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# Licit and illicit risks in Thomas Aquinas's *De emptione et venditione ad tempus*

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Working paper

## *Abstract*

In *De emptione et venditione ad tempus*, a brief early letter on forward selling, Thomas Aquinas presents a risk of usury inherent in the intertemporal dimension of exchange, but inherent also in licit expenses such as transport, and illicit ones such as borrowing costs or expenses incurred without attention or unwisely, which the merchant may or may not pass on via the price. These expenses appear as risks which are described here for the case of forward sale, but are properly inherent to any commercial activity. While transport is a part of the merchant's activity and represents the paradigm of licit risk, imprudence characterises two stages of failure in his management, namely negligence and mismanagement, and hence leads to illicit risk.

Keywords: Thomas Aquinas, risks, expenses, transport, prudence

JEL Classification: B11

## **1. Introduction**

*De emptione et venditione ad tempus* (1262) is the first specifically economic treatise by Thomas Aquinas (1225-1274). This is the only one alongside the *Letter to the Duchess of Brabant*.<sup>1</sup> *De emptione* is situated between the *Commentary on the Sentences* (1254-1256), an early work which deals in particular with usury (*In III Sent.*, d. 37, a. 6) and trade (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3), and the great mature texts of an economic nature, which date from the 1270s.<sup>2</sup> *De emptione* is a brief reply to friar James, of the Dominican convent of Viterbo,

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<sup>1</sup> These writings are published in *Opuscula III* of the Leonine edition: *De emptione et venditione ad tempus* (*Forward Purchase and Sale*; we retain the Latin name by which the treatise is known), 391-394, and the *Letter to the Duchess of Brabant*, 375-378.

<sup>2</sup> 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 quantity of works dealing with economic questions around 1268-1272. 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, written in Paris in the period 1271-1272. We must note the *Quodlibetal Questions* (II, q. 5, a. 2 and III, q. 7, a. 2), dated 1268-1272, the *Disputed Questions De malo* (q. 13, a. 4) written around 1270, the *Commentaries on Aristotle's Politics* (*Politicorum*, I, 6-9) and *Nicomachean Ethics* (*Ethicorum*, V, 9), dated 1269-1272 and 1271-1272 respectively, and the *Letter to the Duchess of Brabant*

concerning the usurious situation of merchants who engage in forward selling (for a study of the text and its history, see Mandonnet 1910, 116-120; O’Rahilly 1928; Dondaine 1979, 381-390; Torrell 1993, 178-179; Imbach and Oliva 2009, 21; Porro 2015, 178-179, 301, 441; Januard 2021b). Rather slowly disseminated, it remained for a long time in the shadow of the *Summa theologiae*, and in particular of *S. T.*, IIa IIae, q. 78, a. 2, ad 6 which studies usury in the specific case of sale on credit, and of which it seems to be a prefiguration, although it has been shown (Januard 2021b) that it is above all a commercial treatise, which concerns purchase and sale (*De emptione et venditione*) for the particular case which is forward transaction (*ad tempus*).

*De emptione* has received little attention from commentators. In the economics literature we find only a few mentions of it, often brief and allusive (e.g. Noonan 1957, 51, 90, 181; Baldwin 1959, 77; Bartell 1962, 373; De Roover 1971, 58; Lapidus 1986, 24; 1992, 30; 2021; Langholm 1992; 2003, 168; Chaplygina and Lapidus 2016, 22). As a matter of methodological choice, the economics literature has tended to study the Scholastic authors as a whole or by major periods, and studies dealing specifically with Aquinas focus primarily on the great works of his maturity such as the *Summa theologiae*. However, such elements as the conceptual elucidation of the notion of usury, the progressive rediscovery of the primacy of justice in the Thomasian just price, and the understanding of the framework attributed to the activity of the merchant, brought to light by the literature, often within the same broad contributions, can all be used to highlight the singularity of *De emptione*.<sup>3</sup>

*De emptione* concerns the forward sale, which is situated at the conjunction of commercial exchange and loans; thanks to its formulations, the text thus makes it possible to specify what Aquinas meant by a just price, to understand it as a normative and pre-existing price of justice that would be translated into effective just prices, to establish the link between an unjust price and a usurious situation, and to elaborate a typology of the risks incurred by the various co-contractors during forward purchases or sales (Januard 2021b).

More specifically, *De emptione* makes it possible to establish a typology of the licit and illicit risks incurred by the merchant, and above all to establish the reasons for them, as well as their consequences - namely that the merchant will be able to integrate them into the price so that they are borne by the client, or be forced to assume them himself. The vocabulary in use here stands in need of clarification: the lexicon employed could lead one to believe that the world is

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(*Ad ducissam Brabantiae*), dated 1271. The *Collationes in decem preceptis* on the Ten Commandments, a late-finalised writing based on his preaching 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.

<sup>3</sup> It is therefore worth mentioning Tawney [1926] 1948; McLaughlin 1939 and 1940; De Roover 1953, 1958 and 1971; Noonan 1957; Baldwin 1959; Hollander 1965; Mélitz 1971; Lapidus 1986, 1987, 1991, 1994 and 2021; Langholm 1984, 1992, 1998 and 2003; Hamouda and Price 1997; Gomez Camacho 1998; Friedman 1980; Sivéry 2004; De-Juan and Monsalve 2006; Franks 2009; Koehn and Wilbratte 2012; Ege 2014; Monsalve 2014a and 2014b; Chaplygina and Lapidus 2016 and 2022; Sturn 2017; Hirschfeld 2018; Santori 2019, 2020 and 2021; Januard 2021a, 2021b, 2022.

risk-free. The noun *dubium* (doubt) appears three times in *De emptione*, but to mean that there is no doubt (*non est dubium*) that a situation is usurious, and the noetic lexicon of imperfect information is absent. The notion is present, however, through the use of moral vocabulary in describing possible carelessness in the agent's behaviour under two forms of a lack of prudence: *incaute* (without precaution) and *imprudenter* (unwisely). Aquinas's lexicon in *De emptione* is rather that of cost or expense (*expensas*). The specific features of the forward sale leads Aquinas to present three costs:

a) The cost of waiting, which is treated differently depending on whether the situation is usurious or not, i.e. whether it is a cost *because of time* (*propter expectationem; propter temporis dilationem*), which is charged as interest, or a cost *through time* (price fluctuation).

b) The cost of transport (*in portatione*), the merchant's own activity, to which Aquinas adds the other licit expenses (*expensas alias*).

c) Expenses incurred without precaution or unwisely (*expensas quas incaute et imprudenter fecisset*), which the merchant cannot recover (*recuperare*). The merchant must be careful; hence these expenses result from a defect in professional practice.

While the lexical field employed is, initially, one of expenditure, I will endeavour to show that, on the one hand, it undergoes an evolution in Aquinas's works such that transport is progressively treated in terms of risk (*periculum*) by a gradual integration of the lexicon of the decretals of Gregory IX (1234); and, on the other hand, the fact that in *De emptione* the adverbs *incaute* and *imprudenter* are used to characterise certain expenses allows us to treat expenses in terms of risk, since the lack of prudence, through the etymology of the terms used and through the intertemporal dimension, refers to a lack of anticipation.

I have already studied the specific nature of the cost of waiting, translated by the notion of credit and by the interest contained in the price in the forward sale, which Aquinas introduces in *De emptione* I and II through the combination of the notions of just price and usury (Januard 2021b). Here I focus on the other two types of expenses, which thus appear as licit and illicit risks, and are discussed mainly in *De emptione*, III; these are presented by Aquinas for the particular case of the forward sale, but are inherent to any commercial activity.

The distinction between what is and what is not licit allows Aquinas to determine what can be included in the just price. This confirms the progressive importance of price, for Aquinas, as a revealer of the justice of exchange, where the intentions of agents remain hidden. Moreover, while he stresses the existence of illicit expenses, he also highlights licit expenses - such as transport, which is the only one explicitly named. This attention to transport, combined with his treatment of exchange in the *Commentary on the Sentences*, where he introduces the notion of just price, speaks in favour of an ontological and objective understanding of licitness: it is the *item of expenditure* that is or is not licit. This approach based on the nature of the expenditure

must be combined with an approach based on the nature of the financing, since transport, in order to be licit, must be financed by a licit operation - i.e. by shareholding, as in the traditional *societas* model - and not by interest-bearing loans. Moreover, this attention to the nature of the expenditure guides the understanding of illicit expenditure - expenditure incurred *incaute* or *imprudenter* - and improvidence as relating more to the object of the expenditure than to its modalities.

The framework of analysis for illicit expenditure is the prohibition of usury, which Aquinas uses to extend his analysis to all commercial expenditure. I will show that the situations presented by Aquinas lead to the highlighting of three major aspects of the Thomasian approach.

Firstly, the Thomasian conception of borrowing is not yet that of a loan allowing the development of economic activity. For Aquinas, borrowing is either the action of a poor person who is subject to a certain necessity, or the action of the imprudent, the latter being the situation which arises here, the merchant being all the more guilty because by his borrowing he causes usury and leads the lender to sin.

Then, from the question of the usurious situation, about which he had been asked, and which occupies the major part of economic thought at the beginning of the thirteenth century - a period which begins with Robert of Courçon's *De usura* and continues with William of Auxerre's *Summa aurea* and Albert the Great's *Commentary on the Sentences* (Januard 2021a) - Aquinas turns his gaze towards commercial exchange by extending illicit expenditure to imprudent expenditure, thus going beyond the strictly usurious situation. It is therefore not so much usury but rather the justice of exchange in any economic transaction that captures his attention.

