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A Normative Power in the Making: Theological *Quodlibeta* and the Authority of the Masters at Paris at the End of the Thirteenth Century

Elsa Marmursztejn

In the thirteenth century the authority of the Parisian masters largely rested on the University's prestige, in particular on the radiant influence of its Faculty of Theology. Among other sources, a passage from a sermon of Eudes of Châteauroux illustrates how the city was identified with the university that it hosted, which had become the symbol of its own splendour: "Your city is the mill in which all God's wheat is ground for the nourishment of the entire world; it is ground, I say, by the lectures and the discussions of the masters. Your city is the oven, and the kitchen, in which the entire world's bread is baked and this world's food is prepared."[1] Many other sources – letters or university statutes – allow us to grasp the institutional and collective dimension of the Parisian masters' authority. But if one considers that their authority lay more fundamentally and more specifically in intellectual activity itself, that is, in the individual exercise of thought, then one must seek this authority in their "ideological production." *Quodlibeta* have been indicated and employed for this purpose for a long time.[2] In fact, these disputes provided the masters with an opportunity to tackle quite a few questions concerning the specific nature, social utility, profits and risks of their role. Their solutions recalled and established the norms and the goals of intellectual activity. By gathering various quodlibetal fragments, one can thus reconstruct a kind of "mirror of the masters," reflecting the features of an intellectual, pedagogical and spiritual ideal. But what I would like to show here[3] is that *Quodlibeta* were not only "mirrors" built by the masters to whom the questions were directed, to attest to, justify or impose their eminent authority, but they were also the forum where a unique authority was constructed and exercised.

This authority is first and foremost a specifically intellectual authority, expressing itself in and through argument. Quodlibetal determinations actualize the masters' capacity as arbiters summoned to decide between opposing arguments brought up during the course of the debate. Displaying a clear normative character, these magisterial solutions are also very much expressed

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[1] Palémon Glorieux, "La faculté de théologie de Paris et ses principaux docteurs au XIIIe siècle," in Louis Halphen et al., eds., *Aspects de l'université de Paris* (Paris 1949), p. 34.

[2] Jean Leclercq, "L'idéal du théologien au Moyen Age," *Revue des Sciences Religieuses* 21 (1947), pp. 121-48; Astrik L. Gabriel "The Ideal Master of the Medieval University," *The Catholic Historical Review* 40.1 (1974), pp. 1-40; Ian P. Wei, "The Self-Image of the Masters of Theology at the University of Paris in the Late Thirteenth and Early Fourteenth Centuries," *Journal of Ecclesiastical History* 46.3 (1995), pp. 398-431.

[3] As I attempted to do in my doctoral thesis, written under the direction of A. Boureau and defended in December 1999 at the EHESS (Paris): "Un 'troisième pouvoir'? Pouvoir intellectuel et construction des normes à l'université de Paris à la fin du XIIIe siècle d'après les sources quodlibétiques (Thomas d'Aquin, Gérard d'Abbeville, Henri de Gand, Godefroid de Fontaines)."

in the same way as judicial rules. Indeed, quodlibetal questions are distinguished by their resemblance to the legal *casus*. This way of teaching, widespread in the law schools at the end of the twelfth century, involved the exposition of a problem tied to a particular situation, and the solution was to serve as a model in all similar situations. In the wake of Raymond de Pe**n**afort, who had founded the genre of the *Summae confessorum* as "traités de morale juridisée,"[4] the authors of confessors' manuals likewise employed the method of the *casus*. The strong presence of questions resembling *casus* in Parisian *quodlibeta* from the second half of the thirteenth century, however, demonstrates that the discussion of practical cases was not confined to penitential literature. Indeed, from the onset of the century, theologians had gradually worked the consideration of concrete situations into their teaching.[5]

The scale and the diversity of the questions that were treated, moreover, indicates that, at the time, university theologians claimed a kind of universal authority. From the doctors' own worth to the possibility of escape for those condemned to death, through the payment of tithes, the plurality of ecclesiastical benefices, marriage, vows, rents, commercial profit, royal taxation, anti-usury legislation, or punishment for theft – the questions put to the masters under the rubric of sin suggest that they had the capacity to intervene in all fields. They expressed the intellectuals' vocation and universal competence to criticize and to propose, even to judge, all things.[6] Conceived in this way, the authority of the masters appeared as a form of "intellectual jurisdiction" whose scope coincided – ideally, at least – with that of Christian society, and whose exercise contributed to affirming the theologians' intellectual mastery over the whole Christian world. The evolution of the representations of power at that time probably accounts for this ambition – and its perception by some contemporaries – at the end of the thirteenth century, and the twofold Gelasian scheme was enriched by a third term, *Studium*, which assumed the rank of universal power alongside *Sacerdotium* and *Regnum*.[7]

The claim to this form of mastery was not without consequences: the masters meant to control the norms established by the lay and ecclesiastical authorities. Moreover, by claiming mastery over the principles that allowed them to evaluate the norms produced by the popes, bishops or lay princes, the theologians suggested that they themselves had the competence to produce norms. That intellectuals were producers of norms is, on the face of it, nothing new.

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[4] Pierre Michaud-Quantin, "Sommes de casuistique et manuels de confession au Moyen Age (XII-XVIe siècles)," *Analecta Mediaevalia Namurcensia* 13 (1962), p. 40.

[5] Even if not necessarily all the practical questions are of *casus*. Leonard E. Boyle for example notes that Thomas Aquinas' *Quodlibeta* contain quite a large number of practical questions, but no question-*casus*; see "The *Quodlibets* of St. Thomas and Pastoral Care," in *Pastoral Care, Clerical Education and Canon Law. 1200-1400* (London 1981), p. 246.

[6] See Alain Boureau, "Intellectuals in the Middle Ages. 1957-1995," in *The Work of Jacques le Goff and the Challenges of Medieval History*, ed. Miri Rubin (Woodbridge 1997), pp. 151-2.

[7] See Herbert Grundmann, "*Sacerdotium-Regnum-Studium*. Zur Wertung der Wissenschaft im 13. Jahrhundert," *Archiv für Kulturgeschichte* 34 (1951), pp. 5-21.

Working for the salvation of souls by elucidating Scripture and elaborating a doctrine that was passed on through preaching, they had the task of determining the norms of belief and behavior that evangelic law, conceived as a *lex gratiae* or *lex libertatis*, had not made explicit. What changes in the thirteenth century is that scholasticism provided a context for the production of rational norms constructed and, especially, disseminated – though not exclusively – via an exercise which perfectly embodied the scholastic ideal of contradictory investigation, namely the quodlibetal disputation.

Among the Parisian masters of the second half of the thirteenth century, four great theologians stand out for the scale of their quodlibetal production and for the importance of this production in their *œuvre*.[8] Gerard of Abbeville, Thomas Aquinas, Henry of Ghent, and Godfrey of Fontaines made the *quodlibet* a regular mode of instruction and an privileged means to disseminate their doctrine. Moreover these authors, who belonged to two successive generations of theologians, had a close and complex relationship.

Gerard of Abbeville († 8 November 1272) and Thomas Aquinas (†7 March 1274) are exact contemporaries. The biography of Gerard, well known for his involvement in the struggle against the mendicants and for his bequest of a library of more than 300 volumes to the collège de Sorbonne, is otherwise rather obscure. A few official documents, published in *Chartularium Universitatis Parisiensis*, provide the only traces of his rapid rise in his ecclesiastical career.[9] Besides, in articles published in the 1930s,[10] Glorieux noted that Gerard of Abbeville owed his notoriety above all to the stature of his adversaries, since the master and his partisans, the *Geraldini*, were the principal opponents of Thomas Aquinas during his second period of teaching at Paris, between 1268 and 1272. On the orders of his superiors, Aquinas had even been forced to leave Rome for Paris to see to the defense of the Dominican Order, under renewed attack by the seculars. In the 1260s, Gerard was, along with Thomas, the only master to have maintained the rate of two quodlibetal disputations a year. These *Quodlibeta* constitute a major portion of his writings, which otherwise consist of polemical treatises, disputed questions and sermons.[11]

Henry of Ghent (master of theology from 1276) and Godfrey of Fontaines (a student of Henry of Ghent before becoming his colleague in 1285) belong to the following generation. Their *Quodlibeta* run in parallel from the mid-1280s to the early 1290s. It is thus possible to compare their respective positions. In complete agreement on the question of the mendicants'

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[8] With the notable exception of Aquinas, whose *œuvre* is otherwise considerable, but also better known.

[9] See Philippe Grand, "Le *Quodlibet* XIV de Gerard of Abbeville. La vie de Gérard d'Abbeville," *AHDLMA* 31 (1964), pp. 207-25.

[10] See Palémon Glorieux, "Les polémiques *contra Geraldinos*," *RTAM* 6 (1934), pp. 5-41; idem, "Pour une édition de Gérard d'Abbeville," *RTAM* 9 (1937), pp. 57-8.

[11] For the list of Gerard of Abbeville's works, see Grand, "Le *Quodlibet* XIV de Gérard d'Abbeville," p. 219.

privileges and, because of that, on papal power, the two theologians nevertheless adopted divergent stances on the condemnation of 1277. Henry was a member of the commission of theologians that the bishop of Paris, Etienne Tempier, assigned to investigate the errors taught in the Faculty of Arts. On 7 March 1277 this investigation concluded in the condemnation of 219 propositions. In contrast, in the 1290s, Godfrey became the spokesman of those demanding at least the partial appeal of the decree of 1277, on the grounds that it was harmful to both intellectual progress and university cohesion. In this context, one can perhaps best grasp Godfrey's originality and independence: his determined opposition to the mendicants did not prevent him from defending in a qualified way the philosophical positions of Thomas Aquinas, showing that they were, *de facto* and *de iure*, beyond the scope of Tempier's condemnation.[12]

The chronological framework fixed by the selection of these four authors coincides with a phase of intellectual life largely shaped by the quarrel between mendicants and seculars and by the condemnation of 1277. Thus, it allows us to appreciate the vigor of the scholastic debates. By a comparative reading of their *quodlibeta*, one can see the disagreements, the retorts, the allusions, the echoes, the reversals, and the rebounds that formed the very stuff of Parisian intellectual life in the second half of the thirteenth century. What is essential, however, is undoubtedly not so much the collision of the masters' opinions as the common principles that emerged from it – principles which, as we shall see, contributed both to establishing and to building the specifically intellectual authority of the Parisian theologians of the thirteenth century.

***Quodlibeta* as a "Mirror of the Doctors"**

Quodlibeta gave rise to many questions about the nature of the masters' intellectual function, their social responsibility and the authority of their discourse. They are the texts by which the actors strove to analyze their own actions,[13] that is, in this case, they are the masters' own expressions of their status of authority. One can derive from quodlibetal determinations the outlines of a very high intellectual ideal, which betrays the existence, among the Parisian masters of the second half of the thirteenth century, of a genuine intellectual consciousness, a consciousness that their role was special and preeminent.

[12] François-Xavier Putallaz, *La connaissance de soi au XIIIe siècle. De Matthieu d'Acquasparta à Thierry de Freiberg* (Paris 1991), pp. 259-64.
[13] See Marcel Gauchet, *La condition historique* (Paris 2003), p. 189.

The Autonomy of the Intellectual Function

The reflexion carried out in the *quodlibeta* promotes a claim to the autonomy of knowledge and the independence of the intellectual function with respect to any type of institution. This idea appears very clearly in quodlibetal questions concerning the masters' competence, and more precisely concerning the requirements for obtaining the *aureola* of the doctors.[14] After Thomas Aquinas, who had treated the matter in 1271, Henry of Ghent distinguished the act of teaching (*actus docendi*) from the status of being master (*status magisterii*), in a question from December 1277. He maintained that the function prevailed over the title.[15] The reception of the *aureola* was thus linked to the effective transmission of knowledge and not to the degrees that the institutions conferred haphazardly:

> He who teaches others with the words of the sermon or the *lectio* in order to lead them to eternal salvation by the way of truth, whatever status he may have, master or not master, earns the *aureola* of the doctors. For in such matters, the act is esteemed more than the status. That is why I believe that, even if he were not absolutely worthy of the rather difficult status of doctor, which is that of the masters of theology, nevertheless, if he accomplishes the tasks of preaching and teaching well anyway, he would obtain the reward of the *aureola*. On the other hand, if, because he was not regarded as worthy to be promoted to the rank of master, he were prevented from having either the place or the opportunity to teach – even if he had the goodwill to teach others, and even if by that goodwill he obtained, as I believe, the essential reward – he would not receive the *aureola*, because the will alone is not enough, but the act, as I see it, is required.

The idea that the *aureola* rewarded the act of teaching and not intellectual competence (which could exist without ever being actualized in real teaching) is a good witness to the care that the masters had for pedagogical and doctrinal efficacy, that is, for the practical and social efficacy of their teaching. As a final appeal, Henry of Ghent called into question the idea that the judgments of the Church Militant were necessarily in conformity with those of the Church Triumphant:

> To the argument to the contrary, according to which "the Church Militant does not judge someone worthy of being promoted to the rank of master, therefore the Church Triumphant does not consider him worthy of the masters' reward," one should say that if anyone is, all

[14] On the distinction between *aurea* (designating the essential beatitude that all saints enjoy in the afterlife) and *aureola* (the accidental reward of martyrs, virgins, and teachers), see Ex. 25: 23-25. The notion of *aureola* reached maturity in Bonaventure, *In IV Sent*., d. 33, **q. 2, a. 3** (Florence 1889), vol. IV, p. 756.

[15] The question, treated in 1295-1296 by Rainier of Clairmarais, attests to the longevity of this solution. See Wei, "Self-Image of Masters," p. 403, n. 17.

> things considered, worthy of being promoted to the rank of master and he is not promoted with the others, I believe that this is an error by the one who did not promote him.

Henry of Ghent's stance, at the time the text was written, was not purely theoretical. As a matter of fact, in March of 1277,[16] 51 articles from the Augustinian Giles of Rome's commentary on book one of the *Sentences* were censured. Giles was then a formed bachelor. The bishop of Paris, Etienne Tempier, failed to obtain Giles' retraction of the articles in question. He could not excommunicate Giles because the Hermits of Saint Augustine had been exempt from episcopal jurisdiction for two decades. Therefore, he had his chancellor refuse Giles the license. Thus, at first glance, it seems possible to read Henry of Ghent's quodlibetal text as supporting Giles of Rome, *dignus licentiari*, but deprived, at the time, of the title that he obtained only in 1285.[17]

This hypothesis, formed by Glorieux,[18] was rejected by Robert Wielockx, who on the contrary interprets the censure of Giles of Rome as the result of his deep personal and doctrinal differences with Henry of Ghent. In fact, the Faculty of Theology – and at its core Henry of Ghent – largely contributed to Giles' censure, even if this was above all the work of Bishop Tempier. Therefore, Pope Honorius IV's intervention, which Giles sought in 1285, and the rehabilitation of a certain number of his articles by an assembly of masters that convened to receive his retractation and thus to permit his magisterial promotion, sound like a repudiation of Henry of Ghent. The turnover of teaching personnel, and in particular the coming of Godfrey of Fontaines to the duties of regent master, probably explain the new stance that the assembly of doctors adopted in 1285. Robert Wielockx's illumination makes it possible to understand better the quodlibetal question from December 1277: in accordance with the common opinion of the theologians of his day, Henry reaffirmed that the doctors' *aureola* was due to their intellectual practice, not their official status. Nevertheless, he who, deprived of the title of master, was *ipso facto* unable to teach, could not receive the *aureola*. And it was this very incapacity to teach that struck Giles of Rome, because his condemnation, which brought disciplinary measures against specific people, entailed a punishment that was binding everywhere, and not only in the territory subject to the jurisdiction of the bishop.[19] Henry's position on the question did not invalidate the principle according to which the special sanctity of the master derived from his function, not from his position.

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[16] Between 7 and 28 March 1277, according to Robert Wielockx, *Aegidii Romani opera omnia, III. 1: Apologia, édition et commentaire* (Florence 1985), pp. 77-88.
[17] On this point, see Wielockx, *Aegidii Romani opera omnia*, pp. 173-5 and 219-23.
[18] Glorieux I, p. 90.
[19] See Wielockx, *Aegidii Romani opera omnia*, pp. 71 and 117.

