
Intentions, Conventions, Performativity

Medieval Discussions about Sacramental Formulas and Oaths

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Introduction

The medieval period is particularly rich as far as theories and theorisation on language are concerned. It is well known that there were specialists in *artes sermocinales*, in the schools of the XIIth century, and in the faculty of Arts of the universities from the XIIIth century on. They were interested in signification, reference, truth conditions, valid argumentation, paying particular attention to the various meanings a word could take in different contexts, analysing the formal structure of utterances, etc. Their analysis was grounded not only in the classical available sources for the arts of language, Cicero, Donatus, Priscian, Aristotle with Boethius's translations and commentaries, but also on philosophical sources: the analysis of the relations between words, concepts and things, first based on the indications given in the *logica vetus*, was then given a new impulse when the *De anima*, the *Metaphysics* or the *Physics* were rediscovered and read together with Avicenna and Averroès commentaries¹. Theologians, who had training in arts and philosophy, also shared this interest in language. They used a linguistic and semiotic approach to numerous theological problems. To mention just a few examples: the analysis of the Eucharist was, from Bérenger of Tours on, done through the study of the sacramental formula, *hoc est corpus meum* (this is my body); the problem of ineffability and of divine attributes was analysed with the help of the logical notions of equivocacy, univocity and analogy borrowed from chap. 1 of the *Categories* and from the *Sophistical refutations*; the relations between the three persons of the Trinity gave rise to a complex analysis of the reference of the terms in a given proposition; an important part of angelology was devoted to angels' talk, always compared to "our" language, with important

1 For an up to date introduction, see the articles in R. Pasnau (ed.), *The Cambridge History of Later Medieval Philosophy*, Cambridge, Cambridge University Press, 2009, esp. section II *Logic and Language*.

consideration about mental signs and mental language. The theologians knew and used the same sources as the masters in *artes sermocinales* did, and knew the major developments in these *artes*. It is very obvious when we read for instance the chapters where they analyze the formula *hoc est corpus meum* already mentioned: the notions of *demonstratio*, the analysis of the *verbum substantivum*, of compositionality, truth and falsity, difference between a material and a significative use of the pronoun, etc. But they also used other sources for their study of linguistic and semantic problems, in particular Augustine, which was hardly known by the *Artistae* in the XIIth and XIIIth centuries, Boethius' theological tractates, and also the Pseudo-Dionysius analysis of divine names. And, as we will see, they saw the relations between various disciplines, esp. for the present purpose, law, ethics, and language, in a way that was not done in the Arts faculties.

But even if *artistae* and theologians shared partly some notions and sources, and if they were all interested in language, their analysis remained partly separated. For instance, with the example of speech acts, the idea that some utterances were used to *do something* and not to signify was devised somewhat *independently* in the arts of language and in the other fields, including theology, in the XIIIth century. Grammarians devised the theory while analysing non-standard utterances, like figurative ones, or incomplete ones like: *Aqua!* used to ask someone else to get water when a fire started. Logicians introduced the notion of *actus exercitus*, esp. in the Oxford tradition of the XIIIth century, when reflecting on the acts performed by 'signa', that is words like quantifiers (*omnis*). Rhetoric was used esp. in the *artes praedicandi*, since the mendicant orders had to teach the priests the best way to make convincing sermons. Theologians noticed the efficiency of the sacraments, and thus of the sacramental formulas, and wrote numerous pages to explain that *ego te baptizo* was not only a cognitive sign (*signum cognitivum*), but also an efficient sign (*signum operativum*), since the formula was used to perform the action it signified, i.e. to operative baptism. They carefully studied the linguistic implications of the new definition of the sacrament "as a sign which performs what it signifies" (*id efficit quod figurat*).

I will now analyse the general question of the distinction between the literal meaning of an expression and its intended meaning through the study of promises and oaths and their reverse, lies and perjuries, for one part, and of sacramental formulas on the other, as it was done by theologians in the XIIIth century. The two topics were seen as related, and rightly so: in both cases the problem was to determine if the performativity and validity of an oath, or of a sacramental formula, was primarily due to the very words which composed it, or to the intention of the speaker who uttered them².

2 See P. Legendre (éd.), *Du pouvoir de diviser les mots et les choses (Travaux du Laboratoire Européen pour l'Etude de la Filiation, 2)*, Bruxelles, Emile Van Balberghe Libraire et Yves Gevaert Editeur, 1998, for the related discussion on the distinction *de virtute sermonis* vs. *ex intentione proferentis*, as it developed with the maxim of Hilarius of Poitiers, quoted in the *Decretales* of Gregory the IXth ("Intelligentia dictorum ex causis est assumenda dicendi, quia non sermoni res, sed rei est sermo

Augustine theory of lies and its medieval developments

In their analysis of lies, the theologians borrowed Augustine's definition from the *Contra mendacium* (xii, 26):

“a false signification of words, with the intention to deceive”
(*falsa vocis significatio cum intentione fallendi*)

