

CONTENTS

| | |
|--|-------|
| List of Illustrations | ix |
| Preface | xi |
| Acknowledgements | xvii |
| Abbreviations | xix |
| Principal Texts & Events..... | xxiii |
| Chapter 1. Introduction | 1 |
| 1. Method..... | 7 |
| 2. Concepts and Terminology | 24 |
| Chapter 2. The Position of John XXII | 29 |
| 1. From Suppression to Condemnation..... | 30 |
| 2. John's Early Account of Poverty | 34 |
| 3. John Re-acts | 40 |
| 4. John and the Types of Law | 42 |
| 5. Origin of Property | 44 |
| 6. Legal Nature of Use..... | 47 |
| 7. Summary of John's Theory | 61 |
| Chapter 3. The Varieties of <i>Ius</i> | 65 |
| 1. <i>Ius</i> and the Jurists | 69 |
| 2. Bonagratia of Bergamo | 101 |
| 3. Michael of Cesena | 103 |
| 4. Francis of Marchia..... | 111 |
| 5. William of Ockham | 114 |
| Chapter 4. The Nature of <i>Dominium</i> | 121 |
| 1. Bonagratia of Bergamo | 124 |
| 2. Michael of Cesena | 127 |
| 3. Francis of Marchia..... | 147 |
| 4. William of Ockham | 161 |
| Chapter 5. The Species of <i>Usus</i> | 175 |
| 1. Bonagratia of Bergamo | 176 |
| 2. Michael of Cesena | 179 |

| | |
|---|-----|
| 3. Francis of Marchia..... | 195 |
| 4. William of Ockham | 209 |
| Chapter 6. Consumables | 227 |
| 1. Bonagratia of Bergamo | 227 |
| 2. Michael of Cesena | 231 |
| 3. Francis of Marchia..... | 238 |
| 4. William of Ockham | 246 |
| Chapter 7. Corporate Poverty..... | 255 |
| 1. Origins of Corporate Poverty | 255 |
| 2. Innocent IV & Corporation Theory | 258 |
| 3. Bonagratia of Bergamo | 265 |
| 4. Michael of Cesena | 268 |
| 5. Francis of Marchia..... | 275 |
| 6. William of Ockham | 277 |
| Chapter 8. Conclusions | 285 |
| 1. Summary of Michaelist Position | 285 |
| 2. Legal <i>Catenae</i> in the <i>Opus nonaginta dierum</i> | 294 |
| Appendix A. Fourfold Community of Goods | 321 |
| Appendix B. A Structural Analysis of the Michaelist Tracts | 327 |
| Appendix C. Comparison of Legal References..... | 333 |
| Bibliography..... | 357 |
| Index | 383 |
| Citations Index..... | 393 |

LIST OF ILLUSTRATIONS

Figures

| | | |
|-----|---|-----|
| 1.1 | Relationship of Texts | 14 |
| 5.1 | Michael of Cesena on <i>usus</i> | 193 |
| 5.2 | Francis of Marchia on <i>usus</i> | 207 |
| 5.3 | William of Ockham on <i>usus</i> | 223 |

Tables

| | | |
|-----|---|-----|
| 4.1 | Poverty in the Early Church and Medieval Church | 145 |
| B.1 | Structual Analysis of Michaelist Tracts | 328 |
| C.1 | Table of Canon Law References | 333 |
| C.2 | Table of Roman Law References | 347 |

PREFACE

This book aims to lay out clearly and systematically William of Ockham's (ca. 1287–1347) early theory of property rights, mainly as it can be understood from the *Opus nonaginta dierum*, an extended defense of a certain conception of the nature of Franciscan poverty. Yet Ockham did not write this massive text merely as an academic exercise unrelated to the events of his day. It is rather a treatise meant to summarize and defend the Michaelist position regarding Franciscan poverty against the rather different picture that emerges from several of Pope John XXII's bulls. In my opinion, a serious study of Ockham's theory of property rights requires a careful consideration of the texts written in the same context as the *Opus nonaginta dierum*; of particular importance are the tracts written by his fellow dissidents, Bonagratia of Bergamo, Michael of Cesena, and Francis of Marchia. This is especially true since, with few exceptions, scholars have had a tendency to jump too quickly from the pope to Ockham. If nothing else, I hope this book demonstrates on the one hand that the Michaelists as a whole deserve further attention in their own right and for helping us understand Ockham better, and on the other that the *Opus nonaginta dierum* obscures the fact that there is no one Michaelist conception of Franciscan poverty.