In claiming for themselves the *aureola* of the doctors, the theologians supported the conjoining of *Studium* and *Sanctitas* characteristic of the thirteenth and fourteenth centuries. As some canonization processes attest,[20] the Church then esteemed knowledge to the point of establishing intellectual practice as a constitutive component of holiness. Still, one has to await the bull for Thomas Aquinas' canonization, in 1323, for the true shift of emphasis from the virtues of the man to the zeal for study and the doctrinal *œuvre* of the master. The theological production of the last third of the thirteenth century thus anticipated somewhat the bringing together of learning and sanctity which clearly accounts for the introduction of intellectual work among the things valued postively by the Church in the next century: henceforth, the figure of the doctor could also be that of a saint.[21] However, whereas the Church acknowledged to the masters that it discerned a holiness of an institutional kind, according to a process analogous to that of the granting of university degrees, the masters claimed a holiness of a functional kind, obtained independently of any institutional sanction. These quodlibetal questions about the *aureola* of the doctors thus introduce an essential idea: the mediation the masters claimed to exercise did not resemble sacerdotal mediation, because it concerned knowledge, not an institution.

Under these conditions, what about the academics' position with respect to the Church? From a certain point of view, the university was an institution of Christendom – the institution of decyphering the truth that the papacy intended to place in the service of Christian orthodoxy. But the people of knowledge wanted to distinguish themselves from the people of the Church, and they explicitly claimed that their function was special and superior, as a quodlibetal question determined by Thomas Aquinas in 1270 attests: Can one ask for the licence in theology for himself?[22] This question immediately provoked the comparison between the functions of master and prelate. If the master and the prelate were both ministers of the divine word, they were distinguished insofar as the knowledge of the master existed before his title, while the capacity of the prelate lay in his title itself and only began to exist with it. Consequently, he who asked to be prelate targeted power itself as an end, while he who sought the license only aspired to transmit the knowledge that he possessed and that, moreover, he knew he possessed: "because one can know with certainty that one has the knowledge that makes one ready to

[20] See André Vauchez, "Culture et sainteté d'après les procès de canonisation des XIIIe et XIVe siècles," in *Le scuole degli ordini mendicanti (secoli XIII-XIV)* (Todi 1978), pp. 153-72, and *La Sainteté en Occident aux derniers siècles du Moyen Age d'après les procès de canonisation et autres documents hagiographiques* (Rome 1981), pp. 460-72.
[21] A reversal occurs around the turn of the 15th century; popular spirituality and religious movements reject learning in favor of the profane; sanctity flourishes among men and women who are strangers to learned culture; see Vauchez, "Culture et sainteté," p. 172.
[22] Thomas Aquinas, *Quodl.* III, q. 9, ed. R.-A. Gauthier, 2, pp. 251-2.

teach; on the other hand, no one can know with certitude that he has the charity which makes one suited to exercise a pastoral office."[23]

The Social Utility and Responsibility of the Masters

Postulating this difference in nature between the function of the prelate and that of the master, the theologians also laid claim to the exclusive capacity to train the clergy. The many quodlibetal questions about the need for training prelates and priests in theology, or about the utility of competence in theology for administering a particular church, or even the Church as a whole, allowed the masters to articulate the idea of the practical efficacy of theology and that of their social responsibility – in other words, to build the image of their own social indispensability.

Asked about the abilities required for exercising the highest offices of the Church, the theologians could thus defend their positions, in competition with the canon lawyers since the middle of the twelfth century, and affirm their role in the training of the Church elites. This is precisely what Godfrey of Fontaines does in 1293 or 1294, when he answers the question whether a good lawyer or a theologian would be most suited to administer a church: the prelate, essentially devoted to the spiritual administration of his church, had to be trained in theology to know how to preach and to administer the sacraments for the salvation of the souls entrusted to him. It sufficed for him to delegate to qualified men the temporal tasks that were secondarily his responsibility. Godfrey of Fontaines deplored the inversion of priorities, in a Church which seemed less and less concerned with governing souls than with administering its temporal property, and which was beginning to look like a well-developed juridical organization, headed by an absolute monarch. In this respect, perhaps Godfrey's text is a kind of response to the reprimand which the legate Benedict Caetani had addressed, at the Synod of Paris of 1290, to the theologians who intervened in the mendicant controversy.[24] Admittedly, Godfrey's text dates to a period in which the papal throne was vacant (between the death of Nicolas IV, 4 April 1292, and the election of Celestine V, 5 July 1294). But Benedict Caetani – who was above all a lawyer – was at the time one of the men most likely to become pope, and he was probably the focus both of the question that was put to Godfrey of Fontaines and of the latter's determination.

As the structures of the Church became more juridical, while the popes readily entrusted the highest offices to canonists and relied on the *ius novum* in governing, the theologians' hostility to the lawyers was not the result of mere professional jealousy. The theologians declared that their criticisms were founded on a more spiritual ecclesiology, related to the essential

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[23] Thomas Aquinas, *Quodl.* III, q. 9, ed. R.-A. Gauthier, 2, p. 253.

[24] James Long formed this hypothesis in "Utrum iurista vel theologus plus proficiat ad regimen ecclesie. A quaestio disputata of Francis Caraccioli. Edition and Study," *Mediaeval Studies* 30 (1968), p. 140.

requirements of pastoral care. No doubt their hostility also showed what was at stake in the power struggle: if theology were relegated to the second level in the hierarchy of sciences, and if the highest prelates were trained and surrounded by lawyers, the theologians would lose their traditional role in the government of the Church.

On the other hand, they did not lay claim to such an essential responsibility in the education of simple priests. The idea that this could be limited to teaching the basics for fulfilling the duties of their ministry is rather common in the quodlibetal literature. To the question whether an ignorant priest sins mortally in receiving the care of souls, Gerard of Abbeville[25] responded in the negative: it was enough for a priest to be moderately educated. Moreover, in no case must one deprive an ignorant cleric of the benefice he had already received, because the scandal of his ignorance would be always less, in the eyes of the faithful, than that of his dissolute morals, and he could always delegate those tasks which his ignorance prevented him from accomplishing. In the same vein, in a quodlibetal determination from 1291,[26] Godfrey of Fontaines shows that the power of the keys does not depend on theological knowledge, insofar as it is conferred by the sacrament of ordination. Of course, the appropriate exercise of the power of the keys did require some knowledge, but a priest did not need to have the “eminent knowledge” corresponding to the knowledge of subtleties, which made it possible “to discern and to judge” but which was hardly necessary for pastoral tasks. Instead, the priest had to possess “enough knowledge that he knows what is subject to his judgment and what is not, and knows to doubt where one should doubt, to consult the more experienced, and to refer to his greaters and superiors.”[27] Here the distinction between “eminent knowledge” and “enough knowledge” is fundamental. It suggests a hierarchy of degrees of knowledge, which Servais of Mount-Saint-Eloi had already established in a *Quodlibet* of 1267-68, in answering the question whether a confessor can distinguish a mortal sin from a venial one:[28] only the masters and the highest prelates were capable of ruling on these difficult matters. An ordinary confessor, provided with a basic knowledge, ought above all to be able to identify the doubtful cases that did not fall under his competence.

The masters did not restrict themselves to establishing the conditions in which ignorant priests could perform their ministry properly. They also showed that the responsibility for this ignorance could not be imputed to the doctors. This common position rested on an explicitly hierarchical conception of the distribution and uses of knowledge. One finds a particularly clear

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[25] Gerard of Abbeville, *Quodl.* IV, q. 15, Paris, BNF, lat. 16405, ff. 52vb-53ra; BAV, Vat. lat. 1015, f. 51rb-va.
[26] Godfrey of Fontaines, *Quodl.* VIII, q. 14, ed. Jean Hoffmans (Louvain 1924), pp. 136-7.
[27] Ibid. One find this idea, among others, in the Franciscan Eustache of Arras, *Quodl.* III, q. 19 (c. 1266), transcription by Leclercq from BAV, Borgh. 139, f. 151ra-rb, in "L’idéal du théologien au Moyen Age," pp. 127-8.
[28] Servais of Mont-Saint-Eloi, *Quodl.* VI, q. 69 (transcription by Wei in "Self-Image of Masters," pp. 407-8, n. 23, from Paris, BNF, lat. 15350, ff. 284vb-285rb).

version of this in Peter de Falco's determination of 1280 or 1281:[29] the common good – and in this case, the common utility of the Church – requires that everyone do what he shows the greatest aptitude for doing, and thus that everyone teach what he has learned. So the more knowledgable have to teach the more difficult aspects of the faith and of good morals; the less knowledgable have to teach easier things and also what they learned from the more knowledgable, being unaware of causes and unable either to demonstrate or to defend them. Between the two, those with an average knowledge have to teach things of average difficulty. Theologians who were limited to teaching the simpler things that their inferiors we able to and wanted to teach, had made their own work useless. In a hierarchy where the theologians assigned themselves first place, that of the *maiores*, who taught *mediocres*,[30] who in turn were charged with teaching the *inferiores*,[31] that is the parish clergy, the great masters represented an aristocracy of knowledge that had no duty to train the lower clergy. Thus one could not blame the ignorance of simple priests on the great masters. What emerges from this group of quodlibetal questions is that the masters, in virtue of their "eminent knowledge," positioned themselves in the category of "prelates," without direct contact with a "sacerdotal plebs" which was to be educated just enough to recognize the need for deferring to the more knowledgable "superiors."

Some questions provoked a comparison of the intellectual and pastoral functions and provided the masters an opportunity to specify the terms in which they viewed their superiority. Above all, this involved the value, the utility and the efficacity of study and teaching, even devoting oneself to it exclusively and perhaps abandoning pastoral care for its sake.[32] Once again, *quodlibeta* show the masters' opinions developing in a context where canonical norms swung between contradictory requirements. Indeed, from the end of the twelfth century the Church attempted to reconcile the residence requirements imposed by the concrete obligations of the priesthood with the urgent necessity to improve the training of these priests, devoted to relaying on the local level the reform initiatives from the top of the Church hierarchy. At the end of this process, the bull *Cum ex eo*, promulgated in 1298 by Boniface VIII, testifies that the

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[29] Peter de Falco, *Quodl.* II, q. 15, ed. Alexandre-Jean Gondras, "Pierre de Falco. *Quaestiones disputatae de quolibet*," *AHDLMA* 41 (1966), pp. 228-30.

[30] Jacques Verger points out that many priests did not pass the level of the small grammar school. However, certain parish priests were former students without degrees who, for lack of means, had not been able to continue their *cursus*: these "intellectuels intermédiaires" were "ni créateurs ni même vraiment transmetteurs de savoir, mais [constituaient les] relais indispensables pour diffuser à une échelle suffisante […] un certain nombre d'éléments venus de la culture savante et en assurer l'efficacité sociale"; see Jacques Verger, *Les Gens de savoir en Europe à la fin du Moyen Age* (Paris 1997), p. 165.

[31] Peter de Falco, *Quodl.* II, q. 15, ed. Gondras cit., p. 230.

[32] See Gerard of Abbeville, *Quodl.* V, q. 6 (BNF, lat. 16405, f. 55va; BAV, Vat. lat. 1015, f. 75 rb), and Godfrey of Fontaines, *Quodl.* XI, q. 10, ed. Hoffmans (Louvain 1932), pp. 51-3. Thomas Aquinas, *Quodl.* I, q. 14, ed. R.-A. Gauthier, (Rome 1996), 2, pp. 194-7, and Henry of Ghent, *Quodl.* I, q. 35, ed. R. Macken (Louvain-Leiden 1979), pp. 195-202.

Church henceforth considered an exemption for studies as a means of supporting the training of the parish clergy.[33] At two points in the development of the canonical legislation, Gerard of Abbeville and Godfrey of Fontaines took part in the progressive movement to justify the temporary exemption of residence for the sake of study.[34] In so doing, they claimed to record an established fact, stated in the argumentation. But beyond simply ratifying the practice, the two theologians resorted to the principle of the "common utility" to show that "travel for study" was a legitimate reason for interrupting one's pastoral ministry: the parish priest, equipped with "enough knowledge," as mentioned by Godfrey of Fontaines in another context, was hardly useful except in his church. The cleric gifted for studies, who could nourish the hopes of increasing the ranks of the masters and of thus benefitting science itself, would be useful to the Church as a whole; therefore he should be able to entrust to someone else the burden of his flock and to attend the university.

In the *quodlibeta* of the time, the hierarchical scheme driving these developments is made quite clear by the frequent recourse to the Aristotelian metaphor of the architect and the worker.[35] From Thomas Aquinas to Servais of Mont-Saint-Eloi by way of Peter de Falco and Henry of Ghent, this metaphor illustrated the intellectual function's superiority over the pastoral function and led to the essential qualification of theology as an "architectonic" science. As Aquinas established in a quodlibetal determination of 1269:

> In any production whatsoever, he who lays out the plan – called the architect – is better absolutely than any worker who accomplishes the tasks according to the plan that the other laid out for him. That is why, in the construction of buildings, even though he made nothing with his hands, he who makes the plan is better paid than the manual workers who carve the pieces of wood and cut the stones.[36]

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[33] *Sext.*, 1, 6, 34 (Fr. 964-965); see Leonard E. Boyle, "The Constitution *Cum ex eo* of Boniface VIII. Education of Parochial Clergy," in *Pastoral Care, Clerical Education and Canon Law* (London 1981), pp. 275-6.

[34] The context of Gerard of Abbeville's question is the extension of the provisions of the bull *Super speculam* (1219), which exhorted bishops to send their promising clerics to study theology at the university and gave them the right to enjoy the revenues of their benefices for five years; see *Liber extra*, 5, 5, 5 (Fr. 770-772). Godfrey's question is part of the wave of criticism formulated against the constitution *Licet canon*, which tried to remedy clerical absenteeism by instituting strict conditions of residence and brief time limits for ordination, on pain of the privation of one's benefice; see *Sext.* 1, 6, 14 (Fr. 953-954) and also the sharp critiques of Guillaume Durand around 1291-92, *In sacrosanctum concilium Lugdunense commentarius*, 12.35, ed. J. Moscard (Fano 1569), f. 46v.

[35] Aristotle, *Nicomachean Ethics* I, c. 1, 1094a9-16; VI, 1041b22-29; VII, 1152b1-3; *Physics* II, 194a36b8; *Métaphysics* I, 981a28-b6; 981b30-982a1.

[36] Thomas Aquinas, *Quodl.* I, q. 14, ed. R.-A. Gauthier, 2, pp. 194-5.

Priests are compared to workers; theologians to the particular category of architects who "investigate and teach how others must work to save souls."[37] Henry of Ghent explains the distinction between the intellectual and pastoral roles in the same terms:

> The architect […] teaches construction rules that the manual worker applies to the task according to the rules that were communicated to him. He often does not know the reasons for these rules, just as *rurales doctores*[38] and preachers are often unaware of the reasons for what they preach and teach, although they teach with confidence, because they know that they receive what they teach from the masters.[39]

Thomas Aquinas and Henry of Ghent paraphrase a passage of Aristotle's *Metaphysics*:

> Men of experience know well that a thing is, but they do not know the why, while the men of art know the why and the causes. Again, for the same reason, we reckon that the leaders of an enterprise deserve greater consideration than the workers, and are more learned and wise: this is because they know the causes of what is done, while the workers are like inanimate things that act, but act without knowing what they are doing, in the way that fire burns […]. Thus, it is not practical skill that makes, in our eyes, the leaders wiser; it is because they possess the theory and know the causes […]. Also, […] one considers the man of art superior to the man of experience, the architect higher than the worker, and the theoretical sciences higher than the practical sciences.[40]

Under these conditions, one must blame the doctor who, like a good architect abandoning the direction of a large construction site to go cut stones and prepare cement, abandons all intellectual activity to go shape the souls of simple folk.[41] On the basis of the principles of the common utility and of the optimal use of individual abilities, the masters established as a norm the common practice of the doctors who persevered in study rather than assume a pastoral charge. In this way, they simultaneously constructed the image of their social indispensability and that of their superiority in a hierarchy which only partially corresponds to the ecclesiastical hierarchy.

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[37] Ibid. Bishops also form part of this category, but their specific function consists of "ordering" and "arranging" the way in which priests ought to perform their duty.

[38] Jacques Verger suggests translating this expression as "intellectuels de village"; like the *mediocres* mentioned by Peter de Falco, they correspond to the category of "intermediate intellectuals" (see *Les gens de savoir*, p. 165).

[39] Henry of Ghent, *Quodl.* I, q. 35, ed. Macken cit., p. 199.

[40] Aristotle, *Metaphysics* I, c. 1, 981a.

[41] Henry of Ghent, *Quodl.* I, q. 35, ed. Macken cit., p. 199.

