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New perspectives on Ulrich of Strasbourg's *De summo bono* VI: an analysis of the legal sources

The editorial project on Ulrich of Strasbourg's *De summo bono*, launched in the 80's by the *Corpus Philosophorum Teutonicorum Medii Aevi*, is nearing completion[1]. The critical edition of the sixth and last book of the *Summa* is in preparation: in 2011 the first volume was published[2]; it included Treaties I and II, and the first six chapters of Treatise III. The chapters 7–29, which complete Treatise III, constitute a second recently published volume[3]. The critical edition of Treatise IV, which is being finalized, will allow us a comprehensive understanding of the sixth book and Ulrich's moral thought. The last book of the *Summa*, indeed, represents a broad-spectrum moral treatise and will show us a new side of Ulrich. The Dominican friar theorized an ethics based on the recognition of the intellect's inherent capabilities. The anthropological model emerging from the sixth book of the *Summa* is that of a person fully in control of his own actions and, therefore, responsible for his own virtues and vices[4].

Ulrich's system was long considered entirely dependent on Albert the Great's doctrines[5] and, therefore, stood for a considerable time on the

[1] The following volumes have been already published: ULRICUS ARGENTINENSIS: *De summo bono* I. Mojsich, B. (ed.) (= CPTMA I, 1). Hamburg: Meiner 1989; II, 1–4. de Libera, A. (ed.) (= CPTMA I, 2[1]). Hamburg: Meiner 1987; II, 5–6. Beccarisi, A. (ed.) (= CPTMA I, 2[2]). Hamburg: Meiner 2007; III, 1–3. Tuzzo, S. (ed.) (= CPTMA I, 3[1]). Hamburg: Meiner 2004; III, 4–5. Tuzzo, S. (ed.) (= CPTMA I, 3[2]). Hamburg: Meiner 2007; IV, 1–2, 7. Pieperhoff, S. (ed.) (= CPTMA I,4[1]). Hamburg: Meiner 1987; IV, 2,8–14. Palazzo, A. (ed.) (CPTMA I, 4[2]). Hamburg: Meiner 2012; IV, 2, 15–24. Mojsich, B./Retucci, F. (eds.) (= CPTMA I, 4[3]). Hamburg: Meiner 2008; IV, 3. Palazzo, A. (ed.) (= CPTMA I, 4[4]). Hamburg: Meiner 2005; VI, 1–3, 6. Tuzzo, S. (ed.) (= CPTMA I, 6[1]). Hamburg: Meiner 2011; VI, 7–29. Ciancioso, S. (ed.) (= CPTMA I, 6[2]). Hamburg: Meiner 2015.

[2] ULRICUS ARGENTINENSIS: *De summo bono* VI, 1–3,6. Tuzzo, S. (ed.). Hamburg: Meiner 2011.

[3] ULRICUS ARGENTINENSIS: *De summo bono* VI, 3,7–29. Ciancioso, S. (ed.). Hamburg: Meiner 2015.

[4] ZAVATTERO, I.: *I principi costitutivi delle virtù nel* De summo bono *di Ulrico di Strasburgo*, in: BECCARISI, A./IMBACH, R./PORRO, P. (eds.): *Per perscrutationem philosophicam. Neue Perspektiven der mittelalterlichen Forschung. Loris Sturlese zum 60. Geburtstag gewidmet* (= CPTMA IV). Hamburg: Meiner 2008, 125–126.

[5] HAUREAU, B. : *Histoire de la philosophie scholastique* II 2. Paris : Durand et Pedone-Lauriel 1880, 42; THERY, G. : *Originalité du plan de la* Summa de bono *d'Ulrich de Strasbourg*, in: Revue thomiste 27 (1922), 376–397; DAGUILLON, J. : *Ulrich de Strasbourg O.P.* La summa de bono. *Livre I : Introduction et édition critique* (= Bibliothèque thomiste XII). Paris : Vrin 1930, 29–30; GRABMANN, M.: *Der Einfluss Alberts des Grossen auf das mittelalterliche Geistes-*

margins of the history of medieval philosophy. However, the gradual advancement of the critical edition enabled scholars to revise earlier interpretations. The critical edition of the *De summo bono*, according to Martin Grabmann[6], had to be functional to a better comprehension of Albert's, Theodoric of Freiberg's and Meister Eckhart's thought; nevertheless, it led to some significant findings. Recent critical studies[7] have clarified the subsistent doctrinal relationship between Ulrich and his master Albert, which is no longer perceived as a slavish dependence. It was also demonstrated that Ulrich's theories on natural providence influenced Theodoric of Freiberg's speculation[8].

However, there is much on Ulrich's thought that remains to be studied. Giovanni Nider, a 15th century German Dominican, in his *De abstinentia esus carnium* defined Ulrich as follow: "Ulricus de Argentina [...] qui tamen maximus fuit theologus, philosophus, ymmo et iurista"[9]. Ulrich was evidently considered an eminent authority in the Dominican Order not only

leben. Das deutsche Element in der mittelalterlichen Scholastik und Mystik, in: *Mittelalterliches Geistesleben. Abhandlungen zur Geschichte der Scholastik und Mystik* II. München: Hueber 1936, 324–412; DE LIBERA, A. : *Introduction à la mystique rhénane d'Albert le Grand à Maître Eckhart* (= Sagesse chrétienne 3). Paris : O.E.I.L./F.-X. de Guilbert 1984, 100.

[6] GRABMANN, M.: *Der Einfluss Alberts des Grossen auf das mittelalterliche Geistesleben. Das deutsche Element in der mittelalterlichen Scholastik und Mystik*, in: *Mittelalterliches Geistesleben. Abhandlungen zur Geschichte der Scholastik und Mystik* II. München: Hueber 1936, 362.

[7] DE LIBERA, A. : *Ulrich de Strasbourg, lecteur d'Albert le Grand*, in: IMBACH, R./FLÜELER, C. (eds.): *Albert der Grosse und die deutsche Dominikanerschule. Philosophische Aspekte*, in: FZPhTh 32 (1985), 1–2, 105–136; STURLESE, L.: *Storia della filosofia tedesca nel Medioevo. Il secolo XIII*. Firenze: Olschki 1990, 163; PALAZZO, A.: *La sapientia nel De summo bono di Ulrico di Strasburgo*, in: Quaestio 5 (2005), 495–512; BECCARISI, A.: *La «scientia divina» dei filosofi nel De summo bono di Ulrico di Strasburgo*, in: Rivista di storia della filosofia 61 (2006), 139; PALAZZO, A.: *Le apparizioni angeliche e demoniache secondo Alberto il Grande e Ulrico di Strasburgo*, in: Giornale critico della filosofia italiana 85 (87) (2006) 2, 237–253; ZAVATTERO, I.: *I principi costitutivi delle virtù nel* De summo bono *di Ulrico di Strasburgo*, in: BECCARISI, A./IMBACH, R./PORRO, P. (eds.): *Per perscrutationem philosophicam. Neue Perspektiven der mittelalterlichen Forschung. Loris Sturlese zum 60. Geburtstag gewidmet* (= CPTMA IV). Hamburg: Meiner 2008, 110; PALAZZO, A.: *"Ulricus de Argentina ... theologus, philosophus, ymmo et iurista". Le dottrine di teologia morale e di pastorale penitenziale nel VI libro del De summo bono e la loro diffusione nel tardo Medioevo*, in: FZPhTh 55 (2008) 2, 75; SACCON, A.: *Intelletto e beatitudine. La cultura filosofica tedesca del XIV secolo*. Roma: Storia e Letteratura 2012, 23; PALAZZO, A.: *Ulrico di Strasburgo, un maestro nel citare: nuove evidenze del ricorso alle opere di Alberto il Grande in* De summo bono IV 2 8–14, in: MEROI, F. (ed.): *Le parole del pensiero: studi offerti a Nestore Pirillo*. Pisa: ETS 2013, 49–75.

