

A Quandary Concerning Immanence

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Abstract A stationary eddy that constantly re-forms in the riverbed of the evolution of Western normative institutions, Legal Critique dates back, beyond modernity, to the beginning of the so-called Common Era. But critique also shapes the historical review of earlier phases of this evolution, and this not only as a method of the examination of sources, but also as a transferential displacement that tends to project into history the divides and aporias which define a present political situation. Unsurprisingly, this proceeding betrays more about current conceptions than it reveals about those of the past. The fate of the philosophical topic of immanence and transcendence and that of the proto-modern politics inaugurated by the distinction of God's absolute versus ordered power offer a significant case in point. Certain critical orientations find in the long and complex history of these divides merely their own anticipated echo. Yet, the split between the adepts of an Aristotelian universe rooted in the *being* of the *good* and the followers of Spinoza, accustomed to absolute power and immanent causality, resists such simplifications and warrants a new examination.

Keywords Absolute/ordered power of God · Immanent/transcendent causality · Thirteenth and fourteenth century theology versus philosophy · Duns Scotus and William of Ockham on *potentia absoluta* · Aristotle versus Spinoza · Franciscan anti-aristotelianism · Evangelic militancy

I

This article meets a problem—the philosophical concept of immanence; tells a story—the story of its birth in a medieval limit-formulation of 'power'; and

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exemplifies a method—the method of exposing claims to universal validity to the account of their historical birth conditions. The philosophical notion of immanence is downgraded by tracing its autonomy back to the account of the history of a political-spiritual movement, the friars minor, i.e. to *religion*—not in the currently available weak sense of that word, but in its more precise medieval sense, which was ‘being in religion’ (monasticism as professed/professionalised religion). The resulting problem is that of a biblical and more specifically evangelical path-dependency of the Western history of universals. The much praised anti-aristotelian tradition of the later Middle Ages appears as inseparable from the *aggiornamento* of a spiritual-evangelic movement, suggesting that the vessels of philosophy at their most purified and of Western Christianity at their most idiosyncratic *communicate*. What is at stake in this method is briefly outlined in this first section, the problem and the story—which unfolds both in life and in writing—in the following ones.

Even if a number of currently unfolding episodes, such as the differential growth rate between emerging economies and those of the First World, now take away certain explosive aspects of the issue (while adding others), the question whether by using the name ‘the West’, or any one of its synonyms, one implicitly lodges a claim to a pioneering historical test laboratory for universal values, claims, norms or whether, on the contrary, all one refers to is a specific historico-cultural trajectory among others,¹ remains fundamental. To come up with an answer to this question is not among the tasks of these pages, which are, instead, concerned with a much narrower subject matter which regards only scholarship. Scholarship, as is well known, is about specific outcomes; it is located, in short, at the point at which an item of undeniable evidence encounters, indents, and occasionally reshapes, the consensually probable. The logic of scholarship is, to this extent, a logic of inquiry—as opposed to universal norms, values, claims, that follow a wholly different logic, a legal logic dominated both by the humpty-dumpty idea of validity and the intimidating, but ludic protocol of decision. A problem appears at the point of their encounter—the historical point at which what have grown into world-shaping universal claims have entered the world, as an unspectacular matter of fact. At this juncture, a very common strategy of arguing universal norms, or of promoting their effective grasp, consists in erasing the historical aspect of their conditions of emergence, in claiming that universal values or norms are independent or separable from the idiosyncratic nitty-gritty that has brought them into existence. This strategy is exposed to two objections. It is bound to be ineffective: if there is one lesson that the geopolitical experience of the past two decades has confirmed over and over again, then it is that upholding Western-born universal claims while disclaiming their specific and contingent context has proven an insufficient offer for compromise, which has continuously failed to appease the rejection rooted in culturally motivated dissent. But it is also reckless and opportunistic, as nothing indicates how the goal of favouring and advancing the acceptance of universal

¹ While the first answer is widely shared, at least as some form of a compulsory working hypothesis, by most diverse schools of thought, the second one underlies the work of one thinker of Western legal evolution, Pierre Legendre, whose reluctance to concede Western culture an exceptional standing both in terms of justifiability and of function, is unfolded throughout his *oeuvre*. See for instance Legendre (2004).

norms, were it even successful, could count as a legitimate reason to protect the ‘orthodox’ logic of law from the ‘critical’ logic at work in scholarship, especially historical examination.² In order to summarize this situation before entering the specific historico-normative encounter to which these pages are devoted, the relationship between scholarship and legal argument is characterized by what might be called the historico-normative squint—a ‘hard case’ located at the crossroad of two methodological imperatives. All values, norms, entitlements, etc., come complete with their history. History, however, is a leveller; it is ‘democratic’, it brings forth comparison and comparability, relation and relativity. It erodes norms. All universal values and norms, on the other hand, are related, in one way or the other, to issues of consensus, unquestionability, and value ‘anti-relativism’. At the heart of the problem we find a norm with an universal claim to validity attached to it, which asks to be taken to be valid for humanity at large, yet which is but the contingent result of a distinct evolution located in a particular corner of the world and appears, to boot, as durably connected to the particular forms of faith and subjection that presided over its emergence. Specific and historically unique faith-related bonds threaten to subvert and relativize universal norms, to the extent to which the claim of the latter, of having purely ‘spiritual’ roots—or none at all, ‘no genealogy’ (*agenealogetos*), as is said about the Christ in the New Testament (*Heb.7,3*)—is confronted with the strict particularity of a given factual provenance. One point that this problem is *not* about, is religion as such. To the extent to which Christianity’s identity can be catered for by the notion of a religion, the conflict remains under cover and control: if anything, Christianity, taken as a religion among others, finds itself in competition with these other religions (which are haunted by the same condition). The problem shows as soon as Christianity is considered, correctly, looking at the geo-historical evidence, as a religion *not* like other religions; it is the problem of the spectral Christianity underlying Western-generated normative-universal claims—the problem of a religion which exists outside of and independently from professed religious bonds, as a powerful secular institution or *secondary religion*—a powerful belief system located *outside* of the realm of religious categories—and is chiefly represented by the language of the universal validity claims present in philosophy and—most importantly—law.³

