

THE FRANCISCAN CONUNDRUM

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“At the heart of [the debate] lies the question of poverty, property, and the issue of the coherence of pure usage without right, or of a right against right to such usage.”



The story of the medieval debate concerning Franciscan poverty has by now been very ably documented by several scholars.¹ I will not repeat that exercise here, but rather offer an interpretative and evaluative reflection upon this story and its astonishingly wide ramifications.

As Olivier Boulnois remarks in this same issue, one can no longer repeat the tired nostrum that nominalist theology gave

¹ See, in particular, Olivier Boulnois, “Most High Poverty: The Challenge of the Franciscan Experiment,” *Communio: International Catholic Review* 42 (Fall 2015): 448–65; Giorgio Agamben, *De la très haute pauvreté* (Paris: Payot et Rivages, 2011); Luca Parisoli, “L’involontaire contribution franciscaine aux outils du capitalisme,” in *Tisser le lien social*, ed. Alain Supiot (Paris: Sciences de l’homme, 2014), 199–212; Luca Parisoli, *Volontarismo e diritto soggettivo: la nascita medievale di una teoria dei diritti nella scolastica francescana* (Rome: Istituto Storico Del Cappuccini, 1999); Peter Garnsey, *Thinking About Property: From Antiquity to the Age of Revolution* (Cambridge: Cambridge University Press, 2007), 84–106.

rise to modernity.² To the extent that it did so, it was only one aspect of a broader, often Franciscan legacy, which, for all of the life it has brought to the Church, at the same time has introduced an ambiguity. The idea that modernity is essentially Franciscan seems unlikely, but more and more appears to be true in remarkably many ways—as to economics and politics in both theory and practice, as to both realism and utopianism, as to philosophy, theology, and religious practice. And this realization presents Catholic theology (Roman Catholic or otherwise) with a certain new choice: should one retheologize modernity in its latent Franciscan light, or should one instead recognize within the Franciscan legacy an unfortunate tendency to deviate away from the patristic legacy which was much more sustained by the other mendicant orders—the Dominicans and the Augustinians?

At the heart of this dilemma stands the question of Franciscan poverty. For if there was a *novum* about Francis, then it concerned his revolutionary attempt more closely to follow Jesus and the apostles in their restoration of a paradisaical life on earth as far as possible. For Francis this meant adoption of *altissima povertà*, the “most high poverty,” refusing not just private property, like the traditional monastic orders, but even any notion of property shared in common. This refusal undergirded the new ideal of a mendicant, wandering, begging way of life, in which truly one became like the birds of the air and lilies of the field, trusting solely to the providence of the heavenly Father. But to renounce property in this way, along of course with all use of violent coercion, meant, above all, to renounce all use of *law*, thereby attempting to realize much more exactly the New Testament teaching that gospel and grace lie beyond and supersede the legal sphere altogether.

In anachronistic terms, one could say that Francis’s ideal appears to have been one of a kind of anarcho-communism so extreme as to amount to a kind of refusal of human culture in an attempt to recover a missing essential human-animal nature, such that a rupture with the natural world, consequent upon the Fall, would be overcome. In this sense, Francis appears both appealing and relevant for today, when we suffer at once both ecological despair and a sense of the twin failure of greedy individualism on the one hand and of state control on the other, even as reforming remedies.

2. Boulnois, “Most High Poverty,” 464.

But then we face the “conundrum.” Just the refusal of any property and defense of an extra-legalism, of a kind of anarchism, appears to have given rise, within Franciscan university thought, to several features that one might regard as its opposite, and the opposite likewise of Francis’s simple affectivity: his insistence of the surpassing of intellect by love. These features include: the idea of absolute property rights defined as pure power to control; the notion of social contract as the mediation of pure self-interest; the legitimation of usury; the displacement of legal gift by legal “trust,” which assisted the eventual rise of monopoly capitalism; a disenchantment of the cosmos, which separated existential sign from natural essence; an encouragement of experimental science linked to a mechanistic outlook; a quantification of ontology, allied to a reductive view of analogy and a quantification equally of economic and political relations, allied to a displacement of a substantive view of justice by a more formalistic approach; and a much intensified engagement with abstract logic and pre-shaping of philosophical outlooks that would eventually become empiricism, rationalism, and transcendentalism.

How is this “conundrum” to be understood? Perhaps in two basic ways. First, there is the thesis of “non-intentionality.” According to this approach, the Franciscans were Hegelian “beautiful souls” who accidentally produced a cynically realist order out of a dialectical inversion of their excessive pursuit of purity. But a second thesis would insist that the seemingly opposite sides of Franciscan reflection and endorsed practice formed a perfectly coherent dualism and even in certain respects a monism. As we shall see, there is some truth in both theses, though in the end more truth in the second.

The first thesis is most plausibly true of Francis himself. Here it is crucial to note, with Giorgio Agamben, that, in proposing the “pure use” rather than “possession” of earthly things—*simplex usus facti* rather than *dominium*—Francis, unlike all his theoretical followers among the Friars Minor, including the Spirituals, did not suggest a paradoxically legal justification, beyond the mere fact of usage, for the refusal to have anything to do with law—“a right not to have a right”—of which some contemporary authors explicitly spoke.³ Instead, his approach lay

3. Hugo de Digne, *Expositio Hugonis super regulam fratrum minore, 1.*

within the strictly metaphysical and existential Pauline register of “having as not having,” “using as not using.” In this way then, Francis was truly a utopian purist who by no means anticipated the dialectical reversals that must follow when poverty is seen as itself a paradoxical right, and when ordinary *dominium* is thereby regarded as equally based on pure will—that is to say, one wills to own or one does not, and this alone establishes whether or not one is a legitimate owner. Nevertheless, such a consideration does not decide the case as to whether or not Francis was a beautiful soul (with the kind of strange culpability that this must unavoidably imply) in imagining that use without even collective ownership was possible, or a human as opposed to animal life without *nomos*—at least after the Fall and perhaps also before—equally feasible. Nor, by the same token, does it decide the case as to whether Francis understandably overreacted to the vile urban decadence that he saw all around him, in supposing that all property as such was inevitably tainted. Yet this is not to go so far as to say that he really anticipated the later Franciscan definitions of *dominium* as sheerly amoral willed and powerful control and right to dispose and dispense as one wished.

