

THE INFLUENCE OF PETRUS IOHANNIS OLIVI (1248–98)  
UPON THE FORMULATION OF A RADICALLY  
VOLUNTARIST CONCEPTION OF NATURAL LAW

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**Abstract**

The Franciscan thinker, Petrus Iohannis Olivi (ca. 1248–98), was the first later-mediaeval thinker to propose a radically voluntarist theory of natural law. While his Franciscan predecessors, in particular Alexander of Halles (ca. 1185–1245), John of La Rochelle (end of 12th century–1245) and Saint Bonaventura (1221–1274) prioritised the higher will (*voluntas*) over the intellect in respect both to God himself as the providential giver of natural law, and of the human being as the recipient of God's gift of natural law as an aspect of his eternal law, all these Franciscan thinkers regarded the operation of the intellect and will, first in the Divine and then in human nature in co-operative terms. Olivi is the first thinker to propose the absolute and not simply relative priority of the will in both the Divine creation of the natural law and how it impinges upon, and operates within the human rational faculty. In this brief introduction of Olivi's theory, I focus on the first of these two perspectives.

Keywords: natural law, Franciscan/mediaeval Franciscan thought, higher will, Divine law/eternal law, Petrus (Iohannis) Olivi, Divine ideas

Mark Murphy, in his avowedly Thomist overview of the natural-law tradition in ethics in the *Stanford Encyclopaedia of Philosophy*, points out that Aquinas approaches this subject from two perspectives: (1) that of God's role as the providential giver of natural law (the transcendent perspective), and (2) that of the human being's role as the recipient of God's eternal law in the form of natural law (the immanent

perspective).<sup>1</sup> From this second angle, natural law constitutes, in Murphy's opinion, the preeminent part of Thomas's theory of practical rationality, especially as it pertains to ethical decision-making. But I think it can also be said that virtually every major thinker of the later-mediaeval period (ca. 1150-1347) considered natural law on the basis of this twofold division. In the enormous *Summa* that he wrote between approximately the mid-1270s and the mid-1290s, for instance, the Franciscan thinker from Languedoc, Petrus Iohannis Olivi, links the two perspectives together as the yoked questions, LXXXI and LXXXII, of Book II of his *Summa*: the first poses the question of whether the human conscience is either a single or a multiple power, or (2) an act, or (3) a *habitus* (an ingrained or acquired pattern of behaviour, thought or action), and the second of whether natural law denotes something co-created with the Divine intellect, or the Divine will, or both.<sup>2</sup> These questions are relatively short and perfunctory, and we need to read them from the broader perspective of two related issues that preoccupied Olivi during the two years or so following the Parisian Condemnation of 7 March 1277, where the Bishop of Paris, Etienne Tempier, and his theological advisors censured 219 Averroistic and/or Aristotelian propositions that they judged to be either contrary to the Christian faith or a threat to the morals of the students attending the university.<sup>3</sup> These two issues were the nature of the eternal Ideas or exemplars by which God created the cosmos, which Olivi examines in Question 6 of Book One of his *Summa*,<sup>4</sup> and the pre-eminence of the higher, or rational will in human acts of *liberum arbitrium* (rational, primarily ethical, decision-making), a subject that he treats extensively in questions 57 and 58 of the second book of his *Summa*.<sup>5</sup>

In this short introductory talk, I have only time to discuss the radically voluntarist character of Olivi's conception of natural law from the perspective of Divine providence or beneficence. Olivi's theory of its role in human acts of ethical decision, I will have to put to the side. At the close, I will make some comments upon the influence of Olivi's conception of natural law upon his English Franciscan philosophical successors, Duns Scotus and William of Ockham.

<sup>1</sup> Mark MURPHY: "The Natural Law Tradition in Ethics". In: Edward N. ZALTA (ed.): *The Stanford Encyclopedia of Philosophy*, (Summer 2019 Edition) <https://plato.stanford.edu/archives/sum2019/entries/natural-law-ethics>.