Finally, Aquinas takes an objective and ontological look at the justice of exchange, since on the one hand he rejects subjective discourse, in this case the alleged need for merchants to integrate these expenses into the price in order to extend their activity and increase their income, and on the other hand he focuses more on the nature of the expense than on its modalities in order to determine its licitness. The agent's subjective intention remains his underlying focus: as a moralist, his primary motivation is to determine the sinful situations, but since he does not have access to this intention, which remains hidden, he looks for observable criteria such as the price and what it incorporates.

Although Aquinas does not specify his point further, the use of the adverbs *incaute* and *imprudenter* to describe illicit expenditure also allows us to better identify what form of imprudence is involved and to distinguish the two stages of this imprudence. On the one hand, the etymology and the study of the virtue of prudence in Aquinas's thought leads us to conclude that imprudence does not reside so much in the attraction for risk but in a lack of anticipation in the face of the unknown that is entailed by the future, which is found in the contemporary analysis of prudence (Kimball 1990). As with the latter, the imprudence described by Aquinas can be related to a distribution of risks that we would represent today by a leftward spread of

the curve representing the probability density function. The behaviour of the merchant who forecasts badly can therefore be represented by a negative skewness of this spread. On the other hand, the lexical nuances between *incaute* and *imprudenter* lead to a distinction between two stages of imprudence. *Incaute* emphasises the negligence of the merchant, who indulges in loans or expenses without anticipating their coverage and who is content to try to pass the burden on to the client. *Imprudenter* does not necessarily evoke negligence but rather bad management, with expenditures that are inappropriate given his ignorance of the future. Through a moral approach based on the distinction between licit and illicit, and via the use of terms that are apparently synonymous and therefore seemingly rhetorically redundant, Aquinas provides a typology for analysing entrepreneurial management in a context of risk over time.

For two reasons, I choose to translate the two adverbs *incaute* and *imprudenter* respectively as ‘without precaution’ and ‘unwisely’. On the one hand, these two terms are found under the common notion of lack of prudence, not only in the sense of the virtue of prudence but also in the contemporary sense of prudence, for which reason it is therefore preferable to keep the same term. On the other hand, *imprudenter* is distinguished from *incaute*, the lack of precaution, within the general notion of imprudence, by taking on the more specific meaning of a misuse of available information leading to poor anticipation, which is further rendered by the adverb ‘unwisely’.

I first discuss the emergence of a licit risk through the paradigm of transport risk (section 2). I show how in *De emptione*, following the *Commentary on the Sentences*, Aquinas sets up the analytical framework that allows him to integrate a risk into the price. Then I highlight the specific and paradigmatic character of the risk of transport, before showing how this risk can be borne by the buyer through the price. I then show how the risk of imprudence is characteristic of the illicit risk (section 3). I start by drawing on the Thomasian conception of the loan at interest, which is not yet thought of in its entrepreneurial dimension, to emphasise the illicitness of charging a loan to develop one’s commercial activity. I then draw up, through the study of the adverbs *incaute* and *imprudenter*, a typology of the merchant’s imprudence, according to whether it stems from his lack of attention to management (*incaute*) or from the inadequacy of his management activities with respect to his lack of information about the future (*imprudenter*). This leads me to highlight the way in which Aquinas reduces the strategic risk, which depends on the behaviour of the co-contractor, by ensuring that each person assumes and bears the risks incurred by his own improvidence.

## **2. The emergence of a licit risk: the paradigm case of transport risk**

Starting from the distinction between what is usurious and what is not, Aquinas broadens the field of illicit expenditure to include everything that bears witness to imprudence or improvidence, and designates as a paradigm of licit expenditure the expenditure for transport.

Although he uses the vocabulary of expenditure and not that of risk, the intertemporal nature of the forward sale and the treatment of the expenditure for transport in the later works lead us to consider that it is indeed a risk, which is also the case for illicit expenditure, being characterised by its imprudence. He thus lays down the analytical framework that allows him to integrate certain risks into the price. Having formulated the licitness of the risk of transport, he would later have to ensure this licitness, which he does in the *Summa theologiae* by encouraging the financing of transport by a licit and non-usurious transaction.

### 2.1. The analytical framework for incorporating a risk into the price

In *De emptione*, III, Aquinas presents a situation which is sinful and sets out to show the illicitness of the expenses incurred therein, either because they are a loan or because they are imprudent. He does, however, make a distinction between such expenses, which the merchant cannot factor into the sale price, and other expenses which would be licit, which the merchant could also have incurred, and which, in turn, can be passed on: “It is, on the other hand, permissible [*et licet*] for them to recover licitly [*possint licite recuperare*] by their sale other expenses [*expensas alias*] legitimately incurred [*licite factas*], for example, for the transport of the cloths [*puta in portatione pannorum*]”. (*De emptione*, III). This permission is, on the one hand, a statement that complements and does not contradict the prohibition of usurious expenditure and, on the other hand, a statement without a concessive character, which is posited as one of the two terms of the norm. These characteristics are evident in two respects: first, the sentence is introduced by “and [*et*]”, which here takes on an oppositional value (Blaise 1954, 316), since the previous sentence refers to cases of prohibition, but which in a global approach of a two-term norm could take on a reinforcing adverbial value, with the meaning of ‘even’ (Blaise 1954, 316; Ernout and Meillet 2001, 202). Second, there is no indication of an asymmetrical concessive value that would elevate situations of prohibition to the level of norms and make licit cases exceptions.

Licit expenditures are thus part of the same package as the illicit expenditures that precede and follow, and do not constitute a concession.<sup>4</sup> Moreover, the repetition of the adverb ‘*licite*’ emphasizes Aquinas’s insistence on the licitness of other expenses, taken in a general way and of which transport is only one example (Hollander 1965, 627, 630, 632): the point is to “licitly recover [*licite recuperare*]” the expenses “licitly made [*licite factas*]”. The restriction comes only later, introduced by *tamen* (however). It is not, therefore, a case where expenses are standardly illicit and where some are admitted by concession. On the contrary, it is a matter of returning to the general case which is *a priori* licit, that of expenses made in the practice of commercial activity, primarily the activity of transport (Baldwin 1959, 65, 77), in order to

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<sup>4</sup> Translations sometimes introduce the sentence in a concessive mode, placing the licit expenses in an exceptional or derogatory situation. Thus O’Rahilly 1928, in his now classic translation of *De emptione*, renders the initial ‘and’ as ‘and although’.

distinguish it from particular illicit expenses that result from a defect in the practice of this activity.

Aquinas seems to favour an ontological typology of expenditure, by its nature and by budget item, rather than by its modality. Transport is a licit expense, whereas borrowing at interest from the merchant is an illicit expense. An ambiguity remains about imprudent commercial expenditure, made *incaute* or *imprudenter* depending on whether the imprudence comes from the nature of the expenditure or its modalities. Ten years later, in the *Summa theologiae*, Aquinas would define commercial prudence as true but imperfect prudence, because its purpose is a “special order of activity” and does not touch the purpose of the whole of life. The other cause of imperfection, which does not exclude the first, is that the means should be well deliberated upon yet the person does not “command efficaciously [*non efficaciter praecipit*]” (*S. T.*, IIa IIae, q. 47, a. 13, resp.), so that the realisation is imprudent in spite of the prudent means. The two interpretations of imprudence in *De emptione*, III, according to the means or according to the realisation, thus remain relevant and do not exclude each other. However, the treatment of transport and borrowing, identified by their nature on the one hand, and on the other by the deployment in Aquinas’s work of an approach in terms of goods, plead rather for an ontological and objective reading of prudence, which would concern the nature of the expenditure and not or not only its modalities. Indeed, the study of the first occurrences of the expression ‘just price’ in Aquinas, namely in *Super Isaiam*, 55, 1 (1252), followed by two occurrences in the *Commentary on the Sentences* (1254-1256), in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 and *In IV Sent.*, d. 36, q. 1, a. 2, has made it possible to highlight, for the licitness of the trade, a *quid* criterion relating to the property exchanged, in addition to the criteria relating to the terms of the exchange proposed by the general framework in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, namely the person (exclusion of clerics and monks), the day (exclusion of holidays) and the mode (operation carried out without fraud and according to the licit contract). Certain goods cannot be the object of a price, e.g. spiritual goods (simony). In *De emptione*, III the expense is the price of a good or service exchanged, e.g. the transportation service, which can be priced, or money obtained by borrowing or other imprudent expenses which cannot be licitly priced.

*De emptione* marks an important step in the role Aquinas assigns to price. In the *Commentary on the Sentences*, just price is not explicitly mentioned either in relation to usury (*In III Sent.*, d. 37, a. 6) or in relation to the activity of merchants (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3). Moreover, Aquinas kept some distance from the parallel treatment in his master’s works (Albert the Great, *In IV Sent.*, d. 16, a. 46) where the expression appears three times and where the just price is seen as revealing the justice of the exchange (Januard 2022). In addition, where the just price does appear, in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 and *In IV Sent.*, d. 36, q. 1, a. 2, the complementarity of two criteria of justice, one qualitative and one quantitative, is noted. The criterion of price is not enough to ensure the justice of the exchange: a non-financial qualitative criterion concerning the good is also necessary: spiritual goods (*In IV Sent.*, d. 25, q. 3, a. 1, qc.



