Janet Coleman

The Intellectual Milieu of John of Paris OP

The Dominican John of Paris (d. 1306) wrote a tract “De potestate regia et papali” which would later influence fifteenth-century conciliarists and seventeenth-century republicans¹. But the manuscript tradition shows no widespread diffusion of the work in its own times, and according to Leclercq, the “De potestate” does not figure amongst the works attributed to John of Paris in ancient Dominican catalogues of Dominican authors². It has long been thought that it should be dated c. 1302³ as a contribution to the debate between Boniface VIII and Philip the Fair of France. John has been judged a major advocate of the royal position and his treatise has been taken to be a principal literary weapon in Philip’s arsenal against the pope. It has also been judged by many to be a single issue treatise of great coherence⁴.

Summary of position

Although John’s treatise may indeed have been used, but only, I would argue, eclectically, in Philip’s defence, I would like to propose a different reason for its composition.

¹ *Janet Coleman*, *Dominium in thirteenth and fourteenth-century political thought and its seventeenth-century heirs: John of Paris and Locke*, in: *Political Studies* 34 (1985) 73–100.

² *Jean Leclercq*, *Jean de Paris et l’Éclésiologie du 13^e Siècle* (Paris 1942) 7–8. Only one MS, Paris Bibl. Nat. lat. 18288, can be dated with certitude to the first half of the fourteenth century (ibid. 151). Also see the incomplete list of MSS in *Fritz Bleienstein*, *Johannes Quidort von Paris, Über königliche und päpstliche Gewalt (De regia potestate et papali)*. Textkritische Edition mit deutscher Übersetzung (Frankfurter Studien zur Wissenschaft von der Politik 4, Stuttgart 1969). For additional MSS see *Jürgen Miethke*, *Die Traktate “De potestate papae”*. Ein Typus politik-theoretischer Literatur im späten Mittelalter, in: *Les genres littéraires dans les sources théologiques et philosophiques médiévales* (Publications de l’Institut d’Études Médiévales II.5, Louvain-La-Neuve 1982) 209.

³ *Leclercq* 10–14.

⁴ *John of Paris*, *On Royal and Papal Power*, Translated with an Introduction by *J. A. Watt* (Pontifical Institute of Mediaeval Studies, Toronto 1971) 11–12. Watt argues that John’s deposition theory is the centre of the work, 47–57. *A. J. and R. H. Carlyle*, *A History of Mediaeval Political Theory in the West* (Edinburgh 1928) 437: “It serves to represent the confident and thorough-going temper in which the French king and his advisers met the claims of Boniface VIII”. *Arthur P. Monahan*, *John of Paris, On royal and papal power*, transl. and introduction (New York 1974) for similar views.

I want to argue that it is not a single issue treatise but rather a series of tracts⁵, written possibly over several years, in response to a cumulative series of important issues that emerged from events with which the Dominican Order had to deal. These events finally came to a head in 1295–7 when Boniface VIII became pope and his election was contested by two rebellious cardinals, Peter and James Colonna. It will be argued that there is a connection between John's position on papal resignation and the opposing views of the Colonnas. Furthermore it will be argued that the origins of John's treatise are in the much narrower debate between the Franciscans and Dominicans during the final third of the thirteenth century and their respective relation to property and papal jurisdiction⁶. It will be shown that John's method of argument as well as his conclusions are an original contribution to the distinctively Dominican use of canon and civil law and theological arguments and not simply Thomist: John draws the positions of Aquinas to much more specific conclusions. John's purpose appears to have been to put forth a general Dominican thesis on the distinction between dominium and jurisdictio, property ownership and its administration, in church and state, with much greater emphasis given to these issues within the church than the regnum. A close reading of the whole treatise does not lead us to the traditional view that it was written specifically for Philip of France in his controversy with Pope Boniface VIII. Rather it is a more general treatise largely on church administration of property that is owned by the collective church corporation and not by the pope or the *ecclesia Romana*. There is little doubt that John, as a Dominican at the convent of Saint-Jacques in Paris, was a member of an order that was favoured by French royalty and that he was intellectually antagonistic to hierocratic views of lawyers and theologians who wrote for the papal cause. His name is found amongst those Dominicans at Saint-Jacques who signed a petition in 1303 for a council, launched by Philip, to judge Boniface VIII. But he never names Philip in the "De potestate" and only mentions Boniface VIII once with respect to his contested election after the resignation of Celestine V. This occurs only in the final chapters of the tract which appear to have been added on later, in order to treat specific problems that illustrate the more general thesis he had already written. But naming names is not the issue here. Following the practice of lawyers, John speaks generally and impersonally of popes, kings and emperors. And the conflict between Philip and Boniface was a specific instance of an already ancient conflict over the respective limits of papal and royal power. Hence it is not surprising that his tract has very few specific *historical* references to the contemporary scene. Instead it publicizes a detailed presentation of opponents' views along with examples to prove his own arguments, and these are extremely specific, enabling John to establish his more general principles. From an analysis of these opponents' views and John's responses, I would think that most of the "De potestate" was written largely c. 1297–8,

⁵ *Heinrich Finke*, *Aus den Tagen Bonifaz' VIII.* (Münster 1902) 171 also called the "De potestate" a series of treatises juxtaposed, but Finke argues there are no links between the parts.

⁶ *Janet Coleman*, *The two jurisdictions: Theological and legal justifications of church property in the thirteenth century*, in: *Studies in Church History* 23 (1987) 75–110. *Janet Coleman*, *Property and Poverty*, in: *The Cambridge History of Mediaeval Political Thought*, ed. *J. H. Burns* (Cambridge 1988) 607–48.

but it draws on identifiable arguments made by Franciscans and Dominicans twenty years earlier.

Chapters 1–10 deal with specific arguments largely made by Franciscans and Dominicans from 1270–81; Chapter 11 lists opponents' views and widens the debate beyond the opposing Franciscan position to those hierocrats who argued similarly; Chapters 12–13 are preliminary general remarks before a point by point repudiation of opponents in Chapters 14–20. Then Chapter 21 looks like a separate treatise on the Donation of Constantine and on the powers of the Roman Emperor, drawing on traditional Roman law arguments. Chapter 22 deals with whether one is permitted to debate and judge issues concerning the pope, and looks like a determination in a university debate, possibly a contribution to the debate on such issues at the University of Paris, c. 1295 (?)⁷. Chapter 23 treats of specific 'frivolous' arguments put forward largely, but not exclusively, by radical Franciscans, that the pope cannot resign. This debate was occasioned by the resignation of the saintly pope Celestine V in 1294. Chapters 24–5 answer these arguments drawing on the treatise by the Augustinian Aegidius Romanus, "*De renuntiatione papae*" (1297)⁸, that favours papal resignation and mentions the specific problem of Celestine V's resignation and Boniface VIII's accession (1294/5). As we shall see, Chapters 21–5 appear to be add-on discussions occasioned by recent events and debates, c. 1295–7 with possible modifications to these chapters made as late as 1302. Throughout this study it is suggested that historians of medieval political thought reconsider how political treatises were composed. It is suggested that we reject the long held belief that the "*De potestate*" was written for a single crisis in church-state relations. Nor was it a product of a few days or weeks.

In sum, the argument here presented attempts to demonstrate that John of Paris' milieu was a specifically Dominican one, and one which was primarily defined by the in-house debate between Franciscans and Dominicans and their respective relations to the papacy. What holds the entire work together is the constancy of the Dominican positions as these were elaborated between the 1270s and 90s. This means that it is no longer clear that John's "*De potestate regia et papali*" was written in *direct* response to Boniface VIII's "*Clericis laicos*" (1296) or "*Unam sanctam*" (1302) or to any of the intervening papal bulls like "*Ausculata fili*" (1301) or the false "*Deum time*" to which John's *already* elaborated doctrine could thereafter have been applied. The "*De potestate*" appears to be a Dominican theory on the relationship between the pope and the church, the pope and temporal rulers, the relationship between the church and its col-

⁷ J. A. Watt, Introduction 35, speaks of this university discussion beginning in 1292. For an argument that rejects that there was any Parisian discussion before 1297 which argued that papal renunciation was *invalid*, see John Marrone and Charles Zuckerman, Cardinal Simon of Beaulieu and relations between Philip the Fair and Boniface VIII, in: *Traditio* 31 (1975) 195–222, esp. 207. There was, however, a debate in 1295–6 in Paris concluding that papal resignation was permissible according to Godefroid de Fontaines, *Quodlibet* 12 q.4 (1295), and the Thomist Peter of Auvergne (1296).

⁸ *De renuntiatione papae*, ed. *Johannis Thomas de Rocaberti* (Bibliotheca Maxima Pontifica II, Rome 1698) 1–64. Also ed. L. Oliger in: AHF 11 (1918) 366–73; John Eastman (Ed.), *Aegidius Romanus, De renuntiatione papae*. Kritische Edition und Analyse der Frage der Papstabdankung in der Zeit von Cölestin V. und Bonifaz VIII. (Würzburg 1984).

lective property and the relationship between temporal rulers and the private property of their subjects. The very heart of the theory is an examination of the different modes by which individuals and corporations may hold property, and the consequences for the secular and spiritual administration of and dispensing of such property that is held in different ways. It issues in the first instance from the property-poverty debate between secular and mendicant churchmen of the mid-thirteenth century⁹, and in the second instance from the differences between Franciscans and Dominicans on the same problems. It highlights how the two mendicant orders developed distinct understandings of Christ's powers and his relationship to the apostles. And it reflects the widening differences between Franciscan and Dominican attitudes to property ownership, jurisdiction and use.

I. Background

With the revival of Roman and the development of canon law in the twelfth century, a doctrine of supreme and universal jurisdiction began to be expounded with increasing vigour by the papacy. By the thirteenth century, those learned in Roman and canon law began to distinguish in more subtle ways between jurisdiction on the one hand and holy orders on the other; between the capacity to make law and to discover law; between legislating and adjudicating, and between ruling and owning. 'Iurisdictio' had become one of a cluster of terms used to define aspects of rulership, authority, prelacy and imperium, combining the idea of rightful administration of the common good with the legitimate and authoritative use of coercive force¹⁰. During the thirteenth century when the word 'jurisdiction' came to acquire the broader meaning of ruling in general, ruling the material and spiritual worlds, a clear tendency can be observed in some authors to distinguish jurisdiction as a complex of supreme legislative, judicial and administrative rights, from the rights of dominium or ownership of goods to be administered. Already by the mid-thirteenth century there were some who conflated jurisdiction and dominium and some who separated them. In general, the Franciscans conflated jurisdiction and ownership¹¹ and the Dominicans separated them¹², and the dispute between the two mendicant orders served as a microcosm of what was occurring in the wider world. This debate would eventually define the distinct and separate roles of church and state by drawing a line between their respective jurisdictions and their distinctive relationships to property and wealth.

⁹ This debate continued at least until 1290 when the University of Paris debated and cardinal legate Gaetani, the future Boniface VIII, found in favour of the mendicants and their privileges against the seculars. See *Finke*, *Aus den Tagen*, Quellen III–VII.

¹⁰ *Brian Tierney*, *Religion, Law and the Growth of Constitutional Thought, 1150–1650* (Cambridge 1982) 30–5. *M. Van de Kerckhove*, *La notion de juridiction dans la doctrine des décrétistes et des premiers décrétalistes*, in: *Etudes Franciscaines* 49 (1937) 420–55.

¹¹ But they separated use from dominium/ownership.

¹² But they combined use and dominium/ownership. See below.

In Paris, the first round of the debate over property, dominium and jurisdiction in the church showed the mendicant orders united against the secular clergy. Thereafter, the Franciscans Bonaventure and John Pecham¹³ presented views that confronted and conflicted with the Dominican position as elaborated by Thomas Aquinas, in a subsequent debate that developed between the two orders. The Franciscan theory of dominium would go on to influence an enduring strand of church-state debate at the hands of the papal hierocrats. For Franciscans like Pecham and for later hierocrats, all jurisdiction and dominium/ownership was Christ's. Therefore, all members of the ecclesiastical and lay communities have no fundamental rights of ownership but are only administrators and stewards of wealth. Ultimate jurisdiction was claimed from God rather than the king, and the pope merely tolerated as a concession various kings' claims to exclusive jurisdiction in actions "ratione materiae". For Franciscans like Pecham this toleration was a papal concession rather than the recognition of a secular and natural right. For Franciscans the pope had supreme jurisdiction and dominium whereas ecclesiastics and kings exercised a delegated jurisdiction alone.