It is feasible then to argue that Francis himself was advocating, like the ancient cynics or like patristic hermits and later Trappists (whose forswearing of speech may be seen as implying another refusal of human culture as such), an extreme and parabolic spiritual path for some, though certainly not for all. Perhaps it is important that some, indeed, take the parable of the lilies and the birds literally—do we not all need just such a reminder? To become “animal,” as some of the Franciscan Spirituals explicitly recommended, is a kind of further reminder that our “lacking” state as an animal is not just the negative sign of our positive supplementation by culture (by the *technai* of tool and language),⁴ but also the negative sign of our cosmic lostness after the Fall, which causes other creatures also to suffer and to suffer our cruelty.

It is here important to note that Francis, in refusing those aspects of culture that are political law and economic property,

4. See Bernard Stiegler, *Technics and Time I: The Fault of Epimetheus*, trans. Richard Beardsworth and George Collins (Stanford: Stanford University Press, 1998).

refused also other aspects which are the vaunting of human reason over “animal” affection, and therefore by no means envisaged that his followers would enter into *studia* and embrace the life of the cathedral school and university, which, however, they quickly did. Some, but by no means all, of the problems and reversals which constitute the “conundrum” followed upon the settlement and vastly extended property use that academic life inevitably involved. Thus to a degree one could properly argue that Franciscanism only faced *aporiae* because it was untrue to the very extreme rigors of its founder—whether in terms of excessive settlement in university communities or in quasi-monastic ones, or yet again in established urban and lay-serving roles like that of bookkeeping.

This argument can readily be allied to a further acknowledgment of the timeliness and extreme challenge of Francis’s witness. First, he did not simply react against the new urban civilization by returning to the desert of the fields or fleeing to a monastic asylum. Rather, he did a new thing by fleeing to “everywhere,” that is to say, to nature as such, rather than culture, and yet in such a way that his path of continuous flight now possibly passes through every street of every town. There is in consequence a new stress upon the visibility, availability, and exemplarity of the perfectly Christian apostolic life, in a way that seems, of course, to be literally much more like the New Testament. Indeed, with the mendicant moment one has the first “reformation” in just the sense of a reaching behind even patristic witness to a purely biblical one. But of course, the same thing applies here also to the Dominicans. To flee to *theoria* is now also perpetually to return as the preacher at the street corner.

Secondly, Francis called into question the evident corruption that could reside in the monastic claim to own only in common, if, in reality, this gave the monks a substantive share in extensive property and worldly power, placing them at much the same distance from the people as secular *seigneurs*. By arguing that pre-fallen humanity had enjoyed sheer use but no dominion (either economic or political), Francis deflected the individual away from the lure of power and the temptation of mimetic contagion (that might rage even or even above all behind conventual walls), in an almost proto-Rousseauian manner, toward authentic self-realization as an individual within the dimension of ir-

reducible loneliness. The “solitary walker” had already arrived in the West, with all its promise, if also ambivalence.

On the other hand, even given a recognition of his extreme, exemplary, and heroic fidelity to the following of Christ, it is not in all honesty so easy to let Francis, or at least his immediate interpreters, completely off the hook. Just insofar as the paradisaical life is identified with pure use, the way of total dispossession and alegality becomes more than just “a” spiritual path for some and is instead projected both as ideal for all and as the new polestar of normality. And a certain spiritual elitism would seem to ensue: if, as for the Dominicans, Jesus owned his purse on collective behalf of the disciples, but was perfectly poor through “poor usage” of a minimal *dominium*, then there is a continuity between apostolic perfection as recovered by the mendicants and the exigencies of ordinary lay life. To own as such is not to be mired behind a sinful barrier. But Francis or his first followers would seem to imply that it is, involving an implied literal reading of Christ’s remark about the camel and the needle’s eye. That remark had been normatively read as hyperbole by the Church Fathers (for example by Clement, Origen, and Augustine), who had all insisted that the rich might be redeemed, though with strenuous difficulty, by a good and just usage of their wealth.⁵ Yet the initial Franciscan position implies not just a literal reading but a logically extended gloss: *any* possessed wealth, in any degree, is, as such, a barrier to salvation.

One can here conjecture that behind the acrimony of the debates about Franciscan poverty lurked the sense that Francis’s authentic charisma, which almost no one doubted, was somehow shadowed by an uneasy exaggeration with awkward and even non-negotiable implications for Christian life as hitherto conceived. One can augment this shadow if, after Eric Voegelin (who saw Francis ambivalently as one of the key instigators of modernity), one points out the novelty of his spirituality.⁶ This was radically christocentric, yet christocentric in a new way.

5. Garnsey, *Thinking About Property*, 87–94.

6. Eric Voegelin, “Saint Francis,” in *History of Political Ideas*, vol. 2, *The Middle Ages to Aquinas* (Columbia: University of Missouri Press, 1998), 135–43. Voegelin went perhaps further than anyone else so far in seeing the status of Francis as *alter Christus* as ambiguous.

Traditionally, in the Christian East and to some degree in the Christian West, the integral divine humanity of Christ had been spiritually followed, since the assumption of humanity by God implied the reverse possibility of the deification of all human beings. But Francis, in effect, pursues a hyperbolic version of the Augustinian notion that Christ's divinely personified and so perfected humanity offers to our humanity the grace of transformation into perfection, specifically as human. Of course this conception is not wrong, but can it risk imbalance? In Francis's case this involved a newly mimetic emphasis on the following of Christ's human life—an emphasis that granted a new importance to all its kenotic details, like famously the Christmas crib, but at the same time was in danger of obscuring the sense that the following of Christ must always be analogical and nonidentical, precisely because we are all unique individuals. It can also obscure the approach to Christ as God-Man in worship in favor of a proximity to him through imitation. One may well contrast here Giotto's use of perspective to provide more realist portrayals of Christ and his disciples with its use by the Dominican painter Fra Angelico to reinforce and not abandon the sense of an iconic approach to Christ as divine-human mystery.⁷

Finally and most crucially, Franciscan hyper-Augustinianism risks flipping over into Pelagianism, and it is by no means irrelevant that the only previous denouncers of all ownership whatsoever were the Pelagians of the patristic period, whose equal affirmation of the absence of *dominium* in Eden derived from a Stoic provenance that also undergirded their stress on the absoluteness of the answerability of free will.⁸ In the early Franciscan case, to abandon crucial features of human culture is to throw oneself on the mercy of God's grace alone, but on the other hand it is also to claim to possess, in willed and literal external dispossession, the exact key to the attainment of a purified humanity. Ironically, this is to be attained in one's own person, under one's own control, in a relative bypassing of even liturgical and sacramental, never mind political and economic, human

7. Kim H. Veltman, "Narrative, Perspective, and the Orders of the Church," 1991, http://www.sumscorp.com/img/file/1993_Narrative_Perspective_and_the_Orders_of_the_Church.pdf.

