

MORAL ABSOLUTES IN THE PREDECESSORS OF ST. THOMAS

JOHN F. DEDEK

Catholic University of America

A STUDY of the doctrine of St. Thomas and St. Bonaventure on moral absolutes was recently published by Franz Scholz.¹ His conclusion is that for Thomas and Bonaventure all concrete moral norms admit exceptions. Norms which implicitly include a value judgment are exceptionless—for instance, the rule against murder (unjust killing). But norms which are expressed in merely factual or descriptive terms (e.g., thou shalt not kill) are not exceptionless. Men must determine which physical actions are to be regarded as murder, stealing, or adultery. This cannot be determined a priori. The presence of a proportionate reason for the physical evil can remove the act from the class of forbidden actions. Accordingly, in his analysis of St. Thomas, Scholz sees a basis for the denial of the existence of any “intrinsically evil acts.”²

A few years ago John Giles Milhaven made a similar study, in which he tentatively concluded that St. Thomas' thought on negative moral absolutes was more akin to contemporary ethical reflection than one would gather from today's Thomists.³ To suggest that Thomas' doctrine on the absoluteness of moral norms had more in common with the teaching of contemporary theologians than with some of his traditional commentators is a startling conclusion. But Milhaven proposed it with appropriate tentativeness. For, he wisely said, to penetrate beyond the

¹ Franz Scholz, “Durch ethische Grenzsituation aufgeworfene Normenprobleme,” *Theologisch-praktische Quartalschrift* 123 (1975) 341–55.

² This reflects the direction of thought of a good number of contemporary Catholic moralists. Cf., e.g., Peter Knauer, S.J., “La détermination du bien et du mal moral par le principe du double effet,” *Nouvelle revue théologique* 87 (1965) 356–76, and “The Hermeneutic Function of the Principle of Double Effect,” *Natural Law Forum* 12 (1967) 132–62; Josef Fuchs, S.J., “The Absoluteness of Moral Terms,” *Gregorianum* 52 (1971) 415–58; Bruno Schüller, S.J., “Direkte Tötung—indirekte Tötung,” *Theologie und Philosophie* 47 (1972) 341–57; Richard A. McCormick, S. J., *Ambiguity in Moral Choice* (Marquette Univ., 1973). The last item, representing McCormick's comments in his “Notes on Moral Theology” in *THEOLOGICAL STUDIES* over the past few years, provides a clear and handy summary of the whole discussion. The debate about situation ethics, of course, is considerably wider than this discussion. A brief but useful summary of the theological background of this larger debate can be found in John G. Milhaven and David J. Casey, “Introduction to the Theological Background of the New Morality,” *TS* 28 (1967) 213–44.

³ John G. Milhaven, “Moral Absolutes and Thomas Aquinas,” in *Absolutes in Moral Theology?* ed. Charles E. Curran (Washington, D.C., 1968) 154–85.

borrowed formulae used by Thomas to the genuine dynamics of his mind requires more than a survey of his works; it also requires an understanding of the historical development of the question up to his time.⁴

These pages intend to supply the immediate historical context in which Thomas wrote his theology, by bringing into review the doctrine of some of the great theologians who preceded him.⁵ The formulae and doctrine of these pre-Thomistic theologians are in themselves an important part of the Catholic tradition. And an understanding of their language and teaching will provide the immediate historical context necessary for an accurate reading of Thomas himself.⁶

PETER OF POITIERS⁷

After the condemnation of Abelard at the Council of Sens, Catholic theologians generally agreed that morality is not merely a question of intention.⁸ Thus Peter of Poitiers rejects Abelard's opinion that all acts are indifferent until they are made good or bad by their end. Then he sets down his own rule: all of man's acts are judged good or bad according to their end, except those *quae sine praevaricatione fieri*

⁴ Milhaven notes that the work of Dom Lottin in the thirties and forties provides valuable material on natural law in the medieval period, but that he never envisioned the contemporary debate and the contemporary theological problematic. Cf. Odon Lottin, *Le droit naturel chez St. Thomas d'Aquin et ses prédécesseurs* (Bruges: Beyaert, 1931); and *Psychologie et morale aux XIIe et XIIIe siècles 2* (Louvain: Abbaye du Mont César, 1948).

⁵ I have made a thorough study of the writings of almost all of the prominent theologians from the time of William of Auxerre to Thomas Aquinas. The most notable omission in this survey is Odo Rigaud, O.F.M. I was able to read Odo's sentence commentary only as preserved in *Cod. Vat. lat.* 5982, which contains only 1, d. 3—3, d. 23. In this segment of his commentary I found nothing pertinent to our question. Also I was unable to consult the *Summa Duacensis* (Douai 434 t. 1, f. 59^v–62^v and 65^v–70^v), since I had available only manuscripts preserved at the Vatican Library. However, I have no reason to believe that either of these authors departed in any substantial way from the doctrine of their coevals. Odo was, in general, an integral part of the Franciscan tradition of his time, and the *Summa Duacensis* was a source of the *Summa de bono* of Philip the Chancellor. Also, I consulted several theologians who wrote before William of Auxerre: Robert of Melun, Gandulf of Bologna, and Peter of Poitiers. Only in Peter did I find anything useful.

⁶ All the manuscript codices of the Vatican Library used in this study have been consulted on microfilm copies which are included in the collection made by Lowrie J. Daly, S.J., and preserved in the Vatican Film Library at St. Louis University. Since these texts are not readily available, I will quote them in full.

⁷ Peter of Poitiers lectured at Paris from 1167 to 1193, when he was made chancellor of the University. He wrote his *Sentences* at Paris between 1168 and 1176, probably before 1170.

⁸ Cf. DS 725. The proposition condemned here hardly reflects the subtleties and nuances of Abelard's thought. For Abelard's original text and an English translation, see D. E. Luscombe, *Peter Abelard's Ethics* (Oxford: Clarendon, 1971).

nequeunt. Some actions are *per se mali*. They do not become good because they are performed out of good will; rather they corrupt the good will that performs them.

However, Peter explains, this rule is not absolute. God is not bound by it, nor are men acting under God's direction. Acts *quae sine praevaricatione fieri nequeunt* can be good and meritorious when done under divine inspiration and out of desire for God's justice. In fact, Peter says, no act is so bad in itself that it cannot become good if it is performed under divine inspiration or command. For God is above all laws and precepts, and man must always obey the lawgiver before any law.⁹

In his discussion of the ten commandments Peter does some casuistry. He inquires whether it is ever licit to act against any of the precepts of the Decalogue. In this context he raises questions about killing, stealing, and lying.

Killing, he says, is forbidden, but it is not always wrong to kill. It is wrong to kill out of hatred but not out of a desire for justice or to defend the truth or the faith. Also, killing can be commanded by legitimate authority both human and divine. Abraham did not sin but merited in willing to kill his son, because he acted out of a desire to fulfil God's command. And a hangman does not sin, because he is authorized by the king for justice' sake. Similarly, stealing is not sinful when it is done in obedience to God's command. The Jews did not sin in despoiling the Egyptians, because they were not motivated by avarice but by a desire to fulfil God's precept. Does this imply that God can command polyandry, because there can be no compensation for that. the natural law has to be understood in more formal terms: "Ideo dicimus quod in lege illa subintelligendum est *injuste*, ne facias *injuste*."¹⁰

Next Peter turns to the question of lying. He accepts Augustine's definition of a lie as the false signification of speech with the intention of deceiving, and argues that every lie is a sin since it is an abuse of speech, which is a gift of God. If a man lies *ex duplicitate animi*, he commits a mortal sin. If he lies for the welfare of his neighbor or jokingly, he commits at least a venial sin. Thus, the midwives who lied to the king of Egypt to save the Jewish children committed a venial sin.

Then Peter inquires about Jacob. Did Jacob lie when he said that he was Esau in order to deceive his father? Peter first notes the opinion of some who said that Jacob was speaking figuratively: when he said that he was Esau, he merely meant that he was the one coming for Esau's blessing, and he did not act out of malice but from a command of the Holy Spirit. Then Peter gives his own explanation, distinguishing

⁹ *Sententiarum libri quinque* 2, c. 16, col. 1003 (published in PL 211).

¹⁰ *Ibid.* 4, c. 4, col. 1151-52.

between a false statement and a lie: "Jacob dixit falsum sed non est mentitus." Jacob's false statement was not a lie, because he did not speak against his mind or conscience. His mind or conscience dictated that he obey the Holy Spirit, under whose impulse he spoke. Nor did Jacob intend to deceive his father, even though he said what he knew was false and persuaded his father to believe it. Jacob, therefore, spoke contrary to what he knew was true but not against his conscience. The same principle applies to every kind of evil act: when done under God's command, they become good and meritorious. But how can the Holy Spirit be the cause of what is false? Peter answers by again distinguishing a false statement from a sin: the Holy Spirit is the cause of the false statement but not of real falseness, which is had when one departs from God by unfaithfulness.¹¹

In his treatment of marriage Peter raises questions about incest, divorce, fornication, and polygamy. On incest, Peter constructs the case of a man who unwittingly marries his sister, later learns that she is his sister but cannot prove it, and she asks him to render the marriage debt. Peter records three opinions: (1) the couple must separate; (2) the man may render the debt when asked but should not seek it; (3) the couple are married and both are held to the debt. Peter seems to favor the last opinion. He argues that in such matters one should follow the judgment of the Church even when it is wrong, just as one ought to hang a legally convicted man even if he is innocent.