It was Innocent IV in the middle of the thirteenth century who sought further to extend the definition of the pope's universal monarchy with the words "the pope has jurisdiction and power over all *de iure*", and his use of jurisdiction showed much in common with the later use of the idea of sovereignty¹⁴. And it was his crucial decision, in "*Ordinem vestrum*", to accept dominium as well as jurisdiction over all property given for Franciscan use, that led to a widespread Franciscan belief that the pope alone could and did conflate dominium/ownership and jurisdiction, if not in his person then certainly in his office. As we shall see, prior to human laws all dominium and jurisdiction is Christ's and therefore, they argued, the pope's. This Franciscan attitude to Franciscan property was later to be generalised (1302) not least by the Augustinian Aegidius Romanus to all property relations both in the church and in secular society. But John of Paris had already entered this debate during the 1290s, using arguments previously elaborated during the 1270s and 80s in order to reaffirm the following points against the Franciscans: that to have proprietary right and ownership over property was not the same as having jurisdiction over it; and neither princes nor popes were owners of the property over which they exercised jurisdiction.

The problem began during the 1250s at the University of Paris in the intellectual feud between secular university masters and the mendicant orders¹⁵. The story is well known, with William of Saint Amour, the Franciscan Thomas of York and Gerard of Abbeville as the chief protagonists. By the 1270s the Dominicans would adopt many of the theses propounded by the secular clergy and, in particular, the view that although the pope was the shepherd of the sheep of a bishop, the pope was not the source of the bishop's jurisdiction, whereas Christ was the source. William of Saint

¹³ For a fuller account of the arguments by Bonaventure and Pecham in the following pages see Coleman, *The two jurisdictions*, and for the continuation of this debate in the fourteenth century see Michael Wilks, *The Problem of Sovereignty in the Later Middle Ages* (Cambridge 1963).

¹⁴ Tierney, *Religion* 32 n. 6.

¹⁵ Y. M. Congar, *Aspects ecclésiologiques de la querelle entre mendiants et séculiers*, in: *AHDLMA* (1961) 35–151.

Amour had argued what would be argued by John of Paris, that each bishop was autonomous in his diocese and the pope was not permitted to change the church's constitution, especially regarding what was a truly coordinate rather than subject power of the episcopacy¹⁶. While they admitted that the whole ecclesia was generally maintained by the pope, the geographically more restricted power of each bishop was not derived from him as the higher authority. In contrast, the Franciscans were frequently the natural enemies of those episcopalists who saw their power as autonomous.

In 1269 Bonaventure answered Gerard of Abbeville's attack¹⁷ with his *Apologia pauperum*¹⁸. For our purposes we should note Bonaventure's following points.

The Rules of St Francis of 1221 and 1223 prohibited Franciscans from having any contact with money and they must not receive reward for any work. They were provided with an "amicus spiritualis" who bought clothes and provided for the necessities of the ill. No brethren were to appropriate any property to themselves. But there was no reference to denying property rights as such. When Gregory IX allowed an extension in the functions of the "amicus spiritualis" who was now to be the agent of the almsgiver, his bull "Quo elongati"¹⁹ raised questions. Who held the dominium over the movable and immovable goods used by Franciscans if they could not own these things even collectively like other religious orders? Gregory IX confirmed that the friars were not the owners and they were not to have proprietas, individually or in common, although they could have usus of utensils, books and movables. He thereby confirmed that ownership remained in the hands of the donors, and he did this by distinguishing between dominium and usus. Dominicans could not accept that use could be separated from ownership although jurisdiction could be separated from dominium as we shall see. Thereafter Innocent IV created the legal fiction of papal dominium of the goods Franciscans used, and he seems to have consciously included in the concept of papal power both dominium and jurisdiction so that what he meant by governing included the capacity to own that over which he exercised jurisdiction²⁰.

Following Gregory IX, Bonaventure considered that the possession of temporal goods could be treated with regard to dominium on the one hand and usus on the other²¹. He said it was the nature of evangelical perfection to renounce voluntarily earthly possessions and their ownership but, as St Francis had maintained, not to reject usus completely. And if a man rejects dominium held in common *and* in particular, he professes perfect poverty. The life of Christ and the apostles showed the pattern of rejecting individual and common ownership of things. Although church goods could be held without detriment to perfection, it was more perfect to live in imitation

¹⁶ *Guillaume de Saint Amour*, *De periculis novissimorum temporum* (1255); Tierney, *Religion* 61–2.

¹⁷ *S. Clasen*, *Tractatus Gerardi de Abbatisvilla contra adversarium perfectionis christiane*, in: *AFH* 31 (1938–9) 276–329 and *AFH* 32 (1939–40) 82–200.

¹⁸ *Apologia pauperum*, in: *Bonaventure, Opera Omnia* 8 (Quaracchi 1898) 223–330.

¹⁹ "Quo elongati", ed. *Herbert Grundmann*, in: *AFH* 54 (1961) 20–5.

²⁰ *Innocent IV*, "Ordinem vestrum". For citations and discussions see *M. D. Lambert*, *Franciscan Poverty, the doctrine of the absolute poverty of Christ and the apostles in the Franciscan Order 1210–1323* (London 1961) 97 n. 3 and 97–9. On Innocent IV's "Quanto studiosius" *ibid.* 100.

²¹ *Apologia pauperum* cap. 8 par. 3, 272–3.

of the penurious life of poverty of Christ and the apostles. The Franciscans, he implied, were following the more perfect way²². *Dominium* and *usus* were, he said, capable of separation in civil law. Dominicans disagreed.

But most importantly Bonaventure argued from a particular understanding of the nature of Christ's royalty. He focused on Christ the king's voluntary choice of condescending to give up those aspects of his royalty which would make him *de facto* king on earth and in heaven²³. As we shall see, John of Paris and other Dominicans rejected this analysis of Christ ever having earthly royal powers capable of exercise which he then voluntarily renounced. John argued, as did others, that Christ's royalty was never meant to be of this world so that his royal power is not of the temporal order. Hence there was nothing to renounce, voluntarily or otherwise. In the course of his earthly life Christ never did exercise property rights or any temporal jurisdiction concerning ecclesiastical or secular wealth.

Bonaventure wrote his *Apologia* in 1269 and in this same year a controversy on the relative perfection of the two mendicant orders erupted in Oxford²⁴. It was a debate over whether the Franciscans did indeed receive money and property, especially through legacies. The Franciscans argued that all these gifts were still in the hands of donors and capable of reclamation at will. In addition they argued that they do not receive money through an interposed person and that papal declarations have correctly asserted St Francis' intentions. The Dominicans replied that the pope was an inadequate executor of Francis' will, not knowing his intentions. The Franciscans replied with the papal plenitudo potestatis argument: that when a pope makes a declaration he does so out of his plena potestas and authority to govern the whole church. Dominicans refused to accept a papal declaration that pecunia in Franciscan use did not also transfer title of ownership: *usus* and *dominium* cannot be separated. So the Franciscans called upon the absolute power of the papacy to define a separation of use from ownership.

The Franciscan position in this Oxford debate was mirrored more widely in Paris by the Regent Master at the Franciscan friary, John Pecham. Following Bonaventure's *Apologia*, Pecham wrote his own *Tractatus pauperis* (1269/70)²⁵. As we shall see, the

²² *Apologia pauperum* cap. 7–9, 273–89. Bonaventure argues that the church through the holy spirit was provided with temporal abundance.

²³ See also *Bonaventure*, *Sermo in Epiphania I* (in: *Opera Omnia* 9, Quaracchi 1901) 147–8 and *Collatio* 149; *Sermo in Epiphania III* 158 and *V* 163–4. Cf. also *Bonaventure*, *De perfectione evangelica* IV.3 (in: *Opera Omnia* 5, Quaracchi 1891) 196: "Vicarius Christi in terris utramque a Christo potestatem accepit; unde et sibi uterque gladius competit. (...) Ex quo aperte colligitur, quod utraque potestas ad ipsum reducitur sicut ad unum hierarcham primum et summum."

²⁴ A. G. Little, *The Grey Friars in Oxford* (Oxford Historical Society 20, Oxford 1892), provides the text of the debate in Appendix 320–35. Coleman, *The two jurisdictions* 86–88 nn. 35–44.

²⁵ *Tractatus pauperis a fratre Johannis de Peckham conscriptus* (cap. 1–6), ed. A. van Wyngaert (Paris 1925). F. Delorme, *Trois chapitres de Jean Peckham pour la défense des ordres mendiants*, in: *Studia Friburgensia* 29 (1932) 3–47 (cap. 7–9); *Coll. Franc.* 14 (1944) 84–120 (cap. 11–14). Fr. Ricardi de Mediavilla *questio disputata de privilegio Martini IV* (Quaracchi 1925) 79–88 (cap. 15). Fr. *Johannes de Peckham*, quondam Archiepiscopus Cantuariensis, *Tractatus tres de paupertate*, ed. A. G. Little (Brit. Soc. Franc. Stud., Aberdeen 1910) 2, 21–90 (prologue, cap. 10, 16 and

arguments elaborated here find their way into John of Paris' presentation of views maintained by opponents. Pecham gave a detailed account of his own opponents' views, and it is clear that he is referring not only to seculars but also to Dominicans.

In this tract Pecham, following Bonaventure, argued for an original church where the originals of bishops were the apostles who were patterns of holy poverty and austerity. But to indicate that they were not hostile to ecclesiastical wealth, Bonaventure and Pecham argued that although the apostles preferred to concentrate on prayer and teaching, leaving to deacons the distribution of alms laid at their feet by their first converts (donors), the conversion of Constantine changed the situation. Christianity as a result became a universal religion giving the church a legal status as a corporate institution with legitimate permanent endowments, and bishops were now the rightful administrators of this wealth. But Pecham affirmed that the material goods held in trust (and not owned) by episcopal administrators were of little importance. The true model was a propertyless apostolate. Both Bonaventure's *Apologia* and Pecham's *Tractatus* represent an understanding of Christ's and the apostles' propertylessness in a way that would modify more extreme Franciscan positions, but both modified and extreme Franciscan positions would be represented by John of Paris when he defines the errors of the Waldensians and Herodians in his *Proemium*. Just as Dominicans did not mention Franciscan opponents by name in their tracts, neither did the Franciscans mention Dominicans. Indeed when the Franciscan Pecham argued specifically against the views of Aquinas he blamed these views on the disreputable seculars, Siger of Brabant and Boethius of Dacia.

It is significant that Pecham gives his opponents' views. We shall see that they are repeated as John of Paris' own views and indicate the Dominican constancy of position. Pecham says the opponents argue that it should be understood that the church or monasteries have possessions that are movable and immovable, and one person does not have this property but rather the whole church. The church however, is not to be understood as its bricks and mortar and possessions but as its members. Thus the property of the church belongs to the "*communitas personarum*" as Gratian said: "*Dominium est apud clericos sicut dominium est universitatis apud cives.*" And yet the comparison is not perfect between ecclesiastics and laymen. Clergy may not sell or alienate ecclesiastical goods as laymen may. Ecclesiastical wealth may, however, be divided into prebends in order to provide sufficiently for their work. And each church may give prebends to whomever it wishes, and he shall be the church's servant who liberates through mercy or through ecclesiastical wealth those who require it. Clergy may only alienate ecclesiastical wealth "*in casu res ecclesie*", and since the "*res ecclesie*" are not material but living men, the church is submissive to Caesar and pays tax tribute. "*Si igitur ecclesia vere habet res in potestate, ecclesia possidet res mobiles et immobiles, quamvis non omnino eodem modo quo seculares proprietarii. Item clericus licet non possit nisi in casu res ecclesie distrahere, potest tamen res alienatas repe-*

Fortsetzung Fußnote von Seite 179

extracts from other chapters). On Pecham in general see *Decima Douie*, Archbishop Pecham (Oxford 1952).

tere sicut res ecclesie, ut habetur xiii q. 1 res ecclesie (C. 14 q. 1 c. 1) et ut dictum est, non sunt res ecclesie materialis et lapidee sed hominum in ecclesia degentium. Item in hiis rebus ecclesia est Cesari obnoxia et tributum dare tenetur, sicut patet xi. q. 1. si tributum (C. 11 q. 1 c. 1)." Monks may receive for the common welfare of the faithful wealth in property and things, using it to sustain the poor. Hence property and inheritance may be taken up by monasteries where the donor is professed but these gifts get transferred to the community which now has "dominium ... sed transeunt in commune"²⁶.

After presenting these opposing views Pecham goes on to argue his own case that Franciscans practise a very distinctive notion of poverty, owning nothing in common or individually, and whatever they use can be taken away by the lord pope. And "it is this nudity which I believe the Lord commended to the apostles and I know that Francis' intention was to renew this recommendation". This is the "summa paupertas fratrum minorum" because their community owns nothing, they prefer no man above another, according to their law nothing can be claimed back by them, they require no tribute rendered to them, receive nothing beyond the portion of the poor, inherit from no one, hold no immovables and serve poverty. Hence they are free from Caesar's exactions ("ab exactionibus Cesaris liberum esse"). What they use is in the free gift of the pope and cardinals. Friars are cut off from dispensation. Cardinals dispense things for Franciscans²⁷.

