

At the Boundaries of the Trading Sphere: The Appearance of the ‘Just Price’ in Thomas Aquinas's Early Works

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Abstract

‘Just price’ appears explicitly once in the *Commentary on the Book of Isaiah* and twice in the *Commentary on the Sentences*, the early works of Thomas Aquinas. These three inaugural expressions, little known and seemingly anecdotal, which concern a gift, a non-tradable good and a semi-tradable good, are in fact fundamental and decisive: They give a new understanding of the Thomasian just price as an analogy of justice, they highlight the role of price in reducing the risk of lack of information about the justice of exchange, they allow the delimitation of the market and they indicate how Aquinas implements, through a particular attention to the goods, an objective approach that reduces the subjective risk concerning the agents and their hidden intention.

keywords: Thomas Aquinas, Scholastics, just price, risk

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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 ‘just price’ appears only nineteen times in Aquinas's authentic works. Moreover, this appearance is gradual: the very first occurrence is in *Super Isaiam*, c. 55 (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 just price is not explicitly used in specifically economic passages of the *Commentary on the Sentences*, Aquinas's early work, neither on usury, in *In III Sent.*, d. 37, a. 6 (Januard 2021a), nor on the activity of merchants, in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3 (Januard 2021c). It was not taken up again in a more structuring way within the texts of a strictly economic nature as a criterion of justice of

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exchange until about five years later in *De emptione et venditione ad tempus* (Januard 2021b), and then in the mature works such as the *Summa theologiae*.¹

The first occurrence, in the early biblical *Commentary on the book of Isaiah*, allows Aquinas to comment on the prophet's statement that God offers his spiritual goods free of charge, compared to water and food: "All you who are thirsty, come to the water, and you who have no money, come and eat; come, buy without money" (Isaiah, 55:1). Aquinas then comments: "without money, it is less than the just price [*absque argento: id est minus quam justo pretio*]" (*Super Isaiam*, c. 55, 18-19). This first occurrence thus paradoxically indicates that God does not practice this just price and that the sale is in reality a gift. The next two occurrences in Aquinas's *Commentary on the Sentences* do not deal either with direct economic questions, but 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 the serf when he is married. They might seem anecdotal.

This last aspect shouldn't be underestimated since it entails an actual risk of overinterpretation. The reason is that although Aquinas uses the phrase 'just price', on non-economic matters in his early works and on economic ones later, he never explains unequivocally what it is. As a result, we have had long streams of interpretation focusing on some kind of market price, of production costs or, more recently, on justice in exchange. My purpose here is to avoid possible overinterpretations. The first step is provided by what Aquinas wrote in his non-economic early writings. Indeed, if he doesn't express what the just price is, he clearly explains here what it applies to, and he shows how and why this concept is useful for him.

These first three uses of the term 'just price', which remain little known, actually have three major interests that I highlight in a dynamic perspective in order to show how these occurrences can be seen as foundation stones and to emphasise Thomasian thought's evolutions.

¹ 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, 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 (published in the Leonine edition's *Opuscula III*, pp. 375-378). The *Collationes in Decem Praeceptis* 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.

First, through the gift (*Super Isaiam*, c. 55), then the non-tradable good such as the sacrament and more broadly the spiritual good (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1), and finally the semi-tradable good such as the married serf, whose sale is subordinated to strong non-financial criteria (*In IV Sent.*, d. 36, q. 1, a. 2), the three occurrences of ‘just price’ set the ontological and epistemological framework for all of Aquinas's contributions with an economic scope by drawing a delimitation of what can pertain to exchange, even if it means pushing back its limits, as in the case of non-tradable and semi-tradable goods, and what definitely does not, as in the case of the gift.² The first uses of term ‘just price’ can be seen as setting boundaries to the trading sphere.

Secondly, they clarify and allow for a new interpretation of the trading activity 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), time (exclusion of feast days) and mode (without fraud and according to the licit contract), are enriched by a good-focused approach with the distinction between a *justice of object* and a *justice of quantity*. This objective approach by the goods, which has the advantage of circumventing the lack of information of a subjective approach concerning the agent and his intention, will be found again in the later works.

