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# **NORM, VIRTUE AND INFORMATION: THE JUST PRICE AND INDIVIDUAL BEHAVIOUR IN THOMAS AQUINAS' *SUMMA THEOLOGIAE***

André Lapidus

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Question 77 of the *Summa Theologiae* (II<sup>a</sup>-II<sup>ae</sup>) contains the crux of the analysis Thomas Aquinas devotes to the just price<sup>1</sup>. The expression itself (*justum pretium*) however appears only rarely in these passages<sup>2</sup>, and a cursory reading might lead one to conclude only too readily that the object of these few pages is to be found elsewhere. In some respects, such a spontaneous reading would be a fair one. Although Question 77 bears the heading “On the fraud committed in purchase and sale”, its object, which is much more complex, only deals indirectly with the just price. Alone, however, this heading does make it possible to assess the extent of the investigation Thomas Aquinas carries out. This does not in any respect mean drawing up a price theory that would contain its own principle of intelligibility. The objective here, is more limited, and reveals the subordinate character of economic thought: by way of a group of normative prescriptions, tending to distinguish that which is just in commercial transactions from that which is not, the issue is one of enlightening a confessor vis-à-vis his penitent, or even the judge in an ecclesiastical tribunal. From this perspective, the Thomistic construction brings together two levels of analysis. The first involves establishing a referential norm - the just price - (section 1), whereas the second deals with the circumstances, which allow the priest to obtain the correct information that had caused the transaction price to reach this norm or, on the contrary, to depart from it (sections 2 and 3).

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<sup>1</sup> A great deal has been written on the scholastic theories of the just price, and the question could hardly be bypassed, even in more general works in medieval economic thought. In this literature, two contributions are remarkable for the wealth of their references and for their analyses of often inaccessible primary sources: first, the monograph by J. Baldwin [1959] which reviews the theories of the just price in 12th and 13th c. theologians and canonists; second, the recent work by O. Langholm [1992] on the Parisian tradition in medieval economic thought from 1200 to 1350. Among the works in which the interpretation of the just price is given particular consideration are D. Barath [1960], R. De Roover [1958] and [1971] (chap. V), B.W. Dempsey [1935], H. Defalvard [1989] (p. 108 sqq.), D.D. Friedman [1980], O. Hamouda and B.B. Price [1993], S. Hollander [1965], J. Ibanès [1967], A. Lapidus [1986] (chap. I and II), and [1992a], C. Spicq [1935], G. Wilson [1975] and S.T. Worland [1977].

<sup>2</sup> Thomas Aquinas uses the phrase “just price” only three times, and all three in Article 1 (resp.; ad 1; ad 2) - the other three articles excepted.

This approach raises a particular difficulty. Understanding what founds the just price in Thomas Aquinas' writing involves conceiving society as a finalised whole that leaves no place for the specificity and diversity of individual behaviour. On the other hand, if we aim not to explain what the just price should be, but to catalogue the reasons that lead a transaction either to be concluded at the just price or, on the contrary, to depart from it, it is precisely the issue of individual behaviour that comes to the forefront<sup>3</sup>. There is, however, no paradox here: in relation to the world the individual has no existence outside his function within the social body, whereas in relation to God the Christian remains an individual capable of sin. It is precisely this possibility of sin that makes it possible to introduce individual behaviour into an understanding of price from which it was initially excluded. Very simply, we shall stress that the very nature of the question raised - that of sin - governs the way in which individual behaviour should be understood: this obviously does not involve taking into consideration the expression of the preferences of individuals who are trying to get the greatest satisfaction possible from their transactions; it is by virtue and by vice that individual behaviour will contribute to the formation of a transaction price.

## 1. The referential norm: the just price

### 1.1. The virtue of justice in the just price

Fraud, an understanding of which requires the prior determination of the just price, is a sin against justice. Now, if sin is possible, it is because according to Thomas Aquinas justice stems from virtue, and thereby not only from civil laws, but also from morals<sup>4</sup>. However, its nature differs from that of the other moral virtues. Whereas the latter are intended to rectify the inner passions of each individual, justice concerns neither an isolated individual, nor even interaction between individuals, but an external operation that is independent of the individual: "law, in the works of justice, is made up of its relation to others, even disregarding the subject [...]. Consequently, we give the name of just, with all the rectitude of justice that it bears, to that to which the act of the virtue of justice leads, without any concern for the way in which the subject accomplishes this, whereas, for the other virtues, it is on the contrary the way in which

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<sup>3</sup> Although the problem is dealt with differently by O. Hammouda and B. Price [1993], it nevertheless lies in a duality similar to that which is focused upon here, presenting the just price as the resultant of ethical and economic determinations.

<sup>4</sup> Without drawing any conclusions as to the author's explicit project, O. Langholm ([1992], p. 223, n. 10) however notes that Thomas Aquinas does not use the proper legal term, "*fraus*", but "*fraudula*".

the subject acts which serves to determine the rectitude of what he does” (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 57, a. 1, resp.)<sup>5</sup>.

The distinction between inner passions and external operations is not a vain sophistication. If, from a juridical point of view, the objective character of a rule of justice comes from the exteriority of the law, the question is not as easily resolved in the moral order. The solution adopted by Thomas Aquinas draws from two arguments, both of which are related to the Aristotelian tradition. The first leads to seeing this external operation that “implies a given relation with others” in the subject matter of justice; and it is with insistence that the author of the *Summa Theologiae* claims: “It is therefore in the equality of the proportion of this external reality to external persons that the medium of justice lies. Now, this equality actually holds the medium between the plus and the minus, as is said in the *Metaphysics* [IX, 5]. Justice therefore has an objective medium [*justitia habet medium rei*]” (*Ibid.*, q. 58, a. 10, resp).

