



Francis of Assisi and the rise of modern market law

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Francis of Assisi changed the world by appreciating all creatures and honouring them as an enrichment to human society. He saw in everyone special abilities that made people complement each other in society.

Francis recognized that everybody could use his own gifts, together with hard work and education, to promote social prosperity. However, the new, flourishing economy of medieval trade required that those who could not maintain themselves be supported through charitable projects. Once again the opposites complemented each other. Franciscans could not only advise merchants as confessors, but thanks to their vow of poverty, they escaped the logic of the economy and organized oases of charity.

Francis influenced the understanding of law by emphasizing not only individual responsibility in the marketplace, but also freedom in law in general, with which subjective laws could be used to freely and responsibly shape society. The rich and the aristocratic could stimulate their economy and their society just as much as the poor, who could provide employers with the necessary workforce.

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THE CONVERSION OF FRANCIS

Giovanni di Pietro di Bernardone (1181/2–1226), was born in 1181/2 at Assisi and died there in 1226. For his contemporaries, therefore, he became known as Francis of Assisi. He was the son of a wealthy merchant, who traded tissues and clothes and had acquired some wealth¹. We are well informed about his early life thanks to the writings of Thomas de Celano (ca. 1190–1260), one of his first followers². However, ever since his youth Francis has been viewed from different perspectives. Until today, modern authors, trying to find him in his writings and the effects of his life, represent him from a diverse angle instead of giving a uniform explanation³.

¹ A bibliography on this topic is contained in Cyprian J. Lynch (ed.), *A Poor Man's Legacy. An Anthology of Franciscan Poverty*, Saint Bonaventure (N.Y.), 1988.

² On his “biographies” or hagiography cf. LYDIA SCHUMACHER, *Early Franciscan Theology. Between Authority and Innovation*, Cambridge 2019, 48.

One of the first perspectives in his early life started when Francis' father engaged him in his company and prepared him to become his successor. Francis received the necessary tuition and even dreamt of social rise and a life as a knight, just as many boys since his time have done⁴. He enjoyed drinking, singing, and the company of friends till late into the night. But whilst still a young man he was captured, and, whilst he was kept captive for two years, he became very sick. In the following years he sought his special place in life and gained some religious experience.

The story of his conversion to a life devoted to religion, as told by Thomas de Celano, is revealing. This first biography was commissioned in 1228 by Pope Gregory IX. Celano reports that in 1205 or 1206, Francis, aged 25 or more, travelled to the nearby city of Foligno to sell expensive scarlet cloth on behalf of his father⁵. His trip was particularly successful: he was even able to sell his horse advantageously. Burdened by the sack of money, he hastened home. Three kilometres off Assisi, he rested at the old Romanesque chapel of San Damiano called "Santa Maria degli Angeli" or, more commonly, "Portiuncula", which was almost in ruins. He contemplated the money he had earned and its worth, especially what it could buy him. Then he heard a voice calling him to enter the chapel and see how demolished it was.

This was St Francis' moment of conversion. He decided to give all the money he had earned that day to the priest of the chapel. The poor priest of this place was at first afraid that Francis' family would take revenge for the loss of profit. But Francis insisted and some say that he even helped to rebuild the church with his own hands. This little chapel became the founding place of the Franciscan movement, later Francis' preferred place, where he even died in 1226. The Portiuncula soon became the hub of all Franciscan orders⁶.

This story has been recounted numerous times to demonstrate Francis' decision to leave the secular world and to renounce money⁷. Francis and his followers set a new model and standard for Christian humility, poverty, and charity. For this reason, Francis like no other was often called "*Alter Christus*" (the other Christ)⁸. In fact, since

³ JACQUES LE GOFF, *Saint François d'Assise*, Paris 1999.

⁴ PETER KAMMERER/ EKKEHART KIPPENDORFF/ WOLF-DIETER NARR, *Franz Von Assisi – Zeitgenosse für eine andere Politik*, Düsseldorf 2008, 65.

⁵ Cf. THOMAS DE CELANO, *Vita prima S. Francisci*, cap.4 n.8 and 9, ed. H.G. Rosedale, London 1926, 13; LE GOFF, *Saint François d'Assise* (n. 3), 52-58.

⁶ LE GOFF, *Saint François d'Assise* (n. 3), 65.

⁷ KAMMERER/ KIPPENDORFF/ NARR, *Franz von Assisi* (n. 4), 52 on the portrait of St Francis in his engagement with Lady Poverty, as to be found in the lower church of St Francis at Assisi.

their beginning, Franciscan orders, like all mendicant orders, have refused to own things, instead obliging their monks and nuns to adhere to a very strict ideal of poverty⁹. In the 13th and 14th centuries, however, the question of how strictly this principle had to be handled was debated, as well as how Franciscan orders could dispose of monasteries, libraries, and the like. Whilst some, the “Conventuals”, tried to combine the ideal of poverty with the necessity of such property, others, like the stricter “Observants”, could not accept any papal dispensations from strict poverty. The “Fraticelli” or “Spiritual Franciscans” became known for a harsher, more demanding interpretation. The debate on Franciscan poverty was one of the most famous and influential debates of the time¹⁰. Due to their ideal of poverty and their care for all parts of their society, Franciscans immediately became highly respected as true followers of Jesus. Even non-Christians like the Sultan Malik-el-Kamil, who met Francis at Damietta in 1219, could venerate them for their ascetic life¹¹.

The story of the conversion, however, does not say that Francis rejected the money. In using the capital for the restoration of the chapel and the later centre of his activity, Francis instead demonstrated that he knew well how to invest his money. His investment was indeed a business of extraordinary success. Furthermore, Francis’ new order did not want to escape the world like hermits. Instead, Franciscans

⁸ ZACHARY A. MATUS, *Franciscans and the Elixir of Life: Religion and Science in the Later Middle Ages*, (The Middle Ages Series), Philadelphia 2017, 18.

⁹ VOLKER HONEMANN, Armut im franziskanischen Schrifttum des 13. Jahrhunderts. Hagiographie und Historiographie, in: H.-D. Heimann/ A. Hilsebein/ B. Schmies/ Ch. Stiegemann (eds.), *Gelobte Armut. Armutskonzepte der franziskanischen Ordensfamilie vom Mittelalter bis in die Gegenwart*, Paderborn/ München/ Wien/ Zürich 2012, 103-127; as an encompassing principle in Gottfried Schweiger/ Clemens Sedmak (eds.), *Handbuch Philosophie und Armut*, Berlin 2021, here esp. CHRISTIAN ROHDE, Armut in der hochmittelalterlichen Philosophie, 86-93.

¹⁰ KARL BALTHASAR, *Geschichte des Armutsstreites im Franziskanerorden bis zum Konzil von Vienne (Vorreformationsgeschichtliche Forschungen)*, Münster 1911; on subjective rights BRIAN TIERNEY, *Liberty and Law: The Idea of Permissive Natural Law, 1100-1800* (Studies in Medieval and Early Modern Canon Law, Volume 12), Washington, D.C., 2014; MAXIMILIANE KRIECHBAUM, *Actio, ius und dominium in den Rechtslehren des 13. und 14. Jahrhunderts*, (Abhandlungen zur rechtswissenschaftlichen Grundlagenforschung, 77), Ebelsbach 1996, 40ff; THOMAS FRANK, *Exploring the Boundaries of Law in the Middle Ages: Franciscan Debates on Poverty, Property, and Inheritance*, Law and Literature 20 n.2 (2008), 243-260.

¹¹ RAMONA SICKERT, Armut im Vergleich. Überlegungen zur zeitgenössischen Wahrnehmung franziskanischer Armut im 13. Jahrhundert, in: G. Melville/ A. Kehnel (eds.), *In proposito paupertatis. Studien zum Armutverständnis bei der mittelalterlichen Bettlerorden*, (Vita regularis, 13), Münster/ Hamburg/ London 2001, 101-115.

founded their new monasteries in the cities¹², ready to serve their communities as confessors for the poor and the rich and mighty in their society. As their pledge of poverty was only personal or institutional for their own orders¹³, Franciscans respected the growing wealth of their surroundings. They demonstrated perfect understanding of the use of money and the functioning of their society, especially in confessionals. Whilst the Church was not a part of the new trade¹⁴, the followers of Francis acted as confessors for the citizens of their towns, especially the merchantmen and the governors¹⁵. Respecting their knowledge of the society and the market, the citizens also appointed Franciscans as executors of their wills¹⁶. At the same time, Franciscans cared for the poor and sick and established early forms of social care. Francis's influence on both the debate on the vow of poverty and the treatment of the market has been intensively examined from various perspectives in recent years. This article will examine these new insights and their significance for legal history.

Emergence of the medieval European market and the new ideal of poverty

Market transactions such as those of Francis were a typical new phenomenon of the time. In the 12th century, especially in Northern Italy, the establishment and extension of a European market started, particularly with wool from the Low Countries, and later the British Islands, which was woven and dyed in Northern Italy, whilst Italian cloth was sold in many parts of Europe¹⁷. This had an enormous impact on European society, as it led not only to new prosperity, but also enhanced the cultural unity of Europe. After two especially dark and poor centuries, wealth came back to Europe, causing the population to increase tremendously and leading to the establishment of new cities in many different places around Europe, from Gent to Bergen. New tech-

¹² LE GOFF, Saint François d'Assise (n. 3), 212.

¹³ GIACOMO TODESHINI, Franciscan Wealth. From Voluntary Poverty to Market Society, Ashland (Ohio) 2009, 58.

¹⁴ ANTONIO RIGON, Mendicant Orders and the Reality of Economic Life in Italy in the Middle Ages, in: D. Prudlo (ed.), *The Origin, Development, and Refinement of Medieval Religious Mendicancies*, (Brill's Companions to the Christian Tradition, 24), Leiden/ Boston 2011, 241-275.

¹⁵ GIACOMO TODESHINI, *Richesse Franciscaine. De la pauvreté volontaire à la société de marché*, trad. N. Gaillius/ R. Nigra, Paris 2008, 120.

¹⁶ DAVID BURR, Olivi and Franciscan Poverty. The Origins of the Usus Pauper Controversy, Philadelphia 1989, 14.

¹⁷ As one of many important studies cf. IRIS ORIGO, *The Merchant of Prato*, first edition, London 1957.

niques and forms of commerce were started, education and craftsmanship spread, and European products were exported everywhere¹⁸.

In European agriculture, one grain sown brought only one and a half grains in the harvest. All financial means, therefore, had to be used for agriculture, and coins were not used to store wealth, but rather to facilitate the exchange of objects. But the new commerce made some people rich, who were now able to accumulate money¹⁹. Whilst the trade developed interest in storing and dealing with money, the rural population had no chance to participate in this business. Europe was increasingly divided into these two spheres.

This is also true for the interest in Franciscans²⁰. One the one hand, the prosperous part of the society developed a new fascination with poverty²¹. Their distance from business provided Franciscans with independence with regard to wealth, power, and authorities²², and they were loved for their social charity. At the same time, Franciscans were respected for their erudition and knowledge of the world, including trade and commerce. The presence of Franciscans, therefore, helped medieval cities to develop welfare, and was a boost for the cities and their society. Furthermore, a close contact to the leaders in church and civil life gave them insight into the ways of commerce and politics.

Whilst Dominicans acted very much like Franciscans, the rest of the Church had less interest in commerce. In the tradition of Roman law, Canon law held up the idea of the one and eternal just price for things²³. The Church and its Canon law protected this idea with the possibility to sue against this *laesio enormis*²⁴. Furthermore, Canon

¹⁸ JEAN FAVIER, De l'Or et des épices: naissance de l'homme d'affaires au Moyen Âge, (Pluriel Histoire), Paris 1987, 70, 291.

¹⁹ ODD LANGHOLM, Economics in the Medieval Schools, Wealth, Exchange, Value, Money and Usury according to the Paris Theological Tradition 1200-1350, (Studien und Texte zur Geistesgeschichte des Mittelalters, 29), Leiden/ New York/ Köln 1992, 5-8; LE GOFF, La bourse et la vie. Économie et religion au Moyen Âge (= Textes du XX^e siècle, 12), Paris 1986; for the evolution of commercial law cf. MATHIAS SCHMOECKEL, From subsistence to profit as economic orientation: Major shifts in economic order, *Sartoniana* 33 (2020), 73-112.

²⁰ TODESCHINI, Richesse Franciscaine (n. 15), 35.

²¹ Cf. the articles in H.-D. Heimann/ A. Hilsebein/ B. Schmies/ Ch. Stiegemann (eds.), *Gelobte Armut. Armutskonzepte der franziskanischen Ordensfamilie vom Mittelalter bis in die Gegenwart*, Paderborn/ München/ Wien/ Zürich 2012.

²² BURR, Olivi and Franciscan Poverty: The Origins of the Usus Pauper Controversy, Philadelphia 1989, 5; TODESCHINI, Richesse Franciscaine (n. 15), 97.

²³ ELISABETH KOCH, Art. Gerechter Preis, HRG, 2nd ed., vol. 2, Berlin 2017, 73-74.

²⁴ MATHIAS SCHMOECKEL, Kanonisches Recht, Munich 2020, 233.

law was opposed to augmented interest rates, which they understood as the crime of usury²⁵. In effect, there were tendencies in the Church in the 12th and 13th centuries to ban money transactions²⁶. Only thanks to Thomas Aquinas were cases identified in which interest rates were legitimised, such as lost profits (*lucrum cessans*), damage incurred (*damnum emergens*), or contractual damages²⁷.

Francis appreciated the phenomena of nature and the world²⁸ and developed a profound sense, or even special religiosity, for their own worth, especially visible in his famous Canticle. Sins were regarded as the result of the will²⁹, not of the world. Instead, the Friars cared for the problems of the world and felt the responsibilities of the Church and the members of their community.

The Friars developed an understanding of the necessities of secular and commercial life. As seen, their presence in the towns was a factor for social stability and economic growth³⁰. They helped their compatriots to recognise their responsibility towards their society. For this reason, Franciscan friars did not oppose the idea of commerce and profit. Friars of the 13th to the 15th century, such as Bernardino of Siena OFM (1380–1444), have been described, not only as economic experts, but also as full of comprehension of economic needs³¹. They have been recognised for their responsibility in establishing the first banks and insurance companies³².

