

## Lying, Equivocation and Mental Reservation : Peter John Olivi in the context of thirteenth century thought

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### Introduction

The doctrines of equivocation and mental reservation are best known today for being satirised in Pascal's *Lettres Provinciales*. The Jesuit in these fictional dialogues presents equivocation as 'ingenious ways to avoid lying, especially when one would like to make another believe something false.'<sup>1</sup> He quotes the rule of equivocation: 'it is permitted to use ambiguous terms, causing the one hearing to understand a different meaning from that which the speaker intends.' If this is not possible, it is permitted to use a mental restriction, the rule that 'it is permitted to swear that you have not done something, which in fact you have done, understanding internally that you have not done it on a certain day, or before you were born, or silently understanding some other similar circumstance, without giving any indication in the words that are spoken out loud of this internal condition.'<sup>2</sup> Pascal thought these views were self-evidently devious, but in the large confessors' manuals from the fifteenth and sixteenth century, equivocation and mental restriction were uncontroversial and undisputed.<sup>3</sup> The theory had appeared in the most popular and conservative casuistic literature, such as the *Summa Sylvestrina*, published in 1516, which said, among other things, that a Christian who is asked about something he is obliged to keep secret, can say 'I do not know', mentally understanding the caveat 'so that it may be revealed to you'.<sup>4</sup> The doctrines only became notorious and divisive when they were pushed to extremes by certain English and Spanish authors around the turn of the sixteenth and seventeenth centuries. The Spanish canonist Martin de Azpilcueta and the English Jesuit Henry Garnet developed their theories of just concealment as members of religious groups subject to hostile interrogation; in 1590 Azpilcueta argued that a man who had promised to marry, but added a nullifying mental reservation was guilty of neither lying nor perjury, and the English Jesuit Henry Garnet wrote in pamphlet published in 1595 that a Catholic priest could without perjury deny being in a certain place under oath, knowing the contrary, if he made a secret reservation in his mind.<sup>5</sup>

The story of how the doctrines of mental reservation and equivocation were first developed is much less well known than their later descent into infamy and controversy. It is known that penitential works from the late twelfth century on often included a mention of equivocation, but the stages by which a coherent theory and set of academic

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<sup>1</sup> *Les Provinciales, Neuvième Lettre*. ed. Sellier (Paris 1999 repr. 2004) pp. 412.

<sup>2</sup> *ibid.* pp.412-413.

<sup>3</sup> Albert R. Jonsen and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley Los Angeles London 1988), pp. 195-215; Johann P. Sommerville, 'The 'new art of lying': equivocation, mental reservation, and casuistry', Edmund Leites (ed) *Conscience and Casuistry in Early Modern Europe* (Cambridge, 1988) pp. 159-184; Perez Zagorin, *Ways of Lying: Dissimulation, Persecution and Conformity in Early Modern Europe* (Cambridge, Mass. London 1990) pp.153-220.

<sup>4</sup> Jonsen and Toulmin, *The Abuse of Casuistry*, p.198.

<sup>5</sup> Martinus ab Azpilcueta, *Commentarius in cap. Humanae Aures XXII. Q.V. De Veritate Responsi; partim verbo expresso, partim mente concepto reddit* (2 vols ed.Venet. 1588) i.218-224; Jonsen and Toulmin, *The Abuse of Casuistry*, pp.207-8; \*Zagorin, *Ways of Lying*, pp. 168-175, 194-197.

arguments in favour of just equivocation were developed has not been charted. This article considers the contribution of one particular early theorist of equivocation and mental reservation, Peter John Olivi, who drew on an existing intellectual tradition of discussing practical problems and situational dilemmas, but was the first scholastic to generalise from these cases into coherent moral principles about lying and telling the truth. It will consider Olivi's debt to existing intellectual discussions of lying and the extent of his innovation.

In addition to his famous writings on prophecy and poverty, Olivi's more applied moral theology has attracted scholarly attention in the last thirty years.<sup>6</sup> In particular his writings on economy and usury has been the subject of several studies, initially because Olivi proved influential on later moral theologians;<sup>7</sup> subsequent studies have helped to situate his thought within the values and concepts of his own period.<sup>8</sup> Similar points can be made in the case of the morality of lying – Olivi's works on equivocation and mental restriction anticipated later arguments on the subject, but were also rooted in the thought-world of two existing traditions of practical moral theology, Bible commentary and confessional literature. Olivi was thus an important transitional figure in the doctrine of equivocation: he elevated what had previously been a set of special cases of conscience into general moral theories.

### **Ethical Thought about Lying**

In the background of all scholastic and penitential discussion of lying in the high middle ages, there was a standard set of teachings consisting of three widely endorsed principles.<sup>9</sup> First, lying, defined as a deliberate falsehood told with intent to deceive, is

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<sup>6</sup> See articles in Alain Boureau, Sylvain Piron (eds) *Pierre de Jean Olivi. Pensée scolastique, dissidence spirituelle et société*, (Paris 1999); for a comprehensive bibliography of recent scholarship on Olivi, see bibliography in Catherine König-Pralong, Olivier Ribordy, Tiziana Suarez-Nani (eds), *Pierre de Jean Olivi – Philosophe et Théologien*, Actes du colloque de philosophie médiévale. 24-25 octobre 2008, Université de Fribourg. *Scrinium Friburgense* 29 (Freiburg 2009); bibliography and editions 2004-2012 are provided by Catherine König-Pralong, Antonio Montefusco, Sylvain Piron et Juhana Toivanen, 'Bibliographie des travaux récents sur Olivi, 2004-2012', *Oliviana* [Online], iv, 2012, published 14 mars 2013, consulted 18 November 2013. URL : <http://oliviana.revues.org/696>.