1) are not exchangeable with respect to price, while the married serf (*In IV Sent.*, d. 36, q. 1, a. 2) is exchangeable but only under strong geographic constraints. Five years later, Aquinas would fully seize upon price as a unique indicator of justice. In *De emptione*, the just price reveals the justice of the exchange in the forward sale not only by the absence of a usurious situation, i.e. by the absence of a variation of the price because of time (Januard 2021b), but also by the wider absence of undue charges (borrowing, imprudent expenditure), whether or not they are linked to time. The price thus asserts itself, from this early work, as a visible and objective indicator of the justice of the exchange. It reduces the risk arising from the hidden intentions of merchants or hidden expenses they incurred during the constitution of added value. The price is the counterpart of a good whose value does not depend on good or bad management on the part of the merchant.

Aquinas's introduction of the virtue of prudence, given that he speaks of *incaute* or *imprudenter* expenditures, requires clarification, since these expenditures may or may not be included in a price which is a 'just price', whereas one does not speak of a 'prudent price' even though the just price is determined by prudent men (Monsalve 2014a, 10). Prudence and justice, as cardinal virtues, are related (Baldwin 1959, 59; Bartell 1962, 338; Langholm 2003, 86; Hirschfeld 2018, 106; Rajapake 2010, 250). However, while justice is an external act because it concerns a relationship (Delos 1932 194-196 and 198-199), although such an act has an author and the just price has been seen as the price asked by a just person (Koehn and Wilbratte 2012), prudence is a personal act. Thus, the merchant must be a prudent person (Langholm 2003, 153). Prudence has the particular feature of being the intellectual virtue that unfolds the moral virtues (Dierksleier and Celano 2012, 254-255; Conrad and Hunter 2020, 99) and of being the virtue by which a man governs and orders things to their proper end (*S. T.*, IIa IIae, q. 50, a. 1; Bartell 1962, 342; Dubrulle 2016, 45-48; Hirschfeld 2018, 106-107).

Aquinas specifies that prudence is the principal cardinal virtue, to which all others (strength, temperance, justice) are related as to their cause (*In III Sent.*, d. 33, q. 2, a. 5, resp.), because it is through prudence that a man practices discernment by means of reason. It is this discernment that allows him to practice justice, which is always a matter of relationship with others (*S. T.*, IIa IIae, q. 58, a. 2, resp.). Thus, Aquinas writes that "justice is the habitus by which one gives, with a perpetual and constant will, to each one his right. And this is almost the same definition as that given by the Philosopher [Aristotle, *Ethics*, V]: justice is the habitus according to which someone is said to be acting [*operativus*] in conformity with the choice he has made of what is just [*secundum electionem justitiae*]" (*S. T.*, IIa IIae, q. 58, a. 1, resp.). However, such deliberation depends upon the virtue of prudence. Thus, to be just, the price cannot result from imprudence. *De emptione*, III gives a clear articulation of the virtues according to Aquinas's account: prudent discernment is the cause of a just price (exchange with others according to justice).

Having studied the nature of expenses and their inclusion in the price, it remains to make a lexical clarification. In *De emptione*, III, as in all of his early works and most of his writings, Aquinas does not deal explicitly with risk, or at least does not use its lexicon directly. He refers only to expenses (*expensas*). The introduction of risk will only occur in *S. T.*, IIa IIae, q. 77, a. 4, ad 2, where he introduces the notion of the danger (*periculum*) of transport. We can therefore formulate two alternative hypotheses as to the conception of expenses found in *De emptione*, III:

*Hypothesis 1: Risk-free expenditure.* Under this hypothesis, Aquinas would consider only the expense incurred, without including in it any risk. One can factor into the selling price, which is known, the purchase of transport services or other expenses made in this regard, but one does not foresee any risk of loss. Similarly, one cannot factor in any interest on the loan or other expenses that would be imprudent in the sense of being unnecessary, but whose cost is known. In *De emptione*, III Aquinas only uses the expression *expensas*, whereas the medieval West saw the development of the lexical field of cost, which is better suited to integrating the risk of loss since it is not limited to the initial expenditure and can encompass the final outcomes of the operation. While *constantia* was already found in classical Latin, one would later see the appearance of the term *constagium* (Blaise 1975, 240), or, from the eleventh century onwards, *constamentum* or *constamen* (Piron 2010, 133). This new lexicon does not seem to appear in the Thomasian works. Under this hypothesis, then, Aquinas sticks to the simple expense without integrating the possibility of further harm.

*Hypothesis 2: Expenditure at risk.* Under this hypothesis, Aquinas would consider not only the expense itself but also the risk it engenders. Two elements tend to support this hypothesis. On the one hand, whether the sale is forward or spot, the expenses are incurred before the sale, and the price varies *over time* (price fluctuation), without taking into account usury and the variation *due to time*. Thus with the same expenses, the merchant's gain is dependent on price fluctuations. On the other hand, the examples taken by Aquinas all involve a risk. Firstly, the place and social dominance of merchants developed during the thirteenth century (Le Goff [1956] 2001 41-67; [2010] 2019, 121-231) and their role is often identified with maritime or land transport (Baldwin 1959, 65, 77). Such transport is notoriously risky (Spicq 1935, 349-354; Franks 2009, 82; Dellemotte 2017, 38) and costly (Sturn 2017, 650), even though during the Middle Ages the development of carriage transport across the Alps and the securing of sea and land routes brought down this cost (Persson 2014, 253). Whether or not the merchant included a risk of shipwreck in his price, the carrier did so in the price he asked of the merchant in order to guarantee his own transport material. The just price therefore not only includes gross transport costs, but also incorporates the risk of loss of the vessel, charged by the carrier to the merchant, and the risk of loss of the goods, factored by the merchant into the final price. In addition, borrowing carries a specific risk arising from the progression of the action over time. Aquinas in his works does not consider the risk of default (Januard 2021a, 615) for the lender,

but he mentions the delay in payment, which can give rise to a *poena conventionalis* (*De malo*, q. 13, a. 4, ad 14), and the difficulty of assuming responsibility and repaying (Januard 2021a, 629 and 2021b). Finally, he introduces the notion of risk through the virtue of prudence. Some expenditures are imprudent (*incaute* and *imprudenter*), and prudence involves adaptation to a future that is not known with certainty. The adjective ‘*prudens*’ (prudent) first took the meaning of ‘one who foresees’ (Ernout and Meillet 2001, 541), before taking on a broader meaning of ‘one who knows’. Foresight was then indicated more specifically by new forms, such as *providentia* (providence), but the foresight dimension in prudence remained (Lemoine 1991, 30; Rajapakse 2010, 58).

In the *Summa theologiae*, Aquinas would start from etymology, following Isidore of Seville in deriving *prudens* from *porro videns* (one who sees far), to consider that “the prudent person sees the vicissitudes of uncertain things” (*S. T.*, Ia IIae, q. 47, a. 1, resp.). He knows how to foresee the rightness, the circumstances and the consequences of a future action. Foresight, by which “the gaze is fixed on something distant as a term to which present actions must be ordered” (*S. T.*, IIa IIae, q. 49, a. 6, resp.) is thus part of prudence. If expenses are imprudent (or prudent, for that matter), it is because they fall under the virtue of prudence, and therefore because they are made in a universe of risk.

It seems, therefore, that the latter hypothesis is to be retained and that ‘risk’ can be understood as being implied where Aquinas writes ‘expenditure’ (*expensas*) in *De emptione*, III, since all these expenditures, as well as the income secured by the price, are subject to a future that cannot be known with certainty.

## 2.2. The specific nature of transport: from expenditure to the risk of the merchant’s own activity

The risk of transport holds a special place for Aquinas. It is the only licit expense explicitly named in *De emptione*, III and the only risk explicitly mentioned ten years later in the *Summa theologiae* when Aquinas deals with trade. Such risk is the only reason, along with the improvement of the property and the variation of prices in time or space (*loci vel temporis*), which justifies an increase in the sale price (*S. T.*, IIa IIae, q. 77, a. 4, ad 2).

Four stages in Aquinas’s formulation of the risk of transport can be noted and the progressive influence of the themes and lexicon of Gregory IX’s 1234 *Decretals* in Aquinas’s works can be discerned, in line with my discussions elsewhere (Januard 2022) of *turpe lucrum*, dishonest gain, “by greed [*propter cupiditatem*]” (Gratian, *Decretum*, II, causa 14, q. 4, c. 9), i.e. made by speculative intent (Langholm 2003, 36). At first transport is treated allusively in Aquinas’s early work the *Commentary on the Sentences* (*In IV Sent.*, d. 16, q. 4, a.2, qc. 3, resp), which was written twenty years after the *Decretals*. Then, about five years after the *Commentary on the Sentences*, transport is mentioned as an expense (*expensas*) in *De emptione*, III. At the third

stage, a few years later, it then appears in *De regno*, II, 7 (II, 3), understood not in a generic sense but through the description of a detrimental situation, where supply can be prevented by war or by “various difficulties of communications [*diversa viarum discrimina*]”. It is interesting to note that ‘*discrimen*’ means distance, separation, but also crisis and by extension risk, a meaning that can be summarised in the context as ‘difficulties’. Risk is implicitly evoked by the use of an antonym in the opposite situation. Indeed, the city is “safer (*securius*)” if it gets its supplies from as close by as possible. And finally, the explicit mention of a risk (*periculum*) of transport appears in the *Summa theologiae* (*S. T.*, IIa IIae, q. 77, a. 4, ad 2). This term takes up the usage by Gregory IX in his 1234 decretal *Naviganti* (*Decretales*, l. 5, t. 19, c. 19), which explicitly mentions the risk (*periculum*) of those who finance the conveyors by sea (*naviganti*) and by land, namely those who go to fairs (*eunti ad nundinas*).

