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## Beyond the Positive Law

### The Oath and Vow as a Theological Matter Between the 12<sup>th</sup> and Early 13<sup>th</sup> Centuries

**Abstract:** The legal value of the oath has been at the centre of the interest amongst historians of medieval legal thought. Focusing on the contents of both civil and canon law, scholars have stressed the relevance of the oath of loyalty as a cornerstone of medieval feudal society, and as a key element in both liturgical practice and the legal structure of the church. Due to its importance, the oath was not only an interest of lawyers: it also questioned the religious and theological discourse which based its approach upon Scripture and tried to understand the world through the divine word. In exegetical and theological texts dating from the late 12<sup>th</sup> and the early 13<sup>th</sup> centuries, it is possible to examine how theologians contributed to defining the role and value of the oath within the moral and cultural framework of medieval Latin Europe. In this same period, another concept became crucial for this kind of discussion, namely that of the vow. Focusing particularly on the Parisian theological production of the period, the paper will show how a veritable ‘theology of the oath and of the vow’ was created, which was deeply connected with the social and political systems of the time. The paper will examine the process of creating this doctrine, whose foremost clear presentation is offered in John of La Rochelle’s *Quaestiones disputatae de legibus* (1240–1245 ca.).

On the 20 July 1213, John, King of England, formally submitted himself to Pope Innocent III, who in 1206 had elected Stephen Langton Archbishop of Canterbury. John had strongly opposed Langton’s election, and the Pope had firstly declared the Interdict against the English kingdom and later on, in 1212, had excommunicated the king. With the excommunication, Innocent had formally dissolved all the obligations of loyalty which committed subjects to their king. In exchange for his acceptance of Innocent’s election of Langton, John was absolved from excommunication by the archbishop himself, and in that same occasion the king pronounced some kind of oath which was probably a repetition of the coronation oath.<sup>1</sup>

John’s act needs to be placed within the peculiar context of the months of his alliance with Otto IV against the King of France, Philip Augustus, and Frederick Hohenstaufen, which had involved him in the struggle to establish a new political order in Latin Europe. Philip’s victory at Bouvines, on 27 July 1214, marked a crucial turn-

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1 James C. Holt, *Magna Carta* (Cambridge: Cambridge University Press, 2015), 196–9.

ing point in this historical process.<sup>2</sup> Since the Pope directly supported the king of France and Frederic II, and in that same 1212, John was also facing the beginning of the internal rebellion of his barons, he decided to put an end to his conflict with Innocent III and to rebuild a solid relationship with the Church to secure his political positions in England. The renewal of the coronation oath, which associated secular and ecclesiastical matters, starting with the solemn promise to grant and maintain the Church in peace, was therefore imposed on the king by the specific political contingencies of the summer 1212, but it assumed a quite different value from the point of view of Archbishop Langton.

By linking his submission to the Pope's decision with the contents of the coronation oath, John was allowing the archbishop to directly intervene in the political conflicts within the kingdom, as the representative of the only legitimate power which was able to determine the mutual duties of the king and the English clergy and aristocracy involved in that oath. It is from this perspective that Langton dealt with the events of John's reign which will lead, in June 1215, to the *Magna Carta*.<sup>3</sup>

This specific event in English medieval history is one of the many examples of the statute of the oath as a sign and a practice with crucial political consequences. Moreover, the renewal of the coronation oath of July 1213 before the Archbishop of Canterbury evidences how oath-taking in the medieval context was also a religious matter, or at least deals with sacred things, involving some sort of intervention by the ecclesiastical authority. Between the 12<sup>th</sup> and the early 13<sup>th</sup> centuries, the oath was therefore not only an issue discussed by canon and civil lawyers, but it also concerned exegetes and theologians.<sup>4</sup> Swearing was a basic act in Medieval Europe, being the very basis of the whole legal and political order, as well as of the system of ecclesiastical jurisdiction which had been built by re-framing secular elements such as the oath. This situation was apparently in contradiction with the explicit prohibition of oath-taking stated in the Scripture, both in the Old and New Testaments. Throughout the 12<sup>th</sup> century, exegetes and theologians debated the meaning and ap-

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2 On the political framework of the Battle of Bouvines see George Duby's classic *Le Dimanche de Bouvines: 27 juillet 1214* (Paris: Gallimard, 1973).

3 See Frederick Maurice Powicke, *Stephen Langton* (Oxford: Clarendon Press, 1928), 111–3; John W. Baldwin, 'Maître Étienne Langton, future archevêque de Canterbury: les écoles de Paris et la *Magna Carta*,' in *Étienne Langton: Prédicateur, Bibliste, Théologien*, ed. Louis-Jacques Bataillon, Nicole Bériou, Gilbert Dahan, and Riccardo Quinto (Turnhout: Brepols, 2010), 11–50, esp. 26–9.

4 On the connection between theological debate and political discourse between the 12<sup>th</sup> and early 13<sup>th</sup> centuries see Philippe Buc, *L'ambiguïté du livre: Prince, pouvoir, et peuple dans les commentaires de la Bible au Moyen Âge* (Paris: Beauchesne, 1994); Philippe Buc, 'Principes gentium dominantur eorum: Princely Power Between Legitimacy and Illegitimacy in Twelfth-Century Exegesis,' in *Cultures of Power: Lordship, Status, and Process in Twelfth-Century Europe*, ed. Thomas N. Bisson (Philadelphia: University of Pennsylvania Press, 1995), 310–28; John W. Baldwin, 'Master Stephen Langton, Future Archbishop of Canterbury: The Paris Schools and Magna Carta,' *English Historical Review* 123 (2008): 811–46.

plication of these prohibitions in order to define the sense in which oath-taking is unjust and why certain kinds of oath are legitimate.

By the end of the 12<sup>th</sup> century and much more in the first half of the 13<sup>th</sup> century, the issue of the oath was the subject of a more sophisticated theological analysis, being considered together with another genre of taking a solemn promise, that is, a vow. Particularly within the mendicant orders, the vow was at the centre of a growing theological discussion whose aim is to define its features and role, and to analyse similarities and differences with the oath.<sup>5</sup> Among the theologians of the mendicant orders, the Franciscan John of La Rochelle offers one of the first analytical discussions about the vow and its connections with the oath. In his *Quaestiones disputatae de legibus* he undertakes a close study of vow-taking, and in doing so he significantly rethinks the concept of the oath, reconsidering not only its features but also its proper subject matter.<sup>6</sup> His text is a precious witness to a crucial turn in the history of the oath as part of the political, legal and religious structures of European civilisation in the Middle Ages. After some general remarks about the status of the oath between the end of the 12<sup>th</sup> and the early 13<sup>th</sup> centuries that will help to define the historical framework of John's theological thinking, this study will examine how the Franciscan master defined and understood the oath. By investigating the comparison he made between *iuramentum* and *votum*, it will be possible to define the major features of his account of the oath.

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5 A complete overview of the issue of religious vows in the Middle Ages is offered in Alain Boureau, 'Le désir dicté: Histoire du voeu religieux dans l'Occident médiéval' (Paris: Les Belles Lettres, 2014).

6 On John of La Rochelle's *Quaestiones disputatae de legibus* and their contents see François M. Henquin, '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. Henquin, 'Notes additionnelles sur les écrits de Gueric de Saint-Quentin,' *Recherches de théologie ancienne et médiévale* 8 (1936): 369–88. Henquin'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), 53–7; 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.

## The Oath and the Church: The Early 13<sup>th</sup>-Century Theological Framework

In his study dedicated to the history of the political oath, Paolo Prodi has stressed the relevance of this practice for the understanding of the legal and institutional history of Europe, suggesting that the medieval discussions established all the essential features of the political oath as the basis for both the legal order and the legitimacy of political authority.<sup>7</sup> Prodi's perspective combines the historical and sociological approach of Max Weber with Harold Berman's thesis of the 'Papal Revolution' as the key historical event in the definition of the political and religious features of Modern Europe.<sup>8</sup> In doing so, the Italian historian agreed that the understanding of the history of the oath requires not just a consideration of legal and political history: it also involves the study of the religious value attributed to the *iuramentum*.

This perspective seems to bear directly on the case of king John's renewal of the coronation oath before Archbishop Langton and its consequences in the months after July 1212. The promises solemnly made by the king were essential to establishing his authority in accordance with the divine will, granting him the loyalty of all his subjects, both secular and ecclesiastical. But the oath was also an explicit and clear boundary to the exercise of an absolute power by the king, who swore in God's name. As Langton himself stated in a disputed question which dates to the years of his teaching in Paris, that is, before his election to the archbishopric of Canterbury, the sacred value of the oath was 'proportional' to its form, so that swearing before the altar and the priest, kneeling, amplifies the oath and makes more serious the perjury in case of a violation of the solemn promise.<sup>9</sup>

The religious relevance of the oath and the role of the ecclesiastical hierarchy in granting the sacred obligations it determines is certainly part of the cultural development of Latin Europe from the age of the Gregorian Reform in the middle of the 11<sup>th</sup> century, when the claim regarding the universal authority of the Apostolic See and

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7 Paolo Prodi, *Il sacramento del potere: Il giuramento politico nella storia costituzionale dell'Occidente* (Bologna: Il Mulino, 1992).

