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Optimus vir, optima lex

A Medieval Debate on the Soul of a City¹

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Mens et animus et consilium et sententia
civitatis posita est in legibus.

Cicero, *Pro Cluentio*, 146.

Lex, id est, imperator qui est lex animata in
terris.

Accursius, *Glossa ordinaria*,
dist. 1. 3. 22. v. *cum lex*.

Abstract: This paper studies a series of thirteenth- and fourteenth-century scholastic discussions on Aristotle's "vexed question" of whether the best law or the best man should govern. The paper examines arguments in favour of law by Thomas Aquinas and Godfrey of Fontaines, and the more absolutist arguments from Peter of Auvergne and Giles of Rome, before turning to the theological solutions from the Franciscans Gerald Odonis and Francis of Meyronnes. The paper offers fresh insight into the scholarly debate through a prism of medieval moral psychology and situates the political question within a broader theological framework. A critical edition of Odonis's Ethics commentary question is presented in the appendix.

Keywords: Politics, Ethics, Law, Common Good, Virtue, Political theology, Franciscan.

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1. Introduction: The Soul, the Body-politic, and Aristotle's Enquiry

In Book III of *Politics*, Aristotle presents the “vexed question” (or to use Aristotle’s own signatory term – διαπορεῖν): *Utrum optimam legem principari eligibilius quam optimum virum?*². The question is preempted in the *Nicomachean Ethics*, where the issue is understood as a tension between reason and desire in governance, channelled respectively by λόγος and ἄνθρωπος: «Propter quod non sinimus principari hominem, set rationem, quoniam sibi ipsi hoc facit, et fit tyrannus»³. Then, in *Politics*, Aristotle offers a more extensive discussion, where he recommends a city to be governed by law rather than by men, since *sine appetitus lex est*, and «qui quidem intellectum iubet principari, videtur iubere principari deum et leges»⁴.

Aristotle extends this psychological language of governance into a body-soul metaphor: «anima quidem enim corpori dominatur despótico principatu, intellectus autem appetitui politico et regali»⁵. Just as the soul rules over the body, the “ruling principle” (*principatus*) presides over a city⁶. Aristotle’s model of the polity lends itself to a psychological interpretation and he encourages the reader to understand the city in the terms of body and soul. Of course, Aristotle is far from being the sole classical authority to take this path. Cicero sketches a more precise picture of the mind-body metaphor in *Pro Cluentio*, pointing towards the law as the soul of the city:

2. Aristoteles, *Politica*, III. 16. 1287b21, F. Susemihl (ed.), A.L. XXIX. 2, Leipzig 1872, p. 231. Eng. trans. S. Everson, *Politics*, CUP, Cambridge 2010, p. 89.

3. Aristoteles, *Ethica Nicomachea*, V. 11. 1134a35-36, R.-A. Gauthier (ed.), A.L. XXVI 1-3 fasc. iii, Brill, Leiden 1972, p. 241. Eng. trans. R. Crisp, *Nicomachean Ethics*, CUP, Cambridge 2000, p. 92.

4. Aristoteles, *Politica*, III. 16. 1287a29-33, p. 88.

5. Aristoteles, *Politica*, I. 5. 1254b5-6, p. 18. On the relationship between Aristotle’s political thought and his moral psychology, see Miller (2013, pp. 38-66).

6. Aristoteles, *Politica*, I. 5. 1254a33, p. 17. Eng. trans. Everson (2010), p. 16. In this paper, I will be using “city” and “state” interchangeably, unless otherwise specified. Most of the authors discussed here use the term *civitas* when discussing a political entity, except for Giles of Rome and Francis of Meyronnes, who use *regnum*. For a discussion on the medieval usage of *civitas* and cities as the primary space of reference for scholastic discussions of ethics, economics, and politics, see Kaye (2014, pp. 241-289).

«Within the law are reposed the mind and heart, the judgement and the conviction of the state»⁷. The law is a collective expression of humanity's cognitive and verbal capacities⁸, which, according to Cary Nederman, form the rational foundations of human association and hence the very existence of the city⁹. Law gives form to the city, just as the mind gives form to the body¹⁰.

The translation of Aristotle's *Ethics* and *Politics* into Latin in, respectively, the 1240s and 1260s gave medieval scholastics fresh philosophical material and inspiration in their discussions on the nature of community and governance. Aristotle's discussions on the principle of governance and his preference for the rule of law over the governance of men became especially popular and influential topics. Walter Ullmann goes as far as arguing that Aristotle pushes the medieval discussions towards a sense of communitarian populism, where the polity is the highest form of human association, an organic body of citizens, and where law is the reason of this natural community, an intellectual fruit of the organic whole¹¹.

However, it would be a reductive oversight to consider Aristotle as a simple exponent of law and legal governance, and even more so as an intellectual genesis of democracy and popular sovereignty. As Thomas Renna points out, Aristotle's *Politics* was used extensively by thirteenth- and fourteenth-century French royalist theorists to entrench the monarchical power¹². Ernst Kantorowicz also cites

7. Cicero, *Pro Cluentio*, LIII. 146, in *Pro Lege Manilia. Pro Caecina. Pro Cluentio. Pro Rabirio Perduellionis Reo*, Leob Classical Library, Cambridge (MA) 1927, pp. 378, 379.

8. For the use of *lex* by Cicero, as opposed to the more juristic term of *ius*, see Murphy (2006, pp. 105-111), where he argues that the classical philosophers use *lex* to refer to the system of laws and understand it primarily from the statutory and written perspective of law.

9. Nederman (1988), pp. 6-10.

10. Cicero continues, describing a lawless state as a mindless body, a collection of matter without form: «The state without law would be like the human body without mind – unable to employ the parts which are to it as sinews, blood, and limbs». Cicero, *Pro Cluentio*, LIII. 146, pp. 378, 379.

11. Ullmann (1966), pp. 179-194; for a study that challenges the "Aristotelian Revolution" thesis, see Nederman (1991, pp. 179-194).

12. Renna (1978), pp. 309-310).

Aristotle as the main source of inspiration for Dante's *optimus vir* in *Monarchia*¹³. The passages, when singled out, are striking:

Si autem est aliquis in tantum differens secundum excessum virtutis vel plures quidem uno, non tamen possibile complementum exhiberi civitatis, ut non sit comparabilis aliorum omnium virtus neque potentia ipsorum politica ad eam quae illorum, sive plures, sive unus, eam quae illius solum non adhuc ponendum partem <hos> civitatis: iniuriabuntur enim dignificati aequalibus inaequalitales tantum existentes secundum virtutem et secundum politicam potentiam: sicut enim deum inter homines verisimile esse talem. Unde palam, quia et legislationem necessarium esse circa aequales et genere et potentia, de talibus autem non est lex. Ipsi enim sunt lex.¹⁴

Cum igitur sit genus totum vel aliorum unum acciderit esse differentem secundum virtutem tantum, ut excedat quae illius eam quae aliorum omnium, tunc iustum est genus hoc esse regale et dominans omnium et regem unum hunc. [...] Quare relinguitur solum obedire tali et dominum esse non secundum partem, sed simpliciter.¹⁵

It is with these premises in mind that this paper shall approach the medieval afterlife of the “vexed question”. While the debate on

13. Kantorowicz (1957, pp. 459-461).

14. Aristoteles, *Politica*, III. 13. 1284a4-14, pp. 207-208. Eng. trans., Everson (2010, pp. 81-82): «If, however, there be some one person, or more than one, although not enough to make up the full complement of a state, whose excellence is so pre-eminent that the excellence or the political capacity of all the rest admit of no comparison with his or theirs, he or they can be no longer regarded as a part of a state, for justice will not be done to the superior, if he is reckoned only as the equal of those who are so far inferior to him in excellence and in political capacity. Such a man may truly be deemed a God among men. Hence we see that legislation is necessarily concerned only with those who are equal in birth and capacity; and that for men of pre-eminent excellence there is no law – they are themselves law».

15. Aristoteles, *Politica*, III. 17. 1288a16-29, p. 235. Eng. trans. Everson (2010, p. 90): «But when a whole family, or some individual, happens to be so pre-eminent in excellence as to surpass all others, then it is just that they should be the royal family and supreme over all, or that this one citizen should be king. [...] he should have the supreme power, and that mankind should obey him, not in turn, but always».

the relation between the prince and the law had been a familiar *topos* in medieval political discourse, the question in this particular formulation – constructed as a tandem between *optimus vir* and *optima lex* – has its origins in Aristotle. The re-introduction of Aristotle's moral and political philosophy to western Europe also coincided with a rapid expansion of the judicial edifice, to which the secular and ecclesiastical authorities increasingly resorted for the organisation and governance of public affairs, as well as with the emergence of the concept of territorial sovereignty and the nascent theories of political and papal absolutism. However, in a world of intellectual confluences, the separation between the legal and the human is not always so stark. The Roman law tradition marks the will of the prince as the source of law and *lex animata*¹⁶. Exponents of papal plenitude of power argue for a divine institution of the papacy and urge the pope to govern like God, both in his ordinary powers of laying down laws, and the absolute powers of rising above laws¹⁷. Kantorowicz in his *King's Two Bodies* proposes a double-faceted understanding of kingship: the king as a person, made of flesh and blood, prone to human weaknesses, and bound to law; the king as a public institution, an immortal personification of justice, and governing above the law¹⁸.

This paper therefore seeks to study this aporia of governance in late thirteenth- and early fourteenth-century scholastic theological and philosophical discussions, with a particular focus on responses to the Aristotelian question of *optimus vir* and *optima lex*. It will attempt to address the challenge raised in Renna's 1987 study on the same question: these discussions are «highly abstract and speculative», with precious little references to practical problems, making it difficult to consider them “political”¹⁹. I pro-

16. Pennington (1993, pp. 129-131 and 148-163).

17. Pennington (1993, pp. 54-69).

18. Kantorowicz (1957, pp. 95-96).

19. Renna (1978, pp. 317, 319). Of course, there are exceptions: Giles of Rome's *De regimine principum* is clearly targeted at both an academic and courtly audience; Godfrey of Fontaines uses the *optimus vir* question as a basis to launch a criticism of extraordinary taxation. Cf. fn. 48.

pose, above all else, to situate the debate in a model of moral psychology, where the governing principle of the city is ultimately assimilated to the soul, and the various positions of the masters can be understood through a perspective of moral psychology. As James Blythe points out, for the medieval mind, the political analogy to the physical nature is «obvious and necessary»²⁰. As such, the paper seeks to offer fresh insight into the medieval trajectory of the “vexed question” through a prism of the body-soul language and by situating the discussion in a more theological framework. Medieval discussions of the city, its governance, and the “ruling principle” (*principatus*) are profoundly shaped by the physio-psychological metaphors in general, and by Aristotelian moral psychology in particular. Any medieval discourse of psychology and politics are also inextricably theological. The world is Christian, and humanity and the polity are but part of the greater divine order. In a body-soul political metaphor, the city may pursue its political perfection, but its ultimate end is divine grace for the soul, and the union with God for the body. The best polity is not one with perfect citizens, but one with perfect Christians. It is a divine community, with a divine prince at its helm.

Section 2 surveys the more “legalist” responses of Thomas Aquinas and Godfrey of Fontaines, who advocate for the rule of reason and where law is understood as a transcendental principle and an expression of communal reason: law should govern the city just as the intellect should rule over the will and the body. Section 3 studies views that challenge the supremacy of law and its relation to transcendental reason: Peter of Auvergne and Giles of Rome both argue that even the best laws are still products of human reason, and therefore cannot transcend the rationality of the lawmaker; the prince should thus instrumentalise positive law. Section 4 examines two under-studied early fourteenth-century Franciscan texts by Gerald Odonis and Francis of Meyronnes, who propose a governance of the supreme will and advocate the rule of the best

20. Blythe (1992, p. 46).

man. Both approach the question with a thoroughly theological outlook, where the merit of the law, the prince, and the political community is gauged with its divinity.

2. Intellect, Reason, and the Government of Law

Thomas Aquinas opens his *Politics* commentary with a quote from Aristotle's *Physics*: «ars imitatur naturam»²¹, and he continues to argue that the city is the greatest artifice to be constructed by human reason, which ultimately arises out of natural principles, informed by the divine light²². Thomas's *Politics* commentary does not proceed far enough so as to offer us an extensive analysis of the arguments in Aristotle's Book III on the governance of law and of man, but he does confront the question in his commentary on the *Nicomachean Ethics*, where Thomas reads Aristotle's tandem of men and law as fundamentally an opposition between *voluntas et passiones* and *ratio*²³. As Thomas argues in *De regno* with a corporatist metaphor: just as the body is ruled by the soul, the irascible and concupiscible appetites are ruled by

21. Thomas de Aquino, *Sententia libri politicorum*, I. prologus, in *Sancti Thomae de Aquino opera omnia*, tom. xlviii, Leonina ed., Romae 1971, p. 69.

