esp: Partes autem potentiales alicuius virtutis dicuntur virtutes adiunctae quae ordinantur ad aliquos secundarios actus vel materias, quasi non habentes totam potentiam principalis virtutis. Et secundum hoc ponuntur partes prudentiae eubulia, quae est circa consilium; et synesis, quae est circa iudicium eorum quae communiter accidunt;

is consistent with the position of Albertus in considering that *eubulia*, *synesis* and *gnome* are secondary virtues that are adjoined to the principal virtue of prudence, since they do not have the whole power of the principal virtue, but can be considered separately and independently. Further, in Question 47, Aquinas argues that the acts of prudence are to take counsel, to judge, and to command, out of which to command is the principal act because it is closest to the end of prudence.⁷⁸⁶ In this way, none of *eubulia*, *synesis* and *gnome* pertains to the act of command, and thus can only be secondary virtues for specific matters, where such matters arise.

Since Aristotle himself never presents *phronesis* as a triad, Odonis's question 'whether *eubulia*, *synesis* and *gnome* are part of prudence or distinct habits' is clearly responding to both Albertus and Aquinas, and his response takes place with a drastically different approach.⁷⁸⁷ He rejects Aquinas's idea of the integral parts of prudence and places them as the *habitudes* necessary for the acts of prudence. Odonis explores two different methods of mereology on the relationship between virtue and its parts: the relationship between the whole and its constituent parts, and that between virtue and its acts:

Firstly, it should be known that virtues can be understood as having parts in in two ways. First, any virtue as a complete habit would include some partial constituent habits, which together form the total habit, just as habit of the proposition includes the habit of the terms, and generally a complex habit includes uncomplex habits.

The second way is that a virtue would have many acts, hence whatever act is in this respect its partial act, just as generosity has as its act to give and accept where appropriate, fortitude has as its act to attack and to await. In this way a virtue, while it disposes towards two or more acts, is said to be complete in respect to itself, as it determinately disposes towards one act or another. The virtues of attacking rightly and of anticipating rightly are two parts of

et *gnome*, quae est circa iudicium eorum in quibus oportet quandoque a communi lege recedere. Prudentia vero est circa principalem actum, qui est praecipere.

⁷⁸⁶ *ST*, II2ae, q. 47, art. 8: Sed practica ratio, quae ordinatur ad opus, procedit ulterius et est tertius actus eius praecipere, qui quidem actus consistit in applicatione consiliorum et iudiciorum ad operandum. Et quia iste actus est propinquior fini rationis practicae, inde est quod iste est principalis actus rationis practicae, et per consequens prudentiae.

⁷⁸⁷ *ExEth*, VI, q. 15, f. 133vb: Utrum *eubulia*, *synesis*, et *gnome* sint partes prudentiae an virtutes ab ipsa distinctae.

fortitude, which both attacks rightly and anticipates rightly, and are certainly not different habits that constitute one habit.⁷⁸⁸

Odonis rejects the first approach, which is the line taken by Albertus, and to some extent, by Aquinas as well, and proceeds to consider prudence in relation to its acts, as its ‘potential parts’. What Odonis goes on to present is a gigantic triple-layer structure of four acts and sixteen habitudes that brings together everything ever said about prudence by both Aristotle and the Roman philosophers. Of the acts of prudence, there are four: to seek counsel, to judge, to command, and to act. For each of the four acts, Odonis places four habitudes through which relevant action may be executed out properly. The structure is introduced as follows:

Act of Prudence:	Habitudes: ⁷⁸⁹
Counsel	Shrewdness, docility, memory, reason; ⁷⁹⁰
Judgement	Understanding, sensibility, circumspection, caution; ⁷⁹¹

⁷⁸⁸ *ExEth*, VI, q. 15, f. 134ra: De primo sciendum quod virtus potest intelligi habere partes dupliciter, primo quidem quod in habitu totali includat habitus partiales constituentes habitus totalem, sicut habitus propositionis includit habitus terminorum, et generaliter habitus complexus includit habitus incomplexionis.

Alio modo quod virtus habeat plures actus, sic quod quilibet sit partialis respectu eius, sicut liberalitas habet dare ubi oportet et accipere unde oportet, fortitudo habet invadere et habet expectare. Et hoc modo virtus, ut disponit ad duo, vel ad plura opera, dicitur quoddam totum respectu sui, ut determinate disponit ad istud opus vel ad istud. Sicut diceretur quod virtus recte invasiva, et virtus recte expectativa sunt duae partes fortitudinis, quae recte invadit et recte expectat, non quidem quod sint distincti habitus constituentes unum habitum. Nunc autem in proposito, non inquirimus partes prudentiae primo modo sumptas, quia tunc quaereremus habitus complexos rerum agilibium, sed quaerimus partes secundo modo dictas, quas antiqui vocaverunt partes potentiales.

⁷⁸⁹ *ExEth*, VI, q. 15, f. 134ra: Et ergo sciendum secundo, quod quattuor sunt opera prudentiae. Primum est consiliari quaerendo, ut supra 4 libro, capitulo 6. Secundum est iudicare de inquisitis per consilium, ut habetur hic, capitulo 11. Tertium est praeiudicata praecipere; prudentia enim est praeceptiva, ut habetur ibidem. Quartum est praecepta exequenda agere, et ideo in eius diffinitione, dicitur quod est habitus activus.

Secundum hoc ergo posset dici quod virtus bene consiliativa, et virtus bene iudicativa, et bene praeceptiva, et virtus bene activa essent quattuor partes prudentiae modo quo dictum est.

Tertium sciendum quod quodlibet istorum quattuor operum requirit in homine bene operante quattuor habitus, vel quattuor habitualitates, per quos, vel per quas, redditur opus bonum.

⁷⁹⁰ *ExEth*, V, q. 15, f. 134ra: Bene enim consiliari requirit eustochiam, docilitatem, memoriam, et rationem.

⁷⁹¹ *ExEth*, V, q. 15, f. 134ra: Recte autem iudicare, quod est secundum opus prudentiae, requirit prudentialem intellectum, prudentialem sensum, prudentialem circumspectionem, prudentialem cautelam.

Command	Determination, persuasion, benignity, constancy; ⁷⁹²
Action	Foresight, vigilance, diligence, solicitude. ⁷⁹³

Therefore, prudence has consistency in its acts: all four acts of prudence are to be present for man's action to be complete and prudential. Much like Aquinas's idea where an act of prudence is a sequence of mental mechanisms involving its integral parts, where one part is cognitive, while the other part preceptive, Odonis delineates prudence as a progression from counsel, to judgement, to command, and finally to action. Prudence is in accordance with right practical reason and the complete process of practical syllogism always involves deliberation and concludes in action.⁷⁹⁴ In his response to Cicero's three-fold division of prudence, Odonis argues that prudence simply does not function like this: there is no separate part that acts on what is past, another part acts on the future, and another part that applies this to action. All acts of prudence work together to achieve the end of living life well as a whole, and the virtue of prudence applies itself in its entirety to each particular, instead of dispensing a part of it to a particular that requires this part:

It should be said that foresight, intelligence, and memory are not three virtues distinct from one another, nor are they distinct from prudence, because it would be stupid to say that a virtue which deliberates the future based on the past, and which acts out with its potency, can be divided into three virtues, of which one would consider acting on the past, one would infer about the future, and the other one would apply the reasoning to intent action. It is really one and same virtue which forms the entire reasoning and applies itself in action.⁷⁹⁵

Odonis then proceeds to address the role of *eubulia*, *synesis*, and *gnome*. He disagrees with Albertus and Aquinas and denies that they are adjoined virtues. Instead, Odonis argues that these are really the

⁷⁹² *ExEth*, V, q. 15, f. 134rb: Recte autem praecipere quod tertium opus est prudentiae, requirit duo ex parte intellectus, scilicet, determinatam certitudinem, vel certam determinationem, et efficacem suasionem, et ex parte appetitus alia duo, scilicet benignitatem et constantiam.

⁷⁹³ *ExEth*, V, q. 15, f. 134rb: Agere vero et ad opera applicare quod est quartum opus prudentiae, requirit ad sui bonitatem quattuor. Duo quidem essentialiter, et duo quasi accidentaliter. Essentialiter quidem requirit providentiam atque vigilantiam. Accidentaliter vero diligentiam et sollicitudinem.

⁷⁹⁴ Reeves, *Aristotle on Prudence*, p. 13.

⁷⁹⁵ *ExEth*, VI, q. 15, f. 134vb: Per hoc dicendum ad primum in oppositum, quod prudentia <providentia, sic in *X* and *V*>, intelligentia, et memoria non sunt tres virtutes ab invicem distinctae nec a prudentia. Quia stultum esset dicere, quod virtus arguens ex praeteritis, ad futura, et agens potentia divideretur in tres virtutes, quarum una consideraret agens de praeterito, et altera inferet consequens de futuro, et altera applicaret argumentum ad opus in praesenti proposito, sed est una et eadem, quae totum argumentum format et ipsum ad opus applicat.

same habit of prudence, from which they are inseparable. *Eubulia* is the rectitude of counsel, *synesis* that of judgement, and *gnome* is where one judges the particulars with equity. Whatever pertains to each of them pertains to prudence as well, and it is for this reason that they are parts of prudence, rather than separate virtues. All of them tend towards the end of prudence, and make right its acts.

They (*eubulia*, *synesis*, *gnome*) are all potential parts of prudence, and they should be precisely understood as habits of prudence, which disposes man towards one or another action, as was made clear above about the meaning of those potential parts. Such is the case here, for prudence, in that it means precisely the habitual and active rectitude of counsel, and this rectitude is *eubulia*, because whatever is said of *eubulia* can also be understood as pertaining to prudence. Prudence is also the habitual and usual rectitude of judgement, which is *synesis*, or *eusynesia*, and whatever is said about *eusynesia* can also be understood as pertaining to prudence. This is not contradictory to Aristotle, who says that *synesis* is not prudence, because *synesis* is understood in terms of use, and prudence in terms of habit. ...

Prudence is also exactly the rectitude of judging in accordance with the arbitration of equity that transcends general laws, and this rectitude is *eugnome*, because whatever is said about *gnome* can be understood to pertain prudence.

Therefore *eubulia*, *eusynesia* and *eugnome* are all potential parts of prudence. Thus, they are one and same prudential habit, and are determined towards one or another act, as it has been explained, or they are the rectitude of these acts, as what the text of the Philosopher seems to be saying. On this one can state clearly that Aristotle does not think they should be distinct habits or virtues distinct from prudence.⁷⁹⁶

⁷⁹⁶ *ExEth*, VI, q. 15, f. 134vb: Quartam conclusionem probo sic. Illa sunt partes prudentiae potentiales, quae sunt habitus prudentiae praecise acceptus, ut disponit ad istud opus, vel ad illud, ut patet ex modo accipiendi partes potentiales superius exposito. Sed sic est in proposito, quia prudentia, ut dicit praecise rectitudinem habitualement vel actualement consilii, est *eubulia*, quia quaecumque dicuntur de *eubulia*, possunt vere dici de prudentia sic accepta. Ipsa etiam, ut est habitualis vel usualis rectitudo iudicii, est vere *synesis* et *eusynesia*, quia quaecumque dicuntur de *eusynesia* vere possunt dici de prudentia sic accepta. Nec obstat quod Philosophus dicit *synesim* non esse prudentiam, tamen quia ipse sumit *synesim* pro usu, prudentiam autem pro habitu, et hoc modo una non praedicatur de reliqua, tamen quia sumit *synesim* cum praecisione consilii et praecepti, prudentiam autem cum inclusione istorum. Et ideo nec hoc modo prudentia praedicatur de *synesi*, quamvis vere dici possit quod iste habitus, quo recte iudicamus in agibilis, est vere prudentia, et illud rectum iudicium in actu et etiam in usu, est prudentia in actu et usu.

Therefore, the triad of *eubulia*, *synesis* and *gnome* corresponds partially to the four acts of prudence: *eubulia* is the correctness of deliberation; *synesis* is the rectitude of judgement; and finally, *gnome* is the equity of the precept. It is obviously interesting to note that there is no potential part of prudence that corresponds to the final step of the prudential process: action. One may consider that the rectitude of action ultimately resides in the will, yet Odonis presents earlier the four qualities required of action and shows that, while the will may be the agent that moves man to act, it is still acting with the influence of the intellect.

To act and to apply into practical action is the fourth act of prudence, and it requires four aptitudes for its own goodness: two essentially and two accidentally. Essentially, it requires providence and vigilance, and accidentally it requires diligence and solicitude. ... The reason for this is that providence takes care of things which are investigated with counsel, determined with judgement, and commanded with precept, as it is clear that none of them could be absent. Vigilance intends that the work is driven through out of all foresights. Diligence connected with love continues the act and intends this continuation. Solicitude connected with labour is occupied with many things, just as another Martha.⁷⁹⁷

While diligence, as love, and solicitude, as labour, may be considered qualities of the will, providence and vigilance are clearly qualities of the intellect, and it is important that the latter two constitute the

Ipsa etiam prudentia, ut est praecise iudicativa secundum arbitrium epiekes, generalibus regulis praetermissis, ipsa est vere eugome <eugnome, sic in *X* and *V*, infra idem>. Quia quaecunque dicuntur de *gnome* vere possunt dici de prudentia sic accepta, ut habetur ex dictis Philosophi. Quare *eubulia*, *eusynesia*, et *eugnome* sunt partes potentiales prudentiae. Sic quod sunt unus et idem prudentialis habitus, tamen ad aliud et ad aliud opus determinatus, sicut fuit expositum, vel sunt rectitudines ipsorum operum ut plurimum quod (quam, *X*) sonare, videtur littera Philosophi. De quo constat evidenter quod non sensit esse distinctos habitus, vel distinctas virtutes, a prudentia.

⁷⁹⁷ *ExEth*, VI, q. 15, f. 134rb-va: Agere vero et ad opera applicare quod est quartum opus prudentiae, requirit ad sui bonitatem quattuor. Duo quidem essentialiter, et duo quasi accidentaliter. Essentialiter quidem requirit providentiam atque vigilantiam. Accidentaliter vero diligentiam et sollicitudinem, quod declaratur in quodam exemplo recitato per Hugum de Sancto Victore in *Didascalicon*, dicit enim quod apud veteres philosophos, fuit descripta lectica philosophiae, portata per duos iuvenes apparentes exterius, et per duas puellas latentes interius. Unus iuvenum vocabatur *Filos*, idest amor, alter *Copos*, idest labor, una puellarum vocabatur *Philamina*, idest cura, vel providentia, altera *Agrenmia*, idest vigilantia. Cuius ratio erat quia providentia curat de hiis quae consilio investigata sunt et iudicio determinata et praecepto iniuncta, ut videlicet nullum eorum desit. Vigilantia vero intendit qualiter peragitur opus ex omnibus provisus, sed diligentia amoris connexa opus continuat et continuationi intendit. Sollicitudo vero labori connexa occupatur circa plurima sicut altera Martha.

essential aptitudes for good action. Here, providence is obviously central to good action as a habit that brings together all three precedent acts: counsel, judgement, and precept. One simply cannot read this without reference to Cicero's very own reading of prudence: providence is the understanding of the future. Although Odonis rejects Cicero's triad of prudential parts, he may well have been inspired by Cicero's writing, and considers that providence as the intellection of future events in anticipation of the action to be taken. Surely, this differs from Cicero's original idea of the role of providence, which together with memory and intelligence forms a complete understanding of man and universe. Yet, it is central to Odonis's own thesis, as prudence is concerned with the undetermined, which is yet to happen. Providence duly understands such future contingencies, and makes the recommendation to the will so that a right action may be taken.

With the final part of action taken out, the triad of potential parts of prudence is confined to the cognitive and preceptive. As we have seen at the beginning of this section, Aristotle considers this triad as part of the natural state of *phronesis*, and Odonis here mostly concurs. In the grand scheme of the question of the first virtue, Odonis offers a proposition that differs from both Aquinas, who considers *synderesis* as the innate ability, and Scotus, who points to the affections of the will. Odonis writes:

No virtue that is distinct from prudence would include precisely the disposition of nature and the complement to prudence. *Eubulia*, *synesis*, and *gnome* include the disposition of nature, as the Philosopher said that these states seem to be natural endowments, and no one indeed is held to be wise by nature, but by nature he may have *gnome*, *synesis* and intellection. An indication of this is that we think that these qualities are related to one's age. As per an existing natural cause, they include the complement of prudence, because one is naturally apt to investigate and to judge both for himself and for others, and to rule rightly and to apply to action. The natural endowments receive determinately the virtuous complement through the habit of prudence towards the good.⁷⁹⁸

⁷⁹⁸ *ExEth*, VI, q. 15, f. 134vb: Tertio quia nulla virtus a prudentia distincta includit praecise habilitatem naturae et complementum prudentiae; sed eubulia, synesis, et gnome includunt huiusmodi habilitatem naturae, dicente Philosopho, quod naturalia esse videntur hic; et natura sapiens quidem nullus, gnome autem habet et synesim et intellectum. Signum autem quoniam et aetatibus aestimamus sequi, sed ut natura causa existente, includunt etiam complementum prudentiae, quia cum aliquis est naturaliter aptus investigare, iudicare sibiipsi et aliis, recte praecipere, et ad opus applicare. Ista quidem habilitates naturales per habitum prudentiae ad bonum determinate recipiunt complementum virtuosum. Sicut colligi potest ex dictis Philosophi, quia ille tres dispositiones non sunt virtutes distinctae a prudentia.

Instead of an understanding of universal moral principles, it is the ability to deliberate, to judge, and to command that is naturally endowed to man, and it is with these abilities that one develops prudence and other moral virtues later in life through repeated actions and experience. In other words, for Odonis, man naturally has the basis of the prudential process. While such natural state of prudence may not be capable of what other ethicists call ‘heroic actions’, it may certainly be capable of a good act, coupled with the indeterminate but free will.

As we have seen, part of the motivation for the medieval commentators to analyse the taxonomy of prudence is to give greater precision and epistemological structure to the plethora of authorities each differing from one another on the parts and acts of prudence. Before substantial parts of Aristotle’s text was made available, the Stoics, as well as the Patristics after them, conceive of *prudentia* as an understanding of the eternal truths and the cosmic order as a whole; the prudent man, or the Stoic sage, already has a grasp of the eternal and universal truths, and is ready to apply such universal principles to the particular human actions. In the early thirteenth century, William of Auxerre and Philip the Chancellor both identify a duality of judgement within prudence: the *iudicium discretivum*, which determined the good and evil of the moral action proposed, and the *iudicium diffinitivum*, which puts the first judgement into action. The Stoic legacy is evinced by the absence of the deliberative element in the acts of prudence - the Stoic tradition already assumes the perfection of wisdom and does not concern with the contingent which lies outside the purview of the universal. Therefore, the Aristotelian ideas of virtue as a habit that needs to be formed in repeated actions, and of *phronesis* that underlines the importance of deliberation, are not within the intellectual spheres of Stoicism. In this context, Aquinas, who was a vocal critic of Stoicism in the Middle Ages,⁷⁹⁹ and Odonis, who understands well Aristotle’s intention that *phronesis* should be a complex internal process, both bear witness to the legacy of the prevailing intellectual currents of Stoicism before the reintroduction of Aristotle back into the Latin West.

Such is Odonis’s psychological exposition of prudence, and the generalist reading of both *praxis* and the practical mind certainly elucidates the generalist end of prudence - living life well as a whole. Before we explore further prudence’s relationship with wisdom and the moral virtues, we must now further consider the broad remit of prudence as a general and master virtue, and turn our attention to Odonis’s discussion of prudence as a political science.

⁷⁹⁹ David Lines, ‘Sources and Authorities for Moral Philosophy in the Italian Renaissance’, p. 11.

II. UNITY OF PRUDENCE

1. A Division of Prudence: Personal, Domestic, and Political

In the Aristotelian scheme, the importance of *phronesis* lies in the fact that, however well-educated and trained a person is in the science of ethics, he still inevitably has to deal with the particular matters each arising out of particular circumstances. Aristotle realises that general principles of ethics do not suffice in the practical life, and *phronesis* is required so that one may act virtuously in particular matters. Yet, it is precisely the complexities of practical life that Aristotle addresses with practical wisdom that denies Book VI the simplicity that many readers may wish for. As Anthony Celano argues, ‘the type of practical wisdom envisioned by Aristotle demands constant attention toward the fluctuating conditions within institutions, as well as toward the diverse talents within the communities.’⁸⁰⁰

While Aristotle always intends the *Ethics* to be a work on man in relation to civil society, his assumption that man is always the political animal finds itself in a strange place in medieval intellectual circles, where Augustinian theology focuses introspectively on man’s individual salvation and union with God. In the Christian mindset, man is first and foremost a private individual embarking on a journey towards the union with God. His social and political characteristics come secondary to his salvific mission. The great secular-mendicant debate on the relative merits between active and contemplative life arises out of this context of a dichotomy between the private and the communal. If moral virtues rectify one’s own actions and justice governs one’s relationship with others, the idea of *phronesis* seems to be sitting on both sides. *Phronesis* is undoubtedly a highly internal state of the intellectual mind, but also has an indelible social and political dimension. Aristotle affirms that:

Political science and practical wisdom are the same state, but their being is different. There are two sides to practical wisdom as concerned with the city; that which co-ordinates is legislative science, while that concerned with particulars has the name political science. (*NE*, 1141b)

⁸⁰⁰ Celano, *Aristotle’s Ethics*, p. 13.

Yet,

Practical wisdom is also thought of especially in terms of that form of it that is concerned with oneself, the individual. (*NE*, VI, 1141b)

Aristotle's descriptive definition of *phronesis* leaves it riding on both the private and the public spheres of actions, and thus it should come with no surprise that many commentators of the *Ethics* turn to ask the question of the relationship between these different prudences.

Aristotle's identification of *phronesis* with politics thus becomes somewhat inconsistent to the received wisdom of the later middle ages that the virtue of prudence should be divided into the personal (or monastic), economic, and political. This division ultimately originates from the Stoics, who consider that there are three aspects of man's moral life: the personal, the familial, and the political. By the thirteenth century, it has become common for the artians to divide the moral science into this triad, as we see in Part I, chapter V, 3 on the division of the moral science.⁸⁰¹

While it is generally accepted that moral science should have three aspects, the triple division of prudence specifically may be the contribution of the commentary of Eustratius. Eustratius divides prudence into the political, the economic, and the moral habit, and considers that only the moral habit can be thought of as the same with general prudence without further qualifications. Both domestic and political prudence are thus different from *prudentia maxime*. The difference takes two levels. Firstly, the subject of prudence is different: *prudentia maxime* concerns one individual person, domestic prudence concerns the household, while political prudence concerns the whole polity. On a second level, Eustratius argues that while every virtuous person may have personal prudence, it only pertains to the rulers of the polity to have political prudence, which remains inaccessible to the ordinary citizens.⁸⁰² In a way, Eustratius's position is consistent to that of Aristotle, who never intends the level of individual egalitarianism assumed in medieval theological and moral thought. It is always important to remember that for Aristotle, only the political and intellectual elite of the Athenian society was able to attain a virtuous life. The ruler must learn how to be ruled, as the virtue of ruling and being ruled are the different sides of the same state. However, compared with the Athenian

⁸⁰¹ Ingham, 'Phronesis and Prudentia', p. 645.

⁸⁰² Roberto Lambertini, 'Political Prudence in Some Medieval Commentaries on the Sixth Book of the *Nicomachean Ethics*', in I. P. Bejczy, *Virtue Ethics in the Middle Ages: Commentaries on Aristotle's Nicomachean Ethics, 1200-1500*, Leiden, 2008, p. 226-228.

political system where male citizens took turns governing the city, the ordinary man in Eustratius's twelfth-century Byzantium had no part in government. Ultimately, for Eustratius, personal and political prudence only share a partial identity. Since prudence comes from experience of particular matters, there is no way an ordinary citizen could acquire the virtue of political prudence through ruling.

Albertus Magnus differs significantly from Eustratius' position. Albertus not only rejects Eustratius's idea that *prudentia* and *politica* are different habits and have only partial identity, but also argues that prudence and politics are one and the same habit concerning the same subject, differing only in *modus* and *ratio*.⁸⁰³ The former pertains to directive reason, while the latter to operative reason. For Albertus, the prudent person deals necessarily with both the private and the public, and exercises prudence in both spheres. Lambertini argues that in Albertus's commentary, prudence as a purely private virtue simply does not exist. Yet, Albertus seems to see prudence and politics as divisible from each other, albeit this division will make prudence imperfect. In the following question *quod prudentia sit circa ea quae sunt communitatis*, Albertus argues:

Prudence, simply speaking, directs both one's own affairs and those which pertain to the community, because he who does not know one or the other, is not perfectly prudent.⁸⁰⁴

Albertus acknowledges the possibility that man can have one part without the other. This separability is perfectly illustrated in the passage that follows, where it is easy to see the possibility of prudence without politics, and yet:

There are also those who do well in the communal regime but who do not know how to manage their own affairs, and the reason for that is that either they hold private goods in contempt, or private reasons are more particular than the reason of the state, and man is subject

⁸⁰³ Lambertini, 'Political Prudence', p. 228; *AMSE*, VI, lect. XI, num. 544, p. 467: Dicendum quod prudentia et politica sunt idem habitus secundum subiectum, sed differunt secundum modum sive secundum rationem, quia prudentia se magis tenet ex parte rationis dirigentis, quia est cum ratione eligibilium, sed politica se magis tenet ex parte operis; est enim quidam habitus eligibilium, prout sunt operabilia.

⁸⁰⁴ *AMSE*, VI, lect. XI, num. 547, p. 469: Dicendum, quod prudentia, si simpliciter habeatur, dirigit in propriis et in his quae ad communitatem pertinent, quia non est perfecte prudens, qui se et alios regere nescit.

to more perilous falls than the state, and the universal is always easier to understand than the particular.⁸⁰⁵

Although private reason involves more complexities as it is subject to more particular matters, public reason, which *ordinat bene in his quae sunt communitatis*, is the more principal (*principalior*) prudence, because it is concerned with the good that is more divine. To understand this paradox, it is important to go back and look at Albertus's understanding of the term *divinius*. In Albertus's gloss on Book I, as summed up by Matthew Kempshall, common good is more divine than private through its similitude to God. A private citizen is limited by his mortality in his imitation to God, but the community, or the city, overcomes this barrier of mortality as it is composed of an *ad infinitum* succession of citizens, thus more similar to God in its infinity.⁸⁰⁶ For Albertus, common good is only quantitatively superior to the private good. Although later Albertus revises his commentary and gave the term *divinius* a much more metaphysical bend, here we are concerned solely with the first version whence the question on prudence is taken. Therefore, *politica* is not a higher form of prudence despite its greater divinity; instead, Albertus implies that personal prudence is the more difficult part, since it concerns more particulars, and particulars are more difficult than the universal. Thus, despite his insistence that politics and prudence are the same virtue, the different reasons concerning the two spheres still need to be acquired separately, since the possession of one does not necessarily imply the possession of the other.

Aquinas's take on this question shows elements from both commentators above. Aquinas argues that prudence has a degree of unity, and yet it is divided into different species according to the different matters, with which each species is concerned. In his question *utrum prudentia se extendat ad regimen multitudinis*, Aquinas firstly rejects the notion that prudence pertains to the individual and one's own good alone as an erroneous statement of the other ancient philosophers, cited by Aristotle only as a contrary opinion; then he proceeds to argue that both the faith and right reason dictates that common good is superior to personal good. Further, the acts of prudence are taking counsel, making judgement,

⁸⁰⁵ *AMSE*, VI, lect. XI, num. 547, p. 469-470: Sed secundum quid est prudens, qui tantum scit se habere bene in propriis. Similiter etiam sunt aliqui qui bene se habent in regimine communitatis, sed in propriis nesciunt seipsos regere, et huius ratio est, vel quia contemnunt propria vel quia propriorum rationes sunt magis particulares et homo pluribus periculis subiacet quam civitas, et universale semper facilius est ad sciendum quam particulare. Tamen inter has duas prudentia principalior est illa quae ordinat bene in his quae sunt communitatis, quae est circa divinius bonum. Tamen etiam qui deficit in altero, non attingit optimum, quod est virtutis.

⁸⁰⁶ Kempshall, *Common Good*, p. 29-30.

and commanding in regard to the means to a due end, and such acts can be made both in private and public affairs:

According to the Philosopher (*Ethic.* vi, 8) some have held that prudence does not extend to the common good, but only to the good of the individual, and this because they thought that man is not bound to seek other than his own good. But this opinion is opposed to charity, which "seeketh not her own": wherefore the Apostle says of himself: "Not seeking that which is profitable to myself, but to many, that they may be saved." Moreover it is contrary to right reason, which judges the common good to be better than the good of the individual.

Accordingly, since it belongs to prudence rightly to counsel, judge, and command concerning the means of obtaining a due end, it is evident that prudence regards not only the private good of the individual, but also the common good of the multitude.⁸⁰⁷

More interestingly, Aquinas addressed the objection that those who seek the common good often neglect their own, arguing that the personal good depends on the good of the family and the state, and that the good disposition of the part, i.e., the individual, depends on the relationship with the whole, i.e., the household or the state. *Bonum proprium* is a consequence of the *bonum commune*, and thus prudence concerns both the individual and the multitude.

He that seeks the good of the many, seeks in consequence his own good, for two reasons. First, because the individual good is impossible without the common good of the family, state, or kingdom. Hence Valerius Maximus says of the ancient Romans that "they would rather be poor in a rich empire than rich in a poor empire." Secondly, because, since man is a part of the home and state, he must needs consider what is good for him by being prudent about the good of the many. For the good disposition of parts depends on their

⁸⁰⁷ *ST*, II2ae, q. 47, art. 10: Respondeo dicendum quod, sicut philosophus dicit, in VI *Ethic.*, quidam posuerunt quod prudentia non se extendit ad bonum commune, sed solum ad bonum proprium. Et hoc ideo quia existimabant quod non oportet hominem quaerere nisi bonum proprium. Sed haec aestimatio repugnat caritati, quae non quaerit quae sua sunt, ut dicitur I ad Cor. XIII. Unde et apostolus de seipso dicit, I ad Cor. X, non quaerens quod mihi utile sit, sed quod multis, ut salvi fiant. Repugnat etiam rationi rectae, quae hoc iudicat, quod bonum commune sit melius quam bonum unius. Quia igitur ad prudentiam pertinet recte consiliari, iudicare et praecipere de his per quae pervenitur ad debitum finem, manifestum est quod prudentia non solum se habet ad bonum privatum unius hominis, sed etiam ad bonum commune multitudinis.

relation to the whole; thus Augustine says that "any part which does not harmonize with its whole, is offensive."⁸⁰⁸

Yet, Aquinas also states that the prudence that concerns individual good is not the same as that which concerns the multitude. There is a division of species according to each habit's relation to its end: there is prudence simply called, concerning one's own good, domestic prudence, concerning the common good of the household, and then political prudence, concerning the common good of the city:

Prudence is in the reason. Now ruling and governing belong properly to the reason; and therefore it is proper to a man to reason and be prudent in so far as he has a share in ruling and governing. But it is evident that the subject as subject, and the slave as slave, are not competent to rule and govern, but rather to be ruled and governed. Therefore prudence is not the virtue of a slave as slave, nor of a subject as subject.⁸⁰⁹

There is a specific species of prudence for each sphere of man's action, and Aquinas makes it clear that although every rational human being is capable of prudence, the specific kind of prudence that one practices is determined by one's own social status: the prudence between man and woman is different, and prudence of a ruler is different from the prudence of a political subject.⁸¹⁰ Despite the divisible structure of prudence, Aquinas also makes for a substantial degree of unity within the virtue of prudence. Whereas Eustratius considers that personal, economic, and political prudence separate habits sharing no more than a generic term and thus partial identity, Aquinas allows for a much more

⁸⁰⁸ *ST*, II2ae, q. 47, art. 10: Ad secundum dicendum quod ille qui quaerit bonum commune multitudinis ex consequenti etiam quaerit bonum suum, propter duo. Primo quidem, quia bonum proprium non potest esse sine bono communi vel familiae vel civitatis aut regni. Unde et maximus Valerius dicit de antiquis Romanis quod malebant esse pauperes in divite imperio quam divites in paupere imperio. Secundo quia, cum homo sit pars domus et civitatis, oportet quod homo consideret quid sit sibi bonum ex hoc quod est prudens circa bonum multitudinis, bona enim dispositio partis accipitur secundum habitudinem ad totum; quia ut Augustinus dicit, in libro Confess., turpis est omnis pars suo toti non congruens.

⁸⁰⁹ *ST*, II2ae, q. 47, art. 11: Respondeo dicendum quod, sicut supra dictum est, species habituum diversificantur secundum diversitatem obiecti quae attenditur penes rationem formalem ipsius. Ratio autem formalis omnium quae sunt ad finem attenditur ex parte finis; sicut ex supradictis patet. Et ideo necesse est quod ex relatione ad diversos fines diversificentur species habitus. Diversi autem fines sunt bonum proprium unius, et bonum familiae, et bonum civitatis et regni. Unde necesse est quod et prudentiae differant specie secundum differentiam horum finium, ut scilicet una sit prudentia simpliciter dicta, quae ordinatur ad bonum proprium; alia autem oeconomica, quae ordinatur ad bonum commune domus vel familiae; et tertia politica, quae ordinatur ad bonum commune civitatis vel regni.

⁸¹⁰ *ST*, II2ae, q. 47, art. 11: Sed virtus principis et subditi differt specie, sicut etiam virtus viri et mulieris.

systematic connection. The pursuit of the individual good is not only a consequence of the pursuit of the common good, as we have seen above, but personal prudence is commanded by the higher forms of prudence, namely domestic prudence, which is in turn commanded by political prudence. Aquinas's analogy of the ordering of equestrian, military, and civil virtues perfectly illustrates his concept of the hierarchy of species. The individual good is ordered towards the common good, and personal prudence is the lower stage the virtue, from which one is to progress towards economic, and finally political prudence:

Even different ends, one of which is subordinate to the other, diversify the species of a habit, thus for instance, habits directed to riding, soldiering, and civic life, differ specifically although their ends are subordinate to one another. In like manner, though the good of the individual is subordinate to the good of the many, that does not prevent this difference from making the habits differ specifically; but it follows that the habit which is directed to the last end is above the other habits and commands them.⁸¹¹

Aquinas inherits the Stoic and Eustratian legacy of the separable moral spheres into the personal, domestic, and political, but also represents a significant departure from his predecessors by placing the three species of prudence in an order of hierarchy with political prudence at the very top. This is a thesis of both separation and unity. Just as one's private good is ordered towards the city's common good, one's personal prudence is a prerequisite for his public life in the civic sphere.

2. The Unitary Nature of Prudence: Odonis

Compared with his predecessors, Odonis presents a much more unitary version of prudence. This stems from his idea of an individual moral agent as exactly that - an individual. One person does not live separate lives of the private, domestic, and public, but rather, one lives one and same life with various and complex social interactions. Indeed, as we have seen in the Prologue, there is only one, indivisible moral science, and hence, there is one indivisible prudence. Personal, economic, and

⁸¹¹ *ST*, II2ae, q. 47, art. 11: Ad tertium dicendum quod etiam diversi fines quorum unus ordinatur ad alium diversificant speciem habitus, sicut equestris et militaris et civilis differunt specie, licet finis unius ordinetur ad finem alterius. Et similiter, licet bonum unius ordinetur ad bonum multitudinis, tamen hoc non impedit quin talis diversitas faciat habitus differre specie. Sed ex hoc sequitur quod habitus qui ordinatur ad finem ultimum sit principalior, et imperet aliis habitibus.

political prudences are not different species of prudence, but rather, they are one and same habit, and differ from each other only in terms of formal reason.

Although Odonis does not cite Albertus or Aquinas directly in his commentaries, he is amply aware of the opinions of the Dominican masters on the issue. In his question ‘whether personal prudence, domestic prudence, political prudence, and the prudence of positive law, or the master science, are one and same virtuous habit, or are they different’,⁸¹² Odonis raises three objections at the beginning. Firstly, Odonis cites the argument of Eustratius and states that there is prudence simply called, and domestic prudence, political prudence, and legal prudence are all different habits and are identical to prudence simply called in name only. Secondly, Odonis invokes the argument of Aquinas, stating that virtues with different formal objects are different habits, and are divided according to the different ends - one’s own good, good of the household, and good of the family. Thirdly, again invoking Aquinas, Odonis presents the argument that personal, domestic, and political prudences differ because they are different scientific habits.⁸¹³

Odonis then offers a solution to the question arguing that such habits of prudence are one and the same and that they are inseparable from each other. He presents the unity of prudence on three levels: the unity of object, the unity of subject, and the unity of scientific reason. Firstly, personal, economic, and political prudences share the unity of object, i.e., to live life well as a whole. Although prudence simply called is ordered towards the good of oneself, this object cannot be achieved without the domestic and political good:

Firstly, because prudence simply speaking is not a habit that is different from any virtue except in its being, and true prudence simply speaking does not differ from domestic or political prudence other than in its being, therefore it is not a habit different from the others.

⁸¹² *ExEth*, VI, q. 14, f. 131va: *Utrum prudentia personalis et prudentia economica et prudentia politica et prudentia legis positiva seu architectonica sint unus et idem habitus virtuosus an diversi.*

⁸¹³ *ExEth*, VI, q. 14, f. 131va: *Primo quia virtutes contra se invicem divisae sunt habitus diversi; sed dictae prudentiae sic sunt divisae, dicitur enim in textu quod videtur prudentia maxime esse, quae circa seipsum, et in illum, et habet ipsa commune nomen prudentiae. Istarum autem haec quidem economica, haec autem legis positiva, haec autem politica, quare sunt habitus diversi. Secundo quia virtutes habentes obiecta formaliter diversa sunt habitus diversi; sed dictae virtutes sunt huiusmodi, quia personalis prudentia habet pro formali obiecto bona propria, economica vero bona domestica, politica vero bona civilia ut legibus ordinabilia, quare sunt habitus diversi. Tertio quia scientia ethica, et economica, et politica sunt diversi habitus scientifici, quare a simili hae prudentiae erunt diversi habitus prudentiales.*

I shall prove this assumption through the opposite position, which says that prudence simply speaking differs from domestic prudence, because domestic prudence is ordered towards domestic good, and also differs from political prudence, because political prudence is ordered towards civic good. This prudence (political or domestic) is the good of oneself, because all these goods (domestic and political) are necessary for living life well as a whole, to which prudence simply speaking is ordered, see Book VI chapter 6. Therefore absolute prudence is not different from others except in being.⁸¹⁴

Unlike Albertus Magnus who considers personal good as a consequence of the pursuit of the common good, Odonis rejects this causal relation and turns it the other way around: domestic and political goods are the necessary condition for personal good, which does not exist without the other two. The individual is at the centre of this triad, as Odonis takes the perspective of the individual and considers both man's domestic and civic lives absolutely integral to his personal being. It is impossible to have three separate species of prudence each ordered to the good of one sphere without an essential identity that make them one and same habit, since the good of the individual cannot be separated from the good of the household and the good of the city.

Secondly, Odonis considers the unity of prudence in terms of the subject. Unlike Eustratius, who identifies the distinction between different prudences as one of the quantity of subject, and Aquinas, who attributes different species of prudence to different men according to their social status, Odonis states that the virtue of the good man is the same as that of the virtuous citizen, and therefore the prudence of a good man, i.e. prudence simply called, that of a virtuous citizen, i.e. political prudence, must be one and same.

Secondly because, just as virtue of the good man is to virtue of the studious citizen, prudence of the good man is to prudence of the studious citizen: these virtues are the same virtue as the Philosopher determines in Books 3 and 2 in *Politics*, and therefore these prudences are necessarily one and same habit and one and same virtue. Prudence of the good man is the

⁸¹⁴ *ExEth*, VI, q. 14, f. 131va: Primo quia prudentia simpliciter dicta non est habitus diversus ab aliqua virtute, a qua non differt, nisi sicut a seipsa; sed prudentia vera simpliciter dicta non differt ab economica et politica, nisi sicut a seipsa. Quare non est habitus diversus ab eis.

Assumptum probo per positionem oppositam cum dicit quod prudentia simpliciter dicta differt ab economica, quia ista est ad bonum domesticum, et a politica, quia ista est ad bonum civile. Ipsa tamen est bonum proprium, quia haec bona sunt essentialiter inclusa in bene vivere totaliter, ad quod est ordinata prudentia simpliciter dicta, ut supra eodem libro, capitulo 6. Quare ipsa non differt ab aliis, nisi sicut a seipsa.

absolute and simple prudence as we call it, and prudence of the studious citizen is the political prudence through which the good citizen knows to command the good and to obey the good. Similarly, the same thing can be said of domestic prudence.⁸¹⁵

This is the same argument used by Odonis on the question of the equivalence between legal justice and aggregate virtue: legal justice is the virtue of a citizen, and aggregate virtue is the virtue of a private person; yet a citizen is a private person, and their virtues are the same. Not only are the supposedly different spheres of life inseparable from each other, there is no difference between prudence of the ruler and the prudence of the political subject - as Odonis states, a studious citizen knows how to command and how to obey through his prudence. The prudence required of a person, regardless of his social status or social situation, is thus always the same.

It is important to note here that Odonis and Aquinas quote the same passage from Aristotle's *Politics* and yet arrive at opposite conclusions. Aristotle states that 'it was proved that the virtue of a man and that of a citizen in the best state must of necessity be the same' (*Pol*, III, 1288a). Odonis holds this to be true and extends the argument to prudence, where the difference in the moral subject does not result in a distinction of virtues. Aquinas (*ST*, II2ae, q. 47, art. 11), on the other hand, cites an earlier passage in the Book of *Politics* where an exception is made: 'practical wisdom alone of the virtues is a virtue peculiar to a ruler; for the other virtues seem to be necessary alike for both subjects and rulers to possess' (*Pol*, III, 1277b).

Clearly, Odonis considers the subject of prudence as someone who is inseparable from the social context, both for the reason that one's own good is untenable without the associated household and political good, and for the fact that, unlike Aquinas, who argues for a difference in virtue between man *qua* private individual and man *qua* citizen, the virtue of a man does not shift according to the differences of moral sphere where one finds himself.

Odonis then proceeds to consider the epistemological unity of prudence. Without experience and life in the domestic and public, one cannot know what is good for oneself. Prudence simply called cannot

⁸¹⁵ *ExEth*, VI, q. 14, f. 131va: Secundo quia sicut se habent virtus boni viri et virtus civis studiosi, sic se habent prudentia boni viri et prudentia civis studiosi; sed illae virtutes sunt eadem virtus et idem habitus ut determinat Philosophus (Philosophi, *X*) 3 *Politicae* et 2. Quare et hae prudentiae erunt necessario unus habitus et una virtus. Prudentia autem boni viri est prudentia simpliciter et absolute dicta, prudentia tamen civis studiosi est prudentia politica, per quam bonus civis scit et potest bene principari et bene subiici, ut habetur ibidem. Similiter posset argui de economica.

be acquired without domestic and political prudence. If one is ignorant of domestic and political prudence, then he will be by necessity ignorant of personal prudence.

Thirdly, because prudence simply speaking cannot be acquired without domestic and urbane prudence. ... The lack of experience in civil and domestic good is the cause of ignorance concerning prudence simply speaking. Therefore, lack of prudence is caused by ignorance. Aristotle said that prudence simply speaking concerns one's own good and it is not domestic prudence, nor is it without urbanity, because the young can do geometry and other studies, but they are not prudent. The reason is rather that prudence is the knowledge of particulars, which is learned through experience; however, the young are not experienced.⁸¹⁶

Odonis underlines Aristotle's idea that prudence arises out of particulars, and such particulars are always familial or political by nature. One cannot truly know himself without socialisation, and one cannot be truly prudent, privately or publicly, without knowledge and experience of the domestic and public affairs. Odonis reinforces his thesis, arguing that, while scientific knowledge of the universals can be acquired separately of one another, prudence cannot.⁸¹⁷ It is the virtue ordered towards a holistically good life, and needs to be acquired holistically, in all life's aspects. Indeed, Odonis refuses to recognise a formal distinction between life's different spheres - man's private life simply cannot be separated from his domestic and civic lives. They are one and the same, just as prudence is one and the same.

It should be known that prudence disposes towards living life well as a whole. It disposes interlaced complexities of life towards the good of living well. It is both preceptive and active. And it can be assigned to four formal reasons. The formal reason according to which

⁸¹⁶ *ExEth*, VI, q. 14, f. 131va: Tertio quia prudentia simpliciter dicta non potest haberi sine economica et urbana, quare non est alius habitus distinctus ab eis. Consequentia tenet, quia quod est prius generatione potest haberi sine posteriori, quae distinguuntur ab eo maxime, ubi generantur successive. Antecedens autem ponit et probat hic Philosophus in littera, intendens sic arguere, posita causa ignorantiae ponitur ignorantia; sed inexperience bonorum civilium et domesticorum est causa ignorantiae circa prudentiam simpliciter dictam. Ergo ipsa posita ponetur talis ignorantia. Dicit enim quod signum huius, quod dictum est quod prudentia simpliciter dicta, et circa propria bona non sit economica, nec sine urbanitate est. Quia iuvenes fiunt geometrici et talia sapientes, prudentes autem non. Causa autem est, quoniam singularium est prudentia, quae fiunt cognita ex experientia, autem iuvenis expertus non est.