It was followed by the analysis devised in the *Enchiridion* (VI, 18 et VI, 22) and the *De mendacio*. To lie, for Augustine, is to talk against what is in one's mind, whether true or false, with the intention of deceiving the one to whom the discourse is addressed. This definition was transmitted both in Gratian's *Decretum*³ (II, causa 22, q. 2, c. IV. 3), and in Peter Lombard's *Sententiae*⁴ (III, dist. 38, c. 4.1, p. 215: 15–20), and thus commented both by lawyers and by theologians. For Augustine, the main thing to consider is not the things that are said, but the speaker's intention (*intentio dicentis*), not the ‘mouth of the body’, but the ‘mouth of the heart’. *Sincerity* was thus more important than *truth*, for Augustine. If someone says that: ‘it is raining’, and if it is in fact raining (so what he is saying is true), but that he intends to cheat the listener and tell him something else, then this is still a lie, because he says something and has something else in mind. Lying is always a sin, Augustine says, because words were given so that men could inform each other about what they think, and not to deceive others.

With Augustine's definitions as a starting point, medieval theologians devised different theories⁵.

1. The theologians, beginning with the Franciscan Alexander of Halès in the 1240's, always distinguished, when commenting on Augustine's definition, between the “*falsity of what is said*” (*falsitas dicti*), and what they called “the falsity of the speaker” (*falsitas dicentis*): we notice that they talk about falsity (and truth) in both cases, but that what is at stake is in fact falsity (and truth) in the first case, and sincerity (and insincerity) in the second case. Alexander, from an idea found in Augustine himself, that there is always in lies a “will to tell something false” (*voluntas falsum enuntiandi*)⁶, will modify Augustine's definition:

« a lie is a falsity of what is said, with the intention to tell something false »

subiectus”).

3 Gratian, *Decretum*, éd. A. Friedberg, 1881.

4 Peter Lombard, *Sententiae in IV libris distinctae*, t. 1 (I–II), Rome, Ad Claras Aquas, 1971.

5 Vecchio, S., 1997. « Mensonge, simulation, dissimulation. Primauté de l'intention et ambiguïté du langage dans la théologie morale du bas Moyen Age », in C. Marmo (éd.) p. 117–132; Rosier, I., 1995a. « Les développements médiévaux de la théorie augustinienne du mensonge », *Hermès*, 15, p. 91–103, Rosier-Catach, I., 1998a. « Le serment et les théories linguistiques médiévales », *Memini ; Travaux et documents publiés par la Société des études médiévales du Québec*, 2, p. 3–28.

6 Augustine, *De doctrina christiana*, I, xxxvi, 40 (CCL 32, p. 29); cf. *De mendacio*, IV, 4 (CSEL 41, p. 418).

(*falsitas dicendi cum intentione falsum dicendi*)⁷

The *will to tell something false* (*intention* or *voluntas falsum enuntiandi*⁸) was distinguished, and substituted to Augustine's *intention to deceive* (*intention fallendi*), and this substitution was stressed later by Gabriel Biel:

« When we hear 'with the intention of deceiving', this means in fact 'with the intention of telling something false'. As a matter of fact, there is not in every lie an intention to deceive, that is, to deceive the listener. For instance in the lie which is made for fun, the listener is not deceived ... Thus we get this definition of lie: it is a 'false signification of the words', that is a sign which represents something false, 'with the intention of deceiving', that is, with the intention of producing a false sign ... ».⁹

Augustine himself mentioned cases when people lied for fun (*mendacium iocosum*), or even for good reasons and not to deceive others, which was called *mendacium officiosum* in the Middle Ages. Lying became, with this redefinition a real "linguistic sin", analysed as such with other linguistic sins¹⁰. In Austin terms, the *illocutionary* aspect of the speech act was distinguished from the *perlocutionary* one. There was something which had to do with the normal rules of using language: when someone says something there is a *presumptio* (Latin word most used at the time) that he is telling the truth and respecting the conventional meaning of what he is saying. There was something else that had to do with the purpose the speaker had in speaking, whether he wanted or not to deceive and cause some harm to the one he was talking to.

7 Alexander of Hales, *Summa theologica* lib. II/2, éd. Quaracchi, t. 3, p. 402, n. 399, *solutio* et ad 3: « Secundum enim Augustinum requiruntur duo in mendacio simpliciter dicto: quod proferens dicat falsum et quod intendat dicere falsum. Ex qua dispositione est ut possit aliquis falli, ut sic sit falsitas ex parte intendentis et ex parte signi. »; *ibid.* c. 5, *solutio*, éd. Quaracchi, t. 3, p. 406, n. 403.