The Franciscans are not entitled to property offered to God (NB not offered to the collective church) and modern ecclesiastics well exceed their privileges by enjoying excessive luxuries. Pecham's general position towards property is distinctively Franciscan. Temporal goods, he says, are not in any way good in themselves. They are judged good only through the use to which they are put. And those goods given for the use of Franciscans living according to the barest of necessities are rendered not to Franciscans but rather "in curie Romane" (sic) whose apostolic authority serves to satisfy the conscience and intentions of the donors²⁸. His distinctively Franciscan position is that a superabundance of wealth serves to inspire avarice in men's hearts so that anything is considered a superabundance if it provides beyond the barest of necessities. For Pecham it is possession itself that sparks the desire for excess and serves as the lure to vice. Indeed, without property contracts, Pecham implies that men would adequately secure their necessities and they would eliminate the vice of exclusivity enflamed by contractual "meum" and "tuum"²⁹: "Credo quod inter omnes possessiones pecunia est illecebrosissima que maxima delectat avaros, in quantum in eam omnes alie resolvuntur. Hec est enim immediatissima omni contractui, omni voluptati, non tantum necessitati." The Dominican position, as elaborated by Aquinas precisely at this time, argued that the ownership of a moderate amount of private possessions over and above the barest necessities, serving the higher end to use them well, was both natural and

²⁶ Tractatus cap. 10, 34. *Coleman*, The two jurisdictions 91 nn. 51–3.

²⁷ Tractatus cap. 10, 35–8. *Coleman*, The two jurisdictions 91–2 nn. 54–6.

²⁸ Tractatus cap. 10, 39–42. *Coleman*, The two jurisdictions 93 nn. 57–9.

²⁹ Tractatus cap. 10, 43.

just. Hence, private property was a natural conclusion of natural law precepts known to all. Temporal goods have a certain good in themselves³⁰.

Lastly, Pecham presents the Franciscan view on obedience owed to the pope which, as we shall see, would stand in stark contrast to the Dominican position as presented by John of Paris. According to Pecham, the pope as successor of Peter is the sole bearer of plena potestas. Those who claim that the pope has no more power over the universal church than bishops have in their dioceses speak heresy³¹. As Pecham made clear in his commentary on the Franciscan Rule, when the pope calls himself "episcopus", it must be understood that he is "episcopus" not only of part but of all, "totius universitatis".

The pope is the very vertex, the summit of the ecclesiastical hierarchy for he is "ecclesie Romane antistes Petri successor"³². Pecham has not, we note, called the pope as Peter's successor the "dominus" but the overseer, the president of the Roman church. In but a few years he would affirm that the pope was indeed "dominus". In the Tractatus of 1270 however, he understands the papal plena potestas as authoritative jurisdiction over all bishops through Christ's unique commission to Peter when he said: "Feed my sheep". Therefore, Peter or Peter's vicar is "totius ecclesie pastor immediatus a Domino constitutus" and the overseer of all the apostles, bishops and Christians. Hence, Franciscans owe obedience only to the apostolic see. Their obedience to their Rule, their poverty, their chastity and their subjection to the "ecclesia Romana" issue from the evangelical source whose voice in the world is the pope's³³.

1270 was an important year in Pecham's life for he not only presented the Franciscan position on property and poverty against the Dominican and secular opposition in Paris, but he also entered into a famous debate with Thomas Aquinas. Pecham was not only opposed to the introduction of Aristotle's science and philosophy into Christian teaching, which of course was one of the hallmarks of Thomas' philosophy and theology. Pecham was also a key figure in elaborating numerous Franciscan theological objections to some of Aquinas' most distinctive theological positions. Perhaps the most famous was the Franciscan maintenance of the doctrine of the plurality of forms against the Thomist defence of the unicity of substantial form³⁴. But there were other

³⁰ Aquinas, *Summa Theologiae* II, 2 q. 66 art. 1-2.

³¹ John of Paris in chapter 10 argues that all the apostles received the *same* power as Peter and it does not say *from* him: "Item eandem potestatem acceperunt omnes apostoli cum Petro (...) 'In Novo' [D. 21 c. 2], ubi dicitur quod Petrus ligandi solvendique potestatem primus accepit, ceteri vero apostoli cum eodem, non dicitur 'ab eodem', pari consortio honorem et potestatem acceperunt, et in collatione huius non posuit Christus aliquam restrictionem respectu aliorum a Petro". Peter is only the more principal, as head of the Church, for the sake of preserving unity. So now in common law, whatever the pope can do, so can any other bishop: "et nunc de iure communi, quidquid papa potest quilibet episcopus potest, nisi quod papa potest ubique, ceteri vero episcopi in suis diocesibus tantum" (De potestate 109).

³² Pecham, *Expositio super regulam fratrum minorum*, in: *Bonaventure, Opera Omnia* 8 (Quaracchi 1898) 391; on Pecham's authorship see lxxi-lxxii. Tractatus cap. 10, 45-6; Coleman, *The two jurisdictions* 94 n. 62.

³³ Tractatus cap. 10, 47; Coleman, *The two jurisdictions* 94 n. 64.

³⁴ Frederick J. Roensch, *Early Thomist School*; also published as: *The Unicity of Substantial Form and its implications in the early Thomistic schools* (Dubuque, Iowa 1964). F. Ehrle, *Der Kampf*

Thomist positions which Pecham and the Franciscans would not accept. These were, in addition to Aquinas' doctrine of the unicity of substantial form, his teaching on the pure potentiality of prime matter, his doctrine of the spirituality of separated substance, his insistence that matter was the principle of individuation, and, lastly, his demonstration of a real rather than a formal distinction between essence and existence. We have an eyewitness account by the Franciscan Roger Marston of this theological debate between the two men³⁵. Its relevance for us is in the fact that the Dominicans increasingly commended Aquinas' position³⁶ with the Franciscans demurring and finally issuing a *Correctorium* listing Thomas' errors. The author of the Franciscan *Correctorium* was William de la Mare OFM³⁷, the successor of Pecham in Paris after Pecham returned to Oxford, where he was Franciscan lector in theology and then English provincial (1275). We wish to show that it is the Thomist Dominican position on just such matters that lies at the very basis of John of Paris' early arguments for his positions in his "*De potestate regia et papali*". John of Paris would be one of the early great defendants of Thomas' views, indeed this is what he was known for in his own times³⁸ rather than for his more political work, and in particular he would write a *Correctorium* to correct the Franciscan *Correctorium* of de la Mare. In John's *Correctorium* "*Circa*" (before 1284)³⁹ he would follow many of the arguments of one of the English (Oxford) Thomists, Richard Knapwell⁴⁰, and we shall see that these positions would surface in his philosophical justifications for many of his positions in the early chapters of the "*De potestate*". Richard Knapwell and John of Paris demonstrate the closeness of Parisian and Oxford Thomists against their Franciscan contemporaries. John of Paris appears to have known the Parisian work of Pecham, the *Tractatus pauperis*, and used its positions to highlight the errors of his opponents. But he also knew the more elaborated and even more extreme hierocratic Franciscan position as it would evolve in the 1270s, because the Franciscan position regarding *plena potestas* was further developed by Pecham in his confrontation with the Dominican provincial Kilwardby in Oxford, 1272, over the issue of poverty and property.

Fortsetzung Fußnote von Seite 182

um die Lehre des hl. Thomas von Aquin in den ersten fünfzig Jahren nach seinem Tod, in: Zs. f. kath. Theologie 37 (1913) 266–318. F. Ehrle, John Peckham über den Kampf des Augustinismus und Aristotelismus in der zweiten Hälfte des 13. Jahrhunderts, in: Zs. f. kath. Theologie 33 (1909). D. A. Callus, The origins of the problems of the unicity of forms, in: The Dignity of Science. Studies presented to W. H. Kane OP, ed. J. A. Weisbeipl OP (Washington, D. C. 1961).

³⁵ R. Marston, *Quaestiones disputatae*, ed. PP. Collegi S. Bonaventurae, (Bibliotheca Franciscana Scholastica 7, Florentiae ad Claras Aquas 1932).

³⁶ Roensch, The Unicity 17 f.; *Acta capitulorum generalium ordinis praedicatorum*, ed. B. M. Reichert (Monumenta Ordinis Fratrum Praedicatorum Historica 3, Rome 1898) 199; *Chartularium Universitatis Parisiensis*, eds. Denifle-Chatelain 2, 567 n. 481; M. Burbach, Early Dominican and Franciscan legislation regarding St. Thomas, in: *Mediaeval Studies* 4 (1942) 139–58.

³⁷ *Correctorium*, in: AFH 26 (1933), *Definitiones capituli generalis Argentinae* 139. R. Creytens, *Autour de la littérature des correctoires*, in: AHP 12 (1942) 313–330.

³⁸ See the list of John of Paris' works in Roensch 101–3.

³⁹ Jean-Pierre Müller (Ed.), *Le correctorium corruptorii 'Circa' de Jean Quidort de Paris*, in: *Studia Anselmiana*, fasc. xii–xiii (Rome 1941).

⁴⁰ Roensch 266–97. *Le correctorium corruptorii 'Quare' (R. Knapwell)*, in: Paléon Glorieux (Ed.), *Les premières polémiques thomistes* (Bibliothèque Thomiste 9, Le Saulchoir, Kain 1927).

The *Tractatus contra Kilwardby* (1272)⁴¹ is perhaps the oldest document that makes explicit the controversy between the Franciscans and Dominicans on the subject of poverty and papal dominium. It is especially important because Pecham includes portions of Kilwardby's now lost position in his own work. It makes the following points which are relevant to the position of the opposition as presented by John of Paris: Poverty and austerity were not imposed on the apostles as prelates but they were imposed as the foundation of the general church. The rule of absolute poverty, the renunciation of property, even in common, is no innovation of the Franciscans but imitates the life of the apostles. Pecham relates that Dominicans argue that their own order does not depart from the Gospels when they provide for their own maintenance and possess houses and gardens and schools according to their needs. But they do not mean that everyone should follow their example nor do they denounce those who refuse all possessions like Franciscans. John of Paris too recognises the distinctiveness of the Franciscan position. Only when minorites accept provisions of corn and oil and testamentary legacies, the Dominicans say they are not keeping strictly to their law of poverty since they use an agent to acquire conveniently what they need for permanent use and this, in effect, is ownership. Pecham insists that the true law of the Gospels enjoins absolute poverty and that Jesus and the apostles conformed to this. But he accepts distinctions which uphold the existing property of secular and regular clergy. Indeed, neither bishops nor popes should be condemned for possessing property, although this does not mean that the true law of Christ is not absolute poverty, proscribing property both in common and individually. He reaffirms that those who offer property to Franciscans can always recall it; and further, it should be known that he who intends to offer things for Franciscan use does not transfer the dominium to the brethren, but to the apostolic see over which things the pope is the immediate owner: "Adhuc sciendum quod utuntur fratres quibusdam, quorum ex intentione dantium et fratrum transfertur dominium non ad fratres sed ad sedem apostolicam, que rebus, quibus fratres utuntur, dominatur immediate." Pecham here has finally accepted Innocent IV's doctrine of papal dominium of Franciscan wealth⁴² and this would be confirmed by pope Nicholas III in "Exiit qui seminat" (1279)⁴³.

Apparently the Dominican Kilwardby had appealed to Aquinas' doctrine that in the matter of wealth one need not pay attention to the things but rather to the mind of the user. Since he who has no attachment to his possessions, which in themselves are a good, can throw them overboard with readiness, he may be called a stranger to riches as much as is the man who in fact possesses nothing. But Pecham and Franciscans in general believed this to be insufficient. Pecham says, "there is a distinction here not between sin and perfect acts but between more and less perfect acts. Hence

⁴¹ *Tractatus contra fratrem Robertum Kilwardby OP*, ed. F. Tocco, in: *Fratris Johannis Pecham quondam archiepiscopi Cantuariensis Tractatus tres de paupertate*, eds. C. L. Kingsford, A. G. Little, F. Tocco (British Society of Franciscan Studies, Aberdeen 1910) 121–47. Coleman, *The two jurisdictions* 95–8.

⁴² *Tractatus contra Kilwardby* 140.

⁴³ "Exiit qui seminat", in: *Regula fratrum minoris seraphicae legislationis, Textus originales* (Quaracchi 1897) 181–227.

marriage is not a sin but it is not the most perfect state. The pauper who voluntarily assumes poverty is more perfect than the rich man, no matter what the latter's intentions⁴⁴. If this is the case, John of Paris will say, then how is the pope, who is owner of property, evangelically perfect?

With these attitudes expressed in Oxford, Pecham moved from being provincial of the Franciscans to being Lector in theology for two years at the papal curia. He there formulated even more radical views⁴⁵ which would surface in practice when he was nominated by Pope Nicholas III to the archbishopric of Canterbury in 1279. And it is probably to Pecham-like, more hierocratic views of papal power that John of Paris refers when he says that the original, so-called Waldensian absolute poverty doctrine was shifted into a Herodian view, asserting Christ's absolute dominium in the world as well as in heaven, and hence, the vicarious papal position regarding property.