Thirdly, these three occurrences inaugurate the concept of just price by announcing its utility and 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, it appears explicitly here in order to reduce the lack of information on the justice of the exchange. The just price is the objective and visible revealer, by its possibility (whether the nature of the good allows to sell it or not) and its level, 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 the *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 to consider goods that cannot have one or whose sale is also governed by elements outside 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

² The first occurrence, in *Super Isaiam*, c. 55, which does not concern exchange, will not be addressed systematically, but it will allow us to clarify Aquinas's thought by shedding light on the other two occurrences. It does, however, resonate with the recent literature, which endeavours to show the importance of the gift in Aquinas's economic thought. See Franks 2009; Hirschfeld 2018; Santori 2019, 2020 and 2021.

framework of the just price through its possibility and its contour. In the first two instances, concerning the gift of God and simony, he raises the question of its possibility, and then in the third instance, concerning the sale of the married serf, the question of the articulation of two complementary criteria of justice, a financial one manifested by the price, and a non-financial one, in this case the distance of the sale so as not to infringe on the marriage of the serf, which is irreducible to the price. The nature of 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.

The inaugural occurrences thus highlight the primacy of justice and remain far from the traditional debate between a determination of the just price by production costs, supported by the *Ethicorum*, argued for instance by Tawney [1926] 1948, and a determination on the market, supported by *De emptione* and the *Summa theologiae*, 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 an analogical approach to the just price from the very beginning of its expression: the effective just price maintains a relationship that we will see is of analogy, but not of identity, to justice. 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, acceptable prices that conform to it. Moreover, these inaugural occurrences confirm and enrich an approach of the just price through its three levels of reality, which had been highlighted in *De emptione* from the external convocation of the Thomasian categories of sign and analogy (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 the three economic levels three legal levels of reality of the just price (Januard 2021c). It is therefore clear from Aquinas's early writings that the just price is first of all the normative just price pre-existing 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, the just price of the singular exchange or according to the particular contract.

This study extends, by its object, its approach and its results, the usual analyses of the Thomasian just price. Indeed, if the "just price" among medieval and modern scholastics, often taken as a whole through a few major works, finds a certain place in 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, 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; Koehn and Wilbratte 2012; Monsalve 2014a; Chaplygina and Lapidus 2016 and 2022; Sturn 2017; Santori 2019, 2020 and 2021; Januard 2021b and 2021c.

Building on these insights, I first show how the application of the just price to the 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 the justice of object and the justice of quantity and emphasising 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 intervenes for what has no price (section 3). The just price, by its possibility and its level, assumes 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 founding structure 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 establish the specificity of this trade, then to show 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 is completed by non-financial conditions that are irreducible to it.

2. The non-tradable good: circumscribing the trading sphere

The first occurrence of just price concerning exchange comes in *In IV Sent.*, 25, q. 3, a. 1, qc. 1, resp., when Aquinas deals with simony, i.e. the sale of spiritual goods, which cannot be sold. The just price thus appears for goods in a borderline situation, for which it is not self-evident that they have a price. The general framework of trade, which set out three practice conditions in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, 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 comes to delimit 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 the non-tradable good 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 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 questioning is explicitly moral, but since it is 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 in Aristotle and Aquinas is fairly predictable (Conrad and Hunter 2020), by 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 treated this lack of information a hundred years earlier by equating it with an evil end (Januard 2021c). Thus, in the *Commentary on the Sentences*, trading is framed but not always considered sinful. Similarly, ten years later, in *De regno*, II, 7 (II, 3), Aquinas expresses a regret or a warning when he considers the case of too many traders in the city, since they seek gain, greed passes into the hearts of the citizens and everything becomes venal (Franks 2009, 102), but 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 this was only a part of the potential merchants, and it only concerned trade, 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, if we find in Aquinas's works 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, which could be licitly a tradable 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 borderline case that is totally non-trade (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, 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 a properly theological question, 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 (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 it cannot be respected, since God gives when he sells (Isaiah, 55:1), or where it 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.

