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## From 'Lex aeterna' to the 'leges addictae'

John of La Rochelle and the *Summa Halensis*

**Abstract:** The issue of law is a crucial topic within late medieval culture as a whole, not merely from the point of view of canonists and civil lawyers. At the beginning of the 13<sup>th</sup> century, the concept of law and its diverse forms preoccupied theologians, particularly within the Parisian milieu. The development of a structured and systematic theological understanding of reality defined a new framework within which 'law' was considered as a major genre, with a series of species which are necessary to analyse. In this context, John of La Rochelle, one of the very first Franciscan masters of theology at Paris, composed his *Quaestiones disputatae de legibus*, which represent the very first complete theological account of law and its forms. Starting from the eternal law, John examines natural law, the prescribed laws, and the law of Moses. His text is the direct source of the treatise on law of the *Summa Halensis* and offers a veritable paradigm for the whole scholastic debate on this issue.

Introducing his research on the evolution of the idea of divine law in the premodern period, Rémi Brague notes that this idea is crucial to understanding the development of the modern concept of law. In his *La loi de Dieu*, the French philosopher offers an overview of the history the notion of divine law, the roots of which can be identified in the Ancient Greek and Hebrew traditions, and which medieval Christian thinkers presupposed and defined as a general principle from which all human positive laws derive.<sup>1</sup> According to Brague, the modern idea of law as something that pertains to human beings only assumes radically different forms in different cultural and historical contexts; nonetheless it clearly depends on the medieval heritage. Focusing on the relation between law and religious thinking, Brague stresses the relevance to modern idea of law of the scholastic debates, in which law was one of the most disputed theological issues.

According to the 12<sup>th</sup>- and 13<sup>th</sup>-century masters who lectured on the Scripture or on Peter Lombard's *Sentences*, the law is something which has a double relevance: it has clear biblical implications which exegesis clearly shows, but it also involves the legal discourse, as is evident from the huge number of writings that civil and canon lawyers produced on the nature and species of laws. As regards legal theory, the Parisian milieu of the first half of the 13<sup>th</sup> century marks a significant turning point: it is within this context, more specifically in the 1240s, that a systematic and well-structured analysis of laws come to feature in major theological texts, such as the *Summa*

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1 Rémi Brague, *La loi de Dieu: Histoire philosophique d'une alliance* (Paris: Gallimard, 2005).

*Halensis*. This work, co-authored by the first Franciscan masters in theology, is the result of the sophisticated reorganization of the intellectual inheritance of its authors, including Alexander of Hales.<sup>2</sup> The third book of the *Summa* includes a long treatise on laws, which is based to some extent on some *Quaestiones disputatae de legibus* which are preserved in two manuscripts: Assisi, Biblioteca Comunale 138 (which contains the whole text of the disputed questions) and Vatican City, Biblioteca Apostolica Vaticana, Vat. Lat. 782 (which contains only the questions on eternal and natural law).

In the 1930s, working on the edition of the *Summa*, father François-Marie Henquinet offered the first detailed analysis of these *Quaestiones*, identifying them as the source of the *Summa* on the issue of law, but also attributing the text to the Franciscan master John of La Rochelle, a pupil of Alexander of Hales who succeeded to his master to the Parisian chair of theology in 1238, teaching until his death in February 1245.<sup>3</sup> Henquinet's conclusions were confirmed by the researches of his co-friar Victorin Doucet and by Odon Lottin's studies on the history of scholastic moral thought.<sup>4</sup> This still unpublished text is certainly relevant to the history of the composition of the *Summa Halensis*, but it is also crucial for understanding the rapid evolution of the scholastic discourse on law towards a more systematic and structured approach.

With a view to clarifying the role of John of La Rochelle in the creation of this great Franciscan theological synthesis, this contribution will firstly analyse the literary and doctrinal links between the *Quaestiones disputatae de legibus* and the *Summa Halensis* and then will consider John of La Rochelle's authorship of the for-

2 Alexander of Hales, *Doctoris irrefragabilis Alexandri de Hales Ordinis minorum Summa theologica* (SH), 4 vols (Quaracchi: Collegium S. Bonaventurae, 1924–48), Vol IV, P2 (nn. 224–605), pp. 313–939.

3 François M. Henquinet, 'Ist der Trakt De legibus et praeceptis in der Summa Alexander von Hales von Johannes von Rupella?', *Fraziskanische Studien* 26 (1939): 1–22, 234–58. See also François M. Henquinet, 'Notes additionnelles sur les écrits de Gueric de Saint-Quentin,' *Recherches de théologie ancienne et médiévale* 8 (1936): 369–88. Henquinet's studies are preceded by other references to the *Quaestiones disputatae de legibus*. See in particular August Pelzer, *Codices Vaticani Latini: Tomus II: Pars Prior: Codices 679–1134*, Bibliothecae Apostolicae Vaticanae codices manuscripti recensiti (Vatican City: Biblioteca Apostolica Vaticana, 1931), 96–110; Odon Lottin, 'Le droit naturel chez S. Thomas d'Aquin et ses prédécesseurs,' *Ephemerides Theologicae Lovanienses* 2 (1925): 37–40, republished in a volume with the same title (Bruges: Beyaert, 1931), 53–57; Ferdinand Pelster, 'Forschungen zur Quästionsliteratur in der Zeit des Alexander von Hales,' *Scholastik* 6 (1931): 321–53; Ferdinand Pelster, 'Die Quästionen des Alexander von Hales,' *Gregorianum* 14 (1933): 401–22, 501–20. Also, Martin Grabmann had linked the name of John of La Rochelle to the *Summa Halensis*. See Martin Grabmann, 'Das Naturrecht der Scholastik von Gratian bis Thomas von Aquin: Nach den gedruckten und ungedruckten Quellen dargestellt,' *Archiv für Rechts- und Wirtschaftsphilosophie* 16 (1922–23): 12–53, re-edited in Martin Grabmann, *Mittelalterliches Geistesleben: Abhandlungen zur Geschichte der Scholastik und Mystik*, 3 vols (Munich: Hueber 1926–56), 1:65–103.

4 Victorin Doucet, 'Prolegomena in librum III necnon in libros I et II "Summae Fratris Alexandri",' in *Doctoris irrefragabilis Alexandri de Hales Ordinis minorum Summa theologica*, vol. 4 (Quaracchi: Collegium S. Bonaventurae, 1948), CCVCIII–CCCVII and CCCLIV–CCCLXX.

mer text. After assessing these aspects of textual history, the enquiry will then examine the doctrinal features of John's account of law in relation to the early 13<sup>th</sup>-century theological background. This approach will allow for an initial evaluation of the influence of the Franciscan master's ideas on the debates concerning law in the second half of the 13<sup>th</sup> century.

## The Literary and Doctrinal Parallels Between the *Quaestiones* and the *Summa Halensis*

François-Marie Henquinet has noted the existence of a clear parallel between the *Quaestiones disputatae de legibus* and the treaty on laws in the *Summa Halensis*. The two texts exhibit the same structure, starting from the issue of the eternal law and then moving to a detailed discussion on natural law. After the definition of these general species of laws, both the *Quaestiones* and the *Summa* examine the 'prescribed laws', i.e. the law of Moses and finally the law of the Gospel. Henquinet has also underlined the existence of a doctrinal connection between the *Quaestiones* and the *Summa*, which goes through the whole text, and on this basis concludes that the first text was the source for the composition of the second one.

The nature and quality of this textual relationship can be appreciated by considering a parallel between excerpts from the two works, which concerns how they answer the question about the existence of the eternal law, which opens both texts.

| <i>Quaestiones disputatae de legibus</i> <sup>5</sup>   | <i>Summa Halensis</i> <sup>6</sup>  |
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| Quaesitum est de lege aeterna et primo quaeritur an sit lex aeterna.  | An sit lex aeterna.   |
| Isidorus: "Si ratione lex constat, lex erit omne quod ratione constiterit"; sed planum est quod providentia Dei ratione constat; ergo est lex. Quod autem providentia Dei constet ratione, Boethius: "Providentia est divina ratio in summo principe constituta, quae cuncta disponit." | Ad primum. a. Isidorus, in II Etymologiarum: "Si ratione lex constat, lex erit omne quod ratione constiterit." Si ergo providentia Dei constat ratione, ergo providentia Dei est lex; sed non nisi aeterna; cum ergo providentia divina sit, constat legem aeternam esse.—Minor patet; nam, sicut dicit Boethius: "Providentia est divina ratio in summo Principe constituta, qua cuncta disponit." |
| Item, Augustinus, in libro De libero arbitrio: "Videtur lex illa quae regendis civitatibus fertur"  | b. Amplius, Augustinus, in libro De libero arbitrio: "Videtur lex ista, quae regendis civitatibus fertur,   |

<sup>5</sup> John of La Rochelle, *Quaestiones disputatae de legibus* (Assisi, Biblioteca Comunale 138, fols 213vb-214ra; Vatican City, Biblioteca Apostolica Vaticana, Vat. lat. 782, fol. 129ra): [The eternal law should be inquired into and firstly it is asked whether there is an eternal law. Isidore: "If law exists through reason, then all that exists through reason will be law"; but it is clear that God's providence exists through reason, therefore it is law. That the providence of God exists through reason, Boethius: "Providence is the divine reason, conceived in the supreme principle, which ordains everything."]