The second argument shows that the external operations the virtue of justice aims for are only related to interpersonal relations insofar as the individuals present are socialised at once as part of a whole that transcends them and whose common good - that of the species - prevails over private goods<sup>6</sup>. This is indeed an organicist and teleological understanding of society, which Thomas Aquinas borrows from Aristotle. It is to be found in the commentaries on the *Ethics* and the *Politics*, as well as in the passages in the *Summa Theologiae* drawing from moral and political philosophy: “it is obvious that all those who live in society bear the same relation to that society as the parts to the whole. Now, the part, in itself, is but part of the whole; hence, it follows that the good of the part must be subject to the good of the whole” (*Ibid.*, q. 58, a. 5, resp.). The fact that society is finalised refers to a novel analysis which develops the Aristotelian thesis of a hierarchy of natures, making explicit the way in which this is inscribed in the design of Creation. If God constitutes the ultimate end of the Universe, it is by the intermediary of superior beings - men gifted with reason - that he governs inferior beings. Therefore, it is not merely a holistic representation of society that is at stake. Indeed, the finality of the species, that of humanity, will be incarnated in the good of society, which cannot be reduced to the sum of individuals’ goods any more than society may be reduced to the sum of the individuals that compose it. But there is more.

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<sup>5</sup> See also *Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 58, a. 9, ad 2.

<sup>6</sup> See *ibid.*, I<sup>a</sup>, q. 50, a. 4, ad 3.

Each individual is in the position of an agent between God and the world<sup>7</sup>. As a spiritual being, who thereby surpasses the society in which he is immersed, his vocation is to accomplish the good of society as a whole. And it is by the use of external goods that he contributes to the realisation of the divine plan.

When it comes from justice, as a moral virtue independent of any positive institution, the just price appears as an external norm which acquires its meaning only at the level of society as a whole. The understanding of this norm involves a more precise identification of the justice it depends on.

Now, this identification is not as simple as a hasty reading might suggest it should be. In various respects, general justice as well as particular justice are involved in commercial transactions. However, the relation is only indirect in the case of general justice, which aims for the common good<sup>8</sup>, and subordinates particular goods to it. The same does not apply to particular justice which, via its subjective parts - distributive justice and commutative justice - has a bearing on “the distribution [*distributio*] and exchange [*commutatio*] that constitute a use of external realities” (*Ibid.*, q. 61, a. 3, resp.).

At first sight, the gap between distributive justice and commutative justice seems to be impassable. The first governs the relations between society and its members as relations between the whole and its parts<sup>9</sup>: it concerns the distribution of a common good. The second governs relations between individuals as parts of a whole<sup>10</sup>: this is a question of exchanges, whether voluntary or involuntary, between two individuals. Moreover, the happy medium which characterises justice is established differently. In distributive justice, Thomas Aquinas subordinates distribution to the position of each person within society, that is, to his contribution to public happiness: “all the more common good is given to somebody as their place in society is prominent” (*Ibid.*, q. 61, a. 2, resp.). On the contrary, commutative justice is founded on a principle of compensation, in which “one must equate one thing with another” (*Ibid.*), independently of the social position of the parties present. In this way, following Aristotle, Thomas

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<sup>7</sup> This is the idea of “agency” which is to be found, for example, in the way Aquinas appreciates the relations between men and external goods. He mentions at this juncture the power to manage and dispose (*potestas procurandi et dispensandi*). See *Summa Theologiae*, II<sup>a</sup>-II<sup>a</sup>e, q. 66, a. 2, resp.

<sup>8</sup> *Ibid.*, q. 58, a. 5, resp.; a. 6, resp.

<sup>9</sup> *Ibid.*, q. 61, a. 1, resp.

<sup>10</sup> *Ibid.*

Aquinas concludes that the happy medium is established “according to a geometric proportion” in the one case, “according to an arithmetic proportion” in the other <sup>11</sup>.

But, on the other hand, Thomas Aquinas stresses the similarity between the two types of particular justice, if this is understood as “everything whose use is an external operation”: “for things can be taken out of the community in order to be distributed among individuals as much as exchanged between them” (*Ibid.*, q. 61, a. 3, resp.). Although its extent is limited, this identity forbids a definitive dissociation of the two kinds of justice. Moreover, although Thomas Aquinas inscribes commercial transactions in the domain of “voluntary exchange” which clearly comes from commutative justice <sup>12</sup>, the links with distributive justice can never be definitively broken.

## **1.2 Need, labour and expenses: the foundations of the just price**

The question of the characterisation of prices that are considered as just from the point of view of commutative justice is not thereby resolved. This is, however, the best known and most debated aspect of the Thomistic doctrine of the just price. We shall consequently restrict ourselves to recalling some striking features. What is most surprising is that the *Summa Theologiae* says nothing about this - as if the simple fact of evoking the principle of the “equality of one thing to another” were enough to provide information about what should determine the values set in relation to one another by the exchange. This omission has doubtless favoured the later confusion between the question of the characterisation of the just price on the one hand, and that of the priest’s or the magistrate’s knowledge of this on the other hand, knowledge which constitutes a major preoccupation in the *Summa Theologiae*. On the contrary, the characterisation of the just price, independently of how it is known, comes to the forefront in Thomas Aquinas’ commentaries devoted to the passages in Aristotle’s *Ethics* concerning the

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<sup>11</sup> *Ibid.*, q. 61, a. 2, ad 2. It shall be noted, however, that the classification in the *Ethics* led to opposition between distributive justice (*Ethics*, V, 3), corrective justice (*Ibid.*, V, 4) and reciprocal or exchange justice (*Ibid.*, V, 5). The last two categories in Albert the Great and Thomas Aquinas merge to give commutative justice. This merger has repercussions on the respective borders of distributive justice and commutative justice: Aristotle thus showed that corrective justice could not be assimilated to reciprocal justice since, for example, the compensation of an offence (corrective justice) took the social condition of the victim into account, when a simple transaction (reciprocal justice) ought to ignore the status of the parties.

