Au risque de l'échange : l'activité économique dans les oeuvres de jeunesse de Thomas d'Aquin

Pierre Januard

▶ **To cite this version:**

Pierre Januard. Au risque de l'échange : l'activité économique dans les oeuvres de jeunesse de Thomas d'Aquin. Economies et finances. Université Panthéon-Sorbonne - Paris I, 2022. Français. NNT : 2022PA01E023 . tel-03865294v2

HAL Id: tel-03865294

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UNIVERSITÉ PARIS 1 PANTHÉON-SORBONNE
ÉCOLE D'ÉCONOMIE DE LA SORBONNE (UFR 02)
PHARE

AU RISQUE DE L'ÉCHANGE : L'ACTIVITÉ ÉCONOMIQUE DANS LES ŒUVRES DE JEUNESSE DE THOMAS D'AQUIN

AT THE RISK OF EXCHANGE: ECONOMIC ACTIVITY IN THOMAS AQUINAS'S EARLY WORKS

Thèse pour l'obtention du titre de Docteur en Sciences Économiques

Présentée et soutenue le 23 juin 2022

Par

Pierre JANUARD

Sous la direction de Madame Nathalie SIGOT

Professeure à l'Université Paris 1 Panthéon-Sorbonne

Avec la coopération de Monsieur André LAPIDUS

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Composition du Jury :

Monsieur Ragip EGE, Professeur émérite, Université de Strasbourg, rapporteur

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Résumé

Bien que l'œuvre à portée économique de Thomas d'Aquin (c. 1225-1274) ne représente qu'une petite partie de ses écrits, elle est la plus importante de son temps, tant par son ampleur et par sa diversité que par sa postérité. Ses œuvres de jeunesse ont été peu explorées jusqu'à présent par les économistes. Elles présentent cependant un triple intérêt : des apports uniques dans l'œuvre de l'Aquinate ; des éléments comparatifs permettant de montrer les évolutions par rapport à ses prédécesseurs d'une part et à ses œuvres plus tardives d'autre part ; et des clefs de lecture nouvelles pour comprendre ses œuvres plus connues comme les *Commentaires* d'Aristote et la *Somme de théologie*. Il s'agit donc de mener l'analyse économique des passages du *Commentaire des Sentences*, la grande œuvre de jeunesse de Thomas d'Aquin, concernant l'usure et l'activité des marchands, du *De emptione et venditione ad tempus*, court traité sur la vente à terme, ainsi que des écrits qui ne portent pas directement sur les questions économiques mais qui contiennent des situations d'échanges régies par le juste prix. Ces écrits présentent un ensemble de risques, dont cette spécificité que constitue le risque d'erreur d'analyse et de compréhension de l'opération. On peut ainsi en dessiner une cartographie qui donne lieu à une typologie et conduit à dégager une structure générale comportant des risques en amont de l'échange et des risques intervenant au cours de celui-ci. Il en ressort que Thomas d'Aquin porte son attention sur le prix et sur la nature marchande ou non de l'objet échangé comme instruments visibles et objectifs de la justice de l'échange, plus que sur les agents et leur intention.

Summary

Only a few of the works of Thomas Aquinas (c. 1225–1274) are directly related to economics; yet, in terms of their scope and diversity, and of their influence on posterity, these count among the most important such writings of his era. His early works have so far been little explored by economists. However, they are of threefold interest: they are distinctive contributions to Aquinas's overall body of work; they provide comparative elements which highlight the evolution of his thought in relation to his predecessors on the one hand and to his later works on the other; and they contain new keys to understanding his better-known works such as the *Commentaries* on Aristotle and the *Summa theologiae*. The aim is therefore to carry out an economic analysis of the passages on usury and the activity of merchants in his great early work the *Commentary on the Sentences*, and of the *De emptione et venditione ad tempus*, a short treatise on the sale in time, as well as of writings that do not deal directly with economic issues but which present situations of exchange governed by the just price. These writings highlight a series of risks, including among them the risk of error in the analysis and understanding of the transaction. We can thus draw a map that gives rise to a typology and leads to the identification of a general structure including risks located upstream of, as well as during, the exchange. We can see that Thomas Aquinas focused on visible and objective instruments of the justice of the exchange like the price and the trading or non-trading nature of the object exchanged, rather than on the agents and their intentions.

Mots-clefs

Thomas d'Aquin – Risque – Échange – Usure – Commerce – Juste prix – Scolastique – Marchand

Keywords

Thomas Aquinas – Risk – Exchange – Usury – Trade – Just price – Scholastics – Merchant

L’Université Paris 1 Panthéon-Sorbonne n’entend donner aucune approbation ni improbation aux opinions émises dans cette thèse : ces opinions doivent être considérées comme propres à leur auteur.

À la mémoire de mon père,

Jean-Pierre Januard (1940-1993)

Avertissement

Cette thèse rassemble six articles de recherche, publiés ou ayant vocation à être publiés, qui constituent chacun un chapitre distinct. Les chapitres peuvent différer légèrement des versions publiées. Cependant, on n'a pas cherché à éviter les redondances liées à une thèse sur articles.

Sources des chapitres :

Chapitre 1 :

Analysis risk and commercial risk: the first treatment of usury in Thomas Aquinas's *Commentary on the Sentences*, *European Journal of the History of Economic Thought*, 28 (4), 2021, 599-634.

Chapitre 2 :

Risky exchanges: Price and justice in Thomas Aquinas's *De emptione et venditione ad tempus*, *European Journal of the History of Economic Thought*, acceptation conditionnelle.

Chapitre 3 :

Risks on trade: The activity of the merchant in Thomas Aquinas's *Commentary on the Sentences*, *History of Economic Ideas*, 2022 (1), à paraître.

Chapitre 4 :

Licit and illicit risks in Thomas Aquinas's *De emptione et venditione ad tempus*, *document de travail*.

Chapitre 5 :

Is God giving or trading? *Super Isaiam*, 55, 1: Thomas Aquinas's first use of the 'just price', *document de travail*.

Chapitre 6 :

At the boundaries of the trading sphere: The appearance of 'just price' in Thomas Aquinas's *Commentary on the Sentences, document de travail*.

Remerciements

… quasi nanos gigantum umeris insidentes
… comme des nains juchés sur les épaules des géants

Adage de Bernard de Chartres (XII^{e} siècle),
rapporté par Jean de Salisbury, *Metalogicon* (1159).

Au terme d'une pérégrination qui m'aura fait cheminer sur les sentiers du Moyen Âge pour y rencontrer en Thomas d'Aquin un illustre et bien plus grand voyageur, tant en pensée qu'en distance parcourue au cours de sa vie, j'exprime ma gratitude envers les maîtres et compagnons de route qui m'ont accompagné et guidé dans cette entreprise qui nécessite à la fois la solitude et le silence de l'étude, le dialogue et le débat, la boussole et l'autorité sûre de guides expérimentés.

Je remercie Nathalie Sigot, ma directrice de thèse, pour sa confiance et son attention. Sa disponibilité et sa réactivité ont été précieuses lors des différentes échéances qui jalonnent le parcours doctoral. Ses conseils et remarques m'ont été très utiles et m'ont permis de franchir de nouvelles étapes, au long de ma recherche, dans la compréhension et l'analyse économique de l'œuvre thomasienne.

Je remercie André Lapidus, qui a tant œuvré dans la direction de ma thèse et qui m'a accompagné, suivi et guidé pas à pas tout au long de cette longue marche. Ma gratitude est d'abord celle du jeune étudiant que j'étais, il y a plus de vingt ans, lorsqu'en suivant son cours d'histoire de la pensée économique médiévale j'ai trouvé en un éclair les prémices d'une vocation intellectuelle qui ne m'a jamais quitté. C'est aussi celle d'un chercheur en devenir qui a trouvé, en son temps, un guide et un maître. Sa bienveillance exigeante et respectueuse, sa patience et ses encouragements, ont contribué à faire de ce chemin intellectuel un parcours initiatique. Mes travaux ont bénéficié de son érudition aussi profonde que vaste, de l'hébreu au latin, des textes médiévaux aux théories économiques les plus contemporaines, de la métaphysique aristotélicienne aux dominances stochastiques. Puisque nous cheminons au Moyen Age, c'est sans doute l'image déployée par Bernard de Chartres qui exprime le mieux la reconnaissance qui est la mienne. Ce fut un honneur et une fierté de me hisser, jour après

jour, sur les épaules sûres du maître pour continuer à explorer un champ où il reste tant à défricher. Il est des intuitions de jeunesse qui ne se démentent pas. *Gratias tibi ago, Magister* !

Je remercie les autres membres du jury : Ragip Ege, Adriano Oliva, Arnaud Orain et Richard Sturn pour leur lecture attentive et l'intérêt porté à ce travail. Leurs remarques, suggestions et conseils lors de la pré-soutenance m'ont permis de préciser et d'enrichir ma recherche en me faisant partager leur érudition et les apports de leurs spécialisations respectives. La rencontre de ces approches ouvre des perspectives très stimulantes en vue de développements futurs.

Je remercie l'École doctorale d'économie Panthéon-Sorbonne, son directeur Mouez Fodha et son personnel administratif, notamment Christelle Gauvrit et Anaïs Leveneur, pour la qualité de l'accompagnement au long du parcours doctoral.

Je remercie Laurent Jaffro et Goulven Rubin qui, à la direction de PHARE, m'ont toujours soutenu et m'ont apporté toutes les facilités souhaitées pour mener à bien, présenter et publier mes travaux. J'adresse également ma plus vive reconnaissance à François Morvan qui a souvent su, par sa réactivité et sa ténacité, déjouer nombre de difficultés pratiques et soutenir ainsi ma recherche.

Je remercie les membres de PHARE pour leur accueil chaleureux, leur bienveillance, leur ouverture à un sujet habituellement peu abordé, et pour l'érudition et le haut niveau d'analyse économique qu'ils ont su partager. Ma gratitude va notamment aux participants des Ateliers de PHARE. Mes travaux portent largement la marque de leurs questions et de leurs suggestions exigeantes et stimulantes. J'éprouve une reconnaissance particulière à l'égard de Laurie Bréban, Nadeera Rajapakse et Élodie Bertrand qui ont relu avec attention certains chapitres et y ont apporté leur expérience et leur expertise. Si je demeure le seul responsable des faiblesses ou des erreurs qui pourraient s'y trouver, les analyses qui y sont menées doivent beaucoup à leurs conseils. Je remercie également les doctorants pour l'émulation intellectuelle, les relations d'amitié et les questions soulevées lors du séminaire des doctorants qui m'ont été très utiles lors de l'achèvement de ce travail. Je remercie singulièrement Amélie Fiévet, avec qui j'ai cheminé sous la houlette d'un même guide et dont le soutien et les encouragements ont été très précieux.

Je remercie les organisateurs et les participants de l'Université d'été d'histoire de la pensée économique, de la conférence annuelle de la *European Society of the History of Economic Thought*, de la conférence annuelle de la *History of Economics Society* et du séminaire du

Laboratoire d'Économie d'Orléans qui m'ont permis de présenter et de discuter mes travaux. Ma gratitude va également aux répondants de ces colloques et aux rapporteurs du *European Journal of the History of Economic Thought* et des revues *History of Economic Ideas et Œconomia,* dont les précieuses remarques m'ont permis de préciser et d'enrichir de nombreux passages.

Je remercie la Commission léonine, qui assure l'édition critique des œuvres de Thomas d'Aquin, et l'ensemble de ses membres. J'exprime ici ma gratitude à son président, Adriano Oliva, qui m'a accompagné de longue date dans mon intérêt pour les études thomistes. Ses suggestions m'ont souvent ouvert des horizons nouveaux et ses écrits m'ont permis de préciser de nombreux points de la vie et de la pensée de l'Aquinate. Cette chaleureuse reconnaissance s'adresse également à Timothy Bellamah, dont l'érudition concernant les Bibles auxquelles Thomas d'Aquin aurait pu avoir accès, la connaissance des manuscrits médiévaux, la communication de ces manuscrits et la disponibilité bienveillante m'ont été extrêmement précieuses.

Je remercie Gilles Berceville, mon maître en latin et en études thomistes, qui m'a donné le goût d'étudier Thomas d'Aquin et qui m'a toujours encouragé à entreprendre un travail de recherche. Son amitié et sa confiance m'ont été d'un grand soutien tout au long de ce chemin. Ma reconnaissance va également à Xavier Loppinet, qui m'a initié au latin et dont l'amitié m'est chère.

Je remercie les bibliothèques du Saulchoir et de l'Annonciation et leurs bibliothécaires respectifs, Joseph de Almeida Monteiro et Jérôme Rousse-Lacordaire, pour la mise à disposition de l'ensemble des ouvrages nécessaires à mes travaux.

Je remercie Le Cèdre Finance Éthique et son équipe, Pierre-Antoine Varin, François Lagorse et Camille Mathé, équipe à laquelle j'ai l'honneur d'appartenir et qui m'a permis de valoriser ma recherche et de l'appliquer aux questionnements contemporains en matière d'éthique économique et financière. J'exprime également ma reconnaissance aux institutions dans lesquelles j'ai pu enseigner avant ou durant ma recherche, notamment l'Université catholique de l'Ouest et l'Université Paris 1 Panthéon-Sorbonne. Ces enseignements multiples et variés en sciences économiques ou en études médiévales m'ont permis de mûrir des intuitions scientifiques et d'éprouver la joie de la transmission.

Je remercie les relecteurs de ma thèse, Michèle Daviet, Claire Rondeau, Sandrine Leloup et Éric de Clermont-Tonnerre, ainsi que Ben Young, qui a assuré la révision de l'anglais, pour leur dévouement, leur disponibilité et leurs conseils en vue d'une toujours meilleure intelligibilité du propos.

Je remercie les personnes qui m'ont permis de mener à bien ce travail de recherche, m'ont encouragé dans cette voie et m'ont donné la possibilité matérielle de m'y employer, en premier lieu Nicolas Tixier, Rémi Chéno, Thierry-Marie Courau et Éric de Clermont-Tonnerre. Ma gratitude va également aux personnes qui m'ont offert des lieux propices à l'étude.

Je remercie mes amis, particulièrement Jérôme Daviet et Minh Thu Thuy Nguyen, pour leur soutien, leurs conseils et leurs encouragements. Leur présence a été indispensable au long de ce parcours tant personnel qu'intellectuel et, puisque la recherche est œuvre humaine, son achèvement leur doit beaucoup.

Je remercie particulièrement mes parents, Anne-José et Jean-Pierre Januard (†), ingénieurs économistes, chacun selon des voies propres, et dont je suis heureux et fier de poursuivre la tâche. J'exprime ma gratitude à l'égard de mère pour son soutien au long de ce travail, et plus largement à ma famille pour sa présence : Jean, Yasya, Georges, Daniel-Pierre, Marie-Geneviève, Bernard, Claudine, Emmanuel, Leïla, Myriam, Hatem, Élisabeth, Daniel, Fabien et Élodie. Merci à mes filleuls Belinda, Aksel, Benoît, Camille et Corentin.

Je remercie enfin l'École, au sens de l'ensemble des lieux d'enseignement que j'ai pu connaître. Ce témoignage de reconnaissance, s'il figure en dernier, tient certainement la première place. Sans ses maîtres, des premières classes en me donnant d'apprendre à lire, à écrire et à compter, aux formations universitaires les plus spécialisées, ce travail de recherche n'aurait pu voir le jour. C'est bien d'abord à eux que je dédie l'adage de Bernard de Chartres. Ils furent à chaque étape les géants sur les épaules de qui je me suis juché pour voir plus loin, ces hommes et ces femmes qui m'ont donné la joie de la découverte et de la connaissance, le désir de transmettre à mon tour le fruit d'un savoir toujours à approfondir, la passion de chercher, et ayant trouvé, de chercher encore.

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Introduction générale

1. Ouverture : Thomas d'Aquin ou le retour aux sources de la pensée économique parisienne

Une histoire de la pensée économique de l'Université de Paris viendrait mettre en lumière les figures qui, connues ou moins connues, ont porté, d'épaules en épaules, de géant en géant et de siècle en siècle, les économistes d'aujourd'hui à voir plus loin et à comprendre mieux. Une telle histoire plonge ses racines au cœur du Moyen Âge, bien avant que la pensée économique se soit constituée en discipline autonome. En effet, cette histoire est aussi longue que celle de l'Université de Paris, puisque la pensée économique y est aussi ancienne que l'Université elle-même. Il faudrait alors dresser la longue et prestigieuse liste des maîtres médiévaux qui lui sont attachés et qui ont traité de questions économiques.

Un nom suffit cependant à montrer l'éminence de la filiation qui jalonne l'histoire de la pensée économique parisienne. Lorsque Thomas d'Aquin (c. 1225-1274) revient enseigner à Paris, cette « école des écoles [qui est] son milieu naturel » (Chenu 1959, 27-30), en 1252, il donne à son Université le plus grand *corpus* à portée économique de l'époque, à la fois en volume et en postérité. Il y rédige sans doute sa première réflexion sur le juste prix dans le *Super Isaiam*, puis deux traités novateurs et fondateurs, sur l'usure et sur l'activité des marchands, au sein du *Commentaire des Sentences*. Même lorsqu'il rejoint Orvieto et répond dans son *De emptione et venditione ad tempus* (1262) à la question portant sur la vente à terme posée par le frère Jacques de Viterbe, lecteur du couvent dominicain de Florence, Paris demeure présent au cœur de l'Aquinate puisqu'il prend en exemple la foire de Lagny, la ville marchande voisine. À l'exception de ce bref traité, et sans doute du *De regno*, traité politique peut-être rédigé à Rome en 1265, toute l'œuvre à portée économique de l'Aquinate est parisienne, puisque la *Lettre à la duchesse de Brabant* sur la gestion des biens usuraires par le prince, les *Questions quodlibétiques* sur le prix et l'usure, la *Question disputée de malo* sur l'usure, les commentaires de l'*Éthique* et de la *Politique* d'Aristote et, de façon plus emblématique encore, les questions 77 et 78 de la *secunda secundae* de la *Somme de théologie* datent du dernier séjour parisien de Thomas (1268-1272).

Lorsque le XIII^{e} siècle donne à Paris son Université, que dans une même décennie, qui voit Thomas d'Aquin venir y enseigner, on rend Notre-Dame pleinement opérationnelle après l'achèvement de ses tours et par l'agrandissement de ses transepts et on fonde le collège qui deviendra la Sorbonne, que les voûtes de la pensée s'élèvent aussi haut que les voûtes de pierres, que la scolastique rivalise de splendeur avec l'architecture gothique (Panofsky [1951] 1976), la

pensée économique y prend toute sa part. Cette part est certes moins volumineuse que les travaux philosophiques et théologiques de l'Aquinate et, plus généralement, de l'École, mais elle est loin d'être anecdotique, non seulement dans l'histoire de la pensée médiévale mais aussi dans l'histoire de la pensée économique. La variété des thèmes abordés (l'usure, l'échange, le commerce, la monnaie puis, après Thomas, le change) mais aussi les sauts conceptuels franchis à chaque génération au long d'un siècle qui s'ouvre avec le *De usura* de Robert de Courçon, se poursuit avec la *Summa aurea* de Guillaume d'Auxerre, les écrits d'Albert le Grand puis ceux de Thomas d'Aquin, avant de s'achever avec le *De usuris in communi* de Gilles de Lessines, suffisent à justifier son investigation en histoire de la pensée économique.

Si à l'époque moderne la réflexion économique est souvent faite par les marchands ou par les agents eux-mêmes impliqués dans les opérations, la pensée économique médiévale est le fait des philosophes, des théologiens et des juristes. Son étude repose donc davantage sur la lecture des textes menant un questionnement moral que sur l'histoire des faits économiques ou d'une conceptualisation émanant de ces faits et produite par leurs acteurs. La connaissance du contexte, qu'il s'agisse du cadre historique général ou de la vie de l'auteur, aide cependant à comprendre les écrits médiévaux, notamment ceux de Thomas.

Thomas d'Aquin est contemporain de Louis IX (Saint Louis), de dix ans son aîné et qui règne de 1226 à 1270. L'anecdote voulant que Thomas ait pris son repas à la table du roi et qu'après qu'il se fut exclamé avoir trouvé comment réduire les Manichéens le roi fit venir un secrétaire pour noter l'argument (Guillaume de Tocco, *Ystoria*, ch. 44, 87 ; Weisheipl [1974] 1993, 264 ; Torrell 1993, 422) pourrait relever de la légende (Le Goff 1996, 592 ; Torrell 2012, 316 ; 2015a, 368), mais elle indique le lien entre les dominicains et la cour. Le XIII^{e} siècle voit aussi le développement des grandes routes commerciales en Europe, routes maritimes à partir des grands ports, mais aussi routes terrestres et fluviales entre les Flandres et Venise puis le long de la vallée de la Seine (Ellul 2013, 201). De grandes foires régulières, notamment en Champagne, rythment la vie économique de l'Europe et la vie des marchands : Lagny en janvier-février, Bar-sur-Aube en mars-avril, Provins en mai-juin, Troyes, en juillet-août, Provins en septembre-novembre, puis Troyes en septembre-novembre (Le Goff [2010] 2019, 30). Les foires constituent des institutions, dotées de personnalité juridique et de privilèges (Ellul 2013, 222-224). C'est une époque d'urbanisation et de prise d'importance des villes, avec leur artisanat, leur commerce et leur marché local (Ellul 2013, 224-225), et la naissance d'une nouvelle classe sociale, celle des marchands professionnels, rompus à la comptabilité, au change, à la navigation et au droit commercial. Le contour de leur activité est encore mal délimité, ce qui

peut nourrir la suspicion usuraire (McLaughlin 1939, 75-95 et 1940 ; De Roover 1953, 28-29 ; Le Goff [1956] 2001, 41-67 ; [2010] 2019, 121-231 ; Ege 2014, 392 ; Feller 2020, 57-61).

La famille de Thomas peut être identifiée dès 887 ; elle est propriétaire du château de Roccasecca, dans le comté d'Aquino, à peu près à mi-chemin entre Rome et Naples, depuis la fin du X^{e} siècle. Thomas est fils et frère de chevaliers : un de ses frères a pris part à une expédition en Terre Sainte, a servi dans l'armée de Frederic II puis a été exécuté pour avoir comploté sa mort et soutenu le pape. Quant à son père, il est identifiable sur le nécrologe de l'abbaye du Mont Cassin comme *miles*, soldat de cavalerie, soit chevalier, en contexte médiéval (Weisheipl [1974] 1993, 16-19 ; Torrell 1993, 2-5). L'usage familier du lexique chevaleresque par Thomas a pu conduire à le considérer comme un *chevalier manqué* (Synan 1988, 437). On ne s'étonnera donc pas que Thomas conçoive un ordre social aristocratique où le chevalier disgracié tombe au rang des paysans et des marchands (*S. T.*, Ia IIae, q. 91, a. 6, resp. ; Synan 1988, 419-420) et où les marchands mènent une vie de plaisir qui encourage leur faiblesse psychique et morale (*De regno*, II, 7 (II, 3)).

Si certains détails de la vie de l'Aquinate et certaines datations sont encore en discussion, les biographes s'accordent sur les éléments principaux de son histoire (voir par exemple Weisheipl [1974] 1993 ; Tugwell 1988 ; Torrell 1993, 2012, 2015a ; Imbach et Oliva 2009 ; Porro 2015, sans oublier, pour son caractère de source hagiographique, le récit de son premier biographe, Guillaume de Tocco, l'*Ystoria sancti Thome de Aquino*, rédigé entre 1218 et 1323). Thomas naît autour de 1225, devient oblat au monastère du Mont-Cassin voisin vers l'âge de 5 ou 6 ans puis part à Naples à l'automne 1239 poursuivre ses études et y entre dans l'ordre des dominicains en 1244. Il est enlevé par ses frères à la demande de sa mère et reconduit à Roccasecca où la famille, qui espérait en faire le futur abbé du Mont-Cassin, essaie de le faire changer d'avis. Il retourne à l'été 1245 au couvent dominicain de Naples (en s'évadant, selon certaines sources, ou plus probablement laissé finalement libre par sa famille). Malgré ces péripéties, Thomas resta très lié à sa famille et à son milieu. Il aurait ensuite été envoyé à Paris pour un premier séjour d'études de trois ans où il a probablement suivi les cours d'Albert le Grand, en compagnie de qui il part en 1248 pour Cologne, où il reste jusqu'en 1252. Ce séjour est mieux attesté dans les sources. Il y poursuit ses études de théologie auprès d'Albert. Sur les conseils d'Albert et avec l'appui du cardinal dominicain Hugues de Saint-Cher, le maître de l'ordre des dominicains envoya Thomas à Paris en 1252 sans doute encore comme bachelier biblique puis comme bachelier sententiaire pour enseigner les *Sentences* de Pierre Lombard, selon l'usage académique de l'époque, malgré son jeune âge. Bachelier, puis titulaire de la

licencia docendi, il présente sa leçon inaugurale au printemps 1256, avant l'âge de 35 ans requis par les statuts de l'université et alors que la rédaction de son *Commentaire des Sentences* n'était pas achevée.

Thomas partit sans doute pour l'Italie en 1259, probablement à Naples, mais la période 1259-1261 demeure incertaine. Il est assigné à Orvieto en 1261, où il est lecteur du couvent, chargé de la formation permanente des frères dominicains, puis à Rome en 1265 pour reprendre en main la formation initiale des jeunes frères. C'est à cet effet qu'il commence à rédiger la *Somme de théologie* un an plus tard. Il rentre à Paris, probablement en 1268, et y reprend ses enseignements. Les motivations de ce retour sont discutées et sans doute cumulatives : la présence de théologiens conservateurs qui voient en Aristote un danger pour la foi ; l'influence prêtée aux averroïstes dont il faut réfuter les erreurs ; la pression des séculiers qui veulent exclure les mendiants (dominicains et franciscains) de l'enseignement universitaire. Il repart pour Naples en 1272. Aux environs du 6 décembre 1273, Thomas aurait eu une expérience spirituelle alors qu'il célébrait la messe. Il cessa d'écrire à compter de ce jour, il parut profondément changé et aurait dit : « Je ne peux plus. Tout ce que j'ai écrit me semble de la paille en comparaison de ce que j'ai vu » (Torrell 1993, 424). Convoqué par le pape Grégoire IX au Concile de Lyon pour le 1er mai 1274, il se met en route en début d'année. La suite, tragique, est marquée par quelques éléments hagiographiques. Perdu dans ses pensées tandis qu'il marchait, sa tête heurta les branches d'un arbre tombé sur le chemin. S'arrêtant fin février chez sa nièce, déjà malade, il aurait demandé des harengs frais (Guillaume de Tocco, *Ystoria*, ch. 56, 115-116), d'où naquit la légende qu'il s'agissait de son plat préféré. Il repartit pour l'abbaye de Fossanova mais son mal s'aggrava et il y mourut le 7 mars 1274, « seule date de sa vie dont on peut être certain » (Weisheipl [1974] 1993, 7).

L'histoire personnelle de l'Aquinate montre qu'il a beaucoup voyagé et, pour ainsi dire, passé sa vie sur les routes. Parallèlement à sa vie d'étude, de prière et d'enseignement, Thomas s'est trouvé en contact avec la mutation socio-économique de son temps, qu'il s'agisse de l'urbanisation ou de la circulation des marchands professionnels à travers l'Europe. Si Thomas ne rend pas directement compte de ce qu'il observe de l'activité économique, ses écrits théoriques sont ainsi non seulement nourris des questions pastorales qui lui sont posées et des témoignages qui lui sont apportés, mais aussi de ce que son histoire personnelle, ses déménagements et ses voyages lui ont donné à voir.

Les contributions à portée directement économique de Thomas s'étalent sur près d'une vingtaine d'années, depuis les questions sur l'usure (*In III Sent.*, d. 37, a. 6) et l'activité des marchands (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3) dans sa grande œuvre de jeunesse qu'est le *Commentaire des Sentences* (1252-1256) jusqu'aux deux questions de la *Somme de théologie* (1271-1272) sur la fraude commerciale et sur l'usure (*S. T.*, IIa IIae, q. 77 et 78). Si la part du *corpus* appartenant aux œuvres de la maturité, particulièrement la *Somme de théologie,* est plus connue, les écrits de jeunesse, comme les deux questions du *Commentaire de Sentences* et le *De emptione et venditione ad tempus* (1262), qui traite de l'achat et de la vente à terme, demeurent peu étudiés. Ces textes méritent pourtant une attention particulière. Ils manifestent la nouveauté de la pensée thomasienne et leur lecture renouvelle et complète la compréhension des œuvres plus tardives de l'Aquinate en mettant en évidence de nouveaux accents.

Ces écrits de jeunesse constituent donc le *corpus* de référence de la présente recherche. On doit toutefois relever que les opérations économiques, ou les situations de ce que Thomas appelle les « échanges volontaires » (*S. T.*, IIa IIae, q. 77, prol.) ne sont pas uniquement présentées dans les passages explicitement dédiés au commerce ou au prêt mais qu'elles sont dispersées dans l'ensemble de l'œuvre de Thomas. Si la notion d' « échanges volontaires », qui regroupe dans la *Somme de théologie* les échanges commerciaux et les prêts, permet de circonscrire l'objet d'une investigation de la contribution thomasienne en histoire de la pensée économique, il est impossible d'en délimiter un *corpus* exclusif. Toute l'œuvre de Thomas, qu'elle soit philosophique, théologique ou biblique, comporte une réflexion sur le commerce et le prêt de manière disséminée et en apparence anecdotique, au-delà des quelques textes qui leur sont explicitement consacrés. En outre, pour comprendre la pensée économique de l'Aquinate, il est nécessaire de connaître la réflexion morale plus large dans laquelle elle s'inscrit et les soubassements philosophiques et théologiques qui la façonnent.

Les commentateurs abordent habituellement l'histoire de la pensée économique médiévale de manière thématique, à travers la question de l'usure et, dans une moindre mesure, du commerce et du prix, bien que les contributions récentes y accordent davantage d'importance et ne la réduisent pas à celle du juste prix. Cela les conduit à se saisir de l'un ou l'autre de ces thèmes traités au travers de la scolastique prise comme un tout ou par grandes périodes, et à rarement s'arrêter sur l'ensemble du *corpus* à portée économique d'un auteur. Pourtant, la notion d'échanges volontaires vient explicitement offrir une perspective unificatrice à la pensée économique de l'Aquinate. Plus encore, une question transversale apparaît à la lecture du *corpus* thomasien, celle du risque, puisque l'Aquinate cherche à réduire le risque d'injustice de

l'échange en contournant le défaut d'information sur les intentions des agents par le recours au prix comme critère visible et objectif de justice. En outre, les agents, qu'il s'agisse d'un prêt ou d'un échange commercial, prennent des décisions qui peuvent entraîner une diversité de conséquences. Cette question unificatrice et structurante du risque chez Thomas d'Aquin fait écho à l'omniprésence de l'attitude face au risque et à sa gestion dans les différentes sous-disciplines de la science économique contemporaine. Cette omniprésence, nouvelle par ses formulations et ses champs d'application, se trouve déjà, sous des formes propres, certes parfois implicites et allusives, mais réelles, dans les écrits de l'Aquinate. Interroger le traitement du risque chez Thomas d'Aquin rejoint donc une problématique économique familière en dessinant son enracinement historique.

S'agissant du cadre conceptuel, la difficulté que l'on rencontre avec Thomas d'Aquin, comme avec l'ensemble des penseurs du Moyen Âge, réside à la fois dans le risque d'anachronisme quant à la description des structures et des opérations économiques et dans l'emploi de concepts étrangers à ces auteurs. À cet égard, le terme de « marché » constitue un exemple paradigmatique. La notion de « juste prix » chez l'Aquinate a souvent été assimilée par la littérature à celle de « prix de marché », alors qu'un tel usage ne semble résister ni à l'histoire des faits, ni à l'histoire des concepts. On peut reprendre ici, en l'appliquant au XIII^{e} siècle, la distinction que Steven Kaplan propose lorsqu'il traite de l'époque moderne (Kaplan 1984, 25-29) entre *marketplace* (marché comme espace ou comme site) et *market principle* (marché comme principe). D'une part, le marché médiéval est d'abord un lieu physique, le *forum*, où l'on achète et où l'on vend, non une réalité conceptuelle décrivant les conditions d'échange d'un bien (au sens du marché de tel bien) ; d'autre part, pour Thomas, le marché est le lieu où se réalise l'échange à un certain prix qui peut être juste, mais il n'est pas un lieu conceptuel actif et producteur de prix, où la confrontation d'une offre et une demande, représentées par deux courbes venant à se croiser, permettrait la fixation d'un prix, qui de surcroît serait le juste prix, en vue de réaliser l'échange.

L'histoire de la pensée thomasienne nécessite ainsi de soumettre préalablement les concepts de l'analyse économique au critère de pertinence historique. Soit le concept est déjà explicitement présent dans l'œuvre de l'Aquinate (la vente, le prêt, le prix, la fraude…) : il faut alors s'assurer que son sens et son lexique correspondent à ceux d'aujourd'hui. Soit le concept est postérieur à l'Aquinate : c'est par exemple le cas pour le marché, la concurrence ou le risque, bien qu'on en trouve des traces lexicales. Trois positions méthodologiques, sinon épistémologiques peuvent alors être adoptées (Lapidus 2019) : la première consiste à renoncer à tout usage

conceptuel et lexical distinct de celui de l'auteur, ce qui évite tout anachronisme mais prive le lecteur des outils d'analyse de la science économique, dans une stricte herméneutique de l'auteur (approche extensive). La deuxième consiste au contraire à appliquer les concepts contemporains, dans une stricte herméneutique du lecteur, pour tirer d'un auteur ancien des éclairages pour l'analyse contemporaine, au risque de ne pas rendre compte de ce que l'auteur a réellement voulu dire (approche rétrospective). La troisième consiste à combiner les herméneutiques de l'auteur et du lecteur pour éviter l'anachronisme, qui trahit la pensée, et la simple histoire des idées, qui la réduit à un statut de précurseur historiquement daté sans en saisir la fécondité actuelle (approche intensive). Cette dernière position n'interroge pas ce que l'auteur a dit, ni ce que le lecteur y lit, mais ce que l'auteur penserait s'il disposait des outils conceptuels du lecteur, leur trouvant ainsi un langage commun. Position thomiste, en quelque sorte, puisqu'il s'agit, comme le fait à sa manière la voie de l'analogie (*S. T.*, Ia, q. 13), de contourner à la fois une équivocité apophatique (chaque époque, tels Dieu et sa créature, donnerait son sens aux mots sans points de contact, empêchant ainsi tout dialogue à travers l'histoire) et une univocité réductrice (les faits et la pensée des siècles passés subiraient une distorsion venant d'une assimilation conceptuelle contemporaine à marche forcée). En d'autres termes, ce qui guide le lecteur dans cette approche à la fois fidèle et féconde est de vérifier constamment si l'auteur se reconnaîtrait dans l'interprétation qu'on donne de ses écrits s'il disposait des mêmes connaissances que ses interprètes.

Thomas n'a pas de formulation explicite du concept de risque. Il décrit cependant des situations où les agents prennent des décisions qui entraînent une pluralité de conséquences possibles, qui pourraient être décrites par une variable aléatoire, c'est-à-dire une fonction des états du monde vers un ensemble de conséquences. Il ne formule pas de loi de probabilité, mais cela ne signifie pas qu'il décrive un univers non probabilisable qui renverrait les agents à une situation d'incertitude (Knight 1921, 233) et non de risque. On peut alors interroger l'œuvre de l'Aquinate sous l'angle du risque pris dans son acception courante en économie.

On soulignera dès à présent les résultats les plus saillants auxquels cette recherche conduit :

- Les œuvres de jeunesse, à portée directement économique ou traitant de questions théologiques mais contenant des situations d'opération économique dont la justice est assurée par le juste prix ont peu ou pas été étudiées jusqu'à présent par les économistes. Elles contiennent pourtant des apports propres et uniques sur la compréhension thomasienne de ces opérations, elles éclairent les œuvres plus tardives et plus connues de Thomas d'Aquin et elles permettent la mise en lumière des évolutions de sa pensée.

- À partir de ces œuvres de jeunesse, on peut dessiner une cartographie des risques qui donne lieu à plusieurs typologies alternatives, parallèles ou croisées, et qui conduit à dégager une structure dynamique des risques constituée de deux risques amonts qui portent sur la compréhension de l'opération et sur le caractère marchand du bien échangé, et des risques intervenant au cours de l'opération et qui se rapportent *in fine* au prix ou au bien.

- Thomas d'Aquin porte son attention sur le prix et sur la nature de l'objet échangé comme instruments visibles et objectifs de la justice de l'échange, plus que sur les agents et leur intention, à laquelle il n'a pas accès. La justice comporte une dimension qualitative (nature et conditions de l'échange et nature du rapport d'échange) et une dimension quantitative (traduite par le prix). Puisqu'il observe le déroulement de l'opération en s'émancipant d'une lecture selon le statut social prédéfini des agents, Thomas d'Aquin tend, d'une part, à une universalisation du regard pour considérer l'ensemble de l'opération et de ses parties-prenantes et, d'autre part, à une relativisation et une universalisation de la possibilité pour tous les agents de se trouver en état de nécessité.

Avant d'entreprendre l'analyse du risque dans l'œuvre thomasienne qui conduit à ces résultats, il faudra, dans un premier temps, en déterminer le cadre épistémologique et méthodologique (section 2). Cela conduira d'abord à délimiter l'objet d'étude qu'est l'activité économique (section 2.1), puis à préciser l'intérêt d'étudier le risque dans les œuvres de jeunesse de l'Aquinate (section 2.2), enfin à justifier le choix d'une investigation historique et analytique et à en spécifier les caractéristiques, puisqu'il s'agit de mettre en œuvre une démarche diachronique, intégrale, positive, économique, faisant appel à d'autres disciplines, combinant sources primaires manuscrites et imprimées et littérature secondaire (section 2.3). Il s'agira ensuite de revenir de manière synthétique sur les résultats d'une investigation initiale conduite texte par texte (section 3). On commencera par dessiner une cartographie des risques et par présenter les typologies afférentes mises en évidence au cours de la recherche (section 3.1). On montrera alors que l'analyse économique thomasienne consiste à réduire le défaut d'information par un regard objectif sur l'échange. Le prix, critère visible et objectif, constitue le premier instrument au service de la justice de l'échange (section 3.2). Son utilisation dès les œuvres de jeunesse, combinée aux autres marqueurs de l'analyse thomasienne que sont l'universalisation du regard vers une attention à l'ensemble des agents, la relativisation et l'universalisation de la volonté conditionnée, et l'attention lors de l'échange à l'objet et à l'activité plus qu'à l'intention de l'agent permet ainsi de réduire le risque d'injustice de l'échange (section 3.3).

2. Objet et méthode : Une investigation économique de l'œuvre thomasienne

Les écrits de l'Aquinate constituent un jalon majeur de l'histoire de la pensée économique. Ils offrent d'abord, à travers les notions d'*œconomia* et plus encore d' « échanges volontaires », une délimitation stricte de l'activité économique au prêt et à l'échange commercial. Plus encore, leur prise en compte de la problématique du risque est manifestée par les champs lexicaux connexes utilisés, bien qu'au premier abord la description des situations et l'absence du strict champ lexical du risque pourraient conduire à négliger cet aspect. Pour mener cette étude, les œuvres de jeunesse constituent un *corpus* de référence peu étudié alors qu'elles permettent de préciser le caractère novateur de la pensée thomasienne et d'éclairer les œuvres postérieures de l'Aquinate. À partir de cet objet et de ce *corpus*, il convient de préciser et de justifier méthodologiquement et épistémologiquement l'approche retenue, une approche diachronique, qui procède par une lecture intégrale et cursive des textes selon une visée positive, selon les instruments et les méthodes de l'analyse économique mais appuyée sur un éclairage pluridisciplinaire.

2.1. Une activité économique circonscrite au prêt et à l'échange

Il est d'abord nécessaire de circonscrire l'objet d'étude en précisant ce qui, chez Thomas d'Aquin, relève de ce que nous entendons communément aujourd'hui comme activité économique. Le nom *œconomia,* et surtout son adjectif *œconomica,* sont attestés dans les œuvres de l'Aquinate. Ils décrivent principalement le niveau auquel se situe l'activité. Il s'agit de la part de l'activité économique qui concerne la gestion de la maison, à laquelle peuvent s'ordonner les activités de production et de transport, et qui n'est pas faite en vue d'un gain. L'expression plus large qui regroupe les activités économiques à la fois domestiques et professionnelles et lucratives est celle d' « échanges volontaires », qui offre un cadre commun pour traiter des activités qui ne relèvent ni du don (qui n'est pas un échange), ni du vol (qui est involontaire). Cependant, les deux activités placées sous ce vocable dans la *Somme de théologie* sont l'échange commercial et le prêt (*S. T.*, IIa IIae, q. 77 et 78), comme déjà dans le *Commentaire des Sentences* les deux questions directement économiques portaient sur l'usure (*In III Sent.*, d. 37, a. 6) et l'activité des marchands (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3). Cela fait alors apparaître que la monnaie, et plus encore la production, ne sont traitées qu'indirectement par Thomas. Le financement de l'activité productive n'apparaît pas de manière distincte et l'emprunt à des fins productives ne connaît pas de traitement spécifique qui lui octroierait une exemption de la règle commune sur l'usure.

*2.1.1. Une activité en partie décrite par l'*œconomia

Délimiter l'activité économique chez Thomas d'Aquin nécessite d'abord de voir si cette activité est assumée par le terme *œconomia,* puisque ce terme, par ses acceptions successives, se trouve à l'origine du terme « économie » que nous employons aujourd'hui. L'Aquinate emploie le terme « *œconomia* » et ses dérivés 128 fois dans ses œuvres, principalement comme adjectif (*œconomica*), puisque le nom n'apparaît que neuf fois, dont huit fois dans le *Commentaire de la Politique* d'Aristote. Les acceptions sont variées mais elles se rattachent de manière propre ou figurée à la gestion de la maison (au sens de maisonnée), à partir du sens étymologique et philosophique grec (Schumpeter [1954] 2006, 50 et 89). Le terme « économique », qui semble apparaître chez Xénophon dans son traité éponyme, y évoque déjà la gestion des affaires (Mondzain 1996), bien que le sens se resserre autour de la gestion domestique dans le traité du même nom d'Aristote (Agamben [2007] 2021, 400), qui traite davantage les questions de production, d'échange et de monnaie dans la *Politique*, I et l'*Éthique à Nicomaque*, V. On rencontre ensuite des élargissements métaphoriques successifs du sens accordé à *œconomia*.

Chez Thomas, le terme ne renvoie pas à l'activité de production et ne désigne une activité d'échange qu'en tant qu'elle pourvoit aux besoins de la maison, sans but lucratif. Thomas distingue l'activité « économique (*œconomica*) » et l'activité en vue d'un « gain monétaire (*pecuniativa*) ». Le terme « *œconomia* » ne recouvre donc que très partiellement le domaine habituellement imparti à l'analyse économique. La polysémie du terme est sans doute, à la suite d'Aristote, moins large que dans la tradition byzantine, où elle est à la foi trinitaire, juridique et sociale (Mondzain 1996), mais elle permet cependant, souvent par contraste ou pour y apporter des distinctions, de préciser le contour de ce qui relève, chez Thomas, de l'activité économique pris dans un sens plus contemporain de production et d'échange.

La première distinction opérée par Thomas fait le départ entre le politique et l'économique. La communication (ou l'échange, *communicatio*) économique concerne les offices domestiques, alors que la communication politique concerne celle des hommes avec leurs concitoyens (*In III Sent*., d. 29, q. 1, a. 6, resp.). Thomas insiste davantage sur la distinction entre le politique et l'économique que sur la perméabilité des ordres, mise en lumière par Agamben [2007] 2021, 445-481, qui verrait en l'*œconomia* une inspiration du pouvoir royal au Moyen Âge.

La distinction ne désigne cependant pas deux réalités juxtaposées mais ce qui concerne le tout et ce qui concerne la partie : parler des parties de la cité nécessite d'abord de parler de l'économie, puisque toute cité est composée de maisons (*Politicorum*, I, 2, n°2). Au sein du

gouvernement de la maison (*regimen domus*), Thomas distingue deux niveaux, puisque ce gouvernement peut être despotique (*despoticum*), lorsqu'il s'agit de diriger les serviteurs, ou économique (*œconomicum*) lorsqu'on prend soin de toute la famille. (*Politicorum*, I, 1, n°5 ; I, 5, n°1-2).

Chacun des niveaux est régi différemment. Ainsi ce qui concerne la loi appartient à la politique, non à l'économique ou au monastique (*In IV sent.*, d. 1, q. 1, a. 2, qc. 4, resp ; *Ethicorum*, I, 1, n°6). Le moyen d'action est plus limité dans l'économique que dans le politique : le roi corrige mais il peut aussi exterminer pour purifier la communauté, alors que dans une société économique, le père de famille ne peut que corriger (*In IV Sent.*, d. 37, q. 2, a. 1, ad 4).

Thomas utilise les images sociales pour envisager la gestion de l'Église, qui est une assemblée de fidèles à la fois économique, avec une seule famille, et politique, avec un seul peuple (*In IV Sent.*, d. 20, q. 1, a. 4, qc. 1, resp.). On retrouve ici la coloration domestique du vocabulaire décrivant la vie des premières communautés chrétiennes et, de manière allusive, l'*œconomia* paulinienne et patristique, qui décrit d'abord la tâche de l'apôtre avant d'être appliquée de manière théologique à Dieu ou au Mystère (Prestige [1936] 1952, 62 ; Agamben [2007] 2021, 404-406). Cependant, le recours à la métaphore économique pour traiter de la création et d'une administration du monde qui nécessite une méthode et qui implique une économie comme projet et dessein ou pour rendre compte de l'organisation et de la cohérence interne du christianisme (Prestige [1936] 1952, 58, 67, 97-111) transparaît peu chez l'Aquinate. Sous un angle anthropologique, l'ontologie d'analogie, qui permet d'articuler ressemblance, différence et continuité, pour traiter des réalités humaines et divines (Descola [2005] 2015, 221, 351-401), si elle permet à Thomas une certaine diversité des usages de l'image de la gestion de la maison, ne trouve somme toute qu'un déploiement assez restreint.

L'image du gouvernement divin comme économie est rare chez Thomas alors qu'on la trouve plus fréquemment chez les Pères (Prestige [1936] 1952, 63). On trouve certes la trace d'un ordre économique comme ordre providentiel (*S. T.*, Ia, q. 116, a. 2 ; Prestige [1936] 1952, 57 ; Agamben [2007] 2021, 482-513) : Dieu veille sur le monde d'une providence économique, comme quelqu'un gouverne une famille et politique, comme quelqu'un gouverne une cité ou un royaume (*De veritate*, q. 5, a. 2, resp.). Cependant, parmi les ordres selon lesquelles une peine peut être imposée aux hommes, Thomas distingue les cas où la nature humaine est soumise à l'ordre de sa propre raison, les cas où la peine est donnée par l'ordre extérieur de l'homme qui gouverne spirituellement ou temporellement, économiquement ou politiquement,

et les cas où l'homme est soumis à l'ordre universel du règne divin (*S. T.*, Ia IIae, q. 87, a. 1, resp.). On observe ainsi une certaine prudence dans l'usage fait par Thomas de la comparaison entre l'autorité qui s'exerce dans la gestion de la maison et dans l'exercice de l'autorité divine.

Puisqu'il s'agit d'exercer une bonne gestion, l'Aquinate traite principalement de l'économie dans le cadre de la vertu de prudence, dont il distingue d'abord les trois parties subjectives : économique, politique et militaire (*S. T.*, IIa IIae, q. 50, prologue). La prudence économique traite de la maison, qui se situe entre la personne et la cité (*S. T.*, IIa IIae, q.50, a. 3, resp.). C'est un *habitus* à la fois spéculatif, qui examine, et pratique, qui agit sur ce qui concerne les gens de la maison (*In III Sent.*, d. 33, q. 3, a. 1, qc. 4, resp.). Cette prudence économique « est ordonnée au bien commun de la maison ou de la famille » (*S. T.*, IIa IIae, q. 47, a. 11, resp., voir également *S. T.*, IIa IIae, q. 50, a. 3, ad 1). Cette prudence peut être soit paternelle, lorsqu'elle est exercée par le père de famille, soit simplement (*simpliciter*) économique (*In III Sent.*, d. 33, q. 3, a. 1, qc. 4, resp.).

On retrouve la distinction entre le politique et l'économique, développée au sujet des formes de prudence, lorsque Thomas traite de la justice, bien que ce soit plus bref : la justice au sein de la maison n'est pas que politique mais aussi économique (*S. T.*, IIa IIae, q. 58, a. 7, ad 3). C'est dans le cadre de la justice que va se trouver le point de contact entre la gestion de la maison et l'activité économique.

L'économique, au sens de la gestion de la maison, s'inscrit dans l'ensemble de l'activité économique prise dans son acception contemporaine puisque lui sont ordonnés la production et le transport. Dans la *Somme contre les Gentils*, Thomas traite de l'ordonnancement des arts, au sens des métiers ou des activités, entre eux. Il considère que l'art d'abattre des arbres sert à la construction navale, laquelle sert à l'art de la navigation, qui à son tour sert à celui de l'économique (IV S. C. G., 75, n°1). La gestion de la maison apparaît donc comme la finalité de la production et du transport, sinon du commerce, elle apparaît donc constitutive de l'activité économique. Encore faut-il distinguer les finalités de l'activité économique, qui peut être conduite en vue d'un gain monétaire ou chrématistique (rendue par *ad pecuniativam*), pour lequel il convient d'acquérir de l'argent, ou en vue de l'économique (*ad œconomicam*), pour lequel il convient de l'utiliser (*Politicorum,* I, 6, n°4). Les richesses sont donc vues dans l'économique comme un instrument et non comme une fin en soi (*Ethicorum*, I, 1, n°15). Cette distinction entre deux finalités de l'activité économique est explicitée dans la *Somme de théologie*, lorsqu'au sein de la question sur la fraude commerciale, Thomas traite du gain des

marchands (*S. T.*, IIa IIae, q. 77, a. 4, voir également *Politicorum*, I, 7, n°11). Il distingue deux types d'échanges selon leur finalité. Il envisage d'abord un échange (*commutatio*), « comme naturel et nécessaire, par lequel l'échange se fait denrée contre denrée [*rei ad rem*], ou denrées contre deniers [*rerum et denariorum*], pour la nécessité de la vie [*propter necessitatem vitae*] ». Il précise que cet échange ne convient pas aux marchands (*negotiatores*) mais davantage aux maîtres de maison (*ad œconomicos*) ou aux hommes politiques (*politicos*), qui doivent approvisionner la maison ou la cité. Il traite ensuite d'une autre espèce d'échange, qui se fait « deniers contre deniers ou denrées quelconques contre deniers, non pour rechercher les choses nécessaires à la vie, mais un gain [*propter lucrum quaerendum*] » (*S. T.*, IIa IIae, q. 77, a. 4, resp.).

Trois observations peuvent donc être faites concernant la délimitation lexicale de l'activité économique à l'aide de l'usage que Thomas fait des terme *œconomia* et *œconomica* : L'*œconomia* constitue une partie de l'activité économique, à savoir l'échange en vue de pourvoir aux besoins de la maison ; elle constitue la finalité de la production et du transport, sans relever pour autant de ces activités ; elle se distingue des échanges qui sont faits en vue d'un gain.

2.1.2. L'activité économique : ni un don ni un vol

Le champ lexical de l'*œconomia* ne suffit donc pas à circonscrire de manière exhaustive l'activité économique de production et d'échange. En revanche, Thomas définit lui-même un ensemble d'activités qui se rapporte à cette délimitation contemporaine. Dans le prologue à la question 77, qui couvre également la question 78, de la *secunda secundae* de la *Somme de théologie*, il regroupe l'objet de ces deux questions sous la notion d' « échanges volontaires [*voluntariae commutationes*] », qui inclut « les achats et les ventes » et « les prêts ». Cette définition offre ainsi une première précision de l'objet de l'activité économique, puisqu'elle exclut le don, qui n'est pas un échange, et le vol, qui est subi involontairement.

On retrouve ainsi les trois modes de relations décrites par Philippe Descola en anthropologie que sont l'échange (avec contrepartie), le don et la prédation (Descola [2005] 2015, 530-531). Cependant, la délimitation opérée par Thomas tend à se démarquer des deux approches conduisant à lire chez lui une interpénétration du don et de l'échange. On note d'abord le développement récent d'une approche anthropologique qui conduirait à introduire du don dans l'échange, puisque l'homme peut être à la fois un homme de don et d'échange, de la justice et

de la charité et qu'il pourrait joindre les deux aspects dans une seule action (Franks 2009, Hirschfeld 2018, Santori 2019, 2020, 2021).

On pourrait considérer au contraire avec Marcel Mauss, dans son *Essai sur le don,* repris dans *Sociologie et anthropologie,* que le don constitue une étape de l'échange puisqu'il montre que les trois obligations sont de donner, recevoir et rendre, et que les échanges sont faits sous forme de cadeaux obligatoirement faits et rendus, parfois sous des formes diverses et immatérielles (Mauss, 1950 [2013], 147-151). Ces deux lectures opposées, du don dans l'échange et de l'absence de don gratuit, ne semblent pas rendre compte du cadre analytique thomasien. En effet, Thomas effectue une distinction nette entre l'échange (*commutatio*), qui relève de la vertu de justice et se trouve régie par la justice commutative, et le don, qui relève de la charité. Ainsi préfère-t-il prévoir la reconnaissance qui peut être explicitement exigée en échange d'un prêt, bien que cette reconnaissance ne puisse faire l'objet d'une obligation civile, puisqu'une telle contrainte nuirait à sa spontanéité (*S. T.*, IIa IIae, q. 78, a. 2). Il se tient ainsi à distance de l'*antidora* (Piron 2005), notion qui vient du Droit romain mais qui se développe à son époque, gratification librement consentie mais dont la liberté même est non dénuée d'ambiguïté (Lordon [2006] 2011, 110-118) et qui pourrait apparaître comme un contre don non assumé de l'usure.

On peut toutefois rapprocher Mauss et Thomas si l'on considère, avec Claude Lévi-Strauss, que l'échange constitue pour Mauss le phénomène primitif et non les opérations discrètes de sa décomposition (Lévi-Strauss [1950] 2013, XXXVIII). En effet, je montre, à travers l'analyse de cas limites comme le traitement des biens réputés non marchands ou semi-marchands, que le cadre analytique thomasien de référence est celui de l'échange et non celui du don. Dans le cadre de l'échange, les éléments parfois interprétés comme une immixtion du don ne relève pas de la gratuité ou de la charité mais relèverait d'un don au sens de Mauss, qui n'est que l'un des éléments de l'échange.

2.1.3. Une activité d'échange plus qu'une activité productive et monétaire

La notion d'échange volontaire et l'ensemble des textes qui se rapportent à ce que cette notion décrit, à savoir l'échange commercial et le prêt, apportent une seconde précision. Non seulement l'activité économique se voit circonscrite extérieurement par le don et par le vol, mais elle se trouve spécifiée par la notion d'échange et par les deux activités qui lui sont rapportées. Ainsi, ni la monnaie et le change monétaire, ni la production ne constituent des activités explicitement et directement désignées par les « échanges volontaires ».

D'abord, Thomas n'inclut pas ici le change monétaire dans les activités d'échanges volontaires. Le change apparait probablement sous une forme spéculative à travers le terme « *campsoria »,* dont le sens est discuté, en *Politicorum*, I, 7. Si *campsoria* a été interprété par Nicole Oresme au XIV^{e} siècle comme l'activité du changeur, le sens du terme est plus général chez Aristote (*Politique*, I, 9, 9-10, 1257b), qui parle de καπηλικόν et de καπηλική (*kapelikon/kapeliké*) pour désigner le commerce de détail, par opposition au grand commerce par mer, ἐμπορία (*emporia*), qu'on trouve en *Politique*, IV, 4, 10. Lorsque Guillaume de Moerbecke traduit la *Politique* d'Aristote en latin, ne connaissant pas le terme, il le latinise en *capelica,* qui devient *campsoria* chez Thomas. Le sens du terme chez Thomas demeure obscur, comme l'explique l'histoire de son apparition (Langholm 1984, p. 56-57 ; Dupuy 1992, 41), mais il semble qu'il renvoie au change spéculatif proprement dit, puisqu'il s'agit d'échanger deniers contre deniers en vue d'un gain, plutôt qu'au petit négoce selon le sens du terme grec qu'on trouve chez Aristote. La confusion est en effet possible, puisque le texte d'Aristote serait logiquement et économiquement signifiant si l'on remplaçait le petit négoce par le change, puisqu'il s'agit de nouvelles opérations à but lucratif permises par l'invention de la monnaie.[1] Ce n'est cependant qu'avec Gilles de Lessines, disciple de Thomas, que le change trouvera pleinement sa place quelques années plus tard dans le *De usuris*.

Ensuite, la production, comme la monnaie, donne lieu à des développements encore allusifs et ne constitue pas un objet économique de plein exercice, puisque l'activité économique est l'échange volontaire. La production n'est traitée qu'en tant qu'elle donne lieu à un échange. Le champ lexical de la production est présent chez l'Aquinate, avec 1 321 occurrences de « *productio* » et de ses dérivés. La production est également présente à travers le travail, puisque les œuvres de l'Aquinate comptent 1 864 occurrences du terme « *labor* » (travail) et de ses dérivés. Cependant, ces termes demeurent peu présents dans les textes à portée directement économique. Pour rendre compte de l'approche de la production chez Thomas, on peut relever trois passages significatifs. D'abord, dans le *De enptione et venditione ad tempus*, Thomas détermine les dépenses qui peuvent être intégrées dans le prix. Seul le transport est évoqué explicitement, comme exemple, parmi ces dépenses : « il est permis que les marchands puissent récupérer les autres dépenses faites licitement, par exemple pour le transport des draps » (*De*

[1] « Une fois la monnaie inventée par suite des nécessités de l'échange, apparut l'autre forme de l'art d'acquisition, le commerce de détail, pratiqué d'abord de manière fort simple ; et ensuite, grâce à l'expérience, avec une technique déjà plus poussée qui rechercha les sources et les modes d'échange en vue de faire le plus gros profits » (Aristote, *Politique*, I, 9, 9, 1257b). « Si l'on place souvent la richesse dans l'abondance de la monnaie, c'est parce que cette abondance est le but de l'art d'acquisition et du commerce de détail » (Aristote, *Politique*, I, 9, 10, 1257b).

emptione, III). Les dépenses de production du bien et de service commercial hors transport sont licites mais ne font pas l'objet d'une attention particulière, étant simplement désignées par l'expression « autres dépenses ».

La production apparaît cependant brièvement dans la *Somme de théologie* lorsque Thomas évoque les trois cas où la majoration du prix est licite : l'amélioration du bien, la variation des prix et les risques de transport (*S. T.*, IIa IIae, q. 77, a. 4, ad 2). La production n'est pas abordée ici à travers le travail mais à travers la qualité qu'elle confère au bien. Cependant, ici encore, cette production n'est considérée par l'Aquinate que dans la perspective de la détermination d'un juste prix qui permette l'échange.

Si la production est souvent mentionnée de manière allusive et n'entre pas pour elle-même dans le champ de l'activité économique circonscrit par Thomas qui est celui des échanges volontaires, ses évocations viennent éclairer la justice de ces échanges. Dans son *Commentaire de l'Éthique à Nicomaque* d'Aristote, Thomas aborde le juste prix par les coûts de production, ce qui demeure très rare dans ses œuvres. Le juste prix qui permet l'échange doit assurer une égalité des coûts de production « en travail et en dépenses [*in labore et expensis*] » (*Ethicorum*, V, 9, n°3). L'introduction de la production, et plus seulement de l'échange, permet d'unir, dans l'activité économique, les deux principes de la justice particulière que sont la justice commutative et la justice distributive. En effet, le juste prix est le prix qui permet la justice de l'échange selon une égalité de chose à chose, qui est la justice commutative (*S. T.*, IIa IIae, q. 77, a. 1, ad 3). Il est aussi ici le résultat de l'exercice de la justice distributive, qui n'est pas une égalité de chose à chose mais une proportionnalité de chose à personne (*S. T.*, IIa IIae, q. 61, a. 2, resp.).

Pour saisir comment la production peut être vue sous l'angle de la justice commutative et sous l'angle de la justice distributive, il faut d'abord dissiper une ambiguïté. La justice distributive ne traite pas de la répartition d'un « bien commun » qui serait différent des autres, mais d'un bien pris du commun (Chaplygina et Lapidus 1996, 24), qui est alors distribué, comme il peut également être échangé de personne à personne : « La justice commutative et la justice distributive ont même matière. Les biens peuvent être distribués du commun au particulier [*res distribui possunt a communi in singulos*], ou échangés d'un [particulier] à l'autre [*commutari de uno in alium*] » (*S. T.*, IIa IIae, q. 61, a. 3, resp.). On peut donc considérer, à la fois, que chaque revenu est échangé contre la part apportée à la production (justice commutative) mais

aussi que les revenus de la production constituent un ensemble commun réparti entre des personnes privées qui ont contribué à cette production (justice distributive).

Le coût du travail et des autres dépenses correspond à des revenus pour le travailleur et ceux qui fournissent ce qui apparaît comme des consommations intermédiaires. La justice du prix, pensée à partir de la production, fixe un rapport d'échange (justice commutative), mais ce rapport résulte de la répartition des revenus (justice distributive) effectuée selon le mérite, au sens spécifique que lui donne Thomas, c'est-à-dire une hiérarchie sociale préétablie, selon une conception organiciste de la société (Lapidus 1992, 33). Ainsi Thomas considère-t-il la répartition des revenus comme des parties d'un tout : on doit payer l'impôt au prince, le salaire aux ouvriers et la dîme à l'Église ; la dîme est calculée et payée sur le gain brut, avant l'impôt et les salaires, car les fruits de la terre viennent de la bonté divine (*S. T.*, IIa IIae, q. 87, a. 2, ad. 4). Cette bonté divine doit donc être rétribuée en premier.

En outre, ces coûts, même pris individuellement, ne sont pas toujours régis par la justice commutative. Prenons l'exemple du coût du travail, qui est le coût explicitement évoqué par Thomas dans l'expression « *in labore et expensis* ». On peut comprendre l'expression comme la désignation des dépenses de production dans leur ensemble ou comme la manifestation d'une distinction entre le travail et les autres dépenses qui sous-entendrait que le travail fait l'objet d'une rémunération spécifique. Les œuvres de l'Aquinate laissent penser que le cadre d'analyse est celui de l'échange comme c'est le cas des autres dépenses, mais avec des spécificités. Le coût du travail représente un revenu pour le travailleur. Ce revenu est le fruit d'un échange avec égalité de chose à chose : le salaire (*merces*) « est versé en compensation pour rétribution d'une œuvre ou un travail [*recompensatur pro retributione operis vel laobris*] » (*S. T.*, Ia IIae, q. 114, a. 1, resp.). Ce même salaire correspond à la définition de la justice commutative, c'en est même un exemple-type : « une égalité d'une chose à une autre, par exemple la récompense d'un salaire [*recompensatio mercedis*] » (*S. T*, IIa IIae, q. 57, a. 1, resp.). L'égalité étant donnée par le prix (*S. T.*, IIa IIae, q. 77, a. 1, ad 3), il n'est pas étonnant que Thomas parle du « prix d'un salaire [*pretium mercedis*] » (*S. T.*, IIa IIae, q. 100, a. 2, resp.), puisque le salaire est le prix du travail. Le salaire appartient donc à la justice commutative (Noell 1998, 475), cependant deux éléments conduisent à ne pas réduire le revenu du travail à une égalité selon la justice commutative. D'une part, il existe des cas où le travail ne fait pas l'objet d'un prix selon une égalité des valeurs mais d'une indemnité, d'un dédommagement du service social rendu. C'est le cas de l'indemnité du prêtre (*In IV Sent.*, d. 25, q. 3, a. 2, qc. 1, ad 4), du soldat (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.), ou du marchand (*S. T.*, IIa IIae, q. 77, a. 4, resp.), du salaire des comédiens

qui doit être modéré mais qui est possible (*S. T.*, IIa IIae, q. 168, a. 3, ad 3) ou de la rémunération des avocats. Comme celle des médecins, elle doit être modérée et elle ne doit pas être uniquement fondée sur une égalité de chose à chose, mais « en tenant compte de la condition personnelle [de leurs clients], des affaires [traitées], du travail, et des coutumes du pays [*considerata conditione personarum, et negotiorum, et laboris, et consuetudine patriae*] » (*S. T.*, IIae IIae, q. 71, a. 4, resp.). D'autre part, le travail doit assurer la subsistance, puisque c'est sa finalité (*S. T.*, IIa IIae, q. 187, a. 3, resp.). L'égalité de chose à chose ne suffit pas à assurer la justice de la rémunération, mais celle-ci doit permettre la subsistance. La justice du revenu du travail ne relève donc pas uniquement de la justice commutative. Certaines situations justifient que d'autres éléments viennent parfois moduler, au sein même de l'échange, l'exercice de la justice, pour aboutir à un rapport d'échange qui, pour être juste, doit se distinguer du prix entendu comme un rapport d'égalité de chose à chose.

L'approche du juste prix par les coûts de production, qui correspond à une approche par les revenus que représentent ces coûts, fait donc apparaître la nécessité d'envisager la justice particulière dans toutes ses composantes. La répartition des revenus et la détermination de chacun de ces revenus pris individuellement sont certes exprimées selon la justice commutative (avec parfois la prise en compte d'autres éléments, qui ne relèvent pas d'une égalité de chose à chose) mais le prix ou le rapport déterminé dans l'échange selon la justice commutative permet à la justice distributive, qui touche la répartition, de s'exercer.

On doit enfin clarifier le cas que Thomas fait d'un éventuel financement de la production par l'emprunt (*S. T.*, IIa IIae, q. 78, a. 2, ad 5). Le prêt est un *mutuum*, au sens du Droit romain, un transfert de propriété. L'emprunteur « conserve cet argent à son propre risque et est tenu de le restituer intégralement. Le prêteur ne peut donc exiger plus qu'il a prêté [*mutuavit*] ». Il s'agit donc d'un prêt sans intérêt. Le financement de la production ne suscite donc pas formellement de dérogation à l'interdiction du prêt à intérêt. En revanche, « qui confie [ou engage, risque] son argent [*commitit pecuniam*] » à un marchand ou à un artisan selon le mode de la société (*per modum socetatis*), en restant propriétaire, participe au risque du marchand ou de l'artisan. Cet investisseur partage le risque (*periculo*) et peut donc réclamer une part du gain (*partem lucri*) et supporter une part de la perte. Au premier abord, on peut recevoir une rémunération parce qu'on prend part au risque, mais la jonction se fait par la propriété : le risque montre que l'on reste propriétaire et qu'il ne s'agit donc pas d'un *mutuum*. L'investisseur peut donc recevoir une rémunération en tant que propriétaire.

On peut considérer que Thomas adopte une approche par l'objet du financement, auquel cas sa distinction relève d'une tentative de contournement de l'interdit de l'usure pour financer la production et le transport, ou une approche par la nature du financement, auquel cas la distinction entre prêt et actionnariat n'est plus formelle mais elle prend un sens économique. En effet, dans le cas du prêt, le risque incombe à l'emprunteur, alors que, dans le cas de la *societas,* le risque incombe à tous les partenaires. Il est possible de considérer une voie moyenne selon laquelle Thomas cherche à légitimer le financement de la production, donc à contourner l'interdit de l'usure, mais en considérant la distinction de nature économique entre les deux opérations à partir de l'assomption du risque. L'interdiction très explicite, dans le reste de ses œuvres, de l'emprunt pour développer une activité productive ou commerciale (par exemple en *De emptione*, III) semble confirmer que cette distinction entre les modes de financement n'est pas purement formelle et légale. On constate également que Thomas n'établit pas de distinction conceptuelle entre prêt à la consommation et prêt à la production mais que le départ se fait à partir de la propriété et de la participation au risque et aux gains qu'elle permet.

La nécessité de financer la production entraîne au Moyen Âge le développement de substituts au prêt. Le XIII^e^ siècle voit apparaître la rente, ou contrat de *census*, qui consiste en la vente d'un bien productif acheté avec le produit de son exploitation (Lapidus 1992, 58). Il s'agit de la vente d'un droit (Noonan 1957, 156-157) davantage régie par le juste prix que par l'usure. La rente, d'abord annuelle en grain, devient rapidement rente perpétuelle en grain (McLaughlin 1939, 120 ; Theiller 2009, 256) puis plus souvent monétaire. On voit également se développer les rentes viagères en monnaie (Munro 2002, 325). L'interprétation de la rente à partir de la fin du XIII^e^ siècle est multiple : certains théologiens, comme Henri de Gand, assimilent la rente en monnaie à l'usure tandis que d'autres comme Henri de Hesse y voient une sorte de prise de participation (Noonan 1967, 155-156). Chez Thomas, le *census* apparaît peu avec un sens économique autre celui employé que pour décrire l'impôt ou le tribut dû dans l'évangile à l'autorité politique (Matthieu 17 et 22, Marc 12, Luc 13, 16, 19 et 20). On trouve cependant le sens d'une rente permise et qui doit être honorée dans la *Somme de théologie* pour décrire l'une des situations où le don d'offrande est impératif : « si un fonds ecclésiastique a été concédé, à charge de faire à des époques fixées des offrandes déterminées. Ce qui tient compte de la rente [*census*] » (*S. T.*, IIa IIae, q. 86, a. 1, resp.).

Il convient d' ajouter la lettre de change, puisqu'elle va peu à peu jouer un rôle d'escompte au-delà du simple change monétaire et ressortir davantage de l'activité de banquier que de l'activité de changeur (De Roover 1946, 116-119 ; Noonan 1957, 176-177). Cependant, si la pratique se

développe au XIII[e] siècle, la combinaison du change et du prêt n'est pas encore traitée par l'Aquinate et il faut attendre le *De usuris* de Gilles de Lessines, à la fin du siècle, pour en trouver une première analyse.

On trouve encore, chez Thomas, un écho du financement de la production dans les titres extrinsèques, à savoir les contrats qui peuvent être associés au prêt sans intérêt pour assurer au prêteur une compensation (*S. T.*, IIa IIae, q. 78, a. 2, ad 1). On ne peut stipuler de *lucrum cessans*, une indemnité fondée sur le fait « qu'on ne gagne plus rien avec l'argent prêté [*de pecunia non lucratur*] », en revanche, on peut recevoir un dédommagement pour le préjudice subi en se privant de la somme prêtée (*damnum emergens*). Ce dernier cas se présente si le prêteur se trouve dans l'obligation d'emprunter à son tour (McLaughlin 1939, 145).

Ce préjudice peut, bien sûr, affecter une activité de consommation. Mais il peut aussi concerner un artisan qui se trouverait privé de revenu en raison du prêt qu'il aurait consenti. Cependant, ce financement de la production reste limité. L'interdiction qui frappe le *lucrum cessans* concerne typiquement le marchand professionnel, dont on sait que l'argent sert directement au gain. Ainsi, la typologie des titres extrinsèques distingue-t-elle davantage entre les agents engagés professionnellement dans une activité pour le gain (*propter lucrum*), selon l'expression employée en *S. T.*, IIa IIae, q. 77, a. 1, resp., et les autres agents, qu'entre producteurs et consommateurs, bien que ces catégories se recoupent partiellement.

Il apparaît ainsi que si la production et son financement ne sont pas absents de la pensée thomasienne, ils ne constituent pas encore une catégorie clairement établie. Thomas traite de la production à travers l'activité des marchands, la vente, le transport. Tout comme la distinction fonctionnelle des revenus selon qu'ils proviennent du capital ou du travail, la distinction des fonctions économiques élémentaires que sont la consommation et la production est encore allusive. Il faut attendre la fin du XIII[e] siècle et le *Traité des contrats* (vers 1293) du franciscain Pierre de Jean Olivi pour voir apparaître plus clairement l'idée d'un capital investi dans des opérations risquées qui ne soit pas un *mutuum* gratuit et ne tombe pas sous la prohibition de l'usure (Piron 2012, 22) sans relever pour autant du modèle de la *societas*. Se dessine alors une distinction entre prêt à la consommation, qui ne peut pas donner lieu à intérêt puisqu'il est réputé sans risque, et prêt à la production, pour un investissement, qui implique un risque et peut donner lieu à un profit.

On relèvera cependant que les éléments qui viennent justifier ce surplus ne sont pas liés à la nature intertemporelle de l'échange et à la préférence pour le présent, mais à l'existence d'un

risque. Or le risque incombant au propriétaire, Olivi mène d'abord une réflexion approfondie sur le droit de propriété (Toivanen 2016, 43-49). L'élargissement d'Olivi est double. D'une part, dans le cadre du *mutuum*, il accepte parmi les titres extrinsèques le *lucrum cessans* (Olivi, *Traité des contrats*, II, Des contrats usuraires, 51) pour compenser le gain qui aurait été gagné dans le commerce (Kaye [1998] 2004, 119). D'autre part, le surplus vient de la couverture d'un risque Ce surplus est calculé à partir d'un gain probable et non certain. Dans un contrat sans transfert de propriété, donc pas un *mutuum*, le présent est préféré au futur, mais uniquement parce que dans le présent la possession est certaine alors qu'elle est incertaine dans le futur (Piron, 2012, 67 et Olivi, *Traité des contrats*, III – Précisions sur la matière des usures, 53-58). Le profit n'étant qu'attendu, probable, mais pas certain, le prêteur encourt un risque de perte (Piron, 2012, 69) : « La certitude de la chose présente […] est en effet plus grande et plus forte que la certitude d'une chose future » (Olivi, *Traité des contrats*, III – Précisions sur la matière des usures, 55). C'est cet argument du risque qui sert à justifier les rentes : il n'y a pas prêt (*mutuum*) mais achat, car il y a vente de la rente. Il ne s'agit donc pas d'un prêt avec paiement par anticipation mais du paiement actuel d'un droit actuel (*ibid.*, 56).

Deux éléments, peu notés par la littérature, doivent être apportés ici. D'une part, il serait un peu rapide de considérer qu'Olivi autorise le prêt à intérêt (puisque le prêt est un *mutuum*, par nature sans intérêt), et qu'il prend soin (1) premièrement de traiter comme usuraire tout contrat de prêt (*mutuum*) rapportant un surplus (*ibid.*, 65 ; Kirshner et Lo Prete 1984, 254), (2) deuxièmement de rester concernant le prêt dans le cadre des titres extrinsèques, (3) et troisièmement de montrer que, dans une rente, la rémunération vient du fait qu'il ne s'agit pas « d'un contrat de prêt mais d'achat [*non est contractus mutui sed emptionis*] » (Olivi, *Traité des contrats*, III – Précisions sur la matière des usures, 56). La rente n'est pas un intérêt mais ce qui est vendu. D'autre part, il s'agit de payer maintenant le produit d'une rente qui demeure incertain. Le risque pèse sur celui qui achète la rente (l'investisseur), puisque la contrepartie qu'il va recevoir est d'un montant qui peut varier. La justification du surplus est le risque encouru. Olivi est très attentif à l'intention du prêteur (Kirshner et Lo Prete 1984, 255 ; Olivi, *Traité des contrats*, III – Précisions sur la matière des usures, 56) car le confesseur doit établir qu'il n'y a pas d'intention d'un gain sans risque (Piron 1997, 298). Notons qu'alors que Thomas se concentrait sur le déroulement extérieur de l'opération et sur l'effectivité du risque, Olivi s'attache davantage à l'intention du gain sans risque qu'à son effectivité. Quoi qu'il en soit, le surplus licite est donc une prime de risque. Il ne s'agit pas d'un intérêt, puisqu'un intérêt est composé, outre la prime

de risque, d'une compensation issue de la préférence pour le présent. Ici, seule la légitimation par le risque (Piron 2020, 299) est traditionnellement avancée.

Quelques années après Pierre de Jean Olivi, le franciscain Gérard ou Gerald Odonis (ou Guiral Ot) écrit son *Liber de contractibus et restitutionibus et de sententia excommunicationis* en 1315-1317. Ce traité reprend les thèses d'Olivi, mais il adopte un cadre analytique nouveau pour penser le prêt à intérêt et préfigure ainsi ce que seront les développements de l'époque moderne. Le préjudice engendré par le prêt rend légitime un intérêt (Piron 1997, 297) et à la suite de la bulle *Exiit qui seminat* (1279), Odonis sépare la propriété de l'usage (Ceccarelli et Piron 2009, 185). Odonis ne suit plus les discussions complexes autour des différents titres extrinsèques, mais il envisage directement la « vente du temps », légitimée par l'utilité sociale des marchands (la justification par le bien commun se trouvait déjà chez Olivi, voir Ceccarelli 1999, 242) et la nécessité d'un délai de paiement pour le commerce au long cours (Ceccarelli et Piron 2009, 180-181). Désormais, ce n'est donc plus le risque qui justifie le surplus mais le temps.

Cette évolution aboutira cinq siècles plus tard, par exemple chez Turgot, à la promotion d'une libéralisation du prêt à intérêt, perçu davantage comme un prêt à la production que comme un prêt à la consommation. D'abord, le développement du commerce « roule sur l'argent emprunté » (Turgot, *Mémoire sur les prêts d'argent,* XIV, 18), ce qui évite au producteur ou au commerçant d'aliéner son capital. Ensuite, l'argent est une marchandise qu'on peut vendre ou louer (*ibid.*, XXXVI, 75). Enfin, la libéralisation du commerce de l'argent permet à l'artisan de placer facilement sa petite épargne, ce qui permet de prévenir la misère, les accidents de la vie et de financer sa vieillesse (*ibid.*, XL, 80-81).

Il faut noter une différence majeure entre Olivi d'une part et Odonis puis Turgot d'autre part. Olivi est certes plus ouvert à l'intérêt que ses prédécesseurs, mais son cadre d'analyse est le même que celui de Thomas : le *mutuum*, les titres extrinsèques ou la rente, bien que cette dernière soit moins présente chez l'Aquinate. Le surplus est encore fondé sur le risque seul. Il s'agit davantage d'une prime de risque que d'un intérêt au sens plénier, puisqu'un intérêt est composé d'un surplus issu de la préférence pour le présent, et d'une prime de risque. Or chez Olivi, le prêt sans risque ne fait pas l'objet de surplus. Odonis, puis Turgot, au contraire, n'abordent que très peu le risque. C'est le temps qui légitime l'intérêt (Turgot, *Mémoire…*, XXIII, 34). L'argent est loué comme tout bien et l'intérêt est le « loyer de l'argent pour un temps » (*ibid.*, XXIV, 35). Thomas d'Aquin demeure bien en retrait de cette utilité économique du prêt, bien qu'il cherche à en expliquer le mécanisme au-delà de l'argument patristique

traditionnel qui y voit une exploitation du pauvre. Deux éléments sont cependant déjà en germe : comme ce sera le cas chez Olivi, c'est le risque qui justifie le surplus, mais pour Thomas le prêteur n'encoure pas de défaut de crédit et la prise de risque ne se prend qu'à travers les modèles de prise de participation comme la *societas*. Paradoxalement cependant, certaines proximités se dessinent entre Turgot et Thomas. Comme cinq siècles plus tard chez Turgot, le prêt n'est pas le lieu du risque mais d'un préjudice issu de la préférence pour le présent. Toutefois, chez Thomas, cela ne s'exprime encore qu'avec parcimonie à travers les titres extrinsèques que sont le *damnum emergens* et la *poena conventionalis,*

2.2. Le risque dans les œuvres de jeunesse de Thomas d'Aquin

Le XIII[e] siècle constitue une période de mutation sociale et intellectuelle qui favorise un fort développement de la réflexion portant sur des questions de nature économique. Au sein de ce vaste ensemble, la contribution de Thomas d'Aquin est la plus abondante et la plus large. L'Aquinate écrit en moraliste, mais sa quête morale l'amène à investiguer les mécanismes économiques pour en comprendre les articulations. Dans sa description du prêt et de l'échange commercial, la notion de risque apparaît rapidement, puisque ces opérations engagent des agents qui prennent des décisions pouvant entraîner une pluralité de conséquences. Cette notion de risque émerge à travers les champs lexicaux de la probabilité, de la prudence et du danger. En outre, la lecture des œuvres de Thomas met en évidences trois types de risques : les risques explicitement identifiés par l'Aquinate, les risques implicitement présents et repérables dans les situations décrites et les risques que le traitement des opérations économiques proposé par Thomas peut engendrer. Pour étudier ces différents types de risques, les œuvres de jeunesse, jusqu'ici peu explorées, se révèlent fondamentales : à la fois fondatrices, en montrant l'évolution de Thomas face aux autorités et en annonçant ses écrits postérieurs, et structurelles, en établissant un socle analytique et conceptuel large.

2.2.1. Pourquoi étudier le risque chez Thomas d'Aquin

L'œuvre de Thomas d'Aquin marque un tournant dans le traitement du risque pour deux raisons, tenant la fois aux faits et à la pensée économiques.

D'abord le XIII[e] siècle constitue une grande période de mutations économiques dans l'Occident latin, avec l'émergence des villes, le déclin progressif du servage, bien qu'il demeure encore important (Domar 1970, 28-30 ; Feller 2017, 171 ; Persson 20214, 235), et l'avènement d'une nouvelle catégorie sociale, celle des marchands, qui devient vite prédominante (Le Goff [1956]

2001, 41-67 ; [2010] 2019, 121-231). On peut y associer le développement des foires et de nouvelles pratiques commerciales et financières ou du commerce au long cours (Spicq 1935, 392-399). Le transport et les opérations à terme représentent donc des risques qui, sans être nouveaux, deviennent plus structurants.

Ensuite, Thomas d'Aquin est l'auteur qui fournit, en matière économique, l'apport quantitativement le plus important de cette période. Au siècle précédent, le *Décret* de Gratien en 1140 (*Decretum*, I, d. 47, introduction ; I, d. 88, c. 11 « *Ejiciens* » ; II, causa 14, q. 1 ; II, causa 14, q. 4) et les *Sentences* de Pierre Lombard en 1150 (*III Sent.*, d. 37 et *IV Sent.*, d. 16) en 1150 avaient fourni le cadre réflexif général. Le début du siècle est marqué par un traité spécifique, le *De usura* de Robert de Courçon (†1219), puis on trouve la question de l'usure reprise par Guillaume d'Auxerre (†1230) dans sa *Summa aurea* (III, XLVIII, c. 1, q. 1). Grégoire IX aborde en 1234 les deux grandes questions médiévales que sont la justice de l'échange commercial (*Decretales,* l. 3, d. 17 « *De emptione et venditone* ») et l'usure (*Decretales*, l. 5, t. 19, qui comporte un chapitre sur la vente à crédit (c. 10) et un chapitre sur le financement de l'investissement du commerce maritime, dites décrétale « *Naviganti* » (c. 19)). Albert le Grand (†1280), maître et prédécesseur immédiat de l'Aquinate, offre ensuite une réflexion plus large, qui porte à la fois sur l'usure, sur le juste prix, sur l'activité des marchands et sur la monnaie (*In III Sent.*, d. 37, a. 13 ; *In IV Sent.*, d. 16, a. 46 ; *Ethicorum* – premier commentaire, 1250-1252 (ed. Cologne), V, VII-IX et second commentaire, postérieur à 1260 (ed. Borgnet), V, II, 9 ; *Politicorum*, I, 8). La fin du siècle sera marquée par le traité *De usuris in communi* de Gilles de Lessines (†1304).