This divergence of historical and normative claims is nothing new, to be sure. It dates back at least to the Renaissance blossoming of philological critique. What is new, and rich in unseen consequences, is that normative claims no longer benefit identifiable authorities and sites of hierarchical legitimacy, as once were, in Europe, the Papacy or the Holy Roman Empire. The current beneficiaries of the universalist silence about specific histories are more discreet and less identifiable. Normative claims boil down to questions that are ultimately of style of life, not institutional representation or power. What appears as the fundamental normative claim today is paradoxically that of a human life *without norms*—a human life ‘without trimmings’

² The divide is most concisely expressed in the enlightening formulation of William Maitland’s Inaugural from 1888: ‘The lawyer must be orthodox otherwise he is no lawyer; an orthodox history seems to me a contradiction in terms’. See Maitland (1911).

³ On the genealogy of Christianity’s claim to be more than a religion, see Margel (2005).

legal, institutional, or meaning-related. This notion of life, to be sure, is still normative, if only to the extent of a *zero* normativity as supposed in Agamben's reading of the negative in Saint Paul and Derrida. The management-strategy in use in the Western normative tradition and its self-presentation strives to reshape, re-adapt, discreetly re-package—in short, conceal—its historical identity.⁴ And yet, in spite of concealment and precaution, it has provoked 'fundamentalisms' and triggered obstacles and obstinations (Schütz 2005, pp. 71–93). Crisis, the current trump card to extort surplus-governability, is an escalatory product of this managerial strategy.

The legal horizon of norms and validity unifies; the world image that it results in has been described in a terminology of closure: *oikoumene* or *sphericisation*.⁵ The horizon of historical learning and scholarship de-unifies, it looks for discoveries, inventions, improbable emergences, it cherishes singularity and contingency. Universal norms and values are, as well, contingent singularities. Universal legal claims to validity are fatally connected each to its specific genesis. Their secret horizon of genesis—located, punctual, singular—differs from their claimed horizon of validity, which is totalizing and all-inclusive. Roman Law, Common Law, scholastic philosophy are born as idiosyncratic contrivances located in the riverbed of a particular culture. Each, in its specificity, adds a further genealogical question mark to the culture-transcending claim of the Western or 'old-European' bouquet.

It is barely surprising in these circumstances that academic discourse is wary to allow itself to be cut in two halves by the normative-historical squint. Yet this embarrassment in itself gains little from being overstated as an inescapable tragedy. Let us outline the problem. It consists in the fact that legal values, forms of social integration, claims to universal rights entitlement, etc., which are humanity-wide and universal as to their normative range, have nonetheless grown out of a distinct legacy, located within Western Christianity, in which legal, political and religious components form an originary and inseparable knot. Two extreme ways or perhaps 'techniques' offer themselves to respond to this challenge: a technique of foregrounding the universalism of Western norms and values while covering their specific provenance in silence, under the assumption that discreetly 'de-labelled' Western-Christian values have greater chances to find general favour and diffusion and run smaller risks of provoking resistances; and a technique of foregrounding the systematic investigation of context and genesis, in spite (or, indeed, in virtue) of the possibility of weakening the geopolitical prestige of the Western normative offer, unique in having lodged its distinguishing cultural feature in the claim to be the unique heir and home of all cultures, and in a sense undistinguishable from this claim. And yet, the opposite motion, the suggestion of sacrificing the historical narrative to the normative success (we might speak of a 'de-labelling approach'), is in possession of at least one strong argument, as well. That cultural features, which are successful enough to spread beyond the site of their original invention, eventually make their original site disappear from memory is a well-known fact and, moreover, a long-term core topic of

⁴ Cf., for an exemplary study of the normative/historical tension at work between religion and religious sciences, Smith (1990).

⁵ Global normative universality appears in his view as the 'geometrical limitation of a star closed upon itself like a gigantic molecule'. Cf. Teilhard de Chardin (1955, p. 265), quoted and discussed in Clam (2010, 306f).

anthropological scholarship. Are universally disseminated entitlements, of which Human Rights offer the most vivid example, not a set of successful, thus eminently exportable and transculturally implementable cultural features? Now, dealing with a geopolitical success history of the sort, one might well ask what can be wrong about ignoring, forgetting, taking for irrelevant, etc., the history of their earliest stages, in this case the fact that they are the offspring of an idiosyncratic history of a series of Western-Christian inventions? Such an oblivion seems as inevitable as it is unquestionable. Indeed, what in this view suddenly tends to appear inappropriate is rather the opposite attitude: a catonian *ceterum censeo* reminder of provenance. But oblivion and ‘euphemizing-away’ are not the same thing. We have to distinguish: history, as a realm of events that appear and disappear, of invention and oblivion, is open to study—and study is everything else rather than an enterprise of resisting oblivion. In turn, oblivion needs to be distinguished from the observation of arcane silences, from the damping of existing curiosity in matters genealogical and archeological, from denial and especially denial of denial (unadmitted shame).⁶ The unique and conspicuous role that Western Christianity has played in the advent of the politico-mental configuration now in global use may be forgotten, but not glossed over.

