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► **To cite this version:**

Pierre Januard. Analysis risk and commercial risk: the first treatment of usury in Thomas Aquinas's Commentary on the Sentences. 2020. halshs-02876106v1

HAL Id: halshs-02876106

<https://shs.hal.science/halshs-02876106v1>

Preprint submitted on 20 Jun 2020 (v1), last revised 25 Nov 2020 (v2)

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Analysis risk and commercial risk: the first treatment of usury in Thomas Aquinas's *Commentary on the Sentences*

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June 2020

Working paper

Abstract

Whereas literature on Thomas Aquinas's doctrine of usury has tended to focus on the *Summa Theologiae*, this paper highlights the contribution of his early work the *Commentary on the Sentences*. In this work, Aquinas distances himself from the Roman law *mutuum* and the assumption of a borrower's state of necessity, and he introduces preliminary monetary elements. He thereby paves the way for a future understanding of surplus in intertemporal exchange. The monetary loan is presented as a commercial exchange involving not only commercial risk but also the risk of analytical errors in understanding the nature of the operation.

Keywords: risk, interest loan, usury, just price, *mutuum*, scholastic, Thomas Aquinas

JEL classification: B11

Introduction

The notoriety of the two questions of economic significance in the *Summa Theologiae* (IIa IIae, q. 77 and q. 78) seems at times to have cast a shadow over the earlier writings of Thomas Aquinas (1225-1274). If, however, we consider *Summa Theologiae* to express Aquinas's late position, we should naturally feel prompted to investigate how this position emerged. Nearly twenty years before the *Summa*, in the *Commentary on the Sentences* (1254-1256), and notably in *In III Sent.*, d. 37, a. 6 on usury,¹ Aquinas gives an overview of current theories and takes up fundamental economic questions, sometimes clearly distancing himself from the authorities. The *Commentary on the Sentences* is thus an innovative work which constitutes the foundation

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¹ Economic issues are also discussed, albeit much more briefly, in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, which deals with the lawfulness of trade.

of Aquinas's later work,² of which it sometimes appears as a first sketch, while also containing original and major contributions.

Such an approach to the article on usury in the *Commentary on the Sentences* might seem out of step with the reading of Aquinas's work to which we have become accustomed by studies on his economic thought. The literature, on the one hand, pays greater attention to the question of the just price than to interest-bearing loans and, on the other hand, adopts a methodological approach according to which medieval and modern scholastics are considered as a whole or over great periods, showing little regard for the individual path of each, and, for Thomas Aquinas in particular, often concentrating on the *Summa Theologiae*. As a result, not only is the *Commentary on the Sentences* not given special attention, but there are rather few contributions which deal specifically with the treatment of interest-bearing loans in Aquinas's works. Beyond the strictly historical aspects, however, the secondary literature has considered the treatment of interest-bearing loans in Thomas Aquinas in various respects. These include:

- the moral and normative dimension (Noonan [1957]; De Roover [1971]; Lapidus [1987] and [2019]; Langholm [2003]; Sivéry [2004]; De-Juan and Monsalve [2006]; Ege [2014]; Monsalve [2014a]; Santori [2019] and [2020]);
- the legal framework of the *mutuum* under Roman law (De Roover [1953] and [1971]; Noonan [1957]; Baldwin [1959]; Mélitz [1971]; Lapidus [1987] and [1991]; Langholm [1992]; Monsalve [2014b]; Chaplygina and Lapidus [2016]);
- the particular nature of the monetary approach to which it is related (Mélitz [1971]; Lapidus [1987], [1991], [1997] and [2019]; Chaplygina and Lapidus [2016] and [2019]);
- the nature of the partners's commitment, freedom and responsibility through the notion of the conditioned will (Langholm [1984], [1992] and [1998]; Ege [2014]; Sturn [2017]);

² For the years 1268-1272, the introduction to each treatise contained in the Leonine edition, where it is available, as well as the *Brief Catalogue* established by Émery [1993], give a glimpse of a vast body of works dealing with economic questions after the *Commentary on the Sentences* and then the *De emptione et venditione ad Tempus* of 1262 (published in *Opuscula III* of the Leonine edition, pp. 391-394). These works too have sometimes been eclipsed by the *Secunda pars* of the *Summa Theologiae*, of which q. 77 and 78 are a part, which was written in 1271-1272 in Paris. We must also note the *Quodlibetal Questions* (II, q. 5, a. 2 and III, q. 7, a. 2), dated 1268-1272, the *Disputed Questions De malo* (q. 13, a. 4) written around 1270, the *Commentaries on Aristotle's Politics* (*Politicorum*, I, 6-9) and *Nichomachean Ethics* (*Ethicorum*, V, 9), dated 1269-1272 and 1271-1272 respectively, and the *Letter to the Duchess of Brabant* (*Ad ducissam Brabantiae*), dated 1271 (published in *Opuscula III* of the Leonine edition, pp. 375-378). The *Collationes in Decem Praeceptis* on the Ten Commandments, a late finalised writing of his preachings in Italy in his mother tongue, could be the last or, on the contrary, one of the first of Aquinas's contributions. Torrell [1985] and Émery [1993] hesitate between the traditional dating of a Lenten preaching in 1273 and a dating corresponding to Aquinas's previous Italian sojourn in 1261-1268.

- the loan as an exchange that involves risk and is subject to a price (Langholm [1984]; Lapidus [1991]; Sivéry [2004]; Ege [2014]).

It is this last point that we will focus on here, by addressing Thomas Aquinas's first economic writings through the question of risk. In the *Commentary*, his first text on the topic, risk is present in five different ways:

1. The first risk is a risk of understanding. The lexical field of risk is present in a discreet but decisive way in *In III Sent.*, d. 37, a. 6: no occurrence of *periculum* (danger, peril), *alea* (hazard, chance), *fortuna* (chance, fate, luck), *discrimen* (crisis, danger), the verbs *angustio* (to disturb, to trouble) and *inquierto* (to worry), and their derived forms; on the other hand *satis probabilis* (quite probable) appears once in *In III Sent.*, d. 37, a. 6 to characterise the validity of the argument of condemning usury from the *mutuum* as transfer of ownership. The evolution of the meaning of the term *mutuum*, the scholastic conception of probability, the use of the expression *satis probabilis* in the whole of Aquinas' work, and the enumeration of three grounds for condemning usury inherited from the authorities in the absence of the formulation of a decisive demonstration, all tend to show that the first risk that is taken up in the *Commentary on the Sentences* is that of a mistaken understanding of usury, which reflects the lack of information available to the observer as to the nature of the loan transaction.
2. The absence of the vocabulary of risk to describe the situation of the agents does not mean that Aquinas describes a world without risk. It is evident from title of the article, which asks whether receiving an interest is a sin, that this is a moral treatment of usury, and therefore indicates a risk to the moral identity of the agent, who could be characterised as a usurer.
3. Compared to its predecessors, Aquinas's analysis of usury provides the basis for a re-evaluation of risk in relation to the agent. By staying away from the notion of the "conditioned will" and distancing himself from Albert the Great and the Church Fathers who insist on the borrower's state of necessity and lack of freedom, Aquinas introduces an analysis that privileges the agent's activity and particular situation, and not his predefined status. The agent's risk is therefore not attached to his status but to his actual situation. The characterisation of the operation according to objective and visible criteria such as price makes it possible to get around the lack of information on the intentions or motivations of the agents.

4. Thinking of the loan as an intertemporal exchange, as the *Commentary on the Sentences* does, leads us to consider it as a commercial act, and to introduce a price risk, the interest having to correspond to a just price. This last aspect, which is little noted in the secondary literature, deserves particular attention. The reason for this lack of perception seems to be that commentators often implicitly consider Aquinas's position to be relatively homogeneous throughout his writings, whereas on the contrary there is a trend towards a greater acceptance of a surplus, which will then become the subject of both moral and analytical justification. However, in this first text, in which he addresses the question of an interest-bearing loan, the only case that is consistent with a just price is the zero-interest loan, the sum returned having to be equal to the sum lent, without surplus. This position is in line with the strict conception of *mutuum* that prevailed before Thomas Aquinas. It is only in his later writings that Aquinas would open a breach with that conception, by presenting situations in which a surplus can be practised and still conform to the just price.
5. Finally, by laying the groundwork for a conventionalist approach to money and denying it any utility in itself, Aquinas introduces a risk to the value of money, which stems from a lack of information, since the agent does not know how this value will evolve. In usury, a risk thus intervenes into the evolution of the value of the good exchanged in an intertemporal manner. After the risk of analysing and understanding economic activity, a set of commercial risks related to exchange and money thus appears. It should be noted that this conclusion is not immediately obvious. The *Commentary on the Sentences* seems in fact to deal with economic questions in a discrete manner: usury in *In III Sent.*, d. 37, a. 6; the activity of the merchant in *In IV Sent.*, d. 16, q. 4, a. 2, qc 2. Yet certain constitutive points, such as the universality of risk situations and the responsibility of the agent for his own risk, and the central role of price in exchange, are evidence of a unified approach to economic activity.

These five types of risk are on two levels: a risk of error in the understanding of economic activity, and commercial risks for the agents carrying out the operation. These two levels of risk are closely intertwined, the commercial risk being systematically coupled with an analysis of risk, in which the originality of Aquinas's work lies.

I will address these five categories of risk by showing how, by moving from the moral prohibition of usury to the economic justifications of this prohibition, Aquinas opens up a space

for analysis. This requires, first, that we identify the normative framework that Thomas Aquinas inherited, as well as the sense of *mutuum* and the monetary conceptions at the heart of the arguments proffered by the authorities who constitute his reference space (section 1). I then analyse the expression *satis probabilis* that Aquinas uses to evaluate the justification of the prohibition of usury by the sense of *mutuum*, in order to assess its importance for the new approach to usury found in his later works. This will highlight the emergence of a risk of error in the analysis and understanding of interest-based lending, which entails a risk for economic agents starting with their moral identification as a usurer, and then extending to society as a whole, since the prohibition of usury affects social redistribution (section 2). Finally, I identify the risks that assimilate usury to a commercial exchange: risks on money, which constitutes the exchanged good, on the price, since the interest is a surplus of the exchange, and on property, since the risk is incumbent on the owner (section 3).

1 From moral prohibition to economic justification: Emergence of a space for analysis

Thomas Aquinas' economic thinking is doubly embedded in a moral framework, since on the one hand it is rooted in a questioning of the morality of interest-bearing loans, and on the other hand it draws upon a powerful base of authorities who strongly and indisputably affirm the prohibition of usury, which is seen as tantamount to theft. Aquinas revisits the arguments that have already been offered, and proposes new economic justifications for the prohibition of interest-bearing loans based on the *mutuum* stemming from Roman law and an early theory of money.

1.1 A normative framework

The article on usury in the *Commentary on the Sentences, In III Sent.*, d. 37, a. 6,³ is part of Aquinas's commentary on Peter Lombard's distinction on the theft in the *Sentences (III Sent.*,

³ The *Commentary on the Sentences* is articulated in books, distinctions, questions and articles. The *Summa Theologiae* simplifies the outline by removing the distinctions and tightening up the articles for pedagogical purposes. Each article focuses on answering a question. It is made up of a series of objections, which are generally not false, but which serve as points of support to be surpassed or clarified. Next comes the *sed contra* (on the contrary), which gives the key to Aquinas's position, usually drawing from a biblical, patristic or philosophical quotation, and then the *respondeo* (answer, or main part of the article), which presents the author's thesis, often by a process of distinction which allows the question to be approached from different angles. The answer to the

d. 37) which, like Gratian's *Decree*, equates theft and usury. To these authorities of the mid 12th century, Aquinas adds the classical evangelical verse "lend without any hope of return" (*Luke* 6:35), used in the great texts against usury from the beginning of the 13th century. He thus anchors his article in a moral perspective and in the views of a set of very assertive authorities.

1.1.1 *Is usury theft?*

The *Commentary on the Sentences* constitutes the foundation of Thomasian thought, both as an academic synthesis with a view to becoming a *sententiary bachelor*, and as the first steps in his personal work. Thomas Aquinas does not take up the treatment of theft contained in *II Sent.*, d. 40 by Peter Lombard, Bishop of Paris (who wrote his *Sentences* around 1150), who condemned the figure incarnated today by Robin Hood: stealing from the rich to do charity by giving to the poor is not permitted, because although the end is good, the means are bad since theft is a sin in itself. We also find this argument in Giles of Lessines's *De usuris in communi* of 1276-1285,⁴ which points to a similarity between theft and usury, both of which can have a good end but may be condemned for the bad means employed (*De usuris*, III). On the other hand, Aquinas takes up and abundantly amplifies Peter Lombard's discussion of the Ten Commandments in *III Sent.*, d. 37, of which chapters IV and V also dealt with theft (*de furto*). For Lombard, usury could be dealt with in only a few lines. The interdict was supported by Jerome: "To seek usury or to defraud or steal [*usuras quaerere vel fraudare vel rapere*] brings nothing. Agree with your brother and receive what he gives you, and do not seek anything superfluous, because the superabundance in usury is counted [*quia surabundantia in usura computatur*]" (Peter Lombard, *III Sent.*, d. 37).