[8] BECCARISI, A.: *La* «scientia divina» *dei filosofi*, in: Rivista di storia della filosofia 61 (2006), 137–163; BECCARISI, A.: "Einleitung", in: ULRICUS ARGENTINENSIS: *De summo bono* II, 5–6. Beccarisi, A. (ed.). Hamburg: Meiner 2007, 6*–20*.

[9] IOHANNES NIDER: *De abstinentia esus carnium* XII, in: Wolfenbüttel, Herzog August Bibliothek, cod. Guelf. 664 Helmst., ff. 185v-186r (recte 184v–185r); I refer to the bibliographical reference reported in the article of PALAZZO, A.: *Ulricus de Argentina ... theologus, philosophus, ymmo et iurista*, in: FZPhTh 55 (2008) 2, 66.

in the field of philosophy and theology, but also in the matter of law. Even though his activity as a theologian and philosopher has been widely investigated, almost nothing has been established about his expertise in the field of law. In a recent article published in 2008 in the *FZPhTh*, Alessandro Palazzo[10] launched an introductory study on doctrines of moral theology and pastoral care treated in the sixth book of the *De summo bono* and for a long time ignored by critics. The study, based on partial critical editions, does not provide however a comprehensive framework on the legal sources consulted by Ulrich. Thanks to the edition and the critical study on Treatise III (7–29) of the sixth book a considerable number of quotations derived from legal sources were ascertained, and some of these sources have not been attested in any book of the *Summa* so far published. The recent edition fills thus a gap in the studies on Ulrich's *De summo bono*, allowing scholars to open up a new path of research regarding Ulrich's legal and economic thought. The Norwegian historian of economics Odd Langholm, indeed, hoped that the long-awaited critical study of Ulrich's work would finally clarify some of the relations existing between the economic doctrines developed by the 13th century theologians. In a volume published in 2003 by Brill, Langholm[11] declared that John of Freiburg, a Dominican friar and a pupil of Ulrich, had been led by his teacher in the elaboration of the theories on the prohibition of speculation, economic coercion and the exploitation of needs. When Langholm was conducting his research, the critical edition of the *De summo bono* was in progress, but the sixth book was still unpublished.

Moreover, Paolo Prodi[12] in a recent article lamented the shortage of critical studies on the development of the concept of theft occurring from the 13th century onwards, which would be useful to comprehend the role played by theologians and jurists of the 13th century in the birth of market. Ulrich provides several starting points for research on this issue: the entire

[10] PALAZZO, A.: *Ulricus de Argentina ... theologus, philosophus, ymmo et iurista*, in: FZPhTh 55 (2008) 2, 64–97.

[11] LANGHOLM, O.: *The merchant in the confessional: Trade and price in the Pre-Reformation Penitential Handbooks* (= Studies in medieval and Reformation Thought 93). Leiden–Boston: Brill 2003, 56.

[12] PRODI, P.: *VII: non rubare*, in: LAMBERTINI, A./SILEO, L. (eds.): *I beni di questo mondo, Teorie etico-economiche nel laboratorio dell'Europa medievale*. Atti del convegno della Società italiana per lo studio del pensiero medievale, Roma, 19–21 Settembre 2005 (= Fédération Internationale des Instituts d'Etudes Médiévales. Textes et Études du Moyen Âge 55). Porto 2010, 3 and 5: «Un problema che non mi sembra essere stato affrontato sino ad ora in tutta questa grande opera di rinnovamento storiografico è quello della trasformazione del concetto stesso di furto come sottrazione dei beni altrui [...] Ben noto è ormai il mutamento avvenuto a partire dal XIII secolo, sia in politica che in economia, con la riscoperta della politica aristotelica, del bene comune e della funzione socialmente positiva della ricchezza, ma non mi sembra ancora sufficientemente studiato il ruolo svolto dalla nuova etica nella formazione del mercato».

legal section, included in the sixth book, is nothing more than an exposition of cases in which the Dominican, on the basis of Civil law, Canon law and theology of penance, treated illicit subtractions.

The purpose of this article is, therefore, to conduct a quantitative and qualitative analysis of the legal sources recognized in the *De summo bono* VI 3, in order to contribute to the rediscovery of Ulrich's legal thought, which is attested by his contemporaries.

Furthermore, the present study aims to analyze a specific case, the *bellum iustum*[13], which involves questions regarding theft and the restitution of goods stolen during the conflict.

1. *De summo bono* VI 3: structure, questions and sources

The sixth book of the *De summo bono* is composed of five treaties and it is dedicated to the discussion on ethical virtues. Ulrich structures the book on the basis of the Aristotelian pattern adopted in the *Nicomachean Ethics* from the second to the fifth book. The treatment of virtues is interrupted in the fifth Treatise, that remains unconcluded, and in which Ulrich should have analyzed the intellectual virtues. Further to the discussion on virtue in general and the cardinal virtues carried out in Treaties I and II, Ulrich dedicated Treatise III to the virtues *adiunctae* to the cardinal virtues: liberality, magnanimity, magnificence, mildness, truth, politeness and modesty. Among these virtues, Ulrich dedicated more space to the discussion on liberality: Treatise III is composed of twenty-nine chapters and the first three chapters focused on the definition of liberality and the vice opposed to it. The consecutive nineteen chapters are dedicated to *modi* of the *illiberalitas*. These twenty-two chapters constitute a pure and simple legal section, in which the Dominican friar discussed: theft, usury, robbery, restitution of stolen goods, just war, inheritance, prescription, inquisition, homicide, simony and sacrilege. From the critical edition it has

[13] Vismara, G.: *Problemi storici e istituti giuridici della guerra altomedievale*, in: *Ordinamenti militari in Occidente nell'alto medioevo* (= Settimane di studio del Centro Italiano Studi sull'Alto Medioevo 15). Spoleto: S.A. Arti Grafiche Panetto & Petrelli 1968, 1127–1200; Clavadetscher-Thürlemann, S.: *Polemos dikaios und bellum iustum. Versuch einer Ideengeschichte*. Zürich: Juris 1985; Russell, F.H.: *The just war in the Middle Ages* (= Cambridge Studies in Medieval Life and Thought 3). Cambridge University Press 1975; Mantovani, M.: *Bellum iustum: Die Idee des gerechten Krieges in der römischen Kaiserzeit* (= Geist und Werk der Zeiten 77). Bern: Lang 1990; Loreto, L.: *Il* bellum iustum *e i suoi equivoci*. Napoli: Jovene 2001; Calore, A.: *Forme giuridiche del* bellum iustum: (Corso di diritto romano, Brescia, a.a. 2003–2004). Milano: Giuffrè 2003; Marmursztejn, E.: *Guerre juste et paix chez les Scolastiques*, in: Dessi, R.M. (ed.) : *Prêcher la paix et discipliner la société. Italie, France, Angleterre XIII^e-XV^e s.* (= Collection d'études médiévales de Nice 5). Turnhout: Brepols 2005, 123–140; Padoa-Schioppa, A.: *Profili del diritto internazionale nell'Alto Medioevo*, in: *Le relazioni internazionali nell'Alto Medioevo*. Spoleto 12 Aprile 2010 (= Atti delle Settimane 58). Spoleto: Fondazione Centro Italiano di Studio sull'Alto Medioevo 2011, 1–78.

emerged that Ulrich availed himself of a conspicuous number of sources to discuss moral questions: not only – as one would traditionally expect – the Scriptures, Albert the Great's second *Commentary* on *Nicomachean Ethics* and the works of the Fathers of the Church, but also and especially the *Corpus iuris civilis* and the *Corpus iuris canonici*, Raymond of Penyafort's *Summa de poenitentia* glossed by William of Rennes and Godfrey of Trani's *Summa super titulis decretalium*. In particular, Raymond's and Godfrey's works constitute two unknown sources, which have not until now been attested in any book published of the *De summo bono* or in the partial critical editions of *De summo bono* VI 3[14].