8. Garnsey, *Thinking About Property*, 94–98.

mediations. In a certain subtle way here, the Incarnation is seen as bringing about the possibility of a new “natural” humanity, which, in somewhat relegating the need to put on Christ also as God, *also* bypasses the availability of deification only through the complex ramifications of a renewed humanity as the collective body of Christ, Augustine’s *totus Christi*. This is exactly Voegelin’s main point: that Francis’s path was in danger of suppressing the incarnational paradox whereby we can attain as far as the Godhead only by repeating the divine descent into all the vagaries of human existence. Unlike Christ, as sinners we cannot engage perfectly in this muddied domain; but the way indicated for us out of sin is not to step aside from the world construed as all of human culture, but rather to embrace our ambiguous legacy in the confidence that it can be so transformed, and us along with it, as eventually to prove theophanic. John Milton was here hyper-orthodox; indeed there is for the religion of the Incarnation surely no “cloistered virtue.” Francis then rightly tried to refuse the temptation of Christianity as power, as Christendom; yet perhaps he did not see the more subtle temptation of Christianity without Christendom as purified counter power, of an imagined Christianity seeking to escape the inevitable human tragedy of our peculiar animal need to risk power and ownership as aspects of required artifice, just as we risk parenthood if the human race is to continue, as Augustine (against many of the Greek fathers) deemed desirable.

Given all of the above, one might conclude that Francis had, on the one hand, validly argued for a dispossessive witness by some, a dramatic acting “as if” human beings were flowers or animals, in such a way as to make no normative legal claims whatsoever and thereby to gesture toward the supremacy of charity, beyond law as usually understood. But on the other hand, Francis or his immediate followers, by making a normative claim as to the nature of paradisaical and apostolic poverty, could not really avoid (to challenge Agamben here) entering upon legal considerations, if human culture as such involves considerations of normativity. In an extremely impressive way (rather recalling the theological writings of the early Hegel), Agamben has shown how the monastic tradition sought to distance the notion of a “rule of life” from a living under the law now taken to be

surpassed.⁹ “Rule” was not law, because it emerged from the affective sense of Christ’s life as such and always transcended, according to its innate spirit, the absoluteness of any given precepts. Nor even, for a long time, were any specific “vows” ever taken—these were not envisaged by Augustine, for example. Continuous liturgy, as Agamben argues, spilling over into the Benedictine sense that labor and leisure remain a part of the liturgical rhythm and offering, expresses a sense of “life” and “norm” becoming entirely merged, such that, in Pauline terms, the rule does not stand “over against us” like law, but is truly and exactly (as for the young Hegel’s reading of Jesus) just “real life as such.”

For Agamben, the Franciscan path fulfills in the most extreme manner possible the Philonian and then Christian exigency to merge ontological and political discourses, such that Being as such is also “the cosmic ruler” and (as with Aquinas) a theological metaphysics can also be offered as a theory of “divine government.”¹⁰ In practice this merging means that to be and to live fully is also to be and to live *rightly*—precisely to live by rule such that the rule is the life and the life is the rule, in a restoration of paradise. For Agamben, the monastic way still sustains an unsatisfactory tension between life as such and the still somewhat extrinsic pattern of liturgical normativity—even though, rightly but confusingly, Agamben offers analogical “habit” as the third path between life and norm: confusingly, because “habit” would seem to contain ineluctably just that possessive “having” which, after the Franciscans, he apparently wants to refuse, along with all legality. The Franciscan Spirituals, for Agamben, nearly but not quite opted beyond any hybrid for the path of “bare life” by making not even liturgical commitment, but rather sheer dispossession the normative mark of apostolicity. However, quite apart from the apparent displacement of the centrality of worship here, as already alluded to, this does seem like a utopian council that coincides with one of despair: to speak imposes norms, to craft with a tool shapes a precedent, and one can only exit these things in the space of pure abandonment, either of oneself to oneself or of oneself by others. As Agamben freely allows, a human being

9. Agamben, *De la très haute pauvreté*, 11–121.

10. Thomas Aquinas, *Summa theologiae* I, q. 103–19 (hereafter cited as *ST*).

cannot survive as an animal (the spiritual friar can receive those donations which alone allow him to live only from the enculturated) and so, if he is reduced to “bare life,” becoming a scapegoat outcast *homo sacer*, then he can be ontologically normative only as an eschatological sign of a redemption we cannot even anticipate. Here the Italian philosopher seems both dualistically Gnostic and Heideggerean rather than either Marxist or Christian.

He also arguably ignores the import of his own observation that monasticism and liturgical life were not extra-legal with respect both to the Benedictine *pactum* or social contract between the monks and the abbot, so long as the abbot governed the community justly, and various invocations of the *ius publicum* of Roman law, as opposed to laws to do with civil or criminal actions.¹¹ “Public law” concerns something civilly constitutive and so in a sense is not “over against” the city, but coincides performatively with its very being. It is also thereby nonreactive, in contrast to both the *ius civile* and the *ius criminale*, which assume a negative state of affairs that needs to be guarded against or corrected. But it is surely the latter whose ultimacy Paul protests against, since the original, eternal law of God and the natural law following from it (and in which the Old and New Testaments agree, according to Gratian) was not a reaction—it assumed no evil nor indeed any proceeding finite state, but rather set something up and was indeed coincident with this very setting up. All the same, it is fair to say that even perfected human, finite existence, while integrally uniting nature with culture—body and environment with tool, language, and law—nevertheless involves a certain constant interplay between the two. Thus the laws of the city belong as much to its foundation as do the walls, but can still be invoked as general sources of inspiration, or, in a fallen world, as normative correctives. Agamben points out that Ambrose, following Philo, read Jacob’s flight from Laban and founding of the Levitical (priestly) cities in terms of the monastic flight to contemplation, which yet also involves the legal setting up of an alternative city in the wilderness. The “offering of the people” of this city, its *leitourgia*, is at one with its life and yet regulatively normative for this life, even in a legal way since it belongs to the *ius publicum*, without which there would be no monastic life in common at all.