Although several hundred pages on Michaelist ideas about property rights might seem to fall afoul of the parable "On Exactitude in Science" by Jorge Luis Borges, I hope that some of the topics covered by these texts merits so extended a discussion. Indeed, since much political thought amounts to a justification of why it is acceptable (or even desirable) for individuals or groups to have more things—more property, more wealth, more power, more "say"—than others, it should not be surprising if the writings of Ockham and his confreres discuss topics that would appeal to more than just specialists in Franciscan history. (Or so I hope.) At the same time, it is well known that the *Opus nonaginta dierum*, Ockham's first real polemical work, contains many ideas and theses that would be repeated or expanded upon in his other so-called political works. Thus, by reconsidering the achievements and limitations of the *Opus nonaginta dierum* in the light of the texts he set out to defend, we are left in a better position to understand why he argued so forcefully for certain idea(l)s later on.

The first chapter addresses methodological considerations. It is an attempt to explain why the other chapters have the shape they do. I first explain the nature of the relationship between all the texts discussed in the subsequent chapters, and then try to justify the limits of my effort to contextualize the *Opus nonaginta dierum*. In the final part of the first chapter I quickly outline one modern attempt to capture what ownership means in order to provide an easy frame of reference for understanding what aspects of property rights piqued medieval writers' interest.

Before proceeding directly to the Michaelists, I analyze in synchronic fashion Pope John XXII's bulls on Franciscan poverty. As the pope was the *impugnatus* of Ockham's text, that is, the person whom the *appellans* (Michael of Cesena) "attacked" in his appeals, it is important to understand the pope's own point of view regarding property rights.

The next three chapters each focus on one of the key terms of the debate: *ius*, *dominium*, and *usus*. The third chapter thus examines *ius*, which is commonly translated into English as either "law" or "right"; as I show, Ockham and the other Michaelists use this term in both senses of the word, though I deny that *ius*-as-right should be understood in a purely subjective sense. To latch onto these subjective elements without considering the bigger picture distorts their account of rights. In the first few sections of this chapter I look briefly at how *ius* is employed in the juridical tradition, which is an important but largely neglected source for Michaelist ideas. Although Ockham clearly favoured canonistic sources in his treatise, other Michaelists made use of *utrumque ius*. The remaining sections examine the Michaelist writings, beginning with Bonagratia, and then passing on to Michael, Francis, and William. This order is maintained for the other chapters as well.

The fourth chapter takes up the topic of *dominium*, which I consistently translate as "lordship." Recent scholarship has stressed that for much of the poverty controversy, *ius* was conceived of as a sort of *dominium*. To do so for the Michaelists is highly misleading. (I would argue the same is true for most thirteenth-century authors as well, but that is beside the point here.) It is true that medieval authors often thought that the possessor of a *ius* usually had mastery of some sort, or in some respect, over the thing in which (or person over whom) one had the *ius*; but this distorts the true relationship between these terms in their technical sense. If you have *dominium* you have a *ius* of some kind; but the converse is not necessarily true. The confusion seems to have arisen because earlier phases of the poverty controversy discussed *dominium* and *usus*, while the other, lesser property rights were rarely analyzed in great detail. By the 1320s, the situation had changed: *ius*

had displaced *dominium* as the counterpoint of *usus*; and, in the process, *dominium* becomes explicitly subordinate to *ius*. Two kinds of *dominium* are analyzed in this chapter: divine and human. For the Michaelists, the nature of the possessor of *dominium* did not determine whether the lordship was divine or human; it was instead decided by the *ius* in which it was grounded. A human being could have divine lordship only if it was based in divine law (*ius*), and, *mutatis mutandis*, the same is true of human lordship. Lordship must be justified, and it is justified in law.

The fifth and sixth chapters deal with the thorny problem of *usus*, first in general, then as it relates to consumables. By this point, we are able to draw on the various distinctions made about *ius* and *dominium* to understand what was at stake between John and the Michaelists. *Usus* is analyzed into its constituent types, of which the two most important are the right of using (*ius utendi*) and use of fact (*usus facti*). It is in the fifth chapter that we see the greatest divergence of views among the Michaelists. Consumables seem to constitute a special category when it comes to use since using them means they are consumed. They thus deserve separate treatment. It is also one place where we see Ockham has truly provided an answer that no one else had previously developed.

