THE COMMON ESTIMATION OF THE MARKET:

DOMINGO BAÑEZ ON THE JUST PRICE

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Since the University of Chicago removed courses in the history of economic thought from the list of courses required for their doctoral program in economics, the study has fallen into the shadows. Graduate and undergraduate students alike learn the standard textbook theories with no more of the historical background than what is provided by pop-out boxes in the text, if even that. The focus of economic study becomes mathematical modeling and quantitative analysis, with little room for an appreciation of how even the familiar supply and demand graph developed over time. The solutions to recurrent economic problems often remain obscured, hidden in the shadow of the methods of the natural sciences. But even within the study of the history of economic thought, the subject matter of real interest often begins in the year 1776 with the publication of Adam Smith’s *Wealth of Nations*. A cursory treatment may be given to Aristotle, the medieval scholastics, and the physiocrats, but they are seldom developed beyond a kind of inchoate primordial soup from which the autochthonous Adam Smith springs fully-formed. The scholastics especially are typically dismissed as mere moralists, not worthy to be counted among the ranks of positive scientists. A commentary tradition, spanning more than five hundred years and developing valuable positive insights within a robust normative framework, vanishes in the shadow cast by the invisible hand.

Retreating even further into the recesses of academic neglect, one finds that many scholastic commentaries on economic matters remain even to be read, much less translated. This literature lies in the shadow of a shadow of a shadow. Odd Langholm, one of the relatively few scholars with significant contributions to the study of scholastic economics, outlines the nature of the problem:

> The interpretation and analysis of [scholastic] printed sources, as well as of a large body of sources still available only in manuscript, are the subjects of a modern critical literature which has been growing steadily in volume for some time. Unfortunately, professional economists are not among the major
contributors to the literature. Very few of the works of the medieval theologians are available in translations, and the percentage of economists who can read Latin is dwindling. Most of the contributions to scholastic economics appear as small segments of text in voluminous works of a general nature, or in particular treatises on topics whose relation to economics is not immediately apparent. The majority of those who are led to the study of such works are medievalists to whom economics is a foreign subject of secondary importance. They therefore normally lack both the expertise required to evaluate what there might be of relevance to economics, and the inclination to communicate such finds to economists.¹

A large body of scholarly thought is inaccessible to modern economics because economists cannot read Latin and Latinists do not care about economics. This paper takes a small step towards closing the gap between economics and Latin by bringing into the light of scholarly discussion a previously untranslated work: Domingo Bañez’s Decisiones de Iure et Iustitia.²

Such a task is not without its hazards. It is always tempting to interpret historical thinkers using a modern paradigm of which they were quite ignorant. This is especially true of the economic doctrines of the scholastics. Most readings of the medieval schoolmen either set them up as straw man proponents of some derided theory of objective value or laud them as precursors to modern free market doctrines, preparing a way in the wilderness for the advent of the Austrian school.³ But the proper way to approach the church doctors is not to pigeonhole them into a post-

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² I have thus far only succeeded in finding two paragraphs of Decisiones de Iure et Iustitia in English translation. One is in Marjorie Grice-Hutchinson, The School of Salamanca: Readings in Spanish Monetary Theory, 1544-1605 (Oxford: Clarendon Press, 1952), 57-8, but it comes from the commentary on Question 78 regarding usury, not Question 77 regarding the just price. The other paragraph is found in Odd Langholm, The Legacy of Scholasticism in Economic Thought: Antecedents of Choice and Power (Cambridge: Cambridge University Press, 1998), 116. This paragraph comes from Question 77, Article 1, Fifth Conclusion and Response to the Objection, which can be found in the appendix, 27.1-28.8. This, however, still leaves me with over eighty pages of new, untranslated material.
Enlightenment intellectual landscape but to read them on their own terms. Just as one must first read and understand their original Latin before translating them, a true understanding requires the reader to step into the universe of medieval thought and appreciate its internal coherence before attempting to bring its ideas to bear on the problems of the modern world. A reading of the scholastics that eagerly plucks ideas out of context to garner support for an ideological position is about as effective as one that leaves key ideas and phrases in untranslated Latin. Thus, in order to appreciate what Bañez writes in his Decisiones we must first set the stage of the scholastic teaching on the just price.

Though Aquinas is often identified as the progenitor of the just price doctrine in the Middle Ages, in reality he is only one in a long line of commentators extending all the way back to the second-century Roman jurist Pomponius, writing about the Roman law. The most important commentary on the nature of value in late antiquity comes from Augustine, who made the distinction between value according to nature and value according to human use. Though a mouse is more valuable according to nature because it is a living thing, a pearl is more valuable in economic terms because it is of greater use to men. Theories about the determination of value and the legal principle of the just price continued to develop over the centuries, but at each stage of its development it remained at its core the common market price, subjectively determined according to human need. Thomas Aquinas, though an important and authoritative contributor to this tradition, is far from its culmination. He was followed by a commentary tradition that had existed for over three hundred years by the time Bañez wrote his Decisiones. In that tradition, the

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4 Michael D’Emic identifies a third modern school that views the interpretation of the late scholastics as market liberals as anachronistic and incorrect. D’Emic, Justice in the Marketplace in Early Modern Spain, xix-xxii. In this camp I would include J.T. Noonan, Odd Langholm, and Wim Decock.
7 Ibid., 29, 34, 53-54, 68-71, 78.
just price was chiefly determined by the *communis aestimatio fori*, the common estimation of the market, not any kind of metaphysical worth.8

Yet despite strong evidence to the contrary, the myth that Aquinas and the other scholastics held to some kind of theory of objective value is remarkably tenacious, ranging from popular media to academic publications. A blog post by the Foundation for Economic Education has this to say about Thomas Aquinas:

> Aquinas believed that goods held an objective value, and selling a good for more than that objective value would be unjust. So the theory of just price holds that a good or service has, well, an objectively just price. Purchasing or selling a good for anything but the established just price violates justice…. The trouble is, the only true just price is determined by the desires of buyers and sellers. Not the priest. Not the statesman.9

Aquinas is here set up as a straw man to be easily dispatched by the subjectivist theories of the marginal revolution.10 The problem is that the assertion that Aquinas believed in objective value is offered without a citation of any his actual works, probably because no such citation exists. Aquinas, along with a lengthy tradition of commentators before and him, did in fact teach that “the true just price is (in the majority of cases) determined by the desires of buyers and sellers,” or the common estimation of the market, a fact which even a cursory examination of the secondary literature would have revealed. This is a clear example of Aquinas, and just price doctrine in general, being misappropriated for a specific ideological purpose.

Similar claims have even passed the standard of peer review on occasion. In October of 2013 the *Journal of Clinical Oncology* published a Rapid Communications article entitled

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“Cancer Drugs in the United States: Justum Pretium—The Just Price.” Once again, the understanding of the just price is strikingly objective:

Aristotle is credited to be the first to discuss the relationship between price and worth in his book Justum Pretium—the just price. Sixteen centuries later, Saint Albert the Great and Saint Thomas Aquinas refined Aristotle’s argument. Their conclusion: of moral necessity, price must reflect worth.¹¹

Unlike the previous example, the authors of this article are in favor of setting up an objective standard of the just price. In their eyes, selling a good “according to what the market will bear” is responsible for prices spiraling out of control, and the solution is to encourage “prices based on real value” as measured by some objective standard of effectiveness.¹² Unsurprisingly, this claim regarding the teaching of the scholastics is not documented with any kind of citation.¹³ The difficulty is that “a thing is worth as much as it can be sold for” was precisely the formulation given to the just price by medieval canonists.¹⁴ Once again, the doctrine of the just price is mutilated to fit into a prefabricated moral framework.

These and similar positions extend into the body of modern scholarly thought on the just price as what may be called the objectivist school. This position and its variations hold that the just price represents some kind of transcendent metaphysical worth and is thus inevitably opposed to the constantly fluctuating market price. Instead of being determined by utility or scarcity, the price must be set to properly offset labor and expenses, or to reflect the good’s

¹² Ibid.
¹³ The authors did publish a correction to the article (“Errata,” Journal of Clinical Oncology vol. 33, no. 30, http://jco.ascopubs.org/content/33/30/3523.1.full, accessed March 17, 2016) that included a number of citations for this paragraph, but none of them support the claim. One source given is a public radio broadcast, another is Rothbard’s Economic Thought before Adam Smith, and another is an undergraduate paper delivered at a student conference. Of these three sources, only Rothbard has any scholarly credentials, and he comes nowhere close to saying that Aquinas believed in any kind of objective value. In fact, he is one of the strongest proponents of the opposite opinion.
intrinsic worth, or any other number of “objective” criteria. Of the modern schools on scholastic economic thought, this view has by far the least support in the primary literature, though it somehow retains dominance in the main stream. The preposterousness of the objectivist school can be exemplified in the famously discredited thesis of Richard Henry Tawney: “The true descendant of the doctrines of Aquinas is the labor theory of value. The last of the Schoolmen was Karl Marx.”

The other members of this school are not much better. In a textbook on the history of economic thought, Ekelund and Hébert claim that the just price and the market price were diametrically opposed:

Indeed, an opinion shared by many historians of economics is that Aquinas viewed market forces as antagonistic to justice. It is difficult to reconcile the medieval notion of “just price” with the modern notion of “market price,” since the former is generally defended on normative grounds whereas the latter is held to be the objective result of impersonal forces.

This conclusion naturally follows from the premise that Aquinas “chose to inject moral instruction into his economics” rather than analyze how uninhibited market forces determine price. In the estimation of Michael D’Emic, a scholar who has read and even translated the scholastics, theirs is “the position of least importance” among recent skeptics of the just price. Their other work on medieval economics, an analysis of the medieval church as an economic firm monopolizing the provision of religion, is “unscientific to the point of frivolousness.”

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17 Ibid.
18 D’Emic, Justice in the Marketplace in Early Modern Spain, xviii.
19 Ibid. This argument appears in Ekelund and Hébert, A History of Economic Theory and Method, 35-37.
certainly unfortunate that the scholars with the worst understanding of scholastic economic
thought are often the ones writing the textbooks.

One particular objectivist account of the just price misses the mark so widely that it
warrants special consideration. Karl Pribram writes that the just price should correspond to some 
bonitas intrinseca (intrinsic goodness) of the goods, for which the most common formula was
the cost of production, or labores et expensae. This is because the scholastics reasoned in terms
of “eternally valid categories” springing from the “divine process of creation” and thus “ignored
certain observations in which Aristotle had admitted that valuation of the goods might be
influenced by subjective wants and increasing demand.” Consequently, the scholastics were
incapable of answering the question of why a gemstone is valued more highly than a piece of
bread. Even though Pribram can read Latin and is apparently interacting with the primary
sources, it is frankly shocking that he can misread the scholastics so dramatically. His assertion
that the scholastics were incapable of answering the paradox of value is not supported by a
citation of any secondary literature and ignores the contribution of Bernardino:

> Water is usually cheap where it is abundant. But it can happen that, on a mountain
or in another place, water is scarce, not abundant. It may well happen that water is
more highly esteemed than gold, because gold is more abundant in this place than
water.

While Bernardino’s answer lacks the degree of elegance of the solution finally achieved by the
theory of marginal utility, it nevertheless demonstrates that the medieval schoolmen had a theory
of value capable of handling one of the perennial puzzles of economics – and that Pribram’s
account of scholastic thought is downright misleading.

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21 _Ibid._, 12-3.
22 _Ibid._
As it turns out, the best antidote to this straw-man scholasticism is the writings of the scholastics themselves. In general, authors tend to hold more accurate and nuanced positions on the scholastics the more they interact with the primary texts. For example, it becomes difficult to assert that the just price was opposed to the ordinary operation of the market when author after author declares it to be the current market price. But like the myth of the flat earth doctrine, the objectivist position on the just price is as tenacious as it is incorrect. In hopes of adding to the mounting pile of evidence that may one day overcome this theory, this paper turns to a hitherto understudied commentator on the just price, Domingo Bañez.

Born in 1528, Bañez took up his pen at a time when the sun of the scholastic method had already begun to set. After entering the Dominican order, he taught under Domingo de Soto at the Spanish University of Salamanca. When the death of Juan de Medina in 1580 left the first chair of the university vacant, Bañez competed for it and won. He continued to serve in that position for twenty years. Though he excelled in all his academic endeavors, Bañez is chiefly remembered for his role as confessor of Saint Teresa of Avila and his fierce dispute with the Jesuit Luis de Molina over grace and predestination in what is now known as the De Auxiliis Controversy. He has also sometimes been credited with being the founder of modern Thomism, though he himself stressed that he never departed from Saint Thomas by even a nail’s breadth.

This dedication manifests itself in *Decisiones de Iure et Iustitia (Commentaries on Right and
Justice), a commentary on questions fifty-seven through eighty-seven of the second part of the second part of Aquinas’s Summa. The work was published in two editions, first in Salamanca in 1594 and again in Venice in 1604, the year of his death. Of the 423 pages of Latin folio text, twenty-three are devoted to the issue of the justice price under the heading Quaestio LXXVII: De Fraudulentia Emptionis et Venditionis (Question 77: Concerning Fraudulence in Buying and Selling).

Bañez begins his discussion of the just price by considering the nature of contracts of buying and selling. Every contract is a human action (actio humana) between two men which creates an obligation for each to the other (3.11-13). All contracts are governed by the principle of commutative justice, which can be summarized as ensuring equality of one thing to another. Thus, questions of justice in exchange revolve around the problem of ensuring that the values of the two things traded are equal – the value of the good traded must be equal to its price. To tackle this problem, Bañez first examines the factors that determine a good’s value and the potential causes of price fluctuations. After determining how the equality of a contract is established, he turns to consider ways in which that equality may be damaged, such as fraud and deception. Finally, he considers business negotiations and the cases in which it is permissible or impermissible to buy low and sell high. Along the way, Bañez will discuss the market process, monopolies, enforcement costs, informational asymmetries, trade, and credit. After tracing Bañez’s reasoning through the treatise, it will be possible to discern what he understood as the central principle of the doctrine of the just price.

29 The text translated in the appendix comes from the 1604 Venice edition.
30 References to the translation included in the appendix will be parenthetical and will include both page and line numbers.
31 Baldwin, “The Medieval Theories of the Just Price,” 62. He defines commutative justice as the principle which “regulates the relations of things to private individuals who are considered equal as individuals and not in relation to the whole.” The mathematical proportion of commutative justice is arithmetic (as opposed to geometric for distributive justice).
Initially considering the potential sources of value, Bañez presents three rules (regulae) which he outlines for the determination of the just price. Each rule identifies a different source by which the just price may be established: 1) the authority of the state, 2) the common estimation of the market, and 3) the agreement between an individual buyer and seller (7.1-6). These rules operate in order of decreasing authority. If there is a fixed legal price, then that is de facto the just price. Where there is no such legal price, the just price is determined by the market price. For goods where there is no market price – whether because the good is newly invented, recently imported for the first time, or the buyer and seller are somehow cut off from the larger market – the just price is simply the price on which the buyer and seller both agree (9.5-17).

As may be apparent, the first rule operates according to a different principle than the second and third. Whereas a just price determined by the latter derives its legitimacy from economic factors (as filtered through the principle of commutative justice), a just price determined by the first rule is just simply because it is a law and to break a law is unjust. In the absence of legislation, a merchant may sell his goods at prices above the normal market price (but only under certain circumstances), and this price will be just. But if the government passes a law imposing a price ceiling below the original price, the former just price ceases to be just. If the mere fact of government legislation can affect the justice or injustice of a price, under what circumstances can the government intervene with the ordinary course of things?

According to Bañez, the state has the authority to establish a legal price “on account of the common good” (7.4). Any official granted authority by the state can determine a price, though lower-ranked officials can only determine prices for commodities of lesser importance. In

32 Decock writes that scholasticism identified three categories of prices mirroring these three rules (pretium legitimum, pretium natural, and pretium conventionale, in the order of the three rules), but sees them as operating side-by-side instead of hierarchically. Decock, Theologians and Contract Law, 528.
cases of “intolerable and evident error,” the determination by these lower officials cannot function as a just price (7.17-20). What exactly qualifies as intolerable and evident error? Bañez does not say, leaving this limitation as an almost offhand remark. Such rulings could err because they fail to secure the common good, or they could deviate too far from the ordinary market price. He also does not clarify whether such a condition is limited to lower officials or extends all the way up to decrees issued by the ruler himself. The absence of analysis on this question suggests either that the scholastic commentators were simply uninterested in cases where legal price fixing failed or that there was no need to discuss them in detail because they would be readily apparent to any onlookers, an interpretation more consistent with the use of the word “evident” to describe these errors.

More often than not these legal prices are merely upper or lower limits – price ceilings or price floors – not exact prices (8.1-11). It is possible for upper and lower limits to be placed on the same price, as Bañez says occurs in the case of wine, but he offers no examples of these limits converging to a single price. The first rule, then, defines not a point but an interval over which prices can freely vary without violating the rules of justice. As Bañez points out, a price can be far below an upper limit determined by legislation and still be just (8.6-8). Thus, the first and second rules must work in tandem. The first rule can only definitively determine a limit beyond which the price is unjust, but within its bounds the just price is subject to determination by the second rule. This interplay between the two rules clarifies both their respective powers and limitations. On one hand, market forces do not morally override government regulations; on the other, the presence of such regulations do not remove the just price from the influence of market forces. The first rule can only determine that a given price is unjust; it is by itself insufficient to establish the just price.
Furthermore, prices established by the first rule are enforceable only to a limited extent and so should not be instituted beyond that limit. A single legal price is made to apply to all grades of a single good because multiple levels of pricing would result in mass confusion (15.17-20). If grain is poor, it can be justly sold below the legal limit according to the common estimation with no harm done to the common good. But if multiple legal prices are instituted for different qualities of grain, buyers and sellers would have to rely not on their own estimations but on the estimation of a judge, which would place a huge strain on the court system. Poor grain only approaches the legal price limit in times of famine (16.2-4). Under ordinary circumstances, a merchant charging the maximum legal price for poor grain can be bound to make restitution because he exceeds the common estimation of poor grain. Likewise, in times of plenty the price of the best grain may fall below the legal limit, in which case a merchant attempting to sell at the limit violates the just price (16.7-10). Thus, Bañez teaches that price limits should only be used to prevent extreme prices. Otherwise, they will place a significant burden on the community.

The third rule, on the other hand, operates only in cases where the first and second rules are insufficient for determining the price. The first rule is insufficient when either no price regulations exist or the goods in question are sold at a price within the legal limits. The second rule fails to apply only when there is some barrier to forming a common estimation. Bañez considers the proper domain of the third rule to be the sale of luxury goods, such as exotic animals or fine clothing (9.20-10.2). In this case, the conditions for establishing a common estimation are absent because the relevant market is not large enough for a common estimation to form. In the example of goods brought over from the Indies for the first time, the people in a given location have not had the time to establish a common estimation (9.12-17). If the same goods were to be imported for a period of five years, the market would establish a common
estimation, and the third rule would cease to determine the just price. Thus, the mutual consent of the third rule naturally gives rise to the common estimation of the second rule.

After identifying the importance of the common estimation in determining the just price, Bañez turns to one of the chief violations of the common estimation and therefore of the just price: monopolies, of which he identifies three species. The first species of monopoly is created by the authority of the government in cases of cogent necessity (11.2-3). This necessity can arise either from the nature of the good itself (“necessaries” such as grain) or because it is beneficial to the common good to have only a limited number of sellers (11.3-9). The latter case is the justification for granting authors a monopoly on the sale of their books. In this species of monopoly the price is determined by the government as a safeguard against the seller charging an oppressively high price and “despoiling the republic” (11.8). Just as in the first rule of determining the just price, the principle at work is the good of the commonwealth, not necessarily market estimation.

The second species of monopoly is when a group of sellers conspire not to sell their goods below a certain price that they set for themselves (11.10-11). Conversely, a conspiracy of buyers not to purchase above a similarly determined price belongs to this species of monopoly (11.15-16). This monopoly is forbidden because it reduces the number of buyers or sellers to one, which directly harms the common good (11.11-15). A proliferation of market actors benefits the community because it drives down prices through competition (11.12-14). This principle establishes a fundamental connection between the common good and commercial activity that is

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33 This indicates a key principle in understanding the just price. A common estimation arises from consent in individual contracts, but once this number of contracts reaches some kind of critical mass the estimation ceases to be individual and becomes common. At that point, individual estimations that deviate from the common estimation cease to be just, though earlier they may have helped to form the common estimation. Wim Decock follows Odd Langholm and J.T. Noonan in articulating this aspect of the just price: “a price determined subjectively by all becomes objective to each.” Decock, *Theologians and Contract Law*, 522.
not readily apparent given the surface antagonism between the two. After all, the common good is the justification for government action in certain circumstances, as detailed by the first rule for determining the just price and the first species of monopoly. But it is important to remember that these are special cases of necessity. When it comes to ordinary goods, the mutual consent of individuals, built into a common estimation, reduces prices and directly benefits the common good. Monopolies are not evil in themselves, but only insofar as they detract from the common good via the common estimation. For example, a collusion of buyers is permissible in order to counterbalance a collusion of sellers, provided the price that the buyers agree upon is the price which would be arrived at by common estimation in the absence of monopoly (11.16-20). The common estimation and the common good are in this way intimately linked.

The third species of monopoly occurs when a small number of merchants purchase the entire supply of a certain good to resell at a price of their own choosing (11.21-12.1). Bañez notes that this species is prohibited by common law along with the second species, but he goes on to distinguish it from the second species in an important way (12.1-2). The creator of a monopoly of the third species is not bound to make restitution unless he conspires with others to create an unjust price, as occurs in the second species (12.3-7). But when he purchases the entire supply of a good at his own risk and in the absence of collusion, there is no injustice (12.7-8).

Furthermore, when there is no law expressly prohibiting it, any trader can purchase large quantities of a good for the purpose of reselling it (12.8-12). What happens to the just price in such a case? Unless there is a legally established price, the just price is whatever the buyer agrees upon with the seller, according to the third rule (12.13-15).

What distinguishes this case from a monopoly of the second species? The number of sellers here is also reduced to one, preventing a common estimation from forming and damaging
the good of the community. Bañez answers this objection by noting that in this case there is one seller, but he also carries a multiplicity of commodities that puts pressure on him to sell to consumers or other merchants (12.16-18). If the monopoly threatens the common good, then the ruler can force him to sell the goods and can even determine the price at which he sells, effectively creating a temporary monopoly of the first species for the sake of destroying a monopoly of the second (12.18-21). What exactly is it about the multiplicity of commodities that makes the third species acceptable where the second is not? Whereas monopolists of the second species have the ability to refrain from selling below their desired price, the pressure of the multiplicity of goods causes the monopolist of the third species to hurry to sell his goods (12.17-18). He is forced to engage in market activity, even though this market activity cannot result in a common estimation because of the small number of sellers.

