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Conscience and Synderesis in John Mair

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Introduction

The following chapter will focus on how Mair understood the psychological structure underlying human moral reasoning. At the centre of the discussion are the concepts of synderesis and conscience, and the meaning of these concepts is intimately bound to Mair's understanding of how knowledge of the different kinds of moral norms develops in the human soul. Therefore, before describing Mair's view of conscience and synderesis, his use of certain pivotal concepts concerning moral judgement will be outlined. Following a description of the nature of conscience and synderesis will be a discussion of Mair's way of dealing with the problems of erroneous conscience and weakness of the will, which elucidates how he applied his theoretical views on conscience when addressing traditional questions related to it.¹

¹ In addition to different editions of Mair's commentaries on the *Sentences*, I will use his his commentary on Aristotle's *Ethics* from 1530. Mair published the *Ethics* commentary while still residing in Paris. However, one could sense some anticipation of his return to the British Isles later

Apprehension, assent and classification of moral norms

It is fair to present Mair's view of the psychology of moral reasoning first with his discussion of the concept of "law". In Mair's context, the moral, juridical, epistemological, psychological and metaphysical aspects of good and evil, and of right and wrong, were conflated in the notion of law. The concept of law was not merely the main concern of law schools, but a standard topic in discussions on ethics, theology and human psychology. Not to mention the laws of nature in natural philosophy, which were distinguished from, but not irrelevant to, the discussions on moral and juridical law.

From the viewpoint of moral reasoning, laws represent the more or less universal norms for evaluating the moral value of human actions. The notion of moral/juridical law itself has directed the discussion on moral issues in a certain direction: the basic form of a law is a moral norm in the form of a true sentence. Even if all laws were not considered as written sentences in some particular language, the possibility of being expressed in the form of an oral or written sentence was inherent in most concepts of law. This is also evident in Mair's definition of juridical/moral law, where law falls

during the same year, since the dedicatory letter to the Archbishop of York Thomas Wolsey (dated June 1st 1530) contains memories and praise of their common native country. Cardinal Wolsey is addressed in the letter as a "patron of all the erudite" (*omnium litteratorum Maecenas*) and the theological relevance of the commentary, which is said to be in accord with the Catholic faith, is highlighted with several examples. Mair, *Ethica Aristotelis peripateticorum principis* (Paris: 1530), fol. a1v.

into the more general category of signs.²

The discussion of laws is often centred in moral and juridical aspects: how different laws establish a moral or juridical obligation and how conflict between the laws should be moderated. The psychological aspect comes to the fore in that the laws establish an obligation for individual persons only insofar as individuals can understand them. For Mair, the mere apprehension of a moral norm is the first stage in the psychological process involved in moral judgement, which nevertheless precedes the judgement concerning its validity. According to the view that had become by Mair's day a standard among the various schools of thought, mere apprehensions through concepts and propositions are distinct from judgements about the apprehended propositions being true or false. Concerning laws, one can say that the power to oblige therefore presupposes only that the norms are promulgated in a way that persons are at least capable of apprehending, whether or not they actually apprehend or assent to them. However, as will be seen later, the relationship between apprehension and assent to a moral norm serves for Mair as a criterion for distinguishing between certain kinds of laws.³

2 John Mair, *Sent.* III.37.1 (1519 fol. 117va; 1528, f. 98va): "Lex est signum creaturae rationali notificatum quantum est ex parte eius eam denotans ligari ad aliquid faciendum vel non faciendum. Signum est genus legis."

3 Gabriel Nuchelmans, *Late-Scholastic and Humanist Theories of the Proposition* (Amsterdam, 1980), 75-76; Franz Joseph Burkard, *Philosophische Lehrgehalte in Gabriel Biels Sentenzenkommentar unter besonderer Berücksichtigung seiner Erkenntnislehre* (Meisenheim am Glan, 1974), 94-95. Nominalists called these acts *notitia apprehensiva* and *iudicativa* (or *adhaesiva*), whereas Scotists and Thomist used different terminology. On the problems connected

With respect to knowledge, laws fall into two rather disparate categories. Positive laws are promulgated in different ways: they may be either civil laws enacted by legal authorities or part of canon law decreed by the Church, and their power to oblige depends on their ability to create moral good for the community. As for the power to oblige, it is safeguarded by positive laws' rationality: "To this law it is enough that it forges honesty for the usefulness of the people and is not against reason, since otherwise it would be neither honest nor useful."⁴ This implies that knowing a positive law to be a law at all, a person needs to know at least something of the community where the law has been imposed. Accordingly, since the validity of a positive law is thus partly socially conditioned, it is typical that such laws vary between cultures and times: "Positive law is mutable and it can be dispensed, sometimes revoked or even abrogated through an opposing convention (*consuetudo*)."⁵ This feature in positive law underlines the importance of the possibility of knowing the contextual factors as well as the use of reason when a person considers their validity.

to this distinction among Mair's colleagues, see Alexander Broadie, *Notion and Object: Aspects of Late Medieval Epistemology* (Oxford, 1989), 125-148.

4 John Mair, *Ethica* V.7 f. 84r: "Lex positiva sive humana consuetudo est lex legitima sive legalis a philosophis data, communis positiva a theologis vocatur. Ad hanc legem sat est eam in populi utilitatem honesta cudi, et quod rationis non adversetur, quia sic nec esset honesta nec utilis...Haec positiva lex dividitur. Nam quaedam est divina (magna autem pars iuris divini est positiva) quaedam est humana canonica, civilis, municipalis, vel consuetudinalis."

5 John Mair, *Ethica* V.7 f. 84r.: "Positiva est mutabilis contra quam est dispensatio, et nonnumquam revocatio, et per consuetudinem oppositam abrogatio."