Let us note here an important assumption, inherited from Lombard, on which Aquinas bases his study: usury and fraud are to be assimilated to theft, a classical position found among the

question dealt with in the article is therefore often nuanced, but in most cases it confirms the *sed contra*, which gave the general line. Finally, replies to the objections are found, which are term-by-term responses. Starting by reading the *sed contra* and then the *respondeo* allows us to get to the heart of Aquinas's thinking by first perceiving his orientation, and then the path of his reasoning, which often involves the articulation of several syllogisms. The reading of the objections and their replies is important in the second stage to clarify Aquinas' argumentation.

⁴ Since the attribution of the treatise, at the beginning of the 20th century, to Giles of Lessines and not to Thomas Aquinas, this is classical dating given by du Passage ([1946], col. 2345), based on the work of Hocédé [1926] and Grabmann [1936], and taken up by Langholm [1984], p. 23.

Fathers⁵ and then among Anselm and Gratian: "If someone practises usury [*si quis usuram accepit*], he steals [*rapinam facit*]" (Gratian, *Decree*, II, causa 14, q. 4, c. 10).⁶ The assimilation of usury to theft is connected to the patristic social foundation of the defense of the poor: "He is no less cruel, the one who kills the poor by means of an interest-bearing loan than the one who steals something from the rich by any means [*non minus crudelis est, qui pauperem trucidat foenore, quam qui diviti aliqua rapit*]" (c. 11). Through the connection with theft, usury and fraud come to be perceived as two branches of the same field of operation. It should be noted, on the one hand, when reading Gratian's *Decree* (1140)⁷ and the *Decretals* of Gregory IX (1234),⁸ that the condemnation of usury is unambiguous, as Lapidus [1991] points out (see also Noonan [1957], pp. 32-32; Langholm [2003], pp. 34; Chaplygina and Lapidus [2016], pp. 31-32); and on the other hand, that commercial questions are, at least in part, dealt with in the chapters devoted to usury, which tends to lend credence to the thesis of a certain unity within economic activity.

Moreover, in *II Sent.*, d. 40 Lombard adds: "Some people think that usury is only in money [*in pecunia*] but usury occurs as soon as a surplus [*plus est*] is granted to what was given". His thought here is thus not about money or the transfer of ownership (although the notion of theft may suggest this), but adverts simply to a moral prohibition based on the idea of surplus.⁹ Gratian's *Decree*, which precedes Lombard's *Sentences* by a few years, already contains this

⁵ The first text of the Catholic *magisterium* prohibiting usury, *Nec hoc quoque*, which belongs to the letter *Ut nobis gratulationem* (443) of Pope Leo the Great, is very combative but contains only two paragraphs and does not define usury except as "dishonest gain [*lucri turpis*]" sought by "greed [*cupiditate*]" (*Enchiridion*, n°280).

⁶ For a historical overview of the condemnation of usury, see du Passage [1946], col. 2316-2390; Noonan [1957], p. 15-17; Lapidus [1991]; Langholm [2003], p. 16.

⁷ The condemnation of usury in Gratian's works can be found in *Decree*, I, d. 46, c. 9-10; d. 47, 1-8; II, causa 14, q. 1, c. 2; q. 3, c. 1-4; q. 4, c. 1-12. It is in this context that the condemnation of commercial *turpe lucrum* comes into play: "Let us deal with *turpe lucrum*, which consists in buying cheaper and selling more [*turpe lucrum sequitur, qui minus emit, ut plus vendat*]. It is compared to the time of the harvest or the grape harvest [the price] of the harvest or the wine: not out of necessity but out of greed, two denarii make four, or six, or more. It is said to be *turpe lucrum* [*quicumque tempore messis, vel vindemiae, non necessitate, sed propter cupiditatem comparat annonam, vel vinum, verbi gratia de duobus denariis quatuor, aut sex, aut amplius, hoc turpe lucrum dicimus*]" (*Decree*, causa 14, q. 4 c. 9).

⁸ The condemnation of usury in Gregory IX can be found in *Decretals*, l. 5, t. 19. The exclusion of usurers is firm: "Manifest usurers cannot be admitted to communion or to an ecclesiastical burial [*manifesti usurii ad communionem altaris et Ecclesiasticam sepulturam [...] admitti non possunt*]" (c. 3). It is in Title 19 that the sale on credit is dealt with and the *Decretal Naviganti* (chapter 19) is to be found. Commercial activities are dealt with in *Decretals*, l. 3, t. 17: "*De emptione et venditione*", which deals in particular with fraud in measures and weights (c. 2) and just price (c. 3 and 6). It is in this section that we find the conditions for the seizure and restitution of a pledge (*pignus*) in kind (house and olive trees, *domos et olivas*) for a loan (chapter 5).

⁹ Lapidus ([1987], p. 1097), whose study focuses on the monetary surplus, recalls this pre-Thomsonian conception of interest as exchange surplus and traces its biblical and patristic origin, and Lapidus [1991] analyses interest from this angle of exchange surplus, which makes it possible to understand the asymmetric view of usury.

prohibition of surplus: "He sins, the one who demands more than what is lent [*peccat autem, qui exigit ultra debitum*]" (Gratian, *Decree*, II, causa 14, q. 1, c. 2). Gratian lays down a general prohibition of usury on the basis of the condemnation of greed¹⁰ and of any *superabundantia* in a loan, whether financial or in kind.¹¹ The entirety of work undertaken by Aquinas in his commentary will therefore be directed to providing economic support for the moral prohibition here laid down, and to distinguishing the nature of this surplus according to whether it is financial, measurable in terms of a monetary price, or of the order of gratitude and moral recognition.

1.1.2 Lend without any hope of return!

Aquinas's commentary in *In III Sent.*, d. 37, a. 6 "Is it a sin to receive interest?" introduces a novel feature into the *distinctio* on the Decalogue by including a specific and lengthy article on usury, along with six objections. This is indicative of the importance Aquinas assigned to the question of usury. Regrettably, there is no such developed early work on other economic questions, and we may note, for example, the brevity of *In IV Sent.*, d. 16, q. 4, a. 2 on trade. Aquinas's challenge in *In III Sent.*, d. 37, a. 6 is to start from a moral prohibition in order to extract elements of understanding and possibly justification, which leads him to study the mechanisms and operations in question.

The *sed contra* is moral, starting from the traditional Gospel verse calling on us to "lend without any hope of return [*date mutuum, nihil inde sperantes*]" (Luke 6:35). As we have indicated, this verse is a classic reference point in medieval condemnations of usury: although it does not appear in Peter Lombard's writings, it is found at the beginning of the 13th century in Robert of Courçon's *De usura* (p. 5 and 19),¹² and then in William of Auxerre's *Summa Aurea* III, XLVIII, c. 1, q. 1 and in Albert the Great's *In III Sent.*, d. 37, a. 13. It is cited by Gregory IX in his

¹⁰ "Ordinary usurers are prohibited [*usurarii ordinari prohibentur*], hence as they exercise usury, they prove that they devote themselves to greed [*inde est, quod usuram exercentes, cupiditati deservire probantur*]" (Gratian, *Decree*, I, d. 47, introduction).

¹¹ "If you lent your money [*mutuam pecuniam tuam dederis*], what did you expect more than what you gave [*a quo aliquid plus, quam dedisti, expectes accipere*], not only money but something more like wheat, wine, oil or something else [*non pecuniam solum, sed aliquid plus quam dedisti sive illud triticum sit, sive vinum, sive oleum sive quodlibet aliud*], if you hope to receive more than you have given [*si plus, quam dedisti expectas accipere*], you are a lender of interest [*foenerator es*], and in this you are to be reproved, not praised [*and in hoc improbandus, non laudandus*]" (Gratian, *Decree*, II, causa 14, q. 3, c. 1).

¹² Georges Lefèvre gives the date of 1202 to *De usura*, which he edited and translated into French in 1902. The treatise is now dated slightly later (1208 for Langholm [1992], p. 40).

Decretals (1234) in a passage attributed to Urban III in 1186, which deals with sale on credit (*Decretals*, l. 5, t. 19, c. 10). Aquinas then turns to it regularly as a point of support: in addition to *In III Sent.*, d. 37, a. 6, sc, it is found in other writings on usury (q. 78, a. 1, obj. 4; *De malo*, q. 14, a. 4, obj. 3), as well as in other places (*Summa Theologiae*, Ia IIae, q. 108, a. 3, ad 2; *Commentary on the Psalms*, 14, 5; *Catena aurea on St. Luke*, 6, 35). Finally, we find two occurrences of the verse in the treatise on usury by Giles of Lessines (*De usuris*, III and XIV) at the end of the 13th century. The verse posits a tension between two notions: *mutuum*, the loan stemming from Roman law, and *sperare*, waiting (Le Goff [1986], pp. 23-24). Although it is understood and employed in the Middle Ages as an exhortation to lend without interest, the context given by *Luke* 6:27-35 in fact indicates a more radical meaning. The loan becomes a gift because it is a matter of *expecting nothing*, neither interest nor repayment of the principal: "Give to everyone who asks you, and do not ask for your property back from someone who takes it" (*Luke* 6:30). By contrast, sinners already practice the interest-free loan, and so fall short of the Gospel exhortation: "Even sinners lend to sinners to get back the same amount" (*Luke* 6:34). By using *Luke* 6:35 against usury but not against interest-free loans, the medieval authors thus softened the meaning.

The Vulgate's expression "*date mutuum*" here translates into Latin the Greek imperative *δανίζετε* (lend), but the precise meaning of the Greek verb is "to lend money at interest", as has been underlined by Ege ([2014], p. 396). The Gospel verse is thus deliberately paradoxical. By choosing the expression "*date mutuum*", the Latin translators of the Greek text thus associate the *mutuum* with a loan which, according to the Greek, is usually made at interest. Two hypotheses then arise concerning the meaning of the term *mutuum* for medieval authors: either the translators of the Greek verse erased the evangelical paradox for the sake of coherence, suppressing the notion of interest by choosing the term *mutuum* which for them does not evoke interest; or else the term *mutuum* does indeed contain the possibility of interest, which would preserve the contradiction in the evangelical verse as translated into Latin and therefore preserve its rhetorical power. The work of the Fathers and the medieval theologians would then be aimed at explicating a new conception of the *mutuum* without interest, rooted in the contradiction of *Luke* 6:35 with its radical normative imperative: "lend", but "without any hope of return [*nihil sperantes*]!"

1.2 The *mutuum* and money: between authorities and quicksand

The keystones of Aquinas's thought on usury are two elements that will go on to structure all his work on this topic: *mutuum* and money. By his choice of a *sed contra* centred on the *mutuum*, he opens a vast hermeneutic field. Historical analysis of the use of the term *mutuum* makes it possible to identify the role of the medieval authors in the evolution of the interpretation of the evangelical verse "lend without any hope of return" (*Luke* 6:35) in the sense of the archaic and restrictive meaning of a *mutuum* absolutely without interest, a meaning which it has not always possessed. The beginning of the *respondeo*, questioning the nature of money, quickly sweeps away the argument put forward by the authorities, here anonymous, that money that does not deteriorate whereas a purchased good does deteriorate. Under the cover of these authorities, Aquinas thus gives two major indications of the future direction of his thought: on the one hand, by choosing the *mutuum* and money, he directs his attention to economic mechanisms and not moral considerations concerning the enslavement of the poor; and on the other, starting from the thought of his masters and predecessors, he allows himself to disqualify from the outset one of the key arguments in play.

1.2.1 *Mutuum, a broad and evolving term*

The general meaning of *mutuum* in Latin literature is first of all lending among friends,¹³ and then lending in the broad sense, whether in money or in kind, without specifying interest (unlike *δανίζετε*), but nevertheless with a notion of reciprocity or mutuality: the equivalent must be returned (Ege [2014], p. 393).¹⁴ The term *fenus*¹⁵ is used to refer to interest, and by extension to interest-bearing loans: this term is thus employed to emphasise the specific nature of such

¹³ For Plautus (d. 184 BC), one of the first great Latin authors, the loans were made to family or friends and carried no interest, as indicated by all the occurrences noted by Feuvrier-Prévotat [1993]. However, we see the emergence of the profession of usurers (*danista*) and bankers (*argentarii*), which were not mentioned in the Greek comedies we know of (Feuvrier-Prévotat [1993], p. 143). Pre-Ciceronian authors usually reserve *mutuum* for an interest-free loan and call *fenus* interest (Nadjo [1989], p. 233-307).