Having dealt with violations of the common estimation, Bañez next considers how the common estimation can change. The just price can vary even in the same time and place as the result of four different “modes of selling”: 1) when buyers seek out sellers, 2) when sellers seek out buyers, 3) when goods are sold in large quantities, and 4) when goods are sold in small quantities (10.4-8). The first mode of selling decreases the just price because it represents a shortage of buyers, whereas the second mode increases the just price because it represents an abundance of buyers (10.10-15). These two conclusions are consistent with the modern model of supply and demand curves. If supply is held constant, an increase in demand (an abundance of buyers) increases the price, while a decrease in demand (a shortage of buyers) decreases the price. Similarly, selling goods in large quantities decreases the price because it creates a shortage of buyers, consistent again with a decrease in demand from bundling goods (10.17-18). Selling in small quantities increases the price because of the labor and industry needed to divide the
goods into small portions (10.20-22). This is consistent with an increase in cost of production resulting in a decrease in supply, driving the price up. Bañez here relates a number of quantitative variables (price, number of buyers, and labor cost) that in modern terms represents an interaction between demand and supply to generate an equilibrium price. But while this is consistent with modern economic theory, it is important to recognize the limitations of Bañez’s analysis. He posits relations between these variables but never provides an explicit formula. Yet although he does not actually arrive at the familiar supply and demand curves, he is clearly not inconsistent with the central tool of modern economics.

After considering the manner in which the just price is determined, Bañez turns to some potential causes of deviation from the just price: deception and bad faith. He follows the opinion of Aquinas that deception is a mortal sin requiring restitution, but notes that it is only legally punishable after a certain limit is reached (21.15-7, 22.1-2). This limit is the “medium of the just price” and is defined as a deviation of one half the just price (20.11-21). Buyers and sellers can deceive themselves right up to this limit without being subject to legal punishment (22.17-22). Nevertheless, even the smallest deviation from the just price violates natural law and binds the deceiver to make restitution (24.20-22). If all cases of deception where natural law is violated were punishable by law, then the frequency of such contracts would cause the courts to be overrun with cases (22.19-22). The exception is cases where the legal limit of the price is violated because the deviation can be easily determined (23.3-8). Yet the fact that the law

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34 Loss beyond this limit is commonly referred to as *laesio enormis*, a doctrine originating from the Justinian code that originally only applied to the sale of land. For more in-depth descriptions, see Decock, *Theologians and Contract Law*, 529-32.

35 The example Bañez gives is if the just price is 100, then it is beyond the medium of the just price for the seller to sell for 151 or for the buyer to buy for 49. While the word initially used is *medium*, Bañez later favors the word *dimidium*, but the meaning is the same.

36 Bañez notes that there is a difference of opinion among the jurists when it comes to defining the lower limit for the medium of the just price, but he keeps to the standard of one half so that it is the same for both the buyer and the seller.
permits deception up to the limit of the medium is not to be taken as a moral stamp of approval on such deception. Bañez distinguishes here between directive and preceptive laws on one hand and permissive laws on the other (23.9-11). Both laws are ordered to just ends, but their means differ. The means established by directive and preceptive laws are themselves virtuous acts, whereas those established by permissive laws have an inherent iniquity (23.15-24.10). Bañez thus again distinguishes between the requirements of legal justice and those of natural justice. While commutative justice requires that restitution be made in all cases of deception, the laws cannot be made to conform to such a high standard without great cost to society.

This distinction appears again in the treatment of contracts made in bad faith, meaning deception of some kind is present. The governing principle of contracts is consent, or voluntariness, so contracts are only rendered invalid when consent is somehow breached. When neither party knows the just price but they mutually agree to contract anyway, the contract is valid even if the price deviates beyond the medium because both parties accepted the risk associated with their ignorance (25.6-14). The contract is valid because it is voluntary, and the price is just because both parties are separated from the common estimation by their ignorance and determine the just price according to the third rule. But in cases where one party believes that the just price is a certain amount but later finds out that it differs, the contract is not valid because the consent was conditioned on the just price being at a certain value (25.17-19). It is possible for a middle case to arise where the contract is valid but the price is unjust. This occurs when one party knows the just price of a thing but is compelled by necessity to buy or sell at a

37 The two examples Bañez gives of permissive laws will certainly raise modern eyebrows. One such permissive law allows for prostitution for the sake of avoiding adultery and other greater sins. Another permits a man to kill his wife caught in adultery for the sake of avoiding “adding sorrow to sorrow.”

38 Bañez even gives an example of an act that violates legal justice but not natural law: gambling. Gamblers are not bound to any penalty beyond what is required by the law because gambling, unlike deception, is not morally wrong (24.17-22).

39 Bañez adds that in such cases the injured party can either demand restitution or rescind the contract.
different price (27.2-7). While the injuring party is still bound to make restitution, the injured party voluntarily agrees to the contract, making it valid (27.4-7). But not all consent resulting from compulsion can create a valid contract; physical compulsion, as by a robber, renders a contract invalid (27.14-20). The difference between compulsion by a robber and compulsion by necessity is that in the former case the necessity is intentionally created by one party of the contract for the purpose of forcing the other party into an agreement to which they would otherwise not consent (27.16-18). The necessity stemming from one party’s general economic circumstances, however, is not personally created by the other party in the contract and thus does not destroy the voluntary nature of the contract (27.18-20). So while the individual need of the other party cannot justly raise or lower the price, it can still provide grounds for the consent necessary to form legally binding contracts.

Having sufficiently answered the question of deception concerning the price, Bañez turns next to deception concerning the good itself, specifically whether a defect in a good renders the contract of sale invalid. In general, this species of deception is more harmful and thus renders a contract involuntary and void (32.8-9). The substance of the good is itself part of the contract, so if the buyer or seller is deceived in this regard the substance of the contract itself is destroyed (32.9-11). But it is possible that the difference in substance may be so small that it does not affect the utility of the good, and since contracts of buying and selling exist for the sake of utility, the contract is not rendered invalid (32.13-14). Only when a contract is made concerning a particular good can the seller not justly substitute another of equal utility (33.4-35.8). In cases

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40 Bañez adds that is not just that a person’s right should arise from injustice he himself commits. This is almost a play on words, given the relation of the Latin *ius* and *iniuria*.
41 Such a voluntary act arising from necessity is said to be performed with a “mixed will.”
42 The two examples given in this case are baptism and marriage. In the case of baptism, the baptism is only invalid if it is part of the minister’s intent to baptize one person specifically and no other. In the case of marriage, it is necessarily a contract concerning one particular person to the exclusion of others, so any substitution renders the
where the good is defective but the defect does not harm the buyer, the seller is not bound to disclose the defect, provided that he reduce the price to accommodate for it (35.10-3, 37.2-4). But if he is expressly asked whether the good has a defect and he lies, the contract is rendered invalid (38.2-4). This is because the buyer in asking this question has expressed his intention not to buy the good if it has a defect, and it is a duty of merchants to tell the truth about their merchandise, a violation of which invalidates the contract (38.3-8).

This raises the question of whether the condition of the buyer is equal to the condition of the seller, or one has the advantage over the other. The objections Bañez gives are in cases where a buyer has some special knowledge of the value of a good not available to the public and thus buys a good of great value at a lower price than if he had shared this knowledge (41.9-21). In these cases the buyer is not bound to disclose a characteristic of the good that increases its value, but the seller is bound to disclose a characteristic of the good that decreases its value. One is allowed to profit from his knowledge, but the other is not. Bañez replies that because contracts of buying and selling are governed by the principle of commutative justice, the conditions of both parties must be equal or else the very principle of the contract would be violated (42.2-3, 9-11). Just as a seller is bound to disclose the defect of a good or lower the price, the buyer is bound to disclose the value of the good or raise the price, but only if this knowledge would affect the common estimation (42.4-9). Hidden virtues, which only trained and experienced buyers can perceive, are not estimated by the common people and so can remain undisclosed without violating justice (42.13-43.9). Given the rule of commutative justice, the same holds true for

\[\text{marriage invalid. But if the contract is the sale of a maidservant, substitution is permissible so long as the substitute is equally useful.}\]

\[\text{43 The first example is a jeweler who appraises the worth of a pearl at more than common estimation, in which case he can purchase it at the common price and benefit from his knowledge. The second example is a jeweler who offers to buy a pearl from a farmer for a certain price, when its real value is much greater. The third example is someone who buys a field knowing that treasure is buried in it, but still only pays the common price for the plot of land.}\]
hidden defects that would not enter into the common estimation. Thus, for every restraint that the just price places upon sellers, there exists an equal and opposite restraint upon buyers. The rule of Aquinas that sellers can raise the price because of their individual loss, but cannot raise it because of an individual buyer’s need, is not an inequality. The symmetric protection on buyers is that their lack of utility or disadvantage in a good can justly lower the price and preserve them from loss (38.11-17). The just price thus functions as a kind of barrier that uses the common estimation to protect both parties to a contract from excessive loss. Sellers cannot be forced to sell below the common estimation, and buyers cannot be forced to buy above the common estimation. This renders the condition of both parties equal and satisfies the requirements of commutative justice.

But the obligation to disclose defects only extends to qualities of the good itself, not future market conditions. Bañez follows the conclusion of Aquinas that, in the case of a merchant who knows that the market will soon be flooded with an abundance of the good he is selling, the merchant may justly withhold his knowledge of a future decrease in price and sell his stock at the current price (44.4-5). After all, the just price is the common estimation of the

44 Bañez never explicitly makes this point, but for him to argue otherwise would be inconsistent with his prior conclusion that the condition of the buyer and the seller must be equal.
45 Aquinas, *Summa Theologia*, Secunda Secundae, question 77, article 1. Ekelund and Hébert note the “analytical asymmetry” of this rule, interpreting it as meaning “[i]t is alright to do one thing if his want is high but not to do the same thing if the buyer’s want is high.” Ekelund and Hébert, *A History of Economic Theory and Method*, 31. It would appear that they fail to understand the symmetry in preventing the buyer from taking advantage of a seller’s need to charge a low price.
46 Cf. Decock, *Theologians and Contract Law*, 522. “In this respect, scholars have pointed out that the just price amounted to the price that guaranteed equilibrium in exchange and, hence, protected individual parties from being exploited through one-sided contracts.”
48 According to Decock, Raffaele Fulgosio, in a “surprisingly liberal spirit,” made a “radical distinction” between the duty to inform the seller of intrinsic defects of the good and the right to conceal information of future market conditions in his 1544 writing. Decock, *Theologians and Contract Law*, 593. It is somewhat surprising that Decock sees this as so radical, given that Bañez sees himself as merely concurring with the conclusion of Aquinas.
market at a given place and time, so a merchant who sells at the current price in no way violates justice. The future common estimation is irrelevant to present valuation, and, since it is not a defect in the good itself, the contract is not unjust (44.6-8). External conditions are so different from defects, in fact, that the seller can do more than simply keep silent about them. If he is asked directly whether there will be a future abundance and lies, he does not sin against justice, the reason being that if he does so he only secures a contract at the current just price, and if he tells the truth he would incur a loss, which he is not bound to do (45.2-4, 13-51). Likewise, buyers are not obligated to disclose information of a future event that would raise the price because this event only affects the justice of the contract per accidens (46.5-8). Nevertheless, in such cases both buyer and seller sin against charity, which demands that a man preserve his neighbor from loss, provided that in doing so he does not incur loss himself (46.17-19). Though these acts are uncharitable, they are not unjust and the party cannot be forced to make restitution.

Having surveyed what Bañez writes about the determination of the just price and the causes of its fluctuations, both just and unjust, we now examine this doctrine more rigorously in an attempt to state it clearly in mathematical terms. We begin with the three rules for the just price. While the three rules operate in order of decreasing authority, they also operate in order of increasing necessity. A government decree may override the common estimation in cases of pressing necessity, such a decree cannot by itself establish the just price. The common estimation narrows the boundaries of the just price, but it still consists in a range of prices rather than a single point. It is only the third rule, the mutual agreement between buyer and seller, that

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49 The merchant’s knowledge of future conditions can be likened to his knowledge of a defect. The knowledge he possesses is not common knowledge and thus does not enter into the common estimation. Thus, as in the case of a defect that would not be estimated by common buyers, he is not bound to disclose it. Lessius makes a very similar argument. Decock, *Theologian and Contract Law*, 594.

50 In the response to the first confirmation, Bañez says that someone lies harmfully when they neither secure the common good nor avoid evil. The merchant in this case is avoiding the evil of his own loss.
narrow the just price to a mathematically precise quantity. Even if a price satisfies the legal requirements (if applicable) and the acceptable range of the market price, it is unjust if the necessary mutual consent is impaired through deception or compulsion. This is because mutual consent creates a condition of equality between the buyer and seller which is the principle of commutative justice, and violations of this equality thus violate justice. The three rules for the just price can thus be combined into the following two decision problems:\(^{51}\):

\[
\text{Buyer: } \max_P U_B(P) \text{ s.t. } k \leq P \leq K, P \geq P_M - \epsilon, P = P_S \\
\text{Seller: } \max_P U_S(P) \text{ s.t. } k \leq P \leq K, P \leq P_M + \epsilon, P = P_B
\]

In this problem, \(U_B(P)\) and \(U_S(P)\) represent the utilities of the buyer and seller, respectively, as functions of price.\(^ {52}\) The condition \(k \leq P \leq K\) constrains the price function to take on values only between the upper bound \(K\) and lower bound \(k\).\(^ {53}\) These bounds correspond to legal price limits as determined by the first rule. The second conditions, \(P \geq P_M - \epsilon\) and \(P \leq P_M + \epsilon\), represent the relation between the offered price and the market price \(P_M\).\(^ {54}\) The market price is, of course, the common estimation of the market at a given time and location, and the error term \(\epsilon\)

\(^{51}\) This is by no means the first attempt at a mathematical reconstruction of scholastic economic theory. See, for example, Michael D’Emic, “Market Liberalism and Anti-Liberalism in Spanish Late Scholastic Treatises (1541-1547), Journal of Markets and Morality 15, no. 1, 161-77. D’Emic’s analysis, however, presents a simple algebraic reconstruction of supply and demand equations. The equations presented here differ fundamentally because they provide not a top-down view of the whole economy but the decisions and accompanying constraints facing individual market actors.

\(^{52}\) It is important to note that the use of utility functions does not require any anthropological assumptions about the nature of self-interest or utility.

\(^{53}\) In this formulation the values are chosen as constants to accord with the examples Bañez provides in the text, but any number of constraining functions of \(Q\) can be used without changing the essence of the model.

\(^{54}\) \(P_M\) is here considered as a parameter rather than the typical intersection of supply and demand curves to more closely fit with Bañez’s presentation. While \(P_M\) may be interpreted as the price level at the intersection of market supply and demand curves without any violence to Bañez’s theory, to state a summary of scholastic just price doctrine in terms of Marshallian supply and demand curves would be somewhat anachronistic. Furthermore, while the market price represents the intersection of these curves at a macro standpoint, the individual buyer and seller has at best a limited knowledge of these functions. Interpreting \(P_M\) as a parameter that is exogenously determined reflects both the knowledge of the individual buyer or seller and the objective nature of the market price relative to them.
reflects the second rule’s nature as an imprecise estimate. Note that this creates an interval \([P_M - \epsilon, P_M + \epsilon]\) of potential just prices within which both parties can bid low or bid high without violating commutative justice.\(^{55}\) Finally, the third conditions, \(P = P_S\) and \(P = P_B\), require that the price ultimately chosen by one party be the price previously bid by the other, i.e. the buyer must match the price of the seller \((P_S)\), and the seller must match the price of the buyer \((P_B)\). Naturally, this condition corresponds to the third rule for determining the just price, which requires mutual agreement between the buyer and seller. If a given value of \(P\) satisfies all these conditions, the price also satisfies all three rules of the just price.

Notice that the second conditions place restrictions upon \(P\) such that only their intersection \(P = P_M \pm \epsilon\) can satisfy both conditions. Such an outcome is the regular result of the bargaining process, where both sides haggle over the price. But recall that Bañez does not consider it a violation of justice for buyers to buy above or sellers to sell below the just price, as long as they do so voluntarily (9.8-10).\(^{56}\) The common estimation of the market serves as a safeguard against the loss of either party. For the buyer, it protects him from being required to purchase above the market price; for the seller, from selling below. In light of this distinction, the constraints should be modified slightly to make the second constraint, reflecting the restriction imposed by the common estimation, *binding only upon the party offering the price*. If a buyer approaches a seller and offers a price above the current market price, the seller is not bound by

\(^{55}\) This interval is analogous to a confidence interval for the expected value of the market price. While it is not the product of formal statistical methods, it nevertheless relies on data to provide a reasonable estimation of the expected value of a random variable. Thus, the set of all potentially just prices under the second rule may be thought of as a moral confidence interval within which ordinary haggling can occur.

\(^{56}\) Since gifts or donation are not subject to the principle of commutative justice, considering the excess price beyond the common estimation as a donation allows the total price to be outside the common estimation without violating commutative justice. This is because the contractual price, i.e. the portion pertaining to the contract, is within the bounds of the market price, whereas whatever remains is a donation and thus cannot violate the conditions of equality of thing to thing. This would seem to imply that extreme cases where goods are sold far above or below the market price cannot factor into the determination of the common estimation, but Bañez is not clear on this.
justice to offer a price in return that is less than or equal to the common estimation. Rather, he can accept the buyer’s freely-offered price and avoid his own loss. The same holds proportionally true for a seller offering a low price to a buyer. This means that the third restriction is binding only upon the party accepting the offered price. The following table summarizes these modifications:

<table>
<thead>
<tr>
<th></th>
<th>Making an offer</th>
<th>Accepting an offer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buyer</td>
<td>$P \geq P_M - \epsilon$</td>
<td>$P = P_S$</td>
</tr>
<tr>
<td>Seller</td>
<td>$P \leq P_M + \epsilon$</td>
<td>$P = P_B$</td>
</tr>
</tbody>
</table>

Thus, the process of deciding on a price can be understood as turn-based interaction between buyer and seller. One party offers an initial price, to which the other party may respond in two ways: either accept the price and conclude the contract, or make a counter-offer at a price more advantageous to themselves. If a buyer is offered a price below the common estimation, he may justly preserve himself from loss by offering a price sufficiently close to the market price. If, however, the offered price is above the common estimation, the buyer is free to accept it without violating justice. Of course, the same holds true for the buyer, who can either counter a high price with a price within the bounds of the common estimation, or accept a low price if the good has a low utility for him. This process allows for individual utilities to enter into the valuation process without subjecting either party to exploitation beyond the common standard.

Given this model, the logical outworking of the doctrine of the just price presented in this treatise, Bañez provides a valuable early insight into market process. Recall that Bañez notes that the just price can increase when buyers seek out sellers. These buyers are free to offer prices above the present common estimation without violating the conditions of the just price, and over time these transactions above the just price will influence the common estimation, raising it to a
new, higher price level. Likewise, if an abundance of buyers seek out sellers by offering prices below the current market price, the transactions that occur at this lower price will lower the common estimation. When sellers compete for buyers, they must bid lower prices, which drives the price of goods down, and the opposite holds true when buyers compete for sellers.

By now it is impossible to hold the position that the just price represented some kind of objective metaphysical worth or labor theory of value. However, the question of the nature of the relation between the late scholasticism and economic liberalism remains to be considered. This question has two complementary aspects: Were the late scholastics the intellectual forebears of post-Enlightenment economic liberalism? If so, was this liberalism a decisive break with an earlier Christian moral tradition? In response to the first, while the theoretical legacy of scholastic economics is often neglected, many scholars agree that the influence of the scholastic teaching on Smith is undeniable. This influence was, of course, mediated through preceding thinkers, especially Hugo Grotius and Samuel von Pufendorf. Grotius employs familiar scholastic terminology, to the extent that it is “rather difficult to imagine how one could truly understand [his] exposition without reference to the conceptual framework developed by the early modern scholastics.” Pufendorf is similarly indebted on matters of fairness in exchange. Through these two men especially late scholastic ideas were passed on to Francis Hutcheson and Adam Smith. In fact, Smith himself, when he discusses pricing in his Lectures on

58 Ibid.
59 Ibid., 16. Chafuen includes on the same page a helpful diagram tracing the development of scholastic doctrine. See also Blaug, Economic Theory in Retrospect, 3d ed. (Cambridge: Cambridge University Press, 1978), 29-31. Blaug sees Adam Smith as not being indebted to the scholastics, even completely ignoring them in some places (such as his rejection of a utility theory of value). Instead, he sees the mercantilists as the real influences on Smith, especially their removal of economic theory from a moral context with their development of the idea of “economic man” and their belief in laissez-faire domestic economic policies. His argument amounts to asserting that Smith’s ideas can be explained without reference to the scholastics, therefore their influence was a mere afterthought. However, he does not appear to have read a single primary source, and his coverage of recent secondary literature is sparse.
*Jurisprudence*, uses scholastic commonplaces such as the irrelevance of the seller’s expenses and the importance of desire and scarcity in determining the price.⁶⁰ The scholastic influence on the Protestant natural lawyers is clear, and the latter are considered “the forerunners of economic liberalism.”⁶¹

But this is not to say that the scholastics can be characterized as “market fundamentalists.”⁶² The doctrine of the just price imposed real (though flexible) restraints upon ethical economic activity. Specifically, the “double rule” of just pricing is incompatible with a purely liberal paradigm. Whereas economic liberals often argue that any price voluntarily agreed upon by both parties qualifies as just, the scholastics required that equality of condition be determined by the common estimation whenever possible. Theirs was not an individualistic, consent-based framework. Bañez in particular draws a distinction between contract law, binding in the secular courts, and moral law, binding in the court of conscience (27.1-28.8).⁶³ Mutual agreement alone does not satisfy the requirements of justice. If it did, the first and second rules for determining the just price would be irrelevant. Furthermore, while the scholastics believed that value was necessarily subjective, they did not treat the sources of value as entirely subjective. This is apparent in the way Bañez forbids sellers from concealing a defect in the good itself while permitting them to conceal or even lie about future market conditions. Both components affect the valuation process, but there is a difference between those components which affect the good *per se* and those which only alter it *per accidens*. Since this difference

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⁶⁰ Chafuen, *Faith and Liberty*, 139.
⁶¹ Decock, *Theologians and Contract Law*, 604. Decock adds that this conclusion is “counter-intuitive,” meaning that it seems strange to think that anyone strongly influenced by scholastic doctrines on justice in exchange could possibly be considered a forerunner of economic liberalism.
⁶² Ibid., 525.
⁶³ This is the passage where Bañez says that a contract can still be valid even when the just price is violated and the offender is bound to pay restitution. Contracts of usury are still valid contracts that must be upheld in court, even though the usurer is bound to make restitution for his sin.
consists only in the ethical obligations upon sellers, it would be wrong to say that this difficulty destroys the claim that the scholastics held a subjective theory of value. But while the positive insight remains intact, the normative implications are different from the “anything goes” mentality that economic liberalism can sometimes lend itself to. Yet despite these differences from the liberal standpoint, Decock concludes that “the consistent application of the doctrine of just pricing appears to have made astonishingly liberal views on business possible in the first place.”

While the scholastics were not quite modern free-market advocates, they nevertheless provided the seedbed from which these ideas organically sprung.

Because of the late scholastics’ affinity with market liberalism, some scholars hold the position that they represent a decisive break with an early moral tradition. The Spanish scholastics especially exhibit a “depersonalization” and “objectivization” of economic ethics and a rising belief in the operation of impersonal market forces.

Odd Langholm, one of the few scholars to explicitly interact with Bañez and the only to quote his commentary on Question 77, holds this position. Comparing Bañez to other scholastic authors, he sees this shift manifesting in the treatment of the effects of will and necessity and their effects on the just price. In the main line of the scholastic tradition – in which Langholm includes Conrad Summenhart, Grergorio de Valencia, Henry of Oyta, and Francisco de Vitoria – the consent of a buyer or seller constrained by necessity was not fully voluntary and required restitution. A sale is unjust if the buyer was constrained by need, creating in him a mixed will that could not fully consent to a contract.