⁸¹⁷ *ExEth*, VI, q. 14, f. 131v: Ad tertium autem diciendum quod non est simile de scientia et de prudentia, quia scientiae distinguuntur secundum rationes universales, prudentiae vero secundum experientias singulares. Unde una de illis scientiis potest acquiri sine alia, non tamen una prudentia sine alia, ut habetur in textu.

prudence brings forth the good life of man and brings forth a good man is prudence simply speaking. The formal reason according to which prudence brings forth a good member of the household and a good steward of familial things, is called domestic prudence. The formal reason according to which prudence brings forth good commander for oneself and for others is called master or positive law or regulative prudence. The formal reason according to which prudence brings forth good administrator of the common things, for instance of the roads and similar things, which pertains to the community, is called political prudence.⁸¹⁸

Here, instead of the classic Stoic triad, Odonis gives a four-fold reading of prudence. While stating that they are different formal reasons, Odonis maintains that prudence is one and the same despite the differences in the formal reasons. In stark contrast to Aquinas, who proposes a hierarchy and progression of the different species of prudence, Odonis places the different forms of prudence on equal footing with each other, since the end of prudence, i.e., to live life well as a whole, cannot be achieved without any of them.

By setting domestic and political prudence as the prerequisite for personal prudence, Odonis reveals the ethical person as always interacting with the social context. Aristotle's idea of practical reason is manifested in Odonis's commentary as necessarily a form of social interaction, either within the familial context, or within the political context. Indeed, it will be tempting to consider that economic, political, and legal prudences as subsidiary forms of prudence simply called, where one acquires experience out of particulars in all these spheres to finally become a perfectly prudent person. Odonis addresses this, arguing that all forms of prudence are ordered to living life well as a whole, and no one form is ordered exclusively to one end that is subsidiary to a total and good life, for indeed

⁸¹⁸ *ExEth*, VI, q. 14, f. 131vb: Propter quod sciendum quod prudentia disponit ad bene vivere totaliter, et ipsamet disponit de conferentibus ad istud bene vivere, et ipsamet est praeceptiva et operativa. Et secundum hoc, secundum quattuor habitudines, sortitur quattuor formales rationes, quia secundum quod reddit vitam hominis bonam et hominem reddit bonum secundum hoc, dicitur prudentia simpliciter; ut autem reddit hominem bonum domesticum, et bonum dispensatorem rerum familiarium, dicitur prudentia economica; secundum autem quod reddit eum bonum praeceptorem sibiipsi et aliis, dicitur architectonica, seu legis positiva vel regulativa; ut autem reddit eum bonum operatorem rerum communium, puta itinerum et similium, quae ad communitatem pertinent, dicitur politica. Cum autem quod maxime pertinere videtur ad seipsum et unum, haec dicitur secundum opus Euripidis poetae, quae damnatur in littera sicut vilis et falsa, quam tamen sequi videtur opinio recitata.

prudence brings everything together towards that end.⁸¹⁹ Odonis does not propose a clear division between the different spheres within one's life, and it is in this point that he is most consistent with Aristotle in thinking that man is by necessity a social being, whose personal life is fundamentally inseparable from his familial and political life.

Despite displaying traces of late medieval moral Stoicism, Odonis is certainly closer to Aristotle's original intentions than his predecessors. He rejects the Stoic division of the three moral spheres in favour of a far more unitary approach.⁸²⁰ Although Odonis did not break the boundary between the different moral spheres on a conceptual level, his argument that the prudence concerning oneself, the household, and the city is really one and the same disregards the contemporary idea of the progressive hierarchy of these spheres, and places man, the moral subject-agent, firmly within a social context. The idea that prudence simply called is informed by one's experience and practical reason concerning economics and politics is consistent with Aristotle's idea that virtue, as a habit, is actualised through man's actions in a civil society. Whatever moral sphere one's action is situated in, and whatever immediate end such action has, they are all invariably ordered towards the final goal of living life well as a whole, which encompasses all of the moral spheres of man's life.

⁸¹⁹ *ExEth*, VI, q. 14, f. 131va-b: Ratio autem opus contrarie non videtur valere, quia distinctio finium non diversificat ea, quae sunt ad finem, nisi unum illorum sit ad finem, ad quem non est alterum, et e converso. Sic autem non est in proposito, quia finis prudentiae simpliciter dictae non solum sunt bona personalia, immo domestica et politica, et universaliter omnia ad bene vivere formaliter conferentia. Simili modo, economica non solum est ad bona domestica, ut divisa a bonis personalibus et communibus. Et ideo ista ratio non concludit, quia si concluderet necessario sequeretur, quod quilibet habitus iustitiae essent diversi habitus, quia ut habetur supra, libro 5, capitulo 3.

⁸²⁰ Ingham, 'Phronesis and Prudentia', p. 645.

III. PRUDENCE AND VIRTUES

Odonis has presented to us an extremely broad reading of praxis, of the practical mind, and of the virtue of prudence. *Praxis* is tantamount to moral and prudential action, and the practical mind, while concerned with the particular and contingent, commands supremely within the human intellect, and works closely with the will. Prudence, in turn, is the master virtue that is ordered simply towards human good and living life well as a whole. Herein, two classical questions arise concerning the role of prudence in the grand scheme of moral philosophy. One is the *quaestio vexata* of *praxis* vs. *theoria*, expressed in terms of the relative superiority of prudence and wisdom. Aristotle states that wisdom is a higher virtue and is *per se* intrinsic to happiness. However, given that Odonis considers the practical mind to be superior to the speculative mind, it only follows logically that prudence, as the perfection of the practical intellect, is superior to wisdom, as the perfection of the speculative intellect. A second question arises out of the wholistic remit of prudence: if prudence is *per se* ordered towards happiness and living life well as a whole, how does it then relate to other moral virtues? Again, in the beginning of Part III, we have outlined Aristotle's position: *phronesis* is necessarily connected to moral virtues, and one cannot have one without having the other. For Odonis, as for his medieval predecessors, this position poses challenge. Odonis finds a solution by arguing for the necessary connection of the cardinal virtues, but rejects any proposition of connection beyond cardinal quartet. Now let us look at these two problems in detail.

1. Prudence and Wisdom

Wisdom, for Aristotle, is the pursuit of pure, theoretical, and immutable truth. It is the highest virtue because it concerns the highest things that exist in this universe. He says: 'wisdom is scientific knowledge, combined with intellect, of what is by nature most honourable' (*NE*, VI, 1141b). Obviously, there are three elements to this definition of wisdom: scientific knowledge, intellect (or scientific *nous*), and the most honourable as its cognitive object.

Scientific knowledge, for Aristotle, is the knowledge of first principles, and the demonstrative knowledge knowable through first principles. Unlike *phronesis*, it is teachable and learnable, because 'all teaching begins from what is already known, as we say in the *Analytics* as well, because some teaching is through induction, some through deductive inference' (*NE*, VI, 1139b). As scientific

knowledge concerns first principles, it follows that one can equally speak of a scientific knowledge of moral first principles and their derivative conclusions:

Scientific knowledge is supposition about things that are universal and necessary. And there are first principles of what is demonstrable, and of every science, since scientific knowledge involves a rational account. So the first principle of what is known cannot be an object of scientific knowledge, or skill, or practical wisdom, because what can be known by scientific knowledge is demonstrable... (*NE*, VI, 1140b)

While ultimately, for Aristotle, the practical contingent falls under the remit of the practical mind and *phronesis*, it is unclear how important a role scientific knowledge plays in terms of deriving moral universals and where exactly it transforms into the knowledge of the practical and contingent. Scientific knowledge concerns the immutable, a concept of which Aristotle speaks remarkably little when it comes to ethics. While the Stoic tradition may consider all moral truths as part of an eternal and immutable truth, in the form of universal natural law, this reading of the extent of moral universals is certainly not shared by the later medieval scholastics, especially Odonis, who, as we shall see, gives scientific knowledge a narrow reading, considering it almost interchangeable with natural science and metaphysics.

Intellect, or *nous*, on the other hand, is a thorough understanding of first principles. Reeve argues that Aristotle intends *nous* to be a sort of scientific acumen, or a natural ability to comprehend complex truth.⁸²¹ ‘The intellect related to demonstrations is concerned with the first and unchanging terms’ (*NE*, VI, 1143b). The exact role of *nous* within Aristotle’s understanding of the mind and wisdom is one of the most controversial topics of Aristotelian ethics and psychology, and this present thesis will not go into greater depth than is needed for understanding Odonis’s position. For now, this suffices.

Finally, Aristotle considers the most honourable things as the subject-matter of wisdom. Clearly, such most honourable things cannot be caused or modified through human means. Wisdom is not concerned with ‘any process of coming into being’ (*NE*, VI, 1143b) - that is to say, with things that may be produced, created, deliberated, acted. Wisdom is not concerned with human happiness, because it is exactly these productions, creations, deliberations, and actions that lead man towards happiness. Instead, it is concerned with what already exists and will always exist - the universal, the eternal, and the immutable. Aristotle says:

⁸²¹ Reeve, *Practices of Reason*, p. 77-8.

It would be absurd for someone to think that political science or practical wisdom is the best science, unless human beings are the best thing in the cosmos.

...

It is obvious as well that wisdom and political science could not be the same. For if we are to say that the science that concerns our own particular advantage is wisdom, there will be many wisdoms... (NE, VI, 1141a)

Wisdom concerns higher, more noble things than *phronesis*, since *phronesis* is ordered towards the merely human. The paradox arises. Aristotle here does not place human at the centre of his cosmology - the truth of the universe transcends the truth of humanity, and does not concern the good of humanity. But at the same time, Aristotle also advocates for a life of contemplation of the higher truth. He considers that a life of contemplation, whose perfection is wisdom, achieves a happiness that is more complete than a life of activity, whose perfection is *phronesis*. Aristotle already outlines the possibility that one can be wise but not *phronimos*, and one can be perfect and happy through wisdom and contemplation alone, which do not *per se* pertain to human good. A life of contemplation is comparable to the gods, and such is Aristotle's idea of perfection - one is perfectly happy when he lacks nothing in happiness. He says:

For while the life of the gods is entirely blessed, and that of human beings is so to the extent that it contains something like this sort of activity, none of the other animals is happy, because they have no share at all in contemplation. Happiness, then extends as far as contemplation, and the more contemplation there is in one's life, the happier one is, not incidentally, but in virtue of the contemplation, since this is honourable in itself. Happiness, therefore, will be some form of contemplation. (NE, VI, 1178b)

Many scholars have pointed out the apparent discrepancy between the earlier books and Book X of the *Nicomachean Ethics*. In the earlier books, Aristotle directs his audience towards an ideal of *eudaimonia* attained through moral virtues and *phronesis*, while Book X turns around and defines *eudaimonia* in terms of contemplation. Reeve argues that there are ultimately two kinds of *eudaimonia*, one is activated by wisdom, and the other achieved through *phronesis*.⁸²² Anthony Celano, on the other hand, considers *phronesis* as central to Aristotle's moral philosophy, despite the

⁸²² Reeve, *Practices of Reason*, p. 96.

Philosopher's claims otherwise.⁸²³ Pierre Hadot sums up this paradox as a fundamental detachment from the self for the contemplation of beauty of nature:

Le plaisir que l'on prend aux beautés de la nature est, en quelques sorte, paradoxalement, un intérêt désintéressé. Dans la perspective aristotélicienne, ce désintéressement correspond au détachement de soi, par lequel l'individu se hausse au niveau de l'esprit, de l'intellect, qui est son véritable moi, et prend conscience de l'attraction qu'exerce sur lui le principe suprême, suprême désirable et suprême intelligible.⁸²⁴

Either way, this may not present much of a problem to Aristotle himself and his ancient counterparts: for ancient philosophers from Plato to the Stoics, the best person always embodies both practical and theoretical wisdom. Hadot points to a significant point of transition of philosophy from the ancient to the Christian: while in antiquity, philosophy is a way of being and an experiential exercise, where the contemplation of truth is inseparable from one's human existence, Christianity represents a fundamental rupture which breaks down man's life into a practical dimension that is the *imitatio Christi*, and ancient philosophy is reduced to a conceptual tool for understanding the various theological controversies.⁸²⁵ Hadot's assessment may not be entirely correct, as we have seen, the dichotomy between *theoria* and *praxis* is not a Christian invention, and Aristotle himself explicitly makes such distinction. However, the fact that philosophical wisdom is relegated from the realm of one's daily life to the sphere of theoretical speculation does reflect a medieval reality, and is certainly echoed by Odonis's own writing.

Hence we arrive at the question of the relationship between *phronesis* and wisdom. Aristotle states unequivocally that wisdom does not fall under the consideration of *phronesis*, and the ratiocinative does not control the theoretical. Nonetheless, nor does he state that wisdom commands *phronesis* in any capacity: 'it will seem odd if practical wisdom, which is inferior to wisdom, is to be put in control of it' (*NE*, VI, 1143b). While the scientific intellect is superior to the ratiocinative intellect, it does not necessarily follow that scientific would in turn command the ratiocinative. Indeed, Aristotle himself suggests that wisdom is not concerned with human good; therefore, one may, somewhat tenuously, come to the conclusion that Aristotle does not consider wisdom to be concerned with *phronesis*.

⁸²³ Celano, *Aristotle's Ethics*, p. Vii.

⁸²⁴ Pierre Hadot, *Qu'est-ce que la philosophie antique?*, Paris, 1995, p. 136.

⁸²⁵ *Ibid*, p. 386-90.

Albertus Magnus establishes the precedence in considering wisdom as unequivocally superior to prudence in his commentary on the *Ethics*, and sets out the classic triad of arguments in favour of wisdom: that wisdom contemplates the highest things, that wisdom is not ordered towards any higher end but itself, and that wisdom is searched for by all those who have found all that is necessary and convenient in life.⁸²⁶ In all, wisdom is *simply* better than prudence, and by extension, the life of contemplative happiness is superior to a life of civic happiness, because civic happiness is really directed towards contemplative happiness for the same reasons.⁸²⁷ There is not so much a choice between a life of contemplation or a life of activity, but rather contemplative happiness is a further perfection in addition to civil happiness. Similarly, it is not so much a choice between wisdom or prudence, but rather, wisdom is better than prudence because it is more complete and more perfect, in the sense that it is an addition to prudence. Albertus considers that wisdom is more divine because it contemplates the highest things for the highest causes, just like what God does, and that such contemplation of the high and divine is achieved when one's earthly needs and desires are taken care of: 'philosophers seek wisdom once all things of necessity and convenience in their life have been found.' For Albertus, wisdom is the final virtue, where man stops seeking anything else but wisdom itself.

Aquinas is not particularly concerned with the supremacy between wisdom and prudence, as he raises no explicit question on this very topic in his *Summa*, nor does he offer any personal interpretation over Aristotle's writing in his *Ethics* commentary. Overall, however, it is clear that Aquinas follows Aristotle very closely on the notion of wisdom.⁸²⁸ Thus, we may reasonably infer that the Angelic Doctor probably considers wisdom as a virtue superior to prudence, but does not necessarily command it. Aquinas states that any virtue of the speculative intellect, wisdom included, does not

⁸²⁶ *AMSE*, VI, lect. XVII, num. 577, p. 497: Illud per quod magis similamur optimo, melius est; sed cum sapientiae sit contemplari de altissimis per causas altissimas, ipsa magis nos assimilat operationi divinae, quia ipsa intelligit per causam primam omnium, quae est ipse, quam prudentia; ergo etc.

Praeterea, illud quod propter se vel nullius gratia quaeritur, melius est eo quod propter aliud quaeritur; sed sapientia, ut dicitur in principio *Metaphysicae*, nullius gratia quaeritur, cum habeat cuius gratia intus, prudentia autem refertur ad opus; ergo etc.

Praeterea, illud quod quaeritur omnibus aliis quae sunt ad commodum et necessitatem, inventis, est nobilissimum; sed sapientiam quaesiverunt philosophi inventis omnibus aliis quae sunt ad commodum et necessitatem vitae, ut dicitur in principio *Metaphysicae*; ergo etc. p. 497.

⁸²⁷ See Celano, *Aristotle's Ethics*, p. 134-8.

⁸²⁸ See Risto Saarinen, 'Wisdom as Intellectual Virtue: Aquinas, Odonis, and Buridan', <https://helda.helsinki.fi/bitstream/handle/10138/41943/2006saarinen_wisdomasintellectual.pdf;jsessionid=9646955DFD5C37B883D7857DAF3205B2?sequence=2>.

perfect any part of the appetite: ‘the habits of the speculative intellect do not perfect the appetitive part, nor affect it in any way, but only the intellective part.’⁸²⁹ He follows up by repeating the Aristotelian mantra that wisdom orders:

And about these is wisdom, which considers the highest causes, as stated in *Metaph. i, 1,2*. Wherefore it rightly judges all things and sets them in order, because there can be no perfect and universal judgment that is not based on the first causes.⁸³⁰

Radulphus Brito does not raise the question explicitly in Book VI, but instead focuses on the broader issue of the merit of contemplative life *versus* the active life in Book X. Brito argues that contemplative happiness is better *per se*, as it is superior to active happiness in terms of honour and dignity, while active happiness is better *per accidens*, as it can only be considered superior to contemplative happiness in terms of utility and necessity of life.⁸³¹ Certainly, contemplative happiness is intrinsically better, because it concerns the most noble things and renders the contemplator the most noble and dignified. However, Brito also brings in a social and political dimension to this question. If a life of activity is dedicated to the conservation and improvement of the common good, and to the betterment of his fellow citizens, then the happiness is not one’s alone,

⁸²⁹ *ST*, I2ae, q. 57, art. 1: Cum igitur habitus intellectuales speculativi non perficiant partem appetitivam, nec aliquo modo ipsam respiciant, sed solam intellectivam...

⁸³⁰ *ST*, I2ae, q. 57, art. 2: Et circa huiusmodi est sapientia, quae considerat altissimas causas, ut dicitur in I *Metaphys.* Unde convenienter iudicat et ordinat de omnibus, quia iudicium perfectum et universale haberi non potest nisi per resolutionem ad primas causas.

⁸³¹ *RBSE*, X, q. 171, p. 557: Ad istam questionem dico, secundum quod dicit Albertus, per distinctionem: quia nos possumus considerare felicitatem practicam et speculatiuam secundum principalitatem dupliciter: aut secundum honestatem et dignitatem, aut secundum vtilitatem necessitatis vite.

Modo si considerentur secundum honestatem et dignitatem, felicitas contemplatiua est principalior: quia illa felicitas que est in homine secundum optimum quod est in eo est melior et nobilior; modo felicitas contemplatiua est in homine secundum optimum quod est in eo, quia secundum intellectum speculatiuum, qui est optimum in homine, quia per ipsum homo assimilatur deo; felicitas autem practica est secundum virtutes morales que magis sunt corporales vel cum corpore existentes; ergo etc.

Si autem considerentur ille felicitates secundo modo, scilicet secundum vtilitatem et necessitatem vite, sic felicitas practica est principalior, quia per ipsam aliquis scit procurare et ordinare necessaria ad vitam; sed felicitas contemplatiua circa hoc non intromittit se, immo ista presupponit necessaria ad vitam, vt habetur in *prohemio Metaphisice*, vbi dicitur quod acquisitis necessariis ad vitam, propter admirari ceperunt philosophari; sic ergo isto modo felicitas practica est principalior.

but rather a happiness of the entire *civitas*. Therefore, contemplative happiness may be superior with regard to one single person, practical perfection is greater if it is dedicated to the common good. At the end of the question, Brito writes:

The more excellent happiness is that which is found in the best and most noble of us - what belongs to the best men is the best thing. It is said that speculative happiness belongs to the best and most excellent of men. Therefore, in accordance of human nature, I think that the philosophers, who contemplate truth, are nobler than kings and princes, assuming that these kings are not philosophers themselves. Indeed, in ancient times, the sons of kings and princes were philosophers, no one else was. Thus, because of their own riches they are not more perfect as men themselves, but they are more perfect in regard to their rule over the masses. Therefore, practical happiness on this account is greater.⁸³²

Therefore, we see that Odonis's argument that prudence is *simpliciter* superior to wisdom goes very much against the intellectual current of his age. We have already explored the psychological basis of this argument above: the practical intellect commands the speculative intellect, because the practical intellect determines not only the individual moral acts, but also the state and end of a person - the speculative intellect only speculates at the command of the practical intellect. However, in Question 16 of Book VI, Odonis offers a fuller exposition on the superiority of prudence over wisdom, where he not only advances positive arguments for the higher status of prudence, but also counters the prevailing arguments for the superiority of wisdom. Instead of the sense of detachment from the self found in Aristotle, Odonis here again demonstrates his human-centrism in his ethical thought, and focuses firmly on the end of human good.

Odonis presents four principal arguments. Firstly, the part of human that is perfected by prudence is superior to the part that is perfected by wisdom. Prudence perfects the practical intellect, perfects one's *praxis*, and it perfects man's moral virtues. Wisdom, on the other hand, perfects the speculative intellect, and perfects one's scientific knowledge. Odonis considers the perfectible part of prudence is superior here, because, oddly, it is corruptible, while the perfectible part of wisdom is incorruptible

⁸³² *RBSE*, q. 171, p. 558: illa felicitas est excellentior que personis nobilibus inest et optimis, dico quod sicut competit optimis, sic est optima. Et cum dicitur: felicitas speculatiua competit optimis et excellentissimis, dico quod secundum perfectionem nature humane, philosophi, qui sunt contemplantes veritatem, sunt nobiliores regibus et principibus, dummodo reges non sint philosophi, quia antiquitus filii regum et principum erant philosophi, et non alii; vnde propter diuitias suas isti non sunt magis perfecti inquantum homines, tamen quantum ad regimen multitudinis sunt magis perfecti, et quantum ad hoc felicitas practica est principalior.

- one can neither corrupt one's scientific knowledge, nor the immutable and eternal truth of the universe; instead, what is corruptible is the very human soul, his virtues, his morality, and his actions. While Aristotle considers the immutable truth the 'most honourable', Odonis clearly considers what is essentially *human* to be the better and nobler. It is the perfection and preservation of what is inherently corruptible within man that demonstrates one's moral worth and one's continuous endeavour to be good and virtuous. The eternal and incorruptible, on the other hand, may concern higher things, but have inherently little moral worth. Odonis writes:

The small part perfected by prudence is better than the part perfected by wisdom. Therefore, prudence is better than wisdom. The consequence is valid because perfection is better than what can be made better, and because the adverse position is grounded on this.

I prove the antecedent in three ways. Firstly, what is best for a man can be corrupted by malice and destroyed by bestiality. The Philosopher said that in a bad man, the best thing is corrupted through malice, but in a bestial man, this best thing is so corrupted that he does not have it anymore, see Book VII, chapter 9. Yet, the part that is perfectible through prudence can itself be corrupted or is corruptible through malice, but not the speculative part. He said in Book VI chapter 6, that temperance safeguards prudential judgment, for pleasure or pain does not corrupt or pervert every judgment - for example the deliberation of whether a triangle can have two right angles or not. Therefore, this is why such parts (that can be perfected by prudence) are the best for man.⁸³³

Odonis then identifies the perfectible of prudence as what defines human ontology above all else. As we have seen above, it is *praxis* and rational choice imbedded in the practical intellect that define and differentiate human from other animals, and such is the perfection of prudence. The ultimate

⁸³³ *ExEth*, VI, q. 16, f. 136rb: Primo quia particula perfecta per prudentiam est melior quam particular perfecta per sapientiam, quare prudentia melior quam sapientia. Consequentia tenet, quia melioris perfectibilis melior est perfectio, et quia fundatur in hoc adversariorum positio.

Antecedens probo tripliciter. Primo quia illud est optimum hominis, quod corrumpitur per malitiam et extinguatur per bestialitatem. Dicit enim Philosophus (philosophi, X), quod in homine malo optimum est corruptum per malitiam; sed in homine bestiali, illud optimum sic est corruptum, quod non habet ipsum, infra libro 7, capitulo 9. Sed particula perfectibilis per prudentiam ipsa corrumpitur, vel est corruptibilis per malitiam, et non particula speculativa. Dicitur enim supra eodem libro, capitulo 6, quod temperantia saluat prudentialem aestimationem, non enim omnem aestimationem corrumpit, nec etiam pervertit delectabile et triste, puta quoniam trigonum equales duos rectos habet vel non habet. Quare huiusmodi particula est optimum hominis.

perfection of prudence is the perfection of the practical intellect. Aquinas famously states that ‘man is most of all the mind of man’ (*homo maxime est mens hominis*),⁸³⁴ and Odonis here seems to be following a similar path, but considers such *mens hominis* to be really the practical mind. Aquinas follows the Aristotelian idea that the mind rules over the body despotically, and therefore the principal being of man is his mind.⁸³⁵ For Odonis, on the other hand, the source of this rule comes from the collaboration between the practical intellect and the will. The highest perfectible is the most human, and such principal being of man consists in a struggle against the weakness of the practical intellect and of the will. He writes:

The principal meaning in a human is what human is most of all. The part perfectible through prudence is what a human is above all. This is proved by the reasoning of the Philosopher, in Book IX chapter 9. The thing that is human above all, where it triumphs, one is said to be triumphant, and where it is vanquished, one is said to be vanquished. The part of prudence, triumphing through continence, is called triumphant man, and the part vanquished through incontinence is called vanquished man. It is certain that the part that is perfectible through metaphysics neither triumphs nor is conquered in such struggle.⁸³⁶

Odonis’s third proposition on the perfectible part of prudence is a regurgitation of his discussion on rational choice and the practical mind’s command over the speculative mind. Where Aristotle states explicitly that *phronesis* does not command wisdom, Odonis goes against the grain of Aristotelian thought, but still attempts to reconcile with Aristotle’s text. While prudence does not directly command wisdom, it nonetheless commands *for the sake of (gratia)* wisdom. The practical choice chooses wisdom as an end, the practical mind commands the speculative mind to speculate on truth,

⁸³⁴ *ST*, I2ae, q. 29, art. 4.

⁸³⁵ *ST*, I2ae, q. 29, art. 4: Alio modo, ex parte sui ipsius, cui vult bonum. Unumquodque enim maxime est id quod est principalius in ipso, unde civitas dicitur facere quod rex facit, quasi rex sit tota civitas. Manifestum est ergo quod homo maxime est mens hominis.

⁸³⁶ *ExEth*, VI, q. 16, f. 136rb-va: Secundo quia principalis sententia quod est in homine est illud quod est maxime homo; sed particula perfectibilis per prudentiam est illud quod est maxime homo; quare ut prius. Minor probatur per rationem Philosophi, infra libro 9, capitulo 9, ubi sic intendit arguere: illud est maxime homo quo vincente, dicitur vincens homo, et quo victo, dicitur victus homo; sed particula prudentiae vincente per continentiam, dicitur vincens homo, et ipsa victa per incontinentiam, dicitur victus homo; quare ipsa est maxime homo et per consequens principium et optimum hominis. Constat autem quod particula perfectibilis per metaphysicam nec vincit nec vincitur in tali certamine.

and thus prudence is said to be able to command wisdom, not directly, but rather through its command of the speculative intellect. To put it simply, prudence commands, and wisdom obeys.⁸³⁷

The second principal argument is demonstrated through crude logic, but rests on the premise that prudence without wisdom is superior to wisdom without prudence. Odonis writes:

A prudent man without knowledge of metaphysics is better than the imprudent man with knowledge of metaphysics. Therefore, prudence without metaphysics is better than metaphysics without prudence. This is why prudence is simply better than metaphysics, which is understood here to be wisdom. Both consequences are found in *Topics* II. I prove it as follows. Any good man is better than any man who is not good. A prudent man without metaphysics is good. It is impossible to be prudent without being good, because it is not possible for anyone to be principally good without prudence, nor to be prudent without moral virtue, as seen in the following chapter. And because such are the virtues according to which man is called simply good, they should not be separated from one another, because once there is one virtue of prudence, all others are thereof inherent, see chapter 7. A man who knows metaphysics but without prudence is not a good man. Therefore, a prudent man without metaphysics is simply better than a wise man without prudence.⁸³⁸

The logic follows:

⁸³⁷ *ExEth*, VI, q. 16, f. 136va: Tertio naturale praecipiens melius est obediente; sed haec (hoc, *X*) particula praecipit illi, ergo melior quam ista. Minorem probo per Philosophum dicentem infra, in fine huius sexti, quod prudentia non praecipit sapientiae, sed praecipit gratia sapientiae, ex quo habeo propositum. Quia cuicumque praecipit prudentia, ei parecipit particula per prudentiam perfecta; sed secundum hoc, prudentia praecipit particulae per sapientiam perfectibili, quia praecipit illi, ut speculetur gratia sapientiae. Ergo particula per prudentiam perfecta praecipit particulae per sapientiam perfectae, et hoc probavi supra, eodem libro, capitulo 3, in quaestione utrum mens practica principetur menti speculativae.

⁸³⁸ *ExEth*, VI, q. 16, f. 136va: Secundo principaliter arguo sic prudens non metaphisicus melior est metaphisico non prudente, ergo prudentia sine metaphisica melior quam metaphisica sine prudentia. Quare prudentia est simpliciter melior quam metaphisica, quae sumitur hic pro sapientia, utraque consequentia habetur ex 2 *Topicorum*. Antecedens probo sic. Quicumque bonus homo melior est quocumque non bono homine. Sed prudens non metaphisicus est bonus homo, quia ut habetur hic; impossibile est prudentem esse et non esse bonum, et quia non est possibile aliquem bonum esse principaliter sine prudentia, nec prudentem sine morali virtute, ut infra, capitulo proximo. Et quia virtutes secundum quas sunt homo dicitur simpliciter bonus, nec contingit ab invicem separari, quia simul prudentiae una existenti, omnes inhaerent, ut infra, eodem libro, capitulo 7. Metaphisicus autem non prudens non est homo bonus (bonus homo, *X*). Quare prudens non metaphisicus est simpliciter melior metaphisico non prudente.

A - B > B - A

Therefore: A > B

However, the premise may be questionable. Firstly, Odonis equates wisdom to metaphysics, which is in itself a misconstrued reading of Aristotle, removing the pertinence of wisdom and its constituent virtues - scientific knowledge and *nous* - from one's moral life. Certainly, this falls within Hadot's idea of a relegated abstract theoretical philosophy in the age of Christianity, and places wisdom in a position of irrelevance except for the most mystical and remote truths. However, such a construction is also contradictory to Odonis's own reading. In question 12 of Book VI, Odonis expounds on the notion of wisdom, which is not only the discovery of abstract first principles, but also the truth of all things, and the contemplation of God:

Wisdom is the habitual knowledge of the determined things, the truth of objects, the nature of the most noble first principles and derived principles, generally of all things and specifically of difficult things, certain aetiology of causes for its own sake architectonic, according to which no one would tell falsehood on things he knows, according to which it is suitable that a liar may be revealed, and through which man holds the world in contempt and becomes a friend of God.⁸³⁹

Considered this way, it would seem that neither of the two propositions in the premise is valid: a prudent man may not be perfectly wise, but he nonetheless would know of the good of the uncovering of truth and of the contemplation of God; similarly, a wise man may not be perfectly prudent, but he nonetheless has sufficient goodness to be a friend of God.

The fallacy of logic aside, the argument presented by Odonis certainly manifests his belief in the primacy of man's active perfection over man's contemplative perfection. In the grand scheme of Odonis's moral ethics, his reasoning is somewhat impertinent to his overall doctrine: the practical intellect commands over the speculative intellect, and man's moral life has primacy over his intellectual life. Man's life is better if it is lived out well as a whole, rather than merely speculating and theorising. Odonis takes the perspective of the subjective individual moral agent - the knowledge

⁸³⁹ *ExEth*, VI, q. 12, f. 129vb: Describitur ergo sic, sapientia est habitualis notitia determinatae, veridica obiectorum, natura nobilissimorum principiorum et principatorum, generaliter omnium, specialiter difficultium, certa causarum redditiva sui gratia et architectonica, secundum quem neminem mentiri contingit de quibus novit, et secundum quem mentientem posse manifestari convenit, per quam sit homo contemptor mundi et amicus Dei.

of the universe does not in itself make for human goodness, but instead, it is human goodness that makes for human goodness. In his third principal argument, Odonis writes:

Of the two virtues, one whose final effect is better is the better one. The final effect of prudence is better than the final effect of wisdom. Thus prudence is better than wisdom. ... It is better to live life well as a whole than merely knowing, or merely speculating, or merely considering. Living life well as a whole is the final effect per se, and the first intent of prudence, see chapter 6. Merely knowing or merely speculating is the end of metaphysics, as it is found expressly in the prologue of *Metaphysics*. Thus the final effect of prudence is better than the final effect of metaphysics.⁸⁴⁰

Odonis further reinforces his human-centrism in his final argument: prudence is the measure of human dignity, whereas wisdom does not measure human goodness, but the detached physical nature. Man's moral worth and goodness are indicated by his moral virtue, and all moral virtues are invariably in accordance with right, practical reason. The speculative intellect does not speculate over man's moral actions in particular circumstances, and therefore bears no relation to man's moral worth. Therefore, it is prudence alone that bears man's moral value. In the commentary text, Odonis argues:

Among the human knowledges, that which is the rule and measure of virtue and human goodness is the better one. Only prudence is such notion. Therefore, prudence is better than the others. ... All those who define virtue point to the habit and say that virtue is in accordance with right reason. Right reason, by which all seem somehow to foretell following prudence, inasmuch as being such a habit, is a virtue, according to prudence. Therefore, in Book II chapter 5, Aristotle said that virtue is an elective habit existing directly out of determined

⁸⁴⁰ *ExEth*, VI, q. 16, f. 136va: Tertio sic. Duarum virtutum illa est melior, cuius finalis effectus est melior; sed finalis effectus prudentiae est melior finali effectui sapientiae, quare ista est melior illa. Minor <Maior, sic in both *X* and *V*> probatur per illam regulam secundi *Topicorum* (hopicorum, *X*): (+ si, *X*) simpliciter ad simpliciter, et magis ad magis, et maxime ad maxime; sed hoc sequitur simpliciter ad simpliciter, dicendo finalis effectus huius rei bonus est. Ergo ipsa bona est per illam regulam, cuius finis bonus est, ipsum quoque bonum est; quare sequitur finalis effectus huius rei est magis bonus, ergo est magis bona. Minor etiam probatur, quod melius est totaliter bene vivere quam solum scire, vel solum speculari, vel solum considerare; sed totaliter bene vivere est finalis effectus per se et primo intentus prudentiae, ut supra eodem libro, capitulo 6. Solum autem scire, vel solum speculari finis est metaphisicae, ut habetur expresse prohemio *Metaphisicae*, et generaliter de omni notitia speculativa, 2 *Metaphisicae*. Quare finalis effectus prudentiae melior est finali effectui metaphisicae.

reason. This is understood about the reason of prudence as well as about the rule and measure of virtuous goodness.⁸⁴¹

While Odonis takes the subject-agent perspective in arguing that prudence is superior to wisdom because prudence is ordered simply towards human good but wisdom is not, one cannot help but return to the question of the ultimate end of life - one's salvation and union with God. As pointed out earlier, Odonis takes the contemplation of God as an act of wisdom. In the broader context, it seems that both the Christian notion of contemplation of divinity and Aristotle's idea of contemplative happiness point to the cognitive being of the speculative intellect and the perfection of wisdom. Therefore, it raises the interesting question of how Odonis would reconcile his claim that prudence and the practical intellect are superior with the infallible truth that the ultimate end of one's life should be directed towards God.

There is a long tradition among the Franciscans to consider philosophy as fundamentally incapable of attaining the divine truth. Alexander of Hales, in his *Summa universae theologiae*, considers philosophy as a separate discipline from theology, and understands the Aristotelian notion of wisdom as nothing more than metaphysics, which treats first principles and aetiology (this line of understanding is repeated exactly by Odonis).⁸⁴² Theology, in other words, true divine wisdom, cannot be comprehended with human intellect, but with mysterious wisdom that reveals to man the divine truth.⁸⁴³ Bonaventure also doubts whether theology and divine truth can be uncovered by human intellect alone: the uncreated wisdom, which concerns divine truth, cannot be understood

⁸⁴¹ *ExEth*, VI, q. 16, f. 136va: Quarto quia inter humanas notitias illa est melior, quae est regula et mensura virtutis et humanae bonitatis; sed talis est sola prudentia, quare ipsa melior est caeteris. Maior apparet, quia talis regula seu mensura, vel est supremus gradus bonitatis humanae, vel non sine illo. Si autem sit haec vel illud, sequitur quod melior est quam notitia, quae non est haec nec illud, quia nec est supremus gradus, nec necessario cum supremo gradu. Minor autem habetur a Philosopho, infra capitulo proximo dicente, omnes qui diffiniunt virtutem apponunt habitum dicentes, et ad quae est secundum rectam rationem. Recta autem ratio, quae secundum prudentiam videntur itaque divinare aliquantulum omnes, quantum talis habitus est virtus, qui secundum prudentiam. Quod ergo dicitur supra libro 2 capitulo 5, quod virtus est habitus electivus immediate existens a ratione terminata, intelligitur de ratione prudentiae tanquam de regula mensura virtuosae bonitatis.

⁸⁴² Alexander of Hales, *Summa universae theologiae*, I, tra. introductorius, q. 1, cap. 1, num. 1, p. 2: Unde secundum hoc dicendum quod doctrina Theologiae est sapientia ut sapientia; Philosophia vero Prima, quae est cognitio primarum causarum, quae sunt bonitas, sapientia et potentia, est sapientia, sed ut scientia; ceterae vero scientiae, quae considerant passiones de subiecto per suas causas, sunt scientiae ut scientiae; see also Johnson, 'Roger Bacon, Franciscan Wisdom', p. 299.

⁸⁴³ Johnson, 'Roger Bacon, Franciscan Wisdom', p. 300.

theoretically or scientifically - instead, it must be experienced.⁸⁴⁴ The three-fold truth of philosophy: truth of nature (*veritas rerum*), truth of morals (*veritas morum*), and truth of rationality (*veritas vocum*) do not lead man towards the ultimate end of beatitude. For both Hales and Bonaventure, the Aristotelian notion of wisdom is pointless when it comes to comprehending God and facilitating man's path to salvation. Later, Duns Scotus tackles the question from another perspective: whether theology is scientific knowledge. Scotus concedes that theology cannot be approached with the same toolset and methods as Aristotelian science - while theological propositions are undoubtedly of the utmost truth and certainty, one cannot have evidence to prove such truth, and one cannot derive such propositions through syllogistic applications of reason.⁸⁴⁵ In fact, the first principles of theology are considered to be of utmost certainty exactly because they are revealed and they require faith and belief - instead of scientific intellection - to comprehend. The derived, secondary propositions of theology may be scientific insofar as they are arrived at syllogistically and evidentially. Aristotelian wisdom does nothing to help man attain the fundamentals of revealed knowledge.

Odonis is consistent with his Franciscan predecessors in considering Aristotle's notion of wisdom in a narrow fashion, as we see time and again where he equates wisdom with metaphysics. On the question of man's journey to salvation and his union with God, Odonis puts it, again, under the command of prudence. The act of obeying God's command is intellective, and pertains to the practical intellect, because the comprehension of *ius* and the understanding of one's singular *debitum* from the universal *ius* are acts of the practical intellect. The act of loving God pertains to the appetitive intellect, and, as Odonis posits earlier, what is of the intellective appetite is also of the appetitive intellect - loving God pertains to the practical intellect as well. Therefore, it is the virtue of prudence that has man obey and love God above all else. Responding to the objection that it is wisdom rather than prudence that makes man love God above all else,⁸⁴⁶ Odonis writes:

The minor proposition is false. In order to prove it, I will show that it is wrong in two ways. First, that with which man loves God above all else can not be attributed to wisdom as much as to prudence. On loving God, the Philosopher posits four points: (1) to live in accordance with the intellect, (2) to esteem and love life in accordance with the intellect, (3) to honour

⁸⁴⁴ Speer, 'Vocabulary of Wisdom', p. 272-4.

⁸⁴⁵ Marrone, 'Scotus on Scientific Knowledge', p. 385-9.

⁸⁴⁶ *ExEth*, VI, q. 16, f. 136rb: Quarto quia illa est melior, quae reddit hominem amantissimum Deo; sed ista est sapientia, ut habetur infra libro 10. Ex quo concludit Philosophus, quod sic erit sapientia maxime felix.

God and to render to God good actions in the same way as he has cared for us, (4) to be righteous and to act well in the furthering of human good.

To live in accordance with the intellect is to live in accordance with the reason of prudence, which orders the entire human life towards living life well as a whole (see chapter 7), because a virtuous life is in accordance with reason, and is therefore in accordance with prudence, see the next chapter. To esteem and to love God is the virtue of appetite, and thus pertains to the dictates of prudence rather than wisdom. Similarly, to honour God, render to God and to give thanks to God with good actions all fall under the dictate of prudence, rather than wisdom. Thus, it is clear that things which make man love God above all else are attributed to prudence more than to wisdom.

Secondly, when the Philosopher said that wisdom is to love God above all else, he does not mean wisdom of a metaphysician, but the wisdom of a prudent man, because, as in chapter 8, wisdom can be taken to mean two things: either wisdom for metaphysics, as in I *Philosophia*, or wisdom for certain skill or notion or intellectual virtue understood in the highest sense. In this way, those books which the theologians call the books of wisdom, since they follow the truth, are indeed books of prudence. Prudence considered here is understood in the highest sense, and Solomon was a prudent man in the highest sense, and in this way prudence is called wisdom and the prudent man called a wise man. Thus, it is not true that wisdom is metaphysics and the wise is a metaphysician. Therefore, the Philosopher in this passage understands the wise for the prudent in the highest sense, and this is a common way of speaking.⁸⁴⁷

⁸⁴⁷ *ExEth*, VI, q. 16, f. 136vb-137ra: Ad quantum dicendum quod minor est falsa. Et ad probationem dico quod deficit dupliciter. Primo quia illud, per quod homo est amantissimus Deo, non potest attribui sapientiae, tantum quam prudentiae. Quod patet de illis quattuor, quae Philosophus ponit: primum est vivere secundum intellectum; secundum diligere et amare vitam secundum intellectum; tertium est honorare Deum, et rebeneficiare ei tanquam curam habenti de nobis; quartum est recte et bene operari continuando hominis bonitatem. Vivere autem secundum intellectum est vivere secundum rationem prudentiae, quae totam vitam hominis ordinat ad bene vivere, supra eodem libro, capitulo 7. Et quia vita virtuosa, quae est secundum rationem ipsa, est secundum prudentiam, ut infra capitulo proximo. Diligere autem et amare, quamvis sit virtutis appetitivae, tamen hoc pertinet ad dictamen prudentiae et non sapientiae. Simili modo, honorare, rebeneficiare, et regratiari Deo, bene operari etiam cadit sub dictamine prudentiae, non sapientiae. Quare patet, quod haec reddenda hominem amantissimum Deo, attribuuntur prudentiae magis quam metaphisicae. Secundo deficit, quod cum Philosophus dicit sapientem esse amantissimum Deo, non sumit ibi sapientem pro metaphisico, sed pro prudente in summo. Quia ut habetur supra, eodem libro, capitulo 8, sapientia sumitur dupliciter: uno quidem modo pro

Although Odonis is commenting on the *Ethics* in his capacity as a theologian, he rarely mentions man's relationship to God in the entire body of text. We see from the Prologue that Odonis does not consider Aristotle's moral philosophy to be of pertinence for man's life after his death, and the commentary contains few passages that delve into man's spiritual life and his relationship with God. At the very beginning of his commentary text, Odonis states that beatitude is known through the knowledge of virtue, and it is through virtue that man knows beatitude to be the most desirable of all goods.⁸⁴⁸ Odonis here can only be speaking of moral virtue, and the practical knowledge through prudence, rather than the speculative knowledge of wisdom. Therefore, for Odonis, prudence is superior to wisdom not only in terms of the psychological structure, where the practical mind commands the speculative, or with the perfectible and effect of prudence, which is living life well as a whole, totally, and completely, but also with the fact that it is prudence and the moral virtues that are more effective in rendering man closer to God and making him love God above all else. Ethics, morality, and human good is not something detached from human life, removed from man's individual and social experience. Instead, it is very much the focal point of human existence - what is good is defined through the subjective agent of the moral science, and this is Odonis's human centrism.

2. Prudence and Moral Virtues

Having studied prudence's relationship with wisdom, it is now incumbent on us to explore the other side of the question, namely, prudence's relationship with the moral virtues. If, as Odonis argues, prudence commands wisdom as practical intellect commands the speculative intellect, then can prudence also possibly command moral virtues? As we have seen at the beginning of Part III, Aristotle posits a thesis of connection between *phronesis* and moral virtues, arguing that *phronesis* cannot be had without moral goodness, and one who possesses *phronesis* would possess all moral virtues at

metaphisica, seu prima philosophia; alio modo pro quacumque arte, vel notitia, vel virtute intellectuali accepta in summo, et hoc modo apud theologos dicuntur libri sapientiales illi, qui secundum veritatem sunt libri prudentiales. Sed quia prudentia ibi tradita est accepta in summo, et Salomon fuit prudens in summo, ideo et illa prudentia dicitur sapientia, et iste prudens dicitur sapiens. Non tamen ideo quod pro illa sapientia sit metaphisica, vel ille sapiens sit metaphisicus. Sic ergo Philosophus in hoc passu accipit sapientem pro prudente in summo, et istum loquendi modum obtinuit (optinuit, *X*) communis usus.