The questions that, in the same vein, invited them to compare disputation and preaching,[42] led them – for example Servais of Mont-Saint-Eloi – to liken disputation to an "architectonic art" and to liken preaching to a simple task of manual execution.[43] As Gerard of Abbeville also established, disputation was higher than preaching because it allowed one to determine the cause of things, to understand and to defend the faith, while preaching served only to instruct simple people about the faith and good morals.[44] The Aristotelian metaphor thus illustrated the superiority of disputation over preaching just as that of the university intellectual over the simple priest. The comparison of disputation and preaching also provoked the related question about the methodological bases of the masters' authority. Asked about the respective roles of reason and authority in the determination of theological questions, Thomas Aquinas affirmed that the goal of university disputation was to instruct the listeners so that they arrive at an understanding of the truth. The roots of the truth could only be perceived by means of a rational investigation, which showed how what had been said was true.[45] For this reason "naked authority" could not satisfy the requirements of the university disputation, "for if the master determined the question by means of naked authorities, the listener might be made certain that it were so, but he would not acquire any knowledge nor any understanding and he would walk away empty."[46] The methodology Aquinas advocates bears witness that disputation perfectly embodied the scholastic ideal of contradictory investigation. Through reason, the contents of the faith inculcated in the common faithful became accessible to the understanding of a small number. To the "emptiness" of the former was opposed the fullness of knowledge of the "wise few" who were able to dress the "naked authorities" in the habits of reason.

The Weight and Impact of Theological Teachings

Convinced of their intellectual superiority and of their social indispensability, the masters developed theories about the authority and the effects of their discourse. Theological *quodlibeta* of the second half of the thirteenth century provided the masters with many opportunities to elaborate and to refine these theories, especially about the need to silence, to suspend or to retract their teachings, or, on the contrary, to profess them in spite of the risk of scandal, conflict, and censure. The texts reveal that the masters were conscious of and cautious about the impact of their teaching, whose spiritual effects they were most concerned about.

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[42] See Gerard of Abbeville, *Quodl.* X, q. 1 (BNF, lat. 16405, f. 79va-vb; BAV, Vat. lat. 1015, f. 115rb-va); Servais of Mont-Saint-Eloi, *Quodl.* IV, q. 40 (transcription by Leclercq in, "L'idéal du théologien," pp. 129-30, and partially by Wei in "Self-Image of Masters," pp. 418-19, nn. 41-6, from Paris, BNF, lat. 15350, f. 277va-vb); Henry of Ghent, *Quodl.* XIV, q. 12 (Paris 1518), ff. 569v-570r.
[43] See Servais of Mont-Saint-Eloi, *Quodl.* IV, q. 40.
[44] See Gerard of Abbeville, *Quodl.* X, q. 1.
[45] Thomas Aquinas, *Quodl.* IV, q. 18 , ed. R.-A. Gauthier, 2, p. 340.
[46] Ibid.

From this perspective Henry of Ghent, in a determination of December 1286,[47] justified a doctor not always explaining the truth that he knew, if that truth threatened to scandalize the simple folk to whom it would be transmitted and cause them spiritual harm. He recommended strict teaching rules: certainly the masters had the responsibility to manifest the truth, but first they had to evaluate how necessary, appropriate, or urgent it was to do so, and to adapt their teaching to the intellectual capacity of their listeners. Along the same lines, Godfrey of Fontaines admitted that a master, during a disputation, could put aside a "litigious question" provisionally, in order to spare the simple folk the spectacle of dissent among the great doctors, waiting for a more favorable moment to reveal the truth he had tactically withheld.[48] If, in spite of all his precautions, the master's teaching still caused a scandal, one could not blame him, since he was not, strictly speaking, the cause. On this point, Thomas Aquinas[49] agreed with the two seculars: certainly a master must be held to retract false doctrines, just as he had to explain more clearly a doctrine that was too abstract or too subtle, or too poorly explained, for his listeners to be able to understand. But his responsibility was limited to the effects of which he was strictly the cause. Moreover, his doctrine could not legitimately be censured or condemned on account of the danger to the faith that it presented, because if this danger proceeded neither from error nor from a defect in exposition, then it was due exclusively to the doctrine's reception, not to its production.

Here one touches upon another aspect of the theologians' theories about the impact of their teaching: they not only worried about its negative effects on simple folk, but they also feared the consequences for themselves in cases where, for example, they had offended the powerful, from whom they could expect reprisals.[50] In 1290 the Parisian masters managed to offend the papal legate Benedict Caetani: when they sent a delegation to demand the reinstatement of Henry of Ghent, whose lectures had been suspended, they were threatened with being stripped of their offices and benefices.[51] Godfrey of Fontaines denounced these "powerful people" who sought, in addition, the support of academics "to promote their own opinions" and "to appease their evil desires."[52] This is probably an allusion to the various commissions of censure that Etienne Tempier set up in 1277, commissions that testified as much to the bishop's abuse of power as to the treason of the masters who, like Henry of Ghent, had served on them. Godfrey may also have been thinking of the consultation of November 1282, carried out under conditions that falsified its results: asked by the new Bishop Ranulph of Houblonnière about the need for

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[47] Henry of Ghent, *Quodl.* X, q. 16, ed. R. Macken (Louvain 1981), pp. 304-7.
[48] Godfrey of Fontaines, *Quodl.* IV, q. 13, ed. A. de Wulf and M. Pelzer (Louvain 1904), pp. 274-7.
[49] Thomas Aquinas, *Quodl.* V, q. 25, ed. R.-A. Gauthier, 2, pp. 191-2.
[50] See Godfrey of Fontaines, *Quodl.* XII, q. 6, ed. Hoffmans (Louvain 1932), pp. 103-8.
[51] See Henryk Anzulewicz, "Zur Kontroverse um das Mendikantenprivileg. Ein ältester Bericht über das pariser Nationalkonzil von 1290," *AHDLMA* 60 (1993), pp. 286-91.
[52] Godfrey of Fontaines, *Quodl.* XII, q. 6, ed. Hoffmans cit., p. 106.

repeating a confession, the masters answered unanimously in the negative,[53] which they certainly would not have done had they known about the privilege that Pope Martin IV granted to the mendicants in the bull *Ad fructus uberes*, promulgated on 13 December 1281.[54] The result of the consultation of 1282 was to affect the conflict between the mendicants and the seculars. Again in 1287, the prelates who led the struggle against the friars, failing to obtain a formal retraction from the masters,[55] nevertheless received from them an interpretation that deprived the friars of a significant argument.[56]

Against the powers that tried to exploit the authority of the masters for their own profit, Godfrey of Fontaines brought up the obligation of the "doctor of the truth" who, "having the public duty of teaching the truth, is held to conform to distributive justice, which requires that in teaching the truth, he should distribute it in such way that he teaches both the truth that touches the greatest men and that which concerns the smallest," without privileging anyone.[57] Because the theologians were invested with a responsibility toward the Christian community, which Godfrey compared in this case to the magistrates' responsibility toward the social or civil community, it was necessary to blame those masters who "tremble where there is nothing to fear and make up good reasons to keep silent when it is not the place to do so," whereas Scripture exhorts one to teach the truth, to declare it, and to shout it out[58] – if necessary against the bishop, as Godfrey and Henry of Ghent showed in questions of 1290 and 1291.[59]

The passage in Godfrey is one of those where the particular need for intellectual freedom after the Parisian condemnations of 1277 is expressed most clearly:

> If a sure reason or authority showed that the prelate condemned as false and erroneous the true side, or if, without being absolutely sure, this side contained a probable truth so that, by reason of its probability, it could be maintained as probably true, or even that contrary positions could be held concerning it, it seems that such an excommunication and condemnation is erroneous, since, through it, the quest for and knowledge of the truth is impeded.[60]

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[53] See *CUP* I, p. 596, no. 510.
[54] The bull provided that confessions heard by mendicants would not have to be repeated to parish priests.
[55] The prelates ran up against the reservations of the masters, who said they wanted to seek the opinion of the other signatories of 1282; see *CUP* II, p. 13, no. 543.
[56] See Henry of Ghent, *Quodl.* X, q. 1, ed. Macken cit., pp. 17-18.
[57] Godfrey of Fontaines, *Quodl.* XII, q. 6, ed. Hoffmans cit., p. 107.
[58] Ibid.
[59] Godfrey of Fontaines, *Quodl.* VII, q. 18, ed. M. de Wulf and J. Hoffmans (Louvain 1914), pp. 402-5; Henry of Ghent, *Quodl.* XV, q. 15 (Paris 1518), ff. 593v-594r; see also Wei's text in "Self-Image of Masters," pp. 428-30, nn. 65-72 from ed. Venice, 1613, 2, ff. 393r-394r.
[60] Godfrey of Fontaines, *Quodl.* VII, q. 18, ed. de Wulf-Hoffmans cit., pp. 403-4.

Godfrey of Fontaines did not recommend individual resistance, apart from cases of urgent necessity. However, he called for pressure on the bishop to revoke the condemnation and the threat of excommunication that accompanied it, because "although no harm on the level of salvation results from it, it brings harm to the perfection of the intellect, by preventing men from freely treating truths by which the intellect is perfected in no small way."[61] But Godfrey went even further, by declaring that even if the opinion condemned by the prelate were actually false, the masters who considered it true and based this judgment on rational and scriptural arguments had to teach it if it seemed to them necessary for salvation.[62] By admitting the possibility of disagreement between the truth and the teaching of the masters, Godfrey held a particularly advanced position, based on the idea of the primacy of the conscience, even erroneous. Error thus was a step in intellectual progress, which the silence imposed on the university debates ground to a halt. The entire problem was consequently evaluating the doctrinal power of the bishop, and the initial question was whether the masters could dispute it.

Henry of Ghent answers this question in 1291, by affirming that it is "absolutely licit and extremely advantageous" to dispute the power of the prelates, as long as one aims at true knowledge, which teaches the prelates the legitimate uses of their power and teaches their subjects the correct limits of the obedience owed to the former.[63] Henry denounced the temerity of those who recommended an unconditional obedience to the commands of the superiors. To this blind faith in authority he opposed the attitude that St Bernard advocated: "You should not obey the things that you have understood as contrary to what God has instituted, and you should pose questions on this subject and seek by disputation the truth to which you believe they are contrary."[64] Henry concluded that no prelate should refuse to have his power discussed freely, since in so doing he would show the fear that his power had in itself an insufficient basis. This thinking would be more in line with that of Mohammed, who had prohibited all argument in connection with his law, than that of Christ, who, because He knew it was true, exposed His law to the free discussion of the believers and the unbelievers.[65]

By answering the question whether the bishop of Paris, Simon Matifas, sinned in not correcting certain articles condemned by Etienne Tempier twenty years earlier, Godfrey of Fontaines was *de facto* disputing the power of a prelate.[66] He confirmed the ideal of free discussion that he had already defended in 1290: any restriction imposed on the practice of

[61] Ibid., p. 404.
[62] Ibid.
[63] Henry of Ghent, *Quodl.* XV, q. 15, f. 594r.
[64] Ibid. Henry of Ghent paraphrases Bernard of Clairvaux's thoughts on monastic obedience; see *Ad Adam monachum*, *Sancti Bernardi Opera* 7, ed. Jean Leclerq and Henri-Marie Rochais (Rome 1974), pp. 33-4. This advice evokes the function assigned to disputation by Peter the Cantor in *Verbum Abbreviatum:* "Nihil plene intelligitur, fideliterve praedicatur, nisi prius dente disputationis frangatur" (PL 205, 25).
[65] Henry of Ghent, *Quodl.* XV, q. 15, f. 594r.
[66] Godfrey of Fontaines, *Quodl.* XII, q. 5, ed. Hoffmans cit., pp. 100-5.

disputation would harm the truth that the censure claimed to protect. In fact, after 1277, intellectual activity and university relations were no longer governed by the search for truth, but by suspicion and fear of denouncement and excommunication. Moreover, Godfrey contested the scope of Tempier's intervention: "Common laws should not be reckoned effective for determining questions – for that, they must have validity throughout the whole world – since these laws only have binding power in one place."[67] Stripped of universal legal validity, Tempier's condemnations could not be considered authoritative, and their value for argument thus turned out to be very weak. In fact, in 1325 it was the bishop of Paris, Etienne de Bourret, and not the pope, who cancelled the decree of 1277. Luca Bianchi noted, however, that Tempier's "syllabus" had been incorporated into the legislation of the Franciscans and the university statutes of Bologna, Vienna, Cologne, and Erfurt,[68] and that, in addition, it was not just interpreted as a restriction on teaching freedom, but as a real doctrinal condemnation. This interpretation of Tempier's decree did not prevent theologians from challenging the doctrinal power of bishops: Servais de Mont-Saint-Eloi challenged the principles of such a power in a quodlibetal determination of 1287-88;[69] in 1290, Godfrey of Fontaines dealt directly with the doctrinal powers of Simon Matifas. More jurist than theologian, according to Godfrey, the bishop of Paris was not able to judge properly the strictly doctrinal content of the propositions condemned by Tempier without resorting to a commission of theologians. If the persistent disagreements among the masters in connection with these articles seemed to justify the bishop's taking no decision, Godfrey pointed out that the bishop did have the power to annul the sentence of excommunication that had so heavily burdened Parisian intellectual life for two decades. Because the truth was now more evident, the bishop could correct a great number of articles without thereby repudiating Etienne Tempier.[70] This historicist and opportunist conception of the production of the truth had the advantage of justifying the bishop's intervention without harming episcopal authority.

Ultimately, *quodlibeta* provoked and expressed the masters' reflection on their role. They were a privileged means of expressing a common opinion which, made fast over a certain duration, strengthened by arguments from diverse sources, forged in discussion, reinforced by the repetition of the same themes, is not on the order of a simple proposition. Fruit of the dialectical

[67] Ibid., p. 103.
[68] See Luca Bianchi, *Il vescovo e i filosofi. La condanna parigina del 1277 e l'evoluzione dell'aristotelismo scolastico* (Bergamo, 1990), pp. 27-9; idem, "Censure, liberté et progrès intellectuel à l'université de Paris au XIIIe siècle," AHDLMA 63 (1996), pp. 82-3; idem, *Censure et liberté intellectuelle à l'université de Paris (XIIIe-XIVe siècles)* (Paris 1999), pp. 214-15.
[69] Servais of Mont-Saint-Eloi, *Quodl.* VI, q. 61, ed. in Roland Hissette, "Une question quodlibétique de Servais du Mont-Saint-Eloi sur le pouvoir doctrinal de l'évêque," *RTAM* 49 (1982), pp. 238-42.
[70] Godfrey of Fontaines, *Quodl.* XII, q. 5, ed. Hoffmans cit., pp. 103-4.

treatment of various authorities selected, classified, and arranged rationally in the scholastic manner, the magisterial determinations gave rise to reflexive norms, which make it possible to draw an ideal portrait of the masters based on their own representations: the themes of the preeminence and autonomy of their intellectual role, of the utility and the social responsibility of the masters, and of the impact of their teaching, participate in the construction of their authoritative status.

This authority was exercised outside the world of the schools, and the norms produced by the masters encompassed more than their intellectual role alone. In fact, *quodlibeta* reveal the specific interest theologians had in normative powers, be they ecclesiastical or lay. In some cases, the questions invited the masters to evaluate and to delimit the powers of the popes, bishops, or princes. These questions implied that the masters had the capacity to evaluate, nay to control – at least in pure theory – these various instances of normative power. Beyond that, they even suggested that they had the ability to produce norms. Because in the Middle Ages theology and normativity were closely linked, in asserting and showing their specific aptitude for grasping the principles of norms, the theologians expressed the idea of their own normative capacity.

The Normative Ambition of the Theologians

Fundamentally, the indetermination of the "new law," conceived as the "law of grace" and the "law of freedom," required that Christian norms be determined continuously and that they be so *usque ad finem mundi*. Thus, a passage from Henry of Ghent's *Summa* relates that these norms, given "formally," had to be established "materially" though the progressive explanation of Scripture.[71] They were thus determined, rather than created, by authors considered to be simple interpreters of the total and perfect law of the Gospel. Moreover, this conception formed the perspective of all medieval production of norms. As a matter of fact, the powers based the universality of the norms that they enacted on the authority of the truth: the authority of royal legislation depended on the capacity of the sovereign to grasp this truth; the authority of canon law was based on the Church as an institution of the truth. In each instance, the truth made right. A norm was only legitimate insofar as it proceeded from divine or natural law. One encounters this idea, affirmed by the canonists and the theologians of the twelfth and thirteenth centuries, in Henry of Ghent who, in a determination of 1280 or 1281, denies the status of law to an unjust law, "because the justice of the law does not depend on the will of the legislator, […] but […]

[71] *Henry of Ghent Summae quaestionem ordinarium, reprint of the 1520 Edition* (New York 1953), 1, f. 69v.

on divine and natural law, to which it must conform even if it is established by an unjust legislator."[72] Godfrey of Fontaines expresses the same idea in a passage from 1289, where he maintains that "laws are right to the degree that they participate in the eternal law."[73] Just as the norms of canon law, lay norms had to conform to divine law. The various types of medieval norms thus maintained close links with theology. Divine law, established formally, provided its own basis to human law. Human law was therefore constructed only indirectly, on the foundations of knowledge. Thus its application was theoretically subordinated to people of knowledge, whose precise role consisted in advancing in the explanation of the truth identified with divine law. As some quodlibetal passages testify, theologians claimed to subject human norms to their control, in judging their conformity with the principles that grounded them and made their obedience compulsory.