<sup>7</sup> Amleto Spicciati, 'Gli Scritti sul Capitale e Sull'interesse di Fra Pietro di Giovanni Olivi: Fonti per la storia del pensiero economico medioevale' *Studi Francescani* 73.3-4 (1976) 289-325' idem, 'Sant'Antonino, San Bernardino e Pier di Giovanni Olivi nel pensiero economico medioevale', *Economia e Storia* 19 (1972): 315-341; Franco Mormando, *The Preacher's Demons: Bernardino of Siena and the Social Underworld of Early Renaissance Italy* (Chicago London 1999) p.37.

<sup>8</sup> See Odd Langholm on Olivi's discussions of interest, *Economics in the Medieval Schools: Wealth, Exchange, Value, Money and Usury according to the Paris Theological Tradition 1200-1350* (Leiden New York Köln 1992) pp.370-372; Giacomo Todeschini, *Ricchezza Francescana: dalla povertà volontaria alla società di mercato* (Bologna 2004) pp. 117-124; Sylvain Piron, Introduction to *Pierre de Jean Olivi: Traité des Contrats* (Paris 2013); for discussion of Olivi's method in Bible commentary and his sources, see Fortunato Iozzelli, 'La parabola del buon samaritano (Lc 10, 25-37) in Pietro de Giovanni Olivi', *Studi Francescani* 107 (2010): 61-88.

<sup>9</sup> cf. A.M. Landgraf, 'Definition und Sündhaftigkeit der Lüge nach der Lehre der Frühscholastik' *Zeitschrift für katholische Theologie* 63 (1939): 50-85, 157-180; S.

always a sin and can never be justified; second, in normal circumstances, there is no absolute obligation to reveal the whole truth: people should aim to be just and charitable in their communications, but if it would be better to conceal a fact, this is permissible and advisable.<sup>10</sup> Augustine illustrated the principle with the case of the murderer at the door. Someone accosted by a murderer seeking his victim could never justly lie, but equally he would be morally obliged not to disclose the victim's true whereabouts.<sup>11</sup> Augustine's views were widely accepted in the high Middle Ages: his teachings on lying were made accessible by the extracts in Peter Lombard's *Sentences* and Gratian's *Decretum*.<sup>12</sup> Both textbooks endorsed Augustine's views, and in sentence commentaries these principles remained stable and unchallenged. The third rule related to the eighth commandment against false testimony and to actual judicial practice; anyone speaking under oath was obliged to answer questioning and to tell the truth unequivocally. This applied in equal measure to testimony under oath and promises.<sup>13</sup>

These rules were uncontroversial. However, much like modern ethics scholars, university and school masters were interested in exploring difficult cases that seemed to undermine the universality of widely accepted moral rules. Two genres in particular lent themselves to this kind of exercise: Bible commentary and literature for confessors.

### Penitential and Confessors' Manuals

In his *Summa de poenitentia*, Raymond of Penyafort considered the dilemma of the man confronted by a murderer at the door. Asked about the whereabouts of his friend

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Vecchio, 'Mensonge, simulation, dissimulation. Primauté de l'intention et ambiguïté du langage dans la théologie morale du bas moyen age', in *Vestigia, Imagines, Verba: Semiotics and Logic in Medieval Theological Texts (XIIth-XIVth Century)*. *Acts of the XIth Symposium on Medieval Logic and Semantics, San Marino, 24-28 May 1994*. (*Semiotic and Cognitive Studies*, 4), ed. C. Marmo (Turnhout, 1997) pp.117-132; Irène Rosier-Catach, *La Parole Efficace: Signe, rituel, sacré* (Paris 2004) pp.295-323; M. Colish, 'Rethinking Lying in the Twelfth Century', in *Virtue and Ethics in the Twelfth Century*, eds. I.P. Bejczy and R.G. Newhauser (Leiden, 2005), pp.155-173; Carla Casagrande and Silvana Vecchio, *Les péchés de la langue* (Paris 2007 – translated from Italian, Rome 1991) pp.187-212.

<sup>10</sup> Augustine stated this most famously in his two short treatises on lying: *De Mendacio* ed. J. Zycha, CSEL 41 (Vienna, 1900) and *Contra Mendacium* ed. J. Zycha, CSEL 41 (Vienna, 1900). See especially *De Mendacio* 18-20, *Contra Mendacium* 4.

<sup>11</sup> *De Mendacio*, 22-24.

<sup>12</sup> *Sententiae in IV Libris Distinctae, tomus II*, Spicilegium Bonaventurianum 5 (Grottaferrata, Rome 1981) d.38, pp.213-8; *Decretum Magistri Gratiani*, ed. E. Friedberg, *Corpus Iuris Canonici* (2 vols., Leipzig, 1879-81), i, C.22, q.2, pp.866-875.

<sup>13</sup> The legal oath to tell the truth required litigants to swear to tell the whole truth that they knew, unmixed with falsehood, see, for example, Goffredus of Trani, *Summa in Titulis Decretalium*, (Venice 1564), De Testibus §15, p.211. Both the *Sentences* and the *Decretum* repeat a rule taken from Isidore, that in order to prevent fraud, the words of oaths should be interpreted according to the understanding of the listener, rather than the one talking. 'quacumque arte verborum quis iuret, Deus tamen, qui conscientiae testis est, ita hoc accipit, sicut ille cui iuratur intelligit.' *Decretum* C22 q.5 c.9; *Sententiae* III, D.39 c.11, p.227; Lombard and Gratian amend this to the rule that speech under oath should be taken to signify what the speaker and the listener and trustworthy men agree it to mean, which amounted to a prohibition of ambiguity in oaths and testimony under oath.

hiding within, the man at the door should not lie, said Raymond, but could return an equivocation such as ‘Non est hic’ (which could mean either ‘he is not here’, or ‘he does not eat here’) in order to mislead the questioner.<sup>14</sup> These comments came near the start of a long history of casuistry concerning lying and equivocation in penitential literature and confessors manuals.