⁸⁴⁸ *ExEth*, Pr, f. 1rb: Cognitione quippe virtutis cognoscitur felicitas seu beatitudo, quae inter cuncta desiderabilia est bonum per omnes homines desideratissimum.

once. Without necessarily having been influenced by the writings of Aristotle, both the Stoics and the Patristics regard the moral virtues as essentially connected.⁸⁴⁹ Indeed, prior to Grosseteste's translation of the complete books of *Ethics*, medieval scholastics have considered the thesis of the connection of virtues as essentially a Stoic position.⁸⁵⁰ Both Cicero and Seneca argue for the connection of virtues, and the Church Fathers mostly follow suit. Augustine states that 'virtues in the human soul ... are in no way separated from each other; so that whatever people are equal in courage, they are also equal in prudence, temperance, and justice.'⁸⁵¹ Ambrose, who first coins the term 'cardinal virtues', posits a thesis of connection and underpins temperance at the very centre of the moral scheme, where temperance is the consistency and harmony, and integrates all virtues together.⁸⁵²

The opinions of later medieval scholastics on the question of connection of virtues is well documented by a number of studies. Odon Lottin's essays 'Les vertus cardinales et leur ramifications chez les théologiens de 1230 à 1250', and 'La connexion des vertus chez saint Thomas d'Aquin et ses prédécesseurs' have extensively and expertly traced down the writings from the twelfth century to the time of William of Ockham.⁸⁵³ Bonnie Kent builds upon the findings of Lottin and presents a detailed account of scholastic opinions, especially those of the Franciscans, as well as a thorough exploration of Odonis's own discussions in her doctoral thesis.⁸⁵⁴ More recently, Rega Wood wrote another survey of the medieval debate in her edition of Ockham's treatise on virtues, and Istvan Bejczy has produced a monograph focusing on role and connection of cardinal virtues.⁸⁵⁵ Thus, in light of this abundance of scholarly writings which are inevitably more expertly produced than the present thesis, I shall survey the scholastic opinions briefly before turning to that of Odonis.

Prior to the translation of Grosseteste, the consensus among the artians is that virtues are not necessarily connected, as this would put the fundamentals of Aristotle at odds with Christian ethics - if a virtue is to be acquired through repeated actions, then not everyone would have the opportunity

⁸⁴⁹ See Rega Wood, *Ockham on the Virtues*, West Lafayette, IN, 1997, p. 40-41; and Bejczy, *Cardinal Virtues*, p. 12-28.

⁸⁵⁰ Kent, *Aristotle and Franciscans*, p. 519.

⁸⁵¹ Augustine, *De Trinitate*, VI, 4.

⁸⁵² Ingham, 'Phronesis and Prudentia', p. 639; Bejczy, *Cardinal Virtues*, p. 12-13.

⁸⁵³ Odon Lottin, 'Les vertus cardinales et leur ramifications chez les théologiens de 1230 à 1250', *Psychologie et morale aux XIIe et XIIIe siècles*, vol. III, Louvain, 1948, p. 154-193; idem, 'La connexion des vertus chez saint Thomas d'Aquin et ses prédécesseurs', *ibid*, vol. III, p. 197-252.

⁸⁵⁴ See Kent, *Aristotle and Franciscans*, p. 512-584.

⁸⁵⁵ See Wood, *Ockham on the Virtues*, p. 40-57; Bejczy, *Cardinal Virtues*, p. 136-220.

to acquire all virtues. Therefore, it is impossible for one to acquire all virtues. If such complete virtue is impossible, then surely virtues are not necessarily connected.⁸⁵⁶ The translation of Book VI and Aristotle's explicit endorsement of the connection thesis clearly pose problems. Albertus Magnus and Thomas Aquinas both come to agree with Aristotle in regarding virtues as essentially connected to each other. For Albertus, who follows Aristotle's argument closely, virtues are unified by prudence, which underpins every single moral virtue. Albertus distinguishes between perfect and imperfect prudence, arguing that virtues, in an imperfect state, are not necessarily connected. On the other hand, perfect moral virtues cannot exist without perfect prudence, and perfect prudence cannot exist without perfect moral virtues.⁸⁵⁷

Aquinas also makes the distinction between the perfect and imperfect virtues, where the former is necessarily connected to each other. Like Albertus, he places prudence at the centre of the connection thesis: prudence perfects the rational soul and governs man's rational choice. Aquinas's argument merits an extensive citation, as he writes:

Moral virtue may be considered either as perfect or as imperfect. An imperfect moral virtue, temperance for instance, or fortitude, is nothing but an inclination in us to do some kind of good deed, whether such inclination be in us by nature or by habituation. If we take the moral virtues in this way, they are not connected: since we find men who, by natural temperament or by being accustomed, are prompt in doing deeds of liberality, but are not prompt in doing deeds of chastity.

But the perfect moral virtue is a habit that inclines us to do a good deed well; and if we take moral virtues in this way, we must say that they are connected, as nearly as all are agreed in saying. For this, two reasons are given, corresponding to the different ways of assigning the distinction of the cardinal virtues. For, as we stated above, some distinguish them according to certain general properties of the virtues: for instance, by saying that discretion belongs to

⁸⁵⁶ See Lottin, 'La connexion des vertus', p. 197-210.

⁸⁵⁷ *AMSE*, VI, lect. XVIII, num. 594, p. 511: Dicendum, quod virtutes possunt considerari dupliciter: aut secundum perfectum esse ipsarum, et sic omnes simul habentur, quia virtus moralis non perfecte habetur, nisi etiam prudentia perfecta sit, similiter etiam prudentia non est perfecta, nisi adsint omnes virtutes moralis, quia tunc prudentia perfecta est, quando quis prudens est in omnibus agibilibus, et cum prudentia sit scientia practica, hoc non potest esse, nisi omnes virtutes morales habeantur. Potest tamen aliquis esse prudens imperfecte, ita quod sit prudens secundum partem in temperatis, sed non in fortibus, et sic secundum Esse ipsarum imperfectum non omnes simul habentur. See also, Wood, *Ockham on the Virtues*, p. 47.

prudence, rectitude to justice, moderation to temperance, and strength of mind to fortitude, in whatever matter we consider these properties to be. In this way the reason for the connection is evident: for strength of mind is not commended as virtuous, if it be without moderation or rectitude or discretion: and so forth. This, too, is the reason assigned for the connection by Gregory, who says that "a virtue cannot be perfect" as a virtue, "if isolated from the others: for there can be no true prudence without temperance, justice and fortitude": and he continues to speak in like manner of the other virtues.

Others, however, differentiate these virtues in respect of their matters, and it is in this way that Aristotle assigns the reason for their connection. Because, as stated above, no moral virtue can be without prudence; since it is proper to moral virtue to make a right choice, for it is an elective habit. Now right choice requires not only the inclination to a due end, which inclination is the direct outcome of moral virtue, but also correct choice of things conducive to the end, which choice is made by prudence, that counsels, judges, and commands in those things that are directed to the end. In like manner one cannot have prudence unless one has the moral virtues: since prudence is "right reason about things to be done," and the starting point of reason is the end of the thing to be done, to which end man is rightly disposed by moral virtue. Hence, just as we cannot have speculative science unless we understand the principles, so neither can we have prudence without the moral virtues: and from this it follows clearly that the moral virtues are connected with one another.⁸⁵⁸

⁸⁵⁸ *ST*, I2ae, q. 65, art. 1: Respondeo dicendum quod virtus moralis potest accipi vel perfecta vel imperfecta. Imperfecta quidem moralis virtus, ut temperantia vel fortitudo, nihil aliud est quam aliqua inclinatio in nobis existens ad opus aliquod de genere bonorum faciendum, sive talis inclinatio sit in nobis a natura, sive ex assuetudine. Et hoc modo accipiendo virtutes morales, non sunt connexae, videmus enim aliquem ex naturali complexione, vel ex aliqua consuetudine, esse promptum ad opera liberalitatis, qui tamen non est promptus ad opera castitatis.

Perfecta autem virtus moralis est habitus inclinans in bonum opus bene agendum. Et sic accipiendo virtutes morales, dicendum est eas connexas esse; ut fere ab omnibus ponitur. Cuius ratio duplex assignatur, secundum quod diversimode aliqui virtutes cardinales distinguunt. Ut enim dictum est, quidam distinguunt eas secundum quasdam generales condiciones virtutum, utpote quod discretio pertineat ad prudentiam, rectitudo ad iustitiam, moderantia ad temperantiam, firmitas animi ad fortitudinem, in quacumque materia ista considerentur. Et secundum hoc, manifeste apparet ratio connexionis, non enim firmitas habet laudem virtutis, si sit sine moderatione, vel rectitudine, aut discretionem; et eadem ratio est de aliis. Et hanc rationem connexionis assignat Gregorius, XXII Moral., dicens quod virtutes, si sint disiunctae, non possunt esse perfectae, secundum rationem virtutis, quia nec prudentia vera est quae iusta, temperans et fortis non est; et idem subdit de aliis virtutibus. Et similem rationem assignat Augustinus, in VI de Trin.

Aquinas's argument sets the tone for later medieval discussions of the question of virtues' connection. While he adheres to the thesis of Aristotle, arguing for the essential connection between moral virtues and prudence, he also concedes that, if such virtues are not in their perfect state and are mere inclinations for good, then they are not necessarily connected. Only the perfectly virtuous has complete virtues. The essence of this thesis is found among both Aquinas's followers and those who hold fundamentally different viewpoints. Henry of Ghent follows Aquinas's scheme in bifurcating the connection of perfect virtues and lack of connection of imperfect virtues.⁸⁵⁹ Radulphus Brito essentially duplicates Aquinas's argument, with almost the same wording, distinguishing between the perfect and imperfect virtues, and argues that perfect virtues are connected:

Moral virtues are to be distinguished into that which is perfect and that which is imperfect. Perfect virtue arises out of a habituation of good actions in accordance with right reason. Imperfect virtue is a certain inclination and disposition towards virtue, just as someone, out of his own very nature, can be inclined towards the virtue of courage or temperance, but such virtue is not perfect virtue. ...

If we are speaking of imperfect virtue, and ask the question whether having one virtue means having all virtues, then the answer is no. ...

If we are speaking of perfect virtue generated through the habituation of good actions, and ask whether having one virtue means having all other virtues, then I say that he who has such perfect virtue necessarily has all other virtues.⁸⁶⁰

Alii vero distinguunt praedictas virtutes secundum materias. Et secundum hoc assignatur ratio connexionis ab Aristotele, in VI Ethic. Quia sicut supra dictum est, nulla virtus moralis potest sine prudentia haberi, eo quod proprium virtutis moralis est facere electionem rectam, cum sit habitus electivus; ad rectam autem electionem non solum sufficit inclinatio in debitum finem, quod est directe per habitum virtutis moralis; sed etiam quod aliquis directe eligat ea quae sunt ad finem, quod fit per prudentiam, quae est consiliativa et iudicativa et praeceptiva eorum quae sunt ad finem. Similiter etiam prudentia non potest haberi nisi habeantur virtutes morales, cum prudentia sit recta ratio agibilium, quae, sicut ex principiis, procedit ex finibus agibilium, ad quos aliquis recte se habet per virtutes morales. Unde sicut scientia speculativa non potest haberi sine intellectu principiorum, ita nec prudentia sine virtutibus moralibus. Ex quo manifeste sequitur virtutes morales esse connexas.

⁸⁵⁹ Wood, *Ockham on Virtues*, p. 50-51.

⁸⁶⁰ *RBSE*, VI, q. 153, p. 515-16: Ad istam questionem dicendum quod virtus moralis est duplex: nam quedam est perfecta, et quedam imperfecta: perfecta est que ex assuefactione in bonis operibus secundum rectam rationem est generata; imperfecta autem est quedam inclinatio vel dispositio ad virtutem, sicut aliquis ex sua natura potest inclinari ad virtutem

Walter Burley offers a similar thesis, arguing that in the case of perfect virtues, no moral virtue can be acquired without prudence, and no prudence can be had without moral virtues.

The Franciscans, on the whole, present an array of solutions to the ancient question of virtues' connection. Richard of Mediavilla, for example, echoes Aquinas's position, arguing that there is no essential connection among imperfect virtues, but necessary connection among perfect virtues.⁸⁶¹ However, Mediavilla's position is a rarity among the Franciscans. A more mainstream Franciscan stance would go as follows: moral virtues are essentially independent from one another, while certain later Franciscans present various theses of partial connection based on a normative principle of disconnection. What instead typifies the Franciscan position is a thesis of the connection among theological virtues instead of moral virtues. Alexander of Hales argues that while theological virtues - Faith, Hope, and Charity - are necessarily connected, moral virtues are not.⁸⁶² Odo Rigaldus, makes a more nuanced distinction between standard virtues and the cardinal virtues: moral virtues are not

fortitudinis vel temperantie, et talis virtus non est perfecta virtus: quia nulla virtute perfecta potest aliquis male vti; modo ista inclinatione naturali ad operationem virtutis potest aliquis male vti, quia si non vtatur ea secundum rectam rationem, male vtetur, immo talis virtus erit sibi nociua, sicut Philosophus ponit exemplum: sicut si aliquis fortis equus currat velociter et sine moderamine, quanto fortius currit tanto grauius, si obuiat obstaculum, ledit se, ita quod illa fortitudo sibi tunc nocet; eodem modo homo sine visu, si sit fortis et contingat quod ipse curret et inueniet obstaculum, grauius ledet se quam si non esset fortis. Eodem modo est in proposito: si aliquis non habeat rectam rationem circa inclinationem talem naturalem, istud magis sibi poterit esse nocumentum, et ideo talis virtus non est virtus perfecta.

Modo si queratur de ista virtute vtrum ille qui habet vnam talem virtutem habeat omnes, constat quod non: quia iste inclinationes naturales vt plurimum ad vnum sunt determinate, quia semper natura vt plurimum inclinat ad vnum, sicut natura ignis sursum et natura terre deorsum; modo de illo quod est sic determinatum ad vnum, non oportet quod ille qui habet vnam talem dispositionem habeat omnes alias dispositiones naturales; non ergo oportet quod ille qui habet vnam naturalem dispositionem ad virtutem quod habeat alias. Si autem queratur de virtute perfecta que ex assuefactione in bonis operationibus est generata, vtrum ille qui habet vnam virtutem habeat omnes, dico quod ille qui habet vnam talem virtutem perfectam, necessario habet omnes alias.

⁸⁶¹ Kent, *Aristotle and Franciscans*, p. 553.

⁸⁶² Alexander of Hales, *Glossa in quattuor libros Sententiarum*, III, dist. 36, q. 21: Quaeritur autem si virtutes coniunctae sint in subiecto... Respondeo: auctoritas Augustini sic intelligitur: id est, non est hoc confirmatum per aliquam auctoritatem Veteris vel Novi. Exponitur autem auctoritas Iacobi tripliciter: scilicet 'qui offendit in uno', praecepto scilicet in quantum ad caritatem refertur, vel 'in uno', id est in Deo, qui est omnium auctor; vel 'in uno', id est caritate, quae est mater omnium; quia nisi habeat caritatem, nullum praeceptum meritorie observare potest; quam peccando amisit, et sic reus est in aliis omittendo.

Sed cum dicat Augustinus: 'humana scientia est, ubi legitur hoc in morali philosophia? Nusquam, ut videtur. Respondeo: apud Ciceronem, qui fuit in hac opinione, quam habuit a Stoicis. Peripateticorum autem non fuit opinio. *BFS*, p. 452-3; see also, Wood, *Ockham on Virtues*, p. 43-4.

connected, but cardinal virtues are connected when understood as the general condition of virtue, rather than as individual virtues.⁸⁶³ Bonaventure follows the strain of thought and distinguishes between cardinal virtues as a common condition, which are connected, and cardinal virtues as individual virtues, which are not connected.⁸⁶⁴ So far, one should conclude that the position of the early Franciscans remains largely consistent: that moral virtues are independent of one another, while cardinal virtues, understood as the common condition rather than individual virtues, are connected.

The translation of the complete text of Aristotle marks a point of watershed in the Franciscan understanding of the question. In the second half of the thirteenth century, we see Franciscan positions polarising into the radical independentists such as Scotus and Olivi, and those who argue for a degree of connection, such as Ockham and Odonis himself. William de la Mare continues the tradition of singling out the cardinal virtues,⁸⁶⁵ but edges closer to the connection thesis, arguing that cardinal virtues are necessarily connected, and are the only virtues that are absolutely necessary for human happiness.⁸⁶⁶ Odonis's argument, as we shall see shortly below, comes extremely close to that presented by de la Mare, despite the fact that nuanced and elaborate arguments are presented after de la Mare by the likes of Olivi, Scotus, and Ockham.

The independentist arguments of Olivi, Scotus, and Ockham all demonstrate strong voluntarist assumptions. Olivi, for one, rejects every thesis of virtuous connection, including the connection of cardinal virtues - no single virtue can fully embody all four cardinal virtues.⁸⁶⁷ Virtues are essentially separable because each act of volition is separate and independent. However, there is a certain connection between moral virtues and prudence - each moral virtue is connected to its own specific prudence. Scotus, similarly, offers an independentist thesis, underpinned with his ethical voluntarism.

⁸⁶³ Wood, *Ockham on Virtues*, p. 44.

⁸⁶⁴ *Ibid*, p. 45-6.

⁸⁶⁵ It should be noted that, the passage where William de la Mare discusses the connection of virtue, is taken from a text of uncertain authorship. Lottin presents it as among the 'ouvrage douteux' of William de la Mare, and Kent herself very much doubt the methodology deployed by the author to be that of William, who usually tries to put the authorities of Aristotle and Augustine on the same side, rather than oppose one to the other as is found in the text. See Kent, *Aristotle and Franciscans*, p. 546.

⁸⁶⁶ William de la Mare (attributed), *Quaestiones in tertium et quartum librum Sententiarum*, Munich, 2001, III, dist. 26: Dicendum tamen quod quedam politice sunt de necessitate ad hoc quod vita civilis sit bona, et sic sunt quatuor cardinales; alie sunt que non sunt de necessitate, sed faciunt ad quemdam ornatum et decorem, ut magnanimitas et magnificentia; *ibid*, III, dist. 36, art. 1, q. 3: Circa questionem istam fuit opinio philosophorum virtutes humane honestati necessarie esse connexas, et unam ex altera necessario dependere. See Lottin, 'Connexion des vertus', p. 554-54, 629.

⁸⁶⁷ Wood, p. 51-3; for a more detailed discussion, see Kent, *Aristotle and Franciscans*, p. 548-52.

Scotus subscribes to what Rega Wood calls only half of Aristotle's biconditional - prudence can exist independently of moral virtues, but moral virtue cannot exist without prudence.⁸⁶⁸ Prudence, which is the prerequisite of all moral virtues, can be generated without the presence of any moral virtue in the will.⁸⁶⁹ An act of free volition means that the will may will in accordance or against the judgement of the intellect, which is in turn perfected by prudence. Prudence may exist, yet the will may still enact a decision against the judgement of prudence, therefore committing a vice or an act of incontinence. However, for an act to be virtuous, it must be in accordance with right reason, and therefore requires the presence of prudence. In this sense, moral virtues are not necessarily connected, but also cannot exist without prudence. In other words, man is free to sin, regardless of the state of the intellect; but in order to be virtuous, right reason is a *sine qua non*. In the case of prudence, Scotus argues that it can be generated without the presence of any moral virtues in the will.

William of Ockham's solution to the question resembles that of Scotus. Ockham agrees with Scotus that, on account of the will's freedom, prudence can be had without the presence of moral virtues, but it is nonetheless a necessary condition for the presence of moral virtues subjectively existent in the will.⁸⁷⁰ Like Aquinas's scheme, however, Ockham also distinguishes between the imperfect and perfect states of virtue, albeit in a much more elaborate and sophisticated manner than that found in Aquinas. Instead of a binary distinction between the perfect and imperfect, Ockham distinguishes five grades of virtue:

- a. One wills the performance of a virtuous act in accordance with right reason in a singular incident;
- b. One wills the virtuous act in accordance with right reason as above, and also intends to never give up such works contrary to right reason;
- c. One wills the performance of the virtuous act, with right reason, and the intention, solely and precisely because it is dictated by right reason;
- d. One wills the virtuous act as above, and one does this on account of love of God;

⁸⁶⁸ Wood, p. 53-5; see also, Kent, *Aristotle and Franciscans*, p. 554-64.

⁸⁶⁹ *Ord*, III, dist. 36, num. 72: Quantum ad istum articulum potest dici quod simpliciter rectum dictamen potest stare in intellectu absque recta electione illius dictati in voluntate; et ita cum unicus actus rectus dictandi generet prudentiam, generabitur ibi prudentia absque omni habitu virtutis moralis in voluntate.

⁸⁷⁰ William of Ockham, 'Utrum virtutes sint connexae', art. 4, 492-497: quod nulla virtus moralis nec actus virtuosus potest esse sine omni prudentia, quia nullus actus est virtuosus nisi sit conformis rectae rationi, quia recta ratio ponitur in definitione virtutis, II *Ethicorum*; igitur quilibet actus et habitus virtuosus necessario requirit aliquam prudentiam, in Wood, *Ockham on Virtues*, p. 120.

- e. Heroic virtue: a formally imperative act that goes against one's natural inclination, or against one's natural inclination in certain circumstances.⁸⁷¹

Out of these five grades of virtue, only (a) and (b) are considered as imperfect states of virtue, while (c) (d) and (e) are perfect states of virtue. Ockham argues that virtue in a perfect state is not co-extensive with a moral or theological vice. This is a position fundamentally different from Aquinas's claim that perfect virtues must exist together. While it is abundantly clear that no virtue can exist without right reason, which pervades every grade of moral virtue, the existence of singular moral virtues, even in a perfect state, does not necessarily require any other moral virtue. Ockham characterises prudence as essentially partial or complete propositional knowledge, and the participation of knowledge, i.e., the participation of practical intellect, is essential to any moral virtue. However, while a more perfect version of a moral virtue may be able to elicit the first action of another virtue, on the whole no moral virtue requires the existence of another one. In this respect, just like Olivi and Scotus, Ockham's position is fiercely voluntarist. Virtue, by its definition, requires the participation of right reason; but the freedom and independence of the will means that prudence, as a virtue of the intellect, remains a necessary but insufficient condition for moral virtues.

⁸⁷¹ Ockham, 'Virtutes connexae', art. 2, 116-167 (quoted selectively): *Primus gradus est quando aliquis vult facere opera iusta conformiter rationi rectae dictanti talia opera esse facienda secundum debitas circumstantias respicientes praecise ipsum opus propter honestatem ipsius operis sicut propter finem...*

Secundus gradus est quando voluntas vult facere opera iusta secundum rectum dictamen praedictum, et praeter hoc cum intentione nullo modo dimittendi talia pro quocumque quod est contra rectam rationem, etiam non pro morte, si recta ratio dictaret tale opus non esse dimittendum pro morte...

Tertius gradus est quando aliquis vult tale opus facere secundum rectam rationem praedictam cum intentione praedicta, et praeter hoc vult tale opus secundum circumstantias praedictas facere praecise et solum quia sic est dictatum a recta ratione.

Quartus gradus est quando vult tale opus facere secundum omnes condiciones et circumstantias praedictas, et praeter hoc propter amorem Dei praecise, puta sic dictatum est ab intellectu, quod talia opera sunt facienda propter amorem praecise. Et iste gradus solum est perfecta et vera virtus moralis de qua Sancti loquuntur. ...

Quintus gradus est quando aliquis eligit tale opus facere secundum praedictas condiciones excepto fine, quando indifferenter potest fieri propter Deum tanquam propter finem, et propter honestatem vel pacem vel aliquid tale, - quod dico pro intentione philosophi -, et praeter hoc eligit tale opus facere actu imperativo formaliter, non tantum aequivalenter. Et si tunc velit actu imperativo formaliter facere vel pati aliquid quod ex natura sua excedit communem statum hominem et est contra inclinationem naturalem, vel si tale opus non excedit communem statum hominem nec est contra inclinationem naturalem quantum est ex natura actus, sed solum ex aliqua circumstantia est contra inclinationem naturalem, talis inquam actus imperativus formaliter talis operis est generativus virtutis heroicae vel elicitus a virtute heroica secundum intentionem philosophi et secundum veritatem, et nullus alius habitus generatus ex quibuscumque aliis actibus est virtus heroica.

Odonis inherits the voluntarist approach to understanding moral ethics, yet he does not follow the radical voluntarism of his predecessors in positing a thesis of absolute separation of moral virtues. Instead, Odonis's position most closely mirrors the earlier Franciscan distinction between ordinary and cardinal virtues, and is in many ways a duplication of William de la Mare's thesis on the connection of the cardinal virtues. Odonis argues that cardinal virtues are necessarily connected to each other through prudence; they are necessarily connected because they are necessary for human happiness. Other virtues are not necessary for human happiness, and are therefore not *necessarily* connected to the cardinal quartet. The distinction between the necessary and unnecessary clearly echoes the thesis of de la Mare. Odonis writes:

Firstly, I shall make this distinction: there are two genres of moral virtues - one concerns the essence of principal human good, and the other does not. Virtues that concern the essence of human good, and without which man cannot be principally good, are the cardinal virtues, as I have discussed, see the treatise on fortitude. While these virtues remain within man, he is necessarily a good person. On the other hand, virtues which do not concern the essence of such human good are virtues without which man can still be principally good.⁸⁷²

The logic follows that, for anyone to be considered unqualifiedly good, he needs possess the cardinal virtues, which are the necessary condition for human happiness. However, Odonis clearly does not follow the arguments of Alexander of Hales or Bonaventure in considering the cardinal quartet as a common condition that embodies or adjuncts every other moral virtue. For this, Odonis does not quite regard cardinal virtues as hinges for other singular moral virtues, but rather, as hinges for the entire human good. He writes:

The reason of the cardinal or the principal virtue consists of that which, once one has these four habits, and has none other habit, he is a man of unqualified goodness in his moral being, in accordance with what the philosophers speak of as human goodness. Any of these lacking, even one may possess other habits, no one is absolutely good. Therefore, these four habits

⁸⁷² *ExEth*, VI, q. 17, f. 138ra: Pro solutione quaestionis praemitto unam distinctionem, quod duo sunt genera virtutum moralium, quaedam enim sunt de essentia principalis bonitatis humanae, quaedam autem non. Illae namque sunt de essentia, sine quibus non est possibile hominem principaliter esse bonum, cuiusmodi sunt virtutes cardinales, ut tractavi supra, tractatu de fortitudine, et quibus manentibus in homine, impossibile est hominem non esse bonum. Virtutes autem quae non sunt de essentia talis bonitatis sunt illae, sine quibus homo potest principaliter esse bonus.

are called the principal virtues, which produces among all else a principally good man. They are called cardinal virtues because, just like hinges, human goodness is supported by and revolves around them.⁸⁷³

Odonis clearly intends Question 17 of Book VI as primarily a refutation against the connection thesis, as he devotes the most part of the question on the separation of virtues after singling out the cardinal quartet for the ordinary virtues. Again, Bonnie Kent has done the remarkable work of analysing the text in detail, and therefore we will only sum up Odonis's argument for the separation of virtues:

- i. Except for the cardinal quartet, no virtue is necessary for human goodness, and therefore they are not necessarily connected to one another;
- ii. Not all men are in a condition to acquire all virtues - a poor father is not capable of virtue of liberality or virginity, but he can still be principally good with prudence, justice, temperance, and fortitude - therefore virtues impossible to some are not connected to other virtues;
- iii. Not all virtues are compatible with one another, and therefore they are not connected;
- iv. Virtues which are generated separately from one another are not connected to one another.⁸⁷⁴

⁸⁷³ *ExEth*, IV, q. 5, f. 60va: Quod ratio virtutis cardinalis seu principalis consistit in hoc, quod ipsis quattuor habitis, et nulla alia. Homo est simpliciter bonus homo in esse morali, secundum quod philosophi locuti sunt de bonitate humana. Altera vero ipsarum non habita et quibuscumque aliis habitis, nullus est simpliciter bonus homo. Et ideo dicuntur principales, quia principaliter inter omnes reddunt hominem bonum. Et cardinales quia super eas tanquam super cardines sustentatur et volvitur humana bonitas.

⁸⁷⁴ *ExEth*, VI, q. 17, f. 138rb: Primo quia nulla virtus essentialis bonitati humanae necessario est connexa virtuti non essentiali bonitati humanae. Quod patet: posita bonitate humana necessario ponuntur virtutes ei essentielles non tamen necessario virtutes accidentales, quare in tali casu, essentielles essent separatae ab accidentalibus. Sed aliquae sunt sic essentielles, ut visum est, aliquae accidentales, puta ut virginitas, eutrapelia, et magnificentia, et magnanimitas, et philotimia (philatimia, X), sine quibus potest esse salus et homo principaliter bonus. Quare non necessario essentielles sunt connexae accidentalibus.

Secundo quia nulla virtus possibilis alicui necessario est annexa virtuti, quae impossibilis est illi; sed aliquae virtutes sunt possibiles aliquibus, quaedam impossibiles, quare istae non necessario sunt connexae illis. Minor probatur, quia homini pauperi prolem habenti possibiles sunt virtutes cardinales, quia potest vivere prudenter et iuste, fortiter et temperante; illi tamen sunt impossibiles aliquae aliae, puta virginitas et magnificentia, quare ut prius. Minorem probo, prima enim pars est nota de possibilitate illarum virtutum, aliam partem de impossibilitate aliarum. Probo sic: nulla virtus electiva est possibilis alicui, circa cuius materiam non potest eligere; sed pauper prolem habens non potest eligere circa materiam virginitatis et magnificentiae, quia nullus potest eligere impossibilia. Sed impossibile est isti servare perpetuo castitatem

What Odonis effectively argues is that one can be good and happy *simpliciter* without acquiring all virtues. To be a good man, it suffices to be prudent, just, temperate, and courageous. The bar for being virtuous is not set impossibly high - unlike the exacting standards set by Aristotle for the select Greek *aristoi*, unlike the connection thesis advanced by Albertus and Aquinas, where a perfectly virtuous man has to possess all virtues in their perfect state, and remarkably, also unlike his voluntarist Franciscan predecessors, where the free will can be constantly struggling with even perfected reason. Odonis injects a hefty dose of realism in his understanding of humanity: for most, the acquisition of cardinal virtues is a tangible goal. It takes much to become an unqualifiedly good person - one needs to be prudent, just, temperate, and courageous - but one does not need to be perfect in absolutely every single aspect of his moral and human life.

Odonis follows what is essentially a thesis of the connection of cardinal virtues combined with an independentist argument for the rest. He does not explicitly reject the voluntarist arguments of the likes of Olivi, Scotus, and Ockham, but nor does he in fact pay any attention to their positions. What Rega Wood considers as a characteristic Franciscan topic in the consideration of the will while discussing the connection of moral virtues is conspicuously absent here in Odonis's Question 17.⁸⁷⁵ Odonis does not discuss the possibility of having prudence without moral virtues. Indeed, based on his connection thesis, prudence cannot possibly exist without any moral virtues - prudence is necessarily connected to justice, temperance, and fortitude. For Odonis, the virtue of practical reason requires absolutely the presence of the three other virtues.

How exactly this mechanism functions, Odonis does not explain explicitly, but we may attempt an extrapolation from earlier passages. Odonis states that one is capable of a virtuous act without acting

vel corporis integritatem, cum ipsam non habeat. Quae tamen est electio virginitatis, ut ostendi supra tractatu de temperantia quaestione illa: utrum virginitas sit virtus. ...

Tertio quoniam aliquae virtutes in eodem sunt impossibiles, ergo non necessario sunt connexae. Antecedens patet primo de magnitudine et eutrapelia, quia magnanimus non est lusivus, ut supra tractatu de magnanimitate; eutrapelus autem est lusivus, habens omnem operationem suam in ludo, ut supra tractatu de eutrapelia. Patet etiam de virginitate et coniugali castitate, quae consistit in usu debito coniugii ad proles procreationem. Tertio patet de magnificentia et virtute paupertatis religiosorum, quae includit essentialiter abdicationem temporalium facultatum. Magnificentia vero supponit possessionem et proprietatem earum, consequentia patet.

Quarto quia quorum generationes sunt separabiles, et ipsa sunt separabilia; sed generationes quarundam virtutum sunt separabiles, quare et ipse. Minor patet in quibusdam separabilibus iustitiae et accipio religionem et vindictam, quarum utraque est circa ius naturale, ut notavi supra circa principium quinti libri.

⁸⁷⁵ Wood, *Ockham on the Virtues*, p. 43.

it out *virtuously* - in other words, an action of virtue does not necessarily require the presence of this virtue. Then where does this act come from? It is either effectuated by the practical intellect through right reason, or effectuated by the contingent and undetermined will. If it is the practical intellect that initiates the virtuous act, then it is incumbent upon the will to determine whether to act or not to act, and the execution of the virtuous act by the will is indeed acted out *virtuously*, for it is an act of the will in accordance with the right judgement of the intellect. Therefore, the existence of prudence suffices to indicate the existence of moral virtue, if the virtuous act is effectuated by the will. If the virtuous act originates with the will, regardless of the judgement of the intellect, then indeed it is not acted out *virtuously*, and therefore the absence of moral virtue has no implication of the presence or absence of prudence. However, it is within the Franciscan tradition to consider that the presence of moral virtues in the will is sufficient to indicate the presence of prudence in the intellect, and the other half of the biconditional, as we have just established, is the presence of prudence is sufficient for the presence of moral virtues. Thus, we may explain the metaphysics of Odonis's thesis of cardinal connection.

It is also important to note, again, that for Odonis, prudence is a unitary and extensive virtue that takes the subject as the free moral agent of man, and takes the perspective of man's social and ethical existence as a whole. Prudence, through practical reason, commands all aspects of man's life, be it practical or intellectual, and is acquired unitarily through life's experience. Unlike Olivi, who considers prudence as essentially divisible into different genres corresponding to different moral virtues, or Scotus and Ockham, who consider prudence as a system of moral knowledge, Odonis's idea of prudence goes far beyond the constraints of mere propositional knowledge divisible into different spheres of life or different aspects of morality. Instead, prudence is a wholistic virtue that is the mastermind of the entire human existence, as far as such existence can be contemplated by the practical intellect. Therefore, the essential connection of the cardinal virtues through prudence is not merely a statement of necessity for human goodness, but also a reflection of how Odonis perceives prudence as the supreme virtue in man's moral life.

3. Prudence and Justice: A Retrospection

Given the extensive nature of prudence and its inexorable connection with the other cardinal virtues, it is high point for us to reconsider the virtue of justice and its interplay with prudence. As we have pointed out at the very beginning of Part III, prudence completes the cognitive chain of justice from

the perception of the universal moral principle, through to the obligation of the individual, finally to the action to be carried out and the actual act. In the most classical of understandings of prudence, the practical intellect understands the universal precept of moral laws, deliberates on the particular case, and presents a recommendation in accordance with right reason to the will. The prudential process deliberates, commands, and finally acts. Thus, we have the intellectual participation within the justice cognitive chain and we understand how an external moral precept is transformed into an interior decision to act.

Odonis places the virtue of justice in the will, and considers it as the perfection of the will - the intellectual appetite. Prudence, however, is the perfection of the appetitive intellect. We have already established above how intimately similar the intellectual appetite and the appetitive intellect are to one another - what is commanded by one is also commanded by the other. Every act of justice is, by definition, an act of *praxis*, and therefore commanded also by prudence. Justice and prudence are not only necessarily connected in their generation, but also necessarily connected in their operation. As we have seen above with virtues' connection, no act of justice can be truly virtuous without the participation of practical reason - there is no justice without prudence; a prudential act cannot come to be without the rectitude of the will, which effectuates it - therefore there is no prudence without justice. Odonis states that what is commanded by law is *praxis*, and all *praxis* is commanded by law.⁸⁷⁶ Yet, every act of justice is commanded by law, since, legal justice is the complete virtue, and, according to Aristotle, law commands every virtue and prohibits every vice. Legal justice can therefore be equated to prudence in its acts, the differences in generation and subjective location notwithstanding.

Of all the intimate connections between prudence and justice, what truly epitomises this relationship is the virtue of equity. Equity is, in its very essence, the application of practical reason to natural and positive law. Odonis places the virtue of equity above the universal precepts of human positive law, arguing that while no human law can account for all human acts, which are essentially singular and contingent, it is for the virtue of equity to correct the shortcomings of law. Equity, as a facet of justice, is not only a virtuous movement of the will in delivering a judgement, but it also involves, at its very core, the participation of practical reason. The cognitive process of *epieikeia* is *per se* deliberative and preceptive. It deliberates against the universal precepts of law, because here the law has failed to deliver justice, and draws in the practical intellect in order to determine the particular and contingent.

⁸⁷⁶ *ExEth*, VI, q. 4, f. 122rb: Quarto quia omnis operatio et sola a lege imperabilis est praxis; also see above, section 'Praxis and the Practical Mind'.

An equitable act, like a prudential act, cannot be learned scientifically within the studies of law, but rather, comes with a practical judgement based on one's understanding of the universal moral precepts and one's experience in locating a just mean for the moral end.

It is in this context that Odonis understands equity as the reason of prudent and just man, as opposed to the reason of law. Odonis considers the practical intellect and prudence to be superior to the scientific intellect and wisdom. Correspondingly, the power that determines the contingent is superior to the power that apprehends the universal. Prudential reason of the free and undetermined man is thus superior to the universal reason of law. Just as prudence commands wisdom, what is free and contingent should command the universal, and therefore, correspondingly, the rule of human reason is preferred to the rule of legal reason.

Out of the universal, it is only the commands and prohibitions of natural law that cannot be superseded by the judgement of prudence and equity. Odonis acknowledges a set of universal principles, albeit a limited set, that lies beyond the remit of human prudential reason. Yet, as we see in Question 22 of Book V - whether equity directs natural law - counsels, concessions, and permissions of natural law can be superseded by human reason as one judges fit through his practical intellect.⁸⁷⁷ The scheme of arguments presented in this question very much reflects Odonis's own moral psychology. At the very basis, there are immutable rules set out by the precepts and prohibitions of natural law - these are the unchangeable and unquestionable universal first principles of ethics. On top of this basis is a whole system of fluid moral propositions that are subject to the man's judgement and prudential reasoning. There are the counsels, concessions, and permissions of natural law, which serve as the original set of rules but are fundamentally replaceable with the change of circumstances. Others are the human positive law, which are posited by contingent human reason and can, therefore, be replaced by another contingent human reason. What truly gives the system its fluidity is precisely the universality of legal reasoning, which Odonis considers to be always subject to the corrective force of equity, through the process of prudential reason.

⁸⁷⁷ *ExEth*, V, q. 22, f. 117va: Secundo quia in rebus consultis et suas, honestati et concessis, utilitati et permissis expedientiae ac necessitati, recipit mutationem, correctionem, et directionem.

Equity is the virtue that determines the mean in any human judgement, and this is exactly what Aristotle intends *phronesis* to achieve in man's moral reasoning.⁸⁷⁸ While discussing equity in a legal context, Odonis states that it is the elective habit not determined by any human positive law, but rather it locates the mean that lies between what is legally just in accordance with the very letter of law, and what is unjust that goes against the intention of law. As we have seen above in the section on 'Judge and Equity', Odonis does not intend the virtue of equity and prudential reason to be deployed only in rare cases where the law manifestly fails, but rather, equity and prudence should pervade throughout any legal process for it to be just. Odonis gives the human moral agent immense power and potential in his ethical and political life, while remaining sceptical to the moral validity of universal commands. The veritable justice internalises what is commanded by the external, and this process is powered by man's practical reason with the virtue of prudence.

The human capacity of prudential reasoning is the cognitive assumption that underlines Odonis's argument that it is better for the best men, rather than the best law, to rule a state. The end of government and politics is human - to foster just, prudent, and virtuous citizens, and it is only through human means that such end can be achieved. This is Odonis's human-centric ethico-political philosophy. What makes man the best governor is precisely his capacity of human reason and his contingent human freedom. It is precisely through the prism of prudence that we should understand the underlying assumptions of Odonis's human-centrism. There is a fusion between the notion of a *subject* and the corresponding *subjectivity*. The free and individual moral agent constitutes the subject of Odonis's moral science, but this moral agent is truly an individual - a unitary, indivisible subject, capable of complete subjective potency. There are no separable spheres of human life divided into the personal, familial, and political - the moral agent necessarily experiences everything inseparably and indivisibly, and necessarily acquires prudential reason and happiness in all aspects of life regardless of his social surroundings. In other words, Odonis sees the moral life through the perspective of the moral agent - the end of all human acts and human morality is to live life well as a whole.

Instead of the detached manner where Aristotle and his followers consider the universal and eternal truth of the cosmos to be ethically superior to the happiness of human life, Odonis presents a much

⁸⁷⁸ *ExEth*, V, q. 22, f. 117vb: Secundo dicendum qualis virtus est, propter quod sciendum quod epikeia est habitus electivus iuris per nullam legem determinati, media inter iustum legale secundum litteralem sententiam legitur, et iniustum illegale contra piam intentionem legis, declinativus in punctionibus ad veniam, et mediativus inter rigorem nimium et remissionem nimiam, adhesivus rationi gnomiticae et arbitrio gnomitico boni viri; see also, section 'Judge and Equity'.

more intimate and interior way of understanding moral good. While theoretical wisdom is a delectable perfection, it is nonetheless delectable in order that man may live life well as a whole, and thus ordered towards man's practical perfection through prudence. The superiority of prudence over wisdom also implies that Odonis favours a life of activity instead of a life of contemplation. This may place him in an odd position within the wider secular-mendicant dispute, but we must also bear in mind that the mission of the mendicant orders such as the Franciscans is never limited to contemplation. By Odonis's time, the Franciscans are as much active in scholarship and ecclesiastical governance as their secular counterparts. Nonetheless, the preference of activity to contemplation gives Odonis's moral philosophy a tinge of worldliness. Yet, it is this worldliness that effectively underlines the entire purpose of Odonis's commentary: the end of moral science is man's perfection and happiness of this present life, while man's salvation and eternal happiness lies beyond the reach of Aristotle's intellectual competence. However, even when we consider the eternal life and man's salvation, it should be noted that, for Odonis, the attainment of divine truth comes not from speculative wisdom, but through life's experience and activity.⁸⁷⁹ For Odonis, man's divine perfection cannot be achieved through his sapiential contemplation of God alone, but must be experienced and felt through his daily moral and spiritual life.

⁸⁷⁹ See section 'Prudence and Wisdom'.

CODA: THE INDIVIDUAL AND INSTITUTION - CONCLUDING REMARKS

So far, we have surveyed with some detail Odonis's discussion on the overall purpose of the Book of *Ethics*, the virtue of justice, and the virtue of prudence. We can come at the conclusion that Odonis is a highly original and coherent thinker, at least within the space of his *Expositio*. The underlying themes of moral psychology, such as the contingency of the will, the cognitive process of practical reasoning, and the indivisibility of the moral subject-agent, run constantly throughout the passages discussed by the present thesis. Such underlying principles of moral psychology also underpin the broader conclusions reached by Odonis regarding various topics at stake.

Overall, Odonis speaks of moral virtues and ethics from the subjective prism of one person - the indivisible subject-agent of the moral science. The indivisibility of the moral subject-agent and of his subjective human experience within the grand scheme of ethics is set out from the very beginning of the *Expositio*, and runs recurrently through the books and questions. Aristotle maintains that man's capacities and happiness can only be actualised through societal interactions - the public life is an arena where one achieves his moral and personal worth. Aquinas, following the Stoics, presents domesticity and politics as entirely separable spheres of man's moral life, and staunchly upholds the institution of positive law and institutionalised government. Such is the late medieval assumption of man: human nature is sinful and needs to be suppressed. We gleam this philosophical first principle from the very writings of Augustine and Ambrose, through Aquinas and Bonaventure, right to Odonis's own time. What marks Odonis out against such background is, therefore, his humanism and his faith in moral capacities of an individual person. While for Odonis, no one can be separated from the entangled network of familial and civic life, but at the centre of complex spiral of moral life is the subjective individual, through whose perspective the entire ethical science is understood.

What powers the individual subject-agent through his moral existence is his principle of freedom - the intellectual appetite, and the reason that determines the contingent and undetermined - the practical, or appetitive, intellect. The free will and practical reason of man together define the individual person, and ensure and manifest his subjective potency. It is with a free will and practical

rationality, that one is able to navigate the complex obligations and moral goods in his familial and societal interactions as a moral agent. Odonis states that no one can be separated from his societal existence, but yet one exists through his own accord as a subjective individual. We see this human centrism as the pivotal theme around which Odonis constructs his arguments in the *Expositio*. While there is no doubt that Odonis follows a very Franciscan line of ethical voluntarism in his moral psychology, underlining the primacy of the will in any moral decision making - he nonetheless rejects the radical voluntarism of his predecessors such as Olivi and Scotus. Instead, Odonis displays a measured voluntarism, where the freedom and contingency of the will is complemented by prudence and the judgement of the practical intellect. Surely, the will is capable of any act in its own accord, but only an act in accordance with right reason can be considered virtuous.

We may well question, therefore, Odonis's very own intellectual freedom. While, as we have established in the beginning of this thesis, there seems to be no coherent Franciscan moral philosophy to speak of, the Minorites nonetheless have their own defining intellectual *topos*: the doctrine of poverty. Before reaching for a general conclusion, it is worth a brief detour on the classic Franciscan question of property and poverty to examine how exactly Odonis fits into the Franciscan narrative.

I. ODONIS ON POVERTY AND PROPERTY

The doctrinal debate on evangelical poverty and rights of property is what drives the momentum behind Odonis's rise to the top of the Franciscan Order. The poverty debate underpins both the internal strife between the Observant Franciscans and the Order's establishment, as well as the subsequent clash between the Order as a whole and Pope John XXII. Both events are well documented, notably by Malcolm Lambert in his book on Franciscan poverty (1961), Roberto Lambertini in his *Povertà pensata* (2000), David Burr in his *Spiritual Franciscans* (2001), and recently, by Ryan Thornton in his doctoral dissertation on the Franciscan economic thought (2019).⁸⁸⁰ In addition, there is a wealth of insightful studies into the various aspects of the debate, such as those by Sylvain Piron's on the doctrine of Peter John Olivi and his troubled relationship with the Franciscan establishment, studies on rights by Annabel Brett (1997), Brian Tierney (1997), and Virpi Mäkinen (2001), the work on the role of Bertrand de la Tour by Patrick Nold (2003), etc.⁸⁸¹ What intrigues us here is, however, despite the very centrality of the doctrine of poverty in this episode of Franciscan history, discussion on this issue is conspicuously absent in Odonis's writing. For a debate that has deeply divided the Friars Minor and brought the Order into an existential crisis, Odonis turns out to be completely silent.

