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Risks on Trade: The Activity of the Merchant in Thomas Aquinas's *Commentary on the Sentences*

Pierre Januard*

Abstract

Thomas Aquinas's short text on the activity of merchants in his early work the *Commentary on the Sentences* is a milestone in the understanding of trade and in the treatment of a deficit of information about the trade's finality and the intention of the merchant. Three *levels* of risk can thus be distinguished, relating to the licitness of the trade, the conditions of the trading activity, and the remuneration of merchants; and these in turn encounter three *types* of risk: analytical risks, commercial risks and strategic risks. The treatment of trade activity in the *Commentary on the Sentences* thus offers a new understanding of later works such as *De regno* and the *Summa theologiae*.

Keywords: Thomas Aquinas, scholastics, trade, merchant, just price, risk

JEL Classification: B 11

1 Introduction

The study of trade in Thomas Aquinas's (†1274) early work the *Commentary on the Sentences* (1254-1256) is limited to a brief text on the licitness of the activity of merchants (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3).¹ This might seem marginal compared to the long exposition on usury in *In III Sent.*, d. 37, a. 6 (Januard 2021a) or the analysis of the just price in *De emptione et venditione ad tempus* of 1262 (Januard 2021b), and above all to the later Thomasian works² with the stand-out treatment of the question of commercial fraud in the *Summa theologiae* (*S. T.*, IIa IIae, q. 77). Indeed, the sub-question *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 devotes a scant 304 words to trade; moreover, 'trade' in this context is understood not in the general sense of exchange, but

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¹ Online latin version is available at <https://www.corpusthomicum.org/snp4016.html#17236>

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 work dealing with economic questions after the *Commentary on the Sentences* and *De emptione et venditione ad tempus* (published in the Leonine edition's *Opuscula III*, 391-394). These mature 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 Paris in 1271-1272. We must note *De regno*, written in 1265-1271 (published in the Leonine edition's *Opuscula III*, 449-471), 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, and the Commentaries on Aristotle's *Politics* (*Politicorum*, I, 6-9) and *Nicomachean Ethics* (*Ethicorum*, V, 9), dated 1269-1272 and 1271-1272 respectively, and the *Letter to the Duchess of Brabant* (*Ad ducissam Brabantiae*), dated 1271. The *Collationes in decem preceptis* on the Ten Commandments, a late finalised edition of his sermons in Italy given 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.

rather as the professional activity specific to the merchant, which Aquinas here calls *negotiatio*.³ Nor is this ‘trade’ even studied for its own sake, since Aquinas here is treating of three potentially sinful occupations, that of the merchant, of the soldier and of the publican, within a question on impediments to true penance and, within that question, an article on gambling.

In IV Sent., d. 16, q. 4, a. 2, qc. 3 is nevertheless a landmark in the understanding of trade based on its purpose and the intention of the merchant. This article will show how Aquinas reflected and distances himself from prior treatments by Gratian, Peter Lombard and Albert the Great. The comparison between merchants and soldiers highlights a difference in treatment in favour of the soldier, whose purpose is known and is good. Aquinas, however, no longer holds that the position of the merchant is unavoidably sinful, a view which prevailed a hundred years earlier. The lack of information about the merchant’s intention and about his moral ends was resolved by Gratian (1140) and Peter Lombard (1150) by a tacit assimilation to an evil end and by considering the merchant’s state to be permanently sinful. Following Albert the Great, but departing from him, Aquinas’s first innovation is his treatment of this asymmetry of information, where the observer and the customer are faced by a merchant whose intention they do not know and who has strong bargaining power. It is to this asymmetry that Aquinas brings a solution, via a sidestep whereby he substitutes *justice of finality* by *justice of means*, analysing the conditions of commercial activity through the triptych of *person*, *time* and *mode*, and specifying the mode as being “without fraud” and “according to a licit contract”. This reveals a qualitative and a quantitative dimension to the conditions that are set out. The foundations thus laid allow Aquinas in his later works to deal more directly with the lack of information on the merchant’s intention and gradually to tackle the finality - taken in an Aristotelian sense - or purpose of trade (*De regno*, II, 7 (II, 3); *S. T.*, IIa IIae, q. 77; *II Quodl.*, q. 5, a. 2; *Ethicorum*, V, 9).

Aquinas’s view here is more one-sided than in his later writings, where he would analyse the activity from the points of view of all the co-contractors and also as a whole, within the context of an exchange that is in the interest of the parties, of which trade represents only one particular case (*S. T.*, IIa IIae, q. 77). The special attention to the merchant is explained by the fact that *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 does not deal with exchange in general but only with trade, professionally carried out “for gain”, as Aquinas would later define it in *S. T.*, IIa IIae, q. 77, a. 4, resp., and focuses on the morality of the different professional activities. Due to his profession, which confers on him knowledge and experience, the merchant has significant bargaining power; moreover, unlike the knight, whom Aquinas studies via the position of the soldier, his purpose remains uncertain. The question of whether the merchant seeks gain for himself or for

³ Aquinas deals with the professional activity of the merchant, *negociator*, who engages in *exercitium* or *officium negotiationis*, which today would be translated as ‘business’. However, what Aquinas is concerned with here is the more specific dimension of exchange, which is better captured by ‘trade’ than by ‘business’. We therefore follow the Mercantilists, for example, and their later usage of the word ‘trade’ to describe this commercial part of the merchant's professional activity.

a good purpose in the service of his family or the population would not arise clearly until the later works (*S. T.*, IIa IIae, q. 77, a. 4). However, in the *Commentary on the Sentences* Aquinas perceives that the good end of provisioning, which may not be the merchant's primary end, is not sufficient to morally justify trade. Furthermore, in the absence of access to the agent's intention and purpose, it is necessary to focus on the means and conditions whereby the activity is carried out. This 'means' approach, however, is only possible through a methodological ἐποχή, *epoché*, a suspension of judgment concerning its end.

The approach to the *Commentary on the Sentences* adopted in the present paper differs from previous contributions on Aquinas's economic writings in respect of subject matter, approach and results. The literature, in fact, by methodological choice, often studies the medieval and modern Scholastics as a whole or by major periods, paying little attention to the characteristic paths of individual authors and concentrating on only a few major texts. Moreover, it is not immediately obvious how trade is related to questions about usury and just price – the field to which the literature has sometimes reduced Aquinas's economic thought in his later works – and the topic therefore remains largely unexplored. However, beyond the strictly historical aspects, the secondary literature has provided significant insights into the Thomasian analysis through two types of contributions:

- The dialectic of commercial exchange and usury, between normative distinction and economic unification: McLaughlin 1939 and 1940; De Roover 1953 and 1971; Noonan 1957; Baldwin 1959; Lapidus 1991 and 2021; Langholm 1984, 1992, 1998 and 2003; Munro 2003; Sivéry 2004; De-Juan and Monsalve 2006; Ege 2014; Monsalve 2014; Chaplygina and Lapidus 2016 and 2022; Sturn 2017; Koehler 2020; Januard 2021a.
- A progressive rediscovery of the normative framework of market activity through a renewed understanding of the just price: De Roover 1958 and 1971; Baldwin 1959; Hollander 1965; Friedman 1980; Lapidus 1986, 1994 and 2021; Langholm 1992 and 2003; Hamouda and Price 1997; Gomez Camacho 1998; Sivéry 2004; De-Juan and Monsalve 2006; Franks 2009; Koehn and Wilbratte 2012; Monsalve 2014; Chaplygina and Lapidus 2016 and 2022; Sturn 2017; Hirschfeld 2018, Santori 2019, 2020 and 2021; Koehler 2020; Januard 2021b.

I will build on these insights to conduct an analysis of trade as it appears in the *Commentary on the Sentences*. I will show that the absence of explicit recourse, in this early writing, to the concept of just price to ensure the justice of the exchange contributes to making trading a risky activity. The concept of just price is partly understood in terms of the absence of fraud and the respect of the licit contract, but in an implicit and indeterminate way. Aquinas would increasingly use just price in his works in order to reduce the lack of information regarding the agent's intention and as a visible and objective indicator of the justice of the exchange. Similarly, the non-substitutability of the criteria of justice as defined according to economics (price),

morality (absence of fraud) and law (respect for the licit contract) does not yet allow for a single criterion that takes into account all the dimensions of justice in trade. Thus, the approach to trading through laying down the conditions for professional practice in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 is a first attempt to circumvent this risk on purpose and intention, but it makes trading an intrinsically risky activity.

I will thus endeavour to establish the structural role played by risk in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 through the evolution of the treatment of trade between Aquinas and his predecessors on the one hand, and between the *Commentary on the Sentences* and the later writings on the other. At first glance, it is not obvious that risk is a decisive and unifying concept for Aquinas: its lexical field is not prominent and it is rarely formulated in explicit terms. Yet although it is not very clearly named, risk pervades this account, appearing the moment that an agent, in this case an observer such as the moralist, a merchant or a client, has to make a decision in the face of what today we would recognise as a random variable, i.e., a function of all the states of the world to the set of consequences. It is this type of situation that Aquinas deals with through the question of trade.

Aquinas's treatment of the lack of information on the finality of the trade reveals three levels of risk, these being sets of consequences of different natures that may result from the decision of the moralist, the merchant, or the client. The risk may thus relate to the *licitness* of the trade itself, to the *conditions* of the trading activity, or to the merchant's *remuneration*. Aquinas differs here from his predecessors Gratian and Peter Lombard by leaving open the issue of the licitness of trade, by shifting his focus instead to the conditions of trade, and by considering the merchant's remuneration implicitly, through his treatment of these conditions.

I will show that each of these three *levels*, i.e., these three sets of consequences, can be associated with three *types* of risks, corresponding to the three alternative specifications of the states of the world in which the decision takes place. These types of risks have already been highlighted in relation to usury in *In III Sent.*, d. 37, a. 6 (Januard 2021a) and more systematically in relation to trade in *De emptione* (Januard 2021b). First, there are the *risks of analysing and understanding* the activity of trading. These risks are obviously incurred by the partners in the exchange, but, and this is characteristic of Aquinas's approach, they are also incurred by a third character, the moralist, who must bear the moral and social responsibility for any bad legal decision resulting from a mistaken analysis. Then there are *commercial risks*, which concern the legal and institutional environment of trade or the bargaining power of a particular agent. Aquinas poses conditions for the practice of trade intended to regulate the strong bargaining power of the merchant, whose profession, as he sees it, is that of exchange for the sake of gain. However, in so doing he shifts the commercial risk, arising from the bargaining power, from the customer to the merchant, which can lead to a lack of supply if the

incentives for trade are insufficient. Finally, we observe *strategic risks* that are characterised by the interdependence of the agents's decisions. For the merchant, these risks take the form of legal and moral reputational risks, which result from the analysis risk incurred by the moralist. For the customer, these risks arise from the lack of information on the merchant's intention and the purpose of the trade, which in this early work Aquinas proposes to circumvent by paying attention to the means by which the merchant practices his profession.

In order to study the risks inherent in the activity of merchants, I deal first with the risks pertaining to the licitness of trade (section 2) through the dialectic of the merchant and the knight. I highlight the difference in treatment between the two activities, and Aquinas's circumvention of the lack of information on the finality or purpose of trade and the intention of the merchant by means of a methodological *epoché* concerning this purpose, thus allowing for a focus on the licitness of the means. I then study the risks on the conditions and those on the remuneration from trade that result from them (section 3). I show how the conditions set by Aquinas constitute a double criterion of justice, both qualitative and quantitative. I stress how the conditions of absence of fraud and respect for the licit contract are intended to reduce the risk of abusive remuneration, but that they also open the prospect of an increase in the risk of remuneration of the merchant that concerns not only him but the whole city.

2 Risks on the licitness of trade

Aquinas examines the licitness of trade from the moral perspective of the sinful condition of merchants and soldiers. The parallel treatment of the two activities makes it possible to identify what grounds in reason the difference in the relationship that Aquinas has with them, and to illuminate the issues that are specific to trade. The difficulty Aquinas encounters in legitimising trade is that of information, within the context of what we would see today as a relationship between principal (the moralist) and agent (the merchant). The lack of information about the intention of the merchant and the finality of the trade leads Aquinas to adopt a new approach. Rather than assimilating the lack of information to an intention that is always sinful, as his predecessors Gratian and Peter Lombard did in the previous century, in the *Commentary on the Sentences* Aquinas undertakes an *epoché*, a methodological parenthesis, of the question of the finality in order to concentrate on the means or conditions for professional practice of trade, before engaging in a more direct treatment of the finality in his later works.

2.1 The dialectic of the soldier and the merchant

The comparison offered by the presentation of the two activities in the same sub-question highlights the specific character of the approach reserved for the merchant. Understanding the personal relationship of Aquinas, the son of a knight, to the professions of the merchant and the soldier is important for grasping the subjective framework of his reasoning; however, it is not

sufficient to explain the difference in treatment – despite the formal parallelism – observed in the *Commentary on the Sentences*. This discrepancy has a basis in reason. The difference lies in the purpose of the two professions: the knight might misbehave, and his profession must be supervised, but his purpose is good, and the conditions for the practice of his profession are aimed at achieving this purpose. The merchant's purpose, on the other hand, is more indeterminate, and his intention is unknown to the observer. Aquinas has therefore to tackle the lack of information on the final goal of the activity.

2.1.1 Subjectivity as a risk of analysis, or Thomas Aquinas, the knight's son

Aquinas focuses on trade in the third sub-question of an article on contentious activities, *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, in the context of a distinction devoted to penance: “It seems that military or trade practice does not prevent penance” (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3). The treatment of trade is therefore moral and sacramental. Let us note that the question here concerns trade in the sense of a professional activity for gain and not of commerce in the sense of exchanges for the necessities of life, according to the distinction that Aquinas will make in *S. T.*, IIa IIae, q. 77, a. 4, resp. (Franks 2009, 100-101; Dellemotte 2017, 36-39; Koehler 2020, 362). This distinction concerns the activity itself, but not the nature of wealth (Neves 2000, 654-655), Aquinas not retaining the Aristotelian separation between natural wealth in the goods necessary for life and artificial wealth in money (*S. T.*, IIa IIae, q. 188, a. 7, ad 5). Not only is the sub-question extremely brief, but it also deals conjointly with two activities: that of the soldier (*exercitium militiae*) and that of the merchant (*exercitium negotiationis*), echoing Peter Lombard (*IV Sent.*, d. 16, c. 3). This parallelism makes it possible to highlight by contrast the specific character of Aquinas's treatment of the activity of the merchant.