On the *libellum repudii* Peter says that Moses permitted the Jews to divorce their wives in order to prevent a greater evil; for the Jews would have killed their wives if they were not allowed to divorce them. But even though they were permitted by Moses, these divorces were mortal sins. Moses did not punish them temporally, but God punished them eternally. Therefore a man who divorced his wife and married another did not enter a true marriage with her. Nonetheless, Peter says, sexual intercourse with the second woman was not fornication; for there were few believers at the time and it was necessary to procreate children who would worship the one God. For the same reason polygamy was allowed. A man was permitted to have one woman as wife and others as concubines for the purpose of increasing the number of God's people.¹²

WILLIAM OF AUXERRE¹³

William of Auxerre tells us that God has written in man's heart the law of nature by which he knows that certain things are sinful. Some

¹¹ Ibid. 4, c. 5, col. 1153-56.

¹² Ibid. 5, c. 17, col. 1261-64.

¹³ William of Auxerre was one of the great secular masters at the University of Paris at the beginning of the thirteenth century. He composed his *Summa aurea*, a

things would be sins, he says, even if they were not forbidden. For instance, fornication and adultery are forbidden because they are evil; they are not evil simply because they are forbidden.

Why are they evil? They are evil, William says, because man does them evilly ("quia ea male utitur homo"). Sinning means spurning the immutable good and adhering to a mutable one, joining oneself in love to a creature rather than God and seeking happiness there rather than in Him. Thus, to delight in a creature is harmful to man and to do so willingly is a sin.¹⁴ Accordingly, William explains, certain acts are forbidden because they are evil, and they are evil precisely because they are acts done *ex libidine*, out of selfish desire to delight in a creature.¹⁵

But suppose someone sins against a commandment but does not do so *ex libidine*; then it would seem that he sins only because the act is forbidden. William responds that such a supposition is neither intelligible nor possible; for when a man acts against a divine command, there is a privation of the order which should exist between subject and superior, and such a privation of obedience proceeds *ex libidine*.¹⁶

Acts which are evil only because they are forbidden, e.g., Adam's eating the apple, are against the law of God but can be ordered to a good end. But actions which are forbidden because they are evil, like stealing and fornication, cannot be ordered to a good end. The reason for this, William explains, is that adultery and stealing, in so far as they are such (*in quantum talia sunt*), already include an evil end: enjoying a creature independently of God. However, in themselves (*in quantum in se est*) these acts can be referred to a good end. This is clear in the case of the Jews who took the Egyptian treasures out of Egypt. Here an act which would have been stealing was not stealing because it was done in obedience to God's command.¹⁷

In his discussion of natural law William considers the possibilities of change and dispensation. On the question of change he distinguishes precepts, prohibitions, and demonstrations of natural law. A precept is: do unto others as you would have them do unto you. A prohibition is: do not do to another what you do not want done to you. And under this general prohibition the more specific prohibitions of the Decalogue are contained, e.g., do not kill, steal, etc. The precepts and prohibitions, William says, bind at all times and without qualification.

The demonstrations, however, oblige only at certain times and with qualification. Situations can arise in which their opposites are licit.

commentary on the *Sentences* of Peter Lombard, after 1215, perhaps after 1222, certainly before 1229.

¹⁴ *Summa aurea* (Frankfurt, 1964) f. 71^r.

¹⁶ *Ibid.*, f. 71^v.

¹⁵ *Ibid.*, f. 71^v.

¹⁷ *Ibid.*, f. 86^r.

For instance, it is a demonstration of natural law that all things be owned in common. That was the rule in the state of human nature before the Fall. But it is no longer a precept in the avaricious state of corrupt nature; if it were, it would be destructive of the state. In a time of extreme necessity, however, everything again becomes common, because natural reason dictates that man should care more for his neighbor's welfare than for temporal goods.¹⁸

Then William inquires whether a dispensation from precepts of the natural law is possible. He answers that some things are of first necessity, and from them no dispensation is possible. Other things are of second, third, or fourth necessity, and here dispensations are possible.

Of first necessity, he explains, are those things without which the image of God and charity cannot be preserved, e.g., loving God. Of second necessity are those things which are useful but not necessary for the preservation of the image of God. Thus, it is of second necessity to have only one wife; for if a man has more, he will more easily lose charity because of jealousy and discord among his wives. Of third necessity are those things which oblige because of a human act, like a vow, or which oblige some men but not all, like a counsel. Of fourth necessity are those things which have been instituted by ecclesiastical authorities. No dispensation is possible from what is of first necessity, because men cannot dispense and God does not will to. In everything else a dispensation is possible if there is compensation.

Thus, God dispensed the holy men in the Old Testament so that they could have more than one wife. They maintained their purity of body and soul because they did not use their wives for pleasure but to raise up children to worship God. However, William is unwilling to say that God has dispensed from the precepts against killing and stealing. The command against killing, he says, must be understood fully to read: you shall not kill on your own authority. Nor did God dispense the Jews from the precept against stealing. Rather God who owns everything gave the Jews the Egyptian treasures.

At this point William blurs his earlier distinction between things of first and second necessity. He says that a dispensation from things of second necessity is possible, but not completely. That is to say, it is not possible to dispense from things of second necessity in so far as they participate in what is of first necessity. Then he adds: of first necessity are those things which naturally oblige from the beginning both in general and in particular.¹⁹

William's meaning is not altogether clear here. But it seems he is saying that God not only did not but cannot dispense from certain precepts of natural law, like those against unauthorized killing and

¹⁸ *Ibid.*, f. 153^v.

¹⁹ *Ibid.*, f. 155^r.

stealing. This position is in accord with the one he will take when he later asks whether God can command a man to act contrary to the precepts of the Decalogue.

Before inquiring whether God can command men to act contrary to all the precepts of the Decalogue, William explains some language which will have considerable influence on the theologians to follow him. Discussing the problem of Abraham's immolation of Isaac, he distinguishes between *malum in se* and *malum secundum se*. *Malum in se* is an act which is evil in the abstract (*nulla circumstantia addita*) but becomes good with the addition of a good circumstance, e.g., homicide. *Malum secundum se* is an act which cannot become good through the addition of any circumstance, e.g., fornication. God was able to command the sacrifice of Isaac because it was not *malum secundum se*. It was only *malum in se*, which became good for Abraham because of the added circumstance of obedience to God.

Natural law, William explains, is what natural reason dictates is to be done. It was not against natural law for Abraham to kill his son. Rather it was in accord with natural law, since natural reason dictates that this is to be done because God commands it. And God can command it because homicide is not *secundum se malum*.²⁰

William then inquires about the power of God over the precepts of the Decalogue. He answers that God can command against all of them provided that (1) there is compensating utility and (2) what He commands is not *secundum se malum*. God can command the killing of heretics and polygamy, because there is compensation. He cannot command polyandry, because there can be no compensation for that. And there are some things, like fornication, which He cannot command at all, because they are *secundum se malum*. Even though fornication is a lesser evil than homicide, the malice of fornication is inseparable from it: "fornicari importat deformitatem."

But if this is so, how was it possible for God to command the Jews to steal from the Egyptians, since stealing is *secundum se malum*? William answers that the Jews did not really steal in that instance, because God who owns all things transferred ownership to them.²¹ God, however, does not transfer ownership of interest to the usurer, so that the usurer takes what belongs to another while it still belongs to the other. Therefore usury is stealing, *secundum se malum*, and God cannot command it.²²

On the question of lying, William repeats Augustine's definition: the false signification of speech with the intent to deceive. The false signification is, as it were, the matter of a lie, and the intention to

²⁰ *Ibid.*, f. 167^r.

²² *Ibid.*, f. 223^r-223^v.