¹⁴ In Cicero (d. 43 BC), for example, there is a *mutuum* in kind without mention of interest (or free of charge): "wheat is lent to two cities in Sicily (*mutuum frumentum dedit*)" (Cicero, *On the Agrarian Law*, II, XXX, 83).

¹⁵ The two forms, *fenus* and *fenum*, the product of the meadow, retain different meanings, although the Romans understood the relationship between the two terms (Ernout and Meillet [2001], p. 225). The Romans, like Festus and Varro, also associated *fenus* with *fetus*, progeny, because deniers generate deniers (du Passage [1946], col. 2321).

loans, and makes it possible to distinguish interest from capital, *sors* (Ernout and Meillet [2001], pp. 225, 426, 637). However, the terminology remains relatively imprecise.¹⁶

In Roman law,¹⁷ particularly in Justinian's rule, the *mutuum* was initially a consumer loan contract free of interest,¹⁸ to which may be added a *stipulatio*, an appendix that sets out what the borrower must give in addition to returning what has been borrowed.¹⁹ The borrower becomes the owner of the borrowed sum, contrary to the three other types of real contracts: the *commodate*, the deposit (*depositum*) and the *pledge* (*pignus*). The *fenus nauticum* is thus a variant derogating from the interest of the *mutuum* justified by the specific nature of the sea trade but which is part of the common law.²⁰ More generally, the reasons for a *stipulatio* are very varied, and interest is only one of the possible specifications. In addition, in the 13th century there were many variants of interest *stipulatio*, which can be grouped into two categories: fixed term, or at the will of the creditor. This was, for example, the case in Flanders (Wyffels [1991], p. 855). The extrinsic titles attached to the loan may include: *lucrum cessans*, to cover the opportunity cost of the loan, which prevents the lender from doing other business; *damnum emergens*, if the lender is himself forced to borrow at interest (in particular to take out a consumer loan) because of the loan; and *poena conventionalis*, a penalty for late payment for a loan that was originally free (although this is disguised interest when this 'delay' is agreed in advance). The clauses and titles intended to justify the interest are thus based on the expression of a risk (du Passage [1946], col. 2361 and 2364; Burke [2014], pp. 111-113; Ege [2014], p. 403; Monsalve [2014b], pp. 231-232; Chaplygina and Lapidus [2016], pp. 35-37; [2019];

¹⁶ In Cicero's view, *fenus* can refer to income in a sense close to interest, for which the term used can be *usura*, but without any pejorative connotation, and on the contrary of generosity: "Indeed, the farmers have an open account with the land, which never pushes back their domination and never makes without interest (*sine usura reddit*) what it has received, but gives an income sometimes small, most often considerable (*plerumque majorum cum fenore*)" (Cicero, *Cato the Elder*, XV, 51). The term *fenus* is used to denounce an interest-bearing loan that is usurious: "He received an interest of two per cent per month (*binis centesimis feneratus*); then, there are very many cities where he paid absolutely nothing for the wheat" (Cicero, *Second Pleading against Verres*, III, LXX, 165).

¹⁷ On the rediscovery of Roman law in the Middle Ages, see in particular Lapidus ([1987], pp. 1098-1099).

¹⁸ Since the loan is initially a consumer loan, this explains the difference in bargaining power between borrower and lender (Chaplygina and Lapidus [2016], p. 32; [2019]).

¹⁹ On the common practice of attaching to the *mutuum*, which normally carries no interest, a stipulation which envisages some interest, see Giliberti [1999], p. 169; Cimma [1984]. Andreau, by noting on the one hand the practice of attaching a stipulation of interest to the *mutuum* ([2000], p. 152), and by presenting *mutuum* and *fenus* as two alternatives depending on whether there is interest or not ([1987], p. 433), echoes the lexical diversity of Latin authors, although *fenus* is usually designated as a *mutuum* with *stipulatio* (du Passage [1946], col. 2321).

²⁰ Lapidus [1991] and Chaplygina and Lapidus [2016], p. 39, in breaking down the *fenus nauticum* into two stages, bring it closer to the *societas* and see in it a loan only in name. After the maritime risk there remains a risk of loss during the sale, which was not taken into account in the contract. The lender continues to bear the risk, since it is his money that has been invested in the transaction. He therefore becomes a shareholder of the commercial transaction, as it were.

Lapidus [2019]). We may note, however, that until the 16th century, the licit forms of credit, under the legal aspects of investment or *locatio*, were more frequent than *stipulatio* (Mélitz [1971], p. 475 and pp. 484-485). Foreign exchange was also an alternative form of usury (De Roover [1946], p. 118). De Roover ([1953], pp. 28-29) thus shows that foreign exchange contracts (*mutuo nomine cambi*) were common in Genoa in the twelfth century, but that the term *mutuum* was quickly abolished so as not to fall foul of the condemnation of usury, and that the transaction was presented as a purchase and sale (*emptio-venditio*). Ege ([2014], p. 392) thus observes that usury could never be prevented, and was the subject of multiple "escape attempts", as he puts it, of two types: circumvention by a legal covering of the shareholder type, and the stipulation of clauses of interest in the *mutuum* (Chaplygina and Lapidus [2016], p. 37; [2019]).

Halfway between the two previously formulated hypotheses of translation (a *mutuum* with or without the possibility of interest), the history of Roman law invites us to see in the translation of *δανίζετε* by *mutuum* an enlargement, with a shift in meaning towards a "rather" interest-free loan, and then a new shift under the medieval theologians back towards the original meaning of a *mutuum* clearly without interest, thus departing from the Greek term and the paradox it introduced. Medieval authors adopted the *mutuum* of Roman law as the prototypical form of lending (Mélitz [1971], p. 478), but they did not immediately rely on it to condemn usury. Thus, Gratian's *Decree* (1140) does not explicitly refer to the definition of the *mutuum* in its argument against usury. The ambiguity or polysemy of the *mutuum* can be compared to the expression "loan *ad maniam*" or "*a maniae*", used in the 13th century, originally thought of and understood as a free loan, a deposit, but which was practiced by the cities of Flanders with an interest of about 10% and which appears under the heading *usura* in their accounts (Wyfells [1991], pp. 859-862).²¹

However, one observes in Robert of Courçon's *De usura*, for example, a desire to restore an evangelical meaning to the *mutuum* by seizing upon *Luke* 6:35 and returning to the primary and restrictive meaning, void of any stipulation. It is not the level of the interest rate nor the reason for the loan that determines a loan to be usury, but the very fact of giving an interest-bearing

²¹ In the 12th and 13th centuries European cities regularly needed to resort to borrowing, sometimes forced, sometimes free, as Munro [2003] shows for Genoa and Venice (p. 514-515), and for Northern Europe through *rente* contracts (p. 518).

loan (De Roover [1971], p. 78). While Gratian does not make this point explicitly, Robert goes on to insist on the importance of the change of ownership, relying on the supposed etymology of *mutuum*: "what is mine becomes yours or conversely (*de meo fit tuum vel e converso*)" (*De usura*, p. 14) – by contrast, the agreed etymology today is that the word is a form derived from *muto*, to move, to change (Ernout and Meillet [2001], p. 426). In the *Decretals* of 1234, Gregory IX takes up the notion of *mutuum* as a transfer of ownership that prohibits interest, but the expressions using the term remain rare and allusive: "*mutuam pecuniam*" in *Decretals*, l. 5, t. 19, c. 10; "*certam mutuans pecuniae quantitatem*" in c. 19, *Decretal Naviganti*. We must, therefore, ascertain whether Aquinas, by the choice of *Luke 6:35* in the *sed contra*, first of all fits into the medieval narrowing of the sense of *mutuum* initiated by the previous users of this verse, or whether he intends to return to the broader sense of Roman law.

1.2.2 A stumbling block: the nature of money

Thomas Aquinas's *respondeo* presents three arguments against usury, based respectively on the nature of money, the nature of *mutuum*, and the utility of money,²² and which reflect the three sources of the normative framework that forms the basis of the authorities' work: Aristotle's thought, Roman law, and ecclesiastical sources (Chaplygina and Lapidus 2016, p. 20). The introduction justifies the condemnation of usury in particularly general terms: "But various reasons are given [*sed diversi diversas rationes assignant*]" (*In III Sent.*, d. 37, a. 6, resp.). It is worth noting here, on the one hand, the insistence on diversity manifest by the redundancy *diversi diversas*, and, on the other, the connotation introduced by *diversi*, whose primary meaning is "in the opposite, opposite direction", indicating by extension a splintering in various directions. From the outset, then, Aquinas puts forward the idea of a diversity of arguments which are not necessarily coherent. The starting point remains normative: "All say [*ab omnibus dicitur*] in a general way [*communiter*] that usury is a mortal sin" (*In III Sent.*, d. 37, a. 6), which corresponds well to the legal prescriptions of Gratian and Gregory IX. Aquinas insists on the universality of condemnation (*ab omnibus; communiter*) and on its moral dimension (mortal sin), and in this respect does not differ from the other scholastics whose economic contributions

²² We find here, in a first formulation, what Lapidus [2019] identifies in later Thomasian writings as legal considerations (continuity of ownership), which here refer to the nature of the *mutuum*, ontological considerations (condition of an income), which echo both the *mutuum* and money, and epistemological considerations, which concern the proper use of money.

fall within a theological or canonical framework (Sturn [2017], p. 640).²³ However, without for all that emancipating himself from the initial normative framework, Aquinas is committed to renewing the positive study of usury (Mélitz [1971], pp. 477-482).²⁴ Without repeating the social condemnation developed by the Gospel, the Fathers and again by Gratian (*Decree*, II, causa 14, q. 4, c. 11) according to which usury enslaves the poor, Aquinas set out the two reasons that throughout his work will make usury a "logical fault" (Lapidus [1987], p. 1097): money and *mutuum*.

The first explanation, which can be found here in germ and which will be more fully developed in q. 78, a. 1, resp., falls under the heading of the definition of money.²⁵ Aquinas tries to explicate the argument that "money does not deteriorate by use [*quia pecunia non deterioratur ex usu*]", adding "in the loan, there is no deterioration equivalent to the amount", whereas property purchased with this money does deteriorate, such as for example a horse. But Aquinas notes that this is not always the case, for example when buying a house. Therefore, one cannot compare the deterioration of property to a deterioration of the amount of money lent. Aquinas thus notes the fragility of the argument and moves on to the next: "That is why others give another reason [*et ideo alii assigning aliam rationem*]" (*In III Sent.*, d. 37, a. 6, resp.), explicitly introducing by the word *ideo* ("that is why") a causal link between the limitation of the first argument and the fact that others are thus formulated. To account for the difficulty of the analysis, Mélitz [1971] and Lapidus ([1987], p. 1103) note the confusion between consumptible and fungible goods, while we may also observe that the monetary argument remains a

²³ Thus the debate on Aquinas's reception in q. 78, a.2, ad. 5 of Gregory IX's *Decretal Naviganti* of 1234 does not concern the inclusion of Aquinas within a general framework of condemnation of usury but rather the articulation of the *mutuum* and the model of the *societas* (Noonan [1957], pp. 136-145; Baldwin [1959], p. 52). Aquinas's desire to describe positively the mechanism he observes in *In III Sent.*, d. 37, a. 6 and in other economic writings remains intertwined with the moral purpose of determining sinful situations (Lapidus ([1987], p. 1096; [2019]; Sivéry [2004], p. 705). This is part of the primacy that the scholastics give to justice (Hamouda and Price [1997], p. 192; Monsalve [2014a], p. 5). Man is first of all thought of as a moral being (De-Juan and Monsalve [2006], p. 100-101). He is still *homo justus*, before becoming *homo oeconomicus* (Monsalve [2014a], p. 16). It should be noted that Santori ([2019] and [2020], p. 278) has recently highlighted an earlier stage, with Thomas Aquinas considering the human being to be first and foremost a friend (*naturaliter homo homini amicus*), who gives himself over to the gift (*donum*), before being considered *homo justus*. Le Goff [2010] stresses the importance of an anthropology of giving through the development of *caritas* (charity). Thus Turgot points out in his *Mémoire* of 1770 that the confusion in medieval times between usury and interest, which justifies the prohibition of interest-bearing loans, is not the result of an intellectual incapacity for analysis but of a different centre of interest, focused on a theological and moral concern (Ege [2014], pp. 412-413).