From the late twelfth century on, there were several kinds of penitential work. Some were small treatises attached to statutes on confession intended for ordinary priests who were expected to hear confession, but others were bulkier, more academic works covering all aspects of sin, penitence and applied ethics.<sup>15</sup> The latter category, which included works like Peter the Chanter’s *Summa de sacramentis et animae consiliis*, and Robert of Courçon’s *Summa de penitentia*, included discussions of practical dilemmas, like the murderer at the door, as a means of resolving casuistical problems.<sup>16</sup> It was in these works that the first origins of the doctrine of mental restriction were worked out.

When the morality of lying was discussed in this genre, it was with one of two broader agendas. First, scholastics were interested in scenarios which seemed to challenge a moral principle. The case of the murderer at the door falls within this category. Another was the case of the priest asked under oath to reveal the crimes confessed to him. All university masters felt strongly that the confessor should not reveal what was said in confession – it was forbidden in strong terms in Innocent III’s constitution, *Omnis utriusque sexus*<sup>17</sup> – but were loath to conclude that the confessor should tell a lie under these circumstances. Aquinas, Bonaventure and Richard of Mediavilla’s answer was to suggest that the priest heard confessions and answered questioning in two separate personas. A confessor hears not as a man but as God (ut Deus), and therefore cannot be said to know what was said to him in any personal capacity. When he is questioned in court, his oath only requires him to say what he knows as a man (quod novit ut homo) and so he can truthfully say that he does not know about the crimes confessed to him.<sup>18</sup>

A second category of questions about lying in confessional literature concerned injury and restitution. Do lies and omissions of the truth amount to injuries that must be restored? Two examples in this genre were questions about the vendor’s duty to tell

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<sup>14</sup> Raymond of Penafort, *Summa de Poenitentia et Matrimonio* (Rome 1603/ repr. Farnborough 1967), Book 1, p.100.

<sup>15</sup> Pierre Michaud-Quantin, *Sommes de casuistique et manuels de confession au moyen âge (XII-XVI siècles)* *Analecta Mediaevalia Namurcensia* 13 (1962), pp.15-53; Peter Biller and A.J. Minnis (eds) *Handling Sin: Confession in the Middle Ages* (York 1998) pp.8-13.

<sup>16</sup> Peter the Chanter, *Summa de sacramentis et animae consiliis*, ed. Jean-Albert Dugauquier, *Analecta mediaevalia Namurcensia* 4,7, 16, 21; Robert of Courçon, *Summa de penitentia*, partially ed. V.L. Kennedy, ‘Robert Courçon on Penance’, *Medieval Studies* 7 (1945): 291-336; cf. John W. Baldwin, *Masters, Princes and Merchants: The social views of Peter the Chanter and his circle* (2 vols, Princeton 1970) ii, pp.241-246.

<sup>17</sup> *Decretales Gregorii IX*, ed. Friedberg, *Corpus Iuris Canonici*, (Leipzig 1879-81, 2 vols) vol.2 Book 5, Tit.38 c.12.

<sup>18</sup> Bonaventure, *IV Sententiarum*: vol.4 of *Opera Omnia*, ed. PP. Collegii a S. Bonaventura (Quarracchi, Florence 1889) D.21. p.2 art.2 q.1; Aquinas, *IV Sententiarum*, D.21 q.3 a.1 qc.1; Mediavilla, *IV Sententiarum* (Venice 1507) D.21 dist.4 q.4, f.114r-114v.

his customer about defects in his wares, and a wife's duty to reveal the true parentage of a child born through adultery in the case of a misappropriated inheritance. Both questions were popularly addressed in both practical guides to confessors and in more exclusively academic sentence commentaries and quodlibets, and the most common answer in both cases was that there was no absolute duty to reveal the entire truth.<sup>19</sup> It was in these penitential works that the early theory of equivocation was first developed.

Olivi addressed this kind of question with similar concerns to his contemporaries. He was more permissive than average of lying and concealing the truth, because of his views on the justice of transactions, understood only as an obligation to deliver what was promised.<sup>20</sup> In his treatise on buying and selling, Olivi asked whether a vendor is obliged to reveal a fault in his goods to the buyer. He did not endorse deliberate deception, but argued that the vendor did not have to mention the fault, so long as he charged a just price.<sup>21</sup> In a later question Olivi pushed the principle even further, by saying that merchants who dilute wine with water or artificially moisten pepper and ginger to increase the price should not be held to make restitution unless they charge significantly more than the just price.<sup>22</sup> The only exception to this rule is when all buyers are known to intend to buy pure wine, in which case the vendors would act fraudulently.<sup>23</sup>

He also considered the case of an adulterous wife who is advised to conceal the parentage of her son from her husband. Olivi discussed the question in terms of who might be harmed by such a revelation. He argues that the husband and son would be far more harmed by being deprived of the paternal and filial bond, friendship and shared pleasure of what they believe to be a family relationship than in being allowed to remain in ignorance of the 'mere truth of corporeal generation' (*sola veritas corporalis generacionis*).<sup>24</sup> Moreover, the entire family would be harmed by such a revelation that would prevent them all from living in peace, amity and concord, and the wife would perhaps be in danger of murder from her husband.

Olivi was original in setting out these questions in a treatise devoted to economic contracts; nevertheless, his answers fall squarely within the established genre of pastoral advice for lay people. His main concern was to determine whether omissions of the truth amount to injuries that should be put right via restitution. His contributions to this genre are rather conventional.