Odonis's silence is well testified. Within the extensive works such as the *Ethics* commentary, the *Sentences* commentary, and even his economic treatise, the *Tractatus de contractibus*, the question of poverty is largely eluded. Given that the *Ethics* was probably written during the period of debate between John XXII and the Minorites on poverty, and that the *Sentences* lectures were given after the 1323 papal bull *Cum inter nonnullos* - where John XXII pronounced against the doctrine that

⁸⁸⁰ Malcolm Lambert, *Franciscan Poverty: The Doctrine of the Absolute Poverty of Christ and the Apostles in the Franciscan Order 1210-1323*, London, 1961, esp. p. 149-246; Roberto Lambertini, *La povertà pensata: Evoluzione storica della definizione dell'identità minoritica da Bonaventura ad Ockham*, Modena, 2000; David Burr, *The Spiritual Franciscans: From Protest to Persecution in the Century after Saint Francis*, University Park, PA, 2001; Ryan Thornton, *Franciscan Poverty and Franciscan Economic Thought: 1209-1444* (Doctoral dissertation), EHESS, Paris, 2019, esp. chapters 5-6.

⁸⁸¹ Sylvain Piron, 'Censures et condamnation de Pierre de Jean Olivi : enquête dans les marges du Vatican', *Mélanges de l'École française de Rome - Moyen Âge*, Rome, 2006, p. 313-373; idem, 'Métier de théologien'; Annabel Brett, *Liberty Right, and Nature: Individual Right in Later Scholastic Thought*, Cambridge, 1997; Tierney, *Natural Rights*; Virpi Mäkinen, *Property Rights in Late Medieval Discussion on Franciscan Property*, Leuven, 2001; Nold, *Bertrand de la Tour*.

Christ and the Apostles possessed nothing either individually or in common - Odonis's taciturnity may be read as an unwillingness to confront the pope, or even a consent to the papal pronouncements on the debate. (We have established above in Part I, chapter II, that Odonis may have already been John XXII's candidate to succeed Michael of Cesena as early as 1325, but Odonis's loyalty to the pope was probably formed much earlier through his familial and local connections.) The lack of discussion on poverty in his *De contractibus*, written during the period of 1315-17, is clearly not caused by such concerns; instead, the very genre of the work itself - a confession manual for the urban merchants - does not *per se* call for a discussion on a doctrinal issue that concerns primarily the Franciscans themselves. Elsewhere, Roberto Lambertini has found no evidence of Odonis's contribution to the poverty debate opened by John XXII in 1322.⁸⁸² Even after Odonis was elected Minister-General in 1329, where it became incumbent for him to condemn the Michaelist rebels, he carefully danced around the issue of poverty. In his response to Michael of Cesena's letter to the Perpignan convention, *Quid niteris*, Odonis focused instead on the ecclesiological claim of the rebels over the power of the Emperor to depose the Pope.⁸⁸³ Even Perpignan convention of 1331 itself, where one may reasonably expect the Order to settle on the controversies of poverty and property, does not issue a constitution to such effect - no debate on poverty is ever mentioned.

Nonetheless, Odonis offers extensive discussions on economic topics other than that of poverty, in the *Ethics* and *Sentences* commentaries, and most of all, in his *Tractatus de contractibus*. A number of insightful studies have been produced in recent decades on Odonis's economic thought. Odd Langholm (1992) studies the question of usury in Question 20 in Book IV of the *Ethics* commentary, and compares it to similar questions raised in the Book IV of the *Sentences* commentary, arriving at the conclusion that Odonis borrows heavily from the economic writings of Olivi, and yet comes to 'inconsistent' and 'nebulous' verdicts on the legitimacy of usury - while Odonis considers usury as evil *secundum se*, he nonetheless considers it justifiable if the damage is shared between the creditor and debtor, and proposes a theory based on the separation of use and ownership.⁸⁸⁴ Langholm later (2015) revises his presentation of Odonis's economic thought with reference to *De contractibus*, but the crux of the arguments remain the same.⁸⁸⁵ Giovanni Ceccarelli and Sylvain Piron (2009) offer a forty-page long textual and contextual study on the *De*

⁸⁸² Lambertini, 'Odonis vs. Marchia', p. 366-7.

⁸⁸³ See Roberto Lambertini, 'Odonis vs. Marchia', p. 371-3.

⁸⁸⁴ Langholm, *Economics and Medieval Schools*, p. 508-533; Ceccarelli and Piron, 'Odonis' Economic Treatise', p. 175-193.

⁸⁸⁵ See Odd Langholm, 'Geraldus Odonis: Life and Thought', *History of Political Economy*, 47, 2015, p. 668-675.

contractibus, where they present copious evidence of Odonis intellectual debt to both Olivi and Scotus, and remark on Odonis's use of the papal bull *Exiit qui seminat* as a doctrinal foundation for his argument on the separation between right of use and ownership in Odonis's analysis of usury.⁸⁸⁶ Ryan Thornton's doctoral dissertation (2019) also leans on Odonis's *De contractibus*, which is presented as a case-study of Franciscan economic thought after the Pope Clement V's attempt to settle the Franciscan poverty dispute in *Exivit de paradiso* - a papal bull that affirms both doctrine set out by *Exiit qui seminat* and the legitimacy of *usus pauper* as an orthodox interpretation of the Franciscan *Rule*, but that also leaves it to the Franciscan superiors to determine the extent of poverty observance.⁸⁸⁷ Here, the particular focus is, again, given to use, ownership, and usury; after examining the text, Thornton remarks on the notion of determination of arbitrary authority (in the sense of a subjective judgement) in judging the legitimacy of ownership and usury, echoing the Pope Clement V's resolution in allowing the Franciscan superiors to determine the extent of *usus pauper* in their observation. The present section, however, will aim to explore two themes that have received relatively little scholarly attention but with significant implications on the poverty debate: firstly, on the origin of property, which is discussed both in his treatise on contracts and his *Ethics* commentary; then, building on Odonis's known writings, we will attempt to reconstruct Odonis's thoughts on poverty.

The question of the origins of property lies at the very foundation of the poverty debate. A common Franciscan position is that property is not mandated by natural law, but rather, an institution of human positive law. The institution of property is also closely associated with the Fall - an Augustinian argument, and also very much shaped the papal bull *Exiit qui seminat* - where private property becomes a necessity in human society because of man's sins.⁸⁸⁸ The theories held by individual Franciscan masters are in one way or another a variant of this dominant discourse outlined above. Bonaventure, for example, argues that natural law prescribes common ownership of property in the state of innocence, but for private ownership after the Fall in order to save men from disputes and quarrels.⁸⁸⁹ Peter of John Olivi also argues for a thesis of the absence of property right in the state of innocence, either in common or in private. In a counter-factual scenario of Adam and Eve not having sinned, such a state of non-ownership would have persisted despite the

⁸⁸⁶ Ceccarelli and Piron, 'Odonis' Economic Treatise', p. 175-193.

⁸⁸⁷ See Thornton, *Franciscan Poverty*, chapter 5, II-III.

⁸⁸⁸ Lambertini, 'Poverty and Power', p. 143.

⁸⁸⁹ Langholm, *Economics and Medieval Schools*, p. 147-156.

multitude of population. Olivi also compares the life of Christ and the Apostles to the state of innocence, holding that, just like in the state of innocence, Christ and the Apostles collectively and individually owned nothing, either through dominion or through use.⁸⁹⁰ The implication of such argument is that it is possible to live without property, i.e., in a state of absolute poverty, even after the Fall where property has been instituted. The Apostles, as mere humans, are able to live in poverty and negate their ownership of any property either in dominion or in use, and by implication, so are the Franciscans. Such life of evangelic poverty is realisable because of the supreme freedom of the will, which refuses to possess.

Scotus holds a slightly more moderate view on this question, but still maintains that there is no private property in the state of innocence.⁸⁹¹ Common ownership is decreed by natural law. Unlike Bonaventure, however, Scotus considers that, after the Fall, the natural law prescribing common ownership is rescinded, rather than altered.⁸⁹² With the absence of natural law concerning ownership, property is instituted by human positive law. Such act of institution, however, is far from a historical necessity - just as Scotus considers all human acts and decisions as fundamentally contingent, the institution of property is also inherently contingent, and could have been otherwise. Property is willed by humanity into existence, but there is no necessity in this very existence. It follows that such contingent act of human institution can also be undone, should one will against ownership and property.

Bonagratia de Bergamo, however, explicitly frames connection between the state of innocence and the doctrine of poverty in legalist terms with hefty references to both civil and canon law.⁸⁹³ In his

⁸⁹⁰ Olivi, *Quaestiones de perfectione evangelica*, q. 8: Qui autem vellet dicere quod in statu innocentiae appropriarentur res et iura rerum uni personae aut determinatis collegiis, ab omni recta ratione iudicaretur insanus..., p. 126; *ibid*, Illa (scil. Apostolorum) enim fuit communitas extendens se ad omnes homines - qualis fuit in statu innocentiae - ita quod unum speciale collegium non plus habeat iuris in rebus quibus utebantur, quam quicumque alius homo ... unde illi, ut credo, solum usum habeant in illis communibus, non autem aliquod ius nec in re nec in usu. p. 179; see also, Lambertini, 'Hôtes de l'Éden, maîtres du monde? Les hommes, les animaux et les choses avant et après la chute', p. 260-61

⁸⁹¹ *Ord.* IV. d. 15 q.2: in statu autem innocentiae communis usus sine distinctione dominiorum ad utrumque istorum plus valuit...

⁸⁹² See Lambertini, 'Poverty and Power', p. 147-9.

⁸⁹³ An edition of the text can be found in Liviarus Oliger, 'Fr. Bonagratia de Bergamo et eius Tractatus de Christi et apostolorum paupertate', *Archivum Franciscanum Historicum*, 22, 1929, p. 292-335, 484-511; an English translation

Tractatus de Christi et apostolorum paupertate, dated to 1322-23,⁸⁹⁴ in response to John XXII's *Quia nonnunquam*, Bonagratia takes the traditional Franciscan distinction on the question of ownership in the state of innocence and in the post-Lapsarian state, and argues that there is no *dominium* over goods in the state of innocence, but only simple use of consumables (*usus facti*), as such use is mandated by both God and natural law.⁸⁹⁵ Siding with Scotus, and citing the *Decretum*, Bonagratia proposes that private property is only instituted by human positive law after the Fall.⁸⁹⁶ The Fall is therefore a necessary condition for *dominium* in common or in private, and Bonagratia presents emphatically two arguments in support of this: there is no *dominium* prior to the Fall; and had Adam and Eve not sinned, the common use of consumables would have persisted.⁸⁹⁷ Since the right of *dominium* is instituted by human law, it can be renounced - such is what Christ and the Apostles did, which returns them to the state of innocence, and such is what the Franciscans are doing. Brian Tierney presents Bonagratia as considering that 'the primeval state of innocence was a normative condition to which humans could and should return' - the state of *simplex usus facti* of Adam and Eve is Bonagratia's theological precedence to justify the present doctrine of Franciscan poverty.⁸⁹⁸

After John XXII's *Quia vir reprobus*, William of Ockham, now having joined the Franciscan rebels in Munich, proposes a broadly similar thesis with a different nuance in his *Opus nonaginta*

by Jonathan Robinson, based on Olier's edition, can be found at <http://individual.utoronto.ca/jwrobinson/translations/bonagratia_de-paupertate.pdf>; for more detailed studies on Bonagratia's argument, see Tierney, *Natural Rights*, p. 148-154; and Mäkinen, *Property Rights*, p. 144-150.

⁸⁹⁴ For the dating of Bonagratia's text, see Olier, 'Bonagratia et eius Tractatus', p. 293, where he suggests 1321-23; given that the text is most likely a response to *Quia nonnunquam*, which is published in march 1322, and the Franciscan General Chapter responded almost immediately, in May 1322, the publication of Bonagratia's text cannot be later than 1323, when he was imprisoned by John XXII for his views.

⁸⁹⁵ Bonagratia, *Tractatus de paupertate*, in Olier, 'Bonagratia et eius Tractatus', p. 497: Set in statu innocentie fuisset homines sine dominiis distinctis; *Ibid*, p. 503: Praeterea usus facti rerum necessarium ad substantiationem nature est de iure naturali ... Et ideo nec per legem nec per renuntiationem sive abdicationem nec aliquo modo tolli vel mutari protest; and *Ibid*, p. 504: Quod autem usus rerum, alimentorum cadat sub precepto legis nature patet ... in statu scilicet innocentie. Deus dedit duo precepta homini: unum de commedendo, secundarium de non commedendo.

⁸⁹⁶ Bonagratia, *Tractatus de paupertate*, p. 503: Proprietates vero et possessiones et dominia rerum sunt a iure humano, VIII dist. *Quo iure*...

⁸⁹⁷ Bonagratia, *Tractatus de paupertate*, p. 506: Set nullus ante peccatum habuisset dominium earum rerum, que usu consumuntur; and *ibid*, p. 504: Potuit enim primus homo non peccare et sic usus omnium rerum semper fuisset in omnibus hominibus.

⁸⁹⁸ Tierney, *Natural Rights*, p. 153.

dierum. Ockham presents a thesis of a tripartite development of property rights. There is a phase of dominion in the state of innocence, where all creatures submit themselves to the disposition of men, and men make use of whatever they consider fit without having possession over anything; after the fall there is an interim state where men do not have the right to appropriate property for themselves, but have a potence (*potestas*) of dominion - this phase can be understood as a phase of common ownership; and finally there is the phase of dominion, where possessions are divided into private ownership.⁸⁹⁹

Overall, we see a strong theme of associating private property with the Fall: there is common ownership, or the absence of any ownership, in the state of innocence; private property is instituted, either by positive law or an altered natural law, after the Fall, which is the first and sufficient cause of property. A brief comparison with the Minorites' opponents suffices to demonstrate the intellectual consistency within the Order. Aquinas, for instance, considers that private property would have been *necessarily* instituted even if the state of innocence persisted. Private property is not only natural, but the arrangement of private property is consistent with natural law, since it is materialised through the mutual agreement between men.⁹⁰⁰ Equally, there would have been society, government, and even inequality among men in terms of virtue and grace.⁹⁰¹ Hervaeus

⁸⁹⁹ William of Ockham, *Opus nonaginta dierum*, ed. H. S. Offler, Manchester 1968, p. 435: Primi parentes post peccatum non habuerunt dominium commune omnium temporalium proprie loquendo de dominio, sed habebant potestatem appropriandi sibi et etiam acquirendi commune dominium... ; and *ibid*, 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 ideo si talis potestas vocetur dominium, potest concedi quod habuerunt dominium commune rerum. Tertium tempus fuit post divisionem rerum, et tunc inceperunt dominia propria, qualia nun sunt mundanorum; see also Lambertini, 'Hôtes de l'Éden', p. 266.

⁹⁰⁰ *ST*, II2ae, q. 66, art. 2: Ad primum ergo 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.

⁹⁰¹ *ST*, Ia, q. 96, art. 4: Tunc vero dominatur aliquis alteri ut libero, quando dirigit ipsum ad proprium bonum eius qui dirigitur, vel ad bonum commune. Et tale dominium hominis, ad hominem in statu innocentiae fuisset, propter duo. Primo quidem, quia homo naturaliter est animal sociale, unde homines in statu innocentiae socialiter vixissent. Socialis autem vita multorum esse non posset, nisi aliquis praesideret, qui ad bonum commune intenderet, multi enim per se intendunt ad multa, unus vero ad unum. Et ideo philosophus dicit, in principio *Politic.*, quod quandocumque multa

Natalis, a loyal follower of Aquinas, confronts the Franciscan position head-on, and argues that dominion over goods would still be established even if the state of innocence persisted. Such dominion is not so much a division into private ownership of ‘mine’ or ‘yours’, but a sense of ‘ours’.⁹⁰² In *Quia vir reprobus*, Pope John XXII also declares that in ownership of property already existed, both individually and in common.⁹⁰³

Odd Langholm presents Odonis’s theory of the origin of property as that which is essentially the same as that of Scotus: natural law prescribes common ownership in the state of innocence, while private property is instituted by human positive law through prudence.⁹⁰⁴ On the surface, this conforms the Franciscan tradition of associating property with the Fall and the resulting human necessity in a post-Lapsarian state. In the *Tractatus de contractibus* (1315-17), Odonis cites the same passage in the *Decretum* as Olivi, and states that in the state of innocence, men, as per natural law, have use (*usus*) of all things without having a *dominium* over such goods.⁹⁰⁵ The dominion

ordinantur ad unum, semper invenitur unum ut principale et dirigens. Secundo quia, si unus homo habuisset super alium supereminentiam scientiae et iustitiae, inconveniens fuisset nisi hoc exequeretur in utilitatem aliorum; secundum quod dicitur I Petr. IV, unusquisque gratiam quam accepit, in alterutrum illam administrantes. Unde Augustinus dicit, XIX de Civ. Dei, quod iusti non dominandi cupiditate imperant, sed officio consulendi, hoc naturalis ordo praescribit, ita Deus hominem condidit.

⁹⁰² Hervaeus Natalis, *De paupertate Christi et apostolorum*, ed. Sikes, *Archives d’histoire doctrinale et littérature du Moyen Âge*, 12-13, 1937-8, p. 272 : dicendum quod homines in statu innocentiae habuerunt dominium super res inferiores iuxta illud Dominamini piscibus maris etc. ... Unde in tempore innocentiae si duraret etiam usque hodie, homo habuisset dominium et ius accipiendi necessaria et uti eis ... quia homo non potuisset dicere ‘hoc est meum quod non tuum’, et converso, tamen potuisset dicere ‘hoc est nostrum’.

⁹⁰³ *Quia vir reprobus*, *Bullarium Franciscanum*, 5, p. 422: Ex quibus evidenter apparet, primas parents ... dominium in statu innocentiae habuissent. Et si quaeritur utrum illud dominium proprium fuerit vel commune, videtur dicendum, quod, si tempore benedictionis praedictae solus Adam formatus erat et non Eva (sicut ordo scripturae sacrae evidenter innuit, cum illa benedictio fuerit data Adam extra paradisum esistenti, Eva vero formata fuerit ipso Adam in paradisum translato, ut patet *Genesis* 1 et 2 cap.), videtur, quod ante formationem Evae, dominium temporalium Adae proprium fuit, non commune. For a detailed discussion of John XXII’s approach to the origin of property in his *Quia vir reprobus*, and the larger debate on property in the state of innocence, see Tierney, *Natural Rights*, chapter 6, esp. p. 153-7.

⁹⁰⁴ Langholm, *Economics and Medieval Schools*, p. 515.

⁹⁰⁵ Odonis, *Tractatus de contractibus*, (ed. Ryan Thornton, 2019) (henceforth *TdC*), Prologus. q. 1. 15: Prima est quod pro statu nature lapse rerum dominia non sunt distincta iure naturali. Istam probo. Impossibile est naturam ad opposita inclinare, sed stante statu innocentie de iure naturali omnia erant communia, ergo et post lapsum cum eadem sit natura. Maior patet, minor probatur, quia eodem modo fuisset usus rerum in statu innocentie quomodo plus valuisset

over property is only instituted by human positive legislation, and such institution of property is done through human law alone, as opposed to the dictate of natural or divine law.⁹⁰⁶ Unlike Bonaventure, who considers the relevant natural law rescinded after the Fall, or Scotus, who argues that natural law is changed, Odonis offers an argument closer to Bonagratia, where, regardless of the provision of natural law, which does not *per se* make distinctions in ownership, *dominium* is instituted by human positive law. Yet, the essence of his argument does not deviate from the conventional Franciscan approach to the origin of property.

However, later, a passage in Odonis's *Ethics* commentary reveals more complicated structure of Odonis's thought, and possibly signals a change in position. Here, the institution of property is decoupled from the Fall, which may be a sufficient condition for division of property, but certainly not necessary. While he maintains that *dominium* is instituted after the Fall, there is no necessary correlation between the post-Lapsarian state and the institution of property - indeed, 'if the state of innocence had persisted, nothing would have stopped men from dividing things equally amongst themselves if they so wished.'⁹⁰⁷ Odonis posits this argument as part of his broader thesis that parts of natural law can be superseded by human positive legislation. This places him at a somewhat ambivalent point between the traditional Franciscan stance and that of the Thomist school of political naturalism. In the state of innocence, private property may or may not exist - the institution of property is a contingent and voluntary act, effectuated through man's prudential judgement and free will. Here we are presented with a state of indeterminacy: the counter-factual scenario of a permanent state of innocence may or may not see an institution of property, because such act is entirely contingent. The state of common *usus* is prescribed by natural law, but it is not among the precepts or prohibitions of natural law, and is therefore subject to change and corrections through human means of equity and prudence. The association between the Fall and private property is

ad nature substantiationem et pacificam conversationem. Sed pro statu primo plus valuisset communitas omnium cum quilibet esset rectus, et non occuparet de communibus nisi quantum indiguisset, ergo et cetera. Secundo idem probatur per illud *Decretum*, 'Omnibus' d. 8. c. In 'Iure Nature' 'sunt omnia communia omnibus.'

⁹⁰⁶ *TdC*, Prologus, q. 1. 17: Tertia conclusio, quod rerum dominia sunt distincta iure positivo humano. Ista patet per locum a divisione, quia ex quo sunt distincta, et non iure naturali nec divino, ergo iure humano. Primo probatur per illud *Decretorum*, d. 8, 'iure regum possidentur possessiones' et ibidem, 'tolle iura imperatorum, quis audet dicere hec villa mea est?'

⁹⁰⁷ *ExEth*, V, q. 22, f. 117vb: Nunc autem ratiocinabiliter est interdictum. Communis etiam omnium possessio, de qua tertio arguebatur fuit concessa, non iussa. Unde si status innocentiae permansisset, nihil prohibuisset homines inter se, et si voluisset equaliter dividere bona sua. Nunc multum expedit divisio propter in solertiam et pertiniem aliquorum hominum.

thus severed by Odonis, as the virtues of equity and prudence are perfectly capable of superseding the recommendation of natural law even in the state of innocence. There is nothing sinful about private property, since the Fall is not a necessary condition for its institution.

Odonis's choice of inserting this passage here is curious. Odonis opens the question with the classic reference to the *Decretum* on natural law's prescription of *communis omnium possessio* and the institution of private property by positive law.⁹⁰⁸ There is no need for further clarification because canon law perfectly illustrates his point. Further, his *solutio* to the question is already complete. Therefore, the reference to the state of innocence seems to be an *addendum* that manifests a position deviating from the Franciscan norm, and suggests that Odonis may have felt compelled to clarify his position regarding this specific point. Compared with the straightforwardly conventional stance that he offers in his *Tractatus de contractibus*, this *addendum* that decouples the institution of property from the Fall perhaps signals a shift of position.

We may well imagine that Odonis here has no ulterior motive but to strengthen the principal argument of the question that natural law can be altered and superseded by positive legislation, pure and simple. However, equally, we cannot dismiss the possibility that Odonis feels compelled to clarify his position following external doctrinal debates happening around him, assuming that the *Ethics* commentary was written before 1325. The question of property in the state of innocence does not enter into the focal point until John XXII pronounces against the Franciscans in his 1329 *Quia vir reprobus*. However, seeds of the question are already sown. Firstly, as we have seen above, there is Bonagratia, who anchors the legal basis of his doctrine with the affirmation that in the state of innocence there is no *dominium*, but *simplex usus facti*. However, Odonis has no reason to publicly and deliberately fall out of line with the Order's establishment at this stage. It is more likely that he is making an overture to the papal proclamations in the *Ad conditorem canonum* (first promulgated in December 1322, and subsequently republished before November 1323). In the first version of the bull, John XXII argues that the *usus facti* of consumable goods is juridically untenable; in the second version, addressing Bonagratia's objections, John XXII affirms that *simplex usus facti* is unjust when the user has no right to the good.⁹⁰⁹ Just use of goods must be grounded on *ius utendi*, which also necessitates a *dominium*, held either by one who uses the good,

⁹⁰⁸ *ExEth*, V, q. 22, f. 117va: Tertio quia iure naturali est communis omnium possessio ut in allegato capitulo, ius autem. Sed hoc est hodie correctivum et directivum in melius, ut probatur primo *Politicae*, quare ut prius.

⁹⁰⁹ See Thornton, *Franciscan Poverty*, chapter 6, II, 2

or by one who concedes the *ius utendi*. While neither versions of *Ad conditorem canonum* touches on the *topos* of property in the state of innocence, the implication is that for Adam and Eve to have use of goods in the Garden of Eden, they must have a certain kind of right to such goods. Odonis's argument effectively severs any necessary connection between the Fall and the institution of property, and allows for the ambiguity that in the state of innocence, there may or may not be private property. Thus, he erases the essential distinction between the pre- and post-Lapsarian states of humanity concerning property, and by doing so also circumvents any doctrinal attack on poverty based on such distinction.

Odonis stance here does not break away from the traditional Franciscan narrative, nor is it a complete shift over to the Thomist school of political naturalism; instead, Odonis moves with incremental steps, adhering to the doctrine that private property is, in the historical reality, only instituted after all the Fall, but also allowing for the possibility that it *may* be instituted positively in the state of innocence. His poised ambivalence can be most appropriately understood in the context after the promulgation of the *Ad conditorem canonum* – he feels that the doctrine over the state of innocence is under attack, but the Pope has not yet pronounced explicitly against it. If we were to accept this hypothesis, it would also help us further define the dating of the *Ethics* commentary to 1323-25.

Manifestly, the dissociation between property and the post-Lapsarian state deviates from the traditional Franciscan position. Yet, a closer reflection on Odonis's passage in conjunction with his thoughts on law and voluntarism reveals also a novel approach which opens a path towards an alternative construction of the theoretical underpinnings of poverty. With the limited amount of evidence we have, I would propose an argument that, instead of the traditional Franciscan doctrine of poverty based on the psychological voluntarism, Odonis may be understanding poverty on both voluntary *and* legal grounds.

Voluntarism is central to the Franciscan notion of poverty - the vow of poverty is a supreme example of the power and freedom of the will to renounce the ownership of any earthly possessions in man's path towards perfection. As it is accepted that ownership over goods is the normative in the post-Lapsarian world, it is therefore incumbent for the individual Franciscan to voluntarily renounce his ownership of and right to any property to follow a life of apostolic poverty. Bonaventure, in very Aristotelian language, considers poverty as a virtue of the mind, a mean between two extremes: 'it relinquishes dominion, but does not reject use; it accepts use, but does

not preserve dominion.⁹¹⁰ Peter of John Olivi formulates poverty in more explicitly voluntary terms: *dominium* necessarily involves a will to possess, and one cannot have dominion over things without this subjective volition to possess.⁹¹¹ While property is instituted after the Fall, it is a subjective right (i.e., a right to be actively exercised by the subject-agent) to be voluntarily asserted by the proprietor, and without such subjective affirmation of possession, there is no *dominium*. One can, therefore, even in the post-Lapsarian world, live through his life without the will to possess, or to have dominion over things. Scotus advances a similar argument based on voluntarism - 'one only becomes a proprietor through an act of the will, therefore one can also cease to be a proprietor through an act of the will.'⁹¹²

Against this context, Bonagratia of Bergamo, a jurist by training before entering the Friars Minor, is really the pioneer in constructing a legalist argument for the theoretical underpinning of poverty. Patrick Nold credits his response to the first *Ad conditorem canonum* as shifting the poverty debate towards a legal direction.⁹¹³ Bonagratia's *Tractatus de paupertate* is not a theological text, and gives no pretension to be one; the argument for poverty is almost entirely assembled with legalist building blocks. He invokes the *Exiit qui seminat*, along with the affirmation or tacit consent of subsequent popes as a theoretical precedence for the *de iure* separation of ownership and *usus facti*; the *de iure* separation is then further supported by a citation of the *Digest*, where a slave is said not to own his food or clothes, and thus only a simple *usus facti*.⁹¹⁴ Furthermore, the right of simple use of fact for survival and sustenance is an inalienable part of natural law - it exists and always exists regardless of the dictates of human positive law. 'It is certain that one can renounce every private right, which belongs to someone by human law, and can completely abdicate it from one's self;' but 'No one who is indispensably obliged to the precept of natural law to preserve one's nature can renounce those things without which one's nature is not preserved.'⁹¹⁵ The aim of

⁹¹⁰ Bonaventure, *Apologia pauperum*, XII. 20, p. 322-3: Et hic est ipsius modus sive medietas, quod sic relinquat dominium, quod non reiiciat usum; sic recipiat usum, quod non reservet dominium; sic arcitudinem usus servet, quod sustentationem naturae necessariam non deviet; sic necessitati subveniat, quod ab arcitudine non recedat; see also, Langholm, *Economics in Medieval Schools*, p. 155.

⁹¹¹ See Sylvain Piron, 'Voeu et contrat chez Pierre de Jean Olivi', *Les Cahiers du Centre de Recherches Historiques*, 16, 1996, §5-6, online access at <<http://journals.openedition.org/ccrh/2645>>.

⁹¹² *Ord*, IV, dist. 15, q. 2, num. 113: Ex quo per actum voluntatis suae fuit dominus, ergo per voluntatem potest cessare esse dominus; see also, Thornton, *Franciscan Poverty*, chapter 4, III. 2.

⁹¹³ Nold, *Bertrand de la Tour*, p. 159-161.

⁹¹⁴ Bonagratia, *Tractatus de paupertate*, p. 502.

⁹¹⁵ Bonagratia, *Tractatus de paupertate*, p. 503.

Bonagratia's treatise is to answer the question raised by John XXII - how can Christ and the Apostles *have* nothing individually and in common? What he delivers is, therefore, not a theological text on the doctrine poverty, but rather a legal structure based on precepts and rights to accommodate it.

This brings us back to Odonis, who, in his *Tractatus de contractibus* and *Expositio Ethicorum*, outlines an alternative legal accommodation for the doctrine of poverty. If we were to hypothetically imagine Odonis's personal contribution to the debate, it would probably be constructed on a voluntary-legalist basis. Central to the theoretical foundation for poverty should be Odonis's manifest positivism in his legal thought. As we have established in Part II, chapter II, section 2 'Natural Law and Positive Law', the binding force of the law comes from the very act of positing - an enactment by a competent authority. Any such positive law, due to its very positivity, can be superseded by another positive law, or, to honour the demand of justice, by a prudential and equitable judgement of a private individual. Since *dominium* is instituted by positive law, and inconsequential to the Original Sin, it can then be renounced or superseded by another positive law - in this case the Franciscan *Rule* and the *Exiit qui seminat* - as well as by a prudential and equitable act executed through the will and practical reason - in this case the Franciscan vow of poverty. In this argument, the temporal placement of a possible institution of property in the state of innocence is crucial - it sidelines the potential objection that property is necessitated by the Fall and therefore, as long as one is not fully cleansed of his sins, he cannot possibly renounce this post-Lapsarian imperative.

When it comes to the role of natural law, Odonis makes it clear that, while the precepts and prohibitions of natural law are immutable, the 'softer' aspects of natural law, such as permission, concession, and counsel, are mutable for the purpose of justice and equity. From the beginning of the same question (Book V, Question 22), it is clear that natural law's prescriptions concerning property is among such 'softer' parts - the *fas* that mandates the right to cross another's field is superseded by positive law on private property; natural law's demand on the restitution of property is superseded by the equitable judgement that returning a sword to a furious man ought not to be done lest he kills another with it. Therefore, confronted with the provision of positive laws on property and poverty, the prescription of natural law is of no direct relevance. If we imagine a criticism by Odonis on Bonagratia's *Tractatus*, it would probably be to such effect: while Bonagratia may be correct in asserting a simple use of fact in the Garden of Eden, such premise bears no significance on the Franciscan poverty debate, because the original permission of natural

law is already superseded. The *dominium* over goods, or even the *ius utendi* - a central concept deployed by John XXII in the second bull *Ad conditorem canonum* against Bonagratia's argument - are both positive rights that are instituted by positive law. Therefore, there is no *dominium* or *ius utendi* without their having already been legislated into existence. What is instituted positively can be legislated away by the competent authority, or individually and voluntarily renounced.

Ryan Thornton underlines Odonis's emphasis on the role of authority in determining the legitimacy and practices of property transfer and usury in his *Tractatus de contractibus*.⁹¹⁶ Thornton's study forms part of a grander narrative of Franciscan economic thought in the wake of Clement V's *Exivit paradiso*. With regard to Odonis, however, the power and competence of authorities in determining economic practices demonstrated in the *Tractatus de contractibus* is certainly consistent with the findings of the present study on the *Ethics* commentary, and we may arrive at the conclusion that there is significant intellectual continuity in Odonis's thought on authority and legal positivity. The practices and provisions for transfer of property and monetary loan are obviously determined by authorities positively, and the institution of private *dominium* over and above the prescriptions of natural law is again an instance of positive legal determination. In short, legal positivism, underpinned by the prudential judgement of a virtuous man in authority, lies at the heart of Odonis's considerations of property and poverty.

Evidently, this position is to fall under attack by Pope John XXII in 1329, who in *Quia vir reprobus* argues that dominion necessarily exists even in the state of innocence - Adam is the first proprietor in the fullest sense of the term, and even Christ and the Apostles held dominion over things both in common and in private.⁹¹⁷ Thus, John XXII maintains that the Franciscan claim of the possibility of renouncing ownership is completely void. For John, ownership is natural and normative, while the Franciscans, including Odonis, consider it positive and contingent, if only contingent upon the Fall. Brian Tierney observes that:

Through the whole course of John's argument there was a persistent emphasis on individual ownership as a normal and rightful pattern of human conduct going back to the

⁹¹⁶ Thornton, *Franciscan Poverty*, chapter 5. III.

⁹¹⁷ See note above on *Quia vir reprobus*; see also Lambertini, 'Poverty and Power', p. 153; Tierney, *Natural Rights*, p. 154-6.

very beginning of the human race and to the state of affairs that God had established then.⁹¹⁸

Overall, however, I will argue that Odonis's position on poverty broadly conforms the conventional discourse of the Franciscan establishment. While he does not pronounce directly on the doctrine of poverty, Odonis subscribes to the distinction between *dominium* and *usus* that forms the legal basis of poverty, as decreed since *Exiit qui seminat*.⁹¹⁹ He does not address explicitly issues raised by John XXII in *Ad conditorem canonum*, but he is probably open to shifting his position towards pope all while adhering to the fundamentals of the Franciscan teachings. Unsurprisingly this distances him from the Spiritual movement and the strict observants of *usus pauper*; nonetheless, it remains unbeknown to us as to whether Odonis specifically adheres to the same principle of separation of use and possession when it comes to consumable goods. Although Odonis's theory of the positive institution of property, regardless of the Original Sin, is contrary to the established Franciscan narrative, which ultimately comes from the provisions of the *Decretum*, he is nonetheless consistent with the broad Franciscan distinction between the state of common ownership in natural law and private *dominium* in positive law. Moreover, the temporality of institution of private property prior or posterior to the Fall did not come to the fore of the debate on poverty until John XXII explicitly pronounced against the Franciscans in *Quia vir reprobus* in 1329.

What remains to be answered, however, is Odonis's take on the other papal bulls of 1323-24 *Cum inter nonnullos*, and *Quia quorundam*, in the intervening period prior to the Michaelist rebellion of 1328 and *Quia vir reprobus*. We know that, politically, Odonis may already be an ally of the Pope, as spoke in support of John XXII and the papal bulls in the General Chapter of 1325. It is of greater interest to probe whether Odonis subscribes to the papal positions on poverty *intellectually*. Patrick Nold shows that Bertrand de la Tour played a central role in the drafting of *Cum inter nonnullos*, and that John XXII took pains in making sure that nothing explicitly contradicted *Exiit qui seminat*, and in reconciling all the apparent differences between the two.⁹²⁰ Nold argues:

⁹¹⁸ Tierney, *Natural Rights*, p. 156.

⁹¹⁹ Odonis's position on the distinction between *usus* and *dominium* is well established, separately, by Langholm, *Economics in Medieval Schools*, p. 527-8; Ceccarelli and Piron, 'Odonis's Economic Treatise', p. 182-183; and Thornton, *Franciscan Poverty*, chapter 5. III.3.

⁹²⁰ Nold, *op. cit.*, chapters 7-8.

That John should have taken so long to produce *Cum inter nonnullos*, that he should have studied the *consilia* he solicited, that his bull went through several drafts, and that his condemnation of apostolic poverty should be based on the opinion of, and even be partially drafted by, a Franciscan precisely to avoid a doctrinal contradiction with *Exiit qui seminat* suggests an awareness that a pope should not contradict the doctrinal statements of his predecessors.⁹²¹

Sylvain Piron and Ryan Thornton both point out that the overall response to the papal bulls of *Cum inter nonnullos* and *Quia quorundam* was reconciliatory.⁹²² In this context, it is not difficult to imagine Odonis among those who accepted the papal interpretations of poverty, especially when such interpretations are to a large part influenced by the Franciscan Cardinal Bertrand de la Tour.

In any case, if we were to put the broad themes of poverty debate into Odonis's legal philosophy, accepting that the central point of contention is John XXII's apparent contradiction to *Exiit qui seminat*, then it would follow that, as a body of positive papal legislation, the *Exiit* can be legitimately superseded by another papal legislation. The legal precedence cited by Bonagratia and the implied papal infallibility and irrefutability are not valid objections when considered in a framework of legal positivity. *Exiit qui seminat* by Pope Nicholas III institutes one legal provision, and the *Cum inter nonnullos* by Pope John XXII can legitimately institute a contrary legal provision. In his response to Michael of Cesena from the vantage point of December 1332, Odonis asserts that the *Exiit qui seminat* was never going to be the final verdict on poverty, as the bull submits all ambiguities that should arise to the authority of future popes.⁹²³ In 1332, it may be a political correctness to accept the legitimacy of John XXII's intervention on the doctrine of poverty, and Odonis's letter to Michael of Cesena certainly makes it look as if the Michaelists were really the sole provocateurs of the entire episode. However, the least we can say here is that Odonis shows an intellectual consistency when it comes to the mutability of legislation based on the principle of positivism.

⁹²¹ Nold, *op. cit.*, p. 170.

⁹²² Piron, 'Censures et condamnation', p. 366-71; Thornton, *op. cit.*, chapter 6.4.

⁹²³ Gerald Odonis, 'Responsio Gerald ad Litteram Michaelis', *Chronica*, 962: 'Item determinatio Ecclesiae speciem habuit fidelissimam, puta quia non ultimata, sed remittit ambiguitates emergentes ad culmen Sedis Apostolicae, per Sedem Apostolicam decidenda'; in Nold, *op. cit.*, p. 112.

While Odonis remains silent during the poverty debate presided by Pope John XXII, we have made an attempt to reconstruct his position on poverty by assembling the breadcrumbs found in his writings. Two broad conclusions can be reached, one evident in his writing, the other more hypothetical. On the origin of property, Odonis argues against the Franciscan tradition and dissociates the institution of property from the Fall, and suggests that private dominion *could have* existed had the state of innocence persisted. The right of property is therefore entirely positive, regardless of the status of humanity, and regardless of the provisions of natural law. We have mulled over the possibility that part of this ambiguity is a move to accommodate John XXII's *Ad conditorem canonum*, with an implication that, even well before the Michaelist rebellion, Odonis was already in disagreement with Bonagratia's doctrine of poverty based on natural law. However, we have also seen that Odonis's positivism in the institution of property does not contradict the overall tenets of poverty, but indeed provides an alternative legal provision for the doctrine.

This brings us to the second conclusion. Politically, Odonis undoubtedly sided with Pope John XXII, based on local solidarity, and on his relationship with Cardinal Bertrand de la Tour. Intellectually, he was probably also receptive of John XXII's intervention on the doctrine of poverty, given his seemingly accommodative response to *Ad conditorem canonum* and his probable knowledge of Cardinal Bertrand's role in the drafting of *Cum inter nonnullos*, and on his own very theory of legal positivism.

Underlying Odonis's position is, again, the fundamentals found in his moral psychology. The universal reason of natural law must follow the direction of the particular and practical reason of man. The institution of property is clearly such an instance: man's prudential reason judges it fit and worthy to institute property against a background of natural *usus facti*, and such institution is always just and binding as long as it is effectuated freely and through practical reason.⁹²⁴ It is in the same fashion that the positive institution of property can be renounced by another positive legislation, which can then in turn be superseded by a subsequent legislation. The prudential reason of one may be changed and superseded by the prudential reason of another, in accordance to the exigencies of time and circumstances.

⁹²⁴ *TdC*, Prologus. q. 1: Circa tertium videndum est quomodo ista divisio fieri potuit aliqua lege positiva. Circa quod sciendum est quod "lex ad hoc quod sit iusta requirit in legislatore prudentiam et auctoritatem. Prudentiam ad hoc ut lex bene feratur. Auctoritatem ut hoc liget. Lex enim dicitur a ligando, sententia autem cuiuscumque prudentis super statutum non ligat aliquem super quod nullam habet auctoritatem. Quomodo autem in legislatore prudentia possit esse, satis patet.

II. CONCLUSION: VOLUNTARISM AND HUMANISM IN THE ETHICS OF ODONIS

What transpires unequivocally from our examination of Odonis's writing is the absolute central position that the human subject-agent occupies in the sphere of moral philosophy, as a voluntary and rational being, endowed with both the freedom of the will and the power of practical reasoning. The consideration of the individual moral agent as the primary subject of ethics does not only mean that the moral science investigates what is human and personal, but also that the individual is considered and studied above all else as an *individual*, instead of as part of a larger collective structure of the family, the city, the institution of legal edifice, or a social or political community of any kind.

Odonis marks out the *principium libertatis* as the defining standard for the subject of moral science. The individual is the subject-agent precisely because he is free, and he is the first principle of all human actions and consequently of all human happiness. Odonis places human passions and human actions as the material under consideration of the moral science, and the individual is the first principle that causes all the material considered. While the end goal of the moral science is happiness, understood either as *felicitas* in the Aristotelian framework, or *beatitudo* from a theological prism, it is ultimately the subjective agent that is source and unequivocal authority for all his actions that may or may not lead to his happiness.

This is why Odonis thinks that the ethics of one person is identical with the ethics of a household and of a city, because ultimately it down to each individual moral agent to carry out his actions independently of the collective institutions. The good and happiness of the household and of the city only make sense when they are considered in terms of the good and happiness of the individuals that make up these institutions. By equal measure, any consideration of the individual can only make sense when he is contextualised with his social surroundings. As Odonis states, there is no individual that does not belong to a community, and no act of individual that can be considered independently of the act of the institution as a whole.⁹²⁵ Therefore, the happiness and ethics of the individual are equivocal to the happiness and ethics of the household and the city in both ways: an individual cannot be divorced from his social and institutional context - any human

⁹²⁵ See section 'Individual as the subject'.

being is inherently social, but the institution cannot be considered without the individuals that make up the structure. Therefore, unlike the Stoics and the Thomists before him, Odonis refuses to recognise separate moral spheres of the private, familial, and political. All is one, and one is all - everything centres around the moral well-being of the individual person who is the first principle of all virtues and vices.

The primacy of the individual in Odonis's moral science is underlined by his assumptions of moral psychology: the freedom of the individual is substantiated and sustained by the free volition of the will - the intellective appetite, and the free reasoning of practical mind - the appetitive intellect. The interplay between the free volition and the free reasoning constitutes an individual that can be considered morally responsible of his own actions and worthy of virtues and vices. Odonis follows the arguments of Duns Scotus and places all moral virtues in the will, because the will is the part that intends (for virtues make intentions right), that chooses, that acts *involving* reason rather than *in accordance with* reason, and that derives pleasure from virtuous deeds - it is only in the will that human good can be found, and that a man can be said to be good. While any *praxis* is the collaboration between the will and the practical intellect, the will clearly occupies the position of primordial importance - it is the final arbiter of volition and consequently of voluntary human action. The journey on a life of virtue is, therefore, a journey towards the perfection of the will. In short, Odonis displays a strong adherence to the Franciscan tradition of moral voluntarism.

A voluntarist understanding of humanity necessarily pushes the individual into the spotlight of the philosophical consideration of ethics. A voluntarist moral agent has all of his volitions and actions in a state of indeterminacy until the moment where such volition and action are effectuated. There is moral or rational necessity in human action - every single act of a voluntary individual is essentially contingent, because it is freely determined by the will, with the free deliberative reason of the practical intellect. An individual is therefore an aggregation of contingent volitions, and any societal institution is thus an aggregation of contingent individuals. Although, as Odonis states, no individual can be understood separately from his social context, such social context is always composed of free individuals who voluntarily commit to their institutional reason - an army counts upon each individual soldier to possess the virtue of courage, and to will the act of attack, in order to make a concerted assault as a whole. The military science may study aspects of the army as a whole, but ultimately, it comes down to the ethics of each component of the military to make direct the whole towards its end of victory. Odonis's reading of institution and society is that of an infinite complexity, an aggregation of contingent individuals and individual contingencies. Therefore,

even when speaking of the happiness of the family or of the city, the individual, rather than any institutional arrangement, is still the primary unit, upon which all discussions of moral good and ethics must base.

Odonis's voluntarism in his moral anthropology is accompanied by a belief in the virtuous capacities of humanity. Instead of an Augustinian outlook of pessimism that pervades the Middle Ages - men are inherently sinful, and the present life is nothing but toil and misery - Odonis takes on a much more optimistic note of humanity that heralds Renaissance humanism. In the sphere of the moral science and with the purpose of rendering humanity good and righteous, Odonis firmly believes that what is human is better and more effective than what is inhuman: governance of man is better than the governance of law; judge's reason is superior to the reason of legal procedures. Contrary to many of the scholastics who seek to weed out the human, to keep what is inhuman, to vanquish passion, incontinence, and all other human weaknesses through the force of reason and virtue, Odonis considers such human weaknesses precisely what make man potentially good. Human reason is better than disembodied institutional reason, because humanity must negotiate a life of virtue with its very own sins and weaknesses. It is in the mastering of one's own passions and incontinence through the force of the will and the rightness of reason that one becomes honourable and dignified. Odonis embraces all the shortcomings of humanity and makes them the foremost material studied by the moral science.