In contrast to positive laws, the binding force of natural laws is more straightforward. According to Mair, natural laws are known to be laws by all human beings, since they are written in the hearts (cf. Rom. 2: 15) of all rational creatures.⁶ In addition to being known by all humans, natural laws are typically the same for all, and not conditioned by various social or cultural circumstances.⁷

Even if the obligation of natural laws through their universal familiarity seems straightforward, the problem of how a moral norm is marked off from other norms as an immutable natural law remains. Mair defines natural law as a “practical principle which is evidently known on the basis of its terms or a conclusion drawn in an evident manner and intrinsically from such a principle”. He explicitly describes the practical principles as moral equivalents to the “common concepts of the soul (*communes animae conceptiones*)” in theoretical knowledge, such as the law of excluded middle or Euclid's axioms.⁸

6 John Mair, *Ethica* V.7 f. 84r.: ”Praeceptum morale in lege sive lex naturae est in creaturarum rationalium cordibus insculpta. Ad Romanos 2: Gentes quae legem scriptam non habent, naturaliter ea quae legis sunt faciunt etc.”

7 John Mair, *Ethica* V.7 f. 84r.: ”Adversus ius naturale nulla dispensatio admittitur, nisi forte duo mala ita urgeant ut alterum eorum necesse sit eligi. Nullum malum signanter culpae est eligendum. Nec in ulla lege est revera perplexitas. Bene autem secundum stultam opinionem hominis et sicut non sunt facienda mala ut inde eveniet bona, ita nec faciendum est minus malum ut evitetur maius.

8 John Mair, *Sent.* III.37.2 (1519 f. 118ra; 1528 f. 99ra): ”Lex naturae est principium practicum evidens ex terminis vel conclusio inde evidenter et intrinsice deducta. Sicut in speculabilibus sunt aliquae communes animae conceptiones ut IV Metaphysicae de quolibet est affirmatio vel negatio

Consequently, the definition rests on the criteria for natural laws, which are expressed in psychological terminology. Concerning the practical principles, which are natural laws in a strict sense, Mair identifies here the special relationship between apprehension and assent as the ultimate criterion for a natural law. This is even more explicit in a passage where he defines practical principles as moral norms which are assented to by a mere “intuitive or abstractive apprehension of the terms” without needing to add the notion of evidentness to the definition, although their evidentness is perhaps presupposed as the consequence of the immediate relationship between apprehension and assent. As an example of practical principles, Mair gives the following: “No disgraceful and dishonest thing is to be done”. The most important thing in the practical principles is that they are, like principles of theoretical knowledge, known to be true on the basis of the apprehension of their terms, without any need for further contextual or other kinds of knowledge.⁹

Mair's manner of understanding the practical principles to also include intuitively known singular sentences immediately raises the epistemological question of whether a person can be sure that in cognizing a singular case one cannot be deceived. In cases where one could be deceived, does the mind produce evident knowledge? Other

vera et de communibus animae conceptiones in primo Elementorum Euclidis recitatis.”

9 John Mair, *Sent.* III.37.2 (1519 f. 118ra; 1528 f. 99ra): ”Sic in agibilibus sunt propositiones notae ex terminis cuiuslibet utenti ratione sic quod sola terminorum apprehensio intuitiva vel abstractiva cum intellectu producit [1528, 1519: producunt] assensum talis propositionis influentia Dei generale non secludo. Exemplum: ut haec/nullum turpe et inhonestum est faciendum, talia vocant principia practica.”

philosophers in Mair's circle were aware of the problem that one can be supernaturally deceived in the evident intuitive cognition of a singular entity, if God chooses to remove the substance of the entity and leaves its accidents unchanged – for theologians not merely a hypothetical case, but something actually taking place in the Eucharist according to the doctrine of transubstantiation. Because of this problem, David Cranston omits the undeceivability from the qualifications of an evident assent, whereas George Lokert suggests here a notion of natural evident assent, which presupposes the idea that cognitive power cannot be deceived by natural means.¹⁰

Leaving the epistemological concerns aside, the first step – either logically or psychologically – in the formation of ethical judgement when dealing with practical principles appears as an immediate and evident assent to a universal or singular moral proposition, known on the basis of its terms. As will be seen below, Mair is unwilling to psychologically or metaphysically further explicate the grounds for why certain moral propositions appear evidently true apart from the observation that we immediately and invariably perceive certain moral qualities even in the case of singular events.

In addition to practical principles, whose evidence is founded on the immediate nature of assenting on the basis of their apprehension alone, there is another class of natural laws which are derived from the practical principles, and consequently are defined by being “intrinsically and evidently deduced” from them. Through the centrality of the

10 Broadie *Notion*, 150-151.

concept of evidentness¹¹ in the definition, we again enter the realm of a specifically psychological description of the process of forming a moral judgement. For Mair, an evident assent to a proposition (written, oral or mental declarative sentence) presupposes several psychological qualifications. The assent must be “unhesitant” and “caused by principles which necessitate the intellect”. In addition, these psychological features of assent must be true, and as a consequence of all these conditions the intellect cannot be deceived.¹²

Moral propositions as prudential notions

Laws are not the only source of moral norms in Mair's moral psychology. A link also exists between moral norms and the formation of virtues. In the prologue to the first book of the Sentences, Mair defines prudence as “judgement pointing out something to be done in such a way as it should be done or to be avoided as it should be avoided”.¹³ Prudence is thus generally the act of making a moral judgement concerning a particular act based on various moral norms. Furthermore, according to Mair, prudence is the “driver and guide of moral virtues”, which steers and directs the formation of the moral virtues.¹⁴

11 On evident assent in Mair and his colleagues, see Broadie *Notion*, 149-178.

12 Broadie, *Notion*, 150.

13 John Mair, *Sent.* I prol. 6 (1510 fol. 15vb; 1519 fol. 15vb): “Prudentia nichil aliud est nisi notitia iudicativa ostendens aliquid esse faciendum taliter qualiter fieri debet vel fugiendum taliter qualiter fugi debet.” On prudence, see also John Mair, *Ethica* VI.5 (fol. 95v).