²¹ *Ibid.*, f. 167^r-167^v.

deceive is like the form. Therefore a jocose lie, in which the intention is not to deceive but to provoke laughter, is not properly a lie. But to tell a lie in order to save another's life is something else. Such a lie is sinful for a perfect man who does not care about temporal things like gold, silver, or temporal life. If motivated by venial love of temporal things, his lie is a venial sin; if motivated by mortal love of temporal life, it is a mortal sin. The imperfect man, on the other hand, can lie in such circumstances, because he is not as free from the love of temporal things.²³

Did Jacob lie when he said he was Esau? No, because Jacob spoke under the inspiration of the Holy Spirit, in whom there is no duplicity. Jacob did not speak properly but transumptively: he did not say that he was Esau personally but only virtually, i.e., in respect to his birthright.²⁴

On the questions of the *libellum repudii* and polygamy in the Old Testament, William says that divorce was still sinful for the Jews; Moses merely tolerated divorce in order to prevent uxoricide.²⁵ However, God did dispense the kings and patriarchs (but not the masses) from the natural law precept against polygamy because of the needs of the time. Polygamy is *in se* but not *secundum se malum*. In dispensing from the law against polygamy, God did not dispense from the essence of the virtue of charity, which is immutable, but only from a work of charity, which can vary. The substance of the rule against polygamy is that a man not divide his flesh unless God dispenses. But if God dispenses, fidelity to God takes precedence over fidelity to one's wife.²⁶

WILLIAM OF PARIS²⁷

William of Paris describes the natural law as inscribed in human hearts obliging man to its observance. It is divine law, inspired by divine authority and inscribed as it were by God's own finger. It is born with human nature and is inseparable from it. It obliges with an indissoluble and indispensable bond.²⁸

Nonetheless, God did in fact dispense the holy kings and patriarchs, so that they were able to have many wives and concubines without falling from holiness; for God knew that they would keep faith with all their women, more so than some men do today with only one wife. He also knew that they would approach their women not out of carnal lust

²³ *Ibid.*, f. 216^r.

²⁵ *Ibid.*, f. 289^v.

²⁴ *Ibid.*, f. 217^v.

²⁶ *Ibid.*, f. 286^v-287^r.

²⁷ William of Paris (William of Auvergne), master of theology at Paris from 1223 and Bishop of Paris from 1228 until his death in 1249, composed some thirty monographs, which were gathered together to form a kind of Christian encyclopedia, the *Magisterium divinale*.

²⁸ *Opera omnia* (Paris, 1674) p. 20.

but to raise up children to worship the one God. Therefore God who founded the laws of marriage dispensed from them when He chose.²⁹

In his discussion of conscience William says that it is never licit to act against one's conscience. But it does not follow from this, he says, that it is always obligatory to act according to it; for there are some acts which conscience cannot make good no matter how much it dictates that they are good. These are acts which are *in se mali*. These acts are *per se* or essentially evil, i.e., evil from the very fact that they are such as they are named: adultery in so far as it is adultery, perjury in so far as it is perjury, robbery in so far as it is robbery.³⁰

PHILIP THE CHANCELLOR³¹

In his *Summa de bono* Philip the Chancellor inquires whether God can command something contrary to natural law. Philip searches more deeply into the doctrine of his predecessors. Why, he asks, did earlier authors say that God can order a man to act against the commandment forbidding killing and not against the commandment forbidding adultery? Earlier authors explained that God cannot command adultery because adultery has a deformity in itself. But, Philip notes, Isaac was innocent, and killing an innocent person also has a deformity in itself.³² Besides, the fact is that God did order Osee to commit fornication.³³

In his solution Philip distinguishes between qualifications of the matter of an act and qualifications of its end. There are some dispositions in respect to the end, e.g., sexual intercourse for the purpose of generation or for one's own pleasure. There are also dispositions in respect to the matter, e.g., sexual intercourse with one woman in marriage. God in no way prescribes against a disposition regarding the end. Therefore He never commands a man to have intercourse for the sake of selfish pleasure. Since this is what is implied in fornication, God never commands it. Such a command would be against Himself, who ought to be the end of the deed.

But sometimes God does prescribe against the dispositions regarding the matter, e.g., to have intercourse with many women, as Jacob did, or to have intercourse with a woman other than one's wife, as Abraham did.³⁴

²⁹ Ibid. 25.

³⁰ Ibid 526-27.

³¹ Philip the Chancellor began teaching theology at Paris sometime before 1210. He was appointed chancellor of the Diocese of Paris in 1218 and held that important post until his death in 1236. He composed his *Summa de bono* near the end of his career, probably around 1230.

³² *Cod. Vat. lat.* 7669, f. 142^r.

³³ Ibid., f. 142^v.

³⁴ Ibid., f. 142^v: "Unde attendendum est quod sunt dispositiones quedam respectu

With this distinction Philip responds to the objections. Innocence is a disposition of the matter, not of the end. Knowingly to kill an innocent man is against natural law, because it is against what nature as reason dictates. But it still does not involve a disposition regarding an end on account of which it could not be done on the authority of a superior, namely, the law or God. Therefore, if a judge knows in his conscience that a man is innocent even though the legal evidence is to the contrary, he judges according to the evidence, and the law kills the innocent man. A fortiori, if God commands Abraham to kill the innocent Isaac, Abraham must obey. But if one knowingly kills an innocent man on his own authority, selfish desire enters in, and there is nothing to which the act can be referred like the love of justice and the good of obedience.³⁵

If a disposition regarding the end is brought in, the case is quite different. For instance, God does not command against these precepts: do not kill out of a desire for revenge, or do not commit fornication; for in these precepts selfish desire is forbidden. If God commanded this, He would be commanding against Himself.³⁶

The same thing, Philip adds, must be said about stealing. Even when He commanded the Jews to take the Egyptian vessels, God did

finis, quedam respectu materie. Dispositiones vero que sunt respectu finis notantur per hanc dictionem propter, ut cum dicitur propter generationem, propter voluptatem explendam. Dispositiones que sunt respectu materie notantur cum dicitur cognoscere unam coniugatam. Contra dispositiones que sunt ad finem nequaquam precipit Deus. Unde non precipit cognoscere causa voluptatis, hoc est ex libidine. Unde cum hoc importetur per mechari, nequaquam Dei est precipere mechari. Hoc enim esset precipere contra se qui debet esse finis operis. Sed precipere Dei est non numquam contra dispositiones que sunt quantum ad materiam, verbi gratia, cognoscere plures simul vel habere ut fecit Jacob . . . vel cognoscere non coniugatam ut Abraham scilicet ancillam Agar."

³⁵ *Ibid., f. 142^v: "Ad aliud quod obicitur de hoc occidere innocentem responsio est, si dicatur non occidas hominem, non occidas hominem innocentem, non notatur dispositio respectu finis sed tantum ex parte materie, quia innocentia dicit dispositionem materie. . . . Occidere autem innocentem scienter erit contra ius naturale, quia est contra id quod dicat natura ut ratio. Sed adhuc non implicatur dispositio respectu finis propter quem non possit fieri auctoritate superioris. Superior autem est lex et super hanc et Deus. Ex hoc est quod si iudex secundum conscientiam suam scit ipsum innocentem, si probationes sunt pro opposito, iudicabit secundum probationes. Et iste non occidit sed lex cuius est minister secundum quam habetur pro nocente qui innocens. Multo magis si Deus precipit innocentem occidi ut Isaac erit obediendum ut Abraham fecit quia presumitur de causa. Si autem quis sciens innocentem innocentem auctoritate sua interficiat, ibi libido implicatur quantum ad propriam voluntatem, nec est ad quod referatur ut est quando fit amore iustitie et propter bonum obedientie."*

³⁶ *Ibid., f. 142^v-143^r: "Si autem importetur dispositio ad finem secus est, ut cum precipitur, non occides zelo vindicte, non vindicabis iniurias tuas. Contra hoc non precipit Deus, quia prohibetur libido vindicte, sicut in illo precepto, non mechaberis, prohibetur libido. Et hoc esset precipere contra seipsum."*

not command stealing. Stealing is taking another's goods against the will of the owner. The Jews, acting on the authority of God, took the treasures against the will of the Egyptians but not against the will of the higher owner, who is God.³⁷

Finally, the case of Osee is no problem. God was able to command Osee to join himself to a harlot, because in this act there is involved a disposition of the matter but no disposition in regard to the end. But it does not follow from this that God could have commanded fornication, because in this there is an evil disposition, which God cannot command.³⁸

ALEXANDER OF HALES³⁹

Alexander of Hales inquires: since mortal sins are opposed to the divine goodness, how is it possible that God in the Old Testament commanded homicide, fornication, and stealing? He answers that (1) God did not command Abraham to kill his innocent son but only to offer his son in sacrifice, which is an act of the will; (2) God did not command Osee to fornicate but to join himself to a harlot in marriage; and (3) God did not command the Jews to steal but transferred ownership of the Egyptian vessels to them.⁴⁰

In another place Alexander asks why homicide is licit for a good end but not stealing or lying. He answers that homicide is only *malum in genere*, whereas stealing and lying are *circa materiam indebitam cum duplici circumstantia mala*.⁴¹ By *malum in genere* Alexander means a bad action considered abstractly, i.e., without any of its concrete circumstances.⁴² Therefore its moral character is not yet determined: it may be done for a good end. Thus, killing may be done out of a desire for justice but not revenge.⁴³

³⁷ Ibid., f. 143^v: "Eodem modo dicendum est quod Deo non convenit precipere contra hoc mandatum, non furaberis, dicendo furari. Nec quando precipit quod asportarent ebrei vasa egyptiorum precepit furtum, quia furtum est contrectatio aliene rei invito domino. . . . cum factum sit auctoritate Dei, non est factum invito domino scilicet superiori, etiam posito quod factum sit invitis egyptiis, quod verum est."