Part and parcel of Odonis's humanism is the subjective perspective that our commentator adopts in his *Expositio*. Instead of a value of self-detachment as propagated by Aristotle and the Thomists, where the immutable truth of the universe holds a higher moral worth than personal and collective good of humanity, Odonis sees the structure of moral goodness from the prism of an individual moral agent and through his subjective social experience. Case in point is the equivocation of personal, economic, and political ethics - the good of the private self is identical to the good of the household and the good of the city, because from the perspective and subjective experience of an individual, his personal good is inexorably linked with good of greater collective structures, of which he is part. One can only exist in a social setting, and one's subjective experience is always by necessity social - no one can be happy as an individual without being a happy member of the household or a happy member of the city. This is further reinforced by Odonis's argument that the prudence of the private person is the same as the prudence of the household and prudence of the city - a perfection of practical reason is never limited to regulating one's own life, but also, by necessity, to regulating his social existence. Prudence is habituated through experience, and all of

man's experience is necessarily social. Odonis envisages a life of embarking onto a journey of virtue through the perspective of the subjective agent, navigating through his social surrounding as an independent, free, and voluntary being. Any moral good that he achieves, he achieves through his personal initiative and his very own humanity.

Part II and Part III of this thesis have explored the two central components of man's moral agency - the intellective appetite and the appetitive intellect - through the prism of their respective virtues of justice and prudence. In Book V, Odonis raises a series of questions concerning the virtue of justice, and extends his enquiry far beyond the original Aristotelian scheme into the realm of both moral psychology and legal philosophy. Odonis follows the long-established tradition in considering justice as the excellence and the rectitude of the will. When highlighting the voluntary nature of justice, Odonis draws from both Aristotle's own definition and principles of Roman law - justice is an active habit of the will to will just things and act justly. For Odonis, justice is a virtue that bridges both the internal and external, that connections both psychology and action, and that brings the individual into society.

The Aristotelian notion of justice as primarily distributive and retributive is transformed by Odonis into a virtue that is intensely psychological. Odonis defines justice in terms of willing and acting what is just. The concept of *iustum* is a centre-piece in Odonis's justice moral psychology, a process which translates the external command of the law (*ius*) into an external notion of what is just, what is due, and what just action needs to be acted out. Justice, as the rectitude of the will, is not only present in the final external act of justice, but also in commanding the just cognition of the external precept, and the just transformation of the external and universal into the internal and particular.

In this way, Odonis's concept of justice again places the human individual front and centre within a moral sphere that is defined by universal and impersonal laws. Be it natural law, divine law, human law, justice always requires the cognitive and active participation of the moral agent. It is not sufficient that man acts out just things - he must act *justly*, through his own initiative and with right reason. An individual cannot be just and have justice if he is merely following the commands and imperatives of institutional reason, such as the dictate of the prince or the command of the law. Instead, he needs to be his own agent, to undergo the entire cognitive process, and to will freely the just action all in his own accord. Although the law (*ius*) is causally prior to justice, the virtue of justice is not an external imposition of rules, laws, and universal principles. The participation

of the moral subject-agent is primordial in the formation of virtue. Time and again, Odonis distinguishes between acting out virtuous deeds and acting *virtuously*, and the crucial difference is the subjective participation of the moral agent through his own practical reason, collaborating with his own free will. Merely abiding the command of others does not make one just or virtuous. Even where institutional reason prevails, one still needs to be his own independent moral agent with his own moral judgements.

Frequently, such institutional reason takes the shape of law. Discussion of questions concerning law and legal philosophy occupies a large part of Odonis's commentary on Book V. Odonis distinguishes between two types of law: one that has its binding force prior to human legislation, i.e., natural law, and one that derives its binding force from human legislation, i.e., legal law or human positive law. However, both natural law and human law represent an external, alien reason of *others*, as opposed to the reason and judgement of the moral subject-agent. Prior to one's cognitive appropriation of law, law remains a universal principle that does not have a direct moral consequence on man's singular, contingent actions. What marks out Odonis from many of his contemporaries is that, in his commentary, we see very little difference between natural law and human law. Both have essentially positive characteristics, although obviously human law far more so than natural law. Equally, both can be justly and legitimately modified, corrected, derogated, or superseded by an equitable moral agent capable of justice and prudence. Odonis shares none of the Stoic reverence for the idea of an immutable and infallible natural law that governs both the universe and mankind. Instead, where natural law fails or ceases to be relevant, human positive legislation should rise to fill the vacuum; where human law fails or miscarries justice, the moral judgement of the equitable person should rise in the pursuit of justice and righteousness. The moral worth of the individual always trumps that of the institution. For Odonis, justice is not the installation of a legal edifice and the application of law, but rather, a pursuit on an individual and subjective level of just things.

For this reason, Odonis understands the notion of legal justice to have reaches far beyond the dictate of law. Indeed, as simple abidance to law does not foster the virtue of justice, Odonis readily abandons any inherent link between obedience to law and the notion of legal justice. Instead, it is understood that, in a perfect legal system, what is commanded by law is also the requirement of morality. The precept of law is completely in concord with the demands of virtues. Therefore, lawfulness and complete virtue are essentially identical *per accidens*, with the assumption that the combination of natural and human laws resonates perfectly with the principles of morality. What

differentiates legal justice from the aggregate virtue, however, is its formal reason - legal justice is ordered towards one another, while aggregate virtue is ordered towards the subject-agent himself. Such difference in their teleology does not make them different virtues *per se*. As we have seen above, the ethics of an individual is identical to the ethics of the city. Legal justice is ordered towards the common good, while aggregate virtue is ordered towards one's own private good. But common good and private good are indeed identical in their being, but merely different in their formal reasons.

So, how much 'moral legalism', to James Walsh's term, does Odonis's commentary display? Firstly, it is clear that Bonnie Kent's rejection of Walsh's claim is mistaken: Odonis displays an unequivocal and wide-ranging interest in the nature and operations of law, and devotes large parts of his Book V commentary on topics related to legal philosophy. However, this profound interest in law and legal philosophy does not readily translate into a *legalism* that would underpin Odonis's moral and political philosophy. Instead, he is profoundly sceptical of the legal edifice. Odonis's voluntarism and humanism that place the individual subject-agent at the centre of moral experience also serve to elevate the reason and will of the individual above the institutional and universal reasons of law. As the two final chapters of Part II demonstrate, the judgement of a virtuous man is always superior to the judgement of law, which is reason divorced from humanity. The governance of best men is more potent, more prudent, and more just, than the governance of best positive laws for the purpose of fostering good and virtuous citizens. Going against the grain of Aristotelian thought, Odonis posits that the rule of man is more congruent precisely because of man's passion and humanity. Living beings are best governed by living beings, and impassioned men are best governed by other impassioned men. A virtuous person may exceed the populace in his goodness and wisdom, but he is nonetheless fundamentally flawed and weak with his own humanity. He is therefore of equal status in the eyes of God, and he must go through the same journey to attain a life of virtue and salvation like any other man. In a debate on whether the state should be ruled with a system of laws or by decrees and orders of men, Odonis resolutely opts for the latter.

A significant development of thirteenth- and fourteenth-century legal system is the notion of the due process. This is another element of legalism that Odonis readily disbands in the pursuit of justice. In modern terms, Odonis argues that procedural justice ought always and necessarily to make way for absolute justice. The notion of due process should in no way be an obstacle for the judge to render a just verdict according to the certain truth known to him. The late medieval

standardisation and institutionalisation of legal procedures are another manifestation of institutional and universal reason within the legal edifice - an effort that aims to stem out the arbitrary and erratic decisions made by individual judges. However, in Odonis's books, the institutional framework acts as a constraint for just and prudent judges who are perfectly capable of rendering a just and honourable verdict all by themselves. Indeed, where such procedural constraints would result in a miscarriage of justice, the judge should resort to his own certain knowledge and his own prudence, despite or even against the *ordo iustitiae*. The judgement of a just and prudent man should always trump that of law. Nowhere is there more manifest in Odonis's argument that if the judge is the sovereign prince, then such prince should render a verdict firmly with the view of delivering justice and without any regard to laws, because the prince rules sovereignly in his land and his will *is* law. The judge, as the earthly guardian of justice, is answerable to God. Should he deliberately pervert justice, either for fear or for greed, there is severe punishment reserved for him from God. He is held accountable not by any institutional constraint, but by fear of divine wrath.

Parallel to the legal structure within Odonis's construction of justice is the virtue of friendship. Unlike the Aristotelian notion of friendship as an interpersonal relationship based on affection, Odonis understands *amicitia* as a societal aptitude, with which one comports himself through the complex and contingent social needs and situations. We have concluded that Odonis's notion of friendship should rather be understood as courtliness, whereby negotiates his social interactions with elegance and agreeableness, while also adhering to staunch moral principles. For Odonis, the virtue of *amicitia* is a facet of justice, rather than a virtue that complements and reaches beyond justice, as Aristotle intended. It entails a series of obligations, which differ from one person to another, but which altogether constitute one's social and moral duties, with regard to one's friends, family, superiors, and compatriots.

Overall, Odonis's account of justice is an intensely personal experience. It places the moral subject-agent in his interactions with society, but such virtue ultimately originates from the interior, processed through the cognition-action chain that comprehends the moral imperative of the law, natural or human, into an internal notion of what is just and what is due, and manifests this notion of justice through a particular action. The reason of justice therefore always transcends the reason of law and the collective.

Part III continues to examine how the reason and volition of justice, or indeed of any virtue, comes into being. Central to the cognitive process of justice is the transformation of external universal principles of morality and law into the internal notion of what is due in a particular and contingent situation. This is where prudence comes into play. Following Aristotle's scheme of intellectual virtues, Odonis places prudence in the practical intellect, or the appetitive intellect. The practical intellect deliberates everything that is undetermined, that is contingent, and that requires human action. It forms the principle of morality - only actions willed by the intellective appetite involving the deliberation and judgement of the practical intellect can be considered virtuous and of moral worth. In other words, the practical intellect works closely with the will to render an act of virtue (or vice).

Odonis gives the practical intellect an extremely extensive remit in its objects of deliberation, and the operation of the practical mind goes far beyond the mere syllogistic application of the universal into the particular. Instead, the end of practical deliberation is the entire human happiness - to live life well as a whole. Odonis invokes the concept of *praxis*, or practical human action, and characterises *praxis* as both voluntary and elective. The object of practical deliberation is what is delectable and choice-worthy. The practical intellect determines not only the particular action, but also the state, the disposition, and the end - the choice of the practical intellect is the activation towards this determined end. Odonis comes very close to equivocating the practical intellect with the will, and argues that whatever is commanded by the practical intellect is also commanded by the will, and vice versa. *Praxis* can be a determination of a free potency of the soul, and only a free potency can determine another free potency freely. Therefore, the act of *praxis* does not exist solely in the intellect, but rather, in the transition from intellect to appetite, and from appetite to intellect. In one way, the practical intellect gives counsel to the will; in the other, the will commands the intellect to deliberate. Either way, the will commands, and the intellect deliberates and counsels. In fact, *praxis*, and by implication, practical reason, is what brings the will and the intellect together.

Prudence, in turn, is the perfection of the practical intellect, and as such, concerns all particulars that relate to man's moral worth. It is ordered towards living life well as a whole. Therefore, prudence can be considered as a total virtue on the intellectual side. Indeed, it is prudence that provides the *reason* in accordance with which a volition of the will can be considered virtuous. Without prudence, any act of virtue cannot be carried out virtuously. It is the rational pillar of morality in any individual subject-agent, and the principle of Odonis's scheme of human centrism

in morality. Merely following the reason and dictate of others does not make man virtuous, because in doing so, he does not exercise his prudential reason, and is therefore not his own moral agent.

Odonis subscribes to the Aristotelian argument that prudence can only be acquired experientially - no teaching or scientific demonstration can impart prudence to the moral subject-agent. Neither institutional reason nor universal principles can *per se* make for a prudent man, because every person needs to acquire his own reason and become his own moral agent in navigating the complexities of human society. Practical reason deliberates on the contingent, and no knowledge of the universal can necessarily inform man of the contingent. Instead, just as one becomes virtuous through repeated acts of such virtue, one becomes prudent through repeated exercises of his practical intellect concerning particular circumstances, which he encounters through his life's experience.

As Odonis rejects the distinction between *ethica monastica*, *ethica economica*, and *ethica politica*, while all at the same time arguing that legal justice is identical with the aggregate virtue in being, it is only logical to follow that the prudence concerning one's own good is the same as the prudence that concerns the good of the household and the good of the city. Odonis does not reason from the detached perspective that governing a city is a science which is fundamentally different from governing the household or from bettering oneself; instead, it should be understood that a perfectly prudent man with a wealth of life's experience is equally adept at ensuring his own private good, the good of the household, and the good of the city. After all, prudence is not a science or a systematic knowledge concerning different spheres of life - it is the ability to deliberate and make judgements on particular situations, and to channel one's action towards living life well as a whole. For this end of *bene vivere totaliter*, the public and private are inseparable. As Odonis argues time and again, no man can live without society, and no man can attain a personal moral good without interacting with and con-textualising his act in society. What makes for the unity of prudence is the perspective of individual experience - one's private, familial, and political actions are all ultimately his own actions carried out through his own reason and volition.

Odonis's human centrism in his moral philosophy is also testified by how he places the virtue of prudence over and above that of wisdom. Prudence is both superior to wisdom and commands it, because the practical intellect is superior to, and commands, the scientific intellect. This is an unusual position to take, and yet it underlines the centrality of human experience and of the subject-agent in the grand scheme of ethics. Prudence, as a virtue ordered towards the own good of the

individual, is superior to the pursuit of the universal and immutable truth that is wisdom. Prudence is superior to wisdom because it is only through prudence that one can be considered morally worthy; and wisdom comes under the command of prudence because the comprehension of the universal truth is a disposition worthy of choice, and any choice - wisdom included - is commanded by prudence. Odonis in his arguments goes as far as considering prudence, instead of wisdom, as the means for man to be close to God, because, again, a life of devotion and a path of salvation is choice to be made by practical reason and willed by the intellectual appetite. It is not through wisdom that man loves God above anything else and embarks on a life towards the union with God, but rather through prudence. There is no necessity in salvation or a life of religious devotion; instead, all are the matter of human choice, and all are the deliberation and judgement of prudence.

Clearly, prudence is pivotal to Odonis's moral philosophy. The primordial importance of the practical intellect distinguishes Odonis from the radical voluntarist positions of other Franciscans such as Olivi and Scotus. Prudence is a necessary condition for the existence of moral virtues. On the question of the connection of virtues, Odonis essentially advocates an independentist theory while also maintaining that the four cardinal virtues - prudence, justice, temperance, fortitude - are necessarily connected. For a person to be considered unqualifiedly good, it suffices to have the cardinal virtues, although the possession of the cardinal quartet is by itself no small feat. Together, the cardinal virtues form the very foundation and, literally, the hinges, upon which other moral virtues pivot; they are therefore the exception as well as the basis of a generally independentist theory of moral virtue. Except for the cardinal virtues, moral virtues are generated separately through independent actions and circumstances, and not all virtues are compatible with one another. However, without prudence, justice, temperance, or fortitude, man can have no other moral virtue: prudence is required to provide the guidance of reason for any act to be virtuous, while justice is essential for rectitude of man's volition. Prudence is a wholistic virtue that is the mastermind of the entire human existence, as far as such existence can be contemplated by the practical intellect. Therefore, the essential connection of the cardinal virtues through prudence is not merely a statement of necessity for human goodness, but also a reflection of how Odonis perceives prudence as the supreme virtue in man's moral life.

As the perfection of practical reason, prudence commands all aspects of man's life, be it practical or intellectual, and is acquired unitarily through life's experience. Odonis's idea of prudence reaches far beyond the constraints of mere exercise of syllogism, or of propositional knowledge divisible into different spheres of life or different aspects of morality. As it underpins every single

human *praxis* and every single moral or intellectual virtue, prudence is the keystone to understanding Odonis's moral humanism and voluntarism. The virtue of prudence, just like that of justice, is understood through the lens of an individual's subjective moral existence. Prudence is indivisible because man's moral experience is indivisible - no one can live their personal and social lives separately in the absolute sense. It also complements the principle of the will's contingency and indeterminacy - without the deliberation and judgement of practical reason, a contingent and indeterminate will would be no more than a generator of contingent and random volitions. What makes the will, and consequently the moral agent, truly free, is the underpinning practical intellect that offers a reasoned and experiential counsel to the will, so that the will's free determination is aided by a judgement of virtuous reason. Practical reason is therefore indispensable in man's subjective and free moral existence: it is one's own reason, rather than the reason and judgement of others, that makes for a virtuous person. Without the judgement of the practical intellect, a volition, albeit free, can only count on the institutional reason of law and authority. Man is made morally worthy by the combination of his appetitive intellect and his intellectual appetite.

Overall, Odonis's commentary on the *Nicomachean Ethics* and his moral philosophy does not represent a radical break from the positions of his Franciscan predecessors. Odonis's humanism is a logical conclusion of Franciscan voluntarism - where the free and contingent will is the final determinant, then the primary subject of ethics discussion will inevitably come down to the individual. However, this does not mean Odonis subscribes to more radical positions of the voluntarists, such as Olivi, Scotus, and Ockham. Instead, what transpires in Odonis's writing is a moderate and conventional understanding of the will as one that is free but underpinned by reason. Even his seemingly radical claim that Aristotle is without error does not, in the end, result in fundamental differences with his Franciscan heritage. Indeed, although Odonis does not explicitly state that Aristotle is wrong, he frequently goes against the manifest position of the Philosopher in favour of an approach that resembles more closely that of his *confrères*. The originality of Odonis, therefore, lies not with a rupture from tradition, but rather, from his combining the Franciscan positions with arguments of Aristotle, taking common Franciscan tenets of voluntarism and moral contingency further with Aristotelian terms. Save for the partial commentary of Alexander of Hales, Odonis's *Expositio* is the first full-length commentary produced by a Franciscan master that looks at not only the complete translation of the *Nicomachean Ethics*, but also has the entire *corpus aristotelicum* as its source of reference. Odonis's innovation thus rests largely with his systematic and wholistic approach to Aristotle, where he tries to make sense of the entire book of *Ethics* in a

consistent and methodical way. Bonnie Kent is right in thinking that Odonis's commentary amounts to a Franciscanisation of Aristotle. Voluntarism is placed at the very core of Odonis's commentary, while the free determination of practical reason functions as a pillar of man's moral freedom and moral worth. The Franciscan focus on the will and on man's own moral responsibility necessarily results in a moral philosophy that puts the spotlight resolutely on the individual.

However, what really marks out Odonis from his predecessors and contemporaries is his unmistakable sense of humanism. Where the Augustinians lament the sin and weakness of humanity, Odonis holds out a belief in the virtuous potential of human being. What is human is always more desirable than which is inhuman, because it is only through humanity that one can speak of ethics and moral good. The human experience of life and society is placed as the viewpoint of the moral science, and highest good in ethics is not a detached comprehension of the universal truths of God and man, but rather, very personally, a life of happiness for the moral subject-agent.

Odonis lives through a time of rapid institutional changes that take place at all levels of society - the formation of universities, the evermore complex organisation and structure of religious orders, of the Catholic Church, of government bureaucracies, and of the legal edifice. Yet, in his commentary on the *Nicomachean Ethics*, Odonis has his eyes firmly fixed on the individual and the subjective existence of man. For Odonis, however complex and compelling the forces and reasons of the institutions are, one always needs to be his own moral agent, acting out of his own volition, soliciting counsel from his own reason. What is needed is not only virtuous deeds, but deeds which are acted out *virtuously*. Learning to be virtuous in one's own accord is the entire purpose of the moral science, and the end goal of an ethics education.

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ANNEXE - RESUME DE THESE

INTRODUCTION GENERALE

Aristote invente le célèbre aphorisme selon lequel l'homme est par nature un animal politique. Bien qu'il ne soit pas le premier à observer les caractéristiques sociales fondamentales de l'humanité, il tourne une page de l'histoire de la philosophie politique pour considérer que ces sociabilités des hommes ont des conséquences politiques profondes, et que toutes les études de la politique devraient être, et devraient commencer par, l'animal politique - en d'autres termes, l'étude de l'homme en tant qu'être social. La division de la "science politique" par Aristote en deux parties témoigne amplement de ce processus de pensée : la science morale qui étudie les aspects individuels et sociaux de l'humanité à travers la discussion du bonheur, de la vertu et de l'amitié, et le livre de la *Politique* qui étudie la nature des communautés et des institutions politiques. La dichotomie est abordée : les institutions doivent s'adapter à la vertu de ceux qui sont soumis à ces institutions. Après tout, le livre de la *politique* est la conséquence des livres de l'*éthique*. Cependant, Aristote ne présente pas une simple relation de cause à effet où la vertu du *demos* détermine les institutions politiques ; au contraire, celles-ci sont symbiotiques. Même la meilleure forme de politique ne peut sauver un peuple malveillant, et le corps de citoyens le plus vertueux ne peut pas être simplement corrompu par les forces corrosives de la tyrannie.

Cependant, la question de la relation entre la vertu et les institutions reste non résolue. Aristote considère que la possession de vertus morales et intellectuelles équivaut à l'excellence dans la gouvernance. L'homme le plus vertueux est aussi le plus sage sur le plan pratique, et donc le plus qualifié pour gouverner. Cependant, cette équivoque entre morale et politique ne peut être traduite dans un contexte moderne sans autres qualifications. Même Aristote reconnaît les défauts de cette proposition et suggère une professionnalisation de la gouvernance : une cité est mieux gouvernée par le droit et par des magistrats formés aux affaires de la cité et au droit. Après tout, Aristote a une compréhension arithmétique de la justice - la justice n'est pas beaucoup plus qu'une simple application de principes mathématiques. On peut comprendre l'ambiguïté d'Aristote comme une adaptation à une réalité imparfaite de la gouvernance humaine, où l'homme parfaitement vertueux est difficile à trouver et, en son absence, les institutions dirigées par des magistrats devraient prédominer.

Écrivant au IV^e siècle avant J.-C., Aristote a été confronté à une structure sociale et politique radicalement différente, la question est pourtant toujours d'actualité. Un millénaire et demi plus tard, à l'aube de la Renaissance, au seuil de la modernité, un franciscain du nom de Guiral Ot se trouve confronté aux mêmes problèmes dans un cadre fondamentalement différent. Avec l'*Éthique* et la *Politique*, Aristote présente une observation astucieuse de la nature humaine, une analyse pénétrante des institutions, et une synthèse magistrale des deux facettes de l'existence sociale et politique de l'homme en l'espace de deux livres, qui viendront informer et inspirer des générations de savants dans leur étude de l'humanité, comme notre propre Guiral Ot.

L'Expositio cum quaestionibus super libros ethicorum est une œuvre indépendante et autonome qui reflète l'ingéniosité intellectuelle de son auteur, mais elle est aussi un produit de son époque, où les autorités anciennes étaient recherchées comme source de vérité et de sagesse. La présente thèse vise à répondre aux questions sur la valeur morale de l'individu et son existence dans un cadre sociétal et institutionnel en examinant le commentaire sur l'*Éthique* de Guiral. *L'Expositio de Guiral* fournit un prisme dans le monde du paysage intellectuel de la fin du Moyen Âge en Europe occidentale. En tant que membre de l'Ordre franciscain et, par extension, de l'Église catholique, Guiral est bien placé pour se lancer dans une exploration philosophique de la nature de l'humanité et du fonctionnement des institutions sociétales et politiques. L'œuvre elle-même est le reflet de la relation tenace entre un individu et les institutions : Guiral, en tant qu'érudit bien versé dans l'apprentissage de la théologie scolastique de l'Antiquité classique et du Moyen Âge, a la tâche de mettre ses propres études et son ingéniosité intellectuelle au service de la compréhension et de l'incorporation de l'*Éthique* d'Aristote dans le milieu culturel franciscain ainsi que dans la tradition du commentaire médiéval.

Mes études ont principalement porté sur le commentaire des questions de Guiral sur les livres V et VI, plus précisément sur les vertus de la justice et de la prudence, ainsi que sur les questions soulevées dans le prologue sur le sujet, la structure et le but de l'éthique. La justice et la prudence sont d'une importance cruciale dans le schéma de la science morale d'Aristote, et tout aussi centrales dans la conception de Guiral sur la nature de la personne et sa relation avec sa société et ses institutions. La justice est considérée comme la vertu totale et la seule vertu morale qui concerne la relation de l'homme avec les autres, c'est-à-dire une vertu qui fait entrer l'individu dans la société et la politique. La prudence (ou *phronesis*), en revanche, est la vertu intellectuelle qui

sous-tend toutes les vertus morales, et est assimilée par Aristote à la science politique. Pour Aristote, la prudence concerne à la fois l'individu et l'édifice politique.

Dans la structure médiévale de l'éthique, la justice et la prudence se voient accorder le statut de vertus cardinales. La justice devient universellement acceptée comme une vertu de la volonté, et joue un rôle central dans la tradition franciscaine du volontarisme moral : en tant que rectitude de la volonté, la justice rend la volonté juste. En tant que vertu inexorablement liée à la loi et à la légalité, la justice innove également sur le plan philosophique à la fin du Moyen Âge avec l'expansion de la bureaucratie gouvernementale et du système judiciaire. Tout cela se reflète dans les écrits de Guiral. La prudence, en tant que première des vertus cardinales, devient pour beaucoup l'exercice du syllogisme pratique aristotélicien - l'application de l'universel dans le particulier. Pour Guiral, cependant, la prudence représente bien plus qu'une simple connaissance propositionnelle dérivée d'un simple raisonnement syllogistique ; c'est plutôt la raison et la liberté intellectuelle qui sous-tendent fondamentalement l'indépendance morale et volontaire de l'individu face aux raisons de l'institution. Dans l'ensemble, comme nous le voyons au cours de la présente étude, Guiral place l'individu au centre de toutes les considérations morales et politiques, et comprend le schéma et la structure de la science morale à travers la perspective de l'expérience morale d'un individu dans la société. Dans son commentaire, Guiral fait preuve d'un sens profond du volontarisme et du subjectivisme individuel : la liberté volontaire du sujet moral et l'humanité de la personne dépassent toujours la raison et l'être des institutions collectivisées.

La Partie I de cette thèse propose une longue introduction au commentaire de Guiral. Elle commence par une exploration contextuelle de la notion médiévale de l'individu et de l'institution, avant de présenter la vie et les œuvres de Guiral dans le chapitre II. *L'Expositio cum quaestionibus super libros ethicorum aristotelis* est ensuite étudiée plus en détail, y compris sa structure et son format, les circonstances de sa composition, sa tradition manuscrite, ainsi que les deux éditions des incunables du XVe siècle. Le chapitre III suit avec un bref résumé de *l'Éthique de Nicomaque* d'Aristote, avec un accent particulier sur les vertus de justice et de prudence, ainsi que sur la réception médiévale de *l'Éthique* comme l'œuvre la plus controversée d'Aristote. Le chapitre IV s'étend sur l'attitude générale des scolastiques médiévaux à l'égard du *corpus aristotelicum*, avant de se pencher sur la tradition franciscaine de leur évaluation, de leur absorption, ainsi que de leur critique d'Aristote. Le chapitre V se concentre ensuite sur le texte de commentaire de Guiral lui-même pour examiner sa propre attitude à l'égard du Philosophe.

La Partie II examine principalement le commentaire de Guiral sur le livre V de l'*Éthique*, en se concentrant sur la vertu de la justice et les questions connexes. Alors qu'Aristote divise la justice entre la légalité et l'équité, le commentaire de Guiral se préoccupe clairement plus par la notion de justice en tant que légalité (*iustitia legale*), comme le montre le nombre de questions soulevées sur la légalité par rapport à celle sur l'équité. La présente thèse se concentre donc sur la légalité, car elle cristallise aisément la pensée de Guiral sur l'interaction de la justice, du droit, de la légitimité, de la société et de la politique. Le chapitre I définit le cadre conceptuel en comparant la notion de justice de Guiral avec celle d'Aristote et des autres scolastiques. Le chapitre II explore la relation entre la justice et le droit, en couvrant les questions 2, 3, 11, 15, 16 du livre V. Le chapitre III considère la notion de justice légale comme la vertu complète, en explorant les différences et l'identité entre la justice légale et la vertu agrégée avec le texte des questions 4, 5 et 8. Le chapitre IV porte ensuite notre attention sur la vertu de l'amitié (*amicitia*) et va au-delà du livre V, en analysant la propre compréhension de Guiral de la notion d'amitié en tant que compétence sociétale (ou courtoisie) ; ce chapitre tire son contenu textuel de la question 15 du livre I, de la question 39 du livre IV et des questions 2-5 et 8 du livre IX. Les chapitres V et VI se concentrent sur deux *topoi* larges et pratiques : la gouvernance et le pouvoir judiciaire, où la vertu et la justice d'un individu sont confrontées à la raison et à la justice de l'institution. La question de la gouvernance est principalement examinée à travers la question 11, sur la question de savoir si le meilleur homme ou la meilleure loi doit régir une cité, où la réponse de Guiral est une affirmation résolue sur la supériorité de la règle de l'homme. Le sujet du pouvoir judiciaire considère la vertu de l'équité dans un contexte de justice procédurale et d'une possible perversion de la justice par la peur, par la corruption ou simplement par une *procédure régulière*. Guiral plaide à nouveau pour la suprématie du jugement individuel basé sur la vertu, la raison et l'équité, au mépris de l'institution de l'édifice juridique. Le chapitre VI est examiné avec les questions 19, 20 et 23.

La Partie III attire notre attention sur la vertu de prudence (*prudentia* ou *phronesis*). Elle est la base du jugement moral individuel et indépendant et le fondement de la lecture de Guiral sur la vertu de justice. La prudence, en tant que perfection de l'intellect pratique, s'étend à tous les aspects de la vie de l'homme et constitue le principe de sa valeur morale, de son bien et, surtout, de sa liberté volontaire. La troisième partie commence à nouveau par une étude conceptuelle sur la définition de la prudence donnée par Guiral. Le chapitre I reprend les questions 4, 5, 6, 9 du livre VI et étudie la nature et la téléologie de la prudence, ainsi que les concepts connexes de la praxis et du mental pratique, où le mental pratique commande toutes les actions humaines volontaires et électives, c'est-à-dire la praxis. La section suivante étudie les actes de prudence depuis la

délibération, en passant par le jugement, jusqu'au commandement final, en incorporant le texte de Guiral des questions 15 et 16. Le chapitre II explore la nature unitaire de la prudence en se concentrant sur la question 14 du livre VI, qui reflète manifestement la croyance de Guiral selon laquelle toute expérience morale est essentiellement subjective et projetée à partir de l'individu. Le chapitre III examine la relation entre la prudence et les autres vertus : avec la sagesse, et avec les vertus morales. Dans les questions 12 et 16 du livre VI, Guiral présente le cas de la supériorité de la prudence sur la sagesse, et de l'esprit pratique sur l'esprit scientifique. La prudence est, après tout, ordonnée au bonheur humain, tandis que la sagesse est ordonnée à la compréhension de la vérité. Dans la question 17, Guiral plaide pour une thèse de l'indépendance des vertus les unes par rapport aux autres, à l'exception des vertus cardinales, qui sont nécessairement liées par la prudence.

La thèse se termine par une *coda* et propose une brève conclusion. La *coda* vise à pousser plus loin la présente étude et à réfléchir à ce que Guiral aurait pu dire sur le thème de la pauvreté et de la propriété. La *coda* cite des extraits du commentaire et de son *Tractatus de contractibus*, et conclut que Guiral adopte l'approche de Jean XXII dans le débat sur la pauvreté tout en ayant une vision essentiellement classique de la propriété.

Dans l'ensemble, cette thèse soutient que Guiral fait preuve d'un niveau élevé de centralisme humain, de subjectivisme individuel et de volontarisme dans son commentaire sur l'*Éthique*, où l'individu et l'humanité sont placés au centre même de la science morale. Aucune institution ne peut remplacer l'individu, qui doit être son propre agent moral, et dont la raison et la vertu dépasseraient toujours celles du collectif et de l'institutionnel.

PARTIE I. LE COMMENTAIRE SUR L'ÉTHIQUE DE GUIRAL OT - TEXTE ET CONTEXTE

I. L'individu et l'institution à la fin du Moyen Âge

Le mouvement franciscain incarne véritablement la tension psychologique de l'époque entre l'individu et l'institution à bien des égards. Le récit de saint François est celui d'un champion

solitaire de la foi dans un monde de richesses matérielles et de corruption morale, qui renonce à sa famille, à sa société, au chemin de vie qui lui a été tracé. Cependant, la recherche par François d'un lien direct et personnel avec le Christ sans l'intermédiaire des autorités ecclésiastiques s'est accompagnée d'un profond respect pour la structure de l'Église ainsi que pour les autorités théologiques des scolastiques. En tant que mouvement et institution, l'Ordre franciscain était également collectiviste jusqu'au bout, uni autour de la doctrine de la pauvreté. L'idée franciscaine de liberté repose sur la liberté suprême et sans entrave de la volonté. Cependant, l'exigence institutionnelle d'obéissance peut parfois écraser la quête individuelle de pauvreté évangélique.

Si le contexte est peut-être des plus propices au sein de l'Ordre franciscain pour discuter de la philosophie de la vertu politique, les Minoritaires ne sont pas le seul exemple d'une époque qui voit une prolifération de nouveaux organismes institutionnels. Les réformes fiscales et administratives menées par l'Église, en particulier sous le pontificat de Jean XXII, et pendant son itération à Avignon en général, servent à consolider l'Église catholique dans une machine bureaucratique internationale. Les autorités séculières de France, d'Italie et d'Angleterre jouent également un rôle crucial dans la formation des États territoriaux, dans l'organisation des institutions gouvernementales et bureaucratiques centralisées et dans le déplacement du focus de la loyauté populaire envers l'État souverain.

En même temps, un sentiment d'individualisme dans la philosophie académique ainsi que dans l'expérience sociale surgit pendant une période de formation et de transformation rapides des institutions. La tradition franciscaine du volontarisme et de la liberté de la volonté, qui accorde à chaque personne un pouvoir subjectif de choisir sa façon d'agir, indépendamment de la raison et de la société dans son ensemble, en est un exemple. Collin Morris propose une thèse selon laquelle un tel passage du corporatisme à l'individualisme aux XIIe et XIIIe siècles est finalement le résultat de la combinaison de la nature intérieure du christianisme et de l'humanisme des textes classiques. La marée montante de la piété personnelle au XIIe siècle tourne le regard vers l'intérieur, et les textes classiques nouvellement accessibles fournissent aux érudits médiévaux des outils et des matériaux pour la quête de l'humanité individuelle.

Cette montée de l'individualisme s'est accompagnée d'une attention accrue portée au "profane" dans les milieux savants. Parfois, cet intérêt nouvellement développé pour la vie présente détourne l'attention de la personne du sacré et obscurcit le regard sur la vérité divine. Alors que ni la Bible ni les traditions augustinienes du christianisme ne disent aux hommes d'ignorer la vertu et le vice

de cette vie, la vie mortelle est toujours fermement soumise à celle de l'après et de l'éternel. Le sécularisme de la philosophie d'Aristote réoriente l'attention intellectuelle des hommes vers les possibilités de la vie présente, vers la vertu et le bonheur à rechercher pour elle-même, ainsi que vers la voie de l'union éternelle avec Dieu.

Cependant, Aristote n'est pas un représentant de l'individualisme moderne. Pour Aristote, les vertus morales et le bonheur de la vie reposent sur la société. Pour bien comprendre les intentions d'Aristote, il ne faut pas parler de vertu sans tenir compte de la communauté dans son ensemble. En effet, tout individu qui tente d'affirmer son indépendance et son individualité doit se trouver confronté à une sorte de collectif.

Au contraire, si l'homme de la fin du Moyen Âge ne peut néanmoins pas être extrait de la société et du collectif, il en vient à avoir un paysage psychologique interne plus complexe à explorer. L'éthique et les vertus morales ne sont jamais la préoccupation d'un seul individu. Quentin Skinner identifie le discours sur la vertu dans la pensée politique de la fin du Moyen Âge et de la Renaissance comme étant essentiellement de nature civique - la vertu est une condition de la liberté civique, et la liberté civique est la condition préalable d'une république autonome, et cette autonomie est une forme d'individualisme, différenciée des revendications universelles de l'impérial et de la papauté.

C'est donc à ce moment historique qu'il faut situer le commentaire de Guiral Ot sur l'*éthique* d'Aristote, et ses discussions sur les vertus politiques de la justice et de la prudence. Évalué dans un contexte corporatiste d'institutions - l'Université de Paris, l'ordre mendiant des Minorités - le texte présente de nombreuses traces d'un tel institutionnalisme. Pourtant, le contenu est individualiste à bien des égards: l'agent moral libre qu'est l'homme comme sujet d'enquête, le regard intérieur de la philosophie morale cognitive, et le volontarisme qui fait de la vertu et du vice un choix intensément individuel. Guiral écrit sur l'éthique, sur la moralité d'un agent libre, mais ne perd jamais de vue le social et le politique.

II. Guiral Ot et son *Expositio cum quaestionibus super libros Ethicorum*

On peut établir avec un certain degré de certitude que Guiral est né dans le village de Camboulit, dans l'actuel département français du Lot, vers 1285. Son entrée dans l'Ordre franciscain a probablement été facilitée par son milieu familial - il était un parent du franciscain Bertrand de la Tour (vers 1265-1332), qui était également originaire de Camboulit, élu cardinal en 1320, et qui est devenu vice-ministre général des Franciscains par intérim après la rébellion micheliste de 1328. Guiral a clairement démontré une grande aptitude pour les études universitaires, puisqu'il a été envoyé plus tard à Paris par le *studium* provincial pour étudier la théologie. En 1316, Guiral avait déjà terminé ses études de *baccalaureus* à Paris et avait commencé à enseigner au couvent franciscain de Toulouse, où il resta au moins jusqu'à l'été 1324. Il enseigna les *Sentences* à l'Université de Paris à la faculté de théologie en 1327-28, et peut-être aussi à partir de 1326, et y fut admis comme Maître de Théologie avant le 10 juin 1329, date à laquelle Guiral fut élu ministre général des Frères Mineurs.

Durant la soixantaine d'années de sa vie, Guiral a produit un ensemble considérable d'écrits. Le volume *Vivarium* (vol. 47, numéro 2, 2009) présente un large éventail d'études qui touchent à de nombreuses facettes différentes de la production scientifique de Guiral. Le séjour de Guiral à Toulouse semble particulièrement prolifique : il écrivit des commentaires bibliques sur les épîtres de Paul (*Romains*, *Galates* et *I Corinthiens*), sa conférence sur le jugement dernier, ainsi qu'un commentaire des *Sentences*, qui n'a pas survécu. Au-delà de la théologie, Guiral écrivit un traité économique, *Tractatus de contractibus*, daté de 1315-17, et nous pouvons également placer avec confiance son commentaire *éthique* dans le Toulouse. Ses écrits volumineux sur la logique et la métaphysique datent pour la plupart de cette période. Guiral donna des conférences sur le *Décret* à la faculté de droit de l'Université de Toulouse, qui avait l'habitude d'inviter des spécialistes conventuels pour des conférences pendant les vacances. Un second commentaire des *Sentences* fut écrit pendant son séjour à Paris, daté de 1326-28. Plus tard, après son élection comme ministre général, Guiral écrivit un traité sur le sujet de la vision béatifique à l'appui de la position du pape Jean XXII, basé sur un débat *quodlibet* qu'il avait tenu à Paris. Un ouvrage didactique destiné à l'éducation du prince, le jeune Andrea de Hongrie, *Cathecismum scolarium novellorum*, est achevé en 1338, dont il ne reste aucun manuscrit connu.

Au sein de ce corpus d'écrits considérable, le commentaire de Guiral Ot sur l'*Éthique à Nicomaque* d'Aristote est certainement le plus connu et le plus influent. C'est aussi pour cette raison que Guiral est connu comme le *Doctor Moralis*. Guiral est de toute évidence très estimé dans les traditions scolaires pour sa contribution à l'étude et à la propagation de la science morale. Guiral est le premier franciscain à écrire un commentaire complet sur l'*Éthique*, un exploit qui représente à la fois une continuité de la tradition aristotélicienne de commentaire plus large commencée au début du treizième siècle, et un ajout important au *corpus* franciscain, qui jusqu'à présent n'a pas sa propre doctrine sur la philosophie morale ni de commentaire systématique de l'*Éthique* d'Aristote.

Il existe un petit, mais significatif, corpus de littérature sur le commentaire de l'*Éthique* de Guiral. Charles Langlois est le premier à en étudier le texte (1927), considère l'ouvrage comme étant sans originalité et insignifiant. Des études récentes ont heureusement conclu que l'*Expositio* a plus de mérite. La découverte de James Walsh que le commentaire éthique de Jean Buridan, qui est bien plus connu, est redevable à Guiral, marque peut-être le point de départ d'un nouveau courant d'intérêt scientifique pour le commentaire de Guiral lui-même. La thèse doctorale de Bonnie Kent de 1984, *Aristotle and the Franciscans: Gerald Odonis' Commentary on the Nicomachean Ethics* s'appuie sur les conclusions de Walsh mais couvre le texte de Guiral de manière beaucoup plus approfondie et plus étendue, et jusqu'à présent, il reste la seule étude de format long sur le commentaire de Guiral. Kent examine la tradition franciscaine sur leur attitude envers Aristote, leur volontarisme, leur point de vue sur le thème de l'incontinence, sur la justice et l'obligation, sur la localisation et le lien des vertus morales. Dans ce contexte, elle évalue la cohérence et la déviation de Guiral par rapport à l'héritage intellectuel des franciscains. Kent tire deux conclusions principales. Premièrement, contrairement à ce que l'on croit généralement, les Franciscains médiévaux ne sont pas vraiment hostiles à Aristote. Ce qui marque Guiral, c'est simplement son insistance sur le fait qu'aucun des enseignements d'Aristote (du moins en matière d'*Éthique*) n'est faux et qu'aucune de ses propres opinions n'est contraire à celle du philosophe. La deuxième conclusion est que Guiral est un volontariste convaincu dans son éthique, restant étroitement dans la voie de la tradition franciscaine en psychologie morale. Risto Saarinen (1994) suit une ligne similaire dans son étude sur l'*akrasie* dans la pensée médiévale et place Guiral dans la tradition volontariste de la pensée morale du Moyen Âge tardif. Odd Langholm (1992) a examiné sa discussion sur la question de l'usure (livre IV, question 20) dans une exploration de la pensée économique de Guiral. Joel Kaye (1998) cite également les travaux de Guiral dans ses ouvrages sur la philosophie économique médiévale. Camerin Porter (2009) passe en revue tous les

manuscripts connus ainsi que les deux éditions incunables du commentaire dans son article publié dans le volume *Vivarium*, auquel la présente thèse est très redevable.

Il existe dix-huit manuscrits contenant l'intégralité ou des parties du commentaire sur l'*Éthique* de Guiral, détenus par un ensemble de bibliothèques européennes au Vatican, en Italie, en Espagne, en France, en Allemagne et en Autriche. Il existe également deux éditions incunables, imprimées à Brescia en 1482 et à Venise en 1500. Les deux incunables survivent en cent quatre-vingt-douze exemplaires identifiés en Europe et en Amérique du Nord. La grande disponibilité des témoins manuscrits et des incunables témoigne d'une large diffusion du texte de commentaire de Guiral jusqu'au XVI^e siècle, et probablement au-delà.

L'incunable de Venise (*V*) est utilisé par la présente thèse comme source principale du texte. Lorsqu'on le compare à l'incunable de Brescia (*X*), il est clair que *X* est la source de *V*, compte tenu des nombreuses erreurs et variantes communes. Des échantillons de *V* ont été comparés à *G* et *P*. Bien qu'il y ait de nombreuses divergences, *V* suit de près *G* et *P*, et est généralement un texte supérieur et fiable avec moins d'erreurs, pour autant que je puisse en juger.

Toute tentative de datation du commentaire sur l'*Éthique* de Guiral devra rester hypothétique, car il n'y a aucun point de repère chronologique explicite offert par le texte lui-même ou les colophons des manuscrits pour ancrer la composition à une année spécifique. Cependant, un ensemble de preuves textuelles et inter-textuelles m'a convaincu de dater l'*Expositio* à la période 1320-25, avec une possibilité de la réduire encore à 1323-25. Bien que cela ne soit pas du tout précis, cela réduit déjà la fenêtre des possibilités offertes par les précédents chercheurs. À la base, la composition du commentaire est sans doute antérieure à 1329, année où Guiral a été élu ministre général, un poste dont la responsabilité administrative a considérablement réduit sa production scientifique. Le manuscrit de Salamanque s'inscrit dans cette perspective en faisant référence à Guiral comme étant un *bachelier* en théologie. Une comparaison textuelle avec son commentaire sur I *Corinthiens* m'a également convaincu de le dater avant I *Corinthiens*, ce qui rend un *terminus ante quem* à 1325. Une analyse plus provisoire sur la relation entre le commentaire sur l'*Éthique* et la bulle papale de 1322-23 *Ad conditorem canonum* suggère également que Guiral était au courant de la bulle. Bien que nous puissions dater avec certitude le texte comme étant antérieur au commentaire de I *Corinthiens*, les liens avec *Ad conditorem canonum* sont ici beaucoup plus ténus. Par conséquent, je devrais conclure en datant la composition du commentaire sur l'*Éthique* de Guiral à 1320-25, avec une possibilité probable de la réduire à 1323-25.