22. Thomas de Aquino, *Sententia libri politicorum*, I. prologus, p. 70: «Est enim civitas principalissimum eorum quae humana ratione constitui possunt». Walter Ullmann highlights Aquinas's «insistence on nature» as the most remarkable feature in his metaphysical system: the state is a product of nature, and principles of nature are to be applied to the principles of society. Christopher Flüeler, on the other hand, observes a theological undertone of Aquinas's *Politics* prologue, arguing that the polity is ultimately an imitation of the divine order. See Ullmann (1966, pp. 167-168); Flüeler (1994, p. 454).

23. Thomas de Aquino, *Sententia super libros ethicorum*, V. cap. 11, 1134a35, in *Sancti Thomae de Aquino opera omnia*, tom. xlvii, Leonina ed., Romae 1969, p. 301: «In recta gubernatione multitudinis non permittimus quod homines principentur, scilicet secundum voluntatem et passiones humanas, sed quod principetur ratio, id est lex quae est dictamen rationis, vel homo qui secundum rationem agat, quia, si princeps sequatur passiones humanas, faciet hoc sibi, scilicet, quod plus accipiet de bonis et minus de malis, et ita fiet tyrannus, quum hoc sit contra rationem principis. Ad hoc enim princeps institutus est ut custodiat iustitiam, et per consequens aequalitatem quam praeterit, dum sibi usurpat plus de bonis et minus de malis».

reason, the multitude must be ruled by rational principle²⁴. The purpose is not the complete removal of the human element from governance, but the elimination of human caprice²⁵. The ruler should be a servant of the law, submitting to its precepts, just as the appetite submits to the judgement of the intellect. *Homo* effectively becomes a by-word for arbitrary human will and desires. Or, if we understand it in Kantorowicz's terms, it is "men" *qua* human, as opposed to the prince, *qua* public authority, who is *institutus ut custodiat iustitiam*.

Therefore, the city should be governed by law, because law is the expression of public reason, made by the multitude, or one who acts as an agent of the multitude²⁶. Thomas allows for a diverse range of law-making powers such as the king or a popular assembly, but the best law is made of collective reason and the intellect's participation in the divine order²⁷. In *Summa*, Thomas lists different types of positive laws corresponding to different types of rules, but concludes that the best is the mixture of all: «*lex, quam maiores natu simul cum plebibus sanxerunt*»²⁸. Out of all forms of polities, only tyranny is without law and thus «altogether corrupt» (*omnino corruptum*)²⁹. In tyranny, «*homo absque ratione secundum animae suae libidinem praesidens nihil differt a bestia*»³⁰. Fundamentally, the justice of human laws is measured with its partici-

24. Thomas de Aquino, *De regno ad regem Cypri*, I, cap. 1, in *Sancti Thomae de Aquino opera omnia*, tom. xlii, Leonina ed., Romae 1979, p. 449.

25. As is evident in Thomas's recommendations in his *De regno*, where he advocates for a regal governance.

26. Thomas de Aquino, *Summa theologiae*, I2ae. q. 90. art. 3, in *Sancti Thomae de Aquino opera omnia*, tom. vi-vii, Leonina ed., Romae 1891, p. 151.

27. For a discussion on Aquinas's theory of governance and lawmaking, Beer (1986, pp. 408-411), where Beer states: «Certainly Thomas was a constitutionalist in his consistent advocacy of the rule of law».

28. Thomas de Aquino, *Summa theologiae*, I2ae. q. 95. art. 4. p. 178, citing Isidorus Hispaniensis, *Etymologiarum sive originum libri XX*, tom. i, liber v, cap. 10, W.M. Lindsay (ed.), OUP, Oxford 1911, p. 184.

29. Thomas de Aquino, *Summa theologiae*, I2ae. q. 95. art. 4. p. 178. For a discussion of Thomas Aquinas's thoughts on tyranny, where the relationship between tyranny and law is specifically addressed, see Breidenbach and McCormick (2014, pp. 10-17).

30. Thomas de Aquino, *De regno*, I. cap. 4, p. 453.

pation in divine and natural reason, and the process of lawmaking is nothing but a human intellection and transformation of divine reason into human written law³¹. Human laws should therefore be a reflection of divine laws, with its binding power arising out of its divinity. In *De regno*, Thomas points out the impossibility for individual human reason to attain a complete comprehension of nature and universal principles³². Lawmaking is thus incumbent upon the collective intellect of the city. In other words, the governance of the city should fall upon the city's collective intellect, rather than the human will and passion of the prince without the guidance of reason.

For Thomas, the world is fundamentally comprehensible – and human society governable – through normative principles³³. Thomas's political hierarchy imitates the cosmological hierarchy, where the inferior submits to a superior, but the whole system is governed by primordial rules laid down by God, and it pertains to the intellect to comprehend such rules³⁴. Thomas opens his commentary on the *Ethics* with the Aristotelian aphorism that wisdom orders (*sapientis est ordinare*)³⁵, and such wisdom, which arises out of a cognition and intellection of universal principles, orders not only one's own affairs, but also the affairs of others, through its eminence of reason³⁶. Thomas does not lay out a theory of the collective wisdom of the body-politic, but his legislative theories, combined with his distinction between private and political ethics³⁷, bring him close enough to a notion of collective law-making³⁸. In a world where laws are inherent and primordial, the role of the prince, as the guardian of justice, is to judge, rather

31. Thomas de Aquino, *Summa theologiae*, I2ae. q. 97. art. 3, p. 191.

32. Thomas de Aquino, *De regno*, I. cap. 1, p. 449.

33. Beer (1986, pp. 394-395).

34. Thomas de Aquino, *Summa theologiae*, III. supp. q. 40, art. 6, in *Sancti Thomae de Aquino opera omnia*, tom. xii, Leonina ed., Romae 1906, p. 76. See also, Beer (1986, p. 412).

35. Thomas de Aquino, *Sententia super libros ethicorum*, I. lect. 1, p. 3, citing Aristoteles, *Metaphysica*, I. 2, 982a18.

36. Speer (2000, pp. 265-267).

37. Thomas de Aquino, *Sententia super libros ethicorum*, I. lect. 1, p. 4.

38. Renna (1978, p. 312).

than to legislate³⁹. The prince safeguards justice as a servant of the disembodied reason of the collective intellect. Even as a judge, the purview of his powers is limited⁴⁰. In *Summa* (I2ae, q. 97, art. 3), Thomas sets stringent conditions for the prince's derogative powers. While it goes without saying that a prince should always submit to eternal and natural law⁴¹, he can dispense with the precepts of human law, if and only if the application of such law manifestly causes prejudice to the common good, and such derogation of law benefits the common good.

At the ebb of the thirteenth century, the Parisian secular master Godfrey of Fontaines roots the legitimacy of the ruler in the choice and consent of the populace⁴². Confronting the "vexed question", Godfrey demonstrates an unequivocal preference for governance by law and pushes this legal-normative principle to a maximalist stance. I shall argue that Godfrey's legal-normative view should be best understood with reference to his intellectualist moral psychology⁴³.

Addressing the dichotomy between the good man and good law, Godfrey seizes on the Aristotelian maxim that we should bid reason, or the intellect (*intellectum*), to rule. However, unlike Thomas Aquinas, who considers that the public intellect can be posited in a prince as a guardian of justice, Godfrey precludes such possibility, and states that this intellect is the laws instituted through right reason⁴⁴. Pushing the Aristotelian argument, the

39. Compared to Aristotle, who argues that the best man should be the lawgiver: «quid quod quidem igitur necesse ipsum esse legislatorem», Aristoteles, *Politica*, III, 15, 1286a22, p. 221, Cf. Everson (2010, p. 86).

40. Thomas de Aquino, *Summa theologiae*, I2ae. q. 95. art. 1, pp. 174-175.

41. A more extensive discussion on Thomas's doctrine of justice and natural law can be found in Perkams (2008, pp. 131-150).

42. Kempshall (1999, pp. 252-253). Kempshall characterises Godfrey's moral and political philosophy as «a qualified affiliation to Aquinas» and «a close reading of Aristotle», see *ibid.*, p. 205.

43. For studies on Godfrey of Fontaine's intellectualism, see for example Wippel (1981, pp. 185-207); Kent (1995, pp. 108-110); Kempshall (1999, pp. 207-209).

44. Godefridus de Fontibus, *Quodlibet XI*, q. 17, in J. Hoffmans (ed.), *Les Quodlibets onze-quatorze de Godefrid de Fontaines : texte inédit*, Université catholique de Louvain, Louvain 1932, p. 77: «Unde dicit ibi quod qui iubet intellectum, id est leges secundum rectam

governance of law should be maximal: as much of the state affairs as possible should be committed to laws, even when the *optimus vir* – a virtuous and prudent prince – is on hand to govern. Godfrey says preciously little about the process and power of law-making, but it certainly does not reside with the prince. Law is instituted in consonance with reason and according to the prudence of the discerning judges («secundum consonantiam ad rationem et prudentiam discretorum»). Godfrey echoes Thomas's stance that laws are primordial, made by the wise through reason's participation in God's laws (*Deum et ipsas iustas leges*)⁴⁵.

Godfrey's prince is therefore left with a relatively limited purview of power and responsibilities. The prince of an ideal state is described in thoroughly Aristotelian terms: *optimus et prudentissimus*, one with heroic virtue and even *quasi vir divinus*⁴⁶. Yet, even such an optimally virtuous person is not immune to the perturbations of passions. In comparison, the rule of law is more powerful and more secure (*valentius et firmitus*). Under Godfrey's legalist structure, the ideal prince seems no longer a human being with flesh and blood, but rather a public institution, one that heeds only the common good and deploys only his political prudence (which is different from his personal prudence)⁴⁷. Aristotle's judge is justice personified. For Godfrey, this means the prince rules *secundum leges*. The ideal governance of the prince should be the elimination of the prince's humanity – both the human susceptibility to passion

rationem institutas principari, videtur iubere principari Deum et ipsas iustas leges; qui autem iubet principari hominem, apponit et bestiam. Quando enim concupiscentia et furor principatum habuerunt, id est quando liberum est homini quod principetur secundum quod secundum suas diversas passiones diversimode afficitur, tandem et optimos viros interimet. Et ex his concludit quod quacumque lex potest determinare, per legem iudicanda sunt et non per bonum virum».

45. Elsewhere, Godfrey also asserts that laws are just in so far as they participate in the eternal laws of God. Godefridus de Fontibus, *Quodlibet VI*, q. 18, in J. Hoffmans (ed.), *Les Quodlibet cinq, six et sept de Godefroid de Fontaines : texte inédit*, Université catholique de Louvain, Louvain 1914, p. 262. See Marmursztejn (2006, p. 367).

46. Godefridus de Fontibus, *Quodlibet XI*, q. 17, p. 76. Cf. Aristoteles, *Ethica Nicomachea*, VII. 1. 1145a29, p. 271.

47. Godefridus de Fontibus, *Quodlibet XI*, q. 17, p. 76. For a study on medieval notions of political prudence, see Lambertini (2008, pp. 223-246).

and the human capacity for religious piety – and the transformation into an institution that ministers the law relentlessly. Godfrey's reading of the best man as *quasi vir divinus* stays firmly within the Aristotelian schema of heroic virtue, and does not admit a theological reading of a divinely-inspired prince or a sacerdotal kingship, who is answerable to God only. The prince only has a right to govern (*ius principandi*) by virtue of the whole community (*virtute totius communitatis*), who, as a collective of free subjects, should obey the prince "voluntarily"⁴⁸.

The ostensible purpose of Godfrey's quodlibetal question is to discuss the justice of extraordinary taxations imposed by a prince: «Whether the prince can impose a taxation for the cause of common utility, where its necessity is not obvious, and are the subjects obliged to pay?»⁴⁹ Godfrey reaches a conclusion that such tax needs to be directed for the common good and freely consented to by the community. Kempshall suggests that Godfrey is perhaps deliberately vague about how such consent should take form, but points out that Godfrey is especially interested in discussing one scenario, where communal consent is manifested as the considered opinion of the prince and the counsellors⁵⁰. This act of consent is reflective of a public deliberation, where options are weighted and opinions are discussed, by those who are just and honest (*iusti et fideles*), to find the course of action that is superior to all other options.