Literature has up to now questioned 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

intervenes 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; Storn 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 of these conditions of trading activity can thus be identified: a quantitative financial criterion and a qualitative non-financial criterion (Januard 2021c). The general framework of this double criterion, price and a non-financial element, allows us to think of the borderline 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 non-tradable good exchange echoes the general framework of trade, through a double criterion of justice, both qualitative and quantitative. Aquinas formalises in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 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 here 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 clarifies and formalises a typology which was still only a practical enumeration in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3. 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 (Januard 2021c), whereas the price, implemented in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, came to characterise a good.

Thus, there are two developments 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 trading activity, which was seen until then 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, 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, which 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 explicitation 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: *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, suited particularly well to maintain 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 show the replacement, with *persona*, of the other two criteria, *tempus* and *modus*, by the *quid*. The exclusive focus on the object is all the more 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 only linked 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, if the *tempus* clause is less explicit, we find the *persona* one (*S. T.*, q. 77, a. 4, ad 3) and the *modus* through fraud and contract (*S. T.*, q. 77, a. 1, resp.), or a variation in terms of virtue and law (*II Quodl.*, q. 5, a. 2). However, with the exception of these few reminiscences 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, one can observe, with some exceptions, a replacement of the triptych *persona, tempus, modus* by *quid*, that is to say a greater attention to the object and a lesser one to the other conditions.

The three hypotheses are not incompatible and seem in part to be retained, leading to the following conclusion: Justice *in quid*, perhaps implicitly understood in the original triptych of the general framework of justice, within the ‘*sine fraude*’ 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 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 trade activity as a whole becomes progressively more objective (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 only justified by the nature of the object, but 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 observed the same phenomenon of objectification in the treatment of usury already 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).

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 borderline case within the original framework. It is a borderline case in the primary sense of the term, because while it is eligible for the general framework of analysis, it poses the limit of the trading space.

2.3. An objective delimitation of the trading sphere by good and by activity

The objective distinction, through 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 a distinction of human activities. This is a question that runs through the recent literature, 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 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 borderline 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 gift and trade, but there is nothing here to indicate that we can envisage an imbrication of gift 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 cumulative, with a part of sale and a part of gift that would not be motivated by the moral conditions of the sale. Indeed,

the trading order 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 whole of trade activity, 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 trading order. 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 order. 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.*, 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, of a kind of optional criterion within the *modus*, than of an interference of the order of gift and charity in 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 one.

Concerning useful friendship, which can be declined through civil friendship, between cities or nations (Santori 2019, 85 and Santori 2021, 17-19), and 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 an 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 dealing with 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.

The distance from useful friendship, by reinforcing Aquinas's 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. If he envisages that a loan can freely elicit a spontaneous loan in return (S. T., q. 78, a. 2, ad 4) or that it allows the borrower's benevolence, friendship or gratitude to be demanded (S. T., q. 78, a. 2, resp.), this is more a matter of "evasion" strategies (Ege 2014, 400-405) to consider a form of surplus in the specific framework of the condemnation of usury (Januard 2021a), than of an assimilation of gift and trade. In this respect, Piron 2005 insists on the distance Aquinas takes with the notion of *antidota*, which in the early 13th century places gratitude within the very 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 in the general framework of the *respondeo*. Aquinas considers the exchange which, "by accident" (*per accidens*) turns 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 made by Aquinas. In this case, the just price (*justum pretium*) includes the thing (*ad rem*) and the damage (*ad damnum*). It is licit to sell for more than what the thing is worth in itself (*valeat secundum se*). Justice thus integrates here, through the notion of just price, the value of the thing in itself (on the difference between value and price for Aquinas, see 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 yet 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 totally trading-related surplus.