8 Max Weber, *Wirtschaft und Gesellschaft: Studienausgabe*, 5th ed. (Tübingen: Mohr, 1980); Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983).

9 Stephen Langton, *Quaestio de iuramento* (Cambridge, St John's College Library, C.7 [57], fol. 235vb): 'Verum est quod dicit auctoritas quod quanto sanctius est etc., recepta eadem circumstantia et sollempnitate iuramenti. Sollemnitas enim sepe facit quod iuramentum maius sit, ut si iuret ante altare coram sacerdote, flexis genibus, ista aggrauant iuramentum' [What the authority says, that "the holier <the thing by which he swears>", etc., is true given the same circumstances and solemnity of the oath. For solemnity often makes an oath greater; for instance, if someone swears while kneeling before the altar in the presence of a priest, all these things make the oath more serious]. Riccardo Quinto has listed this disputed question as CAMB101. See on this Riccardo Quinto, "*Doctor Nominatissimus*": *Stefano Langton († 1228) e la tradizione delle sue opere* (Münster: Aschendorff, 1994).

the complete freedom of the ecclesiastical hierarchy from any secular power, including kings and emperors, radically questioned the ancient idea of the oath as a sacrament. Such an understanding of the oath, which was proper to the Carolingian period, reflected the sacred status of the monarch as a ‘consecrated king’, on the model of the ancient kings of Israel, such as David, but also according to a conception of the monarchic authority, particularly the imperial one, shaped on byzantine models.<sup>10</sup> Rejecting the Carolingian idea that the status of ‘protector of the Church’ gives to the monarch the authority to rule the Church and manage its hierarchy, the Gregorian Reform started a theological process of distinguishing between the oath as a means to establishing proper political relations and its sacred implications, which granted the force of the promise and were under the control of the ecclesiastical hierarchy. The development of this process involved the emergence of a clear distinction between the oath and the notion of sacrament that acquired a specific theological sense during the 12<sup>th</sup> century. This concern about the oath does not engage only the distinction between secular and ecclesiastical powers and the claim regarding the superiority of the latter: inside the Church, the construction of a monarchic hierarchy which culminates with the Pope makes the oath an effective instrument to define the features of ecclesiastical jurisdiction. For instance, in 1215 the Fourth Lateran Council established that an elected patriarch can receive the *pallium* and therefore be officially in charge of his see only after he has sworn his obedience to the Pope.<sup>11</sup>

The distinction between the political and ecclesiastical oaths suggests the relevance of this issue not only for legal history but also for religious life. Moreover, it contributes to clarifying that the question of making solemn promises which determine a sacred obligation was addressed by canon and civil lawyers as well as by exegeses and theologians whose aim was to explain the order of reality according to the very content of the Scripture.

Theological accounts of the oath were heavily influenced by the liturgical and spiritual features of Christianity and particularly by the meaning given to the forms of religious life. From the middle of the 12<sup>th</sup> century and into the beginning of the 13<sup>th</sup>, the rise of new religious orders which required a formal and public acceptance of a rule, gave relevance to the concept of the vow, whose features were quite similar if not identical to that of the oath. In particular, the foundation of the mendicant orders and their recognition by Innocent III introduced within the Church the vow as the way to join the order through an obligation to respect the rule and to

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**10** See Walter Ullmann, *The Carolingian Renaissance and the Idea of Kingship* (London: Methuen, 1969). On the whole sacramental discussion in the Carolingian period and its impact on the political idea of kingship see Claudio U. Cortoni, “*Habeas corpus*”: *Il corpo di Cristo dalla devozione alla sua umanità al culto eucaristico* (sec. VIII-XV), *Studia Anselmiana*, 170 (Rome: EOS Verlag, 2016).

**11** *Concilium Lateranense IV*, n. 24, in *Conciliorum Oecumenicorum Generaliumque Decreta*, vol. 2/1: *The General Councils of Latin Christendom: From Constantinople IV to Pisa-Siena (869–1424)*, ed. Giuseppe Alberigo and Alberto Melloni (Turnhout: Brepols, 2013), 179–80.

shape one's own life according to three principal vows: chastity, poverty, and obedience to superiors.

The opening lines of the very first version of the rule of the Franciscan order, the so-called *Regula non bullata* (1221), explicitly requires these three features of the religious life as the subject of the vow of each member of the order. 'The rule and life of these friars—it is said—is this, namely to live in obedience, in chastity and without anything of one's own, and to follow the doctrine and footsteps of Our Lord Jesus Christ.'<sup>12</sup> The final version of the rule, the *Regula bullata*, which Pope Honorius III approved in 1223, developed the structure of the vow, describing the joining of the Franciscan order as a process of examination and spiritual and material purification of the novices. They firstly needed to deal with chastity through a vow of continence and later on to abandon all their goods in order to fulfil the vow of poverty. Finally, after the novitiate, they were allowed to take the final vow of obedience whereby they committed themselves to remaining inside the order.<sup>13</sup>

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**12** *Regula non bullata*, c. 1, in *La letteratura francescana*, vol. 1, *Francesco e Chiara d'Assisi*, ed. Claudio Leonardi (Rome: Fondazione Lorenzo Valla; Milano: Arnoldo Mondadori, 2004), 6: 'Regula et uita istorum fratrum haec est, scilicet uiuere in obedientia, in castitate et sine proprio, et Domini nostri Iesu Christi doctrinam et uestigia sequi.'

**13** *Regula bullata*, c. 2, in *La letteratura francescana*, 1:108–10: 'Si qui uoluerint hanc uitam accipere et uenerint ad fratres nostros, mittant eos ad suos ministros prouinciales, quibus solummodo et non aliis recipiendi fratres licentia concedatur. Ministri uero diligenter examinent eos de fide catholica et ecclesiasticis sacramentis. Et si haec omnia credant et uelint ea fideliter confiteri et usque in finem firmiter obseruare et uxores non habent, uel si habent et iam monasterium intrauerint uxores, uel licentiam eis dederint auctoritate diocesani episcopi, uoto continentiae iam emisso, et illius sint aetatis uxores quod non possit de eis oriri suspicio, dicant illis uerbum sancti Euangelii, quod *uadant et uendant* omnia sua et ea studeant *pauperibus erogare*. Quod si facere non potuerint, sufficit eis bona uoluntas. Et caueant fratres et eorum ministri ne solliciti sint de rebus suis temporalibus, ut libere faciant de rebus suis quidquid Dominus inspirauerit eis. Si tamen consilium requiratur, licentiam habeant ministri mittendi eos ad *aliquos Deum timentes*, quorum consilio bona sua pauperibus erogentur. Postea concedant eis pannos probationis, uidelicet duas tunicas sine caputio et cingulum et braccas et caparonem usque ad cingulum, nisi eisdem ministris aliud secundum Deum aliquando uideatur. Finito uero anno probationis, recipiantur ad obedientiam promittentes uitam istam semper et Regulam obseruare. Et nullo modo licebit eis de ista religione exire iuxta mandatum domini papae, quia secundum sanctum Euangelium *nemo mittens manum ad aratrum et aspiciens retro aptus est regno Dei*' [If any men wish to adopt this life and they approach our brothers, they should send them to their Ministers Provincial, to whom alone, and not to others, permission to admit friars may be granted. The Ministers, for their part, should carefully question them about the Catholic faith and the sacraments of the Church. And if they believe all these things and wish to confess them faithfully and to observe them steadfastly unto the end, and if they have no wives, or if they have wives who have already entered a monastery – or if they have given them permission by authority of the diocesan bishop, with a vow of continence already uttered, and the wives are old enough that suspicion cannot arise concerning them – they may say unto them the word of the Holy Gospel, that they should "go" and "sell" all that they have and strive to "give it to the poor." And if they cannot do this, their good will is enough. And the friars and their Ministers should guard against their being anxious about their temporal possessions, so that they may freely do with their possessions whatever the Lord has inspired them to do. If counsel is required, however, the Ministers may

The kind of promises and obligations which are the subject of vows seem quite close to those involved in an oath, but they pertain directly to the religious life of the late 12<sup>th</sup> and early 13<sup>th</sup> centuries. More precisely, the vow of the mendicant orders provides an answer to the spiritual needs and requirements of a society within which a new awareness of religious matters was growing in many different parts of the society. It is within this general framework, which Marie-Dominique Chenu has described in terms of ‘Christian evangelicalism’, that Francis of Assisi and Dominic de Guzman founded their respective orders, introducing the vow, which in 12<sup>th</sup>-century theological discourse had been important, for instance, for the crusaders, as a key stipulation for joining the order and also for establishing its inner structure.<sup>14</sup>

In the early 13<sup>th</sup> century all these elements were part of a debate about the oath, which was heavily influenced by the theological discourse at the time and by the development of the mendicant religious life. The scholastic culture matched with this complex historical process, directly dealing with the nature and role of the oath and with its multiple developments. Therefore, the terms *iuramentum*, *promissio* and *votum* became the subject of several analyses and arguments among theologians, including the first Dominican and Franciscan masters of theology at the university of Paris.