Le *corpus* à portée directement économique de Thomas d'Aquin est le plus ample du XIII^{e} siècle. On compte d'abord deux textes dans le *Commentaire des Sentences*, son œuvre de jeunesse de bachelier sententiaire, rédigé à Paris en 1252-1256 - un article sur l'usure (*In III Sent.*, d. 37, a. 6) et une brève sous-question sur la licéité de l'activité des marchands (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3). Faute d'édition critique, on peut se reporter à l'édition Lethielleux. Il faut noter ensuite trois traités : le *De emptione et venditione ad tempus*, sur les opérations à terme, écrit en 1262 durant son séjour comme lecteur conventuel à Orvieto, à la demande du frère Jacques, du couvent de Viterbe, et la *Lettre à la duchesse de Brabant*, rédigée à Paris en 1271. On peut y joindre le *De regno*, traité d'abord politique et qui n'appartient donc pas directement au *corpus* économique, mais qui comporte une section plus économique sur le commerce ((II, 7), II, 3). Ce traité a peut-être été écrit à Rome en 1265-1267 mais sa datation demeure incertaine. Ces trois traités sont édités par la Commission léonine dans son volume

Opuscula III. Parmi les œuvres de la maturité, rédigées à Paris et éditées par la Commission léonine, les questions 77 et 78 de la *Secunda secundae* de la *Somme de théologie*, écrite à Paris en 1271-1272 ont parfois éclipsé les autres œuvres. On doit pourtant ajouter les *Questions quodlibétiques* (II, q. 5, a. 2 sur le juste prix et III, q. 7, a. 2 sur l'usure), qui datent de 1268-1272, la *Question disputée De malo*, q. 13, a. 4 écrite autour de 1270 et les commentaires de la *Politique* (I, 6-9) et de *l'Éthique à Nicomaque* d'Aristote (V, 9), qui datent respectivement de 1269-1272 et de 1271-1272. Enfin, on peut ajouter, bien qu'elles ne fassent pas à proprement parler des œuvres à portées économiques, les *Collationes in decem preceptis* sur les Dix commandements, qui traitent toutefois de l'usure (XXVI, sept. prec.). Ces *Collationes* résultent d'une édition, finalisée tardivement, des prédications italiennes données par Thomas dans sa langue maternelle. Si Torrell 1985, qui en propose l'édition critique, et Émery 1993, hésitaient entre une datation traditionnelle du carême 1273 et une datation correspondant au précédent séjour italien de Thomas en 1261-1268, Torrell 2015b revient à la datation du carême 1273.

Il faut cependant garder en mémoire deux observations qui entraînent la nécessité d'une certaine précaution méthodologique pour éviter les surinterprétations ou les mécompréhensions. D'une part, ces écrits répondent à des questions de théologie ou de philosophie morales. Ils visent d'abord à préciser la situation peccamineuse des agents selon les situations. Cependant, pour honorer une question d'ordre moral, Thomas cherche à comprendre positivement les opérations d'échange et leur mécanisme. L'intérêt que l'Aquinate peut alors susciter, pour le caractère positif de son analyse, en histoire de la pensée économique ne doit cependant pas conduire à négliger son intention morale et normative première. Cette normativité s'entend d'abord au sens couramment admis dans l'expression « économie normative ». Bien que ce concept ait pu évoluer et soit relativement polysémique (Mongin 2018), il concerne la description de ce qui doit être fait pour atteindre un objectif ou répondre à un système de valeurs - ou parfois, mais ce n'est pas le cas ici, l'étude de ces jugements de valeurs (Mongin 2006, 19-20) - et non la simple description de ce qui est. La normativité est aussi ici, dans le sens plus médiéval de la conformation à une hétéronomie, la mise en œuvre de ce qui doit être fait selon une norme morale extérieure, qui est la vertu de justice. D'autre part, ce *corpus*, pour être vaste, ne représente qu'une faible part de l'ensemble d'une œuvre essentiellement biblique, théologique et philosophique (ainsi, dans la *Somme de théologie*, les deux questions traitant d'injustices commises dans le cadre d'opérations économiques, réunies sous le vocable d' « échanges volontaires » (*S. T.*, IIa IIae, q. 77, prol.), la fraude commerciale (*S. T.*, IIa IIae, q. 77) et l'usure

(*S. T.*, IIa IIae, q. 78) sont à rapporter aux 614 questions de l'ouvrage et leurs 8 articles à ses 3 125 articles.

Enfin, ces deux réserves étant posées, il faut souligner que l'apport thomasien est non seulement quantitatif mais surtout qualitatif. Thomas marque une étape majeure dans le traitement de l'ensemble des questions qui touchent à l'activité économique. Concernant l'usure, il reprend l'argument apporté par les autorités comme le *De usura* de Robert de Courçon au début du siècle, à savoir la compréhension du prêt comme un *mutuum* issu du Droit romain, mais avec prudence et en lui adjoignant une approche monétaire de l'usure. Il imprime ainsi une évolution nette dans la justification de l'interdiction du prêt à intérêt. Son œuvre se situe en quelque sorte à mi-chemin, non seulement chronologiquement mais aussi conceptuellement, entre le *De usura* de Robert de Courçon et le *De usuris* de Gilles de Lessines. Ce dernier traité, longtemps attribué à Thomas, apporte en effet une nouveauté notable dans la complexité des opérations usuraires décrites et dans la technicité de l'analyse économique proposée. Au sujet de l'activité des marchands Thomas, à la suite de Albert le Grand, présente une évolution significative par rapport à Gratien et à Pierre Lombard en considérant que l'activité peut avoir lieu sans péché et en fournissant le cadre normatif de la licéité de l'activité.

Concernant la compréhension de l'échange, Thomas accorde une importance nouvelle à la notion de prix qui lui permet de contourner l'intention cachée des agents. Il recourt dès son *Commentaire du livre d'Isaïe* comme bachelier biblique (1252) au concept de juste prix. Ce concept, certes déjà ancien, surtout employé par les canonistes puis progressivement par les théologiens (Baldwin 1959, 9), trouve chez Albert le Grand, puis chez Thomas d'Aquin un déploiement nouveau pour réduire le risque d'injustice de l'échange. Thomas s'appuie sur des critères visibles et objectifs pour déterminer la justice de l'échange : le prix, mais aussi la nature de l'objet échangé. Cela lui permet de distinguer à travers les deux occurrences de l'expression « juste prix » dans le *Commentaire des Sentences* ce qui est marchand, ce qui ne l'est pas et ce qui est échangeable mais selon un autre rapport d'échange que le prix, puis d'exprimer dans ses écrits plus tardifs le caractère non marchand dans les termes mêmes du marché, puisque ce qui n'a pas de prix devient ce qui est hors de prix. Thomas offre également une réflexion nouvelle sur la monnaie, d'abord à travers la question de l'usure pour déterminer à quel type de bien elle correspond, selon qu'elle est détruite ou non au cours de l'échange, puis, dans ses écrits plus tardifs comme son *Commentaire de la Politique* d'Aristote, en jetant les bases d'une théorie conventionnaliste de la monnaie, dont la valeur ne résulterait plus d'abord de son poids en

métaux précieux mais de la puissance du prince qui la mettrait en circulation et en garantirait la valeur.

Les « échanges volontaires » dans leur ensemble, qu'ils relèvent du prêt ou de l'échange commercial, décrits par l'Aquinate soit au sein de ses écrits proprement économiques soit au cours de ses développement théologiques, peuvent être envisagés sous l'angle du risque, puisqu'ils décrivent des situations où les agents, acheteur ou vendeur, prêteur ou emprunteur, mais aussi les observateurs comme le moraliste, prennent des décisions qui vont avoir des conséquences pour eux-mêmes et pour les autres. Encore faut-il déterminer de quelle manière le monde dans lequel se déroulent ces échanges est, pour Thomas, un monde risqué, c'est-à-dire un monde où existe une diversité de conséquences possibles.

2.2.2. Le monde de Thomas est-il sans risque ? Probabilité, prudence, danger

Le risque n'est pas traité explicitement chez Thomas d'Aquin. Aucun texte ne lui est spécifiquement dédié. En outre, la présence de son champ lexical demeure ténue. On ne trouve pas, dans les textes à portée économique, les noms *alea* (hasard, chance), *fortuna* (chance, fortune), ou les verbes *angustio* (troubler, inquiéter), ou *inquieto* (s'inquiéter) et leurs formes dérivées. L'apparition de certains termes pourrait, elle, être trompeuse. Ainsi en est-il de *dubium* (doute), qui n'est présent que sous la forme négative *non est dubium* (il n'y a pas de doute) pour souligner l'absence de doute que la situation décrite soit usuraire (*De emptione*, I, II et III). Dans l'opération de prêt, on trouve deux mentions de la *poena conventionalis* (*De malo*, q. 13, a. 4, ad 14), même si le terme n'apparait pas, c'est-à-dire d'une pénalité imposée à l'emprunteur en cas de retard de paiement, un « *interesse* », mais Thomas n'envisage pas le risque de défaut où le prêteur ne serait jamais remboursé. On pourrait ainsi croire à la description par l'Aquinate d'un univers sans risque.

Le vocabulaire du risque est cependant présent sous trois champs lexicaux connexes : la probabilité, la prudence et le danger. Le premier est celui de la probabilité avec l'expression *satis probabilis* (assez probable) qui figure dans le premier texte économique de Thomas, l'article sur l'usure du *Commentaire des Sentences*, en *In III Sent.*, d. 37, a. 6, pour caractériser la validité de la position des autorités, à savoir l'approche du prêt par le *mutuum* issu du Droit romain. Il vient donc décrire un risque d'erreur d'analyse. Ce qui est probable n'est pas certain, surtout dans l'usage du terme « probable » avant le développement des calculs de probabilités au XVIII^{e} siècle. Si Jacques Bernoulli définit en 1713 dans son *Ars conjectandi* la probabilité comme un « degré de certitude [*gradus certitudinis*] » (IV, 1, p. 211 et IV, 4, p. 225), pour

Thomas, et plus largement pour les médiévaux, la connaissance est soit apodictique (vérité universelle et absolue) par voie démonstrative, soit persuasive, par un ensemble d'opinions et d'arguments (Daston 1988, 37-38). Cela résulte d'une distinction de nature entre le certain et le probable (Byrne 1968 ; Daston 1988 ; Hacking 2006), distinction dans laquelle s'insère la notion de foi, *fides*, développée par Thomas (*S. T.*, IIa IIae, q. 2, a. 1, resp.), pour décrire une forme d'assentiment à un existant mais qui est non évident et dont la connaissance relève donc du probable (Wirth 1983, 21-22). Thomas présente les deux manières distinctes de raisonner, apodictique et persuasive, au début de son *Commentaire aux Seconds analytiques* d'Aristote (*In Post.*, I, 1, l. 65-74). Chez Thomas, comme chez Aristote, le probable et le certain relèvent de deux ordres différents de connaissances. Il demeure donc un risque que l'argument avancé par les autorités pour condamner l'usure soit erroné. Le premier risque explicite est donc un risque d'analyse et de compréhension de l'activité économique.

Les deux autres termes employés ne concernent plus tant le risque d'erreur dans l'analyse économique que le risque encouru par les agents lors d'une opération. En effet, le deuxième champ lexical est celui de la prudence et de l'attention. L'Aquinate dénonce en *De emptione*, III les marchands qui effectueraient des dépenses (*expensas*) par imprudence, c'est-à-dire *incaute* (sans précaution) et *imprudenter* (imprudemment). Ces dépenses peuvent être assimilées à des risques, car elles donnent lieu à une pluralité de conséquences possibles selon les conditions qui se présenteront lors de la vente en termes de prix et de quantité. L'imprudence décrite ici par Thomas consiste en un accroissement du risque de perte, qu'on peut visualiser par un étalement vers la gauche de la courbe représentant la fonction de densité de probabilité, rejoignant ainsi la notion contemporaine de prudence au sens de Kimball 1990. Si la redondance prend une dimension rhétorique, les deux adverbes, tout en ayant un usage courant assez proche, désignent des étapes différentes de cette imprudence. *Incaute* est l'adverbe privatif dérivé de *cautio*, la précaution, l'action de prendre garde. Il désigne ici une dépense effectuée par manque d'attention. *Imprudenter* est l'adverbe privatif dérivé de *prudentia*, la prévoyance, la prévision, la compétence, la sagesse. Il désigne ici une dépense mal avisée, issue d'une mauvaise prévision. Les marchands encourent donc un risque soit par négligence soit par mauvaise gestion qu'ils n'ont pas le droit, pour Thomas, de répercuter dans le prix et de faire supporter au client.

Le troisième champ lexical est celui du *periculum* (danger). Le terme apparaît d'abord en objection pour justifier un prix majoré en cas de grand besoin de l'acheteur, notamment pour éviter un danger (*ad periculum evitendum*) (*S. T.*, IIa IIae, q. 77, a. 1, obj. 3), ce que ne reprend

pas Thomas dans sa solution. Apparaît cependant ici, à travers cette objection, le besoin de se prémunir contre le danger. Rien n'est dit ici du caractère certain ou simplement possible de ce danger, mais dans ce second cas il s'agirait de l'anticipation d'un risque en vue d'en réduire la réalisation ou les conséquences. *Periculum* apparaît ensuite à deux occasions dans le cadre commercial, une fois pour prévenir le risque encouru par l'acheteur, une autre pour indiquer le risque encouru par le marchand. D'une part, « il est toujours illicite de donner à quelqu'un une occasion de danger ou de préjudice [*occasionem periculi vel damni*] ». S'il y a danger imminent (*periculum immineret*), le vendeur devra en informer l'acheteur (*S. T.*, IIa IIae, q. 77, a. 3 ad 3). Dans le *respondeo*, Thomas avait explicité ce *periculum* : il y a danger si ce défaut rend l'usage de la marchandise « difficile ou nuisible [*impeditus vel noxius*] ». C'est le cas du cheval qui claudique, de la maison qui menace ruine ou la nourriture avariée. Si les défauts sont cachés, le vendeur doit les révéler. En revanche, si le défaut est manifeste, comme pour le cheval borgne, une réduction du prix suffit sans communiquer davantage d'information (*S. T.*, IIa IIae, q. 77, a. 3, resp.).

D'autre part, le seul danger légitime reconnu au marchand est celui du transport (*De emptione,* III et *S. T.*, q. 77, a. 4, ad 2). Le transport est d'abord évoqué, en *De emptione*, III, comme une dépense (*expensa*) alors qu'il apparaît comme un risque (*periculum*) dans la *Somme de théologie*. On voit la conjonction de deux phénomènes dans cette mutation. D'abord, la conception du transport évolue. Dans le *De emptione*, bien qu'il s'agisse d'un déplacement sur longue distance, de l'Italie jusqu'à la foire de Lagny près de Paris, il s'agit d'un transport terrestre, sans doute géré individuellement, qui constitue essentiellement une opération de déplacement physique, rendu par l'expression « *in portatione pannorum »,* littéralement les dépenses « dans le portage des tissus ». Dix ans plus tard, Thomas n'évoque plus une dépense mais « un danger [ou un risque, *periculum*] auquel quelqu'un s'expose [*exponit*] par le transfert d'un lieu à un autre [*transferando rem de loco ad locum*] » (*S. T.*, IIa IIae, q. 77, a. 4, ad 2). L'insistance porte davantage sur la distance et le mouvement de déplacement que sur le travail physique de transport. Il s'agit d'une approche plus conceptuelle du transport. Le transport acquiert un nouveau statut et devient une activité économique à part entière, exercée par des professionnels dont la mission est de transporter un bien d'un lieu à un autre, sous la menace, exprimée par le substantif *periculum,* du vol ou du naufrage. Le transport est l'un des deux motifs, avec l'amélioration du bien par l'artisan, qui justifie de vendre un bien plus cher qu'on l'a acheté.

Ensuite, à travers le *periculum*, le risque s'affirme comme le critère de licéité de l'investissement, puisque le danger doit être supporté par le propriétaire (*S. T.*, IIa IIae, q. 78, a. 2, ad 5). L'homme ne peut pas pécher ou inciter l'autre à pécher pour éviter un danger (*periculum*), mais il peut se servir de la malice de l'autre (*De malo*, q. 13, a. 4, ad 19), ce qui est la situation de l'emprunteur qui emprunte par nécessité.

Il n'est pas surprenant que le *periculum* apparaisse dans la *Somme de théologie* dans ces deux questions (*S. T.*, IIa IIae, q. 77 et 78) à l'occasion du traitement du transport et des modalités d'investissement. Le transport maritime est le lieu par excellence de la professionnalisation d'un transport risqué qui nécessite un investissement risqué et où la distinction entre prêt et prise de participation ne constitue pas d'abord une possibilité de choix entre des modalités formelles, l'une licite, l'autre non, de financement, mais tisse le lien entre l'assomption d'un risque et la possibilité d'un gain. À travers le transport, le risque évoqué par Thomas dans la *Somme de théologie* est le risque financier de l'investisseur alors que le risque que l'on peut comprendre en *De emptione*, III derrière l'expression « dépenses » est encore pour une part celui incombant à toute opération commerciale dans le temps et dans l'espace d'achat et de revente.

Au champ lexical de *periculum*, on peut adjoindre celui de « *discrimen* », dont le sens premier est « séparation », mais qui prend aussi le sens de « point critique d'un danger ». On trouve le terme dans l'expression « divers dangers des chemins [*diversa viarum discrimina*] » pour décrire les difficultés d'approvisionnement en *De regno*, II, 7 (II, 3).

Nous constatons ainsi que la notion première chez Thomas est celle du danger : danger qui peut entraîner le besoin d'acheter ou d'emprunter, danger de naufrage qui peut affecter le marchand, danger d'avoir acheté un bien détérioré qui peut affecter l'acheteur. Ce danger peut être interprété en termes de risque puisqu'il résulte d'une opération intertemporelle pouvant connaître plusieurs issues possibles. D'une part, l'agent achète ou vend pour prévenir un danger futur, mais en investissant ou en achetant il peut se trouver confronté à un danger futur. D'autre part, il s'agit d'anticiper un possible préjudice futur, dont la réalisation n'est pas certaine.

Une fois établi, grâce aux quelques risques explicites mis en évidence par le lexique, que l'univers dans lequel se déroule l'activité économique pour Thomas d'Aquin est un univers risqué, nous pouvons distinguer les trois grandes familles de risques selon leur extension. Il s'agit d'abord des risques explicitement identifiés par Thomas à l'aide des champs lexicaux connexes évoqués ci-dessus. L'exemple type est le risque de transport pour le marchand (*De*

emptione, III ; *S. T.*, IIa IIae, q. 77, a. 4, ad. 2). Il s'agit ensuite des risques implicites qui ne sont pas identifiés comme tels par Thomas, mais qui découlent de sa description des opérations économiques. L'exemple type est le risque que dans une vente à terme l'acheteur ou le vendeur se retrouve en situation d'usure ou que dans un acte commercial un bien ne soit pas vendu à juste prix (*De emptione*). Il s'agit enfin des risques que l'approche de Thomas engendre. Le cas type est le risque de défaut d'approvisionnement puisque son analyse le conduit à porter davantage son attention sur la modération du gain du marchand (*S. T.*, IIa IIae, q. 77, a. 4, resp.) et sur les externalités négatives pour la société de la présence des marchands étrangers (*De regno,* II, 7 (II, 3)) que sur la nécessité que représente l'approvisionnement pour la cité, conséquence qu'il n'évoque pas, contrairement à son maître Albert le Grand, lorsqu'il envisage l'arrêt de l'échange (*Ethicorum*, V, 9).

La prise en considération par l'Aquinate du caractère risqué des situations qu'il décrit étant attestée par le lexique qu'il emploie, il faut désormais préciser le *corpus* de référence qui constitue le socle de l'analyse de ce risque.

2.2.3. Les œuvres de jeunesse : une référence fondatrice

La présente recherche s'appuie, comme *corpus* de référence, sur les œuvres de jeunesse de Thomas d'Aquin. L'ensemble du *corpus* thomasien à portée économique demeurant limité, tout comme l'ensemble du *corpus* de cette époque, ces œuvres de jeunesse sont mises en lien avec l'ensemble de ces textes, qui se trouve ainsi analysé avec autant d'attention. Cependant, partir de l'ensemble restreint que constituent les œuvres de jeunesse vient sortir de l'ombre des textes peu étudiés par la littérature économique, qui se concentre sur les œuvres tardives, principalement la *Somme de théologie*. Le *Commentaire des Sentences* et le *De emptione* ne bénéficient que de quelques références rapides. Il s'agit donc ici de combler un manque et de fournir une première analyse économique de ces textes peu connus. Porter une attention particulière aux textes de jeunesse permet également de tendre, en les délimitant, à une certaine exhaustivité dans leur analyse en les étudiant pas à pas de manière systématique. Cette démarche conduit à mettre en lumière deux intérêts majeurs de ces textes : d'une part, des apports propres qui ne figurent pas dans les textes tardifs et plus connus, d'autre part, des éléments permettant de souligner les évolutions de Thomas par rapport à ses prédécesseurs et au sein même de son œuvre.

Les apports propres des écrits de jeunesse ne doivent pas être sous-estimés. Certes, le thème de l'usure, abordé pour la première fois en *In III Sent.*, d. 37, a. 6, est abondamment repris et

développé par la suite avec les mêmes points d'appui, bien qu'ils soient convoqués différemment, à savoir le prêt comme *mutuum* et la fongibilité ou non de la monnaie. En revanche, l'introduction de la notion de probabilité pour juger de la pertinence d'un argument contre l'usure, avec l'emploi de l'expression « *satis probabilis* », est propre au *Commentaire des Sentences* et fonde, dès le premier texte à portée directement économique et mieux que partout ailleurs, le risque d'erreur d'analyse et de compréhension de l'activité économique. De même, si Thomas traite ensuite de l'échange (*S. T.*, IIa IIae, q. 77, a. 1-3), du gain des marchands (a. 4) ou de certaines opérations commerciales spécifiques comme la vente à terme (*De emptione*), l'activité des marchands proprement dite, avec ses conditions d'exercice, constitue un thème propre à *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. Enfin, si on trouve quelques éléments synthétiques de façon dispersée dans les œuvres ultérieures, le traitement détaillé et unifié de la vente à terme demeure l'apanage du *De emptione* et c'est là qu'on trouve le développement thomasien sur le sujet.

La lecture des œuvres des jeunesse conduit ensuite, d'une part, à mettre en évidence les continuités et les ruptures opérées par Thomas vis-à-vis des autorités dont il hérite et, d'autre part, à dessiner les évolutions de sa pensée entre ses œuvres de jeunesse et ses œuvres postérieures. Il s'agit ainsi de comprendre à frais nouveaux les œuvres de la maturité, pourtant plus connues, en en fournissant de nouvelles clés de lecture. Le premier traitement de l'usure éclaire les développements ultérieurs à partir d'une combinaison entre l'argument du *mutuum*, fondé sur la propriété, et l'argument monétaire qui connait une évolution fondée sur la reconnaissance du caractère fongible de la monnaie. Le cadre d'exercice de l'activité des marchands, avec l'articulation de deux critères, qualitatif et quantitatif, de la justice de l'échange, constitue le socle sur lequel Thomas peut ensuite discuter du juste prix et voir dans le prix un indicateur visible et objectif de justice. Le traitement de la vente à terme apporte la première approche du juste prix en termes de valeur du bien et comme prix que l'on peut trouver sur le marché, ce qui sera repris et affiné dans la *Somme de théologie* alors que le *Commentaire de l'Éthique à Nicomaque* proposera une approche du juste prix par les coûts de production. La nature des dépenses du marchand, introduite à l'occasion du traitement de la vente à terme, fera ensuite l'objet de précisions importantes : les dépenses seront plus explicitement exprimées en termes de risque et leur licéité devra être complétée par la licéité de leur moyen de financement.

Il apparaît donc utile de lire les écrits de jeunesse à la fois pour eux-mêmes et dans une perspective diachronique. Le rapport instrumental aux œuvres de jeunesse pour renouveler la lecture des œuvres plus tardives et plus connues de l'Aquinate se montre fécond, mais il ne

suffirait cependant pas à leur rendre justice. Les œuvres de jeunesse méritent, pour l'analyse systématique qu'elles proposent du prêt et du commerce, pour la typologie des risques qu'elles initient, pour le caractère fondateur et structurant de l'introduction du concept de juste prix, d'être lues pour elles-mêmes.

La délimitation du *corpus* de référence ne présente pas de difficulté. Nous disposons de trois textes de jeunesse à portée économique dans deux œuvres écrites à quelques années d'écart : le *Commentaire des Sentences* (*In III Sent.*, d. 37, a. 6 sur l'usure et *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 sur l'activité des marchands) et le *De emptione et venditione ad tempus* sur les opérations à terme. Ces trois écrits offrent un panorama de la pensée du jeune Thomas sur l'ensemble des questions économiques : Thomas traite d'abord du prêt à intérêt et, à cette occasion, ébauche une théorie monétaire pour trouver un complément à la justification de l'interdit de l'usure par le *mutuum,* transfert de propriété issu du Droit romain. Il aborde ensuite brièvement l'activité des marchands qui lui permet, à travers le critère d'absence de fraude, de monnayer d'une manière nouvelle les critères classiques de justice de l'échange qu'étaient le *turpe lucrum,* le gain malhonnête, caractérisé par la règle générale du *duplus*, le fait de ne pas vendre un bien deux fois plus cher qu'on l'a acheté (Gratien, *Decretum*, II, causa 14, q. 4, c. 9), et la *laesio enormis* (préjudice énorme) qui, avant de s'étendre à l'acheteur et à toute activité, protège l'héritier d'une terre d'une vente à moins de la moitié du juste prix (Justinien, *Codex*, IV, 44, 2 ; Grégoire IX, *Decretales*, l. 3, t. 17, c. 6). Il étudie ensuite la vente à crédit, qui combine l'échange commercial et le prêt. Son approche commerciale de l'opération manifeste sa compréhension unifiée des activités économiques, qu'il regroupera plus tard sous le vocable d' « échanges volontaires » (*S. T.*, IIa IIae, q. 77, prol.), malgré les statuts moraux différents du prêt à intérêt et du commerce. À travers la vente à crédit, l'Aquinate propose une première approche du juste prix et introduit la vertu de prudence comme critère de justice de l'activité du marchand. L'imprudence, par négligence ou par incompétence, conduit à une mauvaise anticipation du défaut d'information portant sur l'avenir. Thomas jette ainsi les bases d'une gestion appropriée du risque dans les opérations commerciales.

Le passage du *De regno* sur la place du commerce dans la cité ((II, 7), II, 3)) n'entre pas dans ce *corpus* de référence. Il s'agit en effet d'une œuvre chronologiquement intermédiaire, qui arrive quelques années après le *De emptione*, et surtout d'une œuvre et d'un passage à vocation essentiellement politique, même si ce passage traite de questions économiques à travers les marchands. Ce texte mérite cependant d'être étudié de manière systématique en complément de la sous-question du *Commentaire des Sentences* sur l'activité des marchands (*In IV Sent.*, d.

16, q. 4, a. 2, qc. 3) car il éclaire, sous l'angle politique et social, la place des marchands dans la cité et les risques que la nécessité de leur activité lui fait courir.

Enfin, dans le cadre d'une étude transversale sur l'apparition du concept de « juste prix », employé par l'Aquinate pour réduire le risque d'injustice de l'échange, il faut adjoindre les trois passages où cette expression figure dans les œuvres de jeunesse, puisqu'il ne s'agit pas de textes à portée directement économique, mais d'écrits de théologie biblique et sacramentaire : le *Super Isaiam,* 55, 1, passage d'un commentaire biblique de jeunesse du jeune bachelier biblique, qui date probablement de 1252, ainsi que deux passages du traité sur les sacrements du *Commentaire des Sentences* : *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 au sujet de la simonie, la vente d'un bien spirituel, et *In IV Sent.*, d. 36, q. 1, a. 2, dans le cadre du sacrement de mariage, au sujet de la vente d'un serf marié.

2.3. Une investigation historique et analytique des œuvres de jeunesse

Pour traiter l'apport économique de Thomas d'Aquin sous l'angle du risque, la précision du cadre méthodologique et épistémologique est nécessaire. L'approche retenue est diachronique, afin de faire dialoguer les œuvres de l'Aquinate entre elles et avec leurs sources, en respectant le déploiement de sa pensée dans le temps. Cela conduit à préciser le cadre des interpolations et à des extrapolations rendues nécessaires par le caractère parfois allusif des écrits de Thomas mais qui ne doivent pas conduire à masquer la dimension évolutive de sa pensée. L'approche est également cursive et intégrale, par une étude texte par texte, puisque cette étude, préalable à toute synthèse, demeurait encore à réaliser. De même, il s'agit d'une approche positive, visant à décrire la manière dont l'Aquinate comprend les opérations économiques. Enfin, l'étude du risque est menée dans le cadre de l'analyse économique et à partir de ses instruments conceptuels. Elle s'appuie cependant sur un apport pluridisciplinaire puisque les textes étudiés sont d'abord philosophiques et théologiques, écrits en latin médiéval et enracinés dans une culture propre.

2.3.1. Une approche diachronique, intégrale et positive

Il s'agit ici de mener une étude diachronique et de partir des écrits de jeunesse pour les faire dialoguer avec les écrits postérieurs, dans le respect d'un déploiement chronologique de la pensée de l'Aquinate, mais aussi avec ses sources. Cette étude est effectuée selon une lecture intégrale et cursive texte par texte et dans une démarche positive qui vise à décrire et à expliquer la manière dont Thomas d'Aquin rend compte des opérations de prêt et d'échange commercial.

L’approche diachronique met en évidence les dynamiques présentes au sein même de l'œuvre de Thomas d’Aquin. La littérature secondaire, du moins pour celle qui relève de l'analyse économique, fait souvent le choix méthodologique de prendre la scolastique comme un tout, quitte parfois à assimiler la scolastique médiévale et la scolastique moderne. Cela ne conduit pas à mettre en lumière les évolutions au cours de ces longues périodes, ni les spécificités de chaque auteur. La littérature qui s’arrête spécifiquement sur les écrits de Thomas d’Aquin fait ici encore généralement le choix d'une lecture synchronique, prenant l'ensemble de son œuvre comme un tout unifié, et s'attache principalement à étudier la *Somme de théologie,* ou du moins à la prendre comme matrice d’analyse, quitte à s'appuyer accessoirement sur d'autres textes. Les études spécifiquement dédiées à un texte précis sont rares. On peut cependant relever deux exceptions récentes : une étude du commerce international à partir du *De regno* (Santori 2019) et une étude sur la conduite de la vente dans la *Somme de théologie* (Koehler 2020). L’absence de littérature structurée par une mise en dialogue des écrits de l’Aquinate qui considèrerait chacun selon ses apports et ses positions propres conduit à réduire la connaissance de sa compréhension des « échanges volontaires » à ce qu’il en explique en *S. T.*, IIa IIae, q. 77 et 78, synthèse à visée pédagogique au sein du traité de la justice d’un manuel de théologie.

Si la lecture diachronique semble propice à montrer les évolutions de la pensée de l'auteur, elle rend plus délicate les interpolations et les extrapolations. Pourtant, la brièveté et le caractère parfois allusif des écrits de jeunesse à portée économique, et plus généralement de l'ensemble de l'œuvre économique de l’Aquinate, nécessite de procéder, pour la bonne compréhension de chacun des textes, à ces interpolations et extrapolations. Il s'agit plus fréquemment de procéder à des extrapolations, c'est-à-dire de combler une absence à partir de textes antérieurs ou postérieurs, qu’à des interpolations, où le manque est comblé par les développements à la fois antérieurs et postérieurs. On peut citer comme interpolation les éléments fournis à la compréhension des risques soulignés par le *De regno* sur l'activité des marchands par les apports d'une part du *Commentaire des sentences* (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3), qui lui est antérieur et d'autre part de la *Somme de théologie* (*S. T.*, IIa IIae, q. 77, a. 4) puis du *Commentaire de l'Éthique* (*Ethicorum*, V, 9), qui lui sont postérieurs. On peut également évoquer deux exemples d’extrapolation. D’abord, pour mesurer l'importance, dans les écrits de jeunesse, du concept de prix pour assurer l'information nécessaire à la justice de l'échange, il faut se reporter à *S T.*, IIa IIae, q. 77, a. 3. Cet article évoque les rares cas (les cas de dangers) où il est nécessaire de donner une information complémentaire au prix, puisque ces exemples ne figurent pas dans les œuvres de jeunesse mais qu"ils viennent en préciser la compréhension. De même, pour ne pas

faire d'erreur d'interprétation sur l'absence d'évocation du risque d'approvisionnement de la cité en cas d'arrêt de l'échange dans une œuvre tardive comme *Ethicorum*, V, 9 et en déduire trop rapidement que Thomas n'avait pas perçu cette conséquence, il faut se reporter au *Commentaire des Sentences*. Cet écrit de jeunesse, dans les premières lignes de sa sous-question consacrée à l'activité des marchands (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, obj. 1), évoque cette question quinze ans plus tôt, au tout début de sa première analyse de l'échange commercial.

Le choix d'une lecture diachronique nécessite de préciser le cadre épistémologique des interpolations et extrapolations rendues nécessaires par le fait que tous les développements analytiques ne sont pas présents dans toutes les œuvres. Ces extrapolations ne peuvent jamais être faites de manière absolue car rien n'assure qu'il ne s'agisse pas d'une évolution dans la pensée de l'auteur. En effet, la première évolution, toujours présente en cas d'extrapolation, consiste à passer de l'absence à la présence : un sujet ou un concept, présent dans une œuvre, ne l'est pas dans l'autre. La lecture diachronique impose donc, d'une part, d'essayer dans la mesure du possible de comprendre ce qui conduit du silence à la parole ou de la parole au silence et, d'autre part, de s'assurer de la cohérence produite par l'extrapolation. Le vide ainsi comblé doit s'intégrer pleinement dans le raisonnement de l'Aquinate et présenter une utilité pour sa compréhension.

La mise en lumière des évolutions et l'encadrement strict des interpolations et extrapolations permettent de dessiner non pas des ruptures mais une dynamique dans l'œuvre thomasienne. On ne note pas en effet de changement de cap ou de revirement majeur dans l'analyse faite par l'Aquinate. On relève en revanche un certain nombre de pierres d'attente, notamment dans le *Commentaire des Sentences*, qui ne trouveront leur plein développement que dans les œuvres plus tardives. C'est par exemple le cas de la monnaie. Dans sa recherche d'une argumentation monétaire en faveur de la prohibition de l'usure en complément du *mutuum,* le *Commentaire des Sentences* présente une thèse provenant d'autorités anonymes d'une monnaie non fongible alors que les biens achetés avec celle-ci le sont (*In III Sent.*, d. 37, a. 6, resp.). Thomas perçoit déjà la fragilité de l'argument : tous les biens ne se sont pas détériorés par leur usage, c'est le cas de la maison qu'on loue contre un loyer et qui est restituée à la fin du bail. Il ne conteste pas le caractère non fongible de la monnaie soutenu par les autorités puisque « dans le prêt, il n'y a pas de détérioration équivalente au montant ». Puisque la monnaie serait ainsi comme une maison qui pourrait être louée, Thomas conclut sur la faiblesse de l'argument et en déduit que c'est la raison pour laquelle d'autres proposent d'autres voies de condamnation de l'usure : « c'est pourquoi d'autres donnent une autre raison ». Il faudra cependant attendre la *Somme de*

théologie pour que Thomas retourne l'argument monétaire en présentant la monnaie comme fongible, détruite par son usage, donc comme un bien qui ne peut être assimilé à une maison qu'on loue contre un loyer et qui est rendu en bon état (*S. T.*, IIa IIae, q. 78, a. 1, resp.). Il ne s'agit pas à proprement parler d'un revirement, puisqu'il percevait, dès le *Commentaire des Sentences,* une forme d'incohérence dans l'argument dont il héritait, mais il s'agit cependant d'une véritable évolution conceptuelle qui lui permet de combiner approche monétaire et approche par le transfert de propriété (*mutuum*) dans une vision unifiée dans la *Somme de théologie,* là où ces approches étaient présentées comme alternatives et en partie insatisfaisantes dans le *Commentaire des Sentences*.

C'est aussi le cas de l'usage du concept de prix pour traiter des biens non marchands. En *Super Isaiam*, 55,1, la transaction par laquelle Dieu communique à l'homme sa grâce est présentée comme un échange et non comme un don, mais cet échange se fait en-dessous du juste prix, ce qui sous-entend, comme Dieu est juste, qu'il se fait selon un autre rapport d'échange, qui est juste en étant inférieur à ce que serait le juste prix si l'échange se faisait selon un prix. Ce rapport d'échange répond à d'autres critères, à commencer par les ressources de l'acheteur, l'être humain, dont la contrepartie qu'il peut fournir à Dieu en étude ou en éloquence demeure limitée. Dans le *Commentaire des Sentences*, les biens spirituels, qui ne peuvent être vendus, sont simplement présentés comme des biens qui « ne peuvent pas faire l'objet d'un prix » (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1). Ils peuvent cependant faire l'objet d'une offrande pour la subsistance du clerc, mais cette offrande est présentée comme extrinsèque, non comme une contrepartie directe selon un rapport d'échange, pour ne pas remettre en cause le caractère non marchand du bien. Pourtant cette offrande est liée à l'échange de ce bien, elle peut donc être vue comme une contrepartie du bien spirituel. Cette contrepartie répond cependant à un autre rapport d'échange que le prix, puisqu'il s'agit davantage ici d'un *tarif*, au sens donné par exemple par Steiner et Trespeuch 2014, d'une indemnité visant, à travers la subsistance du clerc, à la reproduction de la transaction. Dans la *Somme de théologie*, à côté d'expressions similaires à celles que l'on trouvait auparavant, selon lesquelles le bien spirituel ne peut pas faire l'objet d'un prix, apparaissent des formulations quantitatives où le caractère non marchand du bien n'est plus exprimé en termes d'impossibilité mais en termes de niveau : « Ce serait vendre une grande chose à un prix très bas » (*S. T.*, IIa IIae, q. 100, a. 3, ad 2). On trouve le même phénomène au sujet de l'homme libre : « La personne de l'homme libre dépasse toute estimation pécuniaire » (*S. T.*, IIa IIae, q. 189, a. 6, ad 3). On pourrait au premier abord percevoir une évolution en trois étapes dans le traitement des biens non marchands : un autre rapport

d’échange que le prix, une absence d’échange direct mais avec l’existence d’une contrepartie extrinsèque, une absence d’échange justifié par l’absence d’un juste prix dont le niveau soit accessible. Pourtant les trois situations sont compatibles entre elles. L'ensemble de l'œuvre de l’Aquinate montre comment le concept de prix permet de caractériser la justice de l'échange, qu’il ait effectivement lieu ou non, selon un rapport d’échange qui est un prix ou non. L’expression en termes de niveau de prix et non plus en termes de possibilité participe de la dynamique déjà visible dans les écrits de jeunesse de la référence au concept de prix pour assurer la justice, sans porter atteinte au caractère non marchand ou non échangeable selon d’autre rapports d’échanges des biens évoqués.

Au-delà de l'approche historique diachronique retenue, il faut encore spécifier la méthode d'analyse des œuvres de jeunesse et plus largement de l'ensemble des sources employées. Le cadre épistémologique doit non seulement régler la mise en relation des textes entre eux mais aussi le traitement réservé à chaque texte.

D’abord, on a adopté le principe d’une lecture intégrale et cursive, propice à une analyse la plus exhaustive possible. Face à l'absence d'études systématiques des œuvres de jeunesse de l’Aquinate d'une part, et à la complexité de son raisonnement d’autre part, une analyse texte par texte s'est rapidement imposée. Si elle ne permet pas, dans un premier temps, de lecture transversale synthétique problématisée, elle assure autant qu'il soit possible d'éviter de négliger des apports qui, pour être difficilement repérables, n'en restent pas moins majeurs. La structure particulière de l'article scolastique, que l’on trouve dans le *Commentaire des Sentences* ou plus tard dans la *Somme de théologie*, le *De malo* ou les *Questions quodlibétiques*, impose d'entrer dans son articulation propre parce que c'est elle qui révèle les nuances et les prises de distance de l’auteur.

La construction d’un « article » scolastique et thomasien, présentée par Chenu 1950, 78-81, vise à approfondir la réflexion. Il faudrait donc lire l’article dans son déroulement rédactionnel : les objections, qui sont davantage une ouverture de la réflexion qu’une opposition, le *sed contra* qui présente brièvement l’autre partie de l’alternative, le *respondeo* où le maître expose sa doctrine, puis les réponses aux objections, qui les dépassent plus qu’elles les contestent. Cette lecture dans l’ordre du texte est *in fine* préférable pour ne pas négliger la pertinence des objections et identifier la pensée de l’auteur au *sed contra.* Pour faciliter une première approche des articles et percevoir plus directement la détermination du maître, sans pour autant réduire l’article à cette réponse, nous adoptons cependant la méthode plus didactique qui consiste à

d'abord lire le *sed contra,* qui donne en quelque sorte la clé d'interprétation de l'article, sans qu'il s'agisse nécessairement de la position exacte de l'auteur (ce qui est le cas ici puisque Thomas n'adopte pas la position restrictive présentée en *sed contra*), à travers la nature des autorités citées (philosophiques ou théologiques) et une brève argumentation. Cela permet également de mettre en lumière, par contraste, les nuances et la complexité apportées ensuite par le maître. On lira alors le *respondeo*, qui fournit l'argumentation de Thomas, puis les objections et leurs solutions en terme à terme, puisqu'elles viennent apporter un complément.

Les deux ordres de lecture, qui ont en commun de proposer une lecture intégrale de l'article, montrent leur intérêt en *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, lorsque Thomas traite de l'activité du marchand. Les objections reposent sur la finalité de l'activité alors que la suite de la sous-question, sans les reprendre donc sans les contester, ne traite que des moyens de cette activité. D'une part, l'articulation entre la fin et les moyens qui constitue la clé de l'argumentation de Thomas sur ce sujet n'est perceptible que par une lecture exhaustive qui ne se limite pas au *respondeo.* S'en tenir à la réponse de Thomas permettrait certes de repérer qu'il nuance le *sed contra*, qui assimile commerce et péché, et de souligner les conditions d'exercice de l'activité marchande. Cela ne conduirait toutefois pas à percevoir l'*épochè* méthodologique mise en œuvre par l'Aquinate quant à la caractérisation morale de la finalité du commerce en attendant une résolution qui viendra quinze ans plus tard en *S. T.*, IIa IIae, q. 77, a. 4 avec la formulation de trois finalités bonnes (soutenir sa famille, aider les pauvres, approvisionner le pays) et de la caractérisation du gain modéré (*lucrum moderatum*) comme un moyen. D'autre part, une lecture faite dans l'ordre du texte met en valeur l'argument de l'approvisionnement, qui figure en objection 1, Cet argument ne serait pas repris dans le *respondeo* puisqu'il serait acquis, ce *respondeo* pourrait donc se concentrer sur les moyens d'exercice. Il s'agirait alors d'un déploiement de la pensée de l'Aquinate en deux étapes : la fin puis les moyens. Une lecture commençant par le *sed contra* puis le *respondeo* met au contraire davantage en lumière la manière dont Thomas se démarque des autorités, convoquées dans le *sed contra* pour condamner le commerce, et son attention sur les moyens en restant à distance de la fin, qui figuraient dans les objections mais qu'il ne reprend pas.

Sans montrer d'opposition, les différentes méthodes de lecture suggèrent des nuances d'interprétation dont la pertinence doit être évaluée au regard des autres écrits de Thomas. Si une lecture commençant par les objections conduit à concentrer l'analyse sur le traitement par Thomas de la question précise de l'approvisionnement et à poser d'emblée une justification due à l'activité du marchands, la lecture par le *sed contra* tend à montrer que l'enjeu de l'article porte

plus largement sur une mise à distance des finalités, l'Aquinate se trouvant encore dans l'impossibilité de leur apporter une caractérisation morale. Le traitement postérieur de l'approvisionnement par Thomas tient, dans sa complexité, des deux aspects. Le regard cependant relativement distancié de l'Aquinate sur la question de l'approvisionnement (*De regno*, II, 7 (II, 3) ; *S. T.*, IIa IIae, q. 77, a. 4, resp. ; *Ethicorum*, V, 9), tend cependant plutôt à souligner, sans pour autant négliger l'intérêt d'une lecture dans l'ordre du texte, les accents mis en valeur par la méthode de lecture que nous retenons, qui commence par le *sed contra*.

Les textes à la facture plus classique comme le *De emptione*, le *De regno*, la *Lettre à la duchesse de Brabant* ou les commentaires bibliques ou philosophiques, sont lus de manière exhaustive et linéaire pour éviter de laisser dans l'ombre de brèves expressions pourtant lourdes de signification et pour mettre en lumière la signification du plan du texte lui-même.

Ce mode de lecture conduit par exemple à repérer qu'au sujet de la vente à terme, c'est la notion d'usure qui unifie des notions distinctes, à savoir le « juste prix » et le « prix sur le marché », que Raymond De Roover (1971, 58) assimile en lisant ce texte. En outre, la littérature, à l'exception de Bartell 1962, assimile les notions de « valeur » et de « prix », qui sont pourtant distinctes dans le traité. En effet, le terme « prix » et l'expression « juste prix » n'apparaissent qu'en *De emptione*, I alors que le verbe « valoir » n'apparaît qu'en *De emptione* II et III - « valoir sur le marché commun » en *De emptione*, II. Le lien entre prix et valeur d'une part, et celui entre « juste prix » et « marché » d'autre part, ne sont pas immédiats et l'articulation entre ces notions ne peut être mise au jour que par l'avancée progressive dans l'argumentation thomasienne. On lit d'abord qu'il n'y a pas juste prix là où il y a usure, c'est-à-dire une augmentation du prix à cause du temps (*De emptione*, I) puis que vendre plus cher que ce que le bien vaut sur le marché commun est usuraire (*De emptione*, II). On constate également qu'il n'y a pas identité entre valeur et prix mais que ces deux notions sont jointes par la justice, qui vient qualifier chacune d'elle.

Ensuite, l'approche analytique retenue est une approche positive. Cette positivité se situe à deux niveaux : il s'agit en effet d'étudier *positivement* la manière dont Thomas comprend *positivement* les mécanismes économiques, c'est-à-dire la manière dont il les décrit. On se démarque en cela de quelques rares mais importants travaux contemporains sur l'apport économique de l'Aquinate. Ces travaux s'inscrivent, selon des degrés variables, dans la longue tradition d'une analyse économique normative de l'œuvre de Thomas. Parmi les différents sens qui peuvent être donnés à l'économie normative (Mongin 2006 ; 2018), il ne s'agit pas tant,

dans cette tradition, d'étudier les jugements de valeurs qui sous-tendent l'analyse de l'Aquinate que de puiser chez l'Aquinate d'une part un système de valeur. Ces travaux sur l'œuvre de Thomas d'Aquin reprennent tacitement ou explicitement l'idée d'ordonner l'activité économique à la vertu de justice, et de mettre en lumière ce qui doit être fait pour atteindre un objectif que l'on se donne comme juste. Davantage encore, au-delà des sens traditionnels de l'économie normative, il s'agit de constituer la conformité à la pensée de Thomas en critère de validité et de faire de cette pensée le fondement normatif de l'analyse économique. Le statut d'autorité de Thomas d'Aquin dans l'histoire de la pensée occidentale a pu conduire ses commentateurs successifs, de différentes sensibilités, à trouver en lui un précurseur. Si certains ont pu relever, dans la lignée de Marx, une approche de la valeur par le travail et les dépenses (Tawney [1926] 1948), les partisans d'une approche libérale ont pu voir dans le juste prix le prix de marché (De Roover 1958 et 1971). Les promoteurs contemporains d'une économie plus sociale ont pu faire apparaître, sous des formes diverses, une combinaison entre l'échange et le don, entre la justice et la charité, entre l'*homo economicus* et l'h*omo amicus* (Franks 2009, Hirschfeld 2018, Santori 2019, 2020, 2021).

L'objectif poursuivi ici se démarque de cette tradition normative, dans sa polysémie et sa diversité. Il se limite à faire ressortir la compréhension des mécanismes des opérations économiques par l'Aquinate, en cherchant à en évaluer les évolutions et la cohérence. Il ne s'agit donc ici ni de porter un jugement sur la pertinence de la compréhension thomasienne, ni de préjuger des prolongations normatives auxquelles ces développements positifs pourraient éventuellement donner lieu.

2.3.2. Une approche analytique économique soutenue par la pluridisciplinarité

L'objectif et le champ disciplinaire auxquels l'étude se rapporte doivent encore être spécifiés. L'objectif de notre recherche est analytique. L'analyse peut s'entendre ici de deux manières.

Il s'agit d'une part de se saisir successivement de chacun des éléments contenus dans les textes. Une lecture globale et synthétique ne semble pertinente qu'une fois tous les apports thomasiens et les liens qu'ils tissent entre eux identifiés. Par exemple, la caractérisation du rôle assumé par la notion de prix, convoquée comme critère paradigmatique de réduction du risque de défaut d'information sur la justice de l'échange face à l'intention des agents qui demeure cachée, ne peut être mise en évidence que par la combinaison des conclusions acquises de texte en texte.

Il s'agit d'autre part d'aborder une analyse économique des textes. L'objectif n'est pas de dresser une cartographie descriptive des apports économiques de l'Aquinate, bien qu'il s'agisse d'une première étape, ou même de manière plus précise des risques qui ressortent de ces textes. L'ambition est de se saisir de chaque élément contenu dans ces textes pour les passer au spectromètre conceptuel offert par la science économique. Cela permet de fournir une explication économique du regard porté par Thomas sur les situation d' « échanges volontaires ». Par exemple, la notion de défaut et d'asymétrie d'information permet d'établir une typologie des risques rencontrés dans le traitement de l'usure (*In III Sent.*, d. 37, a. 6) et de la vente à terme (*De emptione*). Les travaux sur l'évolution de la notion de probabilité conduisent à mettre en évidence le risque d'erreur d'analyse de l'usure lorsque l'argument présenté est jugé par l'Aquinate « assez probable » (*In III Sent.*, d. 37, a. 6). La notion contemporaine de « marché contesté » développée par les *commodification studies* à la suite de Margaret Radin (1987 et 1996) permet de penser les cas limites présentés par l'Aquinate comme la simonie (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1) ou la vente du serf marié (*In IV Sent.*, d. 36, q. 1, a. 2). Cette dernière situation pouvant en outre être abordée selon l'approche de Ronald Coase (1960) sur les externalités, selon que le serf ou le seigneur détient les droits de propriété sur les externalités engendrées par le mariage. En outre, la pluralité des rapports d'échange introduite par *Super Isaiam*, 55,1, qui se décline ensuite en une variété d'indemnités permettant à l'agent de reproduire la transaction - indemnité de subsistance du prêtre, solde (*stipendium*) du soldat, quasi-solde (*quasi stipendium*) du marchand, « intérêt » (*interesse*) du prêteur en cas de retard de remboursement ou compensation en cas de préjudice lié au prêt… - peut être comprise comme une première ébauche d'une distinction fonctionnelle des revenus. Elle peut aussi être pensée à l'aide de la notion de tarif, au sens de Steiner et Trespeuch 2014. De même, l'imprudence des marchands (*De emptione*, III) peut être lue à travers la notion contemporaine de prudence formulée par Miles Kimball (1990) après s'être assuré que la description donnée par l'Aquinate correspondait à un étalement vers la gauche de la distribution de probabilité, c'est-à-dire à un accroissement du risque de perte, et non à un attrait pour le risque.

L'approche analytique mise en œuvre ici se trouve en quelque sorte encadrée par un préalable descriptif et par une conclusion synthétique. Il s'agit de décrire une situation d'échange volontaire, de l'analyser au moyen des instruments de la science économique et de rapprocher l'ensemble des conclusions obtenues par l'analyse des différentes situations. Cependant l'approche est précisément analytique parce qu'elle se distingue des approches descriptives et synthétiques qui l'encadrent.

Le champ épistémologique retenu est celui de l'analyse économique. D'autres disciplines peuvent certes prétendre légitimement à la compréhension de ces textes puisque, s'ils ont une portée économique, ce sont d'abord des textes philosophiques ou théologiques qui visent à répondre à des questions morales. En outre, comme tout écrit médiéval, ils mettent en œuvre des lexiques spécifiques et témoignent de l'histoire du temps, au moins de l'histoire intellectuelle. Ainsi, le philosophe, le théologien moraliste mais aussi le philologue ou l'historien peuvent avantageusement contribuer à la compréhension de ces textes et se servir de ceux-ci pour nourrir les avancées de leur discipline propre. Si la littérature portant sur ces textes de jeunesse demeure limitée, il faut cependant constater qu'ils ont suscité plus d'intérêt dans ces disciplines que chez les économistes. Pourtant, l'analyse économique permet de préciser les traductions et les commentaires disponibles. L'exemple le plus typique se trouve dans la traduction française la plus courante de la *Somme de théologie*, celle de la Revue des jeunes, où Ceslas Spicq (1935) introduit le terme « valeur » à deux reprises en *S. T.*, IIa IIae, q. 77, a. 1, resp. là où il est absent de l'original latin, où le concept dominant est celui de prix. À côté des traductions, les introductions peuvent ainsi être précisées. Ainsi en est-il du résumé fait par Hyacinthe-François Dondaine du *De emptione* dans son introduction de l'édition Léonine, qui présente le traité comme un résumé de *S. T.*, IIa IIae, q. 78, a. 2, ad 6 : il y usure quand il y a délai de paiement. L'analyse économique vient spécifier la nature de ce délai, la part qu'y prennent les différents agents et les imbrications de l'échange commercial et du prêt à intérêt. Plus encore, elle relève l'intérêt majeur de ce texte, qui réside dans son approche du juste prix.

L'étude des écrits à portée économique de Thomas d'Aquin ne saurait cependant se limiter à la seule approche économique et nécessite une approche pluridisciplinaire pour deux raisons. Il faut, d'une part, s'assurer autant que possible d'une juste compréhension immédiate des textes en convoquant les acquis de la philologie et de l'histoire des faits et des idées et, d'autre part, recourir aux concepts philosophiques et théologiques permettant de rendre compte de la pensée de l'Aquinate.

Concernant la compréhension immédiate des textes, il faut noter que Thomas écrit en latin médiéval et se saisit d'un vocabulaire théologique et philosophique à la polysémie souvent évolutive. Une étude philologique est donc souvent nécessaire : l'histoire de la compréhension du terme *mutuum* depuis l'Antiquité conduit à préciser la manière dont l'Aquinate entend ce *mutuum* en *In III Sent.*, d. 37, a. 6. En outre, préciser le sens médiéval d'une thèse probable (*probabilis*) conduit à montrer la distance que Thomas prend par rapport à la conception du prêt comme *mutuum* tel que ses prédécesseurs immédiats le concevaient (*In III Sent.*, d. 37, a. 6).

On note également que l'investigation sémantique et lexicale du prix, de la valeur, de *secundum* (selon, sur), permet d'établir la relation entre le juste prix, la valeur et le marché en *De emptione*. Cette même étude de *secundum* et celle de la notion de fraude, pour en souligner le sens à la fois qualitatif et quantitatif et à la fois objectif et subjectif, permettent de comprendre l'expression « sans fraude et selon le contrat licite », qui structure l'activité commerciale en *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp. L'étude de l'expression *sicut cum* (comme lorsque) met en lumière les relations analogiques entre le juste prix et la justice en *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1. On peut également montrer le caractère rhétorique et non concessif de *principue cum* (principalement lorsque) qui empêche absolument la vente au loin du serf marié en *In IV Sent.*, d. 36, q. 1, a. 2. La prise en compte des nuances du champ lexical de la prudence est nécessaire pour ne pas assimiler l'expression « *incaute* et *imprudenter* [sans précaution et par ignorance] » à une simple redondance rhétorique lorsque Thomas traite des dépenses illicites du marchand en *De emptione*, III. Enfin, l'étude textuelle et lexicale met en lumière la nouveauté décisive de l'apport de l'Aquinate lors de sa première utilisation de l'expression « juste » prix en *Super Isaiam*, 55, 1, puisque la *Vulgate* qu'il commente parle d'échange (*commutatio*), que la *Vetus latina*, à la suite du grec de la *Septante* τιμή (*timè*), qui signifie valeur, emploie prix (*pretium*), mais qu'à l'origine de toute ces traditions, la Bible hébraïque porte le terme polysémique מְחִיר (*mechyir*), qui renvoie à la fois au rapport d'échange et à l'action d'échange et à une valeur plus intrinsèque du bien.

On constate qu'il faut également entrer dans l'univers personnel et intellectuel de l'Aquinate pour saisir sa pensée. Ainsi en est-il pour rendre compte de la manière dont le fils de chevalier qu'il est traite l'activité des marchands et l'activité des soldats dans une même sous-question (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3). En outre, Thomas se situe en moraliste, comme religieux et théologien au cœur de la Chrétienté médiévale, ce que la littérature économique récente a rappelé à bon droit (Franks 2009, Hirschfeld 2018). La quête, mise en lumière par l'analyse économique, d'un critère observable et objectif de la justice de l'échange, comme peut l'être le prix, doit toujours être resituée dans la démarche première de l'Aquinate qui se rapporte à la détermination d'une éventuelle situation peccamineuse donc à l'intention des agents. La mise en valeur progressive du prix est donc d'abord une manière de contourner le défaut d'information sur ce qui constitue l'objet même de sa question. Par ailleurs, au-delà de la personne de l'Aquinate, on doit entrer dans le monde de son temps. Ainsi faut-il esquisser une contextualisation du servage pour comprendre la description que Thomas donne de la vente à juste prix ou non d'un serf marié en *In IV Sent.*, d. 36, q. 1, a. 2.

Concernant la seconde étape de l'analyse, qui consiste à établir des propositions d'interprétation, la pluridisciplinarité est nécessaire car elle est présente chez l'auteur lui-même, qui traite dans les mêmes ouvrages de métaphysique, de théologie sacramentaire ou de questions à caractère économique. Cette pluridisciplinarité est présente de deux manières. La première consiste à décrire des situations qui relèvent à la fois d'un cadre théologique et d'une opération économique. Cette situation se présente, par exemple, dans le contexte de l'apparition du terme « juste prix » en *Super Isaiam*, 55, 1, où Dieu communique sa grâce, et dans le traité sur les sacrements du *Commentaire des Sentences* avec, pour les sacrements en général, la simonie (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1) et, pour le sacrement de mariage, la vente du serf marié (*In IV Sent.*, d. 36, q. 1, a. 2). La théologie thomiste de la relation entre Dieu et l'homme, des sacrements, du ministère des clercs qui les célèbrent, et du sacrement de mariage comme relevant du droit naturel et primant sur la vente, qui ne relève que du droit positif, éclaire l'analyse de ces échanges, de leur rapport d'échange et de leurs critères de justice.

Le second niveau d'interdisciplinarité est conceptuel. Thomas écrit à une époque où l'on peut encore considérer une unité du savoir. Certes, dès le premier article de sa *Somme de théologie* Thomas s'attache à distinguer les disciplines, à savoir la philosophie et la théologie (*sacra doctrina*), qui permettent de connaître Dieu (*S. T.*, Ia, q. 1, a. 1), mais la distinction des ordres de connaissance n'enlève pas la mutualisation conceptuelle. L'exemple le plus apparent est le recours à l'analogie. Ce concept polysémique, dont on trouve des déclinaisons anthropologiques fort variées (Descola [2005] 2015, 351-401), est entendu ici comme une analogie de proportionnalité : il établit un lien de proportionnalité qu'on peut penser comme un lien de participation. Il décrit une ressemblance avec une dissimilarité partielle entre deux réalités (Chollet 1903, col. 1142 ; par ailleurs, l'anthropologie, en distinguant quatre ontologies - animisme, totémisme, naturalisme et analogisme – met en évidence la différence entre deux réalités qui vient structurer le rapport analogique, Descola [2005] 2015, 221). Thomas se saisit du concept en théorie du langage pour traiter des noms divins (*S. T.*, Ia, q. 13, a. 5 et 6, voir Chollet 1903, col. 1142-1154 ; Montagnes [1963] 2008 ; Gilson 1965, 121-129 ; Te Velde 2006, 109-121 ; Imbach et Oliva 2009, 83-84 ; Bonino 2016). Il permet d'échapper à une équivocité selon laquelle les noms appliqués à Dieu et appliqués aux réalités créées prendraient des sens différents, au point que l'homme n'aurait aucun accès au sens du mot appliqué à Dieu et ne pourrait rien dire de lui, et à l'univocité qui réduirait ce sens à celui connu des hommes, ce qui porterait atteinte à la transcendance divine. L'analogie de proportionnalité constitue une voie moyenne où ce qui est dit est juste mais où la réalité décrite dépasse ce qui est dit. Ce lien de

ressemblance entre la réalité première (Dieu) et la réalité seconde (la réalité créée) est rendu possible par la relation de création. Il y a donc ni dissemblance ni identité entre la réalité première et la réalité qui en découle. Thomas applique lui-même ce lien analogique entre la justice et le juste prix lorsqu'il traite de la simonie (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp.) à travers l'usage des expressions « *sicut cum* » et « *cum* » : « il y a injustice comme lorsque [*sicut cum*] quelqu'un n'achète pas ou ne vend pas au juste prix » ou « comme [*cum*] lorsqu'il vend ou achète quelque chose qui ne fait pas l'objet d'un prix ». Le juste prix n'est donc pas la justice, mais il en est une expression par analogie.

Puisque le fond conceptuel philosophique et théologique constitue le socle réflexif de l'Aquinate, on peut s'y référer pour lire les textes où il ne serait qu'implicitement présent. La redécouverte récente de la primauté de la justice pour comprendre le juste prix et de la distinction entre le prix de justice qui préexiste à l'échange et les justes prix effectifs, appartenant à un univers de prix acceptables (Lapidus 1994), ouvrent ainsi la voie à une nouvelle étape. On peut mobiliser, outre le concept d'analogie, ce que Thomas fait lui-même, le concept de signe, qu'il emploie en théologie pour décrire trois niveaux de réalité d'un sacrement (par exemple, *In IV Sent.,* d. 3, q. 1, a. 1, qc. 1, ad 1 et *S. T.*, IIIa, q. 73, ad 3, voir Michel 1939 ; Revel 2004 ; Rosier-Catach 2004). Le cas typique est celui du sacrement de l'eucharistie : le pain et le vin sont le signe d'une réalité sacrée, le corps et le sang du Christ qu'ils deviennent par transsubstantiation lors de la messe, cette réalité sacrée étant elle-même le signe d'une réalité ultime, la grâce conférée à ceux qui les reçoivent. De la même manière, on peut envisager trois niveaux de réalité du juste prix. Le juste prix dans l'échange singulier serait le signe (*sacramentum tantum*, signe seulement) du juste prix sur le marché (*sacramentum et res*, signe et chose), qui lui-même serait le signe de la réalité ultime et cachée (*res tantum*, chose seulement) qui serait le prix de justice, c'est-à-dire le prix selon la justice qui préexiste à l'échange. La comparaison doit être adaptée, puisque dans la théologie sacramentaire de Thomas le sacrement est déjà pleinement réalisé dans le *sacramentum et res*, au deuxième niveau, alors que le prix de justice, auquel se réfère les prix acceptables, se situe au troisième niveau, mais elle présente l'intérêt de percevoir comment l'expression « juste prix » peut être comprise selon différents niveaux de réalité. En outre, on voit pour le prix, comme pour les sacrements, que ces trois niveaux sont décomposés en deux : deux premiers niveaux pour l'accomplissement du sacrement puis un niveau pour ses effets, deux niveaux de prix effectifs et un niveau de juste prix comme prix de justice. Le recours aux concepts et aux grilles

d'analyse philosophiques familiers à Thomas permet de rendre explicite ce qui demeurait implicite dans ses formulations.

L'établissement de trois niveaux de réalité du juste prix et de la primauté d'un prix de justice qui préexiste à l'échange nécessite une précision. Dans une perspective aristotélicienne, la justice préexiste en tant que vertu avant sa réalisation en acte, mais le juste prix, en tant que prix, peut-il lui aussi être antérieur à l'échange et se trouver comme en puissance ?

La préexistence du juste prix est sous-entendue par la notion d'approximation développée par Thomas à travers le terme « *aestimatio* ». Certes, dans ses usages non économiques et dans certaines occurrences économiques, le terme désigne un mode ou un moyen de détermination et non une approximation. On trouve par exemple « un sentiment de bienveillance qui ne tombe pas sous une estimation monétaire [*sub aestimatione pecuniae non cadit*] » en *S. T.*, IIa IIae, q. 78, a. 2, ad 3 pour parler des moyens de rétributions licites d'un prêt. Le terme est utilisé pour distinguer ce qui « peut être estimé par la monnaie [*pecunia aestimari potest*] » et ce qui ne le peut pas (*S. T.*, IIa IIae, q. 78, a. 2, ad 4) ou encore dans le cas de la personne libre qui « surpasse tout estimation monétaire [*superat omnem aestimationem pecuniae*] » (*S. T.*, IIa IIae, q. 189, a. 6, ad 3). Mais « *aestimatio* » renvoie également à une approximation par rapport à un niveau inconnu mais qui existe et qu'il s'agit de retrouver. C'est le cas dans le *De emptione*, où il y a usure lorsqu'on achète « moins cher que selon la juste estimation [*minus quam juxta extimatione*] » (*De emptione*, I) et dans la *Somme de théologie*, lorsque Thomas affirme que le juste prix « n'est pas déterminé avec précision mais est plus souvent établi avec une estimation [*non est punctualiter determinatum sed magis in quadam aestimatione consistit*] » (*S. T.*, IIa IIae, q. 77, a. 1, ad. 1). Deux interprétations sont ici possibles. Soit *non est* s'applique à *punctualiter,* soit *non est* s'applique à toute l'expression, donc à *determinatum*. Selon la première interprétation, le prix est déterminé (*determinatum*) par les agents au cours de l'échange, même si ce n'est pas *punctualiter*. Selon la seconde, *non est* s'applique à *determinatum* et le prix n'est pas déterminé au cours de l'échange. Cette dernière hypothèse semble confirmée par la tension entre *determinatum,* qui est un passif et *consistit*, qui signifie étymologiquement « consiste » et signifie aussi « se tenir », dans un sens pronominal. Le juste prix aurait alors une existence par lui-même, il ne serait pas déterminé de l'extérieur mais l'échange effectif constituerait le juste prix, avec une marge d'erreur ; cela supposerait qu'un juste prix effectif « se tient » là, selon une certaine approximation (donc par rapport à un référent, qui serait le prix de justice déjà existant).

Ce qui pourrait sembler surprenant au premier abord pour un économiste devrait lui être en réalité assez familier. Si l'on adopte par exemple un point de vue ricardien, au moins celui qui prévaut après la publication de l'*Essai sur les profits* en 1815, on adopte une approche dans laquelle on fait dépendre les valeurs relatives, qui elles supposent un échange, de valeurs absolues qui, du moins dans une première approximation, expriment des quantités de travail qui leur sont incorporées (voir par exemple son dernier traité, *Valeur absolue et valeur d'échange*, datant de 1823). Dès l'instant où l'on accepte l'antériorité logique du champ des valeurs absolues sur celui des valeurs relatives, il est possible de comprendre ce que Ricardo appelle souvent des « valeurs comparatives », c'est-à-dire le rapport entre deux valeurs absolues, comme une valeur d'échange alors que celui-ci n'a pas été réalisé et n'est encore qu'une potentialité (Lapidus 1986, 83-96). Cette façon de voir se retrouve jusqu'à Marx, pour lequel les valeurs travail préexistent à l'échange et doivent être transformées pour donner naissance d'abord à des prix de production, et ensuite à des prix de marché (alors même qu'il est peu disert sur ce dernier aspect). Il faut attendre le point de vue épistémologique spécifique de Walras qui, dans une perspective kantienne, considère que la science n'a pas à s'occuper des noumènes mais des phénomènes, dont le terme apparaît 29 fois dans les *Éléments d'économie politique pure* (1874), pour sembler renoncer à la connaissance de ce qui préexisterait à l'échange. Le prix est ainsi d'emblée compris comme une valeur relative, comme le montre par exemple l'identification de la valeur d'échange du blé (3^{e} leçon, § 27-29). On peut cependant nuancer la rigueur de cette position puisque, lorsque Walras présente le prix comme un rapport de valeurs, on pourrait en conclure qu'il existe, chez lui aussi, une évaluation qui préexiste à l'échange (5^{e} leçon, § 44) : puisque les termes du rapport sont déjà existants, le rapport qu'est le prix, pour être encore inconnu, ne serait pas pour autant non existant.

Si l'approche pluridisciplinaire est nécessaire, elle vient ici en appui de l'analyse économique, qui permet de caractériser les risques. Les œuvres de jeunesse offrent en effet pour cela un cheminement en plusieurs étapes :

1. Le risque. Les acheteurs et les vendeurs, les prêteurs et les emprunteurs prennent des décisions et encourent des risques de gains ou de pertes, à la fois en matière financière et en matière de réputation morale (*In III Sent.*, d. 37, a. 6 ; *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 ; *De emptione*).

2. L'information. Cette analyse des risques repose sur celle de l'information. Thomas, dont la préoccupation est d'abord morale, se trouve confronté à un défaut d'information absolue qui

concerne l'intention de l'agent, aussi cherche-t-il à contourner ce défaut d'information en trouvant des critères visibles et objectifs révélant la justice de l'échange. Si l'information est généralement facteur de justice, il faut noter l'exception, dans la *Somme de théologie*, où une trop grande information est cause d'injustice, d'un vendeur communiquant trop sur le défaut du bien et pouvant de ce fait se trouver soumis à une pression excessive à la baisse du prix par l'acheteur (*S. T.*, IIa IIae, q. 77, a. 3, resp.).

3. Le prix. Suivre la quête de l'Aquinate pour réduire le défaut d'information nous conduit ainsi à étudier la valeur et le prix, puisque le prix va être employé par Thomas comme le révélateur de la justice que l'information doit permettre (*De emptione*). Le juste prix est principalement présenté comme un prix pouvant être trouvé sur le marché (*De emptione*) mais il sera aussi, dans les œuvres tardives, le prix qui résulte des travaux et des dépenses (*Ethicorum*, V, 9).

4. La diversité des rapports d'échange. Si le prix constitue le critère visible de la justice de l'échange, certains échanges se font selon d'autres rapports d'échange qui, pour être justes, prennent en compte d'autres éléments que ne le ferait le juste prix, la justice n'étant pas réglée selon une égalité de chose à chose (*secundum aequalitatem rei*) telle que l'envisage la justice commutative (*S. T.,* IIa IIae, q. 77, a. 1, ad 3). C'est le cas, lors de la première occurrence de l'expression « juste prix » en *Super Isaiam*, 55, 1, lorsque Dieu attend une contribution de l'homme en retour de la communication de sa sagesse. Le juste rapport d'échange se situe « en dessous du juste prix » car il tient compte des ressources limitées des acheteurs. Cette diversité des rapports d'échange permet ensuite à Thomas d'envisager d'autres échanges qui ne sont pas réalisés selon un prix mais sur le mode du tarif, de l'indemnité qui assure aux agents un revenu permettant de poursuivre leur activité. Ainsi le soldat perçoit-il « une solde », *stipendium* (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.), le clerc « comme un moyen de subsistance », *quasi sustamentum vitae* (*In IV Sent.*, d. 25, q. 3, a. 2, qc. 1, ad 4), ou « une indemnité de nécessité », *stipendium necessitatis* (S. T., IIa IIae, q. 100, a. 2, resp.) le marchand, « une quasi-solde », *quasi stipendium* (*S. T.*, IIa IIae, q. 77, a. 4, resp.), le prêteur « une compensation », *recompensatio* pour le *damnum emergens,* le préjudice que représente la privation engendrée par le prêt (*S. T.*, IIa IIae, q. 78, a. 2, ad 1) ou un « intérêt », *interesse* comme *poena conventionalis*, le retard de paiement (*De malo*, q. 13, a. 4, ad 14). Cette diversité de rapports d'échange, par la diversité des contreparties, ouvre donc à une distinction fonctionnelle des revenus.

5. *Un continuum de marchandises contestées*. À travers la pluralité de rapports d'échange, Thomas pense cet échange, dont le critère de justice est le prix, à partir des cas limites, par lesquels il introduit la notion de juste prix (communication de la sagesse divine en *Super Isaiam*, 55, 1, simonie en *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 et vente du serf marié en *In IV Sent.*, d. 36, q. 1, a. 2). Il intègre ainsi ces cas limites à la sphère de l'échange et non à celle du don. L'approche thomasienne entre en résonance avec les *commodification studies* pour penser la relation entre les biens non marchands et les biens marchands non plus sur un mode binaire mais sous la forme d'un *continuum*. Cela permet d'une part de rendre compte de l'évolution, au moins rhétorique, de la non marchandisation d'abord présentée sous la forme de l'absence de possibilité d'un prix (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1) puis sous la forme d'un prix très élevé (*S. T.*, IIa IIae, q. 100, a. 3, ad 2), et d'autre part de traduire la situation des biens semi-marchands, comme le serf marié qui ne peut être vendu au loin (*In IV Sent.*, d. 36, q. 1, a. 2). Penser les cas limites au sein d'un *continuum* permet de rapporter l'ensemble des risques les concernant à des risques d'injustice de l'échange.

L'approche économique souligne ainsi que les écrits de jeunesse placent les cas limites au sein même du cadre de l'échange sans pour autant mélanger le don et l'échange. La littérature récente a souvent adopté une approche anthropologique et a insisté sur le fait que l'homme est pour Thomas d'abord *homo justus* ou *amicus* ou un être de don et de charité (De-Juan et Monsalve 2006, 100-101 ; Franks 2009, 106-181 ; Le Goff [2010] 2019 ; Monsalve 2014a, 16 ; Hirschfeld 2018, 68-160 ; Santori 2019, 85 ; 2020, 278 ; 2021, 20). Il faut cependant d'abord préciser que Thomas pense l'échange au sein de la vertu de justice ; or la justice manifeste une relation de proportion, qui est extérieure (Lapidus 1994, 436), comme le souligne la *Somme de théologie* : « l'objet de la justice est une activité extérieure » (*S. T.*, IIa IIae, q. 58, a. 10, resp, voir également q. 59, a. 2, ad 3). L'injustice est donc un mauvais ajustement d'un acte extérieur au droit d'une autre personne, c'est donc l'objet de la nature objective et extérieure de l'acte, indépendamment des désirs de l'agent d'être juste (Delos 1932, 194-195 and 198-199). On comprend mieux alors que si certains commentateurs s'attachent à l'agent, l'Aquinate s'attache à l'objet échangé et à l'opération pour appréhender la justice de l'échange.

On constate ensuite que l'agent qui achète et qui vend, qui prête et qui emprunte se présente d'abord ici comme un *homo economicus*. Dans aucun des textes étudiés Thomas ne le présente comme faisant acte de charité ni même comme désirant volontairement faire acte de justice, aussi présente-t-il le cadre extérieur qui permet l'expression des préférences sans porter atteinte à la justice de l'échange. Il justifie l'interdiction de l'intérêt (*In III Sent.*, d. 37, a. 6) et dit quand

il y a usure (*De emptione*), il pose le cadre d'exercice de l'activité marchande (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.) et délimite les dépenses que les marchands peuvent répercuter dans le prix de vente (*De emptione*), il détermine à partir de la chose échangée la nature de sa contrepartie et celle du rapport d'échange. S'il est nécessaire de poser ce cadre normatif pour assurer la justice, on peut en déduire que les agents recherchent prioritairement leur intérêt dans l'échange qui, quand il est juste, satisfait l'intérêt des deux parties (*S. T.*, IIa IIae, q. 77, a. 1, resp.). Si l'on a parfois lu les situations présentées dans les œuvres ultérieures comme une immixtion du don et de l'échange, c'est-à-dire de la charité et de la justice, les soubassements fournis par les écrits de jeunesse invitent plutôt à les lire comme des situations d'échanges volontaires, relevant de la vertu de justice. L'exemple type de ces situations est l'amitié utile (*S. T.*, IIa IIae, q. 77, a. 1, ad 3), qui est en fait une amitié tout à fait intéressée qui s'inscrit pleinement dans le cadre d'analyse de l'échange, de la justice et de l'expression des préférences.

L'évocation de la littérature principale employée constitue le prolongement naturel de ces prolégomènes présentant la méthode et l'approche retenues puisque le choix des références sollicitées n'en est que l'expression et la traduction effective.

2.3.3. Le recours à la littérature, ou employer au mieux une ressource limitée

L'analyse économique des écrits de jeunesse de Thomas d'Aquin s'appuie à la fois sur les sources primaires et sur la littérature secondaire. Le peu de littérature spécifique disponible renforce la nécessité de l'exploiter au maximum, si bien que l'on pourrait, certes de manière analogique et sans en reprendre toute la précision théorique, mais simplement pour souligner qu'il ne s'agit pas d'une ressource illimitée, formuler le recours bibliographique par un trait humoristique. On reprendrait alors l'un des concepts les plus familiers des économistes au point qu'il constitue le titre du premier chapitre de la discipline dans les classes secondaires et dire qu'il faut se livrer à une sorte de « maximisation sous contrainte ».

Les sources primaires sont accessibles. Nous disposons désormais, pour la quasi-totalité des œuvres de l'Aquinate, d'une édition critique de référence fournie par la Commission léonine, et le *Commentaire des Sentences*, dont l'édition critique est encore en cours, bénéficie d'éditions de qualité suffisante. *L'histoire de saint Thomas d'Aquin* par son premier biographe Guillaume de Tocco est également accessible. Les œuvres de l'Antiquité nécessaires, à savoir les écrits de Platon, de Xénophon, d'Aristote, de Cicéron, d'Augustin d'Hippone, de Jérôme de Stridon ou de Théodoret de Cyr, sont éditées. Le *Codex juris civilis* et le *Codex juris canonici*, qui fournissent les textes juridiques à portée économique de Justinien, de Gratien ou de Grégoire

IX, sont également édités, ainsi que la Bible hébraïque, la Bible des Septante, certaines versions de la *Vetus latina*, la *Vulgate*, la *Glossa Ordinaria*, les écrits de Grégoire VII et d'Haymon d'Auxerre, les *Sentences* de Pierre Lombard, le *De usura* de Robert de Courçon, la *Summa aurea* de Guillaume d'Auxerre, les œuvre d'Hugues de Saint-Cher et d'Albert le Grand, le *De usuris* de Gilles de Lessines, le *Traité des contrats* de Pierre de Jean-Olivi et le *Commentaire des Sentences* de Duns Scot. Plus encore, les manuscrits des missels, décrivant la liturgie que Thomas d'Aquin a dû connaître, des Correctoires et des Bibles parisiennes qu'il a éventuellement pu consulter ou de commentaires bibliques d'auteurs dominicains qui furent ses contemporains comme Guillaume d'Alton, sont eux aussi accessibles. Concernant les sources modernes, on peut se reporter sans difficulté aux éditions des œuvres de Gerard de Malynes, Thomas Mun, Jacques Bernoulli, Richard Cantillon ou Anne-Robert-Jacques Turgot. On dispose également des éditions critiques des écrits des économistes du XIX^{e} siècle qui sont évoqués ici, comme *Valeur absolue et valeur d'échange* de David Ricardo et les *Éléments d'économie politique pure* de Léon Walras.

La littérature secondaire est elle aussi aisément accessible, mais elle est soumise à une forte contrainte de rareté. Nous pouvons relever quatre caractéristiques de la bibliographie disponible et employée :

1. Une absence de littérature spécifique. Il faut d'abord souligner l'absence de littérature économique spécifique sur les écrits de jeunesse. Les contributions qui traitent de Thomas d'Aquin n'évoquent que très brièvement ces écrits. Les premières occurrences de l'expression « juste prix », qui ne figurent pas dans des textes proprement économiques, ne sont pas abordées. Les deux questions économiques du *Commentaire des Sentences* sont à peine mentionnées : Noonan 1957, 52 sur l'usure ou Baldwin 1959, 63 sur l'activité des marchands. Le *De emptione* bénéficie d'évocations plus nombreuses mais tout aussi brèves : Noonan 1957, 51, 90, 181 ; Baldwin 1959, 77 ; Bartell 1962, 373 ; Hollander 1965, 630-631 ; De Roover 1971, 58 ; Lapidus 1986, 24 ; 1992, 30; 2021 ; Langholm 1992 ; 2003, 168 ; Chaplygina et Lapidus 2016, 22.

Au-delà de l'absence de littérature propre aux écrits de jeunesse, il faut constater que la littérature économique spécifiquement dédiée à Thomas d'Aquin demeure limitée bien que ces contributions apportent des éclairages importants : Bartell 1962 présente la distinction conceptuelle entre valeur et prix ; Friedman 1980 la réduction des coûts de transaction permise par le juste prix ; Lapidus 1994 l'information, le juste prix et les comportements individuels

dans la *Somme de théologie* ; Neves 2000 la conception de la richesse chez Aristote et Thomas ; Sivéry 2004 la compréhension économique de l'usure par l'Aquinate ; Franks 2009 la manière dont la pensée économique de Thomas est marquée par sa vie de chrétien et de religieux dominicain ; Rajapakse 2010 l'intérêt comme le juste prix de la monnaie ; Frémeaux et Noël-Lemaître 2011 la juste rémunération du travail ; Dierksmeier et Célano 2012 l'application de la vertu de justice à la vie économique chez l'Aquinate ; Koehn et Wilbratte 2012 le juste prix en tant que pratiqué par une personne juste ; Hirschfeld 2018 la manière dont la pensée économique thomasienne, enracinée dans la philosophie morale d'Aristote, peut contribuer à la quête contemporaine de bonheur ; Santori 2019, 2020, 2021 l'importance du don et de l'amitié et la manière dont Thomas pose les fondement de ce qui deviendra un demi-siècle plus tard en Italie l'économie civile ; Conrad et Hunter 2020 la prévisibilité des actes humains, notamment en matière économique et Koehler 2020 la conduite de la vente dans la *Somme de théologie*. Cette littérature, qui s'appuie en grande partie sur la *Somme de théologie* ou les commentaires d'Aristote est donc principalement utile pour comprendre les évolutions de l'Aquinate et pour fournir des éléments d'analyse économique conceptuelle de la pensée thomasienne dans son ensemble.