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, 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 price by its possibility and its level makes it possible to assume 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 very terms of the market, by an inaccessible price level rather than by the impossibility of a just price, which will allow us to understand the non-tradable good, in today's terms, as a borderline case of *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 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.³ It is not, therefore, an expression by identity of this justice, but conforms to it, in 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

³ Aquinas takes up the concept of analogy, which is first of all a mathematical proportion, and then by extension 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 and Imbach and Oliva 2009, 83-84). Aquinas uses analogy 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 through 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 conform but not identical to it (Januard 2021b).

and the justice of object. This occurrence of the just price on the subject 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 and thus to confirm, in an internal way to the expression of the just price, what could 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 applied to the contractual criterion expressed in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3: 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 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: towards expressing the impossibility of trade in trading terms

The appearance of the just price to deal 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 not. It is the nature of the object, and not the anthropological posture, according to whether the agent considers himself more or less *homo amicus*, *justus*, or *oeconomicus* or tries to assume to be all three at the same time, that commands 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 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 trade from 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 an articulation of the two with a market price gravitating around production costs

(Hollander 1965). Before trying, often in vain, to perceive the way in which Aquinas determines the just price, it is necessary to see how the discrimination of goods and situations with a price and without a price provides the contour of trade activity and thus the first sketch of an epistemology of questions of economic significance.

The borderline case of simony in *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 leads to another borderline 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 evolution is observed 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, is then 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. We then find a modality of expression close to the first occurrence of the just price in *Super Isaiam*, c. 55, where the non-tradable good was indeed sold, and a just price existed. The sale was in fact a gift, thus below the just price, but this gift was expressed in trading terms. There is thus a shift in Aquinas's treatment of simony in the *Summa theologiae*. While Aquinas repeats 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, p. 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 use, in his early works, 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, he gradually detach himself, in his later works, 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 which threatens ruin sold for 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 morally controversial, and '*contested markets*' (Radin 1996; Steiner and Trespeuch 2014; Bertrand and Catto 2020, 13-14) can help to understand the path taken by Aquinas in his works. At first sight, the 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 are not contested, but prohibited from being traded. It falls into the category of meritorious goods, subject to *market-inalienability* because of the negative moral externality that their sale would entail (Radin 1987, 1853-1854; Radin 1996, 19-21; Bertrand and Catto 2020, 13; Bertrand 2020, 33). However, the formalisation of this prohibition evolves to be formulated in the very terms of the market, by a very high price, in *S. T.*, Ila Ilae, q. 100. In the case of the spiritual thing as in the case of the free man (*S. T.*, Ila Ilae, q. 189, a. 6, ad 3) the commodification is only a formal expression because prohibition *by nature* was never questioned, neither by Aquinas nor afterwards. However, through the price appears the possibility of a market, even if the very high price prevents any buyer. In the case of the house that threatens ruin (*S. T.*, Ila Ilae, q. 77, a. 3, resp.) and of the dangerous good (*S. T.*, Ila Ilae, q. 77, a. 3, ad 3), commodification is effective because sale is not forbidden and the market is thought to be operational with purchases and sales. The evolution 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 ruined house, underwent an evolution towards an acceptance of their trading, simply under more or less strong conditions.

Goods considered as non-tradable because of their extreme dignity, such as pregnancy, children (Bertrand 2019a; Jouan 2020) and their adoption (Roux 2014), human organs (Steiner 2014; Steiner 2020; Mornington 2020), gametes (Catto 2020) or, to a certain extent, blood donation (Mercier-Ythier 2020), are subject to progressive but often indirect contestation. Thus, it is not the child but the services associated with adoption that will become the object of a market, and with rare exceptions, organs are not the object of explicit and direct commodification. The same is true for the sacraments: simony is formally forbidden, but 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 necessitatis*]" (*S. T.*, Ila Ilae 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" (*In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, ad 4; see also *S.T.*, Ila Ilae, q. 100, a. 2, ad 2). If the spiritual good is absolutely non-commodified, there is nothing to prevent highly regulated markets being associated with it, for example that of the subsistence of clerics.