II

The philosophical question of immanence offers an example of the impact of the Bible in its Western-Christian reading. This impact is in no way limited to ‘religion’. In order to understand the thought of immanence, as the Western philosophical tradition has sculpted and refined it since the Middle Ages, we have to look at it through the looking-glass of Theology and Faith. The early thirteenth century sees the rise of a free-floating population of mendicant friars. They pose a challenge to existing categories and to the established equations of life and the good. Being beggars, they are not monks in any then recognizable sense; yet, as they are begging by spiritual decision rather than to sustain themselves in unhappy material circumstances of life, they are strictly speaking not beggars either.⁷ Since Christian times out of mind, the status of a monk was predicated upon the fact of having abandoned his civil identity and transubstantiated his life into an unending service to God. This status, or non-status (for the relation to worldly authorities that flows from it amounts effectively to an immunity and verges on ungovernability) is embraced by the new congregations. But we have to remember that, in Dominic and

⁶ The contamination of universal values and norms with their Western context of origin can give rise to diverse forms of shame, such as (1) about the Western self-importance and arrogance manifested in the fact of claiming a privileged role with respect to norms and values now universally shared; (2) about the appalling fashion in which the Western-Christian tradition and its personnel have often used their unequalled power in dealing with outsiders; (3) about the hope, maintained and relentlessly reproduced, that, one day, every individual on earth will be something like an enlightened or disenfranchised, potentially atheist Christian—a zero-degree Christian benefitting from a modicum of New Testament discreetly added, if unbeknownst, as some form of global-civil meta-religion, to each particular religion (or ‘cult’).

⁷ Material circumstances of life were, on the contrary, of very comfortable standards for instance in the case of the two mendicant founders Saint Dominic, 1170–1222, and Saint Francis, 1182–1226.

Francis's times, the ancient model of monks as hermits and anachoretēs, of monasticism as solitude, is gone since long. By then, monks have been sheltering for centuries behind the solid walls of cenobitic monasteries—a shelter that could be loose and aristocratic, or stern and militant. And yet, the mendicant orders reject the model of common monastic life as well. Instead of exempting themselves from the worldly life of the cities, they choose to integrate themselves fully into it, forming, for the first time in European history, an urban population that embodies, but also deliberately and consistently exalts, a state of dislocation or homelessness; the first movement created and carried by people who were not only and certainly not principally poor, but rather spoke and acted in the name and in favour of poverty. Poverty and homelessness were less endured than embraced—as part of the militant spirit inherent in a network and a campaign in favour of a *new life, a life of newness, a life lived for the sake of the advent of a specific, hitherto unheard-of type of life (vitae novitas)*.⁸ What the Franciscans emphasize is the poverty of Christ and the apostles who, according to a famous argument, had no property, as they never owned their very clothes, but merely 'used' them.⁹ Part of the overwhelming and historically unheard-of energy of the mendicant orders results from their 'two-ness', the fact that they emerge, not as one identifiable movement, but as two competing campaigns, each operating with the support and to the benefit of the papacy—which, under the early thirteenth century pontiffs such as Innocent III, Honorius III, and Gregory IX, reaches the summit of its power. The historical take-off of intellectual life and ecclesio-political build-up of the thirteenth century takes its substance from the emulation and exchange between the two orders of begging 'friars'—as they were called in England via an Anglicization of Latin *frater*.

It takes a further century and more until the Minervan owl that ratifies the philosophical unfolding of the friars' movement's programme (in its Franciscan, radically evangelic wing) takes its flight. Historians today focus on how closely its trajectory is linked with exogenous evolutions.¹⁰ But this exposure of doctrine-internal choices and external, e.g. politico-economic events, works both ways. The mid-thirteenth century brings a revolution in the accessibility of Aristotle. From 1270 onwards, the door to the neo-platonic tradition (Proclus, Simplicius) is flung open; reinforcing the ingrained neo-platonic affect of certain Church-Fathers Eastern and Western, as well as certain Arab authors (with Augustinus and Avicenna as chief suspects), they promote what is today known as *Metaphysics of the One*, the first of a long sequence of challenges to the aristotelian *Metaphysics of Being*. A certain honeymoon of Theology and Philosophy, fragile and precarious but for some decades fertile, comes herewith to an end. What reveals a closer look at these mutations and their stakes?

⁸ Francis' calling for humbleness led him time and again to reject, in a spirit of unforgiving self-effacement, the notion of a 'rule', setting himself off from the earlier monastic founders Saint Benedict, Augustin and, closer to himself, Bernard. See the biographical *Speculum perfectionis*, ch. 68, translated in Sherley-Price (1959, p. 85).

⁹ William Ockham's antagonist, French lawyer-Pope John XXII, will declare this view a heresy. On poverty and the friars minor see Burr (1989) and Lambert (1961).

¹⁰ See for economic history, Todeschini (2004).

The clash with the medieval-aristotelian focus on *Being* provoked by the late thirteenth century renaissance of the neo-platonic concept of the *One* is compounded with a turn to evangelical absolutism and induces an institutional *ensorship* that increasingly puts a stop to the relativization of theology spawned by the ‘pagan’ Philosophy of Aristotle. This censorship triumphs in the condemnations of 1277 (cf. Boulnois 1998). It is this re-cycled neo-platonism, enriched with the resolute will of the intellectual establishment to rid itself of pre-christian ancestry and instead absolutize evangelic Faith, that leads to the problem-ridden doctrine of *two powers* in God. The break with the philosophical tradition lies in the global confiscation of all power in favour of the one (if trinitarian) addressee *God*. It is God’s power that is twofold—*potentia absoluta*, *potentia ordinata*. God’s power is, first, ‘absolute’—of an absoluteness best understood as indifference. God’s absolute power is absolutely or perfectly *indifferent* to how senseless or cruel its deeds might look to the limited and fallible eyes of human creatures. Suppose that God, in the exercise of his absolute power, phases out one creation in order to replace it with an alternative one. But God’s power is also ‘ordered’, or fitted to the creature’s needs *within this creation*, i.e. adapted to the currently prevailing conditions. In the Gospel-centred doctrine of the split between (conditioning) *potentia absoluta* and (conditioned) *potentia ordinata* lies the specific contribution of the Franciscan fraternal ontology.