2. Une littérature économique sur la pensée médiévale et scolastique limitée. Il faut ensuite souligner que, si le peu de références économiques proprement thomasiennes invite à se reporter aux commentaires portant sur la période scolastique en général, ou plus particulièrement sur la scolastique médiévale, cette littérature est elle aussi restreinte. À cet égard, il faut évoquer les grandes figures qui peuvent être considérées comme des pères fondateurs de l'histoire de la pensée économique médiévale au XX^{e} siècle : O'Brien [1920] 2001 offre un panorama large et synthétique ; Tawney [1926] 1948 insiste sur l'approche du juste prix par les coûts de production ; Rocha 1933 propose une analyse du travail et des salaires, conçus comme prix du travail ; Dempsey 1935 traite du juste prix ; McLaughlin 1939 et 1940 fournit un exposé très détaillé de l'usure, de ses voies de contournements et de ses sanctions effectives. Il faut ajouter à ces précurseurs les deux noms illustres que le milieu du siècle voit émerger et qui fournissent les deux grandes études fondamentales sur les deux principaux sujets scolastiques et thomasiens : Noonan 1957 sur l'usure et Baldwin 1959 sur le juste prix. On doit ensuite s'appuyer sur De Roover 1946, 1953, 1958 et 1971, dont l'approche du juste prix comme prix de marché prend en quelque sorte le contre-pied de celle de Tawney. On peut joindre les pages sur la scolastique de Schumpeter [1954] 2006. Hollander 1965 marque une première étape en combinant les deux approches du juste prix, annonciatrice des évolutions suivantes. La

décennie suivante voit deux contributions ouvrant des voies nouvelles : Mélitz 1971 propose une première réflexion d'analyse monétaire sur la question de l'usure et Worland 1977 une approche du juste prix à partir des justices commutative et distributive. Les quarante dernières années ont produit une littérature relativement abondante avec les contributions encyclopédiques de Langholm 1984, 1992, 1998, 2003, 2006, dont l'approche du juste prix demeure plutôt, avec nuance, dans la mouvance de celle de De Roover, et celles de Lapidus 1986, 1987, 1991, 1992, 1997, 2021 et Chaplygina et Lapidus 2016 et 2022. L'apport décisif de ces derniers est la compréhension nouvelle de l'expression « prix sur le marché », qui ne peut être, au Moyen Âge, un prix de marché au sens contemporain du terme, contrairement au rôle actif donné par De Roover au marché en matière de justice de l'échange. Cela constitue l'ouverture d'une voie nouvelle dans la compréhension du juste prix thomasien comme un prix de justice traduit par un univers de prix effectifs acceptables. Plusieurs auteurs ont ensuite travaillé à sortir le juste prix du débat classique entre prix par les coûts de production et prix de marché : Hamouda et Price 1997 pensent le juste prix à partir de la justice et établissent les critères selon lesquels un prix est juste ; Gomez Camacho 1998 et Muñoz de Juana 2001 y contribuent également à partir de la scolastique tardive ; De-Juan et Monsalve 2006 rappellent l'importance de la dimension morale de l'analyse scolastique ; et Monsalve 2014a et 2014b montrent cette prééminence morale dans le traitement de l'usure et du juste prix proprement dit. Noell 1998 contribue à la compréhension des salaires ; Ege 2014 présente le traitement de l'usure dans une perspective historique et culturelle large. Lupton 2015 et Sturn 2017 montrent l'importance de l'information et envisagent le traitement de l'asymétrie d'information par les scolastiques, point également mis en lumière par Dellemotte 2017 dans sa synthèse. Brollo 2019 met en valeur la place de la monnaie dans la compréhension des opérations économiques au Moyen Âge. Les contributions de Berthoud 1991, 2004, 2005 éclairent le taux d'intérêt à partir de la notion de prix du temps et à partir de la compréhension de la monnaie. Enfin, à la frontière entre l'histoire économique et l'histoire de la pensée économique, Ekelund, Hébert *et al.* 1996 appliquent les théories scolastiques à l'Église comme agent économique.

3. Le recours à une littérature économique générale. La littérature économique vient, elle aussi, éclairer la lecture de l'œuvre thomasienne de plusieurs manières. Les travaux de Mongin 2006 et 2018 sur la normativité en sciences économiques sont utiles pour situer épistémologiquement la pensée thomasienne d'une part, et la démarche de la présente recherche d'autre part. La littérature fournit aussi un cadre d'analyse du risque, d'abord en distinguant le risque et l'incertitude (Knight 1921), puis en précisant les différentes manières de définir le risque

(Rothschild and Stiglitz 1970), avant de définir la notion de prudence (Kimball 1990). La mise en perspective historique du calcul des probabilités (Bréban et Lapidus 2019) permet d'envisager, sous l'angle du risque, les situations décrites par Thomas comme probables. La littérature économique permet également de penser à nouveaux frais la distinction entre biens marchands et biens non marchands à travers la notion de marchandises contestées (Radin 1987 et 1996 ; Callon 2013 ; Steiner et Trespeuch 2014 ; Wilkinson 2016 ; Bertrand et Catto 2020) et l'application de cette approche à différents biens, notamment dans les contributions contenues dans les deux recueils (2014 et 2020) issus des deux colloques majeurs sur la question (Frau 2014 ; Roux 2014 ; Steiner 2014 ; Trachmann 2014 ; Trespeuch 2014 ; Bertrand 2019a et 2020 ; Catto 2020 ; Jouan 2020 ; Mercier-Ythier 2020 ; Mornington 2020 ; Spitz 2020). Les externalités pensées à travers la répartition des droits de propriétés (Coase 1960 et 1992 ; Bertrand et Destais 2002 ; Bertrand 2006, 2014, 2019b ; Bertrand et Sigot 2014) permettent de comprendre les conséquences du mariage du serf, ce à quoi contribue également l'analyse économique du servage (Domar 1970 ; Domar et Machina 1984 et 1985 ; Tourmanoff 1985 ; Aréna 2002 ; Célimène et Legris 2002 ; Clément 2002 ; Dockès 2002 et 2011 ; Herland 2002 ; Lapidus 2002 ; Oudin-Bastide et Steiner 2015).

4. Le recours à une littérature d'autres disciplines. On doit enfin recourir aux travaux fournis par d'autres disciplines. La démarche pluridisciplinaire impose de se reporter aux études thomasiennes ou thématiques menées en histoire, en philosophie et en théologie. Le premier lieu où la littérature secondaire pluridisciplinaire est nécessaire est le cadre historique, qui vient : dessiner la place grandissante des marchands et le rapport à l'usure dans l'Antiquité puis au Moyen Âge ; préciser les lexiques employés, notamment pour caractériser les salaires ; spécifier les lexiques bibliques et liturgiques en matière de prix ; cerner la question spécifique du servage ; introduire aux œuvres médiévales.

Les études antiques comme Nadjo 1989 ; Feuvrier-Prévotat 1993 ; Cimma 1984 ; Andreau 1997 et 2000, et Giliberti 1999 viennent mettre en perspective la question de l'usure en permettant d'esquisser le fonctionnement du prêt dans l'Antiquité. Les études patristiques aident, pour leur part, à une meilleure connaissance des prédécesseurs, même lointains, de l'Aquinate. C'est le cas de Guinot 1980, qui présente Théodoret de Cyr. En outre, pour connaitre les sources de Thomas, les travaux d'histoire de la liturgie latine (Schuster 1925) et plus spécifiquement de la première liturgie dominicaine (Boyle 2004 ; Huglo 2004 ; Gleeson 2004 ; Gy 2004), ainsi que des Bibles latines et des correctoires auxquelles l'Aquinate aurait pu avoir accès (Bogaert 1988 ; Dahan 1992, 2004 et 2005 ; McGuckin 1993) sont très précieux.

Si Panofsky [1951] 1976 resitue le contexte intellectuel, spirituel et artistique du XIII^{e} siècle, Le Goff [1956] 2001, 1986, [2010] 2019 ; Shatzmiller [1990] 2000 ; Wyffels 1991 ; Dupuy 1992 ; Ellul 2013 ; Todeschini 1994, 2002, 2012, 2015, 2021 ; Munro 2003 ; Feller 2014 et 2020 ; Persson 2014 ; Verdon 2016 présentent l'histoire économique du Moyen âge en soulignant d'une part la place nouvelle des marchands et d'autre part le développement de l'usure. Un travail sur les lexiques en vigueur permet à Ouaknin 1991 de préciser le vocabulaire économique dans la Bible hébraïque puis, dans un cadre médiéval, à Piron 2010 et Hengstmengel 2021 de spécifier la notion de valeur dans les écrits économiques médiévaux, et à Pinto et Franceschi 2014 de préciser le lexique de la rémunération. Kaeuper 2020 explicite la nature et la place de la chevalerie et sa perception par les théologiens. Des précisions conceptuelles sont apportées par Thayer 1937 concernant la *laesio enormis* tandis que du Passage 1946 offre une histoire de la compréhension du prêt à intérêt. La mise en lumière des différentes acceptions du terme *œconomia* depuis l'Antiquité par Prestige [1936] 1952 ; Mondzain 1996 ; Agamben [2007] 2021 est quant à elle importante pour contextualiser l'usage qu'en fait l'Aquinate. La conception médiévale du marché est, pour sa part, éclairée par Kaplan 1984, qui distingue le marché comme espace et le marché comme principe.

Les travaux des anthropologues sur le don, à commencer par Mauss [1950] 2013 et par son commentaire par Lévi-Strauss [1950] 2013, suivis par les apports de Lordon [2006] 2011, mettent en perspective la distinction entre le don et l'échange chez Thomas. Piron 2005 présente une application de ces travaux fondamentaux en explicitant la notion d'*antiodora* et sa mise à distance par l'Aquinate.

Une littérature spécifique vient ensuite éclairer plus directement la vie de Thomas d'Aquin (Chenu 1959 ; Weisheipl [1974] 1993 ; Tugwell 1988 ; Émery 1993 ; Torrell 1993 ; 2012 et 2015a ; Imbach et Oliva 2009 ; Porro 2015, complétés par Le Goff 1996 sur sa relation avec Louis IX) et sa méthode (Chenu 1950). On peut ainsi préciser plus particulièrement le contexte et l'histoire rédactionnelle du *Super Isaiam* (Mandonnet 1928 ; Gils 1958 ; Leonina 1974 ; Leroy 1978 ; Dondaine 1979 ; Bataillon 1980 ; Bouthillier et Torrell 1990 ; Oliva 2006) et du *De emptione* (Mandonnet 1910 et O'Rahilly 1928). Il convient encore d'ajouter, parce qu'elles éclairent les écrits de jeunesse bien qu'elles traitent de la *Somme de théologie,* les notes anciennes mais irremplaçables de Delos 1932 et Spicq 1935 dans l'édition de la Revue des jeunes et les introductions au *De decem preceptis* de Torrell 1985 et 2015b.

Il faut enfin ajouter les contributions éclairant les œuvres contemporaines ou proches de celles de l'Aquinate. Ces travaux fournissent la datation des œuvres d'Albert le Grand (Siepmann et Simon 1952 pour les *Postilla super Isaiam* et Kübel 1968-1972 pour le premier commentaire de l'*Éthique*) et l'attribution du *De usuris in communi* à Gilles de Lessines et non à Thomas et sa datation (Grabmann 1936 et Hocédez 1936). Ils offrent également une édition critique et des éléments d'analyse du *Traité des contrats* de Pierre de Jean Olivi (Kirshner et Lo Prete 1984 ; Kaye [1998] 2004 ; Ceccarelli 1999 ; Piron 1997, 2012, 2020 ; Toivanen 2016) et une première approche des travaux de Gerald Odonis (Ceccarelli et Piron 2009).

La littérature de différentes disciplines est également utile sur le plan conceptuel. Elle aide ainsi à entrer dans la notion de probabilité à l'époque médiévale employée en *In III Sent.*, d. 37, a. 6 pour en percevoir la différence avec la conception qui prévaudra à partir de l'époque moderne (Lafont 1961 ; Byrne 1968 ; Daston 1988 ; Hacking 2006) et la préciser à partir de la notion de *fides* (Wirth 1983). La littérature vient également préciser la conception thomasienne du métier des armes et de la guerre juste (Synan 1988 ; Miller 2002 ; Reichberg 2010 et 2011) afin de saisir la différence de traitement entre le soldat et le marchand en *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. Les contributions philosophiques et théologiques fournissent en outre les éléments pour comprendre le juste prix à partir des concepts de signe et d'analogie, qu'elles viennent expliciter (Chollet 1903 ; Gilson 1965 ; Montagnes [1963] 2008 ; Te Velde 2006 ; Humbrecht 2009 ; Bonino 2016). Les travaux anthropologiques offrent une compréhension plus large en mettant en perspective ce concept d'analogie (Descola [2005] 2015). On aura également recours à la théologie sacramentaire thomiste à partir de l'articulation entre les trois niveaux de réalité d'un sacrement afin de comprendre les trois niveaux de réalité du juste prix thomasien (Michel 1939, Revel 2004 ; Rosier-Catach 2004). Cette littérature vient enfin préciser la vertu de prudence et l'articuler avec la vertu de justice chez l'Aquinate (Noble 1936 ; McInerny 1974 ; Belmans 1985, 1989 et 1991, Pinckaers 1985 ; Daubercies 1990 ; Lemoine 1991 ; Dubrulle 2016 et Yuengert 2012).

La littérature secondaire, malgré sa relative rareté et l'absence de contributions spécifiques, permet ainsi d'éclairer ce que la lecture diachronique, intégrale et analytique révèle. Il est alors possible de mettre en évidence les caractéristiques principales de la pensée économique de Thomas d'Aquin et d'en souligner les lignes de force et les évolutions.

3. Résultats : Le risque de l'échange dans les œuvres de jeunesse de Thomas d'Aquin

L'attention portée pour la première fois de manière systématique sur les œuvres de jeunesse, y compris sur des textes décrivant des situations économiques mais qui portent principalement sur d'autres sujets, et la méthodologie employée me conduisent à énoncer des résultats nouveaux. Leur présentation peut avoir, à première vue, un caractère répétitif puisque, au-delà de la simple exposition du contenu de chaque texte, ils procèdent de combinatoires qui mettent en relation les textes eux-mêmes, des critères et des niveaux d'analyse. L'identification des risques singuliers me permet d'en proposer trois typologies puis de les articuler en une structure dynamique. La mise en évidence, comme premier risque, d'un risque d'analyse, en amont de la transaction, risque que l'expert fait encourir aux agents en cas d'erreur de compréhension de l'opération, mérite d'être noté pour sa manifestation du caractère novateur, universel et encore méconnu de l'analyse thomasienne. L'analyse du risque vient par ailleurs renouveler notre compréhension du recours progressif de Thomas au prix comme instrument visible et objectif au service de la justice de l'échange. Cela se caractérise par un usage implicite de la notion de prix dans les textes économiques du *Commentaire des Sentences* (*In III Sent*., d. 37, a. 6 ; *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3) et par une introduction de l'expression « juste prix » d'abord dans les textes non économiques de Thomas (*Super Isaiam*, 55, 1 ; *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 ; *In IV Sent.*, d. 36, q. 1, a. 2), en attendant que l'expression trouve toute sa place à partir du *De emptione* en 1262. Enfin, cela me conduit à mettre en lumière trois marqueurs de l'analyse thomasienne : 1. une responsabilisation des agents à travers la relativisation et l'universalisation de la volonté conditionnée qui consiste à emprunter par nécessité vitale ; 2. une attention à l'objet et à l'activité plus qu'à la subjectivité des agents, à travers une approche ontologique et objective de l'échange ; et 3. une universalisation du regard porté sur l'activité à travers une attention progressive à l'ensemble des agents.

3.1. Pour une approche multiple et dynamique du risque

La lecture des écrits de jeunesse à portée économique permet d'identifier un ensemble de risques et d'en dresser la cartographie texte par texte, selon qu'ils sont présentés au sujet de l'usure, de l'activité des marchands, de la vente à terme, qui ressort potentiellement de ces deux activités, ou qu'ils apparaissent à l'occasion de l'emploi de l'expression « juste prix ». Cela permet de dégager ensuite trois typologies du risque. Les risques peuvent être classés par *type* (risque d'analyse, risque commercial, risque stratégique), par *niveau d'occurrence* (selon les niveaux de réalité du juste prix – risque sur le prix de justice, risque sur le juste prix sur le

marché, risque sur le juste ou prix dans l'échange singulier – ou dans l'activité commerciale - risque de licéité, risque sur les conditions, risques de rémunération), ou selon leur *extension* (risques explicitement nommés par Thomas, risque implicitement déductible de la situation décrite et risques induits par la manière dont Thomas traite la situation). On parvient ainsi à dessiner une structure dynamique des risques tels qu'ils apparaissent dans les œuvres de jeunesse, partant des risques qui surviennent en amont de l'échange, pour caractériser les risques dans l'échange puis aboutir à l'indentification de nouveaux risques qui se situent en amont de l'échange mais qui n'apparaissent qu'à travers l'échange.

3.1.1. Une cartographie des risques dans les écrits de jeunesse de Thomas d'Aquin

Bien que le *corpus* et la méthode retenus soient originaux, leur intérêt réside dans le caractère novateur des résultats auxquels ils permettent d'aboutir. L'apport majeur de la lecture des œuvres de jeunesse est la mise en évidence d'un ensemble de risques, rarement ou jamais soulignés jusqu'à présent. Les six chapitres de la présente recherche viennent donc dessiner progressivement une cartographie des risques affectant l'activité économique en dégageant, texte après texte, à travers les formulations explicites et les contenus implicites de Thomas, ce qui nous apparaît aujourd'hui comme des risques.

1. Le premier chapitre traite du premier écrit à portée directement économique de Thomas, qui porte sur l'usure, dans le *Commentaire des Sentences* (*In III Sent.,* d. 37, a. 6). Le premier risque qui apparaît, singulier dans sa nature, est un risque d'analyse du prêt à intérêt. Dans le *respondeo*, Thomas présente trois arguments contre l'usure hérités des autorités. Il les introduit par des termes généraux : « Mais diverses [personnes] donnent diverses raisons [*sed diversi diversas rationes assignant*] ». Les autorités ne sont pas nommées et le terme *diversi/diversas* comporte à l'origine une idée d'opposition, qui sous-entend ici que les arguments vont au moins dans des directions variées, sinon opposées. L'Aquinate ne remet pas en cause la position générale, dont il souligne qu'elle est unanime : « Tous disent communément que l'usure est un péché mortel », mais l'introduction de l'argumentaire laisse entrevoir une certaine distance critique. Thomas donne ensuite la première raison, qui porte sur la définition de la monnaie (*pecunia*) qui, ici, « n'est pas détruite par l'usage [*non deterioratur ex usu*] ». (*In III Sent.,* d. 37, a. 6, resp.) Cette non détérioration serait spécifique à la monnaie et justifierait qu'il n'y ait pas de surplus versé au prêteur. Thomas note la fragilité de l'argument, puisque certains biens, comme la maison, ne se détériorent pas non plus. Il ne retient pas plus longuement l'argument, qu'il retournera dans la *Somme de théologie* (*S. T.*, IIa IIae, q. 78, a. 1, resp.) en soutenant que

l'usage principal de la monnaie est d'être consommée (*ad consummendas faciendas*). Il conclut donc « C'est pourquoi d'autres donnent d'autres raisons » (*In III Sent.,* d. 37, a. 6, resp.). Le risque d'erreur de la part des autorités est donc présent dès le premier argument énoncé.

Thomas présente ensuite l'argument du *mutuum* : « quand la monnaie est prêtée, la propriété est transférée [*quando pecunia mutuatur, transfertur dominum*] », et « rien n'est reçu en échange ». Il conclut qu'on considère que cette raison est assez probable [*et haec ratio satis probabilis videtur*] » (*In III Sent.,* d. 37, a. 6, resp.). Je montre, d'une part, à partir de l'usage médiéval et thomasien des termes *satis* et *probabilis,* que l'expression *satis probabilis* est à entendre ici comme une absence de certitude et donc comme l'expression d'un risque d'erreur, et d'autre part qu'une ambiguïté demeure sur ce à quoi s'applique ce jugement : le fait que le prêt soit un transfert de propriété ou que ce transfert de propriété empêche un surplus. Thomas termine ensuite, sans émettre de jugement dessus, avec le troisième argument, qui soutient que la monnaie n'a pas d'utilité propre mais sert à mesurer l'utilité des autres biens. On voit ainsi que le trait marquant qui ressort du premier écrit économique de Thomas est que parmi les trois raisons communément données qui prétendent comprendre l'usure pour justifier son interdiction, la première est fragile et la deuxième n'est pas certaine mais seulement assez probable. La pensée de Thomas en matière économique s'ouvre donc sous les hospices du doute.

Ce premier écrit permet également d'identifier la nature du risque attaché au prêt à intérêt en montrant à quel type d'activité il se rapporte. L'usure est présentée comme un échange commercial avec un prix qui ne serait pas juste : « recevoir plus d'argent pour [une somme] moindre [*accipere majorem pecuniam pro minori*] […] modifie la mesure en recevant et en donnant, ce qui constitue manifestement une iniquité » (*In III Sent.,* d. 37, a. 6, resp.). Autrement dit, « le bénéfice du prêt [*beneficium mutui*] n'est pas plus grand que la somme échangée [*pecunia mutata*]. La présence d'un intérêt vient rompre l'égalité de chose à chose que doit assurer le juste prix selon la justice commutative (*S. T.*, IIa IIae, q. 77, a. 1, ad 3). Le prêt est un transfert de propriété donc il s'apparente à une vente dont le prix est la somme prêtée. Cette approche du prêt comme échange commercial sera confirmée dans la *Somme de théologie* puisque la question 78 sur l'usure est traitée dans le cadre de la justice commutative, qui régit un échange avec un prix qui est une égalité de chose à chose, qui est le rapport d'échange qui assure cette justice.

Enfin, cet article de Thomas sur l'usure présente trois principes structurants de son analyse exprimés ici en peu de mots : la même personne qui encoure le risque perçoit le profit ; le risque incombe au propriétaire ; et chacun doit assumer son risque et ne peut le faire supporter par autrui : « tout ce qui advient utilement à celui à qui j'ai accordé un prêt, au-delà de la mesure du prêt selon l'argent prêté, cela vient des efforts [*industria*] de celui qui a sagement utilisé la monnaie. Je ne dois pas lui vendre ses efforts, comme je ne dois pas recevoir moins en raison de sa stupidité » (*In III Sent.,* d. 37, a. 6, ad 4).

2. Le deuxième chapitre poursuit l'analyse à travers l'achat et la vente à terme (*De emptione et venditione ad tempus*), qui relève à la fois de la question usuraire et du commerce. Le risque pesant sur le juste prix est alors un risque usuraire. Il y a usure si on vend plus cher que le juste prix parce qu'un supplément est imposé pour « l'attente [*propter expectationem*] », autrement dit, on reçoit plus que la somme due « à cause du délai dans le temps [*propter temporis dilationem*] » (*De emptione*, I).

Le risque de se trouver en situation d'usure peut évoluer au cours de l'échange. Si le prix qui était fixé pour un paiement à terme était juste et que l'acheteur demande un rabais pour un paiement anticipé, c'est lui qui se trouve en situation d'usure. Le risque usuraire est ainsi universalisé. En portant son regard sur le déroulement de l'opération, Thomas ne se cantonne pas à une détermination préétablie des statuts usuraires des agents, il peut ainsi noter la possibilité pour chacun, acheteur ou vendeur, d'être usurier ou victime d'usure.

Thomas sous-entend ensuite deux risques dans l'établissement du juste prix. Le premier porte sur l'estimation du juste prix. En effet, le cas de l'acheteur qui paye moins que prévu en payant avant le terme permet à l'Aquinate d'introduire la notion d'estimation, puisque l'acheteur achète « moins cher que la juste estimation [*justa aestimatione*] » (*De emptione*, I). Thomas ne précise pas ici le sens du terme '*aestimatio*', mais son autre usage au sujet du prix, en *S. T.*, IIa IIae, q. 77, a. 1, ad 1 comporte une notion d'approximation. Il y a donc un risque d'erreur dans l'évaluation précise du juste prix. Le second risque vient de l'écart conceptuel entre la valeur et le prix. Le terme '*pretium*' n'apparaît qu'en *De emptione* I alors que la situation d'usure se produit quand on vend les tissus « plus que ce qu'ils valent [*plus quam valeant*] », introduisant la notion de valeur en *De emptione,* II et III.

S'il est admis que le prix puisse varier, la stabilité de la valeur n'est pas clairement établie chez l'Aquinate. En effet, Thomas ne parle pas de « prix » sur le marché commun, mais de ce qu'un bien « vaut » sur ce marché. La valeur est le pivot de référence, mais cela ne préjuge pas de son

caractère fixe. On peut interpréter le texte du *De emptione* de trois manières. D'abord, on pourrait considérer que la valeur varie avec le prix du bien sur le marché. Cependant Thomas prend soin de ne pas identifier valeur et prix. Il pourrait donc plutôt s'agir d'une conformité entre un juste prix effectif et une valeur. Une deuxième hypothèse serait que la valeur puisse intégrer le coût du délai de paiement. Cependant, les titres extrinsèques sont extérieurs au bien. On pourrait alors plutôt dire que le prix non usuraire transcrit, au-delà de la valeur du bien, un rapport d'échange qui intègre un surplus acceptable. Enfin, on peut comprendre la valeur comme stable et « *secundum se* ». Rien ne dit explicitement que la valeur varie sur le marché et Thomas réfère la valeur au bien échangé et non aux agents. Il ne formule cependant pas explicitement la valeur comme « *secundum se* » et il ne semble pas possible de statuer définitivement sur la fluctuation éventuelle de la valeur ni sur les composantes qu'elle intègre. La seule conclusion qui peut toutefois être établie est la distinction formelle entre valeur et prix.

Le lien entre le prix et la valeur est assuré par la situation d'usure, si la vente ne se fait pas au juste prix (*De emptione*, I) et plus cher que ce que valent les biens (*De emptione*, II et III). L'étude de la notion de valeur chez Thomas montre qu'elle est plus large que la notion de prix, même si le juste prix est conforme à la valeur et apparaît comme sa transaction dans l'échange. L'écart conceptuel entre valeur et prix introduit un risque d'erreur dans la transcription de la valeur en prix effectif au cours de l'échange.

3. Le troisième chapitre traite des conditions de l'activité des marchands présentées par Thomas en *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. Le premier risque qui apparait à la lecture est un risque d'analyse de sa part. Une erreur de compréhension pourrait provenir de la subjectivité de l'Aquinate et de son regard de fils et frère de chevaliers sur les marchands, catégorie sociale naissante, non aristocratique, à l'activité lucrative parfois suspecte. Ensuite, Thomas formule les conditions d'exercice du commerce. Ces conditions mettent en œuvre des critères qualitatifs - l'activité marchande est interdite aux moines et aux clercs et certains jours de l'année – mais aussi quantitatifs, puisque certains critères sont à la fois qualitatifs et quantitatifs. Ainsi, le commerce doit se faire « sans fraude et selon le contrat licite ». La fraude peut porter sur le prix, mais aussi sur le bien ou le cadre de l'échange, de même que le contrat peut porter sur la détermination du prix mais il régit aussi les modalités qualitatives de l'échange. Le risque d'injustice de l'échange peut donc porter sur les critères qualitatifs de justice : la personne, le jour, l'objet échangé, les conditions effectives non financières et les clauses non financières du contrat. Ce risque peut aussi être un risque quantitatif de prix.

Thomas ne définit pas la fraude, mais ce concept reprend, sans en avoir la précision, les deux principes traditionnels que sont le *turpe lucrum* (gain malhonnête) et la *laesio enormis* (préjudice important). On trouve le *turpe lucrum* par exemple chez Gratien (*Decretum*, II, causa 14, q. 4, c. 9). Il décrit un gain de plus du double (le prix de vente est deux fois supérieur au prix d'achat) avec une intention spéculative. La *laesio enormis*, concept qui servait au départ à protéger l'héritier d'une terre, s'est élargi pour protéger le vendeur d'une cession d'un bien à moins de la moitié du prix initial. La règle générale est donc celle du *duplus,* la vente devant être réalisée entre la moitié et deux fois le prix d'achat. Si Thomas reprend précisément cette règle dans la *Somme de théologie* (*S. T.*, IIa IIae, q. 77, a. 1, ad 1)*,* le *Commentaire des Sentences*, en s'en tenant à une expression générale d'absence de fraude, introduit un risque portant sur l'indétermination du niveau à partir duquel le prix devient injuste.

En *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, seul le marchand se voit contraint à une absence de fraude, qui sous-entend une limite maximale du prix. Rien n'est dit d'une éventuelle protection contre une pression à la baisse sur le prix. Ainsi le vendeur encourt-il un risque de rémunération, puisque son gain maximal est limité tandis que sa perte maximale ne l'est pas. Cette limite à la hausse sera affirmée plus fortement encore dans la *Somme de théologie* par la notion de « gain modéré » (*lucrum moderatum*) en *S. T.*, IIa IIae, q. 77, a. 4, resp. Cela conduit à un risque pour toute la société. En effet, cette limitation du gain n'est pas déterminée avec précision. On ne sait pas s'il s'agit d'un gain net ou brut, d'un bénéfice limité ou de recettes sur lesquelles le marchand doit payer des charges. Exprimé en termes comptables, si le terme « gain » laisse entendre qu'il ne s'agit pas uniquement d'un chiffre d'affaires, il ne précise pas à quel solde intermédiaire de gestion il renvoie. S'il ne s'agit pas du résultat net mais d'un solde intermédiaire comme un excédent brut d'exploitation, les charges restant à payer peuvent conduire à un résultat net négatif. Le gain modéré peut alors se traduire *in fine* par une perte qui dissuaderait les marchands d'exercer leur profession, donc d'approvisionner le pays. Certes, Thomas mentionne l'approvisionnement au début du traitement de l'activité marchande, en *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, obj. 1, puis en *De regno*, II, 7 (II, 3), et en *S. T.*, IIa IIae, q. 77, a. 4, resp. en tant que motif qui légitime le commerce. Cependant, en *Ethicorum*, V, 9, contrairement à Albert, il ne note pas que l'injustice du prix, qui entraîne l'arrêt de l'échange, provoque la fin de l'approvisionnement et menace la cité. En insistant sur la modération du gain, l'Aquinate ne porte pas son attention sur le risque de pénurie qui pourrait en découler.

4. Le quatrième chapitre s'attache à montrer comment, dans le *De emptione*, ce que Thomas présente comme des dépenses licites ou illicites peuvent être comprises comme des risques.

Certaines dépenses, comme le transport, peuvent être intégrées dans le prix de vente, d'autres, comme les dépenses issues de l'emprunt et les dépenses faites par imprudence, ne le peuvent pas. Toutes ces dépenses sont en réalité des risques, car leur recouvrement n'est pas certain. D'une part, il existe un risque pour le marchand que ses dépenses soient illicites et qu'il ne puisse les intégrer dans le prix et un risque pour l'acheteur que le marchand intègre tout de même ces dépenses dans le prix et que la vente se fasse ainsi au-dessus du juste prix. D'autre part, les dépenses, même lorsqu'elles sont licites et recouvrables dans le prix, représentent des risques puisque les quantités vendues et le prix de vente sont encore inconnus au moment de ces dépenses.

En outre, Thomas fait état de l'imprudence de certaines dépenses. Cette imprudence est l'accroissement du risque de perte, ce qu'on traduirait par un étalement vers la gauche de la courbe de densité de probabilité. Ce que vient décrire la conception thomasienne de la prudence rejoint ainsi celle de Kimball 1990. Cette imprudence peut intervenir à deux niveaux : un manque d'attention (*incaute*), qui conduit le marchand à faire des dépenses inadaptées par négligence, et une mauvaise gestion (*imprudenter*), qui entraîne le marchand à faire des dépenses inconsidérées, non par négligence mais par mauvaise anticipation.

Il faut enfin apporter deux précisions concernant les risques encourus par les marchands à travers leurs dépenses. D'une part, la licéité de la dépense ne préjuge pas de la licéité de son mode de financement. Ainsi, si dans le *De emptione* Thomas n'aborde que la nature de la dépense de transport, donné comme exemple type de la dépense licite, il précisera les conditions licites de son financement, par la prise de participation et non par le prêt, dans la *Somme de théologie* (*S. T.,* IIa IIae, q. 78, a. 2, ad 5). D'autre part, le coût de l'emprunt réalisé pour développer son activité ne peut pas être intégré dans le prix. Cet emprunt donne aux usuriers l'occasion de pécher et n'est pas justifié par la nécessité. En effet, cette nécessité alléguée (*ponitur*) par les marchands, qui s'appuie sur deux motifs, « vivre plus honorablement et faire de plus grandes affaires », « n'est pas une nécessité telle qu'elle suffise à excuser le péché mentionné » (*De emptione*, III). Le développement de l'activité du marchand ne constitue pas une nécessité qui excuserait l'emploi d'un moyen illicite qui est l'usure. L'emprunt n'est donc pas vu par l'Aquinate comme un moyen légitime de développement de l'activité économique, mais il ne se résume déjà plus à une situation d'asservissement du pauvre par le riche.

5. Le cinquième chapitre propose une lecture de la première occurrence de l'expression « juste prix » chez Thomas, en *Super Isaiam*, 55, 1. En effet, les quatre premiers articles montrant

l'importance du prix comme critère de justice de l'échange, mais aussi le risque pesant sur le « juste prix », il fallait préciser le contour de cette expression. Cette première occurrence fait apparaître un risque sur la nature de la transaction et un risque sur le rapport d'échange. Le premier risque porte sur la nature de la transaction, puisque ce qui apparaît à première vue comme un don, et qui est considéré comme tel jusqu'au début du XIII^{e} siècle, est traité par Thomas comme un échange avec une contrepartie. Le second risque, qui en découle, porte sur le rapport d'échange. Le juste rapport d'échange n'est pas un prix, l'opération étant réalisée « en-dessous du juste prix », mais elle ne peut être injuste puisqu'elle est réalisée par Dieu, qui ne commet pas d'injustice. Le rapport d'échange n'est pas un rapport d'égalité de chose à chose comme l'est le prix, mais il intègre les ressources (limitées) de l'acheteur, l'être humain, qui ne pourrait pas payer le juste prix d'un bien de si grande valeur (la grâce de Dieu), et la volonté du vendeur (Dieu) que l'échange se fasse. Cette ouverture vers une pluralité de rapports d'échange permet cependant de réduire le risque en rendant compte de manière visible de la justice de l'échange, même quand cette justice n'est pas assurée par un prix mais par un tarif, au sens de Steiner et Trespeuch 2014, à savoir une indemnité qui permet la reproduction de la transaction dans l'intérêt de la société (c'est le cas de l'avocat, du médecin, du prêtre, du prêteur à travers les titres extrinsèques, et même du marchand qui perçoit un « gain modéré » qui est « comme une indemnité » en *S. T.*, IIa IIae, q. 77, a. 4, resp.).

6. Le sixième chapitre présente les deux occurrences suivantes de l'expression juste prix, dans le *Commentaire des Sentences*, l'une à propos de la simonie (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1) et l'autre à propos de la vente du serf marié (*In IV Sent.*, d. 36, q. 1, a. 2). En traitant de bien non marchands et semi-marchands, Thomas vient circonscrire l'espace marchand. Le premier risque consiste donc en une possibilité de méprise sur la nature du bien, marchand ou non. Ensuite, pour le bien non marchand comme le sacrement, le prix suffit à assurer la justice de l'échange puisqu'il assume à lui seul les deux critères de justice, quantitatif et qualitatif, par sa possibilité et par son niveau. Le bien semi-marchand, comme le serf marié, qui peut être échangé mais qui fait l'objet d'une contrainte non financière forte, ici la contrainte géographique, fait l'objet de deux critères complémentaires de justice. L'élément qualitatif et l'élément quantitatif sont distincts et non substituables. Ainsi, le risque d'injustice de l'échange est double, puisqu'une injustice qualitative ou quantitative suffit à rendre l'échange injuste.

3.1.2. Les typologies du risque

Plusieurs typologies peuvent être mobilisées pour ordonner les risques mis en lumière dans les six chapitres de notre recherche.

1. Trois types de risques : risque d'analyse, risque commercial, risque stratégique

Le risque d'analyse, qui est un risque de compréhension de l'activité, est le premier risque mis en évidence par Thomas. Il s'agit d'une singularité issue de la discussion visant à une juste appréciation morale et rendue possible par le cadre offert par la *disputatio* scolastique où l'on discute les arguments en présence. Cet apport dépasse cependant le contexte du XIII^{e} siècle puisqu'il énonce la possibilité d'un mauvais jugement de l'expert et en suggère implicitement les conséquences. C'est un risque indirect. Il vient de la mauvaise analyse du moraliste, mais il est encouru par les agents plus que par le moraliste lui-même. Il s'agit d'un risque de réputation morale et légale, par exemple d'être considéré à tort comme usurier (*In III Sent.*, d. 37, a. 6 ; *De emptione*) ou comme marchand ne vendant pas au juste prix, soit de manière usuraire soit en intégrant dans le prix des dépenses illicites (*De emptione*), selon les conditions qualitatives établies pour le commerce en général (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3) ou d'un bien particulier (*In IV Sent.*, d. 36, q. 1, a. 2) ou selon le rapport d'échange applicable au bien (*Super Isaiam*, 55, 1 ; *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1). Ce risque d'analyse est également quantitatif car des agents peuvent se trouver injustement privés d'une activité pourtant licite, ils peuvent être lésés par un prix dont la justice est erronée, le processus d'estimation du juste prix comportant une approximation, et ils peuvent être lésés dans leur rémunération si une erreur affecte sa nature ou son montant (c'est le cas des marchands, dont la clause « sans fraude et selon le contrat licite » (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3) nécessitera d'être précisée par Thomas par la suite).

Le contenu des autres risques est plus familier à l'analyse économique. Le risque commercial est le risque qui intervient au cours de l'opération et qui n'est pas dû au comportement du co-contractant. Il s'agit typiquement du risque de fluctuation des cours au cours du temps. Il est sous-entendu à deux reprises en *De emptione* : d'une part, lorsque Thomas considère qu'il y a usure quand on vend un bien plus qu'il ne vaut « sur le marché commun [*secundum communem forum*] » (*De emptione*, II), puisque le prix qu'on trouve sur le marché varie ; et d'autre part, lorsque les marchands, par des dépenses imprudentes, accroissent leur risque de perte (*De emptione*, III), puisque le prudent pour l'Aquinate, est celui qui prévoit (*porro videns,* voir loin) et qui « voit les advenues de choses incertaines [*incertorum videre casus*] » (*S. T.*, IIa IIae, q. 47, a. 1, resp.). Le risque commercial affecte également le seigneur s'il ne peut trouver à vendre

son serf marié au juste prix sur place, n'ayant pas le droit de le vendre au loin pour ne pas attenter à son mariage. Enfin, le prêt étant présenté comme un échange commercial où la somme rendue est égale à la somme prêtée (*In III Sent.*, d. 37, a. 6), le cadre analytique du risque de prêt est celui de l'échange commercial. Le risque de cet échange commercial est encore nul, puisque la pratique de l'intérêt est interdite. Il n'y a donc pas encore de risque sur le montant de l'intérêt, c'est-à-dire sur le prix de l'échange, puisque ce prix n'est pas encore libre de fluctuer. Par ailleurs, Thomas n'entrevoit pas de défaut de paiement. Cependant, un risque de nature commerciale apparaît tout de même progressivement avec les titres extrinsèques, puisque Thomas permet le *damnum emergens* (*S. T.*, IIa IIae, q. 78, a. 2, ad 1) et la *poena conventionalis* (*De malo*, q. 13, a. 4, ad 14). Ces titres introduisent un dédommagement financier envers le prêteur. Les agents sont donc confrontés à un risque sur l'évolution commune des conditions de ces titres.

Le risque stratégique vient de l'ignorance de l'agent sur les motivations et les actions futures du co-contractant. Le risque peut venir de l'intention usuraire du prêteur qui dissimile l'intérêt derrière des titres extrinsèques ou de la vente à terme (*De emptione*). Il peut aussi résulter de l'intention d'intégrer dans le prix des dépenses illicites (*De emptione*). Il apparaît aussi avec l'intention du vendeur de ne pas respecter les conditions licites de son activité : de vendre alors qu'il est clerc ou moine, un jour interdit ou avec fraude, selon un contrat illicite ou sans respecter le contrat (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3). Ce risque vient aussi de l'intention de ne pas respecter les critères qualitatifs de justice de l'échange, comme le critère géographique (*In IV Sent.*, d. 36, q. 1, a. 2), ou de l'intention de vendre un bien qui ne peut pas faire l'objet d'un prix ou qui doit être échangé contre une contrepartie spécifique (*Super Isaiam*, 55, 1 ; *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1). Thomas poursuit un objectif de discernement moral visant à déterminer si l'agent commet un péché, ce qui dépend de son intention. Cependant, l'intention demeurant cachée, l'Aquinate contourne le défaut d'information sur cette intention en cherchant des indicateurs objectifs et visibles de la justice de l'échange. Il porte donc son intérêt sur le prix et sur le bien échangé. Cela permet de réduire le risque stratégique, puisque l'agent contourne son ignorance de l'intention de son co-contractant en s'assurant de la justice de l'échange par ces deux indicateurs à sa portée.

2. Trois niveaux d'occurrence du risque

- *Selon les niveaux de réalité du juste prix*

Le juste prix, qui est le prix de justice, se trouve, par analogie et comme signe, dans le juste prix sur le marché, et également, par analogie et comme signe, dans le juste prix de l'échange singulier. Chacun de ces trois niveaux peut donner lieu à chacun des trois types de risques (risque d'analyse, risque commercial, risque stratégique). Nous obtenons ainsi un ensemble de neuf risques fondamentaux qui pèsent sur le juste prix (voir Table 1, *infra*, p. 209).

- *Dans l'activité commerciale*

Le risque peut également être considéré selon le niveau auquel il se situe au sein de l'activité commerciale. Le traitement de l'activité des marchands par Thomas en *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 fait en effet ressortir trois niveaux auxquels un risque apparaît : la licéité de l'activité marchande, les conditions d'exercice de cette activité et la rémunération de cette activité. En s'attachant aux moyens dans sa réponse sans reprendre l'interdiction qui figure dans le *sed contra* et dont il hérite de Pierre Lombard et de Gratien, Thomas laisse la licéité du commerce sous une forme d'*épochè* méthodologique. Il demeure donc un risque sur la licéité même de l'activité. Ensuite, les conditions d'exercice font également l'objet de risques : si les personnes et les jours licites sont bien connues, les notions de fraude et de licéité du contrat sont moins précises. Enfin, le risque peut apparaître au niveau de la rémunération de l'activité marchande, puisque celle-ci est bornée à la hausse par la nécessité d'absence de fraude et de respect du contrat, mais pas à la baisse par une protection du vendeur, car seule la fraude du vendeur est envisagée. Nous pouvons croiser ces trois niveaux de risques (licéité, condition, rémunération) avec les trois types de risques (risque d'analyse, risque commercial, risque stratégique) puisque chacun des trois types se trouve à chaque niveau. Nous obtenons ainsi un ensemble de neuf risques commerciaux (voir Table 2, *infra*, p. 265).

3. Trois extensions du risque : risques explicites, risques implicites, risques induits

Le risque peut également être lu selon une autre typologie, qui tient à son expression ou à son extension formelle. En effet, certains risques sont explicites dans les œuvres de jeunesse, notamment à travers le lexique choisi par l'Aquinate : la compréhension de l'usure à partir du le *mutuum*, jugée *satis probabilis* (*In III Sent.*, d. 37, a. 6, resp.) et certaines dépenses faites *incaute* et *imprudenter* (*De emptione*, III). Les œuvres plus tardives complèteront ce lexique

avec l'emploi de *periculum* pour exprimer un danger qui n'est pas certain (*S. T.*, IIa IIae, q. 77, a. 1, obj. 3 ; a. 3, ad 3 ; q. 78, a. 2, ad 5 ; *De malo*, q. 13, a. 4, ad 19).

Si l'on trouve quelques expressions formelles du risque, la présence de ce risque est le plus souvent implicite et se dégage de la situation décrite. Aucun des trois arguments recensés contre l'usure en *In III Sent.*, d. 37, a. 6 ne semble pleinement satisfaire Thomas, ce qui laisse planer un risque d'erreur. En outre, si l'on argumente contre l'usure, cela montre qu'elle risque de se pratiquer. De même, en *De emptione*, la situation d'un vendeur qui cède un bien à terme au-dessus de ce qu'il vaut sur le marché, ou du client qui impose un rabais pour paiement anticipé, apparait bien comme une situation pouvant advenir. De la même manière, poser les conditions de l'activité des marchands (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3) ou de la vente du serf marié sous-entend qu'il est possible qu'elles ne soient pas respectées. En outre, préciser que certains biens ne sont pas échangeables selon un prix sous-entend que le risque que cela se produise n'est pas nul, au point que cela puisse porter un nom spécifique, comme la simonie (*Super Isaiam*, 55, 1 ; *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1). À l'inverse, *Super Isaiam*, 55, 1 montre que Dieu communiquant sa grâce de toute manière, l'homme risque de ne pas payer la contrepartie juste, au point que la situation a été comprise jusqu'au début du XIII^{e} siècle comme un don et non comme un échange.

Un troisième degré d'extension du risque apparaît chez l'Aquinate. Il ne s'agit plus du risque explicite ou implicite, mais du risque qui peut naître de l'analyse thomasienne, pas tant en raison d'une erreur d'analyse que d'une orientation de celle-ci. Le premier exemple est le risque induit par l'expression « sans fraude » qui s'applique au marchand (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3). D'une part, le concept nécessite encore d'être précisé quantitativement, ce que Thomas fera dans la *Somme de théologie* avec la règle du *duplus* (*S. T.*, IIa IIae, q. 77, a. 1, ad 1). D'autre part, Thomas ne s'attache ici qu'à l'un des co-contractants et le marchand est le seul qui se voit imposer des contraintes à l'exercice de la transaction. Aucune condition n'est posée à l'acheteur. L'attention aux marchands, groupe social nouveau, en plein développement et à l'activité aux contours méconnus et suspects en raison du risque d'usure ou de fraude, et qui dispose d'un fort pouvoir de négociation entraine un risque sur leur rémunération, qui n'est bornée qu'à la hausse, et un risque sur la justice de l'échange venant du comportement abusif de l'acheteur, qui est ignoré ici. Le *De emptione* propose une vision plus équilibrée et symétrique, avec la possibilité que l'acheteur se trouve en position d'usurier s'il demande un rabais pour paiement anticipé. La *Somme de théologie* affermit cette vision symétrique, le vendeur pouvant lui aussi contrevenir à la justice du prix (*S. T.*, IIa IIae, q. 77, a. 3, resp.). L'autre exemple est le risque

d'approvisionnement. On peut considérer que ce risque est traité par Thomas puisque l'approvisionnement est le premier élément mentionné au sujet des marchands en *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, obj. 1, puis qu'il apparaît en *De regno*, II, 7 (II, 3), et en *S. T.*, IIa IIae, q. 77, a. 4, resp. On peut aussi souligner que Thomas ne le reprend pas, ni aucun motif de légitimisation du commerce, dans le *respondeo* en *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp. En outre, en *Ethicorum*, V, 9, l'arrêt de l'approvisionnement n'est pas évoqué comme conséquence de l'arrêt de l'échange. Il est clair que Thomas connaît la nécessité pour la société de l'activité des marchands. Toutefois, si l'on retient la distance qu'il prend avec l'expression de cette nécessité parallèlement à son insistance sur la limitation des revenus, on peut considérer qu'un risque naît de son analyse, cette limitation pouvant entraîner un arrêt de l'activité et une pénurie dans la cité.

3.1.3. Une structure dynamique du risque

Les risques présentés dans les différents écrits de jeunesse de Thomas d'Aquin peuvent être assemblés pour en faire ressortir la dynamique interne. On distingue deux niveaux où le risque peut intervenir, en amont de l'échange et dans l'échange. On repère ensuite une progression descendante puis ascendante, que l'on peut représenter sous la forme d'un schéma qui présente quelque parallèle avec le plan de la *Somme de théologie*, dit *exitus-reditus,* sortie-retour (Thomas part de Dieu, traite de la création et de l'humanité, puis montre comment l'homme, par le Christ et les sacrements, peut retourner à Dieu). Dans les œuvres de jeunesse, on observe d'abord deux risques fondamentaux, au sens premier du terme : un risque fondamental sur l'analyse économique, au sens où il se trouve aux fondements de l'analyse de l'opération, puisqu'il affecte cette analyse elle-même, et un risque fondamental sur l'opération économique, qui vient affecter le fondement de la justice de l'échange, puisqu'il porte sur le caractère échangeable du bien. Ce risque, qui est le premier selon l'ordre de la nature, puisqu'il porte sur la nature du bien, avant tout échange et toute analyse de l'échange, est cependant le dernier dans l'ordre de la connaissance. S'il préexiste à l'échange, il n'est mis en évidence que par l'application des critères de justice de cet échange, à savoir un critère quantitatif (le prix) et un ensemble de critères qualitatifs, qui vont être réduits au *quid*, à la nature du bien. On peut donc représenter le risque selon la structure dynamique suivante :

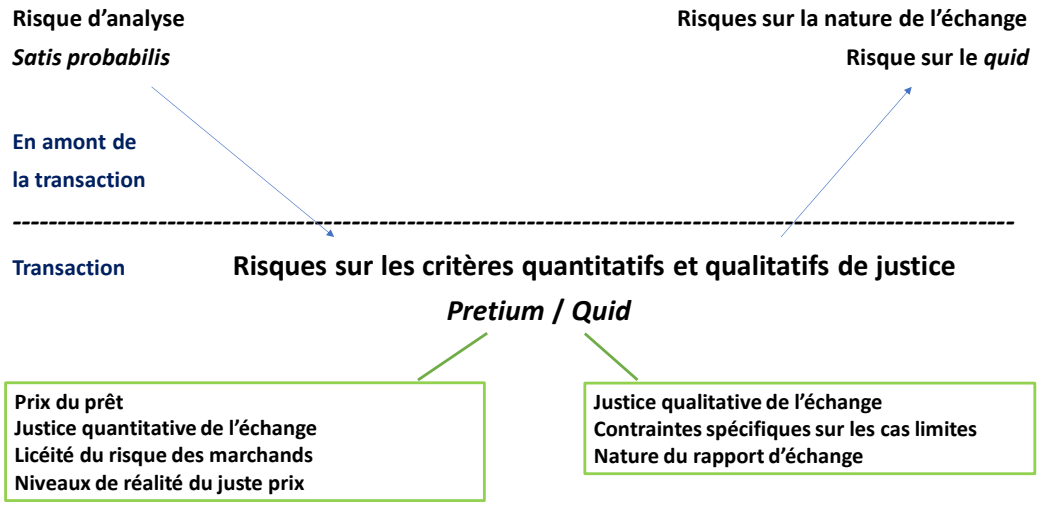

Figure 1 : La structure dynamique du risque

La lecture des œuvres de jeunesse permet de mettre en lumière de manière novatrice une caractéristique largement ignorée et pourtant essentielle du traitement du risque par Thomas. Plus que l'opération elle-même, c'est la manière dont elle est comprise qui engendre le risque aux conséquences les plus larges, puisqu'elles concernent toutes les parties-prenantes et se déploient à chaque étape de l'échange.

La première expression évoquant le risque est employée par Thomas dans son premier écrit a portée directement économique, *In III Sent.*, d. 37, a. 6. Présentant les arguments des autorités contre l'usure, aucun de ces arguments ne semble le satisfaire pleinement. Le premier argument, monétaire, semble insuffisant, « c'est pourquoi d'autres donnent une autre raison ». Thomas présente alors la conception traditionnelle du prêt comme un *mutuum,* un transfert de propriété, qui implique l'absence d'intérêt. Cet argument est présenté comme *satis probabilis,* assez probable (*In III Sent.*, d. 37, a. 6, resp.). Le premier risque exposé par Thomas n'est donc pas un risque encouru au cours de l'opération mais un risque d'erreur d'analyse et de compréhension de cette opération. Les concepts servant à l'analyse de l'opération peuvent être erronés : la question de la fongibilité de la monnaie n'est pas encore résolue de manière certaine pour l'Aquinate dans le *Commentaire des Sentences* et la compréhension du prêt comme un *mutuum* demeure probable mais non certaine. Le risque apparaît donc en amont de l'activité économique, puisqu'une erreur de compréhension de l'opération entraine un risque multiple pour les agents : risque de réputation morale et légale ; risque financier, puisque l'échange licite, qui est fait dans l'intérêt des partie (*S. T.*, IIa IIae, q. 77, a. 1, resp.), ne peut être réalisé puisqu'il est considéré comme illicite ; risque pour le marchand de ne pas pouvoir répercuter dans le prix

une dépense jugée imprudente (*De emptione*, III) ; mais également risque pour les parties prenantes extérieures, comme le prince, qui ne peut user à sa guise des impôts perçus sur un gain considéré comme illicite, en l'occurrence le produit de l'usure, mais qui doit les restituer aux personnes supposées lésées (*Ad Brabantiam*).

Viennent ensuite les risques qui apparaissent dans le déroulement de l'opération. La justice de l'échange relevant à la fois de critères qualitatifs (les conditions non financières) et de critères quantitatifs (le prix), le risque d'injustice peut affecter ces deux ensembles de critères. Le prêt peut faire l'objet d'une contrepartie qui ne soit pas juste, avec présence d'un intérêt, qui ferait que la somme rendue ne soit pas égale à la somme prêtée (critère quantitatif). Il peut aussi faire l'objet de titres extrinsèques injustes, non en termes de montant mais de nature (critère qualitatif), par exemple un *lucrum cessans* (*S. T.*, IIa IIae, q. 78, a. 2, ad 1). De même, l'activité marchande doit être effectuée « sans fraude et selon le contrat licite » (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, resp.). La fraude et le contrat comportent une dimension quantitative, qui affecte le prix, et une dimension qualitative (la tromperie sur la marchandise ou sur la rédaction du contrat). La vente à terme, décrite dans le *De emptione*, présente, elle aussi, un risque qualitatif et un risque quantitatif. Il y a bien un risque sur le prix, puisqu'il y a usure si la vente des tissus se fait à un montant « plus cher qu'ils ne valent » (*De emptione*, II). De même, à l'occasion de la vente à terme, Thomas précise que l'activité des marchands est limitée par ce qu'ils peuvent ou non intégrer dans le prix, c'est-à-dire les dépenses licites ou illicites, dans le *De emptione*. Le risque est *in fine* un risque quantitatif, puisque le risque d'injustice de l'échange est un risque qui pèse sur le juste prix et que le risque encouru par le marchand est que ses dépenses soient jugées illicites et qu'il ne puisse pas les recouvrir dans le prix de vente. Cependant, la distinction qui conduit à ces risques de prix est une distinction à la fois qualitative et quantitative. En effet, Thomas retient comme dépenses illicites le fait d'emprunter pour développer son activité et les dépenses imprudentes, soit par négligence (*incaute*), soit par mauvaise anticipation (*imprudenter*). La notion de prudence mise en œuvre ici s'apparente à celle qu'on trouve dans la littérature contemporaine, par exemple chez Kimball 1990, où il s'agit d'un accroissement du risque de perte avec un étalement vers la gauche de la courbe de densité de probabilité. L'imprudence peut être qualitative, si le marchand achète des marchandises trop chères ou qu'il en achète trop, anticipant mal les quantités et le prix de vente. Cependant, l'imprudence est aussi, et sans doute d'abord qualitative. Deux arguments plaident en faveur de ce critère qualitatif : d'une part, la première dépense illicite est qualifiée par sa nature, un emprunt pour acheter les marchandises, d'autre part, considérer la nature des dépenses est cohérent avec

l'attention à l'objet (*quid*) qui régit la possibilité et les conditions de la vente en *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 et en *In IV Sent*., d. 36, q. 1, a. 2 et à la place du critère qualitatif assurant la justice de l'échange en *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3.

Nous voyons ainsi se dessiner un risque qui, au cours de l'opération, peut porter sur la dimension qualitative et la dimension quantitative de l'échange, que l'on peut ramener à deux critères, le prix et la chose échangée. Les premières occurrences de l'expression juste prix viennent confirmer, à travers des cas limites, que ces deux critères sont bien, d'une part, ceux qui assurent la justice de l'échange et, d'autre part, ceux sur quoi porte le risque de l'opération.

Thomas envisage, dès son premier emploi de l'expression « juste prix », que certains échanges se fassent selon un rapport d'échange qui n'est pas un prix, puisqu'il existe des situations où, pour être juste, l'échange se ferait à un prix injuste, ce qui n'est pas possible. C'est le cas de l'échange entre Dieu et l'homme en *Super Isaiam,* 55, 1, puis dans les œuvres postérieures, le cas du revenu de l'avocat, du médecin, du marchand, du soldat, du prêteur qui émet des titres extrinsèques, ou du prêtre. L'échange ne se fait pas selon un prix, au sens d'une égalité de chose à chose, mais l'outil conceptuel qu'est le prix permet de penser ces transactions dans le cadre de l'échange et non dans le cadre du don. L'existence de cette pluralité de rapports d'échange permet de penser toutes ces transactions, mais comporte un risque d'erreur sur la nature du juste rapport d'échange. Ce qui apparaît dans cette première occurrence de l'expression juste prix se poursuit dans les deux suivantes. C'est la nature de l'objet échangé, le *quid*, qui va déterminer la nature de l'échange et les critères pris en compte dans le rapport d'échange. La notion d'échange et la notion de prix et de juste prix sont donc introduites à travers des cas limites qui viennent restreindre l'échange marchand : le sacrement, qu'on ne peut vendre *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, ou le serf marié, qu'on ne peut vendre au loin sans attenter à son mariage *In IV Sent*., d. 36, q. 1, a. 2.

Le *quid* peut agir comme élément qualitatif de la justice au sein de l'échange marchand et impliquer un risque d'injustice au cours de cet échange. C'est le cas par exemple pour la situation à l'occasion de laquelle la troisième occurrence de l'expression « juste prix » intervient : le serf marié peut être vendu à un juste prix (critère quantitatif), mais un critère non financier (qualitatif) s'ajoute pour établir la justice de l'échange, ici le critère géographique.

Cependant, le *quid* peut aussi déterminer la nature même de l'échange et sa possibilité. Il implique un risque d'erreur sur cette nature et le risque de procéder à un échange qui ne peut être qu'injuste s'il n'est pas conforme à la nature du bien échangé. Ce risque se situe en amont

de l'échange, puisqu'il porte sur sa possibilité et sa nature, non sur son déroulement. Cela apparaît dès la première occurrence de l'expression « juste prix » (échange entre Dieu qui donne sa grâce et l'être humain, qui apporte une contrepartie limitée, qui prend en compte ses ressources) et se poursuit dans la deuxième (le sacrement ne peut être vendu mais on peut verser au prêtre, à l'occasion du sacrement, une indemnité de subsistance). Ce risque sur le *quid* est chronologiquement le premier qui apparait dans les écrits de jeunesse, le *Super Isaiam* étant antérieur au *Commentaire des Sentences*. On peut ainsi noter que les deux risques situés en amont de la transaction, le risque sur le *quid* et le risque d'analyse, sont chronologiquement (du moins si l'on suppose que le *Commentaire des Sentences* a été écrit dans l'ordre du texte) les deux premiers : *Super Isaiam*, 55, 1 et *In III Sent.*, d. 37, a. 6. Cependant, ces deux risques se situent chacun à un bout de la chaîne des risques et viennent comme encadrer les risques sur la transaction. Le risque d'analyse est visible avant l'échange et il est formulé sinon explicitement, du moins sans détour par Thomas (par exemple avec l'expression « *satis probabilis* ») non dans le cadre d'un cas concret d'usure mais dans une revue de l'argumentation, qui se situe en amont de toute opération d'usure. Le risque sur le *quid*, lui, bien que déjà présent, n'apparaît qu'à l'occasion de l'échange effectif et Thomas ne le formule ou ne le sous-entend qu'au sein même de la description de l'échange (échange entre Dieu et l'homme et simonie, vente injuste du sacrement).

On peut donc dégager des écrits de jeunesse une structure dynamique des risques, allant d'un risque fondamental (analyse) à un autre risque fondamental (*quid*), en passant par les risques sur les deux critères de justice au cours de l'opération, à savoir le critère quantitatif assimilable au prix et le critère qualitatif, assimilable au *quid*.

3.2. Le prix, premier instrument au service de la justice de l'échange

L'analyse du risque dans les œuvres de jeunesse de Thomas d'Aquin fait apparaître une attention marquée pour le prix et pour la notion de « juste prix ». Thomas cherche à réduire le risque d'injustice de l'échange en contournant le défaut d'information portant sur l'intention de l'agent. Le prix constitue l'instrument principal de cette quête, car il fait figure d'instrument objectif et visible de la justice de l'échange, quelles que soient les pensées secrètes des agents. Traiter du risque conduit donc à rendre compte de la compréhension et de l'usage thomasien de la notion de prix et de juste prix. On observe d'abord qu'elle est présente dès les premiers écrits de l'Aquinate, mais en des lieux inattendus, non pas dans les écrits traitant de questions économiques, mais dans un commentaire biblique, le *Super Isaiam*, et dans le traité sur les

sacrements du *Commentaire des Sentences*. La présence disséminée du « juste prix » nécessite une investigation large pour en mesurer l'intérêt et la portée, au-delà des écrits proprement économiques, puisque Thomas semble mener un questionnement économique « hors les murs » ou, en quelque sorte, une école économique buissonnière à travers le traitement du don de la sagesse divine, de la simonie ou de la vente du serf marié. Ensuite, le concept de prix, bien que le terme n'apparaisse pas, est introduit implicitement dans les deux premiers textes de jeunesse à portée directement économique (*In III Sent.*, d. 37, a. 6 ; *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3) avant d'être convoqué explicitement dans le *De emptione*. La lecture en contrepoint des œuvres postérieures et de leurs utilisations du concept de prix permet de mesurer combien cette approche du risque par le prix est déjà en germe dans les écrits de jeunesse, tout en mettant en lumière la prise d'importance progressive du prix dans la pensée de l'Aquinate. Enfin, l'ensemble de ces apports des différents textes, pris de façon transversale et synthétique, précise le rôle du prix dans la pensée économique de Thomas. Le prix vient assurer la justice de l'échange de trois manières. Il réduit les risques de défaut d'information en offrant le moyen de contourner le caractère caché de l'intention des agents ; il délimite l'espace marchand en fournissant ainsi une bonne information sur ce qui peut être échangé ou non, selon un prix ou selon un autre rapport d'échange ; il unifie des activités économiques qui étaient jusque-là considérées séparément, comme l'usure et l'échange commercial, en assurant ainsi leur traitement sous un angle relevant proprement de l'analyse économique et plus seulement de considérations morales, sociales ou juridiques.

3.2.1. Le prix, ou l'étude économique buissonnière du jeune Thomas d'Aquin

La caractéristique la plus décisive de l'analyse thomasienne du prêt et de l'activité commerciale est le recours progressif au concept de prix. Le terme « *pretium* » apparaît 438 fois dans les œuvres de l'Aquinate, et 816 fois si l'on ajoute l'adjectif « *pretiosus* », précieux, qui en découle. Le nom, et plus encore l'adjectif, ont une acception plus large qu'un rapport d'échange de type monétaire ou même commercial. L'étude lexicale des premiers écrits permet cependant d'approcher la manière dont le concept que le terme « prix » véhicule en son sens premier entre dans l'appareil intellectuel de l'Aquinate. Dans les commentaires bibliques (Jérémie, Lamentations, Isaïe), l'ensemble n'apparaît que 33 fois, dont seulement 10 occurrences au total pour le nom *pretium*. Dans le *Commentaire des Sentences*, l'ensemble apparaît 87 fois, mais on observe un renversement puisque le nom pretium devient prédominant, avec 65 occurrences. Dans le *De emptione*, le nom apparaît 5 fois, ce qui est cohérent avec le sujet du traité, malgré sa brièveté, mais toutes ces occurrences sont localisées dans le court premier chapitre. Dans le

Commentaire du livre de Job, l'ensemble apparaît 48 fois, essentiellement sous la forme d'adjectif (40 fois). Dans le *De regno*, on note enfin une occurrence du nom.

On peut tirer de cette brève étude statistique trois observations. D'abord, les œuvres de jeunesse ne comportent que 174 fois l'ensemble, soit 21% des occurrences globales dans l'œuvre de l'Aquinate. La répartition est déjà celle de l'ensemble des œuvres, à savoir légèrement plus de la moitié pour le nom *pretium* avec 89 mentions, contre 85 pour l'adjectif. Ensuite, c'est avec les livres III et IV du *Commentaire des Sentences* et avec le *De emptione* que le nom *pretium* prend de l'ampleur, avec 63 occurrences. Enfin, alors que le concept de prix se fait plus présent dans l'univers de l'Aquinate, on peut être frappé par le fait qu'il n'apparaisse qu'une fois dans la question sur l'usure (*In III Sent.*, d. 37, a. 6), qu'il soit absent lorsque Thomas traite de l'activité des marchands (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3) et qu'on ne le trouve que 5 fois de manière très localisée dans le *De emptione*. En outre, la présence d'une unique mention du prix dans le *De regno* apporte un élément supplémentaire pour considérer ce traité comme étant d'abord politique avant d'être économique.

La grande majorité des occurrences du terme « prix » intervient en dehors du traitement des questions explicitement économiques. Pour autant, si le terme est parfois pris dans un sens figuré, on le trouve souvent pour décrire un rapport d'échanges marchands dans une opération de vente effective ou potentielle. Thomas est en effet familier des exemples profanes pour illustrer ses développements théologiques. Pour rendre compte de l'utilisation de la notion de prix dans les œuvres de jeunesse et son évolution par la suite, il est donc indispensable d'élargir la recherche à l'ensemble de ces œuvres sans se limiter aux questions explicitement économiques comme l'usure, l'activité marchande ou la vente à terme. C'est en effet à l'occasion de considérations théologiques que l'Aquinate apporte les éléments les plus précieux pour l'analyse économique. Si l'analyse de l'ensemble des occurrences du terme « prix » dépassent le cadre de la présente étude, celle des trois premières occurrences de l'expression « juste prix » illustre combien cette sorte d'analyse économique « buissonnière » ou « hors les murs » menée par Thomas mérite attention.

L'expression « juste prix » n'apparaît que 19 fois dans les œuvres authentiques de Thomas d'Aquin. On compte une première mention en *Super Isaiam*, c. 55 (1252), suivie de deux occurrences dans le commentaire des Sentences (1254-1256), en *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 et en *In IV Sent*., d. 36, q. 1, a. 2, puis de deux en *De emptione*, I (1262). Viennent ensuite les occurrences dans les œuvres plus tardives, avec onze mentions dans la *Somme de théologie*

(une en *S. T.*, Ia IIae, q. 114, a. 1, cinq en *S. T.*, IIa IIae, q. 77, a. 1, et cinq en *S. T.*, q. 78, a. 2) et trois dans les *Questions quodlibétiques* (deux occurrences en *II Quodl.*, q. 1, a. 2 et une en *II Quodl.*, q. 5, a. 2). On constate donc d'une part que l'apparition de l'expression est progressive, puisque les œuvres de jeunesse ne comptent qu'un quart des occurrences (5 sur 19) en onze ans (1252-1262) alors que les œuvres de la maturité en rassemblent les trois quarts (les 14 occurrences restantes) en cinq ans tout en plus (1268-1272). On observe d'autre part une évolution du contexte de son usage. Dans les œuvres postérieures, l'expression est principalement employée (11 fois sur 14) dans les textes à portée directement économique. Plus de la moitié des occurrences totales se trouvent dans l'œuvre majeure de l'Aquinate en matière économique que constitue *S. T.*, IIa IIae, q. 77 et 78 sur la fraude commerciale et l'usure, auxquelles il faut ajouter *II Quodl.*, q. 5, a. 2 sur le juste prix. Au contraire, les trois premières occurrences interviennent dans des textes proprement théologiques, traitant d'une parole prophétique (*Super Isaiam*, 55, 1), des sacrements en général (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1) et du sacrement de mariage (*In IV Sent.*, d. 36, q. 1, a. 2) et il faut attendre le *De emptione* pour relever l'expression en contexte proprement économique. Avec un ratio de 2 sur 5, les usages de l'expression en contexte économique sont encore minoritaires dans les premiers écrits, loin de la situation trouvée dans les œuvres postérieures. Ignorer les apports de cette analyse économique « hors les murs » menée par Thomas risquerait donc de priver le commentateur d'une part substantielle de ce que les écrits de jeunesse peuvent apporter.

L'analyse lexicale quantitative met en lumière le recours progressif et d'abord extérieur aux écrits proprement économiques du terme « prix » chez Thomas. L'analyse qualitative des différentes occurrences vient, elle, préciser l'usage que Thomas fait du terme, et à travers lui, du concept.

Dans le *Super Isaiam* 55, 1, Thomas unifie l'ensemble des traditions des différentes versions bibliques en commentant l'absence d'argent et l'absence d'échange demandés par Dieu contre sa sagesse en termes de niveau de prix. Plus encore, quand on rapproche ce commentaire des passages concernant ce verset figurant dans ses commentaires bibliques plus tardifs, on constate qu'il introduit dès cette première mention du juste prix l'idée d'une compensation à payer qui justement n'est pas un prix, mais qui ne place pas pour autant l'opération dans le registre du don. On trouve donc en germe ici une première distinction des revenus qu'on retrouvera implicitement lorsqu'il traitera du revenu du marchand en *IV Sent.*, d. 16, q. 4, a. 2, qc. 3 et plus explicitement dans la *Somme de théologie* où, ce gain modéré est « comme une indemnité pour son travail [*quasi stipendium laboris*] » (*S. T.*, IIa IIae, q. 77, a. 4, resp.).

En *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, Thomas ne traite pas d'une question économique mais des sacrements en général et plus particulièrement leur caractère non marchand. L'introduction du juste prix, si elle visait uniquement à affirmer qu'il existe des biens qui ne peuvent en avoir, aurait certes déjà l'intérêt de souligner, par son caractère paradoxal, l'importance pour l'Aquinate de bien délimiter l'univers marchand. Cette occurrence permet cependant d'affirmer deux propositions certainement aussi importantes concernant le prix. En effet, on note d'abord, concernant les biens non marchands, que le prix suffit à assurer la justice de l'échange ou en l'occurrence du non échange, tant par sa possibilité et par son niveau, là où pour les autres biens le prix vient assurer le critère quantitatif de la justice ; on relève ensuite que le prix doit être complété, pour les autres biens, par un critère qualitatif déterminant les conditions de possibilité de l'échange (personne, temps, dimension qualitative de l'absence de fraude, licéité du contrat, contrainte propre au bien échangé…).

On relève ensuite qu'à travers le lien analogique introduit par les expressions « *sicut* » et « *cum* » entre le juste prix et la justice, il est possible de fonder de l'intérieur même de ce que Thomas explique du juste prix la définition qu'il ne lui avait été possible de donner, dans le *De emptione*, qu'a partir d'éléments extérieurs issus de ses écrits proprement théologiques. Le juste prix est d'abord le prix de justice préexistante. Il est aussi, par analogie, le juste prix effectif. Ce texte « hors les murs » vient donc fonder le développement plus large fait à la lecture du *De emptione* et prolongé par celle de *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. En effet, pour comprendre l'expression « valoir sur le marché commun [*valeant secundum communem forum*] » (*De emptione*, II), et voir si l'expression « prix de marché », souvent employée pour en rendre compte, est pertinente, il est bien entendu important de distinguer valeur et prix pour établir les liens qui les unissent, mais il est ensuite nécessaire, à partir de l'étymologie de ce *secundum* d'une part, et de l'appareil conceptuel thomasien d'autre part, de préciser la nature de ce juste prix qu'on pourrait trouver sur le marché mais qui est d'abord un prix selon la justice, comme le dit son nom.

On peut recourir d'un côté à la catégorie de l'analogie (proportionnalité et non identité), utilisée par Thomas dans sa question sur les noms divins (*S. T.*, Ia, q. 13, a. 5 et 6), et d'un autre côté à la catégorie du signe et de la réalité utilisée par Thomas pour expliquer ce qu'est un sacrement (par exemple : *In IV Sent.,* d. 3, q. 1, a. 1, qc. 1, ad 1 *; S. T.*, IIIa, q. 73, ad 3) à partir de trois niveaux de réalité : le signe seulement (*sacramentum tantum*), visible et qui désigne un deuxième niveau, qui est la *res et sacramentum* (la chose et le signe), chose montrée par le premier niveau et encore signe d'une réalité ultime et cachée, la *res tantum* (la chose seulement).

Ces apports conceptuels permettent, de l'extérieur de l'analyse économique, de proposer une formulation du lien qui unirait le prix de justice, le juste prix qu'on trouverait sur le marché, et le juste prix qu'on trouverait dans l'échange individuel. En croisant cette élaboration économique faite à partir des concepts d'analogie et de signe avec l'introduction d'un critère juridique faite par Thomas lorsqu'il traite de l'activité des marchands, puisqu'elle doit se faire « selon le contrat licite [*secundum licitum contractum*] », étayée par le lien qu'il établit entre la justice et le droit positif, nous obtenons une définition complète, à la fois économique et juridique : le juste prix est d'abord le prix de justice qui préexiste à l'échange ; il est aussi par analogie et à titre de signe, le prix qu'on peut trouver sur le marché et selon le droit positif des contrats ; il est encore, toujours par analogie et à titre de signe, le prix qu'on trouve dans l'échange et selon le contrat singulier. Certes, le lien analogique explicite de *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 n'exprime pas l'ensemble de l'élaboration présentée ici, mais il montre que le développement interne de la notion de juste prix présenté par Thomas lui-même la porte en partie et que cette élaboration lui est unie, pourrait-on dire, par un lien de convenance à défaut d'en assurer une démonstration complète.

Enfin, en *In IV Sent.*, d. 36, q. 1, a. 2, ad 4, lorsque Thomas traite des conditions de la vente du serf marié, la question du juste prix ne semble arriver que de manière marginale. Le seigneur ne peut pas vendre le serf au loin pour ne pas attenter à son mariage surtout (*principue cum*) s'il peut le vendre partout à juste prix. Ceci peut être interprété de deux manières : il peut s'agir d'une concession réelle, auquel cas le juste prix suffit à assurer la justice de l'échange et prime sur le lien conjugal. Il peut aussi s'agir, ce qui est plus probable, d'une concession purement rhétorique. En effet, à l'époque de Thomas la terre est abondante, la main d'œuvre rare et la mobilité du travail assurée (Domar 1970, 27-28 ; Persson 2014, 228-229). En outre, le mariage est de droit divin et naturel alors que le servage n'est que de droit positif, ce qui explique pour Thomas que le serf n'ait pas à demander l'autorisation au seigneur pour se marier (*In IV Sent.*, d. 36, q. 1, a. 2, resp.). Il est difficilement envisageable que la préservation du mariage, qui est de droit divin et naturel, et dont tout l'article 2 affirme la primauté, puisse faire l'objet d'une concession au profit du servage ou de la vente. Ainsi, la justice de l'échange relève-t-elle de deux critères complémentaires : un critère financier, le prix devant être juste, et un critère non financier, qui est un critère géographique. Le juste prix constitue ainsi, dans le cas d'un bien semi-marchand, un élément nécessaire mais non suffisant de justice de l'échange.

3.2.2. Le mot et la chose : quand le prix vient à l'idée

Les apports explicites fournis par Thomas concernant sa compréhension du prix doivent paradoxalement être complétés par des éléments implicites, ou le terme n'apparaît pas, dans ses passages plus directement économiques du *Commentaire des Sentences*. En effet si le nom *pretium* apparaît une fois dans la question sur l'usure (*In III Sent.*, d. 37, a. 6), il n'intervient pas dans l'analyse qu'il fait de cette opération, et le terme est absent du traitement de l'activité des marchands (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3), alors qu'il est présent à plusieurs reprises dans le parallèle chez son maître Albert le Grand. (Albert, *In IV Sent.*, d. 16, a. 46, resp. ad q. 1). Pourtant, si le terme n'apparait pas, la nécessité d'un juste rapport d'échange, elle, est omniprésente dans ces passages.

En *In III Sent.*, d. 37, a. 6, le premier traitement de l'usure par l'Aquinate apporte trois éléments concernant le prix. Il faut d'abord noter que Thomas ne retient pas l'argument traditionnel des Pères contre l'usure, qui est un argument social : le pauvre, asservi par le riche prêteur, emprunte par nécessité à un taux usuraire. L'Aquinate prend une certaine distance avec cette « volonté conditionnée » du pauvre. Il ne s'attache pas à l'intention, qui demeure cachée, du prêteur et de l'emprunteur mais à l'opération elle-même. Le taux d'intérêt, donc le prix facturé pour le prêt constitue un critère objectif et visible de la justice de l'échange. Il permet donc de contourner le défaut d'information sur cette justice. On voit ensuite qu'à travers la combinaison du *mutuum* et d'une première approche monétaire, la valeur de la somme prêtée est la somme rendue, qui doit lui être identique. Le prix sous-entendu du prêt est donc un intérêt nul. Le troisième aspect, qui en découle, est que prêt à intérêt et échange commercial se trouvent unis par le fait que leur justice est assurée par un prix, ce qui atteste d'une vision unifiée de l'activité économique, malgré les statuts juridiques différents du prêt et du commerce.

Par la suite, si Thomas reprend l'argument du *mutuum*, du transfert de propriété, en *S. T.*, IIa IIae, q. 78, il le justifie par la nature du bien échangé, la monnaie. En *In III Quodl.*, q. 7, a. 2, dans la *Lettre à la duchesse de Brabant*, en *De malo*, q. 13, a. 4, en *In Decem preceptis*, XXVI, sept. praec., ainsi que dans les commentaires d'Aristote, l'argumentation par le *mutuum* disparaît au profit d'une approche par la monnaie. Sa consommation se confondant avec son usage, elle ne peut faire l'objet d'un loyer. Par ailleurs, sans remettre en cause l'interdit du prêt à intérêt, Thomas en pose cependant les prémices. D'une part, il met en avant la *societas* comme mode d'investissement alternatif (*S. T.*, IIa IIae, q. 78, a. 2, ad 5). D'autre part, il ouvre la porte aux titres extrinsèques, par lequel est payé le prix d'un préjudice : acceptation du *damnum*

emergens (compensation du préjudice lié à la privation de la somme) en *S. T.*, IIa IIae, q. 78, a. 2, ad 1, mais refus du *lucrum cessens* (compensation pour la privation de gain durant le prêt) ; *poena conventionalis*, pénalité de retard de paiement en *De malo*, q. 13, a. 4, ad 14. Ainsi, si le prix est nul dans un prêt monétaire qui est sans risque puisque c'est un échange de biens homogènes, un prix vient rémunérer le risque encouru. Nous pouvons donc conclure de l'analyse de l'usure que le prix est non seulement un moyen de contournement du défaut d'information sur l'intention des agents mais aussi l'instrument de la justice de l'échange en ce qu'il assure une juste rémunération du risque.

En *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, Thomas n'évoque curieusement pas le prix lorsqu'il traite de la licéité de l'activité des marchands. Cependant cette activité doit se faire « sans fraude et selon le contrat licite ». La fraude comporte une dimension qualitative comme la tromperie, une dimension quantitative qui consiste à ne pas vendre à juste prix. Cette dimension quantitative renvoie, de manière certes encore allusive, à l'encadrement des prix et du gain assuré par les règles du *turpe lucrum* (gain malhonnête) et de la *laesio enormis* (préjudice énorme). Le contenu de la notion de fraude est donc connu malgré le caractère général du terme. Cela permet donc de contourner le défaut d'information qui pèse sur l'intention du vendeur pour se concentrer sur cet élément objectif et visible qu'est ici là fraude et qui sera exprimée plus tard en termes de juste prix. Par ailleurs, ici le regard de Thomas sur l'activité marchande est unilatéral puisqu'il ne perçoit la possibilité de fraude que du côté du vendeur. La *Somme de théologie* (*S. T.*, IIa IIae, q. 77) marquera une évolution importante en présentant la possibilité de ne pas respecter le juste prix, soit de la part du vendeur, soit de la part de l'acheteur. Il faut noter en outre que c'est l'introduction de la notion de contrat qui permet de compléter la définition du juste prix en trois niveaux économiques de réalité par trois niveaux juridiques de réalité. Enfin, puisque le contrat peut comporter des clauses qualitatives et quantitatives, il ne peut être réductible au prix. Il n'y a donc pas substituabilité entre le prix et le droit. Le prix ne peut donc pas, à lui seul, assurer la justice de l'échange. Cela évoluera dans la *Somme de théologie* puisque, à l'exception des cas de danger (*S. T.*, q. 77, a. 3, resp.) pour laquelle une information qualitative est nécessaire, le prix semble suffisant pour assurer la communication d'une information satisfaisante et ainsi la justice.

Le *De emptione* vient confirmer la pierre d'attente qui figurait en *In III Sent.*, d. 37, a. 6 au sujet de l'usure. En effet, puisqu'il y a usure lorsque le bien est vendu plus cher qu'il ne vaut, le prix vient unir les dimensions de prêt et d'échange commercial. Plus encore, le prix vient ici réduire le défaut d'information sur la justice de l'échange puisqu'il est le révélateur de la situation

usuraire. Thomas ne s'attache pas à l'intention des agents, d'ailleurs au cours de l'échange, en cas de rabais obtenu pour remboursement anticipé, le rôle de l'usurier peut tourner et incomber à l'acheteur. Ce court traité porte également en germe la distinction entre valeur et prix, puisque chacune des deux notions se trouve dans une partie différente du texte (prix en *De emptione*, I, valeur en *De emptione*, II et III) et que c'est la notion de justice qui vient les unir. Le juste prix, au sens du prix de justice qui préexiste à l'échange, est donc l'expression en termes de rapport d'échange de la valeur, qui est juste et dont l'acception est plus large. Cette distinction conceptuelle entre valeur et prix, qui sera manifeste dans la *Somme de théologie* (*S. T.*, IIa IIae, q. 77, a. 1), trouve donc dans le *De emptione* sa première expression.

3.2.3. Informer, délimiter, unifier : le prix, ou la réduction du risque par la justice de l'échange

Il ressort donc de ce panorama que l'étude de la décision et du risque chez Thomas d'Aquin conduit immédiatement à mettre en lumière le rôle du prix comme instrument visible et objectif permettant de réduire le défaut d'information sur l'intention des agents et de réduire le risque menaçant la justice de l'échange. L'approche diachronique conduit ainsi à souligner trois dynamiques complémentaires :

Premièrement, le concept de prix est présent dès les œuvres de jeunesse. Il fait cependant figure de pierre d'attente qui sera pleinement déployée ultérieurement car il est encore employé de manière implicite dans les premiers écrits proprement économiques que sont *In III Sent.*, d. 37, a. 6 et *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3.

Deuxièmement, ce concept se trouve largement déployé hors des passages spécifiquement dédiés à l'usure ou au commerce et ces questions ne sont pas traitées ensemble dans le *Commentaire des Sentences*, contrairement à ce qui se produira dans la *Somme de théologie* où elles constituent deux questions mitoyennes introduites par un prologue commun. Thomas, héritant d'autorités qui traitent ces questions séparément sans toujours en percevoir l'unité, fait progressivement œuvre de nouveauté en les unissant par une justice assurée par le prix. Ce qui est encore dispersé et latent dans le *Commentaire des Sentences* s'exprime explicitement dans le *De emptione,* qui traite de la combinaison du prêt et du commerce à travers le juste prix, avant de trouver sa pleine unification dans la *Somme de théologie* sous la notion commune d'échange volontaire. Il faut cependant souligner que dès le *Commentaire des Sentences* le prix assure la délimitation de l'espace marchand, puisque, dans le cas du bien non marchand, il porte en lui-même les critères qualitatifs et quantitatifs nécessaires à la justice de l'échange par sa

possibilité et par son niveau, en l'occurrence ici son absence de possibilité qui entraîne l'absence d'échange (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1). L'évolution vers une approche quantitative, au moins rhétorique, sera manifestée dans la *Somme de théologie* par une expression de l'impossibilité de l'échange, non plus par une absence de possibilité d'un juste prix mais aussi par un juste prix inaccessible (*S. T.*, IIa IIae, q. 100, a. 3, ad 2 ; q. 189, a. 6, ad 3).

Troisièmement, les œuvres de jeunesse présentent encore la justice de l'échange sous l'angle de la combinaison de deux critères complémentaires, un qualitatif et un quantitatif, chacun assurant une part de l'information nécessaire à la justice. Le prix ne suffit donc pas à assurer seul la justice de l'échange, sauf dans le cas particulier du bien non marchand. Cela évolue progressivement puisque *S. T.*, IIa IIae, q. 77 ne s'attardera plus sur les conditions de l'activité commerciale comme le triptyque personne, temps, mode (absence de fraude et respect du contrat licite) présenté en *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, sur la nature du bien échangé (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 ou sur le lieu de l'échange (*In IV Sent.*, d. 36, q. 1, a. 2), mais se concentrera uniquement sur la justice du prix. Thomas va même jusqu'à considérer qu'une trop grande information qualitative peut nuire à cette justice quantitative, l'exception demeurant le cas de danger imminent (*S. T.*, IIa IIae, q. 77, a. 3).