In England Pecham found King Edward I active in prohibiting certain legal actions in court Christian and, in effect, deciding on what was of papal jurisdiction and what was of royal, largely in his own favour in matters of property and money⁴⁶. John of Paris would readily accept this royal prerogative as a legitimate aspect of royal jurisdiction⁴⁷. But for Pecham, the king had encroached on the church's liberties. In 1281 the situation exploded, and the confrontation between Edward I and Pecham seems undoubtedly reflected in John of Paris' choice of quotes from papal decretals which give the example of the English king having the power to decide on the obscure line which divided spiritual and temporal jurisdiction. Pecham responded at the Council of Lambeth in 1281 and here we see the full-blown Franciscan understanding of papal dominium and jurisdiction in matters spiritual and temporal, a doctrine Pecham had developed when in Rome. As archbishop of Canterbury, Pecham's Franciscan devotion to the Roman church, and in particular to the papacy, was to be extended in order to bring all his clergy to obey the pope. But it was in the conflict between civil and religious jurisdictions, rather than in the debate on pluralists and the tensions between levels of the church hierarchy, that Pecham advanced his most developed understand-

⁴⁴ Tractatus contra Kilwardby 143.

⁴⁵ *Ioannis de Peckham, Quodlibet Romanum*, ed. F. M. Delorme (Spicilegium Pontifici Athenaei Antoniani, Rome 1938) VII, Qq. v, vi, 109–23.

⁴⁶ Coleman, The two jurisdictions 101–110.

⁴⁷ De potestate c. 13 citing papal decretals *Extra, Qui filii sint legitimi*, "Lator" (X 4.17.5), which states that the secular judge or lord should have judgement of hereditary right, and "Causam" (X 4.17.7) of the same title which says: we take account of the fact that it is for the king to judge of such property matters, not the Church, lest we should appear to detract from the right of the king of England who claims that such judgement belongs to him; *Extra* "Novit" (X 2.1.13): John says that to argue that popes teach and write this doctrine merely from humility is completely dangerous (137). Boniface VIII would indeed modify his own views, on what grounds it is not clear, allowing in time of necessity and danger for a king to tax clergy without prior appeal to Rome, in: "Romana mater ecclesia" (1297). John goes on to say that churchmen can only impose temporal punishments on sinners conditionally, that is, if they wish to repent and accept money penance, for an ecclesiastical judge cannot impose a corporal or money penalty as can a secular judge except on the condition that the guilty party is willing to accept it (138). Edward I made certain that as soon as ecclesiastical judges punished offenders in their courts by pecuniary pains, the case became a question of chattels and under the royal prerogative. Punishments had to remain spiritual in court Christian. Coleman, The two jurisdictions 103.

ing of the position of the pope. Pecham wrote the following to the king “ac ejus consiliariis literatis”⁴⁸: “Obedience to the pope is necessary for it is by divine authority that all human constitutions may be considered binding. God is to be obeyed before men and *no* human constitution is binding nor is any judgement if not sanctioned by divine authority. Therefore it is the decrees of the pope, the statutes of church councils and the orthodox sanctions of the church fathers which comprise the *summa auctoritas*, the *summa veritas* and the source of all *imperium*.” Hence this argument was made well before Aegidius Romanus’ similar argument of c.1301/2 in his “*De ecclesiastica potestate*”, where Aegidius made clear that *dominium* or any kind of posses-

⁴⁸ *Douie*, Pecham 129–30. Registrum Peckham I 239–4 (Lambeth, November, 1281): “Quia tamen oportet Deo magis quam hominibus obedire, ad praevaricationem legum illarum quae divina auctoritate absque omni dubio subsistunt, nulla possumus humana constitutione legari, nec etiam juramento. Quoniam quicquid divinis beneplacitis, dicente Domino, per prophetam [Isai. 10, 1] ‘Vae qui condunt leges iniquas’. Quia igitur ab antiquo tempore inter reges et magnates Angliae ex parte una, et archiepiscopos et episcopos ac clerum ejusdem regni ex altera, duravit amare dissensio pro oppressione ecclesiae contra decreta summorum pontificum, contra statuta conciliorum, contra sanctiones orthodoxorum patrum, in quibus tribus *summa auctoritas*, *summa veritas*, *summaque sanctitas* consistunt, supplicamus regiae majestati quatenus pro honore Dei, ac animae suae suorumque salute, ac prosperitate stabili successionis suae, ab imperatore omnium obtinenda, in cuius redundat injuriam ecclesiae contra praedicta conculcatio, huic periculosae regno et perniciosae clero discordiae dignetur finem imponere salutem. Cui finis aliter imponi non potest, nisi vos sublimitatem vestram praedictis tribus scilicet decretis pontificum, statutis conciliorum et sanctionibus orthodoxorum patrum juxta Dei beneplacitum cum catholicis imperatoribus dignemini inclinare. Ex hiis enim tribus sunt canones aggregati, et jura coronae vestrae Christi coronae suppositae, cuius sunt diadema ac sponsae suae monilia, universae ecclesiasticae libertates, ipso per prophetam dicente (... [Isai 61, 10]). Decretis autem summorum pontificum auctoritatem dedit omnium imperator, dicens Petro in evangelio Matthaei: ‘Quicquid ligaveris super terram erit ligatum et in coelis’ [Matt. 16, 19]. Ligat siquidem summus pontifex non vinculis corporalibus sed spiritualibus, sacris scilicet legibus, quibus tenentur universi nomines obedire, in dicente eodem Domino per Moysen in Deuteronomio [17, 12]: ‘Qui superbierit nolens obedire sacerdotis imperio, qui eo tempore ministrat Domino Deo tuo, et decreto judicis, morietur homo ille’. Ab hac autem obedientia non est altitudo regia absoluta, sed plusquam ceteri laici ea inferiores eidem obnoxia. (...) Tenetur igitur rex ipse ex praecepto legis expresso summo pontifici obedire, quod si non fecerit, timere potest ex legis insinuatione ne regi sui prolongatio minuatur. (...) Ergo nulla obstante consuetudine obediendum est canonibus hierarchice impositis, hoc est sacris arbitriis praelatorum. Sed dicet forsitan ecclesiae inimicus quod non pertinet ad summum pontificem iuga hujusmodi legum vel canonum imponere principi saeculari, cuius nos cum universali ecclesia et omnibus mundi sanctis et sapientibus ex adverso contrarium affirmamus. (...) Ergo ad summum pontificem pertinet omnis controversiae determinatio, quae non potest per inferiores quoscumque iudices terminari. (...). Qui igitur ecclesiae non obediunt in concilio praecipue congregato, haeretici sunt censendi. (...) Haec attendentes, imperatores catholici leges suas omnes sacris canonibus subdiderunt, ne schismatici vel haeretici putarentur. Cum igitur ad vos, excellentissime domine rex, pertineat pax inclita imperii, et vos etiam tenemini leges vestras canonibus subicere, et contrarias abolere, turpis est pars quae suo non convenit universo. Constantinus insuper rex Angliae, et orbis nihilominus imperator, universa concessit quae petimus, et specialiter personas clericorum a solis praelatis ecclesiae iudicandas esse decrevit. (...) Juramento vestro tenemini a regno vestro malas consuetudines extirpare, nec juramento aliquo potestati ad ea quae repugnant libertati ecclesiasticae obligari. Et ex abundanti ab omni vos juramento absolvimus, quod potest conscientiam vestram contra ecclesiam aliquid excitaré.” – For Pecham’s continued anti-Thomist stance in metaphysical issues see Registrum III, 864 (December 7, 1284), and 870 (January 1, 1285).

sion can only be justly maintained through man's baptismal regeneration within the church: "non sufficit quod quicumque sit generatus carnalibus nisi sit per ecclesiam regeneratus quod possit cum iustitia rei alicui dominari nec rem aliquam possidere".

"Kings are to submit to the above authorities for their salvation as well as for the stability of their kingdoms. A king's crown, his rights and prerogatives are dependent on the crown of Christ and Christ's royalty, which, expressed in his dominium and jurisdiction, are the sources of the church's liberties". Although Pecham goes on to say that the binding and loosing committed to Peter by Christ is spiritual rather than corporeal, and hence it is the sacred laws which are to be obeyed universally by all men, Pecham affirms that "Moses, as God's lawgiver, ordained that whoever disobeyed the priest should die. Hence the king is bound more than any other layman to observe papal decrees for the pope as vicar of St Peter had received Christ's full authority to bind and loose in heaven and on earth. Indeed, the earthly commonwealth is a reflection of the heavenly and, therefore, the secular power is subordinate to the spiritual. There are those who say that the pope cannot impose such laws on secular princes, but the universal church and all the holy and wise men affirm the opposite. There are no doubtful questions which are beyond the competence of the papacy and all problems concerning the maintenance of peace pertain to the pope when inferior judges are unable to come to a decision. Not only is the pope the final adjudicator, but all catholic kings are subject first to canon law, disobedience to which is heresy. Indeed the royal oath of office requires the removal of evil customs, and if the king thinks that some aspect of his royal oath requires that he acts against the church, the archbishop would gladly absolve him from this obligation."

Well before "Clericis laicos" Pecham was arguing that from the time of Constantine, who was king of Britain as well as universal emperor, Constantine had conceded ecclesiastical liberties and had recognised the exemption of the clergy from lay jurisdiction.

Pecham had presented his theory of absolute and final jurisdictional authority as located in the papacy. There is not the slightest hint of a natural law argument nor a constitutionalist one, which limits absolutist policies of popes (or kings) as there would be in contemporary Dominican theories. This is not surprising. As Bonaventure repeatedly made plain, plenitudo potestatis is given to the pope, not by human decree but by the decree of God and of Christ. As the vicar of Christ, a pope receives from Christ both a royal and a priestly power; the first gives the pope power to rule over temporal matters, the second gives him power over spiritual affairs, both powers, however, belonging to the pope as the one, first and highest ruler. And Bonaventure made it clear that the pope has such power, not through his episcopal consecration as bishop of Rome, but by his election and his consent to the office of the papacy, an office that was instituted by Christ who set Peter and his successors in order over the whole church. Christ willed Peter's successors to be canonically elected and to have the same power as Peter. Pecham was even more specific. Ultimately all questions fall under the rubric of the spiritual, and hence the pope is the adjudicator with powers to bind and loose on earth as well as in heaven. Although Pecham recognises the role of inferior judges, there is no reference to an autonomous episcopal authority which, for Pecham,

also derived immediately from the papacy⁴⁹. Kings like those in England have a discrete jurisdictional authority not because the source of their jurisdiction is God, natural law or the people's consent. It is rather a papal concession to avoid scandal⁵⁰. For Pecham the pope has total *dominium* and *iurisdictio vice Christi* over both men and their possessions. Where Thomists like John of Paris spoke of a casual or extraordinary papal jurisdiction over kings, Pecham saw all disputed issues concerning a kingdom's peace and its relationship with its clergy to be resolved by the pope by original right, through Christ's royalty, which was passed on to Peter and his successors. It is to these Franciscan views that John of Paris addresses himself in the "De potestate regia et papali".

II. John of Paris in his milieu

We know very little of John of Paris' life other than that he entered the Dominican order after having become a Master of Arts in the University of Paris. He appears to have been a combative man and as a bachelor in theology some of his teachings were denounced as erroneous to the Dominican General in 1284. He came late to his magisterial promotion to the theology faculty. His theological positions on the eucharist were censured by a commission in 1305 and he died in Bordeaux, near the papal court, before his appeal against censure could be decided (1306). We do not know when he was born. He was a Dominican of that generation that took on the active defence of Thomism theologically and philosophically and this led to a distinctive Dominican reading of scripture regarding the nature of Christ's royalty and his legacy to the church. The "De potestate" is the only ostensibly political work John wrote, but even here he included justifications for his positions from what the Dominican order in 1278/9 und 1286 insisted was to be the official position. This means that he had to derive notions of ownership, relations to property, and the common good along lines that harmonised with Thomist theses on, not least, the doctrine that matter was the principle of individuation, that the way something existed, and in particular man, was really distinct from its essence⁵¹, and the various Aristotelian principles that asserted that matter and form were immediately united so that man's soul was to be seen as the actuality of his body, and not separated from its immattered existence as Franciscans

⁴⁹ In Chapter 10 John of Paris says in contrast that the power of prelates does not come to them from God indirectly through any papal mediation, but directly and also from the people who elect them or consent to their election. Christ, not Peter, sent forth the apostles whose successors are the bishops, and not through any intermediary: "Sed potestas praelatorum non est a Deo mediante papa, sed immediate et a populo eligente vel consentiente. (...) 'In Novo' [D. 21 c. 2] dicitur quod omnes a Christo simul eandem et aequalem acceperunt potestatem (114–115). Compare this with the views of Bonaventure in Perf. ev. q. 4 sec. 7–8, in: Opera Omnia 5, 193 and 196; also Bonaventure, IV Sent. d. 25 a. 1 q. 1 ad 5 "Et propter ...", in: Opera Omnia 4, 643 and 631.