²⁵ JOHN T. NOONAN, The Scholastic Analysis of Usury, Harvard 1957; GIOVANNI CECCARELLI, L’usura nella trattatistica teologica sulle restituzioni dei “male ablati” (XIII-XIV secolo), in: D. Quaglioni / G. Todeschini / G.M. Varanini (eds.), Credito e usura fra teologie, diritto e amministrazione. Linguaggi a confronto (sec. XII-XVI), (Collection de l’École Française de Rome, 346), Rom 2005, 3-23; SCHMOECKEL, Kanonisches Recht (n. 24), 236.

²⁶ FAVIER, De l’or et des épices: naissance de l’homme d’affaires au Moyen Âge, (Pluriel Histoire), Paris 1987, 240.

²⁷ REINER FRANKE, Die Entwicklung des (Darlehens-)Zinses in Frankreich, Eine rechts- und wirtschaftsgeschichtliche Untersuchung von der kanonischen Usura-Lehre des 13. Jahrhunderts bis zur Französischen Revolution, (Schriften zur wirtschaftswissenschaftlichen Analyse des Rechts, 25), Berlin 1996, 78.

²⁸ MATUS, Franciscans and the Elixir of Life (n. 8), 31.

²⁹ MATUS, Franciscans and the Elixir of Life (n. 8), 16.

³⁰ LE GOFF, Ordres mendians et urbanisation dans la France médiévale. Etat de l’enquête, Annales d’histoire économique et sociale, 25.4 (1970), 924-946.

³¹ TODESCHINI, Franciscan Wealth (n. 13), 158f on the market.

³² CAROL BRESNAHAN MENNING, The Monte’s ‘Monte’: The Early Supporters of Florence’s Monte di Pietà, Sixteenth Century Journal XXIII n.4 (1992), 661-676, 663 for the cooperation of the Medici and Franciscans for the establishment of the first “monte”.

Questions and limitations

Until now, care for the poor and needy has mostly been seen as the characterising aspect of St Francis' teaching³³. However, it constitutes rather only one side of the coin, whilst the other side was formed by him being the son of a merchant with a clear understanding of the necessities of the new long-distance trade in Europe³⁴. In the past decades, in particular Giacomo Todeschini (born 1950), Professor at Trieste University, already showed Francis' influence on the justification of profit and on the emergence of a new trade order³⁵. With special interest in legal history, I will argue here that Francis developed a new appreciation of economic order that helped his followers to take an active part in the development of a new mercantile system and an economic law, which could acknowledge the use of money, the justice of profit and the unequal distribution of wealth.

We will first have to look at Francis' writings and study his views on law (ch.II). This raises the problem of distinguishing the leading textual authorities in this tradition. It provides for an insight into a new legal tradition, which has seldom been investigated.

Afterwards, we will have to look into the writings of the first Franciscans and their opinions on economic law, especially the legitimacy of profit. We already learnt about the different positions in the Franciscan tradition. Instead of pretending to give an overview of this jungle of treatises, I will concentrate on one author alone. In the last decades, the life and the writings of Petrus Jo(h)annis Olivi OFM (1246/7–1296/8) have been researched. Many, though not all, texts have been re-edited according to modern academic standards. So this scholar was chosen as an example of early Franciscan thought (ch.III). We have to repeat though, that his views, although dependent on Francis, represent only one opinion in a violent debate and not the

³³ ANDREA BARTOCCI, *La povertà francescana tra ius decretalium e scientia iuris nel Trecento*, in: Anton Schütz / Massimiliano Traversino (eds.), *The Theology of «Potentia Dei» and the History of European Normativity. Alle origini dell'idea di normativismo. Il problema della «Potentia Dei» tra teologia e diritto pubblico europeo*, (Divus Thomas, 116/3), Bologna 2013, 79–102 with references to this literature; M.D. LAMBERT, *Franciscan Poverty. The Doctrine of the Absolute Poverty of Christ and the Apostles in the Franciscan Order 1210–1223*, London 1961.

³⁴ CYPRIAN J. LYNCH OFM, *A Poor Man's Legacy. An Anthology of Franciscan Poverty*, St. Bonaventure NY 1988.

³⁵ Starting with GIACOMO TODESCHINI, *Ricchezza Francescana. Dalla povertà volontaria alla società di mercato*, Bolonga 2004; which has been translated into many European languages. I use here mostly the French translation: TODESCHINI, *Richesse franciscaine* (n. 15).

Franciscan tradition as a whole. We cannot even define in which ways his statements are typical or exceptional for the Franciscan tradition of the 13th century.

In order to further link this subject of a canon lawyer with the project on Magnus VI Lagabøtir (1238–1280), King of Norway, a last part will look into the relation of the early Franciscans with monarchs and their ideas on royalty (ch.IV). At the same time, the construction of a Franciscan church at Bergen indicates a link between the new town and its international commerce with the first establishment of the Franciscans in Norway.

The complexity of theological, philosophical, economic, and legal aspects of this debate is overwhelming: there are simply too many perspectives for interpretation of the sources. Each subject would justify much longer and concentrated interpretations from the perspectives of theology, history, philosophy, economics, and law. In no way will this paper be able to explain these intricate questions: most of these topics would need much more research on the sources. Yet this abyss of economic, theological, philosophical, and legal reasoning may be an important source for the European economic order and needs to be taken into account from the perspective of legal history without neglecting the other implications.

Francis of Assisi: poverty and profit

FRANCIS AND HIS VIEW ON TRADE AND COMMERCE

Problems determining Francis' position

It is difficult to determine Francis' position, as not all of his writings survived, he wrote different versions of his monastic order, and because by 1228 his positions might have changed. His first sketch of monastic life might have been a “*formula vitae*”, as his testament suggests, but this has never had any authority³⁶. The existing versions of a monastic rule differ as to their contents, perhaps due to changing interests: whilst the group around Francis first was happy to earn the foundation of their living, it became easier in well-established monasteries to abide by the principle of poverty completely. Very soon, the different rules caused debates among the Franciscan movements, so that their authority had to be qualified.

The second “Rule” written by Francis was not a true list of norms for the monastic order; furthermore, it did not receive any papal legitimation in order to bind the Franciscans.

³⁶ LE GOFF, Saint François d'Assise (n. 3), 60.

In 1223, therefore, Francis was asked to write a new version of his rule. Ugolino of Segni, later Gregory IX, joined him in this. After an approbation by the General Chapter of the Franciscans, Pope Honorius III accepted this version as the definitive rule for all Franciscan orders with his papal bull "Solet annuere". For this reason, this rule is called the "*Regula approbata*".

In 1230, Pope Gregory IX issued his bull "Quo elongati", in which he declared that Francis' own testament was not an authoritative text for Franciscan doctrine and could not create additional obligations³⁷. He accepted that things in use by the Franciscans were not their property, but just a "simple use". In the following year, he declared the Franciscans to be administered directly by the Holy See in his bull "Nimis iniqua". In 1245, Innocent IV extended the papal assistance in his bull "Ordinem vestram"; he accepted all the lands and movables of the Franciscan monasteries to be property of the Church, administered by the Pope.

Despite their differences, all Papal Bulls generally accepted the authority of St Francis' writings. So they all accepted the legal character of these texts³⁸, but this was contrary to Francis' intention and clear will, when he forbade any glosses on his own writings. Yet this made things only more difficult. When the bulls eventually became part of the official canon law (VI 5.12.3), canonists like Joannes Andreas respected Francis' interdiction of interpretation and entered this text into the new collection of Canon law without any gloss in his "*Glossa ordinaria*".

New commentaries started to join the writings of Francis himself. The "*Expositio*" on the Franciscan rule by the "four masters": Alexander de Hales, Jean de la Rochelle, Odo Rigaud, and Robert de La Bassée, became famous. Different schools of Franciscans emerged, especially on the questions of poverty and profit³⁹. Many of these texts have not been edited, or at least not in a proper way and are still difficult to find. This makes it difficult to evaluate the Franciscan discussion of the time.

The legend

The legend of Francis' conversion reveals his relationship with money. The story has been told differently, however. Its interpretation, furthermore, can lead in different

³⁷ HERBERT GRUNDMANN, Die Bulle „Quo elongati“ Papst Gregors IX., Florence 1961; JÜRGEN MIETHKE, Der „theoretische Armutsstreit“ im 14. Jahrhundert, in: H.-D. Heimann/ A. Hilsebein/ B. Schmies/ Ch. Stiegemann (eds.), *Gelobte Armut. Armutskonzepte der franziskanischen Ordensfamilie vom Mittelalter bis in die Gegenwart*, Paderborn/ München/ Wien/ Zürich 2012, 243-283, 250.

³⁸ TODESCHINI, *Richesse Franciscaine* (n. 15), 95, 110; for the confusion cf. MIETHKE, Der „theoretische Armutsstreit“ (n. 37), 245.

³⁹ TODESCHINI, *Richesse Franciscaine* (n. 15), 110.

ways. There is no certainty to be obtained in this field. Yet, the story can be used as a first attempt to understand Francis.

Whilst he became famous for excluding any personal property for the Franciscan monks and nuns, following the ideal of poverty, the episode in which he insisted on employing the sales proceeds for the renovation of the chapel shows that Francis knew well how to use money. Until today we can visit this little church and the traces of this historical moment. In his youth and through his family, Francis had learnt the use and importance of money. He did not despise or ban it, but invested it for his special purposes. Even though the Franciscans rejected personal property, they knew perfectly well that their new monasteries had to be built, that their churches needed stones and the like, and that books and musical instruments were inevitably required for education. Charity could not provide them with all the necessities, so ultimately somebody had to pay for the Franciscans.

Monastic rules

Francis explained his opinion on wages and salaries several times. His positions varied according to the different stages of the evolution of his new order. At first, the monks worked for their first lodgings and were willing to pay for the site and the material. Later, well established in their monasteries situated in the city centres, they emphasised the ideal of poverty⁴⁰.

In the rule of 1221⁴¹, Francis tried to teach his followers a sense of duty and workmanship: they do not have to focus on their job and its surroundings, but have to serve all people wherever they work⁴². Furthermore, Francis allowed compensation for their work, as long as it was not money⁴³. As a result, he did not despise the idea of

⁴⁰ KAJETAN ESSER, Textkritische Untersuchungen zur *Regula non bullata* der Minderbrüder, (*Spicilegium Bonaventurianum*, 9), Grottaferrata (Romae) 1974, 77.

⁴¹ ESSER, Textkritische Untersuchungen zur *Regula non bullata* (n. 40), 29.

⁴² FRANCISCUS OF ASSISI, *Regula non bullata* dicitur prima, ed. H. Böhmer, *Analekten zur Geschichte des Franciscus von Assisi. S. Francisci opuscula, regula paenitentium, antiquissima de regula Minorum, de stigmatibus s. patris, de Sancto eiusque societate testimonia* mit einer Einleitung und Regesten zur Geschichte des Franciscus und der Franciscaner, Tübingen und Leipzig 1904, c.7, 7: *De modo serviendi et laborandi. — Omnes fratres, in quibuscumque locis steterint apud alios ad serviendum vel laborandum, non sint camerarii nec cellararii nec presint in domibus, in quibus servient, nec recipiant lo aliquod officium, quod scandalum generet vel anime sue faciat detrimentum*’ (Mc 8, 36). Sed sint minores et subditi omnibus, qui in eadem domo sunt. (*On the way to serve and to work. All brothers, wherever they stay, for serving and working for others, should not work in their chambers or cellars nor lead the household, in which they serve, nor do they receive any office, which can cause scandals or can be detrimental for their soul. But they are minors and inferiors to all, who are in that house.*)

wages. Instead, he demonstrated a rather realistic sense of service and salary. Principally, he liberated his Franciscans from the rules of business and the logic of the market.

Whilst the Friars personally and institutionally were not allowed to accept any money, this did not mean that services or goods could not be compensated. Because Francis wrote that Franciscans should have no greater utility for money than in stones⁴⁴, money could not simply be compensated by goods such as clothes or services. The followers of St Francis were not allowed to have personal property: this principle was even maintained for monasteries and orders. Franciscans with money or coins had to be considered as false Franciscans. They could not receive it in any way, as payments or as charity. They could, of course, collect offerings for lepers and their manifest needs. Yet they should beware of money⁴⁵. Once again, they were admonished to stay away from any wages or work or helping or to lose their mind and heart⁴⁶.

⁴³ FRANCISCUS OF ASSISI, *Regula non bullata* (n. 42), 7: “Et pro labore possint accipere omnia necessaria preter pecuniam.” (*And for work they may accept everything necessary with the exception of money.*)

⁴⁴ *Regula non bullata*, c.8, 8: “Unde nullus fratrum, ubicumque sit et quocumque vadit, aliquo modo tollat nec recipiat nec recipi faciat pecuniam aut denarios, nec occasione vestimentorum nec librorum nec pro pretio alicuius laboris, immo nulla occasione, quia non debemus maiorem habere utilitatem et reputare in pecunia et denariis quam in lapidibus.” (*So that none of the brothers, wherever he is and walks, in no way takes or receives or makes himself receive money or coins [...] because we owe not to have a greater utility or estimation in money and coins than in stones.*)

⁴⁵ *Regula non bullata*, c.8, 9: “Et si forte, quod absit, continget, aliquem fratrem pecuniam vel denarios colligere vel habere, omnes fratres teneamus eum pro falso fratre et pro apostata et fure et latrone et loculos habente, nisi vere penituerit. Et nullo modo fratres recipient nec recipi faciant nec querant nec queri faciant pecuniam vel pecunie elemosinam nec denarios pro aliquibus domibus vel locis nec cum persona pro talibus locis pecunias vel denarios querente vadant. Alia autem servitia, que non sunt contraria vite nostre, possunt fratres facere cum benedictione Dei. Fratres tamen in manifesta necessitate leprosorum possunt pro eis querere elemosinam. Caveant tamen multum a pecunia.” (*And particularly, if it happens, what should not be the case, that some brother takes or has money or coins, all brothers should take him as a false brother, a renegade, a thief, having pockets, unless he truly repents. In no way may brothers accept or be given or strive for money or charitable money, or coins for other houses or places nor go with somebody to these houses demanding money or coins. But other services, which do not conflict with our life, the brothers can give with the benediction of God. In the manifest necessities of lepers the brothers can go and claim charities for them. They have to take stay away from money.*)

⁴⁶ c.22, 21: “Unde, omnes fratres, custodiamus nos multum, ne sub specie alicuius mercedis vel operis vel adiutorii perdamus aut tollamus mentem nostram et cor a Domino.” (*So, all brothers, let us be vigilant that we do not lose or remove our spirit and heart from God for any profit of a labour or some help.*)

The second draft of the Franciscan rule, which the pope finally approved, is the “*Regula bullata*” from 1223. It explains the idea with a different twist⁴⁷:

De mercede vero laboris pro se et suis fratribus corporis necessaria recipient praeter denarios vel pecuniam, et hoc humiliter, sicut decet servos Dei et paupertatis sanctissimae sectatores.”