Nous pouvons donc affirmer que le prix vient progressivement réduire le risque de trois manières. Il assure le contournement du défaut d'information sur l'intention des agents en constituant un critère objectif et visible de la justice de l'échange ; il délimite l'espace marchand, limitant ainsi le risque d'une marchandisation inappropriée ; il unifie les activités que nous appellerions aujourd'hui économiques, comme le prêt et le commerce, en tant qu'activités d'échange, ce qui permet d'assurer un traitement systématique de la justice de cet échange selon un critère objectif et visible, ce que les approches morales et juridiques qui les avaient séparés auparavant ne permettaient pas.

3.3. Trois marqueurs de l'analyse thomasienne au service de l'information et de la justice de l'échange

La recherche d'indicateurs visibles qui permettent au moraliste de se déterminer sur la justice de l'échange conduit Thomas non seulement à mettre en valeur le rôle du prix, mais aussi à donner trois caractéristiques principales à son analyse de l'activité économique. On assiste d'abord à une universalisation progressive du regard qu'il porte sur les parties-prenantes de l'opération. Si, dans les œuvres de jeunesse le marchand et le prêteur sont encore l'objet de toutes les attentions en raison de la réputation peccamineuse de leur activité, Thomas

s'émancipe de cette classification morale préétablie pour observer l'opération selon les différents points de vue, une vente étant également un achat et un prêt étant aussi un emprunt. Cela lui permet de tenir compte des conséquences mutuelles des comportements de chacun des agents. La deuxième caractéristique qui découle de cette émancipation et de cet élargissement du regard est la relativisation et l'universalisation de la volonté conditionnée et de l'idée de nécessité. Thomas ne se cantonne pas à une vision sociale prédéfinie faisant du prêteur un usurier, de l'emprunteur un pauvre opprimé par un prêteur profitant de son état de nécessité et de sa volonté conditionnée (liberté contrainte par cette nécessité) et du marchand un agent bien informé et disposant d'un fort pouvoir de négociation. Chacun des agents peut au cours de l'opération se trouver en situation abusive, qu'il soit prêteur ou emprunteur, acheteur ou vendeur. La troisième caractéristique est l'attention que porte Thomas au bien échangé et à l'activité comprise positivement plus qu'à la subjectivité des agents, dont l'intention demeure inaccessible à l'observateur.

3.3.1. L'universalisation du regard : vers une attention à l'ensemble des agents

On observe une évolution dans l'œuvre thomasienne. L'attention est d'abord principalement portée sur le prêteur et sur le vendeur avant d'être élargie à l'emprunteur et à l'acheteur. Plus encore, cet élargissement s'inscrit dans une pratique thomasienne qui consiste à observer le déroulement de l'opération plus que les agents. En effet, la quête de l'Aquinate étant d'abord morale, son regard se porte en premier sur les agents réputés pour mener des activités peccamineuses. Cependant, n'ayant pas accès à leur intention, il porte son attention sur les éléments objectifs dont il dispose, à savoir ce qu'il peut observer de l'opération.

Si les écrits de jeunesse semblent davantage porter sur l'activité du prêteur et du vendeur, se montrant par-là plus asymétriques dans leur traitement des agents que les écrits plus tardifs, il faut cependant immédiatement faire état de l'exception majeure que constitue le premier texte à portée économique, même indirecte, qu'est *Super Isaiam*, Isaïe 55, 1, qui peut être vu comme annonciateur des évolutions thomasiennes futures. Ce texte introduit déjà un élargissement du regard. En effet, alors que le passage biblique est entièrement tourné vers les acheteurs, l'activité du vendeur demeure tacite, mais cela s'explique peut-être par son identité particulière puisqu'il s'agit de Dieu et qu'il n'y a donc pas de jugement moral à porter sur son activité. Thomas, lui, commence par mentionner aussi le vendeur, ici Dieu, qui « a fait une promesse », la promesse de donner l'abondance dans la nécessité. La suite de son commentaire, bien que

décrivant la situation de l'acheteur, montre implicitement comment Dieu tient cette promesse. Toutes les parties-prenantes de l'opération sont donc prises en compte par Thomas.

Cette exception inaugurale étant posée, on constate que les écrits de jeunesse sont relativement unilatéraux. *In III Sent.*, d. 37, a. 6 traite de la situation d'usure chez le prêteur. Thomas ne s'arrête pas sur son intention peccamineuse, mais sur ce en quoi consiste le prêt. En revanche, à l'exception de *In III Sent.*, d. 37, a. 6, ad 6 sur le caractère non peccamineux de l'emprunt en cas de nécessité, tout l'article porte sur l'action de prêter et non sur celle d'emprunter. De même, lorsque Thomas traite du commerce dans le *Commentaire des Sentences*, il le fait à partir de l'activité des marchands (*In IV Sent.*, d. 16, q. 4, a. 2, qc 3), sans que l'acheteur ne soit mentionné.

Les deux cas limites à l'occasion desquels Thomas emploie l'expression « juste prix » marquent une première ouverture tout en restant plutôt orientés vers le vendeur. D'abord, la simonie est présentée comme un acte d'achat ou de vente : « il achète ou il vend ce qui ne peut faire l'objet d'un prix [*vendit aut emit quod no cadit sub pretio*], tel est le péché du simoniaque » (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp.). Cependant, l'achat dont il est question ici n'est pas tant l'achat final de celui qui veut user illicitement des pouvoirs sacrés que l'achat de celui qui en fait commerce en les revendant. Ainsi, Simon le magicien, qui veut acheter ces pouvoirs aux apôtres (Actes des apôtres 8, 9-24) et qui donne son nom à ce péché, est considéré par Thomas comme ayant voulu acheter le pouvoir pour le revendre (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, ad 4). Ensuite, lorsque Thomas traite de la vente du serf marié, il présente la situation à partir du seigneur, qui est ici le vendeur, pour déterminer les conditions de la vente, et du serf, ici le bien vendu, pour rappeler sa liberté de se marier et la nécessité pour le seigneur de ne pas attenter à ce mariage par une vente lointaine. En revanche, il n'est pas question de l'acheteur (*In IV Sent.*, d. 36, q. 1, a. 2).

Le *De emptione* marque, environ cinq ans plus tard (1262), une nouvelle étape. Le titre fait état des deux opérations : l'achat (*de emptione*) et la vente (*et venditione*). Le texte est orienté vers l'activité des marchands, mais l'Aquinate fait état d'une situation où l'acheteur tient un rôle actif, puisqu'il pourrait payer avant le terme et se trouver en situation usuraire en obtenant un rabais qui conduirait à un prix inférieur au juste prix. On notera cependant que le contexte est celui de la foire de Lagny, où se rencontrent les marchands d'Europe. L'acheteur n'est donc pas un particulier mais un autre professionnel, qui dispose lui aussi d'une bonne information et visiblement d'un fort pouvoir de négociation et qui achète pour revendre. Comme dans le cas

de la simonie, l'achat n'est pas l'œuvre d'un consommateur final mais d'un revendeur professionnel dont Thomas cherche à identifier le caractère éventuellement peccamineux de l'activité.

Le *De regno*, lorsqu'il évoque le commerce quelques années plus tard (1265-1267), porte encore son regard sur les marchands. Un nouvel élargissement a cependant lieu puisque Thomas présente les conséquences de l'activité marchande pour la société. Si cette activité permet l'approvisionnement, elle présente cependant six risques pour la cité : 1. *un risque de dignité*, car une chose est plus digne (*dignus est*) si elle se suffit à elle-même, et il est plus digne qu'un territoire ne dépende pas d'un autre ; 2. *Un risque d'approvisionnement*, puisque l'indépendance économique est plus sûre (*securius*) pour les approvisionnements ; 3. *Un risque de corruption culturelle*, car le commerce implique le contact avec les étrangers, dont la compagnie corrompt le plus souvent (*extraneorum conversatio corrumpt)* les mœurs des citoyens ; 4. *Un risque de corruption morale,* car « si les citoyens eux-mêmes se livrent au commerce, la porte sera ouverte à beaucoup de vices » ; tout devient vénal dans la cité (*ut in civitate omnia fiant venalia*), qui est ainsi ouverte à la fraude (*locus fraudibus apertitur*) ; 5. *Un risque militaire*, avec l'affaiblissement de l'armée si les soldats s'engagent dans le commerce, dont les caractéristiques ramollissent l'âme et débilitent le corps ; 6. *Un risque politique et d'ordre public*, car le commerce favorise les rassemblements, propices aux séditions (*De regno*, II, 7 (II, 3)). On note toutefois que l'élargissement du regard porte davantage ici sur les conséquences du commerce pour la cité que sur la situation des différentes parties-prenantes au cours de la transaction.

On trouve, dans la *Lettre à la Duchesse de Brabant* (1271) qui traite de ce que le prince peut faire des impôts prélevés sur les gains usuraires, un regard qui s'élargit aux autres parties prenantes et aux transactions subséquentes, puisqu'il étudie les conséquences de l'usure pour le prince et pour les opérations qu'il pourra effectuer avec l'impôt prélevé sur l'usure. On observe donc un élargissement du regard en quelque sorte social et encore partiel proche de celui du *De regno.*

L'évolution majeure intervient dans la *Somme de théologie*, puisque Thomas y étend son analyse à l'activité commerciale en général qui est supposée bonne puisqu'elle est pratiquée « dans l'intérêt des parties » (*S. T.*, IIa IIae, q. 77, a. 1, resp.). Le commerce « pour un gain [*propter lucrum*] » (*S. T.*, IIa IIae, q. 77, a. 4, resp.) ne constitue qu'un cas particulier, intervenant dans le quatrième des quatre articles de la question 77 sur la fraude commerciale.

Avec la *Somme de théologie*, le pouvoir de négociation devient variable et cette variation peut se faire au profit de l'acheteur, qui peut obtenir un prix exagérément bas en profitant d'une meilleure information (*S. T.*, IIa IIae, q. 77, a. 3, resp. et *II Quodl.*, q. 5, a. 2, resp.), puisque les vendeurs ne sont plus seulement des marchands professionnels disposant d'un haut niveau de connaissance et de pouvoir. Pour assurer la justice de l'échange, Thomas doit donc s'assurer que tous les agents agissent de manière juste, puisque chacun pourrait ne pas le faire.

3.3.2. La relativisation et l'universalisation de la nécessité et de la volonté conditionnée

Thomas pose un regard nouveau sur l'activité économique. Non seulement il le porte sur l'ensemble des agents, mais il ne s'arrête pas tant sur les conséquences pour les agents d'une opération injuste que sur les raisons intrinsèques de l'injustice. En cela, il se démarque de ses prédécesseurs. Gratien, à la suite des Pères, assimile le prêt à intérêt, par lequel on asservit le pauvre qui doit emprunter par nécessité, à un meurtre (Gratien, *Decretum*, II, causa 14, q. 4, c. 11). Albert le Grand fait ainsi de la « *voluntas conditionata* [volonté conditionnée] » son première argument contre l'usure (Albert le Grand, *In III Sent*., d. 37, a. 13).

Thomas, lui, considère l'intérêt injuste en raison de la nature même du prêt monétaire, perçu comme un *mutuum*, prêt issu du Droit romain sans intérêt avec transfert de propriété (*In III Sent.*, d. 37, a. 6). Dans la question sur l'usure du *Commentaire des Sentence*s, le *respondeo* et trois objections et leurs solutions sur six (ad 2, 3 et 4) traitent du prix du prêt, à savoir que la somme rendue doit être égale à la somme prêtée, sans surplus. L'objection suivante et sa solution viennent définir le prêt comme un transfert de propriété (ad 5). Ces autres solutions, qui touchent à la nature du prêt, sont encadrées par deux solutions plus subjectives qui portent leur attention sur les agents : la première aux prêteurs et la dernière aux emprunteurs. La première indique que c'est en raison de l'endurcissement de cœur du peuple que Moïse a permis de prêter à intérêt aux étrangers (ad 1). Certes, le prêt est mû par l'avarice (*avaritia*) et s'apparente aux spoliations (*spolationes*) commises par les Égyptiens, mais c'est aussi un instrument de justice, pour reprendre aux autres nations la terre accordée par Dieu comme terre promise. Si la dimension sociale et politique de l'usure sont abordées ici, il ne s'agit donc pas directement de l'exploitation du pauvre. La dernière solution porte son regard sur l'emprunteur. La situation de nécessité est ici présentée sur le mode de la possibilité : « Celui qui paye des intérêts et reçoit un prêt en cas de nécessité [*in necessitate*] ne pèche pas », car il ne le fait pas « volontairement [*volontarius*] » (ad 6). La situation ne semble donc pas systématique et l'asservissement du pauvre n'est qu'une situation possible, mais pas la seule. Il faut noter que

Thomas évoque cette situation pour indiquer les cas où l'emprunteur ne peut être considéré comme concourant au péché du prêteur. Il s'agit d'une clause restrictive applicable à une situation particulière. Cela est confirmé cinq ans plus tard, en *De emptione*, III, par la situation du marchand qui emprunte pour développer son activité et qui ne peut licitement répercuter le coût de cet emprunt dans le prix de vente de sa marchandise. Il ne le fait pas par nécessité et donne à l'usurier une occasion de pécher.

Thomas conservera une certaine distance avec la volonté conditionnée dans ses œuvres plus tardives. Ainsi, dans la *Somme de théologie*, la nécessité est encore présentée comme une possibilité et non comme un invariant et cette nécessité est relativisée par deux expressions : d'une part il ne s'agit que de donner avec une « une sorte de nécessité [*cum quamdam necessitate*] », « *quamdam* » venant ici spécifier et limiter la portée de « *ncecessitate* », puisque *quamdam*, ici pris comme adjectif, signifie « une sorte de » qui vient à la fois préciser et nuancer l'affirmation de la nécessité, et que *quamdam*, comme pronom et comme adjectif, contrairement à *quam* et à *aliquam*, désigne quelque chose qui existe et qu'on pourrait préciser ; d'autre part l'accomplissement libre de la volonté demeure la norme, même si elle est ici minorée : « celui qui ne donne pas absolument volontairement [*non simpliciter voluntarie dat*] parce qu'il a besoin [*indiget*] de cette somme » (*S. T.*, IIa IIae, q. 78, a. 1, ad 7). Par ailleurs, une expression proche de celle d'Albert se trouve en *De malo*, mais si « *violentum mixtum* [violence mitigée] » est employée en objection, la solution apportée par Thomas ne reprend pas l'expression (*De malo*, q. 13, a. 4, ad 8).

On assiste donc à une relativisation de la volonté conditionnée, la nécessité n'étant qu'une situation particulière mais ne constituant plus le cadre général d'analyse de l'usure. Concomitamment, on assiste à une universalisation de cette volonté conditionnée, puisqu'elle n'est pas assignée à l'emprunteur selon une prédétermination sociale qui en ferait une victime de l'usure, mais qu'elle peut affecter tous les agents.

D'une part, le regard que Thomas porte sur l'opération l'amène à ne pas considérer la position d'usurier selon un statut social préétabli mais à décrire l'évolution de cette position au cours de l'opération. En *De emptione*, I, l'usurier peut être, bien sûr, le vendeur qui profite du délai de paiement pour vendre au-dessus du juste prix. Cependant Thomas présente également une autre situation, où la vente à terme se fait au juste prix, mais où l'acheteur fait baisser le prix parce qu'il paye avant le terme prévu. Dans ce cas, « il y aurait plus à craindre quant à l'usure [ou d'être usurier] pour l'acheteur qui, lorsqu'il paye avant trois mois, achète moins [cher] que la

juste estimation [*plus esset de usura timendum emptori qui ubi ante tres menses solvat, minus iusta extimatione pannos emit*] » (*De emptione*, I).

D'autre part, la notion de nécessité, qui constituait le fondement de la condamnation de l'usure, est progressivement employée dans un cadre commercial. En déterminant les conditions d'activité du marchand en *In IV Sent.*, d. 16, q. 4, a. 2, qc 3, notamment en indiquant que cette activité doit se faire sans fraude et selon le contrat licite, Thomas apporte un premier encadrement à la pratique du marchand, supposé disposer d'une meilleure information et d'un meilleur pouvoir de négociation que l'acheteur. Dans le cadre commercial comme dans celui de l'usure, l'Aquinate élargit ensuite la possibilité de se trouver en état de nécessité à l'ensemble des agents. En faisant de l'acheteur un potentiel usurier en *De emptione*, I, Thomas indique que le pouvoir de négociation peut se déplacer entre les agents au sein même d'une opération commerciale, puisqu'il s'agit d'une vente et non d'un prêt. Plus tard, dans la *Somme de théologie*, il insistera sur la responsabilité de l'acheteur, qui n'est pas présenté comme étant en position de victime mais qui doit se renseigner par lui-même sur la qualité du bien qu'il achète, le vendeur ne devant donner l'information sur ce défaut que lorsqu'il est caché (*S. T.*, IIa IIae, q. 77, a. 3, resp.). On retrouve ainsi une mise en application des adages anciens « *caveat emptor* [que l'acheteur fasse attention] » et « *emptor debet esse curiosus* [l'acheteur doit être curieux] ». Thomas évoquera même la situation où le vendeur doit restreindre sa communication de l'information des défauts du bien qu'il vend pour éviter que l'acheteur ne le contraigne à une réduction abusive du prix (*S. T.*, IIa IIae, q. 77, a. 3, resp. et *II Quodl*., q. 5, a. 2, resp.).

On voit ainsi qu'en ne considérant plus la volonté conditionnée comme un fait social préétabli mais comme l'expression du pouvoir de négociation effectif et évolutif au cours de l'échange pour chacun des agents, Thomas en relativise le rôle et en étend la portée à toute activité et à tout agent économique. Cela ouvre ainsi la voie à une évolution du regard social et légal porté sur les agents, le prêteur et le marchand n'étant plus perçus comme menant une exploitation systématique de la volonté conditionnée de leur co-contractant, l'emprunteur pouvant être libre de son emprunt et complice du péché d'usure et l'acheteur pouvant abuser de son pouvoir de négociation pour obtenir un prix inférieur au juste prix.

3.3.3. L'attention à l'objet et à l'activité : une approche objective et ontologique

La quête morale de l'Aquinate, qui le conduit d'abord à porter son attention sur les prêteurs et sur les marchands, puis à considérer l'ensemble des parties-prenantes, connaît non pas une

évolution, puisque cela est présent dès les premiers textes, mais une caractéristique particulière : plus qu'aux agents, Thomas s'intéresse aux mécanismes de l'opération et à l'objet échangé. Cela peut s'expliquer par deux raisons : d'une part Thomas doit contourner l'intention des agents, qu'il ignore, pour se reporter sur des indicateurs objectifs et visibles de la justice de l'échange : la nature de l'échange, ses conditions quantitatives et qualitatives et son objet ; d'autre part, pour porter un jugement moral, la dimension subjective caractérisée par l'intention des agents ne suffit pas, il est nécessaire de qualifier l'acte de manière objective, avant l'intervention des agents. Or, pour qualifier moralement un acte, il faut d'abord en avoir une compréhension positive.

Qu'il s'agisse du prêt monétaire ou de l'échange commercial, la nature de l'activité mobilise l'attention de Thomas. En *Super Isaiam*, 55, 1, on doit certes nuancer cette affirmation, car dans son commentaire l'Aquinate commence par introduire le vendeur, Dieu, puis il complète la description de la situation de l'acheteur : ceux qui ont soif sont les Juifs, en raison de leur pauvreté. On doit cependant noter qu'il ne s'agit là que d'une identification objective des cocontractants, nécessaire à la compréhension de l'opération. Un seul ajout de l'Aquinate prend une dimension subjective, par une expression des « délices » de l'acheteur qui dépasse le simple intérêt commun des agents à réaliser l'échange : « dans les délices, venez, achetez [*et in deliciis, venite, emite*] » (*Super Isaiam*, 55, 1). Le reste du commentaire du verset précise les conditions de l'échange et l'objet échangé : les conditions sont d'acheter « sans argent […] c'est-à-dire en-dessous du juste prix » ; le bien est « le pain et les autres biens de nécessité » et, à travers la citation de Jean 7, 37, « de l'eau vive ».

En *In III Sent.*, d. 37, a. 6, Thomas tente de décrire, à partir des arguments reçus des autorités, ce qu'est le prêt (un *mutuum* avec transfert de propriété), ce qui est échangé (la monnaie) et la conséquence de la nature de l'objet échangé sur la nature de l'opération (la monnaie ne peut donner lieu à un écart entre la somme rendue et la somme prêtée). Les agents ne sont mentionnés que dans la première et la dernière réponse aux objections. La seule dimension subjective évoquée concerne l'endurcissement de cœur avancé comme raison pour laquelle Moïse a permis aux Juifs de prêter à intérêt aux étrangers (*In III Sent.*, d. 37, a. 6, ad 6).

De même, lorsqu'il décrit l'activité des marchands, Thomas s'en tient aux conditions de l'opération commerciale. Les seuls éléments qui se réfèrent aux agents sont l'interdiction de l'activité aux prêtres et aux moines, ce qui est une référence objective, et l'interdiction de la fraude (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3), qui, elle, peut mobiliser l'intention subjective du

marchand. On note cependant une évolution du vocabulaire utilisé par l'Aquinate qui témoigne d'une objectivité initiale qui vient intégrer dans un second temps la situation personnelle de l'agent. En effet, dans le *Commentaire des Sentences*, Thomas emploie le terme « *fraus* » à travers l'expression « *sine fraude* », alors que dans la *Somme de théologie* en général, et *S. T.*, IIa IIae, q. 77 en particulier, Thomas emploie « *fraudulentia* » et ses dérivés, qui apparaissent deux fois dans la question, à côté de *fraus* et de ses dérivés, qui apparaissent six fois. Alors que *fraus* (fraude) est plus caractéristique d'une action, *fraudulentia* (tromperie, malice, œuvre de celui qui fait le mal) est plus caractéristique de la personne qui accomplit cette action (Blaise 1954, 364 ; Blaise 1975, 401 ; Bréal et Bailly 1918, 105 ; Ernout et Meillet 2001, 252), avec, d'une part, l'idée d'être rempli de fraude, et de vivre avec la fraude comme une habitude (Gardin-Dumesnil 1788, 301), et, d'autre part, une proximité avec le vol, puisque la fraude consiste à utiliser la tromperie pour prendre quelque chose qui appartient à quelqu'un d'autre (Barrault et Grégoire 1853, 634). Ces deux caractéristiques de la *fraudulentia*, l'habitude et la proximité du vol, apparaissent dans *S. T.*, IIa IIae, q. 56, a. 2, ad 3. Le contexte est une réponse concernant le vice (*actum vitii*), mentionné dans l'objection 3, et le vice est un mauvais *habitus*, et a donc une dimension répétitive ; de plus, l'Aquinate énumère les trois lieux dans lesquels la ruse est exécutée (*ad executionem astutiae*), le vol (*furto*), la calomnie (*calumnia*) et la vente frauduleuse (*fraudulenta venditione*), montrant ainsi la proximité de ces trois actions. L'introduction à *S. T.*, IIa IIae, q. 77, « sur la fraude [*de fraudulentia*] qui est commise dans les achats et les ventes [*quae committitur in emptionibus et venditionibus*] », marque donc une double évolution par rapport au *Commentaire des Sentences* avec un renforcement sémantique de la dimension morale de l'analyse. L'idée de la répétition de l'injustice, contenue dans la dimension structurelle soulignée par la *fraudulentia* ne conduit pas à revenir à une lecture morale subjective, mais approfondit la réduction du risque d'analyse par la recherche de critères visibles et objectifs de l'injustice, en l'occurrence la récidive. La moralité et l'intention de l'agent, qui restaient cachées, deviennent ainsi observables.

Dans le *Commentaire des Sentences*, les deux cas limites confirment et accentuent l'attention à l'objet déjà présente par les considérations monétaires lorsque Thomas traite de l'usure (*In III Sent*., d. 37, a. 6), puisque c'est la nature de l'objet qui détermine sa possibilité d'être échangé. Le traitement de la simonie conduit Thomas à introduire la notion de « *quid* », de « ce que c'est » : dans l'achat et la vente, l'agent peut pécher « *in quantum* », selon la quantité ou « *in quid* ». « Si c'est *in quid*, comme quand il vend ou il achète ce qui ne fait pas l'objet d'un prix, tel est le péché du simoniaque » (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp.). La catégorie de la

chose échangée est donc explicitement nommée par Thomas dès le *Commentaire des Sentences.* Certes, le simoniaque est évoqué, mais uniquement comme agent d'une opération illicite en raison de la chose, quelles que soient ses intentions. De même, dans le cas de la vente du serf marié, ce n'est pas la moralité subjective des intentions du seigneur qui retient Thomas mais les deux caractéristiques du bien : comme serf, il peut être vendu, comme marié, il ne peut l'être que selon des conditions qui respectent ce mariage (*In IV Sent.*, d. 36, q. 1, a. 2).

Le *De emptione* est, lui aussi, tourné vers l'opération de vente à terme qu'il décrit. Il porte peu d'attention à l'objet échangé, dont le caractère marchand ne fait pas débat, si ce n'est pour évoquer son transport, activité qui est implicitement adaptée à l'objet. L'intérêt de l'Aquinate porte sur les deux caractéristiques de l'activité : elle concerne des marchands professionnels et elle peut se révéler usuraire. La possibilité d'une intention mauvaise de l'agent est connue par Thomas, mais il n'en fait pas l'objet de son traité : « À supposer que la coutume de reporter de trois mois le règlement, comme on le propose, soit pour le bien commun des marchands, à savoir, pour l'expédition de leurs marchandises, et qu'elle n'ait pas été introduite par la fraude de l'usure, on voit qu'il faut faire une distinction » (*De emptione*, I). Thomas ne s'attache donc pas ici à l'intention usuraire mais à la description des faits qui peuvent être usuraires : si un prix est imposé pour l'attente (*De emptione*, I) ou si on vend la chose plus cher qu'elle ne vaut sur le marché commun (*De emptione*, II). Lorsque Thomas décrit ensuite les dépenses que le marchand peut ou non répercuter dans le prix, l'attention est portée sur ces dépenses (*De emptione*, III) : les dépenses de transport peuvent être répercutées alors que les coûts d'un emprunt et les dépenses imprudentes ne le peuvent pas. Les agents ne sont cependant pas absents du traité. D'une part, la notion d'imprudence, qui se décline en négligence (*incaute*) et en mauvause gestion (*imprudenter*), renvoie au comportement des agents qui accroit le risque de perte. D'autre part, Thomas consacre un court passage aux marchands eux-mêmes pour expliquer que leurs arguments en faveur d'une intégration des frais de l'emprunt dans le prix ne sont pas recevables : « La nécessité qui est invoquée – celle qu'ils vivent plus honorablement et qu'ils fassent de plus grandes affaires – n'est pas une nécessité telle qu'elle suffit à excuser le péché mentionné » (*De emptione*, III). Il faut cependant noter que cette attention aux marchands se traduit par un jugement à leur égard à partir de la nature peccamineuse de l'opération à laquelle ils se sont livrés. Le point de référence demeure donc l'opération et non l'agent.

Les œuvres tardives de l'Aquinate conservent cette attention à l'objet et à l'activité. Certes, dans la *Somme de théologie*, les agents et leurs relations mutuelles sont davantage présents que

dans les œuvres de jeunesse : les agents expriment une volonté (*S. T.*, IIa IIae, q. 77, a. 1, s. c.), l'opération se fait pour l'utilité commune (*pro commune utilitate)*, elle peut se faire pour l'utilité (*utilitatem*) de l'un et au détriment (*detrimentum*) de l'autre s'il a grandement besoin (*indiget*) du bien. L'acheteur peut donner spontanément (*sponte*) davantage que nécessaire (*superogare*) et que ce soit honnête (*ad eius honestatem*) (*S. T.*, IIa IIae, q. 77, a. 1, resp.). Cependant, cette prise en compte des agents est toujours ordonnée à la détermination de la justice de l'opération. Après avoir décrit l'activité commerciale, Thomas se consacre dans l'article suivant à l'observation de l'objet échangé et note les trois défauts d'un bien sur lesquels peut porter l'injustice de la vente : selon l'espèce de la chose (*secundum speciem rei*), selon sa quantité et selon sa qualité (*S. T.*, IIa IIae, q. 77, a. 2, resp.). Il aborde ensuite la nécessité de l'information de ces défauts. Si cette information relève des agents, et que la possibilité d'un comportement abusif est présente, la typologie que propose l'Aquinate quant à la publicité des défauts est dressée selon ces défauts et non selon les comportements des agents (*S. T.*, IIa IIae, q. 77, a. 3, resp.). De même, dans le dernier article sur les échanges commerciaux, Thomas fait une typologie de l'activité des marchands non selon leur intention subjective, mais selon le niveau de gain, qui doit être modéré, et les finalités objectives du commerce (le gain, ou subvenir aux besoins de sa famille, aider les pauvres et approvisionner le pays) (*S. T.*, IIa IIae, q. 77, a. 4, resp.).

En outre, les écrits tardifs, se faisant l'écho du *Commentaire des Sentences*, semblent fonder implicitement leur regard objectif davantage sur le critère du *quid* développé à l'occasion du traitement de la simonie que sur le triptyque qu'avait proposé Thomas pour établir le cadre général du commerce en *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. En effet, la clause *tempus* (jours interdits pour commercer) est moins explicite. On retrouve la clause *persona* (interdiction aux clercs) une fois en *S. T.*, IIa IIae, q. 77, a. 4, ad 3, et le *modus* est présent par l'interdiction de la fraude et le respect du contrat en *S. T.*, IIa IIae, q. 77, a. 1, resp. ou selon une variation en termes de vertu et de droit (*II Quodl.*, q. 5, a. 2). Cependant, à l'exception de ces quelques réminiscences du triptyque originel, l'accent est très majoritairement mis sur l'objet, son prix et son état.

Concernant l'usure, la *Somme de théologie* est centrée, dans un premier article, sur la nature du prêt à partir des caractéristiques de la monnaie (*S. T.*, IIa IIae, q. 78, a. 1, resp.). Thomas aborde ensuite les modalités de compensations, ce qui touche aux relations entre les agents et même à leurs sentiments réciproques : bienveillance (*bonevolentiam*), amitié ou amour (*amorem*). Cependant ces compensations d'ordre relationnel ne sont pas confinées par Thomas à une pure subjectivité. Elles ne sont qu'une contrepartie non monétaire que le prêteur peut exiger (*exigere*)

(*S. T.*, IIa IIae, q. 78, a. 2, resp.). L'article suivant porte sur la nature des biens qui peuvent faire l'objet d'un paiement pour leur usage (*S. T.*, IIa IIae, q. 77, a. 3). Le dernier article porte sur la culpabilité de l'emprunteur, qui entraîne le prêteur à pécher s'il le pousse à prêter à intérêt, abordant ici l'emprunt sous un angle plus subjectif (*S. T.*, IIa IIae, q. 78, a. 4, resp.).

Il ressort ainsi de la *Somme de théologie* qu'elle se situe dans la lignée de l'objectivisme originel des écrits de jeunesse portant sur le bien et sur l'activité, tout en intégrant les éléments subjectifs qui sont accessibles à l'observateur, grâce à un élargissement progressif du regard de Thomas à toutes les parties prenantes.

4. Envoi : Un parcours thématique et progressif au risque de l'échange

Le risque se manifeste dans la pensée économique du jeune Thomas d'Aquin comme un risque dans l'échange. Il invite à un parcours thématique unifié par l'échange et dont le recours au prix constitue la progressivité. Ce parcours s'articule en trois parties.

Une première partie, qui présente « le risque usuraire comme risque d'échange », s'attache à montrer que le prêt à intérêt, que la problématique morale conduit à traiter de manière spécifique, relève économiquement de l'échange et que les risques qu'il entraîne sont ceux de l'échange.

Le chapitre 1, « *Analysis risk and commercial risk: The first treatment of usury in Thomas Aquinas's* Commentary on the Sentences », mène l'analyse du premier texte à portée économique de l'Aquinate, l'article sur l'usure du *Commentaire des Sentences.* On peut dégager une première typologie des risques en distinguant des risques d'analyse et des risques commerciaux. En accueillant avec distance les trois arguments successifs qu'il reçoit des autorités contre le prêt à intérêt, Thomas montre que le premier risque en matière économique est le risque d'erreur de compréhension de l'opération. S'il ne remet pas en question l'interdiction de l'usure, Thomas jette les bases d'une nouvelle approche du prêt. On distingue ensuite un risque commercial qui est un risque de prix. En effet, Thomas met à distance l'approche morale et sociale de l'usure en ne reprenant pas l'argumentation traditionnelle des Pères de l'Église qui voient dans l'usure un asservissement du pauvre, qui emprunte par nécessité (volonté conditionnée). Bien qu'il ne traite pas l'intérêt explicitement comme un prix, Thomas mène son argumentation à partir de la nature d'un échange dans lequel il y a transfert de propriété et où le prix de la somme prêtée est cette somme, à rendre. La présence d'un intérêt

signifierait alors qu'il y a rupture d'égalité entre ces sommes, donc implicitement que le prix n'est pas juste.

Le chapitre 2, « *Risky exchanges: Justice and price in Thomas Aquinas's* De emptione et venditione ad tempus » poursuit l'investigation concernant l'usure à travers les opérations à terme décrites dans le *De emptione.* Longtemps compris comme un cas particulier de l'usure, la vente à crédit est traitée par Thomas comme une modalité particulière de l'échange commercial, faisant ainsi le lien entre les deux types d'opérations. Le *De emptione* introduit la notion de juste prix pour la première fois dans les écrits proprement économiques de l'Aquinate. Le texte conduit à identifier une distinction conceptuelle entre valeur et prix. Mobiliser l'appareillage thomasien du signe et de l'analogie permet de comprendre le juste prix selon trois niveaux de réalité : le prix de justice se trouverait à raison de signe et par analogie dans le juste prix sur le marché ; ce juste prix se trouverait, à raison de signe et par analogie, dans le juste prix de l'échange singulier. Par ailleurs, le *De emptione* vient mettre en évidence trois types de risques de prix, des risques d'analyse, des risques commerciaux et des risques stratégiques, que l'on peut croiser avec les trois niveaux de réalité du juste prix pour obtenir un ensemble de neuf risques fondamentaux.

Une deuxième partie, consacrée à l'activité des marchands, aborde « le risque de l'échange commercial, vers un risque de prix ». L'encadrement de l'activité commerciale professionnelle par l'Aquinate se fait par la limitation des conditions d'exercice de l'activité marchande selon des critères qualitatifs et quantitatifs et par la distinction entre les dépenses que le commerçant peut répercuter dans le prix de vente et les dépenses illicites qu'il ne peut refacturer. Ces conditions et ces dépenses sont assimilables à des risques pour les marchands et pour l'ensemble des parties prenantes qui sont progressivement formulées en termes de prix.

Le chapitre 3, « *Risks on trade: The activity of the merchant in Thomas Aquinas's* Commentary on the Sentences », ouvre cette partie. Thomas traite brièvement de l'activité marchande dans le *Commentaire des Sentences* dans une courte sous-question qui aborde simultanément le négoce et l'activité militaire. Contrairement à Gratien et à Pierre Lombard cent ans avant lui, il ne porte pas de jugement sur la finalité de l'activité marchande, puisqu'il ignore l'intention des marchands, mais il contourne ce défaut d'information et le risque qu'il entraîne en se concentrant sur les moyens, à savoir les conditions de cette activité, reprenant à Albert le Grand le triptyque personne (interdiction aux clercs), temps (selon les jours prescrits, donc hors jours de fête), mode (sans fraude et selon le contrat licite). L'activité est donc soumise à des critères

qualitatifs et quantitatifs de justice. A travers la notion de contrat, on peut étendre la lecture économique du juste prix en trois niveaux de réalité à une lecture juridique, le prix de justice étant aussi le prix selon le droit positif et le prix selon le contrat licite singulier. On peut distinguer trois niveaux de risques, un risque de licéité, de condition et de rémunération, que l'on, peut croiser avec les trois types de risques, risque d'analyse, risque commercial et risque stratégique, pour obtenir neuf risques fondamentaux de l'activité marchande. Ces risques affectent les marchands mais à travers eux, toutes les parties prenantes. En effet, l'encadrement thomasien de l'activité marchande et son traitement de l'approvisionnement induisent un risque de pénurie. On trouve donc ici, aux côtés des risques explicites et implicites développés par l'Aquinate, l'exemple type du risque induit par son analyse.

Le chapitre 4, « *Licit and illicit risks in Thomas Aquinas's* De emptione et venditione ad tempus », poursuit l'analyse de l'activité marchande à travers un aspect, qui pourrait sembler marginal dans le *De emptione* aux côtés des traitements de l'usure et du juste prix, mais qui se révèle décisif. Thomas présente les dépenses que le marchand peut ou ne peut pas intégrer dans le prix de vente. L'écart temporel entre la réalisation de ses dépenses et la vente du bien, qui ne concerne pas que la vente à terme mais tout acte commercial, conduit à voir ces dépenses comme des risques, ce que Thomas fait ensuite progressivement. Le risque licite paradigmatique est le risque de transport, qui relève de l'activité propre du marchand. Si le *De emptione* s'attache à souligner la nature licite du transport, Thomas précisera ultérieurement le cadre licite de son financement. Les risques illicites sont, outre l'emprunt, qui n'est pas vu comme un juste moyen de développement de l'activité commerciale, les dépenses par imprudence. Cette imprudence peut se situer à deux niveaux dans la gestion du marchand puisqu'il s'agit des dépenses faites *incaute* (sans précaution, par négligence) et *imprudenter* (mauvaise anticipation).

Une troisième partie se concentre sur « le prix, instrument de la réduction du risque de la justice de l'échange ». En cherchant à assurer la justice de l'échange, Thomas trouve dans le prix un instrument propre à réduire le risque de défaut d'information sur l'opération. La notion de juste prix, avant d'être pleinement intégrée aux textes traitant de questions économiques, apparaît trois fois dans le cadre de questions spirituelles et théologiques. Thomas introduit la notion de juste prix pour aborder les cas limites que sont les biens non marchands ou semi-marchands, qu'il traite dans le cadre analytique de l'échange et non du don et qui manifestent l'intérêt du prix, que l'échange se fasse ou non selon ce prix.

Le chapitre 5, « *Is God giving or trading?* Super Isaiam, 55, 1: *Thomas Aquinas's first use of the 'just price'* », traite de la première occurrence de l'expression « juste prix » chez Thomas. Dieu communique sa sagesse divine par une vente qui se fait métaphoriquement « en-dessous du juste prix ». L'enquête auprès des sources manuscrites et imprimées concernant les différentes traditions bibliques et leurs utilisations par les Pères et dans la liturgie met en évidence le caractère récent, au XIII^{e} siècle, de la compréhension de ce passage selon le cadre analytique de l'échange et non du don, et surtout le caractère novateur de l'introduction par Thomas de la notion de prix et de juste prix. Dieu étant juste, l'échange, qui ne se fait pas au juste prix, se fait donc selon un prix qui serait injuste mais selon un autre type de rapport d'échange. Cette pluralité des rapports d'échange, prenant en compte d'autre critères de justice, sera très utile à l'Aquinate pour penser ultérieurement les indemnités reçues par le prêtre, par le soldat, le témoin au tribunal, mais aussi le prêteur qui subit un préjudice ou même le marchand, dont le revenu est pensé sur ce mode.

Le chapitre 6, « *At the boundaries of the trading sphere: The appearance of the 'just price' in the* Commentary on the Sentences » considère les deux occurrences suivantes de « juste prix », qui figurent dans le *Commentaire des Sentences* pour traiter d'un bien non marchand, le bien spirituel, dont la vente constitue le péché de simonie, et un bien semi-marchand, le serf marié, puisque son mariage impose une contrainte géographique à sa vente. En effet, le seigneur, qui n'a pas à être consulté avant le mariage, ne peut pas le vendre au loin car cela risquerait d'attenter à ce mariage. La justice de l'échange est assurée par deux critères visibles et objectifs, contournant ici encore le défaut d'information portant sur la situation subjective des agents : un critère qualitatif, se rapportant à la nature de l'objet, le *quid* (ce que c'est), et un critère quantitatif, traduit par le prix. Le prix est déjà, dans ces cas limites, le critère majeur de la justice de l'échange : soit de manière exhaustive, dans le cas du bien non marchand, en assumant les deux critères, le critère qualitatif et le critère quantitatif, par sa possibilité (ici son impossibilité, traduisant le *quid*) et son niveau ; soit de manière partielle, dans le cas du bien semi-marchand, aux côtés d'un critère qualitatif, ici le critère géographique qui limite la vente du serf marié.

Première partie :

Le risque usuraire comme risque d'échange

Le premier texte à portée directement économique de Thomas d'Aquin, qui se trouve dans le *Commentaire des Sentences*, concerne l'usure (*In III Sent.*, d. 37, a. 6). En cela il affronte la principale question économique de son temps. Sa manière de l'aborder est cependant novatrice. Délaissant la condamnation traditionnelle appuyée sur la thèse de l'asservissement du pauvre, Thomas passe en revue les autorités qui justifient l'impossibilité d'un intérêt en raison même de la nature d'un prêt monétaire. Il ressort à la fois du prêt conçu comme transfert de propriété et de l'absence d'utilité propre de la monnaie que la somme rendue doit être égale à la somme prêtée. Le risque est alors un risque portant sur l'injustice du rapport d'échange : par un intérêt, l'égalité de valeur entre ce qui est donné et ce qui est reçu serait brisée et la justice commutative, qui régit le prêt comme le commerce, serait affectée. Le prêt est donc traité comme une opération commerciale et les risques afférents sont des risques commerciaux, qui portent sur le prix (l'intérêt) et sur la nature marchande du bien échangé (la monnaie).

Le premier argument reçu des autorités évoqué dans cette première considération directement économique donne aussi lieu à la mention d'un risque qui peut se présenter dans l'ensemble des échanges. En effet, en qualifiant l'argument traditionnel du prêt comme *mutuum* d'assez probable, Thomas introduit la possibilité d'une erreur d'analyse ou de compréhension du prêt, ce qui peut entraîner une condamnation de l'usure et des conséquences morales et sociales pour l'ensemble des agents sur des bases erronées. Ce risque d'erreur se retrouvera, exprimé en des termes différents, dans le traitement des opérations d'achat et de vente, ce qui marque encore davantage la nécessité d'envisager les risques usuraires dans l'ensemble des risques commerciaux.

On trouve une extension du traitement de l'usure dans le *De emptione et venditione ad tempus*, consacré à l'achat et à la vente à terme, qui tient à la fois de l'échange de biens et du prêt à travers le délai de paiement. La dimension de prêt est intégrée au cadre de l'échange commercial puisqu'il existe un lien direct entre le prix et la situation d'usure : il y a usure lorsque la vente ne se fait pas au juste prix en raison du temps. Le risque usuraire est ainsi un risque sur le juste prix. C'est d'ailleurs à travers sa réflexion sur la vente à terme que Thomas propose une élaboration large de la notion de prix. D'abord, il établit un lien entre le prix et le marché selon une formulation qui nécessite une nouvelle interprétation ; ensuite, il articule les notions de valeur et de prix sans les identifier ; enfin, il introduit la notion d'estimation, dont l'étude conduit à considérer un juste prix qui tendrait à retrouver un niveau de justice qui le précèderait.

L'ensemble de l'élaboration de ce texte sur le prix conduit à pouvoir envisager le juste prix selon trois niveaux de réalité (prix de justice, juste prix sur le marché et juste prix singulier) que viendraient croiser les trois types de risques (risque d'analyse, risque commercial, risque stratégique), conduisant à un ensemble de neuf risques fondamentaux.

On voit ainsi que la question usuraire, malgré le traitement moral et légal qui lui est réservé au Moyen Âge, est loin de constituer un univers à part. Elle permet à l'Aquinate de bâtir une première élaboration complète et cohérente au sujet de la justice de l'échange et des risques qui lui sont afférents.

Chapitre 1 :

Analysis risk and commercial risk:

The first treatment of usury in

Thomas Aquinas's *Commentary on the Sentences*

1. Introduction

The notoriety of the two questions of direct economic significance in the *Summa theologiae* (IIa IIae, q. 77 and q. 78) seems at times to have cast a shadow over the earlier writings of Thomas Aquinas. If, however, we consider *Summa theologiae* to express Aquinas's late position, we should naturally feel prompted to investigate how this position emerged. Nearly twenty years before the *Summa*, in the *Commentary on the Sentences* (1254-1256), and notably in *In III Sent.*, d. 37, a. 6 on usury,[2] Aquinas gave an overview of current theories and took up fundamental economic questions, sometimes clearly distancing himself from authoritative texts such as Gratian's *Decree* and Peter Lombard's *Sentences* from the mid-twelfth century, and Robert of Courçon's *De usura*, William of Auxerre's *Summa aurea*, Albert the Great's *Commentary on the Sentences*, and Gregory IX's *Decretals*, from the first part of the thirteenth century. The *Commentary on the Sentences* is thus an innovative work which constitutes the foundation of Aquinas's later work,[3] of which it sometimes appears as a first sketch, while also containing original and major contributions.

Such an approach to the article on usury in the *Commentary on the Sentences* might seem out of step with the reading of Aquinas's work to which we have become accustomed by studies on his economic thought. The literature, on the one hand, pays greater attention to the question of the just price than to interest-bearing loans and, on the other hand, adopts a methodological approach according to which medieval and modern scholastics are considered as a whole or over great periods, showing little regard for the individual path of each, and, for Thomas Aquinas in particular, often concentrating on the *Summa theologiae.* As a result, not only is the

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

[3] For the years 1268-1272, the introduction to each treatise contained in the Leonine edition, where it is available, as well as the *Brief Catalogue* established by Émery 1993, give a glimpse of a vast body of works dealing with economic questions after the *Commentary on the Sentences* and then the *De emptione et venditione ad Tempus* of 1262 (published in *Opuscula III* of the Leonine edition, 391-394). These works too have sometimes been eclipsed by the *Secunda pars* of the *Summa theologiae*, of which q. 77 and 78 are a part, which was written in 1271-1272 in Paris. We must also note the *Quodlibetal Questions* (II, q. 5, a. 2 and III, q. 7, a. 2), dated 1268-1272, the *Disputed Questions De malo* (q. 13, a. 4) written around 1270, the *Commentaries on Aristotle's Politics* (*Politicorum*, I, 6-9) and *Nichomachean Ethics* (*Ethicorum*, V, 9), dated 1269-1272 and 1271-1272 respectively, and the *Letter to the Duchess of Brabant* (*Ad ducissam Brabantiae*), dated 1271 (published in *Opuscula III* of the Leonine edition, 375-378). The *Collationes in decem preceptis* on the Ten Commandments, a late finalised writing of his preachings in Italy in his mother tongue, has been seen as the last or, on the contrary, one of the first of Aquinas's contributions. Torrell 1985 and Émery 1993 hesitated between the traditional dating of a Lenten preaching in 1273 and a dating corresponding to Aquinas's previous Italian sojourn in 1261-1268, but Torrell 2015b confirms that it has been written in 1273.

Commentary on the Sentences not given special attention, but there are rather few contributions which deal specifically with the treatment of interest-bearing loans in Aquinas's works.

From this point of view, the present article aims to fill a gap by restoring the contribution of Aquinas's early writings. Beyond this, however, I also lay emphasis on two points. First, that whereas today we are accustomed to considering the issue of risk through the prism of behavioural attitude (risk aversion, neutrality, or risk attraction), *In III Sent.*, d. 37, a. 6 offers a vantage point from which we may perceive a typology of types of risk of different natures and at different levels. Aquinas notably introduces the idea of analytical risk, which focuses on the way in which, either as agent or as moralist, we understand the nature of the operation which is at stake. Secondly, we are also accustomed to considering commercial exchange and financial operations like lending as distinct operations. For Aquinas these operations are of course distinct, but he considers economic activity itself as a unity: for all operations falling under that heading bring together the same agents, who then partake of a common articulation of analysis and operational risk and must together respect the justice of exchange. Such a perspective thus echoes other recent contributions (Franks 2009 and Hirschfeld 2018) that aim to bring new insights into the determinants of normativity.

Beyond the strictly historical aspects, however, the secondary literature has considered Aquinas's treatment of interest-bearing loans in various respects. These include:

- the moral and normative dimension (Noonan 1957; De Roover 1971; Lapidus 1987 and 2020; Langholm 2003; Sivéry 2004; Franks 2009; Ege 2014; Monsalve 2014a; Hirschfeld 2018; Santori 2019 and 2020);
- the legal framework of the *mutuum* under Roman law (De Roover 1953 and 1971; Noonan 1957; Baldwin 1959; Mélitz 1971; Lapidus 1987 and 1991; Langholm 1992; Monsalve 2014b; Chaplygina and Lapidus 2016);
- the particular nature of the monetary approach to which it is related (Mélitz 1971; Lapidus 1987, 1991, 1997 and 2021; Chaplygina and Lapidus 2016 and 2022; Hirschfeld 2018);
- the nature of the partners's commitment, freedom and responsibility through the notion of the conditioned will (Langholm 1984, 1992 and 1998; Ege 2014; Sturn 2017);
- the loan as an exchange that involves risk and is subject to a price (Langholm 1984; Lapidus 1991; Sivéry 2004; Franks 2009; Ege 2014).

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

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

secondary literature, deserves particular attention. The reason for this lack of perception seems to be that commentators often implicitly consider Aquinas's position to be relatively homogeneous throughout his writings, whereas on the contrary there is a trend towards a greater acceptance of a surplus, which will then become the subject of both moral and analytical justification. However, in this first text, in which he addresses the question of the interest-bearing loan, the only case that is consistent with a just price is the zero-interest loan, the sum returned having to be equal to the sum lent, without surplus. This position is in line with the strict conception of *mutuum* that prevailed before Thomas Aquinas. It is only in his later writings that Aquinas would open a breach with that conception, by presenting situations in which a surplus can be practised and still conform to the just price.

5. Finally, by laying the groundwork for a conventionalist approach to money and denying it any utility in itself, Aquinas introduces a risk to the value of money, which stems from a lack of information, since the agent does not know how this value will evolve. In usury, a risk thus intervenes into the evolution of the value of the good exchanged in an intertemporal manner. After the risk of analysing and understanding economic activity, a set of commercial risks related to exchange and money thus appears. It should be noted that this conclusion is not immediately obvious. The *Commentary on the Sentences* seems in fact to deal with economic questions in a discrete manner: usury in *In III Sent.*, d. 37, a. 6; the activity of the merchant in *In IV Sent.*, d. 16, q. 4, a. 2, qc 3. Yet certain constitutive points, such as the universality of risk situations and the responsibility of the agent for his own risk, and the central role of price in exchange, are evidence of a unified approach to economic activity.

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

I address these five categories of risk by showing how, by moving from the moral prohibition of usury to the economic justifications of this prohibition, Aquinas opens up a space for analysis. This requires, first, that we identify the normative framework that Aquinas inherited, as well as the sense of *mutuum* and the monetary conceptions at the heart of the arguments proffered by the authorities who constitute his reference space (section 2). I then analyse the expression *satis probabilis* that Aquinas uses to evaluate the justification of the prohibition of

usury by the sense of *mutuum*, in order to assess its importance for the new approach to usury found in his later works. This will highlight the emergence of a risk of error in the analysis and understanding of interest-based lending, which entails a risk for economic agents starting with their moral identification as a usurer, and then extending to society as a whole, since the prohibition of usury affects social redistribution (section 3). Finally, I identify the risks that allow usury to be assimilated to a commercial exchange: risks on money, which constitutes the exchanged good, on the price, since the interest is a surplus of the exchange, and on property, since the risk is incumbent on the owner (section 4).

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

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

2.1. A normative framework

The article on usury in the *Commentary on the Sentences*, *In III Sent.*, d. 37, a. 6,[4] is part of Aquinas's commentary on Peter Lombard's *distinctio* on the theft in the *Sentences* (*III Sent.*, d. 37) which, like Gratian's *Decree*, equates theft and usury. To these authorities of the mid-twelfth century, Aquinas adds the classical evangelical verse "lend without any hope of return" (*Luke* 6:35), used in the great texts against usury from the beginning of the thirteenth century. He thus anchors his article in a moral perspective and in the views of a set of very assertive authorities.

[4] The *Commentary on the Sentences* is articulated in books, distinctions, questions and articles. The *Summa theologiae* simplifies the outline by removing the distinctions and tightening up the articles for pedagogical purposes. Each article focuses on answering a question. It is made up of a series of objections, which are generally not false, but which serve as points of support to be surpassed or clarified. Next comes the *sed contra* (on the contrary), which gives the key to Aquinas's position, usually drawing from a biblical, patristic, or philosophical quotation, and then the *respondeo* (answer, or main part of the article), which presents the author's thesis, often by a process of distinction which allows the question to be approached from different angles in a nuanced manner. Finally, there are the replies to the objections, which are term-by-term responses. Starting by reading the *sed contra* and then the *respondeo* allows us to get to the heart of Aquinas's thinking by first perceiving his orientation, and then the path of his reasoning. The objections and replies are important in the second stage as a means to clarify Aquinas's arguments.

2.1.1. Is usury theft?

The *Commentary on the Sentences* constitutes the foundation of Thomasian thought, both as an academic synthesis with a view to becoming a *sententiary bachelor*, and as the first steps in his personal work. Thomas Aquinas does not take up the treatment of theft contained in *II Sent.*, d. 40 by Peter Lombard, Bishop of Paris (who wrote his *Sentences* around 1150), who condemned the figure incarnated today by Robin Hood: stealing from the rich to do charity by giving to the poor is not permitted, because although the end is good, the means are bad since theft is a sin in itself. After Aquinas died, we would also find this argument in Giles of Lessines's *De usuris in communi* of 1276-1285,[5] which points to a similarity between theft and usury, both of which can have a good end but may be condemned for the bad means employed (*De usuris*, III). On the other hand, Aquinas takes up and abundantly amplifies Peter Lombard's discussion of the Ten Commandments in *III Sent.*, d. 37, of which chapters IV and V also dealt with theft (*de furto*). For Lombard, usury could be dealt with in only a few lines. The interdict was supported by Jerome of Stridon: "To seek usury or to defraud or steal [*usuras quaerere vel fraudare vel rapere*] brings nothing. Agree with your brother and receive what he gives you, and do not seek anything superfluous, because the superabundance in usury is counted [*quia surabundantia in usura computatur*]" (Peter Lombard, *III Sent.*, d. 37).

Let us note here an important assumption, inherited from Lombard, on which Aquinas bases his study: usury and fraud are to be assimilated to theft, a classical position found among the Fathers[6] and then in Anselm and Gratian: "If someone practises usury [*si quis usuram accept*], he steals [*rapinam facit*]" (Gratian, *Decretum*, II, causa 14, q. 4, c. 10).[7] The assimilation of usury to theft is connected to the patristic social foundation of the defence of the poor: "He is no less cruel, the one who kills the poor by means of an interest-bearing loan than the one who steals something from the rich by any means [*non minus crudelis est, qui pauperem trucidat foenore, quam qui diviti aliqua rapit*]" (c. 11). Through the connection with theft, usury and fraud come to be perceived as two branches of the same field of operation. It should be noted,

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

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

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

on the one hand, when reading Gratian's *Decree* (1140)[8] and the *Decretals* of Gregory IX (1234),[9] that the condemnation of usury is unambiguous, as Lapidus 1991 points out (see also Noonan 1957, 32-32; Langholm 2003, 34; Chaplygina and Lapidus 2016, 31-32); and on the other hand, that commercial questions are, at least in part, dealt with in the chapters devoted to usury, which tends to lend credence to the thesis of a certain unity within economic activity.

Moreover, in *II Sent.*, d. 40 Lombard adds: "Some people think that usury is only in money [*in pecunia*] but usury occurs as soon as a surplus [*plus est*] is granted to what was given". His thought here is thus not about money or the transfer of ownership (although the notion of theft may suggest this), but adverts simply to a moral prohibition based on the idea of surplus.[10] Gratian's *Decree*, which precedes Lombard's *Sentences* by a few years, already contains this prohibition of surplus: "He sins, the one who demands more than what is lent [*peccat autem, qui exigit ultra debitum*]" (Gratian, *Decretum*, II, causa 14, q. 1, c. 2). Gratian lays down a general prohibition of usury on the basis of the condemnation of greed[11] and of any *superabundentia* in a loan, whether financial or in kind.[12] The entirety of the work undertaken by Aquinas in his commentary would therefore be directed to providing economic support for the moral prohibition here laid down, and to distinguishing the nature of this surplus according to whether it is financial, measurable in terms of a monetary price, or of the order of gratitude and moral recognition.

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

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

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

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

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

2.1.2. Lend without any hope of return!

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

The *sed contra* is moral, starting from the traditional Gospel verse calling on us to "lend without any hope of return [*date mutuum, nihil inde sperantes*]" (Luke 6:35). As we have indicated, this verse is a classic reference point in medieval condemnations of usury: although it does not appear in Peter Lombard's writings, it is found at the beginning of the thirteenth century in Robert of Courçon's *De usura* (p. 5 and 19),[13] and then in William of Auxerre's *Summa aurea* III, XLVIII, c. 1, q. 1 and in Albert the Great's *In III Sent.*, d. 37, a. 13. It is cited by Gregory IX in his *Decretals* (1234) in a passage attributed to Urban III in 1186, which deals with sale on credit (*Decretales*, l. 5, t. 19, c. 10). Aquinas then turns to it regularly as a point of support: in addition to *In III Sent.*, d. 37, a. 6, s. c., it is found in other writings on usury (*S. T.*, IIa IIae, q. 78, a. 1, obj. 4; *De malo*, q. 14, a. 4, obj. 3), as well as in other places (*S. T.*, Ia IIae, q. 108, a. 3, ad 2; *Commentary on the Psalms*, 14, 5; *Catena aurea on St. Luke*, 6, 35). Finally, there would be two occurrences of the verse in the treatise on usury by Giles of Lessines (*De usuris*, III and XIV) written at the end of the thirteenth century. The verse posits a tension between two notions: *mutuum*, the loan stemming from Roman law, and *sperare*, waiting (Le Goff 1986, 23-24). Although it is understood and employed in the Middle Ages as an exhortation to lend without interest, the context given by *Luke* 6:27-35 in fact indicates a more radical meaning. The loan becomes a gift because it is a matter of *expecting nothing*, neither interest nor repayment of the principal: "Give to everyone who asks you, and do not ask for your property back from someone who takes it" (*Luke* 6:30). By contrast, sinners already practice the interest-free loan, and so fall short of the Gospel exhortation: "Even sinners lend to sinners to get back the same amount" (*Luke* 6:34). By using *Luke* 6:35 against usury but not against interest-free loans, the medieval authors thus softened the meaning.

[13] Georges Lefèvre dates *De usura* to the early thirteen century. He edited and translated it into French in 1902.

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

2.2. The *mutuum* and money: between the authorities and quicksand

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

2.2.1. Mutuum*, a broad and evolving term*

The general meaning of *mutuum* in Latin literature is first of all lending among friends,[14] and then lending in the broad sense, whether in money or in kind, without specifying interest (unlike *δανίζετε*), but nevertheless with a notion of reciprocity or mutuality: the equivalent must be returned (Ege 2014, 393).[15] The term *fenus*[16] is used to refer to interest, and by extension to interest-bearing loans: this term is thus employed to emphasise the specific nature of such loans, and makes it possible to distinguish interest from capital, *sors* (Ernout and Meillet 2001, 225, 426, 637). However, the terminology remains relatively imprecise.[17]

In Roman law,[18] particularly under Justinian's rule, the *mutuum* was initially a consumer loan contract free of interest,[19] to which may be added a *stipulatio*, an appendix that sets out what the borrower must give in addition to returning what has been borrowed.[20] The borrower becomes the owner of the borrowed sum, contrary to the three other types of real contracts: the *commodate*, the deposit (*depositum*), and the *pledge* (*pignus*). The *fenus nauticum* was a variant derogating from the interest of the *mutuum* justified by the specific nature of the sea trade but which was part of the common law.[21] More generally, the reasons for a *stipulatio* were varied,

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

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

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

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

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

[19] Since the loan was initially a consumer loan, this explains the difference in bargaining power between borrower and lender (Chaplygina and Lapidus 2016, 32; 2022).

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

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

and interest is only one of the possible specifications. In addition, in the thirteenth century there were many variants of interest *stipulatio*, which can be grouped into two categories: fixed term, or at the will of the creditor. This was, for example, the case in Flanders (Wyffels 1991, 855). The extrinsic titles attached to the loan may include: *lucrum cessans*, to cover the opportunity cost of the loan, which prevents the lender from doing other business; *damnum emergens*, if the lender is himself forced to borrow at interest (in particular to take out a consumer loan) because of the loan; and *poena conventionalis*, a penalty for late payment for a loan that was originally free (although this is disguised interest when this 'delay' is agreed in advance). The clauses and titles intended to justify the interest are thus based on the expression of a risk (McLaughlin 1939, 125-147; du Passage 1946, 2361 and 2364; Franks 2009, 71-83; Dupuy 1992, 52; Burke 2014, 111-113; Ege 2014, 403; Monsalve 2014b, 231-232; Chaplygina and Lapidus 2016, 35-37; 2022; Lapidus 2021). We may note, however, that until the 16th century the licit forms of credit, under the legal aspects of investment or *locatio*, were more frequent than *stipulatio* (Mélitz 1971, 475 and 484-485). Foreign exchange was also an alternative form of usury (De Roover 1946, 118).[22] De Roover (1953, 28-29) thus shows that foreign exchange contracts (*mutuo nomine cambi*) were common in Genoa in the twelfth century, but that the term *mutuum* was quickly abolished so as not to fall foul of the condemnation of usury, and that the transaction was presented as a purchase and sale (*emptio-venditio*), as manifest in certain gambits employed in the account books of agents engaged in both trading and lending (Feller 2020, 59-61). McLaughlin (1939, 75-95 and 1940) and Ege (2014, 392) thus observe that usury could never be prevented, and was the subject of multiple "escape attempts", as Ege puts it, of two types: circumvention by a legal covering of the shareholder type, and the stipulation of clauses of interest in the *mutuum* (Chaplygina and Lapidus 2016, 37; 2022).

Halfway between the two previously formulated hypotheses for translation (a *mutuum* with or without the possibility of interest), the history of Roman law invites us to see in the translation of *δανίζετε* by *mutuum* an enlargement, with a shift in meaning towards a "rather" interest-free loan, and then a new shift under the medieval theologians back towards the original meaning of a *mutuum* clearly without interest, thus departing from the Greek term and the paradox it introduced. Medieval authors adopted the *mutuum* of Roman law as the prototypical form of lending (Mélitz 1971, 478), but they did not immediately rely on it to condemn usury. Thus, Gratian's *Decree* (1140) does not explicitly refer to the definition of the *mutuum* in its argument

[22] Sometimes, on the contrary, the clause explicitly stipulates repayment of the loan in the same currency, to avoid the exchange rate risk (Dupuy 1992, 51-52).

against usury. The ambiguity or polysemy of the *mutuum* can be compared to the expression "loan *ad maniam*" or "*a manaie*", used in the thirteenth century, originally thought of and understood as a free loan, a deposit, but which was practiced by the cities of Flanders with an interest of about 10% and which appears under the heading *usura* in their accounts (Wyfells 1991, 859-862).[23]

However, one observes in Robert of Courçon's *De usura*, for example, from the early thirteenth century, a desire to restore an evangelical meaning to the term *mutuum* by seizing upon *Luke* 6:35 and returning to the primary and restrictive meaning, void of any stipulation. It is not the level of the interest rate nor the reason for the loan that determines a loan to be usury, but the very fact of giving an interest-bearing loan (De Roover 1971, 78). While Gratian did not make this point explicitly, Robert goes on to insist on the importance of the change of ownership, relying on the supposed etymology of *mutuum*: "what is mine becomes yours or conversely (*de meo fit tuum vel e converso*)" (*De usura*, p. 14) – by contrast, the agreed etymology today is that the word is a form derived from *muto*, to move, to change (Ernout and Meillet 2001, 426). In the *Decretals* of 1234, Gregory IX takes up the notion of *mutuum* as a transfer of ownership that prohibits interest, but the expressions using the term remain rare and allusive: "*mutuam pecuniam*" in *Decretales*, l. 5, t. 19, c. 10; "*certam mutuans pecuniae quantitam*" in c. 19, *Decretal Naviganti.* We must, therefore, ascertain whether Aquinas, by the choice of *Luke* 6:35 in the *sed contra*, first of all fits into the medieval narrowing of the sense of *mutuum* initiated by the previous users of this verse, or whether he intended to return to the broader sense of Roman law.

2.2.2. A stumbling block: the nature of money

Aquinas's *respondeo* presents three arguments against usury, based respectively on the nature of money, the nature of *mutuum*, and the utility of money,[24] and which reflect the three sources of the normative framework that forms the basis of the authorities' work: Aristotle's thought, Roman law, and ecclesiastical sources (Chaplygina and Lapidus 2016, 20). The introduction justifies the condemnation of usury in particularly general terms: "But various reasons are given

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

[24] We find here, in a first formulation, what Lapidus 2021 identifies in later Thomasian writings as legal considerations (continuity of ownership), which here refer to the nature of the *mutuum*, ontological considerations (condition of an income), which echo both the *mutuum* and money, and epistemological considerations, which concern the proper use of money.

[*sed diversi diversas rationes assignant*]" (*In III Sent.*, d. 37, a. 6, resp.). It is worth noting here, on the one hand, the insistence on diversity manifest by the redundancy *diversi diversas*, and, on the other, the connotation introduced by *diversi*, whose primary meaning is "in the opposite, opposite direction", indicating by extension a splintering in various directions. From the outset, then, Aquinas puts forward the idea of a diversity of arguments which are not necessarily coherent. The starting point remains normative: "All say [*ab omnibus dicitur*] in a general way [*communiter*] that usury is a mortal sin" (*In III Sent.*, d. 37, a. 6), which corresponds well to the legal prescriptions of Gratian and Gregory IX. Aquinas insists on the universality of condemnation (*ab omnibus*; *communiter*) and on its moral dimension (mortal sin), and in this respect does not differ from the other scholastics whose economic contributions fall within a theological or canonical framework (Sturn 2017, 640).[25] His attention to the justice of the operation is rooted in his moral philosophy and his theology of the virtues and the ultimate end (Franks 2009, 7, 9, 96-97, 105-131; Hirschfeld 2018, 71, 95-117, 135).[26]

However, without for all that emancipating himself from the initial normative framework, Aquinas is committed to renewing the positive study of usury (Mélitz 1971, 477-482).[27] Without repeating the social condemnation developed by the Gospel, the Fathers, and again by Gratian (*Decretum*, II, causa 14, q. 4, c. 11), according to which usury enslaves the poor, Aquinas sets out the two reasons that throughout his work will make usury a "logical fault" (Lapidus 1987, 1097): money and *mutuum*.

[25] Thus the debate on Aquinas's reception in *S. T.*, IIa IIae, q. 78, a.2, ad. 5 of Gregory IX's *Decretal Naviganti* of 1234 does not concern the inclusion of Aquinas within a general framework of condemnation of usury but rather the articulation of the *mutuum* and the model of the *societas* (Noonan 1957, 136-145; Baldwin 1959, 52). Aquinas's desire to describe positively the mechanism he observes in *In III Sent.*, d. 37, a. 6 and in other economic writings remains intertwined with the moral purpose of determining sinful situations (Lapidus 1987, 1096; 2021; Sivéry 2004, 705). This is part of the primacy that the scholastics give to justice (Hamouda and Price 1997, 192; Monsalve 2014a, 5).

[26] Man is first of all thought of as a moral being (De-Juan and Monsalve 2006, 100-101). He is still *homo justus*, before becoming *homo oeconomicus* (Monsalve 2014a, 16). It should be noted that Santori (2019 and 2020, 278) has recently highlighted an earlier stage, with Thomas Aquinas considering the human being to be first and foremost a friend (*naturaliter homo homini amicus*), who gives himself over to the gift (*donum*), before being considered *homo justus*. Le Goff [2010] 2019 stresses the importance of an anthropology of giving through the development of *caritas* (charity). As a Dominican, it is in the charity of Christ that Aquinas's own charity and poverty is rooted (Franks 2009, 105-181). Thus Turgot points out in his *Mémoire sur les prêts d'argent* (1770) 1789) that the confusion in medieval times between usury and interest, which justifies the prohibition of interest-bearing loans, is not the result of an intellectual incapacity for analysis but of a different centre of interest, focused on theological and moral concerns (Ege 2014, 412-413; see Turgot [1770] 1789, 58-60). For a normative approach to the modern economy based on Aquinas, see e.g. Franks 2009 and Hirschfeld 2018).

[27] Compared to predecessors such as William of Auxerre, or the late scholastics (Monsalve 2014b, 219), Aquinas was less concerned with the sinful intention of the usurer and concentrated more on the usurious fact itself.

The first explanation, which can be found here in germ and which will be more fully developed in *S. T.*, IIa IIae, q. 78, a. 1, resp., falls under the heading of the definition of money.[28] Aquinas tries to explicate the argument that "money does not deteriorate by use [*quia pecunia non deterioratur ex usu*]", adding "in the loan, there is no deterioration equivalent to the amount", whereas property purchased with this money does deteriorate, for example a horse. But Aquinas notes that this is not always the case, for example when buying a house. Therefore, one cannot compare the deterioration of property to a deterioration of the amount of money lent. Aquinas thus notes the fragility of the argument and moves on to the next: "That is why others give another reason [*et ideo alii assigning aliam rationem*]" (*In III Sent.*, d. 37, a. 6, resp.), explicitly introducing by the word *ideo* ("that is why") a causal link between the limitation of the first argument and the fact that others are thus formulated. To account for the difficulty of the analysis, Mélitz 1971 and Lapidus (1987, 1103) note the confusion between consumptible and fungible goods, while we may also observe that the monetary argument remains a promissary note which will be developed in the *Summa theologiae*, where he takes instead the side that money is consumable, being assimilated to wine or wheat which are destroyed in use and whose use cannot be sold (*usus rei*) separately from the reality itself (*a re ipsa*).[29] Aquinas relies on Aristotle,[30] who emphasises the function of an intermediary in exchanges (*principaliter est inventa ad commuendas faciendas*), in order to deduce that "the proper and principal use of money is to be consumed" (*S. T.*, IIa IIae, q. 78, a. 1, resp). It should be noted that in this perspective it is the use as an intermediary of exchange that leads to the consumption of money, and not money itself, since it can have two secondary uses that do not lead to its consumption: ostentation, known as *mutuum ad pompam* or *ad ostentationem*, (Mélitz 1971, 480-481; Lapidus 1987, 1100 and 1101; Franks 2009, 73; Chaplygina and Lapidus 2016, 29 and 33; 2022), and as a pledge. In the *Summa theologiae,* Aquinas points out in fact that money can be

[28] The Thomasian approach to usury through money is emphasised by Lapidus 1997, 26, and Chaplygina and Lapidus 2016, 28. See also Hirschfeld 2018, 139-152.

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

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

lent as a pledge or, in the form of silver coins (*pecuniae argentae*), for ostentation (*ad ostentationem*) (*S. T.*, IIa IIae, q. 78, a. 1, ad 6), and in this case the money is not consumed but simply rented. The use can then be sold. For the moment, though, in the *Commentary on the Sentences* Aquinas merely notes the limit of the argument that money is not damaged by use.

3. *Satis probabilis*: highlighting a risk of error in the analysis of usury

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

3.1. The 'rather probable' argument of the *mutuum*

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

3.1.1. The mutuum *or* satis probabilis *thesis syndrome*

Having demonstrated the failure of the monetary argument at the beginning of the *respondeo*, the second reason against interest-bearing loans he considers is that of the *mutuum*, of the loan

as a transfer of ownership.[31] Aquinas now takes up the argument "by way of ownership" formulated by predecessors such as Robert of Courçon: "This is why others give another reason [*et ideo alii assignant aliam rationem*], when money is lent, ownership is transferred [*quando pecunia mutuatur, transfertur dominium*]" (*In III Sent.*, d. 37, a. 6, resp.). This is also the normative framework laid down by Gregory IX's *Decretal Naviganti* in 1234, which is not based on the criterion of assumption of risk but only on ownership. The loan is a transfer of ownership (*mutuans pecuniae*): "The one who lends a fixed amount of money to [a merchant] sailing or going to fairs, in order to receive something beyond the capital by taking the risk on himself, must be considered a usurer [*naviganti vel eunti ad nundinas, certam mutuans pecuniae quantitatem, eo quod suscipit in se periculum, recepturus aliquid ultra sortem, usurarius est censendus*]" (Gregory IX, *Decretales*, l., 5, t. 19, c. 19).

Lending by *mutuum* is then distinguished from renting: "Which is not the case for a house and for other things. Now it seems right that for the use of something which remains my property, namely, the house, I should receive something" (*In III Sent.*, d. 37, a. 6, resp.). Aquinas here justifies the principle of rent received for the use of a thing which remains my property. However, in the case of the *mutuum* I part with the money, which is no longer mine: "But to receive something for the use of money, which becomes the property of another by the very fact that it is lent, is nothing other than to receive something from someone for the use of his property. So it seems to be an exaction and a sin. And this reason seems quite probable [*et haec ratio satis probabilis videtur*]" (*In III Sent.*, d. 37, a. 6, resp.). Again, the expression *satis probabilis* (quite probable) presents a difficulty of interpretation, because the two terms can take on very different connotations, either positive or negative.[32] It is therefore necessary to clarify the meaning of the expression as it is used in the *Commentary on the Sentences.*

3.1.2. Probability before probabilities: The Thomasian and scholastic sense of probabilis

By using the expression *satis probabilis* about the *mutuum*, Thomas Aquinas attracts the attention of his reader. In order to appreciate its significance, one must return to the medieval

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

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

conception of probability, pre-dating the mathematical probability theory which had its advent in modern times. In his 1713 *Ars conjectandi* Jacob Bernoulli defined probability as a "degree of certainty [*gradus certitudinis*]" (IV, 1, p. 211 and IV, 4, p. 225) that differs from it as part of the whole (Daston 1988, 34). This is the sense in which it is used in economic matters (Bréban and Lapidus 2019, 158). In Aquinas's work, and more broadly in medieval times, there is on the contrary a clear distinction, in nature, between what is probable and what is certain (Byrne 1968; Daston 1988; Hacking 2006). Knowledge is either apodictic (universal and absolute truth), based on demonstration, or persuasive, based on a set of opinions and arguments (Daston 1988, 37-38). The Medievals distinguished between the certain, knowledge, *scientia*, and the probable, opinion, that which is not the object of demonstration but of argument and discussion (Hacking 2006, 20-21)[33]. Aristotle had already marked a step forward by taking the *δόξα*, "opinion", denounced by Plato, and making it into *ἔνδοξα*, "the common opinion" (which is found mainly in the form of an adverb or adjective: such as "in conformity with the common opinion"). This refers to what *generally* occurs, but not on the one hand *invariably*, nor *exceptionally* or *rarely* on the other. Aristotle introduces the notion of the plausible or probable (*εἰκός*) to characterise "not what is always, but what is often" (Aristotle, *Rhetoric*, II, 1402b20-21. See also I, 1357a24-35). Reasoning by probability is what unites qualitative arguments, often lacking quantitative evaluation, contrary to what would be done by modern probability calculus.

Aquinas presents both ways of reasoning at the beginning of his Commentary on Aristotle's *Posterior Analytics*: "There is indeed a process of reasoning that leads to a necessary conclusion and in which it is not possible to miss the truth. And it is through such a process of reason that the certainty of science is acquired [*est enim aliquis rationis processus necessitatem inducens, in quo non est possibile esse veritatis defectum, et per huiusmodi rationis processum scientiae certitudo acquiritur*]. But there is another process of the reason in which the true is concluded in most cases, but not necessarily [*est autem alius rationis processus, in quo ut in pluribus verum concluditur, non tamen necessitatem habens*]" (*In Post.*, I, 1, p. 5, l. 69-71). Once the two processes have been established, Aquinas points out that the probable can sometimes refer to events whose occurrence is beyond doubt: "For by such a process, although science is not reached, sometimes faith or opinion is nevertheless produced because of the probability of the propositions from which one proceeds [*fit tamen fides vel opinion, propter probabilitatem*

[33] Within this twofold order of knowledge, Aquinas develops the notion of *fides*, which is an which is an assent to a reality that exists but is not self-evident and is therefore a matter of probability *S. T.*, IIa IIae, q. 2, a. 1, resp. and Wirth 1983, 21-22

propositionum], for then reason leans entirely to one side of contradiction, although it is afraid that the truth will stand on the other side" (n. 6). Thus it is not a question of degrees of certainty, as will be the case almost five hundred years later with Bernoulli, but rather of distinct rational processes.

Hacking warns us against trying to apply a modern understanding to the medieval conception of probability, which would reduce it to a probability of proof and degrees of certainty. We might believe that an opinion is probable when there are good reasons for it, but all reasons are demonstrative because Aquinas associates reason and cause, and causes are necessary causes. A demonstration is made by the causes and allows us to see things as they are. Probability, on the contrary, intervenes where there is no proof, but where a thesis is acceptable according to an argumentative set. By entering the register of probability in *In III Sent.*, 37, a. 6, resp., Aquinas thus renounces the demonstrative certainty of the position he sets forth. Yet what Aquinas considers "quite probable" remains to be determined with precision.

3.1.3. To what does the expression satis probabilis *apply?*

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

The second hypothesis, which relates to the definition of *mutuum* as a transfer of ownership, also deserves attention. *Haec ratio* could refer to the first occurrence of *ratio*: that by which Aquinas introduces the argument. After the failure of the monetary argument, here is a new reason (*aliam rationem*) put forward by others: when there is a loan there is a transfer of ownership. In this case, *satis probabilis* would refer to the definition of *mutuum*. It could still

be a rhetorical formula of quasi-certainty, since this is how Roman law conceives of *mutuum*, or it could be the opening of a line of questioning concerning the true nature of a loan.

The third hypothesis concerns the combination of the two elements: the *mutuum* is a transfer of ownership, and one can only receive income from what one owns. The difficulty is manifold: it is certainly a transfer of ownership in law, but what is merely a characterisation of this type of contract in Justinian's rule takes on a new role for the medieval defenders of the prohibition of interest-bearing loans, to the point of becoming the driving force behind Robert of Courçon's argument (*De usura*) at the beginning of the thirteenth century. On the other hand, the practice of charging interest and the legal admission of the principle of the *stipulatio*, which can associate interest with the *mutuum* although it is originally free of charge, seem to indicate that in Roman usage and in common practice, the transfer of ownership, if not entirely prohibited, does not prevent the receiving of interest, even if it is otherwise formalised (as a *stipulatio*). The discrepancy between the insistence of those who rely on the definition of *mutuum*, the common practice of interest-bearing loans, and the integration in Roman law itself of the possibility of interest associated with the *mutuum*, suggests a fragility in the argumentation on which Aquinas reports.

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

It should be noted first, however, that Aquinas does not formally develop the difference between renting and lending, in the sense that the term *locatio* does not appear, but simply describes the situation "for the use of a good which remains mine [*pro usu rei quae mea remanet*]", contrary to what Robert of Courçon did in his *De usura*, written at the beginning of the thirteenth century, which distinguished between the different risks involved: "We distinguish between what is rented [*locatum*] and what is lent [*mutuum*] [...] Any risk affecting the good must remain the responsibility of the lessor, since the good remains entirely his own". After associating property and risk, Robert then associates risk and gain: "The result is that, because of the damage

suffered and the services rendered by his good, he may receive some surplus" (*De usura*, p. 14). Aquinas thus seems to be stepping back from a line of thought that had already been developed in depth nearly fifty years earlier, by including in the *respondeo* only the core of the principle of *mutuum* in his list of traditional arguments against usury.

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

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

3.2. *Satis probabilis*: small doubt, big consequences…

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

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

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

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

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

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

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

Satis probabilis is also used twice to present a hypothesis about a situation – and not an argument – for example access to baptism when there is sufficient probability that the children will be brought up in the faith, as in *In IV Sent.*, d. 6, q. 2, a. 2, qc. 3, ad 3 (see also *In IV Sent.*, d. 32, q. 1, a. 4, ad 1). In this case the expression is much more affirmative and is intended to express a quasi-certainty. Finally, the expression appears once in an intermediate situation: where Aquinas tries to understand and reformulate the idea of certain authors. The probability here relates to the validity of the restitution he proposes in order to make the thesis coherent (but does not relate to the ultimate validity of this thesis, which he disputes shortly afterwards): "so it is quite probable that this opinion can be supported in this way..." (*In IV Sent.*, d. 12, q. 1, a. 1, qc. 4, resp.).

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

3.2.2. The consequences of a risk of analytical error

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

The theoretical risk of a misunderstanding of the interest-bearing loan is a β-risk or a type II error: the error of retaining as true an assumption (here the *mutuum* theory) that is in fact false. This risk is concrete and relevant to all the economic agents whom Aquinas sees as implicated in the usury mechanism. It is the risk of undue condemnation and restitution for the agents convinced of usury, and the threat of being considered as not the owner of the money lent. The risk is also pertinent for agents who might wish to have recourse to interest-bearing loans and are prevented from doing so. It is also a risk for the prince, who may be forced to use the sums resulting from usury. More broadly, there is a risk of a change in the pattern of social redistribution. In fact, the *Letter to the Duchess of Brabant*, written by Aquinas in 1271 for Margaret of Constantinople, daughter of Count Baldwin I of Flanders and Latin Emperor of

Constantinople, who wondered what to do with usurers, details the consequences of condemning usury.

The risk concerns the whole of society, extending far beyond the agents directly involved in usury. The prince, for example, would not be able to keep the taxes, fines or donations that came from usury, since these sums would be seen as coming from illegally earned income.[34] It would therefore be necessary to return or redistribute these sums (Shatzmiller 1990, 88; Dejoux 2014, 863: "If we find persons from whom it is certain that they have been extorted by granting them an interest-bearing loan, they must be returned to them.[35] Otherwise, these goods must be used [*erogari*] for pious uses [*in pios usus*] [...] or for the common utility of the land [*vel etiam in communem utilitatem terrae*], if a necessity threatens [*si necessitas immineat*] or utility requires it [*vel exposcat utilitas*]" (*Ad Brabantiam*, 1). Here the duties Aquinas ascribes to the prince are what Gregory IX ascribes for the usurers themselves: "They must return to the heirs of those whom they have extorted or, if they are not surviving, distribute to the poor" (*Decretales*, l. 5, t. 19, c. 5). Robert of Courçon only considered the choice between conservation by the prince (which was forbidden) and restitution, and does not deal with the hypothesis of social and charitable redistribution (*De usura*, p. 22). For Aquinas, the possibility of redistribution motivated by social utility makes the constraint less strong than for William of Auxerre: "Of this money, which the usurer earns in interest, he cannot show mercy [*elemosinam*], because what is offered as an iniquitous offering is defiled; he cannot do anything else [*aliquid aliud facere*] with this money that is useful to him, except to give it back to the one to whom it belongs" (*Summa aurea*, III, XLVIII, c. 1, q. 1, l. 154-159). However, even in Aquinas's work, the rules for the use of the products of usury are very restrictive. The condemnation of usury is therefore not only an individual matter, but concerns the whole of society.