14 John Mair, *Sent.* I prol. 6 (1510 fol. 15vb): “Prudentia est auriga et directrix virtutum

Here Mair follows the views developed by Scotus and Ockham, who consider prudence as a particular kind of practical and even partly experiential knowledge, closely connected to the formation of the moral virtues of the will but at the same time sharply distinguished from them as an intellectual phenomenon.¹⁵ Prudence is essential for the genesis and direction of virtues, since the virtues themselves are partly based on their correspondence to the correct prudential judgements. In Scotus and Ockham the same also applies to some degree vice versa: virtuous actions contribute to prudential knowledge. According to them, the genesis of certain prudential judgements are produced partly by experiential knowledge gained by virtuous activity. Mair does not seem to highlight the experiential side of prudence, but his use of the example of calming an angry person with words (used by Scotus and Ockham in this context) indicates that he also considers prudential knowledge to be partly based on experience.¹⁶

More importantly, Mair sees prudence as a kind of knowledge that is not *scientia* in a strict sense. Prudential notions also include judgements on singular and contingent acts, whereas knowledge in the strict sense (*scientia*) is confined to universal and invariant truths. However, since prudential notions also include invariant moral truths,

moralium. Idem [1519 *add*: autem] est prudentiam dirigere virtutem et eam regulare et ostendere qualiter ipsa fieri debeat.”

15 On Scotus and Ockham, see Douglas C. Langston, *Conscience and Other Virtues* (University Park, 2001), 67-69.

16 John Mair, *Sent.* I prol. 6 (1510 fol. 15vb; 1519 fol. 15vb): “[...] ut noticia iudicativa qua iudico [1519 *add* quod] iste colericus bili commotus est per levia verba mitigandus.”

prudence and the theoretical part of moral philosophy (*moralis philosophia intellectualis*) may coincide.¹⁷

This last observation underlines the fact that in Mair prudence consists of prudential notions, a specific category of judgements of the intellect which have a key role in directing the will and consequently the virtues as regards the moral quality of actions. In his discussion of synderesis and conscience Mair further elaborates his view of prudential notions by distinguishing subcategories on the basis of their relationships to different types of moral norms.

Synderesis and conscience as categories of assent

As hinted at the beginning of this chapter, the transition from a mere apprehension of a proposition to its assent is a crucial step in Mair's cognitive and moral psychology. Regarding moral propositions, Mair describes a very general kind of assent called “assent to a prudential notion” (*assensus dictaminis prudentialis*). He notes that conscience can be used as a name for such a generic notion of assent, but in that case it also includes acts of synderesis as its subclass.¹⁸ Nevertheless, the more common

17 John Mair, *Sent.* I prol. 6 (1510 fol. 15vb; 1519 fol. 15vb): “Prudentia et scientia differunt...prudentia [1519 *add vero*] est singulorum et potentium aliter se habere...non differt ab ipsamet quae est moralis philosophia intellectualis, sed non est necesse quod prudentia sit universalium et necessariorum, quod requiratur ad scientiam.”

18 John Mair, *Sent.* II.39 q. un (1510 fol. 64ra): “Conscientia nonnunquam extenditur ad omnem assensum dictaminis prudentialis, ita quod synderesis reputatur conscientia, sed non omnis conscientia est synderesis. Assensus dictaminis prudentialis inevidentis ex terminis est conscientia

usage is to consider conscience and synderesis as two subclasses of such assents. Furthermore, Mair uses the term “prudential” only incidentally here; more often he uses the attribute “practical” instead. The difference should be noted, since “prudential” associates more strongly with the generation of virtues, whereas “practical” demarcates a difference from the theoretical intellect. In any case, the assents at hand are directed to specifically moral propositions which deal with the moral good or evil of actions.¹⁹

Regarding the general outline of Mair's psychology of moral reasoning, it soon becomes evident that his description of moral reasoning process of focuses strongly on acts of the soul involving less notice of the fine distinctions between the soul's various faculties. The faculty of the intellect itself is the subject of various acts and dispositions (*habitus*) caused by those acts. In the area of practical intellect the acts and dispositions of assent are divided into two subclasses according to their function and origin in moral reasoning.²⁰

et non synderesis.”

19 Ibid. See also John Mair, *Sent.* II.39.1 (1519 fol. 148vb-149ra).

20 John Mair, *Sent.* II.39.1 (1519 fol. 148vb-149ra): “Circa hanc materiam pono aliquas conclusiones, quarum prima est: conscientia est actus intellectus. ... Secunda conclusio: sinderesis est in intellectu. Probatur: sinderesis est scintilla conscientiae, sed conscientia est in intellectu per praecedentem conclusionem, ergo et sinderesis.” See also 1528 (fol. 93rb); (1519 fol. 149va): “Ex his patet tam sinderesis quam conscientia est iudicium intellectus et non cuiuslibet intellectus sed intellectus practici et non speculativi.” From 1519 onwards Mair does not use the notion of disposition even concerning the meaning of an acquired disposition in this context.