⁵⁰ In Chapter 11, 35 (125) John says they argue further to the diminution of royal power and the elevation of papal dignity that God established the priesthood from the beginning of history of his chosen people but did not institute a king, so that it appears that God did not accept royal government so much as suffer it to exist ("sed solum ipsum permisit indignatus").

⁵¹ A. J. Heiman, *Essence and Esse* according to Jean Quidort (Mediaeval Studies 15, 1953).

understood it. All of these principles may be seen to operate in his analysis of the nature of men governed, men acquiring property, men being spiritual beings but also materially subsistent entities in a world upon which they had to rely both for biological survival and spiritual salvation. John employs Thomist philosophical and theological arguments to establish an original political argument that was much more specific than any found in Aquinas' own political treatises.

William de la Mare's *Correctorium* of Aquinas' positions was officially accepted by the General Chapter of Franciscans in Strasbourg, 1282, as the order's view of Aquinas. Thomas' *Summa Theologiae* was not to be duplicated except for "noticeably intelligent readers" and then only with de la Mare's corrections as part of the text itself and not simply as marginal notes. In contrast, the Dominicans had, in 1279, at their General Chapter in Paris, enjoined all prior provincials and conventuals and their vicars and visitors to revere Aquinas and to punish anyone who spoke irreverently and unworthily of Aquinas' person or writings⁵². Four succeeding General Chapters strengthened and extended this Dominican support for Thomas. In 1284 Pecham proscribed for Oxford Franciscans the same theses rejected in de la Mare's *Correctorium* and with the same penalties and specifically mentioned Thomas' doctrine of unicity, although he said it was not Aquinas but the discredited seculars Siger of Brabant and Boethius of Dacia who were the originators of this doctrine. What had initially been a debate between Aristotelian and Augustinian psychology expanded into a metaphysical debate and finally spilled over, most clearly with John of Paris, into a political debate.

Aquinas and his supporters argued first that the human soul should be understood as the actuality of its body and it is identical in its essence and potencies so that the soul of each man is immattered in this or that particular body. Each man's intellectual capacities were to be considered as part of the soul-body complex. In man there is only one substantial form, intellective soul, but souls are distinguished one from another in virtue of their bodies. Therefore, anything that humans may know, even in the most abstract of terms, depends on a particular man's body's sensible response to the world of individual things. If souls were not differentiated "per corpora", then there would be no variations in their natural perfections and there would be no reason for the soul to be united to the body at all. Effectively, we would never learn truths from the material world outside mind. The degree of perfection in that supreme factor in the soul, which is the intellective mind, depends on the degree of perfection in the "complexio corporis"⁵³. And of course, against the Averroists, Thomists denied that all souls are one in number. This theory of corporeal individuation leads, with John of Paris, to an understanding of human effort and labour in the world of things as a distinguishing feature of human potential when actualised as human existence. Hence John presents a theory of human acquisition that is natural and which, in effect, is the

⁵² *Acta cap. gen.* I, 204.

⁵³ As John of Paris says in Chapter 10, the more a thing has perfect existence the more its existence is distinct: „nam quanto aliquid habet esse perfectius, tanto magis habet esse distinctum" (107). See also the views on differentiation of souls "per corpora" in the writings of the Thomist Thomas Sutton. *F. Ehrle*, Thomas de Sutton. Sein Leben, seine Quolibet und seine Quaestiones disputatae, in: *Festschrift Georg von Hertling* (Kempten 1913) 426–50.

means by which men not only survive but are individually who they are, as a consequence of their actions, whilst being essentially one species. Humans know that of which they are capable by sensually experiencing the world and coming to general conclusions through sensed experience. The external world to be experienced acts on the soul's sense faculties to produce a species, an imitation that represents an object that is potentially intelligible. In order for humans to know anything, the soul cannot operate of itself but requires actualisation by objects which are sensible species or similitudes of external things. In this life, then, the proper objects of the human intellect are material objects which are known through their species.

This, at its most fundamental level, is a denial of the Augustinian and Franciscan thesis that soul and body are divided, a denial of the actuality of matter in its own right, the denial of the Franciscan understanding of matter as a 'thing' as opposed to the Thomist view that form and matter are principles of beings and not 'things', and therefore, it is a rejection of Augustine's "rationes seminales" in things. This means specifically for John of Paris that matter, what might be seen as potential property, remains potential until it is informed by use, by man's intention which actualises matter through human labour and acquisition. This is the philosophical reasoning behind why Dominicans refused to allow a separation of use and ownership⁵⁴.

Not only did John of Paris write his Commentary on the Sentences c. 1284–6⁵⁵, in which he defended these Thomistic principles. He explicitly defended the Thomist position on the distinction between 'esse' and 'essentia' sometime between 1295–99. And earlier, in his Correctorium "Circa", written before 1284, he repeated in his own fashion Richard Knapwell of Oxford's arguments against the Franciscan pluralists in article 30 (which corresponds to Knapwell's Correctorium "Quare" at article 31)⁵⁶. The soul has both a corporeal as well as a spiritual existence. While the soul is a spiritual form, nevertheless it virtually (not actually) contains all other forms that are prior and imperfect, and so it contains the corporeal form which determines corporeal existence and beyond this determines spiritual existence. The soul participates in both extremes as it is virtually spiritual and corporeal form. The soul virtually contains all forms that are more imperfect in their own modes and such cumulative, mixed forms are contained "non actu sed virtute. Et sic de aliis ut quod anima rationalis continet omnes formas praedictas et dat formaliter materiae et toti composito, quod aliae secundum

⁵⁴ As Thomists in general would argue, matter has an 'esse' (existence) derived from the form which it has received and an 'esse' which is really different from that form, which means it has a capacity to receive form. Quantity is the principle of individuation. As Sutton argued, quantity is not a principal, intrinsic constituent of individuals but is a disposition, the corporeal nature, which enables a thing's individuation. Form is not the principle of individuation because of itself it is "de se indivisibilis et indifferens ad multas materias". See *D. E. Sharp*, Thomas of Sutton O. P. His place in scholasticism and an account of his psychology, in: *Revue neo-scholastique de philosophie* 36 (1934) 332–54, 37 (1935) 88–104, 219–233. Sutton, flourished c. 1277, was a "socius domus de Merton College" who later became a Dominican. His *Quaestiones disputatae* are in MS Oxford Merton College 138, which includes his *Quodlibets* dated 1280–90.

⁵⁵ *Jean-Pierre Müller*, Les reportations des deux premiers livres du commentaire sur les sentences de Jean Quidort de Paris, in: *Angelicum* 33 (1956) 361–414. *Heiman*, *Essence and Esse* 137–43.

⁵⁶ The comparison is in *Roensch*.

earum genus, scilicet esse corpus et mixtum et vivum et sensibile et ulterius rationale"⁵⁷. In appealing to the essential unity of being, John, like Knapwell, says that forms cannot receive greater or lesser of 'esse'; rather, "forma dat esse specificum et individuale". Furthermore, prime matter is purely potential. The immediate union of form and matter is required by Aristotle's definition of the soul as the first act of a physical, organised body having life potentially. Matter, he says, must be understood as having a precedent accidental disposition already existing in matter as potency, preparing it for the reception of a substantial form⁵⁸. And it is one form that confers all that the previous forms conferred and in addition something of its own species⁵⁹. This is the Thomist view that there is a hierarchy of forms in being in which the more perfect contains the less perfect, rather than that there is a plurality of forms. Hence, the general doctrine of the *Correctorium* "Circa" is that in any composite which is essentially one, like man, there is only one 'esse' (existence) and this existence is conferred upon the composition by the rational part of the soul: "Et ideo oportet quod anima rationalis det esse composito et totum suum esse et materiae. Similiter, quod illud esse, quod habet in composito, non est aliud ab esse compositi."⁶⁰ This doctrine of "Circa" is the same as that found in his treatise on forms written c. 1279⁶¹, where he defines form as that nature or perfection by which anything becomes capable of its existence so that owing to the diversity of forms there is a diversity of 'esse'. Through form, the *nature* of anything is constituted in a determined grade of being so that it is capable of actual existence in that grade. Through form, that is, through a thing's nature, a thing is capable of receiving the divine 'esse' which means that the nature of something, its form, is a certain participation or similitude of the first act and the divine 'esse'⁶². This likeness or participation is impressed in things as their natures by the first divine act of creation. And to such form we then assign an effect, which is the 'esse' or existence of a nature. Existence is, then, a product or effect of form and indeed, the very ratio of form is to reduce matter to act, potency to actuality. Existence is the actualisation of a thing's nature. For forms, as dispositions, to be reduced to act, they require the action of a natural agent, that is, something in the world whose species represents it to the soul⁶³. Form gives the quidditative existence of something whereby it produces the natural species, but form does not give 'esse' (existence) of itself, but by the power of its first cause in which it participates, that is, God. Form gives 'esse' not as that by which 'esse' is, but as disposing a being so that it has "esse ab alio". Hence the soul is not, as it is for Franciscan pluralists, the mover of the body but is, rather, the act of an organised body having life potentially, that is, it is the act of the complexion soul-body, which is essentially one. The pluralists, considering the body and soul as diverse

⁵⁷ *Correctorium* 'Circa' 177.

⁵⁸ *Correctorium* 'Circa' 187 and see commentary in *Roensch* 279.

⁵⁹ *Correctorium* 'Circa' art. 48, 248 f.

⁶⁰ *Correctorium* 'Circa' 249.

⁶¹ *Der Tractatus de formis des Johannes Quidort von Paris*, ed. Jean-Pierre Müller, in: *Divus Thomas* 19 (Fribourg 1941) 195–210.

⁶² *Tractatus de formis* 527 c.

⁶³ *Tractatus de formis* 548 b. See *Roensch* 285–6.

'things' are left with the problem of describing the cause of their union in man. Pluralists think of the intellective soul as not united to the body as a form, but only as a mover.

III. "De potestate regia et papali"

The Proemium of the "De potestate"⁶⁴ sets out two errors. One, called the Waldensian error, argues that the successors of the apostles, namely the pope and the ecclesiastical hierarchy, were denied any "dominium in temporalibus", nor was it permissible to have temporal wealth. The true church and its apostolic successors, and the true prelates, endured until the time of Pope Sylvester. With the church accepting the Emperor Constantine's donation, they say it became a Roman church which no longer was the church of God. It is imperative that the church of God be continued or restored by them⁶⁵.

This is the same position as that which was propounded by extreme Franciscans who attempted to justify their relative perfection regrading other orders through interpreting the poverty of the original church and affirming that they alone imitated it. But then, it seems, they changed their tune.

The second error, which is Herod's position, believes that Christ's kingship was of a human kind. Certain moderns, says John, seem to have taken their views from this source. He says they have moved so far from the first error, whereby the church had nothing to do with temporalities, to the position that the church owns all, that they now argue for universal papal dominium⁶⁶. Indeed, we have seen even in Pecham's writings that the position of Franciscans moved from the perfection of rejecting property utterly, to asserting that the pope, insofar as he stands in Christ's place on earth, has a power over the properties of princes and barons as well as cognizance and jurisdiction over these. This is precisely what Pecham argued against Edward I in 1281. They say, says John correctly, that the pope has power in temporalities in a more excellent way than the prince because he has primary authority, derived directly and immediately from God, whereas the prince has his power mediately from God through the pope. And Pecham's view of princely power as a papal concession – a view that would be increasingly shared by hierocratic canon lawyers – is mirrored in John's remarks that, according to such Herodians, the pope only *exercises* this power *de facto* in certain determined cases, and the prince has immediate executive power. If the pope sometimes says he has no temporal jurisdiction, this must be understood, they say, as referring to a regular and immediate *exercise* of jurisdiction, or because he wants to maintain peace between the church and princes or to ensure that prelates are not overprone to become preoccupied with temporal matters. It is not to be understood to mean that the pope has no such absolute temporal jurisdiction. Also they argue, as in-

⁶⁴ The Latin text cited throughout is *Fritz Bleienstein* (see above, n. 2) 69–211.

⁶⁵ De potestate 69.

⁶⁶ De potestate 70–1: "Alius vero error fuit Herodis (...). Ex quo derivari videtur opinio quorundam modernorum, qui in tantum supradictum errorem Valdensium declinat ad oppositum totaliter deflexi, ut asserant dominum papam in quanto est loco Christi in terris habere dominium in temporalibus bonis principum et baronum et cognitionem seu iurisdictionem."

deed Pecham argued, that the relation of the pope to temporalities is different in kind from that of princes and prelates. The pope is sole true lord, dominus, in that he alone can at will absolve usurers from the debt they owe through their crime⁶⁷, take from another as he wishes what otherwise belongs to him and that should he do such an act it is valid, even if he commits a sin in doing it, though he should only do it for such reasonable cause as defence of the church or the like. Other prelates and princes are not lords but merely guardians, agents or stewards of what effectively is Christ's and therefore the pope's.