3.2.3. The premise of a rupture in the understanding of the interest-bearing loan

This strong interpretation of *satis probabilis*, in the sense of a doubt about the validity of the argument (in this case, *mutuum*), is supported by the *respondeo* as a whole. Thomas Aquinas summarises the authorities by giving three grounds for condemning interest-bearing loans. This is the principle behind the commentaries on the *Sentences* made by all young scholars in the thirteenth century. The scholastic method, with its presentation in the form of an article, is

[34] Authorities are often torn between banning interest-bearing loans, protecting borrowers by controlling the interest rate, or seeing usury as a source of revenue for the treasury (Shatzmiller 1990, 73-84).
[35] This requirement of restitution of interest to borrowers and their heirs is further developed by Robert of Courçon (*De usura*, pp. 44-45).

appropriate for this critical evaluation of the arguments through the interplay of objections/replies and through the articulation of arguments within the *respondeo*. It should be noted, however, that in mature works, proof, when satisfactory, is sufficient. When Aquinas multiplies the justifications, this indicates a shift from the register of unique and determining proof to that of appropriateness, or even argumentative probability. This can be observed across the whole of Aquinas's work, extending far beyond economic questions. The most striking example is to be found at the beginning of the *Summa theologiae*. To the question "Does God exist?" Aquinas refuses to answer with a single demonstration, unlike Anselm before him (who presented the ontological proof). He does use the verb "prove" (*probari potest*), but he states "five ways" (*quinque viis*) of demonstrating the convergence of Aristotle's metaphysics with the existence of God (*S. T.*, Ia, q. 2, a.3). Since none of the ways of understanding usury is definitive, none of the ways alone is immediate proof of the existence of God (see Hacking 2006, 82-83). It is in effect a second-rank demonstration, which does not allow hypothetico-deductive reasoning (Imbach and Oliva 2009, 74), although the claim is to go back to the necessary cause (Humbrecht 2009, 106).[36]

Having shown the scope of the expression *satis probabilis*, it is appropriate to clarify the extent to which the reasoning concerning *mutuum* applies by studying Aquinas's other writings and what he subsequently takes from the position he sets out in *In III Sent.*, d. 37, a. 6, resp. The *De emptione*, which follows the *Commentary on the Sentences* of a few years previously, does not give an explanation of the grounds for prohibiting interest-bearing loans, but focuses on determining what is usurious and what is not. The *Summa theologiae* takes up the theory of *mutuum* (prohibition of interest due to transfer of ownership) but broadens it. In *S. T.*, IIa IIae, q. 78, a. 1, resp., Aquinas links transfer of ownership to the nature of the good: if the use of the good is confused with its consumption, there is a transfer of ownership in the loan (*mutuum transfertur dominium*), which is the case with money. The argument of the *respondeo* and of replies 5 and 6 is based first of all on the nature of money, whose "principal use" is "to be spent [*distractio*] in exchange" (ad 6). Thus, there is no question of the *mutuum*, but the transfer of ownership is more a matter of the nature of money than of the legal principle of interest-free lending. This takes us beyond the scope of the basic argument presented in *In III Sent.*, d. 37,

[36] On Aquinas's approach in *S. T.*, Ia, q. 2, a. 3, see Lafont 1961, 40-41 and Gilson 1965, 61 and 90. Moreover, in the first article of the *Summa theologiae*, Aquinas himself gives a key to understanding that takes us away from immediate proof: "even as regards those truths about God which human reason could have discovered, it was necessary that man should be taught by divine revelation; because the truth about God such as reason could discover, would only be known by a few, and that after a long time, and with the admixture of many errors" (*S. T.*, Ia, q. 1, a. 1, resp.).

a. 6, resp. Aquinas takes up the *mutuum* argument in *S. T.*, IIa IIae, q. 78, a. 2, ad 1, but he introduces a distinction which greatly weakens the prohibition: one can provide for compensation to be paid to the lender for the loss suffered, but no one can receive compensation, for the reason that no one can earn anything from the money lent, since "one is not entitled to sell what one does not yet possess [*non debet vendere id quod nodum habet*]". Aquinas thus retains the transfer of ownership, but provides for the possibility of compensation (*recompensationem*), not as a sale of the use of money (*vendere usum pecuniae*) but out of consideration of the prejudice to life (*damnum vitare*). The condemnation of interest on the basis of *mutuum* as transfer of ownership therefore becomes in a certain sense made less strict.

Aquinas's relative flexibility on the *mutuum* is also reflected in the positive way in which he considers ways to get around it. No longer is it a matter of judging the validity of a prohibition based on the *mutuum* itself, as in *In III Sent.*, d. 37, a. 6, resp., but rather of considering an alternative which functions as a challenge from the outside. In *S. T.*, IIa IIae, q. 78, a. 2, ad 5, Aquinas is apparently uncompromising, "He who lends money transfers possession of it to the borrower [*qui mutat pecuniam transfert dominium in eum qui mutat*]", but immediately after this principle he introduces a different situation, that of the *societas* (*per modum societatis*) where the investor is entitled to claim a share of the profit (*et ideo licite potest partem lucri indi provenientis expertere*) (*S. T.*, IIa IIae, q. 78, a. 2, ad 5).[37] The investor assumes the financial risk (du Passage 1946, col. 2361) but remains the owner of the money entrusted (Spicq 1935, note 111, p. 349). Contrary to Giles of Lessines in 1276-1285 (*De usuris in communi*, VI and X), Aquinas does not rely on Gregory IX's *Decretal Naviganti* (1234), which condemns interest accruing to the lender even when it is intended to cover the risks of the voyage, since it is a *mutuum*, but chooses another example, that of the *societas*, which by distinguishing between the loan and the investment (Sivéry 2004, 698) allows him to evade the prohibition of usury. In a roundabout way, then, Aquinas thus accepts the justification of interest as a means to compensate for the risk of the borrower's insolvency, something which *Naviganti* rejects, by not countenancing interest because of risk – even though the *ratio incertitudinis*, the uncertainty about the outcome of the transaction, is often sufficient to dispel suspicions of usury (du Passage 1946, col. 2364). Similarly, *S. T.*, IIa IIae, q. 78, a. 3 and 4 do not develop the notion of transfer of ownership. It can therefore be seen that the *mutuum* is present only in the context of the

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

nature of money or to introduce cases which do not fall within the ambit of the prohibition of usury.

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

It is interesting to observe here a double movement: on the one hand, Aquinas retains the notion of the *mutuum* as a transfer of property, but never takes it up in a general and legal way as with the position presented in *In III Sent.*, d. 37, a. 6. It would certainly be an exaggeration to see here a presentiment that the *mutuum* approach will one day be called into question, but we note however that he always explains it by reference to the nature of money (and, moreover, the commentators who have most insisted on the Thomasian *mutuum* have done so in the context of a monetary approach: Mélitz 1971, Lapidus 1987 and 1991), an analysis which he will feel the need to deepen following the difficulty encountered at the beginning of the *respondeo* of *In III Sent.*, d. 37, a. 6. This confirms the place of doubt, or at least the need for precision, contained

in the expression *satis probabilis*, which, coming from the pen of a medieval young scholar who viewed the *mutuum* as a fundamental postulate and not as a hypothesis to be verified, deserves to be noted. On the other hand it indicates the transition, both in Aquinas's own development and in thirteenth-century thought more widely, from a juridical and moral posture to an attempt to understand the economic and monetary mechanism, which will reach a new stage with Giles of Lessines's *De usuris* at the end of the century. Langholm (1992, 229) considers the *De usuris* as the first economic treatise, and du Passage (1946, col. 2345) had already noted its unique status as the only complete and synthetic treatise on usury in the thirteenth century. The *satis probabilis* as the introduction of a doubt or a nuance thus seems to concern the three hypotheses formulated: the *mutuum* as a transfer of property in a general sense, since Aquinas retains it only for money and other fungible goods, whose use merges with the good; the impossibility of receiving income from a good of which one is no longer the owner, since Aquinas opens the way to compensation (*S. T.*, IIa IIae, q. 78, a. 2, ad 1); and the articulation of the whole, when he emphasises the existence of other models such as the *societas* (ad 5). Beyond the *mutuum*, what is crucial here is the introduction of the possibility of a misunderstanding of the nature of economic operations, with the attendant risk for all agents within the society.

4. Commercial risks of usury

After having marked his distance from the authorities and from a prohibition of usury based on *mutuum* through his use of the expression *satis probabilis*, Thomas Aquinas again takes up the analysis on a monetary basis and then via the connection between property and risk. The loan is then thought of as a commercial operation, an intertemporal exchange in which the price of the sum lent is the sum returned, and thus interest appears as a surplus of the exchange. The result is a set of risks for agents, lenders and borrowers which relate to a price risk, where the interest must correspond to the just price of the exchange.

4.1. Money and price risks

Money has no utility of its own, but permits the measurement of the utility of the goods exchanged. Aquinas introduces a conventionalist view of money which he will later develop. Thinking of the loan as an intertemporal exchange of money highlights the risk incurred by the co-contractors that the value of the money will fluctuate over time. It also allows a shift from a moral approach to interest based on the need to borrow to an economic approach to interest as the price of an exchange. By focusing on the economic transaction and not on the status of the

agent, Aquinas relaxes and broadens the notion of necessity to all agents and thus paves the way for his reader to think of lending as a commercial activity where the meeting of bargaining powers is translated into a price.

4.1.1. The risk of a money with no use of its own

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

Utility seems to be an objective utility of things themselves (*res seipsis*) and not a subjective utility specific to each individual agent. Through money and its relation to usury, Aquinas lays the foundations of his theory of value, which provides the structure of *S. T.*, IIa IIae, q. 77 on commercial fraud. On the one side, Aquinas presents money as a yardstick, a unit of account, for which it is "without rival" (Lapidus 1987, 1100), whereas *S. T.*, IIa IIae, q. 78, a. 1, resp. presents it primarily as a medium of exchange,[38] but here it is mainly used to measure utility (*utilitas*, with three occurrences in two sentences). Money is useful in so far as it measures the utility of goods, but the utility of money itself, just as for goods, is not the subjective utility for the agent but rather the objective utility of the thing itself: "The use of money is not a measure of utility by money itself, but by the things that are measured by money, according to the difference in what transforms money into things" (*In III Sent.*, d. 37, a. 6, resp.).

Aquinas does not yet distinguish between a possible value *secundum se* and a value, which can vary, related to conjunctural utility, but the insistence on the measurement of utility is a promissary note here. It is notable, however, that Aquinas is not talking about pricing, which establishes the value of a thing at a monetary price, but rather about money as a measure of

[38] On the functions of money, see Lapidus 1987; 1997, 25-26. From Franks's point of view, money is what enables the transition from a nonmarket to a market society and favours exchange value over use value (Franks 2009, 47). In this way, the difficulty in determining a single Thomasian approach to value may lie in the fact that Aquinas was writing in what was still, for Franks (2009, 69) and Hirschfeld (2018, 28), a nonmarket society, or at least a society in transition to a more developed market economy; yet it is the development of the market that will eventually lead to the triumph of exchange value (Franks 2009, 36 and 51).

utility. If we follow Aquinas, then, the transformation of value into price and the establishment of the "just price" that facilitates trade by ensuring a social order (Sturn 2017, 646), since they are monetary, are therefore based on a criterion of utility.

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

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

4.1.2. Usury as a commercial situation with a price risk

Usury is presented here as a commercial exchange with a price.[39] "Receiving more money for a lesser good seems to be nothing more than altering the measure by receiving and giving, which clearly involves an inequity" (*In III Sent.*, d. 37, a. 6, resp.). The intermediate writing represented by the *De emptione et venditione ad tempus*, less than ten years after the *Commentary on the Sentences*, does not therefore unite two distinct problems under the question of deferred payment. Rather, it is the late writings which, whether in order to answer specific questions (the *Letter to the Duchess of Brabant* on the use of gains from usury, for example) or for didactic purposes (*Summa theologiae*, *Quodlibetal* or *Disputed Questions*, for example), split the presentation, though doubtless not the thought itself, even though the work on usury specifically draws upon considerations of the nature of money and the *mutuum*.

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

In this sense, Thomas Aquinas's overarching notion of theft militates in favour of a unified view of economic activity. Without going into the question of the freedom of transactions and the suspension of moral judgment, it is possible to read Aquinas's considerations of theft economically as the expression of an exchange in which what one receives in return is insufficient or non-existent, i.e., an exchange at a price below what would be fair. It is the attention to the justice of the exchange, *ius*, the due, that secures the unity of the Thomasian economic analysis (Franks 2009, 96-97).[40]

Aquinas does not focus here on the agent's intention, which is hidden, but reduces the lack of information and the resulting risk of error of analysis and moral judgment by looking at an objective and visible criterion, price. The *In decem preceptis*, the commentary on the Ten Commandments, whose seventh Precept recalls the prohibition of theft, *non furtum facies*, groups together in the same proposition commercial fraud and usury, in accordance with the intuition behind *In III Sent.*, d. 37, a. 6. Aquinas locates theft within the trilogy of forbidding harm to one's neighbour: to their person (thou shalt not kill), to their spouse (thou shalt not commit adultery), and to their property (thou shalt not steal). Aquinas lists the five modalities of theft: to receive in a concealed manner (*occulte accipiendo*); to take with violence (*violenter auferendo*); to not pay for one's merchandise, or more broadly one's debts (*mercedem non solvendo*), for instances salaries, merchandise and taxes (loans are not explicitly mentioned here, as if they were exempt from the risk of default); to defraud in commercial acts (*fraudem in mercationibus committendo*), a modality in which we find the act of falsifying measures and scales or adulterating merchandise, as well as the loan made with interest, for which he says "This commandment is also against wine merchants who mix water with wine [*contra caupones qui miscent aquam vino*], and, by it too, usury [*in hoc etiam prohibetur usura*] is forbidden" (*In decem preceptis*, XXVI, sept. praec.). And finally there is the prohibition against purchasing temporal or spiritual dignity (*dignitates emendo*). Aquinas reminds us of the seriousness of theft, which is assimilated to homicide because "bread is the life of the poor".

The prohibition of theft, via the associated moral considerations, thus presents a catalogue of economic risks: for all the agents, the risk of theft through secrecy or violence; for the sellers, the employees or the prince, the risk of not being paid; for the borrower, the risk of having to pay interest; for the buyer, the risk of being deceived about the quantity of merchandise; and

[40] In this way, the demarcation would not so much be between trade and usury as between an approach to exchange which is still based on the virtue of justice and an approach based on bargaining power, which appears with the development of the market (Franks 2009, 96-97).

for the prince, the risk that his kingdom should be stolen. Here, then, we find a certain unity of economic activity presented through risk, which inhabits every transaction and threatens every agent. The risk that is common to all the situations described is certainly a constraint, but this constraint is more or less strong depending on the case. The unifying factor in all these activities is primarily the price risk: the risk of not receiving fair compensation for that of which one has been dispossessed.

4.1.3. Rethinking the risk of usurious necessity

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

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

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

In *S. T.*, IIa IIae, q. 78, a. 1, ad 7 there is further insistence on the lack of freedom of the debtor, who is seen as giving "with a certain necessity [*cum quamdam necessitate*]" and who "does not give absolutely voluntarily [*non simpliciter voluntarie dat*] because he needs [*indiget*] this amount". Although we here find reference to the borrower's state of necessity and conditioned will, drawing from Aristotle (Sturn 2017, 655), it should however be noted that the words *quamdam* and s*impliciter* entail important nuances. Aquinas seeks a moral exemption for the borrower, but he departs from the tradition of the Fathers, as represented by William of Auxerre who sees in the loan the systematic oppression of the poor, who are subject to constraint, and adopts a social approach to usury: "Usury is directly against charity [*dare ad usuram directe est contra caritatem*]" (William of Auxerre, *Summa aurea*, III, XLVIII, c. 1, q. 1, l. 5). The discussion of the debtor in *S. T.*, IIa IIae, q. 78, a. 4, resp. does not deal with the freedom or necessity of the debtor, but rather with the role the debtor plays in inciting the usurer to sin, depending on whether he was already prepared to do so (*paratus est facere*) and whether he is already practising usury (*usura exercet*). Here again, this qualifies the thesis of conditioned will, since the borrower enjoys a certain freedom and personal determination in his action towards a potential creditor. Similarly, *De malo*, q. 13, a. 4, ad 8, mentions in the objection the mitigated violence (*violentum mixtum*) which motivates borrowing, an expression stronger than Albert's reference to conditioned will, but Aquinas takes up neither the idea nor the expression in his reply.

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

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

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

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

4.2. Risks on the just price of the loan and on the property

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

4.2.1. The just price loan: An intertemporal exchange that is still interest-free

The objections and replies of *In III Sent.*, d. 37, a. 6 provide the foundations for a conception of the loan as an intertemporal exchange, and of interest as a surplus from the exchange. The risk of usury is therefore that of deviating from the just price, and thus receiving unfair interest. Six brief objections and replies are formulated in *In III Sent.*, d. 37, a. 6. First of all, the Bible allows Jews to lend to strangers (Deuteronomy 23:20-21).[41] Second, lending is a service. Third, one is not always obliged to lend for free. Fourth, since I can sometimes receive goods from persons to whom I have not rendered a service at all, how much more can I expect from a person to whom I have made a loan? Fifth, where I have transferred the ownership of my property to someone, that person owes me more than if I had simply let them use that property. Sixth, to join someone in sin makes one complicit in that sin, and since usury is a mortal sin, the borrower would also be in a state of mortal sin.

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

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

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

It is important to note that although *In III Sent.*, d. 37, a. 6 does not envisage any situation other than a null interest in an exchange at a just price, later works are more open, in three respects: first, through proposing a deeper understanding of lending as a commercial exchange that must be carried out at the just price and as a monetary exchange, where the *mutuum* is specifically linked to the nature of money;[42] second, through providing an explanation of the link between

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

risk and surplus[43] and of the distinction between lending and investment (*societas*);[44] and third, through a broadening of the meaning of the *mutuum*, to recover the flexibility that ancient history had given it, with extrinsic titles, but which the medieval authors had sought to restrict by making it a specifically interest-free loan.[45]

The *mutuum* thus remains the general framework for thinking about monetary loans, but two elements of the *Commentary on the Sentences* are decisive in setting Aquinas's subsequent path towards what seems to be a decrease in the aversion to interest-bearing loans: on the one hand, Aquinas's questioning of the strict conception of the *mutuum* through the expression *satis probabilis*; and on the other, the assimilation of the loan to a commercial exchange, which is associated with his increasing distance from the emphasis on the conditioned will and the patristic conception of the loan as oppression of the poor. The nature of money, the notion of just price and the cost of risk will then become paramount in relation to the principle of zero interest and the absence of surplus.[46]

4.2.2. The risk lies with the owner

The reply to the fourth objection again involves the notion of utility, which Aquinas combines with the notion of property to justify the claim that I must expect nothing more from the person to whom I have granted a benefit than what has been granted: "All that arises of usefulness [*de utilitate contingit*] to the person to whom I have granted a loan beyond the measure of the loan according to the money lent, comes from the efforts of the one who has wisely used the money. Now I must not sell him his efforts, nor must I receive less because of his stupidity" (*In III Sent.*, d. 37, a. 6, ad 4). The borrower is the new owner of the property. He bears responsibility,

[43] Surplus would then fit in with the Aristotelian idea that, in a context of risk and vulnerability, wealth provides protection against risk. Aristotle, *Ethics*, I. 5, 1095b26-27; Franks 2009, 161.

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

[45] In *S. T.*, IIa IIae, q. 78, a. 2, ad 1, compensation for prejudice (*damnum emergens*) is allowed, but such compensation may not be based on a deprivation of earnings from the money lent (*lucrum cessans*). In *De malo*, q. 13, a. 4, ad 14 Aquinas explicitly considers compensation for late payment, although he does not use the expression *poena conventionalis* and does not specify whether this surcharge is agreed and formalised in advance.

[46] Aquinas's evolution could be seen as part of the longer movement of the progressive opening of the scholastics to extrinsic titles, as part of their ongoing adaptation to economic realities (Munro 2003, 510-111; De-Juan and Monsalve 2006, 105-106; Monsalve 2014b, 218). Franks, however, criticises the modern tendency to see Aquinas's development as an adaptation to the market, since exchange value, for the latter, is still an abstract notion (Franks 2009, 71). Lenoble and Toneatto (2019, 27-31), for their part, criticise the employment as an analytical grid of a Christianity seen as by nature foreign to profit and as playing a moralising role. According to this grid, the scholastic authors were rooted in a theology hostile to wealth, but were gradually adapting their moral framework to the economic reality.

and must bear the risk of loss or gain in managing the sum (Hollander 1965, 631). Both the gain and the loss are thus vested in him; he must simply be able to return the sum at the time fixed. Behind the "effort" (*industria*) of wise use, or conversely the "stupidity" (*stultitia*) otherwise, lies the possibility of a positive or negative gain. Here we see the idea, recurrent in Aquinas's works, that the agent is responsible for the risks he incurs and that he is the best actor in minimising this risk through his own efforts and wisdom (ad 4).[47]

Aquinas thus here reiterates the link between ownership and risk (that the risk lies with the owner: Langholm 1984, 78; Lapidus 1991; Franks 2009, 81) found in Robert of Courçon's *De usura*: "Any risk affecting the thing must remain with the lessor, since the thing remains entirely his. It follows from this that, because of the damage suffered and the services rendered by his property, he may receive some surplus. But it is not the same with the loan [*mutuum*]. The name *mutuum* comes from the fact that what was mine becomes yours [*de meo fit tuum*] or conversely" (*De usura*, p. 14). In his introduction to *De usura*, Lefèvre 1902 re-establishes the direct linkage between borrower, property and risk: "The interest-bearing loan [...] is thus to have transferred to others the risks while one retained for oneself the security in the possession of the fund and in the enjoyment of the advantages" (Lefèvre 1902, p. X).

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

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

totally voluntary and free loan, although the case of necessity is not presented here as the only possible one.

5. Conclusion

Through the study of usury, the *Commentary on the Sentences* lays the foundations of the economic approach which would be deployed in Aquinas's subsequent writings, and sets out a picture of the economy as structured by a number of fundamental risks which impact on a higher level than the individual transaction. First of all, the owner must assume responsibility for his property, which allows Aquinas to envisage risk minimisation taking place through good management. Next, there is risk related to the moral regard that society has for the operation and the status of the agent. The perception of an activity as sinful or harmful, whether or not it is formally criminal, according to the moral benchmarks of a given culture, constitutes a major risk for the agent, as it can engender negative reactions from other agents or the implementation of restrictive and penalising public policies. Moreover, by reconsidering the patristic thesis, still found in Albert the Great, that the borrower is of necessity weighed down by their state of need, Thomas Aquinas opens the way in his early work to a universalisation of the risk of necessity, which is now extended to all agents and all economic operations. Finally, by thinking of lending as intertemporal exchange and thinking of interest as the surplus of the exchange, he touches upon the notions of price and just price (although the terms do not appear here). The loan is therefore subject to a price risk. This approach contributes to the emergence in Aquinas's work of a unified view of economic activity, whether this concerns trade or usury, as exchange determined by an exchange ratio that corresponds to a price. The new conception of the *mutuum*, which Aquinas's predecessors understood strictly as an interest-free loan – but which it was not always – with the addition of the reflection on money initiated in the *Commentary on the Sentences*, will allow Aquinas in his later works to move towards the possibility of a surplus, notably through extrinsic titles or the alternative of *societas*.

Most fundamentally, however, there is an even more significant overarching risk, that of a potentially erroneous understanding of economic activity itself, and of the universality of risk inherent in all economic activity. This risk is effective for all agents who could have an interest in usury. First of all, it is necessary to underline the importance of the first risk highlighted by Aquinas through his evaluation of the theory of *mutuum* as *satis probabilis*, and the way he accumulates arguments against usury in such a way as to indicate that none of them are decisive. In the thirteenth century, this risk of misunderstanding meant a risk of error in moral evaluation

on the part of the theologians, of unjustified legal requirements by the prince, and finally a risk for all the agents involved in this activity. Thus, while Aquinas's proposals might seem specific to interest-bearing loans, his reflections take on a universal character, since a misunderstanding at such a level can threaten to lead to inappropriate public policies and legal prescriptions.

Chapitre 2 :
Risky exchanges: Price and justice in Thomas Aquinas's *De emptione et venditione ad tempus*

1. Introduction

De emptione et venditione ad tempus (1262) is the first specifically economic treatise by Thomas Aquinas, along with the *Letter to the Duchess of Brabant*.[48] It is situated on Aquinas's journey from youth to fruitful maturity, between the *Commentary on the Sentences* (1254-1256) – notably *In III Sent.*, d. 37, a. 6 on usury and *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 on trade – and the major economic texts dating from the 1270s.[49] Being a brief letter focused on forward sales that at first attracted little attention, for a long time *De emptione* remained in the shadow of the *Summa theologiae* (*S. T.*, IIa IIae, q. 77 and q. 78). However, given the way that it develops and broadens the intuitions of the *Commentary on the Sentences* (*supra,* chapter 1; Januard 2021a), the reading of *De emptione* makes it possible to understand how the synthesis constituted by the *Summa* emerged.

Beyond the strictly historical aspects, the secondary literature from the second half of the twentieth century onwards, notably with the works of De Roover, Noonan and Baldwin, has shed significant light on price and usury, concepts which lie at the heart of Aquinas's thinking on forward selling, through a) a conceptual elucidation of the Aquinas's notion of usury;[50] b) a

[48] 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.

[49] For the years 1268-1272, the introduction to each treatise contained in the Leonine edition, where it is available, as well as the *Brief Catalogue* established by Émery 1993, give a glimpse of a vast body of works dealing with economic questions 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, which was written in 1271-1272 in Paris. 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* (*Ad ducissam Brabantiae*), dated 1271. The *Collationes in decem preceptis* on the Ten Commandments, a late finalised writing of his preaching in Italy given in his mother tongue, has been seen as the last or, on the contrary, one of the first of Aquinas's contributions. Torrell 1985 and Émery 1993 hesitated between the traditional dating of a Lenten preaching in 1273 and a dating corresponding to Aquinas's previous Italian sojourn in 1261-1268, but Torrell 2015b confirms that it has been written in 1273.

[50] This includes: a medieval understanding of the interest loan (McLaughlin 1939 and 1940; De Roover 1953 and 1971; Noonan 1957; Baldwin 1959; Mélitz 1971; Lapidus 1987 and 1991; Langholm 1992; Chaplygina and Lapidus 2016; Monsalve 2014b); the nature of the commitment, freedom, and responsibility of the loan partners through the notion of conditional freedom (Langholm 1992, 1984 and 1998; Ege 2014; Sturn 2017); the loan as an exchange involving a risk and subject to a price (Langholm 1984; Lapidus 1991; Sivéry 2004; Franks 2009; Ege 2014).

progressive rediscovery of the moral and normative dimension of the Thomasian analysis;[51] c) a transformation in the understanding of the Thomasian just price.[52]

However, with respect both to its approach and its results, this paper on *De emptione* continues but differs from the previous works on Aquinas's economic thought. Economic literature, as a result of a methodological choice, approaches medieval and modern scholastics as a whole or by major periods, paying little attention to the unique path of each author or to those of his works deemed minor, so that there are only a few references, often brief and allusive, to *De emptione* in the economic literature (e.g. Noonan 1957, 51, 90, 181; Baldwin 1959, 77; Bartell 1962, 373; Hollander 1965, 630-631; De Roover 1971, 58; Lapidus 1986, 24; 1992, 30; 2021; Langholm 1992; 2003, 168; Chaplygina and Lapidus 2016, 22). *De emptione* has not been the object of particular attention, even though, in dealing with forward sales, it ties together questions of commercial exchange and interest-bearing loans, of the just price and usury.

Moreover, having rarely taken sufficient account of the moral dimension of Aquinas's contributions to economic issues, and thereby implicitly segregating them from the rest of his work, the economic literature does little to mobilise Aquinas's philosophical and theological conceptual apparatus. Yet, his concepts of *sign* and *analogy* provide relevant keys to understanding the just price both in its essence and in its articulation in several levels of reality, beyond its manifestations on the market or in singular exchange. The focus of the debate between the production cost approach (e.g. Tawney [1926] 1948) and the market approach (e.g. De Roover 1958 and 1971), sometimes neglecting the primacy of pre-existing normative justice, may have led to a confusion between the just price itself and its manifestation in the acceptable effective price.

Recent works show a stronger focus on the normative dimension of the just price, advantageously reorienting the discussion towards the notion of justice (e.g. Hamouda and Price 1997; Gomez Camacho 1998; De-Juan and Monsalve 2006; Monsalve 2014a; Chaplygina and Lapidus 2016), and sometimes engaging in a normative approach based on Aquinas's own

[51] Noonan 1957; De Roover 1971; Lapidus 1987 and 2021; Langholm 2003; Sivery 2004; De-Juan and Monsalve 2006; Franks 2009; Koehn and Wilbratte 2012; Ege 2014; Monsalve 2014a; Hirschfeld 2018; Santori 2019, 2020 and 2021.

[52] The classic debate on the Thomasian price (De Roover 1958 and 1971; Baldwin 1959; Hollander 1965; Langholm 1992; Sivéry 2004; De-Juan and Monsalve 2006); taking into account the primacy of justice in the just price (Hamouda and Price 1997; Gomez Camacho 1998; De-Juan and Monsalve 2006; Franks 2009; Koehn and Wilbratte 2012; Monsalve 2014a); the distinction of levels between normative and acceptable just prices (Friedman 1980; Lapidus 1986 and 1994; Chaplygina and Lapidus 2016; Sturn 2017).

works (e.g. Franks 2009 and Hirschfeld 2018). Concerning specifically *De emptione*, this focus on justice is reinforced by the scarcity and brevity of references in economic literature and by the contributions of translators, historians and philosophers, even if they are as scarce and brief (e.g. Mandonnet 1910, 116-120; O'Rahilly 1928; Dondaine 1979, 384-385; Torrell 1993, 178-179; Imbach and Oliva 2009, 21; Porro 2015, 178-179, 301, 441). However, it seemingly remains difficult to fully emancipate ourselves from the categories in which the debate between market price and cost-based price has enclosed our understanding of the just price, or to take full measure of the radical consequences for the very nature of the just price that the adjective 'just' commands. We must, therefore, make a leap in *nature* and not mere of *degree.* The just price is not a price determined by the market while integrating elements of justice, but rather a price that is determined by normative justice, and which may eventually manifest itself in the market and in singular exchange.

We are still in need of the proper conceptual tools to think about the relationship between these three instances of the just price (pre-existing justice, market, singular exchange). Aquinas remains very allusive, but it is possible, by mobilising the whole of his work and his conceptual apparatus, to propose a way of understanding it. The scholastic categories of *sign* and *analogy* provide a means to articulate the three levels of reality of the just price – namely the price as given by justice, price on the market, and price in singular exchange. Aquinas does not explicitly use these categories in *De emptione*, but they belong to what is implicit and obvious to him, because it constitutes his intellectual universe. The normative just price therefore manifests itself as a sign and by analogy in the price on the market and in the price in singular exchange.

However, *De emptione* implicitly develops, through forward sale, a combination of risks linked to the credit activity as well as to the commercial exchange. At first glance, however, the lexicon of *De emptione* might lead one to believe that it posits a risk-free universe. The noun *dubium* (doubt) appears three times in *De emptione* in the expression "*non est dubium*", to signify that there is no doubt that a situation is usurious. The noetic and moral lexicon of the imperfection of information or its use is present, however, through the terms *incaute* (incautiously) and *imprudenter* (imprudently, unwisely), which indicate the possibility of recklessness on the part of the agent. Contenting ourselves with these observations, however, would be insufficient. The major characteristic of Aquinas's contribution is that the question of risk is approached in a surprisingly diverse manner. Risk is also reduced by an objective focus on the transaction and by the use of the price as a visible and objective indicator of the usury situation. We can thus distinguish three categories of risk: the risk of error of analysis and understanding, which

concerned usury in the *Commentary on the Sentences* (*supra,* chapter 1; Januard 2021a) and which relates here to the just price; the commercial risk, reinforced by the intertemporal dimension of the exchange; and the strategic risk, resulting from the usurious behaviour of the co-contracting party. Cross-referencing the three levels of reality of the just price and the three categories of risk produces a structural typology of nine elementary forms of risk – characterised, therefore, by their category of origin and their level of expression.

The risk of understanding and analysis:

1. A risk of error concerning the nature and criteria of justice of the just price, about which Aquinas is not explicit. There is a moral and legal risk for all agents, buyers and sellers alike, who may all find themselves in a situation of usury.
2. A risk of error and of approximation concerning the effective just price on the market, which is based on an estimate.
3. A risk of error about the value of the individual good and the content of the acceptable effective price, and on what it can incorporate.

The commercial risk:

4. A risk of a plurality of acceptable prices that are consistent with the normative just price.
5. A risk of a fluctuating price on the market.
6. A risk concerning bargaining power (agent in an unfavourable situation due to his conditioned will).

The strategic risk:

7. A strategic risk of the co-contractor circumventing or interpreting notions of justice and usury for usurious purposes.
8. A strategic risk of price manipulation by passing off the usurious price as the non-usurious price on the market.
9. An individual strategic usurious risk. The intention of the contracting party to deliberately take advantage of the conditioned will, universalised in *De emptione*, or of the agent's particular lack of information, remains private information and is hidden.

These three main categories of risk (analysis risk, commercial risk, and strategic risk) are located at the three levels of reality of the just price. Indeed, drawing on the scholastic categories of the sign (visible sign of an invisible reality, which it makes present) and the analogy (ratio

of proportion and partial resemblance), which Aquinas uses in his non-economic writings and which serve as a conceptual background, the expression 'just price' can be understood in three complementary senses: the just price is, in its ultimate reality, *res* (thing), the normative and pre-existing just price; but it is also, by analogy and as sign, as a second reality, *sacramentum et res* (a thing which is a sign of the ultimate and hidden thing), the acceptable current just price practised on the market; finally, and still by analogy and as sign (neither ultimate nor second reality), *sacramentum tantum* (sign only), it is the just price in the singular exchange.

I approach this typology of risks, first, by showing how Aquinas's discussion is based upon the notion of price (section 2). I argue that forward selling should be read as a commercial transaction that takes place over time, rather than through an approach that would be immediately formulated in terms of usury. The intertemporal dimension of the trade leads to two new risks: the increased complexity of estimating the just price, and the possible occurrence of a usurious situation. I then propose to rethink the notion of just price (section 3) by first making a distinction of nature between value and price, and then by distinguishing between just price and acceptable prices. Starting out from the scholastic categories of sign and analogy, I articulate the three levels of reality of the just price: the normative justice price, the price on the market, and the singular price (section 4). Finally, this will make it possible to draw up a cross-typology of risks and, for each of the three levels of reality of the just price to which *De emptione* leads through its account of forward selling, to map the three related risks: analysis risk, commercial risk, and strategic risk. This study of risks will lead us to highlight the role of price in reducing the lack of information.

2. A risk-based approach

After having dealt separately with usury and merchant activity in the *Commentary on the Sentences*, in *De emptione* Aquinas addresses the conjunction of these two activities; this conjunction could thus be understood either as a particular modality of lending or as a particular modality of commercial exchange, whereas it is to the latter which the analysis of the text tends to lead us. From a commercial perspective, the price, which is the result of the exchange ratio, reveals the justice of this exchange. Since the forward sale is an intertemporal operation, we must begin by specifying whether time can be integrated into the price. Aquinas sets aside the temporal register, which refers to the situation of usury, and remains in the commercial register by focusing his criterion for the justice of a price on the value of the good, not on time itself. The specific nature of the forward sale, namely its intertemporality, then highlights two new

risks: the margin of error in the approximation of the just price on the market, and the universalisation of the conditioned will, because everyone in the course of the exchange may be found to be in a situation of usury, with the related legal, social, and moral risk, or may be a victim of usury, in a state of necessity and with little bargaining power.

2.1. A commercial exchange over time with a price

Sale on credit, which crosses commercial exchange and loan, has long been considered a modality of usury, while *De emptione* has been read as a presentation, in the literary form of a letter as opposed to an article, of the doctrine contained in *S. T.*, IIa IIae, q. 78 devoted to usury. The lexical field of the title as well as the details of the content orient us towards an account of commercial exchange in the particular modality which is intertemporal exchange. This implies, firstly, that since the transaction is commercial, the risks involved in the transaction are therefore commercial and not financial; secondly, that the moral framework of Aquinas's thinking is that of the justice of the exchange ratio, i.e. that the price charged is a just price; and lastly, that Aquinas's attention is focused on the situation of each agent, seller and buyer, at each stage of the transaction in relation to the just price, and not on a predefined status and unchanging categorisation of them as usurer or usury victim.

2.1.1. Forward and credit sales: loan or trade exchange?

De emptione did not appear in the catalogues of Thomas Aquinas's works until the fourteenth century, and its attribution was considered doubtful until the beginning of the twentieth century when Pierre Mandonnet (1910, 116-120) established its authenticity and dated it to 1262; this date was confirmed, with greater caution, by the *Commissio Leonina* in the critical edition published almost seventy years later (Dondaine 1979, 384). *De emptione* was written during Aquinas's stay in Orvieto (1261-1265) as a conventual lecturer (Torrell 1993, 178-178; Imbach and Oliva 2009, 21; Porro 2015, 441). The text therefore precedes the mature economic writings by about ten years and would thus appear to be an intermediate work, roughly halfway between the *Commentary on the Sentences* and the subsequent writings, which therefore benefit from the more technical reflections of this short treatise. The addressee would be friar James of the Dominican convent of Viterbo, who seems to have solicited Aquinas (Dondaine 1979, 384-385). Mandonnet gives details of Aquinas's appointment and fills in the context. James was a lecturer in the convent of Florence, a city where the draper's trade and associated industry had been developing rapidly since the turn of the century: "As a professor in the most famous convent in the city, [James] like his confreres often had to give solutions to cases of conscience,

which were made all the more difficult by the intense business life in Florence" (Mandonnet 1910, 119).

This short treatise, barely two pages and eighty lines long in the Leonine edition, was slow to spread and is found only within the Italian manuscript tradition, with the exception of a late copy written in Mainz in 1471 (Dondaine 1979, 385). And for a long time *De emptione* remained unknown. Indeed, in just two questions devoted to economic problems the *Summa theologiae* (*S. T.*, IIa IIae, q. 77 and q. 78) offered a masterly and satisfactory synthesis of Aquinas's thought on moral philosophy and theology. The editors of the *Commissio Leonina* thus justified the lack of initial diffusion of this text by its lack of originality: "This little piece of writing, this *Responsio*, may have escaped the first collectors of *Opuscula Thomae*. The doctrine is that of the *S. T.*, IIa IIae (q. 78, a. 2, ad 6), condensed into this simple norm: there is usury when one sells the period of payment" (Dondaine 1979, 385). Mandonnet, for his part, seemed to afford the treatise more originality, saying that Aquinas was nowhere else so "in touch with the realities of everyday life and the economic concerns of his time" (Mandonnet 1910, 119).

Yet in two respects *De emptione* adopts a different emphasis in the analysis of risk. On the one hand, it combines the study of price and value (found in *S. T.*, IIa IIae, q. 77) with the temporal dissociation of payment and delivery. It therefore introduces an additional variable in the determination of risk: time. On the other hand, it is appropriate to question Dondaine's assimilation of *De emptione* to the prohibition of the charging of the cost of credit formulated in the passage of the *Summa theologiae*: "If, as a guarantee for the money he has received, the borrower gives a pledge whose use is appreciable at a price, the lender must deduct this income from the sum to be returned to him by the borrower. If he wanted this income to be granted to him free of charge in addition, it would be as if he were lending at interest, which is usurious" (*S. T.*, IIa IIae, q. 78, a. 2, ad 6).

In comparing *De emptione* with the *S. T.*, IIa IIae, q. 78, Dondaine and the Leonine editors present the sale on credit or at term as a variety of usury. In this they follow a common practice found in the *Decretals* of Gregory IX (1234), whose chapters 6, 10, and 19 (decretal *Naviganti*) of the title *De usuris* (*Decretales*, l. 5, t. 19) study the sale on credit (Spicq 1935, 353). As reprised in the *Decretals* of Gregory IX, when dealing with usurers who must be judged (*usurarius debet judicari*) Urban III (1186) states that "a trader [*negociator*] must in the same way be condemned to punishment, who sells his goods at a much higher price [*merces suas*

longe majori pretio distrahit] if the time limit for payment is extended [*si ad solutionem faciendam prolixioris temporis dilatio prorogetur*] than if he is paid in spot [*quam si ei in continenti pretium persolvatur*]" (*Decretales*, l. 5, t. 19, c. 10). Commercial credit is a commercial substitute for interest-bearing loans intended to circumvent their prohibition (see the historical overview in Noonan 1957, 15-17; Langholm 2003, 16; Rajapakse 2010, 147 and 253; Chaplygina and Lapidus 2022), and often turns out to be usury by the merchant, similar to usury in general (Lapidus 1991). Determining usury status is important because the repression of usury is facilitated by the development of commercial writings (Feller 2020, 45) and the spiritual, legal, and social penalties can be very severe, although their application remains difficult to assess (McLaughlin 1940, 5-22), and usury is practised in many ways (Wyffels 1991) and via many means of circumvention (Mélitz 1971, 475 and 484-485; Ege 2014, 392-403 ; Chaplygina and Lapidus 2016, 35-37 and 2022).

Thus, when Aquinas is questioned about the moral status of forward selling, his first reflex is to avoid the deliberate intention of usury: "Assuming [*supposito*] that this use of deferring payment for three months, as in the case proposed, is for the common good of the merchants [*ad commune bonum mercatorum*], as in the dispatch of goods, and not with a view to usurious fraud [*in fraudem usuram introducta*], it seems that a distinction must be made [*videtur esse distinguendum*]" (*De emptione*, I). Aquinas here takes up two important points: first, unlike his predecessors Robert of Courçon[53] and William of Auxerre,[54] he does not focus on usurious intent, which is condemnable but remains hidden (Chaplygina and Lapidus 2022). In this way Aquinas bypasses the imperfection of the observer's information, and thus his risk of error. Aquinas is a theologian, so he seeks to determine the sinful situations, for which the agent's intention is decisive. However, since he does not have access to the agent's intention, Aquinas does not try to find out whether the agent intentionally wants to disguise usury through a forward sale, but limits himself to observing the economic transaction on the basis of a postulate of honesty regarding the parties's intentions. Then, by focusing on *the common advantage of the merchants*, Aquinas places the whole treatise within a commercial framework.

[53] "If in fact he hoped to receive something in addition to the capital, he mentally [*mentaliter*] committed the contract of usury" (Robert of Courçon, *De usura*, p. 13) and "this sole intention [*ex intentione*] already makes the usurer" (p. 79). Georges Lefèvre dates *De usura*, which he edited and translated in 1902, to the early years of the thirteenth century (p. XVI; see also Langholm 1992, 40).

[54] "Usury is the will [*voluntas*] to acquire by a loan [*mutuum*] something in addition to the capital [*aliquid preter sortem*]" (William of Auxerre*, Summa aurea,* III, XLVIII, c. 1, q. 1, l. 1-2). The *Summa aurea* would dates 1215-1229.

Aquinas's moral determination relates to the usurious situation, but falls specifically within the scope of the commercial activity, since this letter does not deal with the usury of the interest-bearing loan but rather with the payment period (and, at the beginning, the delivery period). Moreover, Mandonnet differs from the approach that would later be taken by the Leonine editors by taking a primarily commercial view of the text and the activity it deals with, when he concludes: "It deserves, first and foremost, to take its place in the history of Florence and its commercial life" (Mandonnet 1910, 120). Aquinas gave a commercial and not a financial name to his treatise: buying and selling. It is therefore to be situated, as its author indeed does, within the commercial whole that he will frame with *S. T.*, IIa IIae, q. 77. This distinction is important because Robert of Courçon had already dealt extensively with the sale on credit, but in the last part of his *De usura* where it was approached as a form of usury, as Aquinas would briefly do in *S. T.*, IIa IIae, q. 78, a. 2. This is not the case with *De emptione*. Beyond the need to respect the hermeneutics peculiar to each author, we may say that although merchants are the object of a general suspicion inherited from the Church Fathers (Baldwin 1959, 12), the merchant's activity is not that of a banker, and the scholastics do not associate them with the opprobrium reserved for usurers (Noonan 1957, 31-32; Baldwin 1959, 63-64; Langholm 2003, 34; Chaplygina and Lapidus 2016, 26). It should be noted, however, that there are links between the two activities and that the same agents can sometimes assume both charges, in particular to mask usury through trade or currency exchange, as Giles of Lessines theorised in *De usuris in communi* (1276-1285), and as confirmed by the observations of De Roover (1953, 33-35) and, more recently, of Feller (2020, 59-61), based on gambits appearing in account books. After describing the loan transaction as a commercial transaction, the risks associated with it must be determined. Non-payment or non-delivery are commercial risks incurred by the same actors who are already subject to the classic risks of any seller and buyer, as would be discussed in the *S. T.*, IIa IIae, q. 77.

2.1.2. Can cost integrate time?

Aquinas takes as his starting point the question that has obviously been put to him, which considers the three-month payment to be a use or "a custom [*illa consuetudo*]". The practice is "for the common good of the merchants [*ad commune bonum mercatorum*]" (*De emptione*, I). This may be an asymmetry in the commercial relationship, unless "merchants" is to be understood as meaning each of the contracting parties, as in the *Summa theologiae* in *S. T.*, IIa IIae, q. 77, a. 1, resp. where the exchange is made "for the common utility of each [*pro communi utilitate utriusque*]". However, the asymmetrical hypothesis appears to be the relevant one

(Langholm 1998, 100): the credit or deferred payment is not granted at the request or for the good of the customer, or even if it is, it ultimately benefits the merchant, who is thus able to sell his goods to buyers who might not be able to pay cash. Moreover, the "common good of merchants" has a practical dimension, since sale *ad tempus* does not only concern payment, but also delivery, when the payment period is "for the dispatch of the goods [*pro expediendis mercationibus*]". The period (*ad tempus*) which may intervene in the course of the commercial act is therefore not necessarily financial or usurious, but may belong intrinsically to the activity of buying and selling goods.

Aquinas then turns to consider the issue which lies at the heart of *De emptione*, namely the term of payment. The moral issue of determining the situation of usury is based on Aquinas's economic understanding of price. Neither the delivery period nor the payment period in itself forms a usurious situation. Rather, the usurious criterion is that of price: "Either the seller sells his goods at that time [*ad terminum praedictium*] more expensive than the just price [*ultra quantitatem justi pretii*] because of expectation [*propter expectationem*], or he sells them at the just price [*aut secundum justi pretii quantitatem*]. In the first case there is no doubt that it is a usurious contract, since the expectation of time enters into the price [*cum expectatio temporis sub pretio cadat*]" (*De emptione*, I). Usury is the remuneration of the payment period as a delay, which manifests itself as a deviation from the just price. It should be pointed out here that the usurious situation, which can occur thanks to the intertemporal nature of the exchange, stems first of all from the Thomasian conception of money (Méliz 1971; Lapidus 1987 and 1997; Chaplygina and Lapidus 2016; Hirschfeld 2018, 139–152; Brollo 2019; Januard 2021a, 609-611 – *supra,* chapter 1), first set out in the *Commentary on the Sentences* (*In III Sent.*, d. 37, a. 6). Money retains its nominal value over time and lending does not involve any price risk. Thus, the just price of a quantity of money is the same amount. This does not appear in *De emptione*, which does not deal directly with monetary lending, but underlies the Thomasian position of prohibiting usury. *De emptione* presents a more complex situation because it is an exchange of two non-homogeneous goods, sheet for money. Time can therefore give rise to a variation in the nominal value of the good, i.e. an evolution of its price on the market, and therefore to a risk for the byer and the seller.

Aquinas does not explain what the just price is, except to point out some of its properties, such as the fact that it is the price excluding expectation. He therefore refuses to include a time supplement in an overall price, since this would add something to the just price. It can therefore

be assumed that the just price is the spot price. However, Aquinas suggests the possibility of an opposite situation, where the just price is the forward price.

Aquinas adds two major elements when he states: "There is no impediment if [the seller] sells [his goods] for a lower price if it is paid immediately [*Nec obstat si pro minori pretio daret si statim pecunia solveretur*]" (*De emptione*, I). On the one hand, Aquinas distinguishes between over-invoicing for payment delay, which is usury, and under-invoicing for spot payment, which falls within the range of acceptable price situations. The difference in treatment between the two situations indicates that it is not time alone that explains why a situation is usurious, since time is also implicated, by its contraction, in the case of immediate payment with price reduction. The responsibility or the freedom of the agent who suffers the damage is also decisive. If the agent decides to accept a situation which is to his prejudice, the situation is in conformity with the just price even if time enters into the price in reverse, so to speak. On the other hand, it is through this latitude given to the agent that Aquinas introduces the idea of a plurality of acceptable prices (Lapidus 1994) in conformity with the just price, but without being confused with it – all occurrences of 'just price' in his works are in the singular. This plurality of possibilities, which is due to the agent's freedom to impose a financial prejudice on himself, is found in the *Summa theologiae*: "However, he who acquires an object that is very advantageous to him [*ex re alterius accepta multum juvatur*] may, on his own initiative [*propria sponte*], pay a surplus to the seller [*aliquid vendenti supererogare*]: It is honest [*quod pertinet ad ejus honestatem*]" (*S. T.*, IIa IIae, q. 77, a. 1, resp.). The conceptual distinction between the just price and the honestly practised prices introduced in *De emptione*, I is a waiting stone to understanding the account in *De emptione*, II on the price "practised in the common market [*secundum communem forum*]".

In the next sentence Aquinas leaves the commercial vocabulary behind and goes back to the general financial lexicon, taking the example of "other debts [*in allis debitis*]" repaid before maturity, for which the creditor grants a discount. While the general situation (interest-bearing loan) is usurious, the act of reducing the price is not: "If a thing is due to someone for a given term, regardless of the reduction in the [amount] due if it is paid more quickly, it is clear in this case that the person to whom it is owed is entirely free from the sin of usury because, although it is usury to receive more than the sum due because of the time elapsed [*propter temporis dilationem*], there is no usury to be received less than the sum due to be paid earlier, especially from one who receives less [*minus recipit*]" (*De emptione*, I). By leaving the purely commercial sphere, the term "price" disappears. There is here a legitimately due sum (without usury) and

an additional, usurious sum from a time billing. Repaying the interest-free (i.e., free from the cost of time) sum corresponds to paying the just price (spot price) in the previous example.

Aquinas does not focus on the status of the agent, but rather on his situation at a given time. This leads him to consider that it is the customer who falls under the sin of usury because it is he who benefits from an advantage in terms of time, through the discount applied to him by paying on the spot: "From the point of view of one who gives less [*minus dat*], in order to pay back more quickly [*ut citius solvat*], there seems to be a form of usury, since he is selling an interval of time [*cum spatium temporis vendat*]" (*De emptione,* I). Whether one is a buyer or a seller, there is usury when one takes advantage of time to receive more or pay less. The shift of perspective effected by Aquinas is important, because it does not focus on one agent – i.e., the seller who is suspected of usury – but rather on the situation of usury as an economic operation, which can concern all agents. This shift from the person to the operation is noteworthy because, shortly before that, William of Auxerre had attached himself to the usurer as a determined agent: "The Church persecutes usurers [*usurarios*] and prostitutes because they sin publicly [*publice enim peccant*]" (*Summa aurea*, III, XLVIII, c. 1, q. 1, l. 9). William's attention is focused on those persons who, by their social behaviour, lead others to sin; by showing that different agents can find themselves in turn in a situation of usury, Aquinas departs from this *ad hominem* position. In addition, the example shows the link between usury and trade (Dellemotte 2017, 39-40), since usury occurs when people take advantage of time to deviate from the just price in a commercial transaction (buying and selling goods).

2.2. Two new risks: approximation of price and the situation of usury

After setting out the framework for his reflections, Aquinas presents two new elements: price estimation, and the reversal of the potentially usurious situation, since the seller can be a usurer by selling more on credit, but the buyer can in turn be a usurer if he buys less for a spot payment. Everyone can therefore find themselves in a usurious position. We can then postulate the emergence of two new risks: the existence of a margin of error in the approximation of the just price, and the universality of necessity, or the symmetry of the conditioned will, with the seller becoming a borrower in spite of himself. Each agent therefore runs the risk of finding himself in a situation of usury or, on the contrary, of falling victim to it, if the intertemporal commercial exchange is carried out at a price that does not conform to the just price because of the passage of time.

2.2.1. Is estimating the just price risky? Estimation or approximation

At the end of *De emptione*, I, Aquinas introduces the expression "just estimation" (Lapidus 1991): "This is why, in the proposed case, there would be more reason to fear usury for the buyer [*plus esset de usura timendum emptori*] who, by paying three months earlier, buys fabrics cheaper than the fair estimate [*justa extimatione*], than for the seller who receives less to be paid earlier [*ut citius ei solvatur*]" (*De emptione*, I). Aquinas does not specify what he means by the expression, however, except to say that the estimation is fair (*justa*). It is therefore necessary to clarify what the estimate relates to and whether it includes the existence of a margin of error – and, if so, where the imperfection of information which is the cause of this error lies. Aquinas does not speak here either of the price or the just price, but the expression 'just price' appears above and it is indeed an amount which pertains to a transaction. Does the estimate relate to the just price itself, or to the determination of a price that would be in line with it? We should note, before proceeding, that the use of the term "*aestimatio*" concerning the price is rare in Aquinas's works: apart from *De emptione*, I, it is found in *S. T.*, IIa IIae, q. 77, a. 1, ad 1 and q. 78, a. 2, ad 3 and 4, and less prominently in *Super Job,* c. 28 and *Catena in Lucam*, c. 12, l. 2.

S. T., IIa IIae, q. 77, a. 1, ad. 1, indicates that the "just price of things [*justum pretium rerum*]" is not "determined with precision [*non est punctualiter determinatum*] but is most often established by an estimation [*sed magis in quadam aestimatione consistit*]". We then find ourselves confronted with justice by estimation, the source of which remains to be identified. This can be deduced from Aquinas's formulation "*non est punctualiter determinatum*" (Bartell 1962, 359). Here again two interpretations are possible, depending on whether *non est* applies to *punctualiter* or to the whole expression. *Determinatum* indicates a passive determination of the subject (the just price), thus carried out by economic agents, whether they be the contracting parties or, as can be found in late scholasticism, the authorities or a common work (Muñoz de Juana 2001, 28). According to a first interpretation, the just price is "determined [*determinatum*]" in the course of the exchange, even if it is not *punctualiter*. In this case justice is brought in from outside by the agents. According to a second interpretation, the negation applies to the whole of the expression. This latter hypothesis seems to be supported by the tension between *determinatum* and *consistit*. Indeed, *consistit*, usually translated according to the etymology by "consists", means "to put oneself, to place oneself, to stop, to stand". These are pronominal or intransitive verbs which give a good account of the action of the price itself to make itself just and which sets its own level by a process of estimation. In this case, there

would be a level of justice of the price, pre-existing the exchange, to which the price would place itself in order to thus become a 'just price' which would then not simply be the fruit of the exercise of external positive justice.

Once it has been accepted that the source of the estimate lies in a justice that pre-exists the exchange, it remains to analyse its implementation. It should be noted that the estimate includes an idea of imperfect approximation, for example when the value is transcribed into monetary prices, since the just price is not determined precisely (De Roover 1958, 624; Sturn 2017, 660; Koehler 2020, 359), which justifies "a slight variation in the price [*modica additivo vel minutio*]" (*S. T.*, IIa IIae, q. 77, a. 1, ad 1).[55] The same idea suggests that "the person who has received more will therefore be required to offer compensation to the one who is damaged, if however the damage is significant [*si sit notabile damnum*]" (*S. T.*, IIa IIae, q. 77, a. 1, ad 1). The effects on prices of the narrowness and malfunctioning of the markets in Aquinas's time, help us to understand the persistence of differences between the prices charged and the just price (Persson 2014, 227). However, this price is considered acceptable when the damage is not significant, thus not giving rise to a right to compensation. Thus, the imperfect information at work in the determination of the price is not always a factor of unfairness that needs to be corrected. By estimation, it is then a question of finding a just price that already exists, and not of making it emerge *ex nihilo*. This is then confirmed where he writes: "a slight variation in the price [*modica additivo vel minutio*] does not seem to affect the equality of justice [*tollere aequalitatem justitiae*]". It is then concluded that not only does the just price is prior to the exchange, but so does what makes it just, namely the level of equality of justice that is given on a normative level.

However, it remains possible to understand the estimate no longer as an approximation with a margin of error, but as a measure which as such would not presuppose imperfection. This is for instance the case for the occurrences of "price estimation" in *Super Job*, c. 28 and *Catena in Lucam*, c. 12, l. 2. Moreover, in *S. T.*, IIa IIae, q. 78, a. 2, ad 3, when Aquinas deals with the loan and the interest, the term *aestimatio* does not necessarily indicate a margin of error: the lender cannot accept a financial interest but he can accept a spontaneous reciprocal loan offer (*spontanea mutatio*) coming from "a feeling of benevolence which does not fall within the scope of a financial estimate [*sub aestimatione pecuniae non cadit*]". Estimation here refers to the process that determines a price level, a financial amount to be accepted, demanded, or

[55] This explains the importance of the *estimator* or *arbitrium boni viri* (Baldwin 1959, 27) to avoid errors as much as possible and minimise the risk to agents.

expected (*accipere et exigere et exspectare*). The following answer pursues this link between estimation and money by distinguishing what can be "estimated with money [*pecunia aestimari potest*]" and what cannot (*S. T.*, IIa IIae, q. 78, a. 2, ad 4). Estimation thus appears here to be the action of evaluating and measuring a monetary price and regains its broad and classic sense of recognising the value of an object. It should be noted that this sense of evaluation and measurement is the one Aquinas assigns to most of the non-economic occurrences of the term *aestimatio* (there are a total of 1,641 occurrences of the noun and the verb in Aquinas's works), where it is often a question of estimating, thinking, and judging a moral situation. Estimation is therefore made in relation to a pre-existing moral reference. Notably, when Aquinas comes to treat of the separation between the market and non-market universes using commercial vocabulary, he does so in the form of estimation: "The person of a free man surpasses all pecuniary estimation [*superat omnem aestimationem pecuniae*]" (*S. T.*, IIa IIae, q. 189, a. 6, ad 3). Estimation is then the process that holds together justice and price, even if we are forced to conclude in this borderline case that this is impossible.

A study of the expression "*justa aestimatio*" in *De emptione*, I thus reveals two possible meanings that are not mutually exclusive. In the commercial context, the hypothesis of a meaning involving an approximation and a risk of error is the most plausible, since it is to be found in *S. T.*, IIa IIae, q. 77, a. 1, ad 1. But it can also refer to a process of pricing, regardless of a possible margin of error (*S. T.*, IIa IIae, q. 78, a. 2, ad 3 and 4) within a moral framework (*S. T.*, IIa IIae, q. 189, a. 6, ad 3 and the general meaning of the term in Aquinas's works). We can see here two facets of a process of quantitatively transcribing a moral judgment into a price – a process which involves a risk of error or approximation. The objective of *justa aestimatio* thus remains to estimate fairly: not to establish a level *ex nihilo*, but to find and approach a pre-existing level of justice.

The just price, by its very essence, can be considered to facilitate trade because it ensures social order (Sturn 2017, 646) and reduces transaction costs (Friedman 1980), since there is no process of negotiation. However, the estimation of the price indicates that the operational determination of acceptable prices and the choice of an effective transaction price are not immediate, and that the effective price is not simply given immediately by the normative just price but is the result of a process of fixing. Understanding the estimate as a proxy adds to the remaining transaction cost, therefore, the cost of the existence of a margin of error.

2.2.2. Universalisation of the conditioned will and of the risk of usury

The hypothesis of the appearance of another risk, the universalisation of necessity or conditioned will, must also be verified in this situation of lower and early payment. Before Aquinas, the first asymmetry between the lender, who is free to lend, and the borrower, concerned freedom, since the borrower's will is conditioned by the need that drives him to borrow at interest (Langholm 1982, 273; Langholm 1984; Lapidus 1987 and 1992; Ege 2014; Chaplygina and Lapidus 2022). William of Auxerre, following in the footsteps of the Fathers, makes lending a systematic oppression of the poor who are subjected to a vital necessity, which thus leads him to affirm that "usury is directly against charity [*dare ad usuram directe est contra caritatem*]" (*Summa aurea*, III, XLVIII, c. 1, q. 1, l. 5). Albert the Great made this "*voluntas conditionata*" the first argument against usury (Albert the Great, *In III Sent*., d. 37, a. 13).

Aquinas distances himself from the authorities as early as the *Commentary on the Sentences*, envisaging the conditioned will in *In III Sent.*, d. 37, a. 6, ad 6 only as a possibility: "He who pays interest [*ille qui usuras dat*] and receives a loan in case of necessity does not sin, nor does he share the fate of the usurer as such, for he does not give interest voluntarily, but as forced by necessity". Necessity therefore no longer appears as so systematic (supra, chapter 1; Januard 2021a, 624-626), and this strengthens the borrower's bargaining power, which was previously confined to the lower bound of a negotiation space with very little gain from exchange because of the vital necessity that drove him to borrow.

After the *Commentary on the Sentences*, *De emptione*, I heralds a new stage in Aquinas's distancing himself from the idea of conditional freedom inherited from his predecessors. After the lightening of the role of necessity, we now see its universalisation. The phenomenon of advance payment leads to a permutation of roles. Admittedly, Aquinas says nothing about the potential permutations of weak bargaining power, nor the risk for the seller of having to accept a lesser and earlier repayment, whereby his co-contractor, the buyer, in turn becomes a usurer: "To find oneself in a situation of usury is more to be feared by the buyer [*plus esset de usura timendum emptori*]" (*De emptione,* I). Does this mean that, in accordance with Albert's position, the seller is moved into a state of necessity? In this case, the conditioned will would therefore be symmetrical and the risk of necessity would become universal, since in the course of the transaction the usurer's position is transferred. A study of the treatment of freedom in economic transactions in Aquinas's later works, notably the *Summa theologiae*, may help us to verify this hypothesis.

First of all, it should be noted that in trade, need is at the origin of exchange: "each needing what the other possesses [*dum silicet unus indiget re alterius et e converso*]" (*S. T.*, IIa IIae, q. 77, a. 1, resp.). This can lead to one of the agents being harmed: "Purchase and sale may in certain circumstances turn to the advantage [*in utilitatem*] of one of the parties and to the detriment [*detrimentum*] of the other, for example when someone has great need of something [*aliquis multum indiget habere rem aliquam*] and the seller is harmed [*laeditur*] if he disposes of it" (*S. T.*, IIa IIae, q. 77, a. 1, resp.). Consent is therefore not always perfectly free, and the prejudice of a lack of freedom may affect each of the parties (Langholm 1998, 100).

With regard to loans, Aquinas takes up the Aristotelian and Albertian thesis (Langholm 1984, 140-149; 1998, 21 and 63-64; Sturn 2017, 655) of the borrower's lack of freedom: the borrower acts "with a certain necessity [*cum quamdam necessitate*]" and "does not give absolutely voluntarily [*non simpliciter voluntarie dat*]", and so is not totally free because he needs (*indiget*) this sum (*S. T.*, IIa IIae, q. 78, a. 1, ad 7). It should be noted, however, that *quamdam* and *simpliciter* bring important nuances concerning the conditioned will of the debtor, since Aquinas does not say that he is totally deprived of his freedom. In *S. T.*, IIa IIae, q. 78, a. 4, resp., Aquinas deals with the incitement exercised by the borrower on the usurer to sin, depending on whether he was already prepared to do so (*paratus est facere*) and whether he already practises usury (*usura exercet*) or not. The borrower is thus presented here as relatively free and as the initiator of the act of usury, which relativises their conditional freedom. Finally, *De malo*, q. 13, a. 4, ad 8 refers in the objection to a strong necessity, the mitigated violence (*violentum mixtum*) at the source of the loan, but Aquinas's response does not echo it, thus abandoning the idea of confining the borrower to a structurally extremely weak bargaining power, and turning him instead into an agent whose bargaining power varies according to the situation.

From the study of the conditioned will it emerges that Aquinas opens the way, in *De emptione*, I, to a double mutation of the risk, concerning on the one hand its universality, and on the other hand the relativity of necessity. Indeed, firstly, the risk is not eliminated by the consent of both parties to carry out the operation. The fact that the seller of *De emptione*, I consents to the discount may arise from what he perceives as a lesser evil, linked to the balance of forces in a case of commercial bargaining linked to need (*S. T.*, IIa IIae, q. 77, a. 1, resp.); but this does not remove the risk that he will be harmed, since another price, a just one, is what was foreseen. Aquinas once again distances himself from an approach which conceives of the agent according to his status, wherein the borrower, i.e. the buyer on credit, would be seen as the victim of a

structural and unilateral necessity that would benefit the seller-lender. The situation is reversed, the buyer becoming the usurer, and Aquinas, without mentioning the conditional will or necessity, does not commit himself to the seller's total freedom to accept a spot payment at a lower price. The symmetry opened up by the hypothesis of early repayment, which places each agent in the potential situation of becoming a usurer, but also in the situation of having to agree to depend on usury (for the buyer, agreeing to pay more on credit; for the seller, to receive less with early repayment) introduces a generalisation of the risk of the conditioned will, which is no longer reserved to the buyer-borrower.

Finally, the risk of necessity is lower than in Albert's works. Moreover, Aquinas does not explicitly mention the conditioned will in *De emptione*, I, and in Aquinas's works it is not presented as being as strong as in Albert's – neither in the *Commentary on the Sentences* (*In III Sent.*, d. 37, a. 6, ad 6), nor here (*De emptione*, I), nor in later works (*S. T.*, IIa IIae, q. 78, a. 1, ad 7; a. 4, resp; *De malo*, q. 13, a. 4, ad 8). Paying more attention to the mechanism of the operations than to the economic status of the agents (lender or borrower, seller or buyer) allows a more precise identification of the shifts in risk during the operation, a better assessment of its intensity, and a more exhaustive consideration of this risk.

3. Reconsidering the just price: towards a new approach to risk

Standing at the confluence of trade and credit, forward selling combines two approaches involving justice. The situation is thus non-usurious when the price is a just price, i.e. when the sale is made at a price corresponding to what the good is worth (its value). However, Aquinas uses the term 'value' polysemically: he does not clearly define what is meant by 'just price', and does not assert an absolute identity between value and price. In the eyes of the reader this creates a risk of error in the analysis and understanding of price and the justice of exchange. Even today, the debates on whether the just price should be seen as a market price, depending on *indigentia* - demand or utility -, expressing an equality from thing to thing, or a cost of production, depending on the labour and expenses of the merchant, giving to each one what is necessary to live according to his status, and more recently the emphasis on the primacy of the moral dimension of justice, show that the notion of the just price remains under discussion. A proper consideration of *De emptione*, however, suggests a way in which we may be able to create a new foundation for our understanding, which would be a prerequisite for the identification and analysis of the risks incurred by agents in the course of the operation. It should be noted that Aquinas rarely uses the expression 'just price': the term appears only

nineteen times in all his works, including twice in *De emptione*, I, in the context of an illustration of usury through an example in which sheets are sold "for more than they are worth". The absence of usury, like the just price, would therefore result from the effective transcription of the value of the good, even if there is no identification between value and price. The just price is not a price determined by the market but a price based on justice that reflects this value and that can be found on the market. It can be seen that the virtue of justice, in its normative and moral dimension, is primary, and that the just price is a price of justice, ontologically prior to the exchange. It is then translated into a set of acceptable effective prices that are in conformity with it.

3.1. From value to just price

Since in order not to be usurious an exchange should not consist in selling a good forward for more than it is worth, the first step must be to explain the reasons for the possible difference between the effective price and the value. The lack of precision in *De emptione* allows two possible hypotheses to be formulated. According to the first, it would be the *value* that could change, either through time or space, with the evolution of the price of the good on the market, or by integrating subjective or individual factors such as the prejudice caused by the forward sale and the payment period. The second hypothesis supposes that the value of a good is intrinsically stable, so it would be the *price* that would change. It is not possible to give a definitive ruling. However, it appears that there is no necessary relationship of identity between value and price.

3.1.1. The dialectic between value and price

The second chapter, concerning Tuscan sheet dealers coming to the Lagny fair, proposes a reversal of what was described in *De emptione*, I: no longer a reduction for spot purchase but an increase in price for a sale on credit. This chapter, which is both brief (59 words in Latin) and dense, introduces usury when selling fabrics "for more than they are worth" (*De emptione*, II). Although the term 'price' does not appear explicitly, the sale presupposes an exchange ratio between two non-homogeneous goods, sheet and money. This exchange ratio, i.e. a nominal price, which must not exceed the value of the good, can therefore vary. A new analytical risk then arises, because the expression "for more than they are worth" maintains a dialectic between price and value such that translators sometimes use one for the other or add one or the other term (such as Spicq 1935), and where commentators omit to distinguish between them and treat the Thomasian expression exclusively in terms of price, or switch from value to price without

explaining why (typically De Roover 1958, 422 and 1971, 52 and 56-61; but this phenomenon is widespread, to varying degrees, in the literature, with the notable exception of Bartell 1962). To understand the nature of the non-usurious price that would be the effective just price, we need to carry out a lexical study, which Todeschini (e.g. 2002) has shown to be essential, and to go back to what Aquinas means by "are worth (*valeant*)". I will address this question first from within the framework of the lexicon available to Aquinas, then from the entire Thomasian corpus, and finally from *De emptione*.

In lexical terms, 'value' covers a much wider field than 'price'. The verb *valeo* in classical Latin means to be strong, vigorous, to have moral value, to be effective in doing something, to rule, or to be well, but the market and monetary connotation comes only in the last sense and is a declination of the previous ones (Ernout and Meillet 2001, 712); to express the verbs "to be worth" or "to cost", the term *consto* is to be preferred (Quicherat 1893, 249 and 1194). The noun *valor* might have been used only rarely and late (Piron 2010, 133), and was not taken up by Quicherat 1893 and Ernout and Meillet 2001. In the Middle Ages, the monetary and mercantile meaning of *valeo* spread, while remaining the last meaning of the verb (Blaise 1954, 835) and *valor* took on the meaning of market value, which Blaise (1975, 945) translated as price, but also the meaning of war value, salary, profit, and power. Moreover, *valor* indicates an inherent dimension of the thing while *pretium* refers to compensation (Piron 2010, 137). Three aspects of the classical and medieval lexicon of value can therefore be highlighted: a broad polysemy; an oscillation between a characteristic of the subject in itself and of the subject in its relationship with its environment, with a dimension which is at once intrinsic, and pertains to usefulness and to moral value; and an economic meaning whose diffusion comes late and remains poorly defined in the Middle Ages, and which assimilates all the existing polysemy. What appears to today's reader as a risk of analysis stemming from the lack of information on this value can therefore also be seen, alternatively, as the effect of a wealth of information on the good. Value is thus a concept with a broad spectrum. It is this breadth that the translation into price terms on the one hand, and then the conceptual precision and development of value theories over the following centuries on the other, will reduce.

The term 'value' is not widespread in Aquinas's works: 47 occurrences for the noun (*valor*) and 368 for the verb (*valeo*), the vast majority of which deal with non-economic issues. Neither the *Commentary on the Sentences* nor *De emptione* offer a draft theory or even a definition of value. *De malo*, q. 13, a. 4, ad 15 states, as does *De emptione*, that if the price is higher than the value there is usury, and *Ethicorum*, V, 9 deals briefly with the value of money. The *Summa theologiae*

sheds some light, although this is often less a matter of Aquinas's own explanations than of the translators's and commentators's projections, because they are looking for a theory of value where price is often mentioned. The misunderstandings about the nature of value (highlighted by Lapidus 1986, 17-28 and 1994, 440) undoubtedly stem from an overly quick identification between value and price, whereas the study of medieval vocabulary encourages caution.

It is remarkable that the first properly economic question of the *Summa theologiae*, *S. T.*, IIa IIae, q. 77, begins precisely, in its article 1, with the dialectic between value and price. A too-quick reading of *S. T.*, IIa IIae, q. 77, a.1, resp. could lead one to believe that value is defined by common utility (*pro communi utilitate utriusque*) or need (*indiget*). Thus, when Aquinas states that it is "the quantity [*quantitas*] of things which come to the use of men which is measured according to the price given [*mensuratur secundum pretium datum*]" (*S. T.*, IIa IIae, q. 77, a.1, resp.), Spicq 1935, in a French translation which has long been authoritative, unduly introduces the term 'value' and translates *quantitas* as "quantity or value". However, the only issue here is price (*pretium*). The value then appears only to represent the link between the thing and the price, thus affirming the need for conformity but not a formal identity: "if the price exceeds the quantity of the value of the thing [*quantitatem valoris rei*], or conversely if the thing exceeds the price [*res excedat pretium*]", and then in the concluding sentence: "therefore to sell more [*carius*] or buy less [*vilius*] than it is worth is in itself unjust and illicit" (*S. T.*, IIa IIae, q. 77, a.1, resp.). The value seems to be distinguished immediately afterwards from the effective just price, which takes account of utility and prejudice: "The just price must be established not only in regard to the thing sold [*respiciatur ad rem quae venditur*], but in proportion to the prejudice suffered by the seller" (*S. T.*, IIa IIae, q. 77, a.1, resp.). Once again, Spicq 1935 introduces 'value' for *respiciatur*, where the Latin does not mention it. Thus, *S. T.*, IIa IIae, q. 77, a.1, resp. seems rather to indicate that it is the just price that integrates and transcribes utility, need, and prejudice, rather than the value from which it derives (Bartell 1962, 333).

Far from defining unequivocally what he means by value, Aquinas unites two values in the same sentence: the intrinsic value, *secundum se*, of the thing, and the value for the possessor: "One may licitly sell something beyond its intrinsic value [*plus quam valeat secundum se*], although it is not sold more than it is worth to the possessor [*plus quam valeat habenti*]" (*S. T.*, IIa IIae, q. 77, a.1, resp.). This double mention underlines the fact that there is no contradiction between the two conceptions of value, that of the thing itself and that of the thing for the agents. We find here from Aquinas's pen the classical polysemy, which presents itself more as a complementary plurality than as an opposition between value in itself and value for others, or

utility. This tends to confirm the hypothesis that Thomasian utility or need are relatively objective notions, the value derived from utility not being decoupled from the value of the thing. Utility is thought of more as a characteristic of the thing than as a subjective characteristic of the agent.

In *S. T.*, IIa IIae, q. 77, a.1, obj. 3, value appears more as a value *secundum se* which does not integrate utility and need. Compensation for a benefit (*beneficium*) sometimes exceeds the value of the thing (*excedit valorem rei datae*) if the need for the thing is great. Aquinas concludes the objection with the dissociation between price and value: it is permissible to exchange at a price higher than what the thing is worth (*pro majori pretio quam valeat*). The answer to the objection dismisses the proportionality between compensation and utility and adopts an objective proportionality of "the equality of the thing exchanged [*secundum aequalitatem rei*]". The value/price dialectic is manifested by a price that reflects a value that is either *secundum aequalitatem rei* or arises from a common objective utility, but not from a singular subjective utility.

Some passages which suggest the integration of a utility dimension in the price may have been read too quickly as indicators of a utility value, as the literature reviewed in Lapidus 1986 (17-28) testifies. Thus, echoing Augustine, Aquinas compares the utility of a horse and that of a slave. The price of things is not estimated according to a hierarchy of nature (*gradum naturae*) but according to utility (*S. T.*, IIa IIae, q. 77, a. 2, ad 3). The study of the relationship between value and price supports Lapidus's reservations (1986, 17-28 and 1994, 440), which relate in particular to the nature of utility, since it is in fact the relationship between utility and price, but not value as such.

Once again, however, we note that the Thomasian understanding of value is not univocal, and that this may justify a rapprochement between value and price, which sometimes seem to be confused. In *S. T.*, IIa IIae, q. 77, a. 3, ad 4 Aquinas describes the fluctuation in terms of value, whereas objection 4 was formulated in terms of price (*minuatur de pretio*). The value varies either because of the state of the thing – "the defect of a thing causes its present value to decrease [*in praesenti esse minoris valoris*]" – or because of the state of the market – "in the future the value of the thing is expected to be lower because of the arrival of new merchants [*in futurum res expectatur esse minoris valoris per superventum negotiatorum*]" (*S. T.*, IIa IIae, q. 77, a. 3, ad 4). On the other hand, in *S. T.*, IIa IIae, q. 77, a. 4, ad 2, to the objection that a good cannot be sold for more than it is worth, Aquinas responds by justifying a variation in the price either

because of an improvement in the object, or because of a change in the price of the thing (*pretium rei est mutatum*) according to the various places and times, or because of the risks of transport, but he does not explicitly mention value. In this case, the price will evolve to reflect an evolution of the good, and therefore of its intrinsic value, but also of the elements external to it, thus pleading for a conceptual distinction between value and price.

Thus, even though Aquinas considers value in its economic sense, this use retains the imprint of a Latin literature where value was largely polysemic. This polysemy, which resonates with the historical analysis of medieval economy (Franks 2009, 36, 51 and 69; Persson 2014, 227; Hirschfeld 2018, 28; Todeschini 2021, 185), is a natural consequence of the usage of the term 'value' to integrate a wide range of connotations that are at once ontological, efficient (utility), and moral.

Value is not defined in *De emptione*, and its relation to price is always indirect and is effected through usury. This interweaving of value, price, justice, and usury is rendered in the very structure of the text. The five occurrences of *pretium* are found in *De emptione*, I, including two occurrences of *justii pretii*. Three of the four occurrences of *valeo* are found in *De emptione*, II (with one occurrence in *De emptione*, III). The question of justice can be found on the one hand in the expression *justii pretii*, and on the other hand in the standard formula which combines sale and value: "*plus vendant pannos quam valeant*". It is found, with slight variations, twice in *De emptione*, II and once in *De emptione*, III. It should be stressed here that it is the question of justice that makes the link between value and price. This should not lead us to draw hasty conclusions: Aquinas gives a clear description, in *De emptione*, of a mechanism linking value, price, and justice. However, the question of justice is approached through that of value when he discusses a commercial action (the sale). On the contrary, price denotes a situation that here has no direct relationship with value. The distinction between value and price thus takes on not only an operational character through a mechanism, but is also based on a semantic distinction: price is separated from value less in terms of level or degree than in terms of nature. Price describes an exchange ratio, which may or may not be just, whereas value constitutes the broader moral reference of justice within this exchange.

3.1.2. Does the value vary?

If value embodies the moral reference of justice that presides over the exchange, *De emptione*, II juxtaposes two propositions that seem to muddy the tracks on the determination of this value:

- *Proposition 1*: If merchants "sell [the fabrics] for more than they are worth according to the common market [*plus vendant pannos quam valeant secundum communem forum*] because they are waiting for their money until Easter, there is no doubt that there is usury".
- *Proposition 2*: "if they do not sell the fabrics for more than they are worth [*plus quam valeant*], even if they sell them for more than if they were paid immediately [*plus tamen quam acciperent si statim eis solveretur*], there is no usury" (*De emptione,* II).

How can we understand the articulation of these two proposals and their associated criteria that determine whether the situation is one of usury? Proposition 1 suggests that the price is just (non-usurious) if it is lower than the price found on the market, which corresponds to the value of the good. Proposition 2 can be read in two ways: either the temporal price difference is linked to the market fluctuation, in which case the price is a just price (non-usurious) as long as it corresponds to the market price, which reflects the value of the good, even if the market price increases and a forward sale, taking place during the term, is made at a higher price; or the temporal price difference is a difference *due to* time and not simply *over* time, in which case the price remains non-usurious as long as it remains below the market price, which reflects the value of the good, even if it includes a time surcharge.

While it is therefore not possible to derive an univocal definition of value or to clarify definitively the value/price dialectic from later works, we can nevertheless, on the basis of the plurality of meanings of Aquinas's notion of value and the lexical study of *De emptione*, formulate two interpretations of his two propositions and, more broadly, of the expression "not to sell a good for more than it is worth": one where the value varies, either with the evolution of the price of the good on the market (interpretation 1a), or by the integration of subjective or individual factors such as the prejudice caused by forward sale and the payment period (interpretation 1b); the other where the value of a good has an intrinsic and stable character, and it would therefore be the price that would change (interpretation 2).

Interpretation 1a: The value varies with the price of the good on the market.

The value varies with the price of the property on the market in a given place and at a given time. We consider a situation where the price of the sheet increases. The price of the singular exchange could increase, but not beyond the price charged on the market. The value of the good would thus correspond to the just and non-usurious selling price, which would itself be the current price on the market, and this could lead to us seeing it as a prefiguration of a market

price, which itself is understood as a price resulting from an adjustment process that makes supply and demand behaviour compatible. The market would thus determine not only the price but also the value of the good. The rare translations of *De emptione* usually retain "*secundum*" (according to, on, in) to render "*valeant secundum communem forum*" in the first proposition of *De emptione*, II. O'Rahilly 1928 thus translates as follows: "than it is worth *in* the general market". However, in the debate between the production cost approach and the market approach, commentators have sometimes hardened the expression by giving the market an active role, for example, by using the translation "*according to* the market price [*d'après le cours du marché*]" (De Roover 1971, 59) and by rendering the corresponding expression in Albert the Great, "*secundum aestimationem fori*" (Albert the Great, *In IV Sent.*, d. 16, a. 46), as "estimation *of* the market" (De Roover 1958, 422). Moreover, the expression 'market price' is regularly used to refer to the Thomasian or scholastic just price (De Roover 1958, 422; thirty-nine times in Hollander 1965; regularly used in Monsalve 2014a when distinguishing between the cooperative scholastic market price and the competitive liberal market price). Despite its anachronistic tone, the use of 'market price' seems to indicate that it is the most commonly used hypothesis. However, it must be noted that we are dealing here with a value and not a price. Nothing is said about the possible fluctuation of this value, nor about its determination. What is more, it is striking that throughout *De emptione* there is no direct link between the terms 'value' or 'worth' and 'price', and there is no common phrase or proposition to match them with. The only explicit lexical links are sale and usury (usury is when you sell something for more than it is worth). It is therefore the act of the transaction and the observed situation of justice that bridge the gap between value and price, so that it cannot be said here that the effective just price on the market, sometimes for convenience called the market price, is, by identity, the value of the good. On the other hand, it can be objected that value can be revealed by prices on the common market without being identifiable or, even more so, being derived from them. This value is therefore situated ahead of its actual translation in terms of price. The Thomasian expression simply says that this value is found on the market, supposedly in the form of the just price, but this remains implicit. We can therefore transform the interpretation as follows: the non-usurious price must be a price in line with the current price that reflects the value of the good exchanged on the market. There is conformity but not identity between the value, which remains veiled, and the effective price on the market.

Interpretation 1b: The value would include the cost of credit.

The very value of the property would change, and would include the prejudice resulting from the deferred payment. This hypothesis is left open by Aquinas's second proposal. The prejudice would lead to an increase in the value of the sheet exchanged in the singular transaction, and therefore in the price charged in this exchange. According to this hypothesis, Aquinas would be justifying the integration of the need to cover the cost of the credit in the good's value itself.[56] Deferred payment combines two economic operations, trading and lending. The porosity of the financial and commercial lexicons, with the application of the term 'usury' to a discrepancy in the value (Aquinas does not use the word 'price' here) of the sheet, is an indication of a relatively unified way of thinking about this activity.[57] Aquinas would thus be taking a first step towards the possibility of a loan surplus.[58] Indeed, *Commentary on the Sentences*, in *In III Sent.*, d. 37, a. 6, condemned interest, but the presentation of the loan as an intertemporal exchange subject to a price (supra, chapter 1; Januard 2021a, 621-622 and 626-628) prepared the possibility of a surplus later on, with the alternative model of the *societas* in *S. T.*, IIa IIae, q. 78, a. 2, ad 5 (see Spicq 1935, 349-351) and especially in *S. T.*, IIa IIae, q. 78, a. 2, ad 1 by stipulating compensation for the damage caused by the deprivation of the sum, i.e. the opportunity cost (broadening the framework of *damnum emergens* – the need to borrow –, but excluding *lucrum cessans* – loss of profit) and in *De malo*, q. 13, a. 4, ad 14, where Aquinas opens the way to *poena conventionalis*, a penalty for late repayment.