8 Alexander of Hales, *Summa theologica* lib. II/2, éd. Quaracchi, t. 3, p. 402, n. 399, *solutio* et ad 3: « Secundum enim Augustinum requiruntur duo in mendacio simpliciter dicto: quod proferens dicat falsum et quod intendat dicere falsum. Ex qua dispositione est ut possit aliquis falli, ut sic sit falsitas ex parte intendentis et ex parte signi. »; *ibid.* c. 5, *solutio*, éd. Quaracchi, t. 3, p. 406, n. 403.

9 Gabriel Biel, *Collectorium II (Canonis Misse Expositio, Pars secunda)*, éd. H. A. Oberman et W. J. Courtenay, Wiesbaden, F. Steiner Verlag, 1965 (Veröffentlichungen des Instituts für europäische Geschichte Mainz, Bd 32), dist. 38, art. 1, not. 1, p. 644–645: « Et quod cum dicitur 'cum intentione fallendi', tantum valet, id est: cum intentione falsum dicendi. Non enim in omni mendacio concurrat intentio fallendi, id est decipiendi auditorem. Nam in mendacio iocoso non semper fallitur audiens, quia, ut dicit Magister, mendacium, 'quod ioco fit, non fallit'. Scit enim, cui dicitur, causa ioci dici... Unde potest colligi haec descriptio mendacii: est 'falsa significatio vocis' id est signum falsa repraesentans, 'cum intentione fallendi', id est cum intentione falsum signum exhibendi. In forma: Est signum false repraesentans, exhibitum ab eo, qui credit ipsum false repraesentare. Per primum excluditur signum verum, etiam quacumque intentione dicatur; per secundum excluditur signum falsum creditum ab exhibente ipsum esse verum. »

10 Casagrande, C. & Vecchio, S., 1991. *Les péchés de la langue*, Paris, Edition du Cerf [Trad. française de *I peccati della lingua. Disciplina ed etica della parola nella cultura medievale*, Rome, Istituto dell'Enciclopedia Italiana, 1987]; Casagrande, C. & Vecchio, S., 1995. « Tu ne porteras point de faux témoignage contre ton prochain : le décalogue et les péchés de langue », in D. Romagnoli (éd.), *La ville et la cour, Des bonnes et des mauvaises manières*, Paris, Fayard.

2. Following on Alexander's paths, Bonaventure explained that language had a dual relation, a first one to reality, and a second one to the speaker's intention. He thus redefined truth, giving it a twofold definition, first as *adequation between discourse and things*, which allows to judge a discourse true or false (*sermo verus/ falsus*), and second as *adequation between discourse and intention*, which defines it as sincere or insincere (*verax/ mendax*). We thus get a material side and a formal side of lies¹¹.

« I respond: for a correct understanding, we should note that the words which are uttered exteriorly should be related to the intention of the speaker (*intentio dicentis*) and to the thing which is signified (*res significata*). In this respect there is a dual definition of truth and falsity. If we compare < the discourse > to the thing which is signified, we will talk about a true discourse; if we compare it to the intention of the speaker then it will be called sincere (*verax*). Thus there are two types of falsity in discourse. By comparison of the discourse to the thing, in so far as there is no adequation between thing and discourse (**adaequatio rei et sermonis**), the discourse will be called false. But by comparison to the intention of the speaker, since there is no adequation between discourse and intention (**adaequatio sermonis et intentionis**), the discourse will be called deceitful or insincere/liar (*mendax*). Since lying (*mendacium*) name the words by relation both to the thing and to the speaker, for a complete definition of lying, two falsities should be considered: one by comparison with the thing, the other one by comparison with the intention of the speaker. »¹²

3. Thomas Aquinas will then give an integrated threefold definition. He distinguishes thus three types of falsities: when what is stated is false, which he calls the *material* element; the moral truth, when someone has the intention of saying something false, which is the *formal* element; and the intention to produce a false effect, or *intentio fallendi*, which judges truth and falsity according to the effect (cf. *Summa theologiae* II–II, q. 110, art. 1). Again the moral element was essential, and defined properly the act of lying.

11 We see here how the definition of truth becomes modified, through these discussions on lies. The definition of truth here modified is the one introduced from Avicenna through William of Auxerre and William of Auvergne, which was attributed, for instance by Aquinas, to Isaac Israeli.

12 Bonaventure, *Sent. III (Commentarii in quatuor Libros Sententiarum Petri Lombardi, Opera Omnia, t. I–IV, Quaracchi, III, 1887)*, dist. 38, art. un, q. 1, resp., p. 840: « Respondeo: Ad praedictorum intelligentiam est notandum quod dictum exterius prolatum comparatur ad intentionem dicentis et ad ipsam rem significatam; et secundum hoc sortitur dictum illud rationem duplicis falsitatis vel veritatis. Nam per comparisonem ad rem dicitur sermo verus, per comparisonem autem ad intentionem dicentis dicitur verax. Sic etiam falsitas duplex est circa sermonem. Nam per comparisonem ad rem, videlicet cum non est **adaequatio rei et sermonis**, dicitur sermo falsus; per comparisonem vero ad intentionem dicentis, cum non est **adaequatio sermonis et intentionis**, dicitur sermo fallax sive mendax. Quoniam igitur mendacium nominat ipsum dictum per comparisonem ad rem et ad ipsum dicentem, hinc est quod ad completam mendacii rationem duplex falsitas concurrit: una per comparisonem ad rem et altera per comparisonem ad intentionem loquentis. »