³⁸ Ibid., f. 142^v: "Ad aliud quod obicitur . . . quod Dominus precipit Osee quod misceret se fornicarie, responsio est quod Dominus potuit hoc precipere, quia in hoc continetur ut dispositio respectu materie et non dispositio respectu finis. Sed ex hoc non sequitur quod potuisset precipere fornicari, quia in hoc continetur dispositio mala et hanc precipere non potest."

³⁹ Alexander of Hales became master of theology at Paris around 1221 and *magister regens* at least by 1229-31, continuing in this post until his death in 1245. He composed his *Commentary on the Sentences* between 1223 and 1227, and his disputed questions *De polygamia et secundis nuptiis* and *De repudio et divortio* between 1226 and 1236.

⁴⁰ *Glossa in quatuor libros Sententiarum* (Quaracchi, 1954) 1, d. 48, 12.

⁴¹ Ibid. 2, d. 40, 3.

⁴³ Ibid. 1, d. 48, 12.

⁴² Ibid. 2, d. 40, 2; 2, d. 36, 8.

But why are stealing and lying different? Alexander simply says that they include two evil circumstances. The laconic style of Alexander's glosses often makes him difficult to understand, and the present text is a good instance. A variant and probably spurious reading in another manuscript attempts an interpretation: "furtum autem circumstantiam malam importat; sed illud dupliciter potest intelligi: vel de dominio caelesti aut terreno; mendacium autem intentionem pravam."⁴⁴ If this text renders Alexander's meaning, then he seems to be saying that stealing implies an injustice, since it is opposed to the right of ownership either of another man or of God. And lying includes an evil intention.

In his discussion of the Ten Commandments Alexander says that killing is justified if it is related to justice and the common good rather than revenge or *libido occidendi*.⁴⁵ But lying is not so easily justified. He distinguishes between lies *simpliciter* (malicious lies, which intend the deception of another) and lies *secundum quid* (jocose lies, which do not intend another's deception but run the risk of deceiving him). Then he says that it is not a mortal sin to intend to deceive someone for the benefit of one's neighbor.⁴⁶

But the objection is raised that all lies are in fact mortal sins, for all lies are *ex libidine*. But *libido* is defined by Augustine as the preferring of temporal goods to eternal ones, and that is mortal sin. Alexander replies that *libido* is equivocal. Sometimes it is used in Augustine's sense of a bad will desiring illicit temporal goods for their own sake.⁴⁷ In this sense jocose lies are not *ex libidine*, although they can be.⁴⁸

After saying that *libido* is equivocal, Alexander neglects to tell us what its other meaning is. A variant reading of the text supplies the omission: *libido* sometimes simply means *placencia*, a desire to be pleased or self-indulgence.⁴⁹

Discussing polygamy, Alexander notes that no dispensation is given from the natural-law precepts which announce man's obligations to God, but dispensations sometimes are given from those natural-law precepts which describe men's obligations to each other. For instance, God dispensed the patriarchs from the obligation of monogamy, so that

⁴⁴ Ibid. 2, d. 40, 3 (Erford, Bibl. Civit., cod. Amplon. 0. 68).

⁴⁵ Ibid. 3, d. 37, 5.

⁴⁶ Ibid. 3, d. 38, 2-3.

⁴⁷ In this context Alexander gives Augustine's definitions of *libido*: (1) "Cupiditas porro improba voluntas est. Ergo improba voluntas malorum omnium causa est" (*De libro arbitrio* 3, 17, 48 [PL 32, 1295]); (2) "Quam [libidinem] esse iam apparet earum rerum amorem, quas potest quisque invitatus amittere" (ibid. 1, 4, 10 [PL 32, 1227]); (3) "Animi appetitus quo aeternis bonis quaecumque temporalia praeponuntur" (*De mendacio* 8, 10 [PL 40, 496]).

⁴⁸ *Glossa in Sent.* 3, d. 39, 9.

⁴⁹ Ibid. 3, d. 38, 19 (London, Bibl. Lambeth, cod. 347).

they could increase the number of true believers. Thus the patriarchs did not act against nature; they acted in accord with a superior nature which came from their good purpose. Lamech, on the other hand, sinned because he used many women *ex libidine*, not to generate children to worship God.⁵⁰

In his disputed question *De polygamia et de secundis nuptiis* Alexander says that Lamech committed adultery, for an adulterer is one who does not seek children but only to satisfy inordinate desire (*explere libidinem*). But how did the patriarchs' desire for children excuse them from an adulterous act? In response Alexander appeals to the inspiration of God. God's inspiration was known from three facts: (1) God commanded that a man adhere to his wife; (2) He also promised to multiply His people; and (3) Rachel was sterile.⁵¹

Finally, in his disputed question *De repudio et divortio* Alexander adopted the common doctrine on divorce: Moses permitted divorce as a lesser evil, i.e., he did not punish it temporally, but it was still sinful.⁵²

HUGH OF ST. CHER⁵³

Hugh of St. Cher inquires whether every action is good. He notes that there are two opinions on this question and both are true. One opinion is that every external action is in itself indifferent and can be either meritorious or blameworthy. For instance, to steal is evil but not *in se*, i.e., in its essence; for stealing is taking something which belongs to another against his will. To take something is in itself good. But when I add that it belongs to another and is taken against his will, I am not describing the essence of the action but its circumstances or matter. Therefore the action becomes bad in so far as the will is referred to it.

The other opinion is that there are three kinds of actions. Some actions are good *in se*: they belong to the genus of good actions, although in some instances they are bad. Other actions are evil *in se*: no matter what their purpose or end, they are always evil, e.g., theft, fornication, and the like. And other actions are indifferent, e.g.,

⁵⁰ Ibid. 4, d. 33, 2.

⁵¹ *Quaestiones disputatae antequam esset frater* (Quaracchi, 1960) 3, q. 60, 17-19.

⁵² Ibid. 2, q. 59, 5. Cf. *In 1 Sent.* d. 47 (loc. cit. 7). But in another place (*Glossa* 4, d. 34, 7) he seems to say that divorce was sinful only for those who divorced their wives out of hatred and took another out of lust. This seems to be the author's meaning, although it is possible that he is referring to polygamy rather than divorce in the context.

⁵³ Hugh of St. Cher, O.P., was among the first Dominicans at the University of Paris, where he taught from 1230 to 1235. During this period he wrote his *Commentary on the Sentences*. In 1244 Hugh was made a cardinal and was instrumental in sending St. Thomas to Paris.

walking down the street: these are good or bad depending on one's intention.

Then Hugh says that these two opinions are not contrary: they are both true. For the first says that actions like stealing and fornicating are good *in se*, i.e., in their essence. The second says that they are bad in their whole being, i.e., in so far as they are qualified by those circumstances which give them their name; for stealing names the act in accord with its bad circumstance.⁵⁴

Does God will evil actions? It would seem that since God wills the act which is fornication, He wills fornication. Hugh responds that God wills the act which is fornication but in no way does He will fornication; for, he says, fornication is the name of a deformed action in so far as it is deformed: "fornicatio nomen est actionis deformis in quantum deformis."⁵⁵

In Hugh's discussion of the Ten Commandments he says that every lie is a sin if the liar's intention is to deceive. However, when Jacob said he was Esau, he spoke under the impulse of the Holy Spirit, in whom there is no duplicity. Jacob was not speaking personally but transumptively: he only meant that he was Esau in so far as his birthright was concerned.⁵⁶

⁵⁴ *Commentarium super sententias. Cod. Vat. lat. 1098, f. 78^v*: "Duas opiniones ponit magister in capitulo. Prima dicit quod omnis actio exterior in se indifferens est, quia non est aliqua actio alicuius specie cuius aliqua non possit esse meritoria et demeritoria. Et ita omnis actio indifferens quo ad meritum et demeritum. Hec enim actio furari sit mala non tamen in se, id est in essentia sua. Furari enim est accipere rem alienam invito domino. Accipere quid in se bonum est. Sed quod dico rem alienam invito domino non sunt de essentia actionis, sed sunt circumstantie sive materia. Unde actio fit mala prout voluntas ad illa refertur. Secunda opinio dicit quod tria sunt genera actionum. Sunt quedam in se bone, id est de genere bonorum, licet in singulari aliquo sint male. Alie sunt in se male et quocumque fine fiant semper in se male sunt, ut furari et fornicari. Et huiusmodi semper in se male sunt. Tertium genus actionum continet indifferentia, ut ire per stratum. Tales sunt bone [et] male ex intentione. Et nota quod iste due opiniones non sunt contrarie. Immo utraque vera est. Nam iste actiones furari, fornicari bone sunt in se secundum primam opinionem, id est in essentia sua. Secundum aliam opinionem sunt male in se, id est in genere suo. In prima opinione hoc pronomen se respicit tantum essentiam actionis, in secunda totum esse actionis, id est actionem vestitam suis circumstantiis sub quibus significatur suis nominibus. Furari enim nominat actionem sub circumstantia mala."