Aquinas's personal relationship to the two activities was very different. In his cultural context, the condition on the profession of arms is that of chivalry. While the literature on the Thomasian vision of just war is relatively extensive (e.g., Miller 2002; Reichberg 2010 and 2011), there is rather less on Aquinas's views on chivalry; Synan 1988, one of the few works specifically on the subject, emphasises his goodwill towards them. Aquinas's family can be traced back to as early as 887. They came to own the castle of Roccasecca from the end of the 10th century. He hailed from a family of knights. His father was one, and so were his brothers. One of his brothers took part in an expedition to the Holy Land, and another, who served in the army of Frederic II, was executed for plotting his death and supporting the Pope. The necrology in the abbey on Monte Cassino identifies his father, a benefactor of the place, as a *miles*, which means cavalry soldier in Aquinas's writings, and in the medieval context a knight (Weisheipl [1974] 1993, 16-19; Torrell 1993, 2-5). Through his family environment, Aquinas had personal knowledge of the reality of the armed professions in all their variety, as shown by his abundant, precise and diverse use of the lexical field of arms to deal with spiritual questions or the

philosophy of language, so much so that one might call him a *chevalier manqué* (Synan 1988, 437).

By contrast, Aquinas also found himself in an era which saw the emergence of newly wealthy merchants (Le Goff [2010] 2019, 121-231), who increasingly came to exercise economic and social domination (Le Goff [1956] 2001, 41-67), in particular because the limits of their activity were sometimes unclear, falling between trading and usury dressed up as commerce (McLaughlin 1939, 75-95 and 1940; De Roover 1953, 28-29; Ege 2014, 392; Feller 2020, 59-61). Their status and social place were rapidly expanding, while the framework of their activity and the nature of their income were not yet fixed (Hirschfeld 2018, 171-172). The way in which the activity of this new class was viewed may therefore have been affected by the perception of their increasing bargaining power. The merchant thus became the object of particular attention from the moralist.

The lexical field of *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 testifies to this focus on the merchant as a professional trader, with an occurrence of *negotiator* (the merchant), and on trading as the professional activity of the merchant, with three occurrences of *negotiatio* (the commercial activity or trade), of *negotior* (to trade or do business), *vendere* (to sell), *mercatio* (the commercial exchange), *fraus* (fraud), and *contractus* (the contract). In the economic vocabulary thus employed we also note an occurrence of *stipendium* (pay, here referring to the soldier) and *telonea* (the tax collector's office, and by extension the tax, here referring to the publican).

Moreover, the semantic field of *negotiatio* indicates a particular attention to the professional activity of the merchant. The term and its derived forms appear 583 times in 386 places. The expression is already used in the early works, with 16 occurrences in *Super Isaiam* (1252) and 1 in the *Commentary on the Lamentations*, 38 in the *Commentary on the Sentences*, and 11 in *De regno* (1265). It is used more frequently in later works, notably in the *Secunda secundae* of the *Summa theologiae*, with 121 occurrences. In *De emptione et venditione ad tempus* (1262), merchants are referred to as '*mercatores*', which is consistent with the description of the sale of goods. In all of Aquinas's works, we find the term *negotio* used in a broad sense, applied to activity in general (see e.g., *In III Sent.*, d. 35 q. 1 a. 4 qc. 2 ad 3), to prayer (*orationis negotium*), e.g., in *In IV Sent.*, d. 15 q. 4 a. 1 qc. 2 ad 3, or to military activity (*in militari negotio*), e.g., in *In IV Sent.*, 40 q. 1 a. 1, resp. 2 ad 3. The *negotiator* can also be the negotiator, for example in case of war (*S. T.*, IIa IIae, q. 40, a. 2, resp.). When *negotiatio* and its derived forms are applied to merchants, they emphasise the professional dimension of commercial activity. However, it can be seen that they do not describe business in general but the activities of buying and selling. This is the case with the verb *negotior* and the noun *negotiatio* in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3.

Fifteen years later, the *Summa theologiae* would confirm the two dimensions of Aquinas's semantics: the professional dimension and the commercial dimension. The *S.T.*, q. 77, which deals with commercial exchange, uses the term 30 times in its various forms. If the occurrence in the Prologue is generic, since '*negotando*' means "to sell at a higher price [*plus vendere*] than one buys", the *negotiator* mentioned in *S. T.*, IIa IIae, q. 77, a. 3, ad 4, on the other hand, is a professional benefiting from an asymmetry of information. He sells at a higher price, knowing that the price will fall, something the buyers are unaware of. Apart from this exception, the first three articles do not describe agents professionally but simply refer to a seller (*venditor*), whose term appears 27 times in *S. T.*, IIa IIae, q. 77, a. 1-3, whereas it no longer appears in *S. T.*, IIa IIae, q. 77, a. 4. In this last article of q. 77, the forms of *negotatio* referring to the person, the activity or the action appear 28 times (*S. T.*, IIa IIae, a. 4). It deals specifically with exchange as a professional activity of the merchant, whereas the first three articles describe the activity of buying and selling in general. However, within the business done in a professional activity, article 4 is specifically confined to exchange (*commutatio*), through the action of buying and selling.

Therefore, *negotatio* could have been translated as 'business', it would refer to its specific dimension of commercial exchange, i.e., 'trade'. On the one hand, the term 'business' better captures the professional dimension of this activity, more so than 'trade', especially considering that 'trade' has lost his specific meaning today. However, on the other hand, 'business' also concerns other forms of allocations, such as administrative ones, and has a broader definition than commercial activity. Moreover, 'trade' is more consistent with the later usage, e.g., by the Mercantilists (see Gerard de Malynes, *The Maintenance of Free Trade*, 1622; Thomas Mun, *England's Treasure by Forraign Trade*, 1664). It seems therefore more relevant to retain the term 'trade' to describe this commercial part of the merchant's professional activity, i.e., as a part of business.

The vocabulary used shows that *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 does not only compare two activities but two professions, with all that this implies, in the Middle Ages, of social identification and reputation. The first risk that appears in the treatment of trade is therefore a risk of analysis stemming from a subjective bias on the part of Aquinas. His social background and family conditioning could have led him to make an erroneous and unfavourable moral judgement which would thus represent, over and above the risk of analysis by the observer, a legal and moral reputation risk for the merchant. To dispel this risk, it is therefore necessary to verify the objective and rational basis of Aquinas's treatment of trade.

2.1.2 A detour via the knight

The treatment of the merchant and the soldier in the same sub-question enables a better understanding of the merchant's activity as distinct from that of the soldier, thought of here as

a knight. Aquinas takes a critical and nuanced look at the *miles*. Knights are not in a state of perfection (Synan 1988, 405); however, like the clergy they seek a good end, the *bonum*, and the common good.⁴ The state of sin sometimes falls more on the lord than on the knight who obeys him (Synan 1988, 420-422). Aquinas's comparison thus seems to be part of a complex social and religious view of chivalry, whereby clerics seek to reduce the use of violence and theologians express some criticism, but where the good purpose is emphasised over the excesses of violence and criticism is mixed with admiration. Aquinas's view seems to be in line with the general observation that the more contact medieval clerics had with soldiers, i.e., in their context knights, the more favourable they were to that profession (Kaeuper 2020, 435-436).

The knight thus performs a more noble activity than the merchant, to the extent that there is a certain opposition between the two figures (Synan 1988, 424). Each pursues a different goal: the soldier, victory, the merchant, wealth. *De regno*, written about ten years after the *Commentary on the Sentences*, seems to provide an incontrovertible confirmation of the perceived difference between the merchant and the soldier and paints a harsh picture of the former: "The practice of trade is still very much contrary to military exercises. Indeed, the merchants [*negotiatores*], cherishing the shade, flee from work [*a laboribus vacant*], and enjoying a life of pleasures, they soften their courage [*mollescunt animo*] and render their bodies debilitated and unfit for military toil" (*De regno*, II, 7 (II, 3)). Let us note the strength of the expression "*mollescunt animo*", which refers, through the different meanings of *anima*, which is at the same time the soul, thought, but also courage or ardour, to a softening of the whole person, both physical and psychic⁵. Aquinas thus insists upon the prohibition of trade for the soldier, as well as of all activities that could divert him from his mission (*De regno*, II, 7 (II, 3); *S. T.*, IIa IIae, q. 142, resp.), and conceives an aristocratic social order where the knight who falls into disgrace drops down into the ranks of peasants and merchants (*S. T.*, Ia IIae, q. 91, a. 6, resp.; Synan 1988, 419-420).

One could nevertheless object that *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 – reference to which is surprisingly absent from a study as thorough and exhaustive as Synan 1988 – would tend to qualify this analysis, since in the objections the professions of arms and trade are endowed with parallel qualities (good purpose) and in the *respondeo* are ascribed parallel sinful characters (possibility of injustice of means). Moreover, a re-evaluation of the profession of arms has recently emerged through an interrogation of the idea of just war in Aquinas's works either

⁴ The idea of a specificity of the soldier is far from being limited to Aquinas's works. Still in the 18th century, Richard Cantillon distinguished between the soldier and the entrepreneur by the certainty of their income, the former receiving wages while the latter had an uncertain income (*Essai sur la nature du commerce en général*, I, 13, p.71-72).

⁵ It echoes the Greek expression 'μαλακία ψυχῆς', which means 'moral weakness' or 'moral cowardice' (e.g., Xenophon, *Oeconomicus*, I, 19). Plato had pointed out that "in well-regulated states, merchants are weak in health, incapable of any other work" (Plato, *Republic*, II, 371c).

through a pacifist approach (Miller 2002) or an approach that distinguishes between the moral characterisation of war and its permission (Reichberg 2010). Furthermore, the fact that, in the *Summa theologiae*, war appears in the treatise on charity and not on justice, qualifies the idea of a war that could be just for its own sake, and encourages us to see war as just when it is a means to peace (Reichberg 2011).

A reading of *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 offers us two arguments that are, if not contradictory, then at least complementary. On the one hand, the parallel treatment of the two professions would indicate that trade is not a separate activity, and that Aquinas applies the same moral analysis to it as to other activities. The introduction of the sub-question, and then its *respondeo* “Sin is closely associated [*ex propinquo habent peccatum annexum*] with military and trade practice and publicans, who levy public taxes, although they can sometimes be practiced without sin” (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.), thus pleads for a unified reading of the activities of the soldier and merchant. On the other hand, the difference in treatment of the two activities introduced in a diffuse manner in the body of the argument, actually tends to support Synan’s 1988 observation, with a generally positive view of the profession of arms and a reserved view of trade.

2.1.3 A distinction by morality of the finality

Aquinas’s judgement on mercantile activity and the profession of arms comes in two stages, through the connection between the end (objection 1) and the means (*respondeo*). In both cases, objection 1 identifies a good end that makes the activity necessary, namely defence and supply: “[The community] cannot be preserved without the profession of soldiering, by which enemies are repelled, nor without trade, by which the people procure the necessary. Such functions can therefore be exercised without sin” (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, obj. 1). The difference in treatment, apparently minimal, lies in the *respondeo*. Aquinas associates the tax-collecting publicans (*publicanorum*) with the soldiers and merchants by laying down the conditions for the practice of these three professions: the soldier “must not strike anyone, must be content with a just stipend [*stipendiis justis contentus sit*], must not use his military office for parading [*non utatur officio militari ad ostentationem*], but for the usefulness of the Church and public affairs and for training” (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.). For both the soldier and the merchant, we note the disproportion between the brief statement of the good end in the first objection and the detail of the conditions for professional practice in the reply. This apparent similarity of treatment could, however, mislead the reader of today.

Concerning the soldier, it should be noted that the conditions for professional practice are entirely turned towards the purpose stated in the objection. Thus, this is not really a question of conditions but rather of the consequences of the purpose stated in the objection: to condemn other purposes (striking, parading), and to recall the purpose stated in the objection (repelling

enemies) from the point of view of its usefulness for the Church and the City. Aquinas thus takes up the notion of the soldier's usefulness in the *respondeo*: everything is oriented towards the pursuit of a known and good end. For publicans, the answer is very brief, but also oriented towards a good and useful end: they must act "under the authority of the prince and for the cause of common utility [*et causa communis utilitatis*], that is, for the defence of the territory and not to collect an immoderate tax [*scilicet ad defensionem terrae, et non immoderata recipiantur telonea*]" (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.).

It is different for the merchant. Admittedly, objection 1 bases the legitimacy of trade on its usefulness, as Albert the Great himself does in his *Commentary on the Sentences*, in objection 3: "There are useful merchants everywhere, who transport the abundance of a land and bring it to one that lacks it" (Albert the Great, *In IV Sent.*, d. 16, a. 46, obj. 3). However, neither Albert nor Aquinas takes up this notion of utility in their *respondeo*. We can therefore nuance Baldwin's account (1959, 64-65), at least with reference to the early work the *Commentary on the Sentences*, where he stresses Aquinas's Aristotelian insistence on the usefulness of merchants in distributing goods from regions of abundance to regions of deficiency. The finality is obscured in the *respondeo* and Aquinas only formulates restrictive conditions for the practice of the activity. For this, he takes up the triptych *persona* (person), *tempus* (time) and *modus* (mode) proposed by Albert (Albert the Great, *In IV Sent.*, d. 16, a. 46, resp. ad q. 1) in a more developed manner than the treatment Aquinas offers (Baldwin 1959, 64). Indeed, the first restriction, which is quite precise, concerns persons: the merchant "must not be in a condition which prevents him from doing so by his office, so that trading is not permitted [*non licet negotiari*] to clerics and monks, although they may sell their own goods" (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.). Fifteen years before *S. T.*, IIa IIae, q. 77, a. 4 which treats trade as a specific type of exchange, this distinction, which is also found in *S. T.*, IIa IIae, q. 77, a. 4, ad 3, already indicates that what is at stake in the *Commentary on the Sentences* is not exchange in general, but the particular situation of the merchant's professional activity. The *Summa theologiae* will specify the two reasons for the prohibition of trading by clerics (monks will no longer be mentioned): the frequency of sin in this activity and the requirement of too great an application to the things of this world (*S. T.*, IIa IIae, q. 77, a. 4, ad 3). The second restriction of *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp. concerns the calendar: "trade must be done at the appropriate time [*tempore debito*], and not on feast days, and such a function must not be exercised at a time which may lead to feasting" (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.). Knowing that non-working days represent, depending on the guild, between a quarter and more than a third of the days of the year (Ellul 2013, 229; Verdon 2016, 13-19), the restriction of *tempus* is real and binding. Finally comes the condition of *modus*: "the mode due, as without committing fraud and according to a licit contract [*et modus debitus, ut sine fraude fiat, et secundum licitum contractum*]" (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.).