Moreover, a merchant forced to jettison his cargo to avoid sinking during a storm at sea has the

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64 Ibid., 592. This conclusion holds even more force because Decock views it as a concession. For him, the presumption is that Christians would be opposed to liberal economic practices, so the fact that in his estimation it was these Christian doctrines that gave rise to economically liberally practices is of considerable importance.
same mixed will as a man forced to give money to a robber at knifepoint. In both cases, the victim does not give up the right of recovering his loss, if he gets the chance.\textsuperscript{67} Similarly, a seller who otherwise would have sold at the just price and agrees to sell below it because of his need has a “will mixed with a compelling force,” just as the sailor jettisoning his cargo.\textsuperscript{68} Finally, a contract unjust if the consent of the buyer has any involuntary element mixed with it, whether from the threat of personal violence or simply from need.\textsuperscript{69} Outside of the mainstream Langholm places Cajetan, who instead argued that an admixture of the involuntary did not harm the sale as long as the just price was observed, and compelling necessity did nothing to alter the just price.\textsuperscript{70} Bañez simply takes the next step of “condon[ing] a transaction even with terms that are known to be unjust, because the stronger party, on objective criteria, can disclaim responsibility for the plight that forces the weaker party to accept those terms,” which Langholm calls “a decisive break with the ideals with which Christian economic philosophy had been infused since the times of the early Church Fathers.”\textsuperscript{71}

The difficulty with Langholm’s interpretation is that he deliberately overlooks the fact that Bañez maintains that a transaction with unjust terms is still morally wrong. The translation he supplies includes the portions where Bañez states that such a semi-voluntary act suffices to create a binding contract, but he ellipses the portions where Bañez says it is possible for a contract to be both valid and unjust.\textsuperscript{72} This position agrees with Summenhart (the sale is unjust when the buyer is constrained by need), Valencia (the victim is still entitled to receive restitution), Oyta (the will of needy party is not wholly voluntary), and Vitoria (the contract is

\textsuperscript{67} Ibid., 108-109.
\textsuperscript{68} Ibid., 110.
\textsuperscript{69} Ibid., 111-2.
\textsuperscript{70} Ibid., 114.
\textsuperscript{71} Ibid. This is in reference to 27.1-28.8.
\textsuperscript{72} Ibid. 
unjust). Furthermore, Cajetan’s opinion (as presented by Langholm) does not seem to contradict the preceding authors in any way. It seems difficult to believe that Summenhart and company would maintain that the price a good would fetch in the absence of necessity suddenly becomes unjust if one party experiences a compelling necessity, as if the very experience of necessity invalidated the sale. To hold this position would be to believe that individual utilities can affect the justice of the common estimation, which would be to deny a central tenet of just price theory. Finally, Bañez in no way “condones” a contract at an unjust price. He affirms that such a contract may be legally binding, and a mixed will does not invalidate the contract, but he clearly affirms that it is nevertheless unjust in the court of conscience because it was conducted at an unjust price. By saying that Bañez “condones” a contract that he plainly says is morally unjust, Langholm appears to disregard the distinction that Bañez makes between what is binding in the exterior versus the interior forum. It also seems strange to argue that only holding a party responsible for the compulsion that they personally create amounts to a “depersonalization” of economic ethics. On this topic, the claim that Bañez represents an evolution in morality or a decisive break with earlier scholastic tradition seems unsubstantiated.

Generally speaking, an author’s answer to the question of the relation between the late scholastics and earlier Christian thought will be determined by their understanding of the central motivation of the just price. Langholm views the just price as a means instituted to prevent the exploitation of the weak by the strong in contractual settings. Under this view, the late scholastic

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73 The double rule of just pricing holds that a seller cannot take advantage of the buyer’s great need in order to charge a higher price. The proposed opinion would require that a buyer with great need could take advantage of that need to demand a price lower than the common estimation. This would imply that the just price varies inversely with the level of utility for the buyer, which is the opposite of the majority opinion. If this were true, it would be unjust to sell food to a hungry person at the ordinary market price.

74 This may be a result of Langholm’s understanding of the rationale behind the just price, which he views as a means of preventing the exploitation of weaker parties via market power. Langholm is, of course, very widely read in the scholastics, and this may be an accurate summary, but in this case it seems to have led to him glossing over distinctions that do not support his narrative.
developments in favor of freedom of contract must necessarily be the result of a fundamental shift in moral thinking because justice in exchange requires the restraint of economic power. Decock follows this opinion, framing the commentary of the moral theologians as an attempt to use Christian interpretations to check the dangerous liberal principles of the Roman law. Consequently, the fact that the anti-liberal principles of the Christian doctrine of the just price leads to liberal solutions to individual cases in application must be “amazing,” “surprising,” and even “astonishing.” But the late scholastics certainly did not surprise themselves. Bañez notes divisions in opinions among the doctors on a number of issues, but he never sees himself or his predecessors as departing from Aquinas’s concept of justice in exchange. Furthermore, the idea of exploitation does not play a prominent role in Bañez’s arguments. Even on the issue of monopolies, a perfect opportunity to invoke unjust exploitation, he instead argues that monopolies are unjust because they reduce the number of sellers, hindering the process of market competition which lowers prices for the common good. The principle of the just price must lie elsewhere.

Francisco de Vitoria (who Langholm earlier included among the morally orthodox scholastics) writes that justice in exchange is “based on a universal and certain principle and this is that I am not obliged to benefit and please my neighbor gratis and without a profit, even when I could do so with no cost or work.” This conception of justice focuses on limiting obligations on individuals rather than placing restraints on the powerful. Bañez does not provide a similar statement in this treatise, but his understanding of justice can be summarized as follows: no one

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75 Decock, *Theologians and Contract Law*, 590-2, 603
77 When Bañez does depart from his tradition in the final dubium of the question, he goes out of way to praise the sensibility of Soto’s argument before firmly stating his own opinion, which he supports with the most arguments of any position in the chapter.
78 Chafuen, *Faith and Liberty*, 90.
is ever obligated to bring about his own loss beyond the limits of the common estimation. This understanding is reflected in the structure of the rules for determining the just price and the repeated appeal to the right of the merchant to preserve himself from loss. An individual can never be compelled to act to their own particular disadvantage in an area where a common estimation exists. Such a common estimation is not necessary in order to satisfy the requirements of commutative justice, but it is beneficial in that it provides a barrier which prevents sellers from being forced to sell too low and buyers from being forced to buy too high. Most cases of unjust prices result from attempts to isolate one party from the common estimation, whether through fraud, deceit, or charging disadvantageous prices to needy parties. The common estimation does place a restraint upon those who would attempt to remove others from common marketplace for their own advantage, but it also gives weaker parties a complementary freedom to pay or receive nothing but the market price. Since an unjust price is the result of interference with the ordinary operation of the market, it should not come as a surprise that the late scholastics, among whom Bañez may now be included, planted the seeds of economic freedom.

This is no small accomplishment. Advocates of free markets often assume, implicitly or explicitly, that economic freedom is the default and government intervention a departure from the norm. But that has not been the case throughout most of history. After millennia of production, consumption, and trade, these economic activities only found their “natural” free-market expression in the past five hundred years, and only imperfectly at that. If free exchange is so inevitable, why did it develop only within a particular constellation of political, social, religious, and moral conditions? In this way economic freedom is like political freedom – while both may be in some sense natural to humanity, it is only within a particular historical context that this nature was first realized and then recognized. Before political freedom could be the
object of theoretical reflection, it first needed to be the object of experience. Similarly, economic freedom could only be formalized in a culture which had experienced it to some extent and had developed a certain habitual relation to economic activity. In this sense the scholastics were pivotal in the development of economic freedom because they established a moral consensus in which mercantile activity and contractual freedom were treated positively. The market was thus *normalized* as an instrument of justice and the common good instead of greed and sin. It would be difficult to imagine a moral philosopher reflecting on the nature and causes of the wealth of nations if the moral consensus held that wealth and those who pursued it were sinful. Economic freedom, then, is less a natural outcome and more a cultural achievement that, though consistent with nature, is hardly inevitable and can only sustain itself as long as a habit of positive moral reflection on the economy is passed on to subsequent generations. The scholastics developed a system of thought permeated by this moral reflection, and it was within this matrix that western markets developed and strengthened until economic science was born.

In light of this discussion, it should be clear that the late scholastics play an important role in the development of economic theory. Joseph Schumpeter explains the nature of that role:

[W]hile the economic sociology of the scholastic doctors of this period was, in substance, not more than thirteenth-century doctrine worked out more fully, the “pure” economic which they also handed down to those laical successors was, practically in its entirety, their own creation. It is within their systems of moral theology and law that economics gained definite if not separate existence, and it is they who come nearer than does any other group to having been the “founders” of scientific economics. And not only that: it will appear, even, that the bases they laid for a serviceable and well-integrated body of analytical tools and propositions were sounder than was much subsequent work, in the sense that a considerable part of the economics of the later nineteenth century might have been developed from those bases more quickly and with less trouble than it actually cost to develop it, and that some of that subsequent work was therefore in the nature of a time- and labor-consuming detour.79

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Not only should the scholastics be considered the founders of “positive” economic science, but they laid a better foundation for its development than the subsequent thinkers associated with the classical school. After a careful reading of the work of Domingo Bañez, Schumpeter’s analysis appears even more justified. Bañez clarifies the somewhat murky operation of the just price by introducing the three rules and explaining their relation, he provides an early account of the supply and demand elements that determine the market price, and he displays a remarkable intuition of how market process can cause the price to change. The teachings of Bañez hold insights of great value which are overlooked by many, even by those experienced in the art, and thus do not enter in the common estimation of his worth as a thinker. By bringing these insights out from the shadow of a shadow of a shadow and into the light of scholarly discussion, this paper should increase the just value of Bañez and the late scholastics according to the common estimation of the marketplace of ideas.
Bibliographic Essay

While the literature on scholastic economics, and the late Spanish scholastics in general, is relatively sparse compared to, say, the literature on Adam Smith, it nevertheless can be somewhat daunting in scope. Much of the material available in general overviews of the history of economic thought fails to interact with the primary sources and typically falls under the objective value theory of the just price, which is the least supported of the three modern interpretations. Thus, while it is possible to produce a long list of books that contain a paragraph or two on the just price, such an endeavor would likely be counterproductive to developing an accurate understanding.

Of course, the best way to understand the scholastics is to read what they wrote. This method is by no means easy, considering the dearth of available English translations of many scholastics, as well as the very technical, even arid nature of their prose. Nevertheless, it is possible to quickly understand the heart of the doctrine of the just price by reading the text around which the commentary tradition is built – *Summa Theologiae*, second part of the second part, question 77 – which is readily available on the internet. For other scholastic authors, Marjorie Grice-Hutchinson’s *The School of Salamanca: Readings in Spanish Monetary Theory, 1544-1605* collects relevant passages from a number of Spanish scholastics together into a single volume. Stephen Grabill has also edited a *Sourcebook in Late-Scholastic Monetary Theory*, containing the contributions of Azpilcueta, Molina, and Mariana. These primary sources would help a reader better understand the intellectual climate within which the author considered in this paper wrote.
The chief primary source I relied upon in this essay is the 1604 edition of Domingo Bañez’s *Decisiones De Iure et Iustitia*. The work of Bañez was chosen, first because the economic contributions of the Scholastics are generally understudied, and second because Bañez in particular is known much more for his theological work, while his commentaries on justice are left virtually untouched. The text itself has been digitized by Google and was accessed via Google Books. While some portions of the text were not clearly legible, those problems more likely stemmed from the original printing than from the scanning process. The figure on the left shows the structure of a typical folio page. The treatise is organized under the article’s of Aquinas’s *Summa*.

The text is presented, followed by a short commentary, and then breaks into a number of *dubia*, presenting a number of objections to the teaching of Saint Thomas. In traditional scholastic style, Bañez answers each objection in turn, but not before offering his own conclusions. These conclusions together form the main body of Bañez’s doctrine, with the surrounding material often helping to clarify and expand upon them.
Throughout the text, Bañez occasionally takes for granted the reader’s familiarity with certain scholastic terms or arguments, and to understand these one must turn to secondary sources.

The scholarship on scholastic economics has improved dramatically over the past hundred years or so. Unfortunately, much of that scholarship is not written in English, making it inaccessible to the average American reader. That said, many English-language scholars will interact with this wider body of literature, making it possible to experience the full range of discussion on this topic, though in a secondhand manner. The authors I interacted with most in this paper are Odd Langholm, Wim Decock, Michael D’Emic, John W. Baldwin, and Alejandro A. Chafuen. Langholm has written the most on the topic by far, including numerous books, articles, and even some encyclopedia entries. For the purposes of this essay, I interacted the most with his book *The Legacy of Scholasticism in Economic Thought*, where he provides an overview of important thinkers and attempts to draw out the defining characteristics of scholastic economic thought. Wim Decock’s book, *Theogians and Contract Law: The Moral Transformation of the Ius Commune*, contains a section on the just price that interacts with secondary literature not available in English, making it a valuable resource. Michael D’Emic has written on two Spanish scholastic treatises approximately fifty years prior to Bañez, both written in Castilian. The two scholastics he translates represent opposite positions on the just price, and he sees in them the beginnings of the liberal-antiliberal debate that continued through the Enlightenment. John W. Baldwin’s article on the just price provides the best overview of the tradition of just price theory before Aquinas. Alejandro Chafuen’s book *Faith and Liberty: The Economic Thought of the Late Scholastics* provides the most accessible introduction to the thought of the late scholastics, with many block quotes from original sources included, although the book focuses more on property rights than the just price.
While the primary and secondary literature on the just price is too expansive for any single scholar to master, much less read, that is only to be expected for an issue that spans hundreds of years and dozens of authors. Nevertheless, it is possible to familiarize oneself with the debate by reading the sources outlined in this essay. Aquinas serves as the best entry point into the discussion, since he is widely available and easy enough to understand. From there, one may turn to Grice-Hutchinson for a topical survey of the Salamancan school. The best summaries of the just price and scholastic economics are Langholm’s entries in *The New Palgrave Dictionary of Economics*. Despite their short length of just one or two paragraphs, they accurately capture the main principles of the debate and provide a framework for further study. From there, one may turn to Baldwin’s thorough treatment of the just price from the Roman jurists to Aquinas, which, though shorter than a full book, is nevertheless quite lengthy for an article. For a good introduction to late scholastic thought generally, as well as good leads for further study, readers should consider Chafuen’s *Faith and Liberty*. These readings should provide an accurate, though far from complete, picture of the scholastic understanding of economics.
Bibliography


DECISIONES DE IURE ET IUSTITIA

QUAESTIO LXXVII: DE FRAUDULENTIA EMPTIONIS & VENDITIONIS
Question 77

On Fraudulence in Buying and Selling

Next we must consider sins which occur in voluntary exchanges. First we consider

fraudulence, which is committed both in buying and selling; second, we consider usury, which
occurs in loans, for in other voluntary exchanges there has not been found any species of sin
which may be distinguished from robbery or theft. Concerning the first we ask four questions.

Regarding this chapter, note that fraudulence is a species of vice contrary to prudence,
which consists in this: that someone pursues that which they have thought cleverly ordered to
some end with deceptive actions.¹ And in this it differs from trickery, because trickery occurs
likewise with deceptive words appropriate to it, and is cunningly performed with one’s own
words. But fraudulence is found only in deceptive actions.

Therefore for the understanding of this article we immediately question why Saint
Thomas, intending to write about injustice, which is committed in contracts of purchase and sale,
has appended to it a chapter on fraudulence, which is committed in the same types of contracts,
although in other vices contracting injustice he has not appended such a chapter. For example, on
the fraudulence of theft or of robbery, etc. But he speaks absolutely concerning theft, robbery,
and usury. First response. The reason is because injustice which is committed in buying and
selling commonly appears together with fraud. Second response. Other vices contrary to justice
have a named species, such as theft, etc. But injustice which is committed in buying and selling
does not have a named species, and therefore is named and circumscribed fraudulence, which is
commonly found in such injustice. But on the contrary, it appears that this species of injustice in

¹ Diu. Thom. supr. q. 55. art. 5.
buying and selling does not differ from theft or robbery. Proof. If injustice should be done without the knowledge of the owner, it will be theft, but if it is done with the knowledge of the owner, it will be robbery. Therefore this is not the difference. Response. Injustice in buying and selling is a neither a species of theft nor a species of robbery. First proof. Injustice of this sort is done with the owner partially willing, partially unwilling. But in theft or robbery injustice is done with the owner unwilling entirely. Second proof. An injustice in buying and selling is removed by the ignorance or knowledge of the victim, that is, it commonly conducts itself to the ignorance or knowledge of the victim. But the injustice of theft is determined to the ignorance of the victim, but the injustice of robbery is determined to the knowledge of the victim. Since therefore involuntary things in ethics are divided into involuntary from ignorance and involuntary from knowledge, and for this reason theft and robbery are distinguished in species, it follows that injustice in buying and selling which is abstracted from the ignorance and knowledge of the victim differs in species from theft or robbery.

FIRST ARTICLE

Whether someone may licitly sell a thing for more than it is worth.

SUMMA TEXT

First conclusion. To employ fraud so that something may be sold for more than it is worth is a sin inasmuch as someone deceives his neighbor to his own loss.

Second conclusion. Even without fraud, to sell something at a higher price or to buy something at a lower price than it is worth is in itself unjust because an inequality is committed in the contract.
Third conclusion. At times it is licit per accidens to sell a thing for more than it is worth, specifically when the seller incurs loss from the privation of the thing which he sells.

Fourth conclusion. It is unequal to sell a thing for more than it is worth in itself because it is especially useful to the buyer because this is to sell something that does not belong to one’s self but to another.

COMMENTARY

On this matter the Doctors argue in chapters on both the law and contracts. And it is necessary to consider all kinds of contracts, so we must establish a definition and division of the term contract so that we might know the difference between a contract of purchase and contract of sale and how they differ from other contracts.

First observation. Contract is defined by Ulpian: a contract is an obligation on both parties. This definition arises from the effect, so to speak. A contract is a human action between two men from which arises an obligation for each man to the other. Moreover this action is required to be human so that it may be exhibited by some sensible sign sufficient for exhibiting the intent (animum) of the contracting party. Principle. Man is composed of body and soul, and therefore a human action which ought to be directed to another is required to be sensible, because our entire cognition pertains to what arises from our senses. There are four forms of contract, or four modes. The first mode is explained thus: I give, that you might give (do ut des). The second: I make, that you might make (facio ut facias). Third: I give that you might make (do ut facias). Fourth: I make, that you might give (facio ut des). Hence it follows that a simple

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2 in [4.distin.15.extant]
3 in 1.Labeo.2.ff. de verborum signific
4 in 1.naturalis.ff.de praescriptis verbis
promise is not a contract because it neither has the form of a contract nor its definition, since no obligation arises for either party.

Second observation. A contract, properly speaking, is divided into seven differentia, or species. The first is called cambium (exchange), in which one thing is exchanged for another.

The second is emptio (buying), where there is understood to be a corresponding sale. The third species is mutuatio (borrowing). The fourth is emphyteusis (lease), i.e. melioratio. For example, some man gives a vineyard that he might tend to it and refresh it, receive the fruits, make some payment, and return it. The fifth species is commodatio, when there is an obligation to return the same quantity given. The sixth species is permutata commodatio. The seventh is locatio. Note that here we do not divide contract in its whole generality, but what pertains to the present matter we divide around the things themselves, not around the persons: and therefore we do not count marriage, nor the votum solenne, because these are trades of persons.

This is sufficient proof of the aforementioned division. By a contract it is possible to transfer the ownership of an article, its usufruct, or its use only. If the ownership of a thing may be transferred, it consists in three species: cambium, which is when one thing is exchanged for another, as wine for grain; emptio, when ownership of a thing is transferred in exchange for money; and mutuatio, when ownership of a thing is transferred with the obligation that the same quantity in some indivisible sum be repaid. By this it appears that mutuatio is not properly a contract, because no obligation arises for the mutuator, but only in the mutuatio. Nonetheless they are deceived in this, because the lender himself, by the very fact which he lends, remains obligated to not seek immediate repayment, until the lender has received some interest, or has been able to receive morally speaking from the borrowed good itself. The principle is the same for the commodator, for there remains an obligation, as the mutuator, but a fixed period is agreed
upon within which the lender or the borrower cannot seek repayment. In addition, if the ownership of a good cannot be transferred by contract, but its enjoyment can be transferred for some price or some temporal or perpetual payment, such a contract is called *emphyteusis*. We say that ownership cannot be transferred through *emphyteusis* because although the good itself may be transferred and traded, the direct ownership of the good still remains with the owner who has transferred the good to the enjoyment of another, although the useful ownership remains in the one who accepts the good through such a contract. Finally, if only the use of the good is transferred by contract, three species arise. For if the thing is transferred freely and without price, or if its use is indeed a service with a condition that the substance of the thing be restored to the owner, e.g. if someone should lend a horse to another man to complete his journey, if he does not transfer it for free, but for the use of another thing, it is called *permutata commodatio*. If it is for a price, it is called *locatio*.

To these seven species we can reduce all contracts, whether named or unnamed. Especially contracts of *assecuratio* (insurance) and *societas* (partnership), for by insurance the ownership of a thing is not transferred, nor its use, but only through insurance is the ownership or enjoyment or use preserved, according to the principle of insurance, and the obligation of the insuring party. Partnership will be able to be reduced to a certain place. Similarly *impignoratio*, or *fideiussio*, does not pertain to a distinct species, but is merely a confirmation of other contracts and can be reduced to them. Master Soto says that it is sufficient to enumerate five species of contracts.\(^5\) For *cambium*, in which one thing is traded for another, can be reduced to *emptio*. *Permutata commodatio* is reduced by him to *locatio*. But to us this does not appear true, that *cambium* may be reduced to *emptio*. First, because *cambium* is a more ancient contract than

\(^5\) libr. 6. de Iustitia. quaest. 2. articul 1.
emptio. Second, buying and selling were invented to supply that which could not conveniently be done by cambium. Therefore if some one of those species must be reduced to another, it should rather be emptio to cambium than cambium to emptio. Besides, permutata commodatio does not require equality of the kind locatio requires, and therefore is not rightly reduced to it. Proof of the antecedent. Two men are able to agree that they will each in turn lend (commodent) goods of unequal utility.

To better understand this division, note moreover that it does not much pertain to morals or the principle of discerning justice or injustice, which is found in contracts of this type, to painstakingly distinguish whether those contracts are distinguished by their metaphysical species and essential difference, provided that we know the different modes which require different consideration in those contracts. Moreover, since this difference may be of any kind at all, it must be selected from different modes of trading the good itself (by transferring ownership with it, or the usufruct, or the use only) and from different obligations arising in the contracting parties (for returning the good itself, or not returning it, or for preserving it or of making one good into another in exchange for the good). And therefore it occurred to wise and prudent men that they distinguish these seven headings of contracts, to which other contracts might be reduced.

From these opinions we have gathered a definition of purchase and sale. A purchase is an acquisition (contractio) of a good for a price, and a sale is a discharge (distractio) of a good for a price. By the word price we understand money, by which the value of all vendible goods is estimated, because money is the common measure of vendible goods. Moreover, this definition is derived from the manner of speaking of the jurists, who call a sale a distractio of a good, and a purchase they call a contractio of a good.
To understand the conclusion of the article of Saint Thomas, we must observe the Theologian’s three principles or rules for establishing justice in vendible goods. First rule: the authority of the state (res publica), which at its good pleasure is able to determine (taxare) a just price of goods of this type on account of the common good. Second rule: the common estimation of the market, and of good men. Third rule: the agreement between the buyer and the seller themselves.