11. Agamben, *De la très haute pauvreté*, 73–84.

It then follows that, to abandon even the rule of liturgy for the living of a purified life—"life as such"—is not to fulfill divine government or the perfect mediation of life with norm, but rather, as Agamben puts it, to render all of specifically human life and thought "inoperative," such that the synthesis is only attained in a one-sided way and so in total obliteration of its original aim. What remains is at best a faith and a Church offering only an entirely negative and so apolitical critique of human politics and culture. But this would be to abandon all mediation and all reshaping within time.

One might argue that Franciscanism tends in just this mystically nihilist, besides anarchist, direction, unless it admits a reengagement with law and even an allowance that law may be a means of grace in itself, apart from "the law against the law" which the Franciscans laid claim to. And here it is important to note that many Franciscans did in fact make these concessions and by no means universally as a body opposed every single aspect of the eventually harsh Thomistic critique made against their rule by John XXII and others.¹²

At the heart of this reengagement lies the question of poverty, property, and the issue of the coherence of pure usage without right, or of a right against right to such usage. Here the greater validity of the second theory of the Franciscan conundrum becomes evident. But this validity has, in turn, two sides to it.

First, one can argue that the proto-capitalist and proto-liberal side of capitalist reasoning (absolute power-based property right; this right as the new subjective foundation for all *iuris*;¹³ loosening of restrictions on usury; displacement of gift by trust; redefinition of the just price as market price; formal social contract as the basis of post-fallen societies) is an almost automatic reflex of the defense of the most high poverty. This could alternatively be regarded as an accidental, unintended consequence.

12. Boulnois, "Most High Poverty," 460–62.

13. The case for the Franciscan rather than Roman or Canonistic origin for modern subjective rights rests upon the sometimes missed point (as, for example, by Brian Tierney) that this, as Michel Villey and others have made clear, means subjectively *founded* rights and not just rights objectively ascribed to a subject, to which indeed the canonists and medieval scholastics in general increasingly ascribed. See my "Against Human Rights: Liberty in the Western Tradition," *The Oxford Journal of Law and Theology* (January 2012): 1–32.

However, John Duns Scotus and still more Peter John Olivi are at once outspoken defenders of Franciscan poverty and articulators of proto-liberal economic and political reasoning, and in a way that explicitly links the two theses as two halves of one case, though with a stress on the priority of poverty over property. The linkage has several aspects.

If dispossession is required for perfection, then possession at its defining core must be bad: its surplus to usage is a manifestation of self-love, will to dominate, and cupidity, as understood by Augustine.

If one refuses to possess what one uses by a sheer act of will, then poverty has, in effect, been defined formally and internally rather than substantially and externally. It follows that what is now taken to be its opposite, namely ownership, must be equivalently defined as a merely existentially willed addition to the same-remaining essence, such that property must consist in the willed power over something and its unrestrictedness.¹⁴ Good usage then becomes irrelevant to property entitlement, because usage is a substantive, not a formal and existential, engagement.

If the most high poverty of total dispossession is the real rule of the law of nature, then ownership is but an emergency, providentially “economic,” and disciplinary measure adopted after the Fall in order to keep some sort of order, in default of real morality. This is Duns Scotus’s theory and the anticipation of Luther here is as real as his anticipation of Hobbes with respect to the post-lapsarian need for social contract in default of the possible pursuit of teleological justice, according to the same logic.¹⁵

If charity is extra-legal unilateral gift, with no legitimate expectation of reciprocal return, then loan or usufruct can no longer belong to the realm of mutual donation involving a free and charitable transfer of ownership, but must remain in the possession of the original owner, in default of any formally contractual transfer of right to possession. In this way, in the thought of Olivi and others, usury is more broadly justified than Christian tradition had hitherto allowed, because the lender remains the owner who must be compensated (in contrast, for example, with

14. Agamben, *De la très haute pauvreté*, 123–95; Garnsey, *Thinking About Property*; Parisoli, “L’involontaire contribution franciscaine.”

15. John Duns Scotus, *Opus Oxoniense* IV, dist. 36, q. 1.

the position of Aquinas).¹⁶ Equivalently, the meaning of usufruct in Roman law is distorted or abandoned, because now the enjoyer of a benefaction (often by a second-person mediation) has no *iūs* to enjoy whatsoever, nor right to know even the name and circumstances of the first-person benefactor, but is simply the beneficiary of what will later be called a “blind trust.” It is this phenomenon that will eventually much assist the conglomeration of capitalist firms into monopolies, and it has now been shown how the prevalence of the category of trust in English common law from the Late Middle Ages onwards did not influence the English Franciscans; rather, the latter’s perspective introduced this concept into common law which, up to that point, was not so mythically different from Roman law to the degree fantasized by nationalist Whig historians, nor so averse to equity (indeed it could be more hospitable and so more “Roman” than the current continental, sometimes canonically induced, recensions of Latin legal tradition).¹⁷ One must not confuse “the people of England, who have never spoken yet” with the English Franciscans—their voice being more apparent in that of Langland’s Piers Plowman, a real poor man sometimes scathingly critical of religiously embraced poverty and insistent, like Aquinas, that poverty is not an end but a means to charity or spiritual *fyndinge* (finding).¹⁸

Again, if pure usage is alone the mark of the genuinely and supernaturally ethical, then any old usage can meet the criteria of a fallen justice whose only criterion is that for mere order of formality. Hence, says Olivi, a contract for prostitution or gambling or theater performance may be fully licit, even though it promotes something substantively unethical.¹⁹

In all the above ways, anarchic, absolute poverty and proto-liberal, amoral, power-based property and legality are logically complementary opposites since they are based respectively on a will against will and on the normal fallen will to

16. Peter John Olivi, *Treatise on Contracts*, III § 16.

17. Parisoli, “L’involontaire contribution franciscaine”; Alain Supiot, *La Gouvernance par les nombres* (Paris: Fayard, 2015), 69–79.

18. See David Aers, *Sanctifying Signs: Making Tradition in Medieval England* (Notre Dame: University of Notre Dame Press, 2004); *ST II-II*, q. 188, a. 7.