⁵⁵ *Cod. Vat. lat. 1098, f. 76^v*: "Ad quartum dicimus quod hoc est falsum, Deus vult istum fornicari. Nec est aliquo modo concedendum, quia fornicatio nomen est actionis deformis in quantum deformis."

⁵⁶ *Ibid.*, f. 123^v-124^v: "In perfecto mendacio duo sunt, id est falsa vocis sive signi significatio que est quasi materia mendacii et intentio fallendi que est quasi forma, et perfectio mendacii dicitur intentio fallendi. . . . Dicimus ergo quod omne mendacium perfectum peccatum est. Aliquando autem accipitur secundum esse materiale verbi [?], et sic potest esse sine peccato, neque proprie dici potest mendacium. . . . Ad secundum dicendum similiter quod mendacium logicorum non est peccatum sed materiale menda-

In the same context Hugh explains that the morality of swearing is determined by the circumstances. But, he notes, some actions are good or bad independently of any circumstances. They are good or bad *in se* and *secundum se*, so that no added circumstance can change their moral character. An example of a good act *secundum se* is loving God for His own sake above all else. An example of an evil act *secundum se* is fornication and everything which from its very name is joined to evil.⁵⁷

Hugh's teaching on polygamy is the same as his predecessors': God dispensed the patriarchs from the natural law because of the needs of the time.⁵⁸ A good reason alone, Hugh insists, is not enough to justify polygamy; God's dispensation also is necessary.⁵⁹

ROLAND OF CREMONA⁶⁰

Roland of Cremona inquires about the possibility of dispensations from natural law and takes the same approach as William of Auxerre. Certain things are of first necessity, others are of second, third, or fourth necessity. Of first necessity are things necessary for salvation and the conservation of the image of God, e.g., love of God and

cium, quia non intendit fallere sed per exercitium veritatem invenire. . . . Jacob non est mentitus cum dixit, ego sum Esau, quia instinctu Spiritus Sancti locutus est in quo non est duplicitas. Locutus est autem transumptive . . . sicut Dominus quando dixit de Joanne Baptiste ipse est Elias non personaliter sed virtute. Et similiter [?] Jacob dixit, ego sum Esau, non personaliter sed debite primogeniture. Ad id quod obicitur dicendum quod non intendebat persuadere patri se esse Esau sed tantum ne perciperet ipsum esse Jacob."

⁵⁷ Ibid., f. 126^v: "Distinguendum quedam esse bona in se et secundum se, quia nullo modo mala possunt fieri, ut diligere Deum propter se et super omnia. Quedam sunt mala secundum se, quia nulla circumstantia possunt fieri bona, ut fornicari et omnia [?] que statim nominata coniuncta sunt cum malo."

⁵⁸ Ibid., f. 181^r: "De iure naturali est quod unius viri iuncta sit uxor et e converso. Sed Dominus secundum exigentiam temporis ut unus possit habere plures sinit. . . . Ad primam ergo quod obicitur concedimus quod habere plures uxores simul est contra ius naturale. Naturalis enim est lex inscripta naturaliter cordi humano [et] dictat ut unus uni adhereat coniugali affectu. . . . Non tamen sequitur quod antiqui patres peccaverunt contrahendo cum pluribus. Non fecerunt hoc ex propria voluntate sed ex Dei dispensatione per quam illud ius commune inscriptum cordi hominis relaxatum fuit ad tempus. . . . Ad secundum dicendum quod Lamech peccavit, quia non fuit dispensatum cum eo, sed ex libidine plures accepit. Ad tertium dicimus quod habere plures non est malum secundum se sed in se sicut occidere hominem."

⁵⁹ Ibid., f. 181^r: "Ad id quod primo obicitur, id est quod tantum sunt duo viri et multe mulieres, dicimus quod nec tunc naturalis ratio dictat ut unus accipiat plures nisi ex dispensatione Dei. Unde habere sive accipere plures ex Dei dispensatione non est contra ius naturale. Sed habere plures est contra ius naturale."

⁶⁰ Roland of Cremona, O.P., originally from the University of Bologna, was the first Dominican master at Paris, where he taught from 1229 to 1230. Succeeded by Hugh of St. Cher as master at Paris, he went to Toulouse, where he composed his *Summa* around 1233.

neighbor. Here no dispensation is possible. Of second necessity are things that help to conserve the image of God and to increase virtue but are not essential for this purpose, e.g., having only one wife. Here dispensations are possible, and God in fact has given them.⁶¹

However, God did not dispense the Jews from the precept against stealing when they took the Egyptian treasure. Rather God who owns everything gave the Egyptian vessels to the Jews.⁶²

Finally, Roland notes, God cannot command anything in which there is deformity, i.e., which is *malum in se et secundum se*. He can command homicide, which is only *malum in se*; but He cannot command fornication, which is *malum in se et secundum se*.⁶³

SUMMA FRATRIS ALEXANDRI⁶⁴

The *Summa fratris Alexandri* asks whether God can command actions contrary to the natural law. In response the author distinguishes three senses of *necessarium*: (1) *stabile*, (2) *inviolabile sive immobile*, and (3) *incommutabile*. *Necessarium stabile* are ecclesiastical laws and religious rules: these can be changed only by the proper authorities. *Necessarium immobile* are the laws promulgated by God, e.g., His prohibitions of killing, adultery, and stealing: these can be changed only by God. *Necessarium incommutabile* are things so established in divine reason that even God cannot change them, e.g., His command of love and the precepts of the first tablet; for if God

⁶¹ *Summa. Cod. Vat. lat. 729, f. 138^v*: "Ad ea que quesita sunt dicendum quod quedam sunt que sunt necessitatis prime, et quedam sunt que sunt necessitatis secunde, et quedam tertie, et quedam quarte. Illa sunt necessitatis prime sine quibus non est salus et non conservatur similitudo Dei, ut est diligere Deum et proximum. Contra talia non potest esse dispensatio. . . . Secunde necessitatis sunt illa que valent ad conservationem similitudinis Dei et ad augmentum virtutis et tamen sine illis potest salvari caritas et similitudo Dei, ut est illud unicam esse unici. . . . Contra talia que sunt secunde necessitatis potest dispensare et dispensavit Deus cum patriarchis."

⁶² *Ibid.*, f. 439^v: "Ad ea que quesita est dicendum quod omnia sunt Dei et potest dare cui vult [?]. Unde non refert quod asportaverunt illa vasa, dum modo precepto Dei hoc fecerunt. Et ita patet, quod non fuit ibi dispensatio contra furtum, quoniam non erat furtum, cum furtum sit contrectatio rei aliene, et ebrei asportando [?] illa vasa non contrectabant aliena immo sua."

⁶³ *Ibid.*, f. 500^r: "Deus non potest precipere aliquid in quo sit deformitas, et id est malum in se et secundum se. Unde non est simile . . . quoniam fornicari est malum in se et secundum se; occidere autem est tantum malum in se et non secundum se."

⁶⁴ The *Summa fratris Alexandri* is a compilation taken from various sources, especially from the pre-existing writings of Alexander of Hales and John of La Rochelle. It is the work of more than one redactor; the most important of these were Alexander himself to some extent and especially John of La Rochelle. This monumental collection was begun after 1236 and was practically completed in the year of Alexander's death, 1245.

commanded contrary to charity or faith, He would be commanding against Himself.⁶⁵

The next article inquires whether God can command or prohibit something contrary to the moral law of the Decalogue. After noting some earlier approaches to this question, the author says that natural law does two things: it orders the creature to God, and it orders the creature to himself and other creatures. God can command against natural law in so far as it orders creatures to creatures, but not in so far as it orders creatures to God. God is above natural law in one sense but not in the other, just as He is not above Himself.⁶⁶

Practically, this means that God can command a man to take another's property (*accipere rem alienam*) or to have sexual intercourse with a woman who is not his wife (*coire cum non sua*), because such things only bring about the privation of right order among creatures. But God cannot command theft or fornication, because theft and fornication imply that the act is done *ex libidine*, which involves a privation of order toward God.⁶⁷

In Book 2 the question of incest is raised. Specifically the author inquires: Is incest *malum secundum se*? He answers that incest as such (*in quantum huiusmodi*) is *malum secundum se*. But what counts as incest depends on the limits that are set by divine or ecclesiastical authority. Incest is sexual intercourse with a prohibited person. At the time of Adam the only limits set by God were between father and daughter or mother and son. Therefore sexual intercourse between brother and sister was not incest. As time went on, God and the Church set other limits. Accordingly, incest is always *malum secundum se*. But what is reputed as incest at one time is not at another. If the human population were to shrink again to a very small size, as it did in the time of Noah, God's dispensation could again make sexual intercourse of brothers and sisters and other relatives licit: "auctoritate ergo divina licitum esset quod sua auctoritate esset illicitum." But, the author insists, from the fact that sexual intercourse of brothers and sisters sometimes is not inordinate and therefore is licit, it does not follow that incest is ever licit.⁶⁸

In his tractate *De legibus et praeceptis* the author asks whether God's law changes. In response he distinguishes between God's *voluntas beneplaciti* and His *voluntas signi*. The will of God, which is His essence, is unchangeable. But the temporal effects that flow from divine reason change: these effects are God's precepts and prohibitions.