The response concerning merchants is thus more structured than that concerning soldiers, and it broadens the conditions beyond the finality stated in the objection. While for the soldiers all the conditions could be related to the purpose of repelling the enemy, for the merchants the three registers of conditions tend rather to restrict their activity, and thus to restrict their capacity to supply (good end of objection 1). If, for the soldier, the conditions are conditions of possibility, of means that allow the end, for the merchant the conditions represent restrictive clauses attached to the means that allow the end. Despite a parallelism of form, therefore, this difference in treatment tends to support Synan's 1988 thesis, underlining a certain benevolence of Aquinas towards the profession of arms and noting the social difference between the aristocratic activity of the knight and the condition of the merchant, which Aquinas would later associate more closely with that of the peasant (*S. T.*, Ia IIae, q. 91, a. 6, resp.). But beyond the social view of the different professions, Aquinas can rely on the good purpose of the profession of arms or of the tax collector, whereas for the merchant the purpose remains at the moral level too uncertain, or unknown, or hidden, or too mixed between the utility of supply evoked in objection 1 and other consequences, not yet set out in the *Commentary on the Sentences*, which would be harmful. The difference in the articulation between ends and means between the professions further reveals Aquinas's caution regarding commercial activities, which require not to be regulated but to be circumscribed, without, however, assuming that their finality was an evil one and prohibiting the activity.

2.2 The end or the means? Circumventing the lack of information

Aquinas assumes the lack of information about the merchant's intention and the aim of the trade. He does not equate it with a thoroughly sinful intention, but in the *Commentary on the Sentences* he does not yet address it directly. The question of the morality of the finality is set aside by a tacit methodological *epoché*, a suspension of judgement, allowing Aquinas to focus on the licitness of means, which is more accessible to him, through taking up the triptych of conditions relating to person, time and mode already present in Albert the Great. Thus, the lack of information about the finality is first circumvented in the *Commentary on the Sentences*, so as to enable the establishment of a licitness of means, before being addressed more directly in *De regno* and then especially in the *Summa theologiae*.

2.2.1 Assuming the lack of information about the merchant's intention and the finality of trade

If one follows Aquinas's traditional methodology, in which the *sed contra* usually gives the general thrust of his position, the practice of trade appears as sinful and precludes penance. Indeed, the *sed contra*, which responds to objections in favour of trade, is terse: "Gregory says the opposite in his writings" (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3). Albert mentions Gregory VII only in the final conclusion of his article and to distance himself from him (Albert the Great, *In*

IV Sent., d. 16, a. 46, ad obj). His *sed contra*, which does not explicitly refer to Gregory VII, is longer and more nuanced than that of Aquinas. Albert concludes that “no one should trade” (Albert the Great, *In IV Sent.*, d. 16, a. 46, s. c.), but after quoting *Ecclesiasticus*, which indicates that it is simply “difficult for traders to avoid sin” (*Ecclesiasticus*, 26:28). Thus Albert opens a first breach in his *sed contra* whereas Aquinas would do so only in his *respondeo*.

At first sight, Aquinas’s lineage seems to be well mapped out. The activity of the merchants was seen by most of the Fathers of the Church as sinful (O’Brien [1920] 2001, 79-80; Koehler 2020, 362). More directly, Aquinas seems to follow Peter Lombard (*IV Sent.*, d. 16, c. 3), who around 1150 quoted Gregory VII who considered in 1078 that the soldier and the merchant “cannot exercise without sin [*sine peccato exerceri non possint*]” (Gregory VII, *Concilium Romanum* V, col. 801, B-C), a text already taken up by Gratian ten years earlier in 1140 (*Decretum*, II, causa 33, q. 3 De poenitentia, d. 5, c. 6.⁶ Thus, the activity of the soldier and that of the merchant would always be marked by sin and they could not therefore practice sincere penance without renouncing their activity. This is at least how Peter Lombard sees it, and how Gratian summarises it in the title of the quotation from Gregory VII: “it is not permitted to return to trading after conversion, for it cannot be done without sin” (Gratian, *Decretum*, II, causa 33, q. 3 De poenitentia, d. 5, c. 6). Aquinas takes a more open position. Certainly, in the *Summa theologiae* commerce will remain the activity most conducive to fraud: “fraud and deceit are usually practised in matters of buying and selling [...] for this reason, there is in the law a special prohibitive precept with regard to fraud committed in buying and selling” (*S. T.*, IIa IIae, q. 56, a. 2, ad 2). However, if the activity were inevitably sinful, why in the *Summa theologiae* simply envisage its regulation by a prohibition of fraud, and not of trade itself, and why in the *Commentary on the Sentences* devote a *respondeo* to the conditions for professional practice of trade?

The text of Gregory VII is more nuanced, and Gratian juxtaposes two elements: “The trade which before conversion existed without sin, after conversion is done without sin and there is no fault. There are many trades which can hardly or never be done without sin. These therefore lead to sin, which is necessary because after conversion the soul does not recover [*animus non reccurat*]”. Taking as his title the end of Gregory VII’s statement, Gratian directs the reading towards a generalisation of the situation of sin. Aquinas thus seems to play subtly with the authorities: he takes up Gratian’s radical interpretation of Gregory VII in the *sed contra* with his apparently terse and definitive formula, but his *respondeo* seems more to honour the plurality of moral situations opened up by Gregory VII (Todeschini 2002).

⁶ Gratian’s *Decretum*, as well as Gregory IX’s *Decretales* are part of the *Corpus juris canonici*. Similarly, Justinian’s *Codex* is part of the *Corpus juris civilis*.

It should be noted that where the Lombard, however, is simply answering the question on penance, Aquinas extends his reflections to the licitness of commercial activity. This shifts the focus from a personal moral situation to the activity and its consequences for the individual. The same shift would occur fifteen years later in the *Summa theologiae* on the subject of war, where, as noted by Reichberg 2010, 220-223, Aquinas moves from a question about sin to an answer about the conditions for permitting war. Thus *S. T.*, IIa IIae, q. 40, a. 1 begins, in the objections, by approaching war from the angle of sin: “it seems that making war is always a sin” (objection 1), to move on to the question of legality in the *sed contra* and in the *respondeo*. Indeed, the *sed contra*, while remaining focused on the agents – here, the soldiers – initiates a transition from morality to law and its implementation, through the different meanings of the verb *prohibeo*, usually translated as “to forbid” or “to prohibit” (legal meaning), but whose first meaning translates an effective action: “to keep away”, “to remove”, “to divert”, “to prevent”. The *sed contra* therefore responds with an absence of legal and operational impediment: “Those who are prescribed to be content with their stipend are not forbidden [nor prevented] to wage war [*militare non prohibuit*]” (*sed contra*). The *respondeo*, on the other hand, addresses the issue from the perspective of the objective conditions of justice: “for a war to be just, three conditions are required” (*respondeo*).

From his negative *sed contra* in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, and despite his refusal to engage in the question of purposes by not taking up objection 1 on supply in his argument, Aquinas nevertheless creates the conditions for licitness. This marks a step in the progressive permission of trade in the Middle Ages (O’Brien [1920] 2001, 79, 83). These conditions are centred on the means, tacitly relying on the path opened up by objection 2, which stresses that the Gospel does not prohibit the practice of these professions.

Aquinas thus situates his thought on both an economic and a normative level by applying first an ethical filter (the purpose) for the first objection, and then a theological one (the Gospel) for the second. Indeed, it is necessary first to verify that the finality is good. For an act to be licit, the means must also be good, but the filter applied by the reference to the finality is redhibitory, as he will explain later in *S. T.*, Ia IIae, q. 18, a. 4. Moreover, it is necessary to ensure that there is no contradiction with Revelation, and that these activities are not subject to biblical prohibition. The double argument, philosophical and theological, chosen by Aquinas in his objections, is decisive. Indeed, Thomasian theology remains scriptural and does not possess the speculative autonomy of modern scholasticism. The two objections are thus chosen deliberately to open up possibilities for a relaxation both in a philosophical mode, through the reference to finality, which he does not address but which remains open, and in a theological mode, through Scripture, which also remains open in the absence of a ban. Aquinas thus leaves the finality in abeyance at the end of the objections, which allows him to devote the *respondeo* to the means. Indeed, if the finality were entirely or systematically bad, or if the activity were condemned by

Scripture, the treatment of the conditions of the means would be useless, which is not the case here.

2.2.2 *A methodological epoché on the end to allow a means approach*

Aquinas starts out from a negative position in order to soften it: “Sin is closely associated with military and trade practice and publicans, who collect public taxes, although they can sometimes be exercised without sin. [...] It is also praiseworthy [that the penitent] avoids these functions” (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.). Aquinas is here repeating Peter Lombard, whose firm position Baldwin (1959, 63) emphasises. Indeed, both the soldier and the merchant practice professions “which it is said cannot be exercised without sin” (Peter Lombard, *IV Sent.*, d. 16). Aquinas observes, however, that the merchant is not always in a state of sin, and he takes a practical view: “A penitent cannot avoid all occasions of sin, as long as he lives in this world. It is therefore sufficient that he avoids sin in these functions” (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.).

Although he does not yet ascribe the good final end of trade that can sometimes be deduced from later texts (Baldwin 1959; Dupuy 1992; Santori 2019), Aquinas departs from Peter Lombard by no longer handling the lack of information about the merchant’s intention and the possibility of an evil intention by equating it with a necessarily evil end. An opening is thus possible, which allows Aquinas to avoid contesting, on the one hand, the medieval valorisation of trade as a counterpoint to the condemnation of usury, and, on the other, the positive policy of princes in their defence of Christian merchants (Dejoux 2014, 855 and 869). This openness remains consistent with the methodology of the sub-question, which starts from a negative *sed contra* and sidesteps it without refuting the positive objections. The *respondeo* finds a middle way, without starting from the usefulness of trade or its purpose, but tacitly relying on the biblical permission of objection 2, to give the conditions for a licitness of means.

For Aquinas, this is more of a conditional concession than a full legitimization. It must be specified that he is not concerned with commercial exchange in general, which is good in itself, since it is instituted “for the common interest of the parties” (*S. T.*, IIa, IIae, q. 77, a. 1, resp) and whose conditions of justice will be developed in the *Summa theologiae* (*S. T.*, IIa, IIae, q. 77). His interest is more specifically on trade, a particular case that will be studied in *S. T.*, IIa, IIae, q. 77, a. 4, namely an exchange “for gain [*propter lucrum quaerendum*]”. Its purpose, unlike that of the profession of arms or of “natural and necessary” exchange, remains undetermined and may not be good, since trade “does not of itself relate to an honest and necessary end”, hence the fact that it “has something shameful [*quamdā turpitudinem habet*] in that it does not of itself relate to an honest and necessary end” (*S. T.*, IIa, IIae, q. 77, a. 4, resp). This moral indeterminacy of the end is explicitly underlined by Aquinas: “gain does not imply of itself [*in sui ratione*] anything honest or necessary”, but “neither does it imply of itself

anything bad [*vitiosum*] or contrary to virtue” (*S. T.*, IIa, IIae, q. 77, a. 4, resp). Trading can thus be ordered towards a good end (a moderate gain for family utility, i.e., to support one’s family; a charitable one, i.e., to help the needy; or a social one, i.e., to supply the country) which will make it licit.

This side trip through the *Summa theologiae* sheds light on the *Commentary on the Sentences* by allowing us to approach trade from the angle of information on the finality, through an asymmetrical relationship between an agent (the merchant), and a principal (the moralist) who lacks this information. Indeed, the link between the finality and the agent’s intention is posited from the beginning of Aquinas’s moral theology as a foundation of the notion of final cause: “If the end is last in execution, it is first in the agent’s intention, and thus plays the role of cause” (*S. T.*, Ia IIae, q. 1, a. 1, ad 1). Ignorance of the objective finality of the act of trading thus reflects ignorance of the merchant’s subjective intention, the importance of which Dellemotte (2017, 32) emphasises. This lack of information about the merchant leads Pierre Lombard to condemn that activity, but in the *Commentary on the Sentences* Aquinas takes a new step by not identifying the lack of information about the purpose and the necessarily sinful nature of this purpose. This allows him to countenance the conditional licitness of trading, focusing however more on the means or the conditions for professional practice, which are more observable, than on the purpose or intention of the agents, which remain hidden. A further step is taken fifteen years later in the *Summa theologiae*, where Aquinas attempts to approach the finality through the indirect but visible criterion of income, the “moderate gain” (*lucrum moderatum*), and through the triple criterion of family, charity and society (*S. T.*, IIa, IIae, q. 77, a. 4, resp).

The *respondeo* of the *Commentary on the Sentences* marks an intermediate stage between the *Sentences* of Peter Lombard, a hundred years earlier, and the *Summa theologiae*, fifteen years later. By not yet entering the field of finality and by not taking up the first objection (supply of the country), Aquinas maintains a suspension of judgement, an *epoché*, which allows him to keep the question of finality open, unlike Peter Lombard, even though he has not yet formulated the objective and visible criterion revealing this finality, namely the moderate gain, which will appear in the *Summa theologiae*.