These three rules are sufficiently enumerated. Proof. The just price is not determined by nature, since natural justice is the same among all men, but the just price varies in many ways on account of variety in time and place, and even from the variety in goods themselves. Therefore it is necessary that the just price be determined by the desires (per beneplacitum) of men. Moreover, it is impossible that any other desire be contrived by which the just price may be established which is not contained in the aforesaid categories. Therefore, these three rules are sufficiently enumerated.

Notice concerning the first rule that by the name of republic is understood all who have authority from the republic, among whom the prince holds the first place, then the praetors, and the other judges and aediles, who are called in Spanish Regidores y Eieles, who have from the republic the authority of determining a price in certain commodities of lesser importance. Unless there is intolerable and evident error, a determination of the price made by the republic and its officials must stand. Such a price must always be presumed to be the just price and in case of doubt must stand.

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6 Aristot.5.Ethicorum.capit.7
7 A regidor is mayor or municipal councilman who is an official of the crown. It may be translated somewhat archaically as alderman. The word Eieles appears to be a corruption of ediles, which is a vulgarization of the Latin aedile, also a municipal councilman. From the text it is not clear if these two words denote two different offices (corresponding to iudices et aediles) or whether they are two different names for the same office. But for the purposes of understanding the text, both are officials of the republic who have a limited authority to set local prices.
Second it must be noted that the determination of the price can be accomplished in three ways. One way is by an upper limit (\textit{terminum magnitudinis}) in favor of the buyer, another way is by a lower limit (\textit{terminum paruitudinis}) in favor of the seller, and the third way is by both limits in favor of both buyer and seller. An example of the first is in the grain decree (\textit{pragmatica}), where price is determined by an upper limit, for the just price of grain cannot be more than what is fixed by the republic. Moreover, it is possible that the just price is much less than what is determined by the republic because an abundance of grain causes the common estimation of the market to lower the determined price. An example of the second is the determination of temporal or vital goods, where the price is determined by a lower limit, for they cannot be bought at a lower price, but they can be bought at a greater price. An example of third is the determination which commonly is made in the price of wine.

\textit{Concerning the second rule.} See Saint Thomas.\textsuperscript{8} \textit{Concerning all three rules in common.}

Note that there is a great difference between a price\textsuperscript{9} determined by the first rule and one determined by the other rules because a price established by the first rule consists in an indivisible, in the way by which it was determined, but a price determined by the other rules is able to vary in the same place and time in a small quantity because it does not consist in an indivisible.\textsuperscript{10} Therefore, the doctors assign a threefold just price in the same place and time, which is regarded as if it were one price. One is called a rigid (\textit{rigidum}) upper limit, but another is called a gentle (\textit{mite}) lower limit, and another is called a moderate (\textit{mediocre}) retreat from either extreme.

\textsuperscript{8} Diu.Thomam sup.q.57.art.7. & in .pretia.ff.ad legem Falcidiam. & l.si seruum.ff.ad legem Aquilam.& in cap.I. de emptione. & venditione. \\
\textsuperscript{9} Manuscript has \textit{pretitum}. \\
\textsuperscript{10} as Divine Thomas says above in the solution to the first.
The second difference is that the price determined by the republic is ordered immediately to the good of the community by legal justice, which principally resides in the prince and the ministers of the republic. But the price established by the other rules is ordered immediately to the good of the ones contracting.

The third difference is between a price established by the second rule and a price established by the third rule. Where there is a standing determination by the second rule, the third rule does not hold a place. For if the price is established by the common estimation of the market, it is not permitted to vary that price because of an agreement between the buyer and seller, but the common practice of the market must stand entirely. This is understood in the principle of a contract of buying and selling. For if the seller because of his own desire wishes to sell a good cheaply, it will indeed be a donation, just as if the buyer wishes to buy to buy dearly it will be a donation. The third rule only has a place when the price of a good is in no way determined, as happens with commodities which are newly brought over from India. The same would happen if some industrious craftsmen should make some new article useful to men and the republic, and even delightful. Then there is not any just price except what arises from the agreement of the parties, which indeed ought to be made with attention to the labor, industry, and expenses of the craftsman.

The fourth difference is between these rules. The objects of the first and second rules are things necessary for the nourishment and clothing of men, for example, these rules are enforced concerning grain, wine, meat, and clothing. But the proper objects of the third rule are things which more pertain to status and the beauty of the republic than to necessity, such as

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11 Text has intea.
12 Text has fastum.
precious stones, hunting dogs, hawks, and elegant horses, which do not have a price determined by the republic.

**FIRST PROBLEM**

Whether the mode of selling a thing can cause the just price of the thing to vary in the same place and time. We will speak about the notable causes of variation. Notice that there are four modes of selling. The first is when the merchant seeks a buyer; the second, when buyers seek merchants; the third, when someone sells a great abundance of a good all at once, and not in small portions; the fourth, when someone sells in small portions.

**FIRST CONCLUSION**

The first mode of selling causes the just price of an article to decrease. This is proved from the common proverb: “voluntary goods become cheap.” Principle. In this mode of selling there is a shortage of buyers, which is one cause out of many of diminishing the price.

**SECOND CONCLUSION**

The second mode of selling increases the just price of a thing. Principle. In that mode of selling there is an abundance of buyers, which is a cause of increasing the price.

**THIRD CONCLUSION**

The third mode of selling causes the price to cheapen. Principle. In that mode of selling there is found a rarity of buyers.

**FOURTH CONCLUSION**

The fourth mode of selling rightly increases the just price of a thing. Principle. In that mode of selling there is much labor and greater care and industry in preserving and dividing the commodities.
From these doctrines follow the opinion we must hold regarding monopolies. A monopoly can be made in three ways. First by authority, as when the prince forbids anyone to sell some commodity besides Peter or John. If this mode of selling is used for things of little necessity to the republic – or if it is used for goods of necessity, it should nevertheless be with cogent necessity or utility to the republic, which could not otherwise be conveniently provided for, if the commodities were not restricted to one or two sellers – then that mode of selling will be just, provided that the price is determined by the republic, lest by that opportunity the sellers should despoil the republic. By this route are justified privileges and monopolies on selling school charts and books by their authors.

The second mode of monopoly is when traders (negotiatores) agree amongst themselves to not sell commodities unless at some certain price determined by their own whims. For then all those traders are effectively one seller, which redounds to the loss of the community, because when there are many sellers not conspiring with each other, the prices of goods are easily diminished, as long as anyone aspires to sell, which indeed redounds to the good of the community. Similarly, buyers also sin *vice versa* when in turn they agree about not buying commodities except at some cheaper price determined by their arbitration. They may nevertheless sometimes be excused, if this should be done against a monopoly which the sellers have made, for then they atone for their vexation, provided the buyers agree on some certain just and equitable price, the kind which could be estimated by upright men if there were no monopoly.

The third mode of monopoly is when two or three merchants, or even one, amass all the commodities of some type with the intention that all should buy from them, but they devise some
price from their own fancies. Therefore all of the aforesaid modes, besides the first with its
limitations, are prohibited by the common law.\textsuperscript{13}

Nevertheless, notice that in the forum of conscience those making the monopoly are not
bound to make restitution unless they have agreed on an unjust price, which indeed is a risk often
found in the second kind of monopoly, when it happens just as much on the part of the sellers as
on the part of the buyers. But in the third kind of monopoly there does not appear to be any
inequity. \textit{Principle}. He who buys the whole quantity of a commodity buys at his own risk, nor
does he fraudulently conspire with anyone. Rather, business of this sort is done publicly in the
republic, nor is it prohibited by the laws, except only in the purchase of wheat, for there is a
provision in the laws of the kingdom that no man may buy grain for the purpose of reselling it.
But where there is no express human law which prohibits buying, whether in small or large
quantities for reselling, it is permissible for any trader to buy the whole quantity of a commodity.

\textit{Objection}. In such a case there will be some just price, when he sells again. \textit{Response}. If
there is no determination made by the republic, the just price will be whatever the buyers agree
with the seller. Nor, morally speaking, will there be risk in such a case that the price increases
beyond the just price on account of the unity of the seller. \textit{Principle}. Although there is a unity of
the seller, there is a multiplicity of commodities with him, and therefore he will hurry to sell
either to the people or to other traders. Moreover, if from such a manner of amassing
commodities to a single trader there should follow some loss to the community, then the prince
of the republic is bound to force that trader to sell, and if necessary to determine the price for
him. Thus far we have spoken of the just price \textit{secundum se}, with attention to the value of a

\textsuperscript{13} L.1.C.de monopoliis. & I.2.tit.7. Partita quinta.
vendible good absolutely speaking. Now however we will speak about the just price per *accidens*.

**SECOND PROBLEM**

Whether the third conclusion of Saint Thomas is true, or if there are any circumstances on account of which a good may be justly sold for more than it is worth in itself, for example, if a thing should be sold at a higher price not only on account of the disadvantage of the seller, but also on account of the honorific antiquity of the vendible good, or on account of the delight which the seller takes from the thing.

**FIRST CONCLUSION**

The doctrine of the Divine Thomas in the third conclusion is proven with great certainty. Since natural equity demands that the seller, who is the owner and possessor of his good, should preserve himself from loss, the conclusion of Saint Thomas is true. *Confirmation by example*. By the same principle we excuse the lender (*mutuator*) when from the borrower (*mutuatarius*) he charges (*exigit*) cessant gain (*lucrum cessans*) or emergent loss (*damnum emergens*) because he preserves himself from loss by doing so. But this doctrine must be understood when the buyer or borrower solicits a seller or lender with the intention that he should sell or lend because others did not intend to sell or lend. If, moreover, he voluntarily offers himself for selling or lending, he is not able to charge anything for his own loss or cessant gain. *Principle.* Then the buyer is not the cause of the seller being deprived of his advantage, therefore it is not just that he pays the price for the disadvantage of a seller profiting from another source.
SECOND CONCLUSION

By reason of honorific antiquity, a seller is able to charge something more than what a good is worth in itself, and a price of this type will be able to be just *per accidens* when the good is honorific to the seller only. But if the good is honorific to whoever may hold it, then the price will be just in itself, since that dignity is quasi-intrinsic to the good. The other greater price which is accepted on account of the pleasure which the seller takes from the thing will indeed be just, but *per accidens*. This doctrine should be understood when the buyer solicits a seller when others do not intend to sell.

It follows that the rules by which those traders are accustomed to justify the price for their commodities are fallacious, for they say that they bought those commodities for so much, that they incurred so many expenses in transporting and preserving them, all of which are irrelevant for justifying the price in the present, unless it is justified by the other proposed and explicated rules. For it will happen that the trader may sell at a lower price than he bought originally, either because after he buys he comes upon a great abundance of commodities, or there was a rarity of buyers.

But in order to examine these things more closely, we argue first against the first rule. 

*First objection.* It is unjust that all commodities of the same species, although dissimilar according to their individual conditions, from which goods are estimated of greater or lesser value, should be sold at one price in the same time and place. But the first rule prescribes this, therefore it is unjust.

*Second objection.* The price of a thing may justly be varied by the abundance or lack of the good or because of a difference of time and place. But the law, which determines a price that will endure for a long time, has no principle of this variety. Therefore, it is imprudent and unjust.
Third objection. The price determined by law is instituted by human prudence. But human prudence does not pertain indivisibly to the medium of justice. Therefore to consist in an indivisible is more proper to a price established by the first rule than by the second and third.

Fourth objection. The just price of things consists in the equality of thing to thing, if indeed there is a medium of commutative justice. Therefore every just price consists equally in an indivisible.

Response to the first objection. The law which determines the price for things of the same species must be understood concerning sound things in that species. For this reason if wheat should be dirty, mixed with chaff or earth, or eaten by mealworms, it is not to be sold according to that price, regularly speaking. We say the same about wine if it should be so acidic that it is practically vinegar, or is mixed with some other liquid, it cannot be sold at the price determined by the law, regularly speaking. If nevertheless the commodities should be undamaged and sound in their species, they may justly be determined by the same legitimate price as far as the upper limit. Principle. The law does not look per se to the particular good of the buyer and seller but to the good of the community. For this reason it is not ill-fitting that some particular inconveniences should be endured. Moreover, if we consider it carefully, could not the price of the decree concerning grain have been determined otherwise? For if a distinct price had been instituted by law for the best grain, and for the mediocre, and for the less good, there would be the greatest confusion among buyers and sellers, for they would not be able to easily find a judge who could distinguish which wheat should be the best, which mediocre, and which less good. Therefore the law prudently institutes a sure price up to an upper limit, even for the best grain. For the legislator has judged that the less good wheat does not pertain to that price except in a great

\[\text{Aristot.2.Ethicorum, capit. 6.}\]
Appendix 16

shortage of wheat and much hunger. Wherefore note that with the standing decree there can be found three differences and circumstances of time. The first is when all wheat, even the cheapest and mixed with chaff, pertains to the decreed price, and this happens when there is a notable famine and scarcity of grain. For then even the most worthless wheat is able to surpass that price if it is not established by decree. The second difference of time is when no wheat can justly be sold at the decreed price, as when there is a great abundance of grain, and then the best, the mediocre, and the less good are each sold at a different just price. Because if someone should sell at the price determined by decree, he would be bound to make restitution to the buyer, even if he should not be punished by the republic, unless there was some excess beyond medium of the just price. The third difference is when the good and best wheat pertains to the decreed price, and the less good does not pertain, nor can it justly pertain to the decreed price. This happens when there is not much abundance nor much lack of grain. Then the best wheat, the good wheat, and even the less good wheat cannot pertain to the decreed price. Whence if anyone should sell the less good wheat at the decreed price with expected money, he will be bound to make restitution to the buyer, since the counted money is not worth so much in the present, from which the just price ought to be derived.

Response to the second objection. The law ought not to have a principle for such variation of abundance or lack when it should be expedient to the common good to determine the price for a long time.

Response to the third objection. The legitimate price in this agrees with the other arbitrary prices because just as from the beginning, when action was taken concerning the passing of a law, human prudence could determine a legitimate price with slight variations, so now with a price once instituted by law, it will be unjust to depart from that determination in the
least. Thus also after an arbitrary price has once been instituted among buyers and seller in particular, it is unjust to depart from that determined quantity, even in the least, unless from the consent of both parties. And thus human prudence approaches the medium of justice in buying and selling, either by instituting a law concerning the legitimate price, or by an agreement between the buyer and seller themselves. And thus the just price remains in an indivisible.

Response to the fourth objection. The equality of commutative justice sometimes consists in a mathematical indivisible when the thing itself consists in an indivisible, as when one who receives two returns two. But sometimes it is necessary that we use a moral indivisible for establishing the equality of commutative justice, as when the medium of a thing does not consist in common for all individual contracts but is a necessary estimation of men, which varies, although it approaches nearly to the medium. And such is the common estimation of the market, until in particular there is made an agreement between the buyer and the seller on an indivisible price. Thus the first rule and the other two do not share the same principle, since according to the first rule the price of things consists in a mathematical indivisible also in common to all contracts, but the price established by the second and third rules consists in a moral indivisible, as long as in a particular case there is agreement. From this we understand the common proverb, “a good is worth as much as it can be sold for,” \(^{15}\) to describe how much a good can be sold for according to the common estimation of the market when there is not a price determined by law. Likewise this is verified in the matter of the third rule, when there is neither a law nor a common estimation of the market.

But now concerning the grain decree, note that there are three instructions. The first is that in the decree it is forbidden not only to sell grain for a greater money price, but also to

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\(^{15}\) L.1.ff. ad Senatusconsulta. & in l. si quis uxori. ff. de furitis.
exchange for another thing of greater price. For example, the standing decree does not permit the exchange of a certain measure of wheat for a certain measure of oil, which is estimated at a higher price. *First proof.* Although the law only expresses that no one may sell wheat except at such a price, nevertheless according to common law the term “sale” at such a price is understood to also mean “exchange.” According to all the jurists this law is verified also in exchange, although it is only spoken of expressly in buying and selling.

*Second proof.* That law was made on account of the good of the community, and if it were permitted to accept something of greater price in exchange for grain, the buyers would be forced by the sellers to buy other goods of greater price for the purpose of exchanging them for grain, which indeed would be disadvantageous even if there were no decreed law. *Third proof.* The law intends to establish the just price in an indivisible, and if it should be licit to receive a good of greater price in exchange for grain, the equality of commutative justice established by the law would not be preserved.

The second instruction is that he who sells grain beyond the determined price sins mortally because he acts contrary to a just law in a grave matter and is bound to make restitution of the excess beyond the just price to the buyers, although he is not bound to the punishment of the law before the condemnation of a judge. This instruction contradicts the doctor Navarro\(^{16}\) when he says that he who sells beyond the price determined by law does not sin mortally, provided he does not sell at a greater price than the good would be worth according to the permission of natural law, if there were no decree. And in the same work\(^{17}\) he teaches that all civil laws do not obligate in the forum of conscience, but are only penal laws. Against his

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\(^{16}\) Suo Manuali, cap. 23, num. 86.

\(^{17}\) Nu. 55. idipsum
opinion it is disputed in common, but what pertains to the present matter is condemned justly by the previous opinion. First proof. There is no just price by the natural law, but only from positive law, or from the common estimation of the market, but when there is a supposed determination of the law that is the legitimate just price. Therefore the natural law for that time justifies no other price above that determined by law. Confirmation. That law, which determines the price, establishes a contract of buying and selling as an act of commutative justice, but commutative justice obligates in the forum of conscience, so that no man acts contrary to it. Therefore those selling beyond the decree sin mortally and are bound to make restitution.

The third instruction is that the decree obliges equally all seculars, ecclesiastics, and regulars. This instruction also contradicts Navarro where he says that clerics are not obliged by the decree because they are not subject to a secular prince, nor to his civil laws. Whence he infers two things. The one is that it is expedient that the bishops should pass the same law regarding the determination of wheat, so that the clerics would be obligated, the other is that where there was permission by law, he who transports grain from other kingdoms should be able to sell the greatest quantity he can at as high a price as he finds, as in fact is permitted. Because then also clerics are able to sell as much as they can. Nevertheless our instruction is most true, and is demonstrated. First proof. Our sources say that clerics are compelled to sell at the same price as secular people. If the clerics should not be subject to a secular prince, insofar as this that law would be unjust, nor should it be permitted by the Pontifex in a Christian people. Second proof. Since all clerics and regulars are subject to secular princes in these matters, which do not impede the government of the church, the decree obligates them all. Final proof. By the natural law

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18 In 1.2.qyaest. 96. Art. 4.
19 Supra, nu. 85.
20 L. 1. Tit. 25. Libro 5. Novae Recopilationis
21 L. citata, & l. 2. &3.
clerics are bound to sell grain at the just price, but the just price in other republics is what is estimated by the common use of men and the market itself according to the convention of the country. Therefore they are bound to sell according to the custom in the city where they live. And this principle concludes that the prince himself is bound to sell his wheat at the price determined by decree, because when a decree is in place the price of the decree is the just price. Thus far we have spoken of the grain decree.

THIRD PROBLEM

The third problem concerns the solution to the first argument, in which solution it is argued about deception, which buyers and sellers make on one another, above or below the medium of the just price.

To understand this problem we must note that when it comes to sellers it is evident what it is to deceive beyond the medium of the just price, for it is to receive beyond the just price more than half, e.g. if the seller should receive 151 for a good which is worth 100. Moreover, he deceives below the medium of the just price when for a good which is worth 100 he accepts up to 149. But nevertheless when it comes to the buyer, there is a difference of opinions among the jurists about what it is to deceive a seller beyond or below the medium. For us nevertheless the opinion should be most sure that the buyer then deceives the seller beyond the medium when for a good which was worth 100 he pays 49 or less. This is so that there should be no difference between the buyer and seller as far as the medium of the just price, since the thing itself must be reduced to the just price of money that we might easily judge who deceives the other beyond or below the half.

First objection. It should be licit for buyers and sellers to deceive each other beyond the medium of the just price. Argument. Civil laws are just, but according to them in court a sentence
is passed in favor of him who deceives the other below the medium. Therefore also in the forum
of conscience they confer the right of retaining what he has received. The minor is clear.\textsuperscript{22}

\textit{Second objection.} Laws concerning prescription transfer ownership of a good in the
forum of conscience to the possessor of good faith, therefore at least the cited laws confer
ownership in the forum of conscience to the buyer and seller of good faith.

\textit{Third objection.} He who establishes ownership through a contract valid by right although
prohibited by law, e.g. he who acquires ownership of money through a game of dice, is not
bound in the forum of conscience to return the money before he should be compelled by a judge.
Therefore much less in our case will he who deceives beyond the medium of the just price be
bound, where both the contract is valid and he is not compelled to make restitution by a judge
having considered the case.

On this matter the jurists debate much.\textsuperscript{23} There are therefore three opinions on this matter.
The first says that it is no sin to deceive the buyer or seller. Summa Rosella holds this, as
Sylvester relates above, and Durandus as a minority, as Conrad relates above, and many jurists,
who cite Dominus Antonius of Padilla in commentaries above.\textsuperscript{24} The opposite opinion is that of
Saint Thomas, that deception of this sort is a mortal sin and gives rise to an obligation of making
restitution. This common opinion is cited by theologians and many others.\textsuperscript{25} The third opinion is
almost a medium between the others and republics that it is a sin to deceive the buyer or the
seller below the medium of the just price, but denies that from this there arises an obligation of
making restitution. Gerson in his tract on contracts holds this opinion.

\begin{footnotesize}
\begin{enumerate}
\item Ex l. 2. & l. si voluntate C. de rescindenda venditione & ex cap. Cum dilecti & cap. cum causa de emptione &
venditione.
\item Videatur Couar. Lib. 2. Variarum Resol.c.3.ad quartum inter Theologos videatur Ionnes de Medina Conplutensis
\item L. 2. C. de rescindenda vendit num. 73.
\item In 4. Dist. 15.
\end{enumerate}
\end{footnotesize}
Nevertheless the opinion of Saint Thomas and the theologians is so sure that the opposite is entirely improbable. *First proof.* He who deceives his neighbor in that case sins against commutative justice, if indeed he receives something beyond the just price, and therefore is bound to compensate for this inequity by an act of commutative justice, which is to make restitution. *Confirmation.* If he should sin merely against legal justice, as Gerson seems to believe, it was not verified that he deceived beyond the medium of the just price. This signifies by proper terms an act contrary to commutative justice, therefore no principle of sin can be considered there except one against commutative justice.

*Second proof.* Even if anyone in good faith should deceive another out because of his invincible ignorance, nevertheless afterwards, having learned the truth, he is bound to make restitution to the extent he was made richer, since that good does not exist. Therefore even if the buyer or seller deceives in good faith, he will be bound to make restitution when he learns the truth. *Proof of the consequent.* Equality demands of such a contract that neither receives more than is just. Therefore when the truth has been learned he will be bound to restore that inequality.

Master Soto makes more arguments above, but these are most valid, for they proceed from proper definitions of terms.