Mair calls the first category of assent *synteresis*. This includes acts of assenting to self-evident propositions which are by nature universal principles of morality, or the dispositions produced by such acts. As seen above, the universal principles of morality, the practical principles, constitute the first subclass of natural laws. A standard example of these is “Every good is to be done”. According to Mair, when a sound human intellect thinks of such a proposition, it immediately (*protinus*) and without error assents to it. This act of assent is called *synteresis*. Mair sees *synteresis* as strongly corresponding to a similar class of acts in the speculative intellect, by which the mind understands certain self-evident truths of reason.²¹

Conscience consists of the second category of assents. Mair applies the Aristotelian notion of practical syllogism in his description of moral judgement. Conscience in a rudimentary form is an act of assent derived from *synteresis* and other assents to propositions, which constitute the premisses of a practical syllogism. An act of assenting to the conclusion, and the disposition produced by such an assent drawn from the premisses, are both called conscience. In the light of the division between the laws discussed above, the propositions which are the object of conscience may be considered as those commandments of natural law which are not included in the

21 John Mair, *Sent.* II.39 q. un. (1510 fol. 64ra): “Sicut sunt aliquae propositiones in speculabilibus per se notae quibus intellectus assentit cognitis terminis...quamprimum propositio quae est communis conceptio intellectui offertur, intellectus protinus et assentit actualiter. Et licet generetur habitus, ex isto actu sine habitu intellectus assentire potest. Sic in agibilibus per se notis directivis ad bonum vel malum intellectus protinus assentit, et assensus respectu talium dicitur *synteresis* sive actualis sive habitualis, qui in nobis non extinguitur respectu conclusionum practicarum.” See also 1519, fol. 149ra; 1528 fol. 93va.

practical principles, but derived from them. Conscience can be either true or false: a false conscience is an assent to a false moral proposition. The falsity of conscience derives from sources other than synderesis, which is by its nature unerring.²²

A particular feature of Mair's view of conscience and synderesis is related to the metaphysical nature of the phenomena that these concepts denote. As mentioned above, for Mair the concepts do not refer to any faculty or innate disposition. On the contrary, they are names for certain acts of assent, which are produced by the practical intellect without any specific underlying faculty or disposition proper to them, although they can produce a disposition for similar acts.

While continuing in broad terms the intellectualist tradition of Aquinas, which considered synderesis and conscience as phenomena belonging to the realm of the intellect rather than the will, Mair seems to adopt Gabriel Biel's *via moderna* type of criticism of the Thomist position. Following Biel, Mair rejects Aquinas's idea of

22 John Mair, *Sent.* II.39 q. un. (1510 fol. 64ra): "Quae sequuntur ex dictaminibus practicis per se notis vel evidentibus est conscientia, ita quod assensus actualis vel habitualis talium dicitur conscientia...Declaratur exemplo: Omnes honestum est amplectendum. Assensus huius est synderesis. Hoc est honestum demonstrando ieiunium vel aliquod tale, ergo hoc est amplectendum. Respectu maioris non cadit error, bene tamen est error respectu conclusionis et minoris. Similiter: Omne turpe est fugiendum, hoc est turpe demonstrando fornicationem, ergo hoc est fugiendum. Et si assensus fuerit respectu conclusionis verae practicae vocatur conscientia recta, si circa dictamen falsum vocatur conscientia erronea. Conscientia recta est assensus circa propositionem practicam recte dictantem. Conscientia erronea est assensus propositionis practicae falsae."

synderesis as an innate habitual knowledge of the self-evident principles of morality.²³ However, unlike Biel, Mair does not consider synderesis to be a name for the practical intellect itself and the potency through which the acts of synderesis and conscience emerge. He suggests instead that synderesis denotes merely the act of assenting to the self-evident principles of morality after they have been presented to the practical intellect; and conscience, accordingly, names other acts of assenting to propositions which follow from these first principles. In the case of synderesis, this is a position that Biel explicitly rejects.²⁴ It should be noted that Aquinas and Biel also considered conscience to be merely an act of the intellect even if synderesis was, according to Aquinas, an innate habit and for Biel a potency. To understand Mair's position it is also important to note that like Biel, he presupposes a sharp distinction between the propositional content of the intellect and acts of assent concerning the content.²⁵

Mair's main argument against Biel is based on the correspondence between acts of the theoretical and practical intellect. He notes that since there seems to be no need to posit a distinct power for assenting to the first principles of the theoretical intellect,

23 John Mair, *Sent.* II.39 q. un. (1510 fol. 64ra): "Et hoc non est per habitus innatos, quia anima nostra est tanquam tabula rasa, secundum Philosophum tertio De anima, in prima productione, quamprimum propositio quae est communis conceptio intellectui offertur, intellectus protinus et assentit actualiter." Biel, *Collectorium* II.39 (658, D 22-31); Michael G. Baylor, *Action and Person: Conscience in Late Scholasticism and the Young Luther* (Leiden, 1977), 93; 96-7. See also Mair, *Ethica* f. 84r, where Mair explicitly denies any disposition of the natural law inscribed in our hearts.

24 Biel, *Collectorium* II.39 (658, D 22-31); Baylor, *Action*, 99.

25 Baylor, *Action*, 99.

there should neither be such concerning the practical principles. Therefore it is enough to say that the power behind the above-mentioned two categories of acts would be simply the theoretical intellect. Synderesis and conscience would then simply name two classes of the theoretical intellect's acts, distinguished by different kinds of propositions – first principles vs. propositions derived from the first principles – as their objects.²⁶

It seems that Mair was attempting to simplify the psychological theory with respect to Biel's position. It would be tempting to consider Mair's position as a follow-up of Biel's *via moderna* type elimination of unnecessary metaphysical entities, which Biel carried out in the case of innate habits. If this were Mair's intention, it is not clear whether he gained very much by renouncing the idea of synderesis as a power, although in his theory the parallelity of the two intellects may be more harmonious than in Biel.

In Biel we indeed find a similar distinction between assents of the theoretical intellect. Assent to first principles is called 'intellect' and assent to the conclusion following the first principles is called 'knowledge' (*scientia*).²⁷ These two types of assent would

26 John Mair, *Sent.* II.39.1 (1519 fol. 149ra): "Tertia conclusio: sinderesis et conscientia ab intellectu distinguuntur. Patet sunt accidentia eius et ei inhaerent. Probatur haec conclusio. Aliter si sinderesis non distingueretur ab intellectu hoc tenet eo sicut dicunt, quod intellectus semper habet sinderesim, hoc est iudicium practicum de evidenti propositione ex terminis. Sed hac via nullus esset assensus principiorum contra Aristotelem primo Posteriorum et omnes." See also John Mair, *Sent.* II.39 q. un. (1510 fol. 64ra).