## John of La Rochelle: The Oath Between Moral Principles and Legal Order

John of La Rochelle, who was the second Franciscan who held a chair in theology in Paris, devoted special attention to the topic of oaths and vows in his *Quaestiones disputatae de legibus*. This text, which represents the direct source of the treatise on law of the *Summa Halensis*, offers the first complete theological discussion of the key concepts of the order of moral laws, describing a structure which includes the eternal law, natural law and positive laws.<sup>15</sup> John places his investigation of the vow and of

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have permission to send the men to “some that fear God” by whose counsel their goods may be given to the poor. After that, they should grant them the garb of probation, viz. two hoodless tunics, a cord, breeches, and a chaperon down to the cord, unless occasionally something else seems to the Ministers to be appropriate in God’s eyes. But when the probationary year is over, they should be admitted to the obedience, promising to observe forever this life and Rule. And in no way will they be permitted to leave this religious order, by command of the Lord Pope, because according to the Holy Gospel “no man putting his hand to the plough and looking back is fit for the kingdom of God”].

<sup>14</sup> Marie-Dominique Chenu, *La théologie au douzième siècle* (Paris: Vrin, 1957), 225–53. See also James A. Brundage, ‘The Votive Obligations of Crusaders: The Development of a Canonistic Doctrine,’ *Traditio* 24 (1968): 77–118. A series of annotated documents is available in *Crusade and Christendom: Annotated Documents in Translation from Innocent III to the Fall of Acre, 1187–1291*, ed. Jessalynn Bird, Edward Peters, and James M. Powell (Philadelphia: University of Pennsylvania Press, 2013).

<sup>15</sup> 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.

the oath within this attempt to describe the foundations of moral life and to fix the theoretical basis of the legal, political and ecclesiastical order according to a theological perspective. The *Quaestiones* directly deal with the 12<sup>th</sup>-century heritage, namely with authors such as Hugh of St Victor and Peter Lombard; however they also evaluate the contribution of the legal culture and of biblical exegesis. In addition, as a member of the Franciscan order and a renowned theologian, John shows particular care for a matter which was crucial for his own religious framework. During his teaching in Paris, between 1238 and 1245, the order extensively debated the understanding of Francis' religious experience, and John was one of the theologians involved in the composition of the *Expositio quatuor magistrorum*, that is, a commentary on the rule of the order whose aim was to offer a theological explanation of its contents.<sup>16</sup>

John of La Rochelle organizes his *Quaestiones disputatae de legibus* according to a specific series of topics, starting from the examination of the concept of eternal law and then moving on to the study of natural law.<sup>17</sup> Once he concludes the discussion concerning the laws which are consistent with God and nature, he considers the 'positive' laws, that is the laws which have been established in time by a legitimate authority. This order of genres and species of laws is not only defined according to a logical principle which identifies priorities and pre-eminences, but it also reflects the basic spiritual features of the biblical history of salvation. The eternal law corresponds to God's creation and describes the kind of relationship and dependence of the latter to the former. Natural law explains the basic moral principles which are consistent with human nature and which establish the rights, duties and obligations that are proper to human beings as human. The failure of natural law in guaranteeing the moral good, due to the consequences of original sin, requires the direct intervention of God's grace, which corresponds to the establishment of the Mosaic law. As a kind of positive law, this law reaffirms the very content of natural law

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A new edition of the Treatise on Laws of the *Summa* with a German translation and a commentary is offered in *Summa theologica Halensis: De Legibus et Praeceptis: Lateinischer Text mit Übersetzung und Kommentar*, 3 vols, ed. Michael Basse (Berlin/Boston: De Gruyter, 2018). See on this 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), CCV-CCCVII and CCCLIV-CCCLXX. The *Quaestiones disputatae de legibus* are transmitted in two manuscripts: Assisi, Biblioteca Comunale 138; Vatican City, Biblioteca Apostolica Vaticana, Vat. lat. 782. While the Assisi manuscript has the whole text, the Vatican manuscript contains only the sections on the eternal law and the natural law. Therefore, the section on the oath and the vow is present only in the Assisi manuscript. In the following pages the reference to this manuscript is given using the initial A, followed by the reference to the folios.

<sup>16</sup> *Expositio quatuor magistrorum super Regulam Fratrum Minorum (1241–1242)*, ed. Livarius P. Oligier (Roma: Edizioni di Storia e Letteratura, 1950).

<sup>17</sup> Silvana Vecchio, 'La riflessione sulla legge nella prima teologia francescana,' in *Etica e Politica: Le Teorie dei Frati Mendicanti nel Due e Trecento: Atti del XXVI Convegno Internazionale: Assisi, 15–17 Ottobre 1998* (Spoleto: Centro Italiano di Studi sull'Alto Medioevo, 1999), 119–51.



and develops a series of specific implications connected with the contingency of ancient Israel. The Mosaic law is therefore the first step in a process of restoring of the natural law that has been perfected with the Gospel. The *Quaestiones disputatae de legibus* do not provide a study of the law of the Gospel, but such a discussion is offered in the corresponding section of the *Summa Halensis*, suggesting that this topic would have been part of the complete theological scheme of the Franciscan master.

John inherits such a 'historical' vision from 12<sup>th</sup>-century debates about the natural law, which had considered this concept as properly referred to the pre-lapsarian state of Adam and Eve. In the decade before John's teaching, the inclusion of this approach to the matter of law is attested in some Parisian disputed questions. Dealing with the analysis of the nature of moral law, the Franciscan master uses these arguments to shape his own theological perspective and establishes a key distinction between two genres of law, that is, the innate law and the prescribed law. While the first genre includes both eternal and natural law, the latter involves two species of law. On the one hand, there are the laws that human beings prescribe for themselves; on the other hand, there are the laws which another authority, namely, God, prescribes to human beings. This second species of prescribed law clearly includes both the Mosaic law and the law of the Gospel, while the first one involves the vow, which John classifies as the act which is the possibility of each human being to impose on himself an obligation and a boundary which has the force of the law.<sup>18</sup>

The vow is therefore part of the whole order of the laws upon which rest both the moral life and the ecclesiastical order. More specifically, the vow emerges as a means of enforcing some contents of the innate laws, particularly the natural law, which is parallel to the God-given law. Quite significantly, John does not identify the *lex voti* with the law of pagan people: on the contrary, it is fully part of a religious account of law which considers the law of the Gospel as the full completion of the moral life.

The master organizes this section on the law of the vow according to a quite analytical index which considers four major issues, namely the essence of the vow, its object, its subject, and finally, the kind of obligation it determines. Each of these aspects is further divided into more specific questions which contribute to deepening the theological analysis. In doing so, John is able not only to examine and define the vow but also to stress similarities and differences with other key-concepts, namely, 'sacrament' and 'oath'.

The starting point of the Franciscan master is a survey of the different theological, exegetical, and legal authoritative sources on the issue of the vow. He assumes

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**18** John of La Rochelle, *Quaestiones disputatae de legibus* (A fol. 220rb): 'Cum multiplex sit lex, scilicet innata et addita, postea quesitum est de lege innata que naturalis dicitur, sequitur uidere consequenter de lege addita, que duplex est: una quam facit sibi homo et alia que fit homini. Prima est lex uoti' [Since there is more than one kind of law, namely innate and prescribed, now that we have enquired about innate law, which is called 'natural', the next thing is to see about prescribed law, which is of two kinds: one that man makes for himself and another that is made for him. The first is the law of the vow].

Peter Lombard's definition as the proper description of the nature of the vow and therefore notes: 'the vow is the witnessing of a spontaneous promise which has to be made to God and concerning those things that pertain to God.'<sup>19</sup> Considering the features of the vow, John inquires how to properly define it: is it a matter of an explicit and external solemn promise? Does it require the use of words, or is it just the liturgical gesture that gives force of obligation to the promise? What is the meaning of the *lemma*, 'that pertain to God'? Which human faculty is directly involved in making a vow? Is the term 'vow' used properly or ambiguously in this kind of search?