### **Moral Dilemmas in Exegesis**

A second and older context of Olivi's writings was Biblical exegesis; since late antiquity there had been a tradition of using stories where biblical characters lie as an opportunity for more general comments on the subject. In particular, late twelfth-century exegesis used Biblical commentary as a forum for applied discussion of the ethics of lying. Olivi was a prolific exegete and contributed discussions of Biblical lies in his own commentaries.

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<sup>19</sup> See Thomas Chobham, *Summa Confessorum* ed. F. Broomfield (Paris 1968) p.514; Thomas Aquinas *ST II-II* q.77 a.3; Ian P. Wei, *Intellectual Culture in Medieval Paris: Theologians and the University c.1100-1300* (Cambridge 2012), pp.287-289.

<sup>20</sup> Piron, Introduction to *Traité des Contrats*, p.20.

<sup>21</sup> *De empcionibus et vendicionibus*, in ed. Piron *Pierre de Jean Olivi Traité des Contrats*, §47-51, pp.124-6.

<sup>22</sup> *De empcionibus et vendicionibus* §84-89, pp.146-150, 348, n.88.

<sup>23</sup> *De empcionibus et vendicionibus* §88, p.150.

<sup>24</sup> *De restitutionibus* §66, p.298.

In many sections of the Bible, prophets and patriarchs appear to tell a lie. To name only a few examples, when Abraham travelled into Egypt with Sarah, he asked her to tell the Egyptians that she was his sister, so that they would not kill him (Gen 12:15), when Joseph encountered his brothers seeking grain in Egypt, he accused them of being spies, although he knew this was not the case (Gen 42:9), and even Jesus ‘feigned to go on further’ when he walked with two travellers on the road to Emmaus (Luke 23:28). In patristic times, these stories were the subject of controversy; the Manicheans pointed to stories of patriarchs apparently lying and committing bigamy in justification of their rejection of the Old Testament – they claimed that since patriarchs were sinful, the Old Testament could not truly be scripture.<sup>25</sup> Within the church, opinion was split between theologians, including Jerome and Ambrose, who argued that these stories taught that lying could sometimes be justified, and Augustine, who said that lying was always wrong.<sup>26</sup> In his own exegesis, Augustine sought to explain away the lies of the patriarchs by claiming in each case that the patriarch in question was in fact telling the truth. Thus, he argued that when Abraham asked Sarah to say she was his sister, he was not asking her to lie, since she was in fact his half-sister, and when Joseph called his brothers spies, he was talking conditionally, really meaning that they would be punished as spies, if they did not prove their innocence.<sup>27</sup> When, in the twelfth century, the monks of Laon compiled the *Gloss* to the Bible, they chose to include many of these fourth-century discussions of lying. A tradition of treating Bible stories as a cue for discussing lying and equivocation was transmitted into the high Middle Ages.

The golden age of Bible commentary as practical morality came at the turn of the twelfth and thirteenth century, among the Parisian scholars known as ‘Masters of the Sacred Page’.<sup>28</sup> What characterised these scholars was an interest in finding relevant and pragmatic meaning in the Bible; in the words of Beryl Smalley, they intended, by their Bible study, ‘not to help the religious in his meditations, but to train the scholar for an active career.’<sup>29</sup> In their exegesis, they combined the interest in moral dilemmas suggested by the Biblical narrative with a lively sense of the implications of these lessons in their own lives. When they discussed stories about lying, the masters questioned the standard Augustinian interpretation and considered the moral lessons from the Bible in the context of late twelfth-century political and economic life. Thus, in Joseph’s deception of his brothers, Peter the Chanter saw a model for twelfth century legal procedure against fraud,<sup>30</sup> and Stephen Langton compared Judith’s deception of

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<sup>25</sup> Augustine, *Contra Faustum*, ed. J. Zycha, *CSEL* 25 (Vienna, 1891) XXII.5, pp.594-595.

<sup>26</sup> Boniface Ramsey, ‘Two traditions on lying and deception in the ancient church’ *The Thomist* 49.4 (1985): 504-533.

<sup>27</sup> *De Civitate Dei*, ed. B.Dombart and A.Kalb, *CCSL* 47-8 (Turnhout, 1955), XVI.19, p.522; *Quaestionum in Heptateuchum Libri VII*, *CCSL* 33 (Turnhout 1958), q.139, pp.53-4.

<sup>28</sup> Beryl Smalley, *The Study of the Bible in the Middle Ages*, (Oxford 1952 3<sup>rd</sup> edn 1984) pp.196-263.

<sup>29</sup> Smalley, *The Study of the Bible*, p.249.

<sup>30</sup> The Chanter compared Joseph’s decision to keep his brothers imprisoned, only sending Benjamin to fetch his father to attest to their innocence, to the practice in his own day of requiring a pledge from those appealing lawsuits that they would follow through with their appeal. London, British Library MS Royal 2 C VIII, f.34vb, after the lemma ‘*in vinculis*’, i.e. the threat that the brothers will be kept in chains while one is

the tyrant Holofernes to the bishop Thomas Becket's secret holiness in the face of corrupt secular power.<sup>31</sup> Stephen Langton and Peter the Chanter's commentaries were popular throughout the following centuries.<sup>32</sup> In the thirteenth century, the tradition for including practical moral doctrines in Bible commentaries continued.<sup>33</sup>