This form of communal consent resembles the just deliberation of the intellect. In his quodlibetal question on legal justice (*Quod. XIV, q. 3*), Godfrey posits that the will necessarily conforms to the

48. Godefridus de Fontibus, *Quodlibet XI*, q. 17, p. 77. See also, Kempshall (1999, p. 253).

49. Godefridus de Fontibus, *Quodlibet XI*, q. 17, pp. 76-78: *Utrum princeps se habere causam pro utilitate republicae nec tamen huiusmodi necessitas est de se notoria possit imponere aliquam exactionem et subiecti teneantur solvere?* (my translation). Kempshall considers this question as a commentary on Philip IV's imposition of subsidies in 1294-96 to finance the wars with Flanders and Aquitaine. It is also likely a response in favour of the papal position in *Clericis laicos*. For an analysis of Godfrey's thoughts in the context of royal and papal taxation, see Kempshall (1999, pp. 249-263).

50. Kempshall (1999, p. 253). Godefridus de Fontibus, *Quodlibet XI*, q. 17, p. 77.

intellect, and that the intellect is a more noble potency than the will⁵¹. Contrary to contemporary scholastic consensus that considers justice as a virtue of the will, Godfrey denies that legal justice, or indeed any form of justice, can reside in the will. By implication, the will, without the aid of the intellect, is incapable of effectuating an act of virtuous justice. Legal justice is a general virtue because it is ordered towards the common good. Dissecting Aristotle's maxim that the common good is the same as the individual good, Godfrey posits that, although the community is composed of a multitude of individuals, the good of the community is not a simple sum of the individual goods of the citizens, but is one and whole⁵². In a metaphysical sense, the city as an entity is different from the sum total of its citizens, and the whole requires a virtue that goes beyond the private virtues of the citizens. It is for this reason that legal justice differs from particular justice, and political prudence from private prudence, not in number, but in kind (*in specie*)⁵³. Godfrey does not go so far as positing a notion of communal intellect in the body-politic. But the idea that legal justice and political prudence (manifested in the justly instituted laws and communal deliberative consent) should differ *in specie* from private virtues is indicative of a psycho-political consideration. The intellect rules with normative principles in the form of laws, while the prince, as the will of the community, rules in conformity of the intellect, and moves nothing without the intellect's deliberation⁵⁴.

For Thomas and Godfrey, the governance of law is preferred because law is the collective conscience of the city, a product of

51. Godefridus de Fontibus, *Quodlibet XIV*, q. 3, in *Les Quodlibets onze-quatorze de Godefroid de Fontaines : texte inédit*, J. Hoffmans (ed.), Université catholique de Louvain, Louvain 1932, pp. 342-343. See also, Wippel (2006, pp. 305-308).

52. Godefridus de Fontibus, *Quodlibet XIV*, q. 3, p. 346.

53. Godefridus de Fontibus, *Quodlibet XIV*, q. 3, p. 351.

54. In *Quodlibet XV*, Godfrey argues that the soul is purely form and actuality, and not a substance separable from the body. If we follow the body-politic analogy, it is the community's collective intellection and laws that give form to the city. Godefridus de Fontibus, *Quodlibet XV*, q. 10, in Lottin D.O., Hoffmann J., Peltzer A. (eds), *Le quodlibet XV et trois questions ordinaires de Godefroid de Fontaines : texte inédit*, Université catholique de Louvain, Louvain 1937, pp. 50-57. See also Wippel (1981, pp. 281-284).

the intellect's public deliberation, and a normative guidance for a body that can be fundamentally comprehended and governed through universal transcendental principles. Both Thomas and Godfrey assert that laws only have legitimacy when they conform to eternal and natural laws, and as such are derived directly from the first principles of justice. The governance of law is akin to the governance of God, precisely because the right and just laws have their provenance in the laws of God, and they are therefore a human intellection of God's laws. What is required in this governance is therefore the scientific intellect and its perfection, wisdom. Understood in a public and collective sense, wisdom's end is the comprehension of the universal principles that orders the good of the community.

3. The Accidental Rationality of Positive Law

By the end of the fourteenth century, the debate on the governance of the good man and good law seemed to have settled into a formula coined by Thomas Aquinas's student, Peter of Auvergne: the governance of the good man is better intrinsically, as man attains reason intrinsically (*per se*), but the practical reality of the imperfection of men means that the governance of law is better, if only accidentally (*per accidens*).

In his commentary on *Politics*⁵⁵, Peter of Auvergne espouses a corporatist consideration of a well-ordered multitude as a rational being with its own subjective agency⁵⁶. In his discussion on the election of the prince, Peter recognises that a mixed and ordered multitude has, in itself, both counsel and power (*consilium*

55. Petrus de Alvernia, *Questiones super I-VII libros Politicorum*, III. q. 22, M. Toste (ed.), Leuven University Press, Leuven 2022, pp. 559-562; Eng. trans. McGrade *et al.* (2001, pp. 251-253).

56. Blythe considers Peter of Auvergne as the first of the medieval Aristotelians to «assign a positive role to the multitude», because it «has something to offer». I would argue that Peter goes beyond this mere positive role and considers the multitude as a political agent in its own right. Blythe (1992, p. 91).

et potestas), just as a rational being, with its parts ordered to a proper form⁵⁷. Although Peter recommends that the election and correction of a prince should pertain to this well-ordered multitude, he does not connect the *prudencia multitudinis* to the notion of law and law-making. Instead, it pertains to the prince to make law⁵⁸. In his question on whether a city should be governed by the best men or by laws, Peter makes right reason and political prudence the standard against which different modes of governance should be measured: «Et ideo aliquantulum per idem determinantur uir optimus et lex, scilicet a ratione recta optima et a prudentia politica»⁵⁹. Law is made by men, and therefore does not attain right reason *per se*, but only attains right reason through its participation in the reason of the lawmaker (*per accidens*)⁶⁰. The rightness of legal reason is entirely predicated upon the rightness of the legislator's human reason.

What sets Peter of Auvergne apart from Thomas and Godfrey is that Peter considers the rationality of law as fundamentally accidental, thereby calling into question the notion of a law as a transcendental norm that arises, almost naturally, from the collective intellect. Christopher Flüeler describes Peter's commentary as Thomism without theology⁶¹. Without its divinity and its sacred inspiration accorded by Thomas, human law becomes a fallible rational proposition. The exponents of a governance through transcendental legal norms may have deliberately blurred the boundaries between positive laws and non-positive (such as eternal or natural) laws: since human law should always conform to eternal and natural law, the distinction should not really matter (except when human law deviates from natural law, and thus becomes unjust). Peter, on the other hand, punctures a hole in this argument

57. Petrus de Alvernia, *Questiones super I-VII libros Politicorum*, III. q. 17, p. 544.

58. Petrus de Alvernia, *Scriptum super III-VIII libros Politicorum Aristotelis*, III. cap. 14, L. Lanza (ed.), Reichert Verlag, Wiesbaden 2021, p. 116.

59. Petrus de Alvernia, *Questiones super I-VII libros Politicorum*, III. q. 22, p. 560.

60. Petrus de Alvernia, *Questiones super I-VII libros Politicorum*, III. q. 22, p. 560.

61. Flüeler (1994, p. 454).

and points out the accidental rationality of positive law: the multitude is not the source of law, but only the source of the prince's authority. The prince is the cause of law, and "the caused" can never surpass the rationality of "the causing". The accidental rationality of human positive law means that it lacks perfection and is therefore a less-than-ideal mode of governance.

The second point of divergence between Peter and his mentor is the epistemic nature of governance: the affairs of a polity consist of both the universal (where a simple application of just laws delivers a just judgement) and the particular (where the universal principle of law fails, and human equity needs to be exercised to deliver a just judgement). The polity is considered introspectively and a self-contained entity independent of the divine cosmos, rather than an imitation and participation of the divine and natural order. Laws are therefore contingent products of an enclosed system, rather than human and secular reflections of transcendental principles. As a result, Peter's political world is considerably more chaotic than Thomas's hierarchy of order. Marco Toste delineates a symbiosis between the diversity and concordance within Peter's polity: Peter recognises the diversity of governances and their corresponding forms of justice and political happiness, all while pointing to a unity of the will within the citizenry, ordered towards that political happiness⁶². Just as an animal needs a heart as a motorising principle, the body-politic needs a governing principle to direct its acts, and this principle is not law, but the prince⁶³. Peter assumes that the city's particular affairs, which require human judgements, are at least as prominent as its universal affairs⁶⁴. The importance of the particular is underlined by Peter's insistence that laws and men are judged to be "best" on account of both right reason and political prudence. The governance of the best man is better intrinsically (*per se*), because «uir optimus per se et essentialiter ad prudentiam

62. Toste (2014, pp. 339-348).

63. Toste (2014, p. 347, n. 78).

64. Petrus de Alvernia, *Questiones super I-VII libros Politicorum*, III. q. 22, p. 560.

attingit»⁶⁵. Law, on the other hand, as a universal proposition, is fundamentally incapable of governing in civic affairs that require prudential judgments. Overall, the governance of the best man is preferred, with a caveat that law is better only accidentally, and only for cases which can be determined by law's universal proposition. In contrast to Thomas, who argues for strict conditions for derogation of laws⁶⁶, and that the prince should always uphold the juridical order, even at the expense of causing manifest injustice⁶⁷, Peter urges the prince to recourse to his own prudence to make an equitable judgement, and to modify the law if needed.

The primary agent in governance is therefore the prince, whose prudence is necessary for determining the city's particular affairs, and who is aided by laws in universal matters. More importantly, as we have noted above, it pertains to the prince – and not the reasoned multitude – to legislate. Thus, the prince is both the judge and the lawmaker. In the event where positive law should fail, it again pertains to the prince to make new laws to supersede the inadequate old law⁶⁸. Is this indicative of an absolutist undertone as Thomas Renna suggests⁶⁹? For one, it does not seem that Peter would agree with Renna's assessment that «the King is an *alternative* to rule by law». Otherwise, laws would have served no purpose when confronted with the prince. James Blythe points out Peter's distinction between *per legem* and *pro lege*, where the prince governs through law (*per legem*) when laws can determine, but above law (*pro lege*) when laws fail⁷⁰. But the failings should be regularised by new laws so that the prince can govern through law again⁷¹. Overall, the governance of the best laws should be the nor-

65. Petrus de Alvernia, *Questiones super I-VII libros Politicorum*, III. q. 22, p. 561.

66. Thomas de Aquino, *Summa theologiae*, I2ae. q. 97. art. 4, p. 192.

67. Thomas de Aquino, *Summa theologiae*, II2ae. q. 67. art. 2, in *Sancti Thomae de Aquino opera omnia*, tom. ix, Leonina ed., Romae 1897, p. 98.

68. Petrus de Alvernia, *Scriptum super III-VIII libros Politicorum Aristotelis*, III. cap. 15, p. 126. See also Blythe (1992, pp. 87-88).

69. Renna (1978, p. 316).

70. Blythe (1992, p. 87).

71. Petrus de Alvernia, *Scriptum super III-VIII libros Politicorum Aristotelis*. III. cap. 15, p. 126.

mative, while the best man remains the final arbiter. Ultimately, law is an instrument of the prince, but it does not limit the prince; the prince is not the law's servant, but its master. The prince instrumentalises law, which, as a universal proposition, gives princely governance greater certainty, clarity, and extensiveness. Peter acknowledges that even the most virtuous man is susceptible to the perturbations of passion; however, the governance of law, limited by its accidental rationality, is not a solution but part of the problem.

The idea of the instrumentalisation of law by the prince is further crystallised by Giles of Rome in his *De regimine principum* (1277-1280)⁷². Giles's approach is similar to that of Peter in that he detaches human law from any notion of divinity, thus making it a malleable instrument for the prince produced within a secular system. Giles's advice on the relationship between the king⁷³ and the law is unequivocal:

Ideo expedit regem aut alium principantem per rationem rectam, aut per legem naturalem, quam Deus impressit in mente cuiuslibet hominis, dirigere legem positivam, et esse supra iustitiam legalem.⁷⁴

If Peter still argues that the prince should act *per legem* and *pro lege*, Giles of Rome pushes for the complete instrumentalisation of positive laws by the king, and advocates for an absolutist monarchy in its proper sense of *legibus solutus*⁷⁵. Giles's arguments are

72. See Lambertini (1990, pp. 318-325), for a more detailed and systematic analysis on the question of law and man. For Giles of Rome's approach to Aristotle and use of Thomas Aquinas, see *ibid.*, pp. 281-296.