2.2.3 Framing the means to meet the ends: an initial circumvention of the lack of information

Aquinas, like Albert, devotes his *respondeo* to the conditions for the practice of trade, which allows him to circumvent the lack of information about the end via his framing of the means. Albert, for his part, proposed a more elaborate argument than Aquinas. On the one hand, as we have seen, he formalised those conditions in a triptych of person, time and mode, which was taken up by Aquinas in a less formal way; on the other, he introduced price as a criterion of justice, which Pierre Lombard had not and Aquinas did neither. In fact, not only does Albert

use the term “price” three times in the article, but he also introduces the notion of “price fraud” (*fraus pretii*) and, as a counterpoint, that of “*justum pretium*” (Albert the Great, *In IV Sent.*, d. 16, a. 46, resp. ad q. 1). To provide a foundation for his openness to trade, Albert relies on the *Glosa*, which introduces the injustice of price: “the very bad act, which is not an honest thing, is condemned, which by its immoderately ambitious spirit imposes more by perjury than by price [*onerat plus perjurio quam pretio*]” (Albert the Great, *In IV Sent.*, d. 16, a. 46, resp. ad q. 1). This leads Albert to conclude that “licit negotiations [*licitae negotiationes*] are not prohibited”. Aquinas is reserved on this recourse to price, the first two occurrences of “just price” in the *Commentary on the Sentences* appearing only in relation to theological and not directly economic questions: simony (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1) and the possibility of selling a married serf (*In IV Sent.*, d. 36, q. 1, a. 2). It was not until the *De emptione*, a few years later, that the first formal appeal to the just price was made in order to establish the justice of the exchange.

The social utility approach to trade would not appear until ten years after the *Commentary on the Sentences*, when in *De regno* (II, 7 (II, 3)) Aquinas dealt with the role of trade in the city, and then a few years later in the *Summa theologiae*, when he dealt with trade (*S. T.*, IIa IIae, q. 77, a. 4, resp.). In *De regno*, trade seems to be justified by an ultimate good finality (the necessity for the city) but which generates bad consequences, collateral damage which can only legitimise trade in a concessive mode. The *Summa theologiae*, a few years later, drops the idea of an *combination* of good and evil within the act of trade, preferring instead to frame it in terms of an *alternative*: an act of trade, whose end is gain, which is morally indeterminate, can be good or bad. The risk therefore lies at different levels: in *De regno*, it concerns the extent and nature of the collateral damage caused by any commercial act, whereas in the *Summa theologiae* it concerns the hidden nature of the trader’s intention, and thus the lack of information about the purpose.

Aquinas notes in *De regno* the necessity of international trade for the supply of the city: “merchants must not be excluded completely from the city [*Nec tamen negotiatores omnino a civitate oportet excludi*], because a place cannot easily be found which abounds in all the things necessary for life” (*De regno*, II, 7 (II, 3)). He thus honours objection 1 of the *Commentary on the Sentences*. Thus, we find a first justification of trade by reference to its finality, or at least a prudent acceptance by necessity (Hirschfeld 2018, 143): “therefore a perfect city must use merchants sparingly [*moderate*]”. Santori (2019, 79-87) offers a new reading of *De regno* that nuances any hasty conclusion that Aquinas is opposed to trade, highlighting the friendship between cities or nations that can result from it. It is nevertheless necessary to note the six reservations that Aquinas retains, which sound like so many risks of trade for the city: 1. *A risk of dignity*, since a thing is more dignified (*dignus est*) if it is sufficient for itself, and it is more dignified for a territory not to depend on another. 2. *A risk of supply*, since economic

independence is safer (*securius*) for supplies, “because of wars and risks of transport [*diversa viarum discrimina*]”. 3. *A risk of cultural corruption*, because trade involves contact with foreigners, whose company most often corrupts (*extraneorum conversatio corrumpit*) the morals of citizens. 4. *A risk of moral corruption* because “if the citizens themselves indulge in trade [*si cives ipsi mercationibus fuerint dediti*], the door will be open to many vices”. Everything will become venal in the city (*ut in civitate omnia fiant venalia*), which will thus be laid open to fraud (*locus fraudibus aperitur*). 5. *A military risk* with the weakening of the army if the soldiers commit themselves to trade, whose characteristics soften the soul and make the body debilitated. 6. *A political and public order risk*, since trade encourages gatherings, which are conducive to seditions.

De regno thus combines two approaches: the new consideration of the ultimate objective good finality, i.e., supply; and the maintenance of the position of the *Commentary on the Sentences*, following Gregory VII, which deals with the lack of information on the subjective intention of traders by considering it to be unmitigatedly bad. In this context, a reconciliation between the two approaches can only be achieved through a regulation of the practice of trade in order to limit the potential for collateral damage inherent in it.

The *Summa theologiae* would take a further step. It still presents trading in a concessive mode, but for a different reason. It is no longer seen as a necessary activity that always also has harmful effects, but rather as an activity that can be either good or bad. Only now does Aquinas move from a *licitness about the means* to a *licitness about the end and the intention*. At the end of the question on commercial fraud, Aquinas mentions the cases in which trade, which is “for gain”, becomes licit: when it is ordered “to support one’s family, to help the needy, or when someone trades for public utility, so that the necessities of life are not lacking” (*S. T.*, IIa IIae, q. 77, a. 4, resp). The *Summa theologiae* thus broadens the purposes by adding to the supply of the city (Baldwin 1959, 64-65; *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, obj. 1; *De regno*, II, 7 (II, 3)) the good of one’s family and that of the needy.

These purposes no longer appear in the objection, as in the *Commentary on the Sentences*, or as a necessity to be circumscribed, as in the *De regno*, but in the core of the response, thus showing that Aquinas has fully integrated them. The fact that they are placed at the end of an argument that is primarily against trade indicates that Aquinas is not concerned with assigning a unequivocally good purpose to trade, but rather with expressing a plurality of purposes and intentions, and that without further information it is not possible to reach a verdict. The Aristotelian justification of trade by its purpose (Baldwin 1959, 64-65; Dupuy 1992, 38-41), i.e., by the necessity of supply, appears only gradually in Aquinas’s works, to the extent to which he is able to circumscribe the hidden intention of the agents and the lack of information of the

observer, whether a theologian or a legislator, first by a framing of the means (conditions for professional practice) and then by the possibility of a framing of the ends themselves.

Thus, as we can see, the *risk of licitness* is primarily a *risk of analysis*. In addition to the subjective bias that may affect the moralist's view of trade, the openness that consists in no longer resolving the lack of information about the end by equating it with sin entails the possibility of a risk of error for the observer. The risk of licitness is also a matter of *commercial risk*, which is reduced by the fact that Aquinas does not regard trading as always sinful, thus circumscribing the risk of supply. The risk of licitness also arises from a *strategic risk*. This risk increases for the merchant with the risk of analysis, since it is legal and moral reputational risk resulting from the moralist's understanding of trade. The lack of information on the finality, even if framed by conditions on the means, also represents a strategic risk for the client, who is unaware of the merchant's intention and the strategy he is enacting.

3 Risks on the conditions and remuneration of merchant's activity

The enumeration of the conditions for the practice of the activity of trade, which takes up Albert the Great's articulation in terms of *persona* (not a cleric or a monk), *tempus* (not a feast day) and *modus* (without fraud and according to a licit contract), lays the foundation for the justice of exchange. This justice is both qualitative and quantitative. Indeed, the dialectic between the two requirements on the modus, namely 'without fraud' and 'according to the licit contract', leads to an association of two criteria of justice, one quantitative and the other qualitative, which partly overlap but which are irreducible to each other. By their complementarity and their financial and non-financial dimensions, these criteria of justice entail risks of conditions and remuneration.

3.1 Conditions leading to a double standard of justice

Aquinas focuses on the conditions for the practice of trade and moves from the morality of the person (the sin of the merchant) to the licitness of the activity. This marks an initial step towards the consideration of all stakeholders that would appear in the later works. The conditions of legality of the activity lead to the emergence of two criteria of justice, a qualitative and a quantitative criterion, which represent risks on the conditions for the practice of trade: risks of analysis for the observer and for the merchants, commercial risks for the merchants and strategic risks for the clients.⁷

⁷ The term "strategic risk" is taken here in the technical sense of a risk relating to a situation in which the behaviour of one party is dependent on the presumed behaviour of the other party.

3.1.1 Conditions of trade: from the person to the activity

The shift in focus towards economic activity is made possible by the evolution of the moral assessment of trade, which is no longer considered inevitably sinful as in Gratian and Peter Lombard. Aquinas relies on Gregory VII's distinction between the two types of trade: "the trade which before conversion existed without sin," and the "many trades which can hardly or never be done without sin" (Gratian, *Decretum*, II, causa 33, q. 3 De poenitentia, d. 5, c. 6). He therefore concludes that this "text is not to be understood in the sense that it cannot be done without sin, but that it often implies a sin" (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.).

One could certainly envisage that intransigence regarding the practice of the sacrament of penance would only affect one's personal life whereas the prohibition of trade would have consequences for the whole of society, and that a practical morality, noting the necessity of trade, would seek to open a breach in that moral prohibition out of societal concern. In the *Commentary on the Sentences*, however, the social necessity of trade presented in objection 1 is not taken up in the *respondeo*. Thus, there seems to be no basis for considering there to be a social pressure on morality (Dellemotte 2017, 32). Rather, it is because Aquinas, with Albert, considers that the activity is not always sinful that trading can be accepted in practice, and so it is necessary to establish its boundaries and move from the person (sacrament of penance) to the activity (conditions of licitness).

The transition from person to activity is first of all lexical. Peter Lombard (*IV Sent.*, d. 16, c. 3), pays particular attention to the personal moral situation of the seller through the terms 'sin [*peccato*]' and 'fault [*culpis*]'. The medieval commentaries see the appearance of the notion of fraud, designated by *fraus* and its derivatives, thus showing a focus on the characterisation of the activity or its conditions. Albert the Great speaks of "fraudulent price [*fraude pretii*]", as opposed to "just price [*justum pretium*]" (Albert the Great, *In IV Sent.*, d. 16, a. 46, ad 1). While fraud usually refers to voluntary behaviour (De-Juan and Monsalve 2006, 104), Aquinas also uses the concept of fraud in a more objectivist way, albeit allusively. *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 is limited to referring to the absence of fraud (*sine fraude*) as a condition for the licitness of the merchant's activity.

'Fraud' here is not defined and appears only by its absence, but Aquinas will define it in *S. T.*, IIa IIae, q. 55, a. 5, resp. as "the execution of cunning [*astutiae*] by actions [*per facta*]", where cunning consists in employing, "to reach an end, good or bad, means which are not true, but simulated and apparent" (*S. T.*, IIa IIae, q. 55, a. 3, resp.). Thus, on the one hand, fraud, like cunning, is a matter of means and says nothing about the end of the action. This confirms that the conditions of *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 concern the means, and that Aquinas does not deal with the end. On the other hand, the concept of fraud governs the passage from personal fault to the injustice of the action (*per facta*). Of course, fraud depends on the virtue of prudence:

it is therefore not an objective observation of injustice but the implementation of a subjective bad intention. However, the term used, *deceptio*, is the fact of being deceived. It therefore has a passive meaning. Thus, fraud has “the purpose of being deceived [*fraus ad deceptionem ordinatur*]” (*S. T.*, IIa IIae, q. 55, a. 3, s. c.), obviously not oneself, but rather that the other be deceived. The turn of phrase thus introduces an objective nuance which relates more to the means of an action than to its author, whereas the use of synonyms such as *fallo*, *decipio* or *deludo* to mean ‘to deceive’ would, by a more direct expression, have more clearly marked the link between the fraud and its author.

Over the course of his life we can see an evolution in the vocabulary Aquinas uses that testifies to a certain return to the agent’s personal situation. Indeed, we observe this development in the *Summa theologiae* in general, and *S. T.*, IIa IIae, q. 77 in particular, in the use of *fraudulentia* and its derivatives, which appear twice in the question, alongside *fraus* and its derivatives, which appear six times. Whereas *fraus* (fraud) is more characteristic of an action, *fraudulentia* (deceit, malice, the work of one who does wrong) is more characteristic of the person who carries out this action (Blaise 1954, 364; Blaise 1975, 401; Bréal and Bailly 1918, 105. Ernout and Meillet 2001, 252), with, on the one hand, the idea of being filled with fraud, and to live with fraud like a habit (Gardin-Dumesnil 1788, 301), and, on the other, a closeness to theft, since fraud involves using deception to take something that belongs to someone else (Barrault and Grégoire 1853, 634). These two characteristics of *fraudulentia*, habit and proximity to theft, appear in *S. T.*, IIa IIae, q. 56, a. 2, ad 3. The context is a response concerning vice (*actum vitii*), mentioned in objection 3, and vice is a bad *habitus*, and therefore has a repetitive dimension; moreover, Aquinas enumerates the three places in which cunning is executed (*ad executionem astutiae*), theft (*furto*), calumny (*calumnia*) and fraudulent sale (*fraudulenta venditione*), thus showing the proximity of these three actions. The introduction to *S. T.*, IIa IIae, q. 77, “on the deceit [*de fraudulentia*] which is committed in purchases and sales [*quae committitur in emptionibus et venditionibus*]”, thus marks a double evolution in relation to the *Commentary on the Sentences*: there is an extension of his account to encompass the purchasers, whereas *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 is limited to the sellers; and there is a semantic reinforcement of the moral dimension of the analysis. Two instruments then allow Aquinas to reduce the lack of information about the justice of the exchange. First, the consideration of all agents, and second, the idea of the repetition of injustice, contained in the structural dimension underlined by *fraudulentia*. He does not, then, revert to a subjective moral reading, but rather deepens the reduction of the risk of analysis by seeking visible and objective criteria of injustice, in this case recidivism. The morality and intention of the agent, which remained hidden, thus become observable.