19. Olivi, *Treatise on Contracts*, II § 35, 40.

dominion. However, the second theory of deliberate Franciscan promotion of neoliberalism has another aspect to it, according to which poverty and property are not opposite sides of the same logic, but expressions of one and the same logical relation. This is seen in terms of the strict separation of *usus* from *ius*, and yet at the same time the legitimation of pure *usus* according to *ius*, and the dependence of the mere usage of one party upon the possessed right of another. Thus the mendicant has the right to use anything and everything *in extremis*, as before the Fall, not out of a shared human possession (as for Aquinas and several of the Greek Fathers) but out of a right to use what is loaned to him by God, the real ultimate owner, out of his creative power. In normal circumstances, he has the right to use what has been given to him to use by donors, but without any transfer of ownership, even as to food and drink. In the first case, he lies at the mercy of the unconstrainedly willing God; in the second, at the behest of the unconditionally willing property owner. But in just the same way, the debtor as to money is at the absolute mercy of the loaner, and the enjoyer of a trust-endowed benefit at that of the owner and provider of the trust. Here unilateral free gift has, curiously or not, the same structure as transfer, now liberated from its traditional Roman legal association with *donum*. Delegalized gift is therefore oddly close to its complementary opposite: willed legal transfer free of all generous connotations. In either case, the substantively rather than formally binding has been squeezed out from the middle—its mutuality now survives only in the etiolated form of a contract entered into merely because of coinciding and not sympathetically mediated isolated egoistic interests. Adam Smith is already in sight.

In accordance with the two aspects of the second theory regarding the Franciscan conundrum, it can be seen how the Franciscan double approach to poverty and property is on the one hand complicitly dualist, but on the other outrightly monist. Dualist because there is a sharp divide between the sinful order of ownership within which most people are stuck and the perfected order of poverty which is the way of the mendicants. Dualist more fundamentally because there is an equally sharp divide between the true natural law of the paradisaical state which prescribes pure usage without human ownership and on the other hand the provisional, procedural, and amoral natural law that economi-

cally administers our fallen state. But also monist, because within that fallen state it is also true that a single providential economy embraces both laity with regular clergy and monks on the one hand and the Franciscan mendicants on the other. This economy includes the new market economy as articulated by Olivi, which recommends the supremacy of formal contract in order to induce the maximum possible circulation of money and goods and so of wealth. This circulation will also provide the greatest possible pool of resources to assist both the poor in general and the friars in particular. It follows that their wealth, though only the wealth of usage, is also, as Boulnois points out, the new wealth of capital, rather than the older wealth of land and physical goods.²⁰ Just because there is now a greater supply of abstract wealth, of wealth as “promise to pay” and of abstract wealth held as “trust” for the future, so also there is a reliable pool of resources out of which the friars, and especially the teaching friars, can be supplied, housed, and fed. Thus for three hundred years in England, the Franciscans truly survived on “intermittent” voluntary donations.²¹ But that they were able to do so was less the sign of the rise of a new spirit of lay charity than of the rise of a more capitalized market economy (which it would yet be anachronistic to describe as fully fledged “capitalism”). As Boulnois rightly says, there is *no* conflict between the banking wealth of Reginald Scrovegni that paid for the Scrovegni chapel and the pious scenes depicted by Giotto within, even though the owner of this wealth was placed by Dante in the circle of the usurers in hell.²²

Therefore, in a way that can help us to understand ourselves better today, if it be true that we remain caught in a “Franciscan” logic and practice, one can see how anarcho-communism, tending somewhat even to a cultural nihilism on the one hand and liberal capitalism on the other (respectively today our “left” and right”), are not just mutually complicit and reciprocally reinforcing opposites, but even in some respects different optional expressions of the same model. After the hippie sixties, there closely followed in its sandaled wake the polished black

20. Boulnois, “Most High Poverty,” 459.

21. Parisoli, “L’involontaire contribution franciscaine.”

22. Boulnois, “Most High Poverty,” 460.

toes of the banking eighties. This pattern holds because, if the will is ultimate, then the substantively opposite outcomes can be formally the same, while if the existential commands without altering the essential, then the command to give to the poor and suppliant can look ethically identical to the command to loan and lend in order to enrich oneself. The right to give up right is indeed one and the same right and even definitory of right, if right be defined formally by willed exercise of power—just as Kant will later have a seemingly opposite but structurally similar problem of distinguishing the legally ethical will to will from the “radically evil” will not to will. (Though one could argue that for Kant also, in a Scotist lineage, natural legality has now been reversed as a self-possessed will to dispossession of one’s natural animal instincts.) Thus, today we know the figure of the entrepreneurial benefactor superstar. We even tend to see him or her as now the exemplary human being. But thereby humble and just, erotic as well as agapeic reciprocity is surely relegated and neglected.

But what is really wrong with this logic and practice? Much that is wrong was articulated against the Franciscans in their own founding epoch. First, to abandon the normal means of cultural survival, at least if this be extended much beyond the extraordinary witness of a few, would seem to read the parable of the lilies and the birds in such a literal fashion that it risks tempting providence by ignoring the fact that the adoption of cultural means by the specifically human animal is a necessary part of the divine government of the human city.

Second, as argued by Aquinas among others, ownership cannot properly and naturally be said to be retained of something that is wholly consumed by another, whether this be food, drink, or a monetary transfer. Such things are naturally alien to commodification (as Karl Polanyi taught in the twentieth century) because they are good insofar as they are used up. To argue, with Olivi, that food and drink and money lent are not also owned by the user, because the user becomes a continuously different user through the process of usage, seems a subtlety too far that threatens to destroy essential continuity of identity altogether, while implausibly insisting to the very limit that ownership is but

a matter of formal existential entitlement.²³ This would appear to override completely and unrealistically the normal legal understanding that longstanding usage establishes thereby a presumed right.

In the third place, a similar consideration applies, in a more qualified way, to all goods of usage, according to which something is only “had” with respect to its deployment, like living in a house or using office space. Here the Franciscans faced a dilemma that tended to form the divide between “the Conventuals” and “the Spirituals.” Permanent occupation of anything somewhat sumptuous seemed to expose the *simplex usus facti* not as a refusal of the existential fictions of all law, but as itself an arch legal fiction, concealing a collective *libido dominandi*. Therefore the Spirituals demanded not just mere usage, but a very strict interpretation of that *usus pauper* which was common to all the mendicant orders. This usage was so strict as to amount, at least in theory, to perpetual beggarage. On the other hand, reduction to vagrancy also ensures that all usage is only of consumable things that can, most implausibly of all, be seen as things used but not owned. So the dilemma is this: on the one hand, a continuous having as reusing would seem to add possession to usage (as with a house); on the other hand, an intermittent usage which is a total consumption would equally seem to exemplify an appropriation in excess of temporary using. On the one hand, occupation tends to usufruct or to a having that is positively in excess of usage; on the other hand, sacred vagabondage tends to a destructive usage negatively exceeding it. In either case, there seems no plausible case for claiming to have escaped a more direct legal entitlement, nor a right linked to usage and arising from it.