<sup>2</sup> Petrus Iohannis OLIVI: *Quaestiones in secundum librum sententiarum*. Bernard JANSEN, S. J. (ed.), vol. 3.: quaestiones 72–118. Quarrachi, Collegium S. Bonaventurae, 1926. 174–78. The question Olivi poses in Question LXXXI is whether "conscientia dicat potentiam unam vel plures aut actum act habitum," and in Question LXXXII whether "lex naturalis dicat aliquid concreatum intellectui vel voluntati vel utriusque."

<sup>3</sup> The most useful study of the articles censured in the 1277 condemnation is David PICHÉ: *La condamnation parisienne de 1277. Texte latin, traduction, introduction et commentaire*. Paris, Vrin, 2003.

<sup>4</sup> Sylvain PIRON has edited the complete question (Quaestio de divino velle et scire) in volume 6 (2020) of the internet journal, *Olivi*, <http://journals.openedition.org/oliviana/977>.

<sup>5</sup> Petrus Iohannis OLIVI: *Quaestiones in secundum librum sententiarum*. Bernard JANSEN, S. J. (ed.), vol. 2. (1924). 305–517. Questions XXXI and LXXXII, as part of the block of questions LXXI–LXXXVI, serve very much to supplement the two earlier very lengthy questions.

At the opening of Question LXXXII of Book Two of his *Summa*, which he devotes specifically to the various kinds of law, Olivi makes clear his position regarding God's eternal law: "While law, by analogy, refers to many things, it principally refers nevertheless to the uncreated law which is God. And this is properly speaking the will of God itself, insofar as it prescribes deeds of virtue and prohibits acts of vice." However voluntarist this might sound Olivi makes little suggestion (outside the significant reservation: "properly speaking") that the divine intellect plays a part in "the uncreated (i.e. "eternal") law that is God" —, when placed in a thirteenth-century Franciscan intellectual context, the proposition is unexceptional. As Lydia Schumacher shows in her valuable study, *Early Franciscan Theology: Between Authority and Innovation*,<sup>6</sup> the so-called "Divine Command" conception of natural law was already present in the first large-scale intellectual product of the Franciscan *studium generale* in Paris: the *Summa haliensis*.<sup>7</sup> Schumacher argues that, owing to the emphasis Saint Francis of Assisi had placed on a literal interpretation of what it meant to imitate the life of Christ as reflected in the gospels, and which was embodied in the Franciscan Rule, the early masters at the Parisian *studium generale* were already inclined to formulate a conception of natural law whose cornerstone was the faithful observance of divine commands. They saw them as taking two principle forms. The first were commands God communicates to human beings through the Mosaic Law and then later, in perfected form, through the law of the Gospel. This is natural law as revealed in Scripture. The second is the law that God wrote into human nature at the time of its creation. This is natural law according to nature. Schumacher (in rebutting modern misconceptions) insists that we should not view this theory as authoritarian, since the early Franciscan masters also emphasised that human beings were free to obey or disobey God's commands, whether written into human nature primordially or communicated through revealed Scripture.<sup>8</sup>

Where Olivi breaks radically with his own Franciscan tradition is not in the pre-eminence that he gives to the Divine will over the Divine intellect in itself in God's infusion of his eternal law into human nature (natural law, properly speaking) and human history (natural law as communicated to humankind in Scripture). The early master, John of La Rochelle, who wrote the long tractate on law in the *Summa Haliensis*, and also an influential *Summa on Precepts and Counsels* (*Summa de praeceptis et consiliis*), defined natural law as "that by which anyone understands and is conscious in themselves as to what is good and what is bad."<sup>9</sup> While this would seem to pertain primarily to reason, in Schumacher's words, "since consciousness implies a *habitus*

<sup>6</sup> Lydia SCHUMACHER: *Early Franciscan Theology: Between Authority and Innovation*. Cambridge, CUP, 2019. See especially Chapter 11- Moral theology, 242–254. <https://doi.org/10.1017/9781108595087>

<sup>7</sup> The Franciscan *studium generale* (International School of Studies, in this case, attached to the University of Paris) was established when the Master of Theology, Alexander of Hales, joined the Franciscan Order in the early 1240s, thereby transferring his seat at the university to the Franciscan *studium*.