There is nothing here to confirm or reject interpretation 1b, which must therefore remain open. However, this interpretation would have to be modified on the basis of the notion of *mutuum* and extrinsic titles on the one hand, and on the basis of the distinction between value and price on the other. Indeed, the existence of a surplus is established by the existence of extrinsic titles

[56] This hypothesis would testify to Aquinas's involvement in the long-term movement of the progressive opening of the scholastics to extrinsic titles, as part of their ongoing adaptation to economic realities (Munro 2003, 510-511; De-Juan and Monsalve 2006, 105-106; Monsalve 2014b, 218). This analytical grid, based on the idea that the scholastic authors come from a theology that is hostile to wealth, is criticised by Lenoble and Toneatto (2019, 27-31).

[57] Berthoud (2005, 66), on the contrary, is keen to demonstrate the specific moral character of the loan, which is irreducible to exchange, and sees in the interest what he calls a "false price".

[58] *De Emptione* does not stipulate any free compensation on the part of the buyer on credit. Indeed *De emptione*, IV is severe: "[a person who obtains a discount because he pays early] cannot claim as an excuse [...] that he does so at the invitation of another [*hoc ab aliquo inducitur*], because that reason would excuse all usurers". Aquinas slightly relaxed his position in *S. T.*, q. 78, a. 2 (spontaneous loan granted in return, in ad 4) and the possibility of demanding compensation that cannot be assessed at a price, such as the benevolence, friendship or gratitude of the borrower (*respondeo*). However, Piron 2005 insists on Aquinas's distinction between contract and friendship and on his distance from the notion of *antidora*, which at the beginning of the thirteenth century placed gratitude within the very framework of the loan.

associated with the *mutuum*, a Roman law interest-free loan (McLaughlin 1939, 125-147; du Passage 1946, col. 2361 and 2364; Noonan 1957, 105-132; Mélitz 1971, 475 and 484-485; Lapidus 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 2021, 607 and 628-629 – *supra*, chapter 1). The surplus is therefore external to the good: strictly speaking it is a supplement to the price, not to the value. It is not the value of the sum loaned that is modified but the repayment price, which may include in addition compensation for the cost to the lender. A distinction is therefore made between the value and the surplus integrated into the exchange ratio. The proposal could therefore be formulated as follows: the non-usurious price transcribes an exchange ratio which, beyond the value of the good exchanged, may include a surplus provided that it is acceptable.

Interpretation 2: A stable secundum se value.

According to a *prima facie* reading of Aquinas's second proposal, the price, which may fluctuate, must remain below the value of the sheet, which is nowhere said to evolve, neither over time in the market (interpretation 1a) nor because of time in the forward sale (interpretation 1b). This value would depend, then, neither on the price on the market nor on the prejudice of the seller on credit. Only the price in the singular exchange would increase. The situation would not be usurious as long as this price, despite its increase, remains lower than or equal to the just price corresponding to the value of the good. Several arguments support this thesis. Aquinas does not use the term 'price', and the term 'value' appears only in verbal form. There is, however, a price-value tension. The price, expressed by the comparative "*plus... quam*", here corresponds to an effective exchange ratio in a sales transaction between an identified seller, the Tuscan merchant, and an implicit buyer. The value is not related to the agents, but only to the fabrics, to the good exchanged. Moreover, in Aquinas's first proposition, the value on the market does not explicitly fluctuate, whereas the price on a market does vary. This interpretation must be nuanced, however, because it is not formally stated that it is a *secundum se* value and, while there is nothing to say that it varies, there is nothing to state definitively that it does not. Aquinas's later writings do not allow us to make a definitive statement on this point. Interpretation 2 can therefore be reformulated by stating that the non-usurious just price, which may possibly vary (interpretations 1a and 1b), but not necessarily (interpretation 2), visibly and observably transcribes the value of the good which is not determined in *De emptione* and which remains equivocal in all the Thomasian works.

The above interpretations remain open. There is no way to say what the value comprises or whether it changes. On the other hand, all the arguments plead in favour of a distinction between effective price and value which would not simply be a discrepancy in *level* or *degree*, but rather a difference in *nature* between an exchange ratio and the value of the thing – where the latter is a value of justice, since it is the criterion of conformity to the effective just price, and is upstream of the effective exchange. It should then be noted that the polysemy of value, and therefore the imprecision of its determination, represents an informational risk as well as a risk concerning the understanding of the justice to which the effective exchange must conform.

3.2. From just price to just prices

Having shown the conceptual distance between value and the effective just price, further investigation is needed to understand the term "worth in the market", which commentators have sometimes unfairly glossed as 'market price'. Bringing together the various economic elements of *De emptione*, including the renewed understanding of valuation as an approximation and as a determination by reference to a moral criterion already present, along with the lexical study of the expression "*secundum communem forum*", and then mobilising the recent rediscovery of the normative and moral framework of scholastic reflection on price, makes it possible to provide new foundations for the notion of just price. The just price is now seen not as a market price, but first of all as a normative price, rooted in the virtue of justice, which is translated into a plurality of acceptable prices that are in conformity with it, and that can eventually be found on the market.

3.2.1. 'Worth on the market' or 'market price'?

After distinguishing between value and price, the concepts of price and just price need to be clarified. The expression 'just price' does not appear in *De emptione*, II; however, it is in this chapter, amidst a background of confusion over the difference between value and price, that the debate on the meaning of the Thomasian 'just price' has its roots (De Roover 1971, 57-58). While there is no formal mention of the just price, the situation of usury indicates that the sale, and therefore implicitly the price charged, is not in accordance with justice, i.e. the price of the exchange does not correspond to the value of the good. In *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 on market activity, Aquinas had not taken up the question of price which had been introduced by Albert the Great in *In IV Sent.*, d. 16, a. 46: "the just price [*justum autem pretium*] is what, according to market estimation [*quod secundum estimationem fori*], the thing sold can be worth at that moment [*illius temporis potest valere res vendita*]" (see Langholm 2003, 57 and 245).

De emptione, II seems to return to Albert with a lexical closeness: "sell the fabrics more expensive than they are worth according to the common market *[plus vendant pannos quam valeant secundum communem forum*]" without introducing any necessary variation in value or just price. One can then try to reverse the expression to obtain a definition of the just price as it was introduced in *De emptione*, I: in *De emptione*, II to conform to it would therefore consist in selling at the price prevailing on the common market. Two readings of the expression 'just price' are then possible, based on the assumptions previously made about value:

1st reading: The just price is the price applied on the market.

In this case it is the price set on the market that determines a just price that is equal to it. The ease of translating *secundum communem forum* as 'market price' reinforces the perception of a market as an entity which determines the just price (although the term *pretium* is absent from the original sentence). In this case the Thomasian just price would be a market price (as in De Roover 1958, 422; Langholm 1992, 228-233; and Sivéry 2004, 703; for an overview of this position, see Lapidus 1992, 29; Franks 2009, 87-89; and Monsalve 2014a, 10-11), or a current market price outside of a crisis situation (De Roover 1971, 57-58), or a market price with the exception of situations of fraud and default on the one hand and force and need on the other (De-Juan and Monsalve 2006, 103-104).

2nd reading: The just price cannot be considered *to be* the market price.

Several elements speak for this hypothesis. Firstly, the study of the "*justa aestimatio*" in Aquinas's works shows that estimation does not consist in establishing the just price but in approaching a normative and pre-existing just price. The use of the expression in *De emptione*, I is not very explicit, but the occurrence found later in *S. T.*, IIa IIae, q. 77, a. 1, ad 1, is more eloquent. The market does not make the just price, but, if it functions in a just manner, it does lead to acceptable prices that are in conformity with justice. The estimation process points to a variety of prices that result from approximation, and that are acceptable although they deviate from the just price. Thus, "a slight increase or decrease in the price [*modica additivo vel minutio*] does not seem to be able to take away the equality of justice [*non videtur tollere aequalitatem justitiae*]" (*S. T.*, IIa IIae, q. 77, a. 1, ad. 1). Further, the agent has a certain freedom: "Whoever acquires an object that is very advantageous to him may, on his own initiative [*propria sponte*], give something extra to the seller [*aliquid venditi supererogare*]. This is honest [*quod pertinet ad ejus honestatem*]" (*S. T.*, IIa IIae, q. 77, a. 1, resp.). The criterion of justice here is the agent's freedom to offer a price that is unfavourable to him. Finally, in *De*

emptione, II the reference of justice is the value according to the common market (*valeant secundum communem forum*); this is not explicitly a question of a price on the market but rather of a value.

The study of the meaning of the preposition *secundum*, which introduces the link between value and market, reinforces this distance between value, price and market. *Secundum* primarily means 'behind', 'along with', or, in a temporal meaning, 'immediately after'; this then gives it the meaning 'second', 'of a lower rank'. Yet there is a fourth meaning, 'according to', 'in accordance with', 'in favour of', which is opposed to *adversus*, and which is also found in other Indo-European languages (Quicherat 1893, 1013; Ernout and Meillet 2001, 608). In the Middle Ages, the preposition takes on a temporal, causal and final meaning: 'at the moment of', 'as a result of', 'in view of' (Blaise 1975, 833), 'during', 'following', 'regarding', 'for', 'in the aim of' (Blaise 1954, 747). The sense of conformity is broadened both quantitatively and qualitatively, to include the locative: 'in proportion to', 'in the same manner as', 'in', 'among' (in the Hellenistic sense); and a distributive sense: 'simultaneously', 'at the same time'. Depending on the meaning chosen for *secundum*, the link between value and market takes on a different structure: one can choose a simple locative or temporal meaning, the value which one finds on the market then being like something situated along the edge of a sea (*secundum mare*), which one might gloss as 'during' the market. One might envisage a meaning in the sense of a 'manner' or 'means', the value thus conforming to the market in the way that an agent might conform to the law (*secundum legem*). One might also consider a quantitative meaning, but the market would then not be a place but a price whose value would be proportional.

The translation as 'market price' implicitly retains the strongest causal meaning. However, three objections can be made to this choice. First, even if the value were *secundum forum* in the same way as it would be *secundum legem*, there would still remain a distance, introduced by *secundum*, as well as a margin of conformity, which is not identity. It should be added that the preposition *secundum* does not usually have a fully causal meaning, and conformity only has the sense of a 'manner'. In this case, the market sets a price, but value is broader than price, so that we cannot identify value and price, and the causal link is reversed since the lexical study of value has shown that price is an expression of value, in all its polysemy, and not the other way round. In Aquinas's works, *secundum* as a preposition is used in a way that might suggest, if not a causal sense, then at least a sense of subordination, when the referent (in the accusative case) is a principle that has ontological precedence over the subject, which is a concrete reality. A distinction may, for example, be *secundum rationem* (according to reason) or *secundum esse*

(according to being); or a reality may be *secundum justitiam* (according to justice), *secundum legem* (according to law), *secundum veritatem* (according to truth). The general principle constitutes the reference to which the subject conforms. However, the only occurrence of a variant of *secundum communem forum*, in *In III Sent.*, d. 37, a. 6, and the four occurrences of *forum* in the sense of market (*In I Sent.*, d. 37, q. 3, a. 2, ad 3; *De malo*, q. 1, a. 3, ad 16; two in *In Physicorum*, l. 2, n. 7 and n. 2) are temporal and locative, the last three occurrences being found in the expression 'going to the market'. There are also 395 occurrences of the form *foris*, often in the general Latin locative sense of 'to be outside', 'in the square', or 'at the market'. It would therefore seem that it is difficult to consider the market as an immaterial principle which would determine a singular material reality which would be value. It is more likely that the market is, on the contrary, the place of value's manifestation. Finally, Aquinas does not explain the polysemy of *secundum* and does not present any contradiction between its different meanings. It is therefore possible that for *secundum*, as for *valeo*, it is necessary to retain the plurality of meanings establishing both a link and a distance between the subject and its complement, without it being possible to specify the nature of this link.

The double lexical and conceptual distinction, between value and price on the one hand, and between the different meanings of *secundum* on the other, proves to be decisive here in order to avoid the two shortcuts that turn 'worth on the market' into 'market price' by translating 'value' as 'price' and giving the market an active role of justice.

3.2.2. Just price and acceptable prices

The normative character of a *just* price as distinct from *possible* and *acceptable* prices has only gradually emerged in the secondary literature. Distinguishing between possible and acceptable prices and the just price, as the second hypothesis does (Lapidus 1994; Chaplygina and Lapidus 2016, 25) based on the normative framework of scholastic reflection (Chaplygina and Lapidus 2016, 20), leads to a rethinking of the debate on the just price (Bartell 1962, 364-380; Franks 2009, 84-89 by taking it out of the ontological framework to which it was assigned by the subsequent re-reading of the market economy (Franks 2009, 69). Indeed, the just price in this case is *not* a market price, as it appears in De Roover (1958, 422 and 1971, 57-59), Langholm (1992, 228-233) or Sivéry (2004, 703), in the sense that it is the result of the market; *nor*, as maintained by the thesis against which this approach was developed, is it a price through the costs of production "in labour and expenses [*in labore et expensis*]" (*Ethicorum*, V, 9) as supported by Tawney ([1926] 1948, 41; see also Baldwin 1959, 73-74), in the sense that it

would be the fruit of their determination; *nor* is it even a price resulting from a combination of both approaches, which would be a market price oscillating around production costs (Hollander 1965). The recent emphasis on the moral dimension of the just price, however, has enabled a new step to be taken: Hamouda and Price (1997, 192-193), Gomez Camacho (1998, 535), De-Juan and Monsalve (2006, 100-101), and Monsalve (2014a, 5) begin to introduce a distance between 'just price' and 'market price' by underlining that the just price includes moral elements. Koehn and Wilbratte (2012, 505), for their part, shift the subject of justice from the price to the person, the just price then being the price adopted by the just person. Man is first *homo justus*, before becoming *homo oeconomicus* (Monsalve 2014a, 16). Santori (2019, 85; 2020, 278; 2021, 15) has recently highlighted an earlier stage, man being first for Aquinas *naturaliter homo homini amicus*, the friend, who gives himself over to the gift (*donum*), before being considered *homo justus*; and Franks (2009, 105-181) and Le Goff ([2010] 2019, 225-231) stress the significance of an anthropology of the gift through the development of *caritas* (charity).

It seems, however, that it is not enough simply to blend the market with elements of justice, but rather that a distinction must be made between two different pricing planes: that of the just price and that of effective prices. The just price would then be the normative framework within which effective prices could be determined, or in other words the trade ratio, according to production costs and the bargaining power of agents.

Thus, if the just price is a normative price of justice, it remains to explicate its connection with value, which is the ultimate referent of justice. Nothing permits a distinction in *content*, or of *level* or *degree* between just price and value, since both designate the norm of justice, which remains veiled but which is manifested in the actual just price. There is therefore a correspondence between value and the normative just price. However, the lexical and conceptual distinction between value and price speaks in favour of a distinction in *nature* between value and just price. Whereas the term 'just price' already expresses justice, lexically speaking, in terms of the exchange ratio, 'value' has a polysemy that gives it an ontological (but not quantitative) content that is much broader. Conceptually and ontologically speaking, therefore, the normative just price is not the value; rather, it is the perfect expression, in terms of normative justice, of value in terms of the exchange ratio.

It should be noted that while value remains veiled, the just price itself is not defined by Aquinas. The polysemy of value therefore seems to be transferred onto the notion of the just price, when

translating this reference point of justice into an exchange ratio. We might emphasise the not-very-explicit character that will still be evident in the *Summa theologiae* in the expression at *S. T.*, IIa IIae, q. 77, a. 1, resp., to "give something more to the seller". What is the reference used to determine what the buyer is paying extra over? Is it the price on the common market (as *De emptione*, II puts it), the 'agreed price' between the contracting parties (as Spicq 1935 translates it into French, diverging from the Latin), or a normative just price? And in addition to which price may the buyer pay a supplement? It is only by articulating these three levels – the normative level of justice, the market and individual exchange – that we will be able to arrive at a clear definition of what the just price is.

4. A typology of risks based on the scholastic conceptual apparatus

Starting out from the rediscovery of the ontological primacy of justice and the articulation between the just price and a set of acceptable prices, a reading of *De emptione* in the light of the whole of Aquinas's work allows us to mobilise two concepts, both familiar to him, in order to deepen the notion of the just price and establish a mapping of the related risks. The mobilisation of the scholastic categories of *sign* and *analogy*, notions with which Aquinas was well acquainted, allows us to take a new step by making a distinction of *nature* and not of *degree* between three levels of reality of the just price: the normative just price, the market price, and the effective price of exchange. For each level of reality, three categories of risk are present: the risks of analysis or misunderstanding of what the just price is and the process through which it manifests; the commercial risks inherent in any market exchange, to which are added the specific risks linked to the intertemporal dimension of forward sales; and the strategic risks when one of the agents adopts a usurious position and goes outside the sphere of the just price and acceptable prices. This therefore makes it possible to propose a typology of risks, in the form of a cross-tabulation of the three levels and three categories.

4.1. Conceiving the just price through the scholastic categories: sign and analogy

To deepen our understanding of the interrelation between normative and acceptable prices, we may appeal to two medieval – and, indeed, particularly Thomistic – categories: that of the thing (*res*) and the sign (*signum*, *sacramentum*), and that of analogy. These categories are widely employed by Aquinas in dealing with philosophical and theological questions, and they constitute part of the framework within which he was accustomed to reason. We can therefore mobilise non-economic examples in which these devices are explicit in to articulate the different levels of understanding of the just price – since it is one and the same author, Aquinas,

who dealt with issues of the sacraments, the divine names, and the just price. The theology of the sacraments, based on the philosophy of the signifier and the signified, suggests we think in terms of several successive levels of reality, from the sign to the thing. Thus, if we apply the signifier-signified sequence to three levels of reality that Aquinas uses for the sacraments, the effective price would in a way be the sign of a thing, the market price, which would itself in turn be the sign of an ultimate reality, the normative just price pre-existing the exchange. The philosophy of language, meanwhile, which deploys the concept of analogy, suggests we consider the possibility of there being several meanings for the same term, which are linked together by a causal chain but which are not identical. This makes it possible to preserve each level of the just price in its own space of determination, and to envisage a set of acceptable prices resulting from the normative just price.

4.1.1. The effective price as a visible sign of the just price

Aquinas uses the notion of *sacramentum* in theology when treating of invisible holy realities, in particular concerning the sacrament, which is a visible sign (*sacramentum*) of a holy reality (*res et sacramentum*), itself in turn being a visible sign of an ultimate and higher reality (*res tantum*) – there are 92 occurrences of this triptych in his works (Michel 1939, col. 581-582 and Revel 2004, 477-520). The most common example concerns the sacrament of the Eucharist in Aquinas's theology. The bread (host) and wine are the visible signs (*sacramentum*) of a sacred reality, the body and blood of Christ as the bread and wine consecrated by the priest during the mass. This consecrated bread and wine, thus becoming the substance of the body and blood of Christ, are a sacred reality and at the same time still the sign of an ultimate reality, hence their name *sacramentum et res*. The ultimate reality (*res tantum*) of the Eucharist is the grace conferred on those who receive it (e.g. *S. T.*, IIIa, q. 73, ad 3).[59] The sign is not always just an indicator. The sacrament is *sacramentum efficax* (efficacious, which produces an effect) – 285 associations of these two terms, including 68 occurrences of the expression as constituted – and it fulfils what it means (Rosier-Catach 2004). Thus Aquinas repeats the phrase *sacramenta significando efficiunt* (the sacraments do what they must mean) nine times in his works. They are thus sign and cause (*signum et causa*), not as the principal efficient cause which would be

[59] For Baptism, for example, "something is the *sign only* [*sacramentum tantum*], like water that flows out and does not remain, something is *the sacrament and the thing* [*sacramentum et res*], which always remains, this is the character, and something is the *thing only* [*res tantum*], a day remains, a day passes, this is grace" (*In IV Sent.,* d. 3, q. 1, a. 1, qc. 1, ad 1).

at the origin of holy reality, but as the instrumental efficient cause which makes the principal efficient cause effective (*S. T.*, IIIa, q. 62, a.1).

Since Aquinas does not use the expression *sacramentum* concerning the just price, it is advisable to guard against too rapid a transposition which would make the acceptable and effective prices simple 'sacraments' of the normative just price[60]. However, the just price applied by the contracting parties can be considered as a sign that manifests a just price applied on the market, which would be the sign that manifests the normative just price, where the latter is not seen but results from equality of justice. The category of sign allows us to introduce a relation of conformity while refraining from positing a straightforward identity between the levels of reality of the just price. Furthermore, the notion of instrumental cause makes it possible to account for the fact that the particular co-contracting parties, and the market, practise prices that make the just price effective, and which manifest it, yet without being its origin – the principal cause being equality of justice. Finally, Aquinas's sacramental triptych, which starts from visible and material elements and moves towards an invisible reality, highlights the need for the three levels. Just as they are present for all the sacraments, and the *sacramentum tantum* and *res tantum* are necessary to go to the *res tantum*, the price of justice can only be accessed through its effective manifestations. We also locate, through the necessity of the intermediate stage that is the *sacramentum et res*, the place given by *De emptione* to the market, since the justice of singular exchange is envisaged in relation to the value "*secundum communem forum"* (*De emptione*, II) and not in direct conformity with pre-existing normative justice.

4.1.2. The effective just price as an analogy for the normative just price

The notion of analogy is also of great utility for the analysis of the just price. The primary meaning of the philosophical broad concept 'analogy (ἀναλογία)' is mathematical proportion, and then by extension ratio or correspondence, but always with an idea of proportionality (Gilson 1965, 124). Analogy also evokes a resemblance with a dissimilarity, or a partial resemblance (Chollet 1903, col. 1142). Reasoning by analogy is also biblical, rooted in Wisdom 13:5: "for the greatness and beauty of creatures makes them contemplate their author by analogy", taken from the Greek text (Septuagint), as stressed by Humbrecht (2009, 73). It

[60] The comparison must be adapted, since in Aquinas's sacramental theology the sacrament is already fully realised in the *sacramentum et res*, at the second level, whereas the price of justice, to which the acceptable prices refer, is at the third level, but it has the interest of perceiving how the expression 'just price' can be understood on different levels of reality. Moreover, we see for the price, as for the sacraments, that these three levels are broken down into two: two first levels for the accomplishment of the sacrament and then one level for its effects, two levels of effective prices and one level of just price as the price of justice.

should be noted that, within the broad concept of analogy, Aquinas takes up the concept of analogy of proportionality (Chollet 1903, col. 1142-1154; Montagnes [1963] 2008; Gilson 1965, 121-129; Te Velde 2006, 109-121; Imbach and Oliva 2009, 83-84; Bonino 2016) and uses it in *S. T.*, Ia, q. 13 in his reflection on divine names, which constitutes an essay at a theory of language. The linguistic work deployed in his theological reflections is enlightening for understanding the different meanings of the expression 'just price'. The distances between creatures may mean that nothing is univocally attributable to them (the same adjective may take on different meanings depending on the subject it qualifies), but since the distance between creatures and God is infinite, there can be no univocity of language when speaking of creature and creator.

Aquinas takes the example of the word 'wise': "Given to man, it circumscribes in some way and contains the signified reality, whereas when it is said of God, it leaves the signified reality beyond all limits and beyond the meaning of the name" (*S. T.*, Ia, q. 13, a. 5, resp.). God's wisdom cannot be limited to what we know of man's wisdom. The equivocality, however, is not total, since otherwise we could know nothing about God. Aquinas, starting from the link of creation (cause-effect), then introduces a relationship of analogy of language whereby everything that is said of the invisible from the visible is true. For this he relies on Romans 1:20: "The invisible attributes of God are made manifest to us by means of his works". However, the analogical discourse does not say everything about the invisible reality, which preserves its divine transcendence. The analogy is then thought in terms of proportion: "It must therefore be said that the names in question are attributed to God and to creatures according to analogy, that is to say, according to a certain proportion" (*S. T.*, Ia, q. 13, a. 5, resp.). Aquinas adds to the following article that if the names are first known to us through the creatures (through the visible), they are first of all attributable to the cause: "For when we say: God is good or wise, we mean not only that God is the cause of wisdom or goodness, but that in him wisdom and goodness pre-exist in a supereminent way" (*S. T.*, Ia, q. 13, a. 5, resp.). It is therefore from the invisible cause that creatures derive their attributes: "It is from God that these perfections derive in creatures" (*S. T.*, Ia, q. 13, a. 6).

Taking this discourse by analogy, which makes it possible to speak of an invisible and pre-existing cause on the basis of its visible effects, and applying it to the concept of the just price, would lead to the conclusions that the normative just price is upstream of the effective just prices, can only be apprehended on the basis of these effective just prices in real transactions, and that it is from the normative just price that the justice of these effective just prices derives.

It should be noted here that the lack of information on the just price does not prevent fair exchanges at an acceptable price, because it is compensated by information on effective prices. The term 'just price' can be used to refer to the price of the single transaction, the common market price, or the normative price, but in the first two cases it is applicable only by analogy. The concept of analogy is all the more relevant here since it is usually used to grapple with the invisible or poorly known on the basis of what is known, or to trace the known effect back to the cause. The normative just price is not clearly known and the criteria that determine it are not explained by Aquinas, but the prices that result from it are known. There remains, however, a margin of appreciation and error that is not found in the theological use of analogy. Indeed, we may ask: is the effective just price the price charged on the market, the price fixed on the basis of production costs, or the market price oscillating around a cost-based price and mixed with criteria of justice such as the prohibition of fraud? The classic debate on the Thomasian just price thus reveals imprecision in our understanding of the just price by means of analogy. However, the Thomasian analogy deployed in *S. T.*, Ia, q. 13, admits and even honours the equivocality within creation itself: "wise" takes on a different meaning depending on whether it is a child, a philosopher, or an old man of whom it is predicated, but each of these meanings says something about God's wisdom. In this spirit, both the price according to the common market and the price according to production costs can be the just price. A plurality of acceptable prices would then correspond not only to a plurality of situations, but also to a plurality of economic approaches to price.

The category of sign and the category of analogy make it possible to reintroduce an ontological approach to the just price, but at a new cost. Aquinas's *sacramentum*, in realising what it signifies, affords access to the holy reality that it designates, and the analogical discourse is compatible with ontology in the sense that the prices of the singular transaction or those practised on the market may be just, and *are* thus "just prices", but from a justice that emanates from the normative just price, which is both the principal cause and the signified reality.

4.2. From the just price to the typology of risks

The conceptual diversion through the notions of sign and analogy, which leads us to propose three levels of reality of the just price, makes it possible to identify three related risks. As long as the justice of the Thomasian price was presented according to a distinction of *degree*, where the just price resulted from a multifactorial equation potentially integrating criteria of justice, production costs, market price, and utility ratio, the risks concerning the just price could

manifest at two levels: in the determination of the level of price demanded by each of the factors, and in the weight given to these factors. The abandonment of this route in favour of a distinction of *nature*, which, with reference to a normative price level, presents us with analogous uses of the expression 'just price' to describe prices that are considered to be fair, leads us to consider risk at each of the levels of the 'just price'. It is also possible to start from the three categories of risk – analysis risk, commercial risk, and strategic risk – and to distinguish, for each of these categories, the risks relating to each level of reality of the just price. Once the mapping and the typology have been drawn up, we can identify how Aquinas reduces risk by circumventing the lack of information about the agent's intention and the nature of the just price.

4.2.1. Three levels and three categories of risks on the price

There are therefore three stages at which the observer and the co-contractors can make mistakes in determining the just price. The first analytical risk lies at the normative level, since Aquinas does not make clear the criteria of justice that govern the determination of the just price. This represents a risk to the analysis and understanding of the justice of economic activity. It is an external risk that is imposed on agents who are dependent on the moral, social, and legal framework that rules the justice of exchange. When dealing with usury in the *Commentary on the Sentences* (*In III Sent.*, d. 37, a. 6), Aquinas, distancing himself from the traditional understanding of interest loans (*supra*, chapter 1; Januard 2021a), identified the risk of error in understanding usury and determining the usurious situation. Here, Aquinas does not seem to perceive the lack of normative information that weighs on the observer, nor the risk that this poses for all economic agents. Indeed, an error in the moral understanding of the criteria of justice entails the risk for agents that the universe of acceptable prices is in reality not fair, and that they will find themselves harmed by the effective price that will result from an erroneous normative just price. Moreover, in the context of the forward sale described in *De emptione*, the agent runs a legal and moral risk of being wrongly considered a usurer, since the criterion for determining the usurious situation is a price criterion.

The second analytical risk concerns the second level of reality of the just price: this is the estimation and approximation risk on the market. This is partly an internal risk because it depends on the estimation capacity of the agents during the transaction. The analysis error here no longer concerns the normative criteria but rather the means of approximating the just price by the market. From this perspective, the perfection of the market does not lie in the meeting

between supply and demand, but in the fact that this meeting leads to an exchange ratio that conforms to the normative just price. Since it is not the market price that is the just price but the just price that must be translated into a market price, risk intervenes in two ways: in the adjustment of supply and demand, but also in the perception and implementation (or not) of corrections allowing the meeting of supply and demand to happen at an acceptable price that is in conformity with the normative just price. Thus the idea that the Thomasian just price is the market price not only reverses the logical order between normative primacy and market effectiveness, but also leads to a risk of misunderstanding the transition from the normative price to the market price, and thus to a risk that the market price is not fair. Indeed, this position does not envisage that, in order to be a just price, the price need not necessarily result from the simple meeting of supply and demand, but that corrections may be necessary to reflect as closely as possible the normative just price.

The third analytical risk is located at the third level of reality, and concerns the possibility that the effective price of the singular exchange should not fall within the universe of acceptable prices. This can occur if factors that are not in accordance with justice are admitted in the determination of the singular price. Here again, this is partly an internal risk because it depends on the ability of the singular agents to apply the right criteria of justice during the exchange. Forward selling, as described in *De emptione*, seems to present a clear, objective and visible criterion of justice: there is usury, and therefore injustice, when the variation in price due to time, by delay of payment or advance payment, exceeds the just price. However, it should be noted that the distance taken in the *Commentary on the Sentences* (*supra*, chapter 1; Januard 2021a) from the traditional argument against usury, as well as the introduction of a risk of analysis in the understanding of interest loans, make it necessary to include the risk of our making a mistake in our analysis of the very notion of usury itself. Aquinas does not call into question the condemnation of usury, but his introduction of a risk of error in its understanding entails that this condemnation itself poses a risk of injustice, and therefore of a mistaken moral characterisation of forward sales that include a variation in price due to time. In addition, *De emptione* does not provide a complete presentation of the factors which may or may not have an influence in the transition to the singular price in a commercial exchange.

Each of the three levels of reality of the just price also corresponds to a non-usurious commercial risk which is inherent in any exchange, and is aggravated by the introduction of a temporal dimension. In the transition from a normative just price to a set of acceptable prices, the price at which the exchange takes place, even if just, need not necessarily be the best for the

agent. The commercial risk relating to the first level of reality of the just price is therefore not temporal but linked to the very articulation of the three levels of reality of the just price and to the plurality of effective possibilities. It is therefore an external risk, since agents exchange within the framework of this plurality, which is given to them. The commercial risk emerging at the second level of reality is temporal: it is the risk of price fluctuation on the market. This commonly observed price can vary for multiple reasons, depending on the evolution of supply and demand. Within the set of acceptable prices, the price observed on the market, while remaining fair, may yet vary to the advantage or disadvantage of sellers or buyers. Here again, this is an external risk, with agents receiving the price emerging from the market. Finally, the third level of reality, that of singular exchange, may see the price vary within the set of acceptable prices for commercial reasons linked to the confrontation between the bargaining powers. This is a mixed risk: an internal risk, since it stems from the exchange itself; but this risk is also external in the sense that the powers exercised in the process of bargaining during the exchange reflect a situation that is determined outside it. The conditioned will, which Aquinas universalises in *De emptione* through the potentially usurious dimension of forward selling, and which he extended ten years later in the *Summa theologiae* to simple commercial exchange (*S. T.*, IIa IIae, q. 77, a. 1, resp.), can lead to a price that is just but disadvantageous. To the need to carry out the exchange at a time when the price on the current price is unfavourable is added the effect of weak bargaining power on the effective price during the singular exchange.

To the triple levels of risks of analysis and understanding on the one hand, and of commercial risks on the other, we must add a triple level of strategic risks, which are internal risks because they relate to the behaviour of agents during the exchange: the risk that an agent should deliberately try not to exchange at a just price in line with the normative just price but at a usurious, unfair, and illicit price that is more advantageous. This can happen even when the exchange takes place at the normative just price, through a distortion of the criteria of justice in favour of the self-serving agent. Aquinas's lack of precision on the criteria of justice, as well as the margin of application on the part of the civil authorities regarding the canonical and theological condemnation of usury, and the relatively slim practical prospects of fighting against usury (McLaughlin 1939, 85-95 and 1940), can all feed into this strategic risk which occurs at the first level of reality of the just price. And a strategic risk also appears at the second level of reality of the just price, that of the market price. Here, price manipulation strategies arise, which are to be distinguished from the corrections implemented to ensure that the

universe of acceptable prices is fair. More precisely, in the usurious framework described by Aquinas, the usurious price, which integrates time, will be passed on to the non-usurious price. Strategic risk may also intervene in the determination of the singular effective price, for example by practicing a usurious forward sale and taking advantage of the conditional willingness of the contracting party to step outside the set of acceptable prices. Aquinas does not consider here simple commercial fraud, and therefore non-usurious strategic risks, such as the failure to reveal a hidden defect of the object sold, as he will do in the *Summa theologiae* (*S. T.*, IIa IIae, q. 77). In *De emptione*, the criterion of commercial injustice is that of usury.

This gives us the following price risk matrix:

Risks / Price	Analysis risk	Commercial risk	Strategic risk
1st level of reality Normative just price	*1st level of analysis risk* Risk on the criteria of justice: ➢ Lack of precision of *De emptione* on the criteria of justice. Lack of information, moral and legal.	*1st level of commercial risk* Risk of plurality of acceptable prices: ➢ Just price but not the most advantageous price for the agent within the set of acceptable prices.	*1st level of strategic risk* Circumvention of the notion of justice or interpretation for usurious purposes by the contracting party: ➢ Lack of information on the intention of the contracting party and on the true criteria of justice.
2nd level of reality Price on the market	*2nd level of analysis risk* Risk of error or approximation: ➢ When estimating in order to translate the just price into price on the market.	*2nd level of commercial risk* Risk of market price fluctuation: ➢ In time and space.	*2nd level of strategic risk* Risk of price manipulation strategies: ➢ The contracting party passes off as a non-usurious price on the market a price that in reality includes time.
3rd level of reality Price in the exchange	*3rd level of analysis risk* Risk of error on the value of the good and on the acceptable elements in the price: ➢ Lack of precision of *De emptione* on the definition of value, on the concept of usury and on the content of the acceptable effective price.	*3rd level of commercial risk* Risk of bargaining power: ➢ Unfavourable situation, within the set of acceptable prices, due to the conditioned will or necessity to carry out the exchange in a time and place in which the market price is unfavourable.	*3rd level of strategic risk* Individual usurious risk: ➢ Usurious strategic behaviour of the contracting party accepted out of necessity (conditioned will) or by lack of information.

Table 1: Distribution of risks in *De emptione*

4.2.2. Price as an instrument to reduce risk

This typology of risks sheds light on the way Aquinas effects a reduction of these very risks by mitigating the lack of information. First of all, it should be noted that in the effective exchange, the risks are intertwined. They can therefore impinge upon agents in a cumulative manner, while also appearing as irreducible because they are not clearly identified. Distinguishing them according to their category and level may then make it possible to treat each risk in a specific manner, facilitating action either by the agents, the observer, or the legislator. Secondly, the typology drawn up on the basis of forward sales, which is both a commercial exchange and a

loan, applies to both aspects of this operation. This thus confirms the initial observation that, while distinguishing between loan and commercial exchange, Aquinas adopts a unified vision of economic activity through the justice of the price (*supra*, chapter 1; Januard 2021a, 623 and 626-630). Finally, the typology of risks highlights the role of the price, as a unique and visible indicator, in limiting the risk of information on the fairness of the transaction. Aquinas does not base justice on hidden elements of the operation, such as the intention of the agents, which is important for him as a theologian but remains inaccessible, but focuses on the price, which is observable.[61]

One question remains, however. In *De emptione*, I Aquinas excludes from his analysis deliberate usurious fraud (*non in fraudem usurarum introducta*), and this tends to reduce the strategic risk of the situations to which he refers. If one rests only with Aquinas's brief introductory mention of this issue, the usurious risk would be a risk of analytical error but would not result from a strategic intention on the part of the agents. In this case, the usurious situation resulting from a higher price due to the expectation in the forward sale (*De emptione*, I) would then be more related to the risk of error in the analysis of what the just price is. Similarly, in the event that the buyer, by obtaining a discount because of the advance payment, would in turn find himself in a situation of usury (*De emptione*, I and IV), it would be necessary to plead misunderstanding.

However, we can temper this moral optimism for several reasons. First, Aquinas does not describe an automatic mechanism, but deliberate actions by agents who sell and buy at a certain price. Secondly, they are well-informed professionals: in *De emptione*, II they are Tuscan merchants who come to the Lagny fair, i.e. merchants who criss-cross Europe, travelling traders meeting wholesalers from fair to fair (Spicq 1935, 392-399; Dupuy 1992, 31; Le Goff [1956] 2001, 9-40; Dellemotte 2017, 25). Specialised or not, large or small, the traders are familiar with written contracts and keep 'books of reason' (accounting). They must master navigation, accounting, foreign exchange, and elements of commercial law (Feller 2020, 57). For these professionals, who thus have a certain culture and a broad practical knowledge, the situation of usury therefore seems to result more from the exercise of a strategic will than from a conceptual and moral ignorance of the just price. Finally, in *De emptione*, III reference is made to merchants who want to "indemnify themselves [*se conservare indemnes*]" for the expectation or who

[61] Following Hamouda and Price (1997, 200), the source of the achievement of exchange justice can be found in the four functions they identify for the scholastic just price: to compensate for a loss, to enable the satisfaction of a need, to provide a fair valuation, and to restrict abuses in trade.

invoke the need to "live more honourably or to develop their trade [*ut scilicet honorabilius vivant et maiores mercationes faciant*]". Here there is not necessarily a deliberate usurious intention, but there is nevertheless a clear strategic intention to bring into the determination of the just price parameters that are foreign to it, which Aquinas even equates with "expenses incurred without precaution and imprudently [*expensas quas incaute et imprudent fecisset*]".

Aquinas does not dwell on the agent's intention, since it remains hidden from the observer, although the Thomasian articulation of the link between causality and freedom makes human behaviour largely predictable (Conrad and Hunter 2020); instead, he focuses on describing the different situations. However, the agent is always presented in *De emptione* as the author who is responsible for his commercial acts and their moral character. It is noteworthy that the only case where the wording is nuanced – when Aquinas refers in *De emptione*, I to the buyer who, obtaining a discount for early payment, "would rather have to fear a situation of usury [*plus esset de usura timendum emptori*]" – returns in *De emptione*, IV in a more affirmative tone: "we see that he commits usury [*usuram committere videtur*] because he is obviously selling the prepayment [*quia manifesto tempus solutionis pecuniae vendit*]", a firm stance which is found *S. T.*, q. 78, a. 2, ad 7. The absence of an explicit characterisation of intent does not remove the moral and legal responsibility for the usurious nature of the act (Todeschini 1994, 135; Dejoux 2014, 854), since the agent "is required to reimburse" (*De emptione*, IV). Aquinas does not dismiss the subjective dimension of justice, characterised by intention, but the use of a visible and objective criterion of justice, no longer attached to the subjects (the agents) but to the object (the sale), is sufficient to ensure the justice of the exchange. Indeed, justice manifests itself in a relationship of proportion, therefore externally (Lapidus 1994, 436), as the *Summa theologiae* testifies: "the matter of justice is an external activity" (*S. T.*, IIa IIae, q. 58, a. 10, resp) and "the object of justice [*objectum justitiae*]" is "something external [*aliquid exterius constitutum*]" (*S. T.*, IIa IIae, q. 59, a. 2, ad 3). Injustice is the maladjustment of an external act to the right of another person, and is therefore a matter of the objective and external nature of the act, irrespective of the own agent's desire to be just (Delos 1932, 194-195 and 198-199).

It should be noted that Aquinas only addresses strategic risk on the side of the agent who directs an exchange to his benefit; nothing is said in *De emptione* about the responsibility for vigilance by the contracting party who would be the victim of an abusive price. *De emptione* does not yet contain the principle expressed in the adage *caveat emptor* (let the buyer beware) (De Roover 1971, 53), nor yet the principle *emptor debet esse curiosus* (the buyer must be curious), which Aquinas would develop ten years later in the *Summa theologiae*, when considering defective

goods (*S. T.*, IIa IIae, q. 77, a. 3, resp.). The absence of a call for vigilance about strategic risk in *De emptione* is not due to an absence of this risk, but to the fact that Aquinas focuses his gaze exclusively on the one who influences or sets the price (the seller, who sells at a higher price forward, or the buyer, who obtains a discount for early payment). In this sense, the *Summa theologiae*, by proposing a broader view of all the partners in the exchange, would present a more explicit deployment of the three categories of risk (analysis risk, commercial risk and strategic risk) outlined in the *Commentary on the Sentences* (*supra*, chapter 1; Januard 2021a) and in *De emptione*.

5. Conclusion

De emptione extends the process embarked upon in the *Commentary on the Sentences* (*In III Sent.*, d. 37, a. 6 on usury and *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 on trade). These two early works thus offer a relatively complete and unified panorama of economic activity, in which Aquinas stands out from his predecessors (*supra*, chapter 1; Januard 2021a). By locating forward sale on the side of commercial exchange, with a purchase and a sale (*De emptione et venditione*) in time (*ad tempus*), and not within a treatise on usury as Robert of Courçon did in his *De usura* at the beginning of the century, Aquinas adopts a new stance.

Aquinas reduces the observer's risk of error by sticking to an objective and observable criterion, namely the exchange ratio translated by the price, without focusing on the agent's intention. His focus on the transaction itself allows him, as in the *Commentary on the Sentences*, to avoid sticking to a predefined status for the agent and to renew the conception of the conditioned will as it was defended by Albert the Great, both by relativising the systematic aspect of the situation of necessity as it weighs on the borrower, and by universalising the conditioned will, since in a forward sale both sellers and buyers may find themselves in a situation of usury or as victims of usury.

In the temporal framework of forward sales, the situation of injustice corresponds to the situation of usury, taken here as an indicator of the gap between value and price when there is a time factor in play. A conceptual leap will occur a few years later with Giles of Lessines, in his *De usuris*, who addresses much more complex situations and introduces foreign exchange. *De emptione*, by contrast, presents more simple situations and does not offer any speculative development on usury, value, or the effective just price, but it highlights the justice of the price as an adequacy to the value of the good, through the relationship between expensiveness and value (not selling a good as more expensive than it is worth). Moreover, it appears that the just

price, both in its understanding and in its effective determination, is neither obvious nor immediate, as evidenced on the one hand by the Thomasian discussion of each of the cases presented in *De emptione* and on the other by the elements of the process leading to the effective just price, starting with the notion of estimation. Aquinas, as he had done for usury in the *Commentary on the Sentences* (*supra*, chapter 1; Januard 2021a), thus suggests that the first price risk is a risk of analysis and understanding of what the just price is, and of how to determine an effective just price.

After the first reflections in the *Commentary on the Sentences*, Aquinas now opens the way for a second stage. If a price is a just price, this is because it is ontologically derived from justice, which is a virtue that pre-exists exchange. This leads to a distinction in nature, and not in degree, between the normative just price, the range of acceptable prices practised in the market, and the price actually adopted during the singular exchange. The debate that would oppose the *De emptione* and the *Summa theologiae* (market price) on the one hand to the *Commentary on Nicomachean Ethics* (price by production costs) on the other, is thus largely relativised, since it is no longer a question of giving these prices a function of determination but only of expression, as sign and analogy of the just price. Starting from justice and mobilising the Thomasian conceptual apparatus of sign and analogy makes it possible to re-found the notion of just price by articulating it around three levels of reality (normative just price, market price, and singular price). For each of these levels, three risks are involved: a risk of error in analysing and understanding the just price; a commercial risk within the range of acceptable prices that comply with justice; and a strategic risk where the co-contractor seeks to step outside this acceptable range. The mapping of risks which arises from this reframing provides a grid for a new reading of Aquinas's subsequent works on exchange subject to price, whether this be a trade in goods or an interest-bearing loan.

Deuxième partie :
Le risque de l'échange commercial,
vers un risque de prix

Thomas traite de l'échange commercial, c'est-à-dire des opérations d'achat et de vente, dans le *Commentaire des Sentences* (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3) et dans le *De emptione*. Le premier texte dresse un panorama large des critères qualitatifs et quantitatifs de la justice de l'échange à travers les conditions d'exercice de l'activité marchande, tandis que le second s'attache plus directement au prix puisqu'il décrit les dépenses que le marchand peut intégrer dans son prix de vente et celles qu'il ne peut faire supporter au client. Si le *De emptione* traite de la vente à terme, cette dernière question, présentée en *De emptione*, III, dépasse ce cadre et s'applique à toute activité commerciale. Le risque commun à ces deux textes est le risque d'injustice de l'échange, une injustice qui peut intervenir soit lorsque les conditions de la vente décrites par Thomas dans le *Commentaire des Sentences* ne sont pas respectées, soit lorsque le prix comprend des dépenses qu'il ne devrait pas intégrer.

Thomas commence par considérer l'activité des marchands dans le *Commentaire des Sentences*. Il se démarque de ses prédécesseurs Gratien et Pierre Lombard en ne considérant pas qu'il s'agit d'une activité toujours peccamineuse. Thomas s'attache à définir une licéité de moyen, sans se prononcer sur la licéité de l'activité à partir de sa finalité. Il emprunte à Albert le Grand le triptyque qui fixe les conditions de cette licéité : la personne (qu'il ne s'agisse pas d'un clerc), le temps (l'activité n'est possible que certains jours) et le mode (l'activité doit être conduite sans fraude et selon le contrat licite). Le prix ne constitue donc pas un critère explicite de la justice de l'échange opéré par le marchand. Cependant, le triptyque comporte une dimension qualitative (personne, jour, part qualitative de l'absence de fraude et du respect du contrat, comme la juste information sur la qualité du bien par exemple) et une dimension quantitative qui est implicitement traduite par le prix (la fraude peut se traduire par l'application d'un prix injuste, et le contrat prévoit le prix). Thomas donne ainsi le cadre général de la justice de l'échange, qui repose à la fois sur un critère qualitatif et sur un critère quantitatif. Le risque d'injustice est donc double, puisque l'injustice peut être qualitative ou quantitative. Par ailleurs, pour le marchand, le risque se situe au niveau de la licéité de son activité, puisque celle-ci varie selon les auteurs et que Thomas ne l'établit pas formellement, au niveau des conditions, puisque la notion de fraude n'est pas précisément explicitée, et au niveau de la rémunération, puisque celle-ci est limitée à la hausse par l'absence de fraude mais n'est pas garantie face à un fort pouvoir de négociation de l'acheteur.

Le traitement de l'activité marchande dans le *De emptione* présente, lui, la justice de l'échange en termes de prix. Cette justice est, comme dans le *Commentaire des Sentences*, à la fois qualitative et quantitative, puisqu'elle repose sur la nature des dépenses, mais la synthèse est

d'ordre quantitative. Le risque se manifeste alors comme un risque de prix pour chacun des agents. D'une part, si le marchand intègre des dépenses illicites, le prix devient injuste au détriment de l'acheteur. D'autre part, les dépenses peuvent être envisagées comme des risques pour le marchand, puisqu'elles sont faites sans que le prix et la quantité du bien qui sera vendu ne soient encore connus du marchand, et que certaines ne peuvent être supportées finalement par l'acheteur. C'est le cas des dépenses engagées à l'occasion d'un emprunt contracté pour développer son activité ou des dépenses imprudentes soit en raison de la négligence du marchand soit en raison d'une mauvaise gestion face à l'avenir. Cette imprudence accroît le risque de perte pour le marchand.

On passe ainsi, d'un texte à l'autre, d'un risque large portant sur des critères qualitatifs et quantitatifs de justice, mais où le prix n'est pas explicitement nommé, à un risque exprimé quantitativement en termes de prix. Le *De emptione* constitue le premier écrit directement économique de l'Aquinate qui évoque le juste prix, qui devient explicitement le critère visible et objectif qui permet à Thomas de statuer sur la justice de l'échange, là où la notion de juste prix demeure implicite dans les deux textes du *Commentaire des Sentences*, sur l'usure et sur l'activité marchande. Le risque d'injustice devient alors explicitement exprimé sous la forme d'un risque de prix. Les dépenses illicites qui ne doivent pas être intégrées dans le prix dans le *De emptione* recoupent et développent la notion de fraude évoquée dans le *Commentaire des Sentences*, mais en faisant du prix la notion centrale qui vient unir les facteurs de justice.

Chapitre 3 :

Risks on trade: The activity of the merchant in Thomas Aquinas's *Commentary on the Sentences*

1. Introduction

The study of trade in Thomas Aquinas's 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).[62] This might seem marginal compared to the long exposition on usury in *In III Sent.*, d. 37, a. 6 (*supra*, chapter 1; Januard 2021a) or the analysis of the just price in *De emptione et venditione ad tempus* of 1262 (supra, chapter 2; Januard 2021b), and above all to the later Thomasian works[63] 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 rather as the professional activity specific to the merchant, which Aquinas here calls *negotiatio*.[64] 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

[62] Online latin version is available at https://www.corpusthomisticum.org/snp4016.html#17236

[63] 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.

[64] 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.

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 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 2014b; Chaplygina and Lapidus 2016 and 2022; Sturn 2017; Koehler 2020; Januard 2021a – *supra*, chapter 1.

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 2014a; Chaplygina and Lapidus 2016 and 2022; Sturn 2017; Hirschfeld 2018, Santori 2019, 2020 and 2021; Koehler 2020; Januard 2021b – *supra*, chapter 2.

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 (*supra*, chapter 1*;* Januard 2021a) and more systematically in relation to trade in *De emptione* (*supra*, chapter 2; 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 as early as 887. They came to own the castle of Roccasecca from the end of the tenth century. He hailed from a family of knights. His father was one, and so where 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 '*negotiando*' 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 *negotiatio* 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, *negotiatio* 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.[65] 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

[65] The idea of a specificity of the soldier is far from being limited to Aquinas’s works. Still in the eighteenth 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).

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 psychic[66]. 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 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

[66] 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).

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[67].

[67] This approach can be qualified according to Chenu 1950, 78-81: *Sed contra* is rather the alternative of the objections than the thought of Aquinas, as this article shows. Furthermore, Chenu argues for a reading in the order of the article and for an understanding of the objections as openings for reflection rather than as arguments contested by Aquinas. In this sense, the articulation between supply as finality in objection 1 and the rest of the article would be more of a deployment (Aquinas would deal with the means, the finality being posited) than a tension between ends and means.

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.[68] 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*

[68] 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*.

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).

It should be noted that where 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 legitimation. 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 [*quamdam 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 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 (Hirschfleld 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 the roads [*diversa viarum discrimina*]". 3. *A risk of cultural corruption*, because trade involves contact with foreigners, whose company most often corrupts (*extraneorum conversatio corrumpt*) 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 apertitur*). 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.[69]

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

[69] 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.

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 thirteenth 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 (*supra*, chapter 2; 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 - *supra*, chapter 2). 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.

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 - *supra*, chapter 2). 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 Sivery 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 (*supra*, chapter 2; 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.

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 (seventeenth 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 (*supra*, chapter 2; 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 2014a, 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 *supra*, chapter 2; 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.

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 (*supra*, chapter 1; 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 thirteenth 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.

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.

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 justi 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 fraud*e' 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 lucum* (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 thirteenth 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.[70] 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 tenth 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 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

[70] *Salarium*, which was rarely used in the early Middle Ages (Feller 2014) but became more common at the end of the thirteenth 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.

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 stipendum 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 in his two commentaries on Aristotle's *Ethics* (*Ethicorum*, written, in 1250-1252, ed. Cologne, V, VII, 403-404 and V, IX, 413 (see Kübel, 1968-1972, VI); and *Ethicorum*, written after 1260, ed. Borgnet, 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*:

Type / Level	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.

Table 2: 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.

Chapitre 4 :

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

1. Introduction

De emptione et venditione ad tempus (1262) is the first specifically economic treatise by Thomas Aquinas. This is the only one alongside the *Letter to the Duchess of Brabant.*[71] *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.[72] *De emptione* is a brief reply to friar James, of the Dominican convent of Viterbo, 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 - *supra*, chapter 2). 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 (*supra*, chapter 2; 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

[71] 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.

[72] 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* (*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, has been seen as the last or, on the contrary, one of the first of Aquinas's contributions. Torrell 1985 and Émery 1993 hesitated between the traditional dating of a Lenten preaching in 1273 and a dating corresponding to Aquinas's previous Italian sojourn in 1261-1268, but Torrell 2015b confirms that it has been written in 1273.

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*.[73]

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 (*supra*, chapter 2; 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 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*).

[73] 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.

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 (*supra*, chapter 2; 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* (*supra*, chapter 1; 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.[74] 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 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 (see *infra*, chapters 5 and 6), 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

[74] 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'.

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 (*supra*, chapter 3; 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 (*supra*, chapter 2; 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 justi*]" (*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 (*supra*, chapter 1; 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 (*supra*, chapters 1 and 2; 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.*, IIa 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 (*supra*, chapter 3; 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 the roads [*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 Giles of 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 - *supra*, chapter 1), 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, 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 - *supra*, chapter 1). This condemnation is present throughout *De emptione* in the form of the contradiction between usury and just price (*supra*, chapter 2; 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 - *supra*, chapter 1) 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 (*supra*, chapter 1; 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; Mélitz 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 - *supra*, chapter 1).

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 (*supra*, chapter 3; 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 (*supra*, chapter 3; 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 (*supra*, chapter 3; 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 (*supra*, chapter 2; 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.

1st 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 *imprudentia*, 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 Matthaeum*, 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 Matthaeum*, 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 Matthaeum*, 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.).[75] 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)

[75] 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).

or '*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*, p. 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 (*supra*, chapter 1; 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 counsulere*], 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.

Troisième partie :
Le prix :
Instrument de la réduction du risque portant sur la justice de l'échange

Le prix constituant le critère permettant à Thomas de statuer sur la justice de l'échange, les premiers textes abordant le « juste prix » viennent éclairer les conditions de réalisation de cette justice. Ces textes ne traitent pas du juste prix pour lui-même et ne sont pas des textes directement économiques, mais ils recourent à la notion de prix pour considérer la justice de la situation qu'ils décrivent. Ainsi Thomas introduit-il la notion de juste prix dans ses œuvres à travers des textes de jeunesse non économiques (*Super Isaiam* et *Commentaire des Sentences*) avant de reprendre explicitement la notion dans le *De emptione*. Ces textes traitent de cas limites concernant des biens non marchands ou semi-marchands. Le prix vient ainsi réduire l'injustice de l'échange en amont de celui-ci en déterminant la nature de l'échange.

En *Super Isaiam*, 55,1, Thomas décrit comme un échange une situation perçue avant lui comme un don. En revanche, le rapport d'échange n'est pas un prix, puisque l'échange, qui est juste puisqu'il est accompli par Dieu, se fait en-dessous du juste prix. Le prix constitue donc la référence qui permet d'évaluer la justice de l'échange. Toutefois, Thomas introduit paradoxalement le juste prix pour considérer la possibilité d'autres rapports d'échanges. Ces derniers assurent la justice de l'échange de certains biens comme la grâce divine, pour lesquels la justice ne consiste pas à les échanger contre un bien de même valeur (elle serait excessive) mais contre une autre contrepartie, dont le montant prend en compte d'autres critères que la valeur du bien. La notion de prix constitue donc pour Thomas un instrument de réduction du risque d'injustice même pour les cas limites qu'elle ne régit pas elle-même.

Le *Commentaire des Sentences* introduit lui aussi le juste prix pour traiter de cas limites qui apparaissent hors des textes proprement économiques. On retrouve les deux critères de justice, qualitatif et quantitatif, apparus dans les textes économiques. Dans le cas du bien non marchand comme la simonie, où il n'y a pas de possibilité de juste prix, le juste prix suffit à assurer l'intégralité de la justice de l'échange, c'est-à-dire le critère qualitatif et le critère quantitatif de cette justice, par son niveau et par sa possibilité. On note en outre que l'impossibilité du commerce du bien non marchand est traitée dans le cadre même de l'échange, d'une part avec une marchandisation d'ordre lexical qui apparaîtra dans les œuvres plus tardives, puisque l'impossibilité d'un prix sera exprimée en niveau de prix, comme un prix très élevé et inaccessible ; d'autre part avec une marchandisation partielle, le bien n'étant certes pas échangé selon un prix, mais étant échangé contre une indemnité de subsistance, même si celle-ci ne se veut pas une contrepartie directe mais demeure extrinsèque à ce qui est apporté initialement.

Dans le cas du bien semi-marchand, ici le serf marié, qui peut être vendu mais dont la vente est soumise à une contrainte géographique, puisque que le seigneur ne peut le vendre au loin par peur d'attenter à son mariage, les deux critères de justice sont assurés de manières distinctes : le prix prend en charge le critère quantitatif, mais pas le critère qualitatif, ici géographique, qui lui demeure irréductible.

Les premières occurrences de l'expression juste prix font donc apparaître deux critères de justice sur lesquels Thomas peut s'appuyer pour réduire le risque d'injustice de l'échange et contourner l'intention cachée des agents : la nature de la chose échangée, qui détermine sa capacité à être échangée et la nature du rapport d'échange qui doit être appliqué, et le prix, qui sert de référence pour assurer la dimension quantitative de la justice de l'échange, que le bien soit non marchand, semi-marchand ou marchand.

Chapitre 5 :

Is God giving or trading?

Super Isaiam, 55, 1: Thomas Aquinas's first use of the 'just price'

1. Introduction

The term ‘just price’ makes an early appearance in Thomas Aquinas’s writings. The very first occurrence is in *Super Isaiam* (1252), a biblical commentary composed while he was still a student. This first occurrence might seem incidental, since it is used to describe God’s gift of His wisdom to people. A reading of this little-known and little-studied text shows, however, that it sets the fundamental orientations of the economic thought that Aquinas would develop in his later works.

The idea of the just price emerges gradually in Aquinas’s authentic works. Nineteen occurrences of the term can be counted: five in his early works – one in *Super Isaiam*, two 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, and two in *De emptione et venditione ad tempus*, I (1262) – and fourteen in the later works (1268-1273) – eleven mentions in the *Summa theologiae* (one in *S. T.*, Ia IIae, q. 114, a. 1, five in *S. T.*, IIa IIae, q. 77, a. 1, and five in *S. T.*, q. 78, a. 2) and three in the *Quodlibetal Questions* (two occurrences in *II Quodl.*, q. 1, a. 2 and one in *II Quodl.*, q. 5, a. 2). *Super Isaiam* does not belong among the treatises which have an economic scope. *Super Isaiam*, 55, 1 comments on the description by the prophet Isaiah of the spiritual gift given by God. This may explain why it has gone unnoticed, especially since the literature, by methodological choice, favours the study of the Scholastics as a unified whole or by major periods, and the economically oriented commentaries on Aquinas dwell mainly on the great later works, such as the *Summa theologiae*.

Whereas *Super Isaiam* has not received much attention in the economics literature, Thomasian studies can be relied upon for a closer reading (Mandonnet 1928; Gils 1958; Leonina 1974; Weisheipl [1974] 1993, 404-405; Leroy 1978; Bataillon 1980; Tugwell 1988, 207-214; Bouthillier and Torrell 1990; Émery 1993, 493; Torrell 1993, 40-52; 2012, 42-52; 2015, 52-62; Oliva 2006, 207-225; Porro 2015, 5). These contributions have been able to discern the importance of what appears to have been Aquinas’s first major work, probably written during his first year in Paris, 1252, prior to the *Commentary on the Sentences*. The present paper, focusing on the implementation of the concept of just price in *Super Isaiam*, 55, 1, tends to confirm this status, but from an economic point of view.

The Latin *Vulgate* version of the Bible reads:

> "All you who are thirsty, come to the waters, and you who have no money, make haste, buy and eat: come, buy without money, and without exchange wine and milk." (Isaiah 55:1)[76]

Aquinas comments as follow:

> "Then, [God] makes a promise, promising future abundance to the needy: 'all you who are thirsty', i.e. you Jews, who before were thirsty because of your poverty, 'buy', *without price*, 'eat', bread, and other necessities. 'He who thirsts, let him come to me and drink, and from within him shall flow living waters' (John 7:37). And in the delights: 'come, buy', take as if you were buying, 'even without money', which is *less than the just price*." (*Super Isaiam*, 55, 1; my italics)[77]

Aquinas twice employs the concept of price, *pretium*: "without price" and "less than the just price". Since *pretium* means price, but also money, the first expression is polysemous: it can mean buying "without price" or "without money". The second expression refers only to the price, and introduces the justice of the price level. Thanks to the introduction of the concept of just price, Aquinas can study the transaction with reference to a just price level, and therefore places it in the context of an exchange and not a gift.

In this paper I intend to demonstrate the innovative character of this introduction of price as a key to the reading of the verse, which seems to be a discovery of Aquinas, as well as its foundational character for his later work with an economic scope. Whereas the Fathers of the Church understood the transaction described in this verse as a gift, Aquinas's masters, Hugh of Saint-Cher and Albert the Great, take a new step by understanding it more within the framework of an exchange. Aquinas then takes a further step, one which introduces the notion of price, by characterising the specific character of the exchange ratio at stake in this transaction. This characterisation of a new kind of exchange ratio which responds to criteria of justice other than those Aquinas assigns to the price (an equality between things exchanged, *secundum equalitatem rei*, according to commutative justice, e.g. in *S. T.*, IIa IIae, q. 77, a. 1, ad 3), is foundational. Considering an exchange ratio other than the price may seem paradoxical to economists, since that is how the price is usually understood. However, the transaction metaphorically presented in order to describe the relationship between God and people provides Aquinas with suitable apparatus to analyse economic issues. Admitting a conceptual diversity

[76] "*Omnes sitientes, venite ad aquas: et qui nos habetis argentum, properate, emite, et comedite : venite, emite absque argento, et absque ulla commutatione vinum et lac*" (Isaiah 55:1).
[77] "*Secundo proponit promissionem, promittens futuram copiam in necessariis*: *'*omnes sitientes', *idest vos ex Judaeis, qui prius prae inopia sitientes eratis,* 'emite'*, sine pretio,* 'comedite'*, panem, et alia necessaria*. John 7, 37: 'si quis sitit, veniat ad me, et bibat [...] et de ventre ejus fluent aquae vivae'. *Et in deliciis: venite, emite, quasi, ac si emeretis accipite* 'vel absque argento', *idest minus quam justo pretio*" (*Super Isaiam*, 55, 1).

of exchange ratios, with reference to price but distinct from it, allows Aquinas to account in his later works for a diversity of transactions within the framework of exchange even though they are not strictly speaking the object of a price.

In order to grasp the innovative dimension of Aquinas's introduction of price, it is first necessary to identify possible sources of its advent (section 2). The verse of the prophet Isaiah underwent significant textual evolution: from the Hebrew Bible, the Greek of the *Septuagint* (second century BC) and then the Latin of the *Vetus latina* (second century AD) chose to introduce the notion of price, translating the polysemous Hebrew word "*mechyir*" as "*timè*" and "*pretium*" in a more value-related way ("without money and without price [*absque pecunia et absque pretio*]"), whereas Jerome of Stridon's *Vulgate* (fourth century AD), the Bible of reference for the mediaevals as well for Aquinas, translated the Hebrew word as '*commutatio*' (exchange), in a more transaction-related way ("without money and without exchange [*absque argento et absque ulla commutatione*]"). The Fathers of the Latin Church use the *Vulgate* version and do not refer to price. In addition, they often quote and comment upon only the beginning of the expression, "without money". So do Greek Fathers like Theodoret of Cyrrhus, although he uses the *Septuagint*. The sources that could have inspired Aquinas to resort to the concept of price are therefore weak. The Fathers don't provide any evidence for this, and a study of the manuscripts of mediaeval Bibles with which Aquinas might have been acquainted is no more convincing: both in the *correctorii* and Parisian Bibles of the thirteenth century, derived from the biblical work of the Dominicans who lived around Aquinas, on the one hand, and in the Bibles identified as retaining passages in the *Vetus latina* version, on the other, the text Isaiah 55:1 always appears in the version of the later *Vulgate*, thus without the term 'price'.

The only source identified thanks to the study of the manuscripts of the early Dominican liturgy is liturgical. It is the *introit* of the "*Sitientes*" Saturday, during Lent. It quotes Isaiah 55:1, in a version that is certainly very old, with the expression "you who have no money [*non habetis pretium*]", where 'money' is given as '*pretium*'. Thus the term appears, but not yet clearly the concept of price. Another element may also have prepared the ground for the Thomasian evolution. The commentaries, up to the *Glossa ordinaria* a century before Aquinas, read the verse as a description of a gift without an exchange ratio, but as involving a counter-gift, since man must give in turn. God is thus freely offering his wisdom. However, Hugh of Saint-Cher and Albert the Great, Aquinas's Dominican masters who inspired his work, introduce a counterpart paid by man within an exchange framework. This counterpart is not explicitly mentioned in Aquinas's *Super Isaiam*, but it appears in the later Thomasian commentaries on

the verse, in *In Matthaeum* and *In Joannem*, where the man pays with his eloquence and study. Thus, the setting is that of exchange, since it is a sale ("buy") with an exchange ratio. After the step taken by Hugh and Albert, which consisted in reading the transaction as an exchange and not as a gift, Aquinas took a new step, which consisted in analysing the exchange ratio by reference to the notion of just price.

Three characteristics emerge from a reading of *Super Isaiam*, 55, 1 informed by later comments on the verse in *In Matthaeum* and *In Joannem* (section 3). First, Aquinas reinforces the paradoxical feature of the verse through his double use of the term 'price': "without price" (even if this means 'without money') and "less than the just price", showing that the transaction is more like a barter than a gift, but where it is not so evident that there is something like a price to complete the transaction. Second, God is presented as ready to do anything to make the sale effective. For the sale to take place, the counterpart must be affordable, and the currency must be available. Third, if this leads to a sale at 'less than the just price', this means that if the exchange ratio is a price, that price is not just. Aquinas's conception of justice as a divine attribute and the way in which the various forms of justice could be applied to God confirm that it is not possible to imagine that God should perform an unjust act. Rather, it suggests that the exchange ratio, which is less than what the just price would be if it were a price, is of a different kind. Aquinas thus unifies the biblical traditions and joins the *Septuagint* and the *Vetus latina*: the transaction is indeed an exchange, which implies a counterpart, but this exchange is made without money and without price.

Through the introduction in this early work of the concept of price and the quantitative measurement of the counterpart by the yardstick of the just price, Aquinas thus lays the foundations of his economic thought (section 4). *Super Isaiam*, often considered to be Aquinas's first theological work, is thus also his first work of economic significance. This text confirms what the reading of the later works would reveal, and provides a key to understanding the lines of development that run through these works: Aquinas sets up a price approach to the justice of exchange. Then, as early as *Super Isaiam*, and then in his later works, he specifies, at least implicitly, what the just price is. However, he approaches it through limit cases which provide the conceptual apparatus for Aquinas to think about the general cases, where the price is the

visible and objective criterion of the justice of exchange (*supra*, chapter 2; Januard 2021b, see *infra*, p. 332).[78]

The question Aquinas raises is therefore that of the delimitation of the space governed by a price. Within the trading sphere, fairness requires types of exchange ratios other than the price, because they take into account elements other than those included in the price. In the case of *Super Isaiam*, 55, 1, these elements are (1) God's absolute desire, as a seller, for the transaction to take place, and (2) the limited resources of the buyers. *Super Isaiam* and the later works that echo it thus set up a complementary approach to the one highlighted in the literature that has adopted an anthropological perspective based on human morality (see *infra*, p. 336; e.g. Franks 2009; Le Goff [2010] 2019; Hirschfeld 2018; Santori 2019, 2020, 2021): the nature and the level of the exchange ratio depends on the good exchanged and on the visible and objective parameters of the transaction.

This inaugural account of the transaction allows us to delimit the sphere of price within the sphere of exchange. Three cases are to be found in the later works. The first occurs where the good cannot be priced. This is the case of the first treatment of simony, found in the *Commentary on the Sentences*, where the sacrament cannot be given a price. Aquinas, however, admits another type of exchange ratio, according to other criteria of justice, since the priest can receive not the price of the sacrament but a subsistence allowance in exchange for the sacrament (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1). The second case occurs where Aquinas explicitly mentions the theoretical possibility of a price, but stresses that the just price would then be inaccessible. The transaction is thus made according to a different kind of exchange ratio. This is again the case of simony, but in respect of its treatment fifteen years later in the *Summa theologiae* (*S. T.*, IIa IIae, q. 100, a. 3, ad 2). The third case, which would be in a sense halfway, is the one where Aquinas does not evoke the possibility or impossibility of a price, but simply mentions an exchange ratio of another nature, which receives a specific name and whose justice responds to other criteria. First, this is the situation for the remuneration of lawyers and doctors, which has to be moderate and to take into account not only the equality of things, but also the personal condition of the clients and the customs of the country (*S. T.*, IIae IIae, q. 71, a. 4, resp.). This is also the case for extrinsic titles (*supra*, chapter 2; Januard 2021a and *infra*, p. 337), intended to compensate the lender for the loss resulting from the deprivation of the sum lent (*damnum*

[78] Thomas uses the concept of just price in *Super Isaiam* to circumvent the lack of information on exchange by means of a visible and objective criterion of justice. The literature on the just price has progressively rediscovered the centrality of justice.

emergens, which is the subject of a "*recompensatio*" (compensation) in *S. T.*, IIa IIae, q. 78, a. 2, ad 1) or from the delay in repayment (*poena conventionalis*, which is the subject of an "*interesse*" (interest), in *De malo*, q. 13, a. 4, ad 14). Finally, compensation appears to qualify the remuneration of merchants, which is a "*quasi stipendium*" (like a compensation), in *S. T.*, IIa IIae, q. 77, a. 4, resp. Aquinas does not adopt a specific name for this compensation, but he associates it with what is closest to it, the *stipendium*, such as a soldier's pay or a social compensation allowing the beneficiary to carry out his activity in the service of the population, but not a salary which would be the price of his work (*supra*, chapter 3; Januard 2022). Through the functional distinction between counterparts according to different kinds of exchange ratios, *Super Isaiam* thus introduces the functional distinction between received incomes.

2. "Without money and without exchange": does price disappear over the centuries?

Aquinas comments on Isaiah 55:1 by introducing the expression 'just price' for the first time in his work. This verse, as we noted above, had already undergone a major textual evolution. The Hebrew version gave rise to two traditions when translated into Greek and Latin. The *Septuagint* and the *Vetus latina* write 'without money and without price', whereas the *Vulgate* says 'without money and without exchange'. Aquinas comments on this last version, the *Vulgate*, which gradually became the norm, by introducing the notion of price in two ways, although lexically it is absent from the text. The interest of the investigation of manuscript and printed sources in order to trace the translations and uses of the verse before Aquinas is twofold. On the one hand, it shows that Aquinas confirms and accentuates the understanding that emerges from his immediate predecessors, Hugh of Saint-Cher and Albert the Great, of a situation of trade and not of gift, contrary to what the *Glossa* still held a century earlier. On the other hand, it stresses the innovative character of Aquinas's commentary, since no source introduces the notion of 'just price', and only a liturgical *introit*, a resurgence of a primitive translation, includes the term '*pretium*', but not in the part of the verse where Aquinas introduces it in his commentary, and probably more in the sense of 'money' than of 'price'.

2.1. The Hebrew, Greek and Latin versions of the Bible: between exchange and price

Isaiah 55:1 underwent changes in meaning in the course of its successive translations from Hebrew (Hebrew Bible) to Greek (*Septuagint*) in the course of the second century BC, then from Greek to Latin (*Vetus latina*) from the second century AD, and finally from Hebrew to Latin (*Vulgate*) at the end of the fourth century AD. These mutations are important for understanding Thomas's contribution, because the economic lexicon varies. The *Vulgate*, which

prevails in the Latin West and which was used by Aquinas and his contemporaries, gives the following text: “All you who are thirsty, come to the waters, and you who have no money [*qui non habetis argentum*], make haste, buy and eat: come, buy without money, and without exchange [*absque argento et absque ulla commutatione*] wine and milk” (Isaiah 55:1). The key phrase, which requires a history, is “without money and without exchange”.

The Hebrew Bible, from which Jerome edits the Latin *Vulgate*, contains the idea of price: “without money [כֶּסֶף *kessef*, one of the four Hebrew words for money in the sense of what allows desire (Ouaknin 1991, 599-601)] and without price [מְחִיר *mechyir*]”, where *mechyi*r means price in the sense of payment, purchase or pledge, i.e. of an exchange as an action. Jerome has therefore translated the text faithfully, choosing *commutatio* for *mechyir*, but has abandoned the notion of price to emphasise the act of exchange. Five hundred years earlier, however, when the Hebrew Bible was translated into Greek to give the *Septuagint*, the expression saw a different evolution. The *Septuagint* contains “without money and price [ἄνευ ἀργυρίου καὶ τιμῆς]”, where τιμή (*timè*) means price in the sense of evaluation, estimation and then value and price, as well as esteem or consideration. The translation of *mechyir* by *timè* is also faithful, but it abandons the notion of action and exchange to insist on price in the sense of value. The *Vetus latina*, which designates all the ancient versions of the Latin Bible translated from the *Septuagint*, before Jerome’s translation of the *Vulgate* from Hebrew, is in the lineage of the *Septuagint* which it inherits. The *Vetus italica*, a version of the *Vetus latina* published by Pierre Sabatier in 1743 and which is its first printed edition, bears some differences in the Latin expression from the forthcoming *Vulgate*, and one of these is of particular importance. It translates the *Septuagint* as “without money and without price [*absque pecunia et absque pretio*]”.[79]

We thus observe two parallel processes of evolution, of the *Vetus latina* from the Greek *Septuagint* and of the *Vulgate* from the Hebrew Bible. On the one hand, in the *Vulgate*, starting from the Hebrew and combining it with the Greek of the *Septuagint*, which wrote *argurios* (silver), Jerome prefers *argentum*, in the sense of coined money, currency, intermediary of exchange, where the *Vetus latina* wrote *pecunia*, which means wealth, having livestock, and then by extension money, and which refers, among the now usual functions of money, more to the reserve of value or to the standard of measurement. On the other hand, the *Vulgate* wrote ‘exchange’ (*commutatio*) from the Hebrew, where the *Vetus latina* wrote ‘price’ (*pretium*) from

[79] This printing of the *Vetus italica* is all the more valuable since the surviving *Vetus latina* manuscripts are rare and often only concern a few biblical books within the *Vulgate* Bible.

the Greek. We should therefore note the introduction of subtle nuances of meaning with the passage from Hebrew to Greek and Latin in the translation of the *Septuagint* and the *Vetus latina*, which operates a shift towards the value of the good (given by *argurios*/*pecunia* and *timè*/*pretium*), and then in the later translation from Hebrew to Latin, since the *Vulgate* takes up the dimension of exchange (*argentum* and *commutatio*) more contained in the Hebrew Bible. Moreover, through the term "exchange [*commutatio*]", the Latin *Vulgate* loses the notion of price, which was explicit in the polysemy of the terms '*mechyir*', '*timè*' and '*pretium*' used respectively by the Hebrew Bible, the *Septuagint* and the *Vetus latina*.

It should be noted that the translation of the notion of price (*mechyir*) from Hebrew to Greek (*Septuagint*) and then to Latin (*Vetus latina* and *Vulgate*) is not uniform. Thus, in Isaiah 45:13, *mechyir* takes on the meaning of ransom, the price to be paid for liberation: "He [Cyrus] shall build up my city, and he shall send back my deportees, without payment [*mechyir*] or commission, says the Lord Almighty". This is translated into Greek as "οὐ μετὰ λύτρων [*ou meta lutron*, without ransom]" taking into account the Hebrew polysemy of *mechyir*. The *Vetus latina* translates *lutron* as *pretium*, i.e. price in a value-related meaning. The *Vulgate* also writes *pretium* (however, Aquinas does not comment on this ransom in *Super Isaiam*, 45 and '*pretium*' does not appear in this comment),[80] whereas in Isaiah 55:1 it insists on the notion of exchange through the term *commutatio*. This shows the specific character of Isaiah 55:1, for which the *Vulgate* does not keep the term 'price' inherited from the *Septuagint* (*timè*) and the *Vetus latina* (*pretium*) but prefers to insist on the action of exchange rather than on the value of the goods exchanged, whereas in other places the *Vulgate* adopts a more value-related approach.

2.2. Patristic commentaries: from gift to exchange

In order to identify Aquinas's direct or indirect sources both for the biblical version he might have read and the commentaries that might have inspired him, an overview of the Fathers' commentaries is required. First of all, Isaiah 55:1 does not appear in Augustine's works, which are rich in biblical references. It is therefore not possible to rely on Aquinas's most usual patristic source. In addition, whereas the beginning of the book of Isaiah has received more attention, there are few patristic and mediaeval commentaries on Isaiah 55. However, some

[80] The textual tradition does not seem to have changed regarding the use of '*pretium*' in this verse in the Latin Bibles, as Bible manuscripts show: 9th c.: BnF lat. 45, f. 193ra; BnF lat. 11504 f. 135ra; Bibles revised from Hebrew: 11533, f. v12vb; 11937, f. 108va; 10th-11th c.: lat. 6 f. 17 va; 13th c. Parisian Bibles Omega J BnF lat. 16721, f. 97va; Omega M Maz 5, f. 194ra; Omega S BnF lat. 15467, f. 337 va; 13th-14th c.: lat 161, f. 205, ra. All these manuscripts contain the *Vulgate* version "*non in pretio* [without price]" in Isaiah 45:13.

Fathers do quote or comment upon this verse. The Fathers' reading of Isaiah 55:1 is primarily spiritual, but the lexicon of money and the phrase 'without money' seem to hold the attention of the authors, though they do not sustain the metaphor. Furthermore, the second part of the expression, "without price" or "without exchange", is not commented on.

The most influential and decisive patristic commentary is that of Jerome (†420), to whom Thomas refers 14 times explicitly in his *Super Isaiam* (Leonina 1974, 52*). Here Jerome uses *pecunia* where in his *Vulgate* he uses *argentum* in the phrase "you who have no money [*non habetis pecuniam/argentum*". Then, he retains the single phrase "without money [*absque argento*]" in his commentary whereas his *Vulgate* keeps a second term, which refers to exchange (*absque ulla commutatione*), and his quotation of the *Septuagint* version translated into Latin in his commentary contains the *Vetus latina* version "without money and without price [*absque pecuniam et absque pretio*]" (Jerome, *Super Isaiam*, col. 548). Jerome's commentary provides two keys to understanding which remain as promissory notes. On the one hand, like most of the commentaries that would follow, Jerome's does not cover the second term but restricts itself to "without money", thus limiting the economic metaphor. The dialectic between exchange and price from the ancient translations of the Bible does not seem to get much attention from commentators. On the other hand, the Latin lexicon of 'money' remains plural, oscillating between *pecunia* and *argentum*.

About fifty years later, around 447 (Guinot 1980, 18), Theodoret of Cyrrhus, a Greek Father who used the *Septuagint* but also the Hebrew text (Guinot 1980, 44), retained from the quotation only "without money [*ἄνευ ἀργυρίου*]", passing over the second term "without price", even though it appears in the two versions he had (Greek *Septuagint* and Hebrew Bible). We thus see that the disappearance of the notion of price is not only the result of the transition to Latin, but that the Greek commentators, who use the *Septuagint* where it appears, do not always take it into account. Theodoret's approach is primarily spiritual: "Divine Scripture often calls 'money' justice" (Theodoret of Cyrrhus, *Super Isaiah*, 55, 1). To come without money is therefore to come without justice, i.e. to be in a state of sin. God therefore invites sinners to come to him. However, after dwelling on the moral dimension, Theodoret takes up the financial lexicon, without however making any economic statement, except that there would be good and bad money, since people who live in iniquity are "wasted money [ἀργύρίον φησιν ἀποδεδοκιμασμένον]", quoting Jeremiah 6:30. Indeed, the first meaning of the verb '*apodokimazo*' relates specifically to money, to the rejection of a metal after it has been put to the test, before being applied more broadly to a candidate for office. This illustrates the

assimilation of "without price" to "without money". It reveals a lack of interest in an economics-oriented reading, which is not the object of Isaiah's verse, while at the same time it shows an understanding of the spiritual meaning of the economic metaphor, through the notion of money, used by Isaiah and Jeremiah.

Haimo of Auxerre, a ninth-century Latin theologian, to whom Thomas refers once in *Super Isaiam* (Leonina 1974, 52*), gives, like his predecessors, a spiritual-metaphorical interpretation of money, which for him is eloquence (Haimo, *Super Isaiam*, col. 1000). He quotes the expression of the *Vulgate* in its entirety ("without money and without exchange"), which he comments on with the gospel verse "you have received freely, give freely [*Gratis accepistis, gratis date*]" (Matthew 10:8), which introduces, in the framework of a spiritual interpretation, a brief continuation of the economic metaphor. Where there is no commercial exchange, there must be reciprocity of gift, or rather continuation of gift, because the final receiver is not the original giver, who is God. Haimo thus suggests a distinction between the orders of exchange and gift, which occurs where there is neither exchange nor money. However, there is a counterpart towards a third party, since man must give in turn.

The more direct sources used by Aquinas – explicitly five times each (Leonina 1974, 52*) – are the *Glossa Ordinaria* of the twelfth century, with particular attention to the interlinear gloss, and the *Postilla super Isaiam* of Hugh of Saint-Cher, an exegete and later a Dominican cardinal, with whom Albert the Great interceded in order to send his young biblical student, Thomas Aquinas, from Cologne to Paris in 1252 to teach, in spite of his young age (Weisheipl [1974] 1993, 64).

The *Glossa Ordinaria* contains the complete expression "without money and without exchange" in the biblical text and the interlinear gloss reads: "Human wisdom is bought with gold and silver [*humana sapientia emitur auro et argento*]" and "your money [or silver] is false [*argentum vestrum reprobum est*]". The *Glossa* thus insists on the difference between human wisdom, which can be bought for money in gold or silver, and divine wisdom, which cannot. Moreover, the *Glossa* criticises human money as false, in the vein of the wasted money evoked by Theodoret. The marginal gloss sets up a gift framework by taking up Haimo's gospel quotation in the same combination with a Pauline verse as found in Jerome (Jerome, *Super Isaiam*, col. 548) : "'By grace you have been saved' (Ephesian 2:8) and in another place: 'you received freely, give freely' (Matthew 10:8) [*gratia salvi facti estis. Et alibi. Gratis accepistis, gratis date*]" (*Glossa ordinaria*, III, Isaias, 55). It is a gift, and there is not exactly reciprocity,

since there is no question of giving back to God. However, the frequent recourse to Matthew 10:8, which introduces a counterpart within the framework of the gift, lays the foundations for thinking about this counterpart differently, within the framework of exchange, and no longer insisting on the gift received free of charge but rather on the requirement to give in turn.