<sup>12</sup> “In all such actions [the exchange], whether voluntary or involuntary, the happy medium is determined in the same manner: equality in compensation; that is why all these actions proceed from one single type of justice - commutative justice” (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 61, a. 3, resp.).

place of justice in exchange. Now, the theologian's procedure consists in proposing a double foundation, i) for the just price, and ii) for its measure.

In the first case, the purpose was to show that the just price for exchanged goods depends on the "labour and expenses" (*labores et expensae*) of the parties involved, but also on human "need" (*indigentia*)<sup>13</sup>. In the second case, the commensurability of goods depended on the same need, as well as on the introduction of money. The double measure hardly ever raises difficulties, since money obviously appears to be a convention of reason that is added to the natural measure represented by need. Things are quite different for the double foundation of the just price.

Yet, founding the just price on need, as well as on labour and expenses, is not as contradictory as it might seem. In fact, the difficulties in understanding Thomas Aquinas' position today seem to be largely due to the contemporary habit of considering the determination of prices from a perspective in which "need" - or, more precisely, an order of preferences - on the one hand, and "labour and expenses" - say, technology - on the other, constitute two exogenous explanatory factors. Analysing the just price through this prism can only lead to finding the properties and the difficulties of much more recent constructions<sup>14</sup>. Need, on the one hand, and labour and expenses on the other, would appear there respectively: as the counterpart of demand which, coupled with supply, determines a market price; as the elements that generate market prices over short and long periods; as the juncture between a need which would be a simple prerequisite and a price determined by production costs; or, on the contrary, as a price dependent on demand but limited downwards by production costs. And if it seems impossible to reconcile these two elements, one concludes that the work of Thomas Aquinas is riven with the conflicting coexistence of two theories of the just price<sup>15</sup>. Now, if need, and labour and expenses, do indeed play an essential role in the determination of the just price, it is in no respect because they are exogenous factors prefiguring consumers' preferences and technology, but as endogenous factors that are themselves determined by a process whose joint results they represent<sup>16</sup>.

This process depends on the singular place that man occupies in Creation. Blessed with reason, he is capable of acceding to an understanding of the common good

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<sup>13</sup> *Ethicorum*, V, 19.

<sup>14</sup> Among the works expounding this approach are notably R. De Roover [1958] (pp. 421 ff.), D. Barath [1960] and J. Baldwin [1959].

<sup>15</sup> See S. Hollander 1965].

<sup>16</sup> See G. Wilson [1975] and S.T. Worland [1977].

and of working towards its achievement. Man is thus more than a simple product of Creation - he is also its agent. The natural law of ownership (the human “dominion” - *dominium* - whatever form this may take: private or collective property) far from contradicting the existence of a divine “dominion”, of God’s ownership of all things, on the contrary takes from this its *raison d’être*: “God, as a principle, has dominion over all things. And it is He who, according to His Providence, has ordained certain things as man’s corporal support. And that is the reason why man naturally has dominion over these things, in that he has the power to use them” (*Ibid.*, q. 66, a. 1, ad 1). It is this activity of agency, contributing to the realisation of the divine plan by transforming nature, which finalises both human needs and a social hierarchy which finds its counterpart in the remuneration of merchants’ labour and expenses <sup>17</sup>. In this way, if the material cause and the formal cause of the production of wealth should be sought respectively in the means of production and in their combination, need and labour clearly make up the final and efficient causes of this. Their divergence would thus be a contradiction between these very final and efficient causes, which would make the production of material goods unintelligible.

Such an interpretation is confirmed by the way in which Thomas Aquinas approaches “need” and “labour and expenses”. Yet, it would be tempting to perceive in the understanding of the “need” that founds the just price and its measure a subjective dimension which would thus foreshadow a utility theory of value. Indeed, such interpretations are not lacking <sup>18</sup>. A more circumspect reading, however, leads to rejecting these. The fact that exchange, according to Thomas Aquinas, is characterised by its being mutually advantageous <sup>19</sup> should not mislead the contemporary reader. The “need” and “utility” of the goods here in question refer to an organicist and finalised conception in which subjective perceptions have no place. When Thomas Aquinas discusses whether the possession of external goods is natural to man (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 66, a. 1), he justifies this possession by evoking the utility of

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<sup>17</sup> The same argument explains that the hierarchy of external goods, which is subject to men’s assessment, should be distinct from the hierarchy of natures. Indeed, nature provides a primary structure of external realities. It is this structure that Aquinas refuses in *Summa Theologiae*, noting - after Saint Augustine - that “the price of things is not no be assessed from the hierarchy of natures, since sometimes it may happen that a horse is sold at a higher price than a slave” (II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 2, ad 3) or, even more explicitly, in the following commentary on the *Ethics*: “different things are impossible to measure by the very properties of the thing, but they are measured by a comparison of the possibility of fulfilling the human need they contain” (*Ethicorum*, V, 9).

<sup>18</sup> For an analysis of the interpretations of the just price in terms of utility value, see A. Lapidus [1986], pp. 20-21.

<sup>19</sup> “Buying and selling were implemented for the common good of both parties, for each needs the other’s products and *vice versa*” (*Ethicorum*, V, 19).

man's appropriation of external things in order to carry out the divine plan. Is it necessary to stress that such an understanding of utility leaves no room for idle fancy? Indeed, it does not reside in a subjective perception, dependent on the whim of each individual, but, on the contrary, in an aptitude of things<sup>20</sup> to ensure the functioning of the social organism. Human need thus generates a hierarchy of goods which differs from the hierarchy that their nature stipulates, but which is no less independent of the possible discrepancy between subjective perceptions.