Little is known about the life of its most radical and momentous exponent, the Franciscan John. Known as subtle doctor or *doctor subtilis*, born in the mid-sixties of the thirteenth century in the village *Duns* near the English border of the Scottish Lowlands, he lived a life of work and peregrination, as common among top intellectuals of his age, and died in 1308 in Cologne. The movement of his followers, in almost steady growth through 400 years—from his lifetime to at least the seventeenth century—outnumbered all rivalling intellectual groups including the Thomists in all centres of learning of Western and Central Europe.¹¹ Their massive presence has exercised a lasting effect on all subsequent phases of philosophical history.¹²

Duns Scotus has supplied the friars minor and their form of life and style of worldly presence with their metaphysical expression. An aspect of this can be seen in his thought of individuation.¹³ Individuals are not forms; it is incorrect to imagine them as formed or consolidated singular essences; if individuals doubtlessly shelter singular essences, if the singular essence ‘Elena’ is only found in the individual

¹¹ On the sixteenth and seventeenth century as a ‘golden age of scotism’ cf. Sondag (1999, p. 4f); Vos (2004, pp. 3–19).

¹² They have also given rise to more anecdotic vestiges, such as the insult ‘dunce’ which, today out of fashion, has been popular for long—eighteenth century writer Alexander Pope still devotes to it his *Dunciad*, an anonymously published satire on contemporaries—after having been instrumental for the slowly upbuilding attack of humanism against scholastic philosophy (a long-lasting, powerful and violent attack which included book autodafés). Yet, if formed after Duns Scotus’s name, the insult applied only to his later followers. For more anecdotes on the scotism/humanism relationship, cf. Margolin, ‘Duns Scot et Erasme’, in Bérubé (1978, pp. 89–112).

¹³ *Ordinatio*, II, 3. Cf. Virno ‘Les anges et le *general intellect*: l’individuation chez Duns Scot et Gilbert Simondon’, quoted after the French tr. in *Multiitudes* 18 (Fall 2004, 33–45). For the relevant texts in Duns, cf. the volume by Sondag (1992).

Elena, to limit individuation to the individual is, for Duns, a metaphysical blunder, an illegitimate inference from the notion of numerical oneness. The individual holds no exclusive rights; Paolo Virno (Virno 2004) associates Duns Scotus's thought on this point with that of twentieth century philosopher of anthropogenesis and technique Gilbert Simondon, the author of an ontology of *régimes d'individuation* whose name is linked to the notion of the *transindividual* (Simondon 1989) and who applies individuation to gestures and skills. While Simondon attacks the monopoly of the individual by arguing that the use of a tool individuates below the level of the individual, for Duns Scotus individuation is what limits the commonality of the common nature, so for him the level of the numeric unit is above the individual¹⁴—two symmetric alternatives to the overstatement of the individual, to its erection as a 'principle'. Individual being is not the natural vessel of individuation; rather, individuation is always in the act and takes place within a common multitude, an immanence. We face an argument, an experience which clearly underlies in common the thought of Saint Francis of Assisi, the Blessed John Duns Scotus, the diabolical Baruch Spinoza and, today, the youthful Antonio Negri.

III

Immanence refers to causality. Immanent causes are different from transcendent or transitive causes in that they are located within, rather than without, the effects to which they give rise. One speaks of an immanent cause and immanent causality when the agent cannot be distinguished from the action, when it is impossible 'to tell the dancer from the dance'. Conversely, transcendent causality *explains* a certain happening by assigning it an (external) cause. The eagerness of finding such an explanation is far more often than not what gives rise to the quest for causality. The enjoyment delivered by explanation to the adepts of transcendent causality is incomparable enough for them to ask: why is there any interest in immanent causes and in immanence at all? The answer might be obvious only to those who have studied Spinoza enough to appreciate the uncompromising beauty and rigour of his demolition of mastery, his relentless campaign of stripping power off the surplus value of transcendent causality, its muddled promises, woolly analogies, and phantasmagorical derivations. If God is the immanent cause of all things, as Spinoza holds he is, then thanking God or praying to God or invoking God, or any other transaction involving God, appears as a pretty silly pastime, but much worse must be said of letting one's own or other humans' lives be subjected to God's will, governed by god-appointed governors, or based on obedience to God's name. One does not need to be a genius to see that the history of the law and sovereignty of God has no overlap with Spinoza's quest. The 'shameless atheist's'¹⁵ insights and

¹⁴ Virno, *op.cit.*, 38; Duns Scotus, *Ordinatio II*, 3, §8; p.89.

¹⁵ See Samuel Pufendorf, letters 137 (19.6.1688) and 138 (17.7.1688) to Christian Thomasius [Pufendorf (1996, pp. 193–198)]. The 'shameless atheist'-trope is endemic throughout Spinoza's lifetime and for a further century, with numberless occurrences especially if one looks into the writing of professional academics (Spinoza himself never considered the possibility of becoming a professional academic, cf. his letter 47). Amusingly, Pufendorf also remembers: 'I have known Spinosam. This was a frivolous bird !,

suggestions make sense only within the most ambitious strategy, the most solitary mind-set.

Yet, God's unequalled art of *establishing* transcendence, and of thereby allowing for a roaring trade with mundane consequences of theological transcendence to take off, is an immemorial ingredient of God's *institutional* history. And from the institutional view-point that is co-extensive to the *transcendent* conception, it is *immanent* causality that looks odd, like a palinody of causality, like causality deconstructed or neutralised, or indeed like an irreconcilable challenge to power as such. The one-off action of the biblical creator-God, if understood as transcendent cause of his *creation*, has a long-term effect: it serves as the proof of God's *power*. As soon as God is taken to be the *immanent* cause of it all, this proof implodes—it becomes useless as the construction it was meant to bolster becomes inoperative. God as the world's immanent cause—the notion is not incompatible with the creative hypothesis ('we are still at it', the version known as *creatio continua*). God's immanence is perfectly compatible with God's unlimited mastery (Spinoza), but so is God's transcendence, as it is present in Descartes, in Leibniz, in Malebranche and others. All Spinoza achieves by means of identifying God and nature is to avoid the unattractive need to invest his God with the dignity of a sovereign ruler as wielded by Descartes' God. Descartes needs the hypothesis of a God whose power is so totally, so immediately out of range with that of any other actor, that the very thought of any potential limit, resistance, dilemma, insufficiency, is immediately discarded. The most important commonality that unites *all* the representatives of classical seventeenth-century Philosophy is in this sense their dependency on a construction of absolute mastery, and it is this construction which they inherit from the theological-philosophical combination of medieval anti-aristotelianism and the evangelical gesture—destined to override the philosophers' pagan-styled wisdom—that goes with it.¹⁶ God's overriding attribute is here his equipment with absolute power; what surprises in comparison is the distance from the infinitely more modest attributions that Aquinas had credited upon God's power account. In Aquinas's cautious eyes, the epistemologically egregious claim of God's absolute power *over mathematics*, held by Descartes¹⁷ and promised to exercise a