3.1.2 Towards the universalisation of commercial and strategic risk

The shift from the person to the activity is confirmed by the progressive universalisation of Aquinas's gaze evident in his mature works. In the *Commentary on the Sentences*, the focus is still on the seller and the object; the buyer is not explicitly involved, neither in the description of commercial activity (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3), nor in the borderline situations of simony (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1), nor the sale of the serf (*In IV Sent.*, d. 36, q. 1, a. 2, ad 4) where the expression 'just price' appears for the first time. This approach to the seller was already to be found in Gratian (*Decretum*, II, causa 14, q. 4, c. 9) in 1140 and in Peter Lombard (*IV Sent.*, d. 16, c. 3) in 1150, and it remains largely true in the Albert's *Commentary on the Sentences* (*In IV Sent.*, d. 16, a. 46). The special attention to the seller will in part be maintained in Aquinas's later work as well. This can be explained by the way in which he starts out in the *Commentary on the Sentences* from the professional merchant with strong bargaining power and hidden intention, but gradually comes to consider a more balanced situation through a more general approach to exchange.

In counterpoint to the predominant attention paid to the seller, which does in part persist, Aquinas's later work shows he broadened his view. He is thus part of the progressive turn that took place in the middle of the 13th century, with a first development by Gregory IX in 1234, twenty years before Aquinas's *Commentary on the Sentences*. The decretal *De emptione et venditione*, whose title shows a less one-sided approach to exchange, evokes without formally naming it the condition of *laesio enormis* and *duplus* which, since Roman law (Justinian, *Codex*, IV, 44, 2), had restored the rights of the injured seller: "the seller deceived [*deceptus*] of more than half of the just price [*ultra dimidiam iusti pretii*] may demand the thing to be returned to him and the price received to be restored [*pretium acceptum restituatur*] or the just price received be completed [*suppleatur*]" (Gregory IX, *Decretales*, l. 3, t. 17, c. 6). Whereas Aquinas himself remains in the background in the *Commentary on the Sentences*, he makes a first move towards the line of Gregory IX concerning the whole operation in *De emptione et venditione ad tempus* (1262), the second of his early works that had an economic scope. In it, Aquinas deals with buying and selling on a forward basis and sets out the changing situation of each of the agents (Januard 2021b). While the primary focus is on the behaviour of the seller, both buyers and sellers may experience strategic risk. The *Summa theologiae* (*S. T.*, IIa IIae, q. 77) marks a new stage, beginning around 1270. Here Aquinas would address commerce more specifically through the act of sale, as the titles of the four articles of the question indicate, but the general introduction to the question refers to "fraud committed in purchases and sales", which shows a broadening to all parts of the exchange. While in the *Commentary on the Sentences* (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.) injustice can only come from the seller, specifically where he does not respect the three conditions of *persona* (neither a cleric nor a monk), *tempus* (not a feast day), *modus* (without fraud and according to the licit contract), the

situation evolves in the *Summa theologiae* since the buyer, emerging as an actor in the exchange, is now also able to behave unjustly, to the point where an asymmetry of information to the benefit of the seller, or at least a limit to that information, may become a factor in assessing justice (Lapidus 1992, 36; Lupton 2015, 526-527; DelleMotte 2017, 34-36). Either the defect is obvious, as in the sale of a case of the one-eyed horse, and it is up to the buyer to be vigilant, or the defect is not obvious, but the seller of his own accord makes a suitable reduction of the price, and it is not necessary to state the defect since “because of this the buyer might want an exaggerated reduction in price” (*S. T.*, IIa IIae, q. 77, a. 3, resp.; see also *II Quodl.*, q. 5, a. 2, resp). The seller thus in turn incurs a strategic risk, which in the *Commentary on the Sentences* is still tacitly the prerogative of the buyer, who remains invisible and passive.

Aquinas’s broadening gaze now not only takes in the partners in the exchange, but also the activity, moving from trade as a profession to exchange in general. In the *Commentary on the Sentences*, as in *De emptione* and *De regno*, the focus is on trade, the professional activity of the merchant. It is then the seller who has strong bargaining power and who thus attracts moral and legal vigilance. It should also be noted that the prohibition of trading by clerics is certainly motivated by religious reasons, but that it is also part of this vigilance, since the cleric has knowledge and moral or even material authority, giving him a strong negotiating power that could distort the justice of the exchange. In later works such as the *Summa theologiae*, where the analysis is extended to commercial exchange in general – which is deemed to be good because it is done “in the interest of the parties” (*S. T.*, IIa IIae, q. 77, a. 1, resp) – and where trade, which is “for gain” (*propter lucrum*), is treated as a particular case of exchange (*S. T.*, IIa IIae, q. 77, a. 4), the bargaining power of agents becomes more variable. Sometimes, indeed, this variation can extend to the benefit of the buyer, who can obtain an exaggeratedly low price by taking advantage of better information (*S. T.*, IIa IIae, q. 77, a. 3, resp. and *II Quodl.*, q. 5, a. 2, resp.), since sellers are no longer only merchants with a high level of knowledge and power. The commercial risk arising from the bargaining power and the strategic risk arising from the hidden intention of the co-contractor are thus considered in a more universal way.

3.1.3 *Without fraud and according to the licit contract: emergence of two criteria of justice*

The triptych *persona, tempus, modus*, which lays down the conditions for the practice of trade in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp., generates three risks, one for each criterion. These are the legal and moral reputational risks incurred by the trader due to a lack of information if he does not have the required personal status, if he trades on prohibited days, and if he commits fraud. Regarding the first two terms the risk is low, since the persons excluded from trade and the prohibited days are relatively well known in society: Aquinas specifies that they are monks and clerics, and feast days. The third term is more imprecise, however, since Aquinas does not

make the notion of fraud explicit, yet at the same time he pays it special attention. Indeed, he specifies this third part of the triptych, the *modus*, through a double criterion: “without committing fraud, and according to the licit contract [*sine fraude fiat, et secundum licitum contractum*]” (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.). The shift from personal morality (the question of the merchant’s penitence in Peter Lombard) to economic activity (the licitness of trade in Albert the Great and then in Aquinas) is effected through the notion of fraud and through the positive law of contracts, whose role in the protection of co-contractors for the medieval scholastics is decisive (Ege 2014, 408-409; Santori 2021, 21).

Two hypotheses can then be formulated on the identity or complementarity that is envisaged to hold between the criterion of the absence of fraud and compliance with the criterion of the licit contract:

1. The proposed identity is a redundant expression. Absence of fraud is reduced to a positive legal criterion on two levels: compliance with the contract and conformity with the law. The notion of fraud is a general and moral notion which is effectively translated into law through the contract. The only objective and verifiable element is the respect of the contract and its authorisation. The moral norm therefore *is* the legal norm.
2. These are two complementary propositions which cannot be reduced to each other. Absence of fraud and contractual licitness are two distinct criteria of justice, not only because they belong to different disciplinary lexicons, but because they cover different realities.

For two reasons, the second hypothesis seems more likely. On the one hand, Aquinas does not present himself as a jurist but as a moralist theologian, and the question concerns penance in a religious sense. Fraud goes beyond the transgression of positive law. *Fraus*, in classical Latin, refers to an action, whereas *fallacia* is used for speech (Gardin-Dumesnil 1845, 44). It is the injury, harm, damage or loss which can result from error, ignorance or deception. *Sine fraude* was thus synonymous with *sine damno*, without damage. However, since damage often results from an evil intention, *fraus* mainly took on the moral meaning of cunning, deception or trickery. Only then does the term take on the general legal meaning of crime or forfeit (Valpy 1828, 163; Wharton 1890, 38; Bréal and Bailly 1918, 105; Ernout and Meillet 2001, 252). In the Middle Ages the moral connotation became stronger, as the term more specifically characterised the activities of heretics and the devil (Blaise 1954, 364). Aquinas would thus understand the *modus* in terms of a moral/legal dialectic through the interrelationship between fraud and contract. The exchange can only take place if morality and law are respected. The notion of fraud thus opens the door to the existence of a criterion of justice that pre-exists the law of contracts.

On the other hand, in the *Quodlibetal Questions* the obligation on the seller to disclose a defect is still only an obligation of disclosure through the price (*II Quodl.*, q. 5, a. 2, resp). It is only

in the *Summa theologiae* that fraud is defined in terms of information not reducible to the price, via the case in which the seller finds himself under the absolute obligation (*simpliciter*) to reveal the defect of a dangerous good (*S. T.*, IIa IIae, q. 77, a. 3, ad 3); prior to that, fraud is essentially a fraud on the price (Gratian, *Decretum*, II, causa 14, q. 4, c. 9) resulting from the greed of the merchants which is translated into a prejudice to the buyer. Fraud thus has a financial dimension, namely an injustice of price; however, fraud cannot be reduced to price, and the absence of the noun *pretium*, although it appears in the *Commentary* of Albert the Great, cannot be overlooked. Moreover, the contract, although it may include financial clauses, governs the other aspects of the exchange and is not sufficient to guarantee the moral justice of the price, and thus the absence of fraud. It should be added that the use of ‘*secundum*’ in the expression *secundum licitum contractum* introduces a link of conformity - although not an identification, between the *modus* and the contract on the polysemy of ‘*secundum*’ (see Quicherat 1893, 1013; Blaise 1954, 747; Blaise 1975, 833; Ernout and Meillet 2001, 608; Januard 2021b). A distance thus remains between the appropriate mode (*modus debitus*) and the contract (*secundum licitum contractum*), which made room for complementarity through the criteria of *sine fraude*. A second dialectic, which can be read as financial/non-financial or price/contract, thus appears after the morality/law dialectic.

The formulation of the double criterion of justice imposed by the absence of fraud and the observance of a licit contract thus covers articulations that are not superimposable. This dialectical polysemy reveals the polysemy within each of the terms of the conditions Aquinas states; and this polysemy can be translated into a qualitative or quantitative imprecision. This is the case with fraud, which is not defined in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp., neither in terms of price level nor in terms of commercial practices. This raises a risk of analysis and understanding of the justice of trade, which can be broken down into three major legal risks that translate into risks to the merchant’s moral and legal reputation. Firstly, there is *a risk on the understanding of fraud*. While the observer and the merchant can verify the licitness of the contract as well as the compliance with it, in the absence of precise criteria the fraudulent nature of the exchange is more difficult to determine, which hampers the seller in protecting himself against the risk of finding himself in a fraudulent situation. Secondly, there is *a risk on the understanding of the licitness of trade*. The nuanced accounts provided by the various authors, from Peter Lombard and Albert the Great to Thomas Aquinas, show that the understanding of commercial activity and the moral judgement that results from it remain subject to a lack of information that can result in moral and legal insecurity for the merchant. Finally, there is *a risk on the understanding of the legal framework of trade*. Aquinas’s use of the criterion of licitness and contractual compliance also introduces an additional legal risk for the merchant. Certainly, this criterion is less imprecise than that of fraud, yet nothing is said about justice or information concerning the positive legal framework governing contracts, or about the just or unjust

measures taken to enforce contracts. The licitness of the commercial activity and the framework for its practice have not been established in a way that is beyond all doubt.

In summary, the risk to trading conditions is of three types. In addition to *analytical risks* arising from the indeterminacy of the concepts of fraud and contract that Aquinas employs, there are also *commercial risks*. These risks, stemming from the merchant's bargaining power, are displaced to his detriment by the framework of the activity represented by the conditions laid down. If the client's commercial risk decreases, the merchant's risk increases. There is also an increase in the supply risk for the city, since the conditions for professional practice make the activity less attractive. A *strategic risk* for the client also arises from the circumvention of the conditions by the merchant, made possible by the indeterminacy of the conditions of the absence of fraud and compliance with the licit contract.

3.2 Risks on the remuneration of merchants

Through the quantitative dimension of the notion of fraud, which is rooted in the tradition of *turpe lucrum* albeit in a way that differs from *laesio enormis*, Aquinas introduces a specifically financial dimension to the conditions of trade. He thus reduces the risks of the buyer confronted with a merchant with strong bargaining power: on the one hand, Aquinas reduces the commercial risk, since the price now has upper limits induced by the absence of fraud; on the other hand, he reduces the strategic risk, since he circumvents the hidden nature of the merchant's intention and purpose through the conditions for professional practice (means). This first quantitative approach to remuneration through the concept of fraud remains allusive, however, and the *turpe lucrum* that it assimilates involves a quantitative imprecision that entails a risk of analysis concerning the right remuneration, which translates into two risks for the merchant: a legal risk and a risk concerning moral reputation on the one hand, and a commercial risk concerning the level of remuneration on the other. However, in his attempt to circumvent the lack of information about the merchant's intention, Aquinas lays a foundation stone that will have to be reinterpreted in the light of the later developments in the *Summa theologiae*, where the notion of moderate gain will no longer lead to the establishment of a licitness of means but rather a licitness of finality. The limitation placed on remuneration in the *Summa theologiae*, and the plurality of its conceptual expression, which prevents it from being assimilated to a price, brings with it a quantitative risk of remuneration: i.e., a risk of analysis and understanding of what this income is for the observer, a risk of level of remuneration for the merchant, and a risk of supply for the whole city.

3.2.1 A dialectic of fraud and contract leading to a price risk

The distinction, yet complementarity, between the absence of fraud and contractual licitness leads to the identification of three characteristics of trade justice, each of which entails a price

risk: 1. the non-transcription of fraud into price, 2. the articulation of three legal levels of reality of the just price, 3. the non-substitutability of price and law.