Olivi's Bible commentaries include both ample discussion of deceiving Biblical characters and Langtonian comparisons of the moral decisions of the patriarchs with life in the contemporary church. When he commented on the story of Abraham sacrificing Isaac, Olivi compared Abraham's evasive words to those of a confessor speaking under oath. When Abraham, just before climbing the mountain to sacrifice Isaac, tells his servants, 'we will return to you' (Gen 22:5), he appears to lie, since at that point he was expecting to come back alone. Olivi said that supernatural counsels from God are excepted from normal human speech, and should not be referred to. A priest who is asked about what was said to him in confession denies what he knows, but is not considered to lie, and similarly (it is implied) Abraham's silence on his intentions to sacrifice Isaac should not be considered a deception.<sup>34</sup> This use of analogy is very similar to that of the twelfth-century masters; the point was to show that the rule of justified silence of sacramental matters holds just as much for the patriarchs as for his own times. Again, when commenting on Joseph's deception of his brothers, Olivi commented that Joseph's statement 'you are spies' should be understood as a trial of his brothers, intended to trick them into telling their secrets. He commented that 'this means of speaking can sometimes be used for a good reason by the wise, particularly by a judge and most of all by a prophet, Joseph being both of these.'<sup>35</sup> Olivi also answered a question on Judith, explaining her apparently deceptive speech as a series

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sent home to fetch Benjamin, 'Argumentum de exigenda cautione ab appellatibus quod appellationem prosequantur.'

<sup>31</sup> Cambridge Peterhouse College MS 112, f.161ra, Next to the lemma 'Quae ego sum' (Judith 12 :13) 'Sic viri sancti fallunt mundum de gestu et habitu exteriori (*sic.*). necnon faciem quod mundo placet, sed in animo mundum contempnunt, ut beatus Thomas qui gloriosus videbatur in oculis homini et amare mundana. Tamen ea contempsit et parvipendit vanitatem seculi.'

<sup>32</sup> Stegmüller lists numerous extant manuscripts especially of Stephen Langton's Bible commentaries from the twelfth and thirteenth centuries; *Repertorium Biblicum Medii Aevii* (Madrid 1949) 5.7744-7765.

<sup>33</sup> See Beryl Smalley, *The Gospels in the Schools c.1100-c.1280* (London Ronceverte 1985) pp. 135-136, 187-8, 251-254 for comments on the applied ethical thought of thirteenth century commentators.

<sup>34</sup> *Super Genesim* (22:5), pp.399-400: 'Sicut enim supernaturalia miracula sunt excepta a communi lege loquendi, sic supernaturalia et occulta et inusitata Dei consilia et mandata. Nec oportet quod sciens illa semper secundum illa loquatur, maxime quando novit hoc non expedire neque decere nec Deum hoc velle, sed sufficit quod loquatur hominibus secundum communem cursum et secundum communem notitiam. Iuxta quod et sacerdotes dicunt aliquando de sacramentaliter sibi confessis et notis quod nesciunt illa. Et tamen in hoc non mentiuntur nec reputantur mentiri.'

<sup>35</sup> *Super Genesim* (42:9) p.559: 'Tertio potest dici quod Ioseph in his et consimilibus non loquitur assertorie sed solum temptative et probative ut sic sub tali modo temptativo occasiones accipiat capiendi eos et veniendi ad eorum secreta quasi ad sibi ignota. Talis autem modus loquendi potest aliquando ex rationabili causa assumi a sapiente et praecipue a iudice et potissime a viro prophetico qualis utique Ioseph erat.'

of equivocations, comparable to divine communication with men.<sup>36</sup> Olivi used the Bible story to state moral rules about a justified form of deception admissible only to those in a position of authority. His perspective combines the interest of a teacher who wishes to bring the Biblical text to life for his students, and a reformer living within Christian institutions.

### **Olivi's Casuistry**

Olivi's most original thought on lying was in his quodlibets, in which he brought philosophical concerns to Biblical and pastoral dilemmas. He sought to give a rational explanation why equivocation and deliberate deception could sometimes be justified, whilst lying was always wrong. He devised explanations that would be equally applicable to the patriarchs and to the cases of conscience taken from penitential literature. It was here that Olivi developed his arguments on equivocation and mental restriction that bear the most resemblance to the later doctrine that became well-known in confessor's manuals.

In his fourth quodlibet, Olivi was asked, 'If someone goes to a certain place, where he has dealings with someone concerning some matter, and, in order to conceal it, intends to say some prayers there, so that when asked, he can say, 'I went there on account of praying'; whether he would be lying in saying this?'<sup>37</sup> Olivi takes the question to be analogous to the problem of Samuel who told Saul that he was going to Bethlehem to make sacrifices, when in fact he was going in order to chose David as king,<sup>38</sup> and Moses and Aaron telling Pharaoh that they were going into the desert in order to make sacrifices, when they were really planning to escape to the promised land.<sup>39</sup>

At the outset, Olivi makes it clear that lying is never permitted and that deception is only allowed in order to protect an innocent from being killed. It would not be right to use equivocation habitually or fraudulently, for example in commercial transactions, law courts or any occasions when one is required to tell the whole truth.<sup>40</sup>

The idea that equivocation is only permitted when used to save someone's life appears also in Olivi's commentary of Genesis, when he discusses Abraham's deception of Abimelech. Abraham had told Abimelech that his wife Sarah was his sister. In the Bible story, Abraham excuses himself for the deception on the grounds that Sarah could truly be called his sister because she was related to him on her father's side (Gen 20:12) and because he was afraid when he arrived in Abimelech's kingdom that he would be killed because of his wife (Gen 20:11). Olivi took it that Abraham had

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<sup>36</sup>*Quaestiones Textuales* (ed. Venice 1509) q.10 *Queritur de Judith an in hiis que pro liberatione sui populi fecit aliquot modo peccavit*, f.37vb-40rb; it has not been possible to include a full discussion of this text here.

<sup>37</sup>Quod 4.10, pp.235-239, 'An vadens ad aliquem locum, ut ibi cum aliquo aliqua tractet, et ad hoc celandum vult ibi orare, ut scilicet si interrogetur possit dicere: Ego ivi illuc causa orandi; an scilicet talis hoc dicendo mentiatur?'