Besides, founding the just price on "labour and expenses" comes down to admitting that it results in a distributive effect<sup>21</sup>. In this regard it may be considered as coming from justice in exchange (commutative justice), as well as from justice in distribution (distributive justice). Here we once again come across the already mentioned link between the two particular forms of justice, with the additional difficulty of distributive justice no longer involving a common good, but goods being privately appropriated. This difficulty should not, however, be overestimated. For Thomas Aquinas, private property does not stem from natural law proper, but, as in Saint Augustine or Gratian, from people's law (*jus gentium*). The way in which this is understood, following the Roman jurists, disqualifies private property from being legitimately at the origin of distributive effects that contradict those that distributive justice authorises within the framework of the distribution of the common good. People's law indeed owes its existence to the double nature of man, part animal, and part spiritual, that is capable of reason. From the one comes the natural law "of first instance", natural law in the strict sense of the term, and from the other natural law "of second instance", or people's law<sup>22</sup>. Thus people's law does not contradict "the community of goods [which] is said to be of natural law, not that natural law prescribes that everything must be commonly owned and that nothing can be made one's own, but insofar as the division of owned things is foreign to the prescriptions of natural law"

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<sup>20</sup> It is this idea of a just price dependent on the aptitude of things that is to be found, for example, in the discussion of differences between natural gold and that which might be obtained by alchemy: "if the gold or silver made by alchemists does not have the genuine matter of gold and silver, their sale is fraudulent and unjust. Especially since there are certain uses of gold and silver, dependent on their natural properties, for which alchemists' artificial gold is not suitable, such as the property to make someone happy or to serve as a remedy for certain illnesses. Besides, genuine gold can be used more frequently, and keeps its purity longer than artificial gold. But if genuine gold were made by alchemy, it would not be illicit to sell it as such" (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 2, ad 1).

<sup>21</sup> A different interpretation is given by O. Langholm [1992], pp. 228-229. Labour and expenses are therein understood not as the expression of a cost of production, but as a kind of "principle of indemnity", a product of the influence of Albert the Great, all the more easily transformed as the Latin tradition of the *Ethics* on which Saint Thomas drew had substituted the term "*indigentia*" for the more ambiguous term "*opus*" that had been used in former translations. See also O. Langholm [1987], pp. 122-123.

<sup>22</sup> See *Ethicorum*, V, 12 and *Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 57, a. 3.

(*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 66, a. 1). Since it implies the capacity of one's reason to anticipate the consequences of one's actions, people's law not only does not contradict the principles of natural law, but accomplishes them through positive institutions such as private property. It is this preoccupation that is implied in Thomas Aquinas' justification of private property. More precisely, he identifies in it the institutional response to what to-day would be called a "moral hazard" leading to less "care" (*cura*) being given to external goods when these are common property than when they are private property<sup>23</sup>. Yet, the same argument leads to the rejection of any use of private property that might contradict the principles of natural law. Man remains in a position of agent between the Creator and Creation, and his appropriation of goods, whatever the form of this property, remains a "right to manage and dispose of" (*jus procurandi et dispensandi*) that conforms to the common good. It follows that if the private property of goods cannot but achieve what reason might have expected from common property, the distributive effects of a just price which rewards the merchants' labour and expenses are precisely those that are triggered off by a distributive justice likely to extend to private transactions.

### 1.3. Knowing the just price

By no means is the purpose of Question 77 in the *Summa Theologiae* to reconsider a characterisation of the just price which, mainly on the basis of the commentary on the *Ethics*, seems complete. By laying stress on fraud, on the gap between the just price and the transaction price, Thomas Aquinas shifts the emphasis from the construction of a theory to the knowledge of its effects by those taking part in the exchange process, as well as by the magistrates and the priests: the question is how to know the just price, even if what founds it is known. Here again, the answer is only an indirect one. Curiously enough, the various examples in the *Summa Theologiae* that illustrate variations from the just price and that question largely their interpretation and sanction, bypass the question of knowing the norm that is used as a reference for analysis. What is more, one feels that the few elements that sometimes help identify this norm are merely part of an auxiliary device. This is the case, for instance, when Thomas Aquinas seems to yield to the appreciation of public authorities<sup>24</sup>, or when he suggests

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<sup>23</sup> *Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 66, a. 2, resp. Aquinas' argument, however, includes other elements. For a more detailed analysis, see A. Lapidus [1992a], pp. 31-33 and O. Langholm [1992], p. 212-214.

<sup>24</sup> "However, in each place it behoves the leaders of the city to determine what the just measures of the things sold are, taking the conditions of places and things into account" (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 2, ad 2).

that the just price may be approached from the just gain of the merchant who thus receives “reward for his labour” <sup>25</sup>.

Knowing the just price therefore does not seem to be a matter of importance. This means that the source of the difficulties in identifying it is to be found elsewhere. In the *Summa*, when one or the other party does not know the just price, it is because the buyer or the seller - sometimes both - is imperfectly informed as to the properties of the object of the transaction: such is the case of the book proposed below its just price (q. 77, a. 1, ad 2), of the brass that the seller mistakes for gold (a. 2, resp.), of the alchemists’ gold compared to natural gold (a. 2, ad 1), of the healthy home compared to the plagued home (a. 3, pr. 2), or of the corn sold in a country where there is none by a merchant who is unaware of this fact (a. 3, pr. 4). In all these examples, things and their uses might be difficult to know <sup>26</sup>; but as soon as they are known, *need* immediately provides the measure of their just price.

Fraud thus becomes possible through the manipulation of information about the commodity, which is itself sometimes difficult to know (and not through the manipulation of information about the just price, which is easily known) as is the case when a buyer, for instance, is able to acquire gold for the price of brass (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 2, resp.). Generally it is not because the seller is unaware of the actual price of gold that this becomes possible, but because he is mistaken about the nature of the metal. From another point of view, this opportunity to manipulate - or not - the information about commodities paves the way for individual behaviour to enter the Thomistic theory of price in order to explain possible variations from the just price.

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<sup>25</sup> *Ibid.*, a 4, ad 1.

<sup>26</sup> On this question of possible defects in the commodity, see *infra*, § 3.2.1.

## 2. The outbidding of virtue

While subjective appreciations are discarded for an understanding of the just price, individual behaviour, however, constitutes the relay point that is likely to give rise to a transaction price. The various examples in the *Summa Theologiae* suggest that these types of individual behaviour should be understood not as the expression of an order of preferences, but as the achievement - or the transgression - at an individual level, of a virtue of justice in a context that is open to several alternative information patterns.