Even today, following Aquinas, the *Code of Canon Law* of the Catholic Church 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 effective celebration 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 a market in the sense of the meeting of supply and demand and the payment of financial compensation, even if this market obeys particular rules: the amount of the compensation does not result directly from the confrontation of supply and demand, this compensation 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 [*oblaciones 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, p. 32), but the sacrament can be the object of retribution 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). 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.

The contested commodities, such as the goods mentioned by Aquinas, whether they are spiritual goods or the house that is in danger of falling into ruin, demonstrate the pre-eminence of an ontological approach to exchange, as it is the *quid*, the nature of the good exchanged, that determines the possibility and conditions of the trade. However, there is an asymmetry: in the case of meritorious goods (children, human organs, gametes, blood...), as we have recalled, it is the *quid* that determines the possibility and conditions of the trade. On the other hand, undignified goods, which can be considered as contested because of their harmfulness or danger, such as pornography (Trachman 2014) or gambling (Trespeuch 2014), are more directly the object of a contested market, which is certainly restricted to protect potential victims, but explicit, such as a house that threatens to fall into ruin or a dangerous good in *S. T.*, q. 77, a. 3. 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).

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 the non-tradable good 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 sets the general framework of justice here, 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 tell the whole of what 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 in Aquinas's works, attest to these three dimensions of an analogical expression: (1) a known manifestation that describes a first term that is inaccessible directly and that lies upstream, (2) what is said by the example is true, (3) but 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 declined analogically into 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 one since it is not a commodity, thus shows on the one hand what the just price is, 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 revelation 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 an estimation pricing technical impossibility, 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 et 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 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 et cum* further argues for 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* from its first occurrence of the just price by the

use of *sicut et cum* allows us to take a new, decisive step in the understanding of the just price. It shows through an analogical expression that appears within a properly economic sentence that links justice and sale to the just price, what we have been able to establish in a more indirect way from the occurrences of the expression just price in *De emptione* (Januard 2021b). In *IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp. thus founds in an inaugural and programmatic way and from the very heart of the explicit expression of the concept of just price what had been set up from the later writings and by the convocation of the sign and the analogy as concepts certainly Thomasian but then considered as external to the economic writings. Indeed, we appealed on the one hand to the Thomasian concept of sign, which serves Aquinas to found his theology of the sacraments, 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. 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 (Januard 2021b).

Through the use of *sicut et 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 (Januard 2021b): the analogical link between a just price and effective prices, to which it would pre-exist and of 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 by 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 can be transposed into *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1, resp. and in *De emptione* (Januard 2021b) to the legal approach. It is indeed these same three levels of reality, pre-existing normative justice, the market and the singular exchange, that we find at the legal level. For Aquinas, as the *Summa theologiae* would later show, 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 can, by virtue of a common convention, 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, to deal with 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 however determined, as in the case of the non-tradable good, by the specificity 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 assumes new facets of this justice, such as compensation following an unjust exchange.

4.1. Trading under non-trading constraints

In dedicating the expression ‘just price’ to a semi-tradable good, which is subject to a strong object constraint, the married serf, after having reserved the first for a gift and the second for a non-tradable good, Aquinas continues his approach to the just price through borderline 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 13th 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 holds the obligation to ask the lord's consent, since otherwise the lord could sell the serf in a remote area where the wife could not follow him, 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)⁴ or the questioning of 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 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 [*cogendus est*] not to sell his serf under these conditions [*taliter*], especially when he does not lack the possibility of selling his serf everywhere at a just price [*praecipue cum non desit facultas ubique 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 take the serf out of the market because of his marriage: the lord would not be prevented from selling him in the absolute, but simply from selling him "under these conditions [*taliter*]". Everything is trade-related here, 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

⁴ 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. Thus, see the debate between Domar and Machina 1984 and 1985 and Tourmanoff 1985.

the conditions of trade activity (not selling far away). While in the modern era, thinking on slavery will successively move from a moral to an economic level (Herland 2002), Aquinas's approach to serfdom is based on an imbrication, 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 its 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. This will be, in a way - for morally opposed reasons, and the comparison must be strictly limited to this precise point - the fate of the serf, married or not, with the abolition of serfdom.