Footnote 15 continued

deorum hominumque irrisor [a mocker of gods and humans]'. And he mentions a curious detail, not found in other sources, that sheds a uniquely lively light on what might be understood—although other interpretation are possible, too—as the philosopher's inscrutable humour. Spinoza, Pufendorf tells his correspondent (*ibid.*, 195), 'had the New Testament and the Coran bound together in one single volume'. This 'practical joke' that Spinoza plays on the two competing religions, implying the cruel subjection of their respective Holy Texts to a mutual exposure which, given the reciprocated aversion that animates both, must be understood as a metaphorical plight of mutual wounding and hurting. It is indeed difficult not to associate another anecdote, this one known to all Spinozians, on the philosopher's enjoyment when observing fights between spiders...

¹⁶ Cf. de Muralt (2002) on this construction as the root of political modernity. For an account of medieval and early modern aspects of public law interpretation and legislation, cf. London Fell (1990).

¹⁷ For Descartes, God can create a triangle the sum of whose angles amount to more or to less than 180 degrees: 'To hold that mathematical truths are independent from God is like speaking of Him as if He were some Jupiter or Saturn, and subjecting Him to the Styx and the destinies. [...] It is God who poses these laws in Nature, in exactly the same way in which a King decrees the laws of his kingdom.' (Letter to Mersenne, April 15, 1630); Adam and Tannery (1897, p. 149).

huge impact on the philosophical horizon of later centuries,¹⁸ had been—even if this spectacularly refuses to match with common ideas about the progress of ideas—just a wrong answer to an inappropriately formulated question. For Thomas, effectively, ‘God cannot make the opposite of the formal principles of things, from which a thing’s essence depends: for instance, he cannot make the three angles of a rectilinear triangle not to be equal to two right angles’.¹⁹

The movement towards absolute power starts with Duns and is pursued by Spinoza—whose distinctive step lies neither in his ‘atheism’ nor in his short-circuiting of God and nature, but in the liberation, the unfettering, the ‘deregulation’ of God’s *power*. The immanentist equation between God and nature offers itself as an enabling device for these liberalizing measures. The much-invoked uniqueness of Spinoza’s thought appears in this view as related to his unrelenting efforts at asserting two equally categorical claims: power, attributed to God, in a way that does not deny its debt to its biblical origins alongside the distinction ‘active/passive’; and immanence, or rather the imperative of immanentizing God’s powerful ‘agency’, equalizing it with experientiable happening. These claims are incompatible, not with God, but with God’s employment as a discursive, argumentative, institutional (legal, political) agent. And paradoxically, rather than weakening him, the fact of stripping God from his institutional utilization results only in a supplementary God-enabling device, a further God-enhancement or God-bonus, and it is likely that the unlikely God construed by Spinoza is effectively the one that comes closest to the intentions underlying the mid- and late-medieval Franciscan elaborations of *potentia absoluta dei*. Yet, by stripping power off its transcendent moorings, by revoking its bond to any *telos* (e.g. care, love, attention), by relocating it in a circle of immanence and absoluteness, Spinoza offers a portrait of power’s potential that, understandably, has encountered reluctance and provoked resistance.

The theoretical complexity that characterizes the constellation of *potentia absoluta dei*, the theologico-philosophical key topic of a fraction of the teaching body of Paris University from the 1170s onward (see König-Pralong 2005), is important; yet it pales in comparison to the historical complexity at work in the unfolding of its success during seven centuries of explosive post-history.²⁰ Duns

¹⁸ Jean-Paul Sartre praises the God of Descartes as ‘the freest God fabricated by the human mind, the only creator-God [...], not subject either to principles—be it that of identity—or to a sovereign Good of which he would then be merely the enforcer’. Sartre (1975, pp. 382–408 (403)); Engl. trans., ‘Cartesian Freedom’, in Sartre (1955, pp. 289–308 (305)).

¹⁹ Cf. his *Summa contra gentiles* Aquinas (1264), II, 25, §1022; also qu.25 of the First Part of his *Summa Theologiae* (Aquinas 1274). See de Muralto (1995, p. 144ff.). Spinoza, in order to reach this same result, will rely, again and again, upon one of his most stunning philosophico-theological manoeuvres: the argument that there is no difference between claiming that God has decreed that a triangle’s three angles equal two right angles, and claiming that God understands that a triangle’s three angles equal two right angles.

²⁰ The theme of God’s absolute power is, together with its biblical references, expounded by eleventh century Saint Peter Damian and restrictively commented upon by Peter Abelard (earlier twelfth century). Abelard initiates a long line of authors who, moving in the opposite direction to the one pushed to its extreme by Duns and Ockham (and, in their wake, seventeenth century classical philosophers), incurred a censure for trying to ‘limit’ divine power.