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Moreover, Augustine, in the book *On Free Will*: “It seems that this law, which is set up for the government of the commonwealth, allows and leaves unpunished much which is punished by divine providence.” But every evil that is punished is punished according to some law; therefore, if something is punished by divine [providence], then divine providence is law.

Augustine proves from the existence of two contrary laws that there is one eternal law. In fact, he says that there is a law that gives the people the power to give honorary offices, and another one that does not, and this is because the people are sometimes serious, sometimes capricious and dissolute; therefore, if these laws are opposite and both right and they cannot exist at the same time, it is necessary to unite them through some one justice; therefore it is necessary that there exists one justice of the eternal law according to which rightness is accorded and then precluded.

On the contrary. The power of the law is to command, to forbid, to allow, to advise, to punish, to reward. The first two actions concern the irascible part of the soul, to allow and to advise concern the rational part, to punish and to reward concern the concupiscible part; however, everything is perfect when it attains its own power, and since there is no eternal law if it is not perfect, therefore there is no such law without its power. However, what is called the ‘power of the law’ is not eternal because to order or to forbid is not eternal, just as the rational creature to which something is ordered or forbidden is not eternal. Therefore, there is no eternal law, since the power of the law is not eternal.

The law has a double status: firstly in disposition, and then in promulgation. However it happens that when it is only in disposition it is not worthy to be called ‘law’ because at this moment it does not bind; therefore there is law only according to promulgation, because that is when it first binds. But it is not correct to say that the promulgation of some precepts is eternal because it is to a creature; and therefore no law is eternal.

If the eternal law was not written or imprinted, it would not bind; this is why divine law does not bind irrational creatures because the knowledge of the law is not impressed on them; therefore it is not law except because it is impressed, because it is on account of this that it binds, for it cannot be said that it binds God. Therefore, if the impression of the divine law is not eternal, neither is the law itself, insofar as it is law.

Answer. According to Augustine in *On True Religion*, where he shows that law is what we call the truth, he says: “Our mind is granted to see the law of immutable truth; but that immutable truth cannot be rooted in the soul, which is mutable. Therefore it is clear that above our mind there is a law which is called the truth”; and this is the eternal law.

Therefore it is necessary to reply to the objection concerning the power of the law that the power of the law is the ground of the truth, that is the rule of ordering and the rule of forbidding etc., and that rule is eternal. But the manifestation of the rule is in the acts themselves when something is ordered or forbidden or advised, etc., and according to this to order and to forbid and similar actions can be considered in a double way: either according to the rule itself of ordering or forbidding etc., or according to the act or effect itself. The eternal law relates to both, because according to the rule and what is in the rule; according to the manifestation it is in the act itself, for then it is manifested when something is ordered or forbidden.

To the other objection it has to be said that law comes on the one hand from ‘reading’, on the other hand from ‘binding’. Insofar as it comes from ‘reading’, the law exists in disposition; insofar as it comes from ‘binding’, law exists in the promulgation. However, insofar as ‘law’ comes from ‘binding’ we can understand it in two ways, that is, actively or passively. Insofar as it comes from ‘binding’ passively, it is said with a view to the creature; insofar as it comes from ‘binding’ actively, it is said with a view to God. But ‘to bind’ actively can be said in two ways, just like ‘rule’. For rule is “the power to compel subordinates”, as Boethius says, and this is eternal, or the act of restraining, which is temporal. Therefore, ‘to bind’ actively can be said in two ways, either as having to do

with power, and in this way it is eternal; or as having to do with the act of binding which is said with a view to the creature and is in time. And according to this it is clear that there is an eternal law.

The solution to the other objection is clear based on this].

6 *SH* IV, P2, In1, Q1, C1 (n. 224), pp. 314–5: [Whether there is an eternal law.

Isidore in Book II of *Etymologies*: “If law exists through reason, then all that exists through reason will be law.” Thus, if God’s providence exists through reason, providence will be God’s law; but definitely an eternal one; therefore, since there is divine providence, it is clear that there is an eternal law. – The minor premise is clear; for, as Boethius says, “Providence is the divine reason, conceived in the supreme principle which ordains everything.”

Augustine in the work *On Free Will*: “It seems that this law, which is set up for the government of the commonwealth, allows and leaves unpunished much which is punished by divine providence.” And Augustine intends at this point to assert the sentence that no evil should go unpunished, and at the same time that every evil is punished according to some law. Therefore, if there is any evil that is not punished by secular law, and it does not go unpunished, it will be punished by the eternal law; therefore, that thing itself is.

Augustine in book I of *On Free Will*: “The two laws seem so contradictory to each other, that one gives the people the power to give honorary offices, the other not, so they cannot be in a community at the same time. Is it possible that one of them is unfair and by no means needs to be endured?”, by which he means: no. Therefore, each of the two is just. As a result, it is argued that it is impossible under the aspect of justice to unite opposing secular laws except through a law that has no opposition and unites them: we call this eternal law.

On the other hand, it is argued that the law exists in the disposition of the law-giver, and thus does not deserve the name ‘law’ because it does not oblige while it is in disposition.

Moreover, it gets its being in promulgation and then earns the name ‘law’, because then it binds; it can not therefore be called a law from the disposition, but from the promulgation. So, if the promulgation of what to do and not to do cannot be eternal, because the public announcement is made to a creature, it is clear that there can be no eternal law.

If the law was not imprinted in the rational creature, it would not bind it: its hallmark is that it does not bind irrational creatures in whom it is not imprinted; therefore there is no law except by imprinting into reason, or that which is impressed upon reason; but this impression is temporal and not eternal; therefore, the nature of the law is temporal and not eternal.

Solution. It must be said, according to what Augustine says in the book *On True Religion*: our mind is granted to see the immutable law of truth. Our mind judges the immutable truth as it judges the following sentence: It is fair that all things are very ordered. So if this, “the human mind, can suffer the changeability of error, it is clear that there is a law above our mind called the truth”; but this law is eternal: in fact, what is above our mind is eternal.

Regarding the first objection, as Isidor says in book II of *Etymologies*, the word ‘law’ comes on the one hand from ‘reading’, on the other hand from ‘binding’. Insofar as it comes from ‘reading’, the law is in the disposition, with the term ‘reading’ extended not only to temporal reading, but to reading in the spirit. Insofar as the law is in the promulgation, it comes from ‘binding’. In the first way it is eternal, not in the second. Yet one can understand it in two ways when one says, ‘The law binds’ because ‘binding’ can be actively or passively understood. If it is actively understood, the eternal law of God is said to be binding; if it is interpreted passively, it is said with a view to the creature. Then, however, one must again differentiate concerning the law that is binding in God, just as concerning rule in God. For rule is the power to compel subordinates, and so it is predicated in terms of *habitus*; but it can also be predicated of activity, and so rule is the act of compelling subordinates; and in both cases a reference to the creature is connoted, but in the first case in *habitus*, in the second in activity.

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*Quaestiones disputatae de legibus*<sup>5</sup>*Summa Halensis*<sup>6</sup>

multa concedere et impunita relinquere quae per divinam providentiam puniuntur". Omne autem malum quod punitur secundum aliquam legem punitur: ergo, si aliqua puniuntur per divinam, divina providentia est lex.

multa concedere atque impunita relinquere quae per divinam providentiam vindicantur." Et intendit ibi Augustinus assumere istam propositionem, quod nullum malum debet esse impunitum et quod similiter omne malum punitur secundum aliquam legem. Si ergo est aliquod malum quod non punitur per legem temporalem, et non relinquitur impunitum, ergo punitur per legem aeternam; ergo ipsa est.

Item, Augustinus ex duabus legibus contrariis probat esse unam legem aeternam. Dicit enim quod est lex quae tribuit populo potestatem conferendi honores, alia vero quae non tribuit, et hoc est quia populus aliquando est gravis, aliquando est levis et dissolutus; ergo, si istae leges sunt contrariae et utraeque iustae et simul esse non possunt, oportet quod concilientur per aliquam unam iustitiam; oportet ergo quod una sit iustitia aeternae legis secundum quam rectitudo concedatur et postea prohibeatur.

c. Item, Augustinus, in libro I De libero arbitrio: "Duae leges ita sibi videntur contrariae ut una earum honorum dandorum populo tribuat potestatem, alia non, ut nullo modo in una civitate simul esse possint. Numquid dicemus aliquam illarum iniustam esse et ferri minime debuisse?" quasi dicat: non. Et ita utraque est iusta. Ex hoc obicitur: Impossibile est leges contrarias temporales conciliari in ratione iustitiae nisi per legem non habentem contrarium conciliationem illas: quam legem aeternam appellamus.

Contra. Virtus legis est imperare, vetare, permittere, consulere, punire, praemium tribuere. Duo prima pertinent ad irascibilem, permittere et consulere ad rationalem, punire et praemium tribuere ad concupiscibilem. Sed unumquodque tunc est perfectum cum attingit propriae virtuti, et constat quod non est ponere legem aeternam nisi perfectam; ergo non est ipsam ponere sine virtute; sed illud quod dicitur virtus legis non est aeternum, quia praecipere non est aeternum seu vetare, sicut creatura rationalis non est aeterna cui aliquid praecipitur vel vetatur; ergo nulla lex erit aeterna, cum non sit ponere virtutem legis aeternam esse.