When the price is approached by means of individual interactions, the *Summa Theologiae* presents it as *negotiated*. This term is to be understood in its strict sense. It results from a one-to-one relationship between the buyer and the seller, in which the legal form of the transaction - a synallagmatic contract - brings to light reciprocal obligations: the transaction sanctions a particular price which stems from previous commitments. There is little in the *Summa Theologiae* about the interaction process that leads to these commitments. At most, one may identify the guideline that links the assumptions about the morals of the parties involved to the transaction price: as a rule (of course, exceptions may occupy a crucial place here) the virtue of the two parties and the vice of at least one of them are respectively associated with the just price and a transaction price that varies from it. After all, one may consider that such a delimitation is enough for the priest in the exercise of his ministry. But in a more analytical way, an economist would find it difficult to be satisfied with this. However, if strictly speaking most of the negotiation procedure remains obscure, textual elements enable one to elucidate what makes it possible, namely the construction of a negotiation set made up of the different prices for which the transaction context is likely to produce binding precommitments. In turn, the existence and the properties of this negotiation set depend on the prices acceptable to each party. It is in order to give a meaning to this acceptability that the considerations concerning the seller's and the buyer's virtue come into play.

Although one lacks elements for a thorough elucidation of the procedure used to determine a transaction price, one can at least understand its initial stages - those leading to the identification of a set of prices that the two parties find acceptable.

### 2.1. Virtuous conjectures and the just price

The simplest case - that of a bilateral transaction in a perfect information situation - makes it possible to discern the role of virtue in the psychological mechanism

that leads up to the setting of a transaction price. Thomas Aquinas introduces this when discussing the various forms of the common sense idea that it would be possible to sell a good for more than it was worth. The argument draws on the well-known passage in the Gospel according to Matthew <sup>27</sup>: “All things whatsoever ye would that men should do to you, do ye even so to them” (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 1, sed contra).

Keeping to the Gospel precept obviously has much wider implications than simply respecting an imperative governing commercial relations. But it is also that. It grounds in each person’s reason the principle of compensation that governs commutative justice - an “equality from thing to thing” - and explains how virtue leads to the just price, whereas vice leads away from it. From an analytic point of view, the operation consists in restraining, for each individual, the set of acceptable prices - those, therefore, likely to be submitted to negotiation. For the sake of convenience in this presentation, two stages might be distinguished.

The first, which starts from a conjecture on transaction prices that one assumes protect the interest of the other party, leads to the exclusion of any transaction price likely to damage this other party. Both the buyer and seller thereby retain as acceptable prices the very prices that would be acceptable to them if they were in their partners’ position; thus the virtuous seller will agree to sell at a price that is below, or equal to a critical value above which he would have felt cheated had he been the buyer: “nobody wishes to be sold something more than it is worth” (*Ibid.*, a. 1, sed contra). The same goes for the virtuous buyer: imagining that he could be the seller, he will agree on prices located above this value under which his partner would have been wronged. For each party, the set of prices acceptable to him is thus bounded by this critical value - what the exchanged thing is “worth” - whether this be from above, as in the case of the seller, or from below, as in the case of the buyer.

The second stage introduces an additional restriction to the set of acceptable prices, by fixing a lower bound for the seller, and an upper bound for the buyer. This new restriction is not linked to a virtuous conjecture about the other party’s interests either, but to the interests of the buyer or seller who is directly concerned and, through him, to the nature of the exchange relation. For the author of the *Summa Theologiae*, this is subordinated, in its very existence, to the presence of an exchange surplus whose sharing conditions, as various as they may be, ensure that neither of the partners’ initial situations will deteriorate: “purchase and sale seem to have been instituted for the common interest of both parties, for each needs what the other owns” (*Summa*

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<sup>27</sup> Matthew, 7, 12.

*Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 1, resp.; see also *Ethicorum*, V, 19)<sup>28</sup>. One could doubtless imagine things otherwise - that an individual renounces a commodity he owns without getting any benefit in return, for example - but this would then be an act of charity, and in no respect an exchange relation governed by commutative justice<sup>29</sup>. Following this, one must concede that the set of prices acceptable to the seller (resp., to the buyer) is bounded from below (resp., from above) by a reservation value under (resp., above) which his initial situation would deteriorate, and from above (resp., from below) by a critical value above (resp., under) which he thinks that his partner would suffer loss. In this way, the prices likely to be accepted by one or the other party in order to conclude the transaction have a double legitimacy: on the one hand, they result from the relation being an exchange relation and, by this fact, conform to the direct interests of the exchangers; but, on the other hand, they result from virtuous conjectures about the other party's interests, these also being included within the framework of this exchange relation.

The possibility of exchange and, consequently, that of the existence of a transaction price, depends on the existence of an intersection between the two sets of acceptable prices; that is on the relative positions of what we have designated as the buyer and seller's critical values and reservation values. A first case may be dismissed from the outset, namely a situation in which the buyer's reservation value is lower than the seller's. No transaction price would then allow for an improvement in the initial situations of the two parties, in such a way that it would be impossible to recognise here an exchange relation. We shall therefore be concerned exclusively with the symmetrical case.

To the contemporary economist this no doubt suggests a simple, but inappropriate, solution. Let us interpret each party's critical value as the reservation value of the other party<sup>30</sup>. The negotiation set that covers the prices acceptable to both partners would henceforth consist of prices which improve the initial situation of both parties. Each price within the negotiation set would then be acknowledged as a

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<sup>28</sup> The same idea (that the non-deterioration of the initial situation constitutes a prerequisite for economic activity) is to be found in the comment on the *Ethics* where Thomas Aquinas subjects the very existence of exchange between a mason and a farmer to the equivalence of "labour and expenses" that are contained in their products (*Ethicorum*, V, 9).