Dealing with these questions, John is able firstly to focus on the very essence of the vow, stressing a difference between two species of vow. On the one hand, there is the simple vow, which just requires a solemn promise of the heart and does not necessarily involve a public statement or act. According to Gratian and the legal tradition, this kind of vow involves 'the conception of a better good, confirmed by the soul's deliberation and freely offered to God'.<sup>20</sup> Peter Lombard's definition concerns another kind of vow, namely the solemn one, which requires testifying before the Church, that is, not only publicly but also before a sacred authority. John notes also that, assuming a broader meaning of the word 'testify', the simple vow can be included under the auspices of Peter Lombard's statement, because in the solemn promise of the heart, there is an interior testimony of the conscience.<sup>21</sup>

The distinction between the simple and the solemn vow goes back to the 12<sup>th</sup> century. Its roots can be found in Peter Lombard's distinction between a private and solemn vow, which falls within the genre of an individual vow. The Lombard introduces

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**19** Peter Lombard, *Sententiae in IV libris distinctae* IV, d. 38, c. 1, 2 vols, ed. Ignatius C. Brady, Spicilegium Bonaventurianum, 4–5 (Grottaferrata: Editiones Collegii S. Bonaventurae, 1971–81), 2:478.3–5: 'Votum est testificatio quaedam promissionis spontaneae, quae Deo et de his quae Dei sunt proprie fieri debet.'

**20** Gratian, *Concordia discordantium canonum*, c. 27, q. 1, pr., in *Corpus Iuris Canonici*, 2 vols., ed. Emil Friedberg (Leipzig: B. Tauchnitz, 1879–1881), 1: 1047]: 'Votum est conceptio melioris boni animi deliberatione firmata deo sponte oblata.'

**21** John of La Rochelle, *Quaestiones disputatae de legibus* (A fol. 220va-b): 'Votum est duplex, scilicet simplex et sollempne. Simplex uotum nihil requirit nisi sponsionem cordis, et secundum hoc diffinitur: "Votum est conceptio boni" etc. In uoto autem sollempni requiritur testificatio in facie ecclesie. Vnde de sollempni intelligitur ista definitio: "Votum est testificatio" etc. Aliter etiam posset concedi, extenso nomine testificationis, quod etiam in uoto simplici est testificatio interior facta sibi, iuxta illud ad Rom. ii: "Testimonium perhibente illis conscientia" etc. Et secundum hoc illa ratio conuenit uoto simplici et sollempni' [There are two kinds of vow, namely simple and solemn. A simple vow requires only a pledge of the heart, and in this sense the definition is: "A vow is the conception of a good" etc. But a solemn vow requires sworn affirmation in the sight of the Church, so the following definition is understood as being about the solemn one: "A vow is the sworn affirmation" etc. Alternatively, it could also be granted, broadening the term 'sworn affirmation', that even in a simple vow there is a sworn affirmation that is internal and made to oneself, as per the passage from Romans 2: "their conscience bearing witness to them" etc. And in this sense the definition is appropriate for <both> a simple vow and a solemn one].

such a distinction in his discussion of marriage, noting that if the violation of a private vow involves mortal sin, the violation of a solemn and public vow adds public outrage.<sup>22</sup> Qualifying the private vow as *simplex*, Langton develops Peter Lombard's doctrine, stressing the theological features that make both the simple and the solemn vow a religious matter, which requires the intervention of the ecclesiastical authority. More in detail, he refers the two species of the vow to two different states of Christ: while the simple vow relates to the union of Christ's soul with his human body before the Passion, the solemn vow signifies the same union after the resurrection.<sup>23</sup> Therefore, taking a simple vow means making a private, solemn promise to God, which includes the possibility of changing one's mind, because it assumes as a paradigm for its sacredness the hypostatic union of body and soul in Christ before the Passion, that is, something which was subject to change because Jesus' body was still corruptible and mortal. Developing the metaphor, Langton notes that after the resurrection, the union of body and soul in Christ became invariable, because Christ's resurrected body is no longer mortal nor corruptible. Therefore, the solemn vow, which signifies the union after the resurrection, involves an insolvable obligation.

Langton's description of the sacred nature of the vow and of its obligation was widely known in the Parisian milieu at the time of John of La Rochelle's teaching. However, dealing with the distinction between the simple and the solemn vow, the Franciscan master stressed their reference, to the private and public nature of the two species of solemn promise, respectively, rather than searching for the theological meaning of each one of them. He firstly establishes a clear distinction between the two species of vow that is able to explain the meaning of both the theological and legal definitions of the vow, but which also defines a sort of hierarchy between them according to which Peter Lombard's definition can be assumed as a general definition.<sup>24</sup>

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**22** Peter Lombard, *Sententiae* IV, d. 38, c. 2 (Brady, 2:478.11–4): 'Singularare votum aliud est privatum, aliud solemne. Privatum est in abscondito factum; solemne in conspectu Ecclesiae factum. Item privatum votum si violetur, peccatum est mortale; solemne vero violare peccatum est et scandalum' [One kind of individual vow is private, the other solemn. A private vow is made in secret; a solemn vow is made in the sight of the Church. Again, if a private vow is broken, it is a mortal sin, but to break a solemn vow is a sin and a scandal].

**23** Stephen Langton, *Quaestio de voto* (Cambridge, St John's College Library, C.7 (57), fol. 320rb): 'Votum simplex sacramentum est coniunctionis anime Christi cum suo corpore qualis fuit ante passionem. Set ante passionem fuit uariabilis et dissolubililis, quia et corpus erat corruptibile et anima passibilis, et ideo uotum simplex quod est signum illius uariabile est, et per matrimonium dissolubile est. Votum autem sollempne sacramentum est illius coniunctionis que fuit in anima et corpore Christi in resurrectione. Illa fuit inuariabilis, et ideo uotum sollempne est indissolubile.' I would like to thank Andrea Nannini, who is working towards a critical edition of Langton's *Quaestio de voto* and kindly allowed me to use his text. In the following I will reference the Cambridge manuscript, even though the *Quaestio* is preserved in different versions in the various manuscript collections of Langton's disputed questions.

**24** See John of La Rochelle, *Quaestiones disputatae de legibus* (A fol. 220va-b).

## Similarities and Differences with the Sacrament

Considering the role of an intention, the spoken word, and an act, with respect to the vow and its force, John considers the closeness between the concept of the vow and marriage. It is a question that has become common among theologians and canonists and which can be also enlarged upon to evaluate the definition of the vow in terms of the category of ‘sacrament’. Evidently, marriage has the same elements involved in the vow. It requires firstly a private consent before each one’s conscience. Later on, it needs to be solemnly ratified before the Church. Finally, the spouses have to consummate the marriage with their physical union. An interior solemn promise, an exterior solemn promise, and an act are the three features of the vow as well as of the marriage.

Peter Lombard has already stressed the need to discuss the relationship between the vow and the marriage in order to explain the impossibility of combining the two things: vow-taking excludes the possibility of a contract in marriage.<sup>25</sup> The Lombard is clearly considering the religious vow, that is, the kind of solemn promise, private or public, which is at the basis of a specific lifestyle. More in detail, he refers to the vow of chastity, which defines an obligation contrary to the one involved by the marriage.

Stephen Langton follows Peter Lombard in explaining that the concept of the vow properly and primarily refers to the obligation of those who belong to a religious order. Fasting, making pilgrimage, and similar actions are the subjects of vowing, while the marriage is of a completely different nature: it is a sacrament.<sup>26</sup> Therefore, the basic question concerns the relation between the notions of vow and sacrament. According to their definitions, the subject of both the vow and the sacrament is a sign of sacred things, and thus it would seem possible to identify them. On the basis of Peter Lombard’s clear distinction between a vow and marriage, Langton stresses the different nature of the vow with respect to the notion of a sacrament.<sup>27</sup> The latter

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<sup>25</sup> Petrus Lombardus, *Sententiae* IV, d. 38, c. 2, (Brady, 2:478.15–6): ‘Qui privatum faciunt votum continentiae, matrimonium contrahere non debent, quia contrahendo mortaliter peccant’ [Those who take a private vow of continence should not enter into a marriage contract, because in doing so they commit a mortal sin].

<sup>26</sup> Stephen Langton, *Quaestio de voto* (Cambridge, St John’s College Library, C.7 (57), fol. 320ra): ‘Votum dicitur obligatio facta de hiis operibus que in genere spectant ad religionem, sicut ad ieiunandum, peregrinandum et consimilia. Matrimonium autem non est talis obligatio, et ideo non dicitur uotum’ [A vow is said to be an obligation made concerning actions that generally pertain to religion, such as fasting, pilgrimage and the like. But marriage is not an obligation of this kind, and therefore it is not called a vow].