27 Burkard, *Philosophische*, 96.

thus nicely correspond to the acts of synderesis and conscience in the practical intellect.

One might still ask for Mair's justification for not considering synderesis and conscience as powers of the soul. It seems that similar reasons which lead Biel and Ockham to reject the notion of synderesis as an innate habit are not applicable to its status as a power of the intellectual soul. Biel shared Ockham's conviction that innate habits are not to be allowed in general. For Ockham, the main reason for denying the existence of innate habits was that the notion of an innate habit is self-contradictory. Whereas Ockham found no place for synderesis in his account, even Biel, who adopted the concept, did not consider it an innate habit, but as a faculty instead.²⁸

According to Biel, distinguishing between the soul's powers does not presuppose a real or formal distinction concerning the soul's essence, and therefore positing a distinction between the powers does not add unnecessary new entities or compromise the indivisibility of the intellectual soul. The names of the powers are only connotative concepts, which signify the essence of the soul but connote it differently as a principle of diverse mental acts. Therefore, if we are able to distinguish a specific class of mental acts, as in the case of synderesis, it is, from this viewpoint, justified to distinguish a specific power of the intellect as a source of these acts. And this is how Biel actually defines synderesis: "The name synteresis stands for the intellectual potency itself, connoting its natural assent to the practical principles." In all of this,

28 Baylor, *Action*, 78; 96.

Biel did not have to depart from the psychological framework that Ockham had laid.²⁹

Biel had yet a stronger reason for seeing synderesis as a power. This relates to the fact that he did not consider conscience to be a distinct power even if he could attribute a specific type of act to it. According to the traditional way of speaking, synderesis was considered a kind of spark that cannot be extinguished. This expressed the idea that the most corrupt sinners had some kind of knowledge of the self-evident principles of morality, even if their actual moral judgement, their conscience, was sometimes leading them astray. According to this way of speaking, it would seem untenable to call synderesis merely an act which has only a transient existence. To call synderesis the permanent power to assent to the self-evident principles of morality gives it the nature of a permanent potency, one which is not necessarily always actual. In contrast, conscience may be considered as an act of the practical intellect, which may or may not be actualized at a certain point in time. More specifically, Biel considered conscience to be an act of synderesis.³⁰

Mair seems to be aware of the problem, and while he adhered to the traditional concept of synderesis, one begins to suspect if his view was actually so different from Biel's, which he explicitly rejects nevertheless. It is exactly in answer to this problem where Mair presents his main argument against Biel, namely that the self-evident principles of theoretical knowledge are of the same kind. At the heart of his argument is the contention that according to Biel's reasoning ("if synderesis is an act, it cannot

29 Baylor, *Action*, 96-97. Trans. Baylor.

30 Baylor, *Action*, 98.

be inextinguishable”), one should conclude that an intellection (an act of the theoretical intellect) would not be an assent to the self-evident theoretical principles “which nobody holds.”³¹

Mair passes over in silence Biel’s distinction between the different meanings of synderesis. According to Biel, synderesis is inextinguishable in various ways, according to the different meanings of the term. As a power, synderesis is simply inextinguishable in all humans; but as an act, if one understands the terms clearly, it may be impeded but not completely extinguished. If, however, someone is for some reason unable to apprehend the terms of a self-evident proposition clearly, the synderesis in the meaning of an act of assent may be impeded. It is therefore clear that Biel did not, as Mair seems to presuppose, understand synderesis exclusively as a power, but included in his idea of synderesis also the act of the power.³²

31 John Mair, *Sent.* II.39 q. un. (1510 fol. 64ra-b): “Forte dicis: synderesis non est extinguibilis, ut Glossa innuit Ezech. primo. Quilibet assensus extinguitur, ergo non est assensus. Propter hanc rationem tenet Gabriel synderesim esse intellectum. Sed istud non valet. Ratio sua concluderet eodemmodo quod intellectus non esset assensus dignitatum speculativarum distinctus ab anima intellectiva. Communes animae conceptiones non extinguuntur eodemmodo, sed nemo hactenus hoc tentavit tenere. Quando doctores dicunt: synderesis non extinguitur, hoc est, quantumcunque malus sit homo adhuc et inheret assensus propositionum per se notarum in agibilibus sicut in speculabilibus. Nemo est qui non assentiat talibus: Omne turpe est removendum, omne honestum persequendum. Et talis synderesis non extinguitur in malis licet in conclusionibus remotis quae deducuntur ex illis principiis sit error in quibus plurimum flagitiosi et vitiis irretiti aberrant in quibus est remorsus conscientiae eos tanquam sentis incessanter pungens.”

32 Biel, *Collectorium* II.39 (664, H 41-57): “Unde clarius respondetur ad dubium, quod de synderesi possumus loqui quantum ad id quod est vel quantum ad actum eius. Quantum ad primum

Therefore Biel did not consider even synderesis, as an act, to be totally inextinguishable, but conceded that, understood as an “immediate act”, synderesis is not to be extinguished, but only impeded. What Biel refers to here as an “immediate act”, ie. an act of assent which necessarily follows when a self-evident proposition is clearly understood, is obviously the same act that Mair has in mind when he defines synderesis as an act. This would suggest that Mair does not actually present a rival understanding of synderesis, but merely highlights one aspect of Biel’s concept as content of the whole concept of synderesis. It remains unclear, however, why Mair so unequivocally refused to grant synderesis the status of a power in his psychology.