The evolution of the formulation between *De emptione* and the *Summa theologiae* is not only about the transformation of expense into risk. *De emptione*, III considers a particular example, the transport of cloth, and lays emphasis on the work of transportation, in the sense of carrying (*in portatione*), which gives rise to the charging of carriage. The *Summa theologiae* would no longer mention transport as an example of licit expenditure, but it appears in an exhaustive list of three grounds for an increase in the sale price, together with the improvement of the good and common variation of the price on the market: This increase (*carius vendat*) “may be licit [*licite*], either because the object has been improved, or because prices have varied according to time and place, or because of the risk [*vel propter periculum*] to which one exposes oneself [*exponit*] by transporting from one place to another [*transferando rem de loco ad locum*] or by having it transported [*feri transferando*]” (*S. T.*, IIa IIae, q. 77, a. 4, ad 2). Here the property itself is no longer specified. Moreover, the emphasis is more on the distance and on the transfer of the good, thus on its movement (*transferando*) rather than on the physical work of transporting it, which is referred to in *De emptione*, III by “*in portatione*”. Finally, this service of displacement can be delegated or subcontracted. We thus see that in the course of ten years Aquinas moves from conceiving of transportation costs as remuneration for the physical work of carrying a specific bulky good, to the coverage of a general risk for the transfer of goods over long distances. In the *Summa theologiae*, transport would acquire a new status as a particular economic activity, whether internalised or outsourced, carried out by professionals whose task is to transport a good from one place to another, under the threat, expressed by the noun *periculum* (which, before meaning risk, primarily means physical danger), of theft (robbery) or loss (shipwreck).

### 2.3. Making it licit to bear the transport risk

While Aquinas takes up the notion of risk evoked by Gregory IX, he never explicitly refers to the juridical norm on commercial maritime and land transport, i.e. decretal *Naviganti* (Gregory IX, *Decretales*, l. 5, vol. 19, c. 19), neither when he deals with transport as in *De emptione*, III

or later in *S. T.*, IIa IIae, q. 77, a. 4, ad 2, nor when he deals with the different modes of investment as in *S. T.*, IIa IIae, q. 78, a. 2, ad 5, contrary to what Gilles de Lessines would do at the end of the century (*De usuris in communi*, VI and X). Aquinas is, however, constrained by *Naviganti*'s imperative framework, which he is obliged to respect (Spicq 1935, 353). *Naviganti* condemns the lender's interest, even when its purpose is to cover the risks of the journey. The decretal assimilates this loan, which corresponds to what is commonly called the *fenus nauticum* (Noonan 1957, 137-138; Lapidus 1991), to the *mutuum*, an interest-free loan from Roman law (McLaughlin 1939, 103; Januard 2021a, 606-609), whereas the *fenus* is a form of *mutuum* with *stipulatio*, a remuneration that can be assimilated to interest (Du Passage 1946, col. 2321). However, *Naviganti* does allow *commende*: entrusting a sum of money to buy goods. In reality, this is a repayment in goods with a higher value than the sum advanced, but it is not formally a loan. Thus *Naviganti* is not based on the remuneration of risk but on the status of the financing.

We have seen that in *De emptione*, III and in *S. T.*, IIa IIae, q. 77, a. 4, ad 2 Aquinas is concerned with establishing the licitness of transport on the basis of the nature of the activity and not on the basis of how it is financed. In *S. T.*, IIa IIae, q. 78, a. 2, ad 5, Aquinas deals with the modes of financing and the assumption of risk (*periculum*) of the activity of the merchant or the craftsman, without explicitly specifying that it is transport. However, three elements allow us to associate *S. T.*, IIa IIae, q. 78, a. 2, ad 5 with transport. Firstly, the mechanisms described correspond to the maritime companies of the time, whose object was long-distance transport: the investor entrusts a sum of money to a merchant without ceding ownership and assumes the risks involved (Spicq 1935, 349). Secondly, Albert the Great had already noted the specific nature of transport and had distinguished between modes of transport according to their safety: "transport by land is safer than by sea", adding that "maritime trade may therefore be more profitable, but it is less safe" (Albert the Great, *Politicorum*, I, 8). Finally, the only expense mentioned in *De emptione*, III, and the only risk mentioned in *S. T.*, IIa IIae, q. 77, a. 4, ad 2, both concern transport.

In *S. T.*, IIa IIae, q. 78, a. 2, ad 5, Aquinas honours the distinction made by Gregory IX which aimed to legitimise investment by the taking of a stake while forbidding lending, which was equated with usury. Aquinas begins by recalling the rule of *mutuum*, a loan conceived as a temporary transfer of property without interest: "He who lends money transfers possession of it to the borrower. The borrower therefore keeps the money at his own risk [*sub suo periculo*] and is bound to return it in full. The lender therefore has no right to demand more than he has given" (*S. T.*, IIa IIae, q. 78, a. 2, ad 5). Aquinas, however, immediately goes on to give the typical medieval example of the loan in the form of *societas maris* (Spicq 1935, 349), where the patron remains the owner of the money entrusted and assumes the financial risk: "But he who entrusts a sum of money to a merchant or a craftsman and constitutes with them a sort of partnership [*per modum societatis*], does not transfer to them the ownership of his money, which remains his own [*qui remanet eius*], so that he participates at his own risk [*cum periculo*] in the

merchant's trade and the craftsman's work. This is why he is entitled to claim [*expetere*], as something belonging to him [*tamquam de re sua*], a share of the gain [*partem lucri*]" (*S. T.*, IIa IIae, q. 78, a. 2, ad 5).

Two readings can be offered of this juxtaposition of the loan and the *societas* alternative:

*Hypothesis 1*: An activity-based approach. The aim here would be to support an activity deemed licit in its nature and to finance the taking of commercial risk without falling under the condemnation of usury. Aquinas would thus be associating himself with the merchants and, like them, be seeking modes of "evasion", as Ege puts it (2014, p. 403). In this case, the most important thing would not be the distinction in nature between loan and investment but rather the risk of transportation, which has to be covered while remaining within the legal framework of the condemnation of usury taken up by *Naviganti*.

*Hypothesis 2*: An investment-based approach. On this reading, Aquinas bases the licitness of the activity of transportation on a clear distinction between types of economic transaction. He would thus adopt *Naviganti*'s analytical framework. In listing the situations, he would simply refer to the financing of commercial risk by the *societas*, which by its nature does not fall under the sin of usury (Chaplygina and Lapidus 2016, 37; 2022), without any particular promotional intent.

It is possible to consider a middle way, where the proposal of *societas* would not be a ploy to circumvent the prohibition of usury, which Aquinas does not question, but a moral and legal means to be promoted to encourage the risk-taking that is necessary for the activity of transport, which is good in itself. Aquinas does not question *Naviganti*, but he seems to avoid the first case described, which is prohibited as usurious, namely lending money to the merchant who sails or goes to the fair in order to receive interest (Gregory IX, *Decretales*, l. 5, t. 19, c. 19); he opts instead for the model of *societas*, which allows him to set aside the question of the prohibition of usury, and so address the risk/profit dyad in purely economic terms (Baldwin 1959, 52), without calling into question the property/risk dyad that sets the structure of the prohibition of usury through the transfer of property in the *mutuum* (Langholm 1984, 78).

### **3. Characterisation of the illicit risk: the risk of imprudence**

In his analysis of usury in forward sales, Aquinas first focuses on what is usurious. Thus the merchant cannot charge interest, but neither can he pass on the interest on a loan he has taken out to develop his business. Such a payment is unfair and encourages the usurer to sin. On the one hand, the loan is not considered a means of developing economic activity; on the other hand, the desire to get rich is not an acceptable justification for charging a fee. Aquinas extends the notion of illicitness of expenditure beyond the usurious situation, to any failure to anticipate, which can be characterised by the adverbs *incaute* and *imprudenter*. Going beyond the rhetorical redundancy of two adverbs with a very similar common meaning, Aquinas's precise

choice of the two terms is employed to differentiate two different stages of imprudence, which will be taken up again in later works: negligence, and management that is unsuited to the lack of information. Finally, while we have seen that in his later works Aquinas made sure that licit risks such as transport could be licitly financed and deferred with respect to the price, he also made sure that nothing should be unduly charged to the client to cover illicit risks.

### 3.1. Illicitness of billing for the loan

In *De emptione*, III, Aquinas contrasts licit expenses, such as the cost of transport, which the merchant can recover (*recuperare*), with illicit expenses which he cannot charge for in the selling price. This is the case for the cost of any loans taken out by the merchant as well as other imprudent expenses.

Merchants who have borrowed “cannot, however, recover the interest payments they have made” (*De emptione*, III). This prohibition stems from the very nature of the interest-bearing loan transaction, which is intrinsically illicit. Aquinas sets out his argument in three stages, moving from the general prohibition to the particular specification of this prohibition. First, “it was an unjust payment [*injusta datio*]”, since in a loan the sum returned must be equal to the sum lent. We find here the condemnation of usury made explicit in *In III Sent.*, d. 37, a. 6, which Aquinas takes from predecessors such as Robert of Couçon (*De usura*), William of Auxerre (*Summa aurea*, III, XLVIII, c. 1, q. 1) or Albert the Great (*In III Sent.*, d. 37, a. 13), building upon these foundations by developing a more monetary approach (Mélitz 1971, 480; Lapidus 1987, 1099-1103; 1997, 26; Chaplygina and Lapidus 2016, 28; Hirschfeld 2018, 139-152; Brollo 2019; Januard 2021a, 609-610). This condemnation is present throughout *De emptione* in the form of the contradiction between usury and just price (Januard 2021b).