The notions of contested commodity and contested market, by their plasticity that goes beyond the binary market/non-market approach (Bertrand and Catto 2020, 14), allow us to address the two borderline cases encountered in Aquinas, 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 borderline 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 has two potential consequences on the price, one upwards, the other downwards. It therefore represents what we would call today a positive and a negative 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 rather 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 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 everywhere, 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 buyer can sell far away if he cannot find 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 serf cannot be found to sell near 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 area has become more complex through 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 developed by Coase [1960] to externalities through the rights associated with them, by combining law and the market (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 very terms of the market.

Or, 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 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 it would not have 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 nearer; 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, 523-523) 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.

Or, 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, 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 seems more appropriate here than "*incomplete commodification*" (Radin 1987, 1917-1921; Radin 1996, 102-114; Bertrand and Catto 2020, 14) because they suggest more 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 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, but 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 sale at the just price in the distance 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, wages or 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-13th 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 important in France at the end of the 13th century (Domar 1970, 28-30; Feller 2017, 171; Persson 2014, 235). 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 to the way opened by *In IV Sent.*, d. 25, q. 3, a. 1, qc. 1 to think of a non-substitutable justice of object. In addition, the submission 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 a 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 sale away 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 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 intrinsic and trading situation, between non-trading and trading dimension. Whether one reads this in terms of 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 specificity of the non-tradable good and the semi-tradable good explicitly sets the limit of the trade activity according to a metaphysical delimitation by 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 borderline 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 contract then do not simply determine the practical conditions of trading exchange but are its ontological delimitation. The difference in treatment by Aquinas, in *In IV Sent.*, d. 16, q. 4, a. 2, qc. 3, of trade activity, whose conditions aim at circumscribing the purpose, which remains hidden, and of military activity, whose conditions frame the activity in order to promote it, with a view to a

purpose that is good (Januard 2021c), argues in this sense. 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 trading and non-trading space.

The roundabout way of looking at the borderline 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 its 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 of distinction 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 borderline 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 specificity 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 under conditions. The non-tradable good is a borderline case where 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 of harmful or dangerous commodities. If in the usual cases it is the constraints represented by the conditions (taxation, restrictions on advertising or buyers) that legitimise the trade, it happens that the assignment of a new, higher purpose ensures this legitimation. This is the case, for example, of 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 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 between financial and non-financial criteria is therefore not only cumulative but 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 borderline 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 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, if Aquinas makes 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 Questions*, 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 the civil law to consider financial compensations. 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 laws allow them to deceive (*decipient*) each other. In solution 1, Aquinas does not

dispute this, except 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 excess 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 a trade level 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.

Conclusion

The first occurrences of the just price in Aquinas's works complete the general framework of trade by specifying the conditions of exercise of the trade activity. They highlight Aquinas's attention to the nature of the object, where 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 of later works.

The intervention of the just price in an early biblical commentary on God's spiritual gift (*Super Isaiam*, c. 55) and in the non-economic parts of the *Commentary on the Sentences*, since it concerns the passages on the sacraments, also affirms 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 or 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 particularity 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 give 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 very terms of the market.

The first occurrences of the just price are also foundational to the notion of 'just price' in Aquinas's works. Their rediscovery finally provides keys to an inaugural reading that gives a new understanding of the Thomasian just price, which is often studied on the basis of 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 borderline cases, the just price delimits the trading sphere before ensuring its internal justice. The specificity of these cases shows that the just price is a price of justice, it reveals 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* originally founds 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, the just price of the singular exchange or according to the singular contract.

These founding occurrences of the expression 'just price' in the *Super Isaiam* and the *Commentary on the Sentences* thus lead to a departure from the traditional debate, 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 very 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.

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