1. *The non-transcription of fraud into price.* Aquinas does not formally transcribe fraud in terms of price. It is therefore not explicitly mentioned in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. In this he differs from Albert the Great, for whom “the just price is that which the thing sold can be worth according to an estimate on the market at that time [*justum autem pretium est, quod secundum estimationem fori illius temporis potest valere res vendita*]” (Albert the Great, *In IV Sent.*, d. 16, a. 46, resp. ad q. 1) and Gregory IX (*Decretales*, l. 3, t. 17, c. 6) who treats being deceived as a deviation from the *justum pretium*. The fraudulent deviation is thus treated quantitatively through the rule of *duplus* thanks to the price. The original absence of the just price in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 is therefore worth noting and provides a key to the reading of later Thomasian writings. It is not until *De emptione* (1262) that explicit considerations on the just price appear and Aquinas once again takes up, albeit in order to displace, the Albertian notion of estimation on the market at a given moment (Rajapakse 2010, 232-237; Januard 2021b). This helps us to take a step back from the classical debate on the Thomasian just price (Dempsey 1935; Worland 1977; Lapidus 1986, 18; Lapidus 1992, 29-30; Lapidus 1994, 435; Franks 2009, 85-92; Santori 2020, 281-282), as the issue is not so much whether it is a price by the costs of production, following *Ethicorum*, V, 9 (Tawney [1926] 1948, 41; presentation in Baldwin 1959, 71 and 75 and Sivéry 2004, 699-700), position that would be found almost fifty years later in Duns Scotus’s *In IV Sent.*, d. 15, q. 2, p. 317-318 (Dempsey 1935, 482-483), or a competitive or a market price (Schumpeter [1954] 2006, 89; De Roover 1958, 422 and De Roover 1971, 59; to a lesser extent Langholm 1992, 228-233 and Sivéry 2004, 703), or even a combination of the two with a gravitation of a market price around the costs of production (Hollander 1965). The point, rather, is to underline the normative rooting of this just price. Aquinas’s question is one that concerns fraud, and therefore an absence of justice. The notion of price will only be used later to transcribe in an objective, observable and quantifiable way the moral criterion of the justice of exchange. The just price will thus make it possible to reduce transaction costs (Friedman 1980). In *De emptione*, the just price will only be the transcription of a non-usurious situation into an observable criterion (Januard 2021b), and *S. T.*, IIa IIae, q. 77 will not deal primarily with the fair price but rather with commercial fraud, as Aquinas himself announces in the title “*de fraudulentia quae committitur in emptionibus et venditionibus*” given by the Leonine edition (1897). In total, Aquinas’s writings contain only nineteen occurrences of the expression ‘just price’, which is very low, two of which are found in *In IV Sent.* (in passages not directly dealing with economic issues), two in the *De emptione*, eleven in the *Summa theologiae* (of which five in *S. T.*, IIa IIae, q. 77 and five in q. 78), and three in *II Quodl.*, q. 1 and q. 5. We observe, therefore, that the expression ‘just price’ arrives gradually in Aquinas’s work. The notion of fraud does not yet benefit from a criterion of determination in *In IV Sent.*,

d. 16, q. 4, a. 2, qc. 3. The explicit introduction of the price will provide an observable criterion reducing errors arising from a lack of information.

2. *The articulation of three legal levels of reality of the just price.* The complementarity between the absence of fraud (particularly price fraud, according to Roman law and then Gratian law) and the need for a licit contract opens up a double dialectic of morality/law and price/contract. By establishing a link between morality and price, this double dialectic supports the idea that the just price, i.e., the non-fraudulent price, is a price of justice corresponding to pre-existing moral criteria. From an economic perspective, this price ontologically precedes the acceptable effective prices that conform to it, whether they are considered in terms of the market or of production costs, but also, from a legal perspective, the prices that are licit according to positive law. In *IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp. allows us to take a new step in the legal understanding of the just price as a price of justice. Through a comparison between Thomas Aquinas and Hugo Grotius (17th century), Lapidus 2021 shows how, in the modern era, law comes to succeed religion as the normative basis for the analysis of economic questions, under the mode of *imbrication* for Aquinas, then under that of *separation* for Grotius. We can therefore see in the *Commentary on the Sentences* the emergence of a juridical approach to justice, still in the mode of imbrication, which is expressed through the focus on the contract and its licitness. This allows us to bring a new element of understanding to the Thomasian just price by transposing, under the juridical mode of the contract, the three levels of reality of the just price that we have been able to highlight in an economic sense for *De emptione* by relying on the successive contributions of the literature (Januard 2021b). These contributions have first illuminated the normative moral dimension of the just price by attempting to integrate it into an economic approach to price (Lapidus 1986, 18; Hamouda and Price 1997, 192-193; Gomez Camacho 1998, 535; De-Juan and Monsalve 2006, 100-101; Monsalve 2014, 5), before formally distinguishing between the pre-existing normative just price and acceptable prices (Lapidus 1994, 456-457; Chaplygina and Lapidus 2016, 25). On the basis of these findings, using the Thomasian concepts of sign and analogy, we distinguished three levels of reality of the just price: a pre-existing normative just price, a just price encountered in the market, and a just price in the singular exchange. The just price in the singular exchange is the sign and analogy of the just price in the market, which is the sign and analogy of the just price in the exchange (on the use made here of sign and analogy, see Januard 2021b. Drawing on Aquinas's use of the contract, we can transpose this economic approach to the legal approach. Indeed, the same three levels of reality – pre-existing normative justice, the market, and singular exchange – are to be found at the juridical level. For Aquinas, positive law is simply the application of the normative moral justice that precedes it and that is expressed in a universe of acceptable positive rights: “The human will can, by virtue of a common convention, make something just among those things that of themselves imply no opposition to natural justice. And it is here that there is room for positive law” (*S. T.*, IIa IIae, q. 57, a. 2, ad 2). We can thus obtain three juridical

levels of reality of the just price, echoing the three economic levels of reality of the just price: the singular contractual just price is only the sign and analogy of the just price according to positive civil law, which is only the sign and analogy of the just price according to natural moral justice.

3. *Non-substitutability between price and law.* Since the contract governs elements external to the price, price and law are not substitutable with or reducible to each other. The justice of the exchange is therefore always maintained by two criteria, one financial (the non-fraudulent price) and one non-financial, in this case the law. We thus see appearing, in an allusive but real way, the idea of a double cumulative criterion of justice: the price plus a non-financial element. It is important to underline the universal scope of this diptych in the first Thomasian writing on trade. It should be noted that within the ‘scholastic duality’ emphasised by Chaplygina and Lapidus (2016, 20) and by Sturn (2017, 641), which proceeds by imbrication (Lapidus 2021) between normative considerations and positive economic behaviour, price and law here enter the normative space as two criteria of justice. This dual financial/non-financial criterion is subsequently found in the two borderline cases of non-market goods and semi-market goods. In the case of non-market goods, which cannot be sold, for example spiritual goods in the case of simony, only the non-financial criterion, the nature of the good, is decisive, but the just price is present by its impossibility – this is, moreover, the first occurrence of the expression ‘just price’ in Aquinas’s writings (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1). In the case of semi-market goods, goods which are exchangeable but with a strong non-market constraint, such as the married serf, whom the lord cannot sell away because this would undermine his marriage, the price is associated with a non-financial criterion derived from marital status (*In IV Sent.*, d. 36, q. 1, a. 2). This double criterion of justice also appears fifteen years later in the *Summa theologiae*, where the buyer’s information on the defect of a good is necessary when his security is at stake and one cannot be satisfied with justice or information as conveyed purely through a low price (*S. T.*, IIa IIae, q. 77, a. 3). It can be seen that after *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp., the contract remains present in the texts with an economic scope (three occurrences in *S. T.*, IIa IIae, q. 77), but that Aquinas is now concerned more with establishing its existence than with making it a moral criterion. Indeed, the deepening of the economic understanding of commercial exchange and its justice will allow him to specify his own conditions without externalising his judgement by relying on positive contractual law. At the same time, the search for an observable and objective criterion of the justice of exchange will push Aquinas to explicitly resort to price, which he does not clearly do here. However, the original dialectic helps him to think about all types of exchange (market, semi-market and non-market goods), since it has established the framework for analysing the justice of all exchange in its market and non-market dimensions. All the commercial situations described later by Aquinas (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1; *In IV Sent.*, d. 36, q. 1, a. 2; *De emptione*; *S. T.*, IIa IIae, q. 77; *II Quodl.*, q. 5, 2; *Ethicorum*, V, 9; *Collationes in decem preceptis*, a. 9), but also the texts concerning

usury (*In III Sent.*, d. 37, a. 6; *De malo*, q. 13, a. 4; *S. T.*, IIa IIae, q. 78; *III Quodl.*, q. 13, a. 7; the *Letter to the Duchess of Brabant*; *Politicorum*, I, 8), which has been shown to be a type of commercial exchange (Januard 2021a), are therefore to be read through the prism of *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3.

The apposition of the expressions ‘without fraud’ and ‘according to the licit contract’ brings out a double risk for the remuneration of merchants. On the one hand, there is a risk of qualitative limitations, with the appearance of non-financial barriers based on law and morality; on the other hand, there is a risk of quantitative limitations, resulting from the dual constraint on price of absence of fraud and compliance with a licit contract.

3.2.2 Reducing the risk of abusive remuneration by rethinking the *turpe lucrum*

The quantitative dimension of the conditions of trade, and thus the question of the merchant’s remuneration, is introduced in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp. through the concept of fraud. This broad concept allows Aquinas to give an implicit account of the facts with which he is confronted. Goods, which are often non-standardised, have only narrow markets and are subject to great price variation (Persson 2014, 227). This can lead to price manipulation, speculation, or monopolistic or dominant situations. The strong bargaining power of the merchants is then detrimental to the buyers who, although formally free, see their will conditioned by the dominant position of their co-contractors (Lapidus 1992, 30; Langholm 1998, 77-99; Langholm 2006). Thus, Aquinas briefly but vividly evokes (Sivéry 2014, 704) the situation of a region lacking wheat, where a trader, arriving before the others, takes advantage of the famine conditions to charge a high price (*S. T.*, IIa IIae, q. 77, a. 3, ad 4). Whereas in agency theory (Sturn 2017; Chaplygina and Lapidus 2022) information asymmetry sometimes serves as a counterbalance to the bargaining power of the co-contractor, in the case of trading both elements are in favour of the merchant, a professional trader oriented towards profit and whose intention remains hidden. Although he has no direct control over these two strategic advantages, Aquinas can indirectly reduce the strategic risk of the buyers by a qualitative and quantitative framing of the remuneration through the double *modus*, ‘without fraud’ and ‘according to the licit contract’.

In this context, the quantitative limitation of remuneration through the concept of fraud turns out to be asymmetrical and captures only one of the two points of support bequeathed by Aquinas’s predecessors. The only agent of *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp. being the merchant, the mention of fraud thus refers to him. *Laesio enormis*, which is intended to protect the seller against an unreasonably low price, has no place here in its original sense. In Roman law, *laesio enormis* originally regulated the trade in land so as to guarantee the heir that the sale would not be made at less than half the value of the property, but its principle was gradually extended to goods other than land (Thayer 1937, 321-326; Baldwin 1959, 23-24; De Roover

1971, 53; Lapidus 1992, 41; Lupton 2015, 520-521; Chaplygina and Lapidus 2016, 21). Aquinas stays back and away from this principle which, together with the notion of *turpe lucrum*, would constitute a relatively symmetrical framing of gains and losses. However, *laesio enormis* extends to the protection not only of the seller but also of the buyer (Baldwin 1959, 23), and this broadened vision of *laesio enormis* then joins *turpe lucrum* to be found in the notion of fraud by the merchant in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. Aquinas's works contain no occurrences of the expression '*laesio enormis*', as it would appear a few years later (Baldwin 1959, 18), but one observes the existence of its principle in the *Summa theologiae* (*S. T.*, IIa IIae, q. 77, a. 1, ad 1), along with a set of specific protections for the seller, who can increase the price if he suffers a great prejudice in disposing of the good (*S. T.*, IIa IIae, q. 77, a. 1, resp.), can take advantage of the asymmetry of information concerning the evolution of prices (*S. T.*, IIa IIae, q. 77, a. 3, ad 4), and can sell for more than the purchase price if he improves the good (*S. T.*, IIa IIae, q. 77, a. 4, ad 1 and 2), if prices rise or to cover the risk of transport (*S. T.*, IIa IIae, q. 77, a. 4, ad 2).

In contrast, the expression *turpe lucrum* (dishonest gain) is explicitly employed in Aquinas's works, appearing 27 times, in senses which mark a significant shift from the usage in Gratian's *Decree*. Following an approach that developed in the 13th century (Baldwin 1959, 63), Aquinas sticks to the question of the honesty of the means, whereas Gratian insisted on the honesty of the end, since dishonest commercial gain, *turpe lucrum*, "has greed [or envy, *propter cupiditatem*] as its end" (Gratian, *Decretum*, II, causa 14, q. 4, c. 9). It is indeed a question of attention to the end: it is normal that the price should vary, but not by speculative intention (Langholm 2003, 36). Aquinas, on the other hand, noting the lack of information on intention and not yet being able to deal with the morality of finality in the *Commentary on the Sentences*, focuses on the means of trade. This may appear to be a position of retreat, but in reality it allows him to fully honour the justice of the means, which had previously fallen short of Gratian's finalist *turpe lucrum*. It is true that Aquinas's moral theology falls within a morality of ends, but a good end is not enough to ensure the goodness of the act; the circumstances, and therefore the means, must also be good (*In II Sent.*, d. 40, q. 1, a. 2 and 3; *S. T.*, Ia IIae, q. 18, a. 4, 6 and 10).

Aquinas thus effects a twofold evolution of Gratian's *turpe lucrum*: 1. The dishonesty of gain is not only a matter of the end, but also of the means. 2. The justice of the exchange does not depend only on the intention, but also on an external reality independent of the intention, the conditions for professional practice allowing this gain.

1. *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 presents a complete account of the morality of the act: the end is addressed in the first objection through the argument of supply, even if the argument is not taken up in the *respondeo* and is not retained as a satisfactory solution to the problem of

intention, while the means are treated in the *respondeo* through the triptych of conditions person, time, mode. However, the good purpose, which appears in the objection, remains in abeyance, being neither taken up nor refuted. Through being ignored, it is thus subordinated to the means, which must be good. Where Gratian discusses the ends, evoking the agent's intention – and thus it is an evil end, greed, which replaces the good end of the generic act – Aquinas focuses on the conditions. He thus concerns himself more with the register of the means, of the modalities of exchange, than with the purpose of the merchant. Using the triptych person, time, mode, he deals with the justice of means, which is as necessary for the goodness of an act as the justice of the finality.