In effect, John is saying that the Franciscan argument defending the true church as adhering to evangelical poverty has now been contradicted by Franciscans themselves when they argue that the pope, successor of the apostle Peter, not only is not divorced from temporal wealth but indeed is a universal owner. What then has happened to evangelical poverty? Furthermore, this opinion concerning papal lordship/ownership of property has another source, says John. It is the error of *Vigilantius*, which says that nothing pertaining to evangelical perfection is repugnant to the pope's status. If the pope as Vicar of Christ is lord of all, then he cannot renounce property rights and ownership in temporal affairs since this is inappropriate to his status⁶⁸. So the previous argument, that poverty and the rejection of temporal lordship was a sign of evangelical perfection is reversed in the case of the pope who is now considered dominus of all temporalities. Pecham, by 1281, had argued precisely this: that all imperium came from the pope as Christ's vicar; that no human constitutions were binding unless sanctioned by divine authority as expressed in papal decrees; and that so-called secular rights and prerogatives of kings are completely dependent on the royal crown of Christ, where Christ's dominium and jurisdiction over heaven and earth were passed on to Peter and future popes. Secular power is always subordinated to the spiritual so that even temporal property arrangements are subject first to canon law. And in what looks like a direct ironic use of Pecham's argument in his tract against Kilwardby, John uses Pecham's example to show that this example is inconsistent with the Franciscan's own positions in his later works: *Vigilantius* equated the state of riches with poverty just as Jovinian thought marriage to be superior to chastity. Pecham, we recall, had said that the debate was not over sin and perfection but about lesser and greater perfection: it was wrong to equate the state of riches with that of poverty. Not only

⁶⁷ Pecham played an important part in Edward I's expulsion of the Jews from England in 1290, although contemporaries also attributed it to the intervention of the pope. The expulsion of the Jews from Gascony preceded their exile from England. Edward legislated the Statute of Jewry in 1275 restricting their commercial transactions. In 1285 the clergy petitioned that, in accordance with the Statute of Jewry, usuary laws which had fallen into abeyance should be enforced with Jews being compelled to restore their goods obtained through usury. Contemporary legislation, however, permitted usury with certain restrictions and both the Queen mother and the Queen, Eleanor of Castille, used Jews to acquire estates of small landowners who had pledged such to Jews as security for loans. Pecham was particularly fond of Eleanor and earnestly warned her against risking her soul by involving herself in usury – to no avail. When the king of France at first accepted Jewish refugees, his charitable impulses were stifled by remonstrances from the pope. It seems that Pecham's view was that no king or clergy could absolve usurers, but because of the papal *plena potestas*, the pope alone could do this. See *Douie*, Pecham 323–30.

⁶⁸ *De potestate* 71.

was poverty better than riches, no matter what the intentions of the rich man, but marriage was less perfect than chastity.

By using this example again, John implies the question: How then can the universal owner, the pope, be better than the rich man? How can he be equated with the higher perfection of the voluntarily poor? And where Pecham had argued that imitators of evangelical poverty need not pay taxes, John now says this opinion is similar to the arrogant Pharisees' argument which taught the people that they need not pay taxes to Caesar⁶⁹. If one argues that the pope is dominus of all, as Pecham finally did, having both property rights and lordship in all temporal affairs, then, says John, this opinion is dangerous, for it means that converts to the faith lose their rights over their own property and their rights get transferred to the pope.

John sketches out a *via media* between these two Franciscan positions⁷⁰. It is not wrong for prelates to have lordship and jurisdiction in temporalities, but this power is not theirs because of their ecclesiastical status or because they are vicars of Christ and successors of the apostles. Ecclesiastics have (collective) dominium and jurisdiction in virtue of the concession and permission either of rulers who endow them through piety, or of other lay donors. In the *Tractatus pauperis*, Pecham had indeed outlined precisely this position as the opposing Dominican one: that the church or monasteries have possessions and possess these corporatively since the whole church is the dominus. The property of the church belongs to the *communitas personarum* as a consequence of pious donations. Property and inheritance may be taken up by monasteries where the donor is professed but these gifts get transferred to the *community* which now is the *dominus*.

If ecclesiastics have collective dominium and jurisdiction in virtue of concessions of rulers and other lay donors who endow them out of piety, then how do rulers and other individual donors come by their property in the first place? Let us recall the previous discussion of the distinctively Thomist thesis on corporeal individuation. We now see that John of Paris provides a Dominican and hence Thomist description of the corporeal distinction amongst men who, nonetheless, comprise a single species. He says that amongst men there is a great diversity "*ex parte corporum, non autem ex parte animarum*", because all men are constituted in the same essential degree according to the unity of the human species, "*quae omnes sunt in eodem gradu essentiali constitutae propter unitatem speciei humanae*"⁷¹. This expresses the Thomist doctrines of the unicity of substantial form and that matter is the principle of individuation, doctrines that were specifically opposed by Franciscans. Furthermore, each individual is dominus or owner of his own property as acquired through his own industry. Each individual is, therefore, the administrator of what is his own to do with as he wishes⁷². Indeed, exterior lay goods are acquired by individuals through their own

⁶⁹ De potestate 72.

⁷⁰ De potestate 72.

⁷¹ De potestate c. 3, 82.

⁷² De potestate c. 3, 82: "*Sed quilibet est dominus suae rei tamquam per suam industriam acquisitae, ideo non indigent temporalia laicorum dispensatore communi, cum quilibet rei suae sit ad libitum dispensator.*"

skill, labour and industry, and as individual persons they have in this property right and power and true dominium. Consequently, each person may order his own, dispose of, administer, hold or alienate as he wishes without injury to any other since he is dominus⁷³. Furthermore, such goods or property, once acquired through the labour of the individual, have neither interconnections with other men nor are they mutually interordered⁷⁴. Effectively, individual property rights are inalienable. In Thomist theological language, this means that human nature is actualised by the act of acquisition which constitutes a particular man's existence. Existence is the actualisation of a thing's nature.

John has adopted this labour theory of property acquisition from the secular theologian Godefroid of Fontaines⁷⁵, but he justifies its use according to a Thomist conception of man. And he adds to Godefroid's position that each individual person may dispose of his own as he wishes except in time of necessity when the prince may dispose of private goods in the interest of the common good.

But where do princes come from? John argues that men learn from natural instinct, which comes from God, that they should live in communities and consequently, in order to live well communally, they should "elect rectors" who are of such a kind that they are appropriate to the community in question. Hence, there is no divine commandment that they be subject in temporalities to one single supreme monarch⁷⁶. This means that in the beginning, we have individual owners who administer what is their own without consideration for others. But men have a natural instinct from God that informs them that a communal life is better for all concerned. This natural instinct is not simply an idea (form) in men's minds. It is the dispositional potential to learn from the experience of being a solitary acquirer amongst other solitary acquirers. John has already said that each man is dominus of his own property as acquired through his own labour so that there is no need for anyone to administer temporalities in common since each is his own administrator to do with his own what he wishes⁷⁷.

But for the reason that sometimes the peace of everyone is disturbed because of such "bona exteriora", for instance, when someone usurps what is another's, and also because at times some men through excessive love of their own things (NB excessive love is bad, rather than things themselves) do not communicate their property to others or place it at the service of the common welfare, a ruler or prince has to be

⁷³ De potestate c. 7, 96: "Quod exteriora bona laicorum (...) sunt acquisita a singulis personis arte, labore vel industria propria et personae singulares, ut singulares sunt, habent in ipsis ius et potestatem et verum dominium, et potest quilibet de suo ordinare, disponere, dispensare, retinere, alienare pro libito sine alterius iniuria, cum sit dominus."

⁷⁴ De potestate c. 7, 96–97.

⁷⁵ *Godefroid of Fontaines*, *Quodlibets* XI (1294), XII (1295), XIII (1296) and XIV (1297), ed. J. Hofmans, *Philosophes Belges* 5 (1932).

⁷⁶ De potestate c. 3, 82: "Non sic autem fideles laici habent ex iure divino quod subsint uni supremo monarchae in temporalibus; sed ex naturali instinctu qui ex Deo est habent ut civiliter et in communitate vivant et per consequens ut ad bene vivendum in communi rectores eligant diversos quidem secundum diversitatem communitatum. Quod autem omnes ad unum supremum monarcham in temporalibus reducantur nec ex inclinatione naturali nec ex iure divino habent."

⁷⁷ See above, n. 72.

established by the people who is then to have the care of such situations, acting as judge (not as owner) and discerning between just and unjust. As a punisher of injustice or injuries the ruler is the measurer of the just proportion owed by each (individual owner) to the common good⁷⁸. Rulers do not destroy the private property of individuals or their natural rights to this property. Rather they organise the private property of individuals so that it serves the common utility, because it is the common utility that is in the care of the ruler. A multitude of private individuals seeking their own, will disintegrate unless there is one who has care of the common good and organises private possessions to secure the good of all⁷⁹. And John provides the Thomist analogy, in St Thomas' words, to such disintegration when he says that a man's body would collapse if there were not some common power *in the body* towards which the common good of all the members intended: "*nisi esset aliqua vis communis in corpore quae ad bonum commune omnium membrorum intenderet*". Hence, such a governing organiser is a necessity since what is an individual's own is not the same as what is common to all: "*Hoc enim necessarium est, nam non est idem quod proprium et quod commune est.*" This does not mean that what is an individual's own has to be destroyed. For men differ as to what is their own (as individuals) whereas what is common to them unites them together: "*Secundum propriam quidem differunt, secundum vero commune uniuntur*"⁸⁰. A uniting principle is required to join individuals to their common species. And in true Thomist fashion, indeed in Thomas' words, John argues more generally that since different causes have different effects, then necessarily what moves each individual to his own good is other than what moves him to the common good of the many⁸¹. In other words, private interest cannot be destroyed, but to live well in community, it must be subordinated at times to the common interest.

Here he politicises the Thomist doctrine of the unicity of substantial form against the Franciscan doctrine of a plurality of forms. He says that it is more useful for the rule of a multitude (of individuals) to be united by one who is potentially most virtuous than for several to rule who are potentially less virtuous, since in one principal ruler is virtue more united and stronger than in many dispersed. This is the Thomist doctrine of a hierarchy of inclusive, more perfect form. And unity and peace is what a

⁷⁸ De potestate c. 7, 97: "*Verum quia ob talia bona exteriora contingit interdum pacem communem turbare dum aliquis quod est alterius usurpat, quia etiam interdum homines quae sua sunt nimis amantes ea non communicant prout necessitati vel utilitati patriae expedit, ideo positus est princeps a populo qui in talibus praestet ut iudex discernens iustum et iniustum, et ut vindex iniuriarum, et ut mensura in accipiendo bona a singulis secundum iustam proportionem pro necessitate vel utilitate communi.*"

⁷⁹ De potestate c. 1, 76: "*Omnis autem multitudo quolibet quaerente quod suum est dissipatur et in diversa dispergitur nisi ad bonum commune ordinetur per aliquem unum cui sit cura de bono communi.*"

⁸⁰ Ibid. – John argues later in Chapter 15 (151) that there is no reason why what has validity in private law (which deals with private property of individuals) necessarily has validity in public law (which deals with the common good): "*Quae autem lege privata dicuntur nulla ratio est ut lege publica construantur.*"

⁸¹ De potestate c. 1, 76: "*Diversorum autem diversae sunt causae, ideo oportet praeter id quod movet ad proprium bonum uniuscuiusque esse aliquid quod moveat ad bonum commune multorum.*"

ruler intends in the governing of a multitude. John cites Aristotle who said that the worst of all constitutions is that of the tyrant who seeks his own advantage rather than that of the common good. Just as in every natural governance we see that the whole governance is reduced to unity (of purpose), so too in any body composed of a mixture of elements there is one element that dominates. In the heterogeneous human body there is one principal member (the head), and in the whole man (the soul and body complex) the soul contains all the elements⁸². This means that individuals remain individuals in a multitude of individuals but they are united by a governing organiser to serve not only their individual needs, which they will naturally do anyway, but also their common species' needs.

This understanding of a multitude, organised, is the political extension of Aquinas' discussion in *Summa Theologiae* Ia Q. 76 of how each person's individuating intelligence, each person's unique understanding must be retained even though each man is considered part of the human species with universally shared characteristics. In this famous quaestio of the *Summa*, Aquinas was determined to move away from the psychology and anthropology of both Averroes and Avicenna and to reject the Franciscan neo-Augustinian notion of matter as imperfect actancy, and of the human soul as a complete and separated substance to which body was irrelevant. He argued that the human mind at work is always aware of the sense origin of its intellectual life so that there is always a bond, instead of a division, between sense particulars and the universals of understanding. He asks, how, when we speak of the act of understanding, do we make this act an act of a particular person? Each person is aware that it is he himself who understands. The same man perceives himself both to understand and to have sensations, and sensation involves the body which is a part of man. Therefore, the intellect, whereby a man understands, is also a part of him, indeed the principal part but it is in some way united to the body. And Aquinas cites Aristotle to aid his cause. Each man understands because *his* intellectual principle is *his* formative principle and from the very act of understanding it is clear that the intellectual principle is united to the particular body as its form. Hence, 'intelligere' is the 'forma' proper to man and it allows the human soul to transcend the material world.