<sup>27</sup> Stephen Langton, *Quaestio de voto* (Cambridge, St John’s College Library, C.7 (57), fol. 320ra): ‘Quodlibet sacramentum uel est ad salutem uel ad remedium infirmitatis. Scilicet ad salutem, idest sanctificans, ut baptismus, quia sine eo non est salus. Ad remedium infirmitatis, ut matrimonium. Votum autem non est ad salutem quia sine eo potest esse salus, nec ad remedium infirmitatis. Non enim ad infirmos spectat uouere, set potius ad fortes, et ideo uotum non dicitur sacramentum’ [Every sacrament is either for salvation or for curing a weakness. Namely, for salvation, i.e. sanctify-

concerns salvation and provides a remedy for spiritual deficiency: baptism, for instance, aims at salvation because without it there cannot be eternal salvation. Therefore, marriage, as a sacrament, offers a remedy against spiritual deficiency. By contrast, the vow does not consist in a reaction to spiritual deficiency, but rather corresponds to an effective power: the one who can fulfil the corresponding obligation is able to make the vow.

John of La Rochelle highlights the distinction between a vow and a sacrament, including marriage. The Franciscan master particularly focuses on the fact that a sacrament properly signifies a sacred thing and for this reason, it determines an obligation, while the vow is the expression of the intention to submit oneself to an obligation. This difference is quite evident precisely in the case of marriage, because this sacrament signifies the union of God with the soul through the consent of two souls. Due to this feature, marriage requires the explicit consent of the spouses, without which neither the words nor the physical relationship is valid. The vow has a different feature, because what is crucial in the case of a solemn promise which determines an obligation is the intention to submit to the obligation. This intention is sometimes associated with an internal statement or an internal purpose, and in other cases, it is associated with an explicit statement or with an act. In each of these cases, the vow is fulfilled, because the combination of the intention to submit to the obligation with a statement or an act which explicitly expresses the promise gives force to the obligation.<sup>28</sup>

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ing, like baptism, because without baptism there is no salvation; for curing a weakness, like marriage. But a vow is not for salvation, because there can be salvation without it. Nor is it for curing a weakness, for vowing does not belong to the weak, but rather to the strong. And therefore a vow is not called a sacrament].

**28** John of La Rochelle, *Quaestiones disputatae de legibus* (A fol. 220vb): ‘Ad aliud quod querit an solo uerbo uel facto possit esse obligatio et uotum, dicendum quod non est simile de uoto et matrimonio, quia uotum non est sacramentum, sed matrimonium sic. Vnde, cum sit signum coniunctionis Dei ad animam per consensum animarum, requiritur in matrimonio de necessitate expressus consensus animarum, alioquin nihil ualet uerbum aut coniunctio carnalis. In uoto autem intentio obligandi quandoque copulatur uerbo interiori sive proposito interiori, quandoque uerbo exteriori, quandoque facto. Quandocumque copulatur intentio obligandi alicui istorum, est uotum completum; vnde sine proposito obligandi cum testificatione oris est promissio et uotum similiter in facto, si copuletur intentio obligandi, erit uotum’ [In response to the next argument, which asks whether there can be an obligation and a vow with only a word or a deed, we must say that it is not the same with vows as it is with marriage, because the vow is not a sacrament whereas marriage is. Hence since it is through the agreement of souls that <marriage> is a sign of the union of God with the soul, marriage necessarily requires the explicit agreement of souls; otherwise there is no validity to the word or the union of bodies. In a vow, however, the intention to be obligated is sometimes attached to an internal word or an internal plan, sometimes to an external word, and sometimes to a deed. Whenever an intention to be obligated is attached to any of these, there is a complete vow. Hence <even> without an <internal> plan to be obligated, with a sworn oral affirmation there is a promise and a vow; likewise with a deed, if an intention to be obligated is attached to it, there will be a vow].

Therefore, there is a clear difference between the vow and the sacrament, particularly with marriage. In the latter the explicit consent of man and woman is required, while in the vow, it is crucial to combine the intention with a form of implicit or explicit demonstration of such an intention. Here, John deepens his analysis, questioning how the intention to submit to an obligation is fulfilled by an explicit statement or action if the one who takes the vow has an internal, opposing purpose which does not establish an obligation. The answer to such a question allows the Franciscan master to examine the role of the vow as a key-concept in religious life, particularly within religious orders, as well as in defining the extent of legitimate ecclesiastical authority. It is the intention of the one who vows that determines the obligation, but such an intention can be of two types: on one side, there is the intention of the aim, and on the other side, there is the intention of the act. Both these intentions are proper of the one who vows, but with a significant difference. The intention of the aim requires a clear understanding of such an aim to which the vow tends and therefore a clear consciousness of all the implications of vow-taking. By contrast, the intention of the action is proper at least to the one who understands in a different sense the words that oblige him or intends to do what they oblige him to do.<sup>29</sup>

This second kind of intention, which concerns the action only, is sufficient to determine the obligation of the vow, as in the case—John explains—of heretics whose obligation towards the Church derives from their baptism. This reference defines a parallel between the relation of the heretic with the Church and between the one who vows and the force of their obligation. The heretic is under the legitimate jurisdiction of the ecclesiastical authority because of their baptism. Even if they wrongly understand the sacred reality that the sacrament signifies, they remain bound by the

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**29** John of La Rochelle, *Quaestiones disputatae de legibus* (A fol. 220vb): ‘Sed quomodo potest <esse> quod intentio obligandi copuletur uerbo exteriori uel facto, cum interius habeat propositum oppositi, scilicet non obligandi? Dicendum quod est duplex intentio, scilicet finis et operis. Intentio finis est in illo qui intendit se obligare, intentio operis est in illo ad minus qui intendit dicere uerba que dicunt obligantes se uel qui intendit facere illud quod faciunt obligantes <se>, et ista intentio sufficit ad obligationem uoti, sicut in heretico ad baptizandum <...> intrat ecclesiam, dicendum quod dupliciter potest intendere obligare <se>, quia potest intendere obligare se sicut obligantur intrantes et hoc modo antequam profiteatur <ms. proficiatur> potest exire et ire ad alium ordinem. Si uero intendit se obligare sicut obligantur perseuerantes, tenetur stare et non potest exire’ [But how can it be that an intention to be obligated is attached to an external word or deed while internally <the person> has a plan for the opposite, namely not to be obligated? We must say that there are two kinds of intention, namely purposive and operative. There is a purposive intention in someone who intends to obligate himself. There is an operative intention in someone who at least intends to say the words that people obligating themselves say, or intends to do what people obligating <themselves> do; and this kind of intention is sufficient for the obligation of a vow, as with the heretic at the baptism. <lacuna> enters a religious order, we must say that there are two ways in which he can intend to obligate <himself>, because he can intend to obligate himself in the way that those entering are obligated, in which case before he makes his profession he can leave and enter another order; but if he intends to obligate himself in the way that those persevering are obligated, he is bound to stay and cannot leave].

obligations taken towards the Church: by the act of receiving baptism, they have joined the *societas christiana* and are therefore under the jurisdiction of the hierarchy that rules such a *societas*. In a similar way, the one who vows has at least an understanding of the meaning of the act they are performing and therefore knows that it determines an obligation. Even if they misunderstand the aim of their vow, because they differently interpret the statement they are making, the consciousness of what kind of act a vow involves determines their being bound by the promise they make.

Since the vow can involve a double intention, it also determines two types of obligation. The Franciscan master clearly refers to the vow that the members of a religious order are required to make in order to join it. In fact, he explains that for those who enter the order, the obligation is not absolute, because they are allowed to leave it or to switch to a different religious order before continuing and pronouncing the final and solemn vow. Considering the Franciscan milieu to which John of La Rochelle belonged, this 'simple' obligation is the one which depends on the first two vows, namely, of chastity and poverty, which according to the *Regula bullata* are required to become a novice and to have access to the period of at least one year devoted to become acquainted with the order and its rule. It was at the end of this novitiate that the candidate was able to pronounce his solemn vow, as *perseverans* (one persevering). This vow, which involves the solemn promise to obey superiors, obliges the novice to remain in the order, and precludes the possibility of leaving it. The solemn vow concerning the complete acceptance of the rule of the order, puts the said novice under the jurisdiction of his superiors, making him a *frater* but also legitimizing the authority over him of the order and of the Pope, to whom goes the obedience of all the mendicant orders.

## The Vow and the Oath: Two Forms of Obligation

John of La Rochelle's discussion of the vow as a form of prescribed law led him to consider a third issue, namely, the relation of this notion to the oath. Peter Lombard's definition of the vow as a witnessing of a spontaneous promise would suggest an equivalence between the two notions, particularly because the oath itself involves a promise concerning sacred things and requires the witnessing of a spontaneous promise.