73. Giles specifically phrases the question using the term "king": *Utrum regnum aut civitatem sit melius regi optimo rege aut optima lege?* While the other texts are only hinting that such *optimus vir* may be a king or prince, it is nonetheless never explicitly spelled out.

74. Aegidius Romanus, *De regimine principum*, III. 2. cap. 29, Bartholomeus Zannettus ed., Romae 1607, p. 533. Eng. trans. McGrade *et al.* (2001, p. 214).

75. Lambertini (1990, p. 319), considers Giles's position as «radicalemte diversa» from that of Peter of Auvergne, and has credited Giles of Rome as having «contributed to the image of Aristotle as a monarchist, almost absolutist political thinker», see Lam-

similar to those of Peter, even though he does not adopt Peter's *per se-per accidens* axiom. Positive law suffers from two deficiencies: first that positive law is necessarily deficient in particular cases⁷⁶, and second that positive law is instituted by a legislative authority and can only bind (*ligare*) correctly with the authority of the legislator⁷⁷. Giles concludes that positive law is entirely subject to the king: (a) causally, the king causes positive law as the legislator, (b) operatively, the king is the source of positive law's binding force, and (c) correctively, the king corrects positive law wherever it is deficient. Thus construed, the rule of the best king is clearly preferred to the rule of best law, since law depends completely upon the king both in its ontology and in its operation.

Juxtaposed to the king's absolute mastery of positive law is his submission to God and natural law: «Sciendum est regem et quemlibet principantem esse medium inter legem naturalem et positivam, nam nullus recte principatur nisi agat ut recta ratio dicat»⁷⁸. Although Giles states that the prince should submit to natural law as the source of his authority⁷⁹, the precepts and interpretation of natural law remain nonetheless nebulous. Giles reads Aristotle's maxim that instead of man, God and intellect ought to rule, and considers it as a recommendation for the king's submission to natural law: «Tunc vero principatur Deus, quando quis in regendo alios non deviat a ratione recta et a lege naturali, quam Deus indidit intellectui cuiuscumque»⁸⁰. While the king's submission to God and natural law seems a condition imposed by Giles to limit the king's power, it is far from Thomas Aquinas's vision where principles of natural law should pervade in a civ-

bertini (2014, p. 54). For a more extensive study on the notion of *princeps legibus solutus* among thirteenth- and fourteenth-century jurists, see Pennington (1993, pp. 77-103).

76. Aegidius Romanus, *De regimine principum*, III. 2. cap. 29, p. 532.

77. Aegidius Romanus, *De regimine principum*, III. 2. cap. 29, p. 533.

78. Aegidius Romanus, *De regimine principum*, III. 2. cap. 29, p. 532.

79. Aegidius Romanus, *De regimine principum*, III. 2. cap. 29, pp. 532-533: «debet regem regere alios, et esse regulam aliorum, et per consequens sequi naturalem legem... quia illam sua auctoritate constituit».

80. Aegidius Romanus, *De regimine principum*, III. 2. cap. 29, p. 533.

il community by underwriting all human laws. Giles has clearly no intention of establishing a direct relation between natural and positive law: the king should submit to natural law, and positive law submit to the king. But natural law *per se* does not cause, empower, or correct positive law – that role is reserved for the king. Instead, this submission to God makes the king a channel for natural reason and God's will. Rather than a limitation on kingship, it is a divinisation of the idea of monarch. Thus construed, the rule of the best king is almost the rule of God.

Lambertini has demonstrated the connection between the texts of Peter of Auvergne and Giles of Rome, suggesting that they were probably written a few years apart from each other and that whichever text that came later was clearly composed with awareness of the other⁸¹. Both Peter and Giles sketch a legal landscape where positive law depends entirely on the legislator for its existence and operation, and is rational only insofar as the legislator is rational. Together, they advocate for positive laws to be an instrument of the prince and government, and for the prince to rule through and above law. Their differences are also stark. Peter's best man is the supreme legislator and the final arbiter of the city, but he should nevertheless rule *through* laws in the normative, and he owes his authority to collective reason and the will of the multitude. Yet, for Peter, legal reason and political authority are endogenous to the body-politic. Giles's king, on the other hand, is the supreme master of positive laws, which are totally malleable under the authority of the king, who represents natural reason and divine will. Giles's ideal kingdom is one that submits to the will of a divine authority, an exogenous reason of a higher plane that imposes itself onto the body-politic.

While Giles's treatise enjoyed extensive circulation among non-scholastic circles, it was finally Peter's formulation of the best man as better *per se* and best law as better *per accidens* that gained the most traction in subsequent scholastic debates. The di-

81. Lambertini (2014, pp. 62-69).

chotomous formula probably owes its popularity to the fact that it is simple as well as sufficiently ambivalent, making it amply malleable to be stretched to either direction. Two examples suffice: Radulphus Brito in his commentary on the *Nicomachean Ethics* (1295-99)⁸² takes up Peter's formula and reiterates much of the same arguments, but ends up building a clear distinction between the ideal state of the governance of best men and the practical settlement of the governance of best laws on account of the rarity of such *optimi viri*. Radulphus then reaches the practical conclusion that governance should be entrusted to law as much as possible, since the law provides a universal basis of reason⁸³. James of Viterbo also takes up the *per se-per accidens* formula and argues that an ideal governance consists of both the best men and the best laws, before settling for a preference of law over men in a secular context⁸⁴. However, James goes on to offer a theological solution: a divinely inspired ruler is better placed to govern than the best laws are, but laws instituted directly by God are preferred to the governance of the grace-infused ruler. Much like his Augustinian confrère, James gauges the merit of governance by its proximity and immediacy to the rule of divine will. Whatever part of the body-politic that most immediately attains divine reason should govern. In a city of God, it is God alone that should rule.

4. *Optimus vir sicut deus*: Franciscans and the Ideal of Divine Kingship

It is emblematic of the evolution of an Aristotelian question in a world of Christianity that the scholastic masters should diverge

82. Costa (2008, pp. 154-155).

83. Radulphus Brito, *Questiones super Ethica*, Lib. V. q. 124, I. Costa (ed.), Brepols, Turnhout 2008, pp. 455-457.

84. Jacobus de Viterbo, q. 30, in *Jacobi de Viterbio O.E.S.A: Disputatio quarta de Quodlibet*, E. Ypma (ed.), Augustinus, Würzburg 1975, pp. 107-110; Eng. trans. McGrade et al. (2001, pp. 322-325).

over whether and to what extent the question is approached theologically. The solutions range from Thomas Aquinas's reading of a temporal polity within a divine cosmos, through the entirely secular system of Peter of Auvergne and Godfrey of Fontaines, to the incorporation of divine law and divinely inspired men in political governance.

The introduction of theological *topoi* into this fundamentally Aristotelian conundrum of *optimus vir* and *optima lex* is especially salient in the *Ethics* commentary of the Franciscan Gerald Odonis, written in Toulouse, 1323-25⁸⁵. Gerald treats the "vexed question" in Book V, question 11 (critical edition in Appendix), where he gives an extensive survey of the merits of best laws and the best man, and declares unequivocally in favour of the rule of the *bonus homo*⁸⁶. In a perfect illustration of what Costa marks as the theologising nature of Gerald's *Ethics* commentary⁸⁷, it is at once thoroughly Aristotelian in its use of syllogism and *corpus aristotelicum*, but also demonstrates an indelible mark of a theologian, where biblical references are used profusely and discussions of the notion of best man is frequently complemented with invocations to Christ.

The central tenet of Gerald Odonis's arguments is that law is dead – that is, «*lex autem est ius mortuum et in mortua pelle descriptum*», but the best man is living⁸⁸. The city, as a living being, is best governed by the living. Gerald does not cite Saint Paul in II Corinthians 3:6, but one cannot fail to notice the similarity, especially considering Gerald's experience lecturing on the Scripture: «*littera enim occidit, Spiritus autem vivificat*». The deficien-

85. For the dating of the text, see Chen and Schabel (2021, pp. 220-225). For a history of the Franciscan *studium generale* of Toulouse, see Piron (2012, pp. 303-358).

86. Geraldus Odonis, *Sententia et expositio cum questionibus super libros ethicorum*, V. q. 11, Simone de Luere (ed.), Andrea Torresani, Venetiis 1500, fol. 103rb-104ra, text edited in Appendix.

87. Costa (2012, pp. 85-88); see also Costa (2015, pp. 182-186), for discussion on Odonis's concept of justice.

88. Geraldus Odonis, *Sententia et expositio cum questionibus super libros ethicorum*, V. q. 11, Appendix 12.

cy of written law does not rest solely on the fact that it is rational only insofar as it participates in the rationality of the lawmaker, a point on which Gerald concurs with Peter of Auvergne, but also because written law is dead words. Instead, the best man is *ius animatum*, a term that invokes both Aristotle's idea of the judge as *iustum animatum*⁸⁹ and the jurists' notion of the prince as *lex animata*⁹⁰. Just as a Christian should not govern himself with the dead laws of the Old Testament, but with the teaching of Christ, the city should not govern itself with words written on dead skin, but with the living justice.

It is pertinent to note the double connotation of *ius animatum* in Gerald's text. At the base, it invokes the jurists' discussions of the prince as the source of law, and more importantly, the legislative power of the prince resides within his will – *pro ratione voluntas*⁹¹. Pennington notes the tension between the prince's reason and will in medieval juristic thought: while reason offers guidance, it is ultimately the will that makes law. This arbitrary and contingent nature of law-making power sits well with Gerald's own voluntarist moral psychology, where Aristotle's idea of personified justice is reflected in the political psychology of the city – the will of the prince reigns above the reason of law in politics. Along with all moral and theological virtues, justice is located in the will⁹². Gerald understands justice as a cognitive process that starts with the perception and internalisation of the command of *ius*, which is then transformed into an external action through the will, manifesting in an act of justice⁹³. Therefore, for an individual, the virtue of justice consists in the cognition of *ius* and the conse-

89. Aristoteles, *Ethica Nicomachea*, V. 7. 1132a23, p. 234: «Iudex enim vult esse velud iustum animatum».

90. Accursius, *Glossa ordinaria*, dist. 1. 3. 22. v, «cum lex»; for a more extensive study on the jurists' use of the term *lex animata*, see Pennington (1993, pp. 130-131).

91. Pennington (1993, pp. 44-45).

92. Geraldus Odonis, *Sententia et expositio cum questionibus super libros ethicorum*, I. q. 37, fol. 24rb-va.

93. Geraldus Odonis, *Sententia et expositio cum questionibus super libros ethicorum*, V. q. 2, fol. 94va-vb.

quent volition of a just act. For the body-politic, the prince that governs the city is himself *ius animatum*, or a just will in voluntarist fashion, obliging the body to follow the will's every volition.

Gerald frames the question in a manner of sheer mutual exclusion: the city is to be ruled either by a good man but without good law, or by good law but without a good man (*Utrum expedientius sit civitatem regi bona lege sine bono homine quam bono homine sine bona lege?*). Effectively, in his response, the possibility of juxtaposition between a good man and bad law or vice versa is never considered. The text provides instead a discussion of governance of law without considerations of the human element, and rule of man without considering the role of law. What seems to transpire, therefore, is that Gerald is perfectly ready to contemplate a governance of the ideal prince, who has no need for written laws. The prince himself is completely capable of administering justice without the aid of normative rules, as he is *ius animatum*.

Gerald gives three principal arguments to prove that the best man, the living justice, is superior to the best law: he exceeds the law in power (*potentia*), prudence, and justice⁹⁴. Evidently, the *ius animatum* is thoroughly just: the best man is just not only in his precepts and universal proposition, but also in his acts, choices, and volition; therefore in justice he is superior to law which is mere propositional reasoning⁹⁵. Yet, it is the notion of the prince's supreme prudence that reveals Gerald's underlying assumptions of political psychology and governance. The felicity of the city rests in having just and virtuous citizens⁹⁶, and such virtues are only attained, in the scheme of Aristotelian moral philosophy, through the habituation of virtuous acts. It is the virtue of prudence that determines the individual's final act, and a prudent governance

94. Geraldus Odonis, *Sententia et expositio cum questionibus super libros ethicorum*, V. q. 11, Appendix 16.

95. Geraldus Odonis, *Sententia et expositio cum questionibus super libros ethicorum*, V. q. 11, Appendix 27.

96. Geraldus Odonis, *Sententia et expositio cum questionibus super libros ethicorum*, V. q. 11, Appendix 15.

that guides and spurs the populace into virtuous deeds. Written laws, as universal proposition, are deficient for this purpose. Gerald argues – contrary to the contemporary intellectual consensus and against the teaching of Aristotle – that prudence is a superior virtue to wisdom (*sapientia*), because one’s moral life consists fundamentally of particular moral contingencies⁹⁷. Moral goodness requires a prudential deliberation for each particular case, beyond the mere application of scientific reason, which is the act of wisdom. Unlike Thomas’s moral and political world, which is ultimately comprehensible through scientific principles, Gerald’s moral cosmos defies universal reason and demands choices and actions at every turn. In such a moral universe, the living prince organises a better governance than the “dead words” of the law.