Oaths and perjury

These elements were transposed to the analysis of oaths (*iuramentum*), but with the important difference that the *iuramentum* was not only the utterance of a discourse, which could be false and deceitful, as in the case of lies, but that it is a discourse which explicitly asserts that it is true, by taking God as a witness to the truth of this discourse. Thus the one who takes an oath performs a double act: he asserts the truth of what he says, just as in any utterance, but he guarantees the truthfulness of what he says by further taking God as a witness (ex. I say P, in the name of God).

Conversely, perjury realised a double sin. It is defined as:

« a lie confirmed by an oath » (*mendacium iuramento firmatum*) »¹³

So the one who commits perjury, not only lies, but invokes the name of God to confirm words which he knows to be false. There is then a double sin, towards God and towards the listener. A *iuramentum* has then something more than a normal discourse, in that it is explicitly stated as true, since God is referred to as a warrant of the truth of one's discourse. Here it is not only the tacit rules of discourse which operate (the hearer has no reason to think that what is said is deceitful); there are explicit rules implied in the use of *iuramentum*: what is said is said with the implication that it should be true. The person who pronounces a *iuramentum* asserts what he says and asserts it as being true. There is a difference between lies and perjuries. Lies go against the tacit accepted rules of discourse: when someone talks, the listener thinks he is telling the truth, there is no reason for him to think otherwise. But in the case of perjury: the rules for truth are uttered, there is something in discourse which manifests the will of telling the truth.

There were two types of *iuramenta*: the *iuramentum assertorium* (assertive oath) is about present facts, the *iuramentum promissorium* (promissive oath) is about future facts. The important notion of *obligatio* was again used here, and even more. It worked differently in both cases. In the first case, according to Thomas Aquinas, the speaker had to assert something that is true. In the second case, the utterer had to have the actual intention of realizing the fact which was the object of the oath. Duns Scotus distinguished very clearly between the *iuramentum assertorium*, in which truth was a matter of *saying* (one had to tell the truth, to say something corresponding to a fact which has occurred or is occurring), and the *iuramentum promissorium*, in which the truth was a matter of *doing* (one had to act so that the fact which is the object of the oath actually takes place):

« There are two types of oaths, the assertory one, and the promissive one, but both convey an obligation: the assertory oath, because the one who takes it obliges himself to *tell the truth*, by the very fact of taking God as a witness for the words he asserts; the promissory oath, because he obliges himself to act in order

¹³ *Summa sententiarum* IV, c. 5, PL 176, 123B; cf. *Sententiae* of Peter Lombard, dist. 39, c. 1, p. 218: 16–17.

that truth takes place. »¹⁴

The case was more complicated when oaths were taken under constraint. It gave rise to different analysis, some theologians arguing that the promissory oath was always valid: “it is better to die than to swear something false”.

Words, intentions, and efficiency in the analysis of the sacramental formulas

Theologians discussed the problem of lies and oaths in relation to the problem of intention when dealing with the sacraments. The problem was to determine what in this case was relevant for the efficiency of the sacraments: the intention of the priest or the meaning of the words—as William of Melitona puts it, the *intentio ministri* or the *intentio verbi*. They had to face a dilemma: in line with Augustine’s requirements, the sacramental formula should have an efficiency, “not because it is said, but because it is believed” (*non quia dicitur, but quia creditur*). But if the stress was put on the belief (*creditur*), then, as they said, since the intention of the priest is never known by the one who receives baptism, he would never be sure whether he was baptised or not. On the other hand, if stress was put on what is said (*dicitur*), this would give too much power to the priest and the words, and could not allow for occasional mistakes. Interesting mistakes were mentioned, as an incorrect pronunciation of the formula, for instance by a priest who supposedly did not know Latin well and would say ‘*in nomine patrias*’ for ‘*in nomine patris*’, or by a priest who was drunk during mass and babbled, or was out of his mind for some reason etc. In this case it was usually admitted that the “intention of the Church” (*intentio Ecclesiae*) could tacitly supply the right formula, that there was a kind of adaptation by usage (*accomodatio usus*): these occasional mistakes could be tolerated, as long as they were not made purposefully¹⁵.