This is the position of Aquinas: for him we never own the essence of anything, but rather only things insofar as they can be used.²⁴ This position suggests a very different construal of the essence-existence relation with respect to economic practice from that of the Franciscans. For them, as supremely with Olivi, essence is aligned with usage and so with brute reality. Economic existence is rather aligned with the sign, regarded as a purely nominal convention—the owned property is not physi-

23. Agamben, *De la très haute pauvreté*, 181–88.

24. *ST II-II*, q. 66, a. 2.

cally changed, just regarded differently by human subjects. But for Aquinas, essence is implicitly seen in a more metaphysically participatory light: it is the depth of things not just insofar as they brutally (and so univocally) exist, but also insofar as they derive from God and so their specific restriction of essence is an analogical participation in being. Usage rather aligns with our subjective existence, but this also is participatory: it involves a certain finite adaptation of eternally essential things (the reality of things as known in the mind of God) according to time, place, need, and fittingness. Thus there is for Aquinas (in contrast to the more crudely Avicennian Franciscans) no essence–existence dualism²⁵ with respect to the things–property compound, but instead existential usage is substantive as well as formal, nominal, and signifying. It regards just how, for example, the bare land is turned into field, copse, and common. And entitlement to ownership springs up from this cultivated soil of usage: even if property is owned privately, its legal justification includes good usage, which is ultimately for public benefit, while in an emergency all property reverts to pre-fallen common ownership. But this remains a state of political legality—or even becomes more so, because conforming more to the model of Adam’s paradisaic rule—whereas in the Franciscan case there is an emergency return to anarchy, which in a fallen condition is far more likely to be the war of all against all than a state of spontaneous harmonious bliss.

A fourth point follows closely from this: the Franciscans exacerbated the Stoic aspect of the Latin patristic legacy regarding the pre-lapsarian condition. It becomes approximated to a pagan golden age in which atomic individuals fall into an automatic order with neither government nor property. Western canon law appeared to endorse this by speaking of a normative natural usage of goods in paradise.²⁶ However, Aquinas’s argument for common ownership, along with Adamic government before the Fall, was not simply an alien Aristotelian intrusion of human political animality into a Christian discourse. For the Greek fathers also, and with more biblical warrant than the sto-

25. See my “Manifestation and Procedure: Trinitarian Metaphysics after Albert the Great and Thomas Aquinas,” in *Tomismo Creativo*, ed. Marco Salvioili (Bologna: Edizioni Studio Domenicano, 2015), 41–117.

26. Gratian, *Decretals*, d. 8 ante Cap. I.

icizing West, identified Adam as sacred *basileus* (king), and so also ascribed to him a kind of eminent domain as ultimate “private” guardian and guarantor of property held in common.²⁷ It is this position which would seem to have been resumed by the Avignon Pope John XXII, enemy of the Franciscans, canonizer of Aquinas, and remarkable temporary restorer of the Greek and early Latin view that we will all be judged collectively in our resurrected bodies, at the end of time, rather than one by one and before the resurrection upon our individual deaths.²⁸ Consistently then, he opposed an excessive individualizing of Christian understanding, of which, as we have now seen, the Franciscan approach would appear to have been, in several significant ways, a part.

In the fifth place, the same individualism would seem to dominate a series of Franciscan positions governed by the idea that decisions apparently taken in common, and gift-exchanging relations establishing reciprocal bonds, must be reduced as far as possible to coinciding private and autonomous acts of willed choice. A suspicion of “real relation” is present here, and one can note that most Franciscan theology rejected the definition of the trinitarian Persons by substantial relation.²⁹ But in the case of *simplex usus facti*, of usury, trust, and social contract as reconceived by Duns Scotus, Olivi, and others, this reduction involves an unnatural and counterintuitive denial that convention and legality should trace real modification of things in usage, which appears in all these cases (including the mutual exchange in substantive trust of the *pactum* under the just governor) to involve a donation leading to a real transfer of property and of property entitlement. *Ius* here springs from the soil of *usus*, as Aquinas suggests.

For all the reasons so far adduced there are reasons to worry as to whether the Franciscan search for a new, mendicant way was dangerously hyperbolic, in contrast to the more mea-

27. See Francis Oakley, *The Mortgage of the Past* (New Haven: Yale University Press, 2012), 113.

28. See György Geréby, “Hidden Themes in Fourteenth-Century Byzantine and Latin Theological Debates: Monarchianism and Crypto-Dyophysitism,” in *Greeks, Latins, and Intellectual History, 1204–1500*, ed. Martin Hinterberger and Chris Schabel (Leuven: Peeters, 2011), 183–212.

29. For a summary, see my *Beyond Secular Order: The Representation of Being and the Representation of the People* (Oxford: John Wiley & Sons, 2013), 57–66.

sured approach of the Dominicans. From the outset, the manifestation of the *alter Christus* had almost a tinge of the *anti-Christus*, if one assumes, as one should, that its mark would be a deceptive almost identity, rather than a demonic inversion. At the heart of the hyperbole would appear to be a tendency to refuse the cultural character of human existence—its reliance on tool, word, and law—and failure fully to see that this belongs to our created as well as fallen nature. Restricted to the latter, culture becomes both demonized and amorally regarded as an “economic” (in every sense) necessity, which must even be promoted both for the sake of order and also to provide the sinful ground for the possibility of a truly sinless existence.

In turn, at the heart of this refusal lies the rejection of property as the mark of perfection. But the mark of Christian perfection is charity, as the Dominicans and many others insisted. Thus, as again Boulnois points out, Aquinas offered an alternative interiorization by stressing that charitable intention can be compatible with external possession, depending on usage.³⁰ But this dependence suggests also that this mode of both judging and willing internality is correlated with a complex and analogically serpentine mode of shifting practice, whereas by contrast the Franciscan merely willing internal gesture of refusal is correlated with a once and for all external absence of law and ownership, even if this externality can only be manifested by empty sign.