<sup>29</sup> "If somebody voluntarily gives another what he does not owe him, he commits neither injustice nor inequity. For man owns a thing through his will" (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 59, a. 3, ad 1). Another interpretation would acknowledge this as a special case of "exchange by accident". See *infra*, § 2.2.2.

<sup>30</sup> This means that the seller, for instance, would not make any difference between cheating his partner and causing his situation to deteriorate.

cooperative equilibrium, which clearly evokes the idea of the core of an economy. At this stage, one notes that the negotiation set resulting from virtuous conjectures is the same as that which would be reached working from selfish calculations. So long as we remain ignorant of the characteristics of the negotiation process that enables one transaction price to be retained out of many possible prices, the acceptance of a price commonly agreed upon (for example the just price), whatever the way in which the negotiation set was constructed, would characteristically result in cancelling out the cost of this negotiation and, since this is generally high, in being consequently preferable for both parties. It is this conclusion that D. D. Friedman [1980] reaches in his presentation, within the framework of scholastic thought, of the exchange relation as a bilateral monopoly in which the just price cancels out the transactions costs (but this after a different procedure - different insofar as it leaves, for example, no room for the idea of virtuous conjecture and reduces the behaviour of the exchangers to a calculation of their individual interest)<sup>31</sup>. Nonetheless, two arguments can be forwarded for the rejection of this interpretation.

Firstly, it is highly debatable that the reservation value, from which the surplus of the exchange may be evaluated, can be considered as an effect of the subjective preferences of the concerned party. Yet it is obviously need that justifies this and explains, for example, in the *Summa Theologiae*, the “prejudice” suffered by a seller who agreed to a transaction at a price below the reservation value. But it is still a socially finalised need, the same that founds the exchange relation (*Ethicorum*, V, 19) that the buyer’s or the seller’s reason tells him is the result of the multiple imperatives of virtue. On the contrary, an increase or a decrease in the reservation value reveals an alteration in virtue. This therefore appears in two ways in the establishment of a set of acceptable prices by one of the parties: first, in the construction of a virtuous conjecture on prices that do not involve the other party a loss; second, by the determination of their own reservation value.

But these remarks only lead to a reinterpretation of the reservation value. It is thus the second argument that is decisive: nothing in the writings of Thomas Aquinas authorises the hasty assimilation of each party’s critical value to the other party’s reservation value.

The problem of determinating a transaction price, the solution to which would have to be sought in the existence of a negotiation set, thus remains open, so long as the

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<sup>31</sup> For a critical discussion of this type of retrospective reading of theories of the just price, see A. Lapidus [1992b], pp. 2-7.

critical values of the exchange partners are unidentified. Now, the *Summa Theologiae* combines in the same passages two conceptions of the critical value. These refer respectively to what Thomas Aquinas terms exchange “in itself” (*secundum se*) and exchange “by accident” (*per accidens*).

In exchange “in itself”, the relation is independent of the nature of the links between the buyer and the seller. To simplify, one might say that it draws on reciprocal anonymity. An immediate conclusion is that one party’s critical value can by no means be the other’s reservation value, obviously because the latter is not known by the party that is not directly concerned<sup>32</sup>. The objective dimension of the virtue of justice here plays a determining role: the critical value above or below which a party can consider himself cheated does not depend on any subjective appreciation. When Thomas Aquinas explains that the buyer would consider himself cheated if he had bought something for “more than it is worth” (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 1, sed contra), he does not refer to any deterioration in the buyer’s situation, but to a deviation from commutative justice - i.e. from the just price - the rules of which, exterior to the individuals, are supposed to be known by everyone<sup>33</sup>. The same occurs, of course, for the seller. A departure from the just price within a transaction, therefore wrongs either the buyer or the seller, who both know this. The just price is then both the buyer’s and the seller’s critical values.

Virtuous conjecture, for the seller, comes down to admitting that the prices acceptable for the transaction will be equal or inferior to a critical value - the just price, in the case of exchange in itself - above which he would feel “cheated” if he had been the buyer; nevertheless, his participation in the exchange testifies that his reservation value is inferior to this just price. For the same reasons, the buyer recognises as acceptable prices that are equal or superior to the just price, to which its own reservation value is superior. An essential difference is thus established between the refusal to suffer the effects of a transgression of commutative justice and a refusal to allow a degradation in the initial situation, which would strip the exchange of its *raison d’être*. This double refusal nonetheless operates at distinct levels, the protection of the other and the protection of the self, and it is this juncture that generates the sets of

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<sup>32</sup> The assumption that the reservation value is only private information will be given up in § 2.2, when the case of exchange by accident will be dealt with.

<sup>33</sup> From now on in section 2, in order to distinguish clearly 1) the loss which proceeds from a deterioration in one partner’s situation, and 2) the loss which comes from a deviation from commutative justice, the expressions which designate the latter (“loss”, “harm”, “wrong”, to be “cheated”, etc...) will be put in inverted commas (“ ”).

acceptable prices for each party - in the case of the seller, from his reservation value to the just price; in the case of the buyer, from the just price to his reservation value.

If, as a rule, the existence of a negotiation set depends on the relative positions of the two critical values, this set is here reduced to a single element, the just price which merges with these values, and takes up an intermediary place between the seller's and the buyer's reservation values. The just price thus stands out as the only transaction price - as the only way of sharing in the gain of the exchange - that is acceptable to both parties, if these are both virtuous and informed. Initially acknowledged as independent from individual behaviour, the just price, as a transaction price, may henceforth, under certain conditions, be understood as the consequence of virtuous conjectures within the framework of exchange in itself.

## **2.2. Virtuous conjectures and transaction prices in exchange "by accident"**

Whereas the study of the relation of exchange in itself allows for the conclusion that the prices acceptable to the buyer and the seller are compatible and lead to a negotiation set made up of one single element (the just price), this is no longer the case with exchange "by accident".