2. A QUANTITATIVE ANALYSIS OF THE LEGAL SOURCES

As a result of a quantitative analysis of the sources conducted on *De summo bono* VI 3 (7–29) it has emerged that: after the Bible, of which the number of occurrences amounts to 371, the most quoted authorities are Albert the Great and Raymond of Penyafort: the former authority is quoted in 233 places, and the latter in 211. If we add to the 211 quotations from Raymond the 21 occurrences in which Ulrich quotes William of Rennes's *Glosses* to the *Summa de poenitentia*, the references to the Spanish Dominican's work increase to 232. The next most quoted work is the *Corpus iuris canonici* with 206 occurrences, of which 173 derived from the *Decretum Gratiani* and 33 from Gregory IX's *Decretales*. The statistical survey reveals a significant piece of data: apart from Scripture and Albert, Ulrich founded his moral discussion on legal sources. Given the high-incidence of quotations of legal nature, no less significant are Ulrich's references to the *Corpus iuris civilis* and to Godfrey of Trani's *Summa*: each source is quoted by the Dominican 40 times. In particular, of the 40 occurrences related to the *Corpus iuris civilis*, 30 of them refer to Giustinian's *Digest*, while 10 quotes are from the *Codex*.

From the count of occurrences, however, it has emerged that the number of Albertinian quotations is significant: the recourse of Ulrich to Albert's works is not unusual; the indexes of the published critical editions demonstrate that Ulrich was referring to the entire *Corpus* of his master. In the specific case of the sixth book, the position of the Albertinian quotations is relevant: Ulrich resorted to Albert's *Commentaries* on *Nicomachean Ethics,* when he wanted to define a virtue and its opposing vice

[14] PALAZZO, A.: *La dottrina della simonia di Ulrico di Strasburgo:* De summo bono VI 3, 19–20, in: FZPhTh 55 (2008) 2, 434–470; PALAZZO, A.: *Philosophy and Theology in the German Dominican scholae in the Late Middle Ages: the cases of Ulrich of Strasbourg and Berthold of Wimpfen*, in: *Philosophy and Theology in the Studia of the Religious Orders and at Papal and Royal Courts.* Acts of the XVth Annual Colloquium of the Société Internationale pour l'Étude de la Philosophie Médiévale, University of Notre Dame, 8–10 October 2008 (= Rencontres de Philosophie médiévale 15). Turnhout: Brepols 2012, 75–105.

connected in the manner of Aristotle. In the third Treatise, indeed, the Albertinian quotations follow a fixed scheme: they are arranged in the first two chapters, in which Ulrich was describing what the object of *liberalitas* is, and from chapter 22 to 29 which are dedicated to the other virtues *adiunctae*. Ulrich dealt with these virtues according to the method established in the second Treatise: "secundum quod philosophi de eis tractaverunt per principia philosophica et non prout sunt infusae"[15].

The Albertinian quotations are implicit and out of 233 occurrences, except for three references concerning the *Summa theologiae*, the *Commentary* on *De divinis nominibus* and the *Sentences*, the remaining 230 quotations refer to the second *Commentary* on *Nicomachean Ethics*. Ulrich borrowed from his master the Aristotelian definition of virtues and consequently proceeded in the discussion following his own philosophical project. This article does not examine the recourse of Ulrich to Albert's works, which has already been widely investigated, instead it focuses on the analysis of the two legal sources most quoted by Ulrich: Raymond of Penyafort' *Summa de poenitentia* and the *Decretum Gratiani*.

3. A QUALITATIVE ANALYSIS OF THE LEGAL SOURCES

From chapter 3 to 21 of the third Treatise Ulrich stopped quoting Albert and started the legal section, in which the authorities who founded the moral discussion on the *illiberalitas* were Raymond and Gratian. According to Xavier Ochoa and Luis Diez[16], editors of the *Summa de poenitentia*, Raymond had composed a first redaction of the work between 1224 and 1226, before Pope Gregory IX entrusted to him the task of collecting the *Decretales*, which had to converge in the *Corpus iuris canonici*. Raymond began to update his *Summa* starting from 1236 in order to compose a second redaction of the work provided with the collection of the *Decretales*. Ochoa and Diez have detected that William's *Glosses* dated back to the first redaction of the work[17]. Consequently, Ulrich consulted the first version of the *Summa*. The *Glosses* circulated as a pseudo epigraphic work ascribed to John of Freiburg until the edition composed in 1718 in Lyon[18],

[15] ULRICUS ARGENTINENSIS: *De summo bono* VI 2,1. Tuzzo, S. (ed.). Hamburg: Meiner 2011, 47,8–10; ZAVATTERO, I.: *I principi costitutivi delle virtù nel* De summo bono *di Ulrico di Strasburgo*, in: BECCARISI, A./IMBACH, R./PORRO, P. (eds.): *Per perscrutationem philosophicam*. Hamburg: Meiner 2008, 112.

[16] OCHOA, X./DIEZ, A. (eds.): *Prolegomena*, in: RAIMUNUNDUS DE PENNAFORTE: *Summa de paenitentia* (= Universa Bibliotheca Iuris I/B). Roma: Commentarium pro Religiosis 1976, 80*–81*.

[17] OCHOA, X./DIEZ, A. (eds.): *Prolegomena*, in: RAIMUNUNDUS DE PENNAFORTE: *Summa de paenitentia*. Roma: Commentarium pro Religiosis 1976, 91*.