By making the refusal of property the mark of perfection, the Franciscans, in short, rendered the whole matter of property far too important. Possessive individualism then already ensued: with a right to be poor, the Franciscans owned their poverty and themselves. The absolute boundary between boundedness and unboundedness was therefore itself construed as a boundary—in anticipation, one wants to say, of the boundary of the sublime in Kant. And one may not implausibly conjecture that just this sublime boundary was also projected metaphysically in Franciscan thought. For there are apparent analogies between their theoretical divisions and the ones pertaining to their practical life. Unlike the Dominicans, whose mission was simply one of preaching practice grounded in a collective liturgy, the Franciscans were more bifurcated between traditional contemplation on

30. Boulnois, “Most High Poverty,” 454.

the one hand—now, however, removed from the conventual and the liturgical and directly linked to poverty and the nomadic—and the new preaching vocation on the other, which took them more into the world and was more linked to liturgical office.³¹ As Agamben remarks, the Franciscans notably did not, like other spiritualizing factions, suggest that sacraments conducted by unworthy officers were invalid, yet this was just because liturgy now for them stood one step away from the central normativity of the life of dispossession. Thus to some degree liturgical offices, the sacraments, and the whole of Church order became for them rather pragmatized and instrumentalized, placed almost in the same box as worldly law and property. Thereby they became a matter of necessity, but also to some degree of indifference, and so to be left alone but in a way disregarded. This attitude fits with the way in which, just as the Friars Minor depended continuously on secular alms, so also they depended on the use of what belonged to the pope by right. Still more significantly, in England it was not the pope but the king, lord, or town that owned by right what the friars purported to merely use—this being a major factor in the special growth of the Franciscan-inspired “trust” within that country.³²

As exponents of *theoria*, the Franciscans pursued an affective union with the infinite God. With the lapse of genuine analogy, already in Bonaventure, univocal being now tended to be sundered in an unmediated way between infinite and finite.³³ Exhibiting a distant but real foreshadowing of Kant (or rather, Kant remained in this Franciscan conceptual space), the Franciscans tended then theoretically also to reside on both sides of the boundary between the unbounded and the bounded. In the unbounded, they enjoyed a unity with God in terms of a high quantitative degree of sharing in the same univocal goodness that belongs to both the finite and the infinite realms. But within the bounded, it became possible to articulate an account of the given essences of things without regard to their derivation from

31. Simon Tugwell, introduction to *Dominican Spirituality*, ed. Simon Tugwell (New York: Paulist Press, 2002).

32. Parisoli, “L’involontaire contribution franciscaine.”

33. Bonaventure, *In II Sent* 3, 1, 1, 1, Concl; 3, 1, 2, 3, Concl; 17, 1, 2, Concl; *Brev.* 2.11.2; *Coll.* 11.20.

God, save insofar as God has willed just this givenness, which is thereby a matter of decree and of “trust” rather than truly of gift.

This position is only challenged within a voluntarist paradigm by John Wyclif who, while sharing Duns Scotus’s Avicennian mode of metaphysical realism, also refused the divide between possession and usage by making both political and economic dominion absolute and inalienable, yet conditional under grace upon the grace-provided reciprocation of good usage.³⁴ It is significant that his political thought was in England sometimes blended with that of Aquinas, as by John Fortescue.³⁵ For Wyclif, God’s grace also, by genuine gift, underwrites the reliability and stability of the essences of things (equivalent to “inalienability”) in a way that rather overcomes the usual Franciscan combination of static form, unaltered by emanative flux and arbitrary if normatively loving divine *fiat*.

But in general, Franciscans and those Franciscan-influenced in following Avicenna by construing “forms” as univocal with respect both to finite and infinite (and so with reversible exemplarity) thought of them as being bestowed in various unstable and in principle undoable mixtures by God upon the finite world.³⁶ Thus whereas the Franciscan friars might stand, theoretically and ethically, directly in the infinite, which now has ontological priority, as articulated by Duns Scotus (well before Descartes), when it came to theoretical reason in the empirical sense, this now operated within a proto-Kantian bound that did not require any reference, as to content, to anything causally “beyond.” Since the transcendental terms were now regarded univocally, it followed that this boundary (between the bounded and the unbounded) was already a “transcendental” one, whereby the reach of our ontology of the finite coincides simply with the reach of our semantic and logical categories in their finite scope.³⁷

34. Boulnois, “Most High Poverty,” 463–64.

35. See S. R. Chrimes, general preface to *De Laudibus Legum Anglie* (Cambridge: Cambridge University Press, 1949), ix–liii.

36. See my “Manifestation and Procedure.”

37. See Ludger Honnefelder, *Scientia transcendens: Die formale Bestimmung von Seiendheit und Realität in der Metaphysik des Mittelalters und der Neuzeit* (Hamburg: Meiner, 1990).

In this way then, the division of the Franciscan mendicants' lives between unintellectual perfected affective freedom on the one hand and dependence on sinful law—newly understood by them in a thoroughly formal and technical way—on the other, corresponds to a division between an affective and voluntary theory of the ethical and contemplative on the one hand and a starkly “epistemological” (one may say with justified anachronism) and logicizing approach to physical and signifying reality on the other. The same univocal framework, with its undisjunctive continuity of infinite and finite (as painted in the almost uniform blue of the earthly walls and celestial ceiling of Giotto's Scrovegni chapel) also gave rise (in Duns Scotus and others) to a reinscription of metaphysical quality as “intensive quantity” tending to a proto-Cartesian quantifying ontology, which also encouraged a mathematically flattened and mechanical approach to physics. With seeming oddness, the movement that began by celebrating proximity to nature ended up in the disenchantment of the same. But reduction of the humanly psychic, which includes artificial and creative hybridity to the animal, perhaps threatens a further reduction of the animal to the barely operative. Meanwhile the psychic (again in anticipation of Descartes) was also “reduced upwards,” away from life and “animal reason,” into the pure ether of the merely regarding and mimetically representational. The too literal copying of Christ mutates, perhaps, into the idea of all true knowledge as a mirroring.

Just the same over-obsession with boundary (refused or embraced) with respect to space can also arguably be traced with respect to the Franciscan understanding of time. First, just as finite and infinite are over-separated (without participatory and analogical mediation) and yet over-linked (by univocity of transcendental property and degrees of an identical will), so also with time and eternity for Bonaventure. Unlike Aquinas, he fails to see that time as such is creatively derived, along with all other finite realities from God, and requires no separate derivation: time participates eternity, to the same degree that finite participates infinite.³⁸ If, by contrast, time requires (for metaphysical and not just biblical reasons) its own independent commencement, then

38. See Joseph Ratzinger, *The Theology of History in St. Bonaventure* (Chicago: Franciscan Herald Press, 1989).

there must be also a kind of “sublimely temporal” link between time and timelessness, just as there is between the bounded and the unbounded, possession and dispossession.