The intellect is dependent on images which represent the material world but it understands them independent of materiality and particularity. The human soul then is both nonmaterial ("est quidem separata") and yet is immattered ("sed tamen in materia"). Hence there must be as many individual souls as there are individual bodies. This means that my intellectual activity might differ from yours thanks to our different sense images; the image of a stone in me was one thing and its image in you another. But the sense image of stone is not what informs our recipient understanding. What

⁸² De potestate c. 1, 76–77: "Est autem utilius regimen multitudinis per unum qui praest secundum virtutem quam per plures vel paucos virtuosos, quod patet tum ex potentia, nam in uno principante magis est virtus unita et ideo fortior est quam in pluribus dispersa, tum ex unitate et pace quae intendi debet in regimine multitudinis (...); tum quia in naturali regimine videmus totum regimen ad unum reduci ut in mixto corpore unum elementum dominatur: in humano corpore heterogeneo unum est principale membrum, in toto homine anima continet omnia elementa."

does inform the understanding is the intelligible species which is abstracted from the particular phantasm or sense image. It is the *nature* that is the intelligible idea of the stone that all of us understand *in the same way*, even though we perceive individual stones via their sense images. The very natures of the things we experience are constant, there to be abstracted by the activity of minds acting individually on the basis of their images derived from such experiences. Hence, although the knower is an individual and his knowledge is an individual piece of knowledge, this does not preclude it from being knowledge of something universal. What is in the mind is not the particular stone which each of us perceives but rather the intelligibility of stone, the species lapidis. Nevertheless, it is the particular stone that is understood.

Aquinas goes on to argue, against Franciscan theories (Bonaventure) that the soul informs the body; it has no existence apart from body; and being conjoined to body it has an existence without any intermediary, so that the soul is the form or actuality of the matter, the body, to which it is conjoined; and activity, like existence, belongs to the compound whole because it is what exists that acts. Bonaventure had maintained that since the soul and its powers comprised a self-sufficient unity, there could be no direct impact of the external material world on the soul or its powers. For Aquinas, the senses are passive powers which must be actualised by an object of sense that is external to it. Hence for John of Paris, this means that individual human beings are actualised as individuals through their existence in a world of things and the actualisation of self is through labouring to acquire possessions. What organises individual possessors is a common purpose, the prince. Just as human understanding in all men is of the nature of a thing which is understood in the same way by all, such understanding is the result of individual and different sense experiences of particular things. The prince is the principal part of the community, united to the body politic, just as the intellect is the principal part of and united to the soul-body complex that is man.

What is significant in this politicised analogy is that the principal member cannot operate at all in some autonomous fashion, because the principal member is dependent entirely on the prior individuals for whom he acts as a principled coordinator. Coordinating government is the consequence of the priority of the existence of individual human beings. And the functions of the first kings, before the advent of a true priesthood, was the service of the needs of collective, human, public life, "*quorum officium est ad vitae humanae civilis necessitatem*"⁸³.

Would Philip the Fair have favoured so restricted a view of his power and its origins? Would Philip have agreed to John's view that a king who offends in spiritual matters like faith and marriage falls under ecclesiastical jurisdiction where the pope has power to admonish, then to excommunicate, and by acting with the people remove him? ("*potest ipsum excommunicare, et ultra non potest plus nisi per accidens, quia si fuerit contemptor potest facere in populo, ut dictum est*"⁸⁴). Would Philip have accepted that when a king offends in temporal matters whose cognizance is not ecclesiastical, then the initiative in starting the correcting process is that of the barons and

⁸³ De potestate c.4, 86.

⁸⁴ De potestate c.13, 139.

peers of the kingdom? According to John of Paris it would be the people who actually deposed the king with the pope acting "incidentally" ("per accidens")⁸⁵. Perhaps if it were argued that this tract were written in England or that it was drawing upon Roman and canon law corporation theories, as Tierney has argued, then the purpose of John's argument could be understood. But we have been told that this was written for Philip of France. And Jacques Krynen has argued that "en France du XIIIe au XVe siècle, le monopole royal de la création législative est une réalité incontestée. A la différence des royaumes ibériques où se répand l'idée que la loi n'est pas que l'expression de la volonté unique du prince, les Cortes sont là pour le rappeler, à la différence de l'Angleterre où l'autorité légiférante doit être exercée en accord avec la loi du pays, ce qui suppose le consentement, personne ne revendique en France le partage ni même l'association à la fonction législative. Bref, le roi capétien incarne le *princeps solus conditor legis*, et cet état de fait ne sera jamais contrarié, au moins jusqu'à la fin du Moyen Âge. ... L'essor du pouvoir législatif en France résulte bien de l'absence de limites juridiques, organiques ou institutionnelles à la souveraineté."⁸⁶ If sovereignty was unlimited in France, then despite the attachment of the French monarchy to Dominican confessors and to the Parisian Dominicans of Saint Jacques, John of Paris was deducing from the Thomist argument some limiting theses on monarchy to which, it would seem, Philip could not have agreed. It is suggested here that we need to rethink the widely accepted belief that John of Paris' "De potestate regia et papali" was written to support the case of Philip against the papacy of Boniface VIII.

Given that John has told us that individuals united instinctively to form a community with *elected* kings, he next asks: How did a priesthood and church come into being? John says, as did Aquinas, that since man cannot secure eternal life through purely human acts of virtue, a divine king, that is Christ, leads us to that higher end rather than does a human king who serves the temporal well-being of the community. Political society is a natural development. But the church was instituted to remedy the injury done to God the Father by the common sin of mankind. And Christ offered himself as a sacrifice on the Cross to God the Father and by his death removed original sin, which is the universal obstacle to man's spiritual salvation. Thereafter, it was necessary to establish certain remedies through which Christ's general benefit might be applied to us in some way. And such remedies are the sacraments of the church. In true Thomist fashion John argues that it was suitable that these sacraments should be of the sense order and thus meet the demands of the nature of man, since it is by things of sense that man is led to an understanding of spiritual and intellectual things. No Franciscan would admit this, because for them man cannot be led to an understanding of spiritual and intellectual things through the sense experiences of the body. And since Christ intended to withdraw his physical presence from his church, John

⁸⁵ De potestate c.13, 138: "Posset papa aliquid facere in populo, unde ille privaretur honore saeculari et deponeretur a populo (...), et sic populus ipsum deponeret et papa per accidens."

⁸⁶ Jacques Krynen, 'De nostre certaine science ...'. Remarques sur l'absolutisme législatif de la monarchie médiévale française, in: André Gouron et Albert Rigaudière (Eds.), Renaissance du pouvoir législatif et genèse de l'état (Publications de la Société d'Histoire du Droit et des Institutions des Anciens Pays de Droit Ecrit 3, Montpellier 1988) 131-144, at 131.

argues it was necessary for him to institute ministers who would administer these sacraments to men. Hence we define the priesthood as the spiritual power given by Christ to ministers (note the plural) of his church for administering the sacraments to the faithful⁸⁷.

John then proceeds to argue for the hierarchy in the church in terms of those who have the power to confer the priesthood on others in ordination and consecration. Bishops, who are not in any way superior to ordinary priests as far as consecrating the host, in their supervisory role are superior in that bishops are important and complete in their power since they can make other priests, which lower clergy cannot do. Just as in each diocese there is one bishop who is head of the church of the people, so in the whole church and Christian people as a whole, there is one supreme head, the Roman pope, successor of Peter: the church militant is modelled on the church triumphant which has one head *presiding* over the whole universe: “ubi unus praesidet qui etiam praesidet toti universo”⁸⁸. And John quotes Osea (1, 11): “Et congregabuntur filii Iuda et filii Israel pariter; et *ponent sibi met caput unum*.” But with the removal of Christ’s physical presence there sometimes occur questions concerning the faith where a diversity of opinions (“*diversitas sententiarum*”) would divide the church’s unity. A single opinion is required to serve unity (“*nisi per unius sententiam unitas servaretur*”). The one who has this unitive role is Peter and his successor, from Christ’s own mouth when he said “Feed my sheep”. But John insists that natural political communities preceded the priesthood in time and with true kings already in existence for a long time, the true priesthood had to await Christ and his institution of his Church⁸⁹.

It is true that the priesthood is higher in dignity than kingship since according to the doctrine of the unicity of form, what is later in time is generally higher in dignity, as is the perfect in respect of the imperfect and as are ends to means. We always find, says John, that what pertains to a final end is more perfect and directs the thing perfected than an inferior end (“*hoc semper reperimus, quod illud, ad quod pertinet ultimus finis, perfectius est et melius et dirigit illud ad quod pertinet inferior finis*”). Kingdoms are ordained towards that which enables the congregated multitude to live according to virtue, and such a multitude is further ordained to a higher end which is the enjoyment of God. The multitude’s direction towards this higher end is in the care of Christ, “*cuius vicarii et ministri sunt sacerdotes*”⁹⁰.

But the less dignified power, that is the secular, does not stand related to the more dignified, the spiritual, as to its origin and derivation. The power of neither of these two derives from the other but rather from the same superior power, God. The natural order is not done away with, as Aquinas explained, but perfected by a higher and separate order, that of grace. In Chapter 10 John argues in a more general, philosophical and Aristotelian manner that nature does nothing without purpose so that every in-

⁸⁷ De potestate c. 2, 80: “Ex quibus praedictis definiri potest sacerdotium in hunc modum: sacerdotium et spiritualis potestas ministris ecclesiae a Christo collata ad dispensandum fidelibus sacramenta.”

⁸⁸ De potestate c. 2, 81.

⁸⁹ De potestate c. 4, 85.

⁹⁰ De potestate c. 5, 87–88.

strument is intended for one use. If nature intended this, so too the author of nature. And extending the Thomist argument on the distinction between essence and existence, he says that this demonstrates that God wishes the two powers to be distinct in their *existence*, not only in themselves but also by the subject in which they are found: "*esse distinctas re et subiecto*"⁹¹.

Chapters 6 and 7 provide the position we have seen the Franciscans to have taken and which John is concerned to destroy. There are some, he says, who wish to elevate the preeminence of the priesthood over royal dignity to the degree where the priesthood is not merely superior in dignity but even superior in the order of causality. They claim that the secular power is contained in the spiritual power and is established by it. This was precisely Pecham's argument of 1281, based on the theory developed when he was at the papal court. At the heart of the error, which allows them to elevate the pope as supreme priest over all secular rulers, is their misunderstanding of how the church acquires property. The Dominican position, which draws astutely on canonist thinking to support its own cause, is now put forth. Ecclesiastical property as ecclesiastical is given by prior, original owners to communities and not to individual persons. No one person has proprietary right and ownership over ecclesiastical property. An individual may have right of use, but he has this not as an individual in his own right, but purely as part and member of the community. And it is the duty of the bishop to allocate just dues to his subordinates. The bishop dispenses for the common good of the college; he is not the owner but the administrator of collectively owned goods. And just as the bishop dispenses in his own cathedral church, so the pope has the same charge but in a more universal way regarding the whole church. The pope is the universal steward of all ecclesiastical goods. He is not owner of these goods since the community is mistress and proprietress of all goods universally, and individual communities and churches have ownership collectively in the property allocated to them by original, lay owners.

It thus appears that they speak ill who say that no individual other than the pope nor any corporate college or community has the right of ownership of ecclesiastical property. They say that the pope is not only the universal administrator and dispenser but that he alone is true owner and proprietor of ecclesiastical goods and, therefore, he can order such goods and alienate them as he wishes. Furthermore, they say that other prelates and even princes or communities do not have ownership but are only the procurers of goods, guardians and dispensers of what is not their own⁹². This is precisely the attitude of Pecham towards bishops and lay rulers: they have jurisdictional dispensation. What has happened, John implies, is that the Franciscans once were correct in their distinction between the way monasteries and clergy held collective property and the way Franciscans only had use of property, which, through their vows, they could own neither individually nor in common. But now they no longer distinguish between the relationship to bona exteriora of the clergy and the special way that Franciscans live. As Pope Nicholas (III) said, *Franciscans* have *usus facti* alone. Therefore,

⁹¹ De potestate c. 10, 109.

⁹² De potestate c. 6, 91–92.

to clarify what was vague and uncertain about just who did own the property which Franciscans merely used, the pope then received "*in se et in ecclesia*" the right and ownership of their goods. But it is quite unacceptable, says John, to believe that the position in property matters of the secular clergy and other religious is exactly the same. But of course Pecham by 1281 said that in terms of ownership, it was the same: the pope alone was *dominus* of all property because Christ was *dominus*; different orders in the church had administrative jurisdiction over and dispensation of the property they did not own. He said explicitly that a king's crown, his rights and prerogatives are dependent on the crown of Christ. And Christ's royalty, expressed in his universal dominium and jurisdiction, is represented by Christ's vicar, the pope. The source of all imperium is that *summa auctoritas*, the pope, through his decrees along with the statutes of church councils and the sanction of the church fathers. And he also said that Christ's royalty, his universal dominium and jurisdiction, rather than gifts from private owners like Constantine, were the source of the church's liberties. Pecham did not argue here that Christ passed his dominium to bishops or religious orders. Rather Christ's dominium is now the pope's. And if this was his view in 1281, it also appears to have been his view earlier in his *Tractatus pauperis*. Pecham does not seem to accept that gifts to individual orders or churches are gifts to a collective church, but rather are offerings to God. Nor is it clear whether he believed, in this early period, that gift-givers had some fundamental right of ownership of that which they offered to God.