Scotus is a much despised thinker—‘blockheads’ is what Hobbes, in his *Behemoth*, calls him, as well as Peter Lombard, unconcerned enough with medieval authors (or indifferent enough to historical precision) to ignore the 150 years separating both. Yet, Duns is also a much worshipped thinker, and a prolific one, too.²¹ There is an expanding agreement that his work is a first-rate source for any research in the genealogy of politico-philosophical argument. At stake here is not necessarily the doctrinal edifice that the concept of *potentia absoluta dei* has given rise to in his work: it is rather the continuing presence of multiply fractured and metamorphosed morsels and remnants of this conception, which, de-labelled and de-theologized, have made their way, throughout the centuries, into the heart of the modern politico-intellectual evolution and the inner cluster of its guiding concepts.²² Duns’s thought of God’s power boasts an explosively positive credit-rating in times when the reference to God has been outsourced to religion, neutered *modo spinoziano* by reconceiving God as an *alias* of nature, or replaced with secular *look-alikes*.²³

One of the obstacles in the way of understanding Duns Scotus’s contribution relates to a general attitude governing the modern approach to medieval thought. There is a sense in which an age is retroactively defined by the discourse it holds about its past, and in this sense modernity defines itself in difference and opposition especially to its past. Among the characters it allocates to the Middle Ages, we find repression, bias and obscurantism. These characters function as operators; they make sure that anything valuable or deserving from these times must be saved and retroactively liberated from its repressive context. Now, if we look at Duns’s concept of God’s absolute power and its history according to this view, then a surprise is in store for us: the 219 articles censored by the authorities of Paris University in 1277 were not Duns Scotus’s, but those of his adversaries.²⁴ His position was close to the censorship. But neither is this surprising, as the Church

²¹ Edited and printed in no less than four different editions (some still in the making), Duns Scotus’s work takes, in its most complete version, the in-folio edition published in the Vatican, copiously more than two meters of shelf space. It is composed to its largest part of the *Lectura*, and abbreviated version of an Oxford course, the *Reportata Parisiensis*, established by his Parisian students, and the uncompleted *Ordinatio*—three successively written series of commentaries to one single work, Peter Lombard’s mid-twelfth century *Four Books of Sentences*. This is a work which, commented upon until the end of the fifteenth century by at least 1,400 authors, has provided the scholars of the Middle Ages with the general theme serving a vast and increasingly unfettered doctrinal gamut of variations. Its extreme importance is often underrated. Although, to be sure, not by everyone. Heidegger for instance writes: ‘Not only has the hermeneutical structure of the commentary to the Sentences of Pierre Lombard—which until Luther governs the effective becoming of theology—remained unanalysed, but the possibilities of its questioning and its evaluation that would be required for this are still entirely lacking’ [Heidegger (2001, p. 21)].

²² See Traversino (2009) specifically on the cosmological implications unfolded, two centuries after Scotus, in Giordano Bruno’s heterodox views.

²³ In our days, this neutering agenda in Spinoza is re-enacted by Niklas Luhmann’s move to reconceive society as the sum-total of *communications*. Just as, for Spinoza, drives and fears, virtues and vices, duties, preoccupations or prohibitions cannot be said to belong to God, people, with their whims and consciousnesses, are for Luhmann not part of society. In his last work, the 1997 German-published and still untranslated 1,150 page study *Die Gesellschaft der Gesellschaft* (‘Society’s society’), Luhmann (Luhmann 1997) acknowledges this debt. The motto of this book, taken from Spinoza’s *Ethics* (I, Axiom 2), says: ‘That which cannot be conceived through anything else, must be conceived through itself.’

²⁴ Among the claims censored were: ‘That God could not create several different universes’; ‘That God could not move the heaven by a rectilinear movement, as this would create empty space’, cf. Denifle and

persecutes philosophical strictures against God's power since at least the twelfth century—in an adamant fashion not altogether dissimilar to the way in which investment bankers today resist any attempt of subjecting their decision-making power to external control. The *imperative of rehabilitation* of what was previously outlawed and persecuted, the entire modern vocation of saving and restituting the precious legacy of times earlier and darker than ours, that determine modernity's attitude to the past in a way that can be read as a follow-up of the Christian doctrine of time as a potential of reform and to history as a promise of an end (Löwith 1949; Ladner 1959; Legendre 1988/2005) points here in the opposite direction. Franciscan evangelic militancy, the modern doctrine of absolute power, the philosophical concept of immanence to which it gives rise, and the praxis of medieval censorship, are here all located within one and the same position.

IV

As a Franciscan thinker and adept of the (conservative) Franciscan-Augustinian school of thought, follower of the pious Augustinian Bonaventura of Bagnoregio (1221–1274), participant in the Paris discussion about Aristotle and the Gospel, Philosophy and Theology, Duns has started off with an untainted, militant commitment for the absolute superiority of the Gospel and fought with unflinching ardour against the notion of an equal footing between revealed truth and philosophical wisdom. The extent to which his position was dependent on the Gospel can barely be emphasized enough: every human being is in search of its beatitude; as Philosophy cannot give us access to it, the end of human existence is man's union with God (Fernandez-Garcia 1910). Duns does speak of ethics, but his is an ethics that culminates in the God-imposed love of God and the neighbour. Also, our nature being not sufficient, Grace (or non-created charity/love) must step in. Love-structured theology is the practical science that shows how to conform human acts to God's love, and how beatitude can be gained (Boulnois 1998).

Duns Scotus's immanentism is predicated upon a particularly uncompromising take on Faith and an unflinching, militant subjection to the Gospel and especially its normative meaning. Recent scholarship casts further light on the character of this evangelic militancy. Discussing the question of forced baptism and of the right of taking Jewish or Pagan children in order to submit them to baptism against their parents' will, Duns Scotus rejects the view of a large majority of canon lawyers (including the renowned Huguccio and Ioannes Teutonicus) and theologians (including Aquinas), all of which argued against such a right (mostly on the force of an argument worded as 'injustice should not be done to anyone'/'*nemini faciendum est iniuria*'), which they interpreted as an underlying principle at work in the Bible at large), and instead asserts the minority motion that the Christian prince not only has a right, but indeed a *duty* of forcing baptism upon Pagans and Jews against their will

Footnote 24 continued

Châtelain (1885), art. 34 et 49, 545. See also Grant (1979, pp. 211–244), and for a summary of the discussion, König-Pralong (2005).