For the salary, however, of bodily labour for himself or his brothers they may receive something instead of money or coins, and this with humility, just as behave the servants of God and the followers of most holy poverty.

So, for their own bodily labour, Franciscans were entitled to receive some compensation with the exception of money and coins. In another text, Francis permitted a reward even more clearly⁴⁸:

“Et pro labore possint recipere omnia necessaria praeter pecuniam.”

And for their labour they can receive everything necessary with the exception of money.

As a result, we can see that in some cases Franciscans could accept wages, provided it was not given in the form of money. Furthermore, they should not expect salaries for their efforts as an obligation of the others; the offerings should be given freely.

His testament

Francis not only underlined the importance of testaments in general, but also wrote a last will himself⁴⁹, which he dictated to his brethren in the last weeks of his life⁵⁰. This text gives yet another perspective on our topic. In the text, Francis recorded the old times when he and his followers lived from their wages or had to make do with alms. He even indicated the existence of a first monastic rule focusing on poverty: nothing should be accepted on the way⁵¹. Living among the citizens, all Franciscans

⁴⁷ *Regula bullata*, c.5, 32.

⁴⁸ *Regula bullata*, c.VII, 7.

⁴⁹ ESSER, Das Testament des Heiligen Franziskus von Assisi (Vorreformationsgeschichtliche Forschungen, 15), Münster, 1949.

⁵⁰ KENNETH B. WOLF, The Poverty of Riches. St. Francis of Assisi Reconsidered, (Oxford Studies in Historical Theology), Oxford 2003, 91.

⁵¹ BALTHASAR, Geschichte des Armutsstreites (n. 10), 8.

should work, even with their hands, in order to earn their living. This should give them the right to demand a remuneration for their efforts. In case this was denied, they should not use legal means, but return to the Church and seek charity from door to door⁵². But this easy acceptance of salaries might have been the reason to deny any validity of Francis' testament for the Franciscan orders.

This is another indication of his appreciation of the modern market. The early 13th century was the time in which the idea of testamentary freedom (*libertas testandi*) developed⁵³. The Church used antique Roman law and moulded it according to the new ideas of the time⁵⁴. The Church was not only interested in legitimising donations for the church in the transfer from one generation to the next or in practical levies for ecclesiastical benefit⁵⁵. It was rather the reaction to the emergence of the European market and the long-distance trade run by new skilled and adventurous merchant houses. Business relations had to build up internationally and were passed to the next generation, whilst new sources of profit, new forms of contracts, and more advantageous contracts were explored. For this reason, the successor in the trade had to be quite educated, eager for new options and ready to take risks.

In agriculture, however, where the economic risk was lower and traditions prevailed, it was more important to pass the land, following easy and certain rules, without dividing the land. In contrast, merchant families have a vital interest in flexibility in order to choose the most suitable successor.

Francis underlined the duty of everybody at the end of life to reflect on what should become of his possessions, whether there were still debts to be paid, and whether the person was even with his family, partners, and vicinity. Had the person fulfilled his duties according to his offices, contracts, and positions to others? The

⁵² FRANCISCUS OF ASSISI, Testamentum, c.5, 37: *Et ego manibus meis laborabam, et volo laborare. Et quando non daretur nobis pretium laboris, recurramus ad mensam Domini, petendo elemosinam ostiatim. (With my hand I may work, and I want to work. And when I am not given the salary for my work, we return to the table of the Lord, asking to be given charities.)*

⁵³ See ORAZIO CONDORELLI, The Ius Decretalium and the Development of the Law of Succession in Medieval Europe – Some Examples from Denmark and Sweden (XII-XIII C.), in: M. di Renzo Villata (Hg.), Succession Law, Practice and Society in Europe across the Centuries (Studies in the History of Law and Justice, 14), Cham 2018, 105, 126.

⁵⁴ See CONDORELLI, Il testamento confermato dal giuramento tra diritto civile e diritto canonico (secoli XIII-XVIII), in: ders./F. Roumy/M. Schmoeckel (Hg.), Der Einfluß der Kanonistik auf die europäische Rechtskultur, Bd. I, 2009, 311, 327 on Diego di Covarrubias.

⁵⁵ DAVID VON MAYENBURG, „Laudabilis usus“ oder „detestabilis consuetudo“? Mortuaria und andere Abgaben von Todeswegen aus der Perspektive des Kirchenrechts, in: O. Condorelli/F. Roumy/M. Schmoeckel (eds.), Der Einfluss des kanonischen Rechts auf die europäische Rechtskultur, Bd. I, 2009, 337–387.

end of life was the last chance to mend injustice and correct errors committed in one's lifetime⁵⁶. This displays a theological reason for the estimation of last wills. Furthermore, this new liberty was not altogether free, but bound by fulfilment of moral duties. This testamentary liberty was seen as a means to fulfil moral and legal obligations.

His own testament, however, was declared as not legally binding by Gregory IX in his Bull "Quo elongati" in 1230⁵⁷. This helped to emphasise the Franciscan principle of poverty in later rules⁵⁸.

SUMMARY: FRANCIS AND ECONOMIC PROFITS

Francis' view on wages and salaries for Friars might have changed in his lifetime. His different statements, however, are quite consistent. On the one hand, Franciscan poverty was a means to contrast the evangelic life of the Cathars and to remind his followers of the ideal of the original church⁵⁹. This poverty should liberate Friars from the rule of law and economy, and emphasise that Franciscans serve God and the poor.

This did not mean, on the other hand, that he rejected the idea of property altogether, at least not for the secular world. Even Franciscans could accept charitable donations for their lives, their monasteries, and the poor⁶⁰. Furthermore, Francis appreciated musical instruments and books, as well as his companions, who knew they had money for themselves and their schooling programs. When from the 1220s onwards Franciscans experienced immense success as teachers⁶¹, they were allowed to use and to offer their services and to receive their compensation. Salaries for their

⁵⁶ FRANCISCUS OF ASSISI, *Regula paenitentium*, in: H. Böhmer (Hg.), *Analekten zur Geschichte des Franciscus von Assisi: S. Francisci opuscula, regula paenitentium, antiquissima de regula Minorum, de stigmatibus s. patris, de Sancto eiusque societate testimonia mit einer Einleitung und Regesten zur Geschichte des Franciscus und der Franciscaner*, 1904, 79 cap. X: *De testamentis faciendis*.

⁵⁷ GRUNDMANN, Die Bulle "Quo elongati" Papst Gregors IX, in: *Archivum Franciscanum Historicum*, Florenz 1961, 1-25.

⁵⁸ NESLIHAN ŞENOCAK, *The Poor and The Perfect. The Rise of Learning of Learning in the Franciscan Order, 1209–1310*, Ithaka/ London 2012, 133 referring to the Rule produced by Parisian masters in 1241–1242.

⁵⁹ ESSER, *Anfänge und ursprüngliche Zielsetzungen des Ordens der Minderbrüder*, (Studia et Documenta Franciscana, IV), Leiden 1966, 246 with reference to Burkhard of Ursberg.

⁶⁰ ESSER, *Anfänge und ursprüngliche Zielsetzungen* (n. 59), 249, 257.

⁶¹ LESTER K. LITTLE, *Religious Poverty and the Profit Economy in Medieval Europe*, Ithaca, New York 1978, 19, 163.

secular assistance and craftsmanship could be accepted, as long as it was not money and did not contradict the ideal of poverty. As a result, they could work in order to earn their livings,⁶² as long as it was not paid in money.

Thus, Francis wanted to emphasise that the Franciscans were not subject to the laws and logics of the market. Their renunciation of property and the absence of binding contracts helped them to underline their freedom in the secular society and their duty to serve God alone. Even using charitable gifts alone for their maintenance of life helped them not to enter the *do ut des* – the reciprocity of secular life. Salaries and profit might be acceptable in the world, but not for Franciscans⁶³.

The early Friars and the modern economy

A SENSE OF VALUE

The controversy

Early Franciscans still had to find a way to reconcile the necessities of their life with the ideal of evangelical poverty⁶⁴. How could Franciscans accept personal poverty, whilst the Franciscan order received endless donations in order to found new monasteries? This caused the discussion on the “*usus pauper*”; the use of things by poor people⁶⁵. This debate had a sincere impact on European politics, the evolution of law, and has often been investigated.

Furthermore, the followers of St Francis showed an increasing interest in the economy. The Italian historian Cesare Cenci found a Franciscan thirteenth-century document from Toledo with sixty-six cases, which tried to distinguish legitimate and

⁶² ESSER, Anfänge und ursprüngliche Zielsetzungen (n. 59), 260-262.

⁶³ ANNETTE KEHNE, Not macht erfunderisch. Denkanstöße zur franziskanischen Armut als Unternehmens- und Wirtschaftsprinzip inspiriert von Georg Schwaiger, Alfred Kieser und Gioacomo Todeschini, in: H.-D. Heimann et al. (eds.), *Gelobte Armut. Armutskonzepte der franziskanischen Ordensfamilie vom Mittelalter bis in die Gegenwart*, Paderborn/ München/ Wien/ Zürich 2012, 233-240, 234.

⁶⁴ VIRPI MAKINEN, *Property Rights in the Late Medieval Discussion on Franciscan Poverty*, (*Recherches de théologie et philosophie médiévales*, 3), Leuven 2001, 18; JÜRGEN MIETHKE, Der „theoretische Armutsstreit“ im 14. Jahrhundert. Papst und Franziskanerorden im Konflikt um die Armut, in: H.-D. Heimann u.a. (eds.), *Gelobte Armut. Armutskonzepte der franziskanischen Ordensfamilie vom Mittelalter bis in die Gegenwart*, Paderborn/ München/ Wien/ Zürich 2012, 243-283.

⁶⁵ BALTHASAR, *Geschichte des Armutsstreits* (n. 10), 6 for the first rules, *passim* for the discussion on how strict this had to be observed; BURR, Olivi and Franciscan Poverty. The origin of the Usus Pauper Controversy, Philadelphia 1989, *passim*.

forbidden practices (*crimen proprietariorum*)⁶⁶. It shows the early Franciscans buying and selling goods (number 1), depositing money (number 2), negotiating with scribes on prices (number 21), intimidating people when asking for alms (number 23), taking purses along on pilgrimages (number 29), trading the products of wood or land belonging to the convent (number 37), claiming to take part in fishing in rivers and lakes (number 45), or expecting money for the treatment of illnesses, especially when they had already received alms (number 51).

An early Franciscan, (St) Bonaventura (1221–1274) of Bagnoregio, Cardinal of Albano, generally considered as the second founder of the Franciscan movement, complained of similar practices⁶⁷. He tried to explain the use of things by the poor by comparing it with families: children could use things of their parents, who clearly remained the owners⁶⁸. Doctrinal conceptions were difficult to develop because they seemed to conflict with the interdiction of interpretation.

According to a Franciscan monastic order from Southern France of 1257, Franciscans could not accept money or any deposit contracts⁶⁹. It was discussed, however, whether they could similarly accept gold or silver with which they could make money to buy necessities⁷⁰. This stayed close to Francis' own writings.

But it hardly solved any imminent problems of their lives, e.g. the acquisition of books. Even the first Friars were well educated and convinced of the advantages or necessity of education⁷¹. The Franciscan movement attracted intellectuals for building up and spreading knowledge⁷². The third follower of Francis, Pietro Cattani, was a lawyer educated in Bologna⁷³. An important topic, therefore, was the participation of Franciscans in learning and schooling. Already in the 1230s the Franciscans were criticized for buying books and building up rich libraries⁷⁴. When the Franciscan

⁶⁶ CESARE CENCI, *Vestigia constitutionum praenarbonensium*, AFH 97 (2004), 61–98.

⁶⁷ ŠENOCAK, *The Poor and The Perfect* (n. 58), 192.

⁶⁸ TODESCHINI, *Richesse Franciscaine* (n.2), 114.

⁶⁹ CENCI, *Vestigia constitutionum praenarbonensium* (n. 66), 83 n.57, 84f c.62-65.

⁷⁰ ŠENOCAK, *The Poor and The Perfect* (n. 58), 134.

⁷¹ ŠENOCAK, *The Poor and The Perfect* (58), 24.

⁷² TODESCHINI, *Richesse Franciscaine* (n.2), 99.

⁷³ LE GOFF, *Saint François d'Assise* (n. 3), 58.

⁷⁴ NICOLE BÉRIOU, *Le vocabulaire de la vie économique dans les textes pastoraux des frères mendians au XIII^e siècle*, in: *L'economia dei conventi dei fratri minori e predicatori alla metà del Trecento*, (Atti dei convegni della Società internazionale di Studi franciscani e del centro), Spoleto 2004, 185.

monasteries expanded in Europe, they soon established schools and universities, which became famous⁷⁵.