Just as the rule of God in *habitus* is said from eternity, rule in activity is said from the temporal; in the same way 'law', if it implies the *habitus* of binding, is in disposition to binding from eternity, and in this way it is called eternal law; but if it implies the act of binding, it is not.

And the answer to the second objection is clear based on this.

The solution of the third [objection] is clear. For though the impression from the eternal is not in effect, it is still in reason from eternity. Therefore, the law is in the disposition from eternity, to be imprinted on the rational soul, even if it is not actually impressed from eternity].

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***Quaestiones disputatae de legibus*<sup>5</sup>**

***Summa Halensis*<sup>6</sup>**

Item, lex duplicem habet statum: est enim in dispositione primo et postea in promulgatione; sed constat quod quando est solum in dispositione non meretur dici lex, quia adhuc non ligat; ergo solus est in in promulgatione, quia tunc primo ligat, sed non est dicere quod promulgatio aliquorum praeceptorum sit aeterna, quia sit creaturae; ergo nulla lex est aeterna.

In partem oppositam arguitur: 1. Lex habet statum in dispositione latoris, et, sic non meretur nomine legis, quia, quamdiu est in dispositione, adhuc non obligat.

2. Item, habet esse in promulgatione, et tunc meretur nomen legis, quia tunc ligat; lex ergo non potest dici ex dispositione, sed ex promulgatione. Si ergo promulgatio aliquorum faciendorum vel vitandorum non potest esse aeterna, quia promulgatio fit creaturae, constat quod non potest lex esse aeterna.

Item, si lex aeterna non esset scripta vel impressa, non ligaret; unde lex divina non dicitur ligare irracionales creaturas, quia illis non est impressa notitia legis; ergo non est lex nisi quia impressa, quia ex hoc ligat, non enim potest dici quod liget Deum; ergo, si impressio legis divinae non est aeterna, nec lex ipsa, in quantum est, est aeterna.

3. Item, si lex non esset impressa creaturae rationali, non ligaret eam: cuius signum est quod non ligat creaturas irracionales, quibus non est impressa; non est igitur lex nisi ex impressione ad rationem sive quod imprimitur rationi; sed haec impressio est temporalis et non aeterna; ergo intentio legis est temporalis et non aeterna.

Responsio: Augustinus, De vera religione, ubi ostendit quod lex est quae veritas dicitur: "Menti", inquit, "nostrae impressum est videre legem immutabilis veritatis; sed illa veritas immutabilis non potest fundari in anima, quae mutabilis est. Apparet ergo supra mentem nostram legem esse quae veritas dicitur"; et ita est lex aeterna.

Solutio: Dicendum, secundum quod dicit Augustinus, in libro De vera religione: menti nostrae concessum est videre legem veritatis immutabilem. Mens enim nostra iudicat de veritate immutabili, ut iudicat istam propositionem: iustum est ut omnia sint ordinatissima. Cum ergo ipsa, scilicet "mens humana, mutabilitatem pati possit erroris, apparet supra mentem nostram esse legem, quae veritas dicitur"; haec autem lex est aeterna: quod enim est supra mentem nostram est aeternum.

Dicendum ergo ad illud quod obicitur de virtute legis quod virtus legis est ratio veritatis, scilicet ratio praecipiendi et ratio vetandi, etc., et illa ratio aeterna est. Manifestatio autem istius rationis est in ipsis actibus, dum aliquid praecipitur vel vetatur vel consulitur, etc., et secundum hoc praecipere et vetare et huiusmodi possunt accipi dupliciter: vel pro ipsa ratione praecipiendi vel vetandi, etc., vel pro ipso actu sive effectu. Lex autem aeterna utrumque respicit, quia secundum rationem et id quod est in ratione, secundum manifestationem vero est in ipso actu; tunc enim manifestatur quando aliquid praecipitur vel vetatur, etc.

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*Quaestiones disputatae de legibus*<sup>5</sup>

Ad aliud dicendum quod lex uno modo dicitur a ligando, alio a legendo. Secundum quod dicitur [214ra] a legendo, extenso nomine 'legendi', dicitur quod lex est in dispositione; secundum autem quod dicitur a ligando, lex est in promulgatione. Secundum tamen quod dicitur a ligando, dupliciter possumus intelligere, scilicet active et passive. Secundum quod dicitur a ligando passive, dicitur respectu creaturae; secundum quod dicitur a ligando active, dicitur respectu Dei. Sed ligare active potest dici dupliciter sicut dominium. Dicitur enim dominium potestas coercendi subditos, ut dicit Boethius, et ita est aeterna; vel actus coercendi, qui temporalis est. Sic ligare active potest dici dupliciter: vel quantum ad potestatem, et hoc modo est aeternum, vel quantum ad actum ligandi quod dicitur respectu creature et est in tempore; et secundum hoc patet quod lex aeterna est.

*Summa Halensis*<sup>6</sup>

[Ad objecta]: 1. Ad primo obiectum dicendum, sicut dicit Isidorus, II Etymologiarum: lex uno modo dicitur a legendo, alio modo a ligando. Secundum quod dicitur a legendo, extenso nomine lectionis non solum ad lectionem temporalem, sed ad lectionem secundum quod legitur in mente, sic lex est in dispositione. Lex autem, prout est in promulgatione, dicitur a ligando. Primo ergo modo est aeterna, secundo modo non. Tamen potest distingui, cum dicitur: 'Lex ligat', quia 'ligare' potest sumi active vel passive. Si active, sic lex aeterna in Deo dicitur a ligando; secundum quod accipitur passive dicitur respectu creaturae. Sed adhuc distinguendum de lege ligante in Deo, sicut de dominio in Deo. Dominium enim est potestas coercendi subditos, et sic dicitur secundum habitum; vel potest dici secundum actum, et sic dominium est actus coercendi subditos; et utrobique connotatur respectus ad creaturam, sed primo modo in habitu, secundo in actu. Sicut ergo dominium in habitu de Deo dicitur ab aeterno, dominium in actu ex tempore, ita lex, si importet habitum ligandi, sic ab aeterno est in dispositione ad ligandum, et hoc modo dicitur lex aeterna; sed, si importet actum ligandi, non.

Ad aliud patet solutio per illa.

2. Et per hoc patet responsio ad secundum.

3. Ad tertium patet solutio. Nam, licet impressio ab aeterno non sit in effectu, tamen est in ratione ab aeterno. Unde lex ab aeterno est in dispositione et ad hoc ut animae rationali imprimatur, licet ab aeterno non imprimatur in effectu.

The textual parallels found above confirm that the *Quaestiones* are the model and the doctrinal source of the *Summa Halensis*. However, they also show that the latter rearranges the material in a more concise argument. In particular, the *Summa* eliminates the first *sed contra* of the text of the *Quaestiones*, where it is said:

The power of the law is to command, to forbid, to allow, to advise, to punish, to reward. The first two actions concern the irascible part of the soul, to allow and to advise concern the rational part, to punish and to reward concern the concupiscible part; however, everything is perfect when it attains its own power, and since there is no eternal law if it is not perfect, therefore



there is no such law without its power. However, what is called the 'power of the law' is not eternal because to order or to forbid is not eternal, just as the rational creature to which something is ordered or forbidden is not eternal. Therefore, there is no eternal law, since the power of the law is not eternal.<sup>7</sup>

The *Quaestiones* offer a reply to this argument which is also absent from the text of the *Summa*. They explain:

Therefore it is necessary to reply to the objection concerning the power of the law that the power of the law is the ground of the truth, that is the rule of ordering and the rule of forbidding etc., and that rule is eternal. But the manifestation of the rule is in the acts themselves when something is ordered or forbidden or advised, etc., and according to this to order and to forbid and similar actions can be considered in a double way: either according to the rule itself of ordering or forbidding etc., or according to the act or effect itself. The eternal law relates to both, because according to the rule and what is in the rule, and according to the manifestation it is in the act itself, it is manifested when something is ordered or forbidden.<sup>8</sup>

This example shows how complex is the relation between the *Quaestiones* and the *Summa*, since the latter certainly follows the order and structure of the first, assuming also its doctrinal contents. However, the text of the *Summa* is not a simple transfer from the *Quaestiones*, but rather it reconsiders and rearranges the argument according to a more systematic approach.

## The *Quaestiones disputatae de legibus* and John of La Rochelle

The attribution of the *Quaestiones disputatae de legibus* to the Franciscan theologian John of La Rochelle depends not only on the close relation of this text to the *Summa*

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7 John of La Rochelle, *Quaestiones disputatae de legibus* (Assisi 138, fol. 213vb; Vat. Lat. 782, fol. 129ra): 'Virtus legis est imperare, vetare, permittere, consulere, punire, praemium tribuere. Duo prima pertinent ad irascibilem, permittere et consulere ad rationalem, punire et praemium tribuere ad concupiscibilem. Sed unumquodque tunc est perfectum cum attingit propriae virtuti, et constat quod non est ponere legem aeternam nisi perfectam; ergo non est ipsam ponere sine virtute; sed illud quod dicitur virtus legis non est aeternum; ergo praecipere non est aeternum seu vetare, sicut creatura rationalis non est aeterna cui aliquid praecipitur vel vetatur; ergo nulla lex erit aeterna, cum non sit ponere virtutem legis aeternam esse.'