²⁴ Thomas Aquinas turns less towards the sinful intention of the usurer than his predecessors such as William of Auxerre, or then the late scholastics (Monsalve [2014b], p. 219), and concentrates more on the usurious fact itself.

²⁵ The Thomasian approach to usury through money is emphasised by Lapidus [1997], p. 26 and Chaplygina and Lapidus [2016], p. 28.

promissary note which will be developed in the *Summa Theologiae*, where he takes instead the side that money is consumable, being assimilated to wine or wheat which are destroyed in use and whose use cannot be sold (*usus rei*) separately from the reality itself (*a re ipsa*).²⁶ Aquinas will rely on Aristotle,²⁷ who emphasises the function of an intermediary in exchanges (*principaliter est inventa ad commuendas faciendas*) to deduce that "the proper and principal use of money is to be consumed" (q. 78, a. 1, resp). It should be noted that in this perspective it is the use as an intermediary of exchange that leads to the consumption of money, and not money itself, since it can have two secondary uses that do not lead to its consumption: ostentation, known as *mutuum ad pompam* or *ad ostentationem*, ready for the watch (Mélitz [1971], pp. 480-481; Lapidus [1987], pp. 1100 and 1101; Chaplygina and Lapidus [2016], pp. 29 and 33; [2019]), and pledge. Aquinas points out in fact that money can be lent as a pledge or, in the form of silver coins (*pecuniae argentae*), for ostentation (*ad ostentationem*) (q. 78, a. 1, ad 6). In this case the money is not consumed, it is simply rented. The use can then be sold. For the moment, though, in the *Commentary on the Sentences* Aquinas merely notes the limit of the argument that money is not damaged by use.

2 *Satis probabilis*: highlighting of a risk of error in usury analysis

After rejecting the initial monetary justification for the prohibition of the interest-bearing loan, Thomas Aquinas returns to the main argument against usury extant in his time, that of the loan, *mutuum*, as a transfer of ownership. By presenting it as "quite probable", he takes it out of the realm of irrefutable proof and certain knowledge and highlights the lack of information on the nature of economic transactions. The analysis of the text and of the occurrences of the term *satis probabilis* throughout the Thomasian corpus tends to confirm the existence of doubt on the validity of the *mutuum* thesis. The first risk for Aquinas would therefore relate not to the

²⁶ The limitation which Aquinas perceives concerning the argument presented in *In III Sent.*, d. 37, a. 6 and its subsequent reversal to keep the consumption of money in the exchange, allows him to make a significant shift from degradation to consumption. Interest is no longer, as in the third argument of the *Decree Ejiciens*, the counterpart of the depreciation of a stock, as rent is the counterpart of the degradation of the house: "Thirdly, the field or house ages with use [*tertio ager, vel domus, utendo veterascit*]. But money, being lent [*mutata*], neither diminishes nor ages [*nec minuitur nec veterascit*]" (Gratian, *Decree*, I, d. 88, c. 11). For Ejiciens, since there is no degradation, the rental of money cannot give interest in return (Monsalve [2014b], p. 220). For Aquinas, on the contrary, interest derives from the possibility of separating the property from the use, which is not the case for money. Aquinas can therefore give a new monetary specification to the condemnation of usury. Whereas rent is possible for a house, which is not consumed (even if it is degraded), it is not possible for money (q. 78, a. 1, resp.; *De malo*, q. 13, a. 4). See Chaplygina and Lapidus [2016], pp. 33-34.

²⁷ "Money is the principle and term of exchange" (Aristotle, *Politics*, I, 1257b); "Money was made only for the purpose of exchange; interest, on the contrary, multiplies that very money" (*ibid.*, 1258a). In *Nicomachean Ethics*, IV, 1, 39, 1121a the criticism of usury is centred on the greed of the usurer.

economic activity itself but to the analysis and understanding of this activity, since the justification for the prohibition of interest-based lending, whose economic and social importance is shown in all the Thomasian writings, is based primarily on a thesis which is probable but not certain.

2.1 The 'rather probable' argument of the *mutuum*

Reading *In III Sent.*, d. 37, a. 6 in the light of the medieval and scholastic conception of probability provides a first indication of the weight of the expression *satis probabilis* in the article. Thomas Aquinas does not consider a degree of probability as a degree of *certainty*, which would correspond to a modern conception of probability, but rather, through the use of the term *probabilis*, characterises the contemporary argument that unfolds from the *mutuum* as a transfer of property, as a thesis which is acceptable at the argumentative level but not susceptible of certain proof by way of demonstration. Moreover, a set of textual clues indicates that Aquinas questions the argumentative solidity of the *mutuum* thesis even as he reports it in *In III Sent.*, d. 37, a. 6, resp.

2.1.1 *The mutuum or satis probabilis thesis syndrome*

Having demonstrated the failure of the monetary argument at the beginning of the *respondeo*, the second reason against interest-bearing loans he considers is that of the *mutuum*, of the loan as a transfer of ownership.²⁸ Thomas Aquinas now takes up the argument "by way of ownership" formulated by his predecessors such as Robert of Courçon: "This is why others give another reason [*et ideo alii assignant aliam rationem*], when money is lent, ownership is transferred [*quando pecunia mutuatur, transferur dominium*]" (*In III Sent.*, d. 37, a. 6, resp.). This is also the normative framework laid down by Gregory IX's *Decretal Naviganti* in 1234, which is not based on the criterion of assumption of risk but only on ownership. The loan is a transfer of ownership (*mutuans pecuniae*): "The one who lends a fixed amount of money to [a merchant] sailing or going to fairs, in order to receive something beyond the capital by taking the risk on himself, must be considered a usurer [*naviganti vel eunti ad nundinas, certam*

²⁸ The commentators, with the notable exception of Mélitz [1971] and Lapidus [1987] and [1991], have not studied the question of the *mutuum* from a purely economic point of view, but they do recall its normative framework, as Baldwin ([1959], pp. 52-53) does by referring to the *Decretal Naviganti*.

mutuans pecuniae quantitatem, eo quod suscipit in se periculum, recepturus aliquid ultra sortem, usurarius est censendus]" (Gregory IX, *Decretals*, l., 5, t. 19, c. 19).

Lending by *mutuum* is then distinguished from renting: "Which is not the case for a house and for other things. Now it seems right that for the use of something which remains my property, namely, the house, I should receive something" (*In III Sent.*, d. 37, a. 6, resp.). Aquinas here justifies the principle of rent received for the use of a thing which remains my property. However, in the case of the *mutuum*, I part with the money, which is no longer mine: "But to receive something for the use of money, which becomes the property of another by the very fact that it is lent, is nothing other than to receive something from someone for the use of his property. So it seems to be an exaction and a sin. And this reason seems quite probable [*et haec ratio satis probabilis videtur*]" (*In III Sent.*, d. 37, a. 6, resp.). Again, the expression *satis probabilis* (quite probable) presents a difficulty of interpretation, because the two terms can take on very different connotations, either positive or negative.²⁹ It is therefore necessary to clarify the meaning of the expression as it is used in the *Commentary on the Sentences*.

2.1.2 Probability before probabilities: The Thomasian and scholastic sense of *probabilis*

By using the expression *satis probabilis* about the *mutuum*, Thomas Aquinas attracts the attention of his reader. In order to appreciate its significance, one must return to the medieval conception of probability, pre-dating the mathematical probability theory which had its advent in modern times. In his 1713 *Ars conjectandi* Jacob Bernoulli defined probability as a degree of certainty (*gradus certitudinis*) that differs from it as part of the whole. Probability is thus seen as a spectrum towards certainty (Daston [1988], p. 34), and this is the sense in which it is used in economic matters (Bréban and Lapidus [2019], p. 158). In Aquinas's work, and more broadly in medieval times, there is on the contrary a clear distinction, in nature, between what is probable and what is certain (Byrne [1968]; Daston [1988]; Hacking [2006]). Knowledge is either apodictic (universal and absolute truth), based on demonstration, or persuasive, based on a set of opinions and arguments (Daston [1988], pp. 37-38). The Medievals distinguished

²⁹ *Satis* can mean that something tends to be good and satisfying, but also rather mediocre, and can suggest near-completeness or imply a lack. *Probabilis* can indicate what is clear and conclusive, but also what is probable, plausible, estimable, or must be proved by others. See Blaise [1954], p. 665 and [1975], p. 735 and p. 820, and Ernoult and Meillet [2001], p. 537 and p. 596.

between the certain, knowledge, *scientia*, and the probable, opinion, that which is not the object of demonstration but of argument and discussion (Hacking, pp. 20-21). Aristotle had already marked a step forward by taking the *δόξα*, "opinion", denounced by Plato, and making it into *ἔνδοξα*, "the common opinion" (which is found mainly in the form of an adverb or adjective: such as "in conformity with the common opinion"). This refers to what *generally* occurs, but not on the one hand *invariably*, and not *exceptionally* or *rarely* on the other. Aristotle introduces the notion of the plausible or probable (*εἰκός*) to characterise "not what is always, but what is often" (Aristotle, *Rhetoric*, II, 1402b20-21. See also I, 1357a24-35). Reasoning by probability is what unites qualitative arguments, often lacking quantitative evaluation, contrary to what would be done by modern probability calculus.

Aquinas presents both ways of reasoning at the beginning of his Commentary on Aristotle's *Posterior Analytics*: "There is indeed a process of reasoning that leads to a necessary conclusion and in which it is not possible to miss the truth. And it is through such a process of reason that the certainty of science is acquired [*est enim aliquis rationis processus necessitatem inducens, in quo non est possibile esse veritatis defectum, et per huiusmodi rationis processum scientiae certitudo acquiritur*]. But there is another process of the reason in which the true is concluded in most cases, but not necessarily [*est autem alius rationis processus, in quo ut in pluribus verum concluditur, non tamen necessitatem habens*]" (*Post.*, I, 1, n. 5). Once the two processes have been established, Aquinas points out that the probable can sometimes refer to events whose occurrence is beyond doubt: "For by such a process, although science is not reached, sometimes faith or opinion is nevertheless produced because of the probability of the propositions from which one proceeds [*fit tamen fides vel opinio, propter probabilitatem propositionum*], for then reason leans entirely to one side of contradiction, although it is afraid that the truth will stand on the other side" (n. 6). Thus it is not a question of degrees of certainty, as will be the case almost five hundred years later with Bernoulli, but rather of distinct rational processes.

Hacking warns against a trying to apply a modern understanding to the medieval conception of probability, which would reduce it to a probability of proof and degrees of certainty. We might believe that an opinion is probable when there are good reasons for it, but all reasons are demonstrative because Aquinas associates reason and cause, and causes are necessary causes. A demonstration is made by the causes and allows us to see things as they are. Probability, on

the contrary, intervenes where there is no proof, but where a thesis is acceptable according to an argumentative set. By entering the register of probability in *In III Sent.*, 37, a. 6, resp., Aquinas thus renounces the demonstrative certainty of the position he sets forth. Yet what Aquinas considers "quite probable" remains to be determined with precision.

2.1.3 To what does the expression *satis probabilis* apply?

The "probable enough reason" (*In III Sent.*, d. 37, a. 6, resp.) obviously relates to the above, but three hypotheses are opened up by the term "*haec ratio*" in respect of what is "probable enough": either it is probable enough that it is a sin to receive something for a property one does not own, or it is probable enough that the *mutuum* is of this order, or the whole reasoning is probable. If we give a strong sense of proximity to the demonstrative adjective *haec*, we will rather retain the first hypothesis since it is what immediately precedes *haec ratio*. It seems that this proposition is the most obvious morally, as can be seen in the following text where Aquinas insists on the prohibition of a surplus if there is a change of ownership: "Therefore the same thing happens with everything whose ownership is transferred by loan, such as grain, wine and things of this kind, for the use of which it is not permitted to receive anything beyond the value of what has been lent [*ultra valorem ejus quod mutuum est*]" (*In III Sent.*, d. 37, a. 6, resp.). In this case, while we are on the side of the argument and not of the evidence, we could see in *satis probabilis* the rhetorical formulation of a quasi-certainty.

The second hypothesis, which relates to the definition of *mutuum* as a transfer of ownership, also deserves attention. *Haec ratio* could refer to the first occurrence of *ratio*: that by which Aquinas introduces the argument. After the failure of the monetary argument, here is a new reason (*aliam rationem*) put forward by others: when there is a loan there is a transfer of ownership. In this case, *satis probabilis* would refer to the definition of *mutuum*. It could still be a rhetorical formula of quasi-certainty, since this is how Roman law conceives of *mutuum*, or it could be the opening of a line of questioning on the true nature of a loan.