So, on the one hand, the necessity of books like the Psalter or scientific texts was obvious; many Franciscans had them somewhere to hand. Seeking access to such commodities without violating the idea of Franciscan poverty⁷⁶, they argued on the basis of theology, which was seen as necessary, and science (*scientia*) as a gift of God to protect and defend the Catholic faith⁷⁷. Franciscans developed the rule that from all books they copied for others, one copy should also remain in their own province. Clearly this was meant to build up a library of their own. On the other hand, no Franciscan nor the order itself could possess books or libraries without violating the principle of poverty, as long as this was understood as the absence of things. So even when they received the books as a donation, it could be suspected as a sort of profit for previous work and a violation of the principle of poverty⁷⁸. The followers of Francis could not solve this apparent contradiction.

Political answers

Solutions were discussed searching for special permissions for Franciscans with teaching positions in the order, but this would concentrate the accusations on these brethren,⁷⁹ and not exclude the disobedience to poverty. It was also suggested that the books should belong to the province, not the brethren or their monasteries⁸⁰. But this idea only transferred the problem to the higher authority of the Franciscan order, which should equally respect the principle of poverty. The Pope was initially prepared to step in to some extent and take over a nominal position of ownership in the name of the Church, so that the Franciscans could use the books. This was the decision of Innocent IV in 1245⁸¹.

But with the tremendous success of the followers of Francis, monasteries and possessions multiplied all over Europe, until Pope Boniface VIII (ca. 1235–1303) annulled all privileges of the Franciscans. In 1279 Nicholas III published his bull “*Exiit*

⁷⁵ TODESCHINI, Franciscan Wealth (n. 13), 26–30.

⁷⁶ ŠENOCÁK, The Poor and The Perfect (58), 185.

⁷⁷ BERND ROEST, Franciscan Learning, Preaching, and Mission c.1220–1650, Leiden/ Boston 2015, 22.

⁷⁸ This continuity is also emphasized by ROSALIND B. BROOKE, The Image of St Francis: Responses to Sainthood in the Thirteenth Century (Cambridge 2006), 79.

⁷⁹ ŠENOCÁK, The Poor and The Perfect (58), 37.

⁸⁰ CENCI, *Vestigia constitutionum praenarbonensium* (n. 66), c.76.

⁸¹ MIETHKE, Der „theoretische Arumutsstreit“ (n. 37), 251.

qui seminat" on Franciscan poverty, in which he tried to influence the interpretation of Francis' doctrine, perhaps drawing on texts of Petrus Joannis Olivi⁸². On December 8th 1322, Pope John XXII decided in his bull "*Ad conditorem canonum*" that the Franciscans had to take over all their own possession⁸³. Now the distinction between those Franciscans who wanted to obey and the more radical wing, the "Spiritual" Franciscans or "Fraticelli", became a central political problem in the European society of the 14th century and separated not only the Franciscans, but increasingly also the European order.

The Franciscans shared the economic fate of their citizens, sometimes witnessing immoderate riches (*avaritia*) of successful merchantmen, or understanding the motivation of trade in the desire of enrichment (*cupiditas lucri*), as well as living with those poor who did not profit from the new trade. As they wanted to share their life with all parts of their society, Franciscans developed an understanding not only for the virtues of civic life, but also for the necessity of rules of society regulating economic life and the common good⁸⁴. Just as the exchange of goods was a necessity for the preservation of human life in society, investment can be profitable, especially for future eternal life⁸⁵. But they were not yet capable of solving their own problem of how to combine the principle of poverty with the necessity of goods for their personal life.

OLIVI AND THE INVENTION OF THE MODERN MARKET

Debate on poverty and Petrus Joannis Olivi

With the intensification of the debate in the 14th century, the "spiritual" Franciscans became more or less equated with heretics⁸⁶. They were accused and condemned as

⁸² JOSEPH CANNING, The Paradox of Franciscan Use of Canon Law in the Fourteenth-Century Poverty Disputes, in: M. Robson/ P. Zutshi (eds), *The Franciscan Order in the Medieval English Province and Beyond*, Amsterdam 2018, 255-270, 258.

⁸³ CANNING, The Paradox of Franciscan Use of Canon Law in the Fourteenth-Century Poverty Disputes, in: M. Robson/ P. Zutshi (eds), *The Franciscan Order in the Medieval English Province and Beyond*, 255-270, 259.

⁸⁴ NICOLE BÉRIOU, Le vocabulaire de la vie économique dans les testes pastoreaux des Frères mendicant au XII^e siècle, in: *L'economia dei conventi dei frati minori e predicatori fino alla metà del Trecento*, (Atti del XXXI convegno internazionale, Assisi 9-11 ottobre 2003/ Società Internazionale di Studi Francescani, centro Interuniversitario di Studi Francescani), 2004, 757-780, 162.

⁸⁵ BÉRIOU, Le vocabulaire de la vie économique (n. 84), 780, 164.

⁸⁶ BURR, Olivi and Franciscan Poverty. The Origin of the Usus Pauper Controversy, Philadelphia 1989, IX.

criminals. Whilst the majority of the Franciscans preferred tranquillity, these “conventuals” separated mostly into the “*Ordo fratrum minorum conventionalium*”. The “spiritual” hardliners, however, concentrated on the early monastic rule and Francis’ last will⁸⁷ as central authorities. These Franciscans were sometimes called “servants”, but they did not establish an order of their own, but can be found in many groups, mainly in countries of Southern Europe. Especially the “spirituals” from Southern France became important theorists in the Franciscan Movement, among them also Petrus Joannis Olivi⁸⁸.

The Franciscan debate was famous not only for the new ideal of poverty in the time of the first great economic success of Europe, but was also the most famous case in which the Franciscans developed their new estimation of liberty. Based on a new appraisal of the human body and soul, they emphasised the different possibilities in the course of life. For this reason, possession (*dominium*) was not just objective law, but also a subjective right to choose how to use it. The notions of intellect and inner will were re-evaluated as necessary articulations of how mankind conducts their life according to Christian principles. In this sense, the debate on Franciscan poverty propagated the philosophical conception of subjective right⁸⁹.

In recent decades, the most notable figure in this debate has become Petrus Joannis Olivi. He was born in 1248 at Sérignan in the Languedoc and raised in Narbonne. In his lifetime, this region participated in the economic success, especially by trade with Italy; Olivi witnessed the emergence of new cities and tremendous wealth⁹⁰. At the age of twelve he entered the Franciscan order. In 1266/7 to 1270/2 he studied theology in Paris, especially under Bonaventura. He soon became known for his radical “spiritual” views on poverty, attacking Thomas Aquinas, and some of his views were condemned⁹¹. He later lectured in Florence and Montpellier.

In the years between 1275 and 1279, he wrote on the *usus pauper* and published a shorter text explaining that the Minorite Rule excludes the legitimacy of all

⁸⁷ ERWIN ISERLOH, Die Spiritualenbewegung und der Armutsstreit, in: H. Jedin (ed.), *Handbuch der Kirchengeschichte*, Band 3.2: Die mittelalterliche Kirche, Freiburg 1986, 453-460.

⁸⁸ BURR, Olivi and Franciscan Poverty. The origin of the *usus pauper* controversy, Philadelphia 1989, 124.

⁸⁹ BRIAN TIERNEY, *The Idea of Natural Rights. Studies on Natural Rights, Natural Law, and Church Law, 1150-1625*, Atlanta Ga. 2001.

⁹⁰ TODESCHINI, Franciscan Wealth (n. 13), 108.

⁹¹ BALTHASAR, *Geschichte des Armutsstreites* (n. 10), 156.

property⁹². Drawing on Bonaventura, he tried to follow neatly the ideal of Francis⁹³. He defended the principle of poverty in conceiving of Francis as the “*alter Christus*”, following the ideal of an evangelical life⁹⁴. Olivi idealised this tradition as only the highest state of poverty could be called *usus pauper*. He combined this idea with a distinction between two different kinds of ownership (*dominium*). He conceived the ideal of absolute poverty as the highest state of *dominium*, because the use of the thing was limited by the *usus pauper*, which displayed the self-mastery of the Franciscans. The other ordinary form of *dominium* was marked by the use and the forms of private or public power over the thing⁹⁵. In this perspective, the restricted use of things, concentrating on the necessities of the poor, could prove one’s self-mastery, freedom of will, and native dignity⁹⁶. In 1279 Nicholas III invited him to take part in the preparation of his bull “*Exiit qui seminat*”.

But Petrus Joannis Olivi’s theory caused severe criticism among his opponents. In 1282 legal procedures were taken to condemn him as a heretic. Although he had to withdraw only some theories in the end, his recognition slowly deteriorated. First, his writings were prohibited by the Franciscan order in 1283, but were rehabilitated in 1285. Later the Council of Vienne (1311/12) tried to judge him as a heretic. After 1317, under John XXII, his writings were partially condemned⁹⁷. In 1318 his grave was

⁹² LANGHOLM, Economics in the Medieval Schools, Wealth, Exchange, Value, Money and Usury according to the Paris Theological Tradition 1200–1350, (Studien und Texte zur Geistesgeschichte des Mittelalters, 29), Leiden/ New York/ Köln 1992, 348; BURR, Olivi and Franciscan Poverty. The Origins of the Usus Pauper Controversy, Philadelphia 1989, 38, 43, 73; MARY BETH INGHAM CSJ, Franciscan Identity, Poverty and the Rational Will: From Summa Halensis to John Duns Scotus, in: Lydia Schumacher (ed.), The Legacy of Early Franciscan Thought, Berlin/ Boston 2021, 257–279, 262ff, each with more references.

⁹³ SUSANNE CONRAD, Franziskanische Armut als Heilsgarantie. Das Zusammenspiel von *vita evangelica* und Apokalyptik im Verständnis von Petrus Iohannis Olivi, in: G. Melville/ A. Kehnel (eds.), *In proposito paupertatis*. Studien zum Armutverständnis bei der mittelalterlichen Bettlerordnen, (Vita regularis, 13), Münster/ Hamburg/ London 2001, 89–99, 91.

⁹⁴ BURR, Olivi and Franciscan Poverty (n. 88), 45,59.

⁹⁵ GIUSEPPE FRANCO, Einführung, in: Petrus Iohannis Olivi, Traktat über Verträge, Hamburg 2021, XLVII.

⁹⁶ INGHAM, Franciscan Identity, Poverty and the Rational Will: From Summa Halensis to John Duns Scotus, in: Lydia Schumacher (ed.), The legacy of Early Franciscan Thought, (Veröffentlichungen des Grabmann-Institutes zur Erforschung der mittelalterlichen Theologie und Philosophie. Münchener Universitätsschriften Katholisch-Theologische Fakultät, 65), Berlin 2021, 257–279, 264–266.

⁹⁷ PETER NICKL, Einleitung, in Petrus Iohannis Olivi, *Quaestio an in homine sit liberum arbitrium/ Über die menschliche Freiheit*, (Herders Bibliothek der Philosophie des Mittelalters, 8), Freiburg i.b./ Basel/ Wien 2006, 12.

taken away to prevent people from worshipping him⁹⁸. So whilst Petrus Joannis Olivi had been famous during his lifetime, the accusations of heresy damaged his fame and the later recognition of his writings. So there was little interest in publishing his writings when printing was invented. Only in the 20th century have his writings been slowly rediscovered. New editions cover many subjects such as marriage, poverty, economics, and more⁹⁹. Nevertheless, these modern texts are just fragments of his extensive works.

Olivi on free will

Petrus Joannis Olivis is noted today for his tract on human liberty, written around 1277 to 1282 in Florence. In reality, it is only a part of his “*Liber Sententiarum*”¹⁰⁰, a commentary on the “Sentences” of Petrus Lombardus. Just one “*quaestio*” has been published with this new attractive title¹⁰¹. Here, Petrus Joannis Olivi tried to prove the existence of the *liberum arbitrium*, as well as its theoretical possibility, starting with reasoning to prove the power of intellect and inner will¹⁰². Justice, he argues, is

⁹⁸ FRANCO, Einführung (n. 95), XVIII; INGHAM, Franciscan Identity, Poverty and the Rational Will: From Summa Halensis to John Duns Scotus, in: Lydia Schumacher (ed.), The legacy of Early Franciscan Thought, (Veröffentlichungen des Grabmann-Institutes zur Erforschung der mittelalterlichen Theologie und Philosophie. Münchener Universitatsschriften Katholisch-Theologische Fakultät, 65), Berlin 2021, 257-279, 262.

⁹⁹ TODESCHINI, Richesse Franciscaine (n.2), 130 gives an overview on his texts; FRANCO, Einführung (n. 95), XLII.

¹⁰⁰ NICKL, Einleitung (n. 97), 19, it is „*questio 57 in secundum librum Sententiarum*“.

¹⁰¹ PETRUS JOHANNIS OLIVI, Über die menschliche Freiheit. Lateinisch/deutsch. Übersetzt und eingeleitet von Peter Nickl, Freiburg 2006 (Quaestio 57 zum zweiten Buch der Sentenzen).

¹⁰² PETRUS JOHANNIS OLIVI, Quaestio an in homine sit liberum arbitrium/ Über die menschliche Freiheit, ed. P. Nickl (n. 101), A cap.II.11, 36; cf. INGHAM, Franciscan Identity, Poverty and the Rational Will: From Summa Halensis to John Duns Scotus, in: Lydia Schumacher (ed.), The Legacy of Early Franciscan Thought, Berlin/ Boston 2021, 257-279, 267.

not possible without freedom, as any moral decision has to be taken freely¹⁰³. Without free choice, nothing good, not even friendship, can arise between men or with God. Furthermore, free will is possible because the human mind is not motivated by affections alone. Petrus Joannis Olivi clearly distinguishes affections from possibilities. Decisions can be taken on the ground of a collection of inner, yet reasonable, arguments for action; furthermore, the concentration on main motives relies on the reflection of the inner will, temperance, agitation, and other reasons which can motivate actions¹⁰⁴. Therefore, it is principally human reason which is responsible for decisions and the choice of its motives¹⁰⁵.