Erroneous conscience

Mair shares the view according to which the conscience is a kind of internal judge,

est ipsa potentia intellectiva. Et illa est ipsa natura rationalis, quae manet in daemonibus et damnatis. Quantum ad actum possumus dupliciter loqui: Vel quantum ad actum immediatum; et hic est assensus principii practici evidentis ex terminis. Et quantum ad hunc extingui non potest, potest autem impedi. Non potest extingui, quin apprehensis clare terminis assentiat. Sic enim daemones et damnati apprehensis principiis assentiunt; alioquin non remurmurarent, quia remurmurare nihil aliud est nisi certe et evidententer cognoscere contrarium principii practici fieri non debere, sicut instigare ad bonum nihil aliud est quam assentire et cognoscere principium ostendens aliquam operationem esse bonam et iustam eamque fieri debere...Verum impedi potest, quia potest ratio turbari tantum poenis vel delectationibus aut alia dispositione necessaria, quod terminos principii clare apprehendere non potest aut se ad ipsum principium convertere ipsum advertendo, et sic impeditur quantum ad assensum.”

whose decree one is obliged to follow, since God has placed it into human beings to direct their moral behaviour in cases where there is no external teacher.³³ This naturally leads to discussing the problem of an erroneous conscience. When conscience dictates something that is contrary to God's law, is the dictate of conscience to be obeyed? Here Mair follows the answers outlined by Biel before him: (a) in the case of an invincible ignorance, where a person finds it impossible to gain knowledge of divine law, one must follow one's conscience, even if it is erroneous, and (b) where such a case of invincible ignorance does not exist, one is obliged to set aside the erroneous dictate of the conscience.³⁴

However, when discussing the question of “whether anyone contradicting one's conscience sins” Mair reformulates his answer in an interesting way. In 1510 he begins with a statement that “everyone contradicting one's conscience sins” explaining that everything one does against one's conscience, that is, believing that it is a sin actually commits a sin. This also applies to when one mistakenly takes a statue to be a living human being and tries to kill it.³⁵ Only after this does Mair present another

33 John Mair, *Sent.* II.39 q. un. (1510 fol. 64ra): “Quicumque contravenit suae conscientiae peccat...quia non possumus habere semper doctorem extrinsecum, Deus dat nobis conscientiam nostram regulatricem actuum nostrorum.”

34 On Biel see Baylor, *Action*, 104-106.

35 John Mair, *Sent.* II.39 q. un. (1510 fol. 64rb): “Quicumque contravenit suae conscientiae peccat. Patet: Omne quod non ex fide est peccatum est...Confirmatur quia non possumus habere semper doctorem extrinsecum, deus dat nobis conscientiam nostram regulatricem actuum nostrorum, quicumque credit occidere Sortem et vult efficaciter tamen peccat percutiens statuum quam credit esse Sortem, ac si Sortem occideret, quia facit quod in se est, sed ille qui difformat se

statement according to which “someone following one's conscience sins” which is confirmed by situations in which a person acts according to his conscience but clearly against God's precept. Mair takes his examples from the persecutions of the Christians.³⁶

Later in 1519 Mair begins his answer to the same question by changing the order of the statements. The case where a person unjustifiedly follows his conscience, against the precept which one should know, gains prominence here. He also explicates more clearly the supporting role of conscience with regard to the precepts given by one's “superior” or “instructor”: conscience is to be followed only when the guidance of an external instructor is not available. Mair explains the persecution of Christian martyrs on the basis of this rule.³⁷

An interesting detail in Mair's discussion of an erroneous conscience is his way of integrating the psychological analysis into the discussion in his discussion of an example where Socrates thinks (like some kind of Robin Hood) that it is right to steal from a particular rich person in order to give the riches to a poor one. It may be of some importance that Mair formulates the case in terms of individual persons, since a

conscientiae erroneae vel recte credit se male agere et vult tamen agere, ergo peccat.”

36 John Mair, *Sent.* II.39 q. un. (1510 fol. 64rb): “Secunda propositio: Aliquis conformans se conscientiae suae peccat. Probatur: quicumque contravenit praecepto Dei vel prohibitioni peccat. Aliquis conformans se conscientiae suae est huiusmodi, igitur talis peccat. Consequentia liquet cum maiore. Minor patet de Iudaeis qui putabant se obsequium praestare Deo occidentibus Christum. Similiter Mahometistae existimant se bene agere occidendo Christianos.

37 John Mair, *Sent.* II.39.1 (1519 fol. 149rb; see also 1528 fo. 94ra).

moral qualification of the rich person under discussion, namely greediness, seems to serve as a particular cause of the conscience's contextual judgement.³⁸

Mair answers first that here one is obliged to renounce the erroneous conscience that contradicts the commandment prohibiting stealing (which according to Mair is an immutable natural law.)³⁹ However, Mair poses a further counter-argument: What if this first judgement of the conscience to steal, which one could call a kind of preliminary moral intuition, is so powerful that even after having consulted the precepts of the moral law the conscience is not able to renounce its first judgement and opts to stealing? Does not the conscience act by necessity, or if not so, does not the judgement of the erroneous conscience still excuse it's violation of the commandment of God, since no-one can completely renounce an erroneous

38 John Mair, *Sent.* II.39 q. un. (1510 fol. 64rb): "Contra ista arguitur. Sequitur quod aliquis esset perplexus inter duo peccata quod esset necessitatus in alterum incidere. Consequens est falsum, ergo et antecedens. Probo consequentiam: habeat Sortes conscientiam quod debet furari ab isto divite ad dandum huic pauperi. Tunc non furando peccat ex prima conclusione, furando peccat ex secunda conclusione." Mair contrasts the greediness of the rich person explicitly with the goodness of the poor person in the formulation from 1519 (fol. 150ra; see also 1528 fo. 94rb): "Conscientia erronea dictet Socrati quod est capiendum alienum ab avaro divite ut detur bono pauperi."