All theologians admitted that the mere uttering of the conventional formulas—that is the mere performing of the prescribed ritual—, by the priest, was not enough, and that some kind of intention was required on his part. But they diverged on the problem of knowing what kind of intention was required. For some, in line with Augustine, mental or *interior* intention was required; for others, it was what they called the *exterior* intention (i.e. the one which is standardly and conventionally associated with the words). Thomas Aquinas distinguished between *habitual intention* and *actual intention*, stating that only the first one was required: the priest had expressed the general intention of, say, performing baptism by using the right formula, and if it happened once that he does not have the correct intention when actually performing the act (for instance if he is distracted for some reason), then this does not invalidate the sacrament. Duns Scotus then refined the distinction, introducing a third category,

14 Duns Scot, *Opus Oxoniense* III (in *Opera omnia* t. VIII, éd. Wadding, Lyon, 1639), dist. 39, q. unic., schol., p. 1000.

15 I sum up here an analysis which can be found in my *La parole efficace. Signe rituel sacré*, Paris, Seuil 2004, c. 5.

between *habitual* and *actual* intention, that is *virtual* intention. In these discussions about linguistic acts, there was a whole range of interesting issues, in line with what was done in canon law, about moral responsibility.

The case of fictitious oaths

These problems became even more interesting in the case of a fictitious oath (*iuramentum dolosum*): this oath is such that at the very moment it is uttered, the speaker does not have the intention of completing the content of the oath, but has an opposite intention.¹⁶ Two different attitudes are found: some, in line with Augustine, claim that the speaker is obliged according to his intention—thus according to the *intentio iurantis*; others take the opposite stand, the speaker is obliged according to the meaning which is received by the speaker—thus according to the *intentio recipientis*.

This problem is found in an interesting discussion stemming from a case raised by Isidore of Sevilla's *Sententiae*¹⁷, mentioned again in the *Decretum* (lib. 3, c. 22): "whatever skill has someone who makes an oath, God receives it as the one to whom it has been given receives it". Richard Fishacre, an English Dominican of the 1240's, comments on the question:

« If the intention of the one who performs baptism is required, no one would know whether he is baptised or not ... The solution of this problem gets different answers, and thus it would be better for anyone, by security, to rebaptise the person in this case. This is what Gregory says (*Moralia* 26), and it is repeated in the *Decretum* (C. 22, q. 5, c. Humanae)¹⁸: 'it is not the words which should be considered, but the will and the intention; since the intention should not be at the service of the words, but the words of the intention'. But in my opinion, as long as the formula accepted by the church is kept, and as long as there is no sign of the intention that the priest does not intend to baptize, then the baptism takes place, and the person should not be baptised a second time, and no one should wonder whether he is baptised or not.... »¹⁹

16 Duns Scot, *Opus Oxoniense* III, dist. 39, q. unic., p. 1003: « Dolosum est, quando iurans aliquid esse factum in ipso actu iurandi intendit oppositum, et non intendit se obligare ad illud, quod iuratur ... ».

17 Isidore, *Sententiae* II, c. 31, n. 8 (CCL 111, p. 156).

18 Gratien, *Decretum* II, causa 22, q. 5, c. 11, éd. Friedberg I, 885.

19 Richard Fishacre, *In IV Sent.*, dist. 6, J. Goering's edition (forthcoming): « Item, si intentio baptizantis exigitur nemo scit utrum sit baptizatus nec ne quia intentionem eius qui se mersit ignorat, et ita expediret cuilibet ad securitatem rebaptizari. ... Ad tertium, solutio variatur secundum diversos, quippe si non intendit baptizare dicunt quod non est baptizatum quia verba debent servire intentioni, secundum illud Gregorii, 26 lib. *Moralium*, et ponitur in *Decretis*, C. 22, q. 5, c. Humanae: 'Non debet aliquis verba considerare sed voluntatem et intentionem, quia non debet intentio verbis deservire sed verba intentioni'. Sed mihi videtur quod dummodo servet formam ecclesiae et non manifeste certo indicio pateat quod non intendit baptizare, baptizatum est, nec est rebaptizandum nec dubitandum tibi vel alteri an sit baptizatus. Et ad hoc argumentum assumo ex eo quod habetur lib. 3, et Causa 22, q. ult., c. *Ex his omnibus*, et est Isidori: 'Quaecumque arte verborum quis iuret Deus sic accipit, sicut ille cui iuratur intelligit.' Sic et verba baptismi quae fiunt praesentibus ubi baptizatur. Illud ergo Decretorum, c. Humanae, sic intelligatur, ut

These discussions are interesting because what is at stake is the distinction between the logical truth and the moral truth. But also because we find here the problem of the norm, of the consensus. The discussion of Isidore's case, which was mentioned in the chapters on promises and perjury in commentaries on Peter Lombard's *Sentences*, was a clear symptom of this latter fact. Although the obligation towards God was always stated (*in foro conscientiae, in foro Dei*), and related to the moral intention, the theologians stressed the social or conventional obligation (*in foro contentioso*). Thus were stated rules about the normal use of language: someone who takes an oath is obliged "according to the way in which the words are normally understood", says Thomas Aquinas.