[18] OCHOA, X./DIEZ, A. (eds.): *Prolegomena*, in: RAIMUNUNDUS DE PENNAFORTE: *Summa de paenitentia*. Roma: Commentarium pro Religiosis 1976, 99*.

which appears to have for the first time correctly attributed the *Glosses* to William. The *Summa de poenitentia*, far from being a simple handbook for confessors, was considered a reference work among the *summae casuum*. The *Summa* was widely distributed in order to provide a moral and legal education to Dominican friars. It is no coincidence that the Spanish canonist began to work on his *Summa* a few years after the closure of the Lateran Council IV, which marked a focal point in the law of war, in the theology of penance and took a decisive stance as regards *iniusta acquisita* and *turpe lucrum*. Indeed, the Council sanctioned the obligation of annual confession, reiterated the condemnation of simony and usury and announced the Fifth Crusade. The questions on war, theft and restitution of stolen goods were at the center of the philosophic-theological and legal debate of the 13th century: with the birth of the merchant figure and the mercantile law, theologians and canonists were questioning the contractual forms of income considered morally reprehensible[19]. First, the questions became normative in the *Corpus iuris canonici*, then were developed in Raimond's *Summa* and finally systematized in Thomas Aquinas' *Summa theologiae* and in Ulrich of Strasbourg's *De summo bono*. Ulrich quotes, indeed, the second book of the *Summa de poenitentia*: 'De homicido, de duello, de raptoribus et incendiariis, de furtis et usuris, et tandem de negotiis saecularibus', and the occurrences are found in the entire legal section in combination with the other sources. The same applies to the quotations of the *Corpus iuris civilis* and the *Corpus iuris canonici*, except for those of Gratian's *Decretum* occurring also in chapter 27 on *mendacio*. Canons of Gratian's *Decretum* and Roman law were useful to Ulrich to provide his moral discussion with a solid legal basis, and they obviously occur throughout the legal section. Meanwhile, the occurrences related to William's *Glosses* and Godfrey's *Summa* are more concentrated: quotations from William are arranged in chapters 11–13 (*De incendiis*, *De praescriptione et usucapione*, *De iudice*) to complete Raymond's discussion. The places in which Ulrich quotes Godfrey concern chapters 14–16 (*De testibus*, *De accusatione*, *De inquisitione*). As in the case of Raymond and William, all of Godfrey's quotations are implicit and in these three chapters Godfrey represents the most quoted legal authority.

3.1 Raymond of Penyafort's Summa de poenitentia *and the* Decretum Gratiani*: the case of the just war*

The quotations derived from Raimond's *Summa* and the *Decretum Gratiani*, which are the legal authorities most often cited in the third Treatise,

[19] CECCARELLI, G.: *L'usura nella trattatistica teologica sulle restituzioni dei male ablata (XIII–XIV secolo)*, in: QUAGLIONI, D./TODESCHINI, G./VARANINI, G.M. (eds.): *Credito e usura fra teologia, diritto e amministrazione. Linguaggi a confronto (sec. XII–XVI)* (= Collection de l'École française de Rome 346). Roma: École française de Rome 2005, 7–8.

deserve special attention. In particular, it has emerged that the *Decretum Gratiani* is the intermediate source of 63 quotations: 40 from Augustine, 7 from Ambrose, 6 from Jerome, 5 from Isidore, 4 from Gregory, 1 from Gospel of John:

Augustinus, *De mend.*	10	Hieronymus, *Ad Gal.*	3
Serm.	8	*Comm. in Mich.*	2
Epist.	7	*Haebr. In lib. Gen.*	1
Enchir.	4		
Enarr. in Ps.	4	Isidorus, *Sent.*	4
Quaest. in Hept.	2	*Etym.*	1
Contra Faust.	2		
In Ioann.	1	Gregorius, *Moral.*	2
Contra Parm.	1	*Hom. in Evang.*	1
		Reg. Past.	1
Ambrosius, *De off.*	3		
Exp. in Luc.	1	Biblia, *Ioann.*	1
Exp. in Ps.	1		
Epist.	1		
De Abr.	1		

As can be noticed in the scheme above, a considerable number of patristic quotations derive from the *Decretum*. The literality of these quotations, if it is compared to the secondary source and not to the primary one, constitute a first proof of the dependence of these quotations on the *Decretum*, as in the case of *De summo bono* VI 3,8, in which it is evident that Ulrich quotes Augustine from the intermediate source:

Aug., Enarr. in Ps. CVIII 4, ed. Dekkers–Fraipoint, 1587, 37–44	Decr. Grat. II 23 3, ed. Friedberg, 896	Ulric. Argent., De summo bono VI 3 8, ed. Ciancioso 15,193–196
	Unde Augustinus in Expositione Psalmi CVIII ait:	Dicit Augustinus *Super Psalmum* illud: "Deus laudem"
[...] Reddere mala pro malis. [...] ut lex eis dederit ulciscendi modum [...] Non quia iniquum est ut recipiat unusquisque quod fecerit; alioqui lex nequaquam id constitueret; sed quia ulciscendi libido vitiosa est, magisque ad iudicem pertinet inter alios hoc decernere, quam bonum hominem sibi expetere.	[...] Reddere mala pro malis. [...] *Unde et lex modum ultionis statuit [...] non quia iniqua est ultio, quam lex statuit,* sed quia vitiosa est libido ulciscendi, magisque ad iudicem hoc pertinet inter *homines* decernere, quam bonum hominem sibi expetere.	[...] "Reddere mala pro malis. [...] *Unde et lex ultionis modum statuit, nec est iniqua ultio, quam lex statuit,* sed vitiosa est libido ulciscendi, magisque ad iudicem pertinet hoc inter *homines* decernere, quam bonum hominem sibi expetere".

A second proof is provided by the consequentiality of quotations, as in the following case, in which Ulrich quotes two *auctoritates* following the same order of the canons I and II (q. 8, Causa XXIII) of the *Decretum*:

Ulr. Argen., *De summo bono* VI 3 9, ed. Ciancioso, 16.19-22 et 23-24	*Decr. Grat.* II 23 8, ed. Friedberg, 953
[...] ut probat Innocentius [...]: "Cum a Iudeis Dominus caperetur forma sacerdotum, quorum prior erat, etiam pro se ipso arma capi carnalia prohibuit".	C. II. De eodem. Item Innocentius Papa. Cum a Iudeis, inquit, Dominus caperetur [...] forma omnium sacerdotum (quorum prior erat) etiam pro se ipso capi arma carnalia prohibuit.
Et Ambrosius: "dolor, fletus, orationes fuerunt mihi arma. Talia sunt munimenta sacerdotis. Aliter nec debeo, nec possum resistere".	C. III. De eodem. Item Ambrosius [...] dolor, fletus, orationes, lacrimae fuerunt mihi arma. Talia enim munimenta sunt sacerdotis. Aliter nec debeo, nec possum resistere.

From this survey emerges not only the dependence of these quotations on the *Decretum*, but also that the *Decretum* is by no means an occasional source, which was useful to Ulrich for borrowing popular and widely known quotations. In this regard a particularly significant case is represen-

ted by the chapter IX[20], in which Ulrich examined the necessary conditions to establish whether a conflict could be defined a just war and in which cases the goods stolen during conflict had to be returned. In this chapter Ulrich reports eight quotations derived from different authorities and borrowed from eight canons of the *Decretum*:

1) Ut probat Innocentius: "Cum a Iudeis Dominus caperetur forma sacerdotum, quorum prior erat, etiam pro se ipso arma capi carnalia prohibuit".
[Decr. Grat. II 23 8; Friedberg 953]

2) Et Ambrosius: "Dolor, fletus, orationes fuerunt mihi arma. Talia sunt munimenta sacerdotis. Aliter nec debeo, nec possum resistere".
[Ambr., Epist. LXXVa2; Zelzer 83,17–20; apud Decr. Grat. II 23 8; Friedberg 954]

3) [...] dicit Isidorus in libro *Ethymologiarum*: "Iustum bellum est, quod ex edicto geritur pro rebus repetendis aut propulsatorum" iniuriosorum "hominum causa".
[Isidor., Etym. XVIII 1; Lindsay n.2; apud Decr. Grat. II 23 2; Friedberg 894]