2. Aquinas makes an objectivist shift, towards the justice of the operation as a reality external to the intention of the agents. Thomasian justice can certainly be seen from the perspective of agents (Koehn and Wilbratte 2012), since it is their behaviour that is right or wrong (Hamouda and Price 1997, 196-199) and this behaviour is relatively predictable in Thomasian anthropology (Conrad and Hunter 2020). However, temporarily setting aside the question of intention – since he cannot yet deal with the strategic risk of information failure – Aquinas focuses on the transaction and its objective modalities: identity of the agent, timing, fraud (taken in its objective sense and not necessarily understood as intentional) and contract compliance. As Lapidus (1994, 436) points out, justice manifests itself in a relation of proportion, and thus externally: “the matter of justice is an external activity” and “the medium of justice consists in an equality of proportion of an external thing with an external person” (*S. T.*, IIa IIae, q. 58, a. 10, resp). Injustice is the maladjustment of an external act to the right of another, and thus it is a matter of the objective and external character of the act, regardless of the agent's intention to be just (Delos 1932, 199).

Thus, by focusing on the means to circumvent an intention that remains hidden, the first site of information asymmetry (Lapidus 1991), Aquinas takes a twofold step forward in terms of justice in relation to *turpe lucrum*: on the one hand, he approaches justice through the means; on the other, he restores to it, as a virtue, its external and objective dimension.

A third shift appears in the *Summa theologiae*. Gratian proposed a quantitative evaluation of dishonest gain, *turpe lucrum*, in a well-known expression: “To procure a measure of wheat for two denarii and to keep it until it is sold for four, six or more [*de duobus denariis comparat modium unum et servat usque dum vendatur denariis quatuor, aut sex, aut amplius*]” (Gratian, *Decretum*, II, causa 14, q. 4, c. 9). Here he was echoing the *duplus*, not to sell for twice the purchase price (Langholm 2003, 59). After the first two evolutions observed in the *Commentary on the Sentences* on the means and on the objectivity of the act, it is on the basis of this notion of *duplus* that Aquinas will be able to effect his third evolution of Gratian's *turpe lucrum* in the *Summa theologiae*. by making it symmetrical. Through the *duplus*, the *turpe lucrum* that

protects the buyer and the *laesio enormis* that protects the seller are thus united. After focusing on the merchant in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, Aquinas adopts a symmetrical view of the buyer and seller fifteen years later: “It may be held licit, without penalty, if there is no fraud, that the seller increases the price of his goods and the buyer buys them for less, if this is not excessive [*nimius excessus*]”. The criterion of licitness is then framed quantitatively: “the law obliges to make restitution, for example if someone has been deceived by more than half the just price [*deceptius ultra dimidiam iusti pretii quantitatem*]” (*S. T.*, IIa IIae, q. 77, a. 1, ad 1). The penalty is then restitution, a principle of medieval commercial justice whose requirement is first and foremost moral and religious, in order to receive absolution (Todeschini 1994, 135; Dejoux 2014, 854).

From the concept of fraud mobilised in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 and its integration of *turpe lucrum* present in Gratian, we can highlight three sources of risk from this *turpe lucrum* which remain in the *Commentary on the Sentences*. First, *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 does not yet benefit from the quantitative approach of the *Summa theologiae* and the formulation of the *duplus* of *S. T.*, IIa IIae, q. 77, a. 1, ad 1. The *duplus* rule is probably implicitly contained in the ‘*sine fraude*’ of *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 since it appears in Gratian’s definition of *turpe lucrum* (*Decretum*, II, causa 14, q. 4, c. 9), but it is not spelled out. In the Middle Ages, however, this rule was not as precise as it seemed. The threshold of prohibition was debated and could be waived by contract (Baldwin 1959, 23-24). Thus, the space created by the vagueness of the *turpe lucrum* threshold in the *Commentary on the Sentences* and the possibilities of circumvention represents an analytical risk for the observer, who may misunderstand the situation; a strategic risk for the buyer if the seller adopts a *turpe lucrum* posture; and a legal and moral reputation risk for the seller if he unwittingly finds himself in this situation.

In Gratian, then, usury and dishonest commercial gain are still articulated through *turpe lucrum* (McLaughlin 1939, 95-97 and 124-125; Rajapakse 2010, 78). Gratian places *turpe lucrum*, which concerns the merchant’s gain, in the midst of questions about usury, yet usury is condemned in principle. Aquinas more clearly distinguishes between the two activities, and it was not until *De emptione*, five years after the *Commentary on the Sentences*, that usury and trade were combined through forward sales. However, fraud, by integrating Gratian’s *turpe lucrum*, includes the situation of dishonest gain which is in fact usury. The merchant may, within his trading activity, adopt a usurious practice. This interpenetration of trade and usury represents a risk of analysis for the observer, for example the moralist, as well as a risk for the buyer of falling victim to usury, and a legal and moral reputation risk for the merchant who might be considered an usurer in spite of himself.

Finally, the appeal to the notion of fraud in the *Commentary on the Sentences* demarcates the boundaries of remuneration in a way that is asymmetrical, since Gratian's *turpe lucrum*, which it contains through the *duplus*, limits gain at the upper end, but nothing sets a lower limit. Clearly, we must beware of a reading that would see the Scholastics as the heirs of a theology that is unequivocally hostile to wealth (Lenoble and Toneatto 2019, 27-31), as well as of an understanding of the criterion of moderation solely as a restriction and not as a broadening that attests that profit is not the sole objective of the market (Santori 2021, 19); nevertheless, through this asymmetrical demarcation, in Gratian and again in the *Commentary on the Sentences*, we can observe a limitation of gain without a guarantee against loss, which represents a risk to the merchant's remuneration.

3.2.3 Towards an increase in remuneration risk

Through the implicit reference to *turpe lucrum*, the absence of fraud required by the *Commentary on the Sentences* emerges from a quantitative justice of trade. The expression *sine fraude*, however, has two dimensions, thus requiring an additional step in the quantitative characterisation of the merchant's activity. On the one hand, the expression remains attached to the means of trade and not to its end, which is not taken into consideration by *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.; on the other hand, nothing is said, except indirectly through the *duplus* drawn from Gratian's *turpe lucrum*, about the level of remuneration of the merchant.

A decisive step would be taken by Aquinas in the *Summa theologiae*, fifteen years later. Here the activity of trading is clearly defined, being an exchange "for gain" (*S. T.*, IIa IIae, q. 77, a. 4, resp.), echoing Aristotle in his *Politics* (I, 3, 1257a). The *Commentary on the Sentences* did deal with the activity of trading, but from the point of view of its agent, the merchant, and without placing it in the context of all the modalities of exchange. By defining trade in the *Summa theologiae*, Aquinas addresses its end, which was left unresolved in the previous works. The appeal to the concept of fraud in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp., certainly made it possible to partly regulate the bargaining power and to indirectly circumscribe the strategic risk of the buyer, by neutralising the means that could allow the merchant to act upon his bad intention. However, this concept of fraud, focusing on the means, prevented Aquinas from dealing directly with the lack of information about the merchant's intention.

In the *Summa theologiae*, Aquinas proposes two possible ends of trade: a triple social end (to support one's family, to help the poor and to supply the country), and gain, which is the immediate end that defines trade, since the latter is an exchange "for gain [*propter lucrum*]" (*S. T.*, IIa IIae, q. 77, a. 4, resp.). Gain itself is presented as morally indeterminate. Gain might be the ultimate purpose of the exchange, in which case this purpose is bad: "by its very nature, [trade] favours greed, which has no limits and tends to acquire without end. This is why trading, considered in itself, is something shameful, because it does not, of itself, relate to an honest and

necessary end” (*S. T.*, IIa IIae, q. 77, a. 4, resp.). Alternatively, gain may be only an intermediate end, a step towards an ultimate good end which is the triple social end, in which case it is good because “nothing prevents it from being ordered to a necessary, or even honest end” (*S. T.*, IIa IIae, q. 77, a. 4, resp.).

In proposing a threefold social end to trade in the *Summa theologiae*, Aquinas makes three shifts in supply (i.e., the provisioning of the city) as it appeared in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, obj. 1 and in *De regno* (II, 7 (II, 3)). Firstly, supply is retained as a finality of trade – which, in a way, frames Aquinas’s argument on trade, from the first objection of his early writing (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, obj. 1) to the end of question 77 of the *Summa theologiae* (*S. T.*, IIa IIae, q. 77, a. 4, resp.). Then, as in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, obj. 1, supply is presented as good, whereas in *De regno* (II, 7 (II, 3)) Aquinas underlined its harmful consequences: in fact, in *De regno* the necessity of supply made the presence of merchants indispensable, and this presence represented multiple disadvantages for the city. Finally, in the *Summa theologiae* Aquinas integrates supply into a social whole that also includes supporting one’s family, a purpose commonly mentioned in the 13th century (Langholm 1998, 125), and helping the needy. Thus, there is no longer any specific attention to provisioning or any instance of its necessity as in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, obj. 1 and in *De regno* (II, 7 (II, 3)); on the other hand, Aquinas no longer stresses the social damage that this necessity caused.

Supply seems to be a more direct end and more independent of gain than assistance to the family and the poor, which is possible thanks to this gain that the merchant “orders [*ordinat*]” (*S. T.*, IIa IIae, q. 77, a. 4, resp.). However, in reality it is only by a roundabout way, through gain, that in the *Summa theologiae* supply will attain the status of an end and no longer simply of a consequence: for the merchant, whose profession is trading and who must live from it, cannot aim at such a good end without it being done by means of gain. The three good ends of trade in the *Summa theologiae*, including supply which already appeared in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, obj. 1, thus require gain. This gain is certainly a means to an ultimately good end, but it is in itself an intermediate end because its pursuit determines the nature of the exchange so as to make it a trade. This gain is itself subject to a quantitative criterion since it must be a ‘moderate gain [*lucrum moderatum*]’. Thus, the good purpose of trading in *S. T.*, IIa IIae, q. 77 is characterised by two elements, a qualitative one (supporting one’s family, helping the poor or supplying the country) and a quantitative one (a moderate gain).

Thus in the *Summa theologiae* we find that the purpose is governed by the same double criterion of justice, qualitative and quantitative, as found in the *Commentary on the Sentences* for the conditions for practice of trade. In order to understand the quantitative dimension of the expression ‘without fraud’ (*sine fraude*) used fifteen years earlier in *In IV Sent.*, d. 16, q. 4, a.

2, qc. 3, it is necessary to specify what is the ‘moderate gain’ which constitutes its extension in *S. T.*, IIa IIae, q. 77, a. 4, resp.

Two expressions are used in the *Summa theologiae* to characterise the merchant’s gain: “*quasi stipendium laboris*”, in the general case of good trading in the service of a social purpose (*S. T.*, IIa IIae, q. 77, a. 4, resp.), and “*praemium sui laboris*” in the case of the craftsman who improves the good and adds value to it before reselling it (*S. T.*, IIa IIae, q. 77, a. 4, ad 1). The study of these expressions and their occurrences in Aquinas’s works tends to highlight three main characteristics of this gain.

Firstly, the merchant is remunerated for his work, or at least for his effort (Koehler 2020, 362), since the gain is always an income (*stipendium* or *praemium*) from this work (*laboris*). Secondly, this remuneration is not exactly the same as wages. The use of ‘*quasi*’ (as) marks an analogical distance, and the use of two different terms introduces a first distinction within the general category of gain (Langholm 1998, 126). Admittedly, Aquinas does not yet have the conceptual tools and vocabulary to distinguish functionally between different types of income, and he does not identify the remuneration of capital as a functionally specific income, since here everything is related to labour. However, neither of the two terms (*stipendium* or *praemium*) is *merces*, which is usually used to designate the wage of labour.⁸ Finally, the dialectic between *stipendium* and *praemium* provides an important clarification. The expression *praemium laboris* is used by Aquinas to designate the reward for merit (*meritus*) in the case of buying and selling (*In II Sent.*, d. 27, q. 1, a. 4, ad 2). The *praemium* is “a wage for work [*merces laboris*]” (*In III Sent.*, d. 29, q. 1, a. 4, obj. 2) and “the price of work [*pretium laboris*]” (*De veritate*, q. 26, a. 6, obj. 10). Thus *praemium*, used for the merchant-craftsman in the *Summa theologiae*, evokes a price and a proportionality between work and income, like the wage (Rocha 1933, 10-20, Lapidus 1994, 441; Rajapakse 2010, 207-210; Noell 1998, 476) and must be just, like the price (Hirschfeld 2018, 188-189).

The expression ‘*quasi stipendium laboris*’ has a different meaning. From a financial point of view, the term *stipendium* refers to the stipend of soldiers (as in *In IV Sent.*, d. 25, q. 3, a. 2, qc. 1, obj. 4), according to the meaning that is affirmed from the 10th century onwards (Feller 2014), as well as to the fees paid to the clergy and for spiritual works (*In IV Sent.*, d. 25, q. 3, a. 2, qc. 2, obj. 5; *S. T.*, IIa IIae, q. 87, a. 1, ad 5; *S. T.*, IIa IIae, q. 187, a. 3 ad 3). In the case of simony, Aquinas thus distinguishes between what would be “the price of a wage [*pretium mercis*]”, which is prohibited, and the legitimate “tribute paid to necessity [*stipendium necessitatis*]” (*S. T.*, IIa IIae q. 100, a. 2, resp.) for the needs of the clergy. This, therefore, seems more like a subsistence allowance, allowing the soldier or cleric to be available to carry out his mission in

⁸ *Salarium*, which was rarely used in the early Middle Ages (Feller 2014) but became more common at the end of the 13th century (Pinto and Franceschi 2014, 187), only appears in Aquinas’s *Politicorum*, II, 16, 5. Moreover, Aquinas does not use *feudum* to designate wages, although the term was in use in his time.

the general interest, as opposed to a salary which is the price of work. The expression ‘*stipendium laboris*’ further clarifies the distinction: it refers to the judge’s fees paid out of the public treasury and the tribute (*tributa*) paid to the rulers as remuneration for their work (*S. T.*, IIa IIae q. 102, a. 2, ad 3). The expression ‘*quasi stipendium laboris*’ appears twice in addition to *S. T.*, IIa IIae, q. 77, a. 4, resp. to designate what is paid to the witnesses “not as the price of their testimony [*quasi pretium testimonii*]”, but “as compensation for their labour [*quasi stipendium laboris*]” (*S. T.*, IIa IIae q. 71, a. 4, ad 3) and the tribute due to the king (*ad Romanos*, c. 13, l. 1, 1041). The term *stipendium* associates merchants with noble activities, as opposed to those workers in modest and often suspect conditions, who seek a *merces* and who subordinate their participation in the common good to their own remuneration (Todeschini 2015, 83-84).