Its main feature is that, in contrast with exchange in itself, the anonymity of the relation has been broken. This makes it possible to take into account situations which were previously excluded from virtuous exchange in itself. For instance, it was impossible to imagine such an exchange if the just price was below the seller's reservation value - even if the latter remained inferior to the buyer's reservation value. In this case, the prices acceptable to the buyer would be contained between the just price and his reservation value; but the set of prices acceptable to the seller would be empty, as would the negotiation set: there is no price which, on the one hand, does not bring about a deterioration in the situation of the seller and, on the other hand, allows him not to involve his partner in "loss". Clearly, the impossibility of exchange in itself comes from the fact that both partners acknowledge the just price as their common critical values. In other words, when the buyer normally thinks that as soon as a price is equal or superior to the just price this does not involve his partner in "loss", the exchange cannot take place because the seller rejects the idea of doing any "harm" to his partner by selling his good above its just price.

On the contrary, when the anonymity of exchange no longer prevails, the buyer now knows that a purchase at the just price would be to the detriment of the seller - not in the sense that the latter would suffer any "loss" as a consequence of an unjust

exchange, but because his situation would deteriorate. If the buyer is correctly informed not only about the good to be exchanged, but about his partner's reservation value, this would necessarily compel him to stop considering the just price as the critical value above which each price does not wrong the seller. He is now aware that if he wants his partner's situation to be improved, the prices which allow the good to be sold have to be above the seller's reservation value.

### **2.2.1. From justice to friendship: the shift in the compensation**

The problem of exchange by accident is dealt with three times in the body of Article 1, when Thomas Aquinas discusses the particular situation which arises from "friendship founded on utility" (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 1, obj. 3; resp.; ad 3). Not only is it difficult to find a modern equivalent for the Latin expression - *amicitia utilis* - but this corresponds to an interpersonal relation that we would today hardly recognise as linked with our current understanding of friendship. As Thomas Aquinas mentions, friendship founded on utility refers to Aristotle's *Nichomachean Ethics*. In Books VIII and IX, Aristotle introduces and discusses at length three types of friendship, respectively founded on goodness, pleasure and utility<sup>34</sup>. This is a crucial distinction, because it testifies that in Thomas Aquinas' mind, as in Aristotle's, although perfect friendship is based on goodness, pleasure and utility are nevertheless possible foundations for friendship. For instance, Aristotle explains that friendship founded on pleasure is commonly observed in young people, whose lives are dominated by passion, whilst friendship founded on utility is usually found in elderly people or, on the contrary, in young men seeking personal advantages.

Now, Aristotle makes it clear that some kind of reciprocity is at issue in friendship, seemingly in the same way as in exchange. Significantly, in the first chapter of Book IX (commented on by Thomas Aquinas in *Ethicorum*, IX, 1), when dealing with friendship between persons of unequal conditions, the author parallels this problem with exchange in civil society, and recalls the role of money, instituted by men as a measure and as a means of exchange. In friendship, as in exchange, something is given for a counterpart, and for lack of this counterpart, one of the parties will feel himself wronged, exactly as the lover who, in Aristotle's words, complains that his passionate sentiments "are not given in return" (*Nichomachean Ethics*, IX, 1). The analogy is still more accurate in the case of friendship founded on utility. In a previous chapter, Aristotle - and, after him, Thomas Aquinas - distinguished two kinds of utility: a

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<sup>34</sup> See, for instance, *Nichomachean Ethics*, VIII, 3, and Thomas Aquinas' *Ethicorum*, VIII, 3.

“moral” utility and a “legal” one, the latter clearly referring to commercial arrangements between friends<sup>35</sup>, even though these are based on trust, rather than on formal contracts (*Nichomachean Ethics*, VIII, 13; Thomas Aquinas, *Ethicorum*, VIII, 13)<sup>36</sup>. This also marks the limit beyond which any comparison would no longer be possible. Whereas in the exchange relation the compensation is both immediate and certain, this is not necessarily the case in a friendship relation. Moreover, the object of this compensation is different, and governed by the nature of the relation. As Thomas Aquinas states, “in commutative justice, one considers principally the equality of the thing. But in friendship founded on utility, one considers the equality of utility; this is why compensation should be in accordance with the utility received” (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 1, ad 3).

Of course, the main obstacles to the achievement of this “equality of utility” - which explain, for Aristotle as for his commentator, the numerous quarrels and disputes which make all sorts of friendship other than those founded on goodness unstable and fleeting - proceed from the delay between the utility given and the utility received, and from the inequality between the conditions of the partners in the friendship relation.

The first difficulty seems irreducible, for it is grounded on the nature of the relation. Nobody will ever be ensured that their friendship will be given in return. More precisely, cancelling out this uncertainty could not be obtained without changing the relation between the two parties either into a true contractual exchange relation<sup>37</sup>, or into perfect friendship, in which no one is expecting any payment in return.

But the second difficulty does not lead to such a dead-end. Even if my friendship is returned - in this case, even if the utility I gave is followed by a utility that I receive - what should be the rule of compensation which would, in some way, equate the utility I gave and the utility I received if, for instance, my partner’s social status is much higher, or much lower, than mine? In its general form, the problem is that of the comparison between utility given and received, both for the good that I give and for the good that I receive.

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<sup>35</sup> The French translator of the *Ethics* describes this legal friendship as some kind of “financial society”.

<sup>36</sup> In the Latin translation of the *Ethics*, which was available to Thomas Aquinas, the concerned passages are in book IX, chapter 15.

<sup>37</sup> Closely followed by Thomas Aquinas (*Ethicorum*, VIII, 13), Aristotle presents a limit case, within the “legal friendship”, where a contractual relation does exist between the two parties, but where the trust which governed the setting up of the contract seems to forbid any trial, even if this contract is not respected (*Nichomachean Ethics*, VIII, 13).