« If the oath is taken sincerely, without cunning (*dolum*), then in *foro conscientiae* the person is not obliged but according to his intention; but in *foro contentioso* where the intention is not taken into account, then the person is obliged according to way words are commonly understood. »²⁰

This will be the position retained in canon law. It is coherent with the redefinition of Augustine's definition: the one who takes an oath *is always responsible for what he says*, because in uttering the words, he has the "intention of saying something false", or rather something contrary to what he has in mind.

In these discussions, as we already said, there were very precise rules about the normal use of language. William of Melitona as others mentions the *ius civilis* in his discussion about *intentio* in baptism. And he arrives to the important conclusion that "words should always be used with the intention to utter them with the meaning they have from imposition".

« Again, as it is said in civil law: the person who utters words with another meaning than their conventional meaning, received through imposition, does not say what the words mean, because that is not what he intends to say. But he does not intend it either, because the words he utters do not signify what he has in mind. From this comes the conclusion: in order for a litterate and articulate word to have a real efficiency in signifying, the intention of the speaker is required: *the intention to utter the words in the same signification which they have through imposition*. The case is seen to be the same <with the sacramental formulas>: in order for sacramental words to be efficient in acting <i.e. in bringing about grace>, they have to be uttered according to the power which was given to them. »²¹

etiam testatur Apparatus, quod verba deserviant intentioni ubi intentio manifesta est, sed ubi latet intentio non recedendum a verbis, et universaliter in dubiis non est recedendum a verbis, sed hoc credatur fecisse quod verba protestantur. »

20 Thomas d'Aquin, *In III Sent. (Commentum in quatuor libros sententiarum Magistri Petri Lombardi*, t. IV, éd. Parme, 1858), dist. 39, art. 3, sol. 3, p. 1294: « Si autem simpliciter juret absque dolo, tunc in *foro conscientiae* non obligatur nisi secundum suam intentionem; sed in *foro contentioso* ubi intentio ignoratur, obligatur secundum quod verba communiter accipi solent. »

21 William of Melitona, *Quaestiones de sacramentis*, tr. II (*Quaestiones de sacramentis*, t. I & II, ed. Gédéon Gàl, Quaracchi, 1961 [Bibliotheca Franciscana scholastica Medii Aevi t. XXIII]), p. 9, q. 47, p. 419–420, 1c: « Item, dicitur in iure civili: qui in alia significatione utitur voce quam institutum est, non hoc dicit quod significat, quia hoc non intendit; nec quod intendit, quia hoc

Any speaker perfectly knows the conventional meaning of the words, and so knows that they will be understood by the hearer according to this conventional meaning. No one should associate a “private understanding” (*intellectus privatus*) to the words he utters, but their common understanding. Language thus does not only involve two persons, but the whole community, the “assistants” in the ceremony of baptism. As William clearly explained, the speaker should intend the words to mean what he knows they will mean for all the *assistentes*, i.e. the community who attends the ceremony.

« In the same way, Isidore says: ‘Whatever is the craft of the words of the person who takes an oath, God takes the words as the one to whom the oath is given understands them’. In the same way it seems that the words of baptism, whatever intention is associated to their utterance, are such that God takes them as the persons who are present understand them.

Here is my response: when one says that ‘God takes the words of the person who take the oath, just as they are received’, this should be understood in consideration of whether the person should be judged sincere (*verax*) or making a perjury.

For instance: the one who receives the oath takes the meaning of the speaker, according to the rational and common use of the words. But the one who takes the oath, has in fact, through some fallacy, formed within himself a *private intellection*, and swears according to the meaning related to this intellection which he forms for himself. But God does not judge the words sincere according to the truth of this private intellection—on the contrary he judges that there is perjury—because they are not true according to the common and rational intellection of the words. Thus when it is said: ‘God takes the words, just as the one who receives the oath takes them’, this must be interpreted as: God judges that there is a true oath or a perjury, and judges the person who takes the oath sincere or not, according to the conformity or difformity of the words to the intellection of the person who receives the oath.

We have the same case here ‘i.e. with sacraments’. If the priest who performs baptism conforms his intention to the intention of the assistants ‘the persons who attend the ceremony’, then God judges him a true minister, and judges that he truly performs his function of baptising. But in the opposite case, if he has a perverted intention, then God judges him to be bad and perverted in performing his function. »²²

non significat. Ex hoc patet quod ad hoc quod vox litterata et articulata habeat efficaciam actualem significandi, requiritur intentio proferentis; intentio inquam utendi in ea significatione quam habet ex impositione. Igitur eadem ratione videtur quod verba virtutis non habent efficaciam actualem operandi, nisi proferantur cum intentione operandi secundum virtutem illis collatam. »

22 William of Melitona, *Quaestiones de sacramentis*, tr. II, pars 9, q. 47, p. 425–426, n. 9: « Item, Isidorus (*Sententiae* II, c. 31, n. 8 (CCL 111, p. 156)): ‘Quaecumque arte verborum quis iuret, Deus sic accipit, sicut ille cui iuratur intelligit’. A simili videtur quod verba Baptismi, quaecumque intentione proferantur, Dominus accipit sicut intelligunt assistentes. »