⁶⁵ *Summa fratris Alexandri* (Quaracchi, 1924-48) 1, 275, ad 1 (381).

⁶⁶ *Ibid.* 1, 276, sol. (383).

⁶⁷ *Ibid.* 1, 276, ad 3 (383).

⁶⁸ *Ibid.* 2/2, 667, sol., ad 1 and 2 (645). Cf. 3/2, 367, ad 1 (550).

Like a good physician, Providence varies His orders according to individual needs.⁶⁹

Accordingly, natural law changes, not in its reason but in its effects. As the art of medicine dictates that wine is healthful but denies it to a sick man, so natural law dictates, for instance, that all things are common or that all men are free in the state of innocent nature, but dictates otherwise in the state of nature corrupted by sin.⁷⁰

Discussing the Decalogue, the *Summa* tries to determine what precisely is forbidden by the Fifth Commandment. The author gives his answer in formal terms: the Fifth Commandment forbids all inordinate killing, just as the Sixth Commandment forbids all inordinate coitus.⁷¹ What is more, it is possible that suicide and killing an innocent man in certain cases are not inordinate killing. Samson was excused from the law against suicide because he was fulfilling a command of the Holy Spirit.⁷² And a judge may sentence an innocent man to death if he has been found guilty in court; for he does not condemn the innocent man in so far as he is just but in so far as he has been proven unjust.⁷³

The author's admission of the right to kill in self-defense gives rise to an interesting problem. If a woman threatens to kill a man unless he commits adultery with her, may he commit adultery to save his life? It would seem that if killing is licit in necessity, so is adultery. The author does not accept the conclusion. He argues that God permits killing in necessity but neither divine nor human law permits adultery in necessity.⁷⁴

Discussing marriage, the author explains how monogamy derives from natural law. Here he has to face the problem posed by the sexual behavior of the holy men in the Old Testament. He argues that for them polygamy was not contrary to the precept of natural law because of the dispensation of God, who is above the precept. What is done by the authority of the superior is not against a precept, because it is assumed in the precept itself that the superior does not dictate otherwise. Besides, Abraham and Jacob, unlike Lamech, used many women not to satisfy their lust but to generate children who would not be idolaters. To have many wives without dispensation and out of lust is always a sin against natural law; but with God's dispensation and a good cause it is in accord with natural law.⁷⁵ In dispensing from

⁶⁹ Ibid. 3/2, 228, sol., ad 2 (321).

⁷⁰ Ibid. 3/2, 247, ad 1 and 4 (348). Cf. 3/2, 281, ad 1 (423).

⁷¹ Ibid. 3/2, 352, ad 4 (521).

⁷² Ibid. 3/2, 354, ad 7 (524).

⁷³ Ibid. 3/2, 355, sol. (527).

⁷⁴ Ibid. 3/2, 358, ad 4 (533).

⁷⁵ Ibid. 3/2, 255, sol., ad 1 (361). Cf. 3/2, 249, ad 3 (352); 369, sol. (553).

natural law, God does not dispense from the essence of a virtue, which is immutable; He dispenses from the work of a virtue, which is mutable.⁷⁶

But how was it possible for God to command Osee to join himself to a harlot? For fornication is *secundum se malum*. The author answers that there are two ways to solve this problem. One is to say, as some authors do, that Osee did not have intercourse with a prostitute; he married a woman who had been a prostitute. But if one agrees that the woman did not become Osee's wife but remained a harlot, the problem is still easily resolved; for Osee copulated with the prostitute in order to generate children. Therefore his copulation had no inordination in respect to its end. There was only a defect in *debita materia*. But this defect of due matter was supplied by the divine command. Therefore Osee's copulation with the harlot was not illicit; for God can dispense from the precept against fornication, just as He can from the other precepts of the second tablet.⁷⁷

On divorce the *Summa's* doctrine is the same as its predecessors': Moses permitted divorce to avoid a greater evil, but divorce was still sinful for the Jews.⁷⁸

In treating the Seventh Commandment the *Summa* inquires whether all robbery is excluded by this precept. The author replies that all robbery *secundum suam rationem propriam* is forbidden. But when authorized by legitimate authority, taking another's property against his will is not robbery in the proper sense. Some examples are (1) the Jews despoiling the Egyptians under God's orders; (2) plunder in a just war carried out under the authority of the prince and without cupidity; (3) despoiling Jews, infidels, heretics, and Saracens when done under the authority of the state; and (4) taking another's property when in very serious need, since in such need all things are common.⁷⁹

Usury, like stealing, is *in se et secundum se malum*. Although God permitted the Jews to take interest from foreigners, He only conceded it to avoid a greater evil. Hence, like divorce, it still remained a mortal sin. God does not transfer ownership of interest as He transferred ownership of the Egyptian treasures. And even if a man freely consented to pay interest, making a gift of the interest money to the lender, taking the interest would still be sinful; for the owner cannot give valid consent in this matter, because God, the owner of everything, contradicts it. In a just war, however, usury is permissible if it is sanctioned by authority and done without avarice. As it is licit to kill

⁷⁶ Ibid. 3/2, 368, ad 1 and 2 (552).

⁷⁷ Ibid. 3/2, 366, ad 4 (549).

⁷⁸ Ibid. 3/2, 266, ad 1 and 2 (390).

⁷⁹ Ibid. 3/2, 374, sol., ad 2 (560); 375, sol. (561); 377, sol. 1 and 2 (562-63).

the enemy, it is also licit to charge him interest. But in these circumstances the act of taking interest is not properly usury.⁸⁰

Immediately before he begins the section on lying, the author poses a case of conscience. The solution of the case sets the tone for what follows. The case is this: I am hiding my friend in my house, and his enemy comes to kill him. If I betray my friend, I sin; if I lie, I sin; if I keep silent, in some way I reveal his presence. The author's solution is that I should neither betray my friend nor lie. I should either keep silent or say that even if I knew I would not tell. But in no way should I sin against the truth to save another.⁸¹

But what if more than temporal life is at stake? Should a man commit a venial sin to save another from mortal sin? For instance, should the patriarch have said what was false to preserve his wife's chastity? The *Summa* responds that the eternal welfare of our neighbor is different from his temporal welfare. Therefore it is the opinion of some authors that in this case the perfect man should not lie but the imperfect man may; other authors say that even the perfect man may lie, although by doing so he falls in some way from perfection.⁸²

May a man lie to save his own chastity? The perfect man should trust in God that he will not consent, and so should not lie. But the imperfect man is weak and so is allowed to lie to prevent a greater sin. His lie, however, is still a sin, though a lesser one.⁸³

The *Summa* then puts the question directly: Can a lie become good under any circumstance? The author accepts Augustine's definition of a lie as the false signification of speech with the intention to deceive. Then he notes that even a lie told to help one's neighbor includes the intention to deceive as the immediate if not the ultimate end.⁸⁴ In response to the question, the author quotes Augustine saying that while homicide and theft can be justified by a good end, lying never can. Then he tries to explain the difference.

Theft and homicide, he says, determine the inordination of the act in respect to the matter but not the end. Lying, on the other hand, has an inordination in respect to the matter and the end. If theft and homicide implied in themselves an inordination of the end or intention, then they too could never be justified.

Besides, there is another reason for the difference. The inordination of the matter in theft and homicide is removed by a newly added condition of the matter: some new good is introduced into the act which outweighs its evil. But in lying there is a defect of truth, and no

⁸⁰ Ibid. 3/2, 380, sol., ad 1, 2, and 4 (565-66).

⁸¹ Ibid. 2/2, 395, v (396).

⁸² Ibid. 2/2, 395, vii (396).

⁸³ Ibid. 2/2, 410, sol. (412).

⁸⁴ Ibid. 2/2, 399, sol. ad 4 (402).

condition can be introduced which is greater as a good than the defect of truth is evil; for truth is more noble than money or mortal life.⁸⁵

Finally, the apparent lies of the holy men in the Old Testament are excused. Abraham did not lie when he said that his wife was his sister: he spoke ambiguously. Jacob did not lie when he said that he was Esau: he was speaking figuratively. And Joseph did not lie when he said his brothers were spies and Benjamin a thief: he was only joking.⁸⁶

RICHARD FISHACRE⁸⁷

Richard Fishacre explains that some things are good and cannot become bad, e.g., loving God, and some things are bad and cannot become good, e.g., fornication. In between are things which can be good and bad. Some things are good in themselves but bad from circumstances, e.g., almsgiving out of vainglory; others are bad in themselves but good from circumstances, e.g., executing a man because of a judge's decision.⁸⁸

CODEX VATICANUS LATINUS 782⁸⁹

The anonymous *Cod. Vat. lat. 782* asks whether the precepts of natural law are mutable. The author records the opinion of William of Auxerre, who distinguished between precepts, prohibitions, and demonstrations. Without rejecting this approach, the author says that St. Augustine's response is better. The art of medicine is immutable, but the physician varies his prescriptions according to the needs of sick people. So also, natural law is immutable in its reason but not in its effects. It prescribes common ownership in the state of innocent nature and private property in the state of nature corrupted by sin, just as the

⁸⁵ *Ibid.* 2/2, 400, sol., ad 1 (403). Cf. 3/2, 390, sol. (580).