<sup>8</sup> See SCHUMACHER op. cit. 243.

<sup>9</sup> *Summa haliensis*, vol. 3, P2, In2, Q2, C1, Solutio, 343: "Lex naturalis est qua quisque intelligit et sibi conscius est quid bonum et quid malum ... conscius importat habitum, dicunt quod est habitus

[an acquired or accrued way of behaving, acting, or thinking], which is generally called a “*habitus* of the will”, the application of the natural law is not simply an act of reason but also a *habitus* of the will. In elaborating this contention, he [John de la Rochelle] writes that an act of reason proceeds from and thus presupposes the substance of an innate operation.”<sup>10</sup> Thus, John unquestionably gives priority to the (higher) will – *voluntas* – and not the intellect in human applications of natural law and, by extension, I would suggest, God’s infusion of His eternal law into the subjective economy of the human being at the moment of its creation.

Olivi, however, does not simply give a relative priority to the will in respect to the intellect in God’s communication of his eternal law to human beings. Such a theory would envisage a cooperative relation between the Divine will and the Divine intellect, where the Divine will has the primary role, but not an absolute one. In Olivi’s theory, though, the divine intellect plays only a passive role in God’s providential impartment of his eternal law into human nature: in Aristotelian ontological terms, it merely acts as the matter which the will informs, while in Aristotelian causal-logical ones, it is the indispensable necessary cause for the will’s sufficient act. While Olivi certainly hints at the absolute pre-eminence of the Divine Will in Question LXXXII, he explicitly argues for this in the long and complex Question 6 of Book One of his *Summa*, where he rejects not only Aquinas’s position regarding the eternal ideas the God holds in his intellect, but also Bonaventura’s more temperate co-operative form of voluntarism. In the argumentative progress of Question 6, Olivi provides a formulaic summary of his argument:

In effect, although the divine intellect (viewed according to our way of understanding it) precedes the Divine will as far as the quiddities or essences of objects taken independently of their actual state of being is concerned, nevertheless the Divine intellect comes after the Divine Will as far as the apprehension of the actual existence of things is concerned.<sup>11</sup>

From Olivi’s quasi-phenomenological perspective, the individual existence that God through His will brings into being takes absolute precedence over the abstraction of the eternal ideas residing in the mind of God.

Only relatively late in the 20th century did scholars begin to recognise how indebted both Duns Scotus and William of Ockham were to Olivi’s thought. This was not plagiarism on their part (even from a permissive medieval perspective): in order to avoid censure from their own order or other ecclesiastical authorities, they did not name their source. The theory of the contingency of the will’s power of *liberum arbitrium* with its necessarily determined act, for example, was earlier believed to have been uniquely a product of Scotus’s philosophical genius; however,

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voluntati [...] lex naturalis actus sit rationis et habitus voluntatis.” Cited in SCHUMACHER op. cit. 252 note 38.

<sup>10</sup> SCHUMACHER op. cit. 252–253.

<sup>11</sup> *Summa* I, 6. (Quaestio de divino velle et scire), Sylvain PIRON (ed.), *Oliviana*, 6 (2020): “Licet enim intellectus divinus secundum modum intelligendi nostrum precedit actum divini velle quoad quidditates obiectorum absque actualitate essendi acceptas, sequitur tamen ipsum quantum ad apprehensionem actualis existentie rerum.”

Olivi had already expounded the theory in considerable detail (this has not as yet been adequately recognised) in Question 57 of the second book of his *Summa*. While Duns Scotus, as far as the eternal ideas are concerned, retreated somewhat from the radicality of Olivi's position, Ockham's views resemble strikingly those of his predecessor from Languedoc. While earlier scholars might have suspected that this is the case, we now have sufficient textual and circumstantial evidence to assert confidently that Olivi profoundly influenced the thought of his English Franciscan successors with regard to the relation between God's eternal law and its embodiment as natural law.