8 John of La Rochelle, *Quaestiones disputatae de legibus* (Assisi 138, fol. 213vb; Vat. lat. 782, fol. 129ra): 'Dicendum ergo ad illud quod obicitur de virtute legis quod virtus legis est ratio veritatis, scilicet ratio praecipendi et ratio vetandi, etc., et illa ratio aeterna est. Manifestatio autem istius rationis est in ipsis actibus, dum aliquid praecipitur vel vetatur vel consulitur, etc.; et secundum hoc praecipere et vetare et huiusmodi possunt accipi dupliciter: vel pro ipsa ratione praecipendi vel vetandi, etc., vel pro ipso actu sive effectu. Lex autem aeterna utrumque respicit, quia secundum rationem et id quod est in ratione, secundum manifestationem vero est in ipso actu; tunc enim manifestatur quando aliquid praecipitur vel vetatur, etc.'

*Halensis*. It also finds a clear confirmation in the doctrinal coherence of the text with other key writings of the master, such as, for instance, the *Introitus generalis in sacram doctrinam*, which presents John of La Rochelle's account of the structure and order of the Bible, defining the general theological perspective of the Franciscan master.

In the *Introitus* John develops his analysis of the first part of the biblical canon, explaining that the term 'law' refers to various books of Scripture, which belong to different literary genres but share a focus on precepts and on all things related to the compliance to such precepts. As a consequence, the master explains, the law includes: (1) the teaching of precepts, which is detailed in the Pentateuch (Genesis, Exodus, Leviticus, Numbers and Deuteronomy), (2) the teaching of examples, which is explained in the historical books (Joshua, Judges, Ruth, Kings, Chronicles, Ezra, Esther, Judith, Tobias, Job, Maccabees) and finally, (3) the teaching of the admonitions, which comprise the content of the books attributed to King Solomon (Proverbs, Ecclesiastes, Canticles, Wisdom and Ecclesiasticus). Following this organization, the books of the Bible which belong to 'the Law' articulate a structured moral discourse. As John of La Rochelle explains: 'The precepts establish what has to be done, the examples and the admonitions exhort to do what the precept establishes; but the admonitions are in the discourse, while the examples are in the action.'<sup>9</sup>

John of La Rochelle's explanation of the structure of the Old Testament, together with the threefold distinction concerning the exegetical category of the 'law' is largely quoted in the *Quaestiones disputatae de legibus*.<sup>10</sup> Here there is a close analysis of

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<sup>9</sup> John of La Rochelle, *Introitus generalis in sacram scripturam* (Vatican City, Biblioteca Apostolica Vaticana, Vat. lat. 782, fol. 119rb): 'Precepta determinant quid est faciendum, exempla et admonitiones movent ad exequendum illud quod est preceptum; sed admonitiones sunt in uerbo exempla in factis.'

<sup>10</sup> John of La Rochelle, *Quaestiones disputatae de legibus* (Assisi 138, fol. 225va): 'Dicendum quod lex sumitur multipliciter, scilicet generalissime, generaliter, specialiter et particulariter. Generalissime sumitur pro doctrina operandorum ad quam pretinet lex Moysi; et pro doctrina credendorum, ad quam Prophetiae, in quibus continetur reuelatio credendorum; et pro doctrina omnium orationum, ad quam Psalmi. Et sic continet libros et Psalmos, et sic sumitur Ioan. x: "Scriptum est in lege uestra", etc. Generaliter, pro doctrina preceptorum, que continet lex Moysi; et pro doctrina exemplorum, ad quam pertinent libri historicales; et pro doctrina admonitionum, que continentur in libris Salomonis, et hoc modo sumitur Luc. ultimo: "Hec sunt uerba que locutus sum uobis, cum adhuc essem uobiscum, quoniam necesse est impleri omnia que scripta sunt in lege Moysi et Prophetis et Psalmis de me": [The term 'law' has multiple meanings, a most general one, a general one, a specific one, and a particular one. On a most general level, 'law' means the doctrine of the things to be done, to which pertains the law of Moses; and for the doctrine of things to be believed, to which pertain the Prophets, where the revelation of the things to be believed is contained; and the doctrine of prayers, to which pertain the Psalms. And according to this meaning 'law' contains the books [of Moses and of the Prophets] and the Psalms, and in this sense it is said in John 10: "It is written in your law" etc. On a general level, 'law' means the doctrine of the precepts which the law of Moses contains; and the doctrine of the examples, to which pertain the historical books; and the doctrine of the admonitions, which are contained in the books of Solomon, and according to this meaning it is said in the

the different genres of law, starting with the eternal law and the natural law and then moving on to the Mosaic law and the evangelical law. It is in the context of disputing the content of the Mosaic law that the *Quaestiones* introduce a distinction between four possible perspectives: the most general one, the general one, the specific one, and finally the particular one. From the most general point of view, the master notes, the Mosaic law concerns the things to do, while the Prophets pertain to things to believe, and finally the Psalms are dedicated to the prayers. Thus, according to this more general perspective, the word 'law' refers to the whole Old Testament, including the Psalms and the Prophets.

Moving to the lower level, i.e. the general perspective, the *Quaestiones* note that another threefold distinction has to be assumed: the Mosaic law, i.e. the Pentateuch, concerns the precepts, while the historical books consider the examples and Solomon's books debate the admonitions. This second level of 'law' is the one to which Jesus refers in his distinction between the Law, the Prophets and the Psalms in the last chapter of the Gospel of Luke.

John of La Rochelle's scheme of the structure of the biblical canon with its elaborated theological rationale represents a specific doctrinal feature of the master, which is present in the *Quaestiones disputatae de legibus* and through them in the *Summa Halensis*, where it is extensively quoted in the *quaestio* concerning the contents of the Mosaic law.<sup>11</sup> This strong parallel confirms the attribution of the *Quaes-*

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last chapter of Luke: "These are the words which I spoke to you, while I was yet with you, that all things must needs be fulfilled which are written in the law of Moses, and in the Prophets, and in the Psalms, concerning me"].

11 SH IV, P2, In3, Tr1, Q2, C1 (n. 265), Solutio, p. 386–7: 'Dicendum quod Lex dicitur multipliciter. Dicitur enim Lex generalissime, dicitur Lex generaliter, dicitur specialiter, dicitur particulariter. Generalissime dicitur Lex Scriptura sive doctrina totius Veteris Testamenti, sive sit doctrina operandorum, ad quam pertinent libri Moysi; sive sit doctrina credendorum, ad quam pertinent prophetiae, in quibus continentur revelationes credendorum; sive doctrina orationum, ad quam pertinet doctrina Psalmorum. Et hoc modo accipitur Lex, Ioan. 10, 34: "Nonne in Lege vestra dictum est: Ego dixi dii estis?" etc. Constat enim quod istud dicitur in Psalmo; vult ergo dicere quod doctrina Psalmorum continetur in Lege. Sic ergo Lex continet libros Moysi et omnes Prophetas et Psalmos. Secundo modo dicitur Lex generaliter, et sic solum sumitur pro doctrina operandorum, et sic dividitur contra Psalmos et Prophetas et ad hanc coarctatur Lex, Luc. ultimo, 44: "Haec sunt verba quae locutus sum vobis, cum adhuc essem vobiscum, quoniam oportet impleri omnia quae scripta sunt in lege Moysi et Prophetis et Psalmis de me." Ecce hic dividit Legem contra Prophetas et Psalmos, et sic Lex continet doctrinam praeceptorum, ad quam pertinent libri Moysi, et doctrinam exemplorum, ad quam pertinent libri historiales, et doctrinam admonitionum, ad quam pertinent libri Salomonis' [Law is said in several ways. It is said very generally, generally, specially, and particularly. Law said very generally is Scripture or the doctrine of the whole Old Testament, whether it be the doctrine of things to be done, to which the books of Moses pertain; the doctrine of things to be believed, to which the prophetic books belong, in which are contained the revelations of that which is to be believed; or whether it be the doctrine of prayer, to which the doctrine of the Psalms belongs. And that is how 'law' is understood in John 10:34: "Is it not written in your law: I said, you are gods?" etc. It is clear that this is said in the Psalm; he wants to say that the doctrine of the Psalms is contained in the law. Therefore, the law contains the books of Moses and all the Prophets and the Psalms. In the second way, law is said

*tion*es to the Franciscan master, as well as the relevance of his theological production for the establishment of the text of the *Summa*.