Two shifts between the *Commentary on the Sentences* and the *Summa theologiae* emerge from a study of the vocabulary used by Aquinas to designate the merchant’s gain.

Firstly, since *stipendium* in its common sense is the stipend of soldiers, Aquinas brings merchants and soldiers together under the same form of income, whereas the information about the purpose had led to a difference in treatment in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. It is possible that the original common treatment of the two professions, already present in Peter Lombard (*IV Sent.*, d. 16, c. 3), inspired the application of ‘*stipendium*’ to merchants in *S. T.*, IIa IIae, q. 4, resp. once the question of purpose had been dealt with. The *stipendium* of the merchant may also have been thought of independently by Aquinas in the *Summa theologiae*, which sheds light on earlier texts such as the *Commentary on the Sentences* wherein the unified treatment of the merchant and the soldier would then appear to be a stepping stone.

Secondly, the notion of *stipendium* not only clarifies but indeed displaces the conception of the merchant’s gain which was included in the notion of absence of fraud in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp., and which remains fundamental to the general framework of exchange in *S. T.*, IIa IIae, q. 77, a. 1 to 3. Indeed, since *stipendium*, unlike *praemium*, used in *S. T.*, IIa IIae, q. 77, a. 4, ad 1, emerges more from the idea of an indemnity than from the price of work, the moderate gain of the merchant referred to in *S. T.*, IIa IIae, q. 77, a. 4, ad 1, resp. is not a more precise expression of an absence of fraud (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.) on the price of the merchandise (*S. T.*, IIa IIae, q. 77, a. 1-3), nor on the price of the work (*S. T.*, IIa IIae, q. 77, a. 4, ad 1). This gain is without fraud if it is a *stipendium*, thus if it is not a price. Fraud in the matter of remuneration would then be a fraud on the nature of this remuneration as much as on its amount. The *Summa theologiae* thus leads to a reinterpretation of the very nature of the merchant’s activity described in the *Commentary on the Sentences*. Indeed, the merchant’s income, ‘*quasi stipendium laboris*’, is not a price for labour in the sense of the four functions of the scholastic just price summarised by Hamouda and Price (1997, 200), which are to

compensate for a loss, to enable a need to be satisfied, to provide a fair valuation and to restrict the abuses of exchange. It is an indemnity, an incentive compensating for the loss of income to enable the achievement of a good social end. Paid or organised by the state (for rulers, soldiers, judges, witnesses) or by an institution (for clerics), the *stipendium* is a social evaluation of compensation. Trading is thus legitimised through the search for a good purpose, but it is not reintegrated into the general framework of licit exchange which is carried out for the benefit of the parties (*S. T.*, IIa IIae, q. 77, a. 1, resp.). Trade's gain falls under another form of income, the compensatory indemnity for subsistence, within the standard framework of *quasi stipendium laboris* (*S. T.*, IIa IIae, q. 77, a. 1, resp.). The notion of moderation of gain (*lucrum moderatum*) does not therefore constitute a clarification of the quantitative framework of income outlined in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 through the absence of fraud (*sine fraude*), but invites us to review the very nature of this income, which is not the price of work even if it is derived from this work. On the one hand, gain is not presented in *S. T.*, IIa IIae, q. 77, a. 4 as a remuneration for risk, unlike in *Politicorum*, I, 9, 5 (echoing Aristotle's *Politics*, I, 1258b20) where Aquinas distinguishes between types of trade according to the risk incurred and the gain. On the other hand, the still imprecise distinction between incomes allows us to underline that the good merchant is not exactly a professional of exchange in the sense of "the common utility of the two parties" which justifies it in *S. T.*, IIa IIae, q. 77, a. 1, resp. He fulfils a social mission for which he is compensated. In this framework, the commercial exchange for the interest of the parties (Santori 2020, 286) could therefore not constitute a licit trade in itself: rather, it must relate either to a craft or industry with an added value (Lapidus 1986, 23), which Aquinas conceives as a physical improvement of the good (*S. T.*, IIa IIae, q. 77, a. 4, ad 1), or to simple trade (*S. T.*, IIa IIae, q. 77, a. 4, resp.) whose finality is no longer the interest of the parties but the social mission.

Within the general framework of exchange, Aquinas has recourse to price as a visible criterion of justice in order to circumvent the hidden intention of agents, through the gradual emergence of the notion of just price. It is the same price indicator that reveals, through the *praemium*, the justice of the craftsman's exchange. For the merchant, on the other hand, Aquinas adopts through the *stipendium* another means of revealing the agent's intention, the moderation of a compensation stipend, which leads to a restrictive retrospective interpretation of the '*sine fraude*' of the *Commentary on the Sentences*. The merchant therefore runs the risk of remuneration regarding the amount: it is known that it is moderate and not the result of a price, but the level is not known. Moreover, it is not clear what this gain covers, since it may be the margin net of all costs and thus an added value, or a gross margin resulting from a difference between purchase and resale, but which must serve to cover other risks, such as the risks of transport or price increases (*S. T.*, IIa IIae, q. 77, ad 2). One can certainly suppose that this gain is an incentive, but, on the one hand, in the other situations of payment of a *stipendium* the incentive is a compensation which is not intended to replace another motivation, which is the

service of the State (the soldier), of justice (the witness) or of the Church (the cleric); and on the other hand, Aquinas only insists on its moderation.

However, a counterargument could be made that would guarantee the merchant's remuneration. It is in the interest of the prince and the people that all three social ends are achieved, especially the end of provisioning, which would be the merchant's guarantee that the *stipendium* is incentivising. It should be noted, however, that assistance to the family and the needy is not presented as a necessity in *S. T.*, IIa IIae, q. 77, a. 4, resp., but simply as a good end. Supply is treated in more detail, showing that Aquinas is aware of its necessity but does not base trading upon it. Indeed, the *Commentary on the Sentences* already states in objection 1 that "[The community] cannot be preserved without [...] trade, by which the people procure the necessities of life" (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, obj. 1). *De regno* is more nuanced, because the city can live either from its local production or from trade, and "it is demonstrated that the first means is the most advantageous [*convenientior esse manifeste convincitur*]" (*De regno*, II, 7 (II, 3)). The necessity presented in *De regno* is thus not absolute, and it entails a set of harmful social consequences. In the *Summa theologiae*, supply allows that "the things necessary [*res necessariae*] for the life of the country are not lacking [*ad vitam patriae desint*]" (*S. T.*, IIa IIae, q. 77, a. 4, resp.), but necessity relates to things and not to activity. Finally, in *Ethicorum*, V, 9, Aquinas differs from his authorities (Langholm 1984, 32) by not noting, contrary to Aristotle (*Nicomachean Ethics*, V, 5, 1133a) and especially to Albert the Great (*Ethicorum*, V, II, 9), that the cessation of exchange resulting from the absence of a just price (Hollander 1965, 619-621) will affect all crafts and lead to the fall of the city (Hamouda and Price 1997, 195).

Thus, it appears that after stressing the necessity of supply in his early work, Aquinas never takes it up unilaterally and treats it only with some reservation. It therefore seems difficult to base the guarantee of a sufficient *stipendium* on this necessity. This leads to a risk of the merchant's remuneration and a risk of the effective carrying out of the merchant's activity, the conditions of which he will be able to identify, even if the risks in themselves remain implicit. In fact, in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, obj. 1 Aquinas expressed his awareness of the necessity of supply, although he does not give it a role in securing the merchant's activity. In return, since for him moderate gain is an intermediate end, it plays the role of a means to the ultimate social end, namely provisioning (*S. T.*, IIa IIae, q. 77, a. 4, resp.). If there is no gain, then there is no supply. It can therefore be stressed that the merchant's risk of remuneration in turn leads to a risk of supply for the country as a whole. Aquinas does not deal with these social consequences of the merchant's risks, since this is not the object of his analysis, but he does establish the causal links that allow us to deduce the appearance of this supply risk.

It emerges that the *remuneration risk* appears to be multifaceted. It is first of all an *analysis risk*, resulting from the conceptual and quantitative imprecision of remuneration. It is also a

commercial risk, since remuneration is subject to asymmetrical demarcation. This can lead to a supply risk if the low remuneration discourages trading. Finally, it is a *strategic risk* for the client, since the merchant's intention with regard to the qualitative and quantitative indeterminacy of the remuneration remains hidden.

4 Conclusion

The dialectic of the merchant and the knight is enlightening as a means for us to discern, via the contrast between them, the reason for their differentiated moral assessment, even though they fall within a common formal framework of analysis. While in the case of the knight the finality is good, in the case of the merchant it may be good but there is no assurance of this. The lack of information leads Aquinas to an *epoché*, a suspension of judgement on the end, in order to reduce, through conditions on the means, the risks arising from the bargaining power and the hidden nature of the merchant's intention. However, the two criteria of justice, qualitative and quantitative, give rise to new risks.

Despite its brevity, *In IV Sent.*, 16, q. 4, a. 2, qc. 3 suffices to highlight three *levels* of risk: *on the licitness of the trade itself*, *on the conditions of the trading activity*, and *on the remuneration of the merchant*. Each of these levels of risk gives rise to three *types* of risk: *risks of analysis and understanding of the trading activity*, which result in legal and moral reputation risk for the merchant; *commercial risks*, since Aquinas sets conditions for the practice of trade which tend to regulate the strong bargaining power of the merchant, who is an expert in exchange for gain, but in so doing he shifts the commercial risk arising from the bargaining power from the customer to the merchant; and *strategic risks* for the client, arising from the lack of information about the merchant's intention and the finality of the trade, which Aquinas in this early work proposes to circumvent by paying attention to the means of professional practice. Aquinas's treatment of trading thus makes it possible to set out a combination of *types* and *levels* of risk in the *Commentary on the Sentences*:

Level \ Type	Analysis risk (1)	Commercial risk (2)	Strategic risk (3)
Licitness	Subjective risk of misunderstanding trading. Reduction of the risk of lack of information on the finality by systematic illicit trading.	Reduction of the risk of non-supply of the city by prohibiting trading.	Increased strategic risk to the customer due to lack of information about the merchant's intention and circumvention of merchant's status.
Conditions	Risk of misunderstanding of the conditions of justice of the means of trade.	Shifting the risks arising from the merchant's bargaining power by applying conditions: Reduction of the customer's commercial risk. Increase in the merchant's commercial risk, which leads to a supply risk for the city.	Risk of circumvention of trading conditions by the merchant due to the imprecision of the mode "without fraud and according to the licit contract".
Remuneration	Risk of conceptual imprecision of remuneration.	Risk that the merchant's remuneration is too low, leading to a supply risk for the city.	Risk of information about the merchant's intention using the conceptual imprecision of remuneration.

Fig. 1: Risks on trade

Licitness is the first level of risk incurred by the merchant. It involves three types of risk. First, there is a *risk of analysis and understanding* (1), since by not having access to the finality of the transaction, observers cannot fully understand the trade and therefore treat it according to their subjective situation, and, as a result, by conceptual approximation, either assimilate this lack of information to a systematically bad purpose, as Gregory VII and Peter Lombard do, which leads to a complete condemnation of the transaction, or provisionally confine themselves, as Aquinas does, to a moral determination concerning the means of the transaction. This risk of understanding thus results in a legal and moral reputation risk for the merchant, since it calls into question the very licitness of their activity. The risk of legality is also a *commercial risk* (2) for the whole city, namely one of supply, from which Aquinas maintains a certain distance but which remains present not only in his first writings on trade (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, obj. 1; *De regno*, II, 7 (II, 3)) but also late in the *Summa theologiae* (*S. T.*, IIa IIae, q. 77, a. 4). Finally, there is a *strategic risk* (3) for the client, because the merchant's intention and the finality of his activity remain hidden and the merchant can, in order to sustain his activity by evading questions about its licitness, circumvent his status as a merchant.

The conditions for the practice of the activity of trade (the prohibition on clerics, the limitation to certain specific days, the requirement to practice without fraud and according to a licit contract) allow Aquinas to outline a double criterion of justice, both quantitative and qualitative. This attention to the means, through conditions which, in particular for the absence of fraud, are somewhat imprecise, creates a *risk of analysis* (1) which is a risk of misunderstanding the conditions of justice relating to the means of trade. There is also a *commercial risk* (2) because the conditions are not there to favour the practice but represent a constraint that limits the activity: in addition to the fact that part of the population is excluded from the activity, merchants cannot sell on certain days, the licit contract represents a formal constraint of an administrative nature, and the absence of fraud entails both qualitative and quantitative constraints (limitation of the price upwards). The conditions reduce the customer's commercial risk in the face of the merchant's bargaining power, but they also impose a commercial risk on the merchants and thus a supply risk on the population. Finally, there is a *strategic risk* (3), since the conditions imposed on the practice of trade enable Aquinas to reduce the strategic risk arising from the hidden nature of the merchant's final intention, but open up the possibility for the latter to take advantage of the imprecision of these conditions and to envisage ways of circumventing them.

The merchant's remuneration also encounters three types of risk: A *risk of analysis and understanding* (1) arising from the conceptual imprecision of the requirement of the absence of fraud and compliance with the licit contract in order to establish the conditions of remuneration. A *commercial risk* (2) which takes the form of a price risk for the merchant, since the condition of a 'fraud-free' transaction and the compliance with 'the licit contract' is disadvantageously

asymmetrical for him. This gives rise to a supply risk for the population, if the remuneration risk results in the merchants' activity being halted. Finally, there is a *strategic risk* (3) for the customer, as the merchant's possible intention to take advantage of the conceptual imprecision of his income and the imprecision of the level of the demarcation remains hidden.

The *Commentary on the Sentences* thus lays the ground upon which Aquinas will engage with the question of merchants in his later works. The various risks that will appear, both for agents and for society as a whole, have their roots in the principles set down in this early text: the articulation between the financial and non-financial criteria of justice, and the search for a visible and objective quantitative indicator of the justice of exchange.

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