4) Ambrosius in libro *De officiis*: "Fortitudo, quae bello tuetur a barbaris patriam, vel domi defendit infirmos, vel a latronibus socios, plena iustitia est".
[Ambr., De off. I 27 129; Testard 47,30–32; apud Decr. Grat. II 23 3; Friedberg 897]

5) Nam ut dicit Augustinus [...] *Ad Bonifacium*: "Non pax quaeritur, ut bellum exerceatur, sed bellum geritur, ut pax acquiratur. Esto ergo bellando pacificus, ut eos, quos expugnas, ad pacis utilitatem vincendo perducas".
[Aug., Epist. CLXXXIX 6; Goldbacher 135,9–12; apud Decr. Grat. II 23 1; Friedberg 892]

6) [...] sicut dicit Augustinus in libro *De Verbis Domini*: "Militare non est delictum, sed propter praedam militare peccatum est", et subdit rationem: "rem publicam gerere criminosum non est, sed ideo rem publicam agere, ut divitias augeat, videtur esse damnabile".
[Aug., Serm. LXXXII 1; PL 39,1904; apud Decr. Grat. II 23 1; Friedberg 893]

7) Et sicut idem dicit, *Contra Manichaeum*: "In bello non culpatur, quod moriuntur quandoque morituri, ut dominentur in pace victuri, sed nocen-

[20] Ulricus Argentinensis: *De summo bono* VI 3,9. Ciancioso, S. (ed.). Hamburg: Meiner 2015, 16,20–22; 16,23–24; 16,27–17.,29; 17,29–30; 17,44–48; 19,98–101; 19,101–105; 20,139–142.

di cupiditas, ulciscendi crudelitas, implacatus atque implacabilis animus, feritas rebellandi, libido dominandi, et si qua sunt similia".
[Aug., Contra Faust. XXII 74; Zycha 672,6–10; apud Decr. Grat. II 23 1; Friedberg 892]

8) Augustinus, *Contra Manichaeum*: "Vir iustus, si forte sub rege sacrilego militet, recte potest illo iubente bellare, si, quod iubetur vel non esse contra Dei praeceptum certum est, vel utrum sit, certum non est, ita ut fortasse reum faciat regem iniquitas imperandi, innocentem autem militem ostendat ordo serviendi".
[Aug., Contra Faust. XXII 75; Zycha 673,24–674,3; apud Decr. Grat. II 23 1; Friedberg 893]

As can be noticed, the quotations are related to the causa XXIII, in which Gratian focused on questions concerning the *bellum iustum*. Clearly, the Dominican treated this question with legal expertise and he composed his moral treatise selecting his sources. Indeed, these eight quotations borrowed from the *Decretum* are combined with Raimond's quotations. Ulrich listed five necessary conditions to define a just war: the first condition stated that the war had to be fought by a secular man, who is allowed to fight; the second required that there must be a valid reason to fight; the third condition established that the motivation of war must be in any case self-defense against an offence committed by an enemy; the fourth condition stated that it was necessary to fight with a righteous intention, i.e. the desire for justice. The last condition required that war must be ordered by the authority of the church, if it is fought to defend the faith, or by the authority of the prince, if it is fought to defend the state. These five conditions had already been established by John the Teutonic in his *Glossa Ordinaria*[21], who summarized Gratian's precepts in five indispensible conditions to fight a just war: *persona, res, causa, animus, auctoritas*. These five criteria are revised by Raymond and borrowed from Ulrich, as can be seen in the synopsis below:

[21] IOHANNES THEUTONICUS: *Glossa ordinaria ad Decretum Gratiani* XXIII 2. Turin: 1588, 1523: «Bellum dicitur iniustum quinque modis: vel ratione personae, ut si fuerit personae ecclesiasticae, quibus non est licitum fundere sanguinem [...] ratione rei, ut si non est pro repetendis rebus vel pro defensione patriae [...]; vel propter causam, ut si propter voluntatem et non propter necessitatem pugnatur [...]; ex animo est inustum, ut si animo ulciscendi fiat [...]; item est iniustum, ut non sit indictum auctoritate principis».

Ulr. Argen., *De summo bono* VI 3 9, ed. Ciancioso, 16,15–18 et 26; 17,31 et 43,49–53; 18,64–66	Raim. de Penn., *Summa de paen.* II 5 17, ed. Ochoa–Diez, 485–486
[...] dicimus quinque condiciones requiri ad hoc, quod bellum sit iustum. Una est condicio personae pugnantis, scilicet ut sit *persona* saecularis, cui licet sanguinem fundere et non persona ecclesiastica, cui hoc non licet. [...] Secunda est *res*, scilicet pro qua pugnandum est. [...] Tertia condicio est *causa*, [...] Causa autem finalis est pax. [...] Quarta est *animus*,[...] scilicet ut non fiat propter odium, vel nocendi cupiditate [...] sed propter zelum iustitiae vel propter caritatem [...] vel propter oboedientiam [...] Quinta condicio est *auctoritas* ecclesiae, si pugnatur pro fide vel pro bono statu ecclesiae, vel auctoritas principis, si pugnatur pro pertinentibus ad rem publicam.	Ut autem plene liqueat de bello, nota quod quinque exiguntur ad hoc ut bellum sit iustum, scilicet: persona, res, causa, animus et auctoritas. *Persona*, ut sit saecularis cui licitum est fundere sanguinem; non autem ecclesiastica cui est prohibitum, nisi in necessitate inevitabili. *Res*, ut sit pro rebus repetendis, vel pro defensione patriae. *Causa*, si propter necessitatem pugnetur, ut per pugnam pax acquiratur. *Animus*, ut non fiat propter odium vel ultionem vel cupiditatem, sed per caritatem, iustitiam et oboedientiam. *Auctoritas*, ut sit auctoritate Ecclesiae, praesertim cum pugnatur pro fide, vel auctoritate principis.

The five necessary conditions for a just war, borrowed from Raymond's *Summa*, are interpolated by Ulrich with biblical sources and with the eight quotations derived from the *Decretum*, which are listed above. Ulrich, to establish that the necessary condition to fight was being a lay person and not a prelate, uses the definition borrowed from Raymond as a corollary, justifying it with two quotations from the *Decretum* and a biblical quotation:[22]

> «Una est condicio personae pugnantis, scilicet "ut sit persona saecularis, cui licet sanguinem fundere" et "non" persona "ecclesiastica", cui hoc non licet. Et ideo, quamvis eius iussu arma movenda sint pro negotiis fidei et ecclesiae, ut supra probavimus, non tamen eius usu et opere ut probat Innocentius per exemplum Christi dicens eum: "Cum a Iudaeis Dominus caperetur forma sacerdotum, quorum prior erat, etiam pro se ipso capi arma carnalia prohibuit", dicens Petro, qui persona ecclesiastica fuit: "Converte gladium in vaginam" *Matth.* 26. Ambrosius: "Dolor, fletus, orationes fuerunt mihi arma. Talia sunt munimenta sacerdotis. Aliter nec debeo, nec possum resistere", supple: nisi in necessitate, tunc enim clericus armis potest se defendere».

[22] Ulricus Argentinensis: *De summo bono* VI 3,9. Ciancioso, S. (ed.). Hamburg: Meiner 2015, 16,16–25.