and of imposing it upon children against their parent's will (*Opus oxoniense*, IV, dist. 4, quest. 9). Nor is this all. Dealing with a curious, but then widespread, interpretation of a quote from Isaiah in Paul's epistle to the Romans, which linked the continuation of time and creation to the continued presence of unbaptised Jews on earth, Duns Scotus, complaining that 'so many Jews persist in following their laws in so many different regions of the world', suggests that having 'just a few Jews sequestered on some island' (*aliquos paucos in aliqua insula sequestratos*) allowing them to follow their rules, is the most appropriate course of action to be taken.²⁵

God's absolute power is mirrored by man's absolute intellectual subjection to the Gospel. Modern and current immanentists often lose sight of this extreme transcendence that has served as immanentism's most vital manifestation. What is good is good because God wants it, and not the other way round (*Ideo est bonum, quia a Deo volitum, et non a converso*); it would be presumptuous on the part of a creature to hold that God wants it because it is good.²⁶ The absoluteness of absolute power is most spectacularly expressed in the indifference it supposes with respect to what is not God (Tornay 1999). This indifference alone offers a sufficient assurance against the apparently dreadful, legally subversive possibility that the creator's will could be modified by his creation. This would put God into a predicament of reactivity and dependence which in turn would put a question mark to his capacity as ultimate lawgiver, thereby imperilling the constitution of the legal subject. Considering that we have no access to the good apart from submitting to God's will, the rightness of our actions is predicated on our self-submission, not our judgment. The legal subject of positivism is predicated on the hypothesis of such an unchallengeable, indifferent power, and Duns's legal philosophy offers what is a stunning anticipation of legal positivism (Parisoli 2000). God, who is under no duty whatsoever, subjects the human will—which, by dint of God's absolute will, is as well under no duty whatsoever—to the command of loving God and one's neighbour (de Muralt 2002, p. 32). A generation after Duns, this hypothesis will generate, in the work of his reader and critic William Ockham, a reflection on imperatives destined to clarify the distance between God's ordered power, *potentia ordinata dei*, and God's absolute power, *potentia absoluta dei*. According to the terms of Ockham's thought experiment, nothing stops God, in the use of his absolute power, from imposing upon his subject the duty of behaving in a way that

²⁵ Cf. Marmursztejn and Piron (2004). Let me note that it would obviously be wrong to overemphasize a passage that draws the powerful impact it exerts on its current reader largely from the light thrown upon it by an event of the twentieth century. Whether, today, in the context of an analysis of immanence and absoluteness, this aspect of Duns Scotus would not best be forgotten, is almost a legitimate question. But while the hypersignificance that the text acquires *post festum* by the simple fact of being read after Auschwitz needs to be flagged out, its effects bracketted, and any 'symptomatological' reading discarded, what Duns's votum relating to Pagans and Jews throws a compelling light upon is the history and political structure of evangelical militancy. In no case the passage should be allowed to undergo a form of 'sequestration' in its own turn.

²⁶ Duns Scotus (1988), 529. Spinoza's converging and equally absolutist view—'we do not desire something because we say it is good, we say something is good because we desire it'—is in the scholium to *Ethics*, III, prop.9. Both aim at Aristotle's claim: 'We desire the good because it appears to us as being good, and not: it appears to us as being good because we desire it' (*Met.* 1072a29).

would ‘normally’ be obvious crime: God could command man to hate God and to hate each other, to steal and to do violence, just as, for the time being, he commands man to abstain from violence, to love him and love each other : ‘[H]atred, theft, and the like may involve evil [...] [T]hey can be performed meritoriously [...] if they should fall under a divine command, just as now the opposite of these, in fact, fall under a divine command.’²⁷ For Ockham, both God’s absolute will and the creature’s absolute subjection to it are predicated on perfect indifference with respect to anything other than the norm imposed/obeyed.

Immanence conveys the same absoluteness when it applies, rather than to law, to the conditions of knowledge: God’s power alone gives rise, within the human intellect, to a truthful and legitimate knowledge of the object of knowledge. God’s *potentia absoluta* acts here as immediate and total cause of anything experienced by the subject. It is experienced ‘*sive res sit sive res non sit*’, ‘whether it exists or not’.²⁸ Scotists are wary to see this moment over-emphasized. Scotus does not say, they remind us, that God acts by absolute power—he only says that God can act otherwise than he actually does.²⁹ God’s determining *potentia absoluta* survives God within every relationship real and potential, freeing itself from God, giving rise to what today’s jargon would call dependent variables, opening contingency, knotting loops of self-reference, programming modern organization and modern management. There is more than the ordinary amount of irony in the fact that this gain in social and epistemological intelligibility is so inseparably linked to the Franciscan movement that it can be said to originate in the most ambitious and uncompromising form of Western-Christian militancy.

References

- Adam, Charles, and Paul Tannery eds. 1897. *Œuvres de Descartes*, vol.1, Paris.
- Aquinas, Thomas. 1264 *Summa contra gentiles*, II, 25, §1022.
- Aquinas, Thomas. 1274. *Summa Theologiae*, First Part, qu.25.
- Boulnois, Olivier. 1994. *La puissance et son ombre: de Pierre Lombard à Luther*. Paris: Aubier.
- Boulnois, Olivier. 1998. *Duns Scot: La rigueur de la charité*. Paris: Cerf.
- Burr, David. 1989. *Olivi and Franciscan poverty: originis of the ‘usus pauper’ controversy*. Philadelphia: University of Pennsylvania Press.
- Clam, Jean. 2010. *Aperceptions du présent: Théorie d’un aujourd’hui par-delà la détresse*. Paris: Ganse.
- de Muralt, André. 1991. *L’enjeu de la philosophie médiévale: Etudes thomistes, scotistes, occamiennes et grégoriennes*. Leyde: E.J.Brill.
- de Muralt, André. 1995. *Néoplatonisme et aristotélisme dans la métaphysique médiévale: analogie, causalité, participation*. Paris: Vrin.
- de Muralt, André. 2002. *L’unité de la philosophie politique: de Scot, Occam et Suarez au libéralisme contemporain*. Paris: Vrin.
- Denifle, Henry and Emile Châtelain. 1885. *Chartularium Univeristatis Parisiensis*. Paris.
- Fernandez-Garcia, Marianus. 1910. *Lexicon scholasticum philosophico-theologicum in quo termini, definitiones, distinctione, effata a Joanne Duns Scoto exponuntur*. Grottaferrata: Quaracchi (reprint Hildesheim: Olms, 1988).