Hugh of Saint-Cher, in the first half of the thirteenth century, comments: "You who have no money, i.e. literally those who are poor [*et qui non habetis argentum: ad literam, id est, qui pauperes sunt*]" (Hugh, *In Isaiam*, c. 55, p. 130). Hugh provides a rare comment on the second term of the phrase "without money and without exchange", saying: "buy, do not understand it as an exchange, in which money is paid [*emite, non intelligatis de commutatione, in qua appenditur argentum*], but only by the toil of the path [*sed pro laboris itineris tantum*]". Hugh is being innovative. On the one hand he comments on the expression "without exchange". On the other hand, this does not lead him to endorse the order of the gift, but instead to think of a non-monetary exchange, accessible to the poor who have no money. The counterpart here is man's effort on the path of a holy life and the hardship he endures. However, the gift framework is not entirely absent for Hugh: in his commentary on the book of Revelation, as part of a meditation on the free gift, which means a gift in the absence of merit, he quotes the entire verse, but he doesn't comment upon it (Hugh, *Super Apocalypsim*, c. 22, p. 429).

Albert the Great, under whom Thomas was a biblical bachelor and perhaps wrote his *Super Isaiam*, also composed a commentary on the book of Isaiah, which was absent for a long time from classical editions and was included in the Cologne critical edition in 1952. The dating is uncertain but it has been estimated around 1250 (Siepmann and Simon 1952, XX). Money refers, as for Haimo, to eloquence: "Money means a ringing and resonating speech [*Argentum propter tinnulum sonum eloquium significant*]", Albert writes. He adds: "those who have no eloquence must nevertheless hasten to the doctrine and grace of the Lord [*Qui enim eloquentiam non habent, nihilominus properare debent ad doctrinam domini et gratiam*]" (Albert the Great, *Postilla super Isaiam*, c. 55, l. 26-32). It is thus a gift only in appearance, for on the one hand it means that those who have eloquence must offer as the counterpart and that the others must come to divine grace. They must therefore do something in return for what seemed to be a gift. In this sense, Albert comments on "buy [*emite*]" by introducing an exchange: "by an exchange of merit in reward [*commutatione scilicet meriti in praemium*]" (l. 45-46). Therefore, he comments on the double proposition "without money and without exchange" in two steps: first, "Without money: He is so generous that he gives out of goodwill to the one who cannot exchange external goods [*Absque argento: tam largus enim est, quod pro bona voluntate dat ei*

qui exteriora bona commutare non potest]" (l. 47-49). Then he comments on "without exchange": "we can exchange nothing because we have got nothing [*nihil enim commutare possumus, quia nihil habemus*]" (l. 51-52). Albert does not say that the transaction takes place outside the framework of exchange, but simply that man has nothing to exchange. The counterpart can thus tend towards zero or be zero, but the framework of analysis is still that of exchange, since the concept of a counterpart is introduced. A few lines above, the counterpart was even non-null since it was merit.

Although it is not a source for Aquinas, one can also refer, as a witness of the time, to William of Alton, a contemporary Dominican author. He takes up the theme of eloquence, with which money is associated in the expression "*absque argento*" in his *Super Isaiam*. However, he insists on the work to be done in order to acquire the milk that God gives, which is his sacred doctrine: "those who work [*laborant*] to acquire Your doctrine" (Madrid Bibl. Nac. 493, f. 250r and 250v; BnF lat. 573, f. 73vba). This thus takes into account the following verse: "Why do you spend your money not on bread and your work [*laborem*] not on satiation" (Isaiah 55:2). Work, mentioned in v. 2, is therefore called upon in the commentary on v. 1, where it is an issue of working to acquire what is good, the divine doctrine. Through the notion of work, retained by William, the idea of a counterpart in the framework of an exchange, developed by Hugh and then by Albert, seems to persist among the Dominicans of the thirteenth century.

We can thus summarise the history of the textual tradition of Isaiah 55:1 up to Aquinas as follows:

Bible versions	
Hebrew Bible "Without money [*kessef*] and without price [*mechyir*]"	
Septuagint (2nd c. BC) and *Vetus italica* (2nd c. AD) "Without money [*arguriou/pecunia]* and price [*timès/pretio*]"	*Vulgate* (4th c. AD) "Without money [*argento*] and without exchange [*commutatione*]"
Fathers's Bible versions	**Fathers's commentaries**
Jerome (4th c.) "Without money [*argento*]"	"By grace you have been saved" "You received freely, give freely"
Theodoret of Cyrrhus (5th c.) "Without money [*arguriou*]"	Money = justice Sinners are "wasted money"
Haimo (8th c.) "Without money [*argento*] and without exchange [*commutatione*]"	"You received freely, give freely"
Glossa ordinaria (12th c.) "Without money [*argento*] and without exchange [*commutatione*]"	"By grace you have been saved" "You received freely, give freely"
Hugh of Saint-Cher (13th c.) "Without money [*argento*] and without exchange [*commutatione*]"	Not an exchange where money is paid Payment: the toil of the path
Albert the Great (13th c.) "Without money [*argento*] and without exchange [*commutatione*]"	Eloquence; exchange of merit in reward "We have nothing to exchange because we have nothing"
William of Alton (13th c.) "Without money [*argento*] and without exchange [*commutatione*]"	Eloquence "Those who work to acquire your doctrine"

Table 3: Money and price in the textual tradition of Isaiah 55:1

Thus, Aquinas's indirect and direct masters, Hugh and Albert, are innovative in commenting on the expression "without exchange" where their predecessors focused on the preceding expression "without money". Paradoxically, the need to comment on the absence of exchange places them before the presence of a counterpart, since it is a purchase, and compels them to leave the framework of the gift, which was that of their predecessors, who had clearly perceived the requirement of a counterpart but who made it a counter-gift. Hugh and Albert must therefore re-establish the framework of exchange and give a monetary interpretation to the expression 'without exchange', which does not mean "without counterpart", but on the one hand 'without monetary counterpart' and on the other hand, more implicitly, 'without counterpart of equal value'. The analytical framework is thus prepared for a new stage, on the nature and level of

this counterpart. This is what Aquinas does by using the notion of 'price', which had disappeared from the *Vulgate* and commentaries, in favour of 'exchange'.

2.3. Bible and liturgy: does price really appear in celebrating Mass?

To understand Aquinas's introduction of the term 'just price' in his commentary on Isaiah 55:1 and the significance of this reference, it is necessary to further investigate the sources which would have allowed him to associate this verse with the term 'price'. Among Aquinas's direct sources, after having identified the authorities he used, it is necessary to clarify which versions of Isaiah 55:1 he read in the Bible and in liturgy. The *Vulgate*, quoted in the margin of the Leonine edition of Aquinas's commentary on Isaiah, and which is the reference Bible in the Middle Ages, does not contain any form of 'price' in Isaiah 55:1.

However, on the one hand, Aquinas lived successively in Italy, in Paris, in Cologne and then in Paris. He therefore encountered a multitude of Bibles, and it is difficult to know whether they were only the *Vulgate* text, since in the Middle Ages other versions were still in use. The *Vetus latina* could still be found in the Middle Ages, even though it consisted only of a few biblical books given in this early version within a Bible that otherwise followed the text of the *Vulgate* (Bogaert 1988, 293-295). The book of Isaiah is not part of this mediaeval survival of the *Vetus latina*. Thus, Bible manuscripts identified as at least partially *Vetus latina* versions give Isaiah 55:1 in the *Vulgate* version (BnF lat. 6 (3), f. 15va; BnF lat. 45, f. 196ra; BnF lat. 161, f. 207ra; BnF 11504, f. 137va). The same applies to mediaeval Bibles where other sections of the text are sometimes revised from Hebrew (BnF lat. 11533, f.15ra; BnF lat. 11937, f. 110ra).

On the other hand, in the thirteenth and fourteenth centuries about ten *correctorii* of the *Vulgate* appeared, six of them notably in Aquinas's time (Dahan 1992, 179-180). In Paris, a *Vulgate* corrected version appeared (McGuckin 1993, 204). A standard text of the Bible emerged, first with a *Correctorium* drawn up under the direction of Hugh of Saint-Cher and then an edition of the Bible around 1250 (Dahan 2005, 10). Hugh's *Correctorium* is the oldest and most widespread. It is probably contemporary with its *Concordance*, around 1235 (Dahan 2004, 161-162). Three questions remain: First, the discussion about which manuscripts would fall under this Parisian version remains open, which prevents us from ruling definitively on the text that circulated in Paris. Secondly, Aquinas does not always follow the same text and does not always follow what we know of these texts. Finally, all the work of correcting and editing the Parisian Bible was done at the time of the writing of *Super Isaiam*, which raises the question of Aquinas's knowledge of this text at the time of writing (Dahan 2005, 12-14).

While it is not possible to rule on the content of Bible versions that Aquinas had, we can simply make two observations:

On the one hand, the *Bible de Saint-Jacques*, called Omega J (BnF lat. 16721, f. 102 rad), edited around 1250, but also the Parisian Bibles Omega M (Paris Maz 5, f. 195vad), edited around 1230, and Omega S (BnF Lat. 15467, f. 340vba) edited around 1270, all keep the *Vulgate*'s version. In addition, the first *Correctoire de Saint-Jacques* (BnF lat. 3218, f. 152v), edited by Hugh around 1230-1235, and the second (BnF lat. 15554 f. 92r), edited around 1260, don't mention any correction for this verse. This confirms Dahan 2005, who doesn't retain Isaiah 55 in his list of corrections on Isaiah made by the *Correctoire* and the *Bible de Saint-Jacques*.

On the other hand, we can look at the version that Hugh retained in his works. In his *Commentary on the book of Isaiah* he quotes the verse according to the *Vulgate*, with the noun '*commutatio*' and not '*pretio*' (Hugh, *In Isaiam*, c. 55, p. 130), and in his biblical *Concordance* Isaiah 55 does not appear for the noun '*pretium*', but it does appear for the noun '*commutatio*' (Hugh, *Concordentia*, 115 and 533). We therefore find no material evidence to suggest that Aquinas had a Bible bearing the term '*pretium*' and not '*commutatio*' as the *Vetus latina* does.

Therefore, without affirming it in a definitive way, we can assume, in view of the biblical materials, that the common and perhaps even unique version of Isaiah 55:1 that Aquinas was able to read in the Bible was the *Vulgate*. We thus need to continue the investigation. Besides the Bible and the Fathers, the liturgy constitutes the third, but perhaps the most important, point of contact of Aquinas with the Scriptures, since it is a place of orality and memorisation. Liturgy is an even more interesting source because, having proceeded by successive additions, the biblical versions it uses are not always harmonised and it retains traces of ancient versions of the *Vetus latina* (Dahan 1992, 179).

The versions of Isaiah 55:1 Aquinas encountered in the liturgy may be approached through early Dominican liturgy manuscripts. Since Aquinas wrote his *Super Isaiam* around the time that Humbert of Romans, Master of the Dominican Order, initiated a reform of the Dominican liturgy in the 1250s, three missals surrounding this reform are especially relevant: one that dates from before the reform and two that are typical examples of this reformed liturgy. The pre-Humbertian manuscript is BnF lat. 8884 *Missale ad usum fratrum predicatorum*, kept in the French Bibliothèque nationale. It probably dates from 1233-1243 (Gleeson 2004, 103). The first post-Humbertian reformation manuscript is SS XIV L 1, *Ecclesiasticum officium secundum Ordinem Fratrum Praedicatorum*, formerly called the *Prototype* of Santa Sabina, where it is

kept (Dahan 2004, 160; Gy 2004). This manuscript dates from 1259 and is the fruit of the liturgical work carried out by the Dominicans in the preceding decade, based on work already undertaken some twenty years earlier. It is more a typical compilation than the establishment of a new liturgy (Boyle 2004; Gleeson 2004). The second post-Humbertian reformation manuscript is BL Add. ms 23935, the portable personal liturgical manuscript of the Master of the Dominican Order, kept in the British Library, which follows the manuscript of Santa Sabina by a few years (Huglo 2004).

It should be noted immediately that all three manuscripts contain the same treatment of Isaiah 55:1: an *introit* containing an old version of Isaiah 55:1 introducing the term '*pretium*', which means 'price' but also 'money', and a reading of Isaiah 54-55 according to the *Vulgate*. This stability of the liturgical texts from one manuscript to another allows us to assume a certain permanence in the liturgical versions of this verse. It speaks in favour of Aquinas's knowledge of these versions, which may have influenced him.

The *introit* antiphon for the Saturday after the fourth Sunday in Lent, often called "*Sitientes* Saturday", quotes Isaiah 55:1 (BnF lat. 8884, f. 82r; SS XIV L 1, f. 0399v; BL Add. ms 23935, f. 491v). This Mass *introit* "*Sitientes*" originated from Antiquity and sets the tone for the celebration, so much so that in Roman lectionaries of Ancient times and the early Middle Ages a second reading during the Mass, from Isaiah 55, still echoed it (Schuster 1925, 176; Bernard 1993, 189). This *introit* appears in early Dominican liturgy in its traditional version. It does not use the *Vulgate*, but another Latin version: "You who are thirsty, come to the waters, said the Lord, you who have no money, come and drink with joy [*Sitientes, venite ad aquas, dicit Dominus, non habetis pretium, venite et bibite cum laetitia*]". In the expression "you who have no money", this *introit* uses the term "*pretium*" where the *Vulgate* contained "*argentum*" and the *Vetus Latina* (Jerome's *Septuagint* Latin translation as well as the *Vetus italica*) contained "*pecuniam*" at this place, although, as we have seen, *Vetus latina* includes '*pretium*' in the next part of the verse, which is not included in the *introit*. We can therefore conclude the likelihood that Aquinas knew, heard and sang the verse Isaiah 55:1 with the word *pretium*, although it means money rather than price in this expression.

However, the fourth lesson of the Holy Saturday, being a reading of Isaiah 54-55 (BnF lat. 8884, f. 123rv; SS XIV L 1, f. 0428r; BL Add. ms 23935, f. 535r), doesn't contain '*pretium*' and keeps the *Vulgate* version. Even without granting too much importance to the parapraxis consisting in repeating "without money [*absque argento*]" – the redundancy is crossed out with a red line –

this tends to confirm the spiritual importance of the lexical field of money here. It is striking that within two weeks of each other (from *Sitientes* Saturday to Holy Saturday), the early Dominican liturgy gives a hearing of two different versions of the same verse from Isaiah, a usage that would continue until the last editions of the Dominican missal in the twentieth century.

The study of the sources thus shows that Aquinas had probably seen the term '*pretium*' associated with Isaiah 55:1, at least in the *Sitientes* Saturday's *introit*. But in this *introit*, "*non habetis pretium*" rather means "you, who have no money" than "you, who don't have price". The biblical, patristic and other liturgical sources, however, do not provide any further evidence. In any case, the expression 'just price' does not appear in any of the sources consulted. Aquinas thus breaks new ground by associating this notion with Isaiah 55:1.

3. Towards a new kind of exchange, ratio and counterpart: Aquinas's *Super Isaiam*, 55, 1

Aquinas thus makes two major contributions. On the one hand, on the biblical and theological level, probably unintentionally, he does a work of unification of traditions by returning to the broad understanding that was contained in the Hebrew expression. On the other hand, on the level of economic ideas, he innovates, since, probably without copying from his authorities, he associates the notion of price and even more that of just price, that is to say a treatment by the possibility and the level of the price, with what seems at first sight to be a spiritual gift. He does not detail the counterpart in *Super Isaiam*, but God sets up an affordable counterpart in an available currency. His later comments on the verse of the prophet Isaiah in the mature biblical commentaries *In Matthaeum* and *In Joannem* indicate that it is eloquence and study that man must provide in exchange for divine wisdom. *Super Isaiam*'s counterpart is philosophically and economically challenging. God conducts a transaction where the counterpart is below the just price. This would mean that God would sell at an unfair price. On the contrary, taking into account justice as a divine attribute in Thomasian thought leads to considering a just counterpart, which would then not be a price, and which would be below what a just price would be, could the transaction indeed have a price. Aquinas thus not only continues the work of his masters, whom the presence of a counterpart had led to think of Isaiah 55:1 in the context of exchange by restricting the absence of exchange to the absence of monetary exchange and equal counterparts, but in addition he returns implicitly to the tradition of the *Septuagint* and the *Vetus latina*: there is indeed exchange with counterpart, but this exchange is done "without money and without price".

3.1. ‘Without price’ or ‘less than the just price’? The price at stake in *Super Isaiam*, 55, 1

Aquinas’s commentary on Isaiah 55:1 deserves attention not only because of the first appearance of the phrase ‘just price’ but also because of the importance of *Super Isaiam* in his works, which reinforces the value of this proto-appearance (see the comprehensive historical file and manuscript study in Oliva 2006, 207-225). *Super Isaiam* is mentioned in the oldest catalogue of Aquinas’s works (Leonina 1974, 3*). This early work of Aquinas is, according to a widely shared opinion, “the first theological work of St Thomas” (Leonina 1974, 20*; Bouthillier and Torrell 1990, 6). Although it is a cursory commentary from a young biblical scholar who was just beginning his teaching career, it is already a personal work. Moreover, the work is important because it is one of the few surviving autographs of Aquinas (*Super Isaiam*, 34-50). This text therefore constitutes a trace of the preparation of his lectures (Gils 1958, 260-262; Bouthillier and Torrell 1990, 5-7; Oliva 2006, 223).

The dating has evolved to bring it progressively forward in Aquinas’s career: first seen as dating from Aquinas’s first teaching as a master in Paris in 1256-1257 (Mandonnet 1928, 34, 116, 130-134) or even as part of his mature writings, it was then seen as the work of the young biblical bachelor at the beginning of his Parisian teaching in 1252-1253 (Gils 1958, 260-262; Leonina 1974, 19*-20*; Bouthillier and Torrell 1990, 5; Torrell 1993, 41-42; Oliva 2006, 223; Porro 2015, 5; Tugwell 1988, 211 dates Parisian teaching on Isaiah a little bit earlier). *Super Isaiam* may even date from the earlier period, when Aquinas was a biblical bachelor in Cologne (Weisheipl [1974] 1993, 59-60 and 404-405, accepted by Bataillon 1980, 119; Leroy 1978, 666; Émery 1993, 493). Indeed, Aquinas came to Paris to read the *Sentences* and not the Bible, and would have been an exception to his Dominican predecessors in Paris. This argues for a slightly earlier writing in 1251-1252, in Cologne where Aquinas was a biblical bachelor of Albert. He would thus have produced this commentary in Cologne under the direction of Albert and in close dependence on Hugh of Saint-Cher (Weisheipl [1974] 1993, 405).

However, there are two arguments for the writing in Paris. On the one hand, its character as a course preparation, emphasised by Gils 1958 and which Oliva (2006, 223) stresses, has never been questioned. On the other hand, while *In Jeremiam* and *Super Isaiam* are roughly contemporary, the former meets the definition of a bachelor’s biblical commentary – a quick commentary to make the literal meaning clear – whereas the latter is clearly richer (Bouthillier and Torrell 1990; Torrell 1993, 40-52). Isaiah 55:1 tends to confirm this, notably through the introduction of the concept of price. This would argue for making *Super Isaiam* a slightly later

work dating from Aquinas's arrival in Paris, since it is still an early biblical commentary but still his first personal theological work. Without categorically asserting this, and without affecting the analysis of the expression 'just price' which it contains, we can therefore retain the hypothesis that *Super Isaiam* was written in Paris in 1252 (Torrell 2015, 53-54, followingOliva 2006), or possibly in Cologne just before. In any case, the interest of the dating discussion lies in the common assertion of the importance of *Super Isaiam* as a foundational work in Aquinas's intellectual life, just before the writing of the *Commentary on the Sentences*.

The commentary on Isaiah 55 begins by identifying the recipients of the divine promise, the servants of the Lord, who are His sons. Then the commentary deals with the promise by commenting on the verse itself. "All of you who are thirsty [*omnes sitientes*]" are the Jews who were previously in deprivation and thirst. Aquinas continues "buy [*emite*]" and comments: "without price [*sine pretio*]". Here he emphasises the paradox of the verse by completing the verb 'to buy', which describes an exchange, with an absence of price. He could have memorised the expression '*sine pretio*' in Psalm 43:13: "You have sold your people for no price [*sine pretio*]" that he quotes in *Super Isaiam* 52, 3. However, he doesn't quote the end of the verse, although it links price and exchange: "and not much has been earned [*non fuit multitudo*] in the exchanges [*in commutationibus*] of them" (Psalm 43:13). In the Hebrew Bible, the *Septuagint* and the *Vetus latina*, the price appears at the end of Isaiah 55:1: "without price [*absque pretio*]", and in the later Dominican liturgy the price appears in the middle part of the verse: "You have no money [*non habetis pretium*]". If Aquinas saw the verse with '*pretium*' somewhere, he may have taken it up as a key to interpretation and mentioned it here, to comment on the first part of the verse. It could also be the lexicon of commerce, with the verb 'to buy', which leads him here to treat the paradox of the verse by an internal play on the lexicon of exchange: a purchase without a price. Aquinas goes on to specify that the invitation to "eat [*comedite*]" concerns bread and other necessities. Then comes the first occurrence of the just price: quoting John 7:37: "if anyone is thirsty, let him come to me and drink", he specifies: "in the delights, come, buy, as if take as if you were buying [*quasi ac si emeretis accipite*], even without money [*vel absque argento*], which is less than the just price [*idest minus quam justo pretio*]". Finally, he specifies the good "which is given free of charge to the thirsty [*gratis sitientibus datur*], divine wisdom [*divinae sapientiae*]" (*Super Isaiam*, 55, 1).

Aquinas first introduces '*pretium*' to emphasise its absence. It probably means 'without money', but it could also mean "no price", as in Psalm 43:13, although in Isaiah 55:1 it seems more accurate to read "to buy without money" than "to buy without price". However, the polysemy

of *pretium* leads to the notion of a price absence. Aquinas goes on to refer to price level, which is lower than the just price, because of the absence of money. There is therefore no identity between absence of price and absence of money. He thus accentuates the paradox of the verse: one buys (lexicon of exchange) without a price but takes (outside the lexicon of exchange) at a price, but lower than the just price, and this price comes into play when the transaction is done without money. A too-quick reading could identify the absence of price (*sine pretio*) at the beginning of the commentary and then the absence of money (*absque argento*) with the absence of a counterpart and make the operation a simple gift. However, the introduction of the price level would tend to distinguish the exchange/gift dialectic from the money/barter dialectic. Either it is an exchange that tends towards a gift, or it is an exchange that tends towards barter, without money, with a price reduced to the point of not being fair, but with a counterpart, which is not yet specified here, that man would bring in exchange for divine wisdom.

In order to know whether it is a gift or a barter, it is necessary to establish the link between the absence of money and a price lower than the just price. Indeed, the second term, the price, is quantitative, it is expressed according to a level. It is also necessary to know whether the first term, the absence of money, is quantitative or qualitative. If the expression is quantitative, in the sense that the counterpart would be money but that it would be reduced to zero, then in this case the price would tend towards zero. We would then find ourselves in the initial framework of an exchange, but where the seller would lower the price so much that it would be a gift. If the expression is qualitative, it is impossible to exchange with money, but there is another counterpart. In this case, it would be the qualitative criterion of the nature of the counterpart, which would be non-monetary, that would lead to a quantitative reduction in the price, which would no longer be fair. There are two arguments for the first (quantitative) hypothesis: the fact that the expression ‘without price’ appears earlier in the verse and the fact that there is no counterpart other than money, which is absent. This would suggest that it is a sale that is transformed into a gift. There is an argument for the second (qualitative) hypothesis: it seems to fit better with the idea of price level, otherwise Aquinas could repeat the expression ‘without price’ here. In order to favour one of the two interpretations, gift or barter, it is necessary to look at Aquinas’s use of Isaiah 55:1 in his other works, as well as the way he articulates the possibility of a price and price level.

3.2. The need for affordable price and available currency: Isaiah 55:1 in Aquinas's other biblical commentaries

In Aquinas's works, the quotation from Isaiah 55:1 appears only in the scriptural commentaries: in the almost contemporary writings of the early biblical commentaries on the prophets Jeremiah and Isaiah, and then in the mature evangelical commentaries on the Gospel of Matthew and the Gospel of John.

In the *Commentary on Jeremiah* (1252), Aquinas briefly interprets Isaiah 55:1 in the spiritual sense of the teaching which is like "regenerating waters [*Aquae reficientis doctrinae*]" (*In Jeremiam*, c. 2, l. 10). He quotes only the first part of the verse, according to the *Vulgate*, without the final expression "without money and without exchange". Aquinas therefore does not enter, contrary to what he does in *Super Isaiam*, into the register of economic metaphor.

Eighteen years later, however, Aquinas takes up the lexicon of the price used in *Super Isaiam*. The *reportatio* of the *Commentary on the Gospel of Matthew* (1269-1270), like that on Jeremiah, quotes only the first part of the verse according to the *Vulgate*. There is therefore no question of price. Nevertheless, he comments as follows: "But how is it sold without money [*sine argento venditur*]? I say that wisdom is sold without money. And what is its price [*quod est pretium eius*]? Let a man willingly study [*libenter studeat*], that is the price of wisdom [*pretium sapientiae*]" (*Super Matthaeum*, c. 25, l. 1, n°2026). The term 'price' appears, but it undergoes three shifts. First, he comments on the quotation in the first part of the verse by introducing the second part of the verse, "*sine argento*". In addition, the man pays a price, that of study, whereas in *Super Isaiam* the gift of God seems free, therefore "less than the just price". Finally, the commentary no longer introduces a price level or the justice of the price, but deals with what makes the counterpart, 'to study', that allows the payment for a good, 'wisdom'.

The *Commentary on the Gospel of John* (1270-1272) contains two mentions of Isaiah 55:1, though they seem less marked by economic metaphor and the lexicon of price is absent. But they echo the *Commentary on the Gospel of Matthew* in taking up the question of the good and the money with which to buy it. First, in a brief quotation, "All you who are thirsty, come to the water" (Isaiah 55:1), Aquinas limits himself to a spiritual meditation on water, without mentioning money or price (*In Joannem*, c. 4, l. 2, n°577). Later, Thomas quotes the following verse, Isaiah 55:2, and comments: "'Why spend your money', which is eloquence, 'not on bread', that is, on true wisdom [*'quare appenditis argentum vestrum', idest eloquentiam, 'et non in panibus', idest, non in vera sapientia*]" (*In Joannem*, c. 6, l. 1, n°849). Here we see that

it is a question of paying (a price – the term does not appear but it is implicit), with a counterpart (whereas the verse of Isaiah insists on the absence of money). Here it is 'eloquence', as it is in patristic and mediaeval commentaries, whereas in *Super Matthaeum*, c. 25, l. 1, n°2026 it was 'study'. This counterpart is not a monetary one, but it is a kind of currency because Aquinas here uses "*argentum*". It should be noted that Aquinas thus transforms the reference to eloquence into a positive element: it is no longer a question, as in Albert, of those who have no eloquence, but explicitly of those who have it, since they pay with it.

Do the later commentaries mark an evolution of Aquinas's thought in the sense of an *inflection*, in the sense that, after a first step where *Super Isaiam* would describe a kind of gift through the expressions 'without price' and 'without money' and by a level of price that would tend towards zero, later commentaries such as *Super Matthaeum* and *In Joannem* present a trade; or rather in the sense of a progressive *clarification* of the nature of an exchange that would be a barter? Both possibilities remain open, but it is the latter interpretation that seems to be retained. Indeed, the late commentaries seem to harmonise well with *Super Isaiam* if one retains the reading according to barter. If *Super Isaiam* introduces the notion of price level, the commentaries of the Gospels of John and Matthew introduce the affirmation of its possibility and propose counterparts that allow the payments to be made. These later commentaries thus add the counterpart dimension necessary for the realisation of the exchange once the existence of a price has been established.

Combining the commentaries, we can therefore conclude that the economic transaction (at least metaphorically) wherein the notion of 'just price' appears, when God sells "without money and without exchange", has three characteristics: (1) It is below the just price; but (2) it remains an exchange ratio to be paid, the 'price' of wisdom. According to the Bible (*Vulgate*) there is no exchange (*commutatio*), probably in the financial sense of trade against money; but according to Aquinas, even if not in a financial sense, there is still an exchange whereby man can get wisdom against another good (study or eloquence), at a certain price – or at least exchange ratio – level. So there is an exchange ratio. (3) The 'price' is paid with another counterpart which is not money in a financial sense but study or eloquence. Thus we see that what seemed to be a gift, made "without money and without exchange", is paradoxically a trade, where we can identify a good exchanged (wisdom), at a price (not a just one), with a currency (study or eloquence). It is a kind of 'barter of spiritual goods'. God therefore offers all the possibilities for the trade to take place: a 'price' at an unfairly low level in order to be affordable and an accessible and available currency.

3.3. Can God make an unjust trade?

With the expression “less than the just price” Aquinas introduces a paradox. Can God commit an act, in this case a sale, that is not just? Justice is one of the divine attributes (*S. T.*, Ia, q. 21, a. 1). *Sed contra*, quoting the psalmist, says “God is just, he loves justice” (Psalm 11:7). Aquinas thus lays down the general principle that God is just. In this case, since it is related to a sale, justice is relative to what Aquinas calls “particular justice”, which consists in commutative and distributive justice. Commutative justice consists in “giving and receiving in return, as in purchases, sales and other communications or exchanges”. This kind of justice “is not suitable [*competit*] for God” (*S. T.*, Ia, q. 21, a. 1, resp.). Indeed, God cannot be held to commutative justice since he owes nothing, being the first giver. So Aquinas quotes Romans 11:35: “Who gave to him first, that he should be paid in return?” A clarification is needed here. Aquinas is not saying that God contravenes commutative justice, but rather that he is not concerned by it: because in order to have an exchange ratio to pay, he would first have to receive something, whereas he is the origin of everything. God is never in a situation of commutative justice in a real way. However, Isaiah 55:1 is concerned with a metaphorical exchange. Moreover, the situation is reversed with respect to the impediment mentioned by Aquinas, since it is not a question of God having to pay an exchange ratio, but rather of receiving a counterpart for an exchange of which he is the initiator.

The case presented preserves well the postulate that prevented God from meeting commutative justice, namely that he owes nothing and that everything comes from him. We can therefore imagine that he meets it, at least metaphorically, since it is a question of a purchase (“buy [*emite*]”), an activity that enters into the initial enumeration of situations where commutative justice applies. In this case, the general principle applies in the absence of any indication to the contrary: God is just, therefore he respects this commutative justice.

The other kind of particular justice, distributive justice, which consists in distributing (unilaterally, without counterpart) a common good to each person according to his or her merit, “manifests the justice of God” (*S. T.*, Ia, q. 21, a. 1, resp.). At first sight, we could believe that the transaction presented in *Super Isaiam*, 55, 1 is a matter of distributive justice. On the one hand, it is about God, who according to the beginning of the *repondeo* is never in a situation of commutative justice, but rather of distributive justice because he owes nothing. In addition, God is like the whole in relation to the part (*S. T.*, IIa IIae, q. 61, a. 1, resp). On the other hand, we have seen that the Fathers had sometimes read this verse of Isaiah as referring to a unilateral

gift without counterpart. Two elements, however, take *Super Isaiam*, 55, 1 out of the framework of distributive justice and bring it back into that of commutative justice. First, in distributive justice, the ruler, in this case God, "assigns to each one according to his dignity [or merit: *dignitatem*]" (*S. T.*, q. 21, a. 1, resp.), but the situation presented does not mention any selection among the recipients, since God invites "all those who are thirsty [*omnes sitientes*]" (Isaiah 55:1). It must also be noted that even in the case presented by Albert of merit allowing a reward, the transaction is presented as an exchange. Second, Aquinas explicitly introduces a counterpart in his later commentaries on the verse in *In Matthaeum* and *In Joannem*.

Religion as a part of justice could be a third way, although it does not appear in *S. T.*, Ia, q. 21, a. 1, resp. about the justice of God because it is not an act of God but of the people. The virtue of religion, which is a distinct part of justice (*S. T.*, IIa IIae, q. 81, a. 4, s. c.), involves a counterpart from the people to God, as in *Super Isaiam*, 55, 1. However, in this early text the counterpart is not to give back to God what is due to him because of who He is, but to pay for divine wisdom. The counterpart belongs to the transaction itself. From the buyer's point of view, a distinction must be made between the real and the metaphorical meaning. In the real sense, since he owes God a counterpart, it is an implementation of the virtue of religion, but in the metaphorical sense of the transaction described as a sale, it is an implementation of commutative justice. Looking at the justice of the exchange through the virtue of religion can help to assess the justice of men, but not of God. The issue is about God's justice, since he initiates the sale and charges a price that is not fair.

The metaphorical framework of the sale takes us back to commutative justice. However, this use is metaphorical. It refers to an exchange with a counterpart, but this exchange is not made according to one of the properties of commutative justice, namely the equality between the things exchanged (*S. T.*, IIa IIae, q. 61, a. 2, resp.). In any case, whatever the type of justice chosen, there is nothing in Aquinas's works to suggest that God acts contrary to justice. Thus, Aquinas's text deserves special attention. He says "without money, i.e. less than the just price", but he does not say "at a price lower than the just price", which would be contrary to justice. It should therefore be considered an exchange ratio that is just and whose level would be lower than what a just price would be.

4. *Super Isaiam*: The grounding of Aquinas's economic-focused later work

Super Isaiam, 55, 1 does not contain any direct development of economic issues. However, the words and the discursivity of the commentary in this first great work of Aquinas, describing the

paradoxical situation presented by the prophet Isaiah, set the foundational intuitions that were to structure his economic thinking henceforth. Three intuitions can be accounted for through three lines. First, Aquinas sets up the notion of 'just price'. This just price is higher than the ratio at which the transaction is carried out because the just price does not integrate agents' resources. Second, the paradox of *Super Isaiam*'s transaction, which is made "without price" but which is a buying operation measured by the yardstick of the 'just price', paves the way for new kinds of transactions, which although falling within the framework of exchange are not truly trading. Third, through this diversity of transactions conceived within an exchange framework, Aquinas introduces different kinds of counterpart. *Super Isaiam* implements a just exchange ratio, which is below the just price. This counterpart integrates other justice criteria, such as the buyer's limited resources and the currencies available. Diversification of ratios paves the way for a functional distinction between counterparts, and then of incomes.

4.1. Towards a visible and objective indicator of the justice of the exchange

The framework generated by the references to Isaiah 55:1 in Aquinas's work is that of a barter between divine wisdom, provided by God, and a counterpart, described later as study (*In Matthaeum*, c. 25, l. 1, n°2026) or eloquence (*In Joannem*, c. 6, l. 1, n°849), provided by people. There remains, however, the issue of the price level, which would transform the barter into a gift if it were equal to zero. Then the two expressions found in *Super Isaiam*, 'without price' and 'less than the just price', would be equivalent, not from a conceptual point of view but from a practical and effective one.

Here, God's will to achieve the sale through any means takes precedence over the justice of the exchange. Transposed into other words, the situation described is as if God had the lowest bargaining power. He does not force the exchange, but he is prepared to do anything, i.e. to charge an effective price much lower than the just price that would be consistent with the value of his wisdom to man. The exchange presented describes a scene where the seller knows that the good he is supplying is most useful to the buyer and that its value is very high, but the buyer is not aware of this or could not afford to pay the just price. The seller, who is determined (we would say, according to a French idiomatic expression, '*à tout prix*', at any price) to make the exchange (in this case, to sell his wisdom), keeps lowering the price and facilitating the transaction, even by shifting to a currency more appropriate to the buyer. Presenting such a situation, *Super Isaiam* can be seen as founding further developments on price, notably in the in the *Summa theologiae*:

1. *Value and price*. Although value is not explicitly mentioned either in the biblical verse or in Aquinas's commentary, two dimensions of value are to be found (there was already a plurality of approaches in the works of the Fathers of the Church, as Hengstmengel 2021 has shown). Indeed, the good exchanged, divine wisdom, has both an intrinsic value *secundum se*, conferred here metaphysically, by its divine origin, and a value or a price derived from its usefulness to those who receive the good. These two approaches to value and price would later be developed in an interlocking manner in his *Summa theologiae* (*supra*, chapter 2; Januard 2021b). It is both a *secundum se* value, and a value for the one who holds it: "One may licitly sell something beyond its value *secundum se*, although it is not sold more than it is worth to the possessor [*plus quam valeat habenti*]" (*S. T.*, IIa IIae, q. 77, a. 1, resp.).

2. *From values to prices: the adjustment process*. Aquinas lays the foundations for a conceptual distinction between value and price (*supra*, chapter 2; Januard 2021b), since divine wisdom has a metaphysical value *secundum se* and a just price. This distinction, rarely taken into account in the literature, becomes a structuring feature of Aquinas's work. Translators sometimes use one for the other or add one or the other term (such as Spicq 1935), and commentators omit to distinguish between them and treat the Thomasian expression exclusively in terms of price, or switch from value to price without explaining why (typically De Roover 1958, 422 and 1971, 52 and 56-61; but this phenomenon is widespread, to varying degrees, in the literature,[81] with the notable exception of Bartell 1962). The study of the relationship between value and price supports Lapidus's reservations (1986, 17-28 and 1994, 440), which relate in particular to the nature of utility, since it is in fact the relationship between utility and price, but not value as such. The *Summa theologiae* is not univocal. Whereas *S. T.*, IIa IIae, q. 77, a. 1 presents, as noted above, a double-dimension value and *S. T.*, IIa IIae, q. 77, a. 3, ad 4 shows a value (not only a price) which varies according to the state of the market, some texts rather highlight a value *secundum se*, where the individual needs would appear only at the time of the transcription of this value into price. In this case, the price (and not the value) is estimated

[81] The conceptual distinction between value and price remains little discussed, even though it allows for a finer understanding of the Thomasian just price by specifying what it may entail. The literature has, however, allowed a better understanding of the Thomasian just price by progressively emancipating itself from the classical debate (Dempsey 1935; Worland 1977; Lapidus 1986, 18; Lapidus 1992, 29-30; Lapidus 1994, 435; Franks 2009, 85-92; Dellemotte 2017, Sturn 2017, 648-653; 37-38; Santori 2020, 281-282) between price on the market (Schumpeter [1954] 2006, 89; De Roover 1958, 422 and De Roover 1971, 59; to a lesser extent Langholm 1992, 228-233 and Sivery 2004, 703) and price by production costs (Tawney [1926] 1948, 41; presentation in Baldwin 1959, 71 and 75 and Sivéry 2004, 699-700) or a combination of these two points of view (Hollander 1965), so as to rediscover its ability to reduce transaction costs (Friedman 1980) and its moral character as a price according to justice (Lapidus 1986, 18; Hamouda and Price 1997, 192-193; Gomez Camacho 1998, 535; De-Juan and Monsalve 2006, 100-101; Koehn and Wilbratte 2012; Monsalve 2014a, 5), before formally distinguishing between the pre-existing normative just price and acceptable prices (Lapidus 1994, 456-457; Chaplygina and Lapidus 2016, 25).

according to the use, the needs or to the common price (*S. T.*, IIa IIae, q. 77, a. 1, obj. 3; a. 2, ad 3; a. 4, ad 2). In *Super Isaiam*, just price integrates these needs in a special interaction. From an economist's point of view, the just price is high because of the metaphysical value *secundum se* of divine wisdom, but also because it takes place in a bilateral exchange in which agent 1 (God) would be characterised by an objective function whose argument is the effective advantage drawn by agent 2 (who could be any of us). This advantage is very high, despite the fact that agent 2 ignores or underestimates the divine wisdom that is to be transferred.

3. *The just price's objective content*. The sale is not made at the just price, but "less than the just price" (*Super Isaiam*, 55, 1), i.e. below the price which takes into account divine wisdom's value *secundum se* and the advantage drawn by people. The just price would be so high that man cannot pay it. From an economist's point of view, the seller (God) voluntarily agrees to grant a discount that is not in line with the just price but is in line with the resources of the buyer. Otherwise, the transaction cannot take place. In considering such a just ratio not to be a just price, Aquinas provides an element that is taken up implicitly in his later writings: the purchasing power of the buyer does not enter into the determination of the just price. This sheds light on both his treatment of the just price in commercial exchange (e.g. *S. T.*, IIa IIae, q. 77) and of usury (e.g. *S. T.*, IIa IIae, q. 78). Aquinas does not rely on the resources of the agents but only on the good to settle the justice of the exchange. For instance, concerning usury, he keeps a certain distance from the traditional argument of the Fathers, namely the 'conditioned will', where lending would always consist in the enslavement of the poor by the rich. He does not seek to show that interest is unfair because it is too high for the resources of borrowers, but because of what is the good exchanged. Aquinas thus draws a major outline of his later writings as early as *Super Isaiam*. In order to establish the justice of exchange, he bypasses the lack of information about the agents (their intention, but also their resources) to look for visible and objective criteria of justice related to the nature of the good exchanged.

This leads to a clarification of posterior developments about the just price. In *Super Isaiam*, price doesn't come from the individual fancy of the agents but from some objective advantages that God knows and that people sometimes admit. It is not excluded that people can subjectively feel it, though it is external to them and objectively given. In this early work, Aquinas thus laid the foundations for further developments on utility in his later works (Lapidus 1994, 440). Nonetheless, this objective dimension of the just price is only shown implicitly: the transaction has to take place, and to do so other criteria must be taken into account, such as the agent's

resources. God adjusts the amount of the exchange ratio to allow people to benefit from his wisdom even if they cannot afford it.

The approach already present in *Super Isaiam*, 55, 1, shows that the quest underlying Aquinas's study of economic issues is already at work in this early writing. The search for visible indicators of the justice of exchange that reduce the lack of information about the subjective dimension of this exchange, such as the intention, the resources or the perceptions of the agents, finds in *Super Isaiam* an already extended exposition, not by explanations, which are absent, but by the situation presented.

4.2. Gift or trade? A new kind of transaction within an exchange framework

After considering value and price, it is appropriate to consider the nature of the transaction, because *Super Isaiam*, 55, 1 describes a transaction that is somehow strange. The huge gap between the value of the property and the effective price might suggest that the price would tend towards zero. This requires that we come back once more to *Super Isaiam* to see how foundational it is for later works. Aquinas comments "buy [*emite*]" by "without price [or without money: *sine pretio*]". This could too quickly seem to support a reading of *Super Isaiam* according to the gift: since what God wants above all is to communicate His wisdom, the price would tend towards zero and this exchange would be shifted into a gift. However, two reservations must be made to this. On the one hand, even if the price tended towards zero, the analysis framework proposed by Aquinas is that of an exchange and not that of a gift. Isaiah 55:1 announces "come, buy [*venite*, *emite*]", even though this purchase is made "without money and without exchange". It is therefore a buying and selling operation. On the other hand, the price seems very low compared to the priceless value of the good, but it remains costly for the buyer. The man must pay by his study or by his eloquence, which does not make him a simple passive recipient, but commits him to provide a counterpart, even if the value of this counterpart is much lower than that of the exchanged good, which is divine wisdom.

However, it remains to articulate the two mentions of the price in *Super Isaiam*, 55, 1: its absence and its level. The kind of 'presence-absence' of a price is ambiguous, but it helps to distinguish the issue of the possibility of an effective price and the concept of price and just price. First, Aquinas comments upon "buy [*emite*]" with "*sine pretio*", which can mean "without price" or "without money". Second, the *Vulgate* contains "without exchange [*absque ulla commutatione*]" and not "without price [*absque pretio*]" like the *Vetus latina* (Isaiah 55:1). However, the concept of price is more likely to appear afterwards. The just price is present and

has a level: the Bible describes a transaction where people are invited to "buy [*emite*]" (Isaiah, 55:1), which implies counterpart, and Aquinas comments on "without money [*absque argento*]" with "less than the just price [*minus quam justo pretio*]" (*Super Isaiam*, 55, 1), introducing a quantity criterion on price. Later works such as *In Matthaeum* and *In Joannem* confirm this quantified counterpart, namely study or eloquence. However, although the just price is conceptually present, the effective price is absent since if it were present it would be lower than the just price and the transaction would be unfair.

This double dimension highlights the importance of *Super Isaiam* in three ways. First, it shows that Aquinas, from his first great biblical and theological work, and on a subject that is spiritual and where exchange is taken only in a metaphorical mode, has recourse to the concept of price and just price through the dialectic between possibility and price level.

Secondly, *Super Isaiam* is a founding work and a harbinger of future developments in Aquinas's thought, when he deals with goods that cannot be traded, and where the price is first expressed in terms of impossibility, before being expressed in terms of unattainable level. This will be the case for the second occurrence of the expression 'just price', which appears in the *Commentary on the Sentences*, an early work that follows *Super Isaiam*, when it deals with simony, the sale of spiritual goods, which is forbidden (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1). Here Aquinas distinguishes between the justice of exchange according to quantity (*in quantum*) and according to the nature of the good (*in quid*), which may make it priceless. Fifteen years later, in the *Summa theologiae*, this impossibility will no longer be expressed only in qualitative terms but sometimes in quantitative terms, with the idea that the effective price would always be much lower than the just price for such a fine good: "this would be selling a great thing for a very low price" (*S. T.*, IIa IIae, q. 100, a. 3, ad 2). The just price is possible but unattainable.

Finally, it testifies to the nature of the good, which is at first without price before in the later works being exchanged for under the just price. The evolution in Aquinas's work concerns non-tradable goods, which cannot be sold, and particularly spiritual goods, to which the divine wisdom referred to in *Super Isaiam*, 55, 1 can be related. While the rhetorical expression evolves to adopt market terms and the lexicon of the price level, it only continues to describe the ontological impossibility of selling spiritual goods. Here, then, would seem to be an argument for the absolute gratuity of divine wisdom and the definitive affirmation of the framework of the gift. However, in the cases of simony or the free man, it is on the one hand the disproportionality that is asserted, as no just price can ever be effectively paid. And on the

other hand, there is nothing to prevent a contribution in the form of an offering (*In IV Sent.*, d. 25, q. 3, a. 2, qc. 1, ad 4; *S. T.*, IIa IIae, q. 100, a. 2, resp.).

The second occurrence of 'just price' (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1) thus sheds light on the first (*Super Isaiam*, 55, 1). The transaction is not strictly speaking a barter in the sense of a non-monetary commercial exchange, since the exchange is not made according to an equality of exchanged goods, an "*aequalitas rei*" (*S. T.*, IIa IIae, q. 77, a. 1, ad 3) through a price, but simply by the payment of an offering which is here study or eloquence. In this sense, the two expressions found in *Super Isaiam* can be unified, since it is indeed an exchange "without price" but at the same time with a payment evaluated quantitatively but which is "less than the just price". It is not strictly speaking a gift either, since a counterpart is expected, and although the fact that God's priority is to impart His divine wisdom means that the counterpart may tend towards zero, the framework is still that of an exchange ratio.

4.3. An exchange ratio which is not a price: towards a functional distinction between incomes

Recent literature has highlighted the articulation of gift and exchange, and sometimes their interweaving, through adopting an anthropological approach. Man is a moral being (De-Juan and Monsalve 2006, 100-101), *homo justus* (Monsalve 2014a, 16), and he would first be like a friend (*naturaliter homo homini amicus*) and as such the author of a gift (Santori 2019, 85; Santori 2020, 278), or an agent of mutual assistance (Santori 2021, 20). He seeks virtue, the Final End and happiness (Hirschfeld 2018, 68-160). The anthropology of the gift is rooted in the notion of charity (Le Goff [2010] 2019) experienced by Aquinas following Christ (Franks 2009, 105-181). *Super Isaiam*, 55, 1 suggests a complementary path, which is more objective and focused on the transaction rather than on the agents. It paves the way for a functional distinction between incomes within the exchange itself, i.e. in a framework that is not that of the gift: Aquinas proposes a model of a transaction that is not a gift but whose exchange ratio is less than the just price. This ratio would therefore be unjust if it were a price, but it is not unjust in its own kind (God's action is fair). This early writing thus introduces an income that is thought of as a compensation, not as a price.[82] The situation found in *Super Isaiam*, 55, 1,

[82] The existence of different types of exchange ratios can be found in recent literature, for instance with the distinction between 'tariff' and 'price' (Steiner and Trespeuch 2014). The tariff is a compensation that avoids dependence on an external source of financing; the price aims to make a profit. The compensations proposed by Aquinas can therefore be equated with tariffs. However, a difference appears. The distinction between tariff and price is made on the basis of the institution imposing the ratio (respectively, an administrative authority and the

where a just ratio takes into account the agents' resources and their purchasing power (but if it were a price, it would be unjust) is not found any more in later works. Indeed, in these works, ratio variations linked to personal situations of the agents are price variations. They derive from needs and not from resources, and fall under a situation of just price (see for example the case of the buyer who voluntarily pays more out of honesty because of his high need in *S. T.*, IIa IIae, q. 77, a. 1, resp., or the evocation of useful friendship in *S. T.*, IIa IIae, q. 77, a. 1, ad 3). In a purchase and sale transaction, there is no case of a fair exchange ratio that is anything other than a price.

However, the functional distinction between incomes suggested in *Super Isaiam*, 55, 1 gives an as-yet-unexploited key to understanding many situations. The first one is the remuneration of the lawyer (*advocatus*), which, like that of the doctor (*medicus*), must be moderate and is not based solely on the equality of things, but is done "taking into account the personal condition [of their clients: *considerata conditione personarum*], the cases [handled: *negotiorum*], the work [*laboris*], and the customs of the country [*consuetudine patriae*]" (*S. T.*, IIae IIae, q. 71, a. 4, resp.). Here, as in *Super Isaiam*, the fair exchange ratio takes into account the resources of the buyer and is therefore not a price.

Other cases are loan interest, merchant's income and the Mass offering given to the priest. First, the loan cannot involve interest, because the compensation (*recompensatio*), or the amount of the sale of money, is the equal sum returned (*S. T.*, IIa IIae, q. 78, a. 1, ad 5 and a. 2, ad 4). It is a quantified counterpart, but the word used is not 'price'. Moreover, the loan can give rise to another kind of compensation: a gracious gift (*gratium donum*) or a non-financial compensation such as benevolence and love (*S T.*, IIa IIae, q. 78, a. 2, resp. and ad 1). Even more, Aquinas gradually admits extrinsic titles in *S. T.*, IIa IIae, q. 78, a. 2, ad 1 by stipulating compensation for the damage caused by the deprivation of the sum (*damnum emergens*), i.e. the opportunity cost (but excluding *lucrum cessans*, loss of profit) and in *De malo*, q. 13, a. 4, ad 14, where Aquinas opens the way to *poena conventionalis*, a penalty for late repayment. The literature has usually thought that it is not the price of the loan itself but the price of something else: the loss resulting from the deprivation of the sum or the delay in repayment (McLaughlin 1939, 125-

market) and the purpose of this ratio (respectively, financing or profit). Aquinas, in contrast, is not primarily concerned with the purpose of the counterpart and the body that decides it, but with what justice commands it to be and to incorporate. Thus the inaugural situation presented in *Super Isaiam*, 55, 1 offers a broader framework than tariffs providing funding. On the one hand, God could give, yet does not Himself need financing. On the other hand, the exchange ratio is implicitly addressed by what it takes into account, for instance God's desire and people's resources.

147; du Passage 1946, col. 2361 and 2364; Noonan 1957, 105-132; Mélitz 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 – *supra*, chapter 1). The alternative model of the *societas*, highlighted in *S. T.*, IIa IIae, q. 78, a. 2, ad 5 (see Spicq 1935, 349-351) may be seen in the same way: shareholding transactions would be for something else than a loan and could involve different kinds of incomes, even prices. This common point of view is related to the nature of the good exchanged or of the transaction made, not to the nature of the income.

Super Isaiam, 55, 1 suggests moving away from the binary approach of distinguishing between transactions that have an exchange ratio (which would necessarily be a price) and those that do not. This early text leads us to consider a multitude of possible ratios. Indeed, if any ratio were a price, the price of the loan being the sum lent, any additional counterpart (gift, benevolence) would be integrated into the price and would make it unjust. In addition, extrinsic titles are exchange ratios, but not prices. *S. T.*, IIa IIae, q. 78, a. 2, ad 1, setting *damnum emergens*, stipulates a compensation (*recompensatio*) for prejudice (*damnum*), but it is not a price. *De malo*, q. 13, a. 4, ad 14, setting *poena conventionalis*, considers that in this case the borrower "is bound to an interest [*tenetur ad interesse*]". The verb '*intersum*' (to be between) appears in the Roman law (*Digestum*, XVII, 2, 60) and the noun "*interesse*" is used by canonists in the Middle Ages (Mc Laughlin 1939, 141; Blaise 1975, 499 gives Aquinas's *De malo* as the key reference) to indicate that the time gap has to be compensated (in contrast to the later meaning of the term 'interest', this refers to the delay in payment, not to the interval between the loan and its due date). Aquinas uses this specific noun, and by doing so he sets up a new kind of counterpart. Moreover, he contributes to laying the foundations for a future characterisation of loan's income, since the term '*interesse*' will be retained, but with a shift in meaning, as the name of this income.

Second, the functional distinction between incomes is also used in another context. Aquinas distinguishes between stipend or allowance (*stipendium*) and wages (*praemium*), thought of as "the price of work [*pretium laboris*]" (*De veritate*, q. 26, a. 6, obj. 10). *Stipendium* is not a price that would be a counterpart of equal value. It is the soldier's income (In IV Sent., d. 16, q. 4, a. 2, qc. 3, resp.). Aquinas takes up this notion of compensation in the *Summa theologiae* to characterise the merchant's income as a *quasi stipendium laboris*, 'like a stipend for the work'

(*S. T.*, IIa IIae, q. 77, a. 4, resp.). It is the same term that designates a witness's allowance in a court case (*S. T.*, IIa IIae q. 71, a. 4, ad 3) and the tribute due to the king (*ad Romanos*, c. 13, l. 1, 1041). Although it rewards an effort (Koehler 2020, 362), it is a social compensation that allows the beneficiary to provide a service, but this compensation is not of a value equal to the work provided (supra, chapter 3; Januard 2022).

Third, Aquinas specifies the priest's income according to the prohibition of the sale of spiritual goods (simony). The priest cannot receive an income coming from a price: neither "the price of a wage [*pretium mercis*]" (*S. T.*, IIa IIae, q. 100, a. 2, resp.), nor the price of the sacrament that he celebrates, "the price of the Mass [*pretium missae*]" (*In IV Sent.*, d. 25, q. 3, a. 2, qc. 1, ad 4). Nevertheless, he can receive a "kind of means of subsistence [*quasi sustamentum vitae*]" (*In IV Sent.*, d. 25, q. 3, a. 2, qc. 1, ad 4) or a "tribute paid to necessity [*stipendium necessitatis*]" (*S. T.*, IIa IIae, q. 100, a. 2, resp.). This, therefore, seems more like a subsistence allowance, allowing him, as is the case for the soldier or the merchant, to be available to carry out his mission.

Super Isaiam thus already bears the seeds of a functional distinction between incomes, not yet between income from capital and income from work, but between wages and compensation. This distinction between incomes is part of the justice of the transaction, because before establishing the fairness of the amount of the transaction, it is necessary to establish its nature. Thus, in *Super Isaiam*, 55, 1, the transaction made by God is just. The counterpart corresponds to an unjust price level, but the just nature of this counterpart is not a price, it is a compensation, whose level is just. The nature and level of the compensation are therefore just. Conversely, if a just price were applied, the transaction would not be just, because the nature of the counterpart would be unjust.

This approach, based on the nature of the income, once again makes it possible to reduce the risk arising from the lack of information about the agent, whose virtue and charitable intention remain hidden, in order to stick to the objective and visible nature of the transaction and to base the justice of the exchange on the justice of the nature of the counterpart, then on its level.

5. Conclusion

While theologians and philologists have been able to see in *Super Isaiam* Aquinas's first theological work, it is also possible to recognise in it his first work of economic significance. The first reason is lexical, with the appearance of the expression 'just price', which would later

constitute one of the characteristic markers of the Thomasian analysis. However, it could be argued that the lexicon is insufficient to establish properly economic reasoning, and that the usage could be incidental. In this sense, the situation in which the expression 'just price' is used would not fall within the usual framework of exchange. It is a metaphorical description of the spiritual relationship between God and man. God gives His grace but man is obliged to give in turn what he can. This reading of Isaiah 55:1 from the perspective of reciprocity, which is characteristic of Hugh, Albert and Aquinas, could support the thesis that this commentary is Aquinas's first theological work. However, the economic dimension of this work remains allusive.

It is therefore necessary to look for a second reason, which constitutes a deepening of the first. The term '*pretium*' does not seem to be very prominent in the sources available to Aquinas, either in the Latin versions of the verse or in the commentaries. It is found in a liturgical version of the verse in Isaiah, but probably more in the sense of 'money' than in the sense of 'price'. Furthermore, the introduction of the expression 'just price' is a Thomasian innovation. Here again, although innovative, the expression could be incidental. But the reading of Aquinas's text shows, on the contrary, that it introduces not only the concept of just price, to which Aquinas has recourse in his later works to consider the justice of exchange, but also contains a reflection on the notion of counterpart which opens up a first functional distinction between incomes. Indeed, God commits no unjust acts, so he cannot charge a price that is not the just price: however, the exchange does take place here under the just price. We must therefore deduce that the exchange ratio is not a price, which would be unjust, but that it is of another nature.

Aquinas thus introduces a distinction between a price and a compensation, which would be very useful to him later, in the *Commentary on the Sentences*, the *Summa theologiae* and *De malo*, when considering exchanges which are not gifts and for which there is a counterpart, but which concern goods or services which cannot be the subject of a price. This is the case of the priest (to sell spiritual goods such as the sacraments is a sin of simony, but the priest needs to be given means of subsistence), of the soldier (who receives a *stipendium*, stipend or allowance), and also of the merchant (who can receive a *quasi stipendium*, a kind of allowance), or of the lender who suffers damage because of the deprivation of the sum lent (and who can receive a *recompensatio*, a compensation for the damage) or who is reimbursed with delay (who can receive an *interesse*, a specific time-related compensation). They receive compensation for the

social service they provide, but it is not a salary that would be the price corresponding to the value of this service.

In *Super Isaiam*, 55, 1, the reason why compensation is not a price is different. God wants the exchange to take place, but man could not pay the just price for the grace given by God. The just exchange ratio differs from the just price because it takes into account the resources of the buyer. In the case of the priest, the soldier, the merchant or the moneylender, it is more a question of not getting rich by being paid according to the value of one's activity, but simply compensating for being able to exercise it. However, in his early work, through a metaphorical situation, Aquinas introduces into his analytical apparatus a plurality of possible exchange ratios and counterparts according to the nature of the activity and the agents. This allows him to specify what is contained in the price and what would belong to another exchange ratio, and to think of a multitude of limit cases within the framework of exchange.

Chapitre 6 :

At the boundaries of the trading sphere:

The appearance of the ‘just price’

in Thomas Aquinas’s

Commentary on the Sentences

1. Introduction

The term ‘just price’ is often associated with the economic thought of Thomas Aquinas (†1274) and serves as a key to understanding the Scholastics’s treatment of exchange in the broadest and most diverse sense of the term. However, the term ‘just price’ appears only nineteen times in Aquinas’s authentic works. Its emergence is gradual: the very first occurrence is 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, and two in *De emptione et venditione ad tempus*, I (1262). More occurrences are found in the later works, with eleven mentions in the *Summa theologiae* (one in *S. T.*, Ia IIae, q. 114, a. 1, five in *S. T.*, IIa IIae, q. 77, a. 1, and five in *S. T.*, q. 78, a. 2) and three in the *Quodlibetal Questions* (two occurrences in *II Quodl.*, q. 1, a. 2 and one in *II Quodl.*, q. 5, a. 2). The term is not explicitly used in the specifically economic passages of Aquinas’s early work the *Commentary on the Sentences*, neither those on usury, in *In III Sent.*, d. 37, a. 6 (*supra*, chapter 1; Januard 2021a), nor on the activity of merchants, in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 (*supra*, chapter 3; Januard 2022); but about five years later the term is taken up again within texts of a strictly economic nature such as *De emptione et venditione ad tempus* (*supra*, chapter 2; Januard 2021b), where it plays a more structural role as a criterion of justice of exchange, a role which it carries over into mature works such as the *Summa theologiae*.[83]

Elsewhere, I have already addressed Aquinas’s first use of ‘just price’. The early biblical text *Commentary on the book of Isaiah* comments on God offering his spiritual goods to humanity (*Super Isaiam*, 55, 1). Aquinas introduces the notion of ‘just price’ in his works through a limit case belonging to the framework of exchange, since a counterpart has to be paid, but the

[83] 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*, pp. 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, 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 (published in the Leonine edition’s *Opuscula III*, pp. 375-378). 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 hesitated between the traditional dating of a Lenten preaching in 1273 and a dating corresponding to Aquinas’s previous Italian sojourn in 1261-1268, but Torrell 2015 confirms that it has been written in 1273.

exchange ratio is ‘less than the just price’ (*supra*, chapter 5). Aquinas thus paves the way to recognising different kinds of exchange ratios.

In this paper, I address the two occurrences in Aquinas’s *Commentary on the Sentences*. Neither is directly concerned with economic questions, but rather with theological ones concerning the sacraments: in *In IV Sent*., d. 25, q. 3, a. 1, qc. 1, on simony, the prohibition of the sale of the sacraments; and in *In IV Sent.*, d. 36, q. 1, a. 2, on the sacrament of marriage and more particularly the conditions of the sale of a married serf.

These cases might seem anecdotal. Indeed, this possibility shouldn’t be underestimated since it entails a material risk of overinterpretation. The reason for this risk is that although in his early works Aquinas uses the phrase ‘just price’ for non-economic matters, and later for economic ones, he never explains unequivocally what it is. As a result, we have had long streams of interpretation focusing on some kind of market price, on production costs, or, more recently, on justice in exchange. My purpose here is to avoid possible overinterpretation. My first step, therefore, is to attend to what Aquinas wrote in his non-economic early writings. Indeed, although he doesn’t express what the just price is, nevertheless in these writings he clearly explains what it applies to and shows how and why this concept is useful for him.

These uses of the term ‘just price’, which remain little known, are of interest in three major respects, which I highlight from a dynamic perspective in order to emphasise that these occurrences are foundation stones on the basis of which the Thomasian thought evolved.

First, through a non-tradable good such as the sacrament, and then spiritual goods more generally (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1), and finally semi-tradable goods such as the married serf, whose sale is subordinated to strong non-financial criteria (*In IV Sent.*, d. 36, q. 1, a. 2), the use of ‘just price’ sets the ontological and epistemological framework for all of Aquinas’s contributions with an economic scope by a delimitation of what can be subject to exchange, even if this means pushing back those limits, as in the case of non-tradable and semi-tradable goods. The first uses of the term ‘just price’ can thus be seen as setting boundaries to the trading sphere.

Secondly, they clarify and allow for a new interpretation of the activity of trade and its conditions of exercise as set out in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. The criteria of justice of means concerning the person (exclusion of clerics), the time (exclusion of feast days) and the mode (without fraud and according to the licit contract), are enriched by a good-focused

approach drawing on the distinction between a *justice of object* and a *justice of quantity*. This objective approach by reference to the goods, which has the advantage of circumventing the lack of information concerning the agent and his intention that is characteristic of a subjective approach, will be found again in the later works.

Thirdly, these three occurrences inaugurate the concept of just price by declaring its utility and announcing its definition. Indeed, whereas the use of price was implicit in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 in the general framework of trade, here it appears explicitly in order to reduce the lack of information on the justice of the exchange. By its possibility (whether the nature of the good allows one to sell it or not) as well as its level, the just price is the objective and visible revealer of this justice. These occurrences thus show, from the earliest works, a recourse to the price that has the effect of reducing the risks arising from the lack of information on the hidden intentions of the agents. This appeal to the price will become stronger in later works. We therefore find that the use of price and the object-based approach are part of the same search for visible and objective indicators of the justice of exchange.

Moreover, and this is undoubtedly the major contribution of the founding use of the expression 'just price' in *Super Isaiam* and the *Commentary on the Sentences*, these occurrences shed new light on the later and better-known uses of the expression, notably in *De emptione*, the *Summa theologiae* and the *Quodlibetal Questions*. Aquinas introduces the just price in order to take into consideration goods that cannot have a price or whose sale is also governed by elements external to the price. Before dealing with the level of the just price in later works, and expressing, for non-tradable goods, the impossibility of a just price by an unattainable price level, Aquinas sets the epistemological framework of the just price through discussing its possibility and sketching its contours. Simony raises the question of its very possibility: the sale of the married serf calls for the articulation of two complementary criteria of justice, a financial one manifested by the price, and a non-financial one, in this case how far the serf can be moved so as not to infringe on his marriage, which is not reducible to the price. The nature of the goods thus conditions a justice that pre-exists the exchange. The just price is thus a normative and pre-existing price of justice that manifests itself in the effective just prices.

These inaugural occurrences thus highlight the primacy of justice and remain far from the traditional debate on whether the determination of the just price is effected by production costs, as supported by the *Ethicorum*, and argued for instance by Tawney [1926] 1948, or by the market, as supported by *De emptione* and the *Summa theologiae*, and argued for instance by De

Roover 1958 and 1971. Indeed, the just price, which can eventually be effectively expressed on the market, comes from justice. Moreover, the *Commentary on the Sentences*, through its formulations, establishes from the outset an analogical approach to the just price: as we will see, the effective just price maintains a relationship to justice that is one of analogy, but not of identity. It conforms to it and comes from it. The normative just price, pre-existing the exchange, can thus open up a set of effective just prices, that is to say acceptable prices that conform to it. Moreover, these inaugural occurrences confirm and enrich an approach to the just price that recognises its three levels of reality, as had been highlighted in *De emptione* from the external convocation of the Thomasian categories of sign and analogy (*supra*, chapter 2; Januard 2021b). The necessity of the licit contract in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 in the general framework of trade also adds to these three economic levels three legal levels of the reality of the just price (*supra*, chapter 3; Januard 2022). It is therefore clear from Aquinas's early writings that the just price is first of all the normative just price pre-existing the exchange. It is also, by analogy and as a sign, the just price that can eventually be found on the market or according to the positive law of contracts, and, still by analogy and as a sign, it is also the just price of the singular exchange or according to the particular contract.

By its object, its approach and its results, this study extends the usual analyses of the Thomasian just price. Indeed, while the 'just price' as it was viewed by the medieval and modern scholastics – often taken as a whole through reference only to a few major works – does have a certain place in the literature, the evolution of the expression over time in Aquinas's works and even more so the characteristics of its first occurrences in his early work are not the object of specific attention and remain largely unexplored. Beyond the strictly historical aspects, however, the literature has allowed a progressive rediscovery of the primacy of normative justice, which has led to a renewed understanding of the just price (De Roover 1958 and 1971; Baldwin 1959; Hollander 1965; Friedman 1980; Lapidus 1986, 1987, 1994 and 2021; Langholm 1992, 1998 and 2003; Hamouda and Price 1997; Gomez Camacho 1998; Sivéry 2004; De-Juan and Monsalve 2006; Franks 2009; Koehn and Wilbratte 2012; Monsalve 2014a; Chaplygina and Lapidus 2016 and 2022; Sturn 2017; Hirschfeld 2018; Santori 2019, 2020 and 2021; Januard 2021b and 2022 – *supra*, chapters 2 and 3.)

Building on these insights, I first show how the application of the just price to non-tradable goods allows for a delimitation of the trading space (section 2). This is done by highlighting the role of price in reducing the risk of confusion between trading and non-trading spaces, distinguishing between 'justice of object' and 'justice of quantity' and emphasising that Aquinas

circumvents the lack of subjective information by an objective delimitation of the trading space by goods and by activity. This leads me to pay particular attention to the paradoxical character of these early occurrences of the just price, which apply to what has no price (section 3). The just price, by its possibility and its level, takes on the entirety of justice and presents itself as an analogy of the justice of object and of the justice of quantity. This expression of the just price as an analogy of justice makes it possible to establish the foundational role of the just price in Aquinas's works. The study of semi-tradable goods, whose sale is governed by two non-substitutable criteria of justice (section 4), leads first to establishing the specific nature of this trade, then to showing how the non-substitutability of financial and non-financial criteria amounts to the treatment of an externality, in this case the marriage of the serf. Finally, I establish that the price, in this situation, cannot embody the entirety of justice, but that it must be completed by non-financial conditions that are irreducible to it.

2. The non-tradable good: Circumscribing the trading sphere

The first occurrence of the term 'just price' in the *Commentary on the Sentences* comes in *In IV Sent.*, 25, q. 3, a. 1, qc. 1, resp., where Aquinas deals with simony, i.e. the sale of spiritual goods, which cannot be sold. The just price thus appears for goods in a limit situation, for which it is not self-evident that they have a price. The general framework of trade, which in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 set out three practice conditions, concerning the person (exclusion of clerics and monks), the time (exclusion of some days) and the mode (without fraud and according to the licit contract), is here completed by the criterion of the possibility of a price, which amounts to delimiting the trading space. Aquinas articulates two criteria of justice: justice of quantity (*in quantum*) and justice of object (*in quid*). The attention paid to the nature of the good in the case of non-tradable goods leads him to give more space to this ontological criterion in his later writings on trade and to delimit the trading sphere objectively by the good and by the activity, rather than by a subjective approach focused on the agents and their intention. It thus reduces the risk of information on the nature of the exchange.

2.1. Price as an instrument for reducing the risk of confusion between trading and non-trading spheres

The first time Aquinas mentions the just price in the context of exchange is in order to address simony, which he defines as an "act of the will [...] to buy or sell [...] something spiritual or associated with something spiritual" (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1., resp.). Aquinas's reasoning is explicitly moral, but since it concerns a trade transaction, he examines the

operational parameters of the purchase and sale. He thus clarifies the general conditions for the licitness of the merchant's activity set out in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. These conditions were based on the triptych *persona* (person), *tempus* (time), *modus* (mode), taken from Albert the Great (*In IV Sent.*, d. 16, a. 46, resp. ad q. 1). The activity of the merchant is forbidden to clerics and monks (*persona*), is reserved for certain days (*tempus*) and must be carried out without fraud and according to the licit contract (*modus*). When dealing with simony, Aquinas introduces the criterion of the nature of the object exchanged. He thus limits the scope of the market, since not everything can be sold (Sturn 2017, 663).

Conditions for the practice of trade are restrictive and aim to circumvent the lack of information about the merchant's end and intention, even though human behaviour, for Aristotle as well as Aquinas, is fairly predictable (Conrad and Hunter 2020) by reference to a framework of means. *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 marks an evolution compared to Gratian (*Decretum*, II, causa 33, q. 3 De poenitentia, d. 5, c. 6) and to Peter Lombard (*IV Sent.*, d. 16, c. 3) who a hundred years earlier treated this lack of information by equating it with an evil end (*supra*, chapter 3; Januard 2022). Thus, in the *Commentary on the Sentences* trading is subject to limits but not always considered sinful. Similarly, ten years later, in *De regno*, II, 7 (II, 3), Aquinas expresses regret and issues a warning when he considers the case in which there are too many traders in the city, since they seek gain, their greed then passes into the hearts of the citizens, and everything becomes venal (Franks 2009, 102): but, still, this is not a ban. *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp. thus introduces two major novelties: on the one hand, the possibility of an ontological impossibility of trade, whatever the conditions, and on the other hand, the basis of this impossibility, which is now founded on the good itself. The general conditions of trade already excluded certain agents, clerics and monks, but these were only some of the potential merchants, and it only concerned trade, this being the professional activity of the merchant, and not all commercial exchange. Here, through the nature of the object, a total impossibility of the sale of certain goods emerges, thus a delimitation of the trading sphere.

The general framework laid down in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 refers to cumulative and systematic conditions and there is no explicit, 'fully-trading' limit situation, as opposed to the absolutely non-trading situation of *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1. Thus, while we do find in Aquinas's works reference to some non-tradable goods, and thus absolutely non-trading exchange activities, we do not find absolutely trading activities (i.e. without non-trading conditions or constraints). That invites us to nuance an overly binary reading that would stress the licitness of trade, especially from an Aristotelian perspective, by insisting on the justification

constituted by the requirement of supply (Baldwin 1959, 64-65; Dupuy 1992, 38-41), as opposed, for example, to usury, for which there is no exception. Indeed, trading activity, rather than being permitted a priori under restrictions, is only permitted after recognising the absence of non-compliance with successive criteria that act as conditional filters. Of course, there are still cases, when the good is not a non-tradable one, where the activity as a whole manages to pass through all the filters (*persona*, *tempus*, *modus*) and becomes possible. Such a procedure assumes that any activity that could be a licit trading one on one condition, may ultimately be a non-tradable one because of the other conditions. For example, the status of the seller may be good, but the day, or the drafting of the contract, or its observance may be non-conforming. While Aquinas envisages a limit case that is totally non-trading (simony), he does not explicitly envisage its opposite, the totally-trading situation, with no non-market clause, governed only quantitatively by price.

After distinguishing the two matters of the moral virtues, i.e. passions and actions, to which buying and selling belong, Aquinas notes that a sin can relate either to the object (*in quid*) or to the quantity (*in quantum*): "If it is with respect to quantity [*in quantum*], then there is injustice [*injustitia*], as [*sicut cum*] when someone does not buy or sell at a just price [*non justo pretio*]; but if it is with respect to the object [*in quid*], as [*cum*] when he sells or buys what is not the object of a price [*quid non cadit sub pretio*], then it is the sin of the simoniac" (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp.).

The expression 'just price' appears for the first time in Aquinas's works in a place that is doubly unexpected for the modern reader. On the one hand, it is about a properly theological issue, which indicates that there is no hermetic separation of subjects and fields of knowledge and that the conceptual apparatus forms a usable whole, whether it concerns the sacraments or secular activities such as trade (*supra*, chapter 2; Januard 2021b). On the other hand, we note the paradoxical emergence of the concept of just price in the works of Aquinas concerning operations where the price is not the relevant exchange ratio (*Super Isaiam*, 55, 1; see *supra*, chapter 5) or where the just price cannot exist, since any price would be unjust, for a good that cannot be the object of a price. Aquinas thus makes a distinction between sacred non-evaluable and evaluable goods (Todeschini 2002; Piron 2010, 138; Rajapakse 2010, 58) that can be traded.

The literature has up to now studied the just price both in terms of its nature and in terms of its scope. *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 allows us to take a new step in the understanding of these two aspects. Concerning its nature: the aim was to recover the pre-existing moral primacy

of normative justice of the just price, but *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 raises the more fundamental, though still little explored, question of its possibility. The notion of price enters here as the junction of ontology (what it is) and morality (the justice of exchange). It represents a visible criterion of justice not only of *level* (a fair price) but also of *possibility* (presence or absence of a price). Concerning its scope: the aim was to show that the just price reduces transaction costs within the market, and ensures, within what we might consider today as a principal–agent relationship, that the exchange is for the mutual benefit of the parties (Friedman 1980; Langholm 1998, 77-117; Sturn 2017, 653-654; Chaplygina and Lapidus 2022), but *In IV Sent.*, d. 25, q. 3, a. 1, qc.1 indicates that the just price further sets the limits of the trading sphere. Through the moral vocabulary of sin, the price allows us to highlight two structural risks of economic activity: an unjust practice (*injustitia*) of the trading economy, with a price that deviates from the just price, and a confusion between the trading and non-trading economy, or more exactly a commodification of the non-trading economy, with the assignment of a price to an object that cannot be sold (*qui non cadit sub pretio*).

2.2. Justice of object and justice of quantity: towards a '*quid*'-related approach

The general framework of trade, laid down in *In IV Sent.*, 16, d. 4, a. 2, qc. 3, establishes three conditions for the activity of the merchant, relating to the person (*persona*), the time (*tempus*) and the mode (*modus*), itself composed of the absence of fraud and conformity to the licit contract. These conditions thus include qualitative dimensions (activity carried out by persons who are neither monks nor clerics, on appropriate days, and respecting the qualitative aspects of absence of fraud and compliance with the contract) and quantitative ones (financial aspects, in terms of price, of the fraud and the contract). A double criterion of justice pertaining to these conditions of trading activity can thus be identified: a quantitative financial criterion and a qualitative non-financial criterion (*supra*, chapter 3; Januard 2022). The general framework of this double criterion – i.e. price and a non-financial element – allows us to think of the limit case as the non-tradable good presented in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1. Conversely, thinking about this case allows Aquinas to deepen his initial reflection structured around *persona*, *tempus*, *modus*.

The treatment of the justice of the exchange of non-tradable goods echoes the general framework of trade through its reference to a double criterion of justice, both qualitative and quantitative. In *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 Aquinas formalises a justice of object (*in quid*)

and a justice of quantity (*in quantum*): “In buying and selling [...] there can be a sin on the object or on the quantity [*vel in quid vel in quantum*]” (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp.).

The justice of quantity (*in quantum*) visibly corresponds to the quantitative dimension of the *modus*, to the justice of price that is implied by the absence of fraud and the respect of the licit contract. However, by explicitly introducing the distinction between qualitative and quantitative justice, and even more so by referring for the first time to the just price in the context of exchange, Aquinas here clarifies and formalises a typology which in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 was still only a practical enumeration. He not only clarifies, through quantity and price, what he meant by the broad and therefore ambiguous expression *sine fraude* and by the respect of the contract, but he uses a visible indicator of the justice of quantity, the just price. The price thus makes it possible to remedy the lack of information *in quantum* that remained with the abstract notion of fraud. Moreover, it shifts the focus from the agent or the transaction to the object. In fact, the criteria of absence of fraud and compliance with the contract referred to the agent and the transaction, since fraud and compliance with the contract have a subjective dimension linked to its author and an objective dimension linked to the activity carried out (*supra*, chapter 3; Januard 2022), whereas the price, implemented in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, came to characterise a good.

Thus, two developments take place between the general framework of trade set out in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 and the handling of non-tradable goods in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1. On the one hand, the introduction of the notion of just price allows for a precision of the quantitative criterion which had been outlined by the conditions of absence of fraud and respect of the licit contract. On the other hand, there is a first integration of the object in the conditions of the trading activity, which had until then been seen through its agents and its modalities. *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, through the justice of quantity and the introduction of the just price, thus represents both a deepening and a widening of the criteria of justice of *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3.

The justice of object (*in quid*), for its part, revisits the formulation of qualitative justice that was given by the triptych *persona*, *tempus*, *modus* in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. In fact, only the object is mentioned as a qualitative clause in *In IV Sent*., d. 25, q. 3, a. 1, qc. 1, while the clauses on the identity of the merchant, the time schedule or the contract seem to have disappeared. Three hypotheses can be formulated here: according to the first hypothesis, it is a clarification or an explanation of the general framework of the merchant activity. The *quid* was

already implicitly understood in the qualitative part of the absence of fraud and in the notion of contract. According to a second hypothesis, the study of a non-tradable good prompts Aquinas to broaden the criteria of justice by shifting his gaze from the agent and the transaction to the object. The existence of non-tradable goods would then lead him to transform his triptych into a 'quadriptych' *persona*, *tempus*, *modus*, *quid*. According to a third hypothesis, non-tradable goods lead him to a substitution: justice *in quid* replaces all qualitative criteria of justice, i.e. *persona*, *tempus* and the qualitative part of *modus*.

The first two hypotheses cannot be definitively invalidated. However, the third hypothesis seems to be preferable for two reasons. First, the radical objectivism of this last hypothesis is supported by a literal reading of the passage, since the other qualitative criteria are no longer mentioned and only the *quid* criterion remains. Secondly, the situation of simony, which is an operation carried out by clerics, is particularly well suited to maintaining a condition on the person (*persona*), which concerned clerics, since it is a question here of the trade in spiritual goods. However, clerics, who are already excluded from trade activity under the general framework laid down in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, are not invoked here. By explicitly evacuating the *persona* criterion, which was relevant here, in favour of the sole *quid* criterion on the object of the exchange, Aquinas seems to propose, along with the explicit replacement of *persona*, an implicit replacement of the other two criteria, *tempus* and *modus*, by the *quid*. The exclusive focus on the object is remarkable. The prohibition of simony, whether in the whole of *In IV Sent.*, d. 25, q. 3 or in *S. T.*, IIa IIae, q. 100, is linked only to the object of the sale, without any further consideration of date or person.

This substitution of the *quid* for the triptych would seem to apply only to non-tradable goods, since, in the later works that reposition the general framework, while the *tempus* clause is less explicit, we find *persona* (*S. T.*, IIa IIae, q. 77, a. 4, ad 3) and *modus* addressed through fraud and contract (*S. T.*, IIa IIae, q. 77, a. 1, resp.), or through a variation in terms of virtue and law (*II Quodl.*, q. 5, a. 2). However, with the exception of these few echoes of the triptych, the focus is overwhelmingly on the object, its price and its state. Thus, taken as a whole, the later works on trade such as *S. T.*, IIa IIae, q. 77 and *II Quodl.*, q. 5, a. 2 have a more objectivist tone than the general framework set out earlier in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. In these later works, therefore, although with some exceptions, one can observe a replacement of the triptych *persona*, *tempus*, *modus* by *quid*, that is to say more attention to the object and less to the other conditions.

The three hypotheses are not incompatible and it seems all should to some extent be retained, leading to the following conclusion: Justice in quid, perhaps implicitly understood in the original triptych of the general framework of justice as falling within the '*sine fraude*' clause of the modus, is brought to light and made explicit on the occasion of the treatment of a non-tradable good. Quid is the only criterion of qualitative justice for the trade of this good. The original triptych persona, tempus, modus remains diffusely present in the later works, as a general framework, but it is extended to quid, which takes the first place within the qualitative criteria.

We thus see not only that Aquinas's view of the activity of trade as a whole becomes progressively more objective (i.e. focused on the object exchanged), but even more that the distinction between trading and non-trading activity is itself totally objective, and not subjective. This distinction is justified only by the nature of the object, and not by the nature of the agent, who is not only a trader, nor by the nature of the relations, nor by an intention, whether self-interested (such as the development of customer loyalty) or disinterested. It should be noted here that we have already observed the same phenomenon of objectification in the treatment of usury in the *Commentary on the Sentences* (*In III Sent.*, d. 37, a. 6), which he does not address through the subjective situation of the poor or the usurer but through the definition of the Roman *mutuum* and of money and through the concept of price (Mélitz 1971, 475-482; Langholm 1984, 16; Lapidus 1987, 1097; 1997, 16; 1991; Sivéry 2004, 697; Chaplygina and Lapidus 2016, 28; Januard 2021a, 608-611, 623-624 – *supra*, chapter 1).

By dealing with a good that cannot be sold, Aquinas restricts trading activity through the *in quid* criterion and subordinates it to an ontological criterion. There is no break between the framing of trading activity on the one hand and the treatment of the case of the non-tradable good on the other, but on the contrary an integration of the non-tradable good as a limit case within the original framework. It is a limit case in the primary sense of the term, because while it is eligible for the general framework of analysis, it imposes a limit on the trading space.