The third hypothesis concerns the combination of the two elements: *mutuum* is a transfer of ownership, and one can only receive income from what one owns. The difficulty is manifold: it is certainly a transfer of ownership in law, but what is merely a characterisation of this type of contract in Justinian's rule takes on a new role for the medieval defenders of the prohibition

of interest-bearing loans, to the point of becoming the driving force behind Robert of Courçon's argument (*De usura*) at the beginning of the 13th century. On the other hand, the practice of charging interest and the legal admission of the principle of the *stipulatio*, which can associate interest with the *mutuum* although it is originally free of charge, seem to indicate that in Roman usage and in common practice, the transfer of ownership, if not entirely prohibited, does not prevent the receiving of interest, even if it is otherwise formalised (as a *stipulatio*). The discrepancy between the insistence of those who rely on the definition of *mutuum*, the common practice of interest-bearing loans, and the integration in Roman law itself of the possibility of interest associated with the *mutuum*, suggests a fragility in the argumentation on which Aquinas reports.

Thus it is conceivable that *satis probabilis* is not here the expression of a quasi-certainty, but the discreet introduction of a question, which can apply at the level of each of the three hypotheses – hypotheses which remain open, since Aquinas only gives his own assessment at the end, and not at each stage of the reasoning. It is necessary to study this expression in detail in order to sketch out our hypotheses as to Aquinas's position on the *mutuum*. Then, in the case where *satis probabilis* testifies to Aquinas's raising of doubts, to look in his later works for possible indications which would help to specify at which stage of the argumentation the fragility is thought to lie.

It should be noted first, however, that Aquinas does not formally develop the difference between renting and lending, in the sense that the term *locatio* does not appear, but simply describes the situation "for the use of a good which remains mine [*pro usu rei quae mea remanet*]", contrary to what Robert of Courçon did in his *De usura*, written at the beginning of the 13th century, which distinguished between the different risks involved: "We distinguish between what is rented [*locatum*] and what is lent [*mutuum*] [...] Any risk affecting the good must remain the responsibility of the lessor, since the good remains entirely his own". After associating property and risk, Robert then associates risk and gain: "The result is that, because of the damage suffered and the services rendered by his good, he may receive some surplus" (*De usura*, p. 14). Aquinas thus seems to be stepping back from a line of thought that had already been developed in depth nearly fifty years earlier, by including in the *respondeo* only the core of the principle of *mutuum* in his list of traditional arguments against usury.

Likewise, in this inventory of authorities, only in ad 4 of the article does Aquinas take up Robert's notion of unfounded hope from the *mutuum*, for whom "to hope for what is not due is usury, even when there is no interest" (*De usura*, pp. 56-57). The transfer of ownership limits both risk and hope: "Everything that happens that is of use to the one to whom I have granted a loan beyond the extent of the loan according to the money lent, comes from the efforts of the one who has wisely used the money. Now I must not sell him his efforts, nor must I receive less because of his stupidity" (ad 4). The gains or losses made by the debtor thanks to the loan do not concern the lender since he no longer owns the money. He therefore no longer bears the risk, since Aquinas does not mention the hypothesis of a repayment default.

The first two thirds of the *respondeo* present both the synthesis of the positions preceding Aquinas, and the two theoretical elements that structure his thinking: the nature of money and the *mutuum*. However, it must be noted that it is above all the hypothesis of a doubt about the ability to formulate a relevant analysis of usury and a justification for its condemnation that furnishes us with key interpretative clues, of which there are three: his insistence on the diversity or even the fragmentation of arguments (*diversi diversitas rationes*), the stumbling block to the monetary approach (use of the adverb *ideo*, therefore, to introduce "another reason"), and then the appearance of the rather rare expression *satis probabilis* concerning the *mutuum* (29 occurrences in derived forms throughout the Thomasian corpus).

2.2 *Satis probabilis*: small doubt, big consequences...

A study of all the works of Thomas Aquinas corroborates the analysis of the expression *satis probabilis* in *In III Sent.*, d. 37, a. 6, by providing details on the quality and validity of the argument the use of this expression indicates. The diversity of the cases encountered allows comparisons to be made with the deployment of the *mutuum* argument in *In III Sent.*, d. 37, a. 6, where no objection is associated with the thesis, but where the proponent of the thesis remains anonymous, thus undermining its authority, and where it is only one of three arguments in the *respondeo*, which tends to indicate that none is decisive. The lack of information on the nature of the transactions, and the existence of a risk of analytical error signified by *satis probabilis*, is fraught with consequences because a doubt about the conception of the loan as a transfer of ownership, the main basis for the prohibition of usury, would mean that the prohibition is economically unfounded, i.e. a risk for all the economic agents concerned by the interest-

bearing loans and, more broadly, for society as a whole since the prohibition of usury affects social redistribution – as Aquinas points out in his *Letter to the Duchess of Brabant*. Moreover, the introduction of doubt about the *mutuum* sets the stage for a rupture in the way the interest-bearing loan is conceived. In his later writings Aquinas will not abandon the idea of a loan as a transfer of ownership, but he will diversify his argument and will always associate this thesis with other elements, especially monetary ones.

2.2.1 *The expression satis probabilis in the work of Thomas Aquinas: doubt or quasi-certainty?*

To clarify the importance and meaning of the expression *satis probabilis*, one must look at all of its occurrences in the author's works. Is it a figure of speech aimed at minimising the force of a certain assertion or, on the contrary, is it intended to introduce real doubt, albeit with discretion and while maintaining his respect for the authorities from whom he received the argument based on the *mutuum*? The term *satis probabilis* is not used in Thomas Aquinas's other economic writings. Of the 29 occurrences in his corpus, only one is found in the strict form of "*satis probabilis*", in the *Commentary on the Gospel of Matthew* (cap. 1, l. 6), on an interpretation of *Matthew* 1:25 "He did not know her until she had given birth". This occurrence is instructive: two positions are presented, that of John Chrysostom, for whom knowledge refers to intellectual perception (Joseph does not know the dignity of Mary before the birth of Jesus), and that of "others" for whom this knowledge is sensitive: like Moses, Mary is so enlightened that Joseph does not recognise her. This is judged "*satis probabilis*" by Aquinas, who adds "but the first interpretation is more literal [*Sed prima expositio est magis litteralis*]". The articulation "*satis* [quite, enough] ... *magis* [more]" and the introduction of the "but" (*sed*) further emphasises the moderate and relative nature of the expression "*quite* probable". Without introducing rebuttals or incompatibility between hypotheses, *satis probabilis* is not here the rhetorical expression of a certainty, but rather the respectful but distanced restatement of arguments inherited from authorities who here remain anonymous. John Chrysostom, for his part, is named as a recognised authority, but his argument is more literal and therefore surely more faithful to Scripture.

The expression comes up eight times in derived forms in the *Commentary on the Sentences* (outside our text *In III Sent.*, d. 37, a. 6). These divide into two cases: five occurrences concern

the validity of arguments presented within a *status quaestionis* presenting the terms of a debate. As in the previous occurrence, their authors are always anonymous. Other arguments are presented, whose authors are sometimes named, since for Aquinas they constitute solid authorities. The *satis probabilis* theses are not refuted, yet he maintains a certain distance from them, either because they claim to correct Aristotle (*In II Sent.*, d. 17, q. 2, a. 1), or because they are correct but still remain probable hypotheses formulated by "some people" (*secundum quorundam opinionem satis probabilem*) prior to being confirmed (*confirmatur*) by Denys, one of Aquinas's sure authorities (*In IV Sent.*, d. 5, q. 2, a. 2, qc. 4, resp.), or because they partly contradict the *Glossa* (*In IV Sent.*, d. 33, q. 2, a. 3, qc. 1, resp.).

The expression *satis probabilis* is also used to exclude a proposition deemed false, such as the attainment of beatitude down here on earth: "But the diversity of fortune, the weakness of the human body, the imperfection and instability of science and virtue exclude this opinion quite convincingly [*sed hanc opinionem satis probabiliter excludit*]" (*In IV Sent.*, d. 43, q. 1, a. 1, qc. 1 resp.). One last occurrence also presents an anonymous thesis ("some people"), but without presenting objections, and its nature is more a matter of supposition – that the resurrection would take place in the twilight – than of doctrinal affirmation. Aquinas is careful to point out that "the time determined [...] cannot be known with certainty [*pro certo sciri non potest*]" (*In IV Sent.*, d. 43, q. 1, a. 3, qc. 4, resp.), explicitly opposing certainty and probability. It may therefore be concluded that when it concerns the presentation of a thesis, the expression *satis probabilis* introduces a distancing, a perhaps respectful but not determinative evocation of authorities who remain anonymous, and allows the introduction of a probability, the formulation of a hypothesis, which falls between refutation and affirmation.

Satis probabilis is also used twice to present a hypothesis about a situation – and not an argument – for example access to baptism when there is sufficient probability that the children will be brought up in the faith, as in *In IV Sent.*, d. 6, q. 2, a. 2, qc. 3, ad 3 (see also *In IV Sent.*, d. 32, q. 1, a. 4, ad 1). In this case the expression is much more affirmative and is intended to express a quasi-certainty. Finally, the expression appears once in an intermediate situation: where Aquinas tries to understand and reformulate the idea of certain authors. The probability here relates to the validity of the restitution he proposes in order to make the thesis coherent (but does not relate to the ultimate validity of this thesis, which he disputes shortly afterwards):

"so it is quite probable that this opinion can be supported in this way ..." (*In IV Sent.*, d. 12, q. 1, a. 1, qc. 4, resp.).

The occurrence of *satis probabilis* in *In III Sent.*, d. 37, a. 6, resp. concerning *mutuum* clearly relates to the expression of a thesis (*haec ratio satis probabilis videtur*), and not a situation. Here again, the position is anonymous, formulated simply by "others [*alii*]", which minimises the authority of the argument. On the other hand, no contradiction is put forward. We may simply note the introduction of a third argument, that of utility: "One can however [*potest tamen*] also give another reason for it". Note that this is only a simple juxtaposition, not a causal link such as the "that is why" that introduced the *mutuum* as a second argument after the difficulty encountered by the monetary explanation. The structure of the text is therefore halfway between the occurrences studied within a *status questionis*: no contestation of the *mutuum*, but anonymous authors and the introduction of a third argument as a complement. The *mutuum* is thus not challenged, but it is not received as certain.

2.2.2 *The consequences of a risk of analytical error*

The expression *satis probabilis* thus proves to be decisive, because it shows that from the very beginning of his work, Thomas Aquinas introduces risk into the understanding of economic activity itself. This first type of risk studied in the chronology of thought is undoubtedly also the most important, not only in degree but also in kind. For Aquinas, the risk is not primarily that incurred by economic agents in the various operations they carry out; it is the risk of the economist – or of the medieval theologian who studies economic operations in order to draw moral conclusions – who may be mistaken in his analysis for lack of sufficient information. It is therefore the risk incurred by all those who follow these erroneous understandings in order to adopt political, legal and moral positions. If the loan was ultimately not a transfer of ownership, what then would become of the justification for the prohibition of usury?

The theoretical risk of a misunderstanding of the interest-bearing loan is a β -risk or a type II error: the error of retaining as true an assumption (here the *mutuum* theory) that is in fact false. This risk is concrete and relevant to all the economic agents whom Aquinas sees as implicated in the usury mechanism. It is the risk of undue condemnation and restitution for the agents convinced of usury, and the threat of being considered as not the owner of the money lent. The

risk is also pertinent for agents who might wish to have recourse to interest-bearing loans and are prevented from doing so. It is also a risk for the prince, who may be forced to use the sums resulting from usury. More broadly, there is a risk of a change in the pattern of social redistribution. In fact, the *Letter to the Duchess of Brabant*, written by Aquinas in 1271 for Margaret of Constantinople, daughter of Count Baldwin I of Flanders and Latin Emperor of Constantinople, who wondered what to do with usurers, details the consequences of condemning usury.