Therefore, Ulrich reiterated the absolute prohibition for prelates to fight, with the exception of necessity, as was established by Canon law and reported by Raymond. The necessity to take up arms is established in the next *condicio*, in which Ulrich reported the popular definitions of Isidore and Ambrose, borrowed from Gratian, to reiterate that the only war granted *ex edicto* was the war in defense of the homeland against barbarians and anyone who attacked the personal safety or property of a fellow citizen. All things considered, it is a classical doctrine of *ius belli* already elaborated by Cicero[23] in order to claim goods unjustly snatched and not returned to the Roman state (*de rebus repetitis*)[24]:

> «Secunda est res, scilicet pro qua pugnandum est. Haec enim non est, nisi de qua dicit Isidorus in libro *Etymologiarum*: "Iustum bellum est, quod ex edicto geritur pro rebus repetendis aut propulsandorum" iniuriosorum "hominum causa". Ambrosius in libro *De officiis*: "Fortitudo, quae bello tuetur a barbaris patriam, vel domi defendit infirmos, vel a latronibus socios, plena iustitia est"».

Ulrich remarked on the concept of defensive war explaining that the motive of the conflict had always to be *noxia eius contra quem pugnatur*, because war against the innocent had in any case to be considered unjust, and the final cause had to be peace. In a recent article Elsa Marmursztejn[25] pointed out that in the *Glossa ordinaria* valid criteria to wage war were generically indicated *propter necessitatem*. Instead Raymond specified that the only necessity of war had to be the achievement of peace. Ulrich borrowed this concept and improved it, as usual, with a quotation from Isaiah and one from Augustine derived from the *Decretum*. As Ziegler[26] rightly highlighted in a recent article, the Bible constituted a crucial normative text for the law of war. The reference is to the Old Testament tradition and the narrations of war promoted or suffered by the people of Israel[27]:

[23] MARCUS TULLIUS CICERO: *De re publica* III 35. Ziegler, K. (ed.). Leipzig: Teubner 1969, 97, 30–31: "Illa iniusta bella sunt quae sunt sine causa suscepta. Nam extra ulciscendi aut propulsandorum hostium causam bellum geri iustum nullum potest. Nullum bellum iustum habetur nisi denuntiatum, nisi indictum, nisi de repetitis rebus"; *De Officiis* I 11,36. Atzert, C. (ed.). Leipzig: Teubner 1963, 13, 20–21: "Ac belli quidem aequitas sanctissime fetiali populi Romani iure praescripta est. Ex quo intellegi potest nullum bellum esse iustum, nisi quod aut rebus repetitis geratur aut denuntiatum ante sit et indictum"; PADOA-SCHIOPPA, A.: *Profili del diritto internazionale nell'Alto Medioevo*, in: *Le relazioni internazionali nell'Alto Medioevo*. Spoleto: Fondazione Centro Italiano di Studio sull'Alto Medioevo 2011, 12.

[24] ULRICUS ARGENTINENSIS: *De summo bono* VI 3,9. Ciancioso, S. (ed.). Hamburg: Meiner 2015, 16,26–17,30.

[25] MARMURSZTEJN, E.: *Guerre juste et paix chez les Scolastiques*, in: *Prêcher la paix et discipliner la société. Italie, France, Angleterre (XIIIe-XVe s.)* (= Collection d'études médiévales de Nice 5). Turnhout: Brepols 2005, 126–127.

[26] ZIEGLER, K.: *Biblische Grundlage des europäischen Völkerrechts*, in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte; Kanonistische Abteilung 117 (2000), 1–32.

[27] ULRICUS ARGENTINENSIS: *De summo bono* VI 3,9. Ciancioso, S. (ed.). Hamburg: Meiner 2015, 17,44–48.

> «Causa autem finalis est pax, secundum illud *Is.* 32: "Et erit opus iustitiae pax et cultus iustitiae, silentium et securitas usque in sempiternum". Nam ut dicit Augustinus: "Tantum est bonum pacis", quod ipsa etiam in bello quaeritur. Idem *Ad Bonifacium*: "Non pax quaeritur, ut bellum exerceatur, sed bellum geritur, ut pax acquiratur. Esto ergo bellando pacificus, ut eos, quos expugnas, ad pacis utilitatem vincendo perducas"».

Ulrich proceeded to define the fourth condition, which stated that the intention necessary to fight had to be righteous, i.e. originated from zeal for justice and obedience to the authority who led the war. At this point of the discussion, Ulrich made a brief digression conjecturing a *notandum*: he maintained that, although an evil conscience made the war unjust for those who perpetrated it, however, when the conflict met each of the other conditions, it could be neverthless considered a just war. Consequently, all properties confiscated from the enemy during the war did not have to be returned. Ulrich, however, specified that those who stole these goods sinned, because they operated against charity[28]:

> «Quarta est animus sive intentio recta, scilicet "ut non fiat propter odium" vel nocendi "cupiditate" [...] sed »propter zelum iustitiae« vel "propter caritatem" in defensione proximorum vel "propter oboedentiam" [...] *Notandum* tamen, quod, licet corrupta intentio faciat bellum iniustum ex parte operantis, et ita non fiat iniuste, tamen si aliae debitae condiciones sive circumstantiae assint, bellum iustum est. Et ideo, quod talis per tale bellum capit, non tenetur restituere, sed peccat mortaliter »faciendo contra caritatem«, quae non agit propter eam I *Cor.* 13».

The Dominican wanted to remark that, despite the fact that according to the positive law one who confiscated properties during an unjust war did not commit an offence, however, he committed an injustice *in foro poenitentiae*, i.e. he sinned. Even though the corrupted conscience was justified by Roman law, it could not be legitimated by Canon law: in this case the unfair invader was not guilty under the law, but he was considered culpable according to *ius divinum*. Ulrich finally defined the fifth and last condition which established that war had to be ordered by the authority of church or state[29]:

> «Quinta condicio sive circumstantia est "auctoritas ecclesiae", si "pugnatur pro fide" vel pro bono statu ecclesiae et pertinentibus ad ipsum "vel auctoritas principis", si pugnatur pro pertinentibus ad rem publicam. Nam propria temeritate bellare est gladium accipere, ut supra diximus et hoc intelligendum est, quando »bellum est de iure gentium«, ut dicit Isidorus in libro *Etymologiarum*».

[28] Ulricus Argentinensis: *De summo bono* VI 3,9. Ciancioso, S. (ed.). Hamburg: Meiner 2015, 17,55–59.

[29] Ulricus Argentinensis: *De summo bono* VI 3,9. Ciancioso, S. (ed.). Hamburg: Meiner 2015, 18,64–68.

He justified the law of war availing of Isidorian *ius gentium*[30], which established that recourse to force was allowed in defence against an armed attack (*vim vi repellere licet*), as was instituted by Justinian's *Digesta*[31]. Ulrich's implicit reference was to the concept of *moderamen inculpatae tutelae*[32], which the Dominican dealt with extensively in chapter VIII[33]:

> «Nam repellere iniuriam inferendam, id est iam paratam inferri in persona, id est in laesione hominis in corpore vel in rebus et etiam inuriam illatam personae [...] licitum est cuilibet per se, si potest, vel per potestatem superioris, si per se non potest, cum "moderamine inculpatae tutelae" [...] quia sicut dicit Isidorus V libro Etymologiarum: "violentiae per vim repulsio" est de iure naturali. Et hoc probatur per hoc, quod omnis natura a se repellit sibi contraria, quantum potest. Sed quod etiam ante illationem iniuriae personalis possit multipliciter aliquis praevenire per violentiam, cum scit hostem paratum ad laedendum ipsum, sequitut ex hoc, licet aliqui contradicant, quia non solum repellitur aliquid, cum est in se, sed etiam cum est in suis causis. Et ideo sicut de iure naturali est repellere secundum iniuriam, cum est tantum in sua causa, sic etiam prima iniuria praeveniri potest, ne inferatur. Et dici lex ff. Ad legem Aquiliam, quod »licet occidere insidiantem« ad occidendum, si aliter nequiit aliquis evadere insidias eius. Haec tamen omnia intelligenda sunt esse licita, nisi intentio sit corrupta».