*Response to the first objection.* Those laws are permissive when it comes to injury below the medium of the just price. Nevertheless they do not justify such a contract, but leave it to be judged by natural right. *Principle.* The laws permit that inequity and do not give action in court because since a contract of buying and selling is incredibly frequent in a republic, if action of injury should be given below the medium of the just price, there would not be enough courtrooms to hold the daily lawsuits which would stem from deceptions of this sort. But
formerly before that law\textsuperscript{26} action of injury in court was not given beyond the medium of the just price, but the deceivers are bound to make restitution by natural right. So also now after that law those injuring below the medium are bound by the same right of nature to make restitution. But here we must observe that when the price is determined by law, as in the decree of grain, action of injury is given below the medium of the just price, just as much in favor of the law as because it is easily established in a case of injury, and not thus is easily established concerning injury when there is not a determined price, because there is much variety in the price of goods where there is not a decree.

\textit{Response to the second objection.} There is no similarity between laws of prescription and other laws about deception in a contract of buying and selling since laws concerning prescription are directive and preceptive, but other laws are merely permissive. And if anyone rightly asks how one can know when a law is perceptive and when it is permissive, we answer that before we do anything else we must attend to the end of the law. Next we must consider the means to the end, whether that which the law institutes for pursuing its end has a species of evil and iniquity, or whether it is good in itself. We say therefore that if such a means in itself was a work of virtue, then the law will be directive and preceptive. But the difficulty is when the means itself has a species of iniquity and malice which, if it cannot be honored by law, is permissive, and thus prostitutes are permitted and defended in court for avoiding adultery and other greater sins. If, however, the means can somehow be honored by the law or the legislator, such as transferring ownership of a good to another, then if such a transfer of ownership is necessary to the end of the law, the law will be perceptive and at the same time directive; if it is not necessary to pursuing the end of the law, then the law is merely permissive. \textit{First example.} A law concerning

\textsuperscript{26} 2. C. de rescindenda venditione.
prescription has for its end that the ownership of goods be certain and defined. To this end it is necessary, as the means which the law establishes, that after a certain amount of time goods remain with their possessors of good faith in perpetuity and that ownership transfers to the possessor of good faith, otherwise the end of the law would be frustrated, which is that the ownerships of things be certain. Second example. The law which gives the husband the power to kill his wife caught in adultery has for its end to show pity to the violent sorrow of the married man and not to add sorrow on top of sorrow. Moreover it is not necessary to concede that public power, so that by the authority of the republic he should kill his wife just as if he were judge properly passing a sentence or a minister of the sentence already handed down by the law. But it is enough that he be permitted to kill her if he wishes and that he not be punished for this deed. From this we gather that the law is permissive only. In this manner, therefore, we say that the law which says that it is licit for the buyer and seller to deceive each other has for its end the avoidance of frequent lawsuits which would arise from contracts of this sort if for any inequality whatsoever there should be given action in court. To this end it suffices that there not be given action in court to the injured party, nor is it required, and it was not said to transfer ownership to the injuring party.

Response to the third objection. The similitude and comparison is denied, because although those contracts might be appropriate in that they are both valid, nevertheless the iniquity or malice in the game of dice is only against legal justice. For this reason to return what someone has won has a principle of punishment only established by law. But the malice which is in a contract of buying and selling where deception intervenes is against commutative justice, and therefore the injuring party is bound by the right of nature to make restitution.
FOURTH PROBLEM

Whether the fact that a contract of buying and selling is made in good or bad faith has anything to do with whether it is valid or not and whether this gives rise to an obligation of making restitution or not.

FIRST CONCLUSION

A contract of buying and selling performed in good faith on account of ignorance of pure negation on the part of both parties, such as because neither party knows the value of the good, but they merely conduct themselves negatively regarding the estimation of value, then such a contract is valid, even if deception should occur beyond the medium of the just price, and that fact that it is valid is clear because it is entirely voluntary for both parties. Moreover, there does not thence arise an obligation of making restitution because both expose themselves to equal risk, and it is almost a contract concerning lots. Thus there is no principle that gives rise to an obligation of making restitution because both parties in that contract freely cede their own right and make a kind of mutual donation to each other. Finally, in that case the third rule of the just price is verified.

SECOND CONCLUSION

If nevertheless a contract of this sort is performed in good faith with ignorance of a crooked disposition, such as because each esteems that the just price be this much, or that much, and nevertheless in fact it is more, or less, then the contract is invalid. Proof. The man who is injured wishes to contract for no other reason than with the supposition that the price is so much, therefore that contract is not voluntary, but involuntary, and by its consequence is invalid. And indeed it pertains to the principle of a human contract that it be voluntary.
THIRD CONCLUSION

A party injured by such a contract has in the forum of conscience a right to demand compensation, because the other party receives more, and the other party is bound in the forum of conscience to make restitution. For the rest, in the exterior forum action will be given to the party injured beyond the medium of the just price. But the injured party will be given the option to either rescind the contract or compensate what he received more fully. This conclusion, when it comes to the prior party, follows from the second conclusion, since if the contract was null and the other party received more fully, it follows that in the forum of conscience he is bound by commutative justice to make restitution or to rescind the contract. When it comes to the second party an opinion is held expressly by...\(^\text{27}\) Principle. When a contract is performed in good faith, it is equal, so that neither party suffers loss when the truth is learned. But indeed it should be obvious that if the injured party is given action in court this option should be given to the injuring party.

FOURTH CONCLUSION

If the contract is performed in bad faith and the injured party does not know the just price of the thing, it will be an invalid contract in the forum of conscience. \textit{Proof}. Such ignorance interpretatively creates an involuntary agreement, and without a voluntary agreement a contract is null, and therefore the contract is invalid. This conclusion is consonant with the civil law, in which nothing is established regarding the strength or nullity of such a contract, but it is only defined so that it does not give action to the injured party beyond the medium of the just price and leaves whatever is left over to be judged by the law of nature.

\(^{27}\) L. 2. C. de rescindenda venditione.
FIFTH CONCLUSION

If the contract is performed in bad faith, and the injured party knows the just price of the thing, but necessity compels him to buy or sell, then the contract is valid in the forum of conscience. Proof. The injured party, knowing the just price, nevertheless desires to contract and to suffer that loss. Therefore the contract is simply voluntary and valid. But we do not say that the injuring party is not bound to make restitution, but that the contract is valid, although it is unjust. Proof by analogy. He who throws out his commodities in the sea on account of a rising storm simply speaking throws them voluntarily, although secundum quid involuntarily since he does not wish to throw them. Therefore such a voluntary act suffices for a contract of buying and selling, if indeed the injured party is in no way compelled by the other to contract. Proof of the consequent and confirmation. Such a voluntary act suffices also for making a vow, therefore it also should suffice for a contract of buying and selling.

Objection. A donation made to a robber is null, although he gives his money simply voluntarily, by the fact that he does it to avoid death it is involuntary secundum quid. Therefore by a similar principle an act that is involuntary secundum quid should suffice to nullify such a contract. Response. When one party to a contract somehow injures the other, and because of this the other party is forced to contract or to give money, then the contract is invalidated, because it is not just that the injuring party’s right arises from the very injury he commits. Now moreover in the case of our conclusion the necessity which drives one party to contract comes not from the other party but from another source: his own need. For this reason the principle is not the same. In this way we also understand why a usurious contract is valid when it comes to the principle of a loan, although the usurer is bound to not receive interest. Principle. The contract is simply voluntary for both parties, because the injured party, acting with knowledge according to his own
judgment, wishes to receive a loan on account of his necessity, interest notwithstanding, and freely contracts a usurer.

Second proof of the conclusion. Alexander defines as valid a kind of contract of buying and selling of a certain forest, even if he who had sold it had deceived beyond the medium of the just price. Nevertheless, he defines the same contract to be supplying iniquity and inequality. So we must especially observe that some contracts are valid, and some are unjust, whence arises an obligation of making restitution. For many contracts are valid, because they are voluntary from both parties, which are otherwise unjust.

FINAL CONCLUSION

He who injures in bad faith beyond the medium of the just price in the case of the fifth conclusion is not bound before the sentence of the judge to stand for an option of the injured party, even if the civil laws concede to the injured party in such a case that he choose whether he prefers either to rescind the contract or to make restitution to him in the amount which he was injured. But we say that the injuring party in the forum of conscience can supply the just price without rescinding the contract. Proof. The option which is given by the civil laws to the injured party is for the punishment of the party injuring in bad faith. Therefore such laws do not obligate in the forum of conscience before the sentence of a judge. Proof of the antecedent. Where there injured party does not act in bad faith, the laws do not concede this option to the injured party, but only give him action in court, but to the party injuring in good faith they give the option. That conclusion is much more probable than the opposite opinion, which is offered some

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28 Ex cap. cum dilecti. De emptione & venditione. Ubi Alex. 3.
Appendix 29

desiring that the laws not be penal but for directing the contract and proposing a necessary
c Condition for performing contracts of this type.

SECOND ARTICLE

Whether an illicit sale should be returned because of a defect in the good sold?

First conclusion. An unjust sale is returned on account of a defect in the good sold,
whether in substance, quantity, or quality. This conclusion is understood by Saint Thomas when
the seller recognizes a defect in the good sold.

Second conclusion. He who in good faith sells a good with a defect, even if he does not
sin against justice, is nevertheless bound to make restitution when he learns that the good has a
defect.

Third conclusion. What was said concerning the seller must be understood proportionally
concerning the buyer. For example, if the buyer recognizes that a good is of greater price than
the seller values it, either on account of substance, or quantity, or quality, then the buyer will be
bound to make restitution for that greater price.

THIRD ARTICLE

Whether the seller is bound to state the defect of the good sold?

SUMMA TEXT

First conclusion. If the defect of a good is hidden and he incurs loss, or risk for the buyer,
the seller is bound to point out that defect.
Second conclusion. If the defect of a thing is evident, the seller is not bound to admonish the buyer concerning that defect.

Third conclusion. If the defect of a good is hidden, but does not cause financial loss or harm the buyer, the seller is not bound to make it manifest, provided nevertheless that he reduce as much from the price as is fitting on account of the defect.

COMMENTARY

FIRST PROBLEM

Whether the defect of the thing sold annuls the contract when a good is sold as if undamaged in quantity, quality, or substance.

First objection. If anyone should, for example, sell Metinian wine in place of wine of Saint Martin, and if that wine were as precious as wine of Saint Martin, then it would be a valid sale, and nevertheless there is a defect in substance. Therefore that defect does not irritate the contract. Confirmation. Suppose that he who buys Metinian wine does not pay the price in money but in some other good, e.g. in cattle, or in something fruitful. Then if that contract is not valid it follows that the seller would be bound to make restitution for the good and its fruits. The consequent appears sound. Proof of the consequent. Everything bears fruit with a true owner.

Second objection. If anyone should baptize Peter thinking that he baptizes Paul, the baptism is in fact valid and true. Therefore an error in substance will not invalidate a contract of buying and selling. Confirmation. If a bishop confers a benefit unworthily on a hypocrite, thinking that he is most worthy, nonetheless the conferral of the benefit is valid, therefore an error in quality will not invalidate a contract of selling. Second confirmation. A marriage contract is not invalidated by an error of the quality of the person, e.g. if the man contracting thinks that his wife is a virgin, or rich, or generous, nevertheless that marriage is valid. Therefore the same
principle holds much more in a contract of buying and selling, notwithstanding error in the quality of the good.

Third objection. And should it be the case that the judge by iniquity or ignorance determines the price of a vendible good by much less than is fitting, then the seller licitly can increase the measure of the vendible good as much as necessary for supplying the just price. Therefore a defect in quantity does not irritate the contract.

Final objection. When the buyer purchases a precious thing which the seller esteems of lesser worth, the contract is valid, even if it should be done at the price according to the estimation of the seller, as we show below in the third problem. Therefore by an equivalent principle a contract will be valid when a defective good is sold in place of a flawless good. The consequent is obvious, because the principle is the same proportionally for the buyer and the seller, as the third conclusion of the article states. But if the seller himself should learn that the vendible good is of less price and worth and sells it in place of a good of greater worth, Saint Thomas says that the contract should be null. Therefore those opinions do not agree very well, nor is the principle the same for the buyer and the seller. Rather, the opposite is true, because a marriage contract with an error of persons is not valid, therefore no contract of buying and selling will be valid when one good is substituted for another.

FIRST CONCLUSION

Speaking per se and regularly, any defect of a good, whether in substance, quantity, or quality, irritates the contract when the good is sold in place of one flawless, sound, and without any defect. Saint Thomas teaches and explains this in his second article, and confirms it from the third book of Saint Ambrose.\textsuperscript{29} Proof by principle. That contract speaking per se and reasonably

\textsuperscript{29} Ca. 10. 1..
is involuntary. Therefore speaking *per se* there is no contract. *Second proof.* Since the injury is greater when he who is deceived in the very good sold than when he is deceived in the price, as the jurists hold in the chapter by yours concerning donations, which indeed Pinellus in his commentaries on the second law relates, who say that injury in substance, quantity, and quality grants action to the one injured, even if he should be deceived below the medium of the just price. Moreover, it does not grant action to the one injured in the price unless he should be deceived beyond the medium of the just price. Therefore it is much greater in the act, which is performed on the good itself, and for this reason the contract will be justly invalidated. *Principle.*

The injury which is made in the vendible good destroys the substance of the contract, since the contract is made concerning the thing itself according to substance, quantity, and quality.

**SECOND CONCLUSION**

It is possible that the injury is so small in substance, quantity, or quality, that the contract is valid, e.g., in the example of the first argument. *Principle.* In morals, what is equal is regarded for nothing. Likewise, because in the sale there is a tendency toward the estimation of a vendible good, according to what is useful for human purposes. But when there is the smallest difference in variety of substance, or in quantity, or in quality, that good remains unchanged, or nearly unchanged, when it comes to the utility of the buyer, therefore the sale will be valid. And it is confirmed from Saint Thomas, where he says that if by the art of alchemy true gold should be made, it would be licit to sell it in place of natural gold.

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30 C. de rescindenda vendition. Tertia parte, capitula secundo
31 Articulo secundo ad primum
Response to the first objection and its confirmation. This proves the second conclusion.

Still we say that if wine of Saint Martin has some medicinal quality, which another wine does not have, it will be unjust to substitute one for the other, and the contract will be null.

Response to the second objection. The consequent is denied. The difference is because the sacrament consists essentially in its matter and form together with the intention of the minister performing what the Church intends to perform in a suitable and regenerate subject. Moreover, the minister’s intention to baptize this or that man does not affect his religious intention, for he ought to intend to baptize that man, about whom anyone at all performs an act of ablution, and the fact that he thinks this particular man is Peter, and he happens to be Paul, is a kind of concomitant ignorance which does not destroy that intention. Otherwise if the minster intends to baptize Peter specifically and not another, he would sin mortally and there would be no baptism if he was not Peter. What remains to the justice of a contract of buying and selling is the necessity that the good about which the agreement was made be traded in the same substance, quantity, and quality just as it was sought by the buyer.

Response to the first confirmation. The consequent is denied. Difference. Since it is beneficial to the common good of the Church that such a conferral of benefit to this man be valid, in order that ecclesiastical ministers be certain and defined, the Church therefore wishes to give him the benefit efficaciously, even if he is otherwise unworthy. But nothing can be inferred from this about the good of the community, because a contract of buying and selling is valid when a good the same in substance, quantity, and quality is not traded.

Response to the second confirmation. He who marries a wife with this ignorance can conduct himself in three modes. In the first mode, there is concomitant ignorance of his intention, but no condition on the object of his intention, e.g. if he had the opinion in his mind
that a particular woman is a virgin and would not accept her as a wife if he believed that she were not a virgin. In the second way, he can conduct himself with the aforementioned conditional consent. He is able to conduct himself in the third way by not expressing with words that conditional consent, but by absolutely saying, “I accept you as my own.” We say therefore that if he conducts himself in the first way, with merely concomitant ignorance, it will be a true and authoritative marriage. Principle. The substance of the contract does not absolutely require that the woman be a virgin, or noble, or rich. If, however, he conducts himself in the second way, it is not a true marriage in the forum of conscience, whether he expresses his intention conditionally or absolutely. If he should have expressed it conditionally, it is not a true marriage in the exterior forum. We say finally that if he had conducted himself in the third way by speaking absolutely, although he retains conditional consent, it will be judged a true marriage in the forum of the church. And although it may not be a true marriage, nevertheless the husband will be bound in the forum of conscience to make it a true marriage. Principle. Such a man gravely deceives his bride, who feels that she is shackled by the chain of matrimony because of the words of her husband. This injury cannot be otherwise remedied, unless the man makes it a true marriage.

Response to the third objection. Those excuses of merchants must not be easily admitted, for whenever the just price is uncertain, it must be assumed that the determination of the judge is good and just. Nonetheless, if it is ever established that the determination is unjust, it will be licit for the seller to employ caution. Nor by this is injury done to the buyers, since he gives to them what he owes according to justice.

Response to the fourth objection. We will respond fully in the third problem. To the argument that we make in the opposite, insofar as it combats the second conclusion, it is
answered that a marriage in which there is an error of person is never valid, even if some woman
should be substituted as sufficient as the one that the man intended to marry. *Principle.* Marriage
is by its nature a kind of contract of conjugal friendship, and it pertains to the principle of
friendship that the friend be affectionate to the particular person with which he wishes to contract
the friendship. But in a contract of buying and selling what matters is the utility of the good.
Whence if something just as useful be substituted to the buyer, it will be a valid contract, e.g. if
someone loves his maidservant, and the seller substitutes to him another just as useful, it will be
a valid contract.

**SECOND PROBLEM**

Consequently, it is doubted secondly about the third conclusion of the third article,
whether if a defect of a good is hidden, but is not pernicious to the buyer, it is a valid contract,
with the seller being silent about the defect of the good, but diminishing the just price as much as
he ought.

*First objection.* If the buyer knew that defect, he would not have bought that good,
therefore he is interpretively involuntary in that contract, and thence it is not a valid contract.

*Second objection.* The seller keeping silent deceives the buyer, therefore the buyer is
involuntary in the contract.

*Third objection.* In contracts of this sort the buyer cannot avoid being burdened, even if
the good has utility equal to quantity of the price. First indeed, since when he has recognized the
defect of the good, he is forced to keep with himself a good that is unpleasant to him. Then if he
wishes to sell the good, he is forced not to sell it to any buyer at all, for that defect will be
harmful to the other, e.g. if a doctor buys a horse with a defect useful to himself, he will not be
able to sell it to a soldier with that defect because it will be harmful to him. Therefore by that
deception the doctor suffers injury. Confirmation. The seller keeping silent regarding the defect of the good will be a cause of risk, which as a result can happen to a third person who can buy the good from the first buyer.

On account of these arguments others hold the opposite opinion. But surely Sylvester speaks confusedly enough.

Fourth objection. Injury on account of the defect of a good is greater than injury on account of an inequity of the price. But injury on account of inequity of the price invalidates the contract when the buyer is ignorant of the just price of the good. Therefore by much more will the contract be invalidated when the buyer is ignorant of the defect.

For the decision of this difficulty it must be noted that the seller in the aforesaid case can conduct himself in two modes. In one mode merely negatively, by keeping silent about the defect of the good. In the other way positively, by affirming that there is no defect in the good, or even when asked answering in the negative, or by his silence approving the good. Proportionally, the buyer can conduct himself in two modes. In one mode so that he virtually has the intention, “If I knew that that thing had that defect, I would not have bought it,” nevertheless he does not express that intention. In the other mode he can conduct himself by expressing to the seller his intention that if the good has a defect, he does not intend to buy it.

FIRST CONCLUSION

When the seller conducts himself negatively, although the buyer has a virtual intention which he does not express, it will be a valid contract in the aforesaid case when the good is not harmful to the buyer, nor does the seller commit any sin. That conclusion must be understood by

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32 Ut Ionnes de Medina de contractibus quaest. 34. & a quibusdam citatis a Sylvestro pro ista sentential in verbo, emptio quaest. 20.
law and speaking absolutely, when it comes to a party in such a contract. Proof. Any contract is valid, speaking *per se*, when it is performed according to the principle of commutative justice, if indeed a good useful to the buyer be given for the quantity of the just price, therefore this contract is valid. *Second proof.* When any father gives to his son some quantity of money, it is a valid donation, even if the father would not have intended to give it if he knew for what evil purpose his son would employ it. Therefore also in the proposed case the sale will be valid. *Confirmation.* The opportunity given by a superior is valid, even if he would not be about to give it if he knew the evil end to which it would be sought by his subject. Therefore similarly, etc. *Third proof.* Vice versa, if the buyer buys something at the just price, the particular virtue of which the seller does not recognize, nor is it commonly recognized, he is not bound to point out that virtue to the seller, nor to increase the price, but it suffices to give the price according to the common estimation, as we say in the third problem. Therefore similarly vice versa, the seller will not be bound to point out a hidden defect of a good when it does not cause harm or financial loss, but the good is as useful as is the price which is given for it. *Final proof.* If the defect of a good should be evident, e.g. if a horse has one eye, and the buyer does not notice it because of his own negligence, the contract is nevertheless valid, even if he would not intend to buy it if he had recognized the defect. Therefore the same thing happens in the proposed case. *Proof of the consequent.* In both places he ignores the defect by his own negligence.

**SECOND CONCLUSION**

If the seller conducts himself in the second mode, i.e., either having been asked affirms that the good has no defect, or by his silence persuades the buyer that there is no defect present in the good, then the contract is illicit and invalid. *Proof.* The expressed will of the buyer is to buy the good without any defect, therefore that contract is involuntary and thence invalid and illicit
on the part of the seller. Second proof. The seller *ex officio* is bound speak the truth when asked, and not to lie of his own volition concerning his goods. Therefore, if he does the opposite he deceives the buyer, and thence the contract is invalid. This conclusion proves the three arguments set forth in the beginning.

5 **THIRD CONCLUSION**

If the defect of the good should render it entirely useless to the buyer, even if it is not harmful, the contract will be invalid, and the seller will be bound to make restitution. *Proof.* In such the buyer has no desire whatsoever to buy a good useless to himself, even if he would otherwise be able to sell that good useful to others. Second proof. A contract of buying and selling is introduced in a republic because of the utility of the contracting parties. Therefore, when a good is entirely useless to the buyer, there will be no contract if the seller remains silent about the defect.

Nor is it a sufficient response to the opposite opinion that the good is useful to others and that the buyer can sell it and thence receive utility, because the purchase speaking *per se* is ordered to the utility of the buyer. Therefore, when the buyer purchases a good for its proper uses, he has no desire to buy a good useful to others and useless to himself. Therefore injury is done when he is forced to sell the good so that he does not lose the price, and thence the seller is bound immediately to repay the price. It is true still that if the buyer otherwise is a wholesaler, by which it is understood that he buys for the sake of selling, it will be a valid contract because the good sold to him is useful to him because of the principle of his trading. Third proof. If the good is harmful to the buyer although useful to others, it is an invalid contract.33 Therefore similarly, if

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33 *Ut patet ex D. Tho. Ar. 3.*
the good is entirely useless to the buyer, it will be an invalidated contract, even if it can be useful to others.

*Response to the first objection.* The antecedent is denied, if the consequent is understood regarding the rationally involuntary according to the laws of justice.

5 *Response to the second objection.* It would not properly be deception on the part of the seller when the seller without being asked remains silent about the defect of a good, which does not render it useless or harmful to the buyer, but still diminishes the price as much as is fitting for the equality of justice.