Nowhere does Gerald Odonis seem to consider the possibilities of human desires, abuses, and failures for the person at the helm of the city’s governance. He is discussing the ideal human prototype, who governs only for the good of the city. The point is most saliently illustrated by Gerald’s advice that a judge should disregard the legal procedure (*ordo iustitiae*) if it hinders the process of justice, and a sovereign prince should govern above laws like God (*sicut deus*)⁹⁸. With Gerald, the apotheosis of the ideal kingship reaches an apogee. The best man rules like God and he almost is God. Countering the argument that men are subject to perturbations of passion, Gerald posits that the best man is one who overcomes his passions and desires, just like Christ «who in every respect has been tempted as we are, yet without sin» (Heb. 4:15). At a stroke of the pen, the Aristotelian maxim is transformed into an *imitatio Christi*, of which the prince is a living example, and the citizens are in turn inspired (*animatur*) to emulate.

Elsewhere in the question, instances where Gerald compares the best man to Christ are aplenty: while law only commands,

97. Geraldus Odonis, *Sententia et expositio cum questionibus super libros ethicorum*, VI. q. 16, fol. 136rb-137ra.

98. Geraldus Odonis, *Sententia et expositio cum questionibus super libros ethicorum*, V. q. 19, fol. 115va.

the best man is like Christ who «began to do and teach» (Act. 1:1); the good prince would carry others' burden, just like Christ carries the sins of the world⁹⁹. More implicit in Gerald's divinisation of kingship is the idea of love in governance. The mutual love between the prince and the subjects is what elevates the human element above the legal infrastructure. Granted, Gerald's commentary is not the first to underline the importance of princely love in a polity. Thomas Aquinas states in the *Politics* commentary that love is what distinguishes regal rule from tyrannical rule¹⁰⁰ – Gerald's notion of love, however, should be understood in a particularly theological context. Bénédicte Sère draws attention to Gerald's equivocation between the perfect friend and Christ, and between the perfect friendship and sanctity¹⁰¹. If perfect love should resemble one's friendship with Christ, and there should be love and friendship between the perfect ruler and his citizens, it only follows that the perfect ruler should be like Christ.

Despite being the first Franciscan to write a full commentary on the *Nicomachean Ethics* as well as to tackle Aristotle's conundrum extensively¹⁰², Gerald Odonis's solution is in many ways representative of the Franciscan tradition. The preference of the rule of man over the rule of law is certainly reflective of the Franciscan moral voluntarism: the will is sovereign within the soul, and analogously the will of the prince is sovereign in the city. Written laws, as a product of the intellect and intellection, should therefore be subservient to the city's will. Duns Scotus, for example, places the

99. Geraldus Odonis, *Sententia et expositio cum questionibus super libros ethicorum*, V. q. 11, Appendix 36.

100. Thomas de Aquino, *Sententia super libros politicorum*. I. cap. 10. 1259b10, p. 113; on the love of the prince, see also, Krynen (1981, pp. 119-123).

101. Sère (2007, pp. 291-293).

102. Another question is found in a quodlibetal series attributed to Nicholas of Lyra, who provides a relatively short answer, favouring the governing of the best man, but builds his arguments on completely different grounds. Nicholas de Lyra, *Utrum civitas regatur melius optimis viris quam optimis legibus vel econtrario?*, Città di Vaticano, BAV, ms. Vat. Lat. 982, fol. 110vb-111ra, accessible online at <https://digi.vatlib.it/view/MSS_Vat.lat.982>. For a survey of Franciscan quodlibets, see Duba (2007, pp. 570-649).

political authority of the sovereign over and above both written laws and some natural rights¹⁰³.

However, the connection between the king's divinisation and the Franciscan tradition seems more tenuous. Yet, again, Gerald is not the only Franciscan to push the idea. Gerald's contemporary, Francis of Meyronnes, wrote several political treatises during the 1320s¹⁰⁴. Unlike Gerald, who considers both the pope and the King of France, and even, formerly, the Roman Emperor, as princes who are sovereign in their realms and govern *sicut deus*, Francis argues unequivocally for a universal theocracy of the pope, which de Lapparent presents as a response to Dante's idea of a universal monarchy in the form of a world emperor¹⁰⁵. Under the supreme authority of the pontificate, it is the Kingdom of Sicily that is the most noble, because it is directly subject to the authority of the Pope. Francis's political theory is that of a complete and perfect order of subjection, where he developed complex and systematic arguments that happily coincide with his political loyalty for Robert of Anjou and the Angevin rulers of Naples and Sicily¹⁰⁶.

Although Francis does not treat the question of whether the best man or the best law should govern, it quickly transpires that his idea of the relationship between the prince and the law is similar to that of Peter of Auvergne's two-fold structure of *per legem* and *pro lege*: the prince should govern in accordance with laws (*secundum legem*) in the normative, but also holds the power, as the legislator, of revocation, suspension, and modification of laws – he is both the lawmaker and the judge¹⁰⁷. Francis is far more preoccupied with the idea of subjection within a hierarchy: just like the

103. For a study on the authority of the prince and the forced conversion of the Jewish children, see Marmusztejn and Piron (2004, pp. 31-33). For Duns Scotus and natural law, see Lambertini (2000, p. 154).

104. Edited and analysed in Lapparent (1940-42, pp. 5-151).

105. Lapparent (1940-42, p. 17).

106. Lapparent (1940-42, pp. 9-10).

107. Franciscus de Maronis, *Quaestio de subiectione*, P. de Lapparent ed. (1940-42), *AHDLMA*, 13, p. 85.

limbs should be subject to the soul, the intellect to the will, a lower power should be subjected to a higher power, and therefore the temporal prince subject to the spiritual prince¹⁰⁸. The best form of temporal power is one that is most immediately subject to the spiritual *ierarchia*, i.e., the papacy. Francis argues that the noblest form of principality has the most perfect laws¹⁰⁹. Thus the spiritual prince with his divine law, instituted with divine revelations, is superior to the temporal prince with his human law, instituted with human rationality¹¹⁰. A temporal prince who governs with both human and divine laws is therefore superior to a temporal prince who governs with only human laws¹¹¹. In the same fashion, the political virtues of the prince are not complete (*informes*) without subjection to theological virtues, and consequently, the temporal prince cannot attain his perfection without subjection to the spiritual prince¹¹².

Francis thus considers and examines the political power of a temporal prince within the overarching scheme of a divine theocracy. The best prince is one who is closest to the supreme divine hierarchy. Francis cites Paul's analogy of the exterior and interior men (Rom. 7:22-23): the exterior man is the temporal prince, whose end is to subdue passions and to submit oneself to the rule of the interior man, the spiritual prince, who holds the law of God¹¹³. The highest virtue of this body is the complete submission of the exterior man to the interior man, so much so that the subjugated forces of the exterior man do not even dare to attempt a battle with the interior (*nullatenus ei bellum audeant attemptare nec velint*)¹¹⁴. This is the heroic, and even divine (*quasi divina*), virtue.

108. Franciscus de Maronis, *Tractatus de principatu regni Siciliae*, P. de Lapparent ed. (1940-42), *AHDLMA*, 13, p. 101.

109. Franciscus de Maronis, *Quaestio de subiectione*, p. 89.

110. Franciscus de Maronis, *Quaestio de subiectione*, p. 82.

111. Franciscus de Maronis, *De principatu temporalis*, P. de Lapparent ed. (1940-42), *AHDLMA*, 13, p. 64; Id., *Quaestio de subiectione*, p. 89.

112. Franciscus de Maronis, *De principatu temporalis*, p. 65.

113. Franciscus de Maronis, *De principatu Siciliae*, pp. 101-102.

114. Franciscus de Maronis. *De principatu Siciliae*, p. 101; cf. Lapparent, "François de Meyronnes", p. 45.

Similarly, in the body-politic, the temporal submits completely and absolutely to the spiritual, the exterior to the interior. Even though the divinisation of the political body is achieved on account of the subjection of the prince, Francis nonetheless chooses to speak of the state as a whole, the *regnum Siciliae*, as a *principatus dicitur divinus esse*.

5. From Man to God: A Conclusion

This study has been primarily an attempt at analysing the medieval responses to the Aristotelian enquiry: is a city better governed by the best man or by the best law? Laws offer a normative principle for governance, which provides guidance to the city's ways of life, and against which cases can be judged to a uniform standard. However, it is also manifest that a human community always requires a human element in its governance. Aristotle posits that the rule of law should be the normative, with magistrates trained in the studies of law to serve as ministers of justice, and to judge with equity where the universal precepts of law should fail. The rule of law is analogous to the rule of God and intellect. However, Aristotle also states that those who are of exceptional virtues should rule like God and govern above law. The Philosopher's mixed messages, intertwined with the Stoic and Roman law traditions, have inspired a plethora of writings on the subject. Thomas Aquinas and Godfrey of Fontaines advocate for the governance of law and position the prince as its guardian: law is the collective reason of the city and the prince is the city's will that acts only in conformity with communal reason. Others follow the *per se-per accidens* distinction coined by Peter of Auvergne, where the *optimus vir* is intrinsically better but *optima lex* is accidentally better, and it becomes the question of which is the better part at embodying reason within the body-politic. Giles of Rome and Gerald Odonis argue, each in their own fashion, that the city is better governed by the best man. For Giles, the best man is an in-

termediary between God and the civic community, just as the soul connects the body with the divine. Yet for Gerald, the best man is himself justice personified, as the will in which justice and moral virtues are located.

The discussion of *optima lex* remains mostly anchored in the terms of human positive law, although different authors have assigned to it various roles within a civic community. For Thomas, laws are transcendental precepts, a product of the city's collective reason, and a written expression of natural and divine law through the participation of the human intellect. Thomas's laws are almost divine in character. Peter of Auvergne understands it as the effect of the lawmaker's rationality, within an enclosed secular system without reference to the transcendental. Giles of Rome makes it the instrument of the sovereign prince. Gerald Odonis considers laws as dead words and sometimes an impediment to the pursuit of truth justice. Francis of Meyronnes discusses human law in juxtaposition with divine law, and firmly subjugates the former to the latter, arguing that the virtues fostered by human law are incomplete without being informed by divine law.

The transformation of the *optimus vir*, however, is far more salient. It shifts from the somewhat Greek notion of the good and virtuous man, perfected with moral and intellectual goodness in both his private affairs and the life of the city, to a divine prince who is the living source of justice and God's very image on earth. Consequently, the best man's relationship with law morphs from the law's magistrate and guardian to Peter of Auvergne's prince who makes law and rules with law, and to Gerald's *ius animatum* who is capable of governing through love, example, exhortation, and prudence. In his apotheosis, the *optimus vir* leaves the pages of Aristotle's civic governance of ancient Athens to inhabit medieval Christendom as a saintly and Christ-like king.

Lying underneath the divergences of the scholastic masters' positions are their differences in moral anthropology. Thomas situates his polity in an overarching divine cosmos, which is fundamentally comprehensible through universal scientific principles,

where the intellect commands the will to moral acts, just as the law commands the prince to political acts. Peter of Auvergne understands the moral and political life as found within a secular system, consisting of both universal matters and particular affairs, which require both the propositional reasoning of law and the prudential reasoning of man. Franciscan moral anthropology, on the other hand, comprehends the world as fundamentally contingent, and situates the principles of human actions and moral virtues in the will. Therefore, it requires a city to be governed by its will, i.e., the prince, who is justice personified, who wields supreme authority but also governs with love and prudence. Ultimately, as Aristotle implies, the best governance is analogous to being ruled by God.