John of Paris continues: Nor can it be argued that, since Christ is the principal owner of all property, the pope as his vicar substitutes for Christ as owner. Here John gives us the Dominican understanding of the nature of Christ's royalty which differed from that of the Franciscans. According to John, Christ *as God* is lord of all property, but *as man* he is not an owner. The reason is that as man he has no corporeal communication or contact with those who are in the church. Christ himself as man did not have such power or jurisdiction: "If it is argued that Christ as man was king, and here I mean king of a temporal kingdom, having direct and immediate authority in temporalities, this is altogether false"⁹³. John says that if his opponent had considered that He whose days are of eternity could not be a temporal king ("*non erat rex terrenus cuius dies a diebus saeculi erant*"), he would not have fallen into an error of such magnitude, as he implies the Franciscans had done. And John shows how Eusebius demonstrated the error of the Herodians who held these views. Therefore, not only did Christ not have authority or judicial power over temporalities but he paid the tribute to Caesar, and ordained that it be paid always. No priest may, therefore, claim to be Christ's vicar in temporal dominium or jurisdiction, for Christ has not granted to anyone what he did not have himself⁹⁴.

Nor do original owners who confer property on the church intend to transfer right and ownership to Christ because as God he has these already and as man he had no

⁹³ De potestate c.8, 99: "*Si vero tertio modo accipiatur quod Christus rex fuerit secundum quod homo, rex dico temporalis regni, quasi dominium directum vel utile habens in temporalibus bonis, omnino falsum est.*"

⁹⁴ Ibid. 100–102.

use for either property rights or ownership. Franciscans had argued, as we have seen, that donors transferred rights and ownership to God, and Pecham had argued that Franciscans were not entitled to this property offered to God. John asserts that the intention of donors is to give property to Christ's ministers collectively and ecclesiastics then dispense it according to need within the collective church for its common good. Franciscans argued that Christ, during his life, had voluntarily given up his rights to and ownership of property. Dominicans argued that during Christ's human life, he never had such ownership to give up, nor did he have jurisdiction, and certainly he did not transfer either to Peter⁹⁵.

IV. Conclusions

The debate in John of Paris' "De potestate regia et papali" is not over whether kings can tax the clergy⁹⁶. More generally, it is about whether the pope, who is universal steward and not owner of ecclesiastical wealth, has the right to take the property of churches for reasons other than the common good. John argues that if he acts as a private owner he can be deposed because he has broken the trust through which he carried out his office as universal steward. Just as a monastic community can depose an abbot and a church can depose its bishop, if it has been established that they have misused the collective property of monastery or church, using the property as private gain rather than for the common good, so, too, the pope can be removed. This is not simply a general argument about papal universal stewardship as opposed to papal dominium. It is a general theory which then is applied to the events of 1296–7.

With the resignation of the saintly pope Celestine V certain radical Franciscan factions, amongst others, refused to recognize the validity of Boniface VIII's election (1294), especially because Celestine had whole-heartedly sympathised with Franciscan ideals⁹⁷. There was, however, already a group of cardinals who objected to Boniface's apparent reinterpretation of the sovereignty of the pope's person which threatened to leave no room for the role of the sacred college of cardinals who were "membra non tantum corporis ecclesiae sed capitis". Although Boniface held weekly consistories for routine matters, he not only would accept no contradiction in consistory but reserved all important affairs to himself and a small group of trusted colleagues. Furthermore, a faction within the cardinalate, led by the two Colonna cardinals James and Peter, had the very different motive of family antagonism to the Gaetani (Boniface) and were influenced by current canonistic doctrines on the power of the college of cardinals as formulated by Hostiensis (Cardinal Henry of Susa). Along with the radical Franciscans

⁹⁵ De potestate c.8 and c.10.

⁹⁶ "Romana mater ecclesiae", in: *O. Raynaldus, Annales ecclesiastici* (ad annum 1297 sect. 49). Boniface says that in cases of necessity, where delay might result in consulting Rome and prove dangerous, a king *could* licitly seek clerical subsidies on his own authority.

⁹⁷ *Brian Tierney, Foundations of the Conciliar Theory* (Cambridge 2nd ed. 1968), part 3 c.1: John of Paris 157–78; *Richard Scholz, Die Publizistik zur Zeit Philipps des Schönen und Bonifaz' VIII.* (Stuttgart 1903) 198–208; *Peter Herde, Cölestin V. (1294)* (Peter von Marrone), der Engelpapst, mit einem Urkundenanhang und Edition zweier Viten (Stuttgart 1981).

the Colonnas also denounced Boniface as a usurper and simoniac in a series of manifestoes of 1297⁹⁸. They called for a general council to adjudicate between themselves and Boniface, an adjudication that was precipitated by the family feud: an attack was mounted on the convoy of papal treasure by Stephen Colonna (3 May 1297). Boniface cited the two Colonna cardinals to appear before him in consistory and demanded that they answer the question whether he was pope or not. He also demanded the return of the papal treasure and the surrender of Stephen Colonna along with three important Colonna castles. In the subsequent manifestoes the Colonnas accused Boniface of maladministration and corruption, arguing that not even a legitimate pope was empowered to misuse the property of the church. They further argued that Celestine's renunciation was impossible and with the help of Franciscans like Jacopone da Todi, who signed the manifesto, they offered confused arguments concerning the person and office of the pope, and misunderstood the relationship between jurisdiction and orders. The final chapters of John of Paris' "De potestate" deal specifically with the points raised by the Colonnas and their Franciscan supporters. Indeed, Boniface deposed the two cardinals and confiscated their property. They ran to France for protection⁹⁹. John does not believe that cardinals or other church officials may be deposed "sine causa", but not for the reasons the Colonnas gave.

The specific events of 1297 may be reflected, but only in part, at the end of Chapter 6 of the "De potestate", after John has elaborated a general theory against papal dominium in collective ecclesiastical property. Now he adds that if the pope knows that there are persons, whether ecclesiastics or laymen, who are laying complaints against him on the score of unjust stewardship as they are permitted and indeed under obligation to do, he can in no manner legally remove them or depose them from what is theirs. He has no authority from God to do this. He should not wish to deprive anyone of what is his without reasonable cause, since to do so is illegal and God does not wish anyone (i.e. ecclesiastic) to be deprived of what has been given to him if he has incurred no fault¹⁰⁰. And in what seems a very direct reference to what Boniface had done to the rebellious Colonnas, John says that since it is the trust of stewardship which God gave to Peter and the pope, the pope may not go against the express will of God to take away arbitrarily from anyone any *right of administration* which has been received justly and properly if he has not been at fault. John says nothing more of historical relevance here. The Colonnas, like any other ecclesiastics, were stewards of church wealth. Unless it could be shown that they used their church's wealth for private gain rather than for the collective good, they could not be arbitrarily removed from their stewardship.

⁹⁸ For a discussion of the manifestoes see *John Marrone* and *Charles Zuckerman*, Cardinal Simon of Beaulieu, in: *Traditio* 31 (1975) 195–222, at 202–3; *Heinrich Denifle*, Die Denkschriften der Colonna gegen Bonifaz VIII. und der Cardinäle gegen die Colonna, in: *Archiv für Literatur- und Kirchengeschichte des Mittelalters* 5 (1889) 493–529.

⁹⁹ See the introduction by *John Eastman* (Ed.), *Aegidius Romanus*, De renuntiatione papae (Würzburg 1984).

¹⁰⁰ Note that laymen are not given property but rather acquire it through natural labour and skill. Through the law of inheritance, sale, etc. they enhance their natural rights to be owners by acquiring even more than they have directly laboured for. Except in cases concerning the public good, laymen are the rightful administrators of what is their own.

But in Chapter 13 he is much more specific. He says here that if a pope were delinquent in spiritual matters, e.g. in conferring benefices simoniacally or in squandering church property or depriving churchmen and chapters of their rights or by false profession or teachings in matters touching the faith and morals, then he ought first to be warned by the cardinals, who stand in the place of the whole clergy. Should he prove incorrigible and the cardinals cannot on their own remove this scandal from the church, then they may have recourse to the secular arm to support the rule of law. Lest we immediately associate this with Philip the Fair, we should note that the next line says: "Then the *emperor* as member of the church, at the request of the cardinals, should proceed against the pope to accomplish his deposition"¹⁰¹. If this tract were written for Philip of France then surely John would have emphasised the rights of kings to proceed against popes.

What we have here is not direct advice to King Philip but rather, as Tierney has argued about the whole treatise¹⁰², a traditional canonist opinion. And it is only with Chapter 14, where John replies to the opposition's arguments listed in Chapter 11, that we begin to see specific arguments with reference to France and the inability of popes to depose kings directly. But even with several direct references to Gallic history, John continues to argue not only that each king is head of his own kingdom, but also that the emperor, if there is one (and there was none at this time), is monarch and head of the whole world: "Non est autem (papa) caput quantum ad regimen in dispositione temporalium, sed quilibet rex est in hoc caput regni, et imperator monarcha si fuerit est caput mundi"¹⁰³. Furthermore, in his responses to arguments of the hierocrat Henry of Cremona, John makes numerous references to imperial rule where rulership is the emperor's by law when the people or army create him. His general point, supported by Aristotle's *Ethics* VIII, is that kings *or* emperors come into being through the will of the people. To what extent Philip would have found this analysis of his own constitution and authority acceptable, given what we know of the absolutist nature of French monarchical theory, is unclear¹⁰⁴. Would Philip agree that the origin of kingship was the appointment of a judge or director for the people's protection and that his authority was the creation of a multitude of naturally constituted individuals?¹⁰⁵ Contemporary doctrines on the nature of French royal sovereignty are 'absolutist' rather than constitutional. "Comment résister à un monarque doté de grâces exceptionnelles, issu d'une famille privilégiée dans les desseins de Dieu? Philippe le Bel et son entourage l'ont bien compris, qui font du roi très chrétien un thème constant de leur propagande"¹⁰⁶.

Furthermore, in Chapter 20 John speaks to the problem of bishops being sum-

¹⁰¹ De potestate c.13, 140: "Et tunc imperator requisitus a cardinalibus, cum sit membrum ecclesiae, deberet procedere contra papam modo praedicto ad eius depositionem."

¹⁰² Tierney, *Foundations of Conciliar Theory* 157–58, 162.

¹⁰³ De potestate c.18, 164–165.

¹⁰⁴ De potestate c.19, 173.

¹⁰⁵ De potestate c.19, reply to argument 35, 175–176.

¹⁰⁶ Krynen, 'De nostre certaine science' 131.

moned by the pope but commanded by the emperor to remain at home¹⁰⁷. When we finally read Chapter 21 in which the Donation of Constantine is rejected, the discussion centres on imperial powers first and then defends France as autonomous of both empire and pope on the basis of a Roman law analysis of property and the changes over time due to prescription¹⁰⁸. Of course Philip could have used this Roman law defence of kings being emperors in their own kingdoms, an argument that had often been made throughout the thirteenth century.

Chapter 22 asks whether it is lawful to debate or judge issues that concern the pope. Disputed elections and electoral defects must be discussed says John, and his manner of debate looks like a contribution to a university of Paris discussion of this issue, which much later (1310) the Colonna cardinals insisted had decided that papal resignation was impossible. They said it was for this reason that they had challenged Boniface VIII in the first place. But it has been doubted whether a coordinated debate of this kind ever took place¹⁰⁹. And in Chapter 23 we see a return to "rationes frivola", put forward by radical Franciscans concerning why a pope cannot resign. In John's replies (Chapters 24–5) he makes use of similar arguments to those put forward by the Augustinian Aegidius Romanus, then archbishop of Bourges and resident of the papal court, in his "De renuntiatione papae" (1297). John turns these arguments to what we have already seen to have been his specifically Dominican ends: to defend a Dominican thesis on the relationship between all ecclesiastics and collective church property and to defend the natural origins of lay property. He is concerned to establish, on the one hand, lay individuals as owners and administrators of their own property, and on the other, ecclesiastical corporations as collective owners and administrators of property given to them by pious laymen. In defending individual and collective ownership he denies to both, kings and popes, the power of true dominium.

¹⁰⁷ De potestate 177.

¹⁰⁸ De potestate 189.

¹⁰⁹ Marrone and Zuckerman, Simon of Beaulieu 207, conclude that the Colonnas lied at the 1310 proceedings; no copy of the so-called sealed University of Paris determination survives which argued that it was illicit for a pope to abdicate.