OLIVI ON CONTRACTS

Introduction

Petrus Joannis Olivi develops a modern theory of economics in several other texts, which have been recently discovered by Giacomo Todeschini and have been discussed by others ever since. Thus, he recently became recognised as a major author of the new market-based economy. Together with two followers after more than a century, (St) Bernardino of Siena (1380–1444) and (St) Antonino of Florence (1389–1459), Petrus Joannis Olivi has been considered as seminal for a new trade-based economy before the Reformation¹⁰⁶.

Today, Olivi is especially known for his “tract on contracts” written around 1293/5 as the foundation of a new market-oriented economic theory¹⁰⁷. His authorship,

¹⁰³ PETRUS JOHANNIS OLIVI, *Quaestio an in homine sit liberum arbitrium/ Über die menschliche Freiheit*, ed. P. Nickl (n. 101), , B cap.II.5.a, 74/76: „Ordo autem iustitiae non est participabilis ab eo quod nullam habet libertatem, nec refrenare se a praedictis secundum ordinem iustitiae potest fieri sine libertate, quia si non fit gratis et libere, numquam debet dici fieri iuste seu secundum iustitiam.“ Translated by Mary Beth Ingham (n.100): 268 at n.42: Now one who does not have freedom cannot participate in the order of justice, nor can one restrain one- self from the above according to the order of justice without freedom, because if such [restraint] is not done freely, it ought never be called just or according to justice.

¹⁰⁴ PETRUS JOHANNIS OLIVI, *Quaestio an in homine si liberum arbitrium* (Fn. 103), answer – cap. I n.1, 54, compared to II n.1, 68.

¹⁰⁵ PETRUS JOHANNIS OLIVI, *Quaestio an in homine si liberum arbitrium* (Fn. 103), answer – cap. II.19 n.4, 160.

¹⁰⁶ LANGHOLM, *Economics in the Medieval Schools, Wealth, Exchange, Value, Money and Usury according to the Paris Theological Tradition 1200-1350*, (Studien und Texte zur Geistesgeschichte des Mittelalters, 29), Leiden/ New York/ Cologne 1992, 345.

¹⁰⁷ TODESCHINI, “*Oeconomia Franciscana*”, II: Pietro di Giovanni Olivi come fonte per la storia dell’etica-economica medievale, *Rivista di storia e letteratura religiosa* 13 (1977), 461-494.

however, was discovered only in 1953¹⁰⁸. In 1296/7, Petrus Joannis Olivi worked again on this text and added some remarks¹⁰⁹. The text was first published by Giacomo Todeschini¹¹⁰, and also slightly later by Sylvain Piron¹¹¹. Giuseppe Franco recently published another edition with a German translation¹¹².

In the new editions, it consists of three or four parts on selling and buying (*de emptionibus et venditionibus*), on usury (*de contractibus usurariis*) and some remaining questions (*dubia circa materiam contractuum*), the last part dealing with restitutions (*de restitutionibus*). Modern editors called it the “tract of contracts”, because it deals with all different kinds of contracts. This is not, however, a clear concept of the time, because “contract” meant mostly mutual obligations, often in relation to trade, but did not yet clearly determine the range of applicable business transactions. Only in the 16th century, starting with François Connan (1508–1551), did the term “contract” slowly become the generic term for all bilateral obligations based on mutual will¹¹³. Until then, based on classical Roman law, the difference in form, legal requisites, and terminology was too important to conceive of as a single, unifying expression.

The text starts with the classical question of whether selling for a price, either over or below its true value, is lawful. With reference to his knowledge of the constant practice in European markets, Olivi introduces two significations of “value” (*valor*): one according to its true nature, the other according to the actual need. As trade aims to provide men with the necessities of life, it can provide men with the product everybody needs, but rarely exactly at the price known to be the one and only true value. The latter perspective is thus more realistic.

¹⁰⁸ TODESCHINI, *Richesse Franciscaine* (n.), 151.

¹⁰⁹ SILVAIN, *Avant-Propos*, in: PETRUS JOHANNIS OLIVI, *Traité des contrats*, éd. Sylvain Piron, (Bibliothèque scholastique), Paris 2012, 38.

¹¹⁰ TODESCHINI, *Un trattato di economica politica francescana: Il “De emptionibus et venditionibus, de usuris, de restitutionibus” di Pietro di Giovanni Olivi*, (Istituto storico italiano per il Medio Evo, Studi storici, 125/126), Rome 1980.

¹¹¹ TODESCHINI, *Un trattato* (n.106); PIERRE DE JEAN OLIVI, *Traité des contrats* (Fn. 109).

¹¹² PETRUS JOHANNIS OLIVI, *Traktat über Verträge*, ed. Giuseppe Franco, Hamburg 2021.

¹¹³ SCHMOECKEL, François Connan (1508–1551), das *Synallagma* und die Föderaltheologie, in: B. d'Alteroche/ F. Demoulin-Auzary/ O. Descamps/ F. Roumy (Hg.), *Mélanges en l'honneur d'Anne Lefebvre-Teillard*, Paris 2009 [2010], 963–989.

Furthermore, things on the market can be assessed in three ways: on the basis of their inherent qualities, on their necessity for life, or on the pleasure they create¹¹⁴. Obviously, I can buy water because I am thirsty, because it is useful for my household, or rather just for any pleasure. Of course, all these qualities are mostly based on personal assumptions, not even compelling motives. The decision to buy, therefore, is much more subjective than other choices, and people will be ready to pay different prices for objects on the market. As a result, Olivi contradicts the common *iustum pretium* doctrine. Though it might theoretically be possible to determine a price generally applicable for all markets throughout the year, human interests mostly prevail. If the *emptor* absolutely wants grain, he can pay a higher price in order to outperform competitors.

According to Petrus Joannis Olivi this explains not only minor divergences from the usual price, which frequently occur. Different evaluations in special markets, situations, and times inevitably lead to different prices¹¹⁵. Moreover, the seller is not even bound to reveal all deficiencies of his goods, as long as the *emptor* is not endangered, or the discrepancy of the value is too high¹¹⁶. So the price can be determined on the basis of different knowledge and will differ for many simple reasons.

The justice of the price is indicated by the consent, the common will of the parties, which forms the foundation of the purchase¹¹⁷. The price reflects how much the object is appreciated by the parties. In case grain becomes rare on a market, it would be wrong for the government to intervene and augment the price¹¹⁸. A higher price might deter other buyers, and such an intervention in the market could encourage parties to back off such bargains. The interdiction of higher prices in the future might encourage possessors not to sell their products yet.

Petrus Joannis Olivi does not abandon the principle of the *iustum pretium* altogether, but just develops different criteria for evaluating the market with a new flexibility¹¹⁹,

¹¹⁴ PETRUS JOHANNIS OLIVI, Traktat über Verträge, lateinisch/ deutsch, ed. Giovanni Franco, Hamburg 2021, here: *De emptionibus et vendicionibus, distinctiones*, n.8-11, 6 and 8. For a first division of value as abstract and social use by Thomas Aquinas as a follower of Albertus Magnus cf. Piron, *Avant-Propos* (Fn. 109), 56.

¹¹⁵ PETRUS JOHANNIS OLIVI, Traktat über Verträge (Fn. 115), *De emptionibus et vendicionibus*, n.45, 28.

¹¹⁶ PETRUS JOHANNIS OLIVI, Traktat über Verträge (Fn. 115), *De emptionibus et vendicionibus*, n.49 and 50, 30.

¹¹⁷ PETRUS JOHANNIS OLIVI, Traktat über Verträge (Fn. 115), *De emptionibus et vendicionibus*, n.18 and 20, 12/ 14.

¹¹⁸ OLIVI, Traktat über Verträge (Fn. 115), *De emptionibus et vendicionibus*, n.42, 24/ 26.

¹¹⁹ Also BÉRIOU, *Le vocabulaire* (Fn. 74), 166.

also thanks to his thorough knowledge of the practice. There is even a psychological dimension in his explanation of value¹²⁰. As a result, he could maintain many rules on the just price, such as damages for exaggerated prices¹²¹. This is particularly the case where buyers as consumers are endangered by goods with illicit supplements, e.g. in wine, or by exaggerated prices¹²². We start to understand how unusual Petrus Joannis Olivi's understanding of the market of his day was and how much he was ready to accept for the necessity of distributing goods in a continuously specializing society.

Second part

In the second part of the text, Olivi first comments on the legitimacy of loans, as also the use of things can be expressed by the market and paid by their value¹²³. If, e.g., houses or horses can be rented, this can be done equally with grain and gold, too¹²⁴. The *iustum pretium* rule, however, is also valid for loans¹²⁵.

Petrus Joannis Olivi continues with a rather lengthy debate on the legitimacy of interest rates. By the loan (*mutuum*), the use of things is transferred to the other party; it even becomes "his" thing according to Olivi¹²⁶. Drawing apparently on Thomas Aquinas, interest rates can legitimately be demanded because of expected profit, of inherent dangers in the contract, or of damages¹²⁷. Money can be used in different ways, and even if it is borrowed in sacks to show of wealth, some price for this use has to be paid¹²⁸. Money can even be invested and used as "capital", in order to produce profit¹²⁹. Here Petrus Joannis Olivi used an Occitan term of his time in

¹²⁰ TODESCHINI, Franciscan Wealth (Fn. 13), 117.

¹²¹ PETRUS JOHANNIS OLIVI, Traktat über Verträge (Fn. 115), De emptionibus et vendicionibus, n.54, 32.

¹²² PETRUS JOHANNIS OLIVI, Traktat über Verträge (Fn. 115), De emptionibus et vendicionibus, n.86, 52.

¹²³ PETRUS JOHANNIS OLIVI, Traktat über Verträge (Fn. 115), De contractibus usurariis, n.2, 56.

¹²⁴ PETRUS JOHANNIS OLIVI, Traktat über Verträge (Fn. 115), De contractibus usurariis, n.7, 58.

¹²⁵ OLIVI, Traktat über Verträge (Fn. 115), De contractibus usurariis, n.11, 60.

¹²⁶ PETRUS JOHANNIS OLIVI, Traktat über Verträge (Fn. 115), De contractibus usurariis, n.35, 68.

¹²⁷ PETRUS JOHANNIS OLIVI, Traktat über Verträge (Fn. 115), De contractibus usurariis, n.39, 72 and n.51, 76.

¹²⁸ PETRUS JOHANNIS OLIVI, Traktat über Verträge (Fn. 115), De contractibus usurariis, n.63, 84.

order to describe bargains, which will not only return the borrowed money, but also with a strong probability of some profit. Evidently, money bargains were frequent at his time.

[. . .] non solum habet rationem simplices pecunie seu rei, sed etiam ultra hoc quamdam rationem seminalem lucre quam communiter capitale vocamus, et ideo non solum debet reddi simplex valor ipsius, sed etiam valor superadiunctus.

It does not have its reason only in the simplicities of the money or the thing, but also beyond this seminal reason of profit, which we usually call capital, and therefore not only the simple value has to be returned, but also the specially added value.

The wording is conclusive in many ways. He refers to the new word, but claims that it has already become common by popular use. But he remains cautious and gives an explanation for this phenomenon: the given coin, like a seed, created profit and, therefore, must be rewarded in returning more money than the initial sum. However, the new term was not altogether innovative. DuCange in his dictionary lists nine different uses of *capitale*, some of them as loans obviously in our sense, and a few even earlier¹³⁰.

This chance of profit is not just a void *emptio spei*, but can be compared to the purchase of a pregnant cow, which soon will give birth to a calf, so that the thing will exist (*emptio rei speratae*)¹³¹. In order to describe his point, Petrus Joannis Olivi divides the sum of the money into the part which was given and the exceeding sum to be returned, which he calls the “added valor”. The reason for the validity of such a bargain is the “*ratio seminalis*”, the seminal reason, which is about to be realized. Instead of being sterile, money can be fruitful and profitable as long as it is used in a skilful way by experts. One of Petrus Joannis Olivi’s most important innovations is this distinction between the “capital” of the loan itself and the profit. Interest rates are only justified if the use of the capital implies risks for the owner and thus justifies interest rates by the lender in order to minimize the risk on the part of the lender. If

¹²⁹ PETRUS JOHANNIS OLIVI, Traktat über Verträge (Fn. 115), *De contractibus usurariis*, n.63, 128

¹³⁰ CHARLES DU FRESNE DU CANGE/ G.A. LOUIS HENSCHEL, *Glossarium mediæ et infimæ latinitatis*, vol. 2, Paris 1842, 130-133, here 132 : *capitale* (7) with reference to documents from 1178 and 1252. I am deeply indebted to Harald Siems for his hint and other precious suggestions.

¹³¹ MAX KASER/ ROLF KNÜTEL/ SEBASTIAN LOHSE, 22nd ed. München 2021, *Römisches Privatrecht*, § 52.9, 303.

the capital is returned in any case, there is no risk and no interest rates can be justified¹³².

In the third chapter, some special contracts are explored. Olivi explains that usury can only occur in the context of loans¹³³. In the case of contracts which are not a loan, but rather a gift or a purchase, no usury can occur, but at most parts of the contracts can be regarded as an injustice¹³⁴. In the same way, the owner can sell some time, in which the goods can be used, to others¹³⁵.

In some cases, the money may be paid later according to subsequent events. This contract based on future developments is commonly called a “future”; until today it is a very risky contract and its legitimacy has been debated ever since. Petrus Joannis Olivi had no doubt, however, in accepting this business contract as long as the just price was not exceeded¹³⁶. He even acknowledged that contracts with the chance of an imminent return of profit can be more valuable than contracts in other situations¹³⁷. A contract on future goods can be the reason to reduce the price, because, e.g. the crop is not yet ripe, and the emptor has the risk of failed harvest¹³⁸.

Loaning money for risky games, however, constitutes also the case of usury¹³⁹. This does not depend on the obvious risks, but results from the pure pleasure implied in such frivolous bargains.

Third part

Everything that is not owned by the possessor has to be returned. Moreover, all damages have to be compensated: only life itself cannot be restituted or expressed in

¹³² PETRUS JOHANNIS OLIVI, *Traktat über Verträge* (Fn. 115), *Dubia circa materiam contractuum*, n.28-31, 106.