Second, just as the “way” of poverty substitutes in Olivi for the “person” of Christ in the spiritual future,³⁹ and the mode of Christ’s life as absolutely poor starts to substitute for the real, ineffable details of that life, so, in general in Franciscan thought, “period of time” starts to substitute for Christ as already the “end” of time. For Augustine, Christ was the eschaton in advance already and time after that was the time of the *totus Christi*. But even Bonaventure was a semi-Joachite who thought (against the prevailing patristic view) that particular events since Christ had typological equivalents in the old covenant.⁴⁰ Most notably, for Bonaventure Francis had been prophesied in the Apocalypse and thus his rule came, especially with the Spirituals, to enjoy the same status as the New Testament itself. One consequence here was the reading of Christ through Francis as much as Francis through Christ, in a manner that encourages a manifest semi-Nestorianism, focusing upon an almost independent perfected humanity in Christ and reducing the personal union to a matter of powerful binding together in Franciscan Christology.⁴¹ Equally, Francis’s seraphic vision and reception of the stigmata got regarded as a kind of near-beatitude within pure immanence, in such a way as to encourage (when combined with an Avicennian reading of Augustine) a removal of the participatory and empirically mediated features of Augustine’s theory of divine illumination (these being by contrast augmented rather than subverted by Aquinas, with the help of both Aristotle and Proclus). For these were substituted at once a kind of direct ontologism and an inalienable a priori human light of understanding.⁴² The recourse

39. Peter John Olivi, *Quaestio octava de altissima paupertate*, cited by Agam-ben, *De la très haute pauvreté*, 192.

40. Ratzinger, *The Theology of History in St. Bonaventure*.

41. Bonaventure, *In Sent.* 1, 3, 1 ad 1; Aaron Riches, *Sequela Christi* (Grand Rapids: Eerdmans, forthcoming); Richard Cross, “The Doctrine of the Hypostatic Union in the Thought of Duns Scotus” (unpublished doctoral thesis, Oxford, 1991), 25. But this semi-Nestorianism was admittedly almost all-prevalent in the Latin scholastic west prior to Aquinas.

42. See Jacob Schmutz, “La doctrine médiévale des causes et la théologie de

to Islamic reflection on the nature of knowledge, which is also a theory of the nature of prophecy, may not be without subtle links to the analogy between Mohammed thought of within Islam as a more final prophet after Christ, and Francis thought of by the Franciscans (and even, to some degree, the Conventuals) as a prophet after Christ, not of course as higher than him, but nonetheless as newly spiritualizing his message for a new human epoch.

Thereby Christocentrism is now taken to mean that Christ was the hinge and not the finality of history, in such a way that his overridingly ontological and not ontic character (as divinely personified) is somewhat suppressed, just as the notion of a specifically first efficient temporal cause tends onto-theologically to confuse the ontological and the ontic registers. For the Augustinian view, the inrush of Christ into history is the end of history already, and the end of boundaries and significant periodizations. But for the Franciscans, and supremely the Spirituals, it is but the pre-announcement of a more spiritual era—of a period beyond periods, like the unbounded beyond boundaries, owned poverty beyond property. In this final epoch, a strange this-worldly spiritualization will prevail, just as internal Franciscan poverty yet requires a static and formal external mark. Thus one gets the paradox of a looking to a future in material time that will yet be a kind of iconoclastic etherealization. And here we can see completed the Franciscan pre-invention of a species of anarcho-communism involving a revolutionary and above all iconoclastic agenda.

There are abundant reasons to be suspicious of this legacy. First, because it has proved in practice to lead to revolutionary terror and totalitarian administration, but second because such has always in the end paved the way for a yet further intensified insertion of an individualistic liberalism and an amoral capitalism. But one should not here imagine that the Franciscans laid the foundations for the modern norms whose prevalence are ahistorically to be regarded as inevitable. It is instead the case that our reality remains contingently Franciscan. As stated at the outset of this essay, one serious possibility here (which recommends itself to all too many Catholics today) is to seek therefore

la nature pure,” in *Revue Thomiste* vol. 101 (2001): 217–64; my *The Suspended Middle*, 2nd ed. (Grand Rapids: Eerdmans, 2014), 95–103.

to re-theologize an essentially Franciscan modernity—thus to accept univocity of being, epistemological representation, possibilistic metaphysics, Kantian ethics, subjectively-founded human rights, political liberalism, unqualified liberal democracy, capitalism, etc. But apart from the substantive objections to this re-baptism already listed, there remains a further one: namely that secularization is not an accidental destiny for the Franciscan path. Univocity, representation, and substitution of ethical rigor for liturgical celebration as the ultimate norm, plus reduction of law and culture to the instrumental, and the rendering of even the supernatural on the “animal” model of a bare life and purified nature, all of themselves inevitably encourage a secularizing upshot. Moreover, for reasons we have seen, secularization cannot here be a terminus, but threatens a further nihilistic undoing of our humanity, since it finds it hard to account for our natural-artificial hybrid existence. This is better understood in terms of a liturgical fusion, where rule and life are kept in balance and yet seamlessly merged as far as possible.

And if modernity is Franciscan, rather than it being the case that the Franciscans anticipated modernity, then what they displaced is not necessarily unmodern, but rather the Middle Ages which we have neglected. The Benedictine path remains fresh today and still more so the Dominican, an equally post-urban rethinking of what apostolic life might be in contemporary terms, for a few and to some degree for all. This approach was later rethought with a deepened radicalism yet again by the Jesuits and today by many (mainly) lay religious movements.

Alongside this practical alternative lies a theoretical one that does not include most of Neo-Scholasticism, since this was too contaminated by the Franciscan legacy. But it does include the main Dominican currents of the Middle Ages of both Albert and Aquinas and then Nicholas of Cusa⁴³ as their early Renaissance successor, along with other later figures like Pierre de Bérulle and the Anglicans Richard Hooker and Thomas Traherne, besides many others.

43. See Johannes Hoff, *The Analogical Turn: Rethinking Modernity with Nicholas of Cusa* (Grand Rapids: Eerdmans, 2013); my “From *Mathesis* to *Mathexis*: Nicholas of Cusa’s Post-Nominalist Realism,” in *Relire Cusanus*, ed. Isabelle Moulin (Paris: Seuil, forthcoming).

For this tradition, both metaphysically and practically, participatory sharing and just usage precedes ownership and rulership (twin *dominium*) and justifies them, but does not remove them. Christianity may displace by grace and charity the reactive civil and criminal laws, but it remains just as Jewish and Greek as it is Roman in proclaiming as central a new and divine, positive and establishing, *ius publicum*. □

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