The authorship of the *Quaestiones* is not the only link between John of La Rochelle and the treaty on laws of the *Summa Halensis*, however. This latter text seems to be more directly connected with the figure of the Franciscan master because of its literary features. The treaty of the *Summa* presents a short prologue where it is said:

The essence of the theological discipline consists of two things: faith and customs. Once the enquiries concerning faith, such as the one on the Redeemer, have been completed, it is necessary to proceed, with the help of Jesus Christ, to enquiries concerning customs.<sup>12</sup>

Thus, the general prologue places the study of the law within a well-articulated understanding of theology according to two major fields, namely systematic and moral theology. It is not present in the *Quaestiones*, but it is common to some of the major theological writings of John of La Rochelle, namely the *Summa de articulis fidei* and the *Summa de vitiis*. For instance, the *Summa de articulis fidei* presents an extended version of the same prologue, where the master articulates the distinction between faith and customs, while providing a more detailed analysis of the two major subjects of the theological discipline. Thus, according to the *Summa de articulis fidei*, the theologian considers the faith, either in terms of *fides qua creditur* or *fides quae creditur*. As regards customs, he focuses on the sins and on the remedies for sins.<sup>13</sup> These lit-

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generally, and so it is taken only for the doctrine of what to do, and to this law is limited in the last [Chapter] of Luke [verse] 44: “These are the words which I spoke to you, while I was yet with you, that all things must needs be fulfilled which are written in the law of Moses, and in the Prophets, and in the Psalms, concerning me.” Here, therefore, he delimits the law against the Prophets and Psalms, and so the law contains the doctrine of prescriptions, to which the books of Moses belong, and the doctrine of the models, to which the history books belong, and the doctrine of admonitions, to which the books of Solomon belong].

**12** *SH* IV, P2, In1, p. 313: ‘Summa theologicae disciplinae in duo consistit, in fide et moribus. Expeditis inquisitionibus pertinentibus ad fidem, ut de Redemptore, cum adiutorio Iesu Christi, procedendum est ad inquisitiones pertinentes ad mores.’

**13** John of La Rochelle, *Summa de articulis fidei* (Vatican City, Biblioteca Apostolica Vaticana, Pal. lat. 221, fol. 62r): ‘Summa theologicae disciplinae in duobus consistit, scilicet in fide et moribus, sicut dicitur in Prologo super Psalterium. Fides autem dupliciter accipitur: est enim fides qua creditur et haec est fides virtus, de qua infra suo loco dicetur; et est fides quae creditur et haec fides nihil aliud est quam articulus fidei. Mores dividuntur in duo: in peccata et remedia peccatorum. Similis enim est moralis consideratio medicinae: Sicut enim tota intentio medici consistit in cognitione aegritudinis corporalis, quae expellenda est, et in cognitione sanitatis corporalis, quae est conservanda, sic tota intentio theologici moralis consistit in cognitione aegritudinis spiritualis, quae est peccatum, et in cognitione sanitatis spiritualis, quae est peccati remedium’ [The whole theological discipline consists of two parts, that is, faith and customs, as is said in the prologue to the Psalms. Faith is taken in two senses: in fact, there is the faith with which one believes and this is the virtue of faith, which will be discussed below in its proper place; and there is the faith which is believed, and this faith is nothing but the articles of faith. Customs are divided into two parts: into sins and

erary features place the treaty on laws of the *Summa Halensis* close to John of La Rochelle's style.

Beside these aspects, the history of the circulation of the texts offers additional knowledge. The manuscript tradition of the *Summa Halensis* shows that the treaty on laws circulated independently from the rest of the *Summa*. The manuscript Vatican City, Biblioteca Apostolica Vaticana, Vat. Lat. 4298 contains the treatise on laws as an autonomous text as well as the John of La Rochelle's *Summa de articulis fidei*.<sup>14</sup> It is on the basis of these elements that Martin Grabmann suggested that the *Tractatus de legibus* would have originally been an independent work, which was later inserted in the *Summa*.<sup>15</sup> The same Vatican manuscript contains the *Quaestiones* 26 and 27 of the third book of the *Summa* on the virtues, presenting them as a sort of autonomous *Summa de virtutibus*, with the above mentioned general prologue which explains John's placement of the moral discourse within his account of the theological discipline.<sup>16</sup>

On the basis of this conclusion and what has already been determined regarding the relationship between the *Quaestiones disputatae de legibus* and the *Summa*, several hypotheses can be formulated. First of all, John of La Rochelle is most likely the author of the *Quaestiones* which are preserved in the two manuscripts of Assisi and Rome. This text is the direct source of the *Tractatus de legibus* of the *Summa Halensis*, which may also be linked with the theological production of the Franciscan master, due to its stylistic features. The *Tractatus* might be a resume of the *Quaestiones* according to a more comprehensive perspective, or it might be the result of an attempt to provide a more structured exposition of John of La Rochelle's theology along with other texts such as the *Summa de articulis fidei* or the *Summa de divinis nominibus*. It is also possible that the master's pupils, above all, the Franciscans in Paris, composed the *Tractatus* on the basis of John's writings and notes and thus assumed his stylistic features. Certainly, the figure of John of La Rochelle is at the origin of the *Quaestiones disputatae de legibus*, and through this text, he became the mind behind the *Tractatus de legibus* in the *Summa Halensis*.

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remedies of sins. In fact, the moral examination is similar to medicine: For just as the entire intention of the physician is the understanding of bodily sickness, which has to be driven out, and of bodily health, which has to be preserved, so the whole intention of the moral theologian consists of the understanding of spiritual sickness, which is sin, and of spiritual health, which is the cure for sin].

<sup>14</sup> See Victorin Doucet, 'The History of the Problem of the Authenticity of the *Summa*,' *Franciscan Studies* 7 (1947): 26–41; Victorin Doucet, 'The History of the Problem of the Authenticity of the *Summa* (Continued),' *Franciscan Studies* 7 (1947): 274–312.

<sup>15</sup> See Grabmann, 'Das Naturrecht der Scholastik von Gratian bis Thomas von Aquin,' 12–53.

<sup>16</sup> See also, on the whole issue of the independent circulation of some parts of the *Summa Halensis*, Doucet, 'Prolegomena,' CCXI–CCXVI.

## John's Discussion of Law and its Contemporary Context

John of La Rochelle develops his analysis of the different kinds of law against a larger intellectual background within which this issue was heavily debated. Particularly in the early 13<sup>th</sup>-century Paris, theologians started to focus on analysing the notion of law in its multiple meanings. Certainly, the issue of law had been the subject of considerable interest already in the 12<sup>th</sup>-century legal discourse: the first distinctions of Gratian's *Concordia discordantium canonum* represent in fact a detailed treatise on the different species of laws and rules. In this regard, Gratian and the canonists, together with the civil lawyers, focused their attention on the notion of *ius*, that is, the legal order, distinguishing a variety of different types of law: the natural law, the civil law and the law of nations. Rather than a specific set of precepts, prescriptions and permissions, the *ius* was defined as reasoning about the law according to specific principles. Thus, the natural law, for instance, was construed as an attempt to establish a legal order according to some basic principles which human beings know by nature. Such principles include:

the union of men and women, the succession and rearing of children, the common possession of all things, the identical liberty of all, or the acquisition of things that are taken from the heavens, earth, or sea, as well as the return of a thing deposited or of money entrusted to one, and the repelling of violence by force.<sup>17</sup>

By contrast, the Latin word *lex* had a different meaning for these 12<sup>th</sup>-century authors. They used it to refer to the set of prescriptions and practices proper to a religious perspective or linked to a certain understanding of the relation between human beings and God. Thus, the term 'law' is used, for instance, to indicate different religions: the 'law' of the Jews is different from the 'law' of the Christians and from the 'law' of the Muslims. In some cases, the term 'law' also implies a religious order, since each one of them has its own specific rule, with precepts that define the lifestyle of its members.

While legal discourse focuses more on the notion of *ius*, the biblical exegetes and theologians appear more interested in the idea of *lex*. The different textual sources used by these two groups of thinkers influenced their representative approaches. In fact, both canonists and civil lawyers deal with large collections of laws, in which the notion of *ius* is presented as the pivotal idea of the whole legal discourse. For their part, theologians and exegetes looked to the Scriptures, where they found

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<sup>17</sup> Gratian, *Concordia discordantium canonum*, d. 1, c. 7, in *Corpus Iuris Canonici*, 2 vols., ed. Emil Friedberg (Leipzig: B. Tauchnitz, 1879–81), 1:2: 'Viri et feminae coniunctio, liberorum successio et educatio, communis omnium possessio et omnium una libertas, acquisitio eorum, quae celo, terra marique capiuntur; item depositae rei vel commendatae pecuniae restitutio, violentiae per vim repulsio.'

the idea of 'law' as a set of prescriptions linked to the religious practice and more specifically as one the most significant means of defining the relationship between God and the creation.