39 John Mair, *Sent.* II.39 q. un. (fol. 64rb-va): "Modo potest deponere illam conscientiam, nec patet ei alia via peccatum evadendi." According to Mair, the commandment not to steal, together with other commandments of the second table of the Decalogue, belongs to natural law, since it can be considered as a direct consequence of the Golden Rule. See John Mair, *Sent.* III.37.11 1519 fol. 125va-b.

judgement in an instant, it necessarily remaining in effect for a period of time?⁴⁰

Mair admits that such an urge to justify stealing may remain, but he solves the problem of contrary judgements by differentiating the psychological components necessary for a binding judgement of the conscience. He states that after one has concluded that stealing is not allowed, the whole act of justifying the stealing does not disappear in an instant. In fact, an assent to justify it remains to some degree, but one is able to choose a contrary assent that stealing is forbidden. Therefore, even if the first assent remains as a psychological fact, because of the new contrary judgement one is able to disagree with it and not sin against the divine commandment. Therefore one is not forced to follow an erroneous judgement, and the mere presence of the original erroneous judgement in one's mind does not excuse one from not obeying the divine commandment.⁴¹

Whether or not it is psychologically plausible, Mair's initial position is indeed rather

40 John Mair, *Sent.* II.39 q. un. (1510 fol. 64va): "Contra hoc arguitur. Iste habet ita vehementem conscientiam quod furandum est ab isto avaro divite quod non potest deponere conscientiam. Ergo vel necessitabitur peccare vel conscientia erronea contra praeceptum dei eum excusabit. Insuper nemo potest actum totum in instanti resecurare; de necessitate continuat per aliquod tempus."

41 John Mair, *Sent.* II.39 q. un. (1510 fol. 64va): "Quando secundo replicas, non potest totum actum in instanti resecurare, transeat, istud resecurat quamprimum potest. Continuatio illa naturalis non est peccatum ex quo sequitur ergo aliquis contraveniens suae conscientiae nullomodo peccat. Elicio conscientiam, hoc est habeo assensum quod furandum est ab hoc avaro divite, in instanti praesenti incipio habere nunc displicentiam de peccato meo sicut possum naturaliter et nolo furari ab isto divite stante assensu qui adhuc non est omnino remissus, sed in remittendo tendit ad non gradum. Iam ego contravenio conscientiae plene dictante et non pecco novo peccato."

unsatisfactory since it presupposes that one can at the same time assent to two mutually contradictory norms concerning a particular thing to be done. In fact, in 1519 Mair refines his position and denies that there could be two such concurrent contradictory assents. When one judges that something be commanded of the conscience, the contradicting norm ceases to be a commandment and in a way becomes a mere apprehension of a non-binding norm. The solution makes it unnecessary to differentiate between degrees of assent. However, according to Mair this does not excuse one when one chooses to deny the right norm. The right norm is still valid since it could as well be the commandment which the conscience would assent to.⁴²

Hence in Mair's final position the last word is epistemological instead of psychological. "A conscience" of a moral norm, ie. assenting to a norm as binding, does not necessarily create an obligation to follow it, if it is false and if the right norm can be known. But even in such a case, the psychological factor plays a crucial role in providing evidence that the right norm can be known since it has been actively denied during the process.

Conscience, and weakness of the will

42 John Mair, *Sent.* II.39.2 (1519 fol. 150rb; see also 1528 fol. 94rb): "Stante illo iudicio 'illud non est praeceptum', non potest habere iudicium quod est praeceptum. Et facit tantum quantum potest ad conscientiae depositionem, non imputabitur ei pro tunc de praecepto [1528: licet faciat contra illud quod alioquin esset ei praeceptum]."

Mair's discussion on the weakness of the will in the *Ethics* underlines the importance of conscience in his later philosophy. Risto Saarinen has noted that Mair uses 'conscience' when discussing akratic phenomena even if the concept does not appear in the commented on passages of the *Nicomachean ethics*. The case of an akratic (*incontinens*) person, ie. one who acts wrongly against his better judgement, is particularly interesting regarding the conscience. According to Mair, an akratic person has a conscience which murmurs him (*remurmurat*) like an external monitor. In contrast, an intemperate person has a corrupted judgement which leads him astray. Although Mair does not use the term 'conscience' in the description of an intemperate person's misguided judgement, in the light of his discussion on erroneous conscience described above it is dubious whether one should pay too much attention to this omission. Nevertheless, a discrepancy between the perfect and the corrupt functioning of moral judgement, whether Mair would explicitly call it conscience in the latter case or not, marks the difference between an akratic and an intemperate action.⁴³

The close connection between akrasia and conscience can also be seen when Mair describes the case of an akratic action – without using the term *incontinentia* – in his description of the vexing of the conscience (*remorsus conscientiae*) in the *Sentences*: the conscience gives the right precept, but the person chooses, on the basis of both the freedom and malice of the will, to will against that precept. This particular instance of akrasia seems to be explained by voluntarist premisses, but as will become obvious

43 Risto Saarinen, *Weakness of will in Renaissance and Reformation thought* (Oxford, 2011), 85-86.

in what follows, Mair also assigns other kinds of explanations for akrasia.⁴⁴

As in his mature discussion on erroneous conscience in the *Sentences*, in the *Ethics* as well Mair seems to firmly adhere to the idea that one cannot assent to genuinely contradicting norms at the same time.⁴⁵ In his discussions on the problems of simultaneous contradicting judgements Saarinen points out how Mair does not reject the un-Aristotelian position which may be called “clear-eyed akrasia”. According to this model, akratic acts are not explained by temporary ignorance of the correct moral norms, which is the more traditional Aristotelian solution, but rather by the ability of free will to choose between contradicting alternatives that have been clearly perceived. However, this does not prevent Mair from using the Aristotelian idea of temporary ignorance as an explanation for akrasia in several cases. The ignorance takes many forms: it may be a false identification or ignorance of a particular case while knowing the right universal norm, it may be caused by emotional perturbances or even drunkenness, which may also temporarily hinder one's use of knowledge. Nevertheless, Mair explicitly states that such cases are not incompatible with the fact that some akratic people act by choice and knowingly. In all of this, it is evident, as Saarinen observes, that Mair – like John Buridan before him – gathers elements from