*Response to the third objection.* Although there is some trouble to the buyer to have a good unpleasant to him, nevertheless a contract performed according to the laws of justice cannot be invalidated because of this. *Confirmation.* This is clear from the first conclusion, for we have said that such a contract is valid *per se* and absolutely speaking, when it comes to the merits of the contract itself. But where there was sufficient risk, or on account of the condition of the good, which can easily be sold to another to whom it will be harmful, or even on account of the condition of the buyer, who easily is inclined to selling the good, then the contract be invalid. This is because the buyer himself is rationally unwilling because he is exposed to the risk of deceiving another harmfully. Therefore the seller sins against justice, because his is the cause of risk which will injure a third person.

*Response to the fourth objection.* The injury about which we spoke in the first conclusion is not so great as the injury which occurs in the price when the buyer does not know what the just price is.

*Objection to the third conclusion.* But nevertheless thus far it is replied against that third conclusion and the aforesaid doctrine. If a good is made especially advantageous to one buyer in
particular, the just price will not for that reason be increased according to the common estimation of the good. Therefore proportionally such a price should not be decreased, if the good is not useful to a particular buyer. *Proof of the consequent.* Otherwise it does not appear that the condition of the contracting parties is equal. *Second response.* The buyer is not bound to indicate to the seller a defect in his money, therefore neither is the seller bound to indicate to the buyer a defect in his good. *Proof of the antecedent.* In the case where the buyer is certain that the money which he pays on the following day will be collected by the prince, then he is not bound to indicate that event, but licitly buys, and the contract is licit. Therefore similarly, etc.

*Confirmation.* If anyone provides a house in the court for a courtier at the current price, knowing nevertheless that the court will swiftly depart from that place, he is nonetheless not bound in providing it to indicate that future event. Therefore neither is the seller bound to indicate the defect of his good.

*Response to the first response.* The consequent is denied. Rather, that principle of justice demands that as the just price increases by the extent to which the seller in particular incurs disadvantage when he sells upon being asked, so also it demands that the price be diminished when the buyer in particular incurs disadvantage from buying it.

*Response to the second response.* In this case the money has no defect at present, but is legitimate according to the estimation of the republic. The fact the money will be collected by the ruler is *per accidens* and extrinsic, and the buyer is not bound to reveal this future event which he knows by his industry or good fortune. *Response to the confirmation.* The house has utility in the present and does not have an intrinsic defect, and it is *per accidens* that the future event is known through the industry or good fortune of the one providing the dwelling, and he is not bound to point out that event.
THIRD PROBLEM

It is doubted thirdly regarding the third conclusion of the second article, whether the condition of buyer and seller is equal in performing contracts of this sort?

First objection. If some buyer, an experienced jeweler, who knows the singular virtue and worth of some pearl, which men – and even jewelers – do not commonly know, he can buy the pearl at a lower price than it is worth secundum se, and yet the seller can never sell a pearl of lesser value for a greater price. Therefore the condition of both is not equal. Confirmation. Suppose some farmer holds a pearl, and a jeweler meets him saying that he wishes to possess the pearl and that he will give three hundred for it, even if it is worth a thousand. Then the jeweler, if the farmer sells it, can possess it in good conscience. And yet on the contrary, if some seller should have sold a pearl for a thousand, while in fact it is not worth even one hundred, the contract will be unjust, therefore etc.

Second objection. He who buys a field in which he is sure that treasure lies hidden is not bound to indicate to the ignorant owner of the field what lies there, but he can buy the field according to its common estimation. Yet vice versa a seller can never sell a field of less worth for a greater price, and therefore the condition of both is not equal.

FIRST CONCLUSION

In performing contracts of buying and selling of this sort, the condition of the buyer and seller ought to be equal according to the laws of commutative justice, and each party is bound to preserve them, e.g., just as the seller sins against justice in selling a defective good in place of a good without defects, so also the buyer sins by buying a good without defect in place of a defective one. Likewise, just as a seller is bound to disclose the defect of a good, even when he is not asked, or to diminish the price, as we have already said, so also the buyer is bound to
increase the price when he knows the value of the good, or to indicate it to the seller, as in the example in the confirmation of the first argument. *Proof.* A contract of buying and selling is an act of commutative justice, therefore both parties are equally responsible for providing for the advantage of the other party according to equality of good to good.

5 **SECOND CONCLUSION**

When a vendible good in itself has some special virtue, which commonly is ignored even by men experienced in that art, the experienced buyer who knows that virtue is not bound to indicate it to the seller, but it will be licit for him to buy it at the common price, e.g. in the cases of the first and second objection. *First proof.* The just price of a good is that which is commonly estimated by men according to circumstances of place and time, but this hidden virtue is not estimated, therefore the buyer is not bound to give the price for that virtue which he especially knows. *Second proof.* The virtue hidden in the gem is regarded with respect to an experienced jeweler the same as a treasure hidden in a field, about which we say immediately that it is licit for the buyer to buy that field, indicating nothing about the treasure, but can lay claim to the treasure with the title of discovery. Therefore similarly the jeweler can possess this gem of outstanding virtue with the title of discovery, even if he should buy it according to the common estimation of men. *Third proof.* If the jeweler ignoring the virtue of the gem should have bought it at the common price and recognized its virtue afterwards, he would not be bound to any restitution, therefore he is also not bound if he bought it knowing its virtue. *Proof of the consequent.* If he should be bound because of justice before the purchase, he should be bound also after the purchase to make restitution by the principle of some other received good, just as if he had received it knowingly and prudently. *Final proof.* When the Spanish discovered the Indies, they were able to buy from the natives gold and pearls according to the estimation of that
society and were not bound to point out how gold would be estimated in other regions. By this the first argument and its confirmation are clear.

But observe in the case of the confirmation that the jeweler is bound to indicate without deceit the common worth of the pearl, otherwise the farmer is justly presumed rationally involuntarily. Nor is it believable that the farmer wishes to perform such a great favor for the jeweler, unless deceived by him.

In order to respond to the second argument more fully we must recall what we have said above regarding the third conclusion of the article about the treasure taken up in two ways, namely properly and improperly. By this the response to the second objection is clear.

FOURTH PROBLEM

It is doubted fourthly about the solution of the third article, whether a seller knowing a future abundance of commodities is bound to point it out to the buyers or indeed to diminish the price.

First objection. He who sells a horse on the point of death, or about to contract some notable defect, is bound to indicate it or decrease the price, therefore also the seller in our case.

Second objection. From the opposite opinion the greatest disadvantage follows. First, the merchant, who knows that a city is about to be besieged, could nonetheless sell his own goods at the current price, which appears unjust and contrary to the good not only of the city but also of the republic. Second, it follows that he who knows that on the following day the price of grain will be determined at a lower level than it is currently, he would today sell all his wheat at the decreed price. Thirdly it follows that he who knows that an amount money is going to be

34 Question 66, article 5.
collected in the kingdom, he can still exchange whatever money he has with him. By these arguments John of Medina was convinced on the affirmative part.  

**FIRST CONCLUSION**

The seller knowing a future abundance of commodities will not be unjust in keeping silent and selling his commodities at the current price. I said “unjust” because he will sometimes sin against charity, as will become clear below. *Proof.* The just price is what is determined according to the common estimation of the market. But he sells his merchandise at the current price of the common estimation, therefore he is not unjust. Second, it follows that he who has in his mind to sell his abundance of grain after three days, because he cannot today sell his wheat at the current price. *Proof of the consequent.* He knows that because of his intended selling tomorrow the wheat will be valued less because of its great abundance than what he is about to sell, therefore he cannot today sell at the current price. Third, it follows that the seller not knowing that future abundance and selling at the current price would be bound to make restitution. *Proof of the consequent.* The obligation of making restitution arises not only from an unjust receiving but also from the principle of the good received, therefore if the merchant knowing the future abundance is bound to make restitution by the principle of unjust receiving, so also the one who does not know the future abundance will be bound to make restitution by the principle of something else, namely the excess of price, which he receives for the grain about to be worth less.

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35 Ubi supra quaest. 35.
SECOND CONCLUSION

Even if the seller should be asked whether there will be a future abundance of wheat, and he says that he does not know, or says that there will not be a future abundance, he does not sin against justice. **Proof.** This is clear from the first argument for the fact of the preceding conclusion. **Second proof.** That contract has all the qualities pertaining to the substance of a just contract, for the good is traded without any defect and at the current price, etc.

**Objection.** Because he lies perniciously to the loss of many, he therefore commits an injustice. **First confirmation.** If another assisting him should lie thus, he would commit an injustice and be bound to make restitution, as is commonly conceded, therefore even more so when the merchant himself lies. **Second confirmation.** If someone by lying hinders the alms of the beggar, he is bound to make restitution for it, therefore, etc.

**Response to the third objection.** The seller by keeping silent or by lying does not commit an injustice. First, because he merely leads the buyer to a just contract at the current price. Second, because if he should speak the truth, he himself would occur loss in his own faculties, therefore he is not bound to suffer. Whence that lie is not formally pernicious, but pertains to his office, because the seller is not bound to undergo loss. Therefore the buyer is only injured from such a lie *per accidens*.

**Response to the first confirmation.** The consequent is denied, because someone lying lies perniciously and not officiously because from such a lie he neither secures the common good nor flees evil, unlike the seller, who truly incurs loss from such a revelation.

**Response to the second confirmation.** If someone who lies should be a beggar, and deceives another in order to receive double alms from him, by saying that his master is not present, or that alms have already been distributed, he is not bound to make restitution for his lie,
nor does he sin against justice, because other beggars have the same right. But if someone rich should lie to a beggar, because that lie is pernicious merely, having no office, he sins against justice and is bound to make restitution.

THIRD CONCLUSION

What was said about the seller, must be said proportionally about the buyer, e.g. if the buyer should know a future great abundance of buyers, which will cause the prices of goods to increase, or he knows of a future lack of commodities, he will be able to keep silent, or if he lies, he does not commit an injustice when he buys at the current price. The conclusion is clear from the act of Joseph in Genesis 41. He who knowing a future lack of grain, nonetheless secured a great store of it. And also as Aristotle says, Thales Milesius bought a great abundance of olive oil, knowing by astrology the future sterility of olive trees. And thus it is licit for someone knowing the future collection of money to buy money which he keeps on his person. And also he will not be unjust who keeps silent when asked about the abundance or lack of commodities if he buys those goods which are necessary for himself. **Principle.** His knowledge or ignorance, which is future, relates *per accidens* to the justice of the present contract.

FOURTH CONCLUSION

Sometimes in the previous cases the seller and the buyer will sin against charity, which must be judged according to the common laws of charity, by which we are bound to provide for the good of our neighbor, provided that it is not done with great detriment to our self.

**Explanation.** If John should know about a huge future abundance of wheat, and Peter wishes to buy from him now some quantity of grain, because of which on the following day Peter will fall
into poverty on account of the arrival of wheat and its abundance, John will be bound by charity
to tell him not to buy now but on the next day, especially if John should be able to easily sell the
wheat to others separately. Otherwise, if John should fall into similar poverty because he does
not sell wheat to Peter, then he will not be bound to point it out.

Response to the first objection. If the seller knows that the horse will die swiftly from the
present defect, or that from its intrinsic disposition, which it has at present, it will incur a notable
defect, either he cannot sell it or ought to decrease the price.

To the other argument already it is clear from what has been said, which is not
disadvantageous.

FOURTH ARTICLE

Whether it is licit in business to sell something more dearly than it is worth.

SUMMA TEXT

First conclusion. The exchange of goods for other goods or for money, which is ordered
to the necessity of life, is praiseworthy.

Second conclusion. Exchange for goods or money which is ordered to profit has a kind of
turpitude and appears damnable.

Third conclusion. Nevertheless, that business can be honorable from the fact that the
profit is ordered to some good end.

COMMENTARY

The first conclusion of the article is evident, and indeed we have already sufficiently
spoken in that conclusion regarding such a contract and how it ought to be justified. But
regarding the second and third conclusion we must first note that business for the sake of profit
can be considered in two modes. In one mode business can be considered in common by
abstracting from singular business negotiations, and thus the second conclusion of Saint Thomas
is to be understood when he says that it has a kind of turpitude *secundum se*, but because it is not
thus far intrinsically evil, although it is of the same species as other evil-sounding things, such as
the holding of many benefits. For this reason Saint Thomas appended the third conclusion, where
he notes that business of this type can be honest when the profit is ordered to an honest end. In
the other mode any particular business negotiation can be considered, with all its circumstances,
and thus no negotiation is indifferent, but each is ordered to good or to evil, because it is not
granted that any individual human act is indifferent.

We must note secondly that business can be related to profit in two modes. In one mode
as to the ultimate end of the negotiation but not the act of negotiating, and thus on no occasion is
negotiation a mortal sin, but it can be a venial sin of avarice, according to the doctrine of Saint
Thomas. In another way business negotiation is related to profit as to the ultimate end of the
negotiator, so that the businessman actually or virtually establishes his end as profit, which
happens when for the sake of profit he violates some precept, e.g. he is a perjurer, or he defrauds
his neighbor in a grave matter. In this mode business is a mortal sin. *Objection.* Contrary to the
aforementioned distinction which Saint Thomas teaches, that every human act is related by the
actor to his ultimate end, what we have said is false, and negotiation can be related to profit as to
the ultimate end of the negotiation, but not of the negotiator. *Response.* In that place Saint

Thomas is sufficiently explained regarding the habitual relation to the ultimate end of the actor.
Moreover, it is not necessary that all human actions are always related actually or virtually to the
ultimate end of the actor, but it suffices that they be related habitually, and to this extent it is also

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37 Infra quaestio 118. Articul. 4.
38 1.2.q.1.art.6.
true that those venial sins of one in a state of grace are related habitually to God himself as to the ultimate end of the actor, as Saint Thomas expressly teaches.\textsuperscript{39} Indeed, they are not related to God actually or virtually, but are said to be related to God habitually as to the end of the worker, because the performed work itself is by grace habitually related to God, and those venial sins do not turn the worker away from this habitual relation. Vice versa, a man in a state of mortal sin is able to do some good moral works, such as giving alms to a beggar, without evil circumstances of his actual or virtual end. Nevertheless, his good works are related habitually to the worker as their ultimate end, because since he is in mortal sin and turned away from God he has been converted to himself as his ultimate end. But here we must especially observe that this habitual relation of works does not suffice to accomplish evil from good works, and even the venial sins of a just man are not habitually related to God to any extent at all. Again the alms of a man in a state of mortal sin can be morally good disregarding the circumstances of his evil deeds, even if they are habitually related to the creature on the part of the worker as their ultimate end, provided that they are not related actually or virtually in the virtue of some preceding act. But we have spoken more broadly concerning this matter.\textsuperscript{40} Since therefore we say here that a kind of negotiation done on account of profit as the ultimate end of the action, but not the worker, we understand this to be concerning the ultimate end of the worker to whom the action is related actually or virtually. It is called the ultimate end of the action because the action consists \textit{secundum se} in profit, as appetite has for the ultimate end of its action the delight of food, and it is not the ultimate end of the one eating, otherwise appetite would always be a mortal sin if it were related actually or virtually to that end, namely, the delight of food.

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\textsuperscript{39} 1.2.quaestione 88.artic.1.ad tertium.
\textsuperscript{40} 2.2. quaestione 10.artic.4.
Finally we must note that business is especially said to have a kind of turpitude because it implies many difficulties and risks of sinning, as Saint Thomas teaches.\footnote{Ad tertium.}

\textbf{FIRST PROBLEM}

Therefore it is doubted first whether a negotiation of selling may be licit in those things which buyers use evilly and for an evil end.

To the first problem Navarro has responded carefully and sufficiently\footnote{In Manuali cap.23. num.91.}, for he says that it is not licit, but that it is a mortal sin that a seller, e.g., sells textbooks to persons who he believes will abuse them. On the contrary, he says that every seller who indifferently sells any type of good sins mortally. John of Medina follows this opinion where he cites Cajetan\footnote{In hac 2.2.quaest.169.ar prope finem}, but Cajetan holds the opposite opinion.

\textbf{CONCLUSION}

When goods are secundum se indifferent to good and evil, the seller can sell them even if he judges truly and prudently that the buyer will abuse them. Furthermore, even if he surely knows that the buyer will abuse them, he can oftentimes sell without sin. \textit{Proof of the first part.}

To examine the morality of others and to discern who wishes to buy for good use, and who for evil, is not the duty of the seller but rather a curiosity harmful in the republic, as it does not fall to sellers \textit{ex officio} to wish to discern the lives of their neighbors. Likewise, because otherwise by the same principle we would condemn tailors who make curious garments, about which it may be probably believed that many men or woman will abuse them for luxury. Likewise, we would be required to condemn those who sell without discrimination common food to all men,
about whom it is probably believed (in accordance with our experience) that many abuse it in appetites and luxury.

Proof of the second part. If a seller is sure that here and now a buyer buys a good so that he might abuse it to mortal sin, he does not sin. First argument. The seller is not bound to impede the sin of another by this, that he not sell to him the vendible good, which he is prepared to sell, therefore he in no way sins. Proof of the consequent. In the act of selling he does not consent directly or indirectly to the sin of another, and indeed the fact that he does not consent directly is manifest, because he does not intend to sell his goods so that the other may sin, but for his own utility. That he does not consent indirectly is proved because someone consents indirectly to some evil deed when he was bound to impede it and did not impede it, but the seller is not bound to impede the evil deed of the buyer, except by the precept of fraternal correction by the means ordained to correction, and with some hope of his correction. But not to sell to him the merchandise is not a means of fraternal correction, therefore he in no way sins mortally against that precept by selling to him the merchandise. Confirmation. No one is bound to lose his temporal convenience for the correction of his neighbor, when his neighbor sins because of his own malice. Therefore, the seller is not bound to lose his profit so that he might impede his neighbor from the pursuit of his sin.

Moreover it is licit to sell or to provide a house for prostitutes, even if the one providing it is sure that the prostitutes will abuse the house. Similarly, it is licit to sell a lamb to Jews, even if the seller knows that they want it so they may sacrifice it.44

Final proof. A contract of buying, when it comes to extrinsic goodness or badness which is not considered on the part of the price or of the vendible good, it will have to be judged on

44 Ut diximus 2.2. quaestione 10 artic. 11.
account of its securing the advantage or disadvantage of the republic. Therefore, at least when an evil use of a vendible good is permitted by the republic on account of a greater good, it will not be an evil sale of a thing indifferently. Moreover, if it is not, he who provides a house for prostitutes in the republic prudently builds that house for them for the sake of avoiding a greater evil, therefore it will not be sin to build the house, or to sell it to prostitutes.

But so that this doctrine might be explained more, we argue against it. First objection. It is not licit to sell arms in a time of unjust war to soldiers prepared for waging that war. Similarly, it is not licit to sell a sword to a man prepared to kill his neighbor. Therefore, similar reasoning must be applied to this case.

Second objection. It is not licit to deposit money with a usurer, about whom it is probably believed that he will give it to usury.

Response to the first objection. We do not posit a universal conclusion, that it is always licit to sell a good to a buyer who intends to use it evilly, but we have said that oftentimes it is licit to do so. The first exception when that is not licit is when that evil use falls into some violence against a third person, e.g., in the case of the first argument the seller is bound first by charity to defend the republic and the innocent, then also by justice not to cooperate in committing an injury to another. For this reason, if in such a case he will have sold offensive instruments, he will be bound to the principle of the consequent loss. This suffices for the first objection.

Response to the second objection. It appears that the principle is the same as the first argument. If indeed the act of depositing money with a usurer is a kind of conferral of instrument to committing injury to a third person, namely to him from whom the usurer will unjustly accept interest, that is a sin against justice. Therefore, it seems that in such a case it would be a sin to
deposit money with a usurer. *Response.* The principle is not the same for both parties, because the usurer commits no violence to the lender to force him to accept the loan at interest, but the borrower on account of his advantage suffers that loss paying interest, and therefore the depositor is not bound to defend him by not depositing his money with a banker prepared to accept interest for a loan. For we suppose that the depositor does not persuade him to be a usurer, nor does he tempt him on the occasion of the deposit so that he is moved to the sin of usury. Therefore, we say it is licit to deposit money with such a usurer otherwise prepared to accept interest from a loan. It poses no problem that he should commit an injury to his neighbor by accepting interest from it, because in such an injury the neighbor does not suffer violence.

Moreover, he who impedes the usurer that he not loan him money injures him by impeding him from greater advantage. Therefore the whole principle of injury remains in the usurer. *Objection.* If anyone wishes to kill himself, it is not licit to sell him a sword or to return a sword he has deposited, therefore even if his neighbor should not suffer violence in the loss which he suffers, I am bound to impede such a loss. *Response.* The principle is not the same. He who kills himself is not the owner of his own life, but God is the special owner of life, and the republic its special guardian, therefore he who kills himself commits an injury to both God and the republic. Then he who kills himself does not acquire some greater advantage, as he who pays interest acquires. Therefore I am bound entirely to defend, if I am able, against anyone killing himself, and I am bound by justice not to give to him an instrument with which he may kill himself.

Moreover we can make another exception, namely, when it is probably believed that the abuse of the buyer falls into the temptation of some innocent young person, for then the seller of the thing will sin against charity, e.g., if a prostitute seeks from the seller some ornament suited

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45 Ut diximus quaest. 64. Artic. 3.
to tempting some innocent youth, then the seller will sin against charity by selling such an ornament. From what we have said we can conclude that the seller is not excused from the precept of fraternal correction, but we say that the seller universally depriving himself of his advantage so that he might impede the abuse of vendible goods is not a proportionate means.

5 **Principle.** Sin principally consists in the will and affection, therefore that which impedes the execution of the work does not impede fraternal correction, nor does it free from sin. But it often happens that he will sin vehemently while he is deprived of the occasion of sinning, according to that common saying, “privation is the cause of appetite.” By the same principle we excuse from sin one who in a loan receives money at interest from a usurer prepared to lend at interest, since the borrower is not bound to deprive himself of his advantage on account of the malice of another who is prepared to sin. Moreover, it is a common opinion among theologians that we can use the malice of another, provided that we do not cooperate in it. Finally, we add that not only will it often be licit for the seller to sell a good to someone who intends to use it evilly, but also he will sin if he does not sell, e.g., if he should be obligated by the republic to sell a certain type of merchandise, he is bound to sell to him who licitly is able to sell and commits an injury against him if he does not sell.

**SECOND PROBLEM**

It is doubted secondly whether it is licit for a negotiator to buy a great abundance of commodities so that he might sell them afterwards in small measures and thence receive more profit. **Principle.** In negotiations of this sort the citizens suffer loss, and they would buy at lower prices if no one had collected the great abundance of goods. **Response.** There are two types of commodities. One type is not necessary to sustaining life nor the common status of the republic, e.g., parrots and monkeys, and many ornaments of women. About goods of this type there is no
difficulty, for everyone can buy as much as he wishes an abundance of these commodities because thence the republic does not suffer harm. Other goods are necessary and advantageous to the common status of the republic, e.g., bread and wine and other common foods, and cloth for making common garments. About goods of this type we make our first conclusion.

5 FIRST CONCLUSION

Regularly speaking, merchants act unjustly who buy a great abundance of goods in this way, coming before the citizens prepared to buy goods one by one. *Proof.* The price of those goods will be much greater than if such goods were represented by many merchants in public. Therefore businessmen of this sort harm the republic and the citizens by their industry, and such a price must not be estimated as licit but rather as an impediment of the just price which otherwise would be current according to the common estimation of the market. We have said “regularly speaking,” because if a negotiator should sell such goods to the republic at the common price at which other negotiators sell carrying them from a long distance, such negotiation is licit, but, as in many cases, it does not happen thus.