2.3. An objective delimitation of the trading sphere by good and by activity

The objective distinction, by reference to the nature of the good exchanged, between trading and non-trading activities, leads to a new understanding of the link between Thomasian anthropology and the treatment of economic issues, in the sense of positing a distinction between kinds of human activities. This is a question that runs through the recent literature and which has led to a new understanding of the imbrication between the different dimensions of

the human being. It emphasizes gift and charity on the one hand, and useful friendship or non-trading compensation on the other. Thus we find the idea of prioritising man as a moral being (De-Juan and Monsalve 2006, 100-101). In different terms, we find the idea that man is first *homo justus* (Monsalve 2014a, 16), before becoming *homo oeconomicus* (Hirschfeld 2018, 39-42) or *homo chremastisticus*, according to Aristotle's distinction of the nature of wealth (Neves 2000, 650; Berthoud 2004). A refinement of this anthropology highlights the existence of an earlier stage: thus, even before being considered as *homo justus*, man would first be like a friend (*naturaliter homo homini amicus*) and as such the author of a gift (Santori 2019, 85 and Santori 2020, 278). In the same perspective, Le Goff [2010] 2019 highlights an anthropology of the gift through the notion of charity (*caritas*). This anthropology would apply particularly to Aquinas, since, as a Dominican mendicant friar, his charity and poverty are rooted in the charity of Christ (Franks 2009, 105-181). Finally, there is the idea that man seeks ultimate happiness in God and orders his actions to this final end (Hirschfeld 2018, 25, 68-94) through the exercise of the virtues (Hirschfeld 2018, 96-117). Economic life thus belongs to this search for happiness (Hirschfeld 2018, 118-160).

It is noteworthy that the *Commentary on the Sentences* invites us to nuance this perspective by focusing on a limit case that forces a shift from the unity of the person to the unity of the activity. Indeed, here it is not the person who determines the nature of the activity, but the object. Man is undoubtedly a being of gifts and trade, but there is nothing here to indicate that we can envisage an imbrication of gifts and trade to the point of considering them as two alternative facets of the same activity, which could be either a sale or a gift, or even the two together, being part sale and part gift that is not motivated by the moral conditions of the sale. Indeed, the order of trade is already ordered to the virtue of justice, so it does not need another order to be virtuous, and finds its own delimitation in the justice of object. In the same way, for the entirety of the activity of trade, the objectivist movement observed in the later works, associated with the subsistence of the original triptych *persona*, *tempus*, *modus*, offers a set of visible criteria of justice within the trading space itself, without interference from either the subjectivity of the agent, notably the hidden criterion of his intention, or from an order outside the space of trade. The strict supervision of trading activity and the concessive tolerance towards merchants can be read as a demand for justice, sometimes insufficiently respected, within this trading framework. Certainly, fifteen years later, in the *Summa theologiae*, there are two notable examples where, by virtue, the agent can voluntarily grant an additional surplus to the co-contractor: he can give more than the price (*supererogare*) because of the great utility he finds

in the good acquired (*S. T.*, IIa IIae, q. 77, a. 1, resp), or lower the selling price if he knows that his price is a monopolistic starvation price but that the price will fall due to the arrival of competitors (*S. T.*, IIa IIae, q. 77, a. 3, ad 4). However, if we read these examples in the light of *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 and *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, it seems that it is more a question of a full accomplishment of the virtue of justice within the trading activity itself because of the conditions of this operation, i.e. of a kind of optional criterion within the *modus*, than of an interference of the order of gifts and charity within the trading order, or of an operation thought of as mixed by the agent for reasons which are external and prior to this operation, or of an operation thought of as trading, nontrading or mixed.

Concerning useful friendship, which can take the forms of civil friendship, friendship between cities or nations (Santori 2019, 85 and Santori 2021, 17-19), and friendship through non-trading but self-interested exchange, its absence in the business-related articles of the *Commentary on the Sentences* is remarkable for two reasons. On the one hand, Aristotle distinguishes three types of friendship, depending on whether it is concerned with the good, the pleasant or the useful (Aristotle, *Nicomachean Ethics*, VIII, 2, 1155b). 'Useful friendship' therefore constitutes part of the intellectual background, of which there is still a trace in the French expression '*prix d'ami*' (friendly lower price), even though co-contractors are not friends. On the other hand, in Aquinas's time the social use of wealth, characterised by the gift, was widespread and did not compete with the flourishing of trade (Feller 2020, 43-44). These transfers of wealth, without entering into trading exchange, strengthen affects and relationships while concerning goods that by nature could be tradable.

The absence of any reference to useful friendship tends to support Aquinas's focus on the objective and observable elements of trade. Indeed, unlike useful friendship, the justice of exchange is independent of the bonds between persons. Even if justice is the act of a person (Koehn and Wilbratte 2012, 505), it manifests itself in a relationship of proportion, thus externally (Lapidus 1994, 436), as the *Summa theologiae* testifies: "The matter of justice is an external activity" (*S. T.*, IIa IIae, q. 58, a. 10, resp.) and "the object of justice [*objectum justitiae*]" is "something external [*aliquid exterius constitutum*]" (*S. T.*, IIa IIae, q. 59, a. 2, ad 3). Injustice is the maladjustment of an external act to the right of someone else. It is therefore a matter of the objective and external character of the act, regardless of the agent's will to be just (Delos 1932, 194-195, 198-199). In the *Commentary on the Sentences*, Aquinas does not enter the anthropological and subjective field.

Aquinas's distancing himself from useful friendship, by reinforcing his objectivism, allows him to reduce the lack of information on the activity. Indeed, the gift – because of the plurality of possible intentions, their inaccessibility to the observer, and the absence of a price which could constitute an observable indicator of justice – cannot enter into the framework of the analysis of exchange. Aquinas therefore makes a clear distinction between what belongs to the order of contract and what belongs to the order of friendship. While he envisages that a loan can freely elicit a spontaneous loan in return (*S. T.*, IIa IIae, q. 78, a. 2, ad 4) or that it allows a demand to be made upon the borrower's benevolence, friendship or gratitude (*S. T.*, IIa IIae, q. 78, a. 2, resp.), this is more a matter of 'evasion' strategies (Ege 2014, 400-405) in order to consider a form of surplus in the specific framework of the condemnation of usury (*supra*, chapter 1; Januard 2021a), than of an assimilation of gift and trade. In this respect, Piron (2005) insists on the distance Aquinas takes from the notion of *antidora*, which in the early thirteenth century places gratitude exactly within the framework of lending.

It is also necessary to remain vigilant when we see a shift in compensations and what seems to be an interpenetration of trading and non-trading exchange. To understand Aquinas's use of "useful friendship [*amicitia utilis*]" in trade matters, as in the emblematic case of *S. T.*, IIa IIae, q. 77, a. 1, ad 3, we must begin by resituating objection 3 and its response within the general framework of the *respondeo*. Aquinas considers the exchange which, 'by accident' (*per accidens*) turns out to the advantage of one of the parties, when for example one has great need (*multum indiget habet*) of the good and the other is harmed (*laeditur*) if he disposes of it (*S. T.*, IIa IIae, q. 77, a. 1, resp.). This exchange, highlighted by Lapidus (1994, 448-454) and commonly called 'exchange by accident' (although it is not the exchange that is accidental but its conditions), allows us to understand the distinction Aquinas makes. In this case, the just price (*justum pretium*) includes the thing (*ad rem*) and the damage (*ad damnum*). It is licit to sell the thing for more than what it is worth in itself (*valeat secundum se*). Thus, through the notion of just price, justice here integrates the value of the thing in itself (on the difference between value and price for Aquinas, see *supra*, chapter 2; Januard 2021b) and a dimension of utility. Objection 3 proposes to include in the contract, in the name of useful friendship which is based on utility, a price higher than the value of the thing (*majori pretio quam valeat*). Aquinas, in his reply, takes a step aside. Whereas in the *respondeo*, through the just price, justice integrates utility, here he distinguishes between justice and friendship, which is nevertheless based on this utility. The purchase, according to commutative justice, must be made according to the equality of the thing exchanged (*secundum aequilitatem rei*), whereas in useful friendship the

compensation is governed by the equality of the respective utility (*aequalitas utilitatis*) (*S. T.*, IIa IIae, q. 77, a. 1, ad 3; see Lapidus 1994, 448). He thus provides the formal framework for thinking about exchange by accident in *respondeo*. A surplus can be granted on the basis of utility, and this surplus is in accordance with justice, since it belongs to the just price, but it is to be distinguished conceptually from the justice price of exchange according to the value of the thing, which is the common mode of exchange. Two remarks must be made: first, exchange by accident is an exchange that would not take place without this surplus compensation for damage. It therefore enlarges the trading space, but it is still thought of as an exception and as not modifying the principle of commutative justice. Secondly, the surplus considered here is integrated into the price, so it is a surplus that is entirely related to trade.

Thus, the treatment of the demarcation between the trading and non-trading spaces in the *Commentary on the Sentences* has more to do with ontology than with anthropology: more to do with the nature of the good (*quid*) than with whether the agent acts as a *homo amicus*, *justus* or *oeconomicus*.

3. The just price for the priceless

The introduction of the just price by reference to its possibility and its level makes it possible to take on the entirety of the justice of exchange. In later works, we observe an evolution in the use of price to delimit the trading space, since the non-trading character of goods will be expressed in the terms of the market itself, by appeal to an inaccessible price level rather than by the impossibility of a just price, and this will allow us to understand the non-tradable good, in today's terms, as a limit case of a *contested commodity* subject to a *contested market*. The first occurrence of the just price in the *Commentary on the Sentences* thus shows that from his early work Aquinas relies on the price as a means of revelation of the justice of the trading exchange in terms of level and possibility. The price, as an objective and visible criterion, thus reduces the risk of lack of information about these two aspects of justice. The *Commentary on the Sentences* also provides, through this first occurrence, the inaugural framework for understanding the Thomasian just price. Aquinas uses an analogical turn of phrase to relate justice to selling or buying at the just price. The just price is presented as an analogy of the

justice of exchange.[84] It is not, therefore, to be taken as an expression of identity with this justice, but rather as conforming to it, taking the form of a range of acceptable prices. It is the expression of a justice that pre-exists it and it reveals it in its dual aspect of the justice of quantity and the justice of object. This occurrence of the just price in the context of the discussion of simony thus makes it possible, through the analogical link formulated between justice and price, to found the understanding of the Thomasian just price as a price of justice. Hence we are able to confirm, in a way that is internal to the expression of the just price, what can also be established from later works such as the *De emptione* by resorting in an external way to the Thomasian categories of the sign and the analogy and applying this to the contractual criterion expressed in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3: namely, that three economic and legal levels of reality of the just price can be distinguished. The price of the individual exchange is by analogy and by reason of sign the just price on the market or the just price according to the positive law of contracts, which is by analogy and by reason of sign the pre-existing normative just price.

3.1. On the possibility of trade and price

The appearance of the just price in the context of dealing with a non-tradable good completes the good-based rather than agent-based approach. Aquinas does not envisage a subjective price where the agent decides that the object has a price or that it does not. It is the nature of the object, and not the anthropological posture (i.e. whether the agent considers himself more or less *homo amicus*, *justus*, or *oeconomicus* or tries to assume all three identities at the same time), that determines the distinction between what has a price and what does not. In the context of articles dealing with the analysis of trade-type exchange, the price is therefore the objective criterion (attached to the object) for separating trading and non-trading exchange.

Moreover, the study of the non-tradable good allows Aquinas to take a decisive step not only in his attention to the object, but even more so in his appeal to the price as a remedy for the lack of information and as a unifying factor of the observable criteria of justice both *in quantum* and *in quid*. The just price fulfils both missions, since it ensures both justice of quantity (by its level) and justice of object (by its possibility). There is no longer any need for a non-financial criterion

[84] Aquinas takes up the concept of analogy, which is first of all a mathematical proportion, and then by extension a ratio or correspondence, but always with an idea of proportionality. It describes a resemblance with a dissimilarity (Chollet 1903, col. 1142-1154; Gilson 1965, 121-129; Montagnes [1963] 2008; Te Velde 2006, 1009-121; Imbach and Oliva 2009, 83-84; and Bonino 2016). Aquinas uses analogy of proportionality to describe a cause-effect relationship or the creation relationship between God and his creation (*S. T.*, Ia, q. 13, a. 5). There is a first, hidden, unknown and upstream term (for example, the wisdom of God) which is partly unveiled though a second and visible term (for example, the different meanings of wisdom in human language), this second term coming from the first one and being conformable but not identical to it (Januard 2021b).

added to the price, since the criterion of possibility of the just price assumes this role. The price, as a criterion of justice, is therefore both financial and non-financial. It makes it possible to distinguish between what is tradable and what is non-tradable, and then to ensure the justice of the trade in what is tradable. The case of simony thus broadens our understanding of the just price and invites us to distance ourselves from the classic debate on the Thomasian just price (Lapidus 1986, 18; 1992, 29-30; 1994, 435; Franks 2009, 85-92; Rajapakse 2010, 232-237; Santori 2020, 281-282) because the issue is not so much whether it is a price according to production costs, following *Ethicorum*, V, 9 (Tawney [1926] 1948, 40-41; overview in Baldwin 1959, 71 and 75 and Sivéry 2004, 699-700) or a price on the market (De Roover 1958, 422 and 1971, 59; to a lesser extent Noonan 1957, 86-87; Langholm 1992, 228-233 and Sivéry 2004, 703), or even an articulation of the two with a market price gravitating around production costs (Hollander 1965). Before trying, likely in vain, to perceive the way in which Aquinas determines the just price, it is necessary to see how the discrimination between goods and situations with a price and without a price provides the contour of trading activity, and is thus the first sketch of an epistemology of questions of economic significance.

The limit case of simony in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 leads to another limit situation in the diptych of justice by granting, as we have recalled, a new role to the price. It is no longer a question here of an association between the price and a non-financial criterion, but of considering the price as a double criterion, both financial and non-financial, both *in quantum*, by its level, and *in quid*, by its possibility. This makes it possible to reexamine *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 through the prism of price, since the general framework of trade activity can be summarised by the two dimensions of price, its possibility and its level. All non-financial clauses are reflected in the criterion of the possibility of price. If the transaction is carried out by a clerk, or on a holiday, or with non-financial fraud, or with an illicit contract or without compliance with this contract, there can be no price. The justice of the price is its impossibility. If all these conditions are fulfilled and there is a price, then the price must be just, hence without fraud on its level.

An evolutionary step is observed to take place fifteen years later in the *Summa theologiae*. The separation between what is trade-related and what is not, still expressed *by nature* in the *Commentary on the Sentences*, since the criteria of justice are complementary and not substitutable, then comes to be expressed in terms of *degree*. The non-possibility of the price is thus transformed into a very high and out-of-reach price. The non-tradable good will be considered as inaccessible to trading activity. There is thus a shift in Aquinas's treatment of

simony in the *Summa theologiae*. While Aquinas reiterates that a spiritual good cannot be estimated at a monetary price and motivates his prohibition by the description he gives of this good, two developments should be noted. On the one hand, the notion of the justice of the object (*in quid*), which was the major contribution of *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, no longer appears explicitly in *S. T.*, IIa IIae, q. 100. On the other hand, the twenty-two occurrences of the term 'price' in *S. T.*, IIa IIae, q. 100 take on a strong comparative tone: "A spiritual thing cannot be compensated for by an earthly price [...] it is more precious [*preciosior*] than all riches [*cunctis opibus*]" (*S. T.*, IIa IIae, q. 100, a. 1, resp.), or also "the Gospel cannot be sold [...]. That would be selling a great thing for a very low price [*magnam rem vili vendunt pretio*]" (*S. T.*, IIa IIae, q. 100, a. 3, ad 2). If the sacrament has no price, it is because any earthly price is lower than it. The just price is possible, but it is never attained because the price that enables the four functions highlighted by Hamouda and Price 1997, 200 – namely to compensate for a loss, to satisfy a need, to provide a fair valuation and to reduce abuses in the exchange – is inaccessible.

The formulation is even more explicit in the case of another non-tradable good, the free person: "The person of a free man surpasses all pecuniary estimation [*superat omnem aestimationem pecuniae*]" (*S. T.*, IIa IIae, q. 189, a. 6, ad 3). The non-commodification of the free man is no longer expressed by non-substitutable non-financial clauses, but by a price level, even if this level is thought to be beyond reach. We can hypothesise here that Aquinas seeks to reduce the analytical risk arising from a lack of information about the transaction. Just as he does not, in his early works, use the criterion of the agent's intention to determine whether the commercial exchange is fraudulent (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3) or whether there is usury (*In III Sent*., d. 37, a. 6; *De emptione*), since it remains hidden from the observer, in his later works he gradually detaches himself from an ontological view of the object of the exchange (*in quid*), or of the other parameters of the activity (*persona*, *tempus*, *modus*), the determination of which requires further study. Aquinas thus translates the non-possibility of the price into a very high and inaccessible price. The opposite procedure, which nevertheless uses the same correspondence between absence of price and price level, can still be found in the French idiomatic expression '*hors de prix*' (literally 'out of price'), which does not designate a non-tradable good but means 'very expensive'. The use of price as the only visible, objective and immediate criterion allows Aquinas to reduce the risk of misunderstanding the nature of the exchange.

Furthermore, from *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp. to *S. T.*, IIa IIae, q. 77, a. 3, there is a development towards the commodification of goods, i.e. a universalisation of the

formalisation of the justice of exchange in terms of price. The treatment of two particular types of goods can be compared, either because they are sacred (as in the case of simony), or because they are deteriorated and dangerous (such as a house that threatens to fall apart). In the *Commentary on the Sentences*, the trading space is restricted, since next to it there are goods that cannot be sold, "which are not subject to a price [*qui non cadit sub pretio*]" (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1., resp.), whereas the *Summa theologiae* seeks to resolve the problem of dangerous goods within the trading space itself. Indeed, Aquinas affirms that the seller is bound to repair the damage in case of sale of a good with a hidden defect, like the house that threatens ruin that is sold as a house in good condition (*S. T.*, IIa IIae, q. 77, a. 3, resp.) and "in an absolute way (*simpliciter*)" to tell the truth in case of danger (*S. T.*, IIa IIae, q. 77, a. 3, ad 3), but he does not say that one should not sell the goods.

The present-day concepts of '*contested commodities*', which are goods whose trade is controversial, and '*contested markets*' (Radin 1996; Steiner and Trespeuch 2014; Bertrand and Catto 2020, 13-14) can help us to understand the path taken by Aquinas in his works. At first sight, simony presented in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp. cannot be equated with a contested commodity, subject to a contested market. Spiritual goods don't seem contested, but rather seem to be prohibited from being traded. A deeper look, however, shows that they are subject to *market inalienability* (Radin 1987, 1853-1854; Radin 1996, 19-21; Bertrand and Catto 2020, 13; Bertrand 2020, 33). The formalisation of this prohibition evolves so as to be formulated in the terms of the market itself, i.e. by a very high price, in *S. T.*, IIa IIae, q. 100. In the case of the spiritual thing, as in the case of the free man (*S. T.*, IIa IIae, q. 189, a. 6, ad 3), the commodification is only a rhetorical expression because the prohibition was never questioned, neither by Aquinas nor afterwards. However, through the reference to price there appears the possibility of a market, even if the very high price prevents there being any buyer. In the case of the house that threatens ruin (*S. T.*, IIa IIae, q. 77, a. 3, resp.) and of the dangerous good (*S. T.*, IIa IIae, q. 77, a. 3, ad 3), commodification is effective because sale is not forbidden and the market is thought to be operational through purchases and sales. The evolutionary course followed by Aquinas can therefore be related, not on the moral level in the case of simony or the free man but at least on the level of expression, to the evolution of certain contested commodities. Indeed, certain goods whose very trading was forbidden, either because of their sacred character, as in the case of simony and the free man, or because of their harmful and dangerous character, as in the case of the ruinous house, underwent an evolution towards an acceptance of their trading, only under more or less strong conditions.

Nevertheless, the commodification approach would not be sufficient to account fairly for Aquinas's purpose. The perspective he adopts complements the commodification approach by introducing a foundational moral dimension. Commodification studies do integrate moral contestation (Steiner and Trespeuch 2014), but not exactly as Aquinas does. Although moral issues are differently addressed from one author to another, three characteristics from commodification studies may be noted. First, the market, rather than the good itself, is morally specified (Bertrand and Catto 2020, 14), being described as "taboo trade-offs" in Fiske and Tetlock 1997, "obnoxious markets" in Kanbur 2004, "repugnant markets" or "repugnant transactions" in Roth 2007 or "noxious markets" in Satz 2010; second, the moral specification is not formulated by the observer according to his or her own moral judgement but according to the one he or she observes socially and which explains the particular commodification process of the good; third, there is no classification, or at least no difference in treatment, between 'good' or 'bad' commodities. Goods such as pregnancy, children (Bertrand 2019a; Jouan 2020) and their adoption (Roux 2014), human organs (Steiner 2014; Steiner 2020; Mornington 2020), gametes (Catto 2020), blood donations (Mercier-Ythier 2020), tobacco (Frau 2014), pornography (Trachman 2014) or gambling (Trespeuch 2014) are not classified according to a moral grid. This literature doesn't usually concern itself with the dignity of the good but with the positive observation of its commodification. On the contrary, Aquinas justifies the non-tradable character of the good by characterising it morally. This leads him to give a separate treatment for sacred goods, such as the sacraments, which are non-tradable because of their sacred character, and defective goods which are so because they are dangerous. Thus, commodification studies allow for a common reading of goods that might, from a Thomasian perspective, receive very different moral qualifications. While the notion of a contested market allows for an overall approach, different 'social arrangements' can therefore be identified (Callon 2013; Steiner and Trespeuch 2014; Wilkinson 2016, 39).

An approach in terms of commodification could also be seen as bringing together under a single light that which Aquinas distinguished. This would mean ignoring Aquinas's meticulous distinctions between transactions without counterparts and others that would involve them. Furthermore, it consists in uniting operations that are considered by Aquinas to be separate, i.e. payments that are not presented as counterparts to the service in the course of which they are made. Here, on the contrary, all the payments are deemed to be counterparts since they are made on the occasion of the celebration of the Mass. Aquinas deploys a set of arguments distinguishing between what would be "the price of a wage [*pretium mercis*]", which is

forbidden, and the legitimate "stipend of necessity [*stipendium necessitates*]" (*S. T.*, IIa IIae, q. 100, a. 2, resp.) for the needs of the clergy. The priest "may receive money [...] not as the price of the Mass [*pretium missae*], but as a means of subsistence [*quasi sustamentum vitae*]" (*In IV Sent.*, d. 25, q. 3, a. 2, qc. 1, ad 4; see also *S. T.*, IIa IIae, q. 100, a. 2, ad 2). The compensation is explicitly paid for the celebration of the sacrament.[85] It should therefore be understood as a counterpart for this sacrament (although it is a non-tradable good), and not for an ancillary good (the priest's health), but according to an exchange ratio that would not be a price but a subsistence allowance. This allowance can be assimilated to a 'tariff', according to the recent distinction between 'price', which aims at profit, and 'tariff', which aims at ensuring the financing of the good or service internally to the exchange (Steiner and Trespeuch 2014). Here we find the plurality of exchange ratios initiated in *Super Isaiam*, 55, 1. Besides the price, which is particularly remarkable because it explicitly refers to an equality or inequality of thing to thing, i.e. to the exercise of distributive justice (*S. T.*, IIa IIae, q. 77, a. 1, ad 3), other ratios respond to other criteria (*supra*, chapter 5), such as the resources of the buyer (*Super Isaiam*, 55, 1), the merchant's need (*supra*, chapter 3; Januard 2022) for a *quasi stipendium laboris*, like an allowance for his work (*S. T.*, IIa IIae, q. 77, a. 4, resp.), or, as here, the subsistence of the cleric. The equality of thing to thing is then not the question by the two parties. However, Aquinas considers spiritual goods as absolutely non-commodified. His ontological-good-related approach leads him to give an 'external appearance' to the cleric's allowance. The money given to the priest is not a counterpart and there is apparently no exchange ratio, although, within a commodification approach, the allowance is given in exchange for a sacrament.

Interestingly, the contemporary *Code of Canon Law* of the Catholic Church seems in line with Aquinas. For instance, it includes a chapter entitled "The Offering given for the celebration of Mass" (can. 945-958). The fourteen canons, which aim to regulate the payment and collection of offerings and to ensure the celebration which they imply, since "any appearance of tracking or trading is to be excluded entirely from the offering for Masses" (can. 947), show, however, that the strictly non-trading activity requires more or less tradable side activities. On the one hand, the sacrament is itself the object of supply, demand and payment of financial compensation, even if the exchange obeys particular rules: i.e. the amount of the compensation does not result directly from the confrontation between supply and demand, this compensation

[85] This is the *professional simony*, the payment for a cleric's professional service, which is subject to progressive though tacit approval and regulation rather than condemnation, unlike the *proprietary simony* (trafficking in land, offices, relics and consecrated vessels) which is strictly forbidden (Ekelund, Hébert *et al.* 1996, 32).

is thought of as a subsistence allowance, and the supply is limited (one mass per day and per priest). Although Aquinas insists that it is not a price, the *Code of Canon Law* provides for and organises the quantitative determination of "the offerings to be given [*offeranda stips*]" (can. 952 §1) for Masses, and of "offerings defined [*oblationes definitas*]" (can. 848) for all the sacraments. This determination is made locally (can. 952 §1) and the amount requested varies greatly from country to country and region to region. On the other hand, the law provides for the possibility of "some recompense by reason of an extrinsic title [*aliqua retributione ex titulo extrinseco*]" (can. 951 §1). This expression draws a parallel between simony and usury, since neither the sacrament nor the loan, in its medieval conception, can be sold (Baldwin 1959, 32), but the sacrament can be the object of compensation by '*extrinsic title*', like the loan, which can be the object of '*extrinsic titles*' compensating the lender (McLaughlin 1939, 125-147; du Passage 1946, col. 2361 and 2364; Noonan 1957, 105-132; Mélitz 1971, 475 and 484-485; 1987, 1103-1108; 1991; 1992, 47-49; Lapidus 2021; Wyffels 1991, 853; Langholm 1998, 74-76; Munro 2003, 511-512; Franks 2009, 70-83; Todeschini 2012, 128; Burke 2014, 111-113; Ege 2014, 403; Monsalve 2014b, 231-232; Chaplygina and Lapidus 2016, 35-37; Chaplygina and Lapidus 2022; Januard 2021a, 607-608, 628 – *supra*, chapter 1). As in the case of adoption (Roux 2014) or medieval lending, the remuneration is extrinsic so as not to undermine the absolutely non-tradable character of the good.

It is clear that the difference between Aquinas's approach and that found in the idea of the contested commodity lies in the way in which payments made in connection with the provision of a good or service are viewed. Whereas Aquinas seemed to exclude them as counterpart, the more contemporary approach recognises them as counterpart. Thus, since the offering is given for the celebration of Mass, it constitutes a counterpart. This service is therefore the object of an exchange and an exchange ratio, even if, rigorously speaking, we would not consider this to be a price: it simply corresponds to the means of subsistence of the priest (*supra*, chapter 5). In the case of the loan, the existence of extrinsic title seems to refer to a greater variety of situations. It may provide for the financing of a service through an extrinsic title, which is presented as distinct from the loan by being a consequence of it, but which is only one facet of it. This is the case for the compensation provided for the prejudice caused by the loan (*damnum emegens*, see *S. T.*, IIa IIae, q. 78, a. 2, ad 1). Alternatively, it may provide compensation for late payment (*ponea conventionalis*, see *De malo*, q. 13, a. 4, ad 14), which could be considered as a payment for a new service, distinct from the original loan. Nonetheless, since this delay

occurs in continuity with the initial loan and as one of its possible outcomes, this indemnity can be considered as part of the initial transaction, like *damnum emergens* or the offering for Mass.

At first sight, the gap between Aquinas's approach (the payment of an offering not being seen as a counterpart) and the commodification approach (this payment being seen as a counterpart) seems to be definitive. My interpretation, however, is more qualified. The important point, from Aquinas's point of view, is that some goods (like a sacrament or a loan) are for moral reasons not the object of a price, although they are the object of an exchange ratio. On the other hand, the contested commodity approach does not require *per se* the existence of a price to separate commodification and non-commodification: for instance, a 'tariff', though not a price, also allows a kind of commodification (Steiner and Trespeuch 2014). Such variety, allowing for different kinds of commodification according to the nature of the exchange ratio, speaks in favour of considering non-tradable goods within a *continuum*, which the contested commodity approach allows. The positioning of the good on this *continuum* depends on the '*quid*', the nature of the good exchanged, that determines the possibility and conditions of the trade.

3.2. The just price as an analogy of the justice of object and the justice of quantity

In the *Commentary on the Sentences*, the introduction of the just price to deal with non-tradable goods allows Aquinas to clarify the role of price as a criterion of justice. When dealing with simony, he relates it to the more general situation of the justice of exchange. *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp. introduces the notion of just price and then that of price in a comparative mode, by the expression '*cum*' (as): 'There is then injustice as when [*sicut cum*] someone does not buy or sell at a just price' or 'as [*cum*] when he sells or buys what does not fall under a price [*non cadit sub pretio*]'. Three alternative hypotheses about the meaning of *cum* and *sicut cum* can then be formulated: *external comparison*, *inclusion* and *analogy*.

External comparison. *Sicut cum* and *cum* have a comparative meaning. The sale and the price appear simply as an external comparison, making it possible to understand the injustice, but this injustice would be of another register than that of the price. This hypothesis does not seem to be appropriate, because Aquinas's point about simony, for which he here sets the general framework of justice, is indeed about a sale with a price. It is therefore not an image external to the transaction.

Inclusion. *Sicut cum* and *cum* take on an inclusive meaning. The sale and the price would be given here as an example. They would belong to the situations of injustice described by the

general framework of the proposition. If other examples can be found on other levels, there would however be a kind of identification between injustice of quantity and situations of sale at a price that would not be the just price, and between injustice of object and the sale of what has no price. This hypothesis is at first reading the simplest, but the polysemy of *sicut* and *cum* and the choice of this turn of phrase to the detriment of a more direct formulation lead us to consider a third hypothesis.

Analogy. *Sicut cum* and *cum* take on an analogical meaning. As such (1) the sale and the price are given here as examples and belong to the situations of injustice described by the general framework of the proposition, but (2) they do not express the entirety of what the injustice is and (3) are only an actual and visible manifestation of it. The 101 occurrences of the expression '*sicut cum*' in the *Commentary on the Sentences*, and more generally the 818 across all of Aquinas's works, attest to these three dimensions of an analogical expression: (1) a known manifestation that describes a primary term that is directly inaccessible and that lies upstream, (2) what is said by the example is true, but (3) the example does not say everything. The use of *sicut* and *cum*, through the polysemy of the terms and their comparative meaning, introduces a distance (Quicherat 1893, 279 and 1035; Blaise 1954, 233-234 and 758; Ernout and Meillet 2001, 156, 561 and 756-757). There would not be a strict identification between justice and just price, not because the just price would not be just, which would be a contradiction in terms, but because the registers of justice and of the effective just price of the exchange in question here would not be superimposable. Moreover, in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, it is not strictly speaking price and justice that are related to each other, but justice and an action that occurs. This is underlined by the temporal value of *cum* and *sicut cum*. Moreover, *sicut* always introduces a comparison that relates to the quality of the thing (Gardin-Dumesnil 1845, 295 and 352), here the sale. The injustice is thus about the transaction and not about the price itself.

This third analogical hypothesis, which seems to be the most linguistically well-founded, lends credence to the thesis of a normative and metaphysically pre-existing price of justice, which would be translated analogically into a range of acceptable effective prices, which conform to it without being superimposable. The just price is thus an analogy of justice. The first occurrence of the expression 'just price', concerning a good that precisely cannot have a just price since it is not a commodity, thus shows on the one hand what the just price is, i.e. the revelation of a justice that pre-exists it, and on the other hand how Aquinas uses the price as an indicator and as a revealer of both the justice of object and the justice of quantity.

3.3. The inaugural establishment of the just price as a price of justice

The original absence of the price to deal with the justice of exchange in the general framework of the activity of merchants in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 leads us to stress that Aquinas's concern lies with moral justice and not primarily with the actual price or just price, which will only be of interest as an observable economic manifestation of this justice. *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 further reinforces the normative primacy of the just price. There are situations where a price cannot be just because the good has no price. This absence is not due to a technical impossibility concerning estimation pricing, and thus to an economic problem, but to the nature of the good and its consequences for justice, thus to metaphysical and moral considerations. Moreover, the assumption of the analogical meaning of *sicut* and *cum* to introduce the link between justice and price, in the sentence "there is then injustice as when one does not buy or sell at a just price" (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp.), indicates that there is conformity but not identity between justice and the effective just price of the exchange. The effective just price conforms to a pre-existing referent, which is justice. The *Commentary on the Sentences* thus supports the thesis of a normative just price according to moral justice which would pre-exist the effective just price, and so confirms the normative moral dimension of the just price highlighted by the literature (Lapidus 1986, 18; Berthoud 1991, 146-147; Hamouda and Price 1997, 192-193; Gomez Camacho 1998, 535; De-Juan and Monsalve 2006, 100-101; Monsalve 2014a, 5). The analogical meaning of *sicut* and *cum* further speaks in favour of the formal distinction between pre-existing normative just prices and acceptable prices (Lapidus 1994, 456-457; Chaplygina and Lapidus 2016, 25).

Moreover, the highlighting of an explicitly analogical link between justice and just price, expressed in the *Commentary on the Sentences* with the first occurrence of 'just price' by the use of *sicut* and *cum*, allows us to take a new, decisive step in the understanding of the just price. Through the use of an analogical expression that appears within a properly economic sentence linking justice and sale to the just price, it shows what we have also been able to establish in a more indirect way from the occurrences of the expression 'just price' in *De emptione* (*supra*, chapter 2; Januard 2021b). In an inaugural and programmatic way, rooted in the very heart of the explicit expression of the concept of just price, *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp. thus provides a foundation for what will be seen in the later writings by the convocation of the sign and the analogy, concepts that have hitherto been considered as certainly Thomasian, but as external to the economic writings. Indeed, we appealed on the one hand to the Thomasian concept of sign, which serves to found Aquinas's theology of the

sacraments, and which distinguishes three levels of reality: the visible sign (*sacramentum tantum*) is a sign of a sacred reality (*sacramentum et res*), which is itself a sign of an ultimate and invisible sacred reality (*res tantum*) – see for example *In IV Sent.*, d. 3, q. 1, a. 1, qc. 1, ad 1 on baptism, although the sacrament is already realised in the *sacramentum et res*. We also relied on the concept of analogy, which Aquinas uses in his philosophy of language notably to establish the nature of the link between the meaning of a word applied to created realities and to God. Aquinas found a middle ground between a univocity that would reduce the meanings by identification, and an equivocity that would remove any link between the meanings of the same word. He applies the word 'wise' to man and to God: "Given to man, it in some sense circumscribes and comprehends the thing that is signified, whereas when it is said of God, it leaves the thing signified as something that is uncomprehended and that exceeds the signification of the name" (*S. T.*, Ia, q. 13, a. 5, resp.). This allows him to affirm: "It must therefore be said that names of this kind are attributed to God and to creatures according to analogy, that is, proportion" (*S. T.*, Ia, q. 13, a. 5, resp.). By summoning these concepts of sign and analogy from philosophy and theology and applying them to the economic question of the just price, we have 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 being the sign and analogy of the just price in the market, which is the sign and analogy of the just price in the exchange (*supra*, chapter 2; Januard 2021b).

Through the use of *sicut* and *cum*, Aquinas establishes from within the just price what had been highlighted in the *De emptione* from the external convocation of its philosophical and theological apparatus (*supra*, chapter 2; Januard 2021b): the analogical link between a just price and the effective prices which it would pre-exist, and with respect to which it would be situated upstream, whether it concerns the market or the singular exchange. The effective just price is then a sign of justice, which remains invisible and inaccessible without mediation, and the expression 'just price' can be used to speak of the effective price, but in an analogical sense, which refers to the referent that is the price of justice, which pre-exists the exchange. *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp. is therefore decisive for a new understanding of the meaning of the just price in his later works.

The *Commentary on the Sentences* makes it possible to go even further, broadening the approach to the just price through its three levels of reality, and thus not only to support but to enrich the understanding of the Thomasian just price. Starting from Aquinas's use of the

contract to set the conditions of the trade exchange, which must be done "according to the licit contract" (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3), the economic approach of the just price of *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp. and in *De emptione* (*supra*, chapter 2; Januard 2021b) can be transposed into a legal approach. It is indeed these same three levels of reality – of pre-existing normative justice, of market and of singular exchange – that we find at the legal level. As the *Summa theologiae* would later show, for Aquinas, positive law, translated by the contract, is merely the application of the normative moral justice that precedes it and which is expressed in a set of acceptable positive rights: "The human will be able, by virtue of a common convention, to make a thing just among those which 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, echoing the three economic levels of reality of the just price, three juridical 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.

4. The semi-tradable good: two non-substitutable criteria of justice

The second occurrence of the just price in a trade context occurs in *In IV Sent.*, d. 36, q. 1, a. 2, ad 4, concerning the sale of a tradable good, the serf, but whose marriage represents a strong non-trading constraint. This constraint is geographical, as the lord cannot sell the married serf far away, at the risk of harming his marriage. After the general conditions of trade concerning the person, time and mode in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, and the criterion concerning the object in *In IV Sent*., d. 25, q. 3, a. 1, qc. 1, resp., the location criterion appears, which thus makes it possible to obtain a set *persona*, *tempus*, *modus*, *quid*, *locus*. The conditions of the sale are determined, however, as in the case of the non-tradable good, by the specific nature of the object, which makes it possible to establish, through the notion of contested commodity, a *continuum* between the non-tradable good and the semi-tradable good. The justice of the exchange of the semi-tradable good is, however, governed by two non-substitutable criteria of justice: a financial and a non-financial criterion. The serf's marriage is like a negative externality for the lord, who has to bear the cost, while the property rights of this externality, namely the marriage, belong to the serf. This occurrence of the just price clarifies the role of the price. Non-financial constraints, in this case the place of sale, cannot be assumed by the price and remain irreducible to it. The role of the price as a visible criterion of the justice of the exchange is however affirmed in the later works, since, with the exception of rare situations

such as the endangerment of the buyer, the just price ensures the entirety of this justice and indeed assumes new facets of it, such as compensation following an unjust exchange.

4.1. Trading under non-trading constraints

In applying the expression 'just price' to a semi-tradable good – i.e. the married serf, who is subject to a strong object constraint – after having reserved the first application for a gift and the second for a non-tradable good, Aquinas continues his approach to the just price through limit cases. In *In IV Sent.*, d. 36, q. 1, a. 2, ad 4, he considers that serfs can marry even without notifying their lord, since marriage is a matter of natural law and serfdom a matter of positive law, which is inferior to it. The natural right, in this case the right to sleep, eat or marry, therefore protects the serf. This restriction of serfdom to positive law made it possible to consider voluntary servitude at the end of the thirteenth century and the proximity between serfdom and urban servile wage labour (Todeschini 2015, 85-86), and to discuss the possibility of contractualising voluntary slavery in the 19th century (Spitz 2020).

Objection 4 upholds the obligation to ask the lord's consent, since otherwise the lord could sell the serf to "remote areas [*extraneas regiones*]" where the wife could not follow him, and the marriage would be dissolved, which is contrary to natural law. The issue, which may seem anecdotal to the present-day reader, is in fact of economic importance, since behind serfdom and its conditions lies the profitability of land (Persson 2014, 228-229), as the debate on the causes of the abandonment of serfdom in Russia shows (Domar 1970, 27-28; Domar and Machina 1984; Domar and Machina 1985; Tourmanoff 1985),[86] or the rising debate over the efficiency of slavery from the 18th century onwards, due to its low profitability, as slaves had no incentive to be sufficiently productive (Arena 2002; Lapidus 2002; Clément 2009, 118-119). Through land, the economic question of serfdom and slavery is thus that of industrial development and commercial competitiveness (Célimène and Legris 2002; Dockès 2002; 2011). The relevance and conditions of serfdom or slavery are therefore not only a moral issue, but also a properly economic one (Herland 2002; Oudin-Bastide and Steiner 1995).

Aquinas replies that in such a case the lord "must be forced [*cogedus est*] not to sell his serf under these conditions [*taliter*, i.e. in remote areas], especially when he does not lack the possibility of selling his serf everywhere at a just price [*praecipue cum non desit facultas ubique*

[86] Evsey D. Domar, who had already conducted an initial economic analysis of the causes of serfdom based on the Russian model (Domar 1970), joined forces with Mark J. Machina to continue his work from the perspective of the profitability of serfdom. See the debate between Domar and Machina 1984 and 1985 and Tourmanoff 1985.

servum suum vendendi justo pretio]" (*In IV Sent.*, d. 36, q. 1, a. 2, ad 4). Aquinas no longer considers the distinction between trading and non-trading space given in *In IV Sent.*, 25, q. 3, a. 1, qc. 1, resp., since he does not exclude the serf from the market because of his marriage: the lord would not be absolutely prevented from selling him, but simply from selling him 'under these conditions [*taliter*]'. Everything here is trade-related, but the conditions for practicing trade activity are subordinated to higher principles, in this case the natural law of marriage, which does not affect the price but rather the conditions of trade activity (not selling far away). While thinking on slavery in the modern era would move successively from a moral to an economic level (Herland 2002), Aquinas's approach to serfdom is based on an imbrication of these two levels, since he combines, in *In IV Sent*., d. 36, q. 1, a. 2, ad 4, an approach based on natural law and an approach based on price.

Here we find the framework of the trade's licitness of *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, but to which is added the attention to the object found in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 and a new geographic criterion. We thus reach, so to speak, a fivefold condition of the trade practice: *persona*, *tempus*, *modus*, *quid*, *locus*. Certain goods can only be sold in a given place: the serf must be sold in the vicinity so as not to damage his marriage. Here justice is ensured both by price and by a non-financial criterion, the place, which has to do with the very nature of the property, the married serf.

The married serf seems to escape the category of contested commodities in the sense of Steiner and Trespeuch 2014 as his commercialisation is not debated. The condition only concerns the geographical distance of the sale of the married serf so as not to infringe the marital bond. However, the importance of the object, the *quid* criterion, in determining the conditions of the sale of the married serf brings this situation closer to contested markets, where the non-trading criterion of justice exerts a strong constraint. Moreover, contestation may vary over time. Some goods – such as tobacco (Frau 2014), although the evolution of its market is very complex – experience a contestation that intensifies and progressively focuses on the object itself and no longer only on the conditions, shifting from the semi-tradable good to the non-tradable good. In a way, this will – for morally opposed reasons, and the comparison must be strictly limited to this precise point – be the fate of the serf, married or not, with the abolition of serfdom.

The notions of contested commodity and contested market, by possessing a plasticity that goes beyond the binary market/non-market approach (Bertrand and Catto 2020, 14), allow us to address the two limit cases encountered in Aquinas, i.e. simony *(In IV Sent.*, d. 25, q. 3, a. 1, qc.

1) and the sale of the serf (*In IV Sent.*, d. 36, q. 1, a. 2, ad 4), as limit cases of the set of contested commodities, bounded on the one hand by the non-tradable good and on the other by the semi-tradable good. These notions thus enable a *continuum* to be established between the activities described in the first occurrences of the just price in Aquinas's works and thus between any good whose possibility or terms of sale are conditioned by the nature of that good. It is therefore noteworthy that Aquinas introduces the notion of 'just price' in his works to deal with contested markets, precisely where the quantitative financial criterion, i.e. the price level, if it were simply the result of the meeting of buyers and sellers, would not suffice to establish the justice of exchange.

4.2. The non-substitutability of justice criteria

Aquinas does not elaborate here on the criteria for determining the level of the married serf's just price. However, marriage changes the serf's sale condition and price. It represents a risk for the lord since it doesn't depend on him and it can modify his income. This risk can be considered in two ways. On the one hand, if the possibility of marriage is foreseen, it is part of the serfdom relationship. It is therefore an information risk borne by the lord, who doesn't know if and when the marriage occurs. Serfdom can then be understood as a principal–agent relationship. On the other hand, although the marriage depends on the serf, it can also be seen as external to the serfdom relationship and its agents. Indeed, the consequences do not depend on the serf but on external parameters such as the state or even existence of a market for married serfs at the time of sale, and the understanding of the moral and legal impact of the marriage on the sale. Hence, a serf's marriage may be seen as entailing externalities. This externality-focused approach seems to take a more synoptic view of the transaction because the reasons that modify the conditions of the sale are external to the personal reasons for which the serf gets married. I will focus hereafter on this situation where the marriage of a serf generates externalities.

The serf's marriage has two potential consequences for the price, one upwards, the other downwards. Thus, it therefore represents what we would call today a positive and a negative pecuniary externality for the lord.

The upward pressure comes from the reproductive capacity offered by marriage. By marrying, the serf is a priori able to have children, thus providing the new owner with additional production capacity and reducing his average production costs. This should therefore put upward pressure on the just price. However, Aquinas points out in *In IV Sent.*, d. 36, q. 1, a. 4,

resp. that the children tend to follow the status, and if necessary the lord, of their mother and not their father. Indeed, the offspring receives from its mother the substance of the body, and servitude is a corporeal condition. The increase of the just price by marriage would therefore be proper to the woman. Aquinas also mentions the practice in some countries of dividing children between the lords of each of the two serf parents, or of one lord buying them back from the other, but does not consider this reasonable. Thus the positive pecuniary externality and the rise in the level of the just price would only occur in the case where the serf who marries is a woman.

The downward pressure comes from the geographical constraint through what we could call a criterion of market liquidity. If the prohibition on the lord selling his serf far away applies especially when (*praecipue cum*) "he does not lack the possibility of selling his serf everywhere at a just price" (*In IV Sent.*, d. 36, q. 1, a. 2, ad 4), or, in other words, when the market is liquid and he can sell his serf anywhere, then this implies that there may be situations where this is not the case. Aquinas's expression can be understood as a concessive proposition, in which case the lord can sell far away if he cannot find a buyer nearby. There is therefore no longer any constraint on the liquidity to be included in the price and the marriage is neutral for the just price. Aquinas's formulation can also be understood as an absolute prohibition on selling far away, considering the expression "especially when [*praecipue cum*]" as a confirmation of this prohibition and not as a concession in case the lord cannot find a nearby buyer at the right price. In this case, it can be assumed that the restriction placed on the liquidity of the market by the addition of a geographical constraint reduces the price of the married serf by integrating this constraint into the price, since the buyer will also be subject to this constraint if he wishes to resell him.

Beyond the level of the just price, the understanding of the Thomasian proposition determines the substitutability between the non-financial criterion (here the geographical criterion) and the price. Indeed, the link between the trading and the non-trading spaces becomes more complex through the consideration of semi-tradable goods whose very nature restricts the conditions of commodification. The justice of the exchange depends on both intrinsic and trade elements. Here we find an application of the original general framework of the complementary dual criterion of financial/non-financial justice provided by *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. Here the need for the serf to stay nearby for the sake of his marriage (non-trading criterion) and the liquidity of the market and the possibility of a sale at a just price (trading criterion, both financial and non-financial) are combined. In order to articulate the two criteria of justice, it is therefore

necessary to begin by clarifying Aquinas's use of the criterion of liquidity, and in particular of the expression '*praecipue cum*'. This can be understood in two ways, which are similar to the treatment of what might be considered, in present-day terms, as a negative externality of the marriage of the serf to the lord. The approach to externalities developed by Coase 1960, which combines the law and the market and so appeals to the associated rights (Bertrand and Sigot 2014, 218), makes it possible to account both for the normative primacy of Aquinas's management of these externalities and for his evolution towards a formulation of the value of what is non-tradable in the terms of the market itself.

According to a first interpretation, the formulation "especially when [*praecipue cum*]" is to be understood in a concessive sense. The prohibition would apply especially when the market is liquid for a sale at a just price, but otherwise the prohibition would be relaxed. According to this hypothesis, there would be situations in which a nearby sale at a just price would not be possible and this would open the way for a reconsideration of the prohibition to sell far away. The lord would then sell his serf at a just price far away rather than at a lower price near. In this case, we would see an interpenetration between the trading and the non-trading space, and more precisely a marketisation of the non-trading criterion. The trading criterion of fairness of exchange would then take precedence over the geographic non-trading criterion. The just price would not be affected downwards because there would not be any non-trading constraint to integrate. We would then find ourselves in a situation where the negative externality would be borne by the serf, i.e. the one who imposes a prejudice on the other. The rights of use of marriage as an externality belong here to the lord. However, it would be possible, as in the examples given by Coase 1960 and explained by Bertrand and Destais 2002, 116 and Bertrand 2006, 986, by disregarding the costs of negotiation, to imagine (which Aquinas does not do explicitly) that a bilateral bargaining process could be carried out that would be beneficial for both parties. For this purpose, a subjective personal assessment of the value of the marital bond could be used here, rather than an unattainable amount, which would be the price of a non-tradable good derived from natural law, since this interpretation of '*praecipue cum*' would indicate that this right is not absolute. The lord would have an interest in renouncing the sale far away if the serf paid him more than the difference between the just price far away and the lesser price near by; the serf would have an interest in paying this sum to avoid the sale if, as is likely, it remained less than the value the serf would place on his conjugal bond, which would be threatened in the event of a sale far away (if the serf placed a negative value on his conjugal bond, he would have an interest in allowing the sale to go ahead). But even in our imagination, the bilateral

negotiation would have little chance of actually succeeding because the status and conditions of serfdom do not give the serf the possibility of paying the lord the necessary compensation. The advantage of the possibility of negotiation (Bertrand 2019b, 523-527) is confronted with the low purchasing power of the serf. Even in the situation where the serf would place a very low or negative value on his marital bond, which does not enter into Aquinas's consideration of marriage, he might have an interest in the sale situation, but this would not result from negotiation.

But according to a second interpretation, the formulation '*praecipue cum*' is merely a rhetorical formula to affirm the universality of the prohibition. In this case, this universality could have a double origin. On the one hand, Aquinas could consider that the possibility of an absence of market liquidity is purely rhetorical, and on the other hand he could envisage that the lord could actually be confronted with it but that the prohibition would be absolute because a higher criterion would take precedence over the absence of liquidity. In this case, the nature of the property is a more important criterion of justice than the price level or even the ability to sell the property. In both cases, the tradable character of the good is real but strictly confined to the space that the semi-tradable nature assigns to it. The intrinsic criterion of justice of the exchange would take precedence over the trade criterion. The trading and non-trading dimensions of the good would then remain partly irreducible to each other. The terms 'semi-tradable' good, which we retain, or "*partial market-inalienability"* (Radin 1987, 1918; Radin 1996, 104), therefore seem more appropriate here than the term "*incomplete commodification"* (Radin 1987, 1917-1921; Radin 1996, 102-114; Bertrand and Catto 2020, 14), although it refers to the same economic phenomenon, because they are more suggestive of the irreducible complementarity of the trading and non-trading dimensions of the good. The geographical constraint would exert a downward pressure on the married serf's just price, as compensation for the buyer's lack of liquidity of the acquired good. There would thus be an integration of the non-trading criterion into the trading criterion and the price level would reflect this non-trading constraint. However, this integration would not be a substitution because the geographical qualitative constraint would remain and would be irreducible to the price. The cost of marriage, as an externality, according to the Coasian analysis, is here borne by the lord and the rights belong to the serf. However, marriage, being according to this hypothesis an intangible natural right, is not negotiable in terms of price. The non-trading character of the rights of use of marriage implies that the serf cannot sell them, so we find ourselves in a situation where negotiation is prohibited (Bertrand 2014, 442). However, if one were to apply to marriage the evolution of treatment that

spiritual goods underwent in the case of simony in Aquinas's later works, with the shift from a formulation of the prohibition through the non-possibility of a price in the *Commentary on the Sentences* (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1) to a formulation in terms of a very high and unattainable price in the *Summa theologiae* (*S. T.*, IIa IIae, q. 100), or if one retained the formulation in terms of price used for the free man (*S. T.*, IIa IIae, q. 189, a. 6, ad 3), one could consider the possibility of a bilateral negotiation that could in principle lead to a sale that would be beneficial for both parties, although one would find that the conditions could not be met. Indeed, the price that the serf places on the marriage in a bilateral negotiation would no longer be a subjective personal evaluation of the marriage bond, as in the first hypothesis, but a value transcribing the objective intangible natural right. The fact that the serf subjectively places a low or even negative value on his marital bond and has a personal interest in selling his right no longer comes into play here, because both serf and lord are bound by the intrinsic value of marriage. The lord would have to pay the serf more compensation than the cost of the damage to his marriage, which is very high and unaffordable, and this compensation would have to be less than the gain from a far-off sale at the just price compared to a local sale at a lower price. This gain, which would be at most the amount of the serf's just price, if the local sale price were zero, would still be much lower than the marriage price. Both parties, even if they could, would therefore have no interest in negotiating rights bilaterally.

The second hypothesis, supporting a universality of the prohibition of sale, seems the most plausible. The delimitation (Coase 1960, 8; we also speak of assignment: Coase 1992, 717 and Bertrand 2006, 985 and 987; or initial allocation of rights: Bertrand and Destais 2002, 115) of the negative externality would go to the one who produces it, the serf, to the detriment of the lord, without any bilateral negotiation leading to a modification of this distribution. There are two main reasons for this interpretation. On the one hand, in an economy where land was abundant, serfdom made it possible to exert a constraint on the mobility of labour, on wages or on contractual conditions, in order to ensure a land rent for the lord. The practice of serfdom thus seems rather to attest to its interest for the lord in the face of a free labour market due to a scarcity of labour (Domar 1970, 27-28; Persson 2014, 228-229), which would argue in favour of the liquidity of the serf market in Aquinas's time. Its reservation thus seems rhetorical. While there was a very gradual decline in serfdom in France from the mid thirteenth century onwards, which can be attributed first partly to demographic expansion and then to a range of other factors after the Great Plague, serfdom was still very widespread in France at the end of the thirteenth century (Domar 1970, 28-30; Feller 2017, 171; Persson 2014, 235). There was a

mobility of serfs from one lord to another, often outside the limits of the parish. This mobility was often favourable to the serfs, who found better conditions with their new master (Ekelund, Hébert *et al.* 1996, 29). On the other hand, the hypothesis is in line with the complementary double criterion of financial/non-financial justice that structures the original framework of the exchange in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, and the way opened by *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 to thinking of a non-substitutable justice of object. In addition, the subordination of the trading dimension to a higher moral good and an interpenetration for the benefit of the non-trading dimension occurred upstream, at the moment of the marriage of the serf who, according to Aquinas, does not have to ask for permission, while his new state comes to pose a restriction of the trading dimension of the good. Thus, the whole of Aquinas's article seems to argue rather for the specificity of the very nature of the property that is the serf and for the preservation of a higher criterion of justice, which is his marriage. This hypothesis of the universality of the prohibition of the far-off sale of the married serf therefore seems to be retained. In this case, marriage leads to downward pressure (geographical restriction) on the just price if the serf is a man and simultaneously to downward pressure (geographical restriction) and upward pressure (reproduction) if the serf is a woman.

The interpenetration between the trading and non-trading dimensions has different consequences in terms of risk depending on whether it is partial or total. If the prohibition on selling far away applies regardless of the liquidity of the market, which seems to be the hypothesis to be retained, the seller bears the liquidity risk imposed by the serf's marriage, and therefore bears a risk for which he is not responsible. If, on the other hand, the lord can benefit from an exemption due to the lack of liquidity, it is then the serf who bears the liquidity risk, for which he is not responsible, and which threatens his marriage. The risk comes from the conjunction between marriage and the lack of liquidity of the serf's market, between the intrinsic and the trading situation, and hence between the non-trading and the trading dimension. Whether one reads this in terms of the non-substitutability or substitutability of the trading and the non-trading criteria, what happens at one of these two levels contributes to the existence of a risk at the other level.

The non-substitutability of the criteria of justice established from the case of the sale of the married serf (*In IV Sent.*, d. 36, q. 1, a. 2), formulated more directly in terms of price through the distinction between justice of object (*in quid*) and justice of quantity (*in quantum*) for the non-tradable good (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1), allows us to reinterpret the meaning of the general conditions *persona*, *tempus*, *modus*, set out in *IV Sent.*, d. 16, q. 4, a. 2, qc. 3. The

specific nature of the non-tradable good and the semi-tradable good explicitly sets the limit of the trade activity according to a metaphysical delimitation made by reference to the good, as indicated by the criterion *in quid*. This delimitation, brought about directly by the treatment of simony and indirectly by the sale of the married serf through the criterion of *locus*, differs from the other conditions because, on the one hand, it did not appear in the original framework *persona*, *tempus*, *modus*, and, on the other hand, it concerns the object of the exchange, and thus the very reason for trade. However, if, on the one hand, we consider the criteria *in quid* and *in quantum* as a variation of the general conditions, since the non-tradable good enters the general treatment as a limit case through the notion of just price, and if, on the other hand, we retain the articulation *in quantum/in quid* as a particular modality of the double complementary criterion of quantitative and qualitative justice, we can read the triptych *persona*, *tempus*, *modus* starting from their singular variation of *in quantum/in quid*. The qualitative non-financial general conditions contained in the modus, namely the absence of fraud and the respect of the licit contract, then form the general framework of *in quid* and ensure at the general level the function assumed by *in quid* at the level of the non-tradable good. Absence of fraud and the licit contract then do not simply determine the practical conditions of trading exchange but are its ontological delimitation. The difference in the ways in which Aquinas, in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, treats trade activity, whose conditions aim at circumscribing the purpose, which remains hidden, and military activity, whose conditions frame the activity in order to promote it, with a view to a purpose that is good (*supra*, chapter 3; Januard 2022), speaks in favour of this. The original framework would thus not only allow for an application to non-tradable goods, but in turn it would contain within itself the distinction between the trading and non-trading space.

The roundabout way of looking at the limit cases in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 and in *In IV Sent.*, d. 36, q. 1, a. 2 thus allows us to revisit *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 not only as a practical framework but as an ontological delimitation of the trade activity through the triptych *persona*, *tempus*, *modus*. Two consequences follow from this, one on the limits, the other on the nature of trade activity. On the one hand, the original double criterion of justice appears as a double criterion for distinguishing between trading and non-trading activities. The market is delimited by the practice conditions. It is therefore limited, which leaves room for goods and modes of exchange that do not belong to it. On the other hand, *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 indicates that no trading activity is unconditional. Each trade exchange is therefore subject to a specific arrangement (Callon 2013, 334). Now, if these conditions assume the *in quid* criterion

of limit cases at a general level, this means that all these arrangements stem from the nature of the good. Thus, any market is potentially contested, not in the plenary sense that it is the very idea of exchange of the commodity that is the object of moral debate, but in the sense that it is the nature of the good that leads to a contestation of the terms of exchange, leading to the formulation of conditions. However, Steiner and Trespeuch (2014) draw attention to the specific nature of contested commodities, since not every commodity is the object of a moral debate. This is not to say that every market is contested, but that the assumption of the *quid* criterion by the original triptych *persona*, *tempus*, *modus* allows us to think of the exchange of contested commodities within the common framework of *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 thanks to the objectivist approach of *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 and *In IV Sent.*, d. 36, q. 1, a. 2.

Conversely, it also means that all goods are potentially tradable, but subject to conditions. The non-tradable good is a limit case where the conditions are absolutely prohibitive. The *Summa theologiae* later allows a new step to be taken, consisting in managing the contestation by legitimising trade through the introduction of an ultimate good purpose: the supply of the country, the service of the family or the good of the poor (*S. T.*, IIa IIae, q. 77, a. 4, resp.). An echo of this double process of legitimation, first by conditions (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3) and then by an ultimate good purpose (*S. T.*, IIa IIae, q. 77, a. 4, resp.) can be found nowadays in the contested markets for harmful or dangerous commodities. While in the usual cases it is the constraints represented by the conditions (taxation, restrictions on advertising or buyers) that legitimise the trade, it can also happen that the assignment of a new, higher purpose ensures this legitimation. This is the case, for example, for charitable lotteries that legitimise the gambling market by financing charity works (Trespeuch 2014).

4.3. Towards a price that embodies the two criteria of justice?

The non-substitutability of the criteria of justice established for the semi-tradable good in *In IV Sent.*, d. 36, q. 1, a. 2 allows us to highlight the role of the price as a visible and objective indicator of the justice of the exchange in order to circumvent the lack of information resulting from the hidden character of the intention of the co-contractors. The general framework set out in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 does not mention the possibility of financial compensation in the event of non-compliance with one of the non-financial clauses. The prohibition, whether it concerns the person, the time or the contract, is not subject to a price. The diptych of justice pertaining to financial and non-financial criteria is therefore not only cumulative: rather, the criteria are complementary and not substitutable for each other. It is not envisaged that a

modification of the justice of the price will compensate for the transgression of a clause. In the case of non-tradable goods, as in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 for simony, justice *in quid* cannot be secured by a modification of justice *in quantum*. The good cannot be the object of a price, whatever that price may be. The concept of price, through the possibility or impossibility of a just price, nevertheless assumes the whole characterisation of the justice of exchange. In the case of a semi-tradable good, as in *In IV Sent.*, d. 36, q. 1, a. 2 for the sale of the married serf, place and price do not seem substitutable. The just price is affected by the marriage, upwards if it is a woman thanks to the contribution of value represented by the reproductive capacity, and downwards if it is a man or a woman because of the geographical constraint, but this decrease does not replace the geographical constraint, which remains. The non-financial criterion therefore takes precedence over the financial criterion here, since it is critical and discriminating, and cannot be assumed by the concept of price. In the *Commentary on the Sentences*, price is therefore introduced implicitly in the general framework and explicitly for limit cases as an instrument for the revelation of justice and the reduction of the lack of information resulting from the hidden intention, but it is sufficient, paradoxically, only in the situation of non-tradable goods, where it is able, because of its non-possibility, to assume the non-financial criterion, here the *quid*.

An evolution occurs in the later works with a partial substitution of the non-financial criteria by price. The object and the quantity, which constitute the two elements that determine the morality of the exchange in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp., are taken up fifteen years later in *S. T.*, IIa IIae, q. 77, a. 3 on the communication of the defects of a good which is sold. In the general case, also presented in *II quodl.*, q. 5, a. 2, the justice of the exchange and the communication of the defect of the good are ensured by the price, without further information. In *S. T.*, IIa IIae, q. 77, a. 3 and *II quodl.*, q. 5, a. 2, Aquinas even thinks of the asymmetry of information as a factor of justice since the communication of the defect could invite the buyer to claim an unjustified additional discount (Lupton 2015, 525-528). The information included in the price is sufficient (Dellemotte 2017, 36). Two major developments are thus apparent, in respect of the criteria of justice and in respect of the instruments for revealing justice and circumventing the lack of information. On the one hand, there is a substitution between price and information, and therefore between the two criteria of justice. It is no longer a question of hermetic complementarity but of interactive substitutability between the financial and non-financial criteria. This makes it possible to integrate them in terms of agency (Lapidus 1994; Sturn 2017) or in terms of risk. There is even a reversal, with the financial criterion taking

precedence. On the other hand, we note that the concept of price alone is sufficient to ensure the manifestation of the justice of the exchange and the reduction of the lack of information resulting from the hidden nature of the intentions of the co-contractors, no longer as in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 through its possibility and its level, but through its level alone.

There remains, however, one specific and isolated case in Aquinas's later works where the price is not sufficient for the justice of the exchange. This is the case of endangering the buyer: "it is always illicit to provide another with an occasion of danger or damage [*occasionem periculi vel damni*]" (*S. T.*, IIa IIae, q. 77, a. 3, resp.). If the *Commentary on the Sentences* articulates the justice of the exchange around a set of clauses, the *Summa theologiae* tightens up around price and information. The inability of the price to ensure the entirety of the justice of exchange comes from its inability to contain all the information necessary for this justice. This incapacity is an insufficiency of nature and not of degree: the price cannot transcribe certain types of information, in this case danger. Thus, while Aquinas does make more use of price in his later works than in his early ones, the trade activity remains subject to a moral framework that goes beyond it.

Besides its informational role, the price gradually becomes a means of compensating for damages, even if this development remains discreet. Indeed, in the *Commentary on the Sentences*, and later in the *Quodlibetal Question*s, Aquinas's stance is normative. He sets out the conditions for a sale to be licit, but says nothing either on the penal level (no penalty provided) or on the civil level (no compensation) in case of transgression. Aquinas goes so far as to justify the absence of punishment for deception (*deceptio*) between seller and buyer (Lapidus 1994, 459) because these are "minor sins (*minora peccata*)" and because "human society is not easily found without them [*quia sine his non facile invenitur hominum multitudo*]" (*II quodl.*, q. 5, a. 2, ad 2). The *Summa theologiae* does not pronounce on the penal level either, but it introduces civil law as a means to consider financial compensation. On the one hand, Aquinas takes up the *duplus* rule used by Justinian (*Codex*, IV, 44, 2) and then by Gregory IX (*Decretales*, l. 3, t. 17, c. 6), which provides for restitution in case of deception over half the price (Lapidus 1992, 39-41; Langholm 2003, 30). In *S. T.*, IIa IIae, q. 77, a. 1, Aquinas recalls in objection 1, implicitly relying on Roman law which says that buyers and sellers can circumvent (*se circumvenire*) each other on the price (Justinian, *Digestus*, IV, 4, 16, 4; see also XIX, 2, 22, 3), that civil law allows them to deceive (*decipient*) each other. In solution 1, Aquinas does not dispute this, except to say that the law obliges restitution if certain limits are exceeded, for example if one of the contracting parties has been deceived for more than half the

price. However, this legal constraint is not the most important one. In the Middle Ages, the requirement of restitution was primarily moral and religious, in order to receive absolution (Todeschini 1994, 135; Dejoux 2014, 854), and for canonists, according to divine law, it usually relates to any exceeding of the just price (Langhom 2003). On the other hand, Aquinas does not provide for a penal sanction in case of hidden defects (*vitia occulta*), even voluntarily (*S. T.*, IIa IIae, q. 77, a. 3, resp.), although the consequences can be serious, since he gives the example of tainted food sold for healthy food. However, a civil treatment of transgression in terms of commutative justice is emerging. Aquinas remains on the level of trade by providing only for compensation for damage (*ad damni recompensationem*) (*S. T.*, IIa IIae, q. 77, a. 3, resp.). The price is not only the indicator of a sin or a risk, but becomes the main element of the exercise of the justice of object and of the justice of quantity, since what the thing is, its state, and the possible damage caused, give rise here to a price. The price, in this case of compensation, thus makes it possible to compensate for the asymmetry of information and to reduce the buyer's strategic risk.

5. Conclusion

The first occurrences of the term 'just price' in Aquinas's works complete the general framework of trade by specifying the conditions of exercise of the activity of trade. They highlight Aquinas's attention to the nature of the object, whereas the general framework of trade stopped at the conditions of exchange. This objective and ontological approach to exchange, which limits the risk of subjective lack of information about the agents and their intention, will mark the approach in the later works.

The references to the just price in an early biblical commentary (*Super Isaiam*, 55, 1) and in the non-economic parts of the *Commentary on the Sentences*, since they concern the sacraments, also affirm the role of the price, which remained implicit in the discussion on trade in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. Even in his early work, Aquinas uses the price as an indicator of the justice of the exchange and thus reduces the lack of information resulting from the hidden intentions of the agents. Admittedly, the price only partly ensures this justice, since there remain qualitative criteria of justice such as the conditions on the person, the day, the quantitative dimension of the mode (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3) and on the location that it cannot assume (*In IV Sent.*, d. 36, q. 1, a. 2). However, because of the particular nature of the goods concerned, a non-tradable good (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp.) and a semi-tradable good (*In IV Sent.*, d. 36, q. 1, a. 2), the two occurrences of the just price assign the price the

function of delimiting the trade activity. The just price ensures, by its possibility and by its level, the delimitation of the market by regulating the non-exchange of the non-tradable good (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp.). This first approach through the price allows Aquinas to make a shift in his later works by expressing the non-possibility of the just price as an inaccessible price, thus expressing the limit of the market in the terms of the market itself.

These first references to the just price are also foundational for the notion of the just price in Aquinas's works overall. Their rediscovery finally provides the keys to an inaugural reading that gives a new understanding of the Thomasian just price, which is often studied on the basis of the later occurrences. By appearing in relation to non-tradable and semi-tradable goods, the just price carries with it the question of its possibility, whereas the later works deal with its level. Through these limit cases, the just price delimits the trading sphere before then ensuring its internal justice. The specificity of these cases shows that the just price is a price of justice, revealing a pre-existing justice which is conditioned here by the nature of the good. This just price is found through a range of acceptable effective prices. Moreover, through the analogical expression that links justice and the just price in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp., the *Commentary on the Sentences* confers the original foundation for an approach to the three levels of reality within the expression of the just price, which had been highlighted in *De emptione* by the external convocation of the Thomasian categories of sign and analogy. The legal mention of the necessity of the licit contract in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 makes it possible to extend this analysis, initially economic, to the legal dimension of the just price. Thus, the just price is the price of justice, the normative just price pre-existing the exchange. It is, by analogy and as a sign, the just price that may be found on the market or according to positive contract law, and, still by analogy and as a sign, it is the just price of the singular exchange or according to the singular contract.

These founding occurrences of the expression 'just price' in *Super Isaiam* and the *Commentary on the Sentences* thus lead us to depart from the traditional debate, which is based on Aquinas's later works, between a just price that would be the price on the market or the price determined by the production costs. Rather, the point here is to rediscover the precise interest of the introduction of the just price for Aquinas: the affirmation of the primacy of justice and the reduction of the information gap. This manifests itself in three ways: the delimitation of the trading space, leading to the determination of an epistemological framework for the study of exchange; the revelation by a visible and objective criterion of the justice of exchange where the intention of the agents remains hidden; and the particular attention to the object exchanged,

which allows Aquinas to take an objective and ontological look at exchange and thus to bypass the subjective and hidden dimensions of the agents and their intention.

Conclusion générale

Le chemin parcouru à travers les œuvres de jeunesse de Thomas d'Aquin offre de nouvelles perspectives pour l'histoire de la pensée économique thomasienne. En effet, les résultats obtenus montrent d'une part la nécessité d'étudier ces œuvres, en raison de leur intérêt propre et des clefs de compréhension qu'elles fournissent afin de renouveler la lecture des œuvres plus connues comme la *Somme de théologie* et les commentaires d'Aristote. Ils manifestent d'autre part la fécondité d'une lecture positive de l'Aquinate. Cantonner ses écrits à la théologie morale, aux prescriptions doctrinales en matière économique ou à une lecture anthropologique conduit à passer sous silence l'ampleur de sa contribution à la compréhension des opérations et des mécanismes économiques. Lui conférer une autorité normative particulière en économie ne ferait qu'accentuer le confinement dont il fait l'objet dans cette discipline puisque cela reviendrait à porter un regard exclusivement moral sur son œuvre pour trouver en son sein ce que le monde devrait être et ce qu'il faudrait faire pour qu'il soit ainsi. L'économiste a pourtant tant à découvrir et à discuter dans ses œuvres, en acceptant de le lire comme il le fait avec Smith, Ricardo, Marx ou Keynes et même, pour prendre des exemples antérieurs à l'autonomisation de la discipline, avec Quesnay ou Turgot.

Seule une lecture qui consiste à aborder un contributeur de la pensée économique et non un moraliste, aussi grande soit son autorité dans ce domaine, permet d'aboutir à un tel panorama de résultats relevant proprement de l'analyse économique : la vaste cartographie des risques que nous pouvons dresser ou des typologies et de la structure dynamique que nous pouvons en déduire ; l'importance du concept de prix comme rapport d'égalité de chose à chose qui assure la justice commutative, son déploiement progressif, à commencer par les textes non économiques, ou sa triple fonction d'informer l'observateur et les co-contractants sur la justice de l'échange, de délimiter l'espace marchand et d'unifier l'activité économique puisque l'échange commercial et le prêt sont *in fine* régis par un prix ; la nécessité, pour comprendre une opération, de porter son regard sur l'ensemble des parties prenantes et non sur les agents au statut social prédéfini et probablement peccamineux comme le prêteur ou le marchand ; la perception du caractère dynamique et mouvant de l'attribution de l'avantage en termes d'information et de pouvoir de négociation au cours d'une opération ; enfin, l'attention portée à l'objet et à l'activité plus qu'à l'agent, si bien que ce que nous appellerions aujourd'hui l'analyse économique relève davantage d'une approche ontologique qu'anthropologique… Ceci, pour ne citer que quelques résultats qui émergent de ce travail et qui concernent le plus directement l'analyse économique.

Le renouvellement de l'histoire de la pensée économique thomasienne me semble alors à poursuivre dans deux directions : le *corpus*, par une étude de tous les textes traitant de l'activité économique, et la méthode, par une lecture de ces textes en économiste.

Le *corpus*. La première direction consiste à continuer l'exploration systématique de l'ensemble du *corpus* thomasien, à commencer par les textes les moins connus, ceux qui sont en apparence les plus anecdotiques, et ceux qui comportent la description de situations économiques mais qui ne font pas partie des œuvres directement économiques de l'Aquinate. Le *corpus* initial, constitué des trois premiers textes économiques (*In III Sent.*, d. 37, a. 6 ; *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 ; *De emptione*), largement méconnus, et des trois premiers textes où figure l'expression « juste prix » (*Super Isaiam*, 55, 1 ; *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 ; *In IV Sent.*, d. 36, q. 1, a. 2), jamais étudiés par les économistes, demeure très limité au regard de l'ensemble de l'œuvre thomasienne. Son analyse a cependant permis d'aboutir aux résultats ci-dessus, montrant leur intérêt pour la discipline. Il faudrait ainsi poursuivre ce travail d'économiste en lisant l'ensemble des textes ressortissant : au prix, en analysant les 816 occurrences du terme « *pretium* » et de ses dérivés ; à l'échange, avec les 360 occurrences de « *commutatio* », y compris ce qui ressort à la justice « commutative », qui s'y rapporte ; au négoce, avec les 380 occurrences de « *negotium* » et de ses dérivés ; au prêt et à l'usure, avec 70 occurrences d' « *usura* » auxquelles il faut ajouter les nombreuses occurrences de « *mutuum* », de « *fenus* » et de leur dérivés pris au sens économique ; à la monnaie, avec les 1 142 occurrences de « *pecunia* » et de ses dérivés, auxquelles il faut ajouter celles d' « *argentum* » au sens monétaire ; à la production, enfin, dont le champ lexical est multiple (fabrication, artisanat, amélioration du bien…) et composé de termes polysémiques et employés également hors du champ économique. Il faudrait enfin contourner ce qui pourrait constituer un « angle mort » lexical, à savoir des situations économiques décrites avec un lexique n'appartenant pas à la discipline. On pourra, alors seulement, prétendre à une connaissance significative, sinon exhaustive, de la compréhension qu'a l'Aquinate de l'activité économique.

Les résultats obtenus à partir d'un *corpus* somme toute limité permettent cependant de dégager quelques apports thomasiens qui dépassent le contexte médiéval et qui tendent à une certaine universalité, partout où il y a échange volontaire, et constituent en cela une contribution à l'analyse économique. Ces échanges volontaires constituent un ensemble spécifique, en ce qu'ils se distinguent d'un côté du don et d'un autre côté du vol et de la rapine :

- Ils se distinguent du don, qui est une transaction d'une autre nature, pensée comme unilatérale dans son essence alors que l'échange est par nature bilatéral, qu'il y ait égalité de valeur ou non entre les choses échangées. Le débat sur l'existence réelle du don gratuit ne remet pas en cause la distinction entre l'échange et le don. Les travaux philosophiques d'une part, lorsqu'ils considèrent que le don constitue une gratification envers soi-même, et anthropologiques d'autre part, lorsqu'ils montrent que le don appelle toujours un contre-don, viennent au contraire renforcer l'idée selon laquelle le cadre premier d'analyse est celui de l'échange. Si Thomas s'intéresse par ailleurs au don, il pose cependant plusieurs pierres d'attente en traitant dans le cadre de l'échange des opérations qui étaient jusqu'alors perçues comme des dons. Cela est possible par l'introduction d'une pluralité de rapports d'échange. C'est cependant la nature du bien, et non la volonté altruiste ou charitable de l'agent, qui détermine la nature du rapport d'échange et les cas d'application d'un tarif permettant la reproduction de cet échange et non d'un prix selon une égalité de chose à chose. En effet, l'agent agit selon son intérêt propre et l'échange résulte de la rencontre et de la satisfaction commune des intérêts (*De emptione*, I ; *S. T.*, IIa IIae, q. 77, a. 1, resp., *Ethicorum*, V, 9). Les expressions apparues au cours de l'histoire et que l'on cherche parfois à rapporter, même de manière lointaine, à la pensée thomasienne, comme « économie civile » ou « économie sociale et solidaire », ne pourraient alors décrire une activité proprement économique qu'à la condition qu'elles ne considèrent pas d'immixtion du don dans l'échange, que la nature de l'échange et du rapport d'échange ne dépende pas de l'intention des agents mais du bien échangé, et qu'au demeurant l'intention supposée des agents soit bien la recherche de leur intérêt.
- Ils se distinguent du vol et de la rapine. Ici encore, l'affirmation qui semble évidente est sans doute plus forte qu'elle n'y parait. Le vol consiste à prendre le bien d'autrui par le secret (*occultum*) et l'ignorance (*ignorantia*), la rapine par la violence (*violentia*). Ces deux péchés s'opposent à la volonté de la victime : « La prise est involontaire de la part de celui à qui on soustrait quelque chose [*acceptio est involuntaria ex parte eius cui aliquid subtrahitur*] » (*S. T.*, IIa IIae, q. 66, a. 4, resp.). La volonté conditionnée, qui consiste en un amoindrissement de la liberté par nécessité, ne relève en apparence ni du secret ni de la violence et l'agent conserve une expression même conditionnée de sa volonté. On peut cependant noter deux arguments rapprochant cette volonté conditionnée du vol et de la rapine :
    - D'une part, l'asymétrie d'information a bien part au secret. On peut toutefois objecter que, dans l'échange avec asymétrie d'information, le secret porte sur les conditions de la dépossession alors que, dans le vol, le secret porte sur la dépossession elle-même. Le vol porterait ainsi non sur l'acte de dépossession mais sur ses conditions, donc sur la qualité et

la quantité du bien dont on est dépossédé (apporter une chose en bon état pour une chose abîmée ou une somme d'argent trop importante, encore que dans ce cas, l'agent sait qu'il l'apporte, il n'est trompé que sur les raisons qui le poussent à cet apport). On peut donc parler de risque de vol, au moins dans un sens partiel.

- D'autre part, le pouvoir de négociation et la nécessité ont bien part à la violence, même si elle ne s'exprime pas par la contrainte physique. Ainsi Thomas parle-t-il de « *violentum mixtum* [violence mitigée] » (*De malo*, q. 13, a. 4, obj. 8) pour exprimer la volonté conditionnée, bien qu'il ne reprenne pas l'expression dans la solution afférente. En relativisant mais en universalisant simultanément la volonté conditionnée dès ses œuvres de jeunesse, Thomas sous-entend le risque permanent de sortie de l'échange volontaire pour tomber dans une forme de rapine. Ici encore, la situation de vol ou de rapine n'est pas nécessairement le résultat d'une intention mauvaise de l'agent, mais elle découle des conditions objectives de l'échange.

La délimitation de l'activité économique prise comme échange volontaire composé du prêt (*In III Sent.*, d. 37, a. 6) et de l'échange commercial (*In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 ; d. 25, q. 3, a. 1, qc. 1 ; d. 36, q. 1, a. 2 ; *De emptione*) impose donc une analyse constante de la qualité de l'information et l'absence d'état de nécessité puisque, lorsque l'une ou l'autre fait défaut, ce qui était initialement un échange volontaire relève désormais du traitement social et juridique du vol et de la rapine.

Cette double distinction entre l'échange volontaire et le don, puis entre ce même échange volontaire et le vol et la rapine, ouvre la voie à un élargissement des risques, tels qu'ils ont été mis en lumière dans ce travail. Je m'en tiendrai au premier risque présenté par Thomas à travers l'expression « *satis probabilis* » dans son premier écrit à portée directement économique (*In III Sent.*, d. 37, a. 6), le risque d'analyse. Ce risque trouve en effet un nouveau développement. Alors que Thomas l'envisage dans le cadre moral médiéval, qui est celui de la condamnation de l'usure, ce risque, peu pris en considération depuis l'Aquinate, tend pourtant, lui aussi, à une certaine universalité. Il ne s'agit plus d'une erreur de compréhension pouvant affecter la perception de la moralité de l'échange et la qualification sociale et légale des agents, mais d'une erreur portant sur ce qu'est l'activité économique elle-même. Cette erreur d'analyse conduirait en effet à omettre d'exclure de cette activité ce qui n'est pas un échange et ce qui n'est pas volontaire. Or, la délimitation est, de manière commune à travers les âges, assurée par la loi qui, d'une part, accorde un encadrement juridique différencié au don et au prêt et, d'autre part,

punit le vol et la rapine. Le risque pour l'ensemble des agents serait alors que la puissance publique, conseillée par les experts, se trompe dans cette délimitation.

La méthode. Les résultats ainsi obtenus à partir d'une première exploration du *corpus* suggèrent ainsi, outre un élargissement de ce *corpus*, un approfondissement méthodologique. Pour l'économiste, l'apport de l'Aquinate ne réside pas seulement dans les éléments témoignant de l'histoire économique et de la pensée de son temps mais dans ce qui chez lui tend à l'universel en décrivant les invariants de l'échange volontaire. Si les modalités des échanges ont pu varier, le cadre épistémologique et la structuration de l'échange volontaire, qui lui sont intrinsèques, ne changent pas. C'est sur ces deux plans qu'on retrouvera la contribution de l'Aquinate, qui consiste d'une part dans la délimitation de l'activité économique et la formulation du risque que cette délimitation soit erronée, et d'autre part dans la caractérisation des deux critères fondamentaux d'analyse de l'opération que sont le prix et la chose échangée.

On retient souvent de Thomas d'Aquin sa préoccupation morale et l'on souligne l'altérité qu'il représente pour l'économiste contemporain en traitant de questions économiques dans un temps où le marché n'est encore que la place du marché et le prix qu'un rapport d'échange de chose à chose et non la rencontre conceptualisée d'une offre et d'une demande. On convoque alors révérencieusement sa mémoire en se sentant revêtu d'une double mission : d'une part, pour appuyer la charge morale dont l'économiste serait investi au service d'une intervention sur la vie économique en faveur d'un Bien dont la nature serait reçue normativement ; d'autre part, pour faire œuvre d'historien et rechercher dans les couloirs du temps les souvenirs obscurs de quelques idées encore balbutiantes contenues dans une littérature certes bien conservée mais dont la langue, les présupposés philosophiques et le style nous sont depuis longtemps étrangers. Ces deux missions, dont on ne discutera ni la noblesse ni l'intérêt, s'éloignent pourtant de la simple analyse des opérations et des mécanismes économiques que l'on est en droit d'attendre de l'économiste. Paradoxalement, alors que l'économiste se mue en philosophe ou en historien pour tirer la quintessence de l'œuvre thomasienne, cette œuvre attend depuis près de huit cents ans d'être lue par des économistes qui n'auraient comme préjugés ni l'intention morale de l'auteur ni la période de rédaction et comme révérence que celle due à un contributeur pour ce qu'il apporte à la science. Les économistes devenus philosophes et historiens qui ont lu Thomas d'Aquin ont déjà permis de grandes avancées et nous avons la chance de pouvoir monter, comme des nains, sur leurs épaules de géants. Le temps semble toutefois venu pour que les économistes que nous sommes, sans pour autant faire abstraction de la morale et de l'histoire, lisions ses œuvres simplement pour ce qu'elles apportent à l'analyse économique. Ce sont alors

des œuvres qui sembleront nouvelles qui surgiront devant nos yeux comme ont surgi ici le *Super Isaiam*, le *Commentaire des Sentences* et le *De emptione*, des œuvres qui, comme toutes les contributions économiques d'hier et d'aujourd'hui, aident à comprendre ce que les êtres humains réalisent en tout temps et en tout lieu, des échanges volontaires.

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