²⁷ Ockham (1985, p. 352).

²⁸ Discussed in de Muralt (1991, p. 240ff.)

²⁹ Boulnois (1994, pp. 57, 279ff.), interpreting *Ordinatio* I, d.44.

- Grant, E. 1979. The condemnation of 1277, God's absolute power and physical thought in the Middle Ages. *Viator* 19: 211–244.
- Heidegger, Martin. 2001. *Phenomenological interpretations of Aristotle*. Bloomington: Indiana University Press.
- König-Pralong, Catherine. 2005. *Avènement de l'Aristotélisme en terre chrétienne. L'essence et la matière: Entre Thomas d'Aquin et Guillaume d'Ockham*. Paris: Vrin.
- Ladner, Gerhart B. 1959. *The idea of reform: Its impact on Christian thought and action in the age of the fathers*. Cambridge: Harvard University Press.
- Lambert, Malcolm D. 1961. *The doctrine of the absolute poverty of Christ and the apostles in the Franciscan order*. London: SPCK.
- Legendre, Pierre. 1988/2005. *Le désir politique de Dieu: Etudes sur les montages de l'Etat et du droit*. Paris: Fayard.
- Legendre, Pierre. 2004. *Ce que l'Occident ne voit pas de l'Occident: Conférences au Japon*. Paris: 1001 Nuits.
- London Fell, Armand. 1990. *The origins of legislative sovereignty and the legislative state, Volume IV*, Boston: Gunn & Hain. 1990.
- Löwith, Karl. 1949. *Meaning in history*. Chicago: University of Chicago Press.
- Luhmann, Niklas. 1997. *Die Gesellschaft der Gesellschaft*. Frankfurt: Suhrkamp.
- Maitland, F.W. (1888) 1911. 'Why the history of English law is not written', *The Collected Papers*, ed. H.A.L. Fisher, Cambridge: Cambridge University Press, vol. 1.
- Margel, Serge. 2005. *Superstition: L'anthropologie du religieux en terre de chrétienté*. Paris: Galilée.
- Margolin, Jean-Claude. 1978. Duns Scot et Erasme, in Camille Bérubé (ed.), *Regnum Hominis et Regnum Dei: Acta Quarti Congressus Scottistici Internationalis*, Padova, 24–29 September 1976. Rome: Societas internationalis Scottistica, vol. II.
- Marmursztejn, Elsa, and Sylvain Piron. 2004. Duns Scot et la Politique: Pouvoir du Prince et conversion des juifs. In *Duns Scot à Paris 1302–2002*, ed. Olivier Boulnois, et al., 21–62. Turnhout: Brepols.
- Ockham, William. 1985. Sententiae II, qu.15, in *Opera Theologica*, vol. V. New York: Saint Bonaventure.
- Parisioli, Luca. 2000. *La philosophie normative de Jean Duns Scot*. Rome: Istituto Storico dei Cappuccini.
- Pufendorf, Samuel. 1996. *Gesammelte Werke*, ed. Detlef Döhring, vol. 1: Briefwechsel, ed. Detlef Döhring, Berlin: Akademie-Verlag.
- Sartre, Jean-Paul. 1975. *La liberté cartésienne*. Situations I. Paris: Gallimard.
- Sartre, Jean-Paul. 1955. 'Cartesian freedom', (Engl. trans) in Jean-Paul Sartre, *Literary and philosophical essays*. London: Rider.
- Schütz, Anton. 2005. Legal critique: Elements for a genealogy. *Law and Critique* 16: 71–93.
- Scotus, Duns. *Ordinatio II*. 1973. Rome: Civitas Vaticana.
- Scotus, Duns. *Opus oxoniense*, III, d. 19, n. 7; Fernandez Garcia (1910), reprint Hildesheim (Olms) 1988, 529ff.
- Sherley-Price, Leo. 1959. *S. Francis of Assisi: His life and writings as recorded by his contemporaries*. London: Mowbray.
- Simondon, Gilbert. 1989. *L'individuation psychique et collective*. Paris: Auber.
- Smith, Jonathan Z. 1990. *Drudgery Divine: On the comparison of Early Christianities and the religion of late antiquity*. London: School of Oriental and African Studies.
- Sondag, Gérard (ed.). 1992. *Duns Scot, le principe d'individuation: introduction, traduction et notes*. Paris: Vrin.
- Sondag, Gérard. 1999. Jean Duns Scot et la métaphysique classique. *Revue des Sciences Philosophiques et Théologiques* 83: 4f.
- Teilhard de Chardin, Pierre. 1955. *Œuvres*. Paris: Seuil.
- Todeschini, Giacomo. 2004. *Ricchezza Francescana: dalla povertà volontaria alla società di mercato*. Bologna: Il Mulino.
- Tornay, Alain. 1999. *L'oubli du bien: la réponse d'Emmanuel Levinas*. Genève: Slatkin.
- Traversino, Massimiliano. 2009. *Il problema della 'potestas absoluta' fra diritto e teologica nel secolo XVI*, Master Dissertation. Università degli studi di Trento.
- Virno, Paolo. 2004. 'Les anges et le general intellect: l'individuation chez Duns Scot et Gilbert Simondon', quoted after the French translation in *Multitudes* 18 (Fall): 33–45.
- Vos, Antonie. 2004. Duns Scotus at Paris. In *Duns Scot à Paris, 1302–2002*, ed. Olivier Boulnois, et al., 7–20. Turnhout: Brepols.