15 SECOND CONCLUSION

After the citizens buy necessaries and conveniences for themselves, it is licit and convenient that the negotiators buy a great abundance of those goods so that afterwards they may sell them bit by bit and receive profit. *Proof.* Negotiation of this sort does not result in disadvantage for the republic, but rather advantage. For it is fitting that goods of this sort be on display before foreigners, citizens who were not able to buy, and beggars. But concerning this matter it will pertain to the Praetor to ordain that such businessmen do not come before citizens prepared for buying, and that afterward as they sell goods in small portions they do not increase the price by an excessive degree.
THIRD PROBLEM

It is doubted thirdly whether negotiators *ex officio* can licitly sell more dearly than others, and how the just price in this case should be measured. Scotus responds\(^{46}\) that only merchants *ex officio* can make as much profit in the sale of things as the republic assigns to them, if it has led them to this office. *Principle.* If there were not in the republic voluntary negotiators of this sort, the republic would be bound to provide for ministers to fulfill their function, namely, transport necessary goods to the community. Master Soto\(^{47}\) says that this rule of Scotus is not to be entirely repudiated, but neither is it always to be preserved.

FIRST CONCLUSION

This rule of Scotus is incredibly false, regularly speaking. *First proof.* It often happens that the price of a vendible good decreases after those merchants have transported their goods, either because there is a shortage of buyers, or an abundance of goods which have arrived, and then it is agreed to be an injustice that negotiators of this sort sell their goods also for the price at which they bought them. *Proof.* The just price at that time is what is current according to the common estimation of the market, which indeed will at that time much less than the price at which they bought, for which reason they can receive nothing for their industry and labor. Again, it is possible that after those merchants have transported their goods, the just price increases on account of a multitude of buyers, or a rarity of goods, and then the just price will be what is current according to the common estimation of the market, even if it should be much greater than the stipend which the republic would designate for its ministers.

\(^{46}\) In 4. Dist. 15.q.2.artic.7

\(^{47}\) Lib. 6. De Iustitia.quaest.2.artic.4.
Second proof. From that rule of Scotus follows a great disadvantage. First, that if the merchant by chance accidentally makes a loss on all his goods, the republic is bound restore that loss, or if he makes a loss on half of his goods, that merchant is able to sell the other half for as much as he would sell the whole stock. Proof of the consequent. If that man should be a pure minister of the republic, he would receive justly as much profit as if he had not transported goods without any defects. Likewise it would follow that if two merchants conducted themselves in such a way that one would buy the goods much more dearly than the other, either because he transported them from remoter regions, or because there was a rarity of merchants when he bought, but he nevertheless bought prudently, then those two negotiators would be able to sell the same goods at the same time and place at prices notably distinct. Proof of the consequent. He who buys more dearly is not able to obtain his whole stipend, unless he sells much more dearly than the other.

Third proof and principle. There exists a difference between the pure minister and the businessman, who is the owner of his own money and of his own goods. For to the office of minister it only matters that he diligently and prudently conduct the business of his master, which if the business should perish, he perishes at the hand of his master. But the businessman, who is his own master as he reaps the advantage when the negotiation succeeds prosperously, it is just also that he bears the loss when it does not thus succeed. Nevertheless, it is true that consideration of the rule of Scotus can be useful when the republic wishes to determine the price of some commodity for the sake of the common good, e.g., when they wish to determine the price of wheat, for then it ought to take account of industry and labor, which the farmers expend, so that they can be sustained by their labor. Moreover, the republic considers this in common and as in many cases, for it cannot provide for every single farmer in every event.
SECOND CONCLUSION

It is licit for businessmen *ex officio* to sell more dearly than other citizens sometimes. Sylvester posits this conclusion.⁴⁸ Cajetan here expressly says that those businessmen can sell more dearly than they buy. *Principle.* Negotiators are useful to the republic, and necessary, therefore they ought not to negotiate in vain. But this conclusion must be understood with a condition, that the just price is estimated according to the common use of the market among those negotiators and the people, not according to the labor and industry of the particular negotiators. The conclusion must also be understood to apply equally to negotiators who sell in small quantities as to those who sell in large quantities. The conclusion especially applies to those obligated by the republic to sell some type of merchandise, because a price can be estimated for that obligation, for they expose themselves to many risks on account of the advantage of the republic. According to common opinion, it is just that moneychangers receive some profit when they exchange money of greater weight with money of lesser weight, because this is useful to the community.

FOURTH PROBLEM

It is doubted fourth principally whether it is licit to sell more dearly with expected money than with counted money. And the same question concerns buying and selling which occurs with anticipated payment before the goods are traded. This question borders the matter of usury, about which the jurists dispute.⁴⁹

FIRST CONCLUSION

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⁴⁸ Verbo, emptio quaest. 10. & Scotus ubi supra.
And indeed all agree in one fundamental conclusion, namely, that a sale, which is made at a dearer price only because of the expectation of payment following some time, is unjust and usurious. Moreover, this conclusion applies when the price exceeds the whole latitude of the just and rigorous price. First proof. In that sale the just price, at which the good traded at present is estimated, is exceeded, therefore it is an unjust sale. Second proof. In that sale usury is included implicitly, therefore etc. Proof of the antecedent. This is to expect payment in money for a good which is traded at present and the seller loans the price of the good to the buyer. As, e.g., for twenty ducats, at which the good is presently estimated, he pays twenty-five after a year, therefore, etc. And the principle is the same concerning buying with anticipated payment before the good is traded when the good is estimated more at the time when it is to be traded. For a good is worth the same, if the buyer loans thirty to the seller so that after a certain time he might repay to him forty, as one which is worth forty.

Nonetheless negotiators have come up with many contrivances in order to make licit purchases and sales of this sort. Thus there are six titles which they suppose can justify contracts of this sort.

The first title is from the common estimation of goods which are sold at credit.

First argument. It is proved that this title suffices to justify contracts of this sort because the common estimation of all negotiators is that goods sold with expected money are estimated at a greater value with than those which are sold with counted money, therefore, etc. Confirmation. There is a frequency of buyers in this case because the goods are worth more, but there are many buyers who seek the goods with expected payment in the future, therefore by this principle they can be sold more dearly.
Second argument. Present money is estimated more than absent money, and indeed absent money is useless for the whole time it is absent, but present money is useful as if in action, and certainly in proximate potency. Therefore by this principle, so that the contract should be justified and equal, it will be licit for the seller to charge a greater price from him who buys a good at credit, than from him who pays with counted money.

Third argument. It is licit to buy debts in the future from him to whom they are owed for a lower price than the debts stand and denote. E.g., someone owes Paul 100. It is licit for John to buy from Paul that 100 for 90 at present with counted money, therefore it will also be licit to given a thing which is now worth 90 for 100 at a future time, which indeed is to sell more dearly by principle of expected payment. With the same arguments proportionally someone can prove that it is licit to buy more cheaply than a good is worth when it will have been traded with anticipated payment in the future.

SECOND CONCLUSION

That first title is insufficient for justifying contracts of this sort. This conclusion is not proved de novo, except by answering the arguments made, because its intrinsic principle is the same as that of the first fundamental conclusion.

Response to the first argument. In order that we may respond it must be observed that goods are different in two ways. For there are some of which a small portion is sold with counted money, and such goods are normally those which ships carry to port and which often are sold in great quantity to other capital negotiators. Others are goods of which a small portion is sold at credit, or surely with a great quantity to other capital negotiators. Others are goods of which a small portion is sold at credit, or surely a great portion is sold with counted money. Concerning goods of the first sort we have spoken within this treatise. Our conclusion applies to goods of the
second kind. To the first argument the antecedent is denied, if it is understood concerning prudent negotiators, and not unjust ones. Goods *secundum se* have nothing more of utility when they are bought at credit than when they are bought with counted money. But that estimation of some negotiators arises from the difficulty of buying goods in the present, as well as the greed of enjoying those goods. *Response to the confirmation.* That frequency of buyers at credit does not increase the just price of the good according to what it is presently valued, but the measure of the just price is that which the merchants make who buy with counted money. *Principle.* The just price of goods is what it is estimated when they are traded now, for which reason the fact that many are buying at credit is irrelevant to establishing the just price in goods of this sort.

*Response to the second argument.* The antecedent is denied, if money should be considered *secundum se* separate from the industry of the negotiator. And indeed money does not bear fruit *secundum se*, nor does it have any use in the principle of money, except when it is discharged by the industry of the negotiator. Wherefore by the principle of expected time, the seller cannot charge something more than it is now licit to accept, for otherwise any lender of money could by the same principle charge profit for a loan, on account of expectation of time.

*Response to the third argument.* In order to respond it is necessary to examine whether the purchase of debts to be paid in the future for lower price at present is licit.

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50 Ut habetur in l. Falcidia. & in l. pretia. ff. ad legem Falcidiam.
FIFTH PROBLEM

Therefore fifthly it is doubted whether it is licit to buy *pagas acerbas*\(^{51}\), on which there are two opinions. The first is Adrian’s\(^{52}\) and apparently Sylvester’s\(^{53}\), although in the end he appears to hold the opposite of Adrian’s opinion. This is the opinion which denies that contracts of this sort are licit for a lower price than the risky debts stand and denote, except when there was a risk or a notable difficulty of recovering the principal. John of Medina follows the same opinion.\(^{54}\) Another opinion is Cajetan’s\(^{55}\), asserting that buying of this sort is licit, if it is done at the current just price. *First proof.* In a contract of this sort, if there were any injustice, it would be usury, but there is not, therefore etc. *Proof of the minor.* In a contract of this sort, there is no principle of a loan from either party, whether implicit or explicit, therefore there is no principle of usury. *Proof of the consequent.* Usury is profit from a loan. *Proof of the antecedent.* If, e.g., John buys from Paul 100 which Peter owes him for 90 given in the present, then John does not loan to Paul, because the principle of a loan is that the borrower remains obligated for repaying something in the future, but Paul is immediately removed from any obligation rightly given to John for recovering those debts. By the same argument it stands, that neither is John a usurer because he does not accept a loan, but the right of recovering for himself those debts which previously were owed to Paul, nor is he further obligated to repay anything to Paul. Therefore there is no principle of a loan, and thence not of usury.

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\(^{51}\) *Pagas* is not Latin but Spanish, meaning “payments.” Literally, these are “bitter”, “harsh”, or even “cruel” payments. See this definition from a roughly contemporary author: “By *pagas acerbas* are understood *debts or actions*, which are called ‘bitter’ on account of the difficulty, whether actual or apparent, of obtaining payment.” Jordanus Preingue, *Theologia Speculativa et Moralis*, https://books.google.com/books?id=hz8VAAAQAAJ&dq=pagas+acerbas&source=gbs_navlinks_s, 257. The closest modern financial instrument would be subprime loans.

\(^{52}\) In 4. Material de restitution folio 36.

\(^{53}\) Verbo usura. 2. §. 14.

\(^{54}\) Ubi supra.

\(^{55}\) Verb. Usura, cap. ulti.
**Second proof and confirmation.** Paul at present gives the entire right which he has to that 100 to John the buyer, and John at present gives 90 for that right, undertaking on himself the responsibility of recovering the debt, therefore the whole contract is completed then and there for both parties, and consequently there is no principle of usury, if indeed neither remains obligated to the other. From this Cajetan infers that the contract will be licit and just within the limits of buying and selling if it should be performed at a just price. It will be performed at a just price if it is the price which is commonly current among businessmen without trickery and fraud, having attended to circumstances of time and place and the abundance or lack of money. On account of these arguments, some of the most learned theologians consider this opinion of Cajetan not improbable. But for us it has always appeared incredibly sound, where there was no risk of recovering those bitter debts.

**First objection.** If that right which Paul has for repaying 100 can be sold for a lower price at present, it follows that Peter the debtor can buy that right for a lower price. Consequently, it seems disadvantageous, because for 90 given with anticipated payment he removes himself from the obligation of repaying 100. Some concede the consequent and admit the consequent according to the opinion of Cajetan. Others indeed assign a different between those contracts, because Peter the debtor is obligated to repaying the whole debt, whence with 90 having been given now, he is not removed from that obligation on account of anticipated payment. And John was not bound to Paul the creditor, because of which he could give freely to Paul the creditor 90 for the right which has to 100. **Second objection.** In practice, Cajetan’s opinion provides much occasion for concealing usury, for those bitter debts could easily be contrived and used to make many contracts of usury under this title, at least virtually and implicitly.
Third objection. That right which Paul has to 100 is indeed worth 100, therefore it is unjust to buy it for 90. Proof of the antecedent. When Paul sold his goods for 100 in future payments, he sold at the just price. (For we presuppose this, and that he has no other bitterness except of time.) Therefore there is equality between the right which he has to his goods and the right which he has to that 100 in future payment. But the right which he has to his goods was worth 100, therefore the right which he acquires is worth 100. Confirmation. In a loan contract there is this equality, that for the 100 which Peter lends to Paul, Paul is bound to render another 100. Therefore it is an inequality that John should buy that right from Peter at a lower price, namely, for 90. Nor is he able to say that John does not buy 100 for 90. But the right which Peter has to that 100 which right indeed is impaired because Peter himself, by the fact that he has lent, has obligated himself not to seek that 100 until the agreed time. Therefore, since John now wishes to enter into that obligation and to remove Peter from it, it is merited that he decrease for himself from the counted money at present, while he buys the right to recovering that 100. I do not say that response is valid, because by an equal principle we can say that Peter from the beginning, when he owed 100 to Paul, could charge from him some profit, therefore Peter freely was subjecting himself to that obligation of not seeking repayment. Thence, that right to recovering 100 from Paul for that entire time of waiting it is entirely useless secundum se. But the whole worth of it is derived from that 100 which must be paid at the agreed time, therefore it is worth neither more nor less than 100, unless there is a risk of recovering it, and there is no bitterness in that right other than the waiting time.

Fourth objection. It follows from this that two companions can licitly be enriched from others under the hope of that contract of the buying of a bitter payment, e.g. John and Paul are companions, and Paul buys from some third party goods for 100, indeed at a just price, but with
expected payment up to one year, then John approaches and buys from that third person that bitter payment for 90 and again John buys from that third person some goods for 100 with expected payment at one year. And then Paul approaches and buys that bitter payment for 90, and thus Peter is able to plunder and become rich.

5 FIRST CONCLUSION

When there is no risk of recovering such debts, nor must any expenses be made in the recovery, it is an unjust purchase if it should be made at a lesser price than the debts stand and denote. This conclusion proves the third argument with its confirmation, for there is an inequality between the price and the good sold, whence the buyer will be bound to restitution.

10 SECOND CONCLUSION

Inequity of this sort is virtually cloaked usury. Proof. The buyer John virtually and equivalently quasi-lends money to Peter, namely 90 at present, so that in the future he might receive 100. And it cannot be responded that Peter does not remain obligated to repay that 100 in the future, because it was regarding the principle of a borrower, and thence there is no principle of a loan or of usury. I say this response is not valid, for likewise Peter remaining obligated to repaying 100 is equivalent to him giving his ability to recover the 100 in the future. Therefore there is in the contract equivalently a principle of a loan. Confirmation. If Peter in this case did not wish to obligate himself to repay that 100 in the future for 90 received at present, and nonetheless gave John a guarantor, who obligated himself to repay that 100, then that contract possesses actually the principle of a loan. But it is the same thing to give John the certain right that he has for recovering that 100 and to give a guarantor, therefore in both cases there is a principle of a loan, at least virtually, and thence that contract is usurious, and for us a certainly improbable opinion of Cajetan.
THIRD CONCLUSION

Nonetheless if anyone in good faith, following the opinion of Cajetan and others, buys a bitter payment at a lower price, he will neither sin nor be bound to restitution, but a prudent confessor will be able to disguise the foregoing deed, and to admonish the rest not to do it.

Otherwise he seeks some confessor, unless by chance it should be his own priest (parochus), to whom the penitent man has a right, that he hear his confession, and then the confessor will be bound to absolve him, following the probable opinion. *Principle.* In doubtful cases the condition of the possessor is better. Therefore, the penitent, who already possesses profit, is not bound to make restitution if indeed there is doubt as to whether that contract is licit or not, and again he is penitent and has an acquired right to a confessor, who is not his own, if he has already heard his confession, and to his own he has the right that he might hear. For this reason both parties in the aforementioned case will be bound to absolve the penitent man, even if he should follow our opinion speculatively in this, because the penitent man is not bound to believe him, nor is he capable of so much subtlety of doctrine to be able to distinguish the principle of a loan and of usury in such a contract.

The second title is taken up from the principle of ceasing profit or emerging loss.

Concerning this title we say much more in the following question, article 2, but now we speak briefly.

CONCLUSION

It is licit for a seller to sell more dearly with expected money than indeed he intended to sell with counted money, and because of the fact that he sells, some loss follows to him, or some profit ceases. *Principle.* It is licit for a seller to preserve himself from loss when he is solicited by

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56 Text has *dabiis.*
a buyer to sell with expected money. Thus teaches Saint Thomas, although he concedes that in such a case it is licit for the seller to receive more than would be the just price of the good on account of emerging loss, but not on account of ceasing profit. But he does not prove that first opinion efficaciously, and he is alone in holding it. For all agree that by the principle of ceasing profit in the aforesaid case it is licit for the seller to charge something more than would otherwise be the just price. Confessors must observe attentively whether that title is fictitious, for many say concerning businessmen that with present money they would be able to do more business and make more profit. But this is no excuse when the businessman has such an abundance of goods, because it is fitting to sell partly at credit and partly with counted money, or also has such an abundance of money, because he did not about to pay the whole amount in his negotiations, but always saves some in deposit.

The third title is the risk to which the seller exposes himself while he sells his goods to men of bad faith, which is in Spanish called *mala dita*.

**SIXTH PROBLEM**

It is doubted sixthly whether when indeed there is such risk, and it is prudently feared either that expenses must be made in the recovery of the price or that the price will perish entirely, it is licit for the seller to charge something more in the price when the contract is with expected money.

*First argument for the negative.* In the chapter on sailors, it is defined that the lender is usurious who receives something beyond chance by the principle that he himself bears the risk of

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57 In articul. 1. supra.
a loan. But in the posited case that seller charges something beyond chance, with this intention, because he himself bears the risk of a loan implicitly, therefore it is usurious.

Second argument for the negative. The seller cannot charge something beyond the loss and detriment which follows from the sale *secundum se*, but such risk does not follow from the sale *secundum se* but because he voluntarily commits himself to such risk, for he could charge a guarantee if the buyer was not of good faith, either making peace with him about paying the expenses to be made in recovering the price, or also that if he will not have paid at a definite time, he pay something more. Therefore if the seller omits all these things, he limits the risk of his negligence which follows and does not make the sale unequal and unjust.

Third argument for the negative. The buyer is not bound to free the seller from fear and risk in any way besides buying at the agreed time, or by giving him a guarantee. Therefore the seller unjustly charges something more than the just price by the principle of such risk.

First argument for the affirmative. The seller can licitly deduce in the pact emergent loss, as was said. But loss to himself emerges from such a sale by the fact that he remains in risk and by the fear of losing his goods. Therefore by this principle he could charge something more.

Second argument for the affirmative. One hundred ducats exposed to risk are estimated by prudent men to be worth less, so that it is licit to buy them for ninety or eighty. Therefore the seller incurs loss when he exposes his goods to such risk, so that now they are not estimated as much as they would be if he had them with himself.

Third argument for the affirmative. Some guarantor will be able to charge something for the guarantee because he exposes himself principally to the risk of paying. Therefore, the seller also will be able to charge the same amount because he exposes himself to equal risk.
On account of the aforementioned arguments, some hold the negative part, but others the affirmative. John of Medina holds the affirmative\(^{59}\), Soto holds the negative.\(^{60}\)

**FIRST CONCLUSION**

The seller can licitly deduce in that pact expenses to be made in the repayment of the debt beyond the just price of the vendible good. *Principle*. In such a case there is emerging loss for the seller, who with his own expenses would recover the just price, therefore he will be able to deduce them in the pact in order to preserve himself from loss.

**SECOND CONCLUSION**

By the principle of risk and fear of recovering the price, the seller cannot charge something more than the just price from the buyer. The arguments made prove this on the negative part. *Proof*. The fact that the buyer promises that he will give 100 for a thing which is worth 90 is not a proportionate means ordered to bearing risk and fear, since he himself remains in the same risk. I have said moreover that the seller cannot charge more from the same buyer, because if some other third party should solicit the seller to sell at credit to men of bad faith, it would be licit for the seller to charge from the solicitor something of the price, especially of counted money, because of the fact that he sells to such men at credit.

*Response to the first argument for the affirmative*. The risk is not emergent loss except for the just price which remains in the risk, which the buyer satisfies if afterwards he pays the just price at a definite time. This is true equally for both parties of the contract. If the buyer should be a man of bad faith, then the seller seeks a guarantee or does not sell what he would have sold, he imputes to himself such risk. *Response to the second argument for the affirmative.*

\(^{59}\) Ubi supra
\(^{60}\) Ubi supra
It is clear from what has been said, for we say that the seller voluntarily and imprudently exposes himself to such risk, and charging something more than the just price is not a means ordained for him to remove himself from such risk.

Response to the third argument for the affirmative. The consequent is denied. The principle is not the same for the guarantor and the seller, because the guarantor expected no advantage from the contract of the seller, and while he commanded in faith exposed himself principally to the risk of paying for the man of bad faith and therefore can charge something of the price from the seller just as from the man of bad faith. But the seller expects an advantage from the sale, whence it is equal that he expose himself to such risk or seek a guarantor.

The fourth title is when the buyer intended to preserve his goods to be sold in the future, when some would be valued more dearly, or was about to transport them to another place, where they would be sold more dearly, e.g., he was about to transport grain to a place where there is not a decreed price.

SEVENTH PROBLEM

It is therefore doubted seventhly, whether by the principle of this title a seller can charge more than the present just price of the good. And we ask the same proportionally concerning the buyer, whether he can buy goods more cheaply than they are valued at present because of the fact that he was about to receive those goods in a time when they would be valued more cheaply. And since that title has a great affinity with the second title concerning emerging loss and ceasing profit, it is answered briefly.

FIRST CONCLUSION

The seller by the principle of this title can justly sell his goods more dearly than they are worth at present whether he sells with counted or expected money, e.g., Peter was about to save
his grain for selling in the month of May, at which time it would prudently be judged to be worth more. He will at present be able to sell more dearly than it is now valued. *Principle.* The seller can preserve himself from loss when he is solicited by a buyer.

**SECOND CONCLUSION**

The buyer similarly will justly be able to buy goods to be traded in the future either with counted or expected money at the price which they will be valued when they will be traded, even if it is cheaper than it is currently. This conclusion similarly is defined in the previously mentioned chapter on sailors.  

*Principle.* The goods are estimated by a human judge, according to what comes to the use of men, therefore when those goods do not come at present into the use of men, the just price will be what they will be estimated at for the time when they are traded. And this conclusion with its principle must be noted for the things that we will say in the last title.

Note moreover that the aforementioned contract can be made in two modes. First, by not determining the price at present but remitting to the future whatever it will be when the goods are traded. This mode is obviously without scruple. In the second mode, the contract be performed at the judgment of a good man, having considered the principle of circumstances of time and place. Then the just price will be able to be determined according to a kind of average, so that both parties remain in equal risk and in equal benefit according to hope, e.g., if it is possible according to the aforementioned circumstances that by human custom wheat is worth 14 silver in the month of May, and it is also possible that it is worth 12, then it will be an equal agreement if the contract is made for 13.