44 John Mair, *Sent.* II.39 q. un. (1510 fol. 64rb): “Remorsus conscientiae nihil aliud est quam iudicare aliquid esse faciendum et nolle istud facere vel velle facere aliquid conscientia dictante oppositum et est poena non modica. Homo vult occidere hominem et tamen iudicat illud esse malum, hoc est, assentit illi propositioni: illud non est faciendum. Conscientia inclinatur et instigatur eum ad bonum, sed ipse ex malitia et libertate sua contravenit conscientiae suae.”

45 See, for example, John Mair, *Ethica* VI.13 (fol. 110r): “Iudicia contraria nequeunt eidem subiecto simul inesse.”

both the intellectualist and voluntarist tradition in his explanation of akrasia.⁴⁶

Perhaps the most interesting part of Mair's discussion of akrasia regarding the conscience, and at the same time ultimately leading beyond the concept of conscience, is his interpretation of certain internal propositions – rather than moral judgements – as 'effective indicative' statements as Saarinen describes them. In these propositions the part typical of moral norms – “is to be done (*est faciendum*)” – is understood not as a moral imperative but as a kind of performative rule or statement of fact about the action taking place. In certain cases Mair expresses the same idea by excluding the attribute 'honest' from his explication of the proposition:

“Every sweet is to be tasted, this is sweet, therefore this is to be tasted' where 'is to be tasted' is equivalent to only 'as it will be tasted' and not 'is honest to taste' since the one willing efficaciously some end and knowing this to be a means to that end, will necessarily act if he is not hindered.”⁴⁷

According to Saarinen, this part of Mair's theory is clearly original and innovative in

46 Saarinen, *Weakness*, 86-88; 90-91.

47 John Mair, *Ethica* VI.13 (fol. 110r): “Omne dulce est gustandum, hoc est dulce, proinde hoc est gustandum, capiendo gustandum ut tantum valet quantum gustabitur, et non dignum gustari. Modo volens efficaciter aliquem finem, sciens hoc esse medium ad illum finem, de necessitate operatur si non praepediatur.” See also: *ibid.*: “Nullum inhonestum est faciendum', 'aliquid inhonestum est faciendum', capiendo faciendum in negativa pro illo quod est factu dignum, et in affirmativa pro illo quod fiet.”

the history of akrasia.⁴⁸ It enables Mair to combine the use of Aristotelian practical syllogism with its power to necessitate action even in the case of perfectly informed clear-eyed akrasia and without compromising the vital principle of not having simultaneous contradictory assents. His main strategy in using this notion is to affirm the compossibility of seemingly contradictory statements. The most striking example is where Mair states that the propositions “Nothing shameful is to be followed” and “Something shameful is to be followed” may be compossible, if the former is understood as a moral judgement and the latter as an effective indicative.⁴⁹

The concepts of conscience and synderesis do not explicitly appear in the passages where Mair utilizes the notion of effective indicatives. Since these concepts do not in Mair denote any definite faculty of the soul, would assent to effective indicative propositions fit under Mair's definition of synderesis or conscience (perhaps as acts of an erroneous conscience)?

In the discussions on the nature of synderesis and conscience described above, Mair seems to consider these concepts mostly as names for the acts of assenting specifically to moral norms which are imperative to human actions. In the discussion of erroneous conscience, however, it is evident that many imperatives do not clearly presuppose moral dignity in an objective sense, and could be understood as plain prompts for action without a moral value. However, it is evident that these kinds of imperatives cannot serve as objects of the act of synderesis, since objects of

48 Saarinen, *Weakness*, 90.

49 For this and other examples, see John Mair, *Ethica* VI.13 (fol. 110r).

synderesis are immutable and immediately derived from natural (moral) law. They also may not be considered as objects of conscience, since even erroneous conscience is an act of assent regarding practical propositions, if the practical propositions are to be understood as prudential notions, that is, as propositions prompting something to be done as it should be done, or even as practical propositions about the moral good or evil of actions. Mair himself gives no clues about how to integrate the effective indicatives into his moral psychology, but it seems probable that they constitute a borderline case of propositions, which despite their formal affinity to moral propositions, ultimately transcend the domain of morality in a proper sense.⁵⁰

Conclusion

In his discussions on the psychology of moral judgement, Mair appears as a follower of the *via moderna* in the footsteps of Gabriel Biel. However, his refinements of, and even conscious disagreement with the Bielian position reveals a degree of originality in his thinking. In all of this, Mair seemed to be interested in the problems of moral psychology throughout his career and endeavoured to find satisfactory solutions even if some remained open to further questions.

50 For definitions of synderesis and conscience see, for example, John Mair, *Sent.* II.39 q. un. (1510 fol. 64ra): “Sic in agibilibus per se notis directivis ad bonum vel malum intellectus protinus assentit, et assensus respectu talium dicitur synderesis sive actualis sive habitualis, qui in nobis non extinguitur respectu conclusionum practicarum...Quae sequuntur ex dictaminibus practicis per se notis vel evidentibus est conscientia, ita quod assensus actualis vel habitualis talium dicitur conscientia...Conscientia recta est assensus circa propositionem practicam recte dictantem. Conscientia erronea est assensus propositionis practicae falsae.”