Certainly, the legal thought and the theological debates were mutually interrelated and influential in the early 13<sup>th</sup> century. An anonymous disputed question on the laws (*de legibus*), which dates at the 1230s, preserved in the MS Douai, Bibliothèque Municipale 434, argues for a minimal but clear distinction between the Law and the Gospel: 'the law concerns reverence,' the anonymous explains, 'while the Gospel concerns love.'<sup>18</sup> Moreover:

There is a double perfection—the anonymous continues—: interior and exterior. The law makes perfect the inner realities, while the Gospel makes perfect the external realities. In fact, "love is the fulfilment of the law", Rom. 13 [13:10]. Thus, the gospel perfects the law just as form perfects matter when it comes [to be united] to it.<sup>19</sup>

The author considers the two terms *lex* and *evangelium* as referring to two different things: while the Law is the set of prescriptions which rules human life, the Gospel gives the inner spiritual meaning to human life and thus also serves as the proper 'form' of the law itself, since it defines the proper aim of the Law. The author clarifies his approach as follows: 'The law constrains but does not lead; the Gospel does not lead but draws towards perfection.'<sup>20</sup>

Such a distinction between the notions of the Law and the Gospel clearly brings to mind the quotation from Isidore of Seville's *Etymologies* which opens Gratian's *Decree*, and according to which: 'The human race is ruled by two things, namely, the natural law and morals. The natural law is what is contained in the Law and the Gospel.'<sup>21</sup> Developing this distinction not from a legal but a theological perspective, the anonymous author witnesses to the emergence of a particular interest amongst theologians in analysing of the notion of 'law'. His text presupposes the distinction between the Old Testament and the New Testament, or more precisely, between the Law, i.e. the ten commandments, and the Gospel, which would become a cornerstone in the development of the discourse on the system of laws. In addition, his text is based on the analysis of several quotations, particularly from the Gospel of

<sup>18</sup> *Quaestio de legibus* (Douai, Bibliothèque Municipale 434, II, fol. 425rb, n. 571): 'lex est timoris, evangelium amoris.'

<sup>19</sup> *Quaestio de legibus* (Douai, Bibliothèque Municipale 434, II, fol. 425rb, n. 571): 'Perfectio duplex [est], intra et extra. Lex intra perfecta facit, extra perfecta per evangelium. Dilectio namque plenitudo legis, ad Rom. xiii [13:10]. Bene per evangelium, tanquam formam adveniēns materiae, perfecit eam, scilicet legem.'

<sup>20</sup> *Quaestio de legibus* (Douai, Bibliothèque Municipale 434, II, fol. 425rb, n. 571): 'Lex cogit, non ducit; evangelium non ducit immo et trahit ad perfectionem.'

<sup>21</sup> Gratian, *Concordia discordantium canonum*, prol. (Friedberg, 1:1): 'Humanum genus duobus regitur, naturali videlicet iure et moribus. Ius naturae est, quod in lege et evangelio continetur.'



Matthew and from Paul's Epistle to the Romans, which represent the major biblical sources for the development of the theological account on law.

Starting from the letter of the Scriptures, the theologians lay out a sophisticated and varied description of the different genres and species of law. Another anonymous disputed question from the same Douai manuscript, which also dates on around 1230 to 1235, discusses the existence of four different kinds of law on the basis of the exegesis of Rom. 7:23, which is offered in Peter Lombard's *Collectanea in epistulas beati Pauli*. The biblical text states: 'I see another law at work in me, waging war against the law of my mind and making me a prisoner of the law of sin at work within me.'<sup>22</sup> Stressing Paul's reference to the presence of different laws in his mind, the *Glossa* notes: 'in this sequence four laws are enumerated.'<sup>23</sup> The anonymous theologian further explains that these four laws are: the law of nature, the law of the flesh, the law of Moses, and the law of the faith, which is also called law of the Spirit or law of the Gospel. The author argues that the distinction between these laws rests upon their different motivating principles: nature is the moving principle of the law of nature, sensuality is the mover of the law of the flesh, the superior part of rationality moves the law of the Gospel, while the inferior part of rationality, which concerns temporal goods, moves the law of Moses. The rationale behind this distinction amongst the laws rests clearly on the inner structure of the human soul, namely the distinction between nature, sensuality, and reason, and then between superior and inferior parts of reason. Such a vision of the human soul was widely debated among the Parisian theologians in the 1220s and 1230s on the basis of the contents of the second book of Peter Lombard's *Sentences* and under the influence of relevant philosophical sources, such as Aristotle's *De anima* and Avicenna's *De anima*, together with Averroes' *Great Commentary on the De anima*, which started to be used in the 1230s.

In addition to this distinction, the theologian notes further differences among the laws. He demonstrates that the law of Moses and the law of the Gospel bespeak two different kinds of involvement of the divine grace with respect to the accomplishment of their own respective aims. In fact, operation of grace can lead one to decline evil, as happens when the human will does this under the influence of the law of Moses; but the operation of grace can also compel one to love and pursue the good, and in this case, the law of faith rules the human will. In addition, there is also a clear distinction between the law of nature and the law of Moses, even if their precepts seem to be the same both in their style of articulation and in their content. The theologian notes that certainly the moral prescription of the law of nature

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<sup>22</sup> Rom. 7:23 (DRB, translation modified on the basis of the Vulgate).

<sup>23</sup> Peter Lombard, *Collectanea in epistula D. Pauli apostoli Epistolas*, ad Rom. 7:23 (PL 191:1426): 'Quatuor enim leges in hac serie memorantur, scilicet lex naturae, lex membrorum, quae pro una cum lege peccati accipitur, lex Mosi, quarta lex fidei' [In this series are mentioned four laws, that is the natural law, the law of the limbs which is considered one with the law of the sin, the law of Moses, and, fourth, the law of the faith].



and of the law of Moses are the same in terms of their substance, but they differ with respect to the genus, species and definition.

This anonymous question presents a sophisticated and clearly articulated account of the issue of 'law', which is also covered in other theological texts of the 1230s and early 1240s. Another anonymous disputed question on natural law, which is preserved in the manuscript Vatican City, Biblioteca Apostolica Vaticana, Vat. Lat. 782 that also contains a part of John of La Rochelle's *Quaestiones disputatae de legibus*, observes the existence of specific differences between the laws. Nature is the basic principle which determines natural law, while grace is at the origin of both the law of Moses and the law of the Gospel. However, this clear distinction does not involve a complete separation among the laws, but rather a reconsideration of the relationship between them. Making use of Aristotelian language, the anonymous author explains that:

[natural law] is the potentiality or matter for the other laws, and its justice is the potentiality to the justice of the other [forms of law]. In fact, in the Gospel ( ... ) there is the perfect justice, in the law of Moses there is inchoate [*inchoata*] justice, while in the law of nature there is only initial [*inchoativa*] justice.<sup>24</sup>

Clarifying this relation between the laws, the anonymous author notes that they are the same according to their matter, since entail show quite similar guidelines and precepts, but they differ according to their form, because each one is the result of a different formal principle: nature is the principle of natural law, reverence (*timor*) is the principle which defines of the law of Moses, and love is the form of the law of the Gospel.

This series of texts illustrates the emergence of law as one of the major topics of the theological debate in the first half of the 13<sup>th</sup> century. Moreover, the attempt to offer an increasingly detailed analysis of the notion of law, focusing on its various aspects, is consistent with the attempt of the early 13<sup>th</sup>-century authors to define a vision which was capable of encompassing the different systems of precepts and practices which were mentioned and described in Scripture, and which remained valid. The distinction between the different species of law had two key consequences. On the one hand it allowed theologians to reconsider all of religious history under the auspices of the notion of 'law'. The Law and the Gospel, i.e. the Old and the New Testament, are seen here as two stages in a chronological sequence of laws that start with natural law, i.e. the law proper to the ancestors whose story was presented in Genesis. The law of Moses coincides with the history of ancient Israel and is followed by the law of the Gospel, which is seen as the achievement of the perfection

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<sup>24</sup> *Quaestio de lege naturali* (Vatican City, Biblioteca Apostolica Vaticana, Vat. lat. 782, fol. 22vb): '[Lex naturalis] possibilis est sive materialis ad alias et iustitia sua ad iustitias aliarum. In Evangelio enim, sicut dictum est, iustitia perfecta, in lege Moysi inchoata, in lege autem naturae inchoativa tantum.'

of the set of prescriptions and practices which rules the relation between God and the creatures, particularly human beings. On the other hand, the three or four identified species of law describe different systems of precepts and prescriptions which are also contemporaneous with one another, since the law of the Gospel, even if it is more perfect than the others, does not suppress the law of Moses, nor the natural law, which in fact are still proper to the Jews, the Muslims and other people. Moreover, as several theologians remark, these laws are certainly different according to their 'form', i.e. the religious and spiritual principle which defines them, but they are equivalent in their very contents.

John of La Rochelle develops his own disputed questions on law in light of this growing debate, offering a more expansive and systematic analysis. The Franciscan author examines firstly the notion of eternal law, considering it as the very highest level of law and the statement of an immutable and eternal truth. He explains:

According to Augustine in *On True Religion*, where he shows that law is what we call the truth, he says: "Our mind is granted to see the law of immutable truth; but that immutable truth cannot be rooted in the soul, which is mutable. Therefore it is clear that above our mind there is a law which is called the truth"; and this is the eternal law.<sup>25</sup>

John suggests that the eternal law coincides, in fact, with the divine will and it is the very principle from which all the other laws derive, with the key exception of the 'unjust' laws. The eternal law, John notes, is not directly present in the human mind, because this is mutable and temporary while the eternal law is immutable and eternal. Thus, it operates as a sort of general model for the following the different species of law, starting with natural law and then moving on to the law of Moses and the law of the Gospel.