Dealing with this problem, the Franciscan master faced a long theological debate which already distinguished the *iuramentum* from the *votum*. For instance, in the writings of the masters of Laon in the early 12<sup>th</sup> century, the vow was already presented as a specific genre of solemn promise combining a certain statement with a specific ritual which involved the clergy in order to signify an obligation taken before God.<sup>30</sup> In contrast, the oath is qualified as an obligation caused by evil and namely

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<sup>30</sup> Anselm of Laon, *Sententiae*, n. 76, in Odon Lottin, *Psychologie et morale aux XIIe et XIIIe siècles*, 6

by the weakness of human nature that is required to secure the natural obligations among human beings through a solemn promise made before humans and before God.<sup>31</sup>

This distinction clearly establishes a different framework for thinking about the vow and the oath. As Peter Lombard noted in his *Sentences*, the latter is part of the moral and legal order and its place, according to the theological perspective, is part of the discussion of the ten commandments. The oath is therefore treated in terms of the explicit ban on swearing which is given both in the Old and New Testaments, in order to explain the meaning of these prohibitions and define the perspective accord-

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vols (Gembloux: Duculot: 1948–61), 5:66: ‘Quedam sunt, que etiam non uouentes reddere debemus, ut cultum Deo, ceteraque precepta. Alia uero sunt, que, nisi uoueamus, reddere non cogimur, ut uirginitatem seruare. Ad hec uouenda inuitat psalmus: “Vouete et reddite” (Ps. 75, 12). Et nota non esse appellandum uotum, si dicamus nos ituros Iherusalem, uel si aliquid huiusmodi facturos sine deliberatione uel ex cursu loquendi, ut sepe fit, sed cum in manu sacerdotis hoc fit, uel apud quemquam ex longa animi deliberatione. Hic solet queri: si aliquis uoueat canonicam uitam, et efficiatur monachus, uel e conuerso, an dicendus sit uotum fregisse. In quo dicendum est, quia, qui minus arctam uitam uouet, si assumit arctiorem, non solum non fregit, sed impleuit hoc habundanter, ut qui uouit canonicam et efficiatur monachus, non habent quid in eo reclamant hii penes quos uouit canonicam uitam se acturum. Sed si uouit monacum, non reddit si efficiatur canonicus, quia minus soluit quam uouit, nec reuerti potest ad seculum, sed uel eremita potest effici, uel in alio monasterio, quod sibi religiosius uideatur, potest monachari sine offensa prioris monasterii’ [There are some things that we are obliged to render even without taking a vow, such as worshipping God and the other commandments. And there are other things that we are not compelled to render unless we take a vow, such as preserving our virginity. The psalm “Vow ye, and pay” (Ps. 75:12) invites us to take these vows. And note that it is not to be called a vow if we say that we are going to go to Jerusalem (or to do some such thing) without deliberation or in passing, as often happens, but when this happens in the hands of a priest, or in anyone’s presence after a long deliberation of the soul. At this point it is customary to ask whether we must say that someone who vows a canonical life and becomes a monk (or vice versa) has broken the vow. On this, we must say that if someone who vows a less strict life adopts a stricter life, not only has he not broken <his vow>, but he has abundantly fulfilled it, so that in the case of someone who has vowed a canonical life and becomes a monk, the people among whom he vowed to lead a canonical life have nothing to complain about. But if he has vowed <to be> a monk, he does not carry this out if he becomes a canon, because he renders less than he has vowed; nor can he return to the secular world; but either he can become a hermit, or he can become a monk in another monastery that he considers more devout without offending the previous monastery].

**31** Anselm of Laon, *Sententiae*, n. 214, in Lottin, *Psychologie et morale*, 5:137–8: ‘Iurare est a malo, id est ab infirmitate. Infirmitas autem illa aliquando est bonum, aliquando non. Tunc non est malum iurare quando pro utilitate illius cui iuratur ille qui iurat iurare cogitur, ut si quid de Deo quod esset credendum alicui dicerem, si ille responderet se concedere sed primum certitudinem se habere uellet, malum est si iurem, sed tamen hoc procedit ex infirmitate illius qui hoc concedere nolebat’ [Swearing comes from something bad, that is, from weakness. But this weakness is sometimes a good thing, sometimes not. It is not bad to swear when the person who swears is compelled to swear for the benefit of the person to whom he swears. If, for instance, I told someone something we should believe about God, and if he replied that he did <not> grant it but wanted to have certainty first, it is a bad thing if I swear; but even so, this comes from the weakness of the person who did not want to concede it].



ing to which it would be legitimate to take one.<sup>32</sup> In light of the prohibitions against oath-taking in Scripture, Christian authors from late antiquity onwards had tried to establish the proper object of the biblical prohibitions, particularly in the New Testament, and what kind of oath could be considered acceptable and required. Peter Lombard firstly stressed that the difference between a good and legitimate oath and a bad one depends upon the circumstances in which the oath is taken and particularly upon the existence of a necessity. Swearing without necessity is a sin, as it involves swearing false things, because in this case the oath, which calls upon God as a witness, involves an abuse of this supreme role of God. The Lombard explains:

Swearing spontaneously and with no need, or false swearing, is a grave sin. However, oath-taking by necessity, for instance, to assert one's own innocence, or to lend support to peace, or to persuade hearers about what is useful for them, it is not evil because it is necessary.<sup>33</sup>

Quite significantly, Peter Lombard does not qualify the oath as 'good' but draws a distinction between the evil oath and the necessary one, suggesting that oath-taking is never good in itself, but that it can be necessary and therefore legitimate, not least from a religious perspective. Quoting Augustine, both in the *Sentences* and in his *Gloss* to the epistle to the Romans, the Lombard notes that the oath is not good in

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**32** Peter Lombard, *Sententiae* III, d. 39, c. 4 (Brady, 2:221.19–222.8): 'Quod ergo Christus ait in Evangelio: *Ego dico vobis non iurare omnino*, "ita intelligitur praecepisse, ne quisquam sicut bonum appetat iuramentum, et assiduitate iurandi labatur in periurium." Quod vero addidit: "*Sit sermo vester, Est, est, Non, non*, bonum est appetendum. *Quod autem amplius est, a malo est*, id est si iurare cogeries, scias de necessitate venire infirmitatis eorum quibus aliquid suades. Quae infirmitas utique malum est, unde nos quotidie liberari precamur dicentes: *Libera nos a malo*. Itaque non dixit: *Quod amplius est*, malum est: tu enim non facis malum, qui bene uteris iuratione; sed *a malo est*: illius" "qui aliter non credit", id est ab infirmitate, quae aliquando poena est, aliquando poena et culpa. "Ibi ergo Dominus prohibuit malum, suavit bonum, indulisit necessarium" [Therefore what Christ says in the Gospel, "I say to you not to swear at all" (Mt. 5:34), "this he is understood to have commanded so that no one should desire an oath as if it were something good, and by constantly swearing should fall into perjury." And what he adds, "Let your speech be Yea, yea, No, no" (Mt. 5:37), this is a good thing to be desired. 'And that which is over and above is of evil,' that is, if you are forced to swear, know that it comes from the necessity of the weakness of the people you are persuading. And this weakness is certainly an evil, from which we pray every day to be delivered, saying 'Deliver us from evil.' And so he did not say 'That which is over and above' is evil, for you who use swearing in a good way do not do evil; but it 'is of evil'" "belonging to the person who otherwise fails to believe", that is, from weakness, which is sometimes a punishment, sometimes a punishment and a fault. "Here, therefore, the Lord forbade the bad, urged the good, forgave the necessary"]. Lombard built this passage quoting Augustinus, *De sermone Domini in monte* I, c. 17, n. 51, ed. Almut Mutzenbecher, *Corpus Christianorum Series Latina*, 35 (Turhnout: Brepols, 1967), 58–9.