In medieval political theology, the soul of the best body-politic should therefore be divine one way or another. For Thomas, God's precepts are manifested through divine and natural law, and translated into written laws through the participation of human reason in the divine reason. For others, the rule of God equates to the sacral kingship. Giles of Rome thinks that the rule of God is personified in the sovereign prince, who mediates between the political community and God. In Gerald Odonis, the prince is a godlike man, or is even Christ himself. For Francis of Meyronnes, the rule of God means the complete submission of the prince and of the political community to God's vicar on earth and to the precepts of divine law. The political community is never considered purely in civic terms. Instead, it is a body that has both flesh and soul, both intellect and will; its end goal is never limited to the Aristotelian notions of moral goodness and intellectual contemplations of the universe, but rather its own divinisation in its union with God.

Appendix¹¹⁵

Geraldus Odonis, *Sententia et expositio cum questionibus super libros Ethicorum* [Scriptum]

Introduction

Despite its wide influence in medieval and renaissance teaching of *Ethics* and the burgeoning scholarly interest in recent decades, Odonis's *Scriptum* has not received a critical edition. A survey of manuscripts by Camerin Porter was published in a special issue of *Vivarium* dedicated to Gerald Odonis, which lays the groundwork for the present edition¹¹⁶. Scholars have primarily relied on the two incunable editions printed, respectively, in Brescia (1482) and Venice (1500). The incunable texts are useable but nonetheless contain at times debilitating errors. The question (Liber V, Questio 11) edited below thus represents a first attempt at a critical edition.

A total of nineteen manuscripts that contain the whole or fragments of Odonis's *Scriptum* are identified, of which fourteen contain the edited question.

Conspectus siglorum¹¹⁷

Fourteen manuscripts contain the edited question:

115. The preparation of this edition was made possible by the financial support of EHESS travel scholarship, which allowed me to inspect a number of manuscripts in person. I am also deeply grateful to the libraries and their librarians for providing me digital versions of the manuscript, when travel was difficult, and for their warm reception, when I was able to visit, especially Andreas Fingernagel at the ONB, Oscar Lilao Franca at the BU Salamanca, Ulrike Mehringer at the UB Tübingen, David Speranzi at the BNCF, Anne Weber at the Bibliothèque Mazarine, and Jose Antonio Zambrano at the Biblioteca Colombina, amongst many others, without whose help this paper would not have been possible.

116. Porter (2009, pp. 241-291).

117. I have adopted the same system of *sigla* as Porter (2009), except for **K**, which was not included in Porter's survey (links to digitised versions, where available, are given in the footnote). Some dating errors are corrected here, and the manuscript call numbers are standardised into the current format used by the respective libraries. For manuscript description, see Porter (2009, pp. 248-261).

- A** = Assisi, Biblioteca del Sacro Convento, 285, fol. 96rb-97ra (14 c.);¹¹⁸
- B** = Boulogne-sur-Mer, Bibliothèque municipale, BV 111, fol. 180va-182ra (15 c. 3/4);¹¹⁹
- C** = Città del Vaticano, Biblioteca Apostolica Vaticana, Vat.lat.2168, fol. 142rb-143va (1439);¹²⁰
- D** = Padova, Biblioteca Antoniana, XVIII 389, fol. 95ra-vb (14/15 c.);
- F** = Firenze, Biblioteca Medicea Laurenziana, Plutei XIII. sin. 3, fol. 149vb-151rb (14 c.);¹²¹
- G** = Città del Vaticano, Biblioteca Apostolica Vaticana, Pal.lat.1027, fol. 167rb-169ra (14 c.);¹²²
- L** = Sevilla, Biblioteca Colombina, 7.5.14, fol. 97vb-98va (14 c.);
- N** = Firenze, Biblioteca Nazionale Centrale, Conv.Soppr.J.3.25, fol. 104ra-105ra (14 c.);
- P** = Paris, Bibliothèque nationale de France, Latin 16127, fol. 89va-90rb (14 c.);¹²³
- R** = Paris, Bibliothèque Mazarine, 3496, fol. 137rb-138va (14 c.);
- S** = Salamanca, Biblioteca General Histórica, 1869, fol. 225v-227r (15 c.);
- T** = Tarazona, Archivo Catedral Capitular, 15, fol. 98va-99va (14 c.);
- U** = Tübingen, Universitätsbibliothek, 378, fol. 89v-91r (fragment, 15 c.);
- W** = Wien, Österreichische Nationalbibliothek, Palatinus 2383, fol. 70ra-va (14 c. 2/2);

Five additional manuscripts do not contain the question, except H, which presents an eight-line summary in fol. 292r. They are therefore excluded from the present enquiry:

- H** = Città del Vaticano, Biblioteca Apostolica Vaticana, Urb.lat.1369 (fragment);¹²⁴

118. <http://www.internetculturale.it/jmms/iccuviewer/iccu.jsp?id=oai%3Awww.internetculturale.sbn.it%2FTeca%3A20%3ANT0000%3APG0213_ms.285&mode=all&teca=MagTeca+-+ICCU>.

119. <<https://bvmm.irht.cnrs.fr/consult/consult.php?reproductionId=20300>>.

120. <https://digi.vatlib.it/view/MSS_Vat.lat.2168>.

121. <<http://mss.bmlonline.it/s.aspx?Id=AWOMTFIN1A417GxMWSG#/book>>.

122. <https://digi.vatlib.it/view/MSS_Pal.lat.1027>.

123. <<https://gallica.bnf.fr/ark:/12148/btv1b9066623w>>.

124. <https://digi.vatlib.it/view/MSS_Urb.lat.1369>.

K = Kraków, Biblioteka Jagiellonska, 1446 (fragment, 15 c. 1/4);
M = Madrid, Biblioteca nacional, 6546 (fragment, 15 c.);¹²⁵
Q = Subiaco, Biblioteca Santa Scolastica, 26 (XXIV) (fragment, 15 c.);
Z = Tarazona, Archivo Catedral Capitular, 71 (fragment, 1370s).

The *Scriptum* is printed twice:

X = Brescia, Bonifacius de Minerva, ed. Graxianus Brixianus, 30 April 1482, 322vb-324rb;¹²⁶
V = Venezia, Andrea Torresani, ed. Simone de Luere, 14 July 1500, 103rb-104ra.¹²⁷

A collation of the codices and incunabula yields several preliminary conclusions.

(1) The manuscript tradition is transmitted through two subarchetypes:

α: ABDLP + XV
β: CFGNRSTUW

(2) Both incunable editions (**XV**) are derived from **α**.

- **X** is the exemplar of **V**.
- **XV** generally present a text superior to other codices within the **α** group.
- Although the editor of **X**, Gratianus Brixianus (or Brixianensis) was based in Padova, the Padova manuscript **D** cannot have been the source, and indeed none of the surviving witnesses within the **α** branch could have been the source, based on a significant number of *lectiones singulares* in each of them.

125. <<http://bdh-rd.bne.es/viewer.vm?id=0000137444&page=1&search=6546&lang=es&view=main>>.

126. <<https://gallica.bnf.fr/ark:/12148/bpt6k1522612t.r=Guiral%20ot?rk=42918;4>>; also <<https://daten.digital-sammlungen.de/0006/bsb00067349/images/index.html?id=00067349&groesser=&fip=yztsenyztsxdsydxdsydweqxseaya&no=2&seite=1>>.

127. <<https://gallica.bnf.fr/ark:/12148/bpt6k59409c.r=Guiral%20ot%20ethicorum?rk=236052;4>>>.

(3) The β branch generally presents a superior quality of text as well as a more consistent *usus scribendi*, which implies that β is probably closer to the autograph.

(4) Within β , three manuscripts **NR** and **F** are *pecia* copies.¹²⁸ It is probable that **NR** are copied from the same Parisian exemplar (the *pecia* marks match where they coincide, and they share a number of errors). **F** is of Italian origin, with errors divergent from **NR**.

(5) To assess the quality of the transmitted text, I have tallied up the *lectiones singulares* of each manuscript for the edited question, excluding cases of word order inversion, missing or additional *et* that do not impair the reading, interchangeable words such as *ergo/igitur* *ut/sicut*. The results are as follows:

- α
 - A 19
 - B 19
 - D 25
 - L 11
 - P 16
 - VX 17

- β
 - C 19
 - F 15
 - G 6
 - N 2
 - R 16
 - S 21
 - T 23
 - U 32
 - W 10

128. Murano (2005, p. 488, n. 395).

- Clearly, **N** transmits by far the best text, which corroborates with my own experience editing the question. **G** follows closely, but the manuscript is extensively corrected by multiple hands, where the corrections often do not match texts from other witnesses. Despite the high number of *lectiones singulares*, **C** offers in fact one of the better versions within the β branch (the manuscript is likely to have been contaminated by a copy of α , judging by the errors it shares with some α codices). Given that neither **N** nor **W** are accessible online, a scholar interested in correcting the incunabula text may find a working solution in checking against **C** or **G**.
- Within the α branch, there is no witness that is clearly superior to others. **L** and **P** may seem to contain the fewest errors, but they are plagued by several *homoeuteleton* omissions. **L** generally transmits the best text, where such passages are present.

The collation is clearly limited in its scope – only one question is taken into account and five manuscripts are excluded. Hence I will not venture into conclusions beyond what is obvious. Aside from the *pecia* copies and the two incunabula, all manuscripts seem to behave in an idiosyncratic manner with significant *lectiones singulares* and *homoeuteleton*, obscuring any patterns that seem to emerge.

Ratio editionis

I have settled into a two-title system for Odonis's *Ethics* commentary. **BDPV CFGW Z** refer to the work as *sententia et expositio* (*cum questiones*) in their *incipit* and/or *explicit*, **A** uses the term *scriptum*, while **L NST** refer to the commentary as *scriptum* in their *incipit*, and *sententia et expositio cum questiones* in their *explicit*¹²⁹. (**R** is the sole exception to use *commentaria*.) Therefore, I have made *Senten-*

129. Porter (2009, pp. 250-260).

tia et expositio cum questiones super libros Ethicorum as the long title, and *Scriptum* as a short title for the text.

A more extensive collation is needed to establish a conclusive *stemma codicum* that maps the manuscript tradition of Odonis's *Scriptum*. This critical edition takes into account all manuscripts that contain the edited question. The edition has kept the medieval orthography with collapsed diphthongs, and standardised the t/c u/v variations. All *lectiones singulares* are eliminated from the *apparatus criticus*, except for *homoeuteleuton* omissions. All explicit citations are included in the *apparatus fontium*. All verbatim quotations are marked with angular brackets. All punctuations, text divisions, and paragraph numberings are mine. With almost 2100 words, this question is typical of Odonis's *Scriptum* questions both in length and style.

GERALDI ODONIS *SENTENTIA ET EXPOSITIO*
CUM QUESTIONIBUS SUPER LIBROS ETHICORUM

5 Liber V, *Questio 11: Utrum expedientius sit civitatem regi bona lege sine bono homine quam bono homine sine bona lege?*

[A96rb, B180va, C142rb, D95ra, F149vb, G167rb, L97vb, N104ra, P89va, R137vb, S225v, T98va, U89v, V103rb, W70ra]

10 <1> Ad evidentiam eorum que dicta sunt de lege et iudice in primis duabus conclusionibus, quero utrum expedientius sit civitatem regi bona [F150ra] lege sine bono homine quam bono homine sine bona lege. [U90r] Sic intelligendo casum quod lex habeat ministrum [G167va] qui portans gladium in ultionem transgressorum
 15 legem stricte faciat observari, et quod iste legis minister non sit bonus [V103va] homo, tamen est bonus minister. Quantum ad hoc, quales sunt multi iustitiarum in regno Francie. Ex alia vero parte sit bonus et prudens homo rector civitatis, sine lege scripta secundum propriam rationem et prudentiam regens, habens etiam
 20 ministrum cum gladio executorem iustitie.

<Argumenta>

25 <2> His autem sic se habentibus, arguitur [T98vb] quod expedientius sit sic regi lege quam homine. Primo ex ratione Philosophi, 3 *Politice*¹, quia homo est passionatus, lex autem non est passionata; homo namque quandoque tristatur, irascitur, indignatur, et affectatur, lex autem numquam. Quare pro regimine, lex expedientior est quam homo.

30
 12 quam bono homine] *om. D G*
 14 in ultionem] in ultione *FT*; et ultionem *D*
 19 habens etiam] *inv. G*; habens autem *W*
 25 sic] *om. FW*
 25 3] 2 *VX*
 27 quandoque] quando *BP FGNRSTW*
 28 homo namque quandoque ... lex autem numquam] *om. per homocuteleuton C*

<3> Secundo quia homo multipliter est [B180vb] onerosus et ex conditione humana et ex necessitate sua. Requirit enim victum, vestitum, exactiones facit, stipendia recipit; «lex autem non est onerosa», ut libro 10, capitulo 11². Quare ut prius.