<sup>38</sup> 1 Samuel 16

<sup>39</sup> Exodus 5; \*Quod 4.10 ll.25-39.

<sup>40</sup> Quod 4.10 ll.39-45. 'Dicendum quod vere absque mendacio et duplicitate potest hoc fieri et dici, et precipue ubi hoc fit intentione sancta et divina, ne detur pestiferis occasio malignandi. Unde sub tali modo loquendi licitum est occultare innocentem ne occidatur. Si quis tantum his dolose et consuetudinarie aut ex causa levi vel vitiosa uteretur, puta ad deceptorie mercandum vel in iudicio ad fallendum vel a subticendum veritatem quam ibi dicere tenetur, tunc patenter et malitiose peccaret.'

justly equivocated. Commenting on Abimelech's reproach of Abraham, 'What is this trick that you have played on us? [...] You have treated us amiss', Olivi adds, 'What [Abimelech] says would be true if Abraham had not had reason to presume that they would kill him if he said that Sarah was his wife'.<sup>41</sup> The implication is that Abraham's equivocation could only be justified when he was in fear for his life.

Returning to the quodlibet, Olivi sees a second issue in the problem; given that a deception is notionally permitted to save a life, more specifically, is equivocation a permissible category of deception? In answer of the second problem, he uses three arguments to show why equivocation is distinct from lying. He needs to establish that the claim 'I went there on account of praying' is indeed the literal truth in that situation, and that what is misleading about it is morally acceptable. His arguments are as follows.

- 1) There is no obligation to tell the whole truth, especially a truth that should definitely remain hidden.<sup>42</sup>
- 2) The phrase 'doing something on account (causa) of something' is ambiguous. It could equally be said that the cause of a bell was the forging fire and the tune, even though neither can be said to be the principal cause. So, to say 'I went there on account of praying' when in fact you mean that it was a secondary reason for going (i.e. you would not have gone unless you went under that pretext) is a valid use of the words 'on account of'.<sup>43</sup>
- 3) Whenever someone tells the truth or even remains silent when there is no obligation to tell the whole truth, his speech cannot be inherently (per se) deceptive. Therefore the listener is deceived by his own faulty inference, rather than any defect in the word, in so far as he thinks that the words mean something different from what they really signify. Words have many meanings in addition to their principle meaning, and sometimes the consequence inferred is not necessary, but only probable. And so, if someone takes a probable consequence of words for a necessary, or a certain meaning for the first and only meaning, he is deceived by his own inference.<sup>44</sup>

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<sup>41</sup> *Super Genesim*, in *Peter of John Olivi on Genesis*, ed. David Flood (St. Bonaventure NY, 2007) p.380, (20:9); 'Hoc quod dicit verum esset si Abraham non habuisset rationem praesumendi quod interficerent eum si dixisset Saram esse suam uxorem.'

<sup>42</sup> Quod 4.10. ll.47-9. 'Primum est, quod nullus de dicto suo tenetur dicere omnem veritatem, et precipue illam quam debet valde celare.'

<sup>43</sup> *ibid.* ll.49-55 'Secundum est, quod multa sunt genera causarum quibus vere competit nomen cause; unde vere dicitur quod ignis conflans fuit causa campane, et similiter quod modulus fuit causa eius, et tamen neutrum horum fuit principalis causa eius, sed solum instrumentalis, vere etiam dicitur metallum fuisse causam eius, et tamen non fuit causa efficiens sed materialis. Causa etiam secundaria vere dicitur causa, licet non sit causa prima.

<sup>44</sup> *ibid.* ll.55-64. 'Tertium est quod, si ex veritate mei dicti aut ex sola subiectiva alicuius veritatis meo dicto annexa, attamen non ex debito iuris dicende, quis fallatur, non fallitur per se, sed solum per accidens a predictis; quia nullum verum in quantum verum, habet per se fallere. Unde ille potius fallitur a defectu sue proprie estimative, per quam aliud estimat contineri in dicto quam contineatur. Nam, preter directum et principale significatum locutionis, multa sunt ibi per consequentiam significata; et consequentia aliquando non est necessaria, sed solum probabilis. Et ideo, si quis tunc sumat probabilem pro necessaria, aut tale consignificatum pro primo et proprio significato, seipsum fallit.'

Olivi touched on the question of responsibility for a misunderstanding when language is ambiguous in another Biblical quodlibet, and gave a more nuanced answer than in the case above. He was asked whether Joshua and the Israelites were obliged to keep their oath of peace to the Gabaonites.<sup>45</sup> The story goes that in order to avoid destruction at the hands of Joshua's army, the Gabaonites resorted to a ruse.<sup>46</sup> They disguised themselves and their donkeys to appear as if they were at the end of a long journey from Egypt, and went to Joshua, saying that they had come from a distant country to make an alliance. Joshua made a treaty of peace with them and ratified it by oath. When the Israelites found out that the Gabaonites in fact did come from the promised land, they kept their oath of peace, but made the Gabaonites servants.