¹³³ PETRUS JOHANNIS OLIVI, *Traktat über Verträge* (Fn. 115), *Dubia circa materiam contractuum*, n.39, 72.

¹³⁴ PETRUS JOHANNIS OLIVI, *Traktat über Verträge* (Fn. 115), *Dubia circa materiam contractuum*, n.21, 98.

¹³⁵ PETRUS JOHANNIS OLIVI, *Traktat über Verträge* (Fn. 115), *Dubia circa materiam contractuum*, n.23, 100.

¹³⁶ PETRUS JOHANNIS OLIVI, *Traktat über Verträge* (Fn. 115), *Dubia circa materiam contractuum*, n.16, 69.

¹³⁷ PETRUS JOHANNIS OLIVI, *Traktat über Verträge* (Fn. 115), *Dubia circa materiam contractuum*, n.51, 118.

¹³⁸ PETRUS JOHANNIS OLIVI, *Traktat über Verträge* (Fn. 115), *Dubia circa materiam contractuum*, n.53, 120.

¹³⁹ PETRUS JOHANNIS OLIVI, *Traktat über Verträge* (Fn. 115), *Dubia circa materiam contractuum*, n.79, 139.

money. As long as the profit was caused during the lifetime, it can be paid; later events do not have to be taken into consideration. Everything which was gained in frivolous ways has to be returned¹⁴⁰. All sentences, including obligations of payment, have to be fulfilled¹⁴¹. Equally, everything that exceeds the just price has to be returned¹⁴².

However, not all cases with regard to such obligations can be mentioned here. Obligations may regard others than the contract parties themselves. If a contract party is not paying the restitution, it might become the obligation of the trade agent or the public notary to pay for the damages etc.¹⁴³ Family members might be liable for their husband or father. Even third parties who concluded contracts with known usurers might be obliged to return all the money they received from the usurer in order to return it to the wronged party¹⁴⁴. The last sections all deal with the question of when and how damages have to be compensated.

Many more cases and exceptions could be described. Generally, Gregory IX did not want to accept risk as a reason for interest rates (X 5.19.19, *Canon Naviganti* [1227–1234]); this question still needed the explanation of Thomas Aquinas.

The specialists

Clearly, Olivi knew the trade and markets of his time better than most lawyers, who still equated merchants and craftsmen. This is a reason why Olivi helped to establish a better understanding of the trade of his century¹⁴⁵. Furthermore, Petrus Joannis Olivi accepted the authority of these experts to explain his admiration for the dynamics of the market. He appreciated their expertise in the forces of the market. Their long education and perilous adventures showed their civic heroism, their success proved them to be virtuous specialists in their trade, and they were necessary for the modern economy, like even Christ for the poor people¹⁴⁶.

Merchants appeared to him as trained specialists in fixing prices, inventors of business forms, and founders of their commerce¹⁴⁷. He accepted their success as the result of their expertise and justified their profit as the price which society owed them

¹⁴⁰ PETRUS JOHANNIS OLIVI, *Traktat über Verträge* (Fn. 115), *De restitutionibus*, n.3f, 142 and 144/ n.8, 146/ n.15, 152

¹⁴¹ PETRUS JOHANNIS OLIVI, *Traktat über Verträge* (Fn. 115), *De restitutionibus*, n.24, 158.

¹⁴² PETRUS JOHANNIS OLIVI, *Traktat über Verträge* (Fn. 115), *De restitutionibus*, n.32, 164.

¹⁴³ PETRUS JOHANNIS OLIVI, *Traktat über Verträge* (Fn. 115), *De restitutionibus*, n.47, 176.

¹⁴⁴ PETRUS JOHANNIS OLIVI, *Traktat über Verträge* (Fn. 115), *De restitutionibus*, n.56, 184.

¹⁴⁵ TODESCHINI, *Franciscan Wealth* (Fn. 13), 128.

¹⁴⁶ TODESCHINI, *Richesse Franciscaine* (n.2), 187.

¹⁴⁷ TODESCHINI, *Richesse Franciscaine* (n.2), 142

for their contribution to the market and their necessary function therein¹⁴⁸. Their professionalism guarantees the rationality of the market, their experience the chance of profitable bargains¹⁴⁹.

SUMMARY

Petrus Joannis Olivi clearly had some special insight into the international market of his time¹⁵⁰ and the professional exchange of goods in Southern France and Northern Italy¹⁵¹, thanks to both his native country and his career in the Franciscan teaching system. His experiences of the business transactions of the merchantmen in his country prove a strong interest in this commercial business and at the same time a commercial practice much more “modern” than previously assumed. In some cases, the harvest could even be sold before autumn by contracts in the style of futures.

Petrus Joannis Olivi gave a new legitimation to the market, where all things and services could be sold or hired. With the intention to change goods and activities for the maintenance of human society and the common good, the market became not only a necessity, but also a new skill for supplying mankind with all things necessary for life. Moreover, it could be regarded as a new device to guarantee a basic justice, mainly on the basis of reciprocity, legitimised with the new knowledge of Aristotle’s Nicomachean Ethics and this tradition¹⁵². The *mercator* was no longer a potential criminal living off usury, but a modern specialist for the market, working for, and assuring the preconditions of, human society¹⁵³.

In the tradition of price theory, Olivi’s theory had great influence, especially in Italy¹⁵⁴, but rather more due to his followers than his writings, which became banned as heretical. It has been recognized as the most advanced work of scholastic thought

¹⁴⁸ TODESCHINI, Richesse Franciscaine (n.2), 163, 173, 196.

¹⁴⁹ TODESCHINI, Richesse Franciscaine (n.2), 161.

¹⁵⁰ TODESCHINI, Richesse Franciscaine (n.2), 213.

¹⁵¹ TODESCHINI, Un trattato di economia politica francescana: il “De emptionibus et venditionibus, de usuris, de restitutionibus” di Pietro di Giovanni Olivi, Roma 1980, (Studi storici, 125/126), 14 refers to a “mentalità profondamente economicizzante”.

¹⁵² TODESCHINI, Richesse Franciscaine (n.2), 173 describes a “play of reciprocity”.

¹⁵³ TODESCHINI, I mercanti e il Tempio. La società cristiana e il circolo virtuoso della ricchezza fra Medioevo ed Età Moderna, Bologna 2002, 349.

¹⁵⁴ Cf. AMLETO SPICCIANI, La mercatura e la formazione del Prezzo nella riflessione teologica medioevale, (Atti della Accademia nazionale dei Lincei), Roma 1977, 150f concept of price in the writings of Thomas Aquinas, Henry of Gand, Pietro di Giovanni Olivi (181f), 25 on Olivi’s “Tractatus de emptione et venditione” and the Italian tradition (271).

on economic issues, and furthermore, he seems to be one of the most interesting and important authors among the Franciscan Spirituals¹⁵⁵.

Once again, we found an elaborate relationship between the veneration of the ideal of poverty and a realistic comprehension of the contemporary market¹⁵⁶, which we already recognized in essence in the thoughts of Francis of Assisi. The most fervent defender of the ‘Alter Christus’ and the principle of poverty showed great understanding or even sympathy for the development of the new market transactions, including the use of the capital and its profit.

The first money deposits and the establishment of banks

Petrus Joannis Olivi proves that money bargains were known, as well as commonly and proficiently used, at the end of the 13th century. We can assume the presence of a class of merchants and others who knew how to use this market to their advantage. We must suppose, furthermore, that Southern France and Northern Italy also had the necessary institutions for such a market. If money was used to store wealth, there was the necessity of safe places where such coins of silver and gold could be stored with little risk. The presence of such deposits at the same time provided the logic, or even necessity, of bargains concerning money. In other words, these commercial cities needed banking institutions for safe accommodation of money¹⁵⁷, and, moreover, that these “mountains” of money were used for all kinds of purposes of the town and the merchants in order to ensure its productivity¹⁵⁸.

After dark centuries of poverty in which Europe had had little use for money, and tradition preferred agriculture as the only chance to increase wealth¹⁵⁹, change came slowly. Since the end of the 12th century, there is evidence in the cities of Northern Italy¹⁶⁰ that they accumulated money and developed strategies for a safe and lucrative storage of coins¹⁶¹. These treasures needed administration by bankers

¹⁵⁵ JOSEPH CANNING, The Paradox of Franciscan Use of Canon Law in the Fourteenth-Century Poverty Disputes, in: M. Robson/ P. Zutshi (eds.), *The Franciscan Order in the Medieval English Province and Beyond*, Amsterdam 2018, 255-270, 258.

¹⁵⁶ TODESCHINI, *Richesse Franciscaine* (n.2), 167.

¹⁵⁷ TODESCHINI, *Richesse Franciscaine* (n.2), 155.

¹⁵⁸ TODESCHINI, *Richesse Franciscaine* (n.2), 243.

¹⁵⁹ WOLFGANG TRAPP, *Kleines Handbuch der Münzkunde und des Geldwesens in Deutschland*, Stuttgart 1999, 68.

¹⁶⁰ FAVIER, *De l’Or et des épices : naissance de l’homme d’affaires au Moyen Âge*, (Pluriel Histoire), Paris 1987, 289.

¹⁶¹ TODESCHINI, *La banca e il ghetto*, Roma/ Bari 2016, 22.

and governments, as it became immediately obvious that money conveyed power over the public order. In Bologna, it was even the family of the bankers, the Pepoli, who took over the government of the city¹⁶².

Theory in particular was late to acknowledge the new significance of money. Of course, money as a measure of value and means of exchange was a part of Aristotle's teaching, which formed the European tradition¹⁶³. Whilst a first tract on state economy was published already at the end of the 1190s, namely Richard FitzNeal of Ely's "*Tractatus de Scaccario*", the first theory on money was developed only in 1370 by Nicholas Oresme, in his "*De Moneta*"¹⁶⁴. Only in the 13th century did authors like Henry of Ghent (1217–1293) start to accept the advantages of money and abandon the old distinction between the good production of farmers and dishonest business of merchants¹⁶⁵. Recently, Wolfgang Ernst and David Fox edited an innovative volume on the history of money law¹⁶⁶. For a long time, banks were seen as inventions of the 15th century¹⁶⁷. Once again, these innovations are linked with Franciscan monks

¹⁶² TODESCHINI, La banca e il ghetto (Fn. 160), 22. For the Florentine company of the Peruzzi cf. EDWIN S. HUNT, The Medieval Super-Companies, Cambridge 1994.

¹⁶³ LANGHOLM, Economics in the Medieval Schools, Wealth, Exchange, Value, Money and Usury according to the Paris Theological Tradition 1200–1350, (Studien und Texte zur Geistesgeschichte des Mittelalters, 29), Leiden/ New York/ Köln 1992, 134; JOEL KAYE, Economy and Nature in the Fourteenth Century. Money Market Exchange, and the Emergence of Scientific Thought, Cambridge 1998, 46.

¹⁶⁴ The "De Moneta" of Nicholas Oresme and English Mint Documents, ed. Charles Johnson, London 1956, 3/5.

¹⁶⁵ KAYE, Economy and Nature (Fn. 162), 103.

¹⁶⁶ For the history of money law cf. THOMAS RÜFNER, Money in the Roman Law Texts, in: D. FOX/ W. ERNST, Money in the Western Legal Tradition. Middle Ages to Bretton Woods, Oxford 2016, 93–109; WOLFGANG ERNST, The Legist's Doctrines on Money and the Law from the Eleventh to the Fifteenth Centuries, *ibidem*, 110–135, who proves some awareness of the problem since Pillius in late 12th century; FABIAN WITTRECK, Money in Medieval Philosophy, *ibidem* 53–70, 59 on the central role of Thomas Aquinas; STEFAN KÖTZ, The Last Scholastic on Money, *ibidem*, 71–89.

¹⁶⁷ ANSCAR PARSONS, Bernardine of Feltre and the Montes Pietates, *Franciscan Studies* 1.1 (1941), 11–32, 11; HERIBERT HOLZAPFEL, Die Anfänge der Montes Pietatis (1462–1515), München 1903; MENNING, The Monte's 'Monte': The Early Supporters of Florence's Monte di Pietà, *Sixteenth Century Journal* XXIII n.4 (1992), 661–676, 663; same, Charity and State in the late Renaissance Italy, *The Monte di Pietà of Florence*, Ithaka NY. 1993; RICHARD HILDRETH, *The History of Banks: To which is Added, a Demonstration of the Advantages and Necessity of Free Competition in the Business of Banking* Hillard, Gray & company, London 1837 reimpr. New York 1968, 5f, pointing at Venice in the 12th or 13th century.

like Bernardino da Feltro or Marco di Matteo Strozzi OFM; the “Monte di Pietà” in Siena, established in 1472, is regarded as the oldest bank in Europe.

Of course, the Church contributed to the use of money. Charities raised money throughout Europe and tithes had to be transferred, at least partially, to Rome. This was easier in coins and was often carried out by banks¹⁶⁸. The Church assumed a rather restrictive, but not hostile, position towards the growing money business¹⁶⁹.

Todeschini also recently explained the remarkable presence of foreigners, especially Jews, in money transactions. Lombards and Tuscans, outside their countries, were also involved in the early banking business. Obviously, foreigners were regarded as particularly fit for this trade¹⁷⁰. Foreigners had less reason to be bound by their families or networks; they could remain neutral with regard to domestic quarrels more easily than others. Furthermore, their business depended on their good reputation. Much less than citizens, foreigners could not afford any scandals. Just as in the administration of the cities of Northern Italy, with the famous constitution of the magistrates established by Emperor Frederick Barbarossa, people from outside the town were entrusted with the positions of mayors and judges, in order to avoid partiality. The mendicant orders, of course, could not fulfil this task as they had to stay out of commerce altogether.

In this light, we should be more aware of copious chapters on such bargains, as we find in the literature of the public notary Rolandus de Passageriis (1234–1300). Obviously, notaries were not only aware of such new contracts¹⁷¹, but took part in their documentation and the realization of such bargains. They also probably took part in their development. In light of the new discoveries in the work of Petrus Joannis Olivi, more of the legal practice should be discovered in this author.