In one sense the topic of consumables represents a specifically Franciscan problem. The same is true of the seventh chapter, which deals with one of the least well studied aspects of Franciscan poverty, namely its corporate aspect. Yet, as lacking property rights even at the corporate level is what set Franciscans apart from other mendicant orders, this is a topic that should not be ignored. Although I have mostly refrained from any serious examination of earlier phases of the poverty controversy because it is a tale told so often before, I do consider Innocent IV's corporation theory in connection with the bulls he wrote regarding Franciscan poverty, which made Franciscan corporate poverty possible in the first place. Innocent's theory help us understand John's better, and it brings into relief the non-juridical rebuttal of the Michaelists, especially those of Francis of Marchia and William of Ockham.

A conclusion and three appendices round out the volume. The conclusion contains one section that fits uneasily with the content of the other chapters. This section analyzes how Ockham made use of the legal sources so liberally sprinkled throughout the *Opus nonaginta dierum*; combined with the lengthy tables in the third appendix, it demonstrates conclusively that Ockham did not rely only on his fellow Michaelists for his legal arguments. There can be little doubt that Ockham mostly dropped the references

to Roman law while bolstering his case by reference to the *Decretum* and *Decretales*. A further result of this line of investigation should also erase any doubt as to whether the *Opus nonaginta dierum* should be considered a 'recitative' work in the manner of the *Octo quaestiones* or *Dialogus*. Ockham's view is this early treatise is on full display except, perhaps, regarding some of the minor differences of opinion among the Michaelists. Yet, at the same time, by comparing his arguments with those of Bonagratia, Michael, and Francis, we can see the precise extent to which his views were based on theirs. The remaining section of the concluding chapter presents the basics of the Michaelist theory of property rights, and highlights some of the more interesting differences between the texts.

There are two other appendices. The first compares how Michael adapted a key passage of Bonaventure's *Apologia pauperum* to suit his own ends in the *Appellatio maior*. This discussion has been relegated to this position because the point comes up several times in the course of the book, but any serious discussion of these two texts would be too long a digression from the main discussion of the book. The second appendix is a simple comparison of the structure and content of the Michaelist texts in reference to John's bulls (starting with *Ad conditorem*²). Although, strictly speaking, this appendix is not necessary for following the argument of this book, I elected to include it because it should prove useful for any future studies of this collection of texts.

A final word should be said about the conventions I have used. Contrary to the current trend, I quote the Latin in the text and offer a translation only in the footnotes. I provide a translation so that my argument can be followed by non-specialists, but the Latin needs to be foregrounded because the subject matter is technical in nature and hiding the Latin in the notes would make it more difficult to see some of the subtleties involved. Of course, I do not mean to deny the value of translations: anyone turning to Ockham's *opera politica* is far better off today than before. I for one gladly made use of these translations—notably, those by Brett (1998); Freddoso (1980); Freddoso and Kelley (1991); Kilcullen and Scott (2001); Loux (1974); McGrade (1992); McGrade and Kilcullen (1995); and Nederman (2002)—when I first looked at Ockham. Obviously, the same could be said of other translated and oft-cited texts.

At the same time, I am quoting from Offler et al.'s edition of the *Opus nonaginta dierum*, from Mariani's edition of the *Improbatio*, and so on, which means I have followed the orthography of their texts and those of the other editors. It is also why I have resisted the temptation to divide the bibliog-

raphy into primary and secondary sources: it is meant as a not so subtle reminder that we do not have Ockham's text as he wrote it, only Offler et al.'s (meticulous) reconstruction. For early printed books, however, I have not hesitated to list them under the name of the author if there is no clear editor given. For these early printed books, I have standardized abbreviations and orthographical conventions with a view to classical Latin, but I always let the spelling of the text stand. For all texts I have modernized legal citations, and I have not hesitated to correct references when necessary; these are marked by a "(!)" in the reference.

Finally, John's bull, *Quia vir reprobus*, presents a somewhat unique problem because it exists in multiple versions, and none of them can be considered critical editions. In the second chapter the references are to the text as it is printed in Gál and Flood (1996); the same is true when dealing with the texts of Bonagratia and Michael, but for Francis and William, I rely on the text as it is quoted in their own works. This seems to be the most sensible method of citation, and any deficiencies in this regard is alleviated by the presence of the the second appendix: those who wish to know where to turn in the works of the other Michaelists should look there first.