III. L'Éthique à Nicomaque d'Aristote

L'*Éthique à Nicomaque* est peut-être l'ouvrage le plus influent de l'histoire de la pensée morale et politique. Aristote se met en quête du but ultime de la vie humaine. L'homme s'efforce toujours d'atteindre ce qui est considéré comme bon. La science qui comprend la relation et l'ordre entre tous ces biens humains serait donc la science maîtresse, c'est-à-dire celle de la politique, et c'est aussi le but de cette science maîtresse de découvrir quelle est la fin ultime et le plus grand bien de la vie humaine. Aristote appelle ce bien final *eudaemonia* (rendu en latin par *felicitas*).

L'*Éthique à Nicomaque* d'Aristote offre à ses lecteurs et commentateurs de nombreux points de départ intellectuels à partir desquels il est possible de poursuivre les discussions sur l'éthique. Deux concepts avancés dans l'*Éthique* sont peut-être les plus conséquents : le bonheur comme fin de la vie humaine, et l'idée de la vertu comme habitude. De tels concepts gagneront considérablement en importance au Moyen-Âge et au-delà. Cependant, la réception médiévale d'Aristote n'est pas une affaire simple et directe. La fin du Moyen Âge est confrontée à un contexte social et intellectuel complètement différent, où le naturalisme d'Aristote en matière de philosophie morale et politique sera confronté à une multitude de défis.

R. A. Gauthier désigne l'*Éthique à Nicomaque* comme le texte le plus influent dans les discussions médiévales de philosophie morale. L'apparition du texte complet de l'*Éthique* au XIII^e siècle a eu un effet profond sur la scène scolastique. De toutes les œuvres d'Aristote, l'*Éthique* est celle qui a posé le plus de problèmes à la pensée traditionnelle augustinienne-chrétienne. L'idée que le bonheur peut être atteint dans la vie présente par la vertu, et que ce bonheur est la fin ultime de la vie humaine, va directement à l'encontre de l'enseignement d'Augustin selon lequel le vrai bonheur n'existe pas mais dans l'au-delà. Par conséquent, toute tentative d'introduire l'*Éthique à Nicomaque* dans le débat scolaire général devra concilier ces divergences évidentes.

En 1250-52, Albert le Grand, un théologien dominicain, est devenu le premier scolastique à écrire un commentaire complet sur l'*éthique* récemment traduite. Honoré en tant que *Doctor Universalis*, le travail d'Albert s'étend à l'ensemble du corpus connu d'Aristote, fournissant des résumés encyclopédiques et des paraphrases d'Aristote, et il a longtemps été considéré comme le *Doctor Universalis* responsable du lancement de l'élan de la réception chrétienne d'Aristote. Albert

s'appuie sur la différence de méthodes d'enquête et de sujets entre la théologie et la philosophie, et s'attache à les considérer comme des domaines humains distincts, qui peuvent tous deux être poursuivis pour leur propre compte.

Ce mouvement de réception aristotélicienne et de division entre philosophie et théologie est poursuivi par Thomas d'Aquin. Thomas édita les notes de conférence d'Albert à Cologne, et ensuite écrivit son propre commentaire sur l'*Éthique* en 1271-2 sous la forme d'une exposition littérale - *Sententia libri ethicorum*. Thomas revint ensuite sur l'*Éthique* sous la forme d'une *tabula libri Ethicorum*, en préparation de la deuxième partie de sa *Somme théologique* magistrale. En plus d'être l'un des textes théologiques et philosophiques les plus influents du Moyen Âge, la *Summa* démontre comment Thomas utilise magistralement la matière et la méthode d'Aristote dans ses recherches. Libérée de la structure et des contraintes textuelles de son commentaire littéraire, la *Summa theologiae* est peut-être un bien meilleur prisme de l'influence d'Aristote sur Thomas d'Aquin, qui, à son tour, est devenu le scolastique le plus influent de la fin du Moyen Âge.

IV. Le Philosophe et les théologiens : Les études aristotéliciennes ver la fin du Moyen Âge

Au début du XIII^e siècle, le rapport entre la théologie et la philosophie a été une relation d'inclusion plutôt que de distinction. Cependant, cela a changé avec l'approche nouvelle apportée par Thomas d'Aquin dans la seconde moitié du XIII^e siècle. Le divin peut, et doit être compris avec un raisonnement humain rationnel. Vers le XIV^e siècle, le concept de théologie en tant que discipline scientifique est devenu un point d'interrogation régulier dans les cercles scolaires. Ces interrogations portent sur la nature même de la connaissance humaine de Dieu et sur les fondements épistémiques de la théologie. La matière et méthodologie aristotéliciennes sont inévitablement adoptés à grande échelle .

Alors que le *corpus aristotelicum* continue de gagner du terrain parmi les scolastiques du Moyen Âge tardif, les condamnations de l'évêque Tempier en 1277 démontrent que l'étude et l'utilisation des textes d'Aristote peuvent être très controversées, malgré sa place importante dans les programmes des facultés d'arts. D'une part, les Dominicains, sous l'égide d'Albert le Grand et de Thomas d'Aquin, sont devenus les principaux représentants du savoir aristotélicien. Les Franciscains, d'autre part, ont eu une relation beaucoup plus complexe avec le Philosophe.

Alors qu'il est communément admis que les Franciscains furent la principale force de résistance dans l'histoire de la réception aristotélicienne, la diversité intellectuelle parmi les Frères mineurs signifie qu'il est impossible d'établir une position franciscaine cohérente ou au moins monolithique concernant Aristote. Le fait que l'Ordre n'ait pas eu de docteur officiel, à la manière des Dominicains avec Thomas d'Aquin, est probablement à la fois la cause et la conséquence des diverses positions et opinions trouvées parmi les frères. On peut suggérer Bonaventure ou Duns Scot comme des maîtres franciscains qui incarnent la tradition intellectuelle de l'Ordre, mais Duns Scot était critique à l'égard de Bonaventure sur de nombreux fronts de la théologie et de la philosophie, et il existe un fossé important entre leurs approches d'Aristote. Ensuite, nous avons plusieurs cas marquants, comme celui de Roger Bacon, dont l'enthousiasme pour la philosophie naturelle d'Aristote et la faible vision de l'approche contemporaine de l'apprentissage et de l'éducation, tant dans les universités que dans les *études* franciscaines, le place quelque peu en marge de l'Ordre. À l'autre bout du spectre, il y a aussi Pierre de Jean Olivi, qui fait preuve d'une maîtrise parfaite du *corpus aristotelicum*, mais qui manifeste aussi parfois un mépris véhément pour les philosophes païens, dont Aristote.

On attribue souvent le récit d'un tournant aristotélicien chez les Franciscains au cours des dernières décennies du XIV^e siècle, en particulier aux décennies cruciales des années 1260-1270. Bien que cette thèse ait une certaine validité dans la mesure où d'éminents franciscains ultérieurs tels que Jean Pecham, Richard de Menneville, Roger Bacon et Jean Duns Scot, sans parler de notre propre Guiral Ot, affichent tous de fortes tendances aristotéliciennes tant dans leurs méthodes que dans leurs positions, il faut également reconnaître le fait que les premières autorités franciscaines telles qu'Alexandre de Hales, Bonaventure et Guillaume de la Mare ont tous largement utilisé les textes d'Aristote, et ont considéré Aristote comme une autorité importante. Dans cette perspective, il n'y a pas de rupture radicale vers la fin du XIII^e siècle par rapport à la tradition franciscaine antérieure. Aucun des derniers Franciscains n'irait jusqu'à dire qu'Aristote est complètement sans erreur, ou que la raison humaine armée de la philosophie aristotélicienne peut entièrement remplacer la révélation divine pour atteindre la vérité parfaite. Il y a eu un changement progressif de positions vers une réceptivité accrue des idées aristotéliciennes.

De même, il est erroné de considérer que le *corpus aristotelicum* avait atteint un statut canonique inattaquable au sein de l'Ordre franciscain au temps de Guiral. Pierre de Jean Olivi, de la première génération de frères entièrement éduqués dans l'Ordre franciscain, s'est opposé fermement à l'idée

qu'Aristote devait être considéré comme une source infaillible d'autorité intellectuelle. Bien que la contribution intellectuelle d'Olivi soit restée en marge des Franciscains de son vivant et ait été deux fois censurée, son rejet d'Aristote représente une force de résistance intellectuelle au sein de l'Ordre franciscain à une vieille tradition scolastique d'incorporation et d'harmonisation, qui cherche à légitimer la lecture des philosophes païens au sens de leur intuition de la vérité chrétienne.

L'éducation et les études sont devenues l'un des points centraux du mouvement spirituel. Il s'agit d'une tension qui se joue entre l'idéalisme fondateur et les réalités pratiques d'un mouvement et d'une institution au succès stupéfiant. Cette tension ne se limite pas, bien sûr, à la question de l'apprentissage et de l'appropriation du *corpus aristotelicum*. Au contraire, elle brosse un tableau complexe de la relation des Franciscains avec Aristote.

V. Guiral Ot et Aristote

Dans son *Expositio*, l'approche de Guiral à l'égard d'Aristote se distingue de celle de ses *confrères* de deux manières principales : l'œuvre d'Aristote est, à quelques exceptions près, discutée presque exclusivement dans un contexte laïque, et Guiral affirme catégoriquement que l'enseignement d'Aristote est "vrai" et totalement conforme aux articles de la foi chrétienne. La première différence rapproche Guiral d'Albert le Grand, de Thomas d'Aquin et d'autres commentateurs de l'*éthique*, et peut être en partie attribuée à la dictée du genre. Il est très probable que Guiral suive une tradition établie d'écriture sur l'*éthique* sans tenir compte des variantes apportées par les récompenses et les punitions d'une vie après la mort - le bien humain est discuté sans référence à Dieu ou au salut. Ce n'est que dans son propre prologue que Guiral utilise le terme Guiral *beatitudo*, tandis que dans le reste du commentaire, le terme *felicitas* est utilisé. Malgré les nombreuses références scripturales et théologiques, Guiral parvient à éviter la théologie et les discussions sur le salut et Dieu dans la plus grande partie de son commentaire.

La deuxième différence est peut-être plus frappante. Aucun des *confrères de Guiral* ne va assez loin pour parler du philosophe comme étant entièrement cohérent avec la foi. Les Franciscains se rendent compte des limites intellectuelles des philosophes païens qui, sans l'aide de l'illumination divine, ne peuvent espérer arriver à la vérité finale et complète. Bonaventure souligne avec soin les erreurs d'Aristote, l'attitude d'Olivi varie de prudemment favorable à carrément hostile, et même

Scot se détache de temps en temps des enseignements d'Aristote au profit d'une approche plus "augustinienne"...

Dans le premier livre de l'*Éthique*, Guiral enquête sur la vérité d'Aristote avec une question au même effet (Livre I Question 31) : La position du philosophe sur le bonheur est-elle en accord ou en contradiction avec la vérité et la foi du christianisme ? Après avoir énuméré plusieurs contradictions évidentes entre Aristote et l'enseignement de la foi chrétienne, telles que les possessions et les succès du monde, l'homme vis-à-vis Dieu comme origine du bonheur, et le bonheur de la mort, Guiral déclare que "la position de la foi est vraie et la position du philosophe est également vraie".

Pour Guiral, la vérité d'Aristote est une proposition donnée, ce qui est une opinion surprenante à tenir. Le texte du commentaire lui-même apporte également des preuves contre cette affirmation : Guiral, bien qu'en de rares occasions, se prononce contre les positions d'Aristote. Cependant, le fait curieux est que Guiral ne confronte jamais ouvertement les positions d'Aristote. Guiral affirme que le Philosophe parle de vérité, mais il concède également que la vérité d'Aristote est limitée. La vérité d'Aristote n'est pas la vérité complète, et Aristote ne prétend pas non plus parler de la vérité complète sur la science morale. Guiral accorde au Philosophe le statut de vérité, dans la mesure où il est entendu que le Philosophe parle des questions temporelles et du bien et du bonheur de cette vie. Dans la question 30 du livre I, Guiral établit le cadre d'une dualité du bonheur. La question classique est posée : le bonheur peut-il être atteint dans cette vie au milieu des fortunes diverses de l'homme ? Ici, Guiral divise le bonheur en deux : le bonheur du mérite (*felicitas meritoria*) et le bonheur de la récompense (*felicitas praemiatoria*). Le bonheur du mérite est le type de bonheur que l'on peut avoir dans cette vie. Au contraire, le bonheur parfait, complet, de récompense ne peut être atteint dans cette vie, car l'homme dans cette vie ne peut être libéré du malheur et du mal subi involontairement. Un tel bonheur ne peut être atteint qu'après la mort, dans l'union avec Dieu. Le bonheur du mérite s'applique strictement à cette vie, et c'est là que se situe la frontière de l'autorité d'Aristote. C'est pourquoi, affirme Guiral, le concept de bonheur d'Aristote est incomplet. Cependant, cette notion incomplète du bonheur est néanmoins correcte dans la compréhension incomplète d'Aristote, et ne contredit pas la vérité du bonheur complet de la récompense. Pour un lecteur médiéval, Aristote ne nie pas la possibilité et l'existence d'un bonheur qui vient de Dieu, mais choisit plutôt de limiter ses discussions au domaine du comportement humain, qui peut être séparé de l'intervention divine, et connu séparément comme tel.

Bien que Guiral limite l'autorité d'Aristote à la vie présente, au bonheur de mérite qui est tenable avec les seuls actes et l'agence humaine, il considère néanmoins que c'est une préparation nécessaire pour la vie éternelle qui suivra. *L'Éthique à Nicomaque* est un guide digne d'atteindre la *felicitas* dans cette vie, en tant que Franciscain ou autre. Il peut différer de ses prédécesseurs franciscains en affirmant qu'Aristote est sans erreur, mais la substance de ses approches ne s'écarte pas radicalement des traditions franciscaines, ni même, dirait-on, de la pratique contemporaine courante en général. Guiral affirme la vérité d'Aristote, mais en même temps, il applique des qualifications et fixe des limites à cette vérité, et propose des dispositifs taxonomiques pour concilier les contradictions littérales et explicites entre les articles de foi et les enseignements de *l'Éthique*.

Sur la question du but et du sujet de la science morale, Guiral se rapproche beaucoup de la tradition franciscaine de volontarisme éthique, comme l'illustrent Olivi, Duns Scot et d'Ockham. Guiral suit de près la doctrine de la suprématie de la volonté et de sa liberté et contingence absolues, tandis que toutes ses discussions sont abondamment tissées avec le langage et la méthodologie de la logique et de la métaphysique aristotéliciennes.

Dans les deux premières questions soulevées dans le Prologue de son commentaire, Guiral cherche à cerner le sujet de l'éthique : le bien ou l'action de l'homme est-il le sujet premier (*subiectum primum*) de cette science, et l'homme en tant qu'être libre (*homo ut liber*) est-il le sujet premier de cette science ? Guiral poursuit avec deux autres questions concernant la nature et la division de la science morale, en demandant si c'est la seule science qui est pratique, et si la science morale peut être divisée de manière appropriée en éthique, qui concerne l'individu, en économie, qui concerne le ménage, et en politique, qui concerne la cité.

Sur la question de la science morale, Guiral se démarque radicalement de ses prédécesseurs, tels qu'Albert et Thomas. La proposition selon laquelle le bien humain devrait être le sujet principal est rapidement rejetée - Guiral soutient que le bien humain relève plutôt de la *considération de la science*, et est donc sa matière (*materia*). Guiral fournit ensuite deux propositions principales pour soutenir sa thèse selon laquelle les actes humains et le bien humain sont la matière, plutôt que le sujet principal, de la science morale. Premièrement, il soutient que les actions humaines relèvent de la considération de la science morale, et sont donc sa matière. Deuxièmement, il soutient que les actes ne peuvent pas être le sujet principal, car l'éthique, en tant que discipline scientifique, ne peut avoir son sujet comme conclusion propre. La philosophie morale recherche le bien humain et

l'action juste pour atteindre ce bien, et donc ces actions sont la conclusion de cette science, et il s'ensuit que les actions ne peuvent pas être le sujet principal. Guiral souligne la nature *subjective* du sujet, considérant que la liberté est le déterminant primordial dans cette question, et soutient que le sujet de la science morale est l'homme libre, c'est-à-dire un homme qui est un agent libre de ses actions morales.

Dans l'analyse de Guiral, il y a une confluence évidente entre le concept de *sujet* et celui de *subjectivité*. Le *principium liberum*, qui est le principe sous-jacent de la *subjectivité* de l'homme, est l'élément déterminant ici dans la définition du sujet moral de Guiral. C'est un thème qui reviendrait sans cesse dans le texte du commentaire. Pour Guiral, le "principe libre" est équivalent à l'appétit intellectif ou électif, c'est-à-dire à la volonté. L'étude de la science morale est par essence une étude du libre arbitre.

C'est dans cette optique que nous devons aborder la thèse de Guiral, posée dans la question 4, selon laquelle la science morale ne doit pas être divisée en trois catégories : éthique, domestique et politique, respectivement pour le personnel, le familial et le civique. Guiral nie catégoriquement qu'il puisse y avoir une éthique qui concerne purement et précisément un individu. Une personne peut être considérée par rapport à elle-même, comme un individu privé, mais elle ne peut être séparée du contexte social, qu'il soit domestique ou politique. La personne, en tant que sujet de la science morale, ne peut être divisée en trois, et par conséquent il ne peut y avoir trois sciences morales distinctes.

Ici, cependant, Guiral se heurte à un problème récurrent de la philosophie morale médiévale, rendu particulièrement aigu par le texte d'Aristote : si toutes les actions morales sont sociales, tous les biens moraux sont publics, comment l'individu s'intègre-t-il dans le paysage moral ? Guiral s'invoque à Augustin pour justifier le but spirituel de l'étude de l'éthique : la connaissance du bonheur béni ne peut être atteinte que par la vertu. L'homme libre, en tant qu'agent subjectif de la vertu et des actes vertueux, a besoin du bon ordre de la volonté pour connaître la fin la plus délectable et la vouloir. La valeur de l'individu, aussi indivisible qu'elle soit de son contexte social, est le principe même de la liberté qu'il possède. Une personne dotée d'une volonté libre et indéterminée est par nécessité toujours un agent agissant dans le paysage social et moral intrinsèquement complexe. C'est la juxtaposition ainsi que la séparation entre une anthropologie sociale et une psychologie du volontariat qui fait fonctionner le schéma d'éthique de Guiral et marque son départ des commentateurs précédents tout en restant fidèle à la tradition franciscaine

du volontarisme. Cette image d'un homme doué de libre arbitre naviguant dans le monde de la philosophie morale est un *topos* qui reviendrait sans cesse dans le commentaire de Guiral. Si la sphère des actions et des vertus morales est toujours sociale et extérieure, on conserve néanmoins son agence et son mérite moral avec le principe de liberté - la volonté qui est le pouvoir ultime de faire agir l'homme.

PARTIE II. JUSTICE

C'est dans la discussion sur la vertu de justice que Guiral fait preuve d'un haut niveau d'ingéniosité intellectuelle par rapport à ses prédécesseurs franciscains et aux commentateurs aristotéliens de son temps. Ce qui marque Guiral dans sa conception de la vertu de justice, ou même dans son éthique de la vertu dans son ensemble, est la combinaison de l'idée franciscaine de la vertu comme état de la volonté, et de la position aristotélicienne de la vertu comme qualité comportementale - l'équilibre entre l'état interne et l'état externe, entre le personnel et la société. Guiral ne partage ni le pessimisme augustinien de la nature humaine, ni la foi thomiste en la rationalité humaine ; au contraire, ce qui se manifeste dans son commentaire, en particulier dans sa discussion de la justice, devrait être décrit comme un certain "humanisme franciscain" - une croyance selon laquelle l'homme est finalement capable de mener une vie vertueuse de son propre chef, grâce aux décisions qu'il prend de son propre gré. L'analyse de Guiral sur la justice offre des aperçus particulièrement intéressants à la fois sur la philosophie de notre maître franciscain et sur le monde médiéval en général. Par la justice, il existe un lien inextricable entre les deux mondes que Guiral tente de réunir dans son commentaire - la justice est un concept clé de la philosophie classique incarnée par Platon et Aristote, et la justice est l'une des principales lignes directrices offertes par la foi chrétienne aux disciples du Christ.

Les écrits de Guiral sur la justice manifestent également ses hypothèses sous-jacentes sur la nature de l'agent moral individuel et son rôle au sein de l'appareil institutionnel. Dans son commentaire du livre V, Guiral place la discussion sur le droit naturel et le droit positif humain au premier plan. La discussion de la philosophie du droit constitue le cœur de la lecture de la justice par Guiral. Ce que nous trouvons ici, cependant, c'est un humanisme qui oppose l'individu à l'écrasante machine juridique. Dans un débat sur les mérites d'un individu libre et moral *face à* une institution juridique

polie et systématique, Guiral plaide toujours pour le potentiel vertueux de la liberté morale du sujet-agent.

I. La justice comme une vertu

Le terme grec pour la justice, *dikaiosune*, est intrinsèquement ambigu. La justice est à la fois une qualité de la société, comprise socialement, et une qualité de l'âme d'une personne, comprise psychologiquement. Une société juste comporte tous les éléments sociaux en proportion et en harmonie, où chaque personne se voit attribuer à juste titre un lieu adapté à ses aptitudes. Une personne juste, à son tour, a les trois parties de son âme en proportion et en harmonie les unes avec les autres. Par conséquent, pour tout individu, la justice est le fondement de toutes les vertus - la sagesse est la justice de l'âme rationnelle, le courage est la justice de l'âme spirituelle, et la tempérance est la justice de l'âme appétissante. En somme, ce qui est juste, tant pour une personne que pour une société, c'est ce qu'est une relation juste et harmonieuse entre ses parties. La justice est, dans ce sens, un bien complet pour la société, et une vertu complète pour un individu.

Aristote consacre l'intégralité du cinquième livre d'*Éthique* à la vertu de justice, et commence par en présenter l'*endoxa*. C'est d'abord et avant tout une vertu personnelle. Il y a une personne juste, qui fait une chose juste, et qui possède la vertu de justice. La justice (*dikaiosune*) est définie en termes de ce qui est juste (*dikaios*), et pourtant ce qui est juste reste manifestement flou. Guiral ouvre son commentaire sur le livre V en abordant les défis conceptuels présentés par le texte d'Aristote. Il soulève des questions concernant la définition et la relation appropriées des concepts de *iustitia* et de *ius*. Dans sa discussion sur la justice, Guiral abandonne le schéma augustinien et scotiste qui consiste à considérer la justice en relation avec l'amour de l'homme pour Dieu. Au lieu de cela, il se fraye un chemin à travers le raisonnement d'Aristote. La justice, en tant que vertu qui dispose les hommes à faire des choses justes, est définie par ce qui est juste. Il est donc d'une importance vitale de découvrir ce qui est exactement *juste*, et comment la notion de *ius* constitue la vertu de justice au-delà du lien linguistique évident.

Le lien entre la justice et la volonté est bien établi tant dans la tradition thomiste que chez les Franciscains, renforcé encore par la traduction latine du grec d'Aristote, *volens iusta*, ainsi que par la notion de justice en droit romain, *voluntas*. Dans la question 1 du livre V, Guiral dissèque et

réorganise la définition proposée par Aristote, l'analyse par rapport à la définition des juristes, et propose une lecture actualisée de la notion de justice. Guiral affirme que la lecture d'Aristote - "la justice est une sorte d'état, à savoir ce qui dispose les gens à faire une action juste, à agir justement et à vouloir ce qui est juste" - présente une définition scientifique complète de la justice. En résumé, l'*endoxa* d'Aristote a réussi à identifier son sujet, sa substance, son objet et ses actes en une seule phrase. Comme Bonaventure et Duns Scot avant lui, Guiral est catégorique sur le fait que la justice, ou toute autre vertu, doit résider dans le principe de liberté au sein de l'homme, et ce principe de liberté est l'appétit intellectif. Guiral suit de près l'intention d'Aristote de faire de la justice une vertu qui relie les habitudes intérieures d'un individu, comme la tempérance et la force d'âme, aux actes extérieurs dans un cadre social. La justice fait passer l'acte interne de la volonté à l'acte externe. Ce lien est primordial pour l'exposé de Guiral sur la justice, et par extension, sur les vertus morales en général. La simple réalisation d'actes justes ne suffit pas à la vertu de justice. Il faut agir avec justice, c'est-à-dire que l'acte doit être accompli avec un acte de bonne volonté, librement et vertueusement.

La disjonction entre l'acte et l'habitude est développée dans la question 4 du livre V. Guiral distingue deux sortes d'actes de vertu : agir vertueusement en tant que personne vertueuse, et agir les actes de vertu de façon non vertueuse. Dans le premier cas, la présence de la vertu correspondante est requise : on ne peut plus agir avec tempérance sans avoir la vertu de tempérance. Avec la seconde, un acte de vertu peut être accompli, mais pas par la vertu connexe, mais suscité par des arrière-pensées, telles que le commandement extérieur ou l'appétit des sens.

On peut dire que la tentative de Guiral de fusionner les deux concepts de justice en un tout cohérent donne un résultat au mieux ténu. Pourtant, elle offre une autre perspective de sa compréhension de la justice. Guiral considère que la définition des juristes se rapporte davantage au concept de justice comme légalité, mais qu'elle est néanmoins conforme à la notion aristotélicienne générale. Ce faisant, Guiral recadre la lecture distributive et administrative de la justice à partir du droit romain en un état psychologique et une vertu intérieure au sens aristotélicien. La fusion des deux sources d'autorité signifie également que les idées de droit et de légalité développées par la jurisprudence romaine et médiévale sont totalement intégrées dans la discussion de la justice.

II. La justice et le droit

Guiral présente une analyse approfondie sur la manière dont *ius* est philosophiquement lié à la justice. Ce qui transparaît dans le texte de Guiral est la nature externe et préceptive de *ius* et de la justice. Le *ius* est présenté comme un commandement (*praeceptum*) provenant d'une source universelle et constante de moralité ou de légalité, exogène à la psychologie morale de l'homme, tandis que la justice est la réception et la réflexion d'une personne à ce commandement, en toute connaissance de cause et volontairement. Le *ius* est causalement antérieur à la justice, comme une norme externe de moralité est antérieure à la participation interne de cette norme.

Guiral arrive donc à la conclusion que les quatre parties de *ius* sont antérieures à l'acte juste, qui est à son tour antérieur à la justice, comprise par Aristote comme une habitude acquise par l'acte juste. Ce faisant, il fonde tout le processus cognitif de la justice dans l'âme d'un individu - un acte juste est le résultat de la cognition intellectuelle et de la libre volonté, suivant le précepte de *ius*, une reformulation d'un commandement externe en un devoir interne avant de le manifester comme un acte externe.

Cependant, étant donné le souci antérieur de Guiral de distinguer entre les actes vertueux et les actes non vertueux, on peut se demander si l'acte juste produit par le processus en quatre parties est accompli de manière juste, étant donné que ce qui est juste (*iustum*) et ce qui est dû (*debitum*) sont tous deux une instruction reçue de manière exogène. C'est l'un des problèmes de circularité que présente le texte d'Aristote. L'habitude de la vertu et l'acte de vertu sont dans une relation circulaire : des actes vertueux sont nécessaires pour former une habitude vertueuse, et pourtant on ne peut pas agir vertueusement sans l'habitude vertueuse. L'argument de Guiral semble ici être d'une circularité similaire : la justice est la vertu qui ordonne à l'homme d'agir avec justice, et pourtant elle est causalement postérieure à la notion mentale de ce qui est juste et à l'acte extérieur de *iustificatio*. On peut proposer ici deux issues possibles à l'apparente circularité de l'analyse de Guiral. La première est le volontarisme de Guiral, la seconde l'extériorité du précepte.

Aristote a peut-être voulu que la vertu de la justice soit d'abord ordonnée aux affaires extérieures de l'homme, une sorte de correction qui ramène l'extérieur désordonné et disproportionné au moyen vertueux. Guiral, cependant, reconstitue la notion de justice d'Aristote en une conséquence combinée de la commande extérieure de l'*ius* et du processus interne de cognition et de volition.

L'acte extérieur n'est qu'une étape finale de la chaîne cognitive, un résultat de la justice interne. En ce sens, Guiral fournit une plate-forme psychologique pour le concept de justice d'Aristote - la justice prend le commandement du *ius* et le transforme en un acte raisonné et volontaire.

Après avoir exploré le processus cognitivo-volontaire de l'*iustum*, nous devons maintenant approfondir le concept de *ius*. Sur le plan lexical, Guiral offre une distinction claire et cohérente entre les termes de *ius* et de *lex*. Guiral utilise le *ius* pour désigner le concept et l'ensemble du droit, les normes et ordres abstraits qui régissent à la fois l'univers et les actes humains, ainsi que l'idée de ce qui est juste et droit. Guiral fait une distinction claire entre le droit sempiternel ou inné chez les hommes - *ius*, et la loi qui est posée par une autorité législative - *lex*. *Ius* est peut-être le terme général pour le droit, mais *lex* est spécifiquement quelque chose qui est posé à un moment précis dans le temps, avec une détermination contingente, pour la gouvernance d'une juridiction particulière. Non seulement la *lex* est différente du droit naturel, mais on s'attend également à ce qu'elle s'en écarte.

Guiral comprend le droit naturel d'une manière qui intègre l'idée des juristes romains tout en tenant compte du rôle de la raison divine et humaine. Le droit naturel doit être considéré de trois manières. Premièrement, dans son sens le plus large, c'est la loi divine suprême qui régit tous les êtres vivants et inanimés. C'est la raison première de toutes choses, et le droit que Dieu a fait, et avec lequel Dieu gouverne l'univers. Dans le second sens, le droit naturel est ce qui est enseigné par l'instinct naturel de tous les animaux. Dans le troisième sens, le droit naturel est le jugement de la raison humaine, qui comprend le *ius gentium*, assimilé au concept de Paul de la loi écrite dans le cœur des hommes.

Guiral n'explique malheureusement pas explicitement comment les trois sens du droit naturel sont entrelacés les uns avec les autres, comme le fait Thomas d'Aquin avec la relation entre la loi éternelle, la loi naturelle et la loi humaine. Pourtant, Guiral présente un ordre de droits naturels, allant de la plus large et la plus universelle, c'est-à-dire le droit divin éternel, au plus limité et au plus particulier, c'est-à-dire le jugement de la raison humaine. La raison divine régit l'univers dans son ensemble, y compris toutes les créatures rationnelles qui le composent. Par conséquent, on peut considérer le droit humain comme naturel, étant une simple détermination plus particulière du droit divin dans le contexte de la vie sociale et morale de l'homme. Pourtant, Guiral accorde une plus grande importance subjective au jugement de la raison. Par rapport à l'argument de Thomas selon lequel le droit naturel est la participation de la raison humaine à la provenance

divine, Guiral ne le considère pas comme étant simplement "imprimé" aux hommes par la raison divine. La raison humaine joue au moins un rôle participatif dans le processus cognitif.

On suppose que toutes les lois, qu'il s'agisse du droit civil, du droit naturel, du droit divin ou de toute autre nomenclature, supposent toujours et nécessairement un législateur. Cela soulève une question sur la nature de ces actes législatifs : si l'on pose des lois, comment concilier l'universalité des lois éternelles et naturelles avec l'acte contingent de légiférer ? Bien que Guiral soutienne la primauté de la volonté et sa liberté absolue dans la volition et la nolition, il soutient que les vertus, tout en résidant dans la volonté, ne peuvent agir sans raison. Cela l'éloigne certainement d'une théorie de la contingence radicale de la volonté, et peut également souligner une thèse de l'universalité et de la nécessité morale du droit naturel.

Par conséquent, on peut conclure avec certitude que dans la distinction faite par Guiral entre les lois ante-positives et post-positives sous la forme du *ius naturale* et du *ius legale*, alors que le second est clairement posé et promulgué par des autorités législatives bien définies, le premier a néanmoins de fortes caractéristiques positives. La différence entre les deux corps de droit n'est donc pas leur positivité ou leur absence de positivité, mais plutôt leur universalité et leur particularité respectives. Le *ius naturale*, bien que proposé par Dieu et la nature, avec la participation de la raison humaine, a une force morale intrinsèquement universelle, avec ou sans institution humaine. Le *ius legale*, cependant, tire sa force contraignante exclusivement de l'acte législatif, qui ne peut transcender la société humaine particulière d'où il est issu, et reste donc limité dans sa portée et sa force.

Comme Guiral définit le *ius legale* avec sa positivité, il est intéressant d'examiner les différentes autorités législatives. Nous avons déjà considéré Dieu comme le donateur des préceptes normatifs universels de du droit naturel, et le pouvoir législatif de Dieu s'étend clairement au-delà de l'établissement de ces préceptes universels et dans le domaine des lois qui concernent des communautés humaines particulières. La taxonomie du droit civil de Guiral est le résultat de la combinaison des divisions des juristes que l'on trouve dans le *Codex* de Justinien et de la typologie des formes de structures politiques d'Aristote. Cependant, Guiral ne semble pas partager la possibilité théorique d'une pluralité de pouvoirs législatifs dans une cité donnée, et attribue un type de droit civil à chacune des formes de gouvernement proposées par Aristote, au lieu des institutions législatives co-extensives telles que décrites dans le droit romain. Par conséquent, on peut considérer la notion de pouvoir législatif de Guiral comme quelque peu souverainiste, où il y a une

autorité législative suprême au sein d'un organe politique. Cette pensée est certainement conforme à l'idée que Guiral se fait du système de droit naturel, où il n'y a finalement qu'une seule source de législation sous la forme de Dieu.

S'il est clair que Guiral envisage une source bien définie d'autorité politique et législative au sein d'un État donné, organisé en une structure de pouvoir unitaire avec une source unique de législation, on peut néanmoins se demander d'où le droit tire sa force et comment cette force contraignante du droit se concrétise. Une interprétation serait que Guiral assimile la source du droit à la force du droit dans une structure positive absolue. Mais une telle thèse de la simple positivité conduirait à deux défis. Le premier est la nécessité d'une enquête plus approfondie sur le pouvoir et la légitimité de l'autorité législative - puisque le droit tire sa force simplement du fait qu'il est posé, la question serait alors de savoir d'où vient le pouvoir du législateur. Cette question concerne le pouvoir du prince. Le deuxième défi est de savoir si une telle loi est intrinsèquement contingente et arbitraire, sans nécessité sous-jacente et sans force morale intrinsèque ? En d'autres termes, comment le droit positif se rattache-t-il aux préceptes nécessaires du droit naturel ?

La théorie de Guiral sur le droit positif humain attribue un pouvoir législatif souverain au prince, qui est libre de faire la loi comme il l'entend. Cependant, quelques dispositions lient effectivement ce pouvoir législatif contingent à la généralité et à la nécessité du droit naturel. En premier lieu, le prince qui gouverne un État est nécessairement un homme vertueux. Ainsi, en tant que *ius animatum*, le prince fait des lois en tant qu'expression de sa vertu. Dans la question 5, Guiral pose que la justice légale est *essentiellement* la même que la somme de toutes les vertus morales, et que les lois faites par le meilleur homme de la cité sont l'expression de la raison de sa prudence. Un prince détermine la loi par l'utilisation de sa raison pratique. Cela assure certainement qu'aucune loi n'est contingente au sens absolu du terme - au contraire, elle est déterminée par une habitude de l'intellect pratique qui discerne les besoins et nécessités particulières requises par des situations particulières. Cependant, Guiral laisse encore un degré considérable de liberté législative : la vertu de prudence est la perfection de l'intellect pratique qui travaille étroitement avec la volonté contingente et n'est pas contrainte par les raisons universelles. Par implication, les lois faites par le souverain prudent et vertueux seraient informées par la raison et les exigences universelles du droit naturelle, ainsi que déterminées librement par la volonté par le biais de la raison prudentielle.

Guiral illustre encore sa théorie des relations entre le droit naturel et le droit humain dans sa question sur le rôle directif de la vertu de l'équité sur le droit naturel : la vertu de l'équité dirige-t-

elle le droit naturel ? Il fait ici une distinction entre deux types de droit naturel. L'un est immuable et inviolable, ce sont les préceptes et les interdictions du droit naturel. L'autre est mutable et remplaçable, ce sont les conseils, les concessions et les autorisations du droit naturel. Par conséquent, alors qu'aucune loi humaine ne peut licitement contredire les parties préceptives du droit naturel, les parties permissives, concédantes et conciliantes du droit naturel ne sont pas déterminées davantage par la loi humaine pour les détails, mais sont au contraire mutées, corrigées ou remplacées.

En ce sens, à l'exception de la partie du droit positif qui confirme et légalise ce qui est commandé et interdit par le droit naturel, le droit positif humain n'est que vaguement lié au droit naturel. Bien qu'il soit guidé par la raison et la morale, le législateur est en fin de compte libre de légiférer d'une manière ou d'une autre sur les actes humains qui se trouvent dans le terrain intermédiaire entre ce qui est intrinsèquement bon et ce qui est intrinsèquement mauvais. Néanmoins, cela doit être compris dans un contexte plus large où Guiral est intrinsèquement sceptique quant à l'efficacité du droit positif pour gouverner une société civile avec justice et pour cultiver des citoyens vertueux. Alors que la vertu de l'équité dicte que le droit naturel doit être modifiée et remplacée par le droit positif humain aux fins de la justice et du bien commun, la vertu de l'équité dicte également que le droit humain doit être mis en sourdine ou simplement mis de côté lorsque l'adhésion aux préceptes artificiels du droit humain violerait la justice. Les principes préceptifs et prohibitifs du droit naturel reviennent pour limiter et corriger l'exercice du droit positif humain. La boucle est bouclée. Au centre de la relation entre le droit naturel et le droit humain se trouve la vertu d'équité, exercée par l'homme équitable. Après tout, l'homme en tant qu'agent moral libre est le sujet principal (*subiectum primum*) de cette enquête de la science morale, et l'homme est la source de tous les actes moraux. Pour Guiral, au lieu de former sa propre discipline scientifique indépendante régie par des principes premiers différents, la discussion des lois et de la justice légale relève résolument de l'éthique. Dans l'analyse du droit par Guiral, c'est finalement la personne juste et prudente qui fait et administre la loi, dans la poursuite de la justice et du bien commun.

III. La justice légale

La positivité absolue de la loi humaine et sa relation ténue avec le droit naturel font qu'il n'y a pas d'association nécessaire entre la morale du droit. Cela remet clairement en question l'affirmation

d'Aristote selon laquelle la justice légale est la vertu complète. Comment Guiral résout l'apparente contradiction qui fait l'objet de notre enquête dans ce chapitre. Pour être une vertu complète, la justice légale doit transcender le droit humain, car le droit positif humain est inévitablement limité, et ne doit pas être utilisé comme une norme infaillible pour la justice. Ici, l'idée de justice légale joue un rôle essentiel pour relier le droit naturel et le droit positif, pour faire de l'homme un être parfaitement vertueux et pour assurer l'administration de la justice.

Ce qu'Aristote entend par l'identification de la justice comme la vertu complète peut être compris sous deux angles. Premièrement, il envisage clairement un système de droit idéaliste et inclusif qui touche à tous les aspects de la moralité et qui cultive des citoyens vertueux par ses commandements et ses interdictions. Ainsi, le droit est l'équivalent de la totalité de la moralité, réglementant chaque aspect de la vie de l'homme. La deuxième perspective vient du naturalisme politique d'Aristote. L'homme est naturellement un animal politique, et doit donc être compris dans un contexte social et politique. La justice est la vertu qui guide l'homme dans sa vie sociale et politique dans ses rapports avec les autres, et par conséquent c'est la vertu complète car on ne peut devenir pleinement vertueux qu'en participant à la vie sociale et politique de la cité.

Guiral tente de combler les vides laissés par Aristote en reformulant à la fois le concept de *iustitia* et de justice légale tout en restant fidèle aux grandes lignes des idées d'Aristote. Guiral aborde le concept de justice légale sous trois angles : en quoi la justice légale est différente de la justice particulière, en quoi elle est identique à d'autres vertus morales et en quoi elle est différente de ces vertus morales en ce qu'elle est ordonnée envers autrui. Dans la question 3 du livre V, Guiral suit Aristote, et divise la justice en légalité (*legale*) et en équité (*equale*), cette dernière étant également assimilée par Guiral au concept de justice particulière d'Aristote, et ils deviennent synonymes dans ce texte de commentaire. Guiral postule que la justice légale, plutôt que d'avoir son propre objet, prend pour objet tous les actes justes de toute vertu, tandis que pour la justice particulière, l'objet est limité à ses propres actes. Ainsi, la justice légale est une vertu générale qui régule et ordonne toutes les autres vertus, puisqu'elle prend pour objet les actes de ces vertus ; la justice particulière, en revanche, est une vertu spécifique, avec ses propres actes, de la même manière que la tempérance et la force d'âme sont des vertus spécifiques à part entière.

Par conséquent, on peut dire que la justice est la vertu totale en ce qui concerne son objet. Cependant, la question se pose de savoir comment la justice légale peut avoir pour objet les actes de toutes les vertus morales sans remplacer essentiellement ces vertus. Sur ce front, Guiral propose

deux solutions. La première est que la justice légale est unique dans la mesure où elle est intrinsèquement ordonnée envers autrui, alors que les autres vertus ne peuvent être considérées comme ordonnées envers autrui que *par accident*. L'autre, que des vertus morales particulières rendent une personne plus parfaite avec une intention correcte et un appétit mieux ordonné.

Pour Guiral, cependant, la justice légale va bien au-delà des limites et de la portée du droit positif humain. Étant donné que toutes les vertus morales sont capables d'être ordonnées envers autrui de manière complexe et subtile au-delà du simple fait d'*agir sur un* autre, et que c'est dans cette complexité des relations interpersonnelles au sein de la communauté politique que l'on a besoin de la justice légale pour réguler de telles relations altruistes. La justice légale est la seule vertu qui soit ordonnée à l'égard d'autrui dans son essence même. Une vertu en *tant que* vertu n'a que les actes vertueux et le bien du sujet-agent vertueux lui-même, mais une vertu en *tant que* justice est une vertu qui cause non seulement le bien du sujet-agent lui-même, mais aussi le bien et la perfection d'autrui.

La justice légale est orientée vers le service d'autrui, de la cité et du bien commun, et est donc plus noble et plus splendide que la vertu en *soi*. Il convient toutefois de noter que la supériorité de la justice légale ne la rend pas quantitativement ou qualitativement supérieure à la vertu agrégée, et que le fait que la justice légale serve le bien commun ne porte pas atteinte à son identité avec la vertu agrégée. Comme le fait remarquer Guiral, un citoyen au service de sa cité est le même être que l'individu qui se perfectionne. À cet argument, Guiral ajoute que la justice légale ne fonctionne pas avec une raison différente de celle de la vertu agrégée. Ainsi, la justice légale ne devrait pas être comprise comme la somme de la vertu agrégée plus le bien commun, où l'implication serait que la justice légale a une raison supplémentaire du bien commun dans ses œuvres. Au contraire, la perfection du citoyen est "plus ample dans l'habitude et la noblesse" (*amplius in habitudine et nobilitate*). Comme Guiral l'a affirmé à maintes reprises, la distinction découle simplement de leur orientation respective.

Dans cette optique, nous devrions enfin en arriver à la relation entre la justice et le droit. Guiral affirme clairement que la justice légale n'est pas simplement l'obéissance à la loi, bien que cette obéissance puisse venir de l'amour du bien commun. Au contraire, la portée et l'étendue de la justice légale vont bien au-delà du champ d'application de la loi. Comme nous l'avons vu plus haut, la justice légale est la justice qui prend pour objet les actes de toutes les autres vertus morales, et elle est la somme de toutes les vertus morales, ordonnées les unes envers les autres, et par

conséquent, envers le bien commun. Elle traduit le précepte du *ius* par la cognition et la volonté internes de l'homme en un acte juste externe. En d'autres termes, c'est la vertu de toute la moralité, comprise lorsque la moralité concerne les autres.

Alors que la loi commande l'obéissance par sa force coercitive, un individu n'acquerrait la vertu d'obéissance à la loi que par son acte d'observation de la loi. La vertu parfaite de la justice légale n'obéit pas à la loi simplement parce que la loi commande l'obéissance, mais obéit à la loi dans le respect de l'intention du législateur. Guiral ne nie pas la valeur de la loi. Au contraire, la vertu de la justice légale permet à l'homme d'utiliser sa raison et sa prudence pour juger ses actions dans l'intention de la loi, plutôt que de suivre inconditionnellement les lettres de la loi, puisque suivre aveuglément le précepte du droit positif humain équivaut à suivre la raison et la prudence d'une autre personne. Le législateur peut avoir une vertu parfaite en tant qu'individu et en tant que législateur, mais la simple obéissance à ses lois ne favoriserait pas les citoyens vertueux, si ce n'est en leur faisant accomplir des actes vertueux. Dans une *policratie*, la perfection d'un citoyen est formée par sa participation à la gouvernance ainsi qu'à l'obéissance, car la vertu de gouvernance et la vertu d'obéissance sont toutes deux orientées vers le bien commun, et la justice légale ne peut être complète sans l'une ou l'autre.

IV. La justice et l'amitié

Guiral suit Aristote en considérant la justice comme une vertu qui est ordonnée aux autres dans son être formel. Globalement, la justice est une vertu qui est relationnelle - elle rend juste ce que l'on fait lorsqu'une telle action se rapporte à ses semblables. Ainsi, la justice légale devient la vertu totale précisément parce qu'elle a pour matériau ses actions sociétales, tandis que la science morale est sondée à travers le prisme de l'expérience sociale de l'agent moral. La discussion de Guiral sur la justice nous amène donc naturellement à examiner une autre habitude qui ordonne la vie sociale de l'homme : l'amitié. En tant que mode de connexion interpersonnelle, l'amitié fait partie intégrante de la compréhension de la justice et des fondements de l'anthropologie politique. Issu d'un cadre conventionnel au sein d'une communauté très soudée, Guiral a peut-être aussi été influencé dans ses écrits par ses propres antécédents.