¹⁶⁸ S. KRISTENSEN, Money and religious devotion in medieval Northern Europe, in: Sv. H. Gullbekk/ Ch. Kilger/ St. Kristensen/ H. Roland (eds.), *Coins in Churches Archaeology, Money and Religious Devotion in Medieval Northern Europe*, London/ New York 2021, 3–28; *De decimis*, Der Beitrag der Kanonisten zur Entstehung eines kirchlichen Steuerrechts, in: David von Mayenburg/ Franck Roumy/ Orazio Condorelli/ Verf. (Hg.), *Der Einfluss der Kanonistik auf die europäische Rechtskultur*, Band 5: Das Recht der Wirtschaft, (Norm und Struktur, 37.5), Köln/ Weimar/ Wien 2016, 405–431.

¹⁶⁹ ANDREAS THIER, Money in Medieval Canon Law, in: David Fox / Wolfgang Ernst (eds.), *Money in the Western Legal Tradition: Middle Ages to Bretton Woods*, Oxford 2016, 136–166, 148 with reference to Hostiensis as an example.

¹⁷⁰ TODESCHINI, *La banca e il ghetto* (Fn. 160), 32, 37.

¹⁷¹ TODESCHINI, *La banca e il ghetto* (Fn. 160), 20 with reference to ROLANDUS DE PASSAGERIIS, *Summa totius artis notariae*, Venice 1546 re-ed. Roma 1977, [written around 1245], pars I, cap.3 “de debitibus et creditibus”.

Franciscans and Magnus Lagabøtr

THE RELATION OF FRANCISCANS WITH ROYALTIES

All parts of European society in the 13th century were fascinated by Francis, even princes. Starting in 1223, for example, (St) Elisabeth of Thuringia (1207–1231) was acquainted with the teaching of Francis of Assisi and tried to follow his example from a very young age. She was the daughter of the King of Hungary, and married the Landgrave of Thuringia, Duke of Austria etc. The younger brother of her husband, Heinrich Raspe, became governor of the Empire in 1242 and in 1246 was even elected as King Henry IV. Obviously, her family was quite in the centre of imperial politics at this time, which was also true for her descendants.

After the early death of her husband, she vowed obedience in 1228 to a dubious priest, Konrad of Marburg, in the Franciscan church of Eisenach, and abandoned all wealth and luxury until her early death in 1231. In 1235 Elisabeth was already officially recognized as a saint of the Church¹⁷², and certainly became one of the most famous saints of the time. Her case illustrates how the ideal of poverty inspired even the highest families. Her large family and many others spread the news. Her son Hermann II (1222–1241) was educated in Paris, whilst her daughter Sophie (1224–1275) became Duchess of Brabant, whose son became the first Landgrave of Hesse. In 1237 Caesarius of Heisterbach had already incorporated her story into his most famous book of miracles¹⁷³.

Count Adolf IV of Holstein (before 1206–1261) had vowed in 1239 to become a priest in case of a victory of his enemy; consequently, in 1240 he entered the Franciscan monastery in Hamburg. His daughter Mechtild, marrying Abel of Schleswig, later King of Denmark, started the connection of the two duchies and the affiliation with Denmark. Many royals throughout Europe now entered holy orders, often in Franciscan monasteries.

In Norway, it was King Håkon IV Håkon(ar)son (1217–1263) who invited or welcomed the first Franciscans. In Bergen, Oslo, and Trondheim the first seem to have arrived in the 1220s¹⁷⁴. The kings helped to build the first monasteries and chur-

¹⁷² ARNO BORST, Elisabeth, NDB, vol. 4, Berlin 1949, 452.

¹⁷³ CAESARIUS VON HEISTERBACH, Vita sancte Elyzabeth lantgravie (1236–1237), in: A. Huyskens/ A. Hilka (eds.), Die Wundergeschichten des Caesarius von Heisterbach, vol.3: Die beiden ersten Bücher der Libri VIII Miraculorum: Leben, Leiden und Wunder des heiligen Engelbert, Erzbischofs von Köln; die Schriften über die heilige Elisabeth von Thüringen, Publikationen der Gesellschaft für Rheinische Geschichtskunde, Bonn 1937.

¹⁷⁴ SYNNØVE MYKING, The universal and the local: religious houses as cultural nodal points in medieval Norway, in: S. Suppersberger Hamre (ed.), Foreigners and Outside influences in Medieval Norway, Oxford 2017, 75–96, 83.

ches from the 1240s, like in Tønnsberg¹⁷⁵. In the mid 1260s, Magnus Håkonarson invited yet more Franciscans to Norway¹⁷⁶. Håkon also used the monks as lay judges (sendemenn), as was also done in Scotland and on the Norwegian islands¹⁷⁷.

Magnus Håkonarson gave the order to reconstruct the first Franciscan church in Bergen in stone, which was named the St Olav's Church in the 1250s, named after the martyr king who introduced Christianity in Norway. After yet another fire, King Magnus VI Lagabøtir (1238–1280) became the main benefactor of this church, which became the cathedral of Bergen after the fire of 1270.

Håkon IV and his son are known to have been interested in a peaceful cooperation with the Church. The “Treaty of Tønnsberg”, the Norwegian concordat of 1277, agreed on ecclesiastical jurisdictional rights and divided the spheres of authority in the Norwegian realm. Both understood that cooperation with the Church helped to grow authority and planful administration in Norway. Laurence Octave was the first Franciscan in Scandinavia to become a bishop: in 1246 he became archbishop of Upsala, and Innocent IV did not accept his refutation of the new dignity¹⁷⁸. Since 1226, the Pope also tried to use Franciscans for the administration of Norway's dioceses¹⁷⁹. The mendicant orders participated in the Norwegian government of ecclesiastical structures and the propagation of knowledge. Norway provides for a wonderful example of the different uses of the friars in the expansion of the administration of towns, dioceses, and the court.

¹⁷⁵ LOUISE DIGERNES, *Fransiskanerordenen i det norske middelaldersamfunnet* (Master thesis), cf. <https://bora.uib.no/bora-xmlui/bitstream/handle/1956/4119/69630733.pdf?sequence=1&isAllowed=y>, last 7.5.2022, 15f; more general for his ecclesiastical politics cf. KIRSI SALONEN/ KURT VILLADS JENSEN, *Scandinavia in the Middle Ages 900–1550. Between Two Oceans*, Abingdon 2023, 78, 163. For a context with the secular legislation as a Magna Charta of Norway cf. Dillon Richard Frank Knackstedt, *A Kingdom of Co-Inherence: Christian Theology and the Laws of Magnus the Lawmender of Norway, 1261–1281*, Master Theses, Western Michigan University, 2019], <https://scispace.com/pdf/a-kingdom-of-co-inherence-christian-theology-and-the-laws-of-4whgoyd35x.pdf>, last 25.4.2025, 10.

¹⁷⁶ PETER ANDREAS MUNCH, *The Chronicle of Man and the Sudreys*, Douglas 1874, 226.

¹⁷⁷ DIGERNES, *Fransiskanerordenen* (Fn. 174), 24.

¹⁷⁸ JOHN MCCLOSKEY, *The Life of Saint Francis of Assisi: and a Sketch of the Franciscan Order*, New York 1867, 303.

¹⁷⁹ DIGERNES, *Fransiskanerordenen* (Fn. 174), 74.

WEALTH AND SOCIAL CARE

But there was another way in which the Franciscan movement propagated in Europe. The first Franciscan brothers were swept along with the expansion of trade and the establishment of new cities, typically in Southern France and Italy¹⁸⁰. They were attracted by the task of serving as confessors to the newly established craftsmen and merchants. At the same time, they were apparently respected for their good counsel and their expertise, even in the questions of the new market. In this way, the first Franciscans might not have come by royal invitation, but of their own initiative, even perhaps in the lifetime of Francis around 1222¹⁸¹, together with the other voyagers who wanted to become citizens in Norwegian cities, probably via Saxony and Denmark¹⁸². This links the cities of Norway with many other European cities.

Franciscans were known to care for the poor. Their presence was therefore at the same time a means to spread the necessary knowledge in economic issues, to stabilize the society by caring for the poor, and, by commenting on current developments, to correct economic misbehaviour¹⁸³ and to enhance general acceptance of the new economic system.

The link of economic growth and social care on the one hand and the success of the Franciscan movement on the other has been studied in particular since Jacques Le Goff invited European historians to describe this link¹⁸⁴. Economic success and care for the poor form a “complexio oppositorum”, which belong together. The emerging towns needed the business for their success, but also the infrastructure that cared for the needy. The expertise of Franciscans could be used to set up new cities¹⁸⁵. This was true for Italy and Southern France and can be found in many new cities around Europe as well. So even if we still do not have the documentary evidence, we

¹⁸⁰ KARL BALTHASAR, Geschichte des Armutsstreites im Franziskanerorden (n. 10), 236.

¹⁸¹ MCCLOSKEY, *The Life of Saint Francis of Assisi: and a Sketch of the Franciscan Order* New York 1867, 303; on the history of Franciscan historiography for Scandinavia cf.

LOUISE DIGERNES, *Fransiskanerordenen i det norske middelaldersamfunnet* (Master thesis), cf. <https://bora.uib.no/bora-xmui/bitstream/handle/1956/4119/69630733.pdf?sequence=1&isAllowed=y>, last 7.5.2022, 14.

¹⁸² JØRGEN NYBO RASMUSSEN, The Franciscans in the Nordic Countries, in: H. Roelvink (ed.), *Franciscans in Sweden. Medieval Remnants of Franciscan Activities*, Assen 1998, 6-21, 9.

¹⁸³ For example CECILIA IANNELLA, *Giordano da Pisa. Etica urbana e forma della società*, Pisa 1999, 106 for this Dominican preacher.

¹⁸⁴ LE GOFF, *Ordres mendians et urbanisation de la France médiévale. État de l'enquête, "Annales. Économies. Sociétés. Civilisations"* 25 (1970), 924-946.

¹⁸⁵ In this sense for a later age JULIA MCCLURE, *The Franciscan Invention of the New World*, Cham 2017.

can assume that the same motives also applied in Bergen. Furthermore, as Franciscans were known for their erudition, a Franciscan monastery could also serve as the first step for education in the town. For such reasons, Franciscans were welcome, or even invited, when they arrived together with the new citizens of Bergen. With their establishment of social care in these new towns, they helped to make the cities liveable.

A short comparison with the Norwegian law code of 1274 might be helpful¹⁸⁶. Where it treats the law of destitute people (VIII-5), it describes debts as a chance to rebuild what was lost. Oaths and custody are no longer preferred ways to ensure that the money is given back, albeit their little chances, but instead sureties of relatives and a promise of the lessor to work the debt off are proposed. The worst reaction of the debtor would be to run away and forfeit the chance to solve the problem.

By its economy, the society gives chances, and the task of the legislator is to exclude impossible contracts. Six prudent people have to assess, how long a cow can be rented, and no one should be obliged to pay the rent for a longer period (VIII-14). The king and his magistrates grant fair and equal chances in this kingdom, they serve the rich and the poor, the young and the old, and even foe and friend alike (I-10). They have helped individuals to provide for their future, e.g. in buying seeds (VII-12). Only if the legislator is aware of the different positions of everybody, all men can use their individual chances in the same way. When a marriage is ended by death, the surviving part has to ensure that no child is left without any means (V-14). In the same way, the king has to enact provisions for the protection of the rich and the poor (IV-3).

For this reason, this kingdom does not want to revenge misdeed by equally atrocious wounds, all must look for ways instead to ameliorate the society following the advice of good people (IV-3). By bringing the poor to the places, where work waits to be done, the kingdom cares for the poor and at the same time provides for the necessities of production and the wealth of the law (V-57).

In this perspective, the lawgiver shows his concern for all parts of the society as important. This is reminiscent of Franz's praise of the sun, according to which there are no unimportant parts of creation, or of his conviction that all parts of society

¹⁸⁶ The code is cited here according to the translation of JÓHANNA KATRÍN FRIÐRIKS-DÓTTIR: Magnus the Lawmender's Laws of the Land, London 2024, https://www.routledge.com/Magnus-the-Lawmenders-Laws-of-the-Land/KatrinFridriksdottir/p/book/9781032610542?srsltid=AfmBOoqrPLFiEpgyBP85Aio5edifkJqHfxZGChx67_PXwJ82Cq7V0PzR, last 8.5.2024, which follows the oldest manuscript of the code, (citing the book and the article); while the German edition of RUDOLF MEISSNER (ed.), *Landrecht des Königs Magnus Hakonarson*, (Germanenrechte Neue Folge/ Nordgermanisches Recht 1), Weimar 1941 followed a version of 1840; the numbering differs.

must work together to strengthen the economy. Once again, we do not find direct references from the lawbook to the Franciscan movement. Yet we find similar interest, particularly in an almost modern concern for all parts of the Norwegian society including a proper poor relief law.

THE MERCHANT'S MODEL

Whilst we still lack more detailed information on the role of Franciscans in stabilizing the royal government in Norway or setting up a new commercial centre in Bergen, it is clear that Norway took part in the European fascination with the new merchantmen.

An important text from the time of King Håkon IV describes the ideal education for a king's man around the mid 13th century, which gives important indications in our context. The text is called "King's mirror" or "Konungsskuggsia" and describes the conversion of a father with his son, who plans his career. The text itself proves a link between Norway and the University of Paris in the 13th century, where the idea of the "four sisters" was found¹⁸⁷.

It contains the story of a father who shares his own experiences with his son¹⁸⁸. Until now we do not know about the author's contact to Franciscan movement¹⁸⁹. But it agrees with Franciscan thought that man should be better educated in order to serve the country and the society. The book tries to convey the ideal of manliness of the king's men, describing good life and courtly manners, which includes humility¹⁹⁰. In the end, this describes also the ideal of the king¹⁹¹. Most parts of the book describe the proper administration of justice. The father advises his son to study the law books, but also the custom of the land. Using many examples, the father tries to explain how truth, peacefulness, justice, and charity are realized in judgement, sometimes with leniency, in other times with strictness.