The risk concerns the whole of society, extending far beyond the agents directly involved in usury. The prince, for example, would not be able to keep the taxes, fines or donations that came from usury, since these sums would be seen as coming from illegally earned income.³⁰ It would therefore be necessary to return or redistribute these sums (Shatzmiller [1990], p.88; Dejoux [2014], p. 863): "If we find persons from whom it is certain that they have been extorted by granting them an interest-bearing loan, they must be returned to them.³¹ Otherwise, these goods must be used [*erogari*] for pious uses [*in pios usus*] [...] or for the common utility of the land [*vel etiam in communem utilitatem terrae*], if a necessity threatens [*si necessitas imminet*] or utility requires it [*vel exposcat utilitas*]" (*Ad Brabantiam*, 1). Here the duties Aquinas ascribes to the prince are what Gregory IX ascribes for the usurers themselves: "They must return to the heirs of those whom they have extorted or, if they are not surviving, distribute to the poor" (*Decretals*, l. 5, t. 19, c. 5). Robert of Courçon only considered the choice between conservation by the prince (which was forbidden) and restitution, and does not deal with the hypothesis of social and charitable redistribution (*De usura*, p. 22). For Aquinas, the possibility of redistribution motivated by social utility, makes the constraint less strong than for William of Auxerre: "Of this money, which the usurer earns in interest, he cannot show mercy [*elemosinam*], because what is offered as an iniquitous offering is defiled; he cannot do anything else [*aliquid aliud facere*] with this money that is useful to him, except to give it back to the one to whom it belongs" (*Summa aurea*, III, XLVIII, c. 1, q. 1, l. 154-159). However, even in Aquinas's work, the rules for the use of the products of usury are very restrictive. The condemnation of usury is therefore not only an individual matter, but concerns the whole society.

³⁰ Authorities are often torn between banning interest-bearing loans, protecting borrowers by controlling the interest rate, or seeing usury as a source of revenue for the treasury (Shatzmiller [1990], pp. 73-84).

³¹ This requirement of restitution of interest to borrowers and their heirs is further developed by Robert of Courçon (*De usura*, pp. 44-45).

2.2.3 *The premise of a rupture in the understanding of the interest-bearing loan*

This strong interpretation of *satis probabilis*, in the sense of a doubt about the validity of the argument (in this case, *mutuum*), is supported by the *respondeo* as a whole. Thomas Aquinas summarises the authorities by giving three grounds for condemning interest-bearing loans. This is the principle behind the commentaries on the *Sentences* made by all young scholars in the 13th century. The scholastic method, with its presentation in the form of an article, is appropriate for this critical evaluation of the arguments through the interplay of objections/replies and through the articulation of arguments within the *respondeo*. It should be noted, however, that in mature works, proof, when satisfactory, is sufficient. When Aquinas multiplies the justifications, this indicates a shift from the register of unique and determining proof to that of appropriateness, or even argumentative probability. This can be observed across the whole of Aquinas's work, extending far beyond economic questions. The most striking example is to be found at the beginning of the *Summa Theologiae*. To the question "Does God exist?" Aquinas refuses to answer with a single demonstration, unlike Anselm before him (who presented the ontological proof). He does use the verb "prove" (*probari potest*), but he states "five ways" (*quinque viis*) of demonstrating the convergence of Aristotle's metaphysics with the existence of God (Ia, q. 2, a.3). Since none of the ways of understanding usury is definitive, none of the ways alone is immediate proof of the existence of God (see Hacking [2006], pp. 82-83). It is in effect a second-rank demonstration, which does not allow hypothetico-deductive reasoning (Imbach and Oliva [2009], p. 74), although the claim is to go back to the necessary cause (Humbrecht [2009], p. 106).³²

Having shown the scope of the expression *satis probabilis*, it is appropriate to clarify the extent to which the reasoning concerning *mutuum* applies by studying Aquinas's other writings and what he subsequently takes from the position he sets out in *In III Sent.*, d. 37, a. 6, resp. The *De emptione*, which follows the *Commentary on the Sentences* of a few years previously, does not give an explanation of the grounds for prohibiting interest-bearing loans, but focuses on determining what is usurious and what is not. The *Summa Theologiae* takes up the theory of

³² On Aquinas's approach in Ia, q. 2, a.3, see Lafont [1961], pp. 40-41 and Gilson [1965], pp. 61 and 90. Moreover, in the first article of the *Summa Theologiae*, Aquinas himself gives a key to understanding that takes us away from immediate proof: "even as regards those truths about God which human reason could have discovered, it was necessary that man should be taught by divine revelation; because the truth about God such as reason could discover, would only be known by a few, and that after a long time, and with the admixture of many errors" (Ia, q. 1, a. 1, resp.).

mutuum (prohibition of interest due to transfer of ownership) but broadens it. In q. 78, a. 1, resp., Aquinas links transfer of ownership to the nature of the good: if the use of the good is confused with its consumption, there is a transfer of ownership in the loan (*mutuum transfertur dominium*), which is the case with money. The argument of the *respondeo* and of replies 5 and 6 is based first of all on the nature of money, whose "principal use" is "to be spent [*distractio*] in exchange" (ad 6). Thus, there is no question of the *mutuum*, but the transfer of ownership is more a matter of the nature of money than of the legal principle of interest-free lending. This takes us beyond the scope of the basic argument presented in *In III Sent.*, d. 37, a. 6, resp. Aquinas takes up the *mutuum* argument in q. 78, a. 2, ad 1, but he introduces a distinction which greatly weakens the prohibition: one can provide for compensation to be paid to the lender for the loss suffered, but no one can receive compensation, for the reason that no one can earn anything from the money lent, since "one is not entitled to sell what one does not yet possess [*non debet vendere id quod nodum habet*]". Aquinas thus retains the transfer of ownership, but provides for the possibility of compensation (*recompensationem*), not as a sale of the use of money (*vendere usum pecuniae*) but out of consideration of the prejudice to life (*damnum vitare*). The condemnation of interest on the basis of *mutuum* as transfer of ownership therefore becomes in a certain sense made less strict.

Aquinas's relative flexibility on the *mutuum* is also reflected in the positive way in which he considers ways to get around it. No longer is it a matter of judging the validity of a prohibition based on the *mutuum* itself, as in *In III Sent.*, d. 37, a. 6, resp., but rather of considering an alternative which functions as a challenge from the outside. In q. 78, a. 2, ad 5, Aquinas is apparently uncompromising, "He who lends money transfers possession of it to the borrower [*qui mutat pecuniam transfert dominium in eum qui mutat*]", but immediately after this principle he introduces a different situation, that of the *societas* (*per modum societatis*) where the investor is entitled to claim a share of the profit (*et ideo licite potest partem lucri indi provenientis expertere*) (q. 78, a. 2, ad 5).³³ The investor assumes the financial risk (du Passage [1946], col. 2361) but remains the owner of the money entrusted (Spicq [1935], note 111, p. 349). Contrary to Giles of Lessines in 1276-1285 (*De usuris in communi*, VI and X), Aquinas does not rely on Gregory IX's *Decretal Naviganti* (1234), which condemns interest accruing to the lender even

³³ The proposal of a lawful alternative, the *societas*, made immediately after having notified the impossibility of an interest-bearing loan, testifies to Aquinas's openness to production and trade and to the need for its financing (Monsalve [2014b], pp. 227-228). This could tend to support Aquinas's favourable view of international trade (Santori [2019]).

when it is intended to cover the risks of the voyage, since it is a *mutuum*, but chooses another example, that of the *societas*, which by distinguishing between the loan and the investment (Sivéry [2004], p. 698) allows him to evade the prohibition of usury. In a roundabout way, then, Aquinas thus accepts the justification of interest as a means to compensate for the risk of the borrower's insolvency, something which *Naviganti* rejects, by not countenancing interest because of risk – even though the *ratio incertitudinis*, the uncertainty about the outcome of the transaction, is often sufficient to dispel suspicions of usury (du Passage [1946], col. 2364). Similarly, q. 78, a. 3 and 4 do not develop the notion of transfer of ownership. It can therefore be seen that the *mutuum* is present only in the context of the nature of money or to introduce cases which do not fall within the ambit of the prohibition of usury.

The other writings represent an even greater distance from the argumentation of *In III Sent.*, d. 37, a. 6. In *III Quodl.*, q. 7, a. 2, Aquinas adopts an approach according to natural reason, following Aristotle, on the nature and functions of money. Here again, he focuses on the nature of the thing lent, money, which is one of "those things whose use is none other than their consumption, like money that is made to be consumed, wine to be drunk [*quaedam vero res sunt quarum usus nihil est aliud quam consumptio ipsarum rerum: sicut pecunia qua utimur expendendo, vinum quo utimur bibendo*]". Reference to the *mutuum* is found in only one place, which is not juridical or moral but linked rather to the nature of money: by conceding the use (*conceditur usus rei*), it concedes the good itself. In *De malo*, q. 13, a. 4, the condemnation of usury is moral and social (exploitation of the poor) in the *sed contra* and based on the nature of the money in the *respondeo*. Nowhere in this long article do we find the legal approach using the *mutuum* as *transfertur dominium*, as in the second argument presented in *In III Sent.*, d. 37, a. 6, resp. The *Letter to the Duchess of Brabant* does not deal with the *mutuum* but with the attitude to be taken towards usurers. The *In Decem Praeceptis* maintains the prohibition of usury, which is assimilated to theft, because it is a case of selling the same good twice, the use and the good, by reason of the nature of money: "For we use money by spending it and wheat by consuming it; if therefore we sell the use, we sell it twice [*Denariis enim utimur consumendo, et frumento destruendo, et ideo si usum vendis, bis vendis*]" (*In Decem Praeceptis*, XXVI, sept. praec.). Aristotle's commentaries do not deal with *mutuum* in the sense of loan in the passages of economic significance (*Ethicorum*, V, 9 and *Politicorum*, I, 6-9), and only the first and general sense of reciprocity is found in the case of "*mutuum reddendum*" to indicate that one must reciprocate to a benefactor (*Ethicorum*, IX, 2).

It is interesting to observe here a double movement: on the one hand, Aquinas retains the notion of the *mutuum* as a transfer of property, but never takes it up in a general and legal way as with the position presented in *In III Sent.*, d. 37, a. 6. It would certainly be an exaggeration to see here a presentiment that the *mutuum* approach will one day be called into question, but we note however that he always explains it by reference to the nature of money (and, moreover, the commentators who have most insisted on the Thomasian *mutuum* have done so in the context of a monetary approach: Mélitz [1971], Lapidus [1987] and [1991]), an analysis which he will feel the need to deepen following the difficulty encountered at the beginning of the *respondeo* of *In III Sent.*, d. 37, a. 6. This confirms the place of doubt, or at least the need for precision, contained in the expression *satis probabilis*, which, coming from the pen of a medieval young scholar who viewed the *mutuum* as a fundamental postulate and not as a hypothesis to be verified, deserves to be noted. On the other hand it indicates the transition, both in Aquinas's own development and in 13th-century thought more widely, from a juridical and moral posture to an attempt to understand the economic and monetary mechanism, which will reach a new stage with Giles of Lessines's *De usuris* at the end of the century. Langholm ([1992], p. 229) considers the *De usuris* as the first economic treatise, and du Passage ([1946], col. 2345) had already noted its unique status as the only complete and synthetic treatise on usury in the 13th century. The *satis probabilis* as the introduction of a doubt or a nuance thus seems to concern the three hypotheses formulated: the *mutuum* as a transfer of property in a general sense, since Aquinas retains it only for money and other fungible goods, whose use merges with the good; the impossibility of receiving income from a good of which one is no longer the owner, since Aquinas opens the way to compensation (q. 78, a. 2, ad 1); and the articulation of the whole, when he emphasises the existence of other models such as the *societas* (ad 5). Beyond the *mutuum*, what is crucial here is the introduction of the possibility of a misunderstanding of the nature of economic operations, with the attendant risk for all agents within the society.

3 Commercial risks of usury

After having marked his distance from the authorities and from a prohibition of usury based on *mutuum* through his use of the expression *satis probabilis*, Thomas Aquinas again takes up the analysis on a monetary basis and then via the connection between property and risk. The loan is then thought of as a commercial operation, an intertemporal exchange in which the price of

the sum lent is the sum returned, and thus interest appears as a surplus of the exchange. The result is a set of risks for agents, lenders and borrowers which relate to a price risk, where the interest must correspond to the just price of the exchange.

3.1 Money and price risks

Money has no utility of its own, but permits the measurement of the utility of the goods exchanged. Thomas Aquinas introduces a conventionalist view of money which he will later develop. Thinking of the loan as an intertemporal exchange of money highlights the risk incurred by the co-contractors that the value of the money will fluctuate over time. It also allows a shift from a moral approach to interest based on the need to borrow to an economic approach to interest as the price of an exchange. By focusing on the economic transaction and not on the status of the agent, Aquinas relaxes and broadens the notion of necessity to all agents and thus paves the way for his reader to think of lending as a commercial activity where the meeting of bargaining powers is translated into a price.