Aquinas adds a reason for this condemnation in the case of merchants: “all the more so because they have sinned in paying this interest, since they have given the usurers an opportunity to sin” (*De emptione*, III). Aquinas regularly reminds us that the borrower who acts out of necessity is not guilty of usury (*In III Sent.*, d. 37, a. 6, ad 6; *S. T.*, IIa IIae, q. 78, a. 1, ad 7), but the one who does so freely participates in the sin of the lender. Borrowing does not constitute a means of developing one’s activity, so it has no economic justification. This tends to confirm the hypothesis that the Scholastics had a restricted view of the motivations for borrowing. Aquinas does not reduce borrowing to the exploitation of the poor, since he makes no mention here of any necessity, still remaining distant from the idea of a “conditioned will”; instead, he sees it as a manifestation of the borrower’s imprudence (Franks 2009, 81). In both cases the collection of a specific income is then usurious. He does not seem to perceive that a debtor who is richer than the lender can have an interest in borrowing freely and without worrying about repayment (Langholm 1982, 273; 1984, 140-149; 1998, 64; Sturn 2017, 665). The Thomasian prohibition is thus not social, as it was with Albert the Great and the Church Fathers (du Passage 1946, col.

2316-2390, Noonan 1957, 15-17, Lapidus 1991, Langholm 2003, 16, Januard 2021a, 625) who sought to protect the poor from usurers with strong bargaining power, but ontological, rooted in the nature of money and the nature of the *mutuum* derived from Roman law (*In III Sent.*, d. 37, a. 6). Since Aquinas keeps his distance from the conditioned will, the borrower not here being under necessity, the loan can be justified neither in economic terms nor in terms of social necessity. The merchant-borrower thus voluntarily contributes to the sin of the usurer and becomes a sinner himself.

Finally, Aquinas makes a more specific and subjective argument: “the necessity which they allege [*cum necessitas quae ponitur*] to live more honourably and to extend their trade [*ut scilicet honorabilius vivant et maiores mercationes faciant*] is not sufficient to exempt them from this sin” (*De emptione*, III). He holds that a practice cannot be legitimised because an agent has an interest in it. He does not take into account the necessity for commercial development, nor the possible benefit to society as a whole; the underlying practice, borrowing at interest and charging interest, seems to be conceived as solely for the particular benefit of the merchant-borrower, as evidenced by the doubt expressed by the verb ‘*pono*’ (to argue, to allege). The Thomasian expression contests both the assertion of the expressed necessity, which is merely a self-serving subjective allegation, and the validity of a personal claim (to live more honourably). The notion of the ‘common good’ here provides a common framework for Aquinas to think about illicit expenditure. Indeed, it is on this primacy of the common good that the objection to a personal claim is based. The same is true of the illicit expenditure referred to later, which results from a lack of prudence and is made *incaute* and *imprudenter*: the criterion for prudence is the common good (Bartell 1962, 351).

From a moral and subjective perspective, the argument that Aquinas provides permits us to get a better grasp of his understanding of economic activity as a whole. On the one hand, this argument concerns the understanding of borrowing: here we see that Aquinas notes that it is invoked as the driving force of economic activity yet without managing to account for it or to integrate it into his approach to usury. The argument put forward by the merchants is not accepted, and the verb ‘*pono*’ may convey some suspicion, but Aquinas simply reports the argument and does not demonstrate its falsity. The economic utility of the loan, which the merchants claim, thus remains a promissary note. It can be compared to other promissary notes issued in the course of Aquinas’s innovative discussions, which will later open up new avenues of thought: these include, for example, in context of the treatment of usury, the use of the expression “*satis probabilis* [quite probable]” introducing a doubt in *In III Sent.*, 37, a. 6, resp, to characterize the justification of the prohibition of usury by the *mutuum* of Roman law before Aquinas; or the systematic combination, in the mature works, of a justification of the prohibition of usury both by the nature of money and by the *mutuum*, as if to counter the weakness of any single argument (Januard 2021a), or the development of extrinsic titles and means of evasion (McLaughlin 1939, 125-147; du Passage 1946, col. 2361 and 2364; Noonan 1957, 105-132;



Méltiz 1971, 475 et 484-485; Lapidus 1986, 24-25; 1987, 1103-1108; 1991; 1992, 47-49; 2021; Wyffels 1991, 853; Langholm 1998, 74- 76; Munro 2003, 511-512; Franks 2009, 70-83; Rajapakse 2010, 212-219; Todeschini 2012, 128; Burke 2014, 111-113; Ege 2014, 403; Monsalve 2014b, 231-232; Chaplygina and Lapidus 2016, 35-37; 2022; Januard 2021a, 607 and 628-629).

On the other hand, Aquinas here reveals how he conceives the activity of trade, which had been briefly explored in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 and later in *S. T.*, IIa IIae, q. 77, a. 4 (Januard 2022). Trading, in the sense of professional activity for gain, is permitted, but under certain conditions: clerics and monks are excluded, it cannot be done on holidays and it must be done without fraud (*sine fraude*) and according to the licit contract (*secundum licitum contractum*) (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3). By implicitly assuming the traditional notions of *turpe lucrum*, *laesio enormis* and *duplus* (which can be summarised as setting a limit of double by the seller, or at half by the buyer, for the price charged for a good in the previous transaction), his appeal to the absence of fraud and respect of the licit contract entails a moderation of the gain (Januard 2022). Ten years after *De emptione*, *Summa theologiae* would provide further details on the good trade: the gain must be moderate (*lucrum moderatum*) and be only a means to three good ends: “to support one’s family, to help the needy, or to ensure that one’s country does not lack the necessities of life” (*S. T.*, IIa IIae, q. 77, a. 4). The merchant earns a *quasi stipendium*. On the one hand, wages, and more broadly remuneration, must always contribute to the common good (Frémeaux 2011) and the lexicon of price and work serves to distinguish useful members of society (Todeschini 2021, 186), whereas in *De emptione*, III there is a claim in favour of the interests of a particular group. On the other hand, while Aquinas has not yet formalised the functional distinction between the different types of income, it has been shown (Januard 2022) that the merchants’s remuneration is not strictly speaking a salary but an indemnity, a stipend, which is a compensation for performing work which has social utility and is not proportional to the work done (on remuneration in Aquinas, see Rocha 1933, 10-20; Lapidus 1994, 441; Rajapakse 2010, 207-210; Noell 1998, 476; Feller 2014; Pinto and Franceschi 2014, 187; Hirschfeld 2018, 188-189). The merchant’s income is equated with that of clerics, soldiers or witnesses at court. Aquinas’s argument in *De emptione*, III, that a claim to need to live more honourably and develop one’s business cannot justify borrowing and charging interest via the price, is thus not only part of his theory of usury but also part of his theory of trade, which unfolds from the *Commentary on the Sentences* to his later works such as the *Summa theologiae*. The merchant’s vocation is not to seek gain for himself and to enrich himself, but simply to receive a moderate gain enabling him to fulfil his social mission. An increase in price could certainly increase his gain and thus respect the first two functions of the medieval just price as summarised by Hamouda and Price (1997, 200), namely to compensate for a loss and to allow the sale to satisfy needs, but it would contravene the next two: to provide a fair valuation and to prevent abuses in the exchange.

### 3.2. A typology of merchants's imprudence

After presenting his three arguments against charging interest via the sale price (an unjust payment; the participation of merchants in the sin of the usurer; the allegation of a need for enrichment), Aquinas extends his analysis to imprudent commercial expenditure (Hollander 1965, 630-631): “in a similar way, it is evident that one cannot recover, by selling one's cloth, expenses incurred without precaution and unwisely [*expensas quas incaute et imprudenter fecisset*]” (*De emptione*, III). Aquinas thus maintains the distinction between loans and commercial exchanges, but treats them in a unified manner, just as he does for the core issue of *De emptione*, namely forward sales, where there is usury when because of time the sale is not made at a just price (Januard 2021b). Here the link is not made directly by the price, but the common characteristic of these two activities is imprudence, which can be motivated by the lure of gain, as the merchants's claims seem to indicate.

In order to establish the nature of imprudent expenses, which are treated like borrowing and cannot be factored into the sale price, it is necessary to specify at what level the imprudence lies and in what way the expenses are imprudent. This requires reading *De emptione*, III in the light of the Thomasian discourse on the virtue of prudence (*In III Sent.*, d. 33, q. 2; *S. T.*, IIa IIae, q. 47 to 56). Prudence is a virtue that Aquinas sees as lying at the confluence of biblical and patristic traditions on the one hand, and philosophical traditions on the other. The first stage here is Augustine (Daubercies 1990, col. 162-165), for whom “prudence is the love that sagaciously separates what is useful from what is harmful” (Augustine, *De moribus*, XV, 25): although this might be seen as a general philosophical precept, Augustine specifies that this love is “the love of God, that is, of the sovereign good” (Augustine, *De moribus*, XV, 25).