**33** Peter Lombard, *Sententiae* III, d. 39, c. 4 (Brady, 2:221.2–7): 'Sponte enim et sine necessitate iurare, vel falsum iurare, peccatum grande est. Ex necessitate autem iurare, scilicet vel ad asserendam innocentiam, vel ad foedera pacis confirmanda, vel ad persuadendum auditoribus quod est eis utile, malum non est, quia necessarium.'

itself but can avoid being evil because of its necessity.<sup>34</sup> Such necessity is due to the indolence of human beings in understanding what is useful for them. The biblical prohibitions on oath-taking are due to the nature of the oath, namely to its sacred character which follows from calling God as a witness to the promise made to another. Precisely the ‘calling of God’ fixes specific boundaries to the oath. More in detail, as Langton has stated, the prohibition on swearing in the Old Testament aims at forbidding idolatry, because it is specifically directed against the practice of swearing an oath on idols or creatures. In contrast, Jesus’ prohibition according to the Sermon on the Mount does not prevent idolatry but aims at continuing to forbid swearing an oath on creatures, because only an oath taken with God as witness can be legitimate.<sup>35</sup>

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**34** Peter Lombard, *Sententiae* III, d. 39, c. 4 (Brady, 2:221.8–12): ‘Unde Augustinus: “Iuramentum faciendum est in necessariis, cum pigri sunt homines credere quod est eis utile. Iuratio non est bona, non tamen mala cum est necessaria”, id est non est appetenda sicut bona, non tamen fugienda tamquam mala, cum est necessaria’ [Thus Augustine: “An oath must be sworn in case of need, when people are slow to believe what is useful for them. Swearing is not good, but it is not bad when it is necessary”, that is, it is not to be desired as good, but it is not to be avoided as bad when it is necessary]. Peter Lombard, *Collectanea in omnes D. Pauli Apostoli Epistolas*, ad Rom. 1:9 (PL 191:1318C): ‘Iuramentum enim faciendum est in necessariis, cum pigri sint homines credere quod eis est utile; non est iuratio bona, id est appetenda, non tamen mala, id est prohibita, cum est necessaria, licet sit a malo infirmitatis eorum quibus aliquid dicitur’ [For an oath must be sworn in case of need, when people are slow to believe what is useful for them; swearing is not good (that is, to be desired), but it is not bad (that is, forbidden) when it is necessary, even though it comes from the evil of the weakness of the people who are told something]. The Augustinian basis of this argument is Augustine, *De sermone Domini in Monte* I, c. 17, n. 51 (Mutzenbecher, 58).

**35** Stephen Langton, *Quaestio de iuramento* (Cambridge, St John’s College Library, C.7 (57), fol. 235va-vb): ‘Alia de causa <iuramentum> prohibitum est in ueteri testamento alia in nouo. In ueteri prohibitum est quia iudei proni erant ad ydolatriam et si iurarent per creaturas, forte crederent numen inesse creature, et ideo prohibitum fuit ne iurarent per creaturas. In euangelio uero prohibitum fuit quia apostoli potuerunt credere quod cessante hac causa cessaret prohibitio et ita quod licite possent iurare per creaturas et non teneri Deo cum non crederent numen inesse creature. Vnde in Matheo prohibuit. Dicebant enim pharisei ut habetur in Matheo: “Qui iurat per templum Dei nihil est, et qui iurat in altari nihil est.” Sed Dominus dixit: “Qui iurat in altari iurat in eo et in omnibus que sunt super illud et qui iurat per templum iurat in eo qui habitat in templo”, etc. Ergo patet quod qui iurat per creaturam iurat per creatorem; ergo tenetur reddere Deo iuramenta, ergo equum est iurare per creaturam et per creatorem, quod falsum est quia auctoritas dicit: quanto sanctius est id per quod iurat, tanto penalius est periurum; ergo grauius est iurare per Deum quam per templum’ [Oath-swearing is forbidden for one reason in the Old Testament and for another reason in the New. It is forbidden in the Old Testament because the Jews were prone to idolatry, and if they swore by creatures, perhaps they would believe that the deity existed in a creature, and therefore swearing was forbidden so that they would not swear by creatures. In the Gospel, on the other hand, swearing was forbidden because the apostles could have believed that the prohibition would cease along with its rationale, and in such a way that they could rightfully swear by creatures and not be bound to God because they did not believe that the deity existed in a creature. Therefore he forbade it in Matthew, for the Pharisees said, as Matthew has it, ‘He that sweareth by the temple of God, it is nothing’ and ‘He that sweareth by the altar, it is nothing.’ But the Lord said: ‘He that sweareth by the altar, sweareth by

The fact that oath-taking determines an obligation, which one commits a grave sin in disregarding, would suggest an equivalence with the vow or, as Langton has noted, the idea that the oath could be considered as a species of vow. Both the vow and the oath involve the same elements, namely, the promise and the witness, as well as the involvement of God, which gives a sacred character to the act. However, there are some basic differences, starting from the fact that the vow is made to God while the oath is made on God, that is, the vow determines an obligation towards God, and the oath establishes an obligation with other people and has both God and human beings as witnesses.

John of La Rochelle deepens the question by stressing that a correct analysis of the definition of a vow clearly reveals its differences from an oath.<sup>36</sup> Firstly, the master notes, Peter Lombard's definition aims at establishing the declaratory or promissory nature of the vow. According to the words of the *Sentences*, the vow concerns a promise, but it refers to specific subjects: a vow does not concern what is necessary

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it and by all things that are upon it; and he that sweareth by the temple, sweareth by it and by him that dwelleth in it', etc. It is evident, therefore, that someone who swears by a creature swears by the creator; they are therefore held to render their oaths to God. Therefore swearing by a creature and by the creator are equivalent – which is false, because the authority says, 'The holier the thing by which he swears, the more punishable is the perjury', so it is more serious to swear by God than by the temple].

**36** John of La Rochelle, *Quaestiones disputatae de legibus* (A fol. 220vb): 'Ad illud quod obicitur de iuramento dicendum quod per ea que ponuntur in diffinitione uoti excluditur iuramentum. Nota ergo quare singula ponantur in diffinitione. Prima quia scilicet sunt assertoria et promissoria, ut ostendatur quod uotum non est attestatio assertoria sed promissoria dicitur 'promissionis'. Item, ut ostendatur quod non est promissionis eorum que sunt necessaria ad salutem additur [pro] 'spontanea'. Item, quia promissio posset fieri homini <ms. hoc> additur 'deo'; et quia deo posset fieri promissio de illicitis, additur 'de hiis que ad deum pertinent,' in qua intelligitur quod uotum debet fieri de bonis, non de malis. Iam patet differentia ad iuramentum, quia quoddam iuramentum est assertorium, uotum non. Item, uotum fit deo, iuramentum homini siue proximo. Item, iuramentum fit per Deum, uotum <ms. iuramentum> autem non per Deum, sed Deo fit. Item, iuramentum finem habet fidem, vnde fit propter necessitatem; uotum autem propter opus et habet finem bonitatem; vnde in iuramento est assertus ut credatur <ms. odeatur>, in uoto est promissio ut compleatur' [In response to the objection about oath-swearing, we must say that the oath is excluded by the details that are included in the definition of a vow. Notice, therefore, why each detail is included in the definition. Firstly, because there are assertive and promissory <sworn affirmations>, in order to show that a vow is not an assertive sworn affirmation but a promissory one, we say 'of a promise'. Again, in order to show that it is not <an affirmation> of a promise of things that are necessary to salvation, we add 'voluntary'. Again, because a promise can be made to a human, we add 'to God'; and because a promise can be made to God about unlawful things, we add 'about things that belong to God', in which it is meant that a vow must be made about good things, not about bad things. At this point the difference compared to an oath is clear, because some oaths are assertive <whereas> vows are not. Again, a vow is made to God, an oath is sworn to a human or a neighbour. Again, we swear an oath by God, but a vow is made not *by* God but *to* God. Again, an oath has assurance as its goal, so it is sworn for the sake of need; a vow, by contrast, is made for the sake of work and has goodness as its goal. Therefore in an oath there is an assertion, so that it may be believed; in a vow there is a promise, so that it may be fulfilled].

for salvation, and therefore the definition stresses that such a promise is spontaneous and not forced. A first significant difference between the vow and the oath therefore concerns the fact that the former requires a completely free decision not forced by necessity, while the latter is legitimate and acceptable from a religious point of view only if it derives from a necessity. This feature is clear also from the assertive character of the statement of the oath, which in fact has the form of a solemn declaration rather than of a solemn promise. In addition, John notes that Peter Lombard's definition clarifies that a vow is a promise made to God only and not to human beings, stressing a double difference from the oath. The latter is, in fact, made to God as a witness of the promise and not as the subject to whom the promise is addressed. Finally, according to Peter Lombard, the vow concerns 'those things which belong to God'; in other words, it is possible to vow only good things and never evil things. By contrast, an oath can concern evil things, and this is because its aim is to establish trust between human beings, and it achieves this result through necessity, while the vow involves an action and its aim is goodness.