A very short text from Godfrey of Fontaines, dating to December 1286,[74] illustrates this claim. Regarding theologians' ability to intervene in domains reserved to papal jurisdiction, the question clearly demonstrated the concern for defining the theologians' place in the area of norms. It also gave a juridical connotation to the term *determinatio*, which in its strict sense did designate the scholarly activity most strongly expressing the masters' authority, simultaneously intellectual and institutional, but which only offered a doctrinal solution deprived of a binding nature. At the height of the quarrel between the mendicants and seculars, this question had nothing abstract about it. Vis-à-vis the mendicants, who "were only able to justify their ministry by a mission and jurisdiction received from the pope, and by a theology of universal and immediate authority from him,"[75] this text put "in question" the exclusivity of the papal jurisdiction in certain matters. One of the arguments suggested that the norms produced by the pope could give rise to doubt and consequently to theological inquest, "for investigating doubts is the role of reason, which should also judge and determine them after looking into them."[76] Thus the argument linked closely the capacity to reason with the right to intervene in the domain of norms. So, theologians were able to claim a particular aptitude to dissolve the doubts that papal norms might cause, even to deal with cases reserved for the pope. It seems, ultimately, that the status of the masters' authority was largely built on the claim of this competence to judge the rationality and thus the legitimacy of human norms, be they secular or ecclesiastical in origin.

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[72] Henry of Ghent, *Quodl.* V, q. 31 (Paris, 1518), ff. 209 v-210 r.
[73] Godfrey of Fontaines, *Quodl.* VI, q. 18, ed. M. de Wulf and J. Hoffmans (Louvain 1914), p. 262.
[74] Godfrey of Fontaines, *Quodl.* III, q. 10, ed. M. de Wulf and A. Pelzer (Louvain 1904), p. 218: "Can a doctor of theology determine what only pertains to the pope or maintain an opinion different from that of the pope, by basing himself on doubts that can arise from the norms that he alone has the qualification to produce?"
[75] Yves-Marie Congar, "Aspects ecclésiologiques de la querelle entre mendiants et séculiers dans la seconde moitié du XIIIe siècle et le début du XIVe," *AHDLMA* 28 (1961), p. 99.
[76] Godfrey of Fontaines, *Quodl.* III, q. 10, ed. de Wulf-Pelzer cit., p. 218.

The Evaluation of Ecclesiastical Norms and Normative Powers

The quodlibetal literature testifies that the theological debates over papal power to act on the law focused primarily on the question of dispensation. They continued the canonists' discussion of the pope's normative supremacy. The canonists had admitted that the pope could dispense, just by his will, with a norm that he himself had established, because, as Hostiensis wrote, relaying the opinion expressed by Gratian more than a century before, "if it is a voluntary constitution that was the cause of a prohibition, consequently only a will to the contrary will be cause of the suspension of the prohibition, since one who established something has the power to destroy and to interpret it."[77] It was still necessary to explain the cases where the pope seemed to have given dispensation for norms that explicitly proscribed this possibility for themselves.

The questions whether the pope could grant a dispensation in the case of bigamy, and whether he could dispense someone from a vow, constitute limit cases that, in spite of their apparent futility and marginality, gave rise to much controversy. The question whether the pope could grant dispensation to a bigamist[78] in order for him to attain holy orders belongs to the long debate on the pope's power to dispense with the *regula apostoli*.[79] This rule, which established the criteria of rank, jurisdiction, and worth of the ministers of the Church, had, since the early Church, held a central place in the part of canon law relating to ordinations. The Church Fathers had interpreted it by showing that man "divided his flesh" with a second marital union. This could no longer represent the mystical union of Christ with the Church, and thus it lost its full sacramental significance. Insofar as it was an irregularity *ex defectu sacramenti*, bigamy did not arise from an offense, but from the absence of a quality that was required for the worthy exercise of the priestly ministry. It was distinguished from an impediment by its perpetual character: if a man had been ordained without having the required knowledge, it was enough for him to be taught for the impediment to be removed. But a man married twice could not make it so that his second marriage had not existed. If the irregularity itself could not disappear, could the Church grant a dispensation, that is, to make it so that "what was the law is no longer the law in this case"?[80]

It fell to Thomas Aquinas, in a *Quodlibet* of 1271,[81] to solve the apparent contradiction between the apostolic precept that prohibited the promotion of bigamists to holy orders and a

[77] Hostiensis, *Lectura in quinque libros decretalium* (Venice 1581; reprint Torino 1965), p. 263.
[78] Whoever had successively contracted and consumated two legal marriages was considered a bigamist and unable to attain holy orders; see J. Vergier-Boimond, "Bigamie," *Dictionnaire de Droit Canonique*, 2, col. 854.
[79] 1 Tim. 3: 2; Tit. 1: 6.
[80] Thomas Aquinas, *Summa theologiae*, IIa IIae, q. 88, a. 10, ad 2 (Rome 1897), 9, p. 263.
[81] Thomas Aquinas, *Quodl.* IV, q. 13, ed. R.-A. Gauthier, 2, pp. 333-4.

case of papal dispensation, inserted into Gratian's *Decretum*, which allowed, by virtue of a special indulgence of the pope, for a bigamist ordained without regard for the required conditions to keep his office, without however allowing him any hope for promotion.[82] The question invited him to delimit the areas of papal intervention and to determine his power to act with respect to the law according to degrees of constraint that were tied to the origin – human or divine – of the law. Aquinas postulated that the pope could only dispense with what concerned human or positive law. Indeed, Christ had allowed that ceremonial or legal precepts of the "new law" – which pertained to human law alone – be freely determined by Christian prelates and princes. Insofar as not promoting bigamists to holy orders obviously concerned solely a "determination of the divine cult," Aquinas admitted that the pope was able to grant a dispensation to a bigamist. In this case, the Apostle Paul had ruled *propria auctoritate* concerning the qualities required of the Church's ministers: "His prohibiting the promotion of bigamists [to holy orders] does not pertain to divine law, but is an institution of human authority that was divinely conceded to him."[83] In contrast to the canonists, who had answered and continued to answer the question by showing that every pope had a jurisdictional power higher than the Apostle Paul's,[84] Aquinas the theologian determined the nature of the norm. He attempted to distinguish what, in the *regula apostoli*, pertained to divine or natural law from what pertained to a purely human institution. In distinguishing these two levels of apostolic normativity, Aquinas went beyond the idea of dispensation *contra Apostolum* invoked by the canonists. Moreover, in dealing more with the nature of the law than with the power of the legislator, he placed his analysis before that of the lawyers, on principles, foundations, and causes. In qualifying the norms, he also brought up the limits of papal jurisdiction: this was strictly confined to the domain of justice delegated by God, that is, to the domain of human and positive law. In favor of the papal power of dispensation in the particular case submitted to him, Aquinas ultimately contributed to reaffirming the limits of the normative power of the pope. The pope's "plenitude of power" in no way enabled him to dispense with anything but the norms of positive law, or more exactly with the norms whose pertinence to positive law the theologians had the task of determining, in virtue of a sort of "plenitude of knowledge."

The problem of the dispensation from a vow – and in particular of the contradiction between a vow of chastity and marriage – constituted another significant angle of attack in the investigation of the pope's normative power. Gerard of Abbeville determined twice, around

[82] Grat. 50, 56 (Fr. 199).
[83] Thomas Aquinas, *Quodl.* IV, q. 13, p. 334.
[84] See Huguccio, *Summa*, 34.18, cited by Stephan Kuttner, "Pope Lucius III and the Bigamous Archbishop of Palermo," in *The History of Ideas and Doctrines of Canon Law in the Middle Ages* (London 1980), p. 425, n. 67. See also Hostiensis, *Summa aurea* (Lyon 1556), f. 60vb, citing the decretal "Innotuit" of Innocent III, a student of Huguccio, *Extra*, 1, 6, 20 (Fr. 62).

1266[85] and again around 1268,[86] the question whether the pope could grant a dispensation to a consecrated virgin from her vow of continence, in the case where "the emperor were a Saracen and a tyrant,[87] and intended to destroy the faith entirely, and to kill all the faithful, unless the Church joined the girl to him in marriage, and by this, he would cease from doing such things and would convert to the faith." This case condenses a legal reference and an allusion to the contemporary context. In his *Summa aurea*, completed in 1253, Hostiensis had taken the example of a "king of Saracens" who would offer "to convert with his whole country, provided that he be given a nun in marriage," to support the opinion that the pope could dispense one from a vow of continence *ex magna causa*.[88] The case probably also reflects the relations with the Mongols, since it evokes the persistence of the Mongol menace,[89] the prospect of alliance with Il-Khans of Persia[90] during the 1260s (illustrated by the marriage of Abaqa with the daughter of the Byzantine Emperor Michael VIII Palaiologos in 1265[91]), and finally the hopes of conversion raised by the Mongols of Persia, for which the papacy dispatched several missions.[92]

The originality of the two determinations, substantially identical, is due especially to their strong legal impregnation. Both justify the dispensation insofar as the *votum necessitatis* (to which the faith pertains) prevails over the *votum voluntatis* (to which virginity pertains).[93] These two concepts, which appear in the *Summa de paenitentia* of Raymond de Pe**n**afort,[94] then in *Summa aurea* of Hostiensis,[95] were developed on the basis of the canon of the *Decretum* of Gratian, who distinguished between what was necessary to observe even without having made a vow from what it was only necessary to observe because one had made a vow.[96] According to the *Glossa Ordinaria*, the faith belonged to the first category; continence, the second.[97] However, Gerard underlined the purely casuistic character of his solution, because the pope was normally bound by the terms of the decretal *Cum ad monasterium*,[98] which stipulated that chastity, like the renunciation of property, was inherent in the monastic rule to the point that the

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[85] Gerard of Abbeville, *Quodl.* IV, q. 13, ed. Denise Cornet, "Les éléments historiques des IVe et VIe *Quodlibets* de Gérard dAbbeville," *Mélanges de l'Ecole Française de Rome*, 58 (1941-1946), pp. 199-201.
[86] Gerard of Abbeville, *Quodl.* VI, q. 3, pp. 201-4.
[87] For which the "king of the Tartars" is substituted in 1268.
[88] Hostiensis, *Summa aurea*, 3 (Lyon 1556), f. 262r.
[89] Illustrated by the Mongol campaigns against Russia and Hungary in 1241 and the invasion of Poland in 1259.
[90] Who counted on Western cooperation for suppressing the resistance of the Mamelukes of Egypt.
[91] See Cornet, pp. 186-7.
[92] See Jean Richard, "Chrétiens et Mongols au concile: la papauté et les Mongols de Perse dans la seconde moitié du XIIIe siècle" and "Les Mongols et l'Occident. Deux siècles de contacts," in *1274, année charnière. Mutations et continuités* (Paris 1977), pp. 31-44 and 85-96; idem, *La papauté et les missions d'Orient au Moyen Age (XIIIe-XVe siècles)* (Rome 1977, 1998).
[93] Gerard of Abbeville, *Quodl.* IV, q. 13, ed. Cornet cit., pp. 199-200.
[94] Raymond of Pe**n**afort, *Summa de paenitentia* 1. 8. 2, ed. Xaviero Ochoa and Aloisio Diez (Rome 1976), col. 340.
[95] Hostiensis, *Summa aurea*, 3, "De voto et voti redemptione" (Lyon 1556), f. 259v.
[96] Grat. 17, 1, 1 (Fr. 812).
[97] *Corpus iuris canonici, una cum glossis*, v. "Sunt quaedam " (Torino 1588), col. 1388.
[98] *Extra*, 3, 35, 6 (Fr. 600).

pope himself could not give a dispensation for it. Occasionally, the possibility of compensating for the vow with a higher good, on the one hand, and the public utility and common well being of the faithful, on the other, justified the pope's dispensing the nun from her vow of chastity.[99] Thus it does seem, as Gaines Post has shown, that the secular theologians, like the canonists, viewed the papal dispensation as a practice employed for "raison d'Etat."[100] In fact, in his reasoning in support of the pope's "plenitude of power" that he develops in 1266,[101] Gerard again paraphrases Hostiensis, who had defined this papal *plenitudo potestatis* as the power to *supra ius dispensare* and had interpreted the prohibition expressed by the decretal *Cum ad monasterium* as saying that it would not have been fitting for the pope to do so (*non decet eum*), or that it would have been impossible for him to do so *sine magna causa*.[102] The introduction of the distinction between a simple and a solemn vow in the 1268 text reduces the pope's power to *dispensare supra ius*, because whoever broke a solemn vow "sinned against God, offended the constitution of the Church [...], and scandalized the men who knew of his vow."[103] Perhaps the resumption of the conflict with the mendicants exactly around this time provides an explanation for this evolution: the struggle against the friars' privileges – and consequently against the pope's power to pass laws in exception – probably led the secular master to invoke the argument of the infrangibility of a solemn vow against the pope's power for dispensation.

Largely inspired by concepts and distinctions of a juridical origin, Gerard of Abbeville thus formulated criteria that allowed him to assess the binding force of the vow and to establish the conditions in which the pope could exercise his power of dispensation. First, he expressed the relativity of the constraint implied by the vow, which appeared capable of being removed in the name of a higher need; second, by evaluating the power of dispensation and by rationally establishing the conditions of its exercise, he subjected – though, once again, in a purely theoretical way – the pope's "plenitude of power" to his own "plenitude of knowledge."

Along the same lines, in a *Quodlibet* of 1280[104] Henry of Ghent postulated that the Church could only dispense what it itself had instituted. If the Church could modify nothing that essentially belonged to the sacraments, it could at least modify what accidentally belonged to them, as, for example, the way of administering them. The question whether one could dispense anyone from a vow of continence solemnized by religious profession[105] thus entailed asking if continence were essential to the religious vow. This theologian denied that it was. If he shared

[99] Gerard of Abbeville, *Quodl.* IV, q. 13, ed. Cornet cit., p. 200.
[100] Gaines Post, *Studies in Medieval Legal Thought. Public Law and the State. 1100-1322* (Princeton 1964), pp. 266-8.
[101] Gerard of Abbeville, *Quodl.* IV, q. 13, ed. Cornet cit., pp. 200-1.
[102] Hostiensis, *Summa aurea*, 3, f. 262r-v.
[103] Gerard of Abbeville, *Quodl.* VI, q. 3, ed. Cornet cit., p. 204.
[104] Henry of Ghent, *Quodl.* V, q. 36, ff. 212r-213v.
[105] Henry of Ghent, *Quodl.* V, q. 28, ff. 207r-208r.

with Thomas Aquinas the initial postulate,[106] he refuted the distinction, which the Dominican established in the *Summa theologiae*, between a vow solemnized by entry into holy orders and a vow solemnized by religious profession. According to Thomas, if the duty of continence was not tied to holy orders essentially, it was nevertheless “essential to the religious state, by which a man renounces the world for total service to God, which cannot happen together with marriage.”[107] Henry of Ghent maintained *a contrario* that the dispensation also applied to the vow of continence solemnized by religious profession, under the condition that what had been devoted to God is put to “a more useful purpose.” However “the virgin who married, after her vow, by virtue of a dispensation […], did not fall into the opposite vice of incontinence, but exchanged one continence for another,” more meritorious than the first, because it was tied to obedience.[108] The considerable originality of Henry of Ghent’s position is due especially to his classifying the vow of virginity among the “consilia” and not among the precepts of natural law. The latter were literally indispensable. On the other hand, the observance of chastity was indifferent to natural law; it was merely necessary for the taking of a vow. Like human laws, the vow of chastity – even solemn – was thus subject to changing circumstances: if it prevented the good of the *res publica*, in case of extreme necessity, the pope could and must give a dispensation.[109] By including chastity among the “determinations” of natural law, which were only binding because the Church instituted them, Godfrey of Fontaines had the same perspective:[110] the solemnization of the vow, purely “external,” consisted merely in a “sprinkling of holy water on the clothes and the person, in a few prayers and other things of this kind”;[111] it could not be an obstacle to the common good.