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61 dict.cap: Naviganti
The fifth title is, when the seller did not intend to preserve his goods for the future, but at the time of expected payment they will be valued more dearly according to the estimation of men.

**EIGHTH PROBLEM**

It is doubted therefore eighthly, whether in this case it should be licit to sell more dearly with expected money than the goods are valued at present. *Argument for the affirmative.*\(^6^2\) If pepper and cinnamon are worth five *livres* in counted money, the seller can sell for six *livres* in expected money, provided there is doubt that at the time of payment those goods will be worth more or less. But still the common solution to that chapter is normally what the pope understands, when goods are to be preserved for selling in the future. But against that understanding it is argued in three ways. *First argument.* Alexander III there speaks absolutely. *Second argument.* Although Gregory IX in a distinct chapter on sailors posits the exception that if the seller intended to preserve his goods for a time when they would be valued more, nevertheless the case in the chapter on the city is distinct from the case in the chapter on sailors, which is clear because the case in the chapter on the city has a species of usury, as the pope says in the same place, but the case in the chapter on sailors is most just, and does not have a species of usury. Therefore, it is distinct, and consequently an exception is made in the chapter on sailors that cannot be applied to the chapter on the city. *Third argument.* It is licit to buy more cheaply with counted money than the goods are presently worth, when indeed similarly it is believed at present that the goods will be worth less when they are traded, as we have said in the preceding title, conclusion 2. Therefore vice versa it will be licit to sell more dearly with expected money only when it is similarly believed that the goods will be worth less at the time of payment.

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\(^6^2\) Ex cap. In civitate de usuris. Ubi Alexand. III dicit,
On account of these arguments, Cajetan\textsuperscript{63} holds an opinion contrary to the common understanding of the chapter on the city. He says the same thing in the summa with a word on exterior usury. For it is judged that the cases of both chapters are distinct, which he distinguishes for their understanding. For the postponement of the time of payment can be considered and performed in two modes. First, so that the postponement is a distinct action from the contract of selling, so that the sale is understood to be already completed by the trading of the good, and thence by the principle of the expected time something more is charged, and in this mode the contract is usurious. In the other mode, the postponement itself could be considered as completing the contract of the sale, so that the sale is not considered complete before, unless for the time of the payment of money, and in this mode it is licit to sell goods more dearly than they are now worth if it is believed that they will be worth more at the time of payment. And that, he says, is the case in the chapter on the city. The principle of Cajetan can exist from his doctrine because the sale is not perfect and complete until the time of payment, but if it should be performed at the time of payment it is licit and just. Therefore, now also that contract, which is performed at present for a future time will be licit and just. Soto\textsuperscript{64} does not prove this opinion of Cajetan, but neither does he entirely disprove it. Nonetheless to us it seems that this opinion must simply be rejected.

CONCLUSION

That contract is illicit and usurious. First proof. The opinion of Cajetan is contrary to the decrees of all the doctors and against the common understanding of the chapter on the city.

Second proof. The foundation of Cajetan is null, because a sale is completed when the good is

\textsuperscript{63} Caiet.quaest.seq.artic.2.
\textsuperscript{64} Lib.6.de iustitia quaest.4.art.2
traded to the buyer as the owner of it, even if payment is expected in the future. Therefore the foundation of Cajetan is null, and it implies a contradiction to say that a sale is not perfect and that the buyer remains the owner of the good so that it stands or perishes with him. Therefore it is fictitious to say that that sale is made in the present for the future *como entonees valiere*. Indeed it is completed now when the good is traded, and according to the common sense of all it is said that that good already is sold at credit. *Confirmation.* If the bishop should sell a benefit to someone and immediately trade it, and expect moreover payment in the future, he is already perfectly a simoniac and incurs all the penalties of the law, as Cajetan himself concedes. But vice versa the bishop should receive immediately a price for trading the benefit in the future, he is not perfectly a simoniac except mentally, and does not incur the penalties of the law until he trades the benefit. *Principle.* He has not yet sold the benefit until he has traded it, therefore in a similar manner the sale of a temporal good is then substantially perfected when the good is traded, whether with expected or counted money. *Third proof.* From the opinion of Cajetan it follows that he who does not intend to preserve his goods for the future can licitly sell them dearer than he who intends to preserve them up to the time when they would be worth more. *Proof of the consequent.* He who intends to preserve his goods is bound to decrease as much from the price as he would pay in preserving his goods and as much as he risked in their preservation. But he who does not intend to preserve his goods would not make any expenses, and thence would be able to sell more dearly. To the argument in the opposite from the chapter on the city it is answered there well in argument. *Response to the first reply.* Gregory IX explicated that chapter in another chapter on sailors, and it is not a distinct case according to the species insofar as it pertains to the present matter according to the principle of usury or not of

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65 Infra quæstio 100
usury. **Response to the second reply.** In the case of the chapter on sailors the seller would be able also to conceal usury if he pretends that he pretends to preserve his goods when he holds no such intent. **Response to the third reply.** The consequent is denied. The difference is manifest, because a sale is perfected when money only is traded, even if the pact should be performed in the future trading of the good.

The sixth title particularly applies to a certain kind of goods, not only on account of the mode of selling in great quantity, but also because all those goods, or nearly all, are sold with expected money, as, e.g., are tapestries, which are transported from Flanders to the port, or also from Holland\(^6\), which in Spanish is called *Olanda*, and the kind of merchandise which is transported to the port for the provision of the whole kingdom.

**NINTH PROBLEM**

It is doubted therefore ninthly whether it is licit to sell goods of this sort at the same time and place at a dearer price with expected money than the same goods are sold from them with counted money in small quantities. **First argument for the negative.** The just price of a good is what it is presently estimated according to the common use of the market with counted money, but some goods of the same species equally good are sold at the same time and place at a lower price. Therefore, that is the just price, and not the other higher price in expected money. **Second argument for the negative.** If all those goods are sold at the same time and place with counted money, without a doubt they are estimated at a much lower price, therefore the higher price which the businessmen charge on account of expectation of time is unjust. **Third argument for the negative.** If it is licit to sell these goods more dearly with expected money than counted, therefore it will be licit to sell at a higher price by as much as the time of payment is extended.

\(^6\) *Bissus.*
First argument for the affirmative. The proper mode *per se* for selling goods of this sort is that they are sold in the same time and place in great quantities, from which immediately it follows that they cannot be sold with counted money. Therefore, their just price cannot be estimated with counted money but will have to be estimated with expected money.

Second argument for the affirmative. If the just price of these goods must be estimated according to what certain goods are sold for presently from these with counted money, no one would want to negotiate in goods of this sort because they could scarcely make a profit over the expenses made.

Third argument for the affirmative. If the just price of these goods ought to be estimated (as some say) as if all those goods are sold with counted money at the same place and time, it follows that the price is unjust from the way in which *de facto* certain goods are sold from them with counted money. Proof of the consequent. If all those goods are sold with counted money, the price necessarily ought to be notably cheaper on account of the abundance of goods and rarity of buyers, but the rarity of buyers is not at all sufficient for such an abundance to be bought with counted money, unless the price is lowered such that even beggars would be invited to buy tapestries.

Concerning this difficulty there are and were various judgments among the masters of our age. Master Soto once said that the just price of these goods ought to be estimated as if all are sold with counted money. The most learned Master Cano offered the same, which I with my own mouth consulted concerning that definition. But afterwards Master Soto\(^6\) admits that he was for a long time anticipated in defining this matter, but nevertheless there already he declines in favor of the sellers with expected money, and he says that it is licit in the aforementioned case to sell

\(^6\) Lib.6.de iustitia,quaestione.4.articulo.1. ad quatum
more dearly with expected money than with counted money, and that the just price is estimated to be that which is current with expected money in goods of such great quantity, which indeed proves with first argument made on the negative part. This opinion was once held most wisely by Vitoria, the common teacher of our school. Other doctors always persist in asserting that it is unjust to sell more dearly with expected money than counted. Nonetheless they say that in the posited case the seller licitly sells dearer with expected money than counted by the principle of ceasing profit because of the fact that they are perpetual negotiators and therefore they suffer loss in the expectation of money, with which they could do more business and make more profit if they had it in their hands.

But nevertheless this opinion is sufficiently attacked with the arguments made on the affirmative part. Thence it is false that in the posited case it is truly ceasing profit, because those businessmen did not intend to sell, but neither were they able to sell with counted money, therefore indeed that profit does not cease to them.

For the decision it must be noted that the price of a vendible good can be called “present” in two modes. In one mode “present” means what is now estimated by upright and prudent men, even if not immediately and at present the price is paid physically speaking. In the other mode “present” means what is paid immediately and at present physically speaking.

It must be noted secondly that the present price in the former mode is the just price for any vendible good, but the present price in the second mode does not relate to the principle of the just price, for it sometimes happens that is joined with that whenever the just price is expected to be paid at a future time.

Note thirdly that the reason why in the buying of goods, about which we speak, the money cannot be immediately paid is because the price cannot be collected except from the
goods themselves in other places and times of selling, because the provision of goods of this sort is deferred through the whole province and the whole kingdom and thus ought to be determined by the judgment of good men at the necessary time, within which the goods of these types can be sold piece by piece and the money be gathered, whence that whole time ought to be regarded as the present with respect to the payment of such goods. This teaching is explicated further. If the seller, a great businessman who conveys a large quantity goods with ships, should send his ministers through the whole kingdom and piece by piece sell his goods with counted money, thus also equivalently when other businessmen buy such goods, they must be considered as subordinate ministers of that great businessman, although they are not entirely ministers because they are effectively the owners of the goods which they buy. Nevertheless, because it pertains to the principle of the presentness of paying the price, they are quasi-ministers, for they are businessmen necessarily subordinated for expending so many goods.

Note fourthly that the structure which is preserved by upright and prudent men in the buying of these goods is that first the just price is determined according to the present estimation, then the seller and buyer agree on the time of payment, which indeed must be determined to be more or less at the judgment of a good man, according to what he will judge necessary so that such goods may be little by little paid out by the businessmen. This whole time ought to be regarded as the present, as if the payment should be made with counted money.

FIRST CONCLUSION

With these things thus established, it is licit in the posited case to sell those more dearly with expected money, up to the agreed time, than the same goods are sold at present with counted money in small quantities. This conclusion is clear from the aforementioned foundations and the arguments made on the affirmative part.
SECOND CONCLUSION

It is not licit to sell those goods in great quantities dearer than they are estimated at present, even with expected money. This conclusion is proved by the arguments made on the negative part, and those conclusions are extended to all other great businessmen who in other regions than in the port sell goods in great quantity, provided that the same goods are not sold in great quantity at the same place and time, for then the just price of all goods would be that which is current with immediately counted money.

THIRD CONCLUSION

The businessman is usurious who, at a price determined once just as it is estimated in the present, and also with determined time of payment necessary for the expediting of the aforementioned goods, as was said, will have sold more dearly because he expects a longer time. This is proved by the same arguments made for the negative part, and proportionally it must be applied to the businessman who buys cheaper in great quantity at the same time and place because he anticipates payment before that necessary time, so that his goods might be paid out little by little.

From these sayings it follows that, with respect to diverse buyers, in the aforementioned case a diverse time can be determined to be longer or shorter as necessary for the goods be expended little by little, but nonetheless then it ought not to be more expensive for one than another, because for on the time necessary for expending the goods is longer than the other, and this whole time is regarded as the present with respect to payment.

FOURTH CONCLUSION

He who buys cheaply with counted money at the same time and place because he buys those goods little by little in small quantities buys licitly and justly. Principle. Those goods are
voluntary and therefore are rightly cheap in that place, because the seller, compelled by necessity to sustain himself in the port, sells them in small quantities, and this is a sign that the contract is licit. \textit{Proof}. At that time there is a rarity of buyers for buying those goods little by little with counted money, nor is it ill-fitting that at the same time and place there should be two distinct prices because of a distinct mode of selling.

\textbf{FIFTH CONCLUSION}

Other businessmen, who afterwards sell the same goods in particular towns, cannot sell them at a dearer price with expected money than counted money. \textit{Proof}. At that time a great quantity of those goods is sold with counted money, therefore it must be accepted as the estimation of the just price.

\textit{Response to the first argument for the negative.} I deny the major, if it should be understood concerning goods which are oftentimes sold in great quantity and hence with expected money, which ought to be collected from goods sold in other ways. Nor is it then unfitting that they are sold in small quantities at a cheap price at the same time and place, because then they are voluntary goods.

\textit{Response to the second argument for the negative.} The consequent is denied. Those conditionals not posited \textit{in esse} do not establish the just price because by the same principle it would follow that it would be unjust for anyone possessing a great abundance of grain to sell it little by little at the current price according to the common use of the market. \textit{Proof of the consequent.} If the whole grain should be displayed at the same time of its sale, it is sure that the price would decrease on account of its abundance. Therefore, those conditionals do not make the just price.
Response to the third argument for the negative. We never have conceded that, formally speaking by the principle of paying expected money, it is licit to sell more dearly than with counted, but we concede that materially speaking sometimes it is licit to sell more dearly with expected money than counted because of some just title, not only by the principle of ceasing profit or emerging loss, but also on account of the mode of selling in great quantity, by which some goods are sold necessarily with expected money, which ought to be collected from them sold at some other time or place, and that the whole time necessary for such an expediting should be regarded as the present time for those goods morally speaking.

TENTH PROBLEM

It is doubted tenthly, and finally, whether just as it is licit to sell more dearly with expected money than counted on account of the aforementioned mode of selling in great quantity, so also it can be licit by some other title to buy at a cheaper price with anticipated payment on account of the mode of the buying in great quantity, or by any other principle.

First argument for the affirmative. It is the common use men in the wool business to buy them from shepherds in the month of October or November with anticipated payment at much lower price than they are worth in the month of April or May, when they are traded. For example, they buy in the month of October with thirty silver coins one arroba of wool, which indeed when it is traded will be estimated at forty silver coins. But it is very harsh to condemn the multitude of such businessmen, therefore this is a sign that there is some title justifying such a contract.

Second argument for the affirmative. The wool business is necessary for the kingdom of Spain in many ways, not only for buying fabrics for garments, but also so that they can be

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68 A Spanish unit of measurement approximately equal to twenty-five pounds.
transported to Flanders, where they are made into tapestries, and sent back to Spain. But this
negotiation cannot happen unless a great abundance of wools is bought and sold before the
shearing of the sheep so that the negotiators can be sure that they will have them at that time in
order to prepare themselves and their ministers for washing and compiling their merchandise.

Therefore, it will be licit to buy in the month of October at a cheaper price than indeed the just
price is estimated for that time.

_Third argument for the affirmative._ A multitude of sellers rightly is the normal cause of
diminishing the price of vendible goods, but in the month of October and November many
shepherds sell wools with anticipated payment of the wools they intend to trade in the month of
April or May. Therefore, they are rightly estimated at a cheaper price in the month of October.

_Confirmation._ Then they appear to be quasi-voluntary goods on account of the necessity of the
shepherd for paying for the pastures of his flocks.

_Fourth argument for the affirmative._ The cause of the rarity of goods is the fact that the
wools will be estimated more when they are traded because already the greatest portions have
been sold at the earlier price. Therefore, the just price, which is paid with anticipated payment,
ought not to be regulated by the current price at the time the wools are traded. _Proof of the
consequent._ If the wools had not been sold already, surely they would be estimated more cheaply
at the time of shearing, because there would be a great abundance of goods. _Confirmation._ It
does not seem just that the greatest portion of the vendible goods follows the price of the
smallest portion, but the smallest portion of the wools is sold at the time of shearing. Therefore,
wools which are sold in the month of October or November ought not to follow the price of
wools which are sold in the month of May.
Fifth argument for the affirmative. Those goods of wools have by their nature the fact that the costs of feeding the flocks is collected from nourishing the wool itself, therefore since the time of paying for the pasture is earlier than the time of shearing the sheep, it follows that the just price of wools ought to be estimated and judged for the time of paying for the pasture, when the wools are sold with anticipated payment.

Sixth argument for the affirmative. The same mode of buying is licit and is used in the buying of marine fish with anticipated payment at a cheaper price, because fish cannot be preserved unless there are already sure buyers and they have paid some price for the expenses of the fishermen. Therefore, this contract of wools will be just by the same principle. Concerning this difficulty there are two doctrines. One is Master Soto’s, where he holds the affirmative part on account of the fifth argument which we make, but adds the condition that fraud be absent, namely, that payment is not made with anticipated payment except three or four months before the shearing of the sheep, or at least the same year the wool is traded. If it should be made before at a cheaper price, it will be a usurious purchase. The other opinion is John of Medina’s, where he disproves entirely such a contract of buying by common principles, by which buying is accustomed to be disproved, which is done at a cheaper price on account of anticipated payment.

To understand this difficulty, we ought to examine the practice itself, which varies easily on account of diversity in time. Indeed, when Soto and John of Medina were writing, the practice in contracts of this type of good was that nearly all wools which were sheared in the month of April had already been sold with anticipated payment, at least by the month of December, but some wealthy shepherds reserved a sale for the month of April or May. The reason for this practice was because at that time there were more buyers of wools who sent so much to Flanders

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69 Libro.6.de iustitia,quaest.4.articu.1.ad 4.
70 In lib. De restitution quaest. 88. Cap. 6.
that no fleeces of wool displayed for sale remained with the shepherds. But now in our times they do not conduct their affairs in this way, since on account of daily wars in Flanders and the risk of pirates contracts and negotiations of wools are not as frequent, but there remains entirely with the shepherds a great multitude of fleeces, so much that they are sold afterwards even in the month of December, partly with counted money, partly with expected. Now, therefore, if we speak concerning that earlier time, we have our first conclusion.

**FIRST CONCLUSION**

The opinion of Master of Soto is probable on account of the arguments for the affirmative part. The reason why, at the time of trading wool which had been sold with anticipated payment, other wools were sold at a dearer price with counted money, was because there was then a rarity of goods and a frequency of buyers. This reason was quasi *per accidens* with respect to the just price of wools which had been sold in very large quantities with anticipated payment. Many doctors from our family of preachers adhere to this opinion.

**SECOND CONCLUSION**

At the same time it is more probable to me that that sale is unjust and usurious. *First proof.* By an equal principle from the opposite opinion it would follow that it is licit to buy with anything whatsoever the fruits of the earth from farmers suffering necessity at a cheaper price than they would be worth at the time of trading. *Proof of the consequent.* This is by the same principle of both of the earlier contracts. Such a contract has a manifest species of usury, for it contains implicitly a loan from which the lender receives profit, e.g., for 30 given at present he receives 40 at the time of the shearing of the wools. But if anyone should say that only the shepherd does not sell immediately the wools when he receives the counted money, but sells the obligation of repaying a certain quantity of wools at the time of shearing, that solution
nevertheless does not suffice, since the obligation for returning 40 is worth 40 and the buyer
gives 30. Therefore it is usurious, if he should give 30 intending to receive 40. Second proof.
There is no principle sufficient for excusing contracts of this sort from usury. Therefore, since it
has a species of usury, it is usurious. The antecedent is proved by solving the arguments of the
affirmative opinion and also proposing new reasons which prove that this contract is usurious.

Response to the first argument for the affirmative. This convention is unjust, like many
others in the republic, although sometimes businessmen are excused by the authority of the
doctors who they consult. Sometimes they are not excused because they do not wish to know the
truth, but feign ignorance to avoid making restitution.

Response to the second argument for the affirmative. The consequent is denied. At that
time such a negotiation of wool could be done in two modes. In one mode, by buying them with
expected money at the time of trading the wools at the same price at which they were then
valued; in the other mode, with counted money and anticipated payment at the same price at
which they were valued at the time of trading.

Response to the third argument for the affirmative. The multitude of sellers in the posited
case was exceeded by multitude of buyers who were diligently seeking wool to buy it at a
cheaper price with anticipated payment, wherefore that multitude of sellers did not diminish the
just price. But the necessity of shepherds in this case was such that they sought money nearly at
interest, whence although that contract is called one of buying, it was not a true sale when it
comes to its substance, because goods were not traded.

Response to the confirmation. These are not voluntary goods properly speaking. First,
because there are not very many buyers seeking them. Second, because indeed for then those
goods did not actually exist but had to be produced in the flocks, wherefore selling nothing at
present they trade nothing but the obligation of trading wools at a time when they are valued more dearly. Therefore, if any other businessman should buy that obligation of trading forty at the time of shearing for thirty at present with counted money, he will be a usurer. Thus, he who is said to buy wools about to be worth forty for thirty in counted money at present will be a usurer.

Response to the fourth argument for the affirmative. In that case the reason of why the price was increased at the time of shearing was not only the rarity of vendible goods but also a multitude of buyers so great that if no goods had been sold with anticipated payment, then the price would increase on account of the multitude of buyers.

Response to the confirmation. It is not sufficiently established whether the greatest portion of the wools is sold with anticipated payment. Indeed, the wealthy shepherds did not sell with anticipated payment. Then the shepherds who are less rich did not sell, except as much wool as was required to pay for the pastures for their flocks. But let us grant it to be the case that in the month of November or December the greatest portion of wools should be sold, it does not from that follow that the just price is what is paid with anticipated payment. For by the same principle it would follow that if someone should sell at the same time and place wools for trading in the month of June at the price at which it is then valued, that contract would be unjust on the part of the seller. The consequent is obvious, because according to the other opinion, the smallest quantity ought to follow the price of the greater quantity, which was sold with anticipated payment. That the consequent is false is most manifest, since this contract is approved by all insofar as it is just with expected payment at the price at which the goods are valued at the time of trading, as we have said.\textsuperscript{71}

\textsuperscript{71} Tits.4.conclusione.2.&titu.5.argumento.2. contra Caietanum.
Response to the fifth argument for the affirmative. The consequent is denied, because by an equal principle it would follow, as we have said, that it is licit to buy the future fruits of the earth at a cheaper price with the obligation of trading when they will be worth more. Similarly, it is licit to buy from shepherds meats from their flocks at a cheaper price with anticipated payment than the goods are worth at the time of trading.

Response to the sixth argument for the affirmative. The consequent is denied, nor is it by the same principle. First, because fish cannot be preserved unless there are ready buyers present, who would receive what they had bought beforehand, whether with expected or counted money. But wools can be very well preserved. Thence there is a difference, since fish are bought before they are caught at the same price with counted money and expected payment at the same time and place, but wools are not bought at the same price with counted money and expected payment. We conclude therefore that the common rule is that a contract of buying and selling at a lower price with anticipated payment than expected is usurious on the part of the buyer, as Saint Thomas teaches, except when there applies some obvious title of those which we approve, e.g., of ceasing profit or emerging loss.

FINAL CONCLUSION

If we speak concerning the practice itself in our times, the sale of wools at credit at a dearer price with counted money than expected is unjust and usurious. Principle. Now there is de facto a great multitude of fleeces of wool with those shepherds who sell with counted money in the month of October, of November, and of December at a cheaper price than with expected payment. It is agreed moreover that the rule of the just price is the common use of the market when the goods are traded with counted money in great quantity, and therefore if they should be

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72 Quaestione.78.artic.2.ad septimum.
sold at a dearer price with expected money, then that contract is implicitly usurious. And these sayings should suffice concerning that question.