3.1.1 *The risk of a money with no use of its own*

In the *respondeo* of *In III Sent.*, d. 37, a. 6 Thomas Aquinas continues his review of the reasons for the condemnation of usury. After an approach based on the fungible or non-fungible nature of money and then the transfer of ownership (*mutuum*), Aquinas resumes his quest for the definition of money: "All other things have a certain utility [*quia omnes aliae res ex seipsis habent aliquam utilitatem*], but not money [*pecunia*], which is rather a measure of the utility of other things [*sed est mensura utilitatis aliarum rerum*]", he says, relying on Aristotle. Two risks appear here: a risk concerning the definition and measurement of utility, which is not clearly defined, and a risk concerning the value of money, since it has no utility in itself but is dependent on the utility of other things.

Utility seems to be an objective utility of things themselves (*res seipsis*) and not a subjective utility specific to each individual agent. Through money and its relation to usury, Aquinas lays the foundations of his theory of value, which provides the structure of q. 77 on commercial fraud. On the one side, Aquinas presents money as a yardstick, a unit of account, for which it is "without rival" (Lapidus [1987], p. 1100), whereas q. 78, a. 1, resp. presents it primarily as a

medium of exchange,³⁴ but here it is mainly used to measure utility (*utilitas*, with three occurrences in two sentences). Money is useful in so far as it measures the utility of goods, but the utility of money itself, just as for goods, is not the subjective utility for the agent but rather the objective utility of the thing itself: "The use of money is not a measure of utility by money itself, but by the things that are measured by money, according to the difference in what transforms money into things" (*In III Sent.*, d. 37, a. 6, resp.).

Aquinas does not yet distinguish between a possible value *secundum se* and a value, which can vary, related to conjunctural utility, but the insistence on the measurement of utility is a promissary note here. It is notable, however, that Aquinas is not talking about pricing, which establishes the value of a thing at a monetary price, but rather about money as a measure of utility. If we follow Aquinas, then, the transformation of value into price and the establishment of the "just price" that facilitates trade by ensuring a social order (Sturn [2017], p. 646), since they are monetary, are therefore based on a criterion of utility.

In pointing out that money is only a "measure of the usefulness of other things", Aquinas reminds us that money is only a measure, and has no usefulness in and of itself except as a measuring instrument. Money is therefore not a good with an associated value. Here we see the seeds of the conventionalist conception that will be developed in his commentary on Aristotle's *Politics*. It is noteworthy that the first function of money presented in the Thomasian work is as the standard of measurement, since Albert the Great, for his part, insists on the commutativity of money and its function as a universal medium of exchange, as also stressed by Aristotle in *Ethics*, V, and explains that avarice manifests itself especially in gold, silver and money (cf. Albert the Great, *Summa Theologiae*, IIa IIae, q. 120, a. 1 and *Politicorum*, I, 8).

If, with Aquinas, we consider that money on the one hand has no use of its own, and on the other hand is conventional, it follows that the owner exposes himself to the risk of loss in the value of money and loss of purchasing power due to a lack of information on the future evolution of this value. The borrower, during the term of the loan, and then the lender, at the time of repayment, incur a risk of loss of purchasing power in the nominal amount lent and returned.

³⁴ On the functions of money, see Lapidus [1987]; [1997], p. 25-26.

3.1.2 Usury as a commercial situation with a price risk

Usury is presented here as a commercial exchange with a price.³⁵ "Receiving more money for a lesser good seems to be nothing more than altering the measure by receiving and giving, which clearly involves an inequity" (*In III Sent.*, d. 37, a. 6, resp.). The intermediate writing represented by the *De emptione et venditione ad tempus*, less than ten years after the *Commentary on the Sentences*, does not therefore unite two distinct problems under the question of deferred payment. Rather, it is the late writings which, whether in order to answer specific questions (the *Letter to the Duchess of Brabant* on the use of gains from usury, for example) or for didactic purposes (*Summa Theologiae*, *Quodlibetal* or *Disputed Questions*, for example), split the presentation, though doubtless not the thought itself, even though the work on usury specifically draws upon considerations of the nature of money and the *mutuum*.

In this sense, Thomas Aquinas's overarching notion of theft militates in favour of a unified view of economic activity. Without going into the question of the freedom of transactions and the suspension of moral judgment, it is possible to read Aquinas's considerations of theft economically as the expression of an exchange in which what one receives in return is insufficient or non-existent, i.e., an exchange at a price below what would be fair. Aquinas does not focus here on the agent's intention, which is hidden, but reduces the lack of information and the resulting risk of error of analysis and moral judgment by looking at an objective and visible criterion, price. The *In Decem Praeceptis*, the commentary on the Ten Commandments, whose 7th Precept recalls the prohibition of theft, *non furtum facies*, groups together in the same proposition commercial fraud and usury, in accordance with the intuition behind *In III Sent.*, d. 37, a. 6. Aquinas locates theft within the trilogy of forbidding harm to one's neighbour: to their person (thou shalt not kill), to their spouse (thou shalt not commit adultery), and to their property (thou shalt not steal). Aquinas lists the five modalities of theft: to receive in a concealed manner (*occulte accipiendo*); to take with violence (*violenter auferendo*); to not pay for one's merchandise, or more broadly one's debts (*mercedem non solvendo*), for instances salaries, merchandise and taxes (loans are not explicitly mentioned here, as if they were exempt from

³⁵ For a price-based approach to usury, see Langholm [1984], p. 16; Lapidus [1991] and Sivéry [2004], p. 697. Berthoud ([2005], p. 66), on the contrary, emphasizes the moral specificity of the loan, which is irreducible to exchange, and sees in the interest what he calls a "false price".

the risk of default); to defraud in commercial acts (*fraudem in mercationibus committendo*), a modality in which we find the act of falsifying measures and scales or adulterating merchandise, as well as the loan made with interest, for which he says "This commandment is also against wine merchants who mix water with wine [*contra caupones qui miscent aquam vino*], and, by it too, usury [*in hoc etiam prohibetur usura*] is forbidden" (*In Decem Praeceptis*, XXVI, sept. praec.). And finally there is the prohibition against purchasing temporal or spiritual dignity (*dignitates emendo*). Aquinas reminds us of the seriousness of theft, which is assimilated to homicide because "bread is the life of the poor".

The prohibition of theft, via the associated moral considerations, thus presents a catalogue of economic risks: for all the agents, the risk of theft through secrecy or violence; for the sellers, the employees or the prince, the risk of not being paid; for the borrower, the risk of having to pay interest; for the buyer, the risk of being deceived about the quantity of merchandise; and for the prince, the risk that his kingdom should be stolen. Here, then, we find a certain unity of economic activity presented through risk, which inhabits every transaction and threatens every agent. The risk that is common to all the situations described is certainly a constraint, but this constraint is more or less strong depending on the case. The unifying factor in all these activities is primarily the price risk: the risk of not receiving fair compensation for that of which one has been dispossessed.

3.1.3 Rethinking the risk of usurious necessity

In his *Commentary on the Sentences*, Thomas Aquinas shifts away from the position of his master Albert the Great, who in his *In III Sent.*, d. 37, a. 13 limits himself to brief developments on usury but tends to distinguish more strongly between usury and commerce. Albert presents usury from three angles: that of the will, showing that the usurer, like the thief, takes a good more or less against the will of the possessor, since here the will is conditioned (*voluntate conditionata*) in the sense that the borrower is obliged to borrow and is not really free; that of the expectation of gain, where the trader and the usurer are not in the same situation because according to natural and divine law a commercial negotiation is not gratis, contrary to the *mutuum*; and that of the pact, showing that a usurious contract cannot be established because it thwarts the gratuitousness which is the very essence of the *mutuum*. Aquinas does not repeat these distinctions, which strongly differentiate usury and commerce.

The question of will is what is distinctive here. Albert makes it the first argument against usury: it represents the first asymmetry between the lender, who is free to lend, and the borrower, whose will is conditioned because it is need that drives him to borrow at interest. This tends to lend credence to Langholm's sketch of the scholastic conception of lending and borrowing ([1984], pp. 140-149), which reduces the borrower to a state of immaturity marked by a lack of foresight, does not distinguish according to the needs of the loan, does not envisage that one can lend to a richer person without being poor oneself, and sometimes assimilates usury to the exploitation of the poor. However, our treatment of the medieval authors must be nuanced. Langholm ([1998], pp. 63-64) presents Aquinas as standing in the line of Albert, attributing to him a certain insistence on necessity: but does the reading of *In III Sent.*, d. 37, a. 6, ad 6; q. 78, a. 1, ad 7 and *De malo*, q. 13, a. 4, ad 8, on which Langholm relies, confirm this thesis, or does it show on the contrary that Aquinas distances himself from his masters and relativises the notion of the borrower's state of necessity?

In Aquinas's works, the conditioned will appears only as a possibility in *In III Sent.*, d. 37, a. 6, ad 6: "The one who pays interest [*ille qui usuras dat*] and receives a loan in case of necessity does not sin, nor does he share the fate of the usurer as such, for he does not give interest voluntarily, but as forced by necessity". This necessity is not presented here as systematic. It should be noted, on the one hand, that Aquinas does not rely on the level of the interest rate and on the notion of abusive price, as Turgot does five centuries later, to identify the cases where the contract is not free for one of the parties (Ege [2014], p. 413). Necessity seems to emerge more from the borrower's personal situation, and Aquinas, like his contemporaries, does not distinguish between usury and interest. On the other hand, though, let us note that presenting the conditioned will as a possibility and not as a systematic reality respects our lack of information on the borrower's real situation. Here again, Aquinas does not base the characterisation of a transaction on elements that remain largely inaccessible to the observer, and thus limits the risk of error resulting from a lack of information.

In q. 78, a. 1, ad 7 there is further insistence on the lack of freedom of the debtor, who is seen as giving "with a certain necessity [*cum quamdam necessitate*]" and who "does not give absolutely voluntarily [*non simpliciter voluntarie dat*] because he needs [*indiget*] this amount". Although we here find reference to the borrower's state of necessity and conditioned will,

drawing from Aristotle (Sturn [2017], p. 655), it should however be noted that the words *quamdam* and *simpliciter* entail important nuances. Aquinas seeks a moral exemption for the borrower, but he departs from the tradition of the Fathers, as represented by William of Auxerre who sees in the loan the systematic oppression of the poor, who are subject to constraint, and adopts a social approach to usury: "Usury is directly against charity [*dare ad usuram directe est contra caritatem*]" (William of Auxerre, *Summa Aurea*, III, XLVIII, c. 1, q. 1, l. 5). The discussion of the debtor in q. 78, a. 4, resp. does not deal with the freedom or necessity of the debtor, but rather with the role the debtor plays in inciting the usurer to sin, depending on whether he was already prepared to do so (*paratus est facere*) and whether he is already practising usury (*usura exercet*). Here again, this qualifies the thesis of conditioned will, since the borrower enjoys a certain freedom and personal determination in his action towards a potential creditor. Similarly, *De malo*, q. 13, a. 4, ad 8, mentions in the objection the mitigated violence (*violentum mixtum*) which motivates borrowing, an expression stronger than Albert's reference to conditioned will, but Aquinas takes up neither the idea nor the expression in his reply.

Thus, in *In III Sent.*, d. 37, a. 6, ad 6, Aquinas initiates a threefold transformation of the perception of risk in the operation of an interest-bearing loan by relaxing the emphasis on the conditioned will found in Albert. First of all, we observe a distancing from the patristic thesis and the first scholastics who saw usury as a systematic constraint and an enslavement of the borrower.

With Aquinas, the borrower's bargaining power, which was formerly confined to the lower bound in a negotiation, seeing very low gains from the exchange because of the necessity to borrow, is strengthened by an alleviation of that necessity.

On the other hand, by re-evaluating the necessity of borrowing, despite the weight of the authorities, Aquinas can engage in an examination of the situation of each agent which gives him space to re-evaluate the scope of conditional liberty. In *De emptione et venditione ad tempus*, I, concerning a sale on credit, it is the seller, who at the beginning of the transaction was the lender, who now finds himself constrained to accept early repayment.

Finally, Aquinas seems to extend the notion of the conditioned will into the realm of commercial activity, and thus to bring usury and trade closer together. In q. 77, a. 1 we find an insistence on the need (and not only the utility) that motivates the exchange: "Each needing what the other possesses [*dum silicet unus indiget re alterius et e converso*]" (q. 77, a. 1, resp.). Their scale of need may turn the sale to the disadvantage of one of the agents: "Secondly we may speak of buying and selling, considered as accidentally [*per accidens*] tending to the advantage [*cedit in utilitatem*] of one party, and to the disadvantage [*detrimentum*] of the other: for instance, when a man has great need of a certain thing [*aliquis multum indiget habere rem aliquam*], while another man will suffer [*laeditur*] if he be without it" (q. 77, a. 1, resp.). Consent is therefore not always an act that is completely free, and may well represent a lesser evil. Out of necessity, the contracting party may enter into an exchange in which he has little bargaining power and receives a much lower benefit than that of the counterparty. Aquinas therefore repeatedly nuances the principle of mutual benefit and freedom in trade (Langholm 1998, p. 100), and thus brings trade closer to usury, where the borrower is driven by necessity. The conditioned will, relaxed in the *Commentary on the Sentences*, is subsequently enlarged. His argument therefore no longer concerns drawing a distinction between an interest-bearing loan and trade, but rather supports a vision of activities which are unified through the existence of risk – risk which here is considered lower for the borrower, but will later be universalised.