In the end, the controversy over the dispensation from a vow of chastity, which is linked to the investigation of the pope’s normative supremacy that the canonists initiated, and which Gerard of Abbeville inaugurated on juridical bases, only takes on its properly theological dimension when Thomas Aquinas introduces the distinction between essence and accident, and more clearly still when Henry of Ghent adds the decisive reference to divine or natural law. The knowledge of Scripture and aptitude for reasoning that the theologians claimed made them aware of the principles of divine or natural law, which allowed them, in this case, to assess the degree of constraint implied by the vow and to establish a hierarchy of obligations. By classifying the vow of chastity among the simple “counsels,” nay among the “determinations”

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[106] Thomas Aquinas, *Quodl.* IV, q. 13: “The pope possess these plenitude of power in the Church, of such a kind that he can dispense everything that was established by the Church or its prelates, that is what belongs to human or positive law,” ed. R.-A. Gauthier, 2, p. 333.
[107] Thomas Aquinas, *Summa theologiae*, IIa IIae, q. 88, a. 11 (Rome 1897), vol. IX, p. 265.
[108] Henry of Ghent, *Quodl.* V, q. 28, f. 207r.
[109] Henry of Ghent, ibid., ff. 207v-208r.
[110] Godfrey of Fontaines, *Quodl.* IV, 18, ed. M. de Wulf and A. Pelzer (Louvain 1904), pp. 288-91 and 346-7.
[111] Godfrey of Fontaines, ibid., p. 289.

of natural law, the masters denied it any "indispensable" character. The public utility and the common well-being of the faithful must come before the individual's commitment to God sanctioned by the vow.

The theological debates on ecclesiastical norms and normative powers related not only to the pontifical power of dispensation, but also to the bishops' power to intervene in the realm of norms. Thus a question that Godfrey of Fontaines answered in 1297-98 involved the case of a cleric who, having received the charge of a parish church, was not ordained within the one-year time limit prescribed by the constitution *Licet canon*,[112] although he had kept his benefices and continued to receive their incomes. Could he keep these incomes or, if he had transferred them to a religious community, could they continue to enjoy them?[113] If neither the cleric nor the religious could retain these incomes in virtue of their own authority and their own right, could the bishop grant them a dispensation allowing them to do so?[114]

According to Godfrey, the cleric's inability to keep his benefice was due exclusively to the papal constitution, which sanctioned deficiencies that were not blameworthy in themselves.[115] Moreover Godfrey maintained that the bishop had the power to dispose freely of the goods of the Church within his means, in which case he could assign them to other purposes than those foreseen by the law if he deemed it useful.[116] The secular master thus crashed straight into the mendicant's position.[117] According to the friars, only the pope, as Peter's successor, held his power directly from Christ. As holders of the power that the pope had delegated to them, the bishops could only give dispensations in cases that he had expressly conferred on them.[118] But the constitution *Licet canon* merely conferred on them the power of dispensation from the obligation of residence;[119] it said nothing about receiving incomes from a benefice.

Against the mendicants' opinion, Godfrey of Fontaines maintained – as he had elsewhere, and like other secular masters[120] – that following the apostles, all bishops received their power

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[112] *Sext*. 1, 6, 14 (Fr. 954). Contemporaries considered this constitution, which Gregory X added to the publication of the decrees of the Second Council of Lyons (1274), a properly pontifical norm; see Guillaume Durand, *In sacrosanctum concilium Lugdunense commentarius*, ed. J. Moscard (Fano 1569), f. 4; Godfrey of Fontaines, *Quodl.* XIII, q. 6, ed. J. Hoffmans (Louvain 1932), p. 231.
[113] Godfrey of Fontaines, *Quodl.* XIII, q. 6, ed. Hoffmans cit., p. 231.
[114] Godfrey of Fontaines, *Quodl.* XIII, q. 7, ed. Hoffmans cit., pp. 231-5.
[115] Godfrey of Fontaines, *Quodl.* XIII, q. 7, ed. Hoffmans cit., p. 232.
[116] Godfrey of Fontaines, *Quodl.* XIII, q. 7, ed. Hoffmans cit., pp. 232-3.
[117] See Godfrey of Fontaines, *Quodl.* XIII, q. 5, p. 224; on the mendicant ideas, see notably Roberto Lambertini, *Apologia e crescita dell'identità francescana (1255-1279*) (Rome 1990), p. 34.
[118] Godfrey of Fontaines, *Quodl.* XIII, q. 7, ed. Hoffmans cit., p. 233.
[119] See *Sext*., 1, 6, 14 (Fr. 954).
[120] See Godfrey of Fontaines, *Quodl.* V, q. 16 (1288), ed. M. de Wulf and J. Hoffmans (Louvain 1914), pp. 71-86, esp. p. 73; *Quodl.* XI, q. 7 (1295-1296), ed. J. Hoffmans (Louvain 1932), p. 38; and especially *Quodl.* XII, q. 3 (1296-1297), ed. J. Hoffmans (Louvain 1932), p. 95. See also Servais of Mont-Saint-Eloi, *Quodl.*, q. 80 (1286), ed. B.G. Guyot, "Quodlibet I. q. 17 de Pierre d'Auvergne – Quodlibet q. 80 de Gervais du Mont-Saint-Éloi," *AHDLMA* 28 (1961), pp. 159-61; Henry of Ghent, *Quodl.* IX, q. 22 (Lent 1286), ed. R. Macken (Louvain 1983), pp. 298-301, and XII, q. 31 (Advent 1288 or Lent 1289), ed. cit., pp. 197-9.

and authority directly from Christ.[121] Nevertheless the primacy of Peter's successor limited episcopal power to the confines of the diocese, while "papal power [stretched] to all things in general."[122] Moreover, the pope could restrict the exercise of episcopal jurisdiction by reserving certain cases and dispensing from episcopal statutes, while he could also forbid bishops from dispensing from his own statutes. But if he did not so forbid expressly, the "best jurists" were in agreement that the bishops could so dispense.[123] Godfrey's allusion probably targeted Guillaume Durand, who around 1291-92 had composed a commentary on the conciliar legislation of Lyons II in which he sharply criticized the constitution *Licet canon* which, on the pretext of solving the problem of absenteeism, deprived clerics of the means that had enabled them to receive a university education.[124] Godfrey of Fontaines borrows from him the rule of legal interpretation according to which only the explicit prohibition of dispensation excluded its possibility.[125] The rights that the pope did not concede explicitly were thus to be regarded as tacitly recognized as belonging to the bishops. Consequently, papal prohibition could not extend to the problem of receiving incomes from a benefice, since the constitution *Licet canon* did not mention it.[126] That did not mean that the cleric could continue to enjoy these incomes even though he no longer had a right to the benefice, but that if the Church did not really need these incomes and if the cleric "were able to render great services to the Church, the bishop could make it so he kept them, not in virtue of a right that the clerk had acquired because he held a church, since he had not acquired any right to it, but by a new and free conferral."[127] Likewise, if the cleric had transferred his incomes from the benifice to some religious, the bishop – who had the power to grant, with the consent of his chapter,[128] a portion of the revenues of a well-endowed church to some honest religious – could grant a dispensation enabling them to retain them.[129]

Godfrey's discussions of the bishops' normative power clarify the singularity of the theologians' perspective and thought process. In favor of the episcopal power of dispensation, Godfrey seems simply to agree with the criticisms that *Licet canon* provoked.[130] He expresses an opinion close to that of the canonist Guillaume Durand, from whom he had borrowed a key

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[121] Godfrey of Fontaines, *Quodl.* XIII, q. 7, ed. Hoffmans cit., p. 233.
[122] Godfrey of Fontaines, *Quodl.* XIII, q. 7, ed. Hoffmans cit., p. 233.
[123] Godfrey of Fontaines, *Quodl.* XIII, q. 7, ed. Hoffmans cit., p. 234.
[124] See Guillaume Durand, *In sacrosanctum concilium Lugdunense commentarius*, especially f. 46v.
[125] Guillaume Durand, ibid., f. 45v.
[126] Guillaume Durand, ibid.
[127] Godfrey of Fontaines, *Quodl.* XIII, q. 7, ed. Hoffmans cit., p. 234.
[128] See *Extra*, 3, 10, 9 (Fr. 505).
[129] Godfrey of Fontaines, *Quodl.* XIII, q. 7, ed. Hoffmans cit., pp. 234-5.
[130] And to which state **XXX** the preamble of the bull *Cum ex eo*, promulgated by Boniface VIII in March 1298, see *Sext*. 1, 6, 34 (Fr. 964).

element of his argument,[131] but also to that of the prelate John Peckham who, when he had promulgated the decrees of Lyons II and the four post-conciliar constitutions – among them *Licet canon* – at the Council of Reading (1279), had declared that a strict application of this legislation would seriously harm the level of intellectual training of the English parish clergy. Clerics were rarely wealthy enough to go for university studies without the material support of a benefice.[132] However, the "professional" argument falls short of explaining Godfrey's specific stance. For this, we must explore its line of argumentation and its thinking processes. The prelate John Peckham and the canonist Guillaume Durand had considered the concrete *effects* of the papal constitution; they had justified the possibility of dispensation or of mitigation of the law with the concern for preserving the level of training of the parish clergy. Godfrey, the theologian, focused both on the *causes* of and on the *first principles* of the episcopal power of dispensation. He brings up the origins of the bishops' power, from the ecclesiological perspective of the secular masters who had fought the mendicants. He invokes the principles of the administration of church property,[133] according to which the bishop was free to assign the goods in his control to uses other than those prescribed by law. Finally, he fixes the limits of legitimate exemption, based on the criterion of utility (*fructus*), a commonplace in theological writings on the question of dispensation. Godfrey's procedure thus seems, specifically, like a search for first principles permitting him to ground the authority of his determinations.

The Evaluation of Lay Norms and Normative Powers

Theologians did not limit themselves to the Church in their investigation of the various instances of normative power. Their interest in the normative power of the prince – who, in the thirteenth century, had strongly asserted his role as *conditor legis* – is evident in quodlibetal questions concerning those areas pertaining strictly to lay power, like taxation, but also areas that specifically but not exclusively required the prince's normative power to be exercised.

Two texts from the 1290s account for the scholastic conceptions of the prince's normative power. The question whether every subject was obliged to observe the statutes that were not obviously required by common utility,[134] posed to Henry of Ghent in 1290 or 1291, clarifies Godfrey of Fontaines' determination, in 1295-96,[135] of a question concerning the princes'

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[131] In fact, Durand appears as a positive figure only insofar as he disputes the cogency of a pontifical rule and where he consequently ceases being a figure or an organ of power to become the agent of a critic of power.

[132] Text cited by L.E. Boyle from Oxford, Bodleian 794, f. 180r-v, in "The Constitution *Cum ex eo* of Boniface VIII," pp. 269-70, n. 20.

[133] Dealt with at greater length in an earlier question of the same *Quodlibet*; see Godfrey of Fontaines, *Quodl.* XIII, q. 5, ed. Hoffmans cit., especially pp. 223-6.

[134] Henry of Ghent, *Quodl.* XIV, q. 8 (Paris 1518), ff. 567v-568r.

[135] Glorieux's date (1294) seems too early; John F. Wippel suggests 1295 at the earliest; an analysis of the text points rather to the quodlibetal session of Lent 1296, which follows Philip the Fair's institution of a new **text** in January 1296.

normative power more directly: could a prince, in the name of common utility, impose a tax if the need were not, by itself, evident, and were the subjects held to pay it?[136] The idea of the acceptance of the law by the subjects, present in the two questions and strongly entrenched in the political and fiscal context of the time,[137] reveals one original feature of the theological conception of lay normativity: princely legislation seemed to have a binding nature only if it appeared to be manifestly inspired by concern for the "common utility," presented as its proper goal. Thus the very legitimacy of the prince's power appeared to rest on his power to grasp and make evident the principles that had to guide his normative action – on a subject all the more delicate since it touched an area essential to the affirmation of the monarchial State.[138]

Henry of Ghent and Godfrey of Fontaines assigned the same end to princely legislation: "the peace and the safety of the *res publica,*"[139] "the common good and common utility."[140] However, determining the sovereign by heredity could not guarantee that he had the necessary virtues to pursue this goal. Godfrey thus prescribed that the prince act

> according to righteously instituted laws and not according to his own wisdom (*prudentia*), as the Philosopher says in the third book of the *Politics*,[141] where he says that all that can be established or judged by the law should not be entrusted to the prince, but settled by the law, because the law, exempt from the passions that affect man, has greater value and firmness.[142]

Godfrey accompanied this distinction with conclusions that Aristotle had drawn, but he introduced a crucial term: "Whoever commands rule by *intellect*, that is by laws instituted according to right reason, seems to command rule by God and by those just laws; but whoever commands rule by a man, establishes rule by a wild beast."[143] This was a reminder that the "value of the transcendent obligation of the law" derived no more from the will of the prince than from the will of the people; it came "from objective and transcendent justice and right, founded in God, Who judged both the people and the prince. But the authority that formulated and applied the law was regarded as belonging fundamentally to the body politic as such, that is,

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[136] Godfrey of Fontaines, *Quodl.* XI, q. 17, ed. J. Hoffmans (Louvain 1932), pp. 76-8.
[137] See Joseph R. Strayer, *Studies in Early French Taxation* (Cambridge 1939; reprint Westport CN 1972), pp. 47 and 49.
[138] See Jean-Philippe Genet and Michel Le Mené eds., *Genèse de l'Etat moderne. Prélèvement et redistribution*. Actes du Colloque de Fontevraud (Paris 1987), p. 8.
[139] Henry of Ghent, *Quodl.* XIV, q. 8, f. 567v.
[140] Godfrey of Fontaines, *Quodl.* XI, q. 17, p. 77.
[141] Aristotle, *Politics*, 3.16.
[142] Godfrey of Fontaines, *Quodl.* XI, q. 17, pp. 76-7.
[143] Godfrey of Fontaines, ibid., p. 77.

to the whole community: people, magnates, and king organically allied."[144] The prince only held his *ius principandi* in virtue of his acceptance by the whole community; "and therefore he should not impose anything burdensome or harmful on the community, unless it proceeds from the consent of the subjects, who, insofar as they are free, must obey voluntarily and not under constraint."[145] Henry of Ghent assigned a more active normative role to the prince: "It belongs to princes or to superiors to order what, which, when and how it is necessary to attain this end [the common good] according to the architectonic science, concerning which the Philosopher said at the beginning of the *Ethics*:[146] it is this that determines which arts are among those that are necessary in cities, and what kinds of arts each person must learn, and up to which point the study will be thorough."[147]

Nevertheless, one finds in the two authors the essential idea that elaborating norms required knowledge or a particular intellectual capacity: Henry of Ghent evoked the *scientia architectonica*, going back to the Aristotelian description of politics; Godfrey of Fontaines placed *intellectus* at the head of good government and identified it with laws based on right reason. So the prince had to have *scientia* and *intellectus*; he also had to put in practice a pedagogy of the law, which would allow subjects to grasp the reasons behind what would be imposed on them and to approve it with full knowledge of the causes.[148] In Henry of Ghent, however, this need was moderated by the "confidence" that the subjects had to place in the "prudence and goodness of the prince."[149] In his first *Quodlibet*, Henry had defined in similar terms the relationship that *rurales doctores* were to have with university masters: if they were generally unaware of the underlying reasons for the doctrinal solutions that they passed on to the faithful, these "rural doctors" taught them nevertheless "with confidence, because they know that what they teach they received from the masters."[150] On that occasion, Henry had described theology – as he now described politics – as an "architectonic science."

Godfrey of Fontaines based his determination on a very different postulate. According to Godfrey, the princes – who in this differed little from tyrants, who always tended to govern according to their own will – were accustomed to invoke the requirements of the *res publica* and the advice of qualified men to impose new burdens on their subjects.[151] That's why it would be necessary for "the most knowledgeable and loyal men to participate in the government and to approve of those laws, so that it might be clear to everyone that the cause for which such a

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[144] Yves-Marie Congar, "Quod omnes tangit, ab omnibus tractari et approbari debet," *Revue Historique de Droit Français et Etranger* 36 (1958), p. 223.
[145] Godfrey of Fontaines, *Quodl.* XI, q. 17, p. 77.
[146] See *Aristoteles latinus*, *Ethica Nicomachea*, p. 142.
[147] Henry of Ghent, *Quodl.* XIV, q. 8, f. 567v.
[148] Godfrey of Fontaines, *Quodl.* XI, q. 7, p. 77.
[149] Henry of Ghent, *Quodl.* XIV, q. 8, f. 568r.
[150] Henry of Ghent, *Quodl.* I, q. 35, ed. R. Macken (Louvain 1979), p. 199.
[151] Godfrey of Fontaines, *Quodl.* XI, q. 17, pp. 77-8.

charge was imposed on them was justifiable, and should be accepted willingly."[152] Godfrey was not referring to the royal council,[153] but to the representative assemblies that had begun to be established in the second half of the thirteenth century. Godfrey's position thus joined the ideology of counsel with that of consent borne in the Roman maxim *Quod omnes tangit, ab omnibus tractari and approbari debet*:[154] restored to honor by the canonists of the second half of the twelfth century, it had become, between the Third and Fourth Lateran Councils, a classic rule of Church law,[155] which clerics often invoked as a reminder that they should not be taxed without their consent. The principle had penetrated the political realm to become, in the second half of the thirteenth century, a basic fact in the public law of States.[156] Godfrey appeared, in this case, as a vector for the penetration of this principle in the lay world.[157]

Godfrey of Fontaines thus imposed strong theoretical limits on the prince's normative autonomy: he was called to govern according to already instituted laws and so he appeared to be confined to the role of *executor legis*. Moreover, the idea that representative assemblies must take part in enacting tax legislation called into question the exclusive character of the prince's normative power. For his part, Henry of Ghent insisted on the bond between the rationality of the law and the legitimacy of princely power. In the event of a clear rift between the norm and the common good, the subjects must try to obtain the revocation of the law from the prince. "But if there is no hope of correction, the subjects must work toward the deposition of the superior rather than tolerate him, and they must not obey."[158] This meant that the very legitimacy of the prince's power rested on the good performance of his normative role, which involved both a science (that of the principles to which the norm must conform) and a pedagogy (which must aim to show the conformity between the norm and its principles). The two masters thus suggested that the role of the teacher – which role the university theologians asserted to be exclusively and preeminently theirs – was to inspire the normative action of the *bonus princeps*. They affirmed their authority beyond the confines of the world of the schools and of purely speculative discussions,[159] in the wider domain of a political community to which they claimed to apply principles of government largely coming under their own competence.