Aquinas develops the philosophical approach in a way that allows him to break down the stages of the practice of prudence and to apply it to human acts as a whole; but his account cannot be understood if we lose sight of the fact that it remains ordered to the sovereign good, which is God. Thus, prudence is a virtue of practical reason (Santori 2021, 19), it is “the right reason for the actions to be taken” (*In III Sent.*, d. 33, q. 2, a. 2, qc. 1, s. c.), and it presupposes the moral rectitude of the will (*In III Sent.*, d. 33, q. 2, a. 4, qc. 4, resp; Noble 1936, col. 1024). Thus reason and will are ordered with respect to an anticipation of and adaptation to a future that is not known with certainty. Now, since prudence is a virtue, a good *habitus*, which one can cultivate, foresight is therefore a capacity that can be developed: “Prudence is the formal and completed part of foresight. Therefore this prudence is also formed in a certain way by what reason progresses in anticipation of the future” (*In III Sent.*, d. 33, q. 3, a. 1, qc. 1, ad 3). Since merchants are professionals, their transactions are recurrent: they should therefore become more and more prudent and less and less *incaute* and *imprudenter*—and if they fail to do so, this attests to a lack of prudence which cannot be justified by a lack of experience.

A clarification must be made here. Aquinas's accounts of prudence and imprudence suggest that he conceives of prudence as a virtue, in that it involves discernment and judgment concerning moral matters. This seems quite different, at first sight, from an economic perspective that insists on calculation as a procedure and on results (Yuengert 2012, 57, 74-75; Hirschfeld 2018, 179). However, this opposition needs to be tempered. What we now consider 'prudence' (Kimbal 1990) is closer to Aquinas's position than one might have thought. Thus, when he emphasises the fact that the merchant acts imprudently, i.e. without precaution (*incaute*) or unwisely (*imprudenter*), this means that the merchant does not make full use of the information available to him about the effects of his decisions. The imprudence described in *De emptione* is the increasing weight of the possibility of loss, compared to behaviour that would be prudent. This is consistent with the contemporary approach where imprudence refers to a leftward spread of the curve representing the probability density function: the trader does not develop an attraction for risk (in the sense that he would prefer spread distributions to concentrated distributions), but an imprudence in the sense that he would prefer distributions spread in the direction of losses (negative skewness) to concentrated distributions. Aquinas uses two terms for this imprudence, *incaute* and *imprudenter*, to refer to situations where the merchants' preferences are distributed in this way.

*De emptione* does not develop a treatise on prudence, and limits itself to briefly describing the merchants' attitude. However, it is possible, with the help of the Thomasian writings as a whole, to draw up a typology of imprudences into which the imprudences of merchants in *De emptione*, III can fall. It should be noted that while the general framework focuses on the distinction between the voluntary and the involuntary (Noble 1936, col. 1065), *De emptione* does not make this distinction in responding to the moralist's inquiry about the sinfulness of imprudence. Indeed, Aquinas does not make the price and the costs it may incorporate depend on the subjective situation of the merchant's person, that is, on whether his imprudence is voluntary or involuntary. While this dimension is decisive for the moralist, it remains hidden from the observer of the exchange who must decide on its justice through the justice of the price. Aquinas therefore gets around the lack of information about the agent's will by sticking to the objective enumeration of illicit expenditures. Two other distinctions are more relevant to the analysis of *De emptione*, III.

*Ist distinction*: Imprudence of means and imprudence of realisation. Imprudence may occur in the choice of the means employed, or, if that choice was prudent, in the realisation which follows that choice (Noble 1936, col. 1027-1032). The action considered in *De emptione*, III is the forward sale by the merchant, so the expenses made in connection with this sale are a matter of means or of realisation. As the intertemporal consequences of the expenditure incurred are not known, two risks can be considered: a risk of means and a risk of realisation. First, there may be an imprudence of means. To achieve an end, in this case the forward sale, the agent must determine the means (*S. T.*, IIa IIae, q. 8, a. 1 and 2; q. 13, a. 3), which Aquinas calls the

action of “judging [*judicare*]”, and which follows deliberation. However, if “prudence is the right reason for the actions to be done” (*S. T.*, IIa IIae, q. 47, a. 8, resp.), it can happen that these actions be badly chosen due to a failure to put the right reason into practice. The appropriateness of the means chosen can thus be called into question if it is not in accordance with the information available to the agent. This is the case, which will be familiar to the modern reader, for the variable-rate loan, where the borrower does not know the interest he will have to pay. It is also the case for what will be described at the end of the thirteenth century by Giles of Lessines (*De usuris*, XIII), just after Aquinas, of a forward payment involving an exchange rate at the date of payment that is still unknown at the time of sale. For Aquinas, more straightforwardly, it is simply the case of the merchant who, imprudently hoping for an increase in the market price of the good, allows himself to incur reckless expenses that such an increase would cover. This imprudence is qualitative, since it is the very nature of the expenditure and its modalities that entails a risk of loss. The imprudence can also be an imprudence of realisation (*S. T.*, Ia IIae, q. 16, a. 3; q. 17, a. 3). In this case the means was good, but the implementation, which Aquinas calls the action of “ordering [*praecipere*]”, is defective (*S. T.*, IIa IIae, q. 47, a. 8, resp.). The expenditure was useful or necessary, but it was wrongly done. For example, the merchant rightly buys a good to be resold later, but he buys it in too large a quantity because he imprudently hopes to sell a lot of it, or at a very high price. This imprudence of realisation is then mainly quantitative: the expenditure is too costly and greater vigilance concerning its amount would have been necessary to limit the risk of loss. One can also envisage a qualitative imprudence in expenditure, concerning for example quality or delivery times. This imprudence also entails a risk of loss, since the goods might not be sold or might not arrive in time to be transported and sold (in the case of *De emptione*, at the Lagny fair).

*2nd distinction:* Imprudence through negligence or imprudence through wrong anticipation. Imprudence can occur at two stages of deliberation, i.e. before and during. At the first stage, lack of prudence results from negligence, which Aquinas presents as voluntary (*S. T.*, IIa IIae, q. 54, a. 1): this consists in voluntarily omitting acts that are necessary for good discernment (Noble 1936, col. 1065-1066). Here, the imprudent person does not explicitly want to act unreasonably, but knowingly neglects to think before acting (*S. T.*, IIa IIae, q. 56). These imprudent acts are characterised by their haste or temerity. This, then, is a matter of imprudence through lack of attention. This is the case for the negligent merchant who runs the risk of loss because he does not take advantage of the information at his disposal to anticipate the quantities required and the price of the goods at the time of sale, does not watch his expenses, or who borrows without worrying about repayment. This upstream imprudence is described by the adverb ‘*incaute*’, without precaution, used by Aquinas in *De emptione*, III. Imprudence can also occur at the next stage, during deliberation. In this case, the information available is made use of, but this use is inappropriate and leads to unfounded hope. Here the merchant anticipates what the price of goods and quantities demanded should be and tries to adapt his expenditure,

but he does it badly due to passion or foolishness (*S. T.*, IIa IIae, q. 46, a. 2), or does it well but does not enact what his reason commands (*S. T.*, IIa IIae, q. 53, a. 5), for example because of greed. The risk of loss then comes from bad or ill-advised management: the expenses incurred are not adapted to the income that the available information, properly processed, would allow one to anticipate. This is the imprudence described by the adverb ‘*imprudenter*’.

*De emptione* adopts these two distinctions because situations of imprudence may fall under either of the possibilities envisaged there: the merchant may be imprudent as regards the means or as regards the realisation, or through negligence or bad management. Two observations can be made. First, the first distinction, between imprudence in means and imprudence in realisation, remains implicit but present and operative in *De emptione*, III. The enumeration of illicit expenditures in *De emptione*, III, with its focus on the nature of the expenditures and not on their quantitative characteristics or modalities, tends to show the relevance of the analytical framework offered by this first distinction. The justice of the exchange ensured by the just price is not primarily a matter of quantitative criteria for determining what can be included in this price, but of an ontological classification of the licitness of expenditures. In Aquinas’s search for objective and visible criteria for the justice of exchange, this typology allows an *ex ante* selection of licit expenditures, without knowing the future sales price or costs, whereas an account of imprudence in terms of realisation, i.e. according to quantitative criteria, could only give rise to an *ex post* determination of the licitness of expenditures, once all expenditures and revenues are known.

Secondly, Aquinas’s lexicon concerning the merchant’s imprudence shows that it is the second distinction which is explicit, and which structure his approach. Illicit expenditures, which the enumeration shows to be primarily related to the means approach (first distinction), have as their unifying principle the fact of being imprudent. This imprudence has two aspects, since these expenses are made *incaute* and *imprudenter*. Aquinas thus focuses on the objective dimension of the activity of management in order to evoke the two stages where this management can be deficient and lead to a risk of loss, negligence and bad anticipation.

Since the framework for the analysis is based upon the use of the terms *incaute* and *imprudenter*, we must specify the meanings of these two adverbs in order to clarify Aquinas’s typology of imprudence, and so better understand the two stages that can lead to a distribution of the consequences of the merchant’s decisions that would be spread in the direction of losses. The lexical study shows the structural and decisive character of the second distinction, i.e. between imprudence by negligence and imprudence by poor anticipation, in *De emptione*, III. Indeed, this lexicon is severe and its usage is rare. This is the only occurrence of the insistent redundancy of these two adverbs with very similar meanings in all of Aquinas’s writings. Thus it is necessary to determine on the one hand whether the expression does amount to a simple rhetorical redundancy, or whether the use of *incaute* and *imprudenter* imports, through nuances

of meaning, a typology of imprudence; and, on the other hand, how this typology entails the general typology.