On this basis, John concludes, the nature of the oath depends on the need of the statement to be publicly delivered in order to create the required conditions of mutual trust. In contrast, the vow is a promise because it expresses the commitment to perform a good action that must be fulfilled. Certainly, there are formal similarities between the oath and the vow. As John of La Rochelle notes, the vow, as promise which manifests the intention to be subject to an obligation, entails three basic conditions: trust with respect to the conscience of the one who vows, judgment about the cause of the vow in order to not invoke the name of God in vain, and justice, so that what has been promised is licit and just. These same three conditions, as Jerome had stressed in a crucial *auctoritas*, are required also for the oath in order to make it licit from a religious perspective and in relation to the biblical prohibitions on oath-taking.<sup>37</sup> The failure to meet one of these conditions, both in the context of an oath and a

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37 John of La Rochelle, *Quaestiones disputatae de legibus* (A fol. 221ra): 'Votum dicit promissionem cum intentione obligandi, et hoc modo debet habere tres comites, sicut iuramentum, quod debet habere ueritatem respectu conscientie iurantis ut credat esse uerum, iudicium quantum ad causam ne accipiatur nomen Dei in uanum, et iustitiam quantum ad illud quod iuratur ut sit licitum. Similiter uotum debet habere ueritatem ut habeatur in corde quod haberetur in uerbo, debet etiam habere iudicium quantum ad causam ne uoueat indiscrete, et iusticiam ut quod uouetur sit licitum et iustum' [A vow indicates a promise with the intention to be obligated, and in this sense it should have three accompaniments, just like an oath, which should have truth as regards the conscience of the swearer, so that he believes it to be true; judgement regarding the matter at hand, so that God's name is not taken in vain; and justice regarding what is sworn, so that it is lawful. Likewise, a vow should have truth, so that what is contained in the word is contained in the heart; it should also have judgement regarding the matter at hand, so that he does not vow recklessly; and justice, so that what is vowed is lawful and just].

vow, results in evil, but in different ways.<sup>38</sup> An oath taken without justice is a sin, because the one who is swearing is taking on an obligation which is illicit and unjust. Such an oath is illegitimate, and it does not have the force of an obligation. Rather, if the one who is swearing lacks knowledge of the truth, or consciousness of what kind of obligation he is taking, and judgment, or the recognition of the existence of an effective necessity to call God as a witness of his statement, he is certainly committing sin. However, the obligation he is taking is valid, because it is licit. As John notes: ‘He who swears unwisely and against his conscience swears without truth and justice and therefore he sins, but he is still obliged.’<sup>39</sup>

Similarly, in the case of a vow, it is not possible to have obligation if the subject of the promise is illicit or unjust, but while in the case of the oath this determines the loss of obligation and a sin, in the case of the vow, it results in sacrilege. Vowing without judgement, or without the understating of the need to do so, is a sin but does not threaten the obligation taken with the vow, which still maintains its justice and its truth, that is, a correspondence between the statement made through words and the statement in the heart.<sup>40</sup>

## The Sacred but not Sacramental Nature of the Oath

John of La Rochelle’s analysis of the vow as a prescribed law allows for evaluating some key features of the historical evolution of the concept and practice of oath-taking between the 12<sup>th</sup> and early 13<sup>th</sup> centuries. The master’s care for a clear distinction between the notions of a vow, a sacrament, and an oath aims at avoiding every possible ambiguity or confusion among terms which in the early 13<sup>th</sup> century already designate three different things. The development of sacramental theology, throughout

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**38** John of La Rochelle, *Quaestiones disputatae de legibus* (A fol. 221ra): ‘Si ergo aliquod istorum defecerit in uoto uel iuramento, male fit’ [Therefore if any of these <accompaniments> is missing in a vow or an oath, it is made wrongly].

**39** John of La Rochelle, *Quaestiones disputatae de legibus* (A fol. 221ra): ‘Sine autem ueritate et iusticia iurat qui indiscrete et contra conscientiam iurat, et ideo peccat et tamen obligatur.’

**40** John of La Rochelle, *Quaestiones disputatae de legibus* (A fol. 221ra): ‘Differt tamen, quia si in iuramento deficiat iusticia, peccat qui iurat, sed non obligatur, quia illicitum est <quod> iurat. Quando autem deficit ueritas <vel> iudicium, peierat qui iurat et tamen obligatur. Sine iusticia fuit iuramentum quando <Dauid> iurauit occidere Nabal. Sine ueritate et iudicio <ms. iusticia> iurat qui indiscrete et contra conscientiam iurat, et ideo peccat et tamen obligatur. Similiter uotum, si non habet iusticiam, sacrilegium est et non uotum. Si autem deest ueritas <ms. necessitas> uel iudicium, peccat uouens et tamen obligatur’ [There is a difference, however, because if justice is missing in an oath, the swearer sins but is not obligated, because <what> he swears is unlawful. But when truth <or> judgement is missing, the swearer commits perjury, and he is nevertheless obligated. An oath was sworn without justice when <David> swore to kill Nabal (1 Sam. 25:22). Someone swears without truth and judgement when he swears recklessly and against his conscience, and therefore he sins, and he is nevertheless obligated. Likewise a vow that lacks justice is sacrilege and not a vow. But if truth or judgement is lacking, the vow-maker sins and is nevertheless obligated].

the 12<sup>th</sup> century, reveals how a sacrament is a sign of divine things through which God's grace directly operates, marking a clear distinction from the oath which is a human action which calls on God as a witness. More in detail, since the oath establishes an obligation among human beings whose respect depends on the act of swearing before God, the theologians examine the differences between the obligation determined by the oath and that which follows from a sacrament such as marriage. The same kind of analysis allows one to understand the specific features of the vow as a third kind of action that determines an obligation, different from the oath and the sacrament. In this case, as John explains, the obligation which is established is not a relation of mutual trust between human beings whose pact rests upon the calling of God as witness. Vow-taking involves freely and spontaneously submitting oneself to an obligation towards God.

John of La Rochelle's remarks seem to specify that the vow is mainly a religious matter, whose value rests upon its being part of the theological moral order that makes the positive and prescribed laws consistent with the innate and God-given laws. The vow mainly concerns the religious life and its form, and it is the basis for a series of obligations that have a religious and moral value because they submit the one who is vowing to God and they are good in themselves. Since it is a promise made directly to God, a vow that is broken does not involve a simple sin but a sacrilege, or failure in a commitment which is good in itself. By contrast, the oath seems to be considered mainly as a matter of granting trust within the basic social and legal relationships among human beings. Its sacred character does not depend on its own nature but on calling God as a witness, which gives to the statement of obligation the required force. According to Scripture, an oath is not good, but it can be necessary because of the weakness of human nature, which requires to imparting a sacred character to a commitment, in order to give force to the mutual obligation of the contractors.

John's account is certainly part of the historical process of the 'de-sacralization' of the oath which starts in the 11<sup>th</sup> century with the Gregorian Reform. The Franciscan master suggests that while the oath is proper to secular relationships, the vow is the form of obligation which characterises religious life. It is certainly true that the oath still has an important role within the Church, as the decrees of the Fourth Lateran Council suggest. The oath is required for bishops and archbishops, but it can also be asked of laymen, in order to establish an obligation of loyalty to legitimate authorities, both political and ecclesiastical. However, swearing means solemnly stating an obligation before God which involves a mutual relationship between the parties, because, as John of La Rochelle notes, its aim is to grant safety. Therefore, the oath appears as a sort of agreement which concerns an exchange and is based on mutual trust, which is granted by calling on God as a witness. The one who breaks such an agreement commits sin because they are lying before God. Thus, the oath is a useful means of giving stability to human relationships, which is not good, it is necessary for overcoming human weakness. Thus, theological discourse in this period gradually 'de-sacralized' the oath by progressively defining its boundaries: only in

case of need an oath is legitimate and only if it concerns just things does it determine a real obligation. Within the Church the oath does not concern properly what is good in itself but the safety of the *societas christiana*. In other words, it is a means to establishing and defining the legitimacy of ecclesiastical authorities and the exercise of their jurisdiction.

With respect to this secular field, the vow introduces a further level of obligation which is completely religious and involves not the mutual obligation among human beings but the relationship between a human being and God. The concept of vow, which in the 11<sup>th</sup> and 12<sup>th</sup> centuries was closely linked to religious practices and to the crusades, with the mendicant orders became the means to joining an evangelical life-style which is not required but is good in itself, because it imitates the life of Christ and the apostles. From a theological point of view, while the oath gives a sacred value to human obligations, the vow establishes an obligation which recalls the one that Jesus accepted by submitting himself to God's will. The vow is thus part of that ideal of *imitatio Christi*, which was crucial to the rise and success of the mendicant orders and determines relevant effects within the Church. The full sacred character of the vow involves a much more stable relationship of obedience to the ecclesiastical authority, with respect to the oath. The obedience to superiors, in fact, is the only way to fulfil the solemn promise made to God that the vow establishes. According to this perspective, if the oath is reduced and limited in its effectiveness and value, the vow strongly reinforces the building of a monarchic structure within the Church. Quite significantly, Gregory IX justified his excommunication of Frederick II in September 1227 on the basis of the Emperor's unwillingness to honour his crusading vow, and in 1245, Innocent IV used this same justification against the Emperor to obtain the approval of the Council of Lyon to depose Frederick. Since the vow determines an obligation towards God, it is only the Pope, the *vicarius Christi*, who is the final and legitimate spokesman of God's will and therefore the one able to grant an obligation whose violation is not just a sin but a sacrilege.