35

<4> Tertio quia lex divinior est homine, quia bonum quanto communius tanto divinius, ut supra libro primo, in prohemio³. Lex autem communior est homine in regendo, omnes enim postquam est promulgata simul alloquitur et omnes simul hortatur; homo vero non potest. Quare lex est divinior et per consequens expedientior.

40

<5> Quarto quia lex est iustior homine. Qui enim est indifferentior ad partes [N104rb] litigantes et universalius ad cives, ipse est iustior, ut habetur ex 3 *Politice*⁴. Lex autem est indifferentior. Impossibile quippe videtur quod aliquis homo equaliter diligit omnes qui inter se sunt partes, et tamen lex equaliter respicit omnes. Quare ipsa est iustior et per consequens expedientior.

45

1. ARISTOTELES, *Politica*, III. 16. 1287a29-33, F. Susemihl ed., A.L. XXIX. 2, Leipzig 1872, p. 229.

2. ARISTOTELES, *Ethica Nicomachea*, X. 11. 1180a25, R.-A. Gauthier ed., A.L. XXVI. 1-3 fasc. iii, Brill, Leiden-Bruxelles, 1972, p. 366.

3. ARISTOTELES, *Ethica Nicomachea*, I. 2. 1094b7-10, A.L. XXVI. 1-3, p. 142; Cf. J. Hamme, *Les auctoritates Aristotelis : un florilège médiéval : étude historique et édition critique*, Publication universitaires, Louvain-Paris 1974, p. 233, n. 5.

4. ARISTOTELES, *Politica*, III. 16. 1287a38, A.L. XXIX. 2, p. 229.

31 Secundo quia homo] *om. per homoeuteleuton sed in marg.* quia L

32 enim] 2 F; *om. U*

34 ut] *om. U; infra add. W*

36 bonum] bonus ADLP

42 et per consequens expedientior. Quarto quia lex est iustior] *om. per homoeuteleuton L*

42 qui] quia VX

43 universalius] universaliter ABL CFGNRSTUW; ut licere *dub. P*

44 3] 13 VX

44 indifferentior] indifferento *a.c. R; differentior S*

45 equaliter] aliquid *ABDLP*

50 <6> Quinto quia lex est commodior. Leges enim sacratissime non
 permittunt hominem in paupertate [L98ra] vivere, nec in anxietate
 mori, ut in *Authentico de heredibus et Falcidia*⁵, ss. finale. Quare
 ut prius.

55 <7> Sexto quia lex est rationalior homine. Homo enim non est ra-
 tionalis, nisi quia rationem habet et quia utitur ratione, potest
 enim aliquando usum rationis perdere manens homo. Lex autem
 [G167vb] est rationalis, quia ipsamet est ipsa ratio. Unde ait Papias
 quod «lex est mens et animus, consilium et sententia civitatis»⁶;
 sic quod ipsa manens lex, non potest esse non recta et non ratio-
 60 nalis. Quare [C142va] ut prius.

<8> Septimo quia lex in precipendo perfectior est [A96va] homine.
 Lex enim secundum omnem virtutem vivere precipit, et secundum
 omne vitium vivere prohibet, ut [F150br] supra eodem, capitulo
 65 5⁷. Homo tamen non potest hec omnia exponere, nec de omnibus
 recordari, nec per consequens de omnibus sermonem vel exhorta-
 tionem facere. Quare ut prius.

70 <9> Octavo quia lex in faciendo bonos cives potentior et efficacior
 est [S226r] homine. Dicit enim Philosophus quod si est aliquem
 futurum bonum hominem, [R138ra] vel bonum civem, oportet
 nutrirī bene et assuefieri, deinde in bonis adinventionibus vivere.

5. *Iustiniani Novellae*, I. «De heredibus et falcidia». cap. iv. *epilogus*, R. Schoell and G. Kroll eds., *Corpus iuris civilis*, vol. 3, Weidmannos, Berolini 1959, p. 10.

6. *Papias Vocabulista*, Venetiis 1469 (reprint Torino 1966), p. 179b. Cf. Cicero, *Pro Cluentio*, 146, in *Pro Lege Manilia. Pro Caecina. Pro Cluentio. Pro Rabirio Perduellionis Reo*, *Leob Classical Library, Cambridge MA 1927*, p. 378; Cf. *Isidorus Hispalensis, Etymologiae*, II. 29. 13, P. K. Marshall ed., *Etymologies. Book II, Rhetoric, Les Belles Lettres, Paris 1983*, p. 151.

7. ARISTOTELES, *Ethica Nicomachea*, V. 5. 1130a23-25, A.L. XXVI. 1-3, p. 230.

54 rationalior] rationabilior BP NRSTU

55 rationalis] rationabilis FRS

57 rationalis] rationabilis BL RS

57 ipsa] om. U; ipsamet VX

59 non] om. G; bonus T

60 rationalis] rationabilis BL GNR

64 eodem] om. ABCDLPVX

Sed ad [B181ra] hec paterna quidem preceptio non habet coactum, nec totaliter alicuius viri unius, nisi forte [D95rb] esset rex vel similis. Lex tamen habet ad hoc potentiam coactivam⁸. Quare ad faciendum bonum virum vel bonum civem, ipsa est potentior homine, et per consequens expedientior. 75

<10> Nono quia lex est securior homine, et minus confidendum est de homine quam de lege. Unde dicit Philosophus quod paucissima commitenda sunt iudicibus, sed omnia possibilis sunt determinanda per leges, 2 *Politice*⁹. Quare expedientius est regi lege quam homine. 80

<11> Decimo quia lex preferitur homini bono in sanctitate et iustitia, bonitate et spiritualitate. Unde Paulus Apostolus preferit eam sibi ipsi, dicens quod «lex quidam sancta, et mandum sanctum, et bonum. Scimus enim quod lex spiritualis est, ego autem carnalis sum», *Ad Romanos*, 7¹⁰. Quare ut prius. 85

<In oppositum> 90

<12> Sed econverso arguitur. Primo quoniam ad [P89yb] bene agere, melior est res animata et viva quam res mortua. Vivi enim bene agunt et non mortui. Unde scriptum est «non mortui laudabunt te domine, sed nos qui vivimus benedicimus domino»¹¹. Bonus autem homo rector civitatis existens est ius animatum, ut hic dicitur¹². Lex autem est ius mortuum et in mortua pelle descriptum. Quare 95

8. ARISTOTELES, *Ethica Nicomachea*, X. 11, 1180a15-23, A.L. XXVI. 1-3, p. 366.

9. *Recte*, ARISTOTELES, *Politica*, III. 16. 1287a20-28. A.L. XXIX. 2, p. 228.

10. Rom. 7:12-14.

11. Ps. 113:25.

12. ARISTOTELES, *Ethica Nicomachea*, V. 4. 1132a22, A.L. XXVI. 1-3, p. 234.

76 bonum] *om. VX*

79 homine] *om. VX*

82 lege] *legi NRT*

95 Vivi... mortui] *om. per homoeuteleuton P*

98 ius mortuum et in mortua pelle] *ius mortuum in mortua autem pelle ABDLPVX*

100 ad bene regere, bonus homo est [G168ra] melior et expedientior
bona lege.

<13> Secundo quoniam ad bene agere, causa est efficacior effectu suo,
quia «propter quod unum-[W70rb]-quodque tale et ipsum magis»
105 tale, primo *Posteriorum*¹³. Sed homo est causa legis, [T99ra] et homo
bonus causa est legis bone; homo quidem legem condidit, non lex
hominem. Quare ad bene regere, bonus homo melior est bona lege.

<Ad questionem>

110 <14> Dicendum ergo ad questionem, tenendo casum premissum, et
supponendo preservantiam regiminis boni viri et regiminis bone
legis, quod expedientius est regimen boni viri quam regimen bone
legis, supposito quod bonus vir habeatur sicut et lex [V103vb] ha-
betur. [U90v]

115 <15> Hoc autem probatur. Quia illud regimen est civitati expe-
dientius quod est ad finem et felicitatem civitatis efficacius; hoc
autem est regimen boni viri. Quare ipsum [F150va] expedientius
est regimine bone legis.

120

13. ARISTOTELES, *Analytica Posteriora*, I. 2. 72a29-30, L. Minio-Paluello and B. G. Dodd eds., A.L. IV. 1-4, Brill, Leiden 1968, p. 287; Cf. Hamesse (1974), p. 313, n.29.

99 regere] agere AB; om. P

103 quod] om. VX

104 ipsum magis] illud magis D; ipsum est magis CFGNRT; illud magis est W

104 causa est] inv. ABDLPVX U

104 legis] legis bone ST

105 et homo bonus causa est legis bone] om. ST

106 regere] agere B; agere a.c. R

111 preservantiam] preservantia B U

117 ad finem et] ad add. SU

117 quod est ad finem et felicitatem civitatis] om. sed scr. vel C

<16> Assumptum probatur. Quoniam [B181rb] finis et felicitas civitatis est esse cives [C142vb] iustos, prudentes, et bonos. Hoc autem habito, cetera civitati necessaria faciliter habentur. Sed ad hoc efficacius est regimen boni viri quam bone legis. Quod apparet [N104va] ex tribus ad hoc necessariis, in quibus bonus homo excedit legem bonam, que sunt potentia, prudentia, iustitia. 125

<17> Quod enim bonus homo sit potentior bona lege probatur. Quoniam ultra precepta legis et hominis sunt quattuor motiva, que continent totam potentiam faciendi homines bonos, scilicet metus et amor, exhortatio et exemplum. 130

<18> De metu enim dicit Philosophus quod multi obediunt necessitati magis quam sermoni, et iacture quam timent magis quam bono, infra libro 10, capitulo 11¹⁴. 135

<19> De amore autem dicit ibidem¹⁵ quod paterni sermones et mores magis habent de potestate quam legalia et civiles mores, «propter cognationem et beneficia; preexistunt enim diligentes et obediens nature» faciliter. 140

<20> De exhortatione vero dicit Hieronimus quod «habet nescio quid latentis energie viva vox, et in aures discipuli ex auctoris ore trans-[L98rb]-fusa fortius sonat», in *Epistula ad Pauli-[G168r-b]-num*, capitulo 2¹⁶. 145

14. ARISTOTELES, *Ethica Nicomachea*, X. 9. 1180a4-5, A.L. XXVI. 1-3, p. 366; Cf. Hamesse (1974), p. 248, n. 222.

15. ARISTOTELES, *Ethica Nicomachea*, X. 9. 1180b4-7, A.L. XXVI. 1-3, p. 367.

16. HIERONYMUS, *Epistulae*, 53 «Ad Paulinum», 2, in J.-P. Migne ed., *Patrologia Latina*, 22, Paris, 1854, col. 0541.

121 quoniam] quando BD

124 efficacius est] efficacius C; inv. FGNSTU

140 faciliter] faciat BDP; faciat a. c. L

143 energie viva vox] energie vox S; energie vinca vox T; emergens vive vocis actus VX

150 <21> De exemplo autem habemus quod zelantes conantur imitari
bona honorabilia, qualia sunt virtutum exempla, 2 *Rethorice*, capi-
tulo de zelo¹⁷. Zelantes autem sunt precipue iuvenes et viri [A96vb]
magnanimi, ut ibidem habetur¹⁸.

155 <22> Nunc autem bonus vir et bona lex pares sunt in metu et timo-
re pene, quia utrique ministrum et gladium habet ultorem. Sed bo-
nus vir rector civitatis existens habet ad cives amorem paternum
et cives ad ipsum, habet etiam exhortationem vivam et exemplum
bonorum operum. Lex autem nec amorem mutuuum, nec exhorta-
tionem vivam, nec exemplum bonorum operum habet. Quare sine
160 comparatione, vir bonus ratione istorum trium potentior est lege
bona ad faciendum cives bonos et iustos.

165 <23> Quod autem sit prudentior probatur. Quia et vir [D95va] pru-
dens et lex [S226v] bona secundum prudentiam datam continent
notitiam et artem bene vivendi, tamen notitia vel ars prudentis
viri excedit legalem notitiam tripliciter, scilicet extensive et inten-
sive et perfectionaliter.

<24> [B181va] Extensive quidem quia lex non potest extendi ad
omnes casus qui possunt evenire, nec legislator eos potuit previ-

17. ARISTOTELES, *Rhetorica*, II. 11. 1388b7-11, B. Schneider ed., A.L. XXXI. 1-2, Brill, Leiden-Bruges-Paris 1978, p. 246.