This requirement that, in modern terms, conventional and intentional meaning should coincide, is also mentioned in the chapters on matrimony, which belong as much to law and to theology, since matrimony is one of the seven sacraments. There is another difference here: since matrimony is a mutual consensus, it concerns two persons for one single act. In particular, they should avoid obscure words. In the case obscure or ambiguous words are uttered, it is then again the common conventional meaning of the words which will be retained. The rule about the use of words was clearly stated in the *Decretales* of Pope Gregory IX: the “obligation” (obligatory character) of the words will come from the words “uttered in the ordinary meaning which they generate for those who understand them correctly”:

« If two persons, suited for matrimony, contract it through obscure words, they have to conform to the common intellection of the words ... When two persons get engaged (*sponsalia*), if one does not understand what the other proposes, we respond that the judgment should begin with the examination of whether those who want to contract matrimony are adequate in knowledge and age. Once this is known, if one does not understand what the other proposes, then the common meaning of the words should be taken: and each should be obliged by the words which are uttered, **in the sense they generate for those who understand them correctly in normal use.** »²³

Respondeo: cum dicitur quod « Dominus accipit verbum iurantis, sicut ille cui iuratur », hoc intelligitur de acceptione quantum ad hoc quod iurans debet iudicari verax vel periurus. Verbi gratia: ille cui iuratur, secundum communem usum et rationalem verborum prolatorum accipit iurantis intellectum; iurans vero aliqua fallacia format sibi intellectum privatum, et secundum quod concipit de illo intellectum quem sibi format iurat; Dominus non iudicat illum veracem secundum veritatem illius intellectus, sed periurum, quia non est verax secundum communem et rationalem intellectum. Unde cum dicitur « Dominus sic accipit, sicut ille cui iuratur », hoc est: Dominus iudicat iuramentum verum vel periurum, et iurantem veracem vel periurum, secundum quod conformem vel difforem habet intellectum intellectui illius cui iuratur.

Similiter potest dici in proposito. Si baptizans conformat intentionem suam intentioni assistentium, Dominus iudicat eum verum ministrum et vere exsequi officium baptizandi. Si non conformat, sed habet intentionem perversam, et Dominus iudicat eum malum et perversum in executione officii sui. »

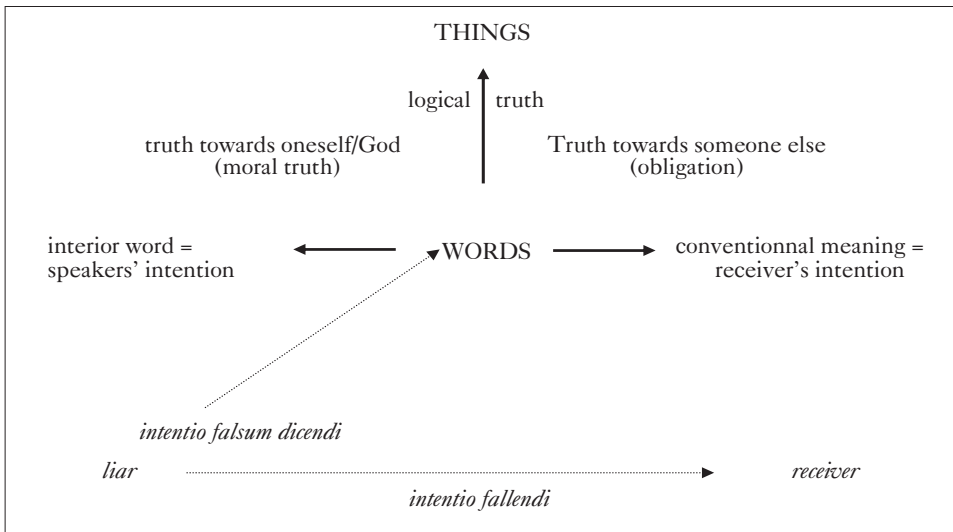
Cf. In Geoffroy of Trani's *Summa* on the *Decretalia*, a passage explicitly associates the text from Augustine quoted by Gratian, and William of Melitona's paradox just mentioned: (Goffredus de Trano, *Summa super titulis decretalium*, f. 247, quoted by L. Mayali (« Du sens des mots et des choses: Hilaire de Poitiers et la tradition juridique romano-canonique », in P. Legendre (éd.), 1998, cit. supra, p. 25–38), n. 2, p. 37): « *De verborum significatione*. Enim quemadmodum verbum procedat ex animo ream linguam non facit nisi rea mens ut probantur hec xxii q.ii, is autem, *Decretum*, causa 22, q. 2, c. 4 et cap. Homines, in fine, causa 22, q. 2, c. 3. Unde versus, non nisi mente rea sit mea lingua rea, unde qui contra mentem loquitur nihil dicit quia non dicit quod cogitat, quia vox illud non significat nec dicit quod vox significat, quia illud non intendit. Igitur nihil dicit. »