Alors qu'Aristote lui-même ne sait pas si l'amitié doit être considérée comme une vertu, pour Guiral, l'*amicitia* est une vertu morale au sens le plus large du terme. Guiral suit Aristote et identifie l'amitié basée sur la vertu comme la forme d'amitié parfaite et sans réserve. Mais sur ce point, Guiral s'écarte considérablement de la compréhension originale d'Aristote. Guiral présente l'amitié dans la perspective d'une expérience sociale subjective, où elle devient la qualité avec laquelle on navigue dans son existence sociétale. Au lieu d'une relation interpersonnelle ou d'un état d'affection, le concept d'amitié de Guiral est celui d'une compétence sociale, une qualité personnelle avec laquelle on devient adepte de la vie en communauté, une vertu avec laquelle on identifie ce qu'il faut faire à l'égard de différentes personnes dans différentes circonstances sociales. C'est une sorte de charisme, ou pour le situer dans le contexte médiéval approprié, une qualité de courtoisie ou une vertu de courtoisie.

Lorsqu'il s'agit d'examiner les écrits de Guiral sur l'amitié, plusieurs problèmes se posent, et ils tournent tous autour du fait que Guiral ne soulève aucune question dans le livre VIII, où Aristote lui-même pose les bases concernant l'amitié. Il en résulte une collection d'écrits incomplète, ou du moins déséquilibrée, qui n'aborde pas pleinement les questions qui préoccupent communément ses collègues commentateurs. Guiral pose une question sur la relation entre l'amitié et la vérité dans le livre I (Question 15 : *Utrum veritas sit praeferenda amicitiae*), une question sur le statut de l'amitié en tant que vertu dans le contexte du livre IV (Question 39 : *Utrum habitus medius inter placiditatem et discoliam, quem Philosophus vocat amicitiam, sit virtus*), et une série de questions concernant les obligations de l'homme envers diverses personnes dans le livre IX. Par conséquent, ce qui manque, ce sont des réponses directes aux notions clés de l'amitié aristotélicienne selon les livres VIII et IX - l'amitié comme relation interpersonnelle construite avec amour sur un fondement d'utilité, de plaisir et de bien. Dans l'exposition littéraire qui suit le texte d'Aristote, en revanche, Guiral dit très peu de choses en plus de ses paraphrases et de son explication de la structure de l'argumentation. Il résulte de cette approche déséquilibrée que Guiral présente le concept de l'amitié comme une vertu exclusivement sociétale, basée sur l'expérience subjective d'une personne qui navigue dans sa vie commune, un peu comme l'approche adoptée par Thomas dans sa lecture de *amicitia ut affabilitas*. Ce qui suit dans le livre IX est donc une complexité d'obligations qui est commandée par la vertu de l'amitié concernant différentes personnes dans diverses circonstances sociales.

Nous devons commencer par nous pencher sur la façon dont Guiral considère l'amitié comme une vertu. Au tout début du commentaire de Guiral, l'amitié est citée comme l'un des biens principaux

de la vie de l'homme considéré comme un être social. Dès le début, on constate que Guiral ne partage pas la préoccupation de ses prédécesseurs de définir de façon étroite la vertu morale qui ne concerne que l'individu lui-même. Au contraire, les vertus morales, tout comme l'amitié, sont toujours sociétales et interactives.

La vertu de l'amitié est donc la perfection de la communication sociétale de l'homme. La communication des actes et des discours est une nécessité pour la vie civique de l'homme, et il faut une vertu pour la perfectionner. C'est pourquoi Guiral décrit une vertu qui dissipe à la fois la flatterie et l'agressivité, qui se situent aux deux extrêmes de l'aptitude sociétale de l'homme. Si elle concerne la relation d'une personne avec une autre, c'est fondamentalement une vertu prise du point de vue de l'agent moral sur le comportement approprié et agréable qu'il doit adopter envers les autres. L'*amicitia*, au lieu d'être une amitié, devrait plutôt être perçue comme une "amabilité".

Ce qu'il est important de noter, c'est que lorsque Guiral parle de *curialitas*, il la présente comme la capacité de vivre et de converser avec qui que ce soit (*quibuscumque*) - l'*amicitia* n'est pas seulement la capacité d'être agréable et plaisant à un roi ou à un seigneur, mais aussi l'aptitude sociétale au-delà de la cour. Dans l'ensemble, l'*amicitia* est une vertu sociétale complète - bien qu'elle soit particulièrement appréciée dans une atmosphère de cour, c'est une vertu générale qui est nécessaire à la vie sociétale de chaque homme. C'est pourquoi Guiral comprend l'amitié comme une vertu d'aptitude sociétale plutôt que comme un amour de la vertu et du bien.

Pour les Guiral, l'amitié implique également une série d'obligations, qui découlent finalement de la notion de *ius*. Si l'on cherche à agir vertueusement dans l'amitié, on se tourne inévitablement vers les exigences de la justice, qui est la vertu qui s'ordonne envers les autres. Guiral déploie le langage du *ius* et du *debitum* pour décrire l'obéissance et les honneurs dus dans diverses relations sociétales, et inscrit ainsi l'*amicitia* dans le cadre plus large de la discussion sur la justice. Guiral soutient que l'obéissance au prince dans les affaires civiques est plus grande que l'obéissance au père dans les affaires familiales, parce que la justice de la cité est plus grande que la justice de la famille. Il serait très intéressant de voir Guiral présenter une discussion détaillée sur la relation entre l'amitié et la justice. Cependant, un tel texte ne se trouve ni dans les questions soulevées, ni dans l'*expositio* littéraire. Mais d'après ce que nous savons, il semble peu probable que Guiral soit d'accord avec la lecture moderne selon laquelle la *philia* d'Aristote complète et va au-delà de la vertu de la justice - au contraire, pour Guiral, l'*amicitia* est une facette de la justice. Elle ordonne l'interaction sociétale d'une personne avec les autres, en ce qui concerne divers types de relations

sociétales. Tout comme la justice, l'*amicitia* concerne la vie sociale de l'homme, sa juste *communicatio sermonum et rerum*, et sa juste et consciencieuse distribution de l'obéissance, de l'honneur et des bienfaits.

L'amitié de la vertu est une espèce spéciale d'*amicitia*, dont l'importance mérite la plus haute obligation de participer aux parties. Cependant, dire cela n'est pas ignorer les contradictions évidentes dans les écrits de Guiral. Si l'on laisse de côté la possibilité d'une deuxième façon de lire l'*amicitia* comme une relation personnelle, par opposition à une aptitude sociétale, le fait de lier l'amitié à l'obligation amène à la conclusion contradictoire que, puisque l'ami de la vertu est simplement la relation sociale qui apporte le plus et le plus pur bien, on a alors la plus grande obligation envers cet ami par rapport à n'importe qui d'autre - par rapport à son père, son prince, etc. Toutefois, comme l'a établi Guiral dans les questions 2 à 4 et 8, les obligations envers les différentes parties sociales sont distinctes les unes des autres. Cette distinction n'est pas ancrée dans une hiérarchie du bien, mais plutôt une reconnaissance de la complexité des relations sociétales, où l'on doit se fier à son jugement pratique et à sa prudence pour délimiter son débit exact. Une telle contradiction découle évidemment du manque d'écrits détaillés et systématiques de Guiral sur la notion d'amitié en tant que relation interpersonnelle fondée sur la délectation et l'affection.

Pourtant, même avec un ami de la vertu, on a toujours une plus grande obligation envers la vérité. Dans la question 15 du livre I, où Guiral demande si la vérité est préférable à l'amitié (*utrum veritas sit praeferenda amicitiae*), il oppose les exigences de l'amitié à l'obligation de vérité de l'homme, et soutient fermement que l'obligation de vérité doit toujours prévaloir sur l'obligation d'amitié. Cette obligation de vérité doit être comprise comme une obligation de justice. Pour la préservation de la vérité au détriment de l'amitié, on porte un jugement pratique sur une action qui en concerne une autre. On peut en effet considérer l'obligation de vérité comme faisant partie du diktat de l'*amicitia* - personne ne peut vraiment posséder la vertu de courtoisie et d'urbanité sans s'accrocher au principe moral de *veritas*, et Guiral déclare que "l'amitié avec la vérité est préférable à l'amitié avec les gens". Certes, la bonté de la vérité transcende le besoin d'aptitude sociétale et d'éthique sociale de l'homme, mais cela ne signifie pas pour autant que l'obligation de vérité doive priver l'homme de sa vie sociale. Le renoncement à la vie sociale pour la vérité contemplative n'est pas une thèse que Guiral souhaite faire avancer - en effet, comme nous l'avons établi jusqu'à présent, la vie sociale est au centre du bien morale de chacun. L'argument de Guiral est tout à fait contraire - la discussion sur la supériorité inviolable de la vérité est fermement ancrée dans un contexte

sociétal, et chaque action que l'homme entreprend pour préserver ou miner la vérité est prise en relation avec une autre. L'obligation de vérité défend en fait un principe de la vie sociale de l'homme, à savoir que la vérité devrait toujours prévaloir, quelle que soit la capacité de sociabilité et l'obligation de chacun envers les relations sociales. C'est dans ce sens que nous devrions comprendre cette obligation de vérité comme faisant partie de l'exigence plus large de justice, puisque la vérité, tout comme la justice, ne concerne pas seulement le moi, mais aussi l'autre.

On ne peut jamais savoir à quel point l'expérience personnelle de Guiral au sein de l'Ordre franciscain a façonné ses écrits sur l'amitié. Dans les communautés étroitement liées des couvents et des *études* franciscaines et dans l'environnement plus vaste, beaucoup plus diversifié et plus mondain de l'Université de Paris. Que ce soit parmi les Franciscains ou au sein de l'Université de Paris, Guiral se trouve dans un milieu imprégné de l'apprentissage des classiques profanes et de la théologie, entouré de chercheurs presque toujours d'origine bourgeoise ou aristocratique. Il n'est pas difficile d'arriver à une notion d'*amicitia* englobant urbanité, courtoisie et de solides principes moraux.

Guiral laisse de nombreux aspects de la discussion d'Aristote sur l'amitié sous-explorés, et présente à ses lecteurs une *amicitia* fortement biaisée vers celle d'une aptitude sociétale. Aristote considère la *philia* comme un bien au même titre, sinon plus, que le bien engendré par la vertu et la justice, car il est inhérent à la nature humaine de vivre sa vie en société, d'implorer les autres avec affection et de les aimer pour leur bonté. Guiral, en revanche, passe sous silence des éléments essentiels de la *philia* d'Aristote comme l'égalité, l'affection, l'exclusivité, etc. et présente l'*amicitia* comme une vertu nécessaire à la vie sociale, car - notez le double négation de Guiral - personne ne peut vivre en dehors de la société. L'*amicitia*, bien que nécessaire et fondamentale pour la subsistance de l'homme, en particulier dans sa *communicatio sermonum et rerum*, ne parvient pas à transcender la limite de la nécessité morale pour atteindre les niveaux supérieurs de plaisir et de bonheur de la *philia* voulus par Aristote. L'*amicitia* de Guiral se manifeste comme une capacité cognitive à agir sur la courtoisie et l'amabilité d'un individu, et sur ses obligations sociétales qui, ensembles, construisent et maintiennent le réseau social de l'homme.

Guiral ne suit pas le précédent établi par les commentateurs aristotéliens précédents en distinguant deux lectures de l'amitié ou en distinguant l'amitié de la charité. Au contraire, notre maître franciscain semble confondre *amicitia* et *caritas*. Il ne s'agit donc pas d'un habillage théologique de la discussion sur l'*amicitia*, mais plutôt d'une élaboration philosophique des enjeux

théologiques. La charité est comprise comme de l'amitié, plutôt que l'inverse. Dans l'ensemble, le *Doctor moralis* présente l'*amicitia* comme une vertu morale pour la vie sociale de l'homme, mais aussi comme un conduit par lequel la bonté de l'amitié dans cette vie peut être canalisée vers la vertu théologique de la charité avec la grâce divine de Dieu.

V. Une cité doit être gouvernée par des meilleure lois ou par des meilleurs hommes

Il ne fait aucun doute que l'amitié occupe une place primordiale dans le schéma de gouvernance civique d'Aristote. Aristote juxtapose et compare la *philia* avec la justice, mais ce qui nous intéresse, c'est une construction plus large de cette dichotomie sous la forme d'une question sur le mode de gouvernance - un État est-il mieux gouverné par les forces exhortatives des vertus et des obligations morales, ou par les forces coercitives du droit ? Puisque la notion de justice légale de Guiral dépasse le cadre du droit positif humain et s'étend à l'ensemble de la morale humaine et à l'agrégation des vertus morales, il devient intéressant de voir comment Guiral compare le système des lois avec le système de la morale subjective et de la justice morale. Ce chapitre s'intéresse à la question de Guiral qui est de savoir si une cité doit être gouvernée par les meilleurs hommes ou par les meilleures lois (Livre V, Question 11). L'enquête se poursuivra dans le chapitre suivant, où nous explorerons la compréhension qu'a Guiral du rôle de l'édifice juridique dans la poursuite de la justice et du bien morale.

Pour bien comprendre la position de Guiral, il est nécessaire d'expliquer ce qu'Aristote pense du rôle du droit par rapport à la gouvernance de l'homme dans une communauté politique. Pour Aristote, les lois sont un instrument d'égalisation qui corrige ce qui est mauvais ou inégal dans les transactions de la société. En tant que tel, la fonction des lois est presque purement mathématique. Dans sa discussion sur la justice réparatrice, Aristote attribue aux lois la fonction de rétablir une égalité *quantitative* où l'inégalité résulte des interactions des hommes entre eux.

Bien que la question se pose à partir d'une lecture de la théorie d'Aristote sur la justice rectificative, Guiral propose une analyse qui va bien au-delà des questions soulignées par le concept d'Aristote sur le rôle de la *lex* d'égaliser les inégalités et celui du juge d'assurer l'égalité devant la loi. Par rapport à ses prédécesseurs, Guiral présente ici l'un des examens les plus complets et les plus approfondis des problèmes qui se posent, et propose une solution qui non seulement favorise une

règle du meilleur homme - doté de *potentia*, *prudentia*, *iustitia* - mais qui accorde également au dirigeant un pouvoir et une autorité immenses qui dépassent de loin tout ce qu'ont imaginé les auteurs précités. En abordant la question, le lecteur doit toujours noter que Guiral s'interroge en effet sur la gouvernance de la *lex*, un terme constamment utilisé par Guiral pour désigner le droit positif humain. Ainsi, la perspective offerte par la question est bien sûr limitée, et la relation entre l'Etat de droit et la gouvernance par des hommes doit à son tour être comprise dans la discussion plus large entourant les concepts de loi et de justice.

Guiral commence la question 11 en passant en revue les arguments en faveur de l'État de droit, et présente une synthèse exhaustive des articles de la plupart des traditions juridiques de son époque. Toutefois, comme c'est le cas pour Guiral, aucune autorité contemporaine n'est citée, bien que nombre des arguments énumérés dans la question 11 soient également utilisés par d'autres scolastiques, notamment Thomas et Auvergne. Au lieu de cela, Guiral prend les références directement des sources anciennes d'Aristote, de la Bible, de Papias et de l'*Authentica*.

Au total, en limitant la discussion à la *lex* - le droit positif légiféré par les autorités humaines, il y a beaucoup d'incohérence et de circularité dans l'argumentation. Bien que Guiral fasse fréquemment appel à l'autorité d'Aristote, cette lecture de la supériorité du droit est dans son essence même une thèse avec l'hypothèse des péchés et de la faiblesse de l'homme dans le contexte du christianisme avec une forte touche d'augustinisme. La primauté du droit est préférable en raison de son inhumanité, et pourtant l'essentiel est que *la lex*, selon sa propre définition, du moins selon Guiral, est intrinsèquement humaine. Elle est un instrument fabriqué par l'homme et hérite donc des nombreuses imperfections de l'homme. Bien que la loi, une fois légiféré, puisse être autonome et régir avec compétence, il nécessite néanmoins une magistrature humaine et doit inévitablement se différencier du jugement humain en raison de son universalité, qui est une imperfection en soi. L'idée de Saint Paul de la gouvernance de la loi de Dieu est donc certainement incompatible avec le cadre de la présente discussion, car la loi divine n'est pas légiférée par l'autorité humaine. Par conséquent, l'Etat de droit, quelle que soit la puissance qui lui est accordé, est finalement humaine et ne peut jamais perdre son humanité. La solution d'Aristote au problème est que la loi, en tant que raison de la multitude, est moins faillible que la raison d'un ou de plusieurs individus, et pourtant ce point n'est pas reflété dans le résumé de Guiral. Pierre d'Auvergne et Raoul le Breton ont tous deux concédé que l'État de droit n'est qu'un meilleur arrangement *par accident*, une solution expéditive aux imperfections des hommes, dont la règle, dans un monde

idéalisé, est intrinsèquement meilleure. Guiral est pleinement conscient de ce problème et l'aborde de manière approfondie dans sa *solutio*.

Après avoir passé en revue de manière approfondie les arguments qui plaident en faveur de l'État de droit plutôt que le droit des hommes, Guiral présente ensuite sa propre opinion au débat dans sa *solutio*. Guiral inscrit sa discussion dans un cadre précis : la supériorité de la loi ou de l'homme est déterminée uniquement sur la question de savoir lequel est plus efficace pour atteindre la finalité de l'État - avoir des citoyens justes, prudents et bons. La gouvernance par de meilleurs hommes est plus opportune que celle par des lois, et Guiral commence par poser deux thèses qui répondent largement aux objections énumérées au début : les lois sont des mots morts écrits sur une peau morte, mais l'homme est vivant et est donc plus apte à gouverner les êtres vivants ; l'homme est la cause du droit, et la cause a plus de puissance et d'efficacité que son effet lorsqu'ils sont ordonnés au même but.

Le but de la gouvernance étant clairement définie, Guiral oriente ses arguments de manière astucieuse pour démontrer la supériorité de la règle du meilleur homme dans la réalisation de cette fin. En premier lieu, les meilleurs hommes sont plus puissants (*potentior*) que la meilleure loi pour faire de bons citoyens. Guiral est pleinement conscient que le pouvoir de la gouvernance ne se limite pas seulement à la force coercitive, mais à la capacité de faire en sorte que d'autres personnes réalisent volontairement les choses prévues par les dirigeants. La force coercitive et l'obéissance seules ne font pas de bonnes personnes ou de bons citoyens, mais seulement la vertu de l'obéissance légale. Il est de la plus haute importance que les citoyens agissent vertueusement de leur propre chef. La gouvernance de l'homme, qui est avant tout *ius animatum*, est profondément plus puissante que la loi dans son amour, ses exhortations et son exemple.

Le deuxième et le troisième thème de Guiral en faveur de la gouvernance de l'homme est que la gouvernance des meilleurs hommes dépasse l'État de droit dans sa prudence et sa justice. En tant qu'être vivant, le *ius animatum*, un souverain juste a la justice non seulement dans sa raison et ses préceptes, mais aussi dans ses actes, ses choix et ses volitions. Comme Guiral l'a établi ci-dessus, la justice n'est pas seulement les actes extérieurs, mais un processus cognitif complet. Par conséquent, un homme juste est juste tout au long de la chaîne cognition-action : il doit non seulement recevoir et comprendre le précepte de *ius*, mais aussi vouloir activement l'acte de justice et l'exécuter. En revanche, le droit n'est juste que dans sa raison et son précepte. La deuxième partie de l'argument sur la raison pour laquelle l'homme est plus juste repose sur le concept d'équité, une

vertu étroitement associée à la prudence. L'équité permet à l'homme de juger des cas particuliers où la loi échoue, mais la loi, par son universalité et son indiscrimination, est incapable d'être équitable. L'intention de la loi et du législateur est toujours la poursuite de la justice et l'éducation de citoyens vertueux, l'État de droit échouera inévitablement à rendre la justice sans l'équité et la raison prudente du juge humain. Guiral envisage sans aucun doute une gouvernance par le meilleur et le plus vertueux homme le, en supposant que de tels hommes existent, un peu comme dans la manière dont Aristote conçoit la règle absolue des hommes héroïques qui sont prééminents dans leur bien par rapport au reste de la communauté politique.

Pour conclure la discussion sur l'idée de Guiral de la meilleure gouvernance, nous avons tracé un chemin intellectuel d'humanisme éthique qui traverse à la fois le domaine de l'aristotélisme et de la pensée chrétienne augustinienne. Guiral formule sa thèse en termes aristotéliens, identifiant le but de la gouvernance comme étant l'éducation de citoyens bons et justes, dotant la gouvernance des hommes d'une raison, d'une prudence et d'une justice supérieures. Mais en fin de compte, de tels arguments reposent sur des idées profondément chrétiennes de la faiblesse des hommes ainsi que du potentiel infini de l'humanité. Les meilleurs hommes, par la maîtrise de leur passion et la conquête de leurs péchés, sont bien plus vertueux et plus aptes à gouverner que les lois les plus justes écrites par les autorités humaines. Guiral comprend la société humaine et la politique comme une société complexe et contingente, composée d'individus complexes et contingents. Pourtant, elle est fondamentalement compréhensible et gouvernable, non pas par les raisons universelles du droit et de la science, mais par l'humanité même de l'homme.

VI. Le juge et l'ordre juridique

Dans le livre V, question 20, *utrum iudici liceat contra veritatem sibi notam iudicare sequendo proposita et probata*, Guiral demande si le juge peut aller à l'encontre des preuves et des audiences du tribunal et juger en fonction de ce qu'il sait par des moyens extrajudiciaires. La question oppose la "vérité" objective aux informations fournies par les preuves judiciaires. Au départ, il serait utile de comprendre ce que Guiral entend par "vérité" - *veritas sibi nota*, et son antithèse supposée - *proposita et probata*.

Guiral reprend la question du texte d'Aristote, où le Philosophe parle de la justice et de l'injustice du jugement rendu par un arbitre. Un arbitre peut rendre un jugement injuste, soit sciemment, soit par ignorance. Pour Aristote, le raisonnement est assez simple : si l'arbitre rend un jugement par ignorance, alors il ne juge pas injustement en ce qui concerne la justice légale, tandis que s'il rend un jugement injuste en connaissance de cause, alors il a agi injustement. Un arbitre, en tant qu'homme vertueux, sait simplement ce qui est juste et ce qui est injuste, et il agira en conséquence. Pour Guiral, cependant, la question est plus compliquée. Alors qu'Aristote distingue la justice légale et la justice tout court, Guiral distingue de manière correspondante les connaissances acquises par des moyens légaux et les connaissances acquises *simpliciter*. Guiral ne s'intéresse pas au cas où un juge ignore complètement la vérité et rend un jugement injuste ; notre commentateur s'intéresse plutôt au scénario où le tribunal, en tant qu'institution juridique, ignore la vérité, mais où le juge lui-même, en tant que personne privée, connaît la vérité.

Guiral affirme qu'il suit Alexandre de Hales, mais qu'en réalité il occupe une position qui ressemble plus à celle d'Henri de Gand, et qui est contraire à celle de Thomas d'Aquin et des juristes. Cependant, il existe de fortes divergences même entre Guiral et Henri de Gand,. Malgré la différence dans la formulation des questions, Guiral sonde la question avec beaucoup plus de nuances et offre une solution plus systématique que Henri. Par rapport à Thomas qui manifeste une confiance totale dans les institutions juridiques, Guiral occupe apparemment une position anti-légaliste.

Pour commencer, Guiral ne considère pas l'épistémologie juridique comme supérieure à la connaissance et à la vérité acquises par des moyens extrajudiciaires - dans ce cas, la capacité du juge en tant que personne privée. Au lieu de la déférence de Thomas pour le tribunal et l'épistémologie juridique, Guiral ne fait pas la distinction entre les sphères publique et privée, et plaide pour un seul standard - la vérité la plus certaine. Il est peut-être évident que Guiral est avant tout préoccupé par les témoignages trompeurs ou carrément faux, qui pervertiraient la vérité pendant le procès et entraîneraient une peine injuste. Cependant, il convient de noter que la fausseté des témoins n'est pas la seule variable dans une procédure judiciaire qui peut conduire à un jugement pervers. Guiral s'intéresse également à la notion abstraite de l'*ordo iustitiae* dans son ensemble. Les règles et les normes des institutions juridiques ne permettent pas toujours d'obtenir un verdict juste, car elles ne fournissent pas toujours des preuves et une probation du plus haut degré de certitude.

De toute évidence, Guiral est d'accord avec le principe selon lequel la justice doit être rendue par un tribunal, mais il s'écarte radicalement de la position des thomistes en pensant que la poursuite de la justice ne doit pas accepter les contraintes institutionnelles et procédurales du tribunal. Le droit positif et le système juridique n'ont aucune valeur lorsqu'ils peuvent être simplement mis de côté en supposant que le juge prudent et vertueux sait mieux que quiconque. Cependant, le scepticisme de Guiral à l'égard de l'édifice juridique a des racines plus profondes. Le système judiciaire n'est pas une structure autonome parallèle à la morale naturelle et aux préceptes de la vertu et de la justice. Il est profondément enchevêtré avec la société dans son ensemble, tout comme la vie publique de l'homme est inexorablement liée à ses vertus privées. Par conséquent, le système juridique n'est pas imperméable aux interventions et aux orientations du droit naturel, et l'épistémologie juridique n'est pas à l'abri de l'examen des moyens extra-juridiques de savoir. Guiral critique un système judiciaire qui contraint le juge à poursuivre la justice. Au contraire, le juge devrait faire tout son possible pour que la justice soit rendue, malgré les contraintes institutionnelles et procédurales. Les juges sont tenus de respecter la norme unique de la justice, et sont responsables en dernier ressort devant Dieu. Un juge n'est pas une personne ordinaire qui se trouve être chargée d'un devoir public et investie d'une autorité publique ; il est plutôt un membre des *boni viri*, les meilleurs hommes de la société civile, et les parangons de la vertu. Il suffit d'invoquer la question de Guiral qui est de savoir si les meilleurs hommes ou la meilleure loi doivent diriger la cité pour voir la confiance de Guiral dans une politique dirigée par les élites morales.

Une question que l'on peut se poser ici est de savoir si Guiral envisage un certain type d'activisme judiciaire. Bien sûr, notre compréhension de ce terme doit être placée dans une perspective historique - les juges de Guiral sont confrontés à un contexte juridique où les normes judiciaires sont encore en cours d'établissement, et l'arbitrage judiciaire est en concurrence avec d'autres méthodes et autorités arbitraires. Le système juridique est en constante évolution et la philosophie juridique dépend toujours fortement des écrits d'Aristote et des juristes romains. Par conséquent, ce à quoi Guiral est confronté est un édifice juridique en cours de formation. Cela peut aider à comprendre la thèse de Guiral selon laquelle la conscience d'un juge et ses connaissances privées véridiques l'emportent toujours sur les informations provenant des procédures judiciaires.

Cependant, il ne peut pas cacher le fait que, même dans le contexte du quatorzième siècle, la vision de Guiral concernant la discrétion des juges et l'activisme judiciaire est remarquable. Le concept même de "processus judiciaire" est un instrument clé dans la tentative des juristes de la fin du

treizième siècle de limiter le pouvoir absolu du prince et de le soumettre à la loi. Pourtant, pour Guiral, comme pour la plupart de ses contemporains lorsqu'il parle du système judiciaire, le juge n'est pas seulement le prince, mais tous les membres du corps judiciaire. Dans la partie où Guiral propose son *consilium*, il fait la distinction entre les juges de rang inférieur et le prince. Il est conseillé aux juges de rang inférieur de soumettre les affaires à leurs supérieurs s'ils ne peuvent pas juger équitablement les affaires en question. Néanmoins, ils peuvent aussi, à juste titre, ne pas tenir compte des *ordo iustitiae* s'ils estiment que la vérité est contraire à la procédure judiciaire. Le prince souverain, en revanche, est au-dessus de la loi et l'édifice juridique, règne *quasi deus in terris*.

Bien que Guiral soit un défenseur des juges prudents et vertueux, il n'est pas insensible à la possibilité que le verdict d'un juge soit perverti pour diverses raisons. Dans la question 21 du livre V, Guiral demande si un juge corrompu ou un homme qui corrompt le juge commet une infraction plus grave (*Utrum corruptus ferens iniustam sententiam pro parte corrumpente delinquat gravius quam corrumpens*). Encore une fois, ce qui nous intéresse ici, ce n'est pas tant ce que Guiral présente comme sa réponse, mais les nombreuses implications de ses arguments. Guiral offre une réponse extrêmement nuancée, et distingue plusieurs possibilités différentes.

Guiral procède ainsi pour fournir la *solutio*. Tout d'abord, il traite de la peur, arguant qu'un juge corrompu par la peur est plus rachetable et commet une infraction moindre que l'agent de la peur. Un tel jugement est le résultat de deux volontés concurrentes - la volonté du juge et celle de la partie corrompue - et est un mélange de volontariat et d'involontaire. Comme le juge n'a pas une volonté absolument libre en rendant son jugement par crainte de la violence ou de la mort, il ne peut pas être tenu absolument responsable du jugement perverti. De même, le fait que le juge soit corrompu par la crainte de la mort rend véniel son péché autrement mortel. Deuxièmement, Guiral traite de la cupidité et semble impitoyable dans sa condamnation des juges qui commettent des injustices par cupidité. Un juge est le gardien des mœurs humaines et du bien commun, avec le pouvoir de préserver ou de subvertir le bien commun. Un juge qui est corrompu par la cupidité sape tout le bien commun. De même, d'un point de vue juridique, un juge ne peut pas vendre ce qui ne lui appartient pas de droit - en acceptant de l'argent, le juge vend essentiellement un jugement injuste, de manière illicite :

Il convient ici de se demander dans quelle mesure la crainte du désordre civil, ou en d'autres termes, la préservation du bien commun, peut justifier un jugement perverti. Sur cette question, Guiral

semble ambivalent. D'une part, il admet que parfois la nécessité impose de faire le mal, par crainte d'un mal plus grand : il faut faire abstraction des *ordo iustitiae* si cela permet de préserver la vraie justice, l'acquittement d'un coupable est plus saint que la condamnation d'un innocent, etc. D'autre part, Guiral s'oppose avec véhémence à céder au jugement de la foule, et soutient qu'il est impossible de faire quelque chose d'intrinsèquement mauvais d'une manière qui le rende bon et juste. En bref, la nécessité et la peur de la violence et du désordre ne justifient pas ce qui est intrinsèquement injuste, mais peuvent atténuer la gravité du péché. Cependant, si l'on considère le revers de la médaille, le désordre civil est un mal intrinsèque, alors que condamner sciemment un innocent est également un mal intrinsèque. Le bien commun peut être plus grand que le bien privé, mais Guiral insiste également sur le fait qu'un tel jugement est contre l'*amor proximi*, car il sape fondamentalement l'édifice politique sur lequel repose le bien commun. On peut chercher en vain où Guiral trace une ligne claire, car il n'approfondit pas explicitement cette question. Quoi qu'il en soit, Guiral est certainement loin de défendre machiavéliquement des mesures extraordinaires au nom de l'utilité politique et publique.

VII. La justice : Une brève conclusion

Dans la troisième partie, nous avons passé en revue les écrits de Guiral sur la vertu de la justice. Nous constatons que Guiral place l'agent moral individuel au centre de sa pensée morale et au-dessus des contraintes du collectif et de l'institutionnel. Malgré l'affirmation de Guiral selon laquelle toute la philosophie morale d'Aristote est véridique, il contredit à la fois le sens littéral et les intentions d'Aristote sur de multiples points clés. Alors qu'Aristote conçoit la justice comme une vertu qui régule principalement les relations extérieures de l'homme avec les autres et avec la société en général, et comme une force corrective du déséquilibre dans les transactions sociales, Guiral se démarque en considérant la justice plutôt comme une habitude psychologique interne qui se manifeste finalement à l'extérieur par des actions justes ou injustes. Guiral plante fermement la vertu de la justice dans la volonté, qui manifeste la liberté morale et psychologique de l'homme. Ce faisant, Guiral se détache de la tradition franciscaine illustrée par Bonaventure et Duns Scot qui considèrent la justice comme une forme d'amour pour Dieu. Au lieu de cela, la justice en tant que vertu est comprise à travers les termes aristotéliens - c'est l'habitude d'agir de manière juste.

Ce qui est crucial pour comprendre la vertu de la justice, c'est la transformation de la notion externe de droit en une action juste effectuée par l'homme. Comme nous le voyons dans la discussion de Guiral sur le droit naturel, ainsi que sur le droit positif humain, la source du commandement de la loi est toujours externe, mais ce commandement doit être internalisé, compris et transformé en la notion de ce qui doit être fait afin d'accomplir ce commandement. C'est la chaîne cognitivo-active de la justice. La vertu de la justice ne peut exister sans la raison juste, car le processus cognitif d'internalisation du commandement externe implique nécessairement la participation de la raison. Le précepte du *jus* est donc transformé de quelque chose d'externe, impersonnel et universel, en quelque chose d'interne, personnel et particulier. Il incombe alors à la volonté de transformer la notion de ce qui est juste en une action juste. Tout au long de ce processus, bien que la source du *ius* soit externe, la participation de l'agent moral est la force subjective qui permet à la justice de se réaliser - l'homme n'obéit pas passivement à ce qui lui est commandé soit par le droit naturel soit par le droit positif ; au contraire, l'homme participe activement à la chaîne cognition-action de la justice, suscitant à la fois la raison et la volonté d'induire la justice. Par conséquent, ce qui rend l'homme juste en fin de compte n'est pas la force institutionnelle de la loi ou de la raison universelle, mais la force subjective de l'agent moral.

Guiral comprend donc la relation de la justice avec le droit. Le droit dicte l'universel mais la justice se préoccupe toujours du particulier. Cependant, même l'universalité du droit a des origines particulières et contingentes. Guiral montre une tendance indéniable au positivisme juridique dans sa lecture du droit naturel et du droit humain. Bien que le *ius naturel* ait la force du droit avant toute législation humaine, il trouve néanmoins son origine chez l'ultime législateur - Dieu, dont la raison peut être aussi bien universelle que contingente. Guiral ne va pas jusqu'à discuter de la contingence de la Création et des lois qui régissent cet univers créé. Cependant, il fait valoir qu'à l'exception des préceptes et des interdictions qui concernent le bien absolu et le mal absolu, tout le reste du droit naturel peut être dérogé et remplacé par la raison humaine et l'équité. De même, toutes les lois humaines sont positives et contingentes, et peuvent donc être équitablement dérogées et remplacées au nom de la justice et du bien moral. Là encore, nous voyons la force subjective de l'agent moral transcender le cadre institutionnel du droit naturel et de la loi humaine. Alors que le droit naturel est légiféré par la raison de Dieu, le droit positif humain est érigé par le législateur humain, qui est par nécessité un agent moral subjectif avec une volonté de contingence. L'origine du droit positif est l'humanité. Par conséquent, toute loi positive peut être dérogée, corrigée, supplantée ou carrément ignorée par un agent moral subjectif doté de la vertu de justice, d'équité et de raison prudentielle.

C'est pourquoi Guiral soutient que la gouvernance par de meilleurs hommes est supérieure à la gouvernance par de meilleures lois. Contre la sagesse conventionnelle, Guiral présente un cas d'optimisme dans la capacité morale de l'humanité. Pour tous les arguments relatifs au manque d'humanité de lois, la loi est finalement faite par les hommes et partage inévitablement les faiblesses de son créateur. Lorsque la fin d'un État est de cultiver des citoyens justes et vertueux, il est clairement plus efficace et plus valable moralement pour les meilleurs hommes de gouverner les citoyens directement que de gouverner de façon intermédiaire en utilisant les lois comme instruments. La justice de l'homme ne peut être égalée par la justice de la loi, car aucune loi ne peut être intrinsèquement vertueuse puisque la loi ne peut jamais être un agent moral. De même, nous voyons Guiral plaider pour la discrétion personnelle du juge contre les contraintes des procédures juridiques. La justice procédurale, qui est en fin de compte une conséquence de la législation positive, peut être facilement dissoute pour la poursuite d'une justice sans réserve..

L'amour mutuel entre le prince et les citoyens est inhérent à la gouvernance des meilleurs hommes. Bien que Guiral n'oriente pas cette affection mutuelle directement vers le concept d'amitié, un lien social et politique basé sur l'amour est néanmoins l'un des fondements mêmes du schéma moral d'Aristote. L'interprétation de Guiral de l'amitié, tend cependant, vers celle de l'aptitude sociétale. L'amitié est une vertu qui ordonne la vie communautaire de l'homme, la façon dont il doit agir et parler dans les différentes situations sociales. Elle fait donc partie de la justice, dans la mesure où elle se rapporte aux autres. La lecture que Guiral fait de l'amitié doit être comprise comme celle de la "courtoisie", c'est-à-dire un raffinement du comportement et du discours, mais aussi une vie sociale fondée sur des principes moraux solides, suivant une série d'obligations sociales, rendant à chaque partenaire social ce qui lui est dû. La compréhension de l'amitié par Guiral n'atteint pas le sommet de la *philia* d'Aristote, qui soutient mais aussi dépasse la justice. Pour notre commentateur, l'*amicitia* est plutôt une manifestation de la justice, en particulier dans les interactions sociales.

Guiral suit Aristote en confondant la justice légale avec la vertu totale. Cela ne veut pas dire pour autant que l'on peut être complètement vertueux en respectant simplement la loi. Loin de là, Guiral entend que la justice légale soit un reflet humain de l'ensemble du droit - de ce qui est juste. Au lieu de suivre la raison et le jugement des autres, qui est l'obéissance à la loi, l'homme ne peut être juste et vertueux que par son propre moyen. Guiral soutient que la justice légale et la vertu parfaite ne diffèrent en rien d'autres que leur raison formelle - la vertu parfaite concerne le bien de l'agent moral individuel tandis que la justice légale concerne le bien commun de l'État dans son ensemble.

Cependant, cela ne signifie pas que la simple vertu doit être subsumée par la justice légale comme le bien privé est subsumé par le bien commun. Au contraire, Guiral assimile les deux : le bien de l'individu est le même que le bien de la communauté, et la vertu requise d'un bon individu est la même que la vertu requise d'un bon citoyen. Au sein de ces sphères morales inséparables, l'agent subjectif est toujours placé au centre même de la compréhension de l'éthique et de la morale par Guiral.

Ainsi, nous voyons l'humano-centrisme dans la philosophie morale de Guiral. Dans toute la discussion de Guiral sur la justice, les forces morales du droit et des institutions sont toujours secondaires par rapport à l'initiative et à la puissance des agents moraux individuels. La justice ne se trouve ni dans les lois, ni dans les commandements, ni dans l'obéissance, ni dans le fait de faire partie des institutions - on ne peut jamais être juste et vertueux en suivant la raison et la vertu des autres. Au contraire, la justice se trouve en soi, dans le processus psychologique qui consiste à comprendre ce qui est moralement juste et à transformer cette compréhension en un acte juste. Il existe une force morale au sein même de l'humanité.

PARTIE III. LA PRUDENCE

A travers la discussion de Guiral Ot sur les différents aspects de la vertu de justice, nous sommes arrivés à plusieurs conclusions concernant son anthropologie politique. Dans son analyse, il détaille une chaîne cognitive de perception, d'action et d'habitation. Dans un tel processus, l'universel se traduit par le particulier, le général par le contingent. Au centre de cette transformation, se trouve le libre agent moral, qui seul peut juger du particulier et prendre la décision contingente en se fondant sur sa connaissance des commandements universels des principes moraux et de la loi. Guiral fait preuve d'un humano-centrisme dans sa pensée morale, juridique et politique : le commandement externe de *iūs* doit être reçu et compris par l'agent moral avant qu'un acte moral puisse être décidé et exécuté, et dans ce processus, l'homme n'est pas le récepteur passif qui exécute servilement le commandement du droit naturel, divin ou humain - au contraire, il participe à la construction de *iustum* et de *iustitia*. Dans le droit et la justice, l'étape la plus importante se déroule donc au sein de l'agent moral, qui interprète le précepte du droit et le met en pratique dans une circonstance particulière.

Pour Guiral, la réalité des affaires sociales et éthiques de ce monde est infiniment complexe. Il s'agit d'un système de chaos plutôt qu'une structure d'universalité. Par conséquent, une telle réalité exige de l'homme libre un jugement sûr du contingent et du particulier, fondé sur les universels, tout sans être dicté par les universels. Il y a, de manière évidente, un chaînon manquant dans cette transformation d'un commandement extérieur en un acte moral, un mécanisme avec lequel le libre arbitre exécute le principe général et universel en un acte de justice. Le lien sous-jacent est la prudence.

La discussion de Guiral sur la vertu de prudence et les questions annexes démontre une fois de plus la compréhension intime de notre commentateur franciscain du texte d'Aristote ainsi que son originalité intellectuelle. En surface, Guiral poursuit une grande partie de la tradition franciscaine qui consiste à considérer le lien entre les vertus cardinales, la localisation subjective des vertus morales dans la volonté, ainsi que la supériorité de la volonté sur l'intellect. Mais une grande partie de cette continuité repose sur les principes de base, tandis que Guiral ouvre de nouveaux fronts qui ne sont pas couverts par ses prédécesseurs franciscains. Il plaide pour une nature unitaire de la vertu de prudence au lieu d'une distinction entre le personnel, le domestique et le politique, tout comme il plaide pour une nature unitaire de la science morale ; le *Doctor moralis* postule également pour une âme pratique dominant sur l'âme spéculatif, et par conséquent, la supériorité de la prudence sur la sagesse théorique (*sapientia*).

I. De la *Phronesis* à la *Prudence* : Un défi conceptuel

Le concept de la *phronesis* d'Aristote et sa place dans la philosophie morale est peut-être l'un des sujets les plus controversés de l'*Éthique à Nicomaque*. La *phronesis* est une vertu intellectuelle, mais elle est inexorablement liée aux vertus morales. Aristote commence par distinguer les deux parties de l'âme : la partie sans raison, et la partie raisonnée - l'âme rationnelle. On dit que les vertus intellectuelles se situent dans l'âme rationnelle, qui est ensuite divisée en deux parties : la partie scientifique et la partie ratiocinative, où l'âme scientifique contemple l'éternel et l'immuable, et la partie ratiocinative contemple le mutable, qui à son tour inclut le pratique et le productif. Il est important de noter la manière dont Aristote différencie l'*action* de la *production* : Aristote définit l'action pratique comme ce qui a une valeur morale : l'action pratique (*praxis*) est l'acte de

l'état pratique (par opposition à l'état productif), et la perfection de l'état pratique est la *phronesis*. Agir bien est la fin immédiate de la *phronesis*, et Aristote précise que la fin ultime de la *phronesis* est le bien général de l'homme - une vie heureuse au sens général.

La traduction en latin de *phronesis* en *prudentia* par Robert Grosseteste pose un ensemble de problèmes. Les stoïciens romains n'assimilent pas toujours la *phronesis* à la *prudentia* - la *phronesis* est comprise comme la sagesse morale, ou la perfection du jugement moral, mais aussi parfois assimilée à la *sapientia* en général. Le concept stoïcien de *prudence* et de sagesse morale, en revanche, est radicalement différent de celui d'Aristote. La notion de *phronesis* d'Aristote dirige les hommes vers la recherche du moyen vertueux dans toute situation particulière, et il considère que les lois humaines sont intrinsèquement culturelles et relatives. Les Stoïciens, en revanche, pensent qu'il existe un ensemble de principes moraux universels qui sont ancrés dans l'univers, et qu'il appartient au sage de connaître ces principes et de les appliquer dans sa vie quotidienne.

Guiral donne à son tour une interprétation large de la proposition selon laquelle la prudence concerne le bien de l'homme et est ordonnée à vivre une vie heureuse au sens général. Les auteurs du Moyen Âge tardif ont tendance à accorder à la prudence un rôle plus restreint dans le grand schéma de la philosophie morale. Tant Thomas d'Aquin que Duns Scot considèrent qu'il s'agit d'une application syllogistique de l'universel au particulier. Si Thomas donne à la prudence l'acte supplémentaire de commander une action, sa portée est néanmoins limitée à la vie civique de l'homme. Duns Scot place également la prudence comme une vertu inférieure à la foi. Plus tard, Raoul le Breton limite la prudence au domaine des actes moraux et de la vie pratique de l'homme, concernant *bene vivere* et *bene opere*. Par rapport à ses prédécesseurs, Guiral comprend que la prudence a une portée bien plus large. Elle s'intéresse au bien de l'homme, non pas *secundum quid*, mais *simpliciter*. La fin de la prudence est le bien humain total, et par là nous devrions lire qu'il ne s'agit pas seulement du bonheur de l'homme dans sa vie civique, mais aussi dans sa vie privée, familiale et spirituelle - en d'autres termes, de *bene vivere totaliter*.

Guiral se lit plutôt littéralement "*bene vivere totaliter*". Comme la science de l'éthique concerne cette vie mais pas la vie au-delà, la prudence concerne le bien humain en parlant simplement de cette vie présente. Ici, on peut logiquement se poser la question de savoir ce qui constitue exactement le *bonum humanum*. Comme nous l'avons déjà établi, ce bien humain, pris au sens strict, est la *felicitas* de la vie présente. Cela inclut à la fois le bonheur actif et le bonheur contemplatif - à la fois le bonheur dans la vie civique, et le bonheur dans la poursuite de la vérité

et de la sagesse. Nous devons comprendre jusqu'à quel point Guiral est prêt à considérer la prudence comme étant ordonnée au bien total de l'homme, ainsi que les implications philosophiques d'une telle considération.