⁸⁶ *Ibid.* 3/2, 390, ad 5, 6, and 7 (582).

⁸⁷ Richard Fishacre, O.P., was the first English Dominican to write a *Commentary on the Sentences*, probably about 1240-43. He succeeded Roger Bacon at the University of Oxford, where he lectured from 1240 to 1248.

⁸⁸ *Commentarium super sententias. Cod. Vat. Ottob. lat. 294, f. 257*: "Sciendum quod quidam actus sunt illi boni qui non possunt esse mali, ut amare Deum, et quidam actus mali qui non possunt fieri boni, ut fornicari; quidam vero sunt medii qui possunt esse boni et mali. Et hi sunt duplex. Quidam enim sunt in se boni sed secundum circumstantias sunt mali, ut dare eleemosynam ex vana gloria. Quidam actus sunt in se mali sed ex circumstantia boni, ut occidere hominem, id est propter decretum iudicis."

⁸⁹ The disputed question *De legibus et preceptis* in the anonymous *Codex Vaticanus latinus 782* was probably written by John of La Rochelle sometime before 1245, although it is possible that it was originally composed by Alexander of Hales and redacted by John. John of La Rochelle, O.F.M., became regent-master of studies at Paris around 1232 and held a chair of theology from 1238 to 1245.

art of medicine allows wine to a healthy person and denies it to a sick man.⁹⁰

In the same way natural law can prescribe monogamy and polygamy. The *ratio legis* is not changed, only its effects. The author of the law can change the law, for the authority of the superior can make exceptions in any law. Therefore, unlike Lamech, Jacob did not sin in taking more than one wife, because he acted on the authority of God.⁹¹

CODEX VATICANUS LATINUS 691⁹²

The anonymous *Cod. Vat. lat.* 691 tells us that natural law announces man's obligations toward God, viz., to love, believe, and obey Him. From these obligations there is no dispensation. Natural law also describes man's obligations to his neighbor, e.g., not to rob him and so forth. From these obligations God can dispense, because He has dominion over everything. Accordingly, God dispensed the Jews so that they could licitly take the Egyptian vessels, and he dispensed the patriarchs so that they could have more than one wife.⁹³

⁹⁰ *Cod. Vat. lat.* 782, f. 148^v: "Quidam volunt dicere quod in lege naturali sunt precepta et prohibitiones; sunt etiam ibi demonstrationes. Preceptum est, omnia quecumque vultis ut faciunt vobis homines etc. Prohibitio est, quod tibi non vis fieri alii ne feceris. Et ista omnino immutabilia sunt. Sunt preterea quedam demonstrationes quasi consilia. Et isti mutabiles sunt, sicut omnia esse communia. Unde ponunt differentiam inter preceptum et demonstrationem in lege naturali, sicut inter preceptum et consilium in lege scripta. Vel aliter dicendum et melius secundum Augustinum qui dicit quod ars medicine immutabilis est et tamen secundum illam medicus mutat precepta languentibus. Et ita mutatio non est ex parte artis que manet eadem in suis rationibus, sed facta est mutatio ex parte languentis. Sic dicit quod lex naturalis immutabilis est quantum ad rationem suorum preceptorum, quia ratio precipiendi non mutatur. Non tamen est immutabilis quantum ad effectum omnium sanationum. Unde iure naturali sunt omnia communia et non communia. Dictat enim omnia esse communia nature bene institute, et dictat non omnia esse communia nature corrupte, sicut ars medicine concedit vinum tempore sanitatis et negat tempore morbi, et eadem ratio servande sanitatis. . . . Ratio ergo sanationis non mutatur, quamvis mutetur preceptum."

⁹¹ *Ibid.*, f. 148^v: "Ad illud de bigamia dicendum quod effectus legis mutatus est sed non ratio legis. Ratio enim legis respicit illud cui datur lex et respicit illum cuius auctoritate datur. Et quantum ad hoc dictat quod ille que est auctor legis potest mutare legem, quia semper auctoritas superioris excipitur in quacumque lege. Quod ergo Jacob plures uxores habuit, dicendum quod hoc fuit auctoritate Dei. Alioquin peccasset sicut Lamech."

⁹² The anonymous *Codex Vaticanus latinus* 691 contains a marginal commentary on the text of Peter Lombard's *Sentences*. It was composed from the sentence commentaries of Alexander of Hales, Hugh of St. Cher, John of La Rochelle, and others.

⁹³ *Cod. Vat. lat.* 691, f. 159^v: "Est ius naturale duplex, unum [?] quo tenetur homo domino, id est tenetur diligere, credere et obedire. Et tale non recipit dispensationem. Est aliud quo tenetur homo ad proximum, id est sicut [?] non facias illis rapinam et

ST. ALBERT THE GREAT⁹⁴

In his *Commentary on the Sentences* St. Albert touches on three topics of interest to us here: usury, lying, and polygamy. Usury, he says, is a mortal sin, *secundum se malum*: it never was and never will be licit. Usury is a lesser sin than homicide. But, unlike homicide, usury can never be justified by a good end; for usury is already inseparably joined to an evil end.⁹⁵

Lying also is *secundum se malum*.⁹⁶ But the intention to deceive is not the same in pernicious, officious, and jocose lies. Only a pernicious lie is a lie absolutely speaking, according to its perfect substance, and only it is mortal.⁹⁷ Jacob, however, did not lie, for he did not speak on his own but under the direction of the Holy Spirit through the counsel of his mother. It is true that Jacob said what was false in so far as his speech did not conform to the reality; but he spoke the truth in so far as his words referred to a mystery.⁹⁸

In the Old Testament polygamy was licit, not simply but *ex causa et dispensatione divina*.⁹⁹ God not only permitted but commanded polygamy for the purpose of multiplying His servants and propagating religion.¹⁰⁰ This does not mean that concubinage was licit. The patriarchs did not take concubines but wives according to the inspiration of the Holy Spirit.¹⁰¹

In his tractate *De matrimonio* Albert qualifies this last statement. He says that these women were not exactly wives: they were wives only in the sense that they were *uxorio affectu cognitae*. And what does this mean? Albert answers that it means the knowledge of a woman with the hope of children and not for selfish pleasure (*non intentione libidinis*).¹⁰² In this context Albert also notes that in the Old

huiusmodi. Circa hoc potest dispensare dominus quia eius sunt omnia, sicut dispensavit cum filiis Israel ut asportarent vasa Egyptiorum non ut aliena sed ut sua. . . . Unde concedendum est quod nisi ex dispensatione Dei sive instinctu Spiritus sancti habere plures uxores est malum per se. Id bene potest fieri si fiat ex dispensatione Spiritus sancti. . . . Lamech tamen peccavit quia habuit plures causa voluptatis non causa multiplicandi cultores Dei."

⁹⁴ St. Albert the Great, O.P., began his teaching career at Cologne as early as 1228 and lectured at the University of Paris from 1240 to 1248, after which he returned to teach theology at the Dominican *studium* at Cologne. He wrote his *Commentary on the Sentences* between 1243-44 and 1249 and his *Summa de bono* immediately before his *Commentary*.

⁹⁵ *Commentarium in libros Sententiarum* (Paris, 1893): *In 3 Sent.* d. 37, a. 13, sol., ad 1 and 8.

⁹⁶ *In 3 Sent.* d. 38, a. 1, sol.

⁹⁷ *In 3 Sent.* d. 38, a. 2, ad 1-2.

⁹⁸ *In 3 Sent.* d. 38, a. 9, sol.

⁹⁹ *In 4 Sent.* d. 26, a. 12, ad quaest.

¹⁰⁰ *In 4 Sent.* d. 33, a. 6, sol.

¹⁰¹ *In 4 Sent.* d. 33, a. 6, sol.

¹⁰² *De sacramentis* (Münster i. W., 1958) tract. 9, q. 3, a. 2, sol. (253).

Testament a man could dissolve his marriage with a sterile wife through the *libellum repudii*, for complete indissolubility of marriage did not come until Christ.¹⁰³

In his *Summa de bono* Albert notes that there are certain actions (*furtum, adulterium, homicidium et huiusmodi*) which as soon as they are named (*mox nominata*) are evil. The end of the act itself is bad, and this end is inseparable from it. For instance, adultery is so joined to an evil end that it is never good, even if the agent intends a good end in performing it, e.g., to convert a harlot from heresy to the true faith. That is the significance of the phrase *mox nominata sunt mala*; for the name comes from the form, and the form in moral affairs comes from the end.¹⁰⁴

Are any dispensations possible, then, from precepts of natural law? Albert responds that man may never dispense; but God can dispense, and a man who is the vicar of God in authority, wisdom, and goodness of life can interpret the meaning of natural law.