According to John of La Rochelle, the eternal law is the first link in a chain which includes all the species of laws, and in which the notion of natural law serves as the medium between the *lex aeterna* and the other 'prescribed laws' (*leges addictae*), i.e. the law of Moses and the law of the Gospel. Moreover, since natural law concerns reason, it is proper to the rational beings only, and it is the principle which validates all the other species of 'positive' laws, including the divine positive laws stated in the Scripture.

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<sup>25</sup> John of La Rochelle, *Quaestiones disputatae de legibus* (Assisi 138, fol. 213vb; Vat. lat. 782, fol. 129ra): 'Augustinus, *De vera religione*, ubi ostendit quod lex est que veritas dicitur: "Menti – inquit – nostre impressum est videre legem immutabilem veritatis; sed illa veritas immutabilis non potest fundari in anima, que mutabilis est. Apparet ergo supra mentem nostram legem esse que veritas dicitur", et ita est lex aeterna.' Cf. *SH IV*, P2, In1, Q1, C1 (n. 224), p. 315.

## The Influence of John through the *Summa Halensis*: the Case of the *lex naturalis as impressa*

The *Quaestiones disputatae de legibus* of the Franciscan master offer the first systematic discussion of the different species of law, presenting them as part of a complex system which explains their mutual relation, as well as their order. The sequence eternal law—natural law—law of Moses—law of the Gospel became a veritable paradigm for the following decades, and the use of John's text as a major source for the treaty on laws of the *Summa Halensis* certainly increased the authority of his account. In fact, the structure and contents of these disputed questions is integrated into the *Summa* and establishes an approach to the topic of law which would be crucial not just within the Franciscan milieu but more broadly speaking for the major authors of the 13<sup>th</sup> century, including Albert the Great and Thomas Aquinas. In this sense, the *Summa Halensis* represents a medium for enlarging the audience of John's doctrine, for instance, concerning the relation between the eternal law and the natural law.

Examining the difference between the two laws, John distinguishes the law which impresses from the law which is impressed, making use of the ancient metaphor of the seal and of the wax. The theologian explains that the natural law is impressed because it is in the likeness of the eternal law. According to this perspective the notion of natural law involves on the one hand the capability of reason to receive a certain understanding of the eternal law, i.e. to act as the wax which receives the seal and to become the likeness of it. On the other hand, it is evident that in John's opinion, the eternal law is received by rational creatures and thus it is made present to their minds through impression rather than through an autonomous search on the part of reason itself.

This same doctrine is summarized in the *Summa Halensis*, which states:

When it is said "the eternal law is impressed in us by nature", this is the idea of this [eternal law], as it is clear from the words of Augustine. However, that knowledge of the eternal law impressed in the soul, is nothing but the same natural law in the soul, which is a certain likeness and image of the divine law and of the divine goodness in the soul. Thus, natural law is the knowledge of the eternal law impressed in the soul. As the image, which is in the seal, impresses, and the image which is in the wax is impressed and is the image of that which is in the seal, so it is here, because the eternal law impresses, and the natural law is impressed in the soul.<sup>26</sup>

<sup>26</sup> SH IV, P2, In2, Q1, C1 (n. 241), Ad obiecta 2, p. 340: 'Cum dicitur "lex aeterna nobis naturaliter impressa", hoc est notio eius, sicut patet ex verbis Augustini. Notio autem illa legis aeternae impressa animae nihil aliud est quam ipsa lex naturalis in anima, quae quidem est similitudo et imago ipsius divinae legis et divinae bonitatis in anima. Unde lex naturalis est notio legis aeternae impressa animae. Sicut imago, quae est in sigillo, imprimens est, imago autem quae est in cera, est impressa, et est similitudo et imago illius quae est in sigillo: ita est hic, quia lex aeterna est imprimens, lex naturalis est impressa animae.'

The study of natural law within the context of theological debates dating to the second half of the 13<sup>th</sup> century evidences an agreement on the idea that natural law represents the basic principle of the moral knowledge of the practical intellect. Despite the proper senses of ‘nature’ and ‘natural’, which pertain to physics, there is a peculiar use of these terms in this context to indicate rational creatures and their psychological features, namely their capability to know the difference between good and evil and to act accordingly. Peter of Tarentasia, in his *Quaestiones de legibus*, which dates to the 1260s, explains that natural law is both the enquiry into supreme moral principles (*notio principiorum*) and the overarching rule of human actions (*regula operandorum*) and thus it combines a cognitive aspect, i.e. the knowledge of the good to look for and of the evil to avoid, and an active element, i.e. the rule according to which the same practical intellect determines the action of the will.<sup>27</sup>

Matthew of Acquasparta, in the early 1280s, notes that natural law is basically a knowledge of the eternal law which makes rational beings able not just to be guided in their moral action but also to guide themselves by rightly orienting their will and desire. Such a moral knowledge is proper to the highest part of rational soul, where this ‘knowledge’ (*notio*) of the contents and prescriptions of the eternal law is ‘impressed’ by its very creation, giving a rule to the practical intellect. Using a passage from Augustine’s *De doctrina christiana*, the theologian explains that the ‘golden rule’, taken from the book of Tob. 4:16 and from the Gospel of Matt. 7:12, i.e. ‘never do to another what you would hate to have done to you; all things therefore whatsoever you would wish that men should do to you, do you also to them,’ states the content of natural law, summarizing a series of precepts whose value is immutable and which are indelibly impressed on the mind of each individual rational creature.<sup>28</sup> Thus, honouring God, living honestly, respecting one’s parents, helping the

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**27** Peter of Tarentasia, *Quaestiones de legibus*, q. 2 (Vatican City, Biblioteca Apostolica Vaticana, Borghesianus 139, fol. 106vb): ‘Dicit Glossa Hebreorum I super illud *qui cum sit splendor*, quod omni animae indidit Deus seminaria intellectus, scilicet quo ad speculativa, et sapientie, scilicet quo ad operabile. Hec autem notio principiorum videtur universalis cum sit regula operandorum, lex naturalis appellatur. Vnde lex naturalis est habitus cognitivus animae naturaliter impressus’ [The *Glossa Hebreorum*, on the verse “who being the brightness”, says that God introduced in every soul the seeds of the intellect, that is, what concerns the speculative activity, and of wisdom, that is, what concerns practical activity. But this idea of the principles seems to be universal because it is the rule of performing, and it is called natural law. Therefore, the natural law is a cognitive habit of the soul naturally impressed].

**28** Matthew of Aquasparta, *Quaestiones de legibus*, q. 2, in *Fratris Matthaei ab Aquasparta Quaestiones disputatae de anima separata, de anima beata, de ieiunio et de legibus*, Bibliotheca Franciscana Scholastica Medii Aevi, 18 (Quaracchi: Collegium S. Bonaventurae, 1959), 461: ‘Et haec quidem lex naturalis, quamvis unum habeat generale praeceptum, ut “quod tibi non vis fieri, alii ne feceris, et alii facias quod tibi vis fieri”, secundum Augustinum, III libro *De doctrina christiana*, tamen plura continet alia praecepta, quae derivantur ab isto, ut Deum esse colendum, honeste esse vivendum, parentes esse honorandos, proximis esse subveniendum in necessitate, nulli offensam vel iniuriam irrogandam; quae sunt regulae quaedam immutabiles, indelebiter scriptae in mente cuiuslibet’ [And this natural law, although it has one general principle, namely “do not to others what you

neighbour, not offending or insulting anyone, these are all precepts of the natural law impressed in the intellect, which evil and sin are not able to delete and are common to all humankind.

This understanding of natural law as the highest form of practical knowledge of rational creatures, and more specifically, as an 'impressed' knowledge of the highest moral principle in the intellect, questions the relation between the natural law itself and the powers of the soul and particularly reason. Accordingly, natural law is not 'natural', in the sense that it is not part of the very nature of the rational creature: this *notio* is impressed on the intellect from the creation of each rational being, but it is not involved in the specific 'definition' of the rational creature, nor angel nor human beings. Accordingly, Peter of Tarentasia notes the closeness of this notion of natural law to the idea of habit which Aristotle uses with respect to the notion of virtue. In the *Categories*, as well as in the *Nichomachean Ethics*, the Philosopher explains that virtue is not a power of the soul, i.e. an element proper to the nature of the soul, nor is it a passion, i.e. something which is passively received. Virtue, like science, is a habit, i.e. a moral or intellectual disposition that human beings acquire through its exercise and which becomes stable as a sort of second nature. Peter of Tarentasia, following closely the ideas of John of La Rochelle and the *Summa Halensis*, argues that natural law is a habit, because rational beings acquire it through the impression of the eternal law in their mind and more precisely, in the cognitive part devoted to moral knowledge, i.e. the practical intellect.<sup>29</sup>

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do not want them to do to you, and do to others what you want them to do to you", according to Augustine, in book III of the volume *On the Christian Faith*, it contains many other precepts, which are derived from this, such as 'God is to be honoured', 'it is mandatory to live honestly', 'parents are to be honoured', 'it is mandatory to help neighbours in need', 'do not inflict on anyone any offense or injury', which are certain immutable rules, written indelibly in everyone's mind].