Pour répondre à la question, il est utile de faire un détour autour de deux concepts clés étroitement liés à la prudence : la *praxis* et l'âme pratique. Pour Aristote, la *praxis* est l'acte propre à l'homme, par opposition aux plantes et aux animaux, tandis que dans le livre X, la *praxis* est opposée à la *théorie* dans la réalisation du bonheur. Bien qu'Aristote arrive à la conclusion qu'une vie de contemplation à la poursuite de la *théorie* est supérieure à celle de la *praxis*, il définit néanmoins la *praxis* comme ce qui définit l'être humain, qui est seul capable de faire des choix et de prendre des décisions. Pour l'exprimer en termes scolastiques, la *praxis* est l'activité essentielle de l'être humain. Dans le livre VI, Aristote lie la *praxis* à la *prohaeresis* (choix rationnel) et puis à la *phronesis*, en la plaçant sous l'égide de la faculté pratique. On peut également affirmer que la *praxis* est la réalisation de la *prohaeresis* par la prudence.

Guiral veut clairement approfondir le concept, et ses discussions portent des traces évidentes de l'influence des traditions franciscaines, en particulier de Duns Scot, qui déclare catégoriquement que la *praxis* implique nécessairement la volonté et est un acte de volonté. À ce stade, il est logique de s'interroger sur les liens précis entre la *praxis*, la volonté et l'intellect. Si la *praxis* est mue par la *prohaeresis*, qui est le travail associé à la volonté (comme le désir intellectif) et la raison pratique, alors elle se rapporte à la fois à l'intellect pratique et à la volonté d'effectuer une action pratique.

La *praxis* suit le choix, et concerne non seulement les actes individuels de l'homme, mais aussi le choix de ses états généraux et le choix de ses fins. En un mot, chaque acte et chaque décision que l'homme prend est une *praxis*. Cette *praxis* est commandée par l'âme pratique, qui est indivisible de la volonté. L'intellect pratique est la contrepartie de la volonté dans l'intellect, et règne sur les autres facultés de l'intellect comme la volonté règne sur les autres facultés de l'âme humaine. La prudence, par conséquent, en tant que vertu de l'intellect pratique, règne en maître au sein de l'intellect, et agit d'une manière indivisible de la volonté en effectuant la *praxis* de l'homme.

Après avoir délimité l'interaction entre la volonté et l'intellect pratique à travers le prisme de la prudence, considérons maintenant le processus prudentiel lui-même. Guiral établit déjà qu'un acte de prudence est une *praxis*, c'est-à-dire un processus de collaboration qui implique à la fois la volonté et l'intellect. Cependant, ce qui reste à étudier, est le processus interne de cette action

prudentielle : le simple fait d'affirmer que la *praxis* fait appel à la fois à l'appétit intellectif et à l'intellect appétitif ne démontre pas la nature exacte du processus prudentiel - il faut examiner précisément comment la prudence fait appel à la volonté et à l'intellect pour exécuter une action élective qui caractérise ainsi l'ontologie humaine.

Ce que Guiral présente est une gigantesque structure à trois niveaux de quatre actes et seize habitudes qui réunit tout ce qui a été dit sur la prudence par Aristote et les philosophes romains. Parmi les actes de prudence, il y en a quatre : délibérer, juger, commander et agir. Pour chacun des quatre actes, Guiral place quatre habitudes par lesquelles l'action pertinente peut être exécutée correctement. La structure est introduite comme suit :

Actes de Prudence :	Habitudes :
Délibération	Astuce, docilité, mémoire, raison ;
Jugement	Compréhension, sensibilité, circonspection, avertissement ;
Commandement	Détermination, persuasion, bénignité, constance ;
Action	Prévoyance, vigilance, diligence, sollicitude.

La prudence a donc une cohérence dans ses actes : les quatre actes de prudence doivent être présents pour que l'action de l'homme soit complète et prudente. À l'instar de l'idée de Thomas selon laquelle un acte de prudence est une séquence de mécanismes mentaux impliquant ses parties intégrantes, dont une partie est cognitive, tandis que l'autre partie est préceptive, Guiral définit la prudence comme une progression du conseil, au jugement, au commandement et enfin à l'action. La prudence est en accord avec la juste raison pratique et le processus complet du syllogisme pratique implique toujours la délibération et se conclut par l'action. Dans sa réponse à la triple division de la prudence de Cicéron en mémoire, intelligence et prévoyance, Guiral soutient que la prudence ne fonctionne tout simplement pas ainsi : il n'y a pas de partie séparée qui agit sur le passé, une autre partie qui agit sur l'avenir et encore une troisième partie qui s'applique à l'action. Tous les actes de prudence fonctionnent ensemble pour atteindre la fin d'une vie heureuse au sens général, et la vertu de prudence s'applique dans sa totalité à chaque particulier, au lieu d'en dispenser une partie à un particulier qui a besoin de cette partie.

Guiral aborde ensuite le rôle de la *eubulia*, de la *synesis* et du *gnome*. Il n'est pas d'accord avec Albertus et Thomas et constate qu'il ne s'agit pas de vertus contiguës. Au contraire, Guiral soutient qu'il s'agit en réalité de la même habitude de la prudence, dont elles sont inséparables. La *eubulia*

est la rectitude du conseil, la *synesis* celle du jugement, et le *gnome* est le lieu où l'on juge les détails de manière équitable. Tout ce qui concerne chacun d'eux relève également de la prudence, et c'est pour cette raison qu'ils font partie de la prudence, plutôt que d'être des vertus distinctes. Tous tendent vers la fin de la prudence, et redressent ses actes.

Par conséquent, au lieu d'une compréhension des principes moraux universels, la prudence est la capacité à délibérer, juger et commander dont l'homme est naturellement doté, et c'est avec ces capacités que l'on développe la prudence et d'autres vertus morales plus tard dans la vie par des actions et des expériences répétées. En d'autres termes, pour Guiral, l'homme a naturellement la base du processus prudentiel. Si cet état naturel de prudence n'est peut-être pas capable de ce que d'autres éthiciens appellent des "actions héroïques", il peut certainement être capable d'un bon acte, associé à l'indéterminé mais au libre arbitre.

Tel est l'exposé psychologique de Guiral sur la prudence, et la lecture généraliste de la *praxis* et de l'âme pratique élucide certainement la fin généraliste de la prudence - une vie heureuse au sens général. Avant d'explorer davantage la relation de la prudence avec la sagesse théorique et les vertus morales, nous devons maintenant examiner plus en détail le vaste champ d'application de la prudence en tant que vertu générale et maîtresse, et nous intéresser à la discussion de Guiral sur la prudence en tant que science politique.

II. L'Unité de la Prudence

Alors qu'Aristote entend toujours que l'*Éthique à Nicomaque* est un travail sur l'homme en relation avec la société civile, son hypothèse selon laquelle l'homme est toujours un animal politique, se trouve à une place étrange dans les milieux intellectuels médiévaux, où la théologie augustinienne se concentre de manière introspective sur le salut individuel de l'homme et son union avec Dieu. Dans la mentalité chrétienne, l'homme est avant tout un individu privé qui s'engage dans un voyage vers l'union avec Dieu. Ses caractéristiques sociales et politiques sont secondaires par rapport à sa mission salvatrice. Le grand débat entre les séculiers et les mendiants sur les mérites relatifs entre vie active et vie contemplative naît de ce contexte de dichotomie entre le privé et le commun. Si les vertus morales rectifient les actions de chacun et que la justice régit les relations avec les autres,

l'idée de *phronesis* semble se situer des deux côtés. La *phronesis* est sans doute un état de l'âme intellectuelle très interne, mais elle a aussi une dimension sociale et politique indélébile.

Eustrate divise la prudence en trois catégories dans ses commentaires sur l'*Éthique à Nicomaque* : politique, économique et morale, et considère que seule l'habitude morale peut être considérée comme la même que la prudence tout court. La prudence domestique et politique est donc différente de la *prudentia maxime*. La différence est présente à deux niveaux. Tout d'abord, le sujet de la prudence est différent : la *prudentia maxime* concerne une personne individuelle, la prudence domestique concerne la famille, tandis que la prudence politique concerne l'ensemble de la cité. À un second niveau, Eustrate soutient que si toute personne vertueuse peut faire preuve de prudence personnelle, il n'appartient qu'aux dirigeants de l'État de faire preuve de prudence politique, qui reste inaccessible aux citoyens ordinaires. Cette division tripartite est devenue plus tard la position standard des maîtres des facultés d'art.

Guiral fait sa propre enquête sur le sujet de la question 14 du livre VI : la prudence personnelle, la prudence domestique, la prudence politique et la prudence du droit positif, ou la science maîtresse, sont-elles une seule et même habitude vertueuse, ou sont-elles différentes ? Par rapport à ses prédécesseurs, Guiral présente une version unitaire de la prudence. Cela provient de son idée d'un agent moral individuel comme étant exactement cela - un individu. Une personne ne vit pas de vies séparables en privée, domestique et publique, mais plutôt une seule et même vie composée d'interactions sociales diverses et complexes. En effet, comme nous l'avons vu dans le Prologue, il n'y a qu'une seule et unique science morale, et donc une seule et unique prudence. Les prudences personnelle, économique et politique ne sont pas des espèces différentes de prudence, mais plutôt une seule et même habitude, et ne diffèrent les unes des autres qu'en termes de raison formelle.

Guiral propose ensuite une solution à la question en faisant valoir que ces habitudes de prudence sont une seule et même chose et qu'elles sont inséparables les unes des autres. Il présente l'unité de la prudence à trois niveaux : l'unité de l'objet, l'unité du sujet et l'unité de la raison scientifique. Premièrement, les prudences personnelle, économique et politique partagent l'unité de l'objet, c'est-à-dire une vie heureuse au sens général. Bien que la prudence simplement appelée soit ordonnée au bien de soi-même, cet objet ne peut être atteint sans le bien domestique et politique.

Deuxièmement, Guiral considère l'unité de la prudence en fonction du sujet. Contrairement à Eustrate, qui identifie la distinction entre les différentes prudences comme une distinction de

quantité de sujets, et à Thomas, qui attribue différentes espèces de prudence à différents hommes selon leur statut social, Guiral affirme que la vertu de l'homme de bien est la même que celle du citoyen vertueux, et donc que la prudence d'un homme de bien, c'est-à-dire la prudence tout court, et celle d'un citoyen vertueux, c'est-à-dire la prudence politique, doit être la même.

Troisièmement, Guiral examine l'unité épistémologique de la prudence. Sans expérience sociale et sans avoir vécu la vie domestique et publique, on ne peut pas savoir ce qui est bon pour soi. La prudence tout court ne peut être acquise sans prudence domestique et politique. Si l'on ignore la prudence domestique et politique, alors on ignorera nécessairement la prudence personnelle. Guiral souligne l'idée d'Aristote selon laquelle la prudence naît des particuliers, et ces particuliers sont toujours de nature familiale ou politique. On ne peut pas se connaître vraiment sans socialisation, et on ne peut pas être vraiment prudent, en privé ou en public, sans connaissance et expérience des affaires domestiques et publiques. Guiral renforce sa thèse en faisant valoir que, si les connaissances scientifiques des universels peuvent être acquises séparément les unes des autres, la prudence ne peut l'être.

En fixant la prudence domestique et politique comme condition préalable à la prudence personnelle, Guiral révèle que la personne morale est toujours en interaction avec le contexte social. L'idée d'Aristote de la raison pratique se manifeste dans le commentaire de Guiral comme étant nécessairement une forme d'interaction sociale, soit dans le contexte familial, soit dans le contexte politique. En effet, il sera tentant de considérer les prudences économique, politique et juridique comme des formes subsidiaires de la prudence tout court, où l'on acquiert de l'expérience à partir de détails dans tous ces domaines pour devenir finalement une personne parfaitement prudente. Guiral aborde cette question en faisant valoir que toutes les formes de prudence sont ordonnées à une vie heureuse, et qu'aucune forme n'est ordonnée exclusivement à une fin qui est subsidiaire à une vie heureuse au sens général, car en effet la prudence importe tout à cette fin. Guiral ne propose pas une division claire entre les différentes sphères de la vie, et c'est sur ce point qu'il est le plus cohérent avec Aristote en pensant que l'homme est par nécessité un être social, dont la vie personnelle est fondamentalement inséparable de sa vie familiale et politique.

Malgré les traces de stoïcisme moral du Moyen Âge tardif, Guiral est certainement plus proche des intentions originelles d'Aristote que ses prédécesseurs. Il rejette la division stoïcienne des trois sphères morales au profit d'une approche beaucoup plus unitaire. Bien que Guiral n'ait pas brisé la frontière entre les différentes sphères morales sur un plan conceptuel, son argument selon lequel

la prudence qui concerne soi-même, la famille et la cité est en réalité une seule et même chose, ignore l'idée contemporaine de la hiérarchie progressive de ces sphères, et place l'homme, sujet-agent moral, fermement dans un contexte social. L'idée selon laquelle la prudence, proprement appelée, est éclairée par l'expérience et la raison pratique de chacun en matière d'économie et de politique, est conforme à l'idée d'Aristote selon laquelle la vertu, en tant qu'habitude, est actualisée par les actions de l'homme dans une société civile. Quelle que soit la sphère morale dans laquelle se situe l'action d'un homme, et quelle que soit la fin immédiate de cette action, elles sont toutes invariablement ordonnées vers le but final de vivre la vie dans son ensemble, englobant toutes les sphères morales de la vie de l'homme.

III. La prudence et les vertus

Guiral nous a présenté une lecture extrêmement large de la *praxis*, de l'âme pratique et de la vertu de prudence. La *praxis* équivaut à l'action morale et prudente, et l'âme pratique, tout en se préoccupant du particulier et du contingent, commande suprêmement au sein de l'intellect humain, et travaille étroitement avec la volonté. La prudence, à son tour, est la vertu maîtresse qui est ordonnée simplement au bien de l'homme et à la vie dans son ensemble. Ici, deux questions classiques se posent concernant le rôle de la prudence dans le grand schéma de la philosophie morale. La première est la *quaestio vexata* de la *praxis* par rapport à la théorie, exprimée en termes de supériorité relative de la prudence et de la sagesse théorique. La deuxième question est de savoir comment la prudence est liée aux vertus morales.

La sagesse, pour Aristote, est la poursuite d'une vérité pure, théorique et immuable. C'est la plus haute vertu car elle concerne les choses les plus élevées qui existent dans cet univers. Il dit : "la sagesse est à la fois science et raison intuitive des choses qui ont par nature la dignité la plus haute." Il est évident que cette définition de la sagesse comporte trois éléments : le savoir scientifique, la raison intuitive, et le plus honorable en tant qu'objet cognitif. Aristote affirme que la sagesse est une vertu supérieure et qu'elle est en soi intrinsèque au bonheur. La sagesse ne se trouve pas sous l'égide de la *phronesis*, et le calculatif ne contrôle pas le théorique.

Cependant, étant donné que Guiral considère l'âme pratique comme supérieure à l'âme spéculative, il s'ensuit logiquement que la prudence, en tant que perfection de l'intellect pratique, est supérieure à la sagesse, en tant que perfection de l'intellect spéculatif. En effet, Guiral argumente ainsi dans la question 16 du livre VI, contre le courant intellectuel de son époque, en présentant quatre arguments principaux. Premièrement, la partie de l'homme qui est perfectionnée par la prudence est supérieure à la partie qui est perfectionnée par la sagesse. Guiral identifie ensuite le perfectible de la prudence comme ce qui définit surtout l'ontologie humaine : c'est la *praxis* et le choix rationnel ancrés dans l'intellect pratique qui définissent et différencient l'homme des autres animaux, et telle est la perfection de la prudence. Le deuxième argument principal est démontré par un exercice de logique, qui repose sur le principe que la prudence sans sagesse est supérieure à la sagesse sans prudence. Guiral donne à la sagesse une interprétation très étroite, assimilant la sagesse à la métaphysique, ce qui est en soi une lecture erronée d'Aristote, enlevant la pertinence de la sagesse et de ses vertus constitutives - le savoir scientifique et la raison intuitive - de la vie morale d'une personne. Le troisième argument suit cette interprétation et affirme que la fin de la prudence - la perfection d'une vie heureuse au sens général - est meilleure que la fin de la sagesse - la perfection de "simplement savoir, ou simplement spéculer, ou simplement considérer". Guiral renforce encore son humano-centrisme dans son dernier argument : la prudence est la mesure de la dignité humaine, alors que la sagesse ne mesure pas le bien humain, mais la nature physique de l'univers. La valeur morale et le bien d'un homme sont indiqués par sa vertu morale, et toutes les vertus morales sont invariablement conformes à la rationalité pratique. L'intellect spéculatif ne spéculé pas sur les actions morales de l'homme dans des circonstances particulières, et n'a donc aucun rapport avec la valeur morale de l'homme.

Guiral adopte le point de vue du sujet-agent en soutenant que la prudence est supérieure à la sagesse car la prudence est ordonnée au bien de l'homme mais pas la sagesse. Pourtant, on ne peut s'empêcher de revenir sur la question de la fin ultime de la vie - le salut et l'union avec Dieu, et la contemplation de Dieu est généralement un acte attribué à la sagesse. Par conséquent, cela soulève la question intéressante de savoir comment Guiral concilierait la supériorité de la prudence et de l'intellect pratique avec la vérité infaillible selon laquelle la fin ultime de la vie d'une personne devrait être orientée vers Dieu.

Il existe une longue tradition chez les Franciscains comme Alexandre de Hales, Bonaventure et Duns Scot, de considérer la philosophie comme fondamentalement incapable d'atteindre la vérité divine sans l'aide de l'illumination divine. Guiral, en considérant la notion de sagesse d'Aristote de

façon étroite, est en accord avec ses prédécesseurs franciscains comme nous le voyons à maintes reprises où il assimile la sagesse à la métaphysique. Sur la question du cheminement de l'homme vers le salut et de son union avec Dieu, Guiral la place, encore une fois, sous le commandement de la prudence. L'acte d'obéir au commandement de Dieu est intellectif et relève de l'intellect pratique, car la compréhension du *ius* et la compréhension de son devoir particulier du *ius* universel sont des actes de l'intellect pratique. L'acte d'aimer Dieu se rapporte à l'intellect appétitif, et, comme Guiral l'a dit plus tôt, ce qui est de l'appétit intellectuel est aussi de l'intellect appétitif - aimer Dieu se rapporte aussi à l'intellect pratique. Par conséquent, c'est la vertu de la prudence qui fait que l'homme obéit et aime Dieu par-dessus tout.

Bien que Guiral commente l'*Éthique* en sa qualité de théologien, il mentionne rarement la relation de l'homme à Dieu dans l'ensemble du texte. Nous voyons dans le Prologue que Guiral ne considère pas la philosophie morale d'Aristote comme pertinente pour la vie de l'homme après sa mort, et le commentaire contient peu de passages qui approfondissent la vie spirituelle de l'homme et sa relation avec Dieu. Au tout début de son commentaire de texte, Guiral déclare que la béatitude est connue à travers la connaissance de la vertu, et c'est par la vertu que l'homme sait que la béatitude est le plus désirable de tous les biens. Guiral ne peut parler ici que de la vertu morale, et de la connaissance pratique par la prudence, plutôt que de la connaissance spéculative de la sagesse. Par conséquent, pour Guiral, la prudence est supérieure à la sagesse non seulement en termes de structure psychologique, où l'âme pratique commande le spéculatif, ou avec le perfectible et l'effet de la prudence, qui est une vie heureuse, totalement et complètement, mais aussi avec le fait que c'est la prudence et les vertus morales qui sont plus efficaces pour rendre l'homme plus proche de Dieu et le faire aimer Dieu par-dessus tout. L'éthique, la morale et le bien humain ne sont pas quelque chose de détaché de la vie humaine, d'éloigné de l'expérience individuelle et sociale de l'homme. Au contraire, c'est le point central de l'existence humaine - ce qui est bon est défini par l'agent subjectif de la science morale, et c'est le centrisme humain de Guiral.

Après avoir étudié le rapport de la prudence avec la sagesse, il nous incombe maintenant d'explorer l'autre facette de la question, à savoir le rapport de la prudence avec les vertus morales. Si, comme le soutient Guiral, la prudence commande la sagesse comme l'intellect pratique commande l'intellect spéculatif, alors la prudence peut-elle aussi commander les vertus morales ? Comme nous l'avons vu au début de la troisième partie, Aristote élabore une thèse qui établit un lien entre la *phronesis* et les vertus morales, en soutenant que la *phronesis* ne peut être obtenue sans le bien morale, et que celui qui possède la *phronesis* possède toutes les vertus morales en même temps.

Guiral hérite d'une approche volontariste pour comprendre l'éthique morale, mais il ne suit pas le volontarisme radical de ses confrères franciscains tels qu'Olivi et d'Ockham en défendant la séparation absolue des vertus morales. La position de Guiral reflète plutôt la distinction franciscaine antérieure entre les vertus ordinaires et les vertus cardinales, et constitue à bien des égards une duplication de la thèse de Guillaume de la Mare sur le lien entre les vertus cardinales. Guiral soutient que les vertus cardinales sont nécessairement liées les unes aux autres par la prudence ; elles sont nécessairement liées parce qu'elles sont nécessaires au bonheur de l'homme. Les autres vertus ne sont pas nécessaires au bonheur humain et ne sont donc pas nécessairement liées au quatuor cardinal. La distinction entre le nécessaire et l'inutile fait clairement écho à la thèse de Guillaume.

Ce que Guiral soutient effectivement, c'est qu'on peut être bon et heureux sans acquérir toutes les vertus. Pour être un bon homme, il suffit d'être prudent, juste, tempéré et courageux. La barre pour être vertueux n'est pas placée excessivement haut, contrairement à la thèse du rapport de connexion avancée par Albert le Grand et Thomas d'Aquin, selon laquelle un homme parfaitement vertueux doit posséder toutes les vertus dans leur état parfait, contrairement à ses prédécesseurs franciscains volontaristes, pour qui la libre volonté peut être constamment en lutte même avec une raison perfectionnée. Guiral injecte une forte dose de réalisme dans sa compréhension de l'humanité : pour la plupart, l'acquisition des vertus cardinales est un objectif tangible. Il faut beaucoup pour devenir une personne qui est simplement bonne - il faut être prudent, juste, tempéré et courageux - mais il n'est pas nécessaire d'être parfait dans absolument tous les aspects de sa vie morale et humaine.

Dans la question 17, Guiral suit ce qui est essentiellement une thèse de la connexion des vertus cardinales associée à un argument indépendantiste pour le reste. Il ne rejette pas explicitement les arguments volontaristes d'Olivi, de Duns Scot et d'Ockham, mais il ne prête pas non plus attention à leurs positions. Guiral ne discute pas de la possibilité d'avoir une prudence sans vertus morales. En effet, selon sa thèse de connexion, la prudence ne peut exister sans aucune vertu morale - la prudence est nécessairement liée à la justice, à la tempérance et au courage. Pour Guiral, la vertu de la raison pratique requiert absolument la présence des trois autres vertus.

Il est également important de noter, encore une fois, que pour Guiral, la prudence est une vertu unitaire et étendue qui prend le sujet comme l'agent moral libre de l'homme, et qui prend la

perspective de l'existence sociale et éthique de l'homme dans son ensemble. La prudence, à travers la raison pratique, commande tous les aspects de la vie de l'homme, qu'ils soient pratiques ou intellectuels, et s'acquiert de manière unitaire à travers l'expérience de la vie. Contrairement à Olivi, qui considère la prudence comme essentiellement divisible en différents genres correspondant à différentes vertus morales, ou à Duns Scot et d'Ockham, qui considèrent la prudence comme un système de connaissances morales, l'idée de Guiral sur la prudence va bien au-delà des contraintes du simple savoir propositionnel divisible en différentes sphères de la vie ou différents aspects de la moralité. Au contraire, la prudence est une vertu holistique qui maîtrise l'existence humaine entière, dans la mesure où cette existence peut être envisagée par l'intellect pratique. Par conséquent, le lien essentiel entre les vertus cardinales et la prudence n'est pas seulement une déclaration de nécessité pour le bien humain, mais aussi un reflet de la façon dont Guiral perçoit la prudence comme la vertu suprême dans la vie morale de l'homme.

Compte tenu de la nature étendue de la prudence et de son lien inexorable avec les autres vertus cardinales, il est temps de reconsidérer la vertu de justice et son interaction avec la prudence. Comme nous l'avons souligné au tout début de la partie III, la prudence complète la chaîne cognitive de la justice, depuis la perception du principe moral universel, en passant par l'obligation de l'individu, jusqu'à l'action à accomplir et l'acte lui-même. Dans la plus classique des conceptions de la prudence, l'intellect pratique comprend le précepte universel des lois morales, délibère sur le cas particulier et présente une recommandation conforme à la juste raison à la volonté. Le processus prudentiel délibère, commande et agit. Ainsi, nous avons la participation intellectuelle au sein de la chaîne cognitive de la justice et nous comprenons comment un précepte moral externe se transforme en la décision intérieure d'agir.

La capacité humaine du raisonnement prudentiel est la base cognitive qui souligne l'argument de Guiral selon lequel il vaut mieux que ce soient les meilleurs hommes, plutôt que la meilleure loi, qui dirigent un État. La fin du gouvernement et de la politique est humaine - encourager des citoyens justes, prudents et vertueux, et ce n'est que par des moyens humains que cette fin peut être atteinte. Ce qui fait de l'homme le meilleur gouverneur, c'est précisément sa capacité de raison humaine et sa liberté humaine contingente. Il y a une fusion entre la notion de *sujet* et la *subjectivité* correspondante. L'agent moral libre et individuel constitue le sujet de la science morale de Guiral, mais cet agent moral est véritablement un individu - un sujet unitaire et indivisible, capable d'une puissance subjective complète. La vie humaine n'est pas séparable en différentes sphères telles que la sphère personnelle, familiale et politique - l'agent moral fait nécessairement l'expérience de

tout de manière inséparable et indivisible, et acquiert nécessairement la raison prudentielle et le bonheur dans tous les aspects de la vie, quel que soit son environnement social. En d'autres termes, Guiral voit la vie morale à travers la perspective de l'agent moral - la fin de tous les actes humains et de la moralité humaine est de vivre la vie bien dans son ensemble.

Au lieu de la manière détachée dont Aristote et ses disciples considèrent la vérité universelle et éternelle du cosmos comme éthiquement supérieure au bonheur de la vie humaine, Guiral présente une manière beaucoup plus intime et intérieure de comprendre le bien moral. Si la sagesse théorique est une perfection délectable, elle n'en est pas moins délectable pour que l'homme puisse avoir une vie heureuse au sens général, et donc ordonné à la perfection pratique de l'homme par la prudence. La supériorité de la prudence sur la sagesse implique également que Guiral privilégie une vie active plutôt qu'une vie contemplative, ce qui donne à la philosophie morale de Guiral une teinte mondaine. Pourtant, c'est cette mondanité qui souligne effectivement tout l'objectif du commentaire de Guiral : la fin de la science morale est la perfection de l'homme et le bonheur de cette vie présente, tandis que le salut de l'homme et le bonheur éternel sont hors de portée de la compétence intellectuelle d'Aristote. Cependant, même si l'on considère la vie éternelle et le salut de l'homme, il faut noter que, pour Guiral, la réalisation de la vérité divine ne vient pas de la sagesse spéculative, mais de l'expérience et de l'activité de la vie. Pour Guiral, la perfection divine de l'homme ne peut être réalisée par sa seule contemplation sapientielle de Dieu, mais doit être expérimentée et ressentie à travers sa vie morale et spirituelle au quotidien.

CODA : L'INDIVIDU ET L'INSTITUTION - REMARQUES FINALES

I. Guiral sur la pauvreté et la propriété

La doctrine de la pauvreté est au centre même de l'identité franciscaine. Le débat sur la pauvreté sous-tend à la fois le conflit interne entre les Franciscains spirituels et l'ordre établi, ainsi que le conflit ultérieur entre l'Ordre franciscain dans son ensemble et le Pape Jean XXII. Il fournit également le contexte politique qui a permis à Guiral de devenir ministre général des Frères Mineurs. Ce qui nous intrigue ici, c'est que, malgré la place centrale qu'occupe la doctrine de la pauvreté dans cet épisode de l'histoire franciscaine, la discussion sur cette question est

manifestement absente dans les écrits de Guiral. Pour un débat qui a profondément divisé les Frères Mineurs et a plongé l'Ordre dans une crise existentielle, le silence de Guiral est révélateur.

Le silence de Guiral a bien été attesté. Dans les nombreux ouvrages tels que le commentaire sur l'*Éthique*, le commentaire sur les *Sentences* et même son traité économique, le *Tractatus de contractibus*, la question de la pauvreté a largement été éludée. Étant donné que l'*Éthique* fut probablement écrite pendant la période de débat de pauvreté entre Jean XXII et les Franciscains, et que les conférences sur les *Sentences* furent données après la bulle papale *Cum inter nonnullos* de 1323 - où Jean XXII s'est prononcé contre la doctrine selon laquelle le Christ et les Apôtres ne possédaient rien ni individuellement ni en commun - la taciturnité de Guiral peut être lue comme une réticence à affronter le pape, ou même comme un consentement aux déclarations papales sur le débat.

Nous devons donc aborder la question sous un autre angle - celui du débat sur l'origine de la propriété, qui est à la base même du débat sur la pauvreté. Une position franciscaine commune est que la propriété n'est pas mandatée par le droit naturel, mais plutôt, est une institution du droit positif humain. L'institution de la propriété est également étroitement associée au péché originel - un argument augustinien quia également beaucoup influencé la bulle papale *Exiit qui seminat* - où la propriété privée devient une nécessité dans la société humaine en raison des péchés de l'homme. Il y avait la propriété commune, ou l'absence de toute propriété dans l'état d'innocence ; la propriété privée fut instituée, soit par le droit positif, soit par une loi naturelle modifiée, après la Chute, qui est la première et cause suffisante de la propriété. Une brève comparaison avec les critiques des Franciscains comme Thomas d'Aquin et Hervé Nédellec, qui soutiennent tous deux que la propriété privée existait en état d'innocence, suffit à démontrer la cohérence intellectuelle au sein de l'Ordre.

Dans son *Tractatus de contractibus*, la théorie de Guiral sur l'origine de la propriété est essentiellement la même que celle de Duns Scot: le droit naturel prescrit la propriété commune dans l'état d'innocence, tandis que la propriété privée est instituée par le droit positif humain par prudence. En apparence, cela est conforme à la tradition franciscaine qui associe la propriété à la chute et à la nécessité humaine qui en résulte dans un état post-lapsarian.

Cependant, plus tard, un passage de son commentaire sur l'*Éthique* révèle une structure plus compliquée de la pensée de Guiral, et signale peut-être un changement de position. Ici, l'institution de la propriété est découplée de la Chute, ce qui peut être une condition suffisante pour la division

des biens, mais certainement pas une condition nécessaire. S'il soutient que le *dominium* est institué après la Chute en tant que fait historique, il n'y a pas de corrélation nécessaire entre l'état post-lapsarien et l'institution de la propriété - en effet, "si l'état d'innocence avait persisté, rien n'aurait empêché les hommes de diviser les biens également entre eux s'ils le souhaitaient". Guiral pose cet argument dans le cadre de sa question qui affirme que certains articles du droit naturel peuvent être remplacés par une législation humaine positive. Cela le place à un point quelque peu ambivalent entre la position franciscaine traditionnelle et celle de l'école thomiste du naturalisme politique. Dans l'état d'innocence, la propriété privée peut exister ou non - l'institution de la propriété est un acte contingent et volontaire, effectué par le jugement prudentiel et la libre volonté de l'homme. Ici, nous sommes confrontés à un état d'indétermination : le scénario contrefactuel d'un état d'innocence permanent peut ou non voir une institution de la propriété, car un tel acte est entièrement contingent. L'état d'*usus* commun est prescrit par le droit naturel, mais il ne fait pas partie des préceptes ou des interdictions du droit naturel, et est donc susceptible d'être modifié et corrigé par des moyens humains d'équité et de prudence. L'association entre la Chute et la propriété privée est donc rompue par Guiral, car les vertus de l'équité et de la prudence sont parfaitement capables de supplanter la recommandation du droit naturel même dans l'état d'innocence. La propriété privée n'est pas un péché, puisque la Chute n'est pas une condition nécessaire à son institution.

La position de Guiral ne se démarque pas ici du récit franciscain traditionnel, ni ne constitue un passage complet à l'école thomiste du naturalisme politique ; au contraire, Guiral avance par étapes, adhérant à la doctrine selon laquelle la propriété privée n'est, dans la réalité historique, instituée qu'après toute la Chute, mais en tenant compte également de la possibilité qu'elle *puisse* être instituée positivement en état d'innocence. Son ambivalence peut être mieux comprise dans le contexte qui a suivi la promulgation de l'*Ad conditorem canonum* - il estime que la doctrine sur l'état d'innocence est attaquée, mais le pape ne s'est pas encore prononcé explicitement contre elle. Si nous devons accepter cette hypothèse, cela nous aiderait également à mieux définir la datation de son commentaire à 1323-25.

Manifestement, la dissociation entre la propriété et l'état post-lapsarien s'écarte de la position franciscaine traditionnelle. Cependant, une réflexion plus approfondie sur le passage de Guiral en liaison avec ses réflexions sur le droit et le volontarisme, révèle également une approche nouvelle qui ouvre une voie vers une construction alternative des fondements théoriques de la pauvreté. Compte tenu du peu de preuves dont nous disposons, je propose un argument selon lequel, au lieu

de la doctrine franciscaine traditionnelle de la pauvreté fondée sur le volontarisme psychologique, Guiral pourrait comprendre la pauvreté sur des motifs à la fois volontaires et juridiques.

Bien qu'il ne se prononce pas directement sur la doctrine de la pauvreté, Guiral souscrit à la distinction entre *dominium* et *usus* qui constitue la base juridique de la pauvreté, telle que décrétée depuis *Exiit qui seminat*. Il n'aborde pas explicitement les questions soulevées par Jean XXII dans *Ad conditorem canonum*, mais il est probablement ouvert à un changement de position vis-à-vis du pape tout en adhérant aux fondements de l'enseignement franciscain. Il n'est pas surprenant que cela l'éloigne du mouvement spirituel et des observateurs stricts de l'*usus pauper*. Bien que la théorie de Guiral sur l'institution positive de la propriété, indépendamment du péché originel, soit contraire au récit franciscain établi, il est néanmoins cohérent avec la large distinction franciscaine entre l'état de propriété commune en droit naturel et le *dominium* privé en droit positif. En outre, la temporalité de l'institution de la propriété privée antérieure ou postérieure à la Chute n'est pas apparue au premier plan du débat sur la pauvreté avant que Jean XXII ne se prononce explicitement contre les Franciscains dans *Quia vir reprobus* en 1329.

On peut donc en tirer deux conclusions générales, l'une évidente dans ses écrits, l'autre plus hypothétique. Sur l'origine de la propriété, Guiral s'oppose au récit traditionnel franciscain et dissocie l'institution de la propriété de la Chute. Il suggère que le dominion privé *aurait pu* exister si l'état d'innocence avait persisté. Le droit de propriété est donc entièrement positif, quel que soit le statut de l'humanité, et quelles que soient les dispositions du droit naturel. Nous avons envisagé la possibilité qu'une partie de cette ambiguïté soit une tentative d'accommoder l'*Ad conditorem canonum* de Jean XXII, avec l'implication que, même bien avant la rébellion des michelistes, Guiral était déjà en désaccord avec la doctrine de Bonagrazia de Bergamo sur la pauvreté fondée sur la loi naturelle. Cependant, nous avons également vu que le positivisme de Guiral dans l'institution de la propriété ne contredit pas les principes généraux de la pauvreté, mais fournit en fait une disposition juridique alternative pour la doctrine.

Cela nous amène à la seconde conclusion. Sur le plan politique, Guiral s'est sans doute rangé du côté du pape Jean XXII, sur la base de la solidarité locale et de sa parenté avec le cardinal Bertrand de la Tour. Sur le plan intellectuel, il était probablement aussi réceptif à l'intervention de Jean XXII sur la doctrine de la pauvreté, étant donné sa réponse apparemment accommodante à l'*Ad conditorem canonum* et sa connaissance probable du rôle du cardinal Bertrand dans la rédaction de *Cum inter nonnullos*, et de sa propre théorie du positivisme juridique.

La position de Guiral repose, une fois encore, sur les principes fondamentaux de sa psychologie morale. La raison universelle de la loi naturelle doit suivre la direction de la raison particulière et pratique de l'homme. L'institution de la propriété en est un exemple évident : la raison prudentielle de l'homme juge qu'il est bon et digne d'instituer la propriété sur un fond d'*usus facti* naturel, et une telle institution est toujours juste et contraignante tant qu'elle s'effectue librement et par la raison pratique. C'est de la même manière que l'institution positive de la propriété peut être abandonnée par une autre législation positive, qui peut alors être remplacée par une législation ultérieure. La raison prudentielle de l'une peut être modifiée et remplacée par la raison prudentielle d'une autre, selon les exigences du temps et des circonstances.

II. Conclusion : Volontarisme et humanisme dans l'éthique de Guiral

Ce qui ressort sans équivoque de notre examen des écrits de Guiral est la position centrale absolue qu'occupe le sujet-agent humain dans la sphère de la philosophie morale, en tant qu'être volontaire et rationnel, doté à la fois de la liberté de la volonté et du pouvoir de raisonnement pratique. La considération de l'agent moral individuel comme sujet principal de l'éthique ne signifie pas seulement que la science morale étudie ce qui est humain et personnel, mais aussi que l'individu est considéré et étudié avant tout en tant qu'individu, au lieu de faire partie d'une structure collective plus large de la famille, de la cité, de l'institution d'un édifice juridique, ou d'une communauté sociale ou politique quelconque.

Guiral définit le *principium libertatis* comme la norme de référence pour le sujet de la science morale. L'individu est le sujet-agent précisément parce qu'il est libre, et il est le premier principe de toutes les actions humaines et par conséquent de tout bonheur humain. C'est pourquoi Guiral pense que l'éthique d'une personne est identique à l'éthique d'une famille et d'une cité, car en fin de compte, il revient à chaque agent moral individuel de mener ses actions indépendamment des institutions collectives. Le bien et le bonheur d'une famille et de la cité n'ont de sens que lorsqu'ils sont considérés en fonction du bien et du bonheur des individus qui composent ces institutions. De même, toute considération de l'individu ne peut avoir de sens que celui-ci est contextualisé dans son environnement social. Comme l'affirme Guiral, il n'y a pas d'individu qui n'appartienne à une

communauté, et aucun acte individuel ne peut être considéré indépendamment de l'acte de l'institution dans son ensemble.

Une conception volontariste de l'humanité pousse nécessairement l'individu sur la sellette de la considération philosophique de l'éthique. Il existe une nécessité morale ou rationnelle dans l'action humaine - chaque acte d'un individu volontaire est essentiellement contingent, car il est librement déterminé par la volonté, avec la libre raison délibérative de l'intellect pratique. Bien que, comme l'affirme Guiral, aucun individu ne puisse être compris séparément de son contexte social, ce dernier est toujours composé d'individus libres qui s'engagent volontairement dans leur raison institutionnelle - une armée compte sur chaque soldat individuel pour posséder la vertu du courage, et sur la volonté de l'acte d'attaque, afin de réaliser un assaut concerté dans son ensemble. La lecture que Guiral fait de l'institution et de la société est celle d'une complexité infinie, une agrégation d'individus contingents et de contingences individuelles.

Le volontarisme de Guiral dans son anthropologie morale s'accompagne d'une croyance dans les capacités vertueuses de l'humanité. Au lieu d'une vision augustinienne du pessimisme qui prévaut au Moyen Âge - les hommes commettent des péchés naturellement et la vie actuelle n'est que labeur et misère - Guiral prend une note beaucoup plus optimiste de l'humanité qui annonce l'humanisme de la Renaissance. Dans le domaine de la science morale et dans le but de rendre l'humanité bonne et juste, Guiral croit fermement que ce qui est humain est meilleur et plus efficace que ce qui est inhumain : la gouvernance de l'homme est meilleure que la gouvernance du droit ; la raison du juge est supérieure à la raison des procédures juridiques. Contrairement à de nombreux scolastiques qui cherchent à éliminer l'humain, à garder ce qui est inhumain, à vaincre la passion, l'incontinence et toutes les autres faiblesses humaines par la force de la raison et de la vertu, Guiral considère ces faiblesses humaines précisément comme ce qui rend l'homme potentiellement bon. La raison humaine est meilleure que la raison institutionnelle désincarnée, car l'humanité doit négocier une vie vertueuse avec ses propres péchés et faiblesses. C'est dans la maîtrise de ses propres passions et de son incontinence par la force de la volonté et la justesse de la raison que l'on devient honorable et digne. Guiral accepte tous les défauts de l'humanité et en fait la première matière étudiée par la science morale.

La perspective subjective que notre commentateur adopte dans son *Expositio* fait partie intégrante de l'humanisme de Guiral. Au lieu d'une valeur de détachement de soi telle que propagée par Aristote et les thomistes, où la vérité immuable de l'univers détient une valeur morale plus élevée

que le bien personnel et collectif de l'humanité, Guiral voit la structure du bien morale à partir du prisme d'un agent moral individuel et à travers son expérience sociale subjective. L'équivoque de l'éthique personnelle, domestique et politique en est un bon exemple : le bien privé est identique au bien d'une famille et au bien de la cité, car du point de vue subjectif d'un individu et de son expérience, son bien personnel est inexorablement lié au bien des structures collectives plus grandes, dont il fait partie. On ne peut exister que dans un cadre social, et son expérience subjective est toujours d'une nature sociale par nécessité - personne ne peut être heureux en tant qu'individu sans être un membre heureux de la famille ou un membre heureux de la cité. Ceci est encore renforcé par l'argument de Guiral selon lequel la prudence de la personne privée est la même que la prudence de la famille et de la cité - la perfection de la raison pratique ne se limite jamais à régler sa propre vie, mais aussi, par nécessité, à régler son existence sociale. La prudence est habituée par l'expérience, et toute l'expérience de l'homme est nécessairement sociale. Guiral envisage une vie où l'on s'engage dans un voyage de vertu à travers la perspective de l'agent subjectif, en naviguant dans son environnement social en tant qu'être indépendant, libre et volontaire. Tout bien moral qu'il atteint, il le réalise grâce à son initiative personnelle et à sa propre humanité.

Dans l'ensemble, le commentaire de Guiral sur l'*Éthique à Nicomaque* et sa philosophie morale ne représente pas une rupture radicale par rapport aux positions de ses prédécesseurs franciscains. L'humanisme de Guiral est une conclusion logique du volontarisme franciscain - où la volonté libre et contingente est le déterminant final, alors le sujet principal de la discussion sur l'éthique revient inévitablement à l'individu. Toutefois, cela ne signifie pas que Guiral adhère aux positions plus radicales des volontaristes, tels qu'Olivi, Duns Scot et d'Ockham. Au contraire, ce qui transparaît dans les écrits de Guiral est une compréhension modérée et conventionnelle de la volonté comme étant libre mais étayée par la raison. Même son affirmation apparemment radicale selon laquelle Aristote est sans erreur, n'entraîne pas, en fin de compte, de différences fondamentales avec son héritage franciscain. En effet, bien que Guiral ne déclare pas explicitement qu'Aristote est dans l'erreur, il va fréquemment à l'encontre de la position manifeste du philosophe en faveur d'une approche qui ressemble davantage à celle de ses confrères. L'originalité de Guiral ne réside donc pas dans une rupture avec la tradition, mais plutôt dans le fait qu'il combine les positions franciscaines avec les arguments d'Aristote, en allant plus loin dans les principes franciscains communs de volontarisme et de contingence morale avec les termes aristotéliens. L'*Expositio* de Guiral est le premier commentaire complet produit par un maître franciscain qui examine non seulement la traduction complète de l'*Éthique à Nicomaque*, mais qui a aussi pour

source de référence l'ensemble du *corpus aristotelicum*. L'innovation de Guiral repose donc en grande partie sur son approche systématique et holistique d'Aristote, où il essaie de donner un sens à l'ensemble des livres de l'*Éthique* de manière cohérente et méthodique. Le volontarisme est placé au cœur même du commentaire de Guiral, tandis que la libre détermination de la raison pratique fonctionne comme un pilier de la liberté morale et de la valeur morale de l'homme. L'accent mis par les Franciscains sur la volonté et sur la responsabilité morale de l'homme aboutit nécessairement à une philosophie morale qui met résolument l'accent sur l'individu.

Cependant, ce qui distingue vraiment Guiral de ses prédécesseurs et de ses contemporains, est son sens de l'humanisme indéniable. Alors que l'augustinianisme déplore le péché et la faiblesse de l'humanité, Guiral croit au potentiel vertueux de l'être humain. Ce qui est humain est toujours plus désirable que ce qui est inhumain, car ce n'est qu'à travers l'humanité que l'on peut parler d'éthique et de bien moral. L'expérience humaine de la vie et de la société est placée du point de vue de la science morale, et le plus grand bien en éthique n'est pas une compréhension détachée des vérités universelles de Dieu et de l'homme, mais plutôt, très personnellement, une vie de bonheur pour le sujet-agent moral.

Guiral vit une époque de changements institutionnels rapides qui se produisent à tous les niveaux de la société - la formation des universités, l'organisation et la structure toujours plus complexes des ordres religieux, de l'Église catholique, des bureaucraties gouvernementales et de l'édifice juridique. Pourtant, dans son commentaire sur l'*Éthique à Nicomaque*, Guiral a les yeux tournés vers l'individu et l'existence subjective de l'homme. Pour Guiral, aussi complexes et contraignantes que soient les forces et les raisons des institutions, il faut toujours être son propre agent moral, agissant de sa propre volonté, sollicitant les conseils de sa propre raison. Ce qu'il faut, ce ne sont pas seulement des actes vertueux, mais des actes qui sont accomplis de manière vertueuse. Apprendre à être vertueux selon sa propre volonté est le but de la science morale et l'objectif final de l'éducation à l'éthique.

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