Canon law availed itself of *moderamen* to define self-defense. John the Teutonic's *Glossa ordinaria*[34] clarified that the right to defense could be interpreted in three ways: firstly, violence could be crushed by arms if it was inflicted by arms, on the contrary if violence was inflicted without arms, it had to be overcome without arms; secondarily, it was necessary to respond to the attack *incontinenti et flagrante*; thirdly, the purpose of war had to be defense and not revenge. Ulrich, indeed, supposed that it was lawful to prevent an opposing threat both for natural law and positive law, as long as the conscience was not corrupted. Consequently the fourth condition for fighting a just war had not to be violated, otherwise the lawfulness of preventive defense was lessened. According to Ulrich only an

[30] ISIDORUS HISPALENSIS: *Etymologiarum* V 6. Lindsay, W.M. (ed.). Oxford: Clarendon 1911: "Ius gentium est sedium occupatio, aedificatio, munitio, bella, captivitates, servitutes, postliminia, foedera pacis, indutiae, legatorum non violandorum religio, conubia inter alienigenas prohibita. Et inde ius gentium, quia eo iure omnes fere gentes utuntur".

[31] IUSTINIANUS: *Digesta* XLIII 16 1,27, in: *Corpus iuris civilis* II. MOMMSEN, T./KRUEGER, P. (eds.). Hildesheim: Weidmann 1993, 689: "Vim vi repellere licet Cassius scribit idque ius natura comparatur: apparet autem, inquit, ex eo arma armis repellere licet".

[32] GREGORIUS IX: *Decretales* V 12, in: *Corpus iuris canonici* II. Friedberg, A. (ed.). Leipzig: Tauchnitz 1879, 801.

[33] ULRICUS ARGENTINENSIS: *De summo bono* VI 3,8. Ciancioso, S. (ed.). Hamburg: Meiner 2015, 12,108–13,126.

[34] On this issue cf. BUSSI, L.: *Echi dello* ius belli *romano nella dottrina canonistica della guerra giusta*, in: Ius Antiquum 13 (2004), 159–160.

attack in response to a threat could be considered really just by divine law, otherwise it was an attack born out of the spirit of revenge[35]:

> «Vindicta vero est, cum pro laesione infertur laesio personae, vel cum pro damno rerum invasor damnificatur sine utilitate damnificantis [...] Et hoc potest tripliciter fieri: scilicet vel ex passione iracundiae facientis appetitus vindictae, et sic semper est illicitum, et sic semper est illicitum [...] Vel ex zelo persequendi iniuriam Dei hoc ipsum inspirantis».

Ulrich clarified that expansionist war, as was established by Roman law, had to be in any case considered illicit. In the discussion on war treated by Ulrich, the *intentio* was the condition that made visible the divarication between *forum poenitentiae* and *forum contentiosum*: according to Roman law one who fought abdicating his righteous intention was not required to return goods stolen during conflict, however, he had to return them in order to conform with the *ius divinum*[36]:

> «Non solum autem qui bello iniquo homines alterius damnificavit vel laesit, tenetur ad restitutionem vel satisfactionem, sed etiam tenetur ad hoc suis hominibus, si ipsi per tale bellum sunt damnificati vel laesi ab iis, quos iniuste invasit, quia qui occasionem damni dat, damnum dedisse videtur. Et hoc verum est, etiam si ipsi cooperati sunt ei inducti ad hoc eius consilio vel timore vel coactione vel quocumque alio modo. Et hoc dico in foro poenitentiali natura, nam in foro contentioso non tenetur [...]».

But what constitutes the practice of restitution? As Ceccarelli highlighted in a recent article: in the 13th century theologians and canonists began questioning the intricate relationship linking sin, absolution and restitution. The Lateran Council IV established the impossibility of granting the remission of sins to those who hold illegally acquired goods and Augustine's precept from the letter to the Macedonian: *non remittetur peccatum, nisi restituatur ablatum*, becomes definitely law[37]. Only in the case of the *iniusta acquisita* is restitution obligatory. In the case of the *turpe lucrum*, on the other hand, restitution consisting of a charitable donation is considered as satisfactory action following absolution. In fact, according to Ulrich restitution consisted of a compensation to the person to whom the damage has been caused, paid by the person who caused the damage, that

35 Ulricus Argentinensis: *De summo bono* VI 3,8. Ciancioso, S. (ed.). Hamburg: Meiner 2015, 14,171–177.

36 Ulricus Argentinensis: *De summo bono* VI 3,9. Ciancioso, S. (ed.). Hamburg: Meiner 2015, 19,111–116.

37 Ceccarelli, G.: *L'usura nella trattatistica teologica sulle restituzioni dei male ablata (XIII–XIV secolo)*, in: Quaglioni, D./Todeschini, G./Varanini, G.M. (eds.): *Credito e usura fra teologia, diritto e amministrazione. Linguaggi a confronto (sec. XII–XVI)* (= Collection de l'École française de Rome 346). Roma: École française de Rome 2005, 7–8.

is who stole goods illegally; the restitution was related to the justice which gives everyone his due, thus the goods unjustly stolen must be returned[38]:

> «Inquantum restitutio est redditio debiti et pertinet ad iustitiam, quae reddit unicuique, quod suum est, sic ad restitutionem pertinet omne, quod alicui debetur ex eo, quod iniuste ei subtractum est, et omne tale restituendum est, dummodo restitui possit in se vel per recompensationem».

The implicit reference was to the *iustitia commutativa* described by Aristotle in the fifth book of the *Nicomachean Ethics*[39]. Ulrich, who referred to Justinian's *Digest*, and more precisely to the institution *De furtis*[40], claimed reduction of guilt for the poor who were forced to steal because of poverty. The poor man who stole out of necessity had to be distinguished from the thief who stole for gain, both for private law and for moral theology. The lust for gain violated social equity, which the state of necessity was trying somehow to rectify[41]:

> «Praedicta vero de debito restitutionis intelligenda sunt, quando subest facultas restituendi [...] licet indigentia minuat peccatum. Et sic bene dicitur *Extra De furtis*, quod, si quis per necessitatem aut per nuditatem aliquid furatus fuerit, poeniteat hebdomadas tres, si reddiderit, non cogatur ieiunare. [...] Unde cum hoc praeceptum auctoritate divina conferat in tali articulo potestatem utendi quibuscumque rebus conditis ad conservationem communis naturae humanae, talis in tali necessitate constitutus accipiendo necessitaria vitae utitur iure suo et ideo non peccat, et ideo dicitur communiter, quod necessitas facit omnia communia».