Olivi thought that the fact that the Gabaonites entered the treaty using deceptive words had direct implications for whether the Israelites were obliged to keep their oath. Did the Gabaonites in fact enter into the treaty on false pretences? On one hand, Olivi pointed out that the Gabaonites did not actually say that they had travelled from Egypt, nor did they explicitly say they were not from the promised land, only that they had 'come from a distant country'.<sup>47</sup> To this extent, they did not directly deceive the Israelites, and so the sworn peace treaty between the two sides was valid. On the other hand, Olivi acknowledges that, understanding their words according to common usage, the Gabaonites did lie when they said that they came from a distant land (even though their words had a spiritual meaning).<sup>48</sup> Moreover, the Gabaonites knew that the Israelites did not want to enter into pacts with tribes from the promised land, so that it could be said that they violated an implicit condition in the treaty.<sup>49</sup> Olivi concludes that these last two considerations go some way to cancelling the Israelites' obligation to keep the oath (Olivi's words are that it was not a fully obligatory oath).<sup>50</sup> He decides in the end that the Israelites were actually obliged to keep peace with the Gabaonites, not on account of the oath, but because the Gabaonites were moved by fear of God in making the treaty, and it would be impious to wipe out a whole people wishing to worship one God.<sup>51</sup>

This is a more nuanced account of responsibility for misapprehension in cases of equivocation. Olivi thinks that the Gabaonites are only partially guilty of deception and lying: they did not actually state a falsehood, but allowed one to be understood. In consequence, their peace treaty was only partially valid. Considerations of what might reasonably be understood by the Israelites are in play, as well as the narrower question whether they in fact told a falsehood. Implicitly, Olivi seems to consider that the

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<sup>45</sup> Quod 2.1, pp.86-90; 'An Iosue et Israelite tenerentur servare iuramentum pacis prestitum Gabaonitis'

<sup>46</sup> Joshua 9.

<sup>47</sup> Quod 2.1, ll.33-4; 'Secundum est, quia non dixerunt expresse se non esse de terra Israelitis premissa, sed solum quod erant de terra valde longinqua.'

<sup>48</sup> *ibid.* ll.50-54; 'Primo scilicet, quia illi secundum communem intelligentiam verbi mentiti sunt se venisse de terra valde longinqua, quamvis spiritualiter esset verum [...]'.  
<sup>49</sup> Quod 2.1, ll.55-59; 'Secundo, quia Israelite non intenderant iuratorium fedus cum eis iniri, nisi subintellegendo quod non essent de terra promissa; quod quamvis in ipso actu iurandi non expresserint, prius tamen hoc expresserant dicendo eis: *Ne forte in terra que nobis sorte debetur, habitetis et non possimus fedus inire vobiscum.*' (Jos.9:7)

<sup>50</sup> *ibid.* l.70; 'non fuit plene obligativum iuramentum'

<sup>51</sup> *ibid.* ll.31-32. 35-40, 69-71.

Gabaonites' use of ambiguous language was at least partially justified; by so speaking they saved their own lives, and showed their willingness to lead a life of faith in God.

These two quodlibets offer a concrete account of how the principles described of licit equivocation can be theologically justified. The words must be truly ambiguous and in one sense true, and the person equivocating must only use this form of deception to save a life. Olivi applies greater academic rigour to the question of equivocation and deception than either his contemporary exegetes or theologians.

Olivi's thought about equivocation is interesting above all for its precision and coherence: his solutions were not substantially different from discussions of equivocation that went before, but he elevated the conversation from special pleading for an anomalous case to an intellectually satisfying theory of licit deception. Olivi's thought about speech under oath, on the other hand, was more original and distinctive. Olivi had a theory for the correct use and interpretation of oaths and testimony given under oath, which sprang from an unusual understanding of signification. It allowed him to explain some cases, in which priests appeared to speak a falsehood under oath, as occasions when words have a conventional, rather than a literal signification. These theories amounted to an early version of the doctrine of mental reservation.

Olivi was posed a question in his fourth quodlibet about the ethics of speaking the truth under oath; the familiar issue of the confessor asked under oath about crimes confessed to him.<sup>52</sup> This situation did not meet the conditions for permitted equivocation in Olivi's view because both problems deal with speech under oath, in which there is a higher obligation to tell the whole truth.<sup>53</sup> However, it did on the face of it seem to be a situation in which the priest must give an indirect or evasive answer. In order to explain why the confessor could justly deny any knowledge of crimes confessed to him, Olivi employed a theory of speech as common understanding.

As we have seen, earlier theologians had answered problems of this kind by suggesting that confessors and officials performed their duties in a separate persona from that in which they answered questions relating to their own conscience. Aquinas and Bonaventure had argued that the confessor hears confessions 'as God' and answers questioning 'as a man', and so speaks the truth when he denies any knowledge of crimes he has heard in confession. Similarly, Aquinas stated that a judge who knows by private knowledge that a defendant is innocent must nevertheless convict if the evidence brought to court requires this. The judge is acting in his persona as a public official, and not as a private individual, and so is not speaking a falsehood when he states that the defendant is guilty.<sup>54</sup>

Olivi reacted against these opinions. He objected that although the confessor hears the crimes in the persona of God, he nevertheless does hear them himself, just as we say that a legate judging on behalf of the pope, does himself make a judgment. It would not be true to say that the person confessing did not say he committed such

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<sup>52</sup> Quod. 4.9, pp.231-234; 'An confessor, qui sub sacramentali sigillo confessionis audivit crimina alicuius, possit in iudicio vel in communi locutione dicere: Ego nihil mali audivi de eo vel ab eo, nec scio eum aliquod crimen commisisse.'

<sup>53</sup> He explicitly denies the relevance of simulation or ambiguous language to this problem: 'Quod autem talis sermo sit simpliciter verus probatur ex duobus...' Quod 4.9, l.33.