¹⁸⁷ JØRN ØYREHAGEN SUNDE, Daughters of God and Counsellors of the Judges of Men: Changes in the Legal Culture of the Norwegian Realm in the High Middle Ages', in: Stefan Brink/ Lisa Collinson (eds.), *New Approaches to Early Law in Scandinavia*, Acta Scandinavica, 39, Turnhout 2014, 131-83.

¹⁸⁸ Thus RUDOLF MEISSNER, Einleitung, in: *Der Königsspiegel. Fahrten und Leben der alten Norweger aufgezeichnet im 13. Jahrhundert*, Leipzig/ Weimar 1978, 6; for a commentary cf. also Jens Eric Schnall/ Rudolf Simek (eds.), *Speculum regale. Der altnorwegische Königs-spiegel (Konungs skuggsjá) in der europäischen Tradition*, Wien 2000.

¹⁸⁹ On the political thought and moral teaching of this text cf. SVERRE BAGGE, *The Political Thought of the King's Mirror*, Brepols 1987.

¹⁹⁰ Chap. 40, 140, 146.

¹⁹¹ Chap. 43, 156.

The first three chapters, however, deal with his first occupation as a merchant. It also serves to describe some voyages, even to Greenland and the wonders of the territories belonging to Norway. Although the son plans to become a member of the royal court, studying countries and languages serves as a good first education¹⁹². Merchants have to risk their lives and their goods and find trustworthy partners abroad instead of looking for immediate success, which would be the difference between true merchantmen and cheaters. Good merchants have to show courage and determination, have to learn how to conclude contracts – always in presence of witnesses – and to know the law to defend their own position in trials¹⁹³. Distribution of wealth should minimize risk, and profit should be shared with God and the Church. In this text, true merchants serve as the ideal of men, and their job is conceived of as the best education for the future powerful elite serving the king.

Compared with the rest of the text, which is less theoretical and tells more of personal experience, the short part on trade seems more the sketch of an ideal. The rest of the book explains the duties of people working in the royal administration. Even the king himself as the highest judge of his realm has to pass sentences which are just. A famous story of the four sisters illustrates this ideal. These sisters are justice and verity, which generally determine the verdict, but sometimes the decision has to be mitigated by the others, charity and peacefulness. The death penalty is harsh, but just, so long as it is necessary¹⁹⁴. All judges have to avoid greed, enmity, violence and the influence of friendship¹⁹⁵.

This ideal, however, of exploring the world, extending knowledge, and working for the common good, seems very close to the attitude of the Franciscans. The fascination was not motivated solely by economic success. It was, rather, a new spirit of individual chances and obligations. These first businessmen discovered new possibilities and engaged themselves in order to be successful. This ability of individuals to change their lives and the conditions of their families and neighbours taught a new lesson of human possibilities¹⁹⁶. Everybody could find new success and at the same time take part of it to care for the needy. Once again, we find a link between the

¹⁹² Chap. 3, 28.

¹⁹³ Chap. 4, 30.

¹⁹⁴ Chap. 61, 213.

¹⁹⁵ Chap. 59, 208.

¹⁹⁶ PETER SCHALLENBERG, Armut oder Ethik? Der Beginn der Sozialethik in der franziskanischen Armutsbewegung, in: H.-D. Heimann/ A. Hilsebein/ B. Schmies/ Ch. Stiegemann (eds.), *Gelobte Armut. Armutskonzepte der franziskanischen Ordensfamilie vom Mittelalter bis in die Gegenwart*, Paderborn/ München/ Wien/ Zürich 2012, 67-80.

chance of successful business and the obligation to care for the poor in the vicinity. It was a new morality which helped Europe to grow in every conceivable way.

Much of the necessary knowledge, also in commerce, was propagated by the Franciscans and Dominicans in the 13th and 14th centuries. Francis encouraged his friends and his readers to use their individual abilities for their and the society's best. This spirit emboldened entrepreneurship *avant la lettre* just as it inspired everybody else to look out for chances to make the world a better place. The changes in law and economy described here are nothing but fruits from the same tree of Franciscan theology. The same seems true for the Konungsskuggsiá.

Already Quaglioni pointed at the major shift from an economy which argued in theological terms to a theology that also took the economy into consideration¹⁹⁷. The preaching and teaching of the mendicant orders taught their contemporaries this new spirit as well as the new, rather technical vocabulary¹⁹⁸. Life became a challenge for everybody to mend his destiny as well as his society.

Summary

Francis of Assisi already struck his contemporaries with his new perception of the world. In the old "Portiuncula" he saw chances where others just found decay. He addressed his surroundings, even the creatures, praising their individual capabilities and skills. He encouraged everybody to take initiatives to settle debts or to correct faults. Each position was different and yet full of its own special wonders, as Francis explained in his "Canticle of the Sun". Many things had to be endured, but life offered so much many chances. And the new economy of his age introduced the plurality of the nations and regions, finishing the unity in the tradition of the Empire¹⁹⁹.

Francis of Assisi changed the world with the keen perception of his society and the commitment to all its members, which allowed him to combine the opposite sides of life. Freedom was also self-mastery²⁰⁰. Visitors perhaps first noticed those Franciscans who lived with the lepers and the homeless, but they also served as the confessors of the mighty and wealthy. The ideal of poverty presupposes wealth, and every society needs food as well as a hint of a better world²⁰¹. Like the different sides of a coin, the

¹⁹⁷ DIEGO QUAGLIONI, A review of: Un trattato di economia politica francescana: Il "De exemptionibus et venditionibus, de usuris, de restitutionibus" di Pietro di Giovanni Olivi by TODESCHINI, *Studi Storici* 23 n.2 1982, 468-470, 468.

¹⁹⁸ BÉRIOU, *Le vocabulaire* (Fn. 74), 151-186.

¹⁹⁹ LE GOFF, *Saint François d'Assise*, Paris 1999, 156.

²⁰⁰ For Alexander of Hales cf. INGHAM, *Franciscan Identity, Poverty and the Rational Will: From Summa Halensis to John Duns Scotus*, in: Lydia Schumacher (ed.), *The Legacy of Early Franciscan Thought*, Berlin/ Boston 2021, 257-279, 270.

market needed the new economy as well as impartial specialists. In the same way, ecclesiastical criticism could ban harmful practices and excesses in a free market²⁰².

Obviously, the 12th and early 13th century was a period of growing contradictions. With the development of trade came the increase of capital and a new prosperity for Europe. At the same time, the Franciscans became a typical asset of the medieval cities, staying with the lepers and serving the wealthy as confessors. They were eager to learn in universities and would take over St Elisabeth's initiative for the lowest in society. Do these aspects, perhaps, represent less of a contradiction but instead the two different sides of a coin, which only together explain the new complex order? Obviously, Francis understood that the new economic order presupposed the existence of poor as well as of rich people, at least relative to one another. Wealth was the condition of assistance for the poor. Charity for the poor, an essential feature of Christianity, was thus the chance to legitimize affluence as well as the new economic order²⁰³.

Francis emphasized the individual chances of everybody and understood that freedom entails obligations. The use of goods can serve the common good, testamentary liberty is a chance to make up for mistakes of the past, and money can buy what people need. He understood better than his contemporaries that it is the individual way in which these assets are used which determines a positive or negative result for the society.

It is this fundamental insight which caused his rather short writings to be so inspiring and to lead to so many innovations. It is further amazing how much Petrus Joannis Olivi understood of the business transactions of his time. Following Francis, for him "capital" was not an abomination for want of charity, but a chance to improve contracts as a means to nourish the European society. Just like money, capital is not bad in itself, but rather the way in which it is used²⁰⁴. And it seems to be the first reference to this economic term, which has received such a bad reputation in the last centuries.

²⁰¹ LE GOFF, Saint François d'Assise, Paris 1999, 157 on the integration of the poor in the new society and its economic order.

²⁰² In this sense already SCHMOECKEL, From subsistence to profit as economic orientation. Major shifts in economic order, *Sartoriana* 33 (2020), 73-112.

²⁰³ Cf. the argumentation of Bonaventura and Petrus Joannis Olivi in TODESCHINI, Carità profitto nella dottrina economica Francescana da Bonaventura all'Olivi, *Franciscan Studies* 6/0 (2002), 325-339.

²⁰⁴ Cf. CECILIA IANNELLA, Giordano da Pisa. *Eтика urbana e forma della società*, Pisa 1999, 126 for Giordano da Pisa.

The new possibilities also brought new risks of failure with regard to God and the common good. Merchantmen could find new goods or new routes for their trade. Learned people could develop new insights in universities. In the same way, the royal administration had to provide for the best conditions, especially a just jurisdiction, to ensure peace and order in the country. Saints like St Elisabeth also embodied the opportunity to change society for the better through their personal commitment²⁰⁵. In the end, the influence of Francis on the law is less derived from the rule of the Franciscan orders, but lies in a profound reinterpretation of the world and its phenomena, including the law, as an opportunity to praise God. In any case, the concept of law was expanded to increasingly refer not to objective, but to subjective law, for the role of law in the economy, this means:

- 1) Through new interpretations, existing law was opened up to a wealth of new ideas, such as determining a fair price and allowing for circumvention of prohibited usury.
- 2) From a moral perspective, fundamental values of the Church were emphasized, which were to be taken into account in the interpretation. This was a means to strengthen the social acceptance of the new economy in protecting the society from evident abuses.
- 3) As confessors to princes and merchants, the Franciscans could advise on the development of the new economy and rule and demonstrate how the opportunities offered by the law could be exploited.
- 4) At the same time, with their vow of poverty, they placed themselves outside the control of money and trade. The establishment of almshouses and hospitals helped those who could not survive in the economy themselves. But it was only through these institutions of charity that the system was able to occupy such a broad space in society.

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²⁰⁵ ANDRÉ VAUCHEZ, *La Sainteté en Occident aux dernières siècles du Moyen Âge*, Aix-en-Provence/ Paris 1981, 243ff, 388.

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Summary

Francis of Assisi changed the world with his vision of a Christian society, in which life's opposites would be united. According to Francis of Assisi, everyone has the opportunity to improve their society, the poor and the strong alike: some are rich, some can learn, others can work. Precisely because every creature is different and full of special miracles, as Francis explained in his «Canticle of the Sun», people can supplement one another. Thus, not only royalty, such as Saint Elizabeth of Thuringia, and the intellectuals of his time were attracted to the Franciscan movement, but also the poor and the weak.

Francis praised the individual freedom of every person and emphasized that freedom comes with responsibility. The use of goods can serve the common good, testamentary freedom offers the opportunity to atone for past mistakes, and money can buy what people need. Francis taught his contemporaries that the commitment of the individual determines the positive or negative outcome of society. In society, different groups depend on one another: the money of the rich is the basis for the market and the income of others, the poor can work and create necessities, teachers impart the necessary skills to others, and even the poor give others the opportunity to show mercy.

Clearly, the 12th and early 13th centuries constituted a period of growing contradictions. The development of trade led to an increase in capital and a new prosperity for Europe. At the same time, the Franciscans, with their institutions for the sake of *caritas*, created places that welcomed those who could not support themselves. Such institutions were essential for the rest of society to function according to the rules of the economy. By supporting the needy and acting as confessors to merchants, the Franciscans helped in the emergence of a new society that could only function within the complexity of this contradiction.

The new medieval trade and economic successes led to growing tensions between the new prosperity of the merchants and the nobility on the one hand, and the poor and outcast, such as lepers and the homeless, on the other. Europe demanded new investments in infrastructure and education. These developments were not contradictory, but rather two sides of the same coin.

Franciscans not only served as confessors and advisors to the powerful and wealthy, but also lived with lepers and the homeless. Their ideal of poverty helped Franciscans to understand the needs of the miserable *personae miserabiles*, which led

to the establishment of almshouses and hospitals. Only thanks to the institutions that provided a life for the poor and the miserable could the rest of society behave according to the rules of the market. Franciscans became experts in the development of new cities and Christian communities.

It is astonishing how much Francis of Assisi and his students like Petrus Joannis Olivi (1247/8-1296/8) knew about the business practices of his time. According to Olivi, *capital* in itself was not an abomination due to a lack of alms, but rather an opportunity to improve contracts as a means of feeding European society. Just like money, capital is not inherently bad, but rather the way it is used. This is one of the first references to this central concept of European economics, which has acquired such a bad reputation in recent centuries.

It is this fundamental insight into the necessity of the *complexio oppositorum* that made his short writings so inspiring and led to so many innovations. It is therefore not surprising how well versed a monk like Petrus Joannis Olivi was in the business practices of his time.

The new market economy brought along new opportunities and risks, both economic and ethical. Merchants could find new goods or new trade routes, but they could ignore the demands of the future. Likewise, scholars could acquire new knowledge at universities without being aware of social necessities. The royal administration had to ensure the best conditions, especially a just judiciary, to maintain peace and order in the country.

Francis's influence on the law, in turn, lies in the recognition of human diversity and freedom. In the process, the concept of law was expanded and increasingly referred to subjective rather than objective law. For the role of law in the economy, this means:

- 1) Through reinterpretations, the law was opened up to a wealth of new ideas, such as setting fair prices and circumventing prohibited usury. The Norwegian legal code of 1274 reflects the idea that different social groups can complement each other and contribute to supporting the economy. Poor Norwegians were encouraged to seek work where helping hands were needed to ensure economic success for themselves and their society.
- 2) From a moral perspective, the fundamental values of the Church were emphasized, which helped to strengthen social acceptance of the new economy and protect society from obvious abuses. The Norwegian text of the «Konungs skuggsjá» (Royal Mirror) explained the benefits of knowledge and experience not only for merchants, but also for courtiers, royal advisors and the kingdom itself.

3) As confessors to lords and merchants, the Franciscans could advise on market development. At the same time, they helped to establish almshouses, hospitals, and «islands of mercy» that enabled the economy to assert itself in daily life.

However, the Franciscans did not want to become the guardians of the world's order; instead, they called on everyone to reflect on their own strengths and seize their opportunities in the interest of a better world together. The forces thus unleashed could not be escaped by the law, both in theory and in practice.

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