A dispensation, he explains, is a relaxation of the law in some work of the law because of some utility or necessity which compensates for the work of the law. But notice, he says, there is a relaxation in the work of the law but not in the end or intention of the law. There can be no relaxation or dispensation from the end of the law, that is, from what is good, because God cannot act against Himself. Therefore God does not dispense from the law against stealing, because stealing means taking another's property against his will *ex avaritiae libidine et propter delectationem possessionis rei alienae*. Rather He dispenses from the act separated from its bad end by joining it to a good end. He dispenses from the act without its evil intention, and so He does not properly dispense from the law against stealing in as much as it is stealing (*de furto secundum quod est furtum*).

So also, God did not dispense Abraham *ex parte finis*: He did not allow him to kill an innocent person *ex libidine irae vel vindictae*. God dispensed from the act, joining it to another end, namely, to provide proof of Abraham's obedience and a figure of the supreme Father offering His son for the salvation of the world. The same is true about Osee's extramarital intercourse. It is impossible to dispense from an act joined to its evil end. It is necessary to separate the act from its evil end and then dispense. To have sexual intercourse out of selfish desire (*concumbere in libidine*) always was and always will be a mortal sin. But to have extramarital intercourse (*concumbere cum non-sua*) not out of lust but as a sign of a coming mystery can be done with a dispensation.¹⁰⁵

¹⁰³ Ibid. 9, q. 3, a. 2, ad 3 (253).

¹⁰⁴ *Summa de bono* (Münster i. W., 1951) tract. 1, q. 2, a. 7, ad 6 (57).

¹⁰⁵ Ibid. 5, q. 1, a. 4, sol. (532).

Against this it is objected that stealing, homicide, and fornication are so joined to an evil end that they cannot be made good; therefore even God cannot dispense. Albert responds that theft, homicide, and fornication *secundum sua nomina* are inseparable from an evil end both in the act and in reason. But the act itself is separable in reason from an evil end if it is removed from the species of theft by a transfer of ownership. Therefore what is allowed is not theft but taking another's goods; and this act is not enough to be theft. So also, God did not command Abraham to commit homicide; He commanded him to perform an act of immolation as a sign of the redemption; for homicide is killing a person *ex appetitu in vindictam*. Similarly, God commanded Osee to have sexual relations outside of marriage not *propter libidinem* but as a sign of the calling of the Gentiles and rejection of the Jews.¹⁰⁶ Accordingly, these acts—under the name of theft, homicide, and fornication—can never be justified. But these acts are able to be separated from the ends which determine their sinfulness. Man can separate them in reason, but God can do more: He can separate them in the acts and join them to good ends.

Therefore, Albert concludes, it is impossible that there be a dispensation from, or a command against, what is *per se malum* or *per se bonum*. What is possible is a dispensation from an act which *per se* is joined to an evil end if the evil end is first removed and a good end is joined to the act.¹⁰⁷

CONCLUSION

The foregoing pages represent an important part of the Catholic tradition on the absoluteness of moral norms. What is more, this tradition is the immediate historical context in which St. Thomas wrote his theology, and it is the context in which he should be read today.¹⁰⁸

This medieval tradition agreed that morality is objective. A man's subjective intentions alone do not determine the moral quality of his behavior. According to this view, certain actions are good or bad in themselves. In fact, some are so bad that they can never be made good: they can never be justified by any set of circumstances or any end.

¹⁰⁶ *Ibid.* 5, q. 1, a. 4, sol. (534).

¹⁰⁷ *Ibid.* 5, q. 1, a. 4, ad obj. (535). St. Albert's *Summa theologiae* was written after the death of St. Thomas and so could have had no influence on him. In this work Albert has little to say on our topic. In *Pars secunda* he repeats that those acts *qui mox nominati sunt mali* have an evil end in themselves and therefore cannot be justified by any good end of the agent (cf. *Summa theologiae* [Paris, 1895] 2, tr. 22, q. 135, ad 1; q. 137, sol.; q. 137, memb. 2, sol.; q. 138, memb. 1, sol.).

¹⁰⁸ I am in the process of preparing an article which examines the doctrine of St. Bonaventure and St. Thomas in the light of this historical context.

They are described as acts which *sine praevaricatione fieri nequeunt* (Peter of Poitiers), are *per se* evil (Peter of Poitiers, William of Paris, Albert the Great), are *in se et secundum se* bad (William of Auxerre, Hugh of St. Cher, Roland of Cremona, *Summa fratris Alexandri*, Albert the Great), and have a deformity in themselves (William of Auxerre, Philip the Chancellor, Hugh of St. Cher, Roland of Cremona). Examples commonly given are murder, fornication, adultery, stealing, usury, and lying.

All of these actions are evil, not of course in their mere ontological existence but in their moral character; for they are actions *circa materiam indebitam*. An innocent man is the wrong matter for the physical act of killing; a woman other than one's wife is the wrong matter for the physical act of coitus; an unwilling owner is the wrong matter for the physical act of taking things.

Nonetheless, the fundamental reason why these actions can never be licit is not that the matter is bad. To kill an innocent man, to have sexual intercourse with a woman who is not one's wife, to take what belongs to another against his will are not always morally wrong. The reason why these actions are absolutely forbidden and can never be justified is that the words used to describe them (e.g., fornication, stealing, etc.) designate more than the act *in materia indebita*; they imply that they are done *ex libidine*, from selfish desire preferring a creature to God. That is why even God cannot command them or dispense from their prohibitions. God cannot command such bad will any more than He can command against Himself. What God can do, however, is separate the material act from its bad end and give it a good end. Then He can order the action or dispense from its prohibition, because it is no longer motivated by selfish interest but by a good end. But then the act is no longer properly described by the term which implies bad will.

This is the doctrine explicitly taught in greater or less detail by Philip the Chancellor, the *Summa fratris Alexandri*, Albert the Great, Hugh of St. Cher, William of Auxerre, William of Paris, and at least implicitly by Alexander of Hales and Peter of Poitiers. The other authors give no indication that they thought anything to the contrary; they simply did not press the question that far.

Accordingly, the medieval theologians generally agreed that God cannot dispense from the natural-law precepts which dictate man's proper ordering towards God; but He can dispense from the precepts of the second tablet of the Decalogue, which describe man's obligations to his neighbor.

However, in applying their principles to specific cases the medieval authors resisted exceptions to the prohibitions of usury and lying.

Although a few exceptions were admitted in interest-taking (e.g., the *Summa fratris Alexandri* allowed it in a just war if sanctioned by authority and done without avarice), their doctrine was generally rigid. Their reason, however, was simply a fact: God does not in fact dispense in usury as He does in theft. Their rigid position probably reflects the sensitive nature of this issue at their point in history. In any event, it does not represent any departure in principle from their general doctrine on moral absolutes.

Their teaching on lying, however, is more difficult to understand. They all found ways, some more ingenious than others, to justify the behavior of Jacob and the other holy men who acted under the inspiration of the Holy Spirit, "in whom there is no duplicity." And it is to the credit of Peter of Poitiers that he anticipated the modern doctrine of lying which eventually found its way into the moral-theology manuals of the first part of the present century. But Peter's distinction between a *falsiloquium* and a *mendacium* did not find its way into the teaching of the theologians immediately following him, nor was it consistently applied by Peter himself. The medieval authors generally agreed that every false statement with the intent of deception was at least a venial sin.

Perhaps the reason for their strictness here was their high regard for truth, which the *Summa fratris Alexandri* describes as the highest value, more noble than money or mortal life. But very likely the most important factor was their high regard for St. Augustine.¹⁰⁹ Augustine had been clear and explicit about lying: a man ought not to lie to save his neighbor's life and thereby lose his own soul.¹¹⁰ No one in the Middle Ages was willing to oppose the authority of Augustine. It was enough for them to try to show that it does not necessarily follow that every lie is a mortal sin.

Finally, the theologians of the Middle Ages had a different understanding of divine revelation and inspiration than theologians of our time. Also, they had a very high regard for authority, human and divine. Accordingly, all legitimate exceptions to natural-law precepts had to be authorized by a superior, by God who is above all laws or in certain instances by some human authority under God, a king or a prince. As William of Auxerre pointed out, a man who departs from the law on his own authority is disobedient, and disobedience always proceeds *ex libidine*.

¹⁰⁹ Bonaventure also suggests this interpretation. He says that Augustine expressly holds this doctrine and theologians commonly follow him, but it is difficult to defend it with reasons (cf. *In 3 Sent.* d. 38, a. un., q. 2).

¹¹⁰ Cf. Augustine, *Enchiridion* 22 (PL 40, 243).