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[152] Godfrey of Fontaines, ibid., p. 78.
[153] Godfrey of Fontaines, ibid. On the occasion of the hundredth imposed in 1295 and especially of the fiftieth demanded in 1296, the assent obtained from a restricted council had provoked sharp protests from the nobility (see Strayer, *Studies in Early French Taxation*, p. 50).
[154] C. 5, 59, 5; D. 39, 3, 8 et 3, 3, 31, § 1.
[155] *Sext*. 5, 12, 29 (Fr. 1122).
[156] See Congar, "Quod omnes tangit," p. 217.
[157] However, Y. Congar noted that theologians in the French sphere of influence seem to "éviter la formule," while at the same time one finds in their texts "des énoncés remarquables de principes politiques nettement orientés dans un sens représentatif" (Y. Congar, "Quod omnes tangit," p. 239.)
[158] Henry of Ghent, *Quodl.* XIV, q. 8, f. 568r.
[159] The theological opinion formed in the *Quodlibeta* is rooted in contemporary reality, as attests the extreme thematic and lexical proximity between Godfrey's determination and Philip the Fair's ordinance instituting a new tax (see *Ordonnances des rois de France de la troisième race*, ed. Louis-Guillaume de Vilevault and Louis-Georges de

This is still the case in 1296 or 1297 when Godfrey of Fontaines determines the question whether princes or prelates sinned in not expelling usurers from their lands,[160] as prescribed by the canon *Usurarum voraginem*[161] which Pope Gregory X promulgated at Lyons II in 1274. This canon ordered the expulsion of foreign usurers and prescribed heavy ecclesiastical sanctions for those who neglected to apply it.[162] Royal legislation already contained similar provisions. As of January 1269, St Louis had enjoined his baillis to drive out all Lombard, Cahorsin,[163] and other foreign usurers from their districts and to have them driven out from the lands of the lords, giving them nevertheless three months to leave.[164] The almost literal repetition of this ordinance by King Philip III,[165] in August 1274, attests to the failure of its execution. This failure is explained both by the high demand for credit on the part of the lords – because of the constant rise in prices in the thirteenth century and the immutability of seigneurial land incomes – and by the policy of the monarchy itself with respect to Jewish credit, since "it sought to benefit its own finances from it, tapping heavily the Jewish 'usurers' by arbitrarily establishing the taxation of their financial transactions or purely and simply confiscating a portion of their goods."[166] In the context of the 1290s, the question put to Godfrey also had a very particular relevance. In 1290, King Edward I had expelled the Jews from all English possessions.[167] Less than a year before, King Charles II of Naples and Sicily had carried out similar expulsions in his counties of Anjou and Maine.[168] Then in July 1291, Philip the Fair ordered the Jews expelled from Saintonge and Poitou.[169] For the costs of this expulsion[170] and to compensate for the loss of taxes paid by the Jews, the king of France had required an annual tax of six sous tournois per hearth for six years.[171] The date of the disputation – 1297 – thus

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Bréquigny, 12 [Paris 1777], p. 333) and whose enactment seems to have provoked Godfrey to reaffirm the principles of lay norm production (according to this theory, *Quodlibet* XI would not be before Lent 1296).

[160] Godfrey of Fontaines, *Quodl.* XII, q. 9, ed. Hoffmans (Louvain 1932), pp. 114-18.

[161] Concile de Lyon II, canon 26, Gian Domenico Mansi, *Sacrorum conciliorum nova et amplissima collectio* (Paris 1903), 24, col. 99-100; repris in *Sext.*, 5, 5, 1 (Fr. 1081).

[162] Godfrey of Fontaines, *Quodl.* XII, q. 9, p. 115.

[163] A term that, until the end of the end of the Middle Ages, designated every userer who was neither Jew nor Italian (see Jean Favier, *Dictionnaire du Moyen Age* (Paris 1993), p. 198.

[164] *Ordonnances des rois de France de la troisième race*, ed. Eusèbe de Laurière (Paris 1723), 1, p. 96.

[165] Ibid., p. 299.

[166] Jacques Le Goff, *Saint Louis* (Paris 1996), p. 798. See also Gérard Nahon, "Le crédit et les juifs dans la France du XIIIe siècle," *Annales Economie Sociétés Civilisations* 24.5 (1969), pp. 1121-48.

[167] He had expelled the Jews from Gascony in 1287. The expulsion of 1290 gave rise to the negotiation of a tax meant to compensate for the sovereign's loss of an important source of revenue; see Salo W. Baron, *A Social and Religious History of the Jews. Late Middle Ages and Era of the European Expansion. 1200-1650*, 12: *Economic Catalyst* (New York 1967), p. 235.

[168] **With** of a tax of three sous per hearth, to which assembly of prelates and nobles agreed; see Strayer, *Studies in Early French Taxation*, p. 19, n. 58. See also Robert Chazan, *Medieval Jewry in Northern France. A Political and Social History* (Baltimore 1973), p. 186.

[169] See *Archives Historiques du Poitou* 44 (1923), 1, 147, p. 227.

[170] Ibid., pp. 226-7.

[171] Ibid., p. 227 et pp. 227-8, n. 1. As in the preceding cases, it concerned a compensatory tax conceded by the inhabitants and agreed to by the lords, and not, as Jean Favier has written, about the price that the Jews had to pay in order to stay; see Favier, *Philip le Bel* (Paris 1978), p. 189.

corresponded to the last year of this levy. It might also have been feared that the king would call back the Jews whose expulsion he had granted – and sold – and thus revive the contradiction between royal legislation and its application.[172]

In fact, the theologian cared less about this clash than about the application of the canon *Usurarum voraginem* in the field of secular law. If "because of the fragile state and disposition of the subjects the expulsion of certain bad people" were to cause "more and greater evils for the community, which would be even more difficult to extirpate,"[173] a good prince should abstain from ordering it. The consideration of the circumstances is once again one of the essential criteria for dispensing with a law.[174] Godfrey of Fontaines supported it with a quotation from Augustine: "In a well-ordered city, it is also good for certain bad things to be permitted, which, although they are bad and disordered in themselves, are nevertheless good for the well-being of the community and present, with respect to this good, a certain order; and this is why they should be authorized, although they should not be ordered nor even advised."[175]

In consequence, if the princes sinned "against the constitution [*Usurarum voraginem*], but also against the law of nature" by not expelling the foreign usurers who impoverished their kingdom and caused harm to their subjects,[176] they could still tolerate the local usurers provided that they "were not excessively numerous nor charged excessive interest, [and] that it appeared probable that from them many benefits would accrue for the community."[177] The usurers thus benefited from the excuse – which was seldom allowed to justify their activity – of the common good, determined by the human legislator according to the circumstances: "Human laws leave certain sins unpunished because of the weakness of men who would be deprived of many boons if all sins were rigorously repressed by applying punishments. And this is why human law appears to allow usury, not that it considers it to be in conformity with justice, but lest many men be deprived of their boons."[178] Godfrey of Fontaines noted, however, that the question posed probably targeted foreign usurers – whom the constitution of Pope Gregory X treated – and concluded that their expulsion was necessary, and the princes were obliged to order it "in virtue of the law of nature, in the absence of any precept established by a constitution."[179]

Lay norms were thus founded in natural law since they aimed at the welfare of the entire community. For this reason, the law to expel foreign usurers was, *stricto sensu*, "indispensable."

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[172] The first argument of the disputation is based exactly on the failure to apply the law (see Godfrey of Fontaines, *Quodl.* XII, q. 9, p. 115).
[173] Godfrey of Fontaines, ibid.
[174] There is a particularly clear formulation in Henry of Ghent, *Quodl.* I, q. 42, p. 235.
[175] Augustine, *De ordine* 2. 4, (PL 32, 1000); Godfrey of Fontaines, *Quodl.* XII, q. 9, p. 115.
[176] Godfrey of Fontaines, *Quodl.* XII, q. 9, p. 116.
[177] Godfrey of Fontaines, ibid.
[178] Godfrey of Fontaines, ibid. Here Godfrey cited almost literally, but not explicitly, Aquinas' *Summa theologiae*, IIa IIae, q. 78, a. 1, ad 3 (Rome 1897), 9, p. 156.
[179] Godfrey of Fontaines, *Quodl.* XII, q. 9, p. 117.

The argument for the common welfare could be called upon only in favor of local usurers, under extremely precise conditions which were likely to vary and, consequently, to cause the law to vary. Second, Godfrey showed that by applying the laws prescribed against the foreign usurers, the lay prince subjected himself to canon law only insofar as it was in conformity with the natural law that it specified, notably in determining the time limit for foreign usurers to depart the kingdom. So to establish the sin of a prince, Godfrey did not limit himself to noting the infringement against papal legislation. He reintroduced criteria proper to theological speculation. Thus, the prince who abstained from legislating or who did not respect the law instituted against foreign usurers neglected the common welfare of his subjects and sinned above all and especially against natural law. He had therefore sinned in the absence of any canon law. In the final analysis, the only true legal constraint stemmed from the requirements of natural law.

By thus fixing the rules and the conditions for the exercise of their normative power, the masters asserted that they themselves had the right to produce norms, since they were capable of confirming or annulling, in virtue of their superior knowledge of the principles, the rationality and thus the legitimacy of any norm. In fact, they played an active role in the normative domain, by producing norms relating to all aspects of Christian society that the quodlibetal questions asked of them touched upon.

The Quodlibetal *determinatio* as a Way to Establish Specific Norms

The most interesting fact is probably that the theologians translated into legal terms the clashes of norms or the conflicts between norms and practices characterizing the cases that were submitted to them. In resolving these cases, they determined rights over goods and people and individual rights; they thus produced norms of action and intention in two essential areas: that of the modes of acquisition of property and that of personal obligation and liability. It is impossible to go into detail about the normative interventions of the theologians here. With modes of acquisition, they concern the right to receive tithes, alms, and ecclesiastical benefices as well as contracts governing exchanges; with obligations, rights over people, or individual rights, they concern the natural duty to support poor parents, the problem of forced baptism of Jewish children, the withholding of the marital debt, homicide in an intoxicated state, the profanation of the host, torture, theft, self-defence in the case of rape, or the right to escape for those condemned to death. In spite of the extreme variety that characterizes quodlibetal

production – as all medieval normative production, essentially casuistic,[180] empirical, and fragmentary, like an imperial rescript[181] – it is still possible to discern the profile of the masters' positions, by outlining them with some short examples.

Common Principles, Nuances, and Divergences

First, an examination of quodlibetal determinations reveals the common principles structuring theological thought and grounding the common intellectual attitude of the masters. Theological norms use natural law as their major referent; in the texts, this usage appears in principles that derive from natural law, principles such as justice, individual intentionality, contractual freedom, and extreme necessity.

The modes of conferring, acquiring, and possessing benefices, for example, had to conform to distributive justice. Now, benefices were theoretically granted on account of a spiritual office, but by their nature exposed clerics to the desire for "filthy lucre" (*turpe lucrum*). Besides, the High Middles Ages also saw the development of papal interventionism with respect to benefices at the expense of the rights of local churches.[182] In this context, some quodlibetal questions led theologians to determine, from different angles, the licit and illicit modes of conferral and possession of benefices.

The abilities that a cleric could put at a church's disposal were seen as the major criterion for the licit collation of the benefice.[183] Thus distributive justice – a concept appearing explicitly in questions of Thomas Aquinas and Godfrey of Fontaines[184] concerning the sin of favoritism – was respected provided the collator only considered the applicant's merits with respect to their utility for the church. The criterion of utility, which Godfrey explicitly attached to natural law,[185] Aquinas linked to competence in a question where he justifies the recruitment of a cleric less qualified overall, but more suited to manage the church because of his wisdom, power, or experience already gained in the service of that church.[186] By the same reasoning, in a later *Quodlibet* Aquinas[187] defends a cleric's ability to accumulate benefices even without a dispensation; from the moment the cleric "could, while absent, serve [a church] more or at least

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[180] The *casus*, a medieval inheritance from Roman law, represented a fundamental way to define a norm. A common method of teaching in the law schools at the end of 12th century, the "question-*casus*" only acquired real importance in theology with the appearance of the *quodlibet*.
[181] See Gérard Giordanengo, "Le pouvoir législatif du roi de France (XIe-XIIIe siècles)," *Bibliothèque de l'Ecole des Chartes* 147 (1989), p. 288.
[182] See Michèle Bégou-Davia, *L'interventionnisme bénéficial de la papauté au XIIIe siècle. Les aspects juridiques* (Paris 1997).
[183] See Gerard of Abbeville, *Quodl.* XII, q. 4; Thomas Aquinas, *Quodl.* VI, q. 9 and IX, q. 15; Godfrey of Fontaines, *Quodl.* XI, qq. 13-14.
[184] Thomas Aquinas, *Summa theologiae*, IIa IIae, q. 63, a. 1, p. 62; Godfrey of Fontaines, *Quodl.* XI, q. 13, p. 63.
[185] "By virtue of the law of nature, the prelate was obliged to confer the church on a person who would be useful to it," Godfrey of Fontaines, *Quodl.* XI, q. 13, ed. J. Hoffmans (Louvain 1932), p. 63.
[186] Thomas Aquinas, *Quodl.* VI, q. 9, ed. R.-A. Gauthier, 2, p. 304.
[187] Thomas Aquinas, *Quodl.* IX, q. 15 (December 1257), ed. R.-A. Gauthier, 1, p. 117.

as much as could another while present," natural law would justify his holding several benefices, with no positive determination being necessary, because, as Godfrey would also say, a dispensation, "since it is only a declaration [of natural law], does not have to be applied in obvious cases."[188] *A contrario*, Gerard of Abbeville stuck strictly to the letter of positive law and to exceptions allowed *a iure*: no cleric could claim to hold two benefices apart from the cases envisaged by the common law; in the event of impossibility by law, only the pope could grant dispensation.[189]

The purely legal casuistry that Gerard developed did not leave any room for the consideration of natural law. His approach coincided more with that of the lawyers – whose authority moreover he called upon extensively, and whose authority the theologians specifically confined to the realm of positive law – than with that of the theologians who claimed a specific aptitude to explain natural law. By connecting the right to receive a benefice to competences that the cleric could put at the church's disposal, the theologians loosened the bond that canon law stipulated between the office and the benefice and justified the practice that illustrated this disassociation most overtly, namely pluralism. Natural law even justified that one could get by without dispensation, if the reason for pluralism were obvious. The theologians thus went beyond the cases for exemption envisaged by canon law;[190] the dispensation was little more than a means of making manifest what was not universally evident.