3.2 Risks on the just price of the loan and on the property

The just price of the intertemporal exchange represented by a loan is the price that corresponds to zero interest, i.e. the sum loaned is the same as the sum returned. No other situations are envisaged in *In III Sent.*, d. 37, a. 6. Aquinas thus remains within the inherited framework of a strict *mutuum*, without *stipulatio*, albeit that in his later writings he opens up certain possibilities for derogation from this framework. The evolution of Aquinas' thinking towards a softening of the principle according to which the price of the sum lent, and therefore the sum returned, is strictly the same as the sum lent, seems to have its roots in the very first reflections on usury in the *Commentary on the Sentences*. The questioning of the *mutuum* and the introduction of monetary considerations paves the way to a more complex understanding of the loan, and therefore of its price, found in his later writings. Aquinas completes his analysis by approaching the study of economic activity through the notion of responsibility. As the borrower is the new owner of the sum, he is responsible for it and must pay for the sum at its just price, i.e. by paying

the equivalent sum on the fixed date. The owner, who in this case is the borrower, assumes the risks of managing the sum. Since a buyer must be in a position to pay for what he buys, the debtor is responsible for the payment received from his creditor. Aquinas's unified approach to economic activity is therefore tied to the idea of price, but also to the question of the responsibility of the agents.

3.2.1 *The just price loan: An intertemporal exchange that is still interest-free*

The objections and replies of *In III Sent.*, d. 37, a. 6 provide the foundations for a conception of the loan as an intertemporal exchange, and of interest as a surplus from the exchange. The risk of usury is therefore that of deviating from the just price, and thus receiving unfair interest. Six brief objections and replies are formulated in *In III Sent.*, d. 37, a. 6. First of all, the Bible allows Jews to lend to strangers (Deuteronomy 23:20-21).³⁶ Second, lending is a service. Third, one is not always obliged to lend for free. Fourth, since I can sometimes receive goods from persons to whom I have not rendered a service at all, how much more can I expect from a person to whom I have made a loan? Fifth, where I have transferred the ownership of my property to someone, that person owes me more than if I had simply let them use that property. Sixth, to join someone in sin makes one complicit in that sin, and since usury is a mortal sin, the borrower would also be in a state of mortal sin.

Aquinas replies first of all that the Mosaic permission is a concession to man's hardness of heart intended to avoid worse consequences: just as the repudiation of marriage is allowed in order to prevent men from killing their wives, so is lending to strangers permitted to avoid people lending to their own brethren (*In III Sent.*, d. 37, a. 6, ad 1). Aquinas then specifies that "the benefit of the loan [*beneficium mutui*] is not greater than the money of the loan [*amplius quam pecunia mutata*]" (ad 2): the reward for the service rendered is therefore the recovery of the loan itself, otherwise one would be demanding more than what was due. The price of the sum loaned is therefore that very same sum, the interest being zero, since time is not a factor in modifying the exchange ratio.

³⁶ On the difference in treatment between brothers and foreigners, see Ege [2014], p. 395 and Monsalve [2014b], p. 216.

Through the monetary measure of what is to be paid, we arrive at the idea of a just price, the value of which is the amount of the loan, without interest. Aquinas does not use here the term "*pretium*", "price", to refer to the amount owed, and speaks instead of what is greater or smaller than the "loan money". It is the idea of a monetary sum to be paid or returned that creates the point of contact between trade and loan, since the loan now has a price, which is the amount of the loan. Aquinas adds that one is not obliged to lend, but that if one does, it is to be without interest (*In III Sent.*, d. 37, a. 6, ad 3). However, we do not find here the formalisation that Giles of Lessines will make through the notion of equality understood according to commutative justice, where lending and giving back are two sides of the same act: "in the action of lending is designated the action of giving back. Consequently, when one gives back more than one has received, there is inequality" (*De usuris*, III).

It is important to note that although *In III Sent.*, d. 37, a. 6 does not envisage any situation other than a null interest in an exchange at a just price, later works are more open, in three respects: first, through proposing a deeper understanding of lending as a commercial exchange that must be carried out at the just price and as a monetary exchange, where the *mutuum* is specifically linked to the nature of money;³⁷ second, through providing an explanation of the link between risk and surplus and of the distinction between lending and investment (*societas*);³⁸ and third, through a broadening of the meaning of the *mutuum*, to recover the flexibility that ancient history had given it, with extrinsic titles, but which the medieval authors had sought to restrict by making it a specifically interest-free loan.³⁹

The *mutuum* thus remains the general framework for thinking about monetary loans, but two elements of the *Commentary on the Sentences* are decisive in setting Aquinas's subsequent path

³⁷ This leads to price fluctuation over time when payment is deferred and the possibility of a surplus due to time if it remains below the just price (*De emptione*, II); to the possibility of a rent for goods not destroyed by use (q. 78, a. 1, resp.); to the billing of the loan *ad ostentationem* (q. 78, a. 1, a. 6); to the possibility of a free and gracious gift to the lender; and to the demand for a compensation that is not assessed at a monetary price, such as benevolence, friendship or gratitude (q. 78, a. 2, resp.). Piron [2005] insists, however, on the distinction made by Aquinas between contract and friendship and on his distancing of the notion of *antidora*, which at the beginning of the 13th century places gratitude within the very framework of the loan.

³⁸ Since the borrower assumes the risk, he has no surplus (interest) to pay, whereas entrusting the merchant with an amount that continues to belong to you and for which you bear the risk of loss justifies a surplus, which is a share of profit (q. 78, a. 2, ad 5). The risk, particularly the risk of transport, therefore justifies that the price of the intertemporal exchange should no longer be the sum itself, but an increased sum.

³⁹ In *De malo*, q. 13, a. 4, ad 14 Aquinas explicitly considers compensation for late payment, although he does not use the expression *poena conventionalis* and does not specify whether this surcharge is agreed and formalised in advance.

towards what seems to be a decrease in the aversion to interest-bearing loans: on the one hand, Aquinas's questioning of the strict conception of the *mutuum* through the expression *satis probabilis*; and on the other, the assimilation of the loan to a commercial exchange, which is associated with his increasing distance from the emphasis on the conditioned will and the patristic conception of the loan as oppression of the poor. The nature of money, the notion of just price and the cost of risk will then become paramount in relation to the principle of zero interest and the absence of surplus.⁴⁰

3.2.2 *The risk lies with the owner*

The reply to the fourth objection again involves the notion of utility, which Thomas Aquinas combines with the notion of property to justify the claim that I must expect nothing more from the person to whom I have granted a benefit than what has been granted: "All that arises of usefulness [*de utilitate contingit*] to the person to whom I have granted a loan beyond the measure of the loan according to the money lent, comes from the efforts of the one who has wisely used the money. Now I must not sell him his efforts, nor must I receive less because of his stupidity" (*In III Sent.*, d. 37, a. 6, ad 4). The borrower is the new owner of the property. He bears responsibility, and must bear the risk of loss or gain in managing the sum (Hollander [1965], p. 631). Both the gain and the loss are thus vested in him; he must simply be able to return the sum at the time fixed. Behind the "effort" (*industria*) of wise use, or conversely the "stupidity" (*stultitia*) otherwise, lies the possibility of a positive or negative gain. Here we see the idea, recurrent in Aquinas's works, that the agent is responsible for the risks he incurs and that he is the best actor in minimising this risk through his own efforts and wisdom (ad 4).⁴¹

Aquinas thus here reiterates the link between ownership and risk (that the risk lies with the owner: Langholm [1984], p. 78; Lapidus [1991]) found in Robert of Courçon's *De usura*: "Any risk affecting the thing must remain with the lessor, since the thing remains entirely his. It follows from this that, because of the damage suffered and the services rendered by his property, he may receive some surplus. But it is not the same with the loan [*mutuum*]. The name *mutuum*

⁴⁰ Aquinas's evolution could be part of the longer movement of the progressive opening of the scholastics to extrinsic titles, as part of their ongoing adaptation to economic realities (Munro [2003], pp. 510-111; De-Juan and Monsalve [2006], pp. 105-106; Monsalve [2014b], p. 218).

⁴¹ Here wisdom and stupidity act as causes of the agent's behaviour. The study of the articulation between causality and freedom in the Thomasian anthropology tends to show that human behaviour as an economic agent is largely predictable (Conrad and Hunter [2020]).

comes from the fact that what was mine becomes yours [*de meo fit tuum*] or conversely" (*De usura*, p. 14). In his introduction to *De usura*, Lefèvre [1902] re-establishes the direct linkage between borrower, property and risk: "The interest-bearing loan [...] is thus to have transferred to others the risks while one retained for oneself the security in the possession of the fund and in the enjoyment of the advantages" (Lefèvre [1902], p. X).

The following two replies confirm the transfer of ownership (*In III Sent.*, d. 37, a. 6, ad 5), and so exempt the borrower from collusion in sin when he borrows out of necessity (ad 6). The *mutuum* leads to the suppression of both risk and hope, neutralising the cost of failing to provide information about assets that you no longer control, since what is done with money which no longer belongs to us does not concern us; the money must simply be returned to us: "The very fact that ownership of money is transferred is the reason why I should not receive or hope for its use as if it were due to me" (ad 5). The borrower, as the new owner, is therefore responsible for gains and losses. Aquinas makes the debtor responsible for the wise or foolish use he makes of the loan since he is now the owner of the sum and responsible for it (ad 4 and 5). On the other hand, Aquinas does not make him responsible for the act of borrowing itself: "The one who pays interest and receives a loan in case of necessity [*in necessitate*] does not sin, nor does he share the fate of the usurer as such, for he does not give interest voluntarily, but as forced by necessity [*sed quasi coactus necessitate*]" (ad 6). Aquinas does not refer to the situation of a totally voluntary and free loan, although the case of necessity is not presented here as the only possible one.

Conclusion

Through the study of usury, the *Commentary on the Sentences* lays the foundations of the economic approach which would be deployed in Aquinas's subsequent writings, and sets out a picture of the economy as structured by a number of fundamental risks which impact on a higher level than the individual transaction. First of all, the owner must assume responsibility for his property, which allows Aquinas to envisage risk minimisation taking place through good management. Next, there is risk related to the moral regard that society has for the operation and the status of the agent. The perception of an activity as sinful or harmful, whether or not it is formally criminal, according to the moral benchmarks of a given culture, constitutes a major risk for the agent, as it can engender negative reactions from other agents or the implementation

of restrictive and penalising public policies. Moreover, by reconsidering the patristic thesis, still found in Albert the Great, that the borrower is of necessity weighed down by their state of need, Thomas Aquinas opens the way in his early work to a universalisation of the risk of necessity, which is now extended to all agents and all economic operations. Finally, by thinking of lending as intertemporal exchange and thinking of interest as the surplus of the exchange, he touches upon the notions of price and just price (although the terms do not appear here). The loan is therefore subject to a price risk. This approach contributes to the emergence in Aquinas's work of a unified view of economic activity, whether this concerns trade or usury, as exchange determined by an exchange ratio that corresponds to a price. The new conception of the *mutuum*, which Aquinas's predecessors understood strictly as an interest-free loan – but which it was not always – with the addition of the reflection on money initiated in the *Commentary on the Sentences*, will allow Aquinas in his later works to move towards the possibility of a surplus, notably through extrinsic titles or the alternative of *societas*.

Most fundamentally, however, there is an even more significant overarching risk, that of a potentially erroneous understanding of economic activity itself, and of the universality of risk inherent in all economic activity. This risk is effective for all agents that could have an interest in usury. First of all, it is necessary to underline the importance of the first risk highlighted by Aquinas through his evaluation of the theory of *mutuum* as *satis probabilis*, and the way he accumulates arguments against usury in such a way as to indicate that none of them are decisive. In the 13th century, this risk of misunderstanding meant a risk of error in moral evaluation on the part of the theologians, of unjustified legal requirements by the prince, and finally a risk for all the agents involved in this activity. Thus, while Aquinas's proposals might seem specific to interest-bearing loans, his reflections take on a universal character, since a misunderstanding at such a level can threaten to lead to inappropriate public policies and legal prescriptions.

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