<sup>54</sup> *ST* IIa-IIae q.67 a.2.

crimes [to the confessor].<sup>55</sup> Instead, Olivi suggests that what the priest says under oath is true according to common understanding. If a priest who has heard of crimes under confession, and has not heard about them in any other context, he has truly heard them, yet he can truthfully deny knowledge of them under oath because everyone who hears his testimony will understand that he knows nothing of these crimes except for what he has heard in confession:

The common, correct and more certain interpretation of a word is that which is understood, and should be understood, rather and more correctly according to its common usage and its common signification than according to its particular and unusual [signification] [...] But it is established that when we speak in an ordinary way about what we know about men in this life, we speak about human interaction considered in the ordinary way. When someone is interrogated according to due process, he is only interrogated concerning that to which he ought to respond according to the order of law. Thus, no one should understand a question or an utterance except insofar as it is within a framework of common sense and due process. And so when the confessor is interrogated about anything confessed to him, both he and everyone else should only understand this to be asking about what he knows by a common means (i.e. outside of the sacrament) and which is subject to human law. Therefore, when, by common means, he knows nothing ill of him, then most truly he can say that he knows nothing about him, for in the common usage of the word, and according to due process, it is implicit and should be taken for granted that he knows nothing in the way that it is asked about or should be asked about in the due process of law.<sup>56</sup>

Olivi says that language should be spoken and understood according to common usage. The confessor's denial is true according to common understanding; Olivi uses a superlative to emphasise the point – the confessor would ‘most truthfully’ (*verissime*) say that he does not know. Because everyone knows that a confessor must not talk about crimes confessed to him, when he denies knowledge of certain crimes, everyone should understand the significance of his testimony. Olivi takes into account the implicit

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<sup>55</sup> Quod 4.9 ll.11-17, ‘Quia quamvis in persona Dei eius crimina audiverit et sciverit, non propter hoc sequitur quin ipse audiverit, immo magis sequitur quod ipse audivit, sicut de legato iudicante vel mandante aliquid in persona Pape potius debet dici quod legatus hoc mandat, quam quod Papa mandat; et idem est de precone proclamante aliquid ex parte regis; et saltem non potest vere dici quod ille confitens non dixerit se talia crimina peregrisse.’

<sup>56</sup> Quod. 4.9. ll.36-52. ‘Secundum est communis et recta ac certior interpretatio sermonis, que potius et rectius sumitur et debet sumi secundum suum communem usum et secundum suam communem significationem quam secundum singularem et inusitatam. [...] Constat autem quod cum communiter de noticia hominum huius vite loquimur, loquimur de humana conversatione in communi modo habita. Cum etiam secundum ordinem iuris aliquis interrogatur, non interrogatur nisi de eo quod secundum iuris ordinem debet respondere. Unde nullus debet interrogationem vel locutionem intelligere nisi secundum quod est informata communi sensu et ordine iuris; et ideo cum confessor interrogatur de aliquo sibi confesso, nec ipse nec alter debet hoc intelligere, nisi de his que scit via communi et que subest humano iuri. Quando ergo per viam communem et talem nihil mali scit de illo, tunc *verissime* dicit se nihil scire de eo; nam ex communi usu sermonis et ex communi ordine iuris subintelligitur et subintelligi debet quod nihil scit per viam debito ordine iuris interrogatam vel interrogandam.’

meaning of words and legal convention as valid aspects of the meaning of speech, in addition to its literal meaning. As such, his solution to the confessor's dilemma appeals to common understanding instead of spiritual truth.

Olivi makes it clear that this kind of convention is reserved for matters pertaining to sacraments and the supernatural. To the objection that his theory would mean that anyone who secretly knows of a crime could deny knowledge of it under oath, with the implicit proviso, 'I know nothing that I can say in public', he replies that it is generally understood that divine and human matters are kept separate, and so the rule only pertains for those who have heard sacramental confession.<sup>57</sup>

This amounts to an early version of the doctrine of mental restriction; Olivi is arguing that in cases where there is an obligation to keep a secret, it is permissible to answer questions with a mental reservation, that he does not know any crimes *that can be mentioned publicly*. He stipulates, as did many other later casuists, that the mental reservation in the priest's denial should be one that would be conventionally recognised.<sup>58</sup>

### Conclusion

Olivi's thought on equivocation and mental restriction was deeply rooted in the existing genres of moral debate of his day. More than most of his contemporaries, he was interested in the situational dilemmas suggested by Bible stories, and applied their implications to his own times; this kind of commentary had a strong precedent in the exegesis of the late twelfth century. He also contributed his own answers to practical questions about lying which had first arisen in confessors' manuals.

Olivi's quodlibets on lying use Bible and penitential subject matter, but are more theoretically developed than most other discussions in this period. Olivi used these occasions to develop a more specific justification for deception by means of ambiguous language in special circumstances, and for broad mental restriction in the case of the confessor made to speak under oath. The appearance of these famous casuistical doctrines first appeared not in the context of persecuting inquisitions and procedures against heretics,<sup>59</sup> but in an attempt to rationalise existing church traditions into a coherent ethics of telling the truth.

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<sup>57</sup> Quod 4.9, ll.57-66; 'Si autem obiciatur quod secundum hoc ille qui humana via solus scit occultum crimen alicuius, posset in publico iudicio dicere: Ego nihil illius criminis scio de eo, quia secundum predicta subintelligeretur quod nihil scio vobis de iure in publico dicendum. Patet responsio quod non est simili, quia saltem hoc scitur humana via et ut aliquando secrete prelato revelandum. Preterea, ille ordo iuris est hic potissime intelligendus, per quem divina sunt ab humanis usibus segregata, sicut utique sacramentalis actus confessionis et sue auditionis sunt divino precepto et iure ab omni humano usu penitus segregata.

<sup>58</sup> For later arguments about the conditions for permitted mental restriction, see Sommerville, 'The "new art of lying"', pp.169-71.

<sup>59</sup> As suggested in Jean-Pierre Cavaillé, 'L'art des equivoques: heresie, inquisition et casuistique. Questions sur la transmission d'une doctrine medieval à l'époque moderne' *Médiévales* 21 (2002): 119-145.