Another fundamental principle, commutative justice, governed the exchange of material goods, a realm that did not concern the Church exclusively and which might only involve laypeople. Odd Langholm[191] has shown the relevance and the wealth of scholastic sources for the treatment of economic questions, at that time focused on the exchange of goods and lending of money. It is in university doctrinal writings, and particularly in *quodlibeta*,[192] that the norms of an "economic ethics" were developed in conformity with the requirements of moral theology. In fact, theologians' interest in the forms and conditions of exchanges stemmed above all from their concern for providing rules for governing souls in an area that offered many opportunities to sin, either by usury or by economic practices done *in fraudem usurarum*.[193] Indeed the quodlibetal questions relate less to usury itself that to the types of contracts that it was likely to sully; these questions thus fit into the more general issue of contractual relationships, and

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188 Godfrey of Fontaines, *Quodl.* XI, q. 14, p. 67.
189 Gerard of Abbeville, *Quodl.* IX, q. 6, Paris, BNF lat. 16 405, f. 78vb; BAV, Vat. lat. 1015, ff. 110vb-111rb.
190 See *Extra*, 3, 5, 8 (Fr. 478).
191 Odd Langholm, *Economics in the Medieval Schools: Wealth, Exchange, Value, Money and Usury according to the Paris Theological Tradition, 1200-1350* (Leiden 1992).
192 Langholm, *Economics in the Medieval Schools*, p. 31.
193 An expression the canonists used to indicate hidden forms of usury and in particular deals that appeared licit, but in fact were tainted by usurious intent; see Terence McLaughlin, "The Teaching of the Canonists on Usury," *Mediaeval Studies* 1 (1939), p. 95; John W. Baldwin, *Masters, Princes and Merchants. The Social Views of Peter the Chanter and his Circle* (Princeton 1970), 1, p. 273.

therefore their solution followed the principle of commutative justice, "which by nature obtains when the thing given and the thing received are the same quantity and value."[194] In the 1220s, Guillaume of Auxerre had been the first to define usury as a sin against justice.[195] The translation of Aristotle's *Ethics*, available from 1247, gave the theologians a more general framework for considering commutative justice.[196] This seems to be the principle for solving all questions about buying and selling. Henry of Ghent – whose importance and originality in the analysis of justice in exchanges Langholm has emphasized[197] – asserts that equality between the partners of the exchange must be defined "according to the [just] medium of commutative justice";[198] in the same way, the equality of price between the item bought and the item sold was to be observed "as communative justice requires."[199] The justice of the exchange was illustrated by the Aristotelian image of the scales:[200] if one side deemed that it had received too much, it was to restore the surplus until the necessary equality was reached, using the image of the balance obtained between the two arms of a scale.[201]

Once again, the scholastics systematically identified the justice on which they based economic ethics with natural law – or, in more exact terms, with the "equity of natural law." Henry of Ghent stigmatized usury, according to the Aristotelian argument of the sterility of money,[202] as the mode of acquisition "most against nature"; but "the justice of contracts pertains to the law of nature, which must be the same for all peoples."[203] The two universal rules defining the equity of natural law were formulated in the long prologue to a question from Henry's *Quodlibet* VI: "In all types of exchanges or loans where one hopes for more than what was given, and especially if one receives it, there is cupidity and a sin of injustice against the equity of natural justice, which obliges everyone to do unto others what, according to the judgment of right reason, he wants to be done unto him, and not to do unto others what he does not want to be done unto him."[204] The prohibition against usury, like all contracts soiled by injustice where one party received more than it had given, was thus founded on natural law. Usury was not iniquitous and sinful because it was against positive law; it was so *ex natura rei*.

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[194] Henry of Ghent, *Quodl.* I, q. 39, ed. R. Macken (Louvain 1979), pp. 211-12, citing **Aristotle, *Ethique à Nicomaque* 5. 7, 1131b-1132a, trans. Tricot (Paris, 1997), pp. 231-232**.
[195] William of Auxerre, *Summa aurea*, 3.48.1.1, ed. Jean Ribaillier (Paris, 1986) 3, 2, p. 910.
[196] **See Aristotle, *Ethique à Nicomaque*, translation and commentary by R.-A. Gauthier and J.-Y. Jolif (Louvain 1958), pp. 74-75**.
[197] Langholm, *Economics in the Medieval Schools*, p. 255, n. 27.
[198] Henry of Ghent, *Quodl.* VIII, q. 24 (Paris 1518), f. 333v.
[199] Henry of Ghent, *Quodl.* XIV, q. 14 (Paris 1518), f. 570v.
[200] Aristotle, *Nicomachean Ethics*, 5. 7, 1132a 25-30.
[201] Henry of Ghent, *Quodl.* I, q. 40, ed. R. Macken (Louvain 1979), p. 221.
[202] Cf. Aristotle, *Politics*, 1. 10, 1258b.
[203] Henry of Ghent, *Quodl.* I, q. 39, ed. Macken (Louvain 1979), p. 219.
[204] Henry of Ghent, *Quodl.* VI, q. 22, ed. G.A. Wilson (Louvain 1987), p. 206; the prologue is an introduction to Henry's economic thought, according to Langholm, *Economics in the Medieval Schools*, p. 254.

The legality of the acquisition or the exchange of goods moreover was determined by the principles of individual intentionality, that is, by the will and the freedom of the contractors. These principles notably regulated the acquisition of ecclesiastical benefices. If they were granted in return for the promise or actual concession of a temporal good, their collation was stained by simony. At the very end of the century, Godfrey of Fontaines makes a radical use of the criterion of inner intent. Aquinas, in a determination of 1271, had concluded that, in the absence of any constraint exerted on the candidate for the benefice, the hope nourished by the collator to obtain a temporal gratification from it, while "depraved" and "carnal," was not, strictly speaking, simoniac.[205] Godfrey, on the other hand, stresses the concept of "mental simony."[206] As Henry of Ghent pointed out in a question about the need to return what one has received by usury in the absence of any agreement, God, "a harsh judge who examined hearts and learned the secrets,"[207] was less concerned about acts than about intents and considered the sins independently of the facts and the words.[208] Using a parallel between usury and simony, Godfrey based his determination on the *ratio mutui*, which demanded that one receive nothing more than what one had lent; so the cleric who had given a loan to a bishop in the hope of obtaining a benefice from him was not entitled to possess the benefice and had to return it, in accordance with the requirements of natural law.[209] Still, the Church could only acknowledge cases of "perfect and complete simony" when a pact had been concluded between the collator and the candidate for the benefice.[210] The bond between the crime and the punishment was thus loosened: the sin, proven according to divine and natural law and labeled such by the theologian, could escape punishment by the Church which acknowledged only tangible and evident things. The Church, which could freely dispose of ecclesiastical benefices, also had the capacity "to remove the titles from those who had them and to confer them on those who had not" and "to make it so that he who committed mental simony, after having performed penance, achieves the title by the Church's liberality, as if by a new collation."[211] Godfrey thus explained the practices of the Church in terms close to those used by the canonists and the theologians who supported the pontifical *plenitudo potestatis*. Such exemptions could be conceived only in the ecclesiastical realm, since the Church did not deal with lay goods as it did with its own goods.

The concept of mental usury had been developed analogously to that of mental simony. Indeed, in lay society usury occupied a place structurally identical to simony in clerical society.

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[205] Thomas Aquinas, *Quodl.* V, q. 23, ed. R.-A. Gauthier, 2, p. 390.
[206] Godfrey of Fontaines, *Quodl.* XIII, q. 14, ed. Hoffmans (Louvain 1932), pp. 282-3.
[207] *Extra*, 5, 3, 34 (Fr. 763).
[208] Henry of Ghent, *Quodl.* VI, q. 26, ed. Wilson (Louvain 1987), pp. 235-6.
[209] Godfrey of Fontaines, *Quodl.* XIII, q. 14, p. 282
[210] Godfrey of Fontaines, ibid., p. 285.
[211] Godfrey of Fontaines, ibid., p. 284.

The attention theologians paid to intent thus applies to contemporary society as a whole. In *quodlibeta*, individual intent is relayed in two ways: through the concept of mental usury itself, meaning that the mere hope of obtaining more than one gave constitutes usury;[212] and via the idea that no one can acquire or lose a right involuntarily: the duress – in whatever form it is applied, pact or simple intent – invalidates the transaction. Theologians like Godfrey of Fontaines delved extensively into the legal effects of intent, attributing to the will a role in the acquisition of a right over goods: if anyone lent money to someone else in the hope of receiving more than what he had loaned, and granted this loan only in this hope, although without an express agreement, he sinned against God by that simple volition. But because usury was also a sin of injustice toward others, for someone really to be a usurer it was also necessary for him to receive the interest on the capital lent against the will of the person who gave it to him.[213] In this case, he had to restore the usurious profit. On the other hand, if the good had been given to him freely, he had to be "capable" of receiving it in the way in which it was given to him. But if, *a contrario*, he determined that the good that was freely given to him stemmed from the loan or the gift which he himself had granted beforehand, he was deprived of any capacity to acquire what was given to him; he did not have a "just title" to this good, which he was thus obliged to restore. The argument of the capacity of the receiver to acquire a right over the good was thus decisive. It allowed the master to charge the lender with the sin of injustice from which he appeared exempt because he did not really injure his fellow man. Although the lender could not be labelled a usurer, since the profit was given to him freely, he still sinned against justice in another way, by reckoning that the gift given to him constituted the price for the loan. He was thus rendered incapable of acquiring what had been given to him: the donation was consequently stripped of legal effect. Taking into consideration the individual's intent as a decisive criterion for the transfer of property (and thus for the acquisition of a right) radically modifies the Roman definition of incapacity based on objective and well-defined categories. The principle of the freedom of the transaction constitutes the result of a process of subjectivisation of the law. The specific perspective of spiritual advisers and the primordial concern for providing the rules of governing souls undoubtedly explain why the theologians tried in this way to create norms for social relations on the bases of individual intent and mutual freedom to make contracts.

That said, the principle of extreme necessity could justify keeping ill-gotten goods. In a context marked by the exigencies of crusading and especially by the development of the mendicant orders, the problem of whether the Church could keep grants, alms, or requisitions of

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[212] Henry of Ghent, *Quodl.* I, q. 39, p. 216.
[213] Godfrey of Fontaines, *Quodl.* X, q. 19, ed. Hoffmans (Louvain 1924), pp. 398-405.

unlawfully acquired goods stimulated theological thought. The illicit character of the initial acquisition of goods brought into question the donor's right to use them and *a fortiori* to alienate them. Thus, asked whether one could licitly accept and use goods of usurious origin that had been received because of the licit exercise of an office, Gerard of Abbeville replied that it was a mortal sin.[214] Deprived of the possibility of restoring the goods that had been given in alms, the usurer could not do penance, and the one who received them would be guilty of scandalous complicity. Finally, Gerard pointed out that the acquisition of goods through usury, just as through other illicit means (theft or simony), did not allow any transfer of ownership nor consequently any legitimate possession. So it was not at all possible to use these extorted goods licitly, and their owner had the right to demand their return. Using similar arguments, Henry of Ghent[215] nevertheless admitted the possibility of alienating fungible goods, like money, which one could replace with an equal amount. In this case, the recipient of the gift or alms could keep the fungible goods that the donor unlawfully acquired, provided that the donor declared his intent to return their equivalent or that he transmitted the burden of restoration to the recipient. For Henry, distinguishing between types of goods and taking the donor's intent into account justify an exemption from the principles of canon law that Gerard confirmed.

In very different terms, Thomas Aquinas, in a *Quodlibet* from Lent 1272, justified that "preachers" could receive alms of usurious origin. They could do so, he said, "in a special case," that is if they preached to the usurers and urged them to return the fruits of their usury, and if they had "no other means of living," insofar as "extreme need makes all things common."[216] Aquinas, who, in this case, seems to worry less about penance and the salvation of the usurers than about justifying the mendicant life, passes over in silence the problem of the restitution of usurious gains, which constitutes the core of Henry of Ghent's demonstration. In the same way, in a question from 1297 or 1298, Godfrey of Fontaines defends the pope's power to grant to anyone a dispensation from the obligation to return goods acquired by unlawful means, for example by plunder or usury, but which the Church required to save the Christian faith.[217] The dispensation, legitimate in this case of extreme necessity, removed any claim on behalf of the injured owner and created the fiction of legitimate possession benefitting the one who, having extorted the goods, had then placed them at the service of the Church. "In such a case, the dispensation is only a kind of declaration of natural law, because by the law of nature, all external goods [...] are common in times of necessity [...], all the more so for the protection

[214] Gerard of Abbeville, *Quodl.* IV, q. 3, Paris, BNF lat. 16405, ff. 48vb-49rb; BNF lat. 14557, ff. 93 rb-vb; BAV, Vat. lat. 1015, ff. 47ra-va).
[215] Henry of Ghent, *Quodl.* VI, q. 25, ed. G.A. Wilson (Louvain 1987), p. 229.
[216] Thomas Aquinas, *Quodl.* XII, q. 30, ed. R.-A. Gauthier, 2, p. 424.
[217] Godfrey of Fontaines, *Quodl.* XIII, q. 5, ed. J. Hoffmans (Louvain 1932), pp. 222-30.

and defense of the common good."[218] However, Godfrey stipulated that the owners wrongfully stripped of their goods should be compensated, to avoid injuring them excessively.[219]

On a different level, the same principle of extreme necessity, linked to compensatory justice, could support a monk's disobeying his superior by leaving the cloister to provide for the needs of his poor parents. On various occasions all the great masters treated this apparently marginal question, which contributed nevertheless to nourishing the debate over the states of perfection in the second phase of the quarrel between mendicants and seculars. Indeed in the *quodlibeta*, the theologians almost systematically opposed the obligation to ensure the subsistence of poor parents to the obligation created by the monastic vow. In contrast to Aquinas, who maintained that the monks became "dead to the world" and so freed by their vow from their natural obligations,[220] the secular masters affirmed the primacy of the divine commandment that prescribed honoring one's parents and they viewed the obligation to ensure their subsistence in case of necessity as a duty of natural justice.[221] As Henry of Ghent asserts, "the monks are not dead to the world of natural things, otherwise they would neither drink nor eat. This is why, [...] as long as they live in the natural life that they received bodily from their parents, they are always obliged towards them in what pertains to the necessity of natural life."[222]

So one sees that the agreement on principles did not exclude differences in the practical conclusions drawn by the masters. The particular cases examined during the quodlibetal sessions involved many exceptions. The disagreements among the masters are primarily due to differences in approach. Thus, Gerard of Abbeville generally sticks to the letter of canon law; his approach is characterized by its juridical character, casuistic and enumerative. Thomas Aquinas' determinations are much more concise and clearly less marked by citations; they follow above all a sequence of rational arguments. Henry of Ghent shows subtle casuistry and remarkable qualities of synthesis. Lastly, Godfrey of Fontaines' questions, generally faithful to Henry's approach and doctrines, also show a strong influence of Aristotelian teachings. These singularities explain to a certain extent how the various authors arrived at opposing conclusions starting from identical principles. On the issue of tithes, for example, Gerard[223] and Henry[224] departed from the same principle from canon law according to which tithes were due on a

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[218] Godfrey of Fontaines, ibid., p. 228.
[219] Godfrey of Fontaines, ibid., p. 229.
[220] Thomas Aquinas, *Quodl.* III, q. 16, ed. R.-A. Gauthier, 2, p. 267.
[221] Ex. 20: 12; see Gerard of Abbeville, *Quodl.* X, q. 5, Paris, BNF, lat. 16405, f. 80va, BAV, Vat. lat. 1015, f. 116va; *Quodl.* XVII, q. 1, BNF, lat. 16405, f. 117rb, Vat. lat. 1015, f. 119ra; Henry of Ghent, *Quodl.* VI, q. 19, ed. Wilson (Louvain 1987), pp. 183-4, and *Quodl.* XI, q. 16 (Paris 1518), f. 472v; Godfrey of Fontaines, *Quodl.* IX, q. 15, ed. Hoffmans (Louvain 1924), p. 262.
[222] Henry of Ghent, *Quodl.* VI, q. 19, pp. 184-5.
[223] Gerard of Abbeville, *Quodl.* XVI, q. 9, Paris, BNF, lat. 16405, f. 115ra-rb; BNF, lat. 14557, f. 136vb; BAV, Vat. lat. 1015, f. 92va.
[224] Henry of Ghent, *Quodl.* XIII, q. 16, ed. J. Decorte (Louvain 1985), pp. 203-4.

purely real basis, not on a personal one.[225] Applying this principle to the case of the Jews, the two masters came to opposite conclusions: true to the letter of the law, Gerard argued that the Jews had to pay tithes, although they had not received any spiritual service from the priest to whom they paid them, since they were due on a purely real basis;[226] on the other hand, more concerned with the nature of the goods than with the legal abstraction that grounded the right of the priest to receive them, Henry believed that the Jews could not alienate, even in tithes, goods that they were obliged to return because of their usurious character.[227]

The different magisterial solutions can be also explained by the tensions and the conflicts of the universities at that time. The quarrel between mendicants and seculars thus makes it possible to understand the disagreement between the Dominican Aquinas and the secular Henry of Ghent, who shared an identical conception of the dispensation on the level of principles, but were opposed on the precise question of the dispensation from a vow.

A Typology of the Theological Interventions in the Normative Realm

On the basis of these common principles, which the different conclusions did not call into question, theologians intervened in various ways in the normative realm. Their first form of intervention consisted in distinguishing and placing normative levels in a hierarchy: positive law and natural law, the judgement of the Church and judgement of the conscience are such levels in the development and relevance of norms.