- 23 *Decretales* Gregorii P. IX, l. 4, tit. 1, c. vii, éd. Friedberg II, col. 663: « Si aliqui, apti ad matrimonium, contrahunt per verba obscura, communem verborum intellectum sequi tenentur. ... quando inter aliquos sponsalia contrahuntur, nec intelligit alter quod alter proponit, respondemus, quod inspiciendum est iudici, si matrimonium contracturi ad id faciendum sint idonei scientia et aetate. Quo cognito, si alter non intellexerit, quod alter proposuit, ad communem verbi intelligentiam recurratur, et cogatur uterque verba prolata in eo sensu retinere quem solent recte intelligentibus generare. »

Conversely, as Gabriel Biel will later express in a clear way, the receiver has to understand the words according to their common meaning—he cannot pretend he does not know the meaning and understands them in another than the usual way:

« If someone hearing the sentence, receives it in a meaning—which makes the sentence false—but giving it a meaning which he does not have from the properties of discourse, this should not lead to declare that the speaker lies ... »²⁴

We can see here an important change occurring in respect to the Augustinian views on language. The improper use of language was, for Augustine, a discordance between the “mouth of the heart” and “the mouth of the body”, because any speaker was required to tell the truth, i.e. to tell what he thinks is true. But later, the improper use of language was analyzed as an attitude of the speaker by which he intentionally had his *intellectus privatus* (i.e. the meaning he intends his words to have) not matching the common intention of the hearer and of the community. The language was then not only seen in its vertical dimension between man and God, but also in its horizontal dimension of a man towards another man. Likewise, responsibility in using language was not only in the vertical dimension, but also in the horizontal one, that is between men.



24 Gabriel Biel, *Collectorium III*, dist. 38, art. 3, p. 690: 38–40: « ... si quis orationem audiens accipit eam in sensu, quam non habet ex proprietate sermonis, in quo est falsa, non propter hoc proferens eam mentitur ... ».

Epilogue

Let me finish with a recent interesting episode. The case of Obama's two oaths, on the 21st and 22nd of January, 2009. As you know, there was a problem during the ceremony. According to the constitution, the future President has to take an oath, publicly, in a solemn way, before the crowd gathered in front of the White House.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States." <http://www.usconstitution.net/const.html>

(1) But something went wrong, here is what happened, in the exchange with the Supreme Court Chief Justice John Roberts (you can watch the video on the web, for example on <http://www.thesun.co.uk/sol/homepage/news/article2158872.cce>).

J. Are you prepared to take the oath senator?

O. Yes I am

J. I Barak Hussein Obama do solemnly swear

O. I Barak Hussein Obama do solemnly swear

M. That I will execute the office of President *to* the United States faithfully**

O. That I will execute

(Obama smiles, interrupts his words, realizes that the Judge has made a mistake, and waits for him to repeat the sentence correctly)

J. that I will the off- faithfully the President Office of the President of the United States

O. The office of President of the United States faithfully

J. And will to the best of my ability

O. And will to the best of my ability

J. preserve protect and defend the constitution of the United States

O. preserve protect and defend the constitution of the United States

J. So help you God

O. So help me God

** The way in which it is uttered can produce something different, because of the pause, and because of the *to* (instead of 'of'): That I will execute the office of President/*for* the United States faithfully—It is a problem of 'scope' of the adverb, according to its place in the sentence.

(2) The new President then decided to re-take the oath the next day, with Mr Roberts, at the White House in front of a group of reporters. Obama even joked to reporters who witnessed his second oath-taking: "We decided it was so much fun." And before the second oath, which apparently was not taken on the Bible, began, Judge Robert told him again: "Are you ready to take the oath?" And Obama replied: "Yes, I am, and we're going to do it very slowly."

Now this episode is very interesting. First because it obviously gives more importance on the correct uttering of the formula than on the intention—which was no doubt right in the first oath, although with some words uttered in an incorrect way. In fact some people said that Judge Roberts, who is known for not liking Obama, made the mistake on purpose! Second because this episode implies that the words are more important in themselves than is the whole of the ritual: the second oath was not done in front of the White House, etc. Third it is also interesting for matters of convention: the convention was that stated in the Constitution, but also through custom: as a matter of fact, the requirement that the oath should be taken on the Bible is not mentioned in the Constitution, and some Presidents did not swear on the Bible. But the decision to retake the oath was Obama's own decision: in which sense can it be said that he respected the prescribed ritual? Lastly, there were discussions on the blogs and journals about the exact moment when the President became President, the official answer being that he did become President with the first oath....

This episode is, I think, a modern version of the difficult issues involved in appreciating the relative role of words, intentions and conventions, in evaluating the validity of a speech act—a problem which, as we saw, deeply interested lawyers and theologians in the Middle Ages.