Ulrich clarified that the Old Testament law provided for the restitution of double, or fourfold and fivefold, as prescribed in the book of Exodus 22,4: "The thief should make full restitution; if he has nothing, then he shall be sold for his theft. If the theft be certainly found in his hand alive, whether it be ox, or ass, or sheep; he shall restore double". The Dominican replied saying that the *lex vetus* was valid *in foro contentioso*, because it was in conformity with the Roman law, however, *in foro conscientiae*, it was necessary to return only what has been stolen, as prescribed by the *lex nova* indicated in the Gospel of Matthew 11,30: "My yoke is easy and my burden is light"[42]:

38 Ulricus Argentinensis: *De summo bono* VI 3,6. Tuzzo, S. (ed.). Hamburg: Meiner 2011, 156,92–95.

39 Aristoteles: *Ethica Nicomachea* V 4, 7, 1132a1. Gauthier, R.A. (ed.) (= Aristoteles Latinus 26, 1–3[4]). Bruxelles: Brill 1973, 460,3–5.

40 Iustinianus: *Digesta* XLVII 2 14,11. Mommsen, T./Krueger, P. (eds.). Hildesheim: Weidmann 1993, 765A.

41 Ulricus Argentinensis: *De summo bono* VI 3, 6. Tuzzo, S. (ed.). Hamburg: Meiner 2011, 157,3–4 and 9–12.

42 Ulricus Argentinensis: *De summo bono* VI 3, 6. Tuzzo, S. (ed.). Hamburg: Meiner 2011, 158,32–45.

> «Quamvis autem secundum legem veterem debeat fieri restitutio in quadruplum vel in quintuplum vel in duplum secundum illud Ex. 22): "Si quis furatus fuerit bovem aut ovem, et occiderit vel vendiderit, quinque boves pro uno bove restituet, et quattuor oves pro una ove", et infra: "Si inventum fuerit apud eum, quod furatus est vivens, sive bos sive asinus sive ovis, duplum restituet", tamen in foro conscientiae nunc sufficit simplum restituere, quia hoc sicut et alia iudicialia, quae in onus illi populo fuerunt imposita, donec veniret iugum "suave et onus leve" cessavit et evacuatum est per Christum. Quamvis Zacheus etiam praesente Christo dicat: "Si quid aliquem defraudavi, reddo quadruplum", Luc. 19), hoc enim dixit, quia usque ad passionem Christi simul cucurrerunt lex vetus et lex nova. Dixi autem in foro conscientiae, quia in foro contentioso secus est. Nam secundum ius positivum poena furti manifesti est in quadruplum, poena vero furti non manifesti est in duplum».

Therefore, according to Ulrich the *lex vetus*, which founds the positive law, was given new meaning by Christ: "to whom all things have been handed over by his father", as described by Matthew 11. For this reason, according to Ulrich, the restitution with compensation, considered fair under private law, was unfair for moral theology, because it was against Aristotelian commutative justice and also the Christian precept.

Accordingly those who fought consciously an offensive war and appropriated the property of the adversary committed a robbery and, therefore, are obliged to return goods illegally subtracted. The Dominican in chapter VII, in which he dealt systematically with *species furti*, established that the *depraedatio* was a more serious kind of robbery "quia eis infertur violentia, quibus magis tenemur beneficientiae et amoris, et violatur fides amicitiarum"[43]. According to Ulrich looting was an act which violated not only Canon law, but also civil laws that regulate coexistence among citizens. As Prodi[44] rightly highlighted, since the 13th century the concept of theft has evolved: from the concept based on the Jewish tradition, which considered theft as a sin against the seventh Commandament (*Non furtum facies, Ex.* 20,15), i.e. an illicit subtraction, to a more complex concept which defines theft as a violation of a contract, an act which infringes the pact of *fides* concluded between citizens. A proof of the originality of Ulrich's thought on theft is provided by John of Freiburg's *Summa confessorum*[45], in which

43 Ulricus Argentinensis: *De summo bono* VI 3,7. Ciancioso, S. (ed.). Hamburg: Meiner 2015, 4,33–34.

44 Prodi, P.: *VII: non rubare*, in: *I beni di questo mondo, Teorie etico-economiche nel laboratorio dell'Europa medievale*. Atti del convegno della Società italiana per lo studio del pensiero medievale, Roma, 19–21 Settembre 2005 (= Fédération Internationale des Instituts d'Etudes médiévales. Textes et Études du Moyen Âge 55). Porto: Fédération Internationale des Instituts d'Études médiévales 2010, 3.

45 Iohannes de Friburgo: *Summa confessorum* II 5, 74. Lyon 1518, 67; on *De summo bono*'s reception see: Palazzo, A.: "Ulricus de Argentina ... theologus, philosophus, ymmo et iurista", in: FZPhTh 55 (2008) 2, 77–78; Palazzo, A.: *Ulrich of Strasbourg and Denys the Car-*

the *De summo bono* is the most quoted theological source on the questions of restitution and usury, and, with regard to theft and robbery, John admitted to preferring Ulrich to the *Glossa* to the *Decretum Gratiani*:

> «[...] Addit ibidem Ulricus. Idem etiam credo in usura, quia licet ibi transferatur dominium, tamen quia competit repetitio ed ad hoc potest compelli. Ideo plenuis ius in hoc habet verus dominius, scilicet qui solvit usuras. *Glossa* tamen ibidem dicit quod quia in usura transferatur dominium, si ipsa res usuraria adhuc apus furem vel raptore in specie remanet ipsam reddere debet iudeo vel usurario. *Sed dictum Ulrici magis etiam in hoc placet, sicut in furto et in rapina*».

As can be noticed, the common thread that holds together the whole treatise on just war, composed by Ulrich, is the issue of restitution of goods unjustly subtracted. Moreover, regarding the questions on theft and usury Ulrich developed a wide discussion, from which emerge elements of novelty and originality that will be the object of a further article.

Conclusion

The analysis of the legal sources consulted by Ulrich has led to some considerable results. The number of the legal sources which has emerged from *De summo bono* VI 3 is significant. The number of the occurrences related to these sources is also conspicuous. The method used to combine the legal sources is the same one adopted by Ulrich with Albertinian quotations: Albert, Gratian and Raymond give a basis to Ulrich's moral discussion, which proceeds following an original conceptual scheme. The ease with which Ulrich used his legal sources to treat much discussed questions in the 13th century attests in indisputable manner his reputation as a *iurista* properly attributed by John Nider. In a society based on the sacralisation of natural law, legal and moral questions found in the *ius naturale divinum* their *trait d'union*. The questions on war, theft and restitution discussed by Ulrich in the legal section show an unknown aspect of his moral system, opening up paths of research in medieval law and medieval economics and providing us with Ulrich's moral thought in all its complexity.

thusian: Textual Analysis and Doctrinale Comments, in: Bullettin de Philosophie médiévale 46 (2004) 1, 61–113; Palazzo, A.: *Ulrich of Strasbourg and Denys the Carthusian (II): Doctrinal Influence and Implicit Quotations*, in: Bullettin de Philosophie médiévale 48 (2006) 46, 163–208.

Abstract

This article focuses on the sixth book of Ulrich of Strasbourg's De summo bono. *The critical edition of the sixth book, Treatise III, 7–29 has ascertained a considerable number of unattested legal sources. The purpose of this article is to conduct an analysis of these sources recognized in* De summo bono *VI 3, in order to rediscover Ulrich's legal expertise attested by his contemporaries. Furthermore, the present study analyzes a specific case, the just war, which constitutes a focal point concerning illicit subtractions. These findings shed light on a new field of the German Dominican tradition, opening up paths of research on Ulrich's moral, legal and economic thought.*