The adverb '*incaute*' means 'carelessly, without precaution, negligently'. It also describes situations where there is no need for precaution, where one can act freely, without being on guard; and it is also used to describe what happens unexpectedly, unforeseenly. It is opposed as an antonym to *caute* and more broadly to derivatives of *cauco*, to be on guard, to watch over, as well as to the adverb *secure*, which derives from *cura*, care, whose antonym is *incuria*, negligence. *Secure* means secure, which also means without worrying, quietly, but specifically in situations where such thoughtlessness is justified (Gardin-Dumesnil 1788, 544; Quicherat 1893, 528; Blaise 1954, 421; 1975, 465; Ernout and Meillet 2001, 107 and 159). There are only 19 occurrences of *incaute* in Aquinas's works. The situation *incaute* entails responsibility and does not exonerate one from sin: "if someone, negligently [*incaute*] hitting another person while playing, seriously injures them, he is not exempt from sin [*culpa non caret*]" (*S. T.*, IIa IIae, q. 72, a. 2, resp). The adverb also describes the hasty promise of the apostle Peter before denying Jesus at the Passion (*Catena in Lucam*, c. 22, l. 14): Peter sinned (*peccavit*) and his action was reprehensible (*reprehensibilis fuit*) (*S. T.*, IIa IIae, q. 43, a. 6, ad 2). There are 68 occurrences of derivatives of *incaute* in Aquinas's works, mainly describing the act of swearing imprudently.

The adverb *imprudenter* apparently has a meaning close to *incaute*. The adverb is rarely studied for its own sake and authors sometimes assimilate it to *incaute*, or at least give very similar meanings: "by inadvertence, imprudently, unwisely, by mistake". However, a specific noetic meaning can be found: "by ignorance, who does not know, without reflection, without knowing the future, without being able to foresee" (Gardin-Dumesnil 1788, 544; Quicherat 1893, 524; Ernout and Meillet 2001, 541). In Aquinas's works there are 116 occurrences of the derivatives of *imprudencia*, with only 9 authentic occurrences of the adverb *imprudenter*, mainly in biblical commentaries but not in the theological treatises on prudence. The proximity between *imprudenter* and *incaute* is indeed found in Aquinas, since *imprudenter* is used to describe the hasty speech of the apostle Peter at the Transfiguration (*Catena in Mattheum*, c. 17, l. 9; *Catena in Marcum*, c. 9, l. 1); however, Peter's denial (*incaute*) was a case of inconsistency. Peter knows the situation and his ability to foresee the future is not in question, but he neglects the scope and consequences of his act. When he speaks at the Transfiguration (*imprudenter*), Peter speaks rather out of ignorance, without understanding the scene and without being able to foresee what will happen next. Not knowing what would happen next, prudence would dictate that he remain silent; his imprudence lies in the mismatch between his speech and his inability to foresee. The adverb is also applied to those who have the temerity to deny the Last Judgement (*Catena in Mattheum*, c. 12, l. 3) and to signify, on the contrary, that it is never rash to pray for the salvation of a sinner (*Catena in Mattheum*, c. 12, l. 9). Here also *imprudenter* takes on its noetic meaning:

it is imprudent to deny what is known, such as the last judgement, but it is not imprudent to pray for a sinner since the usefulness of this prayer is known.

Thus, without hardening the nuances distinguishing *incaute* and *imprudenter*, whose meanings are close and whose mutual redundancy has a clear rhetorical value on which Aquinas seems to insist, two stages of imprudence highlighted in *De emptione*, III can be distinguished. The merchant who acts *incaute* acts negligently and remains responsible for his negligence and its consequences. He borrows or incurs expenses without worrying about his ability to bear them, and wants to integrate them *a posteriori* into the selling price because he has not anticipated their coverage. The merchant who acts *imprudenter* is not necessarily negligent, although according to the general definition of the term he may be, but he makes expenditures that are not in keeping with his ignorance of the future. Foolishness or the lure of gain may lead him to make expenditures which, for example, changes in costs, prices or demand will prevent him from covering, or to borrow money which he may not be able to afford, depending on his other businesses. This situation overlaps with the case of inconstancy (*inconstantia*), to which Yuengert (2012, 126) reduces it—although this case does not seem to be the standard here—where the merchant, after careful deliberation, withdraws from an end goal which is good and changes his course of action (*S. T.*, IIa IIae, q. 53, a. 5).

In his methodology, Aquinas thus abandons personal subjectivity linked to the inner motivations of imprudence, in favour of an approach that is objective and linked to the process of the operation itself. He thus identifies two stages at which risk can intervene for the merchant: the attention he pays to his management (*incaute*), or the quality of this management, depending on whether or not it is rationally adapted to the information available to him and to the lack of information he has about the future (*imprudenter*). It should be noted, however, that Aquinas's treatment is the same whether the imprudence is due to negligence or to inadequacy. The merchant bears the responsibility and must assume the consequences of his imprudence. He must bear the cost of his expenses without charging them on via the selling price.

The distinction between the two forms of imprudence, that which comes from a lack of access to the full and right use of reason and that which comes from the absence of use of this reason, which was nevertheless accessible, will be taken up again in Aquinas's later works. In the *Summa theologiae* Aquinas would define two forms of imprudence: that which occurs through a lack of prudence when one can have prudence, that is negligence (*incaute*); and that which occurs through action contrary to prudence (*imprudenter*), by departing from the rules guaranteeing rectitude (*S. T.*, IIa IIae, q. 53, a. 1, resp.). This lack of use of reason (*imprudenter*) does not only come from the passions, but is extended to foolishness, or in other words the limit of one's rational capacities. This foolishness translates into incompetence, whereas the scholastic canonists intended the merchant to be prudent (*prudens*) in the sense of competent (Lemoine 1991, 30; Langholm 2003, 153, 163). In order to deal with people who take unwise

risks based on unfounded hope, in the *Summa theologiae* Aquinas distinguishes between the foolish, who have too little knowledge to conduct their lives, but who are very few in number (*S. T.*, Ia, q. 23, a. 7, ad 3), and those who do not use the reason which they do have: “all fools [*omnes stulti*] and those who do not use deliberation [*deliberatione non utentes*] try everything and are full of hope” (*S. T.*, Ia IIae, q. 40, a. 6, resp.).<sup>5</sup> Aquinas also specifies two cases of foolishness: foolishness coming from bad natural dispositions, which is not a sin, and foolishness coming from the fact that man is immersed by the senses in earthly things (*S. T.*, IIa IIae, q. 46, a. 2, resp.), the case in which man must assume moral responsibility for his foolishness. Aquinas does not study foolishness in the treatise on prudence, so therefore this is not strictly speaking a kind of imprudence. In the *Summa theologiae*, however, the question on foolishness (*S. T.*, IIa IIae, q. 46) immediately precedes this treatise on prudence (starting q. 47), thus providing a sort of transition from the question on wisdom (q. 45), which precedes it. The fools can be classified as merchants who act *imprudenter* by failing to foresee or adapt their present actions to the lack of information about the future situation. Thus in *De malo*, q. 13, a. 4, ad 14, Aquinas presents a form of imprudence characterised by a lack of judgment rather than by negligence. The lender cannot claim compensation for incurring damage due to foolishness during the term of the loan: “the borrower must not be exposed to damage due to the foolishness [*de stultitia*] of the lender”.

Negligent merchants, described in *De emptione*, III by the adverb “*incaute*”, fall into the category of those who do not think and use deliberation (*deliberatione non utentes*), as presented in *S. T.*, Ia IIae, q. 40, a. 6, resp. They will try anything, but this is neither for the lure of gain nor because of a foolishness which prevents them from adapting their present behaviour on the basis of a just anticipation of the future: but simply because they do not put in the necessary rational work. It should be noted that the rarity of the expression “*deliberatione non utentes*”, which appears only once, in *S. T.*, Ia IIae, q. 40, a. 6, resp., chimes with the rarity of the adverb *incaute*. It is therefore not negligence that most threatens merchants, but the misuse of reason in dealing correctly with the lack of information. The foolishness, here, does not seem to come from a lack of natural capacity, which is not a sin, but from a domination by the senses and passions which turns the merchant towards earthly things, in this case the lure of gain (*S. T.*, IIa IIae, q. 46, a. 2, resp.). The merchant thus bears some responsibility for the misuse of his reason, which leads him to increase his maximum risk of loss by extending to the left the curve (negative skewness) that would represent the probability density function. This liability of the agent, who is the only one to have to assume the costs of his imprudence, will be developed and universalised in the *Summa theologiae* by being extended to the buyer, so much so that some commentators see in it an application of the adage ‘*caveat emptor*’ (De Roover 1971, 53) or

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<sup>5</sup> This Thomasian adage can be found in the very informal wording “*les cons, ça ose tout, c’est même à ça qu’on les reconnaît* [idiots would dare everything, that’s how we know them]”, in Michel Audiard’s dialogue for Georges Lautner’s 1963 film *Les tontons flingueurs* (Crooks in Clover).



‘*emptor debet esse curiosus*’: “If the defect is manifest [*si vero vitium sit manifestum*] [...] the seller is not obliged to communicate it” (*S. T.*, IIa IIae, q. 77, a. 3, resp.).

### 3.3. Prudence or the basis of the justice of exchange and the assumption of risks: the founding role of *De emptione*

Imprudence is the unifying factor of illicit expenses, which are expenses that lead to an increased risk of loss. This is the case for interest to be paid on a loan taken out by the merchant as well as on a purchase made *incaute* or *imprudenter*. Yet having noted the existence of these risks, it is still necessary to specify who must bear them in order that the justice of the exchange should be ensured. Through the notion of imprudence, *De emptione* initiates the understanding of justice that later writings would develop: justice is ensured by the fact that each agent assumes the increased risk of loss that he causes by his imprudence and that is not inherent to his activity.