In distinguishing them, theologians introduced finer qualifications. Their solutions did not rest solely on the evidence of the facts, as we have seen; they were based on the interior intent of the fictitious protagonists that the cases presented. The concepts of mental simony and mental usury, such as one encounters in the questions of Henry of Ghent and Godfrey of Fontaines, attest to the integration of the dimension of individual intent. A question of Henry of Ghent about a Jew profaning the host[228] gives evidence for it in another way: Henry judged that the Jew's sin was smaller if he did not stab the host with the intention of insulting Christ, but of performing an experiment concerning the truth of the Christian faith: if, moreover, he had been converted sincerely by the effect of a miracle – the stabbed host having expressed its eucharistic properties by starting to bleed – Henry even recommended that the Jew not suffer any punishment. The punishment was removed by the "goodwill" of the Jew who asked for baptism

[225] *Extra*, 3, 30, 16 (Fr. 561) and d. p. Grat. 13, 1, 1 (Fr. 718).
[226] Gerard of Abbeville, *Quodl.* XVI, q. 9.
[227] Henry of Ghent, *Quodl.* XIII, q. 16, pp. 203-4.
[228] This quodlibetal question, dated to Advent 1290, echos another event that was at the time recent and known under the name "le Miracle des Billettes"; on this text, see Henry of Ghent, *Quodl.* XIV, q. 15, ed. and French trans. Elsa Marmursztejn in "Du récit exemplaire au *casus* universitaire: une variation théologique sur le thème de la profanation d'hosties par les juifs (1290)," *Médiévales* 41 (autumn 2001), pp. 51-63.

and so put himself at the service of Christ and the Church, which should bring him indulgence and reconciliation.

Other quodlibetal texts show, in addition, that the rule of natural law – "inscribed in the heart of man" – did not deprive the other normative levels of all relevance: civil law, canon law, and natural law constituted a gradation towards the good. A question of Henry of Ghent, dated Lent 1278,[229] quite poignantly illustrates the originality of theologians' perception and production of norms. Seeking to resolve the question whether it was lawful to rent or sell something at a price higher than its actual value or the supposed price of its future value, Henry immediately encountered the contradiction between the principle of natural equity – never receive more than one has given – and the *iura*, which allowed both buyers and sellers to be mistaken, provided that the lesion on either side does not exceed half of the just price.[230] Henry interpreted the provisions of positive law[231] as a concession made to human fallibility, to the "defect of judgment of human reason," which explained the "great latitude" left to the contractors. Not content to base the rectitude of this positive law (whose inchoate character explained its imperfection) on its social utility (it sufficed to maintain peace among men), Henry conferred the legitimacy of natural law to positive law: the "latitude" that benefitted contractors came not only from "human justice," but also from the "justice of natural law," which permitted the uncertainty of human estimation up to half of the just price, provided that the contract were drawn up in the "good faith" and "the pure intent and conscience" of the two sides. The contradiction that seemed to oppose positive, civil, and canon law to natural law was thus resolved.

The theologians also intervened in the normative realm by interpreting the norms of positive law from the perspective of natural law, explaining the reasons that gave strength to certain norms of positive law and reconciling contradictions that seemed to exist among some of these norms of positive law. This type of normative intervention makes it possible to observe the interaction of law and theology in quodlibetal texts, as well as the theologians' paradoxical stand regarding the law, namely keeping their distance from it while appropriating it.

Many quodlibetal questions echo legal debates. This is true for all questions touching on the relationships between *temporalia* and *spiritualia*, i.e. primarily the questions about ecclesiastical benefices and tithes.[232] One notes that all great authors of *quodlibeta* dealt with the issue of

[229] Henry of Ghent, *Quodl.* III, q. 28 (Paris 1518), ff. 87v-89v.
[230] See *Digeste*, 4, 4, 16, §4, ed. Theodor Mommsen, 1 (Berlin 1870), p. 131.
[231] Two papal decretals corroborated the Roman law: *Extra*, 3, 17, 3 (Fr. 518) et 3, 17, 6 (Fr. 520).
[232] The question of tithes is treated in depth in questions 1 and 7 of Causa 16 of Gratian's *Decretum*; it was the subject of an entire title of the *Liber extra*, *De decimis*, 3, 30, 1-35 (Fr. 555-569).

tithes:[233] the contradiction between the fact (they were the object of sales) and the law (they could not be sold) resulted from their double nature, temporal and spiritual; their Old Testament bases and their fixed portion encouraged discussion on their binding force under the "new law." Finally, in a context marked since the end of twelfth century by increased resistance to the payment of tithes and the dispute over the clergy's own right to collect them, which was expressed in particular by laypersons' appropriation of tithes and by their circulation as objects of property, the magisterial solutions stood out. In these matters, the theologians could not ignore the principles the lawyers had been developing for almost a century; they borrowed from them references, concepts, and methods, such as allegation, which emphasized their skill in denuding these notions from their context to cloak them in a new relevance and efficacy.

More generally, the theologians assimilated and adopted the language of the jurists, in particular to determine rights over persons and individual rights, as for example the right of paternal power, the women's right to the body of her husband, or the right to escape of those condemned to death. Most striking, the theologians expressed these rights according to categories of real property. Thomas Aquinas thus assimilated the right of paternal power to a true right of ownership that the father exercised over his child before the age of reason.[234] Natural justice thus precluded the Church's baptizing Jewish children against the wishes of their parents.[235] Marriage gave spouses the right to use their partner's body, and so the entry of one spouse into a religious order could not extinguish the other spouse's right to his or her body.[236] Lastly, a person condemned to death enjoyed an exclusive right of ownership over his own body. The capital sentence could not strip him of this right, which moreover he had the duty to exercise to maintain the life of his body, if the judge who had condemned and imprisoned him neglected to exert his own right of usage, by giving him in fact the opportunity to flee.[237] The masters' appeal to the right of ownership to designate rights over persons and individual rights undoubtedly constitutes one of the most original features of theological normativity as expressed in quodlibetal literature.

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[233] Gerard of Abbeville, *Quodl.* I, qq. 13-16, Paris, BNF lat. 16405, ff. 30va-33vb; idem, *Quodl.* XVI, q. 9, ibid., f. 115ra-rb, BNF lat. 14557, f. 136vb, BAV, Vat. lat. 1015, f. 92va; idem, *Quodl.* XII, q. 13, BNF lat. 16 405, ff. 88vb-89ra and Vat. lat. 1015, ff. 6vb-7ra; Thomas Aquinas, *Quodl.* II, q. 8, ed. Gauthier, 2, pp. 224-6. and *Quodl.* VI, q. 10, ed. R.-A. Gauthier, 2, pp. 304-5; Henry of Ghent, *Quodl.* IV, q. 28 (Paris 1518), f. 145r; idem, *Quodl.* VI, q. 23, ed. G.A. Wilson (Louvain 1987), pp. 210-22; idem, *Quodl.* XIII, q. 16, ed. Decorte (Louvain 1985), pp. 203-4; Godfrey of Fontaines, *Quodl.* I, q. 16, ed. M. de Wulf and A. Pelzer (Louvain 1904), pp. 38-9; idem, *Quodl.* XI, q. 12, ed. Hoffmans (Louvain 1932), pp. 58-62.

[234] Thomas Aquinas, *Quodl.* II, q. 7, ed. Gauthier, 2, p. 223.

[235] On the question, see Alain Boureau and Elsa Marmursztejn, "Thomas d'Aquin et les problèmes de morale pratique au XIIIe siècle," *Revue des Sciences Philosophiques et Théologiques* 83.4 (1999), pp. 685-705; see also E. Marmursztejn and S. Piron, "Duns Scot et la politique. Pouvoir du prince et conversion des juifs," colloque Duns Scot à Paris, Paris, September 2002, forthcoming.

[236] See Thomas Aquinas, *Quodl.* III, q. 18, ed. Gauthier, 2, pp. 274-5; idem, *Quodl.* X, q. 11, ed. Gauthier, 1, pp. 139-40; Henry of Ghent, *Quodl.* V, q. 38 (Paris 1518), f. 214r.

[237] See Henry of Ghent, *Quodl.* IX, q. 26, ed. R. Macken (Louvain 1983), pp. 307-10.

No less frequently the theologians denounced the lawyers' deficient knowledge and intelligence. They adapted their tools and their techniques to subject them to theology's own requirements. That theologians investigated in the practical realm is nothing special, but the specific treatment that theologians gave to practical questions is undoubtedly original. As we have seen, this originality resides above all in the refoundation or the requalification of principles and the reformulation of conclusions of legal origin.

The Production of Compromise Solutions

Finally, theological normativity is characterized by the production of definitions and distinctions that in particular allowed the masters to justify certain common practices against the strict letter of positive law or to justify the maintenance of norms whose legitimacy seemed doubtful. In this respect, the *quodlibet* was a locus for the development of compromise.

To justify the fact that norms of Old Testament origin, like the precept of Sunday observance (substituted for the Sabbath precept) or that of tithes, were preserved under the "New Law," the theologians defined them as "middle" or "mixed" precepts, part moral, part ceremonial. Because they were founded on natural reason, moral precepts had permanent validity. Natural reason required that a rest period be devoted to divine worship or, in the case of tithes, that priests receive the means for their sustinence from the community that they serviced spiritually. Ceremonial precepts in turn specified the day to devote to divine worship and the portion of the tithes. The determination of the time one must devote to divine worship and the veneration of God, and cease all business, just as the determination of the portion of the tithes – and, generally, of all the concrete implementations that natural law had not fixed – fell to the Church, which had sought that they be in harmony with the regulations of the Old Law.[238]

In addition, to demonstrate that the Church could concede the revenues from tithes to laypersons in certain cases, the theologians used the distinction between *ius* and *fructus* or *ius* and *res*,[239] derived from the Roman distinction between corporeal and incorporeal things.[240] Reformulated from the twelfth century by canonists like Huguccio,[241] we find this distinction at the beginning of the thirteenth century in the circle of Peter the Cantor, in authors such as Robert of Courson[242] or Thomas of Chobham:[243] if the Church could not grant to laymen the

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[238] On tithes, see Thomas Aquinas, *Quodl.* II, q. 8, ed. R.-A. Gauthier, 2, pp. 224-5, and Henry of Ghent, *Quodl.* IV, q. 28 (Paris 1518), f. 145r. For the dominical precept, see Henry of Ghent, *Quodl.* I, q. 41, ed. R. Macken (Louvain 1979), pp. 230-1.

[239] See Gerard of Abbeville, *Quodl.* I, q. 16, Paris, BNF, lat. 16405, f. 33rb-va; BAV, Vat. lat. 1015, f. 43rb-va; Thomas Aquinas, *Quodl.* II, q. 8, p. 226; Henry of Ghent, *Quodl.* VI, q. 23, pp. 221-2; Godfrey of Fontaines, *Quodl.* I, q. 16, ed. M. de Wulf and A. Pelzer (Louvain 1904), p. 38.

[240] *Inst*. 2. 2. 14, ed. P. Krüger (Berlin 1890), p. 13.

[241] Huguccio, *Summa decretorum* ad d. a. Grat. 16, 7, 1, cited in Baldwin, *Masters, Princes and Merchants*, 2, pp. 167-8, n. 38.

[242] Robert of Courson, *Summa* 13, 12, cited in Baldwin, 2, p. 168, n. 42.

right – strictly ecclesiastical – to receive tithes, it could nevertheless concede their fruits to them. In the same way, the distinction between *ius* and *pecunia* appears at the end of the thirteenth century as a means of legitimating the practice – which had become common – of rent contracts.[244] Initially formulated by Servais of the Mount-Saint-Eloi,[245] this distinction made it possible to circumvent the idea that these contracts were usurious[246] in that they consisted in giving money in the hope of receiving more at term than one had given: if not the money itself (*pecunia*), but the right to perceive it (*ius*), were regarded as the term of the contract, the money returned to its natural function as a means of exchange (*medium*); one gave it as the price of a right conceived as the end of the exchange (*extremum*). Thus this contract escaped the suspicion of usury. The diffusion of the distinction between *ius* and *pecunia* betrays a remarkable trend toward abstraction and doctrinal malleability. It testifies to the evolution among the theologians at the end of thirteenth century of an original conception of money, more juridical than physical, in a break with Aristotelian theory.[247]

The justification of common practices contrary to the strict letter of positive law constitutes one of the major aspects of theological normativity. In *quodlibeta*, this approach had two consequences. First of all, the masters' solutions helped explain the value of their own role and promoted the recognition of the legitimacy of their practices. Thus, for example, they justified the plurality of benefices – which they themselves practiced rather extensively – and clerical absenteeism for studies, by combining the argument from utility with that of competence. Second, the justification of common practices maintained the links between theology and the practical world. Thus they did not discredit human law; rather, they stressed its didactic and propaedeutic character: with an ascending conception of norms, they conceived this human law as the first step in a series of levels towards the good.

Conclusion

The theological *quodlibeta* of the thirteenth century are among the most favorable sources for the construction of the authority of the Parisian masters, both in terms of representations and

[243] Thomas of Chobham, *Summa confessorum* 6. 12.16, ed. F. Broomfield (Louvain 1968), p. 531.
[244] One can follow the controversy over rent contracts in a dozen texts from the middle of the 1260s to the end of the 1280s. See Fabiano Veraja, *Le origini della controversia teologica sul contratto di censo nel XIII secolo* (Rome 1960).
[245] Servais of Mont-Saint-Eloi, *Quodl.* III, q. 25, ed. Veraja, pp. 203-4. See also Richard de Mediavilla, *Quodl.* II, q. 23 (Brescia 1591), p. 67 sq.; Godfrey of Fontaines, *Quodl.* V, q. 14, ed. M. de Wulf and J. Hoffmans (Louvain 1914), pp. 65-6; Henry of Ghent, *Quodl.* XII, q. 21, ed. J. Decorte (Louvain 1987), pp. 112-13.
[246] An idea defended initially by Henry of Ghent, *Quodl.* I, q. 39, ed. R. Macken (Louvain 1979), pp. 209-18, and in *Quodl.* VIII, q. 24 (Paris 1518), f. 333v, where, however, his position begins to evolve; this evolution is confirmed in *Quodl.* XII, q. 21.
[247] See Langholm, pp. 275 and 341.

enforcement. In terms of representation, the "mirror of the doctors" that *quodlibeta* allow us to reconstitute reflects three requirements: the autonomy of knowledge with respect to all forms of institutionalization; the superiority of the intellectual role as "architectonic"; and the intellectual freedom of the masters from censures and condemnations. In terms of the exercise of magisterial authority, the extreme diversity of the questions tackled during these disputes and their practical character, at times trivial, postulated that the theologians had the right to judge all things at the heart of Christian society.

The masters of theology asserted and exerted this universal competence, which is like a true intellectual *magisterium*, by constructing the normative legitimacy of their discourse on the supra-legal foundations of divine or natural law. On some issues where they were in direct competition with the lawyers, since the questions dealing with tithes, alms, or benefices, for example, entailed defining the licit modes of acquisition which determined the *rights* over these various types of goods, theologians were especially concerned with delimiting their field of competence clearly; hence the repeated invocation of their radical superiority, which gave them their capacity to grasp the principles pertaining to divine or natural law. Thus dedicated to declaring natural law, the masters considered themselves entitled to settle debates often initiated by the lawyers, whose concepts and arguments they employed extensively. In doing so, however, they were almost always – with the notable exception of Gerard of Abbeville – as far as possible from the strict letter of the law. They based their justification of what *appeared* to be contrary to the law on reasons other than those invoked by the law and by arranging them according to the higher norm of natural law.

Obviously one can dispute the normative quality of quodlibetal determinations. Certainly the norms that the masters produced only had an effect from the moment the powers, that is the prelates and pastors, transferred them to the practical realm. But the fact that no proper executive body transferred university norms and that they were deprived, consequently, of any coercive force, is not sufficient to refute the idea that the masters exerted, especially in theological *quodlibeta*, the normative capacity that they explicitly claimed. All the same, the practice of questioning and the diversity of magisterial positions seem more to bolster than to sap the foundations of this authority, if one admits that it was constructed precisely on the exercise of thought, on the foundations of a unified intellectual attitude that consisted above all in common objectives, methods, and references.

At the crossroads of the history of ideas and of representations, social history and intellectual history, it thus appears possible to conceive the theological *quodlibet* as one of the essential places, if not the only one, for the construction of the authority status of the Parisian masters of theology at the end of the thirteenth century. The masters asserted this authority as a form of

normative power or at least as a capacity to influence or to arbitrate, at a time when normativity was becoming the principal qualification of power and when the desire for a rational foundation of norms was becoming evident.