**29** Petrus of Tarentasia, *Quaestiones de legibus*, q. 2 (Vatican City, Biblioteca Apostolica Vaticana, Borghesianus 139, fol. 106vb): 'Ad habitum tamen completum cognitionis duo requiruntur, scilicet species rei cognoscibilis per quas res una distincte cognoscitur. Haec vero duo conveniunt ad actum intelligendi sicut color et lux ad actum videndi. Species quidem principiorum non sunt innatae, quia secundum Aristotelem anima creata sicut tabula rasa, sed lumen innatum est per quod speciebus terminorum incomplexorum receptis anima statim uidet ueritatem complexionis principiorum, ut, recepta specie totius et partis et maioritatis, si proponatur ei omne totum est maius sua parte, statim sine premeditatione adquiescit, quia vero huiusmodi principia intellectualia plus habent de veritate et intelligibilitate eo quod sunt causa veritatis et intelligibilitatis aliorum intelligibilium sicut conclusionum, ut ait Aristoteles, I Metaphysicorum. Ideo propter assimilationem ampliorum in illo lumine intelligibili innato anima statim illo acquiescit non sicut conclusionibus; ideo propter hanc promptitudinem intelligendam dicuntur principia nobis innata non conclusiones. Ideo dicit Augustinus, *De Trinitate*, libro XII, capitulo VI, quod mens naturali ordine subiuncta est intelligibilibus [*ms.* intellectualibus] propter quod illa videt in quadam luce sui generis et incorporea, sicut oculus haec sensibilia videt in luce sensibili. Hoc est lumen, dicit Psalmus: "signatum est super nos lumen vultus tui, domine", et quamvis lux intellectus agentis sufficit ad specierum intelligibilium generationem, aliud tamen fortassis lumen habituale est in mente impressum qui statim videt ipsa prima principia: sicut preter lucem exteriorem qua generantur species visibiles oculus habet lucem aliquam in natura sua. Dico ergo naturalem legem habitum esse impressum naturaliter in anima

In his *Summa theologiae*, Thomas Aquinas offers a different understanding of natural law and its relationship to the powers of the soul, particularly with reason. It is well known that Aquinas defines the natural law in terms of the participation of the rational creature in the eternal law: *participatio legis aeternae in rationali creatura* (Ia-IIae, q. 91, a. 2). Using the idea of ‘participation’, the Dominican master suggests that natural law is not something received by rational creatures but on the contrary, it is a product of reason: *lex naturalis* means the knowledge that rational creatures have of the eternal law. This definition certainly highlights the basic cognitive feature of the natural law, but it also stresses that this moral knowledge is ‘natural’ because it is proper to the practical intellect as a power of the soul. In a specific and strict sense, natural law is a statement of the practical intellect: ‘do good and avoid evil’, which describes what to do and not how to do it. Accordingly, for Aquinas natural law is not a habit, but a knowledge which the practical intellect naturally produces: it is not something according to which someone acts (*quo quis agit*), but something that someone accomplishes (*quod quis agit*).<sup>30</sup>

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in parte eius cognitua non affectua, etiam intellectu practico non speculativo’ [For the completeness of the habit of the cognition two things are required, that is, the species of the knowable thing by means of which a thing is known distinctly. However, these two things concur to the act of understanding just as color and light to the act of seeing. The species of principles are indeed not innate, because according to Aristotle the created soul is like a clean slate, but the innate light is that through which the soul, once it has received the species of the simple terms, sees immediately the truth of the combination of principles, just as, when a species of the whole, the part, and the greater has been received, if it is proposed to him that the whole is greater than its part, at once, without premeditation, he agrees, because intellectual principles of this kind have more truth and intelligibility since they are the cause of the truth and of the intelligibility of the other intelligibles, such as conclusions, as Aristotle says in book I of the *Metaphysics*. Thus, on account of the greater assimilation to that innate intelligible light the soul immediately assents to that [principle] in a way it does not to conclusions; thus, principles are said to be innate in us for the sake of understanding this readiness, but not conclusions. Thus, Augustine, in book XII, chapter VI of *On the Trinity*, says that the mind is subjected in the natural order to the intellectual things, on account of which it sees them in a unique light that is incorporeal, just as this sensible eye sees in a sensible light. This is the light that the Psalm says: “the light of your countenance O Lord, is signed upon us”, and although the light of the agent intellect is sufficient to generate the intelligible species, there is however another habitual light impressed in the mind which at once sees the very first principles, just as as the eye has a certain light in its own nature in addition to the exterior light with which the visible species are generated. Therefore, I says that the natural law is a habit naturally impressed in the soul, in its cognitive part and not in the affective, and in the speculative intellect and not in the practical].

**30** Thomas Aquinas, *Summa theologiae* Ia-IIae, q. 94, a. 1, co., in *Sancti Thomae Aquinatis Opera Omnia: Iussu impensaque Leonis XIII P. M. edita*, vol. 7 (Romae: Ex Typographia Polyglotta, 1892), 168: ‘Dicendum quod aliquid potest dici esse habitus dupliciter. Uno modo, proprie et essentialiter: et sic lex naturalis non est habitus. Dictum est enim supra (q. 90, a. 1, ad 2) quod lex naturalis est aliquid per rationem constitutum: sicut etiam propositio est quoddam opus rationis. Non est autem idem quod quis agit, et quo quis agit: aliquis enim per habitum grammaticae agit orationem congruam. Cum igitur habitus sit quod quis agit, non potest esse quod lex aliqua sit habitus proprie et essentialiter. Alio modo potest dici habitus id quod habitu tenetur: sicut dicitur fides id quod fide tenetur. Et hoc modo, quia praecepta legis naturalis quandoque considerantur in actu a ratione,

## Conclusions

In his study of medieval accounts of the divine law, Rémie Brague notes that: 'Thomas Aquinas' work represents perhaps the deepest thinking on the concept of law in general, and of the divine law in particular, that medieval scholasticism has given to us.'<sup>31</sup> More in detail, he remarks that Thomas' distinction between four species of laws, i.e. the eternal law, the natural law, the human law and the divine law (which includes both the Old and New Testaments), would constitute the recovery of the ancient heritage, i.e. the Stoic notion of natural law, and the innovative deduction of the existence of the eternal law as the necessary condition for the existence of all the other species of law. The study of John of La Rochelle's *Quaestiones disputatae de legibus* and their influence on the *Summa Halensis* shows that such an idea of eternal law was already present in the Parisian theological debates of the 1240s. John's text is, in fact, the first systematic account on the order of laws which assumes the existence of a *lex aeterna* as the very origin of the whole chain of laws.

The close relation, both in literary features and doctrinal contents between the *Quaestiones* and the treatise on laws of the *Summa Halensis*, suggests that John of La Rochelle's thought was one of the major points of reference for the composition of this Franciscan theological synthesis. At the same time, the features of the reception of John's text in the *Summa* evidence a complex work of rearrangement within a larger theological discourse. The composers of this great theological synthesis placed the issue of law within a specific and well-structured vision of theology, which assumes the *lex* as a subject proper of the moral field.

The relevance of John of La Rochelle's teaching and writings is certainly connected to the composition of the *Summa Halensis* and to the incorporation of several aspects of his thoughts, ideas and texts within it. However, a closer look at John's writings shows that the historical relevance of this Franciscan master depends on his

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quandoque autem sunt in ea habitualiter tantum, secundum hunc modum potest dici quod lex naturalis sit habitus. Sicut etiam principia indemonstrabilia in speculativis non sunt ipsi habitus principiorum, sed sunt principia quorum est habitus' [I answer that a thing may be called a habit in two ways. First, properly and essentially: and thus the natural law is not a habit. For it has been stated above (q. 90, a. 1, ad 2) that the natural law is something appointed by reason, just as a proposition is a work of reason. Now that which a man does is not the same as that whereby he does it: for he makes a becoming speech by the habit of grammar. Since then a habit is that by which we act, a law cannot be a habit properly and essentially. Secondly, the term habit may be applied to that which we hold by a habit: thus faith may mean that which we hold by faith. And accordingly, since the precepts of the natural law are sometimes considered by reason actually, while sometimes they are in the reason only habitually, in this way the natural law may be called a habit. Thus, in speculative matters, the indemonstrable principles are not the habit itself whereby we hold those principles, but are the principles the habit of which we possess].

<sup>31</sup> Brague, *La loi de Dieu*, 369: 'L'oeuvre de saint Thomas d'Aquin représente peut-être la réflexion la plus profonde sur la notion de loi en général et de loi divine en particulier que nous ait fournie la scolastique médiévale.'

role as a major figure in his generation of theologians in the Parisian intellectual milieu of the 1240s. His reasoning seems to introduce significant innovations into the theological discourse, assuming a more prominent tendency to offer a systematic analysis of the major issues of the theological research. This suggests the need to reconsider John of La Rochelle not just as a source of the *Summa* but as an author with his own intellectual, literary and doctrinal proclivities, whose intellectual value as an independent thinker is at the origin of his influence on the composition of the *Summa Halensis*. Such a historical perspective offers the possibility to place John of La Rochelle among his contemporaries and within the disputes that enlivened the Parisian theological context of the first half of the 13<sup>th</sup> century. Moreover, it allows one to see in John's thought the origin of key ideas and doctrines, which would become fixtures in 13<sup>th</sup>-century scholasticism, as is the case with the theological account of *lex*.