18. ARISTOTELES, *Rhetorica*, II. 11. 1388b3, A.L. XXXI. 1-2, p. 245.

149 iuvenes] viventes *ABDLPXV*; vivenes *U*

150 habetur] *om. FT*; dicitur *U*

152 metu] motu *NRT*

155 exhortationem] et exhortationem *T*; et hortationem *VX*

156 mutuuum] paternum *L*; *om. S*

157 vivam et exemplum ... exhortationem vivam] *om. per homoeuteleuton P*

158 comparatione] operatione *D CFGNRSTUW*

162 continent] continens *A*; continet *SU*

163 tamen] cum *BVX*

164 excedit] excedat *ADPVX*

164 tripliciter] gratia *VX*

168 omnes] summos *FG*; summus *T*; *p.c. W*

dere, nec de omnibus legem ponere, ut infra eodem, capitulo 17¹⁹.
Tunc autem ubi [R138rb] lex deficit, recursus est ad arbitrium
boni viri, et sic arbitrium boni viri excedit legem extensive. 170

<25> Intensive etiam excedit eam, quia sermones legis sunt univer-
sales et non particulares, [C143ra] ut eodem capitulo²⁰; sermones
vero boni viri possunt esse particulares, ut patet ad sensum. Ser- 175
mo-[F150vb]-nes vero particulares efficaciores sunt in agibilibus
quam universales, ut supra libro 2, et 3 *Politice*²¹. Quare notitia pru-
dentis viri excedit legalem notitiam intensive.

<26> Item perfectionabiliter, quoniam vir bonus et prudens habet 180
quandam experimentalem [P90ra] notitiam ita perfectam, quod
nulli potest inesse nisi homini bono, numquam autem homini
malo, ut infra libro 6, capitulo 16²². Omnis autem legalis notitia
potest inesse tam bono quam malo, quare ista est perfectior quam
illa, et [G168va] per consequens vir bonus est prudentior lege in 185
quocumque habente solam legalem notitiam.

19. ARISTOTELES, *Ethica Nicomachea*, V. 17. 1137b25-28, A.L. XXVI. 1-3, p. 249.

20. ARISTOTELES, *Ethica Nicomachea*, V. 17. 1137b13, A.L. XXVI. 1-3, p. 249.

21. ARISTOTELES, *Ethica Nicomachea*, II. 2. 1104a5-10, A.L. XXIV. 1-3, p. 165; and ARISTOTELES, *Politica*, III. 15. 1286a10-20, pp. 220-1.

22. ARISTOTELES, *Ethica Nicomachea*, VI. 16. 1144a34-36, A.L. XXVI. 1-3, p. 269.

169 ut eodem capitulo] et ff. De legeibus et senatus consultis et longa consuetudine,
l. iura se et se etc, et ibi in terminis *add. B*

171 et sic ... viri] *om. per homoeuteleuton ABDLP FGRT*

176 ut patet ad sensum. Sermones vero particulares] *om. per homoeuteleuton L*

180 quoniam] quando *B*; quam *R*

181 ita] vel *VX*

182 potest] possunt *VX*

182 homini bono] bono *L*; boni homini *S*

183. 6] 7 *ABDLVX*

183 autem] *om. DL C*

183 ut infra libro 6 ... quam malo] *om. per homoeuteleuton P*

190 <27> Quod autem vir bonus sit iustior [T99rb] lege iusta probatur
 dupliciter. Primo quidem de iustitia in communi, quoniam lex di-
 citur iusta, tantum quia preceptiva est iustorum operum; vir bo-
 nus autem dicitur iustus, et quia preceptivus, et quia operativus,
 et quia electivus et volitivus iustorum operum, ut supra eodem,
 capitulo primo²³, et in primo *Magnorum Moralium*, capitulo de iu-
 stitia²⁴. Quare vir bonus iustior est lege.

195 <28> Secundo quia lex in communi data pro aliquo casu particu-
 lari peccabit; sed vir bonus qui dicitur epieikes secundum illam
 iustitiam, que dicitur epieikeia, dirigit et corrigit communem sen-
 tentiam legis, ut infra eodem, capitulo de epieikeia²⁵; hec autem
 200 epieikeia non potest explicari per legem. Quare vir bonus iustior
 est lege bona ratione huius epieikeie; quare manifestum est quod
 vir bonus et prudens rector civitatis existens excedit legem bonam
 in tribus, scilicet potentia, prudentia [N104vb] et [V104ra] iustitia,
 que tria reddunt regimen civitatis optimum. Quare expedientius
 205 est regi bono viro quam bona lege.

<Ad argumenta>

210 <29> Ad primum ergo dicendum [W70va] quod expe-[B181vb]-dien-
 tius est regi homines passionatos [U91r] per rem passionatam
 quam per rem non passionatam, quoniam animus hominis passio-

23. ARISTOTELES, *Ethica Nicomachea*, V. 1. 1129a6-9, A.L. XXVI. 1-3, p. 226.

24. PS.-ARISTOTELES, *Magna Moralia*, I. 34. 1193b3-10, C. Pannier ed., A.L. XXVII, *Aristoteles Latinus Database*.

25. ARISTOTELES, *Ethica Nicomachea*, V. 16. 1137b11-14, A.L. XXVI. 1-3, p. 249.

192 eodem] 4 VX

199 eodem] 2 VX

203 et] *om. ALP CFNRSTUW*

209-210 expedientius est regi ... quod] *om. per homocuteleton A*

211 per rem passionatam quam per rem non passionatam] ad rem passionatam per rem non passionatam *ABDP*; per quam passionatam quam per rem non passionatam *L*; ad rem passionatam per rem passionatam *VX*; ad rem passionatam per rem passionatam quam per rem non passionatam *G*

nati audiens sibi dici per rem non passionatam «non sequaris passionem», dicet intra se «iste precipiens non est expertus passiones, quia non ita diceret», et ideo ipse contemnet.

215

<30> Si vero alius homo passionatus hoc sibi precipiat, videns quod precipiens vincit passiones, animatur et ipse ad vincendum similiter. Et ideo Philosophus illos vocat Sophistas, qui non civiliter conversantes promittunt docere politicam, infra libro 10, capitulo finale²⁶. Certum est autem quod nec lex nec res aliqua non passionata civiliter vivit, et idcirco Apostolus in persona passionatorum civium loquens ait: «Non enim habemus pontificem qui non possit compati [C143rb] infirmitatibus nostris, tentatum [G168vb] autem per omnia absque peccato», Ad Hebreos, 4²⁷. Lex autem non [L98va] potest compati, nec propter [F151ra] hoc est melior ad regendum per se sumpta sine viro bono.

220

225

<31> Ad secundum autem dicendum quod vir bonus non est onerosus quia non tyrannus est, nec aliquid recipit nisi iuste, immo aliena onera portat, ut adimpleat legem Christi, qui aliorum peccata portavit, I Petri, 2²⁸.

230

<32> Ad tertium autem dicendum quod vir bonus divinius est lege bona, unde infra libro 7, capitulo primo²⁹, dicitur quod propter virtutis excellentiam ex hominibus fiunt dii. Nec lex est commu-

235

26. ARISTOTELES, *Ethica Nicomachea*, X. 12. 1180b35-81a1, A.L. XXVI. 1-3, p. 368.

27. Hebr. 4:15.

28. I Petr. 2:22-24.

29. ARISTOTELES, *Ethica Nicomachea*, VII. 1. 1145a19-23, A.L. XXVI. 1-3, p. 271.

212 per rem] parem a.c. L; partem VX

213 sequaris] secuturis VX

213 dicet] dicit VX W

213 est] erat VX

217 ipse] ipsum VX; ille T

234 primo] secundo LN

nior homine, nisi communitate abstrac-[A97ra]-tionis facte per intellectum, non tamen communitate causationis effectus in bonum communitatis de qua sola communitate. Verum est quod bonum quanto communius tanto divinius.

240

<33> Ad quartum dicendum quod ut visum est homo iustior est lege, non autem econverso. Cum autem probatur per illam indifferentiam, [D95vb] dicendum quod bonus homo sufficienter est indifferens ad reddendum cuique quod suum est, quia si pro seipso, ut suppono nulli faceret iniuriam, multo minus pro alio. Verum est autem quod lex est indifferentior, nec hoc negari potest, tamen non propter hoc est simpliciter melior, ut visum est.

245

<34> Ad quintum vero dicendum quod illa commoditas, de qua loquitur in illa *Autentica de heredibus et Falcidia*, debet referri ad solos iurisperitos, [S227r] non ad cives universos, [B182ra] de quibus est natura intentio.

250

<35> Ad sextum autem dicendum quod homo rationabilior est lege, nec lex est ipsa ratio, quia illa numquam est extra mentem, sed est rationalis quia est effectus rationis, prout est in verbo vel in scripto, quoniam de ipsa nunc loquimur.

255

<36> Ad septimum vero dicendum quod lex non est perfectior homine bono, quia etsi lex secundum omnem virtutem vivere

260

236-237 nisi ... intellectum] licet enim lex communior sit communitate abstractionis facte per intellectum bono homine, quia aliquando est circa sermones universales in rasura al. man. G

237 intellectum] intentionem VX

237 causationis] causatione B; cretionis P; creationis GNRSUW;

239 quanto] tanto D; quod quanto R

241 iustior est] inv. ABDLPVX

249 vero] om. UW

250 Autentica] auctoritas B; auctoritate S

254 rationabilior] rationalior CF

257 ipsa] ipso FGNRSW

260 et] om. D; etiam S

precipit, bonus homo tamen secundum omnem virtutem vivit, quia virtutes que principaliter reddunt hominem bonum sunt connexe, ut infra libro 6, capitulo finale³⁰. Hoc autem est plus quam solum precipere, quia et iste sic vivit et precipit, sicut Christus dominus qui cepit «facere et docere», [G169ra] Actus primo³¹. Nec bonus homo virtutes obliviscitur, ut dicitur supra libro primo³², quia virtuose operationes sunt assidue et virtutes permanentissime. 265

<37> Ad octavum dicendum quod lex ra-[T99va]-tione metus non plus habet de potestate coactiva quam vir bonus rector civitatis existens. Tunc enim esset ut rex, [R138va] sicut innuit ibidem Philosophus³³. 270

<38> Ad nonum dicendum quod lex est securior homine, non accepto cum determinatione bonitatis, quoniam hic accepimus hominem, unde plus confidendum [P90rb] est de iustitia legis quam de iustitia cuiuslibet iudicis, quia sepe multi mali et falsi inveniuntur, et ideo illud dictum est [C143va] propter malos. Nos autem de illo querimus quem supponimus esse bonum. 275 280

<39> Ad decimum autem dicendum quod Apostolus sumit seipsum, vocans se carnalem ut personam incontinentem, quamvis ipse esset perfectissimus. Dicit autem legem esse sanctam et iu-

30. ARISTOTELES, *Ethica Nicomachea*, VI. 18. 1145a1-2, A.L. XXVI. 1-3, p. 270.

31. Act. 1:1.

32. ARISTOTELES, *Ethica Nicomachea*, I. 14. 1100b11-17, A.L. XXVI. 1-3, p. 156-57.

33. ARISTOTELES, *Ethica Nicomachea*, X. 11. 1180a20-21, A.L. XXVI. 1-3, p. 366.

260-261 secundum omnem virtutem vivere precipit, bonus homo tamen] *om. sed insert. al. man.* et precipit secundum virtutem vivere, bonus autem homo precipit vivere G; *om.* W

264 et] *om. B;* etiam S

267 virtuose] virtutum G; virtute *a.c.* R

277 unde] dum P; unus T

285 stam, bonam et spiritualem per se sumptam. Non tamen propter
hoc dicit eam esse multum expedientem pro [F151rb] regimine.
Dicit enim quod «mandatum quod erat ad vitam inventum est
mihi, hoc esse ad mortem», ibidem³⁴, quamvis hoc non sit pec-
290 catum legis, sed hominis. Non [V105ra] tamen est laus legis que
solum hominem ad bene vivere precipiendo ligat, sed cooperando
non adiuvat, sicut facit prudentia virtutis et bonitas boni viri, que
non multum ligant et multum iuvant hominem.

34. Rom. 7:10.

285 per] secundum CGNW

286 esse] *om. D S*

287 erat] *esset A; est U*

287 inventum] *inventio BDP; inventio a.c. L; adinventum S*

288 ibidem] *idem BDP*

291 virtus] *virtutis ABDLPVX*

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