However, before highlighting the foundational role of *De emptione* in this regard, it should be emphasised that although it provides the elements of justice *a priori*, since each person assumes the risks he or she incurs, it does not ensure justice *a posteriori*. It does not envisage, at least not explicitly, any restitution or compensation in the case of undue billing. Aquinas does not draw a parallel between the ‘regaining’ of licit expenses and the possible ‘restitution’ for illicit billing, which he does not mention here. The only penalty implied is the loss to the merchant of an expense not recoverable in the price. The criterion here is the ability to regain the expense, which is manifested in the distinction between licit and illicit regaining. The verb “*recupero*” (*De emptione*, III) means ‘to get back, to regain, to recover numerically the lost thing’, but this action often involves an element of risk, as does the act of saving in the religious sense, or the regaining of a city taken by the enemy (Gardin-Dumesnil 1788, 545; Blaise 1954, 702). This shows that we are not here concerned with a predetermined and well-defined cycle of borrowing-purchasing-selling-repaying, but rather that the repayment of the loan is a source of risk for the borrower, who has to find the necessary sum. However, if this risk is not the result of a lack of prudence, i.e. if it is not an increase in the risk of loss due to negligence or mismanagement, this risk can indeed be built into the price and the expense thus ‘regained’. If, on the other hand, the expenditure constitutes an increase in the risk of loss (negative skewness), the recovery of the expenditure is not possible.

As in *In III Sent.*, d. 37, a. 6 or in *De malo*, q. 13, a. 4 on usury, or in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 and in *II quodl.*, q. 5, a. 2, ad 2 on commercial exchange, in *De emptione* Aquinas limits himself to the expression of a normative statement without entering into questions concerning the practice of justice in case of non-respect of this norm. He never mentions criminal sanctions in his economic works, even in the case of deliberate concealment, sale of dangerous goods or usury, and he only introduces the notion of restitution at a late stage. As regards usury, while

the notion of restitution, or even compensation for damage, is clearly present among his predecessors (Robert of Courçon, *De usura*, 42; William of Auxerre, *Summa aurea*, III, XLVIII, c. 1, q. 1, l. 154-159), the notion only appears in Aquinas's works in *Ad Brabantiam*, where it applies most directly to the prince who collects a tax on this interest (Januard 2021a, 618), before being more widely introduced in the mature works as a requirement on the usurer: *III Quodl.*, q. 7, a. 2, resp.; *S. T.*, IIa IIae, q. 78, a. 1, resp. and even more *S. T.*, IIa IIae, q. 78, a. 3, resp. Concerning commercial exchange, one notes the brief and late emergence, in the *Summa theologiae*, of the notion of 'restitution' in case of an abusively high price (*S. T.*, IIa IIae, q. 77, a. 1, ad 1) following Justinian (*Codex*, IV, 44, 2) and then Gregory IX (*Decretales*, l. 3, t. 17, c. 6), and of that of 'compensation for damage' for hidden defects (*S. T.*, IIa IIae, q. 77, a. 3, resp.). Restitution as a principle of medieval commercial justice (Todeschini 1994, 135; Dejoux 2014, 854) thus seems to appear in Aquinas's works only gradually (Lapidus 1992, 39-41; 1994, 459; Langholm 2003, 30), his concern being more with the moral characterisation of the commercial act.

Having given this clarification of the essentially *a priori* conception of the justice of exchange in the Thomasian works, it is now necessary to show how the notion of prudence, brought in by *De emptione*, III, permits Aquinas to deploy this justice in the later writings. The later works confirm this responsibility of the borrower and of the one who incurs expenses that increase his risk of loss. The risk of default borne by the lender is little discussed, and does not seem to be a possibility of which Aquinas takes account. The borrower must and does repay. In *S. T.*, IIa IIae, q. 78, a. 2, obj. 1, we have: "each one can licitly [*licite potest*] seek to indemnify himself [*indemnitati consulere*], but one can suffer prejudice by lending money"; but as Aquinas's answer makes clear (*S. T.*, IIa IIae, q. 78, a. 2, ad 1), this is more a matter of the deprivation of the sum lent than of the hypothesis of a default in repayment. *De malo* presents a consideration of the risk of default, something which is very rare in Aquinas, but even here it is still more a question of a simple delay. Aquinas envisages two risks for the lender and treats them differently: not only, as we have seen, may he need the sum during the period when he has lent it out, in which case the lender bears the risk, which is due to his improvidence, and the borrower is not obliged to compensate; but it is also possible that "the money will not be returned to him at the appointed time [*statuto termino*]" (*De malo*, q. 13, a. 4, ad 14), in which case it is not the lender who is improvident but the borrower. It is then the borrower who must bear the cost of this delay. Aquinas thus opens the way to the *poena conventionalis*, a penalty for late repayment: "the borrower is liable for compensation [*tenetur ad interesse*]".

Liability is thus broadened in Aquinas's later works and universalised to all agents, who must themselves bear the consequences of their imprudence. The failure to pay or repay is always thought of as a breach of prudence and must be borne by the agent at fault. Just as in *De emptione*, III, where the merchant is responsible for his own risk when he borrows or buys

imprudently and cannot pass it on to the customer by charging them more, some years later, in *De malo*, the imprudent borrower cannot pass on his risk to the lender by defaulting and leaving him uncompensated.

The conceptual framework of prudence, introduced by Aquinas in *De emptione*, III and then extended in his later works, will thereafter play a structural role, while undergoing a new development with Giles of Lessines. A deeper understanding of risk will later allow its integration into the price, as Aquinas does for transport. Giles of Lessines, who at the end of the thirteenth century developed the risk of default more fully than Aquinas had, provided for the inclusion in the price of a cover for this risk, which he called “the debtor’s impotence”: “Indeed, if the seller intends to sell his property at a higher price, not only because of time [*non propter tempus tantum*], but also because of the damage [*tantum propter damnum*] which will result for him from the delay in payment [*ex dilatione persolutionis recuperandae*], but also for compensation for the probable inconvenience [*vexationis redimendam*] which he has to fear in claiming what is owed to him because of the wickedness or impotence of the debtor [*impotentiam debitoris*], in such a case he is exempt from all guilt and the valuation in these contracts is justified by compensation for the damage which he reasonably has to fear in giving credit” (Giles of Lessines, *De usuris*, X). The same logic prevails as for Aquinas: every person is responsible for managing the risk that he identifies. The risk of default is the responsibility of the lender, and when he identifies this risk, it is up to him to include a cover or compensation in the price. However, let us note three developments in relation to Aquinas: first, the risk of default is part of a set of known risks, as is the risk of transport in *De emptione*, III and in *S. T.*, IIa IIae, q. 77, a. 4, ad 2; secondly, Giles of Lessines acknowledges that this risk exists and that reimbursement and compensation may never be paid; and, finally, the inclusion of the risk in the price allows for *a priori* coverage, for fear that these inconveniences may actually occur. Prudence then consists in anticipating the imprudence of the co-contractor. This is strategic prudence, which adapts to the other party and anticipates his behaviour, whereas Aquinas only envisages commercial prudence, which adapts to and anticipates the objective developments faced by all.

#### **4. Conclusion**

*De emptione* completes the two articles on usury and on the activity of merchants provided in the *Commentary on the Sentences*, which it follows by some years. Forward sale represents the conjunction of the two economic operations. The risks involved are therefore those of a commercial activity, since it is a purchase and a sale, but they are viewed by Aquinas through the prism of the question of usury, since they are intertemporal operations. The criterion of usury obviously serves as a grid for the study of the cost of waiting, where it is necessary to distinguish between variation in the price because of time (interest) and the variation over time (price fluctuation). It also serves as an initial grid for the study of two other costs: transport and

other licit expenses on the one hand, and the cost of a loan and other imprudent expenses in the sense of lack of foresight on the other. Thus we are no longer concerned here with the usurious activity of the merchant that is disguised as or associated with trade, but rather with the usurious dimension that may arise by accident in the course of the trade transaction since it is an intertemporal transaction.

Usury is thus a starting point for the analysis, which responds to the request made by James of Viterbo to Aquinas; but Aquinas goes beyond this. His attention is focused on the justice of exchange, which is reflected in a just price. Usury is the first threat to price justice in the intertemporal transaction, but it is not the only one. Aquinas proceeds in three stages: he moves on from the situation of usury of the merchant to situations in which usury is hidden and factored into the price. In this case, the merchant borrows and includes in the sale price the interest he owes to his lender. Finally, Aquinas includes in his analysis situations that are not necessarily linked to borrowing and interest, and therefore do not fall under usury, but which it would also be unjust to include in the price. He does not yet envisage the opposite extension, which is that a licit expense, such as transport, should become illicit through usurious financing, which is nevertheless the threat posed by the decretal *Naviganti* of 1234, already nearly thirty years old at the time of *De emptione*. He would later do so in the *Summa theologiae* by promoting the licit solution of *societas*. He also took up the formulation in terms of risks or dangers (*periculum*) which appears in this decretal, whereas *De emptione* still refers to expenses (*expensas*), although the text as a whole shows that it is an issue of risk.

Aquinas thus shifts the criterion of analysis. Without minimising the question of usury put forward by his predecessors, he uses it to resolve a broader question, which is that of the justice of exchange. Since the agent's intention remains hidden, Aquinas intends to solve the lack of information about the justice of an exchange by looking for objective and observable indicators: the nature of the expense or risk incurred that the merchant wants to charge, and the selling price. Relative to these two indicators, the criterion of prudence provides Aquinas with the necessary typology to establish the justice of the exchange. This justice is practiced at two stages of the merchant's activity, requiring both the absence of negligence, and the presence of good management in making the best use, according to reason, of the information available.

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