The basis of the discussion is found at the beginning of Article 1: “in friendship founded on utility, compensation should be awarded in accordance with the utility that has followed for he who has received a benefit; but this [utility] sometimes exceeds the value of the thing given [...]. It is thus permitted, in contracts of purchase and sale, to give something for a greater price than it is worth” (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 1, obj. 3). This helps understand the argument that Thomas Aquinas is disputing. The “utility” which exceeds the value (the just price) of the thing designates the reservation value of the buyer. If the compensation equates with the “utility”, the transaction price precisely reaches this reservation value. Although Thomas Aquinas does not explicitly discuss this point, it is obvious that the argument is far from being logically satisfying: the example could indeed be reversed, in order to deal with the seller’s reservation value. One would then conclude that in friendship founded on utility, the transaction price has to be equal to the seller’s reservation value. As, in a certain way, the reservation value of a good could be understood as its “utility” for the one who buys or sells it, it is therefore not this utility that has to be compensated for through the friendship relation.

But even if, for the time being, we disregard this conclusion, another point in Thomas Aquinas’ introduction to the problem must be stressed. Strictly speaking, the compensation need not be immediate<sup>38</sup>. In the example quoted above, the seller who supplies utility for the buyer, normally expects that he in his turn will later on benefit from a utility granted by his friend, perhaps - but not necessarily - by means of a symmetric purchase. If compensation thus prevails, this is through an intertemporal exchange of utility. Now, Thomas Aquinas assumes that when the buyer pays for the utility he enjoys, the compensation is immediate. Clearly, it is not the same kind of compensation which is at issue. I can give a gift to a friend, and expect another gift in return. If there is compensation in this case, it concerns the gifts that are given and received. But instead of a gift, consider an exchange. Likewise, I can grant an exchange to a friend, knowing that it will be of great utility to him, although I do not draw any particular advantage from it, and then expect that he will grant me a similar exchange in the future. Again, there is intertemporal compensation between the two exchanges. Nonetheless, as these are exchanges and not gifts, there must also be some sort of instantaneous compensation within each transaction.

Thomas Aquinas’ skill is not only to provide a rule for answering the instantaneous compensation problem: although this rule, when respected, does not

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<sup>38</sup> Commenting on Aristotle’s *Ethics*, Thomas Aquinas already distinguished two kinds of “legal utility”, which he respectively illustrated by purchase and sale, and by forward transactions (*Ethicorum*, VIII, 13).

supply any guarantee that a reciprocal exchange will take place - it depends on the stability of the friendship relation, as well as on the availability of opportunities of such reciprocal exchanges, which could be less numerous if the social conditions of both friends are too distant from each other - this nonetheless ensures, if the reciprocal exchange will follow the same rule, that intertemporal compensation will be also achieved.

The argument is developed in Thomas Aquinas' *respondeo*, within the same Article 1. It is based on the idea that, whereas what we called "intertemporal compensation" concerns some kind of exchange of utility, instantaneous compensation rests on the loss suffered by the seller whose good is particularly useful to his friend who buys it: "On the other hand, we can speak of purchase and sale which, by accident, is achieved for the utility of the one, and at the detriment of the other: for example, when somebody is in great need of a thing, and when the seller would suffer loss if he parted from it" (*Ibid.*, a. 1, resp.). As Thomas Aquinas is not very explicit about this "loss", it requires further explanation. The loss would of course not be the same - and might not even exist - for any transaction price. In exchange in itself, there would be no "loss" at all if the good was sold at its just price. Therefore, we are dealing here with one of the situations mentioned above as a characteristic of exchange by accident, in which exchange in itself would be impossible, because the just price is below the seller's reservation value. The loss pointed to by Thomas Aquinas should henceforth be interpreted as the difference between the seller's reservation value and a transaction price equal to the just price.

Thomas Aquinas continues: "In such a case, the just price shall be established not only according to the thing sold, but also according to the loss suffered by the seller by having sold. And then, one can licitly sell a thing for more than it is worth in itself, even though it is sold for no more than it is worth to the person who owns it" (*Ibid.*). The expression "just price", such as it is used in the above quotation, requires further analysis. Obviously, it does not designate what a thing is worth in itself - what was previously called "just price" in the context of exchange in itself. However, it reveals that the transaction price which concludes the sale always respects a compensation principle, even if its object has changed at the same time as exchange in itself has been given up for exchange by accident. Lastly, in writing that the thing is not sold "for more than it is worth for the person who owns it", Thomas Aquinas indicates that such a transaction price can be considered as just - as an effect of compensation - because what is paid by the buyer cancels out the loss that the seller would have suffered, had the

thing been sold for what it was worth, i.e. the just price according to commutative justice.

This answers a question left in abeyance since the introduction of the problem at the beginning of Article 1 (obj. 3): in an exchange between friends, what then is this utility which calls for compensation, if it is not the buyer's total reservation value? Thomas Aquinas' response is that it is to be found in the utility generated for the buyer by the loss suffered by the seller, if he had sold his good "what it is worth in itself", that is, by the positive difference between the seller's reservation value and the just price in the sense of exchange in itself. It is this utility, resulting from a loss, which is focussed on in Thomas Aquinas' already quoted final answer: "in friendship founded on utility, one considers the equality of utility; and this is why compensation should be in accordance with the utility received" (*Ibid*, a. 1, ad 3).

The consequences which follow are twofold. Firstly, instantaneous compensation results in suppressing the loss incurred by the seller - this is what distinguishes an exchange between friends from a gift. Secondly, it also provides a renewed basis for intertemporal compensation. We can no longer consider reciprocal consecutive exchanges as exchanges of utility, this last being already fully compensated for in each exchange. All I do when selling a good to my friend above its just price yet at my reservation value, is to grant him an exchange that would have been unfeasible as an exchange in itself. For me, what I grant him is of no cost. But I also have no incentive other than his interest to buy a good which I own under his reservation value, and other than my expectation that he will, later on, let me benefit from some similar exchange. Therefore, friendship founded on utility leads to a succession of exchanges in which no one ever suffers any loss for the good sold.

The previous interpretation of the utility at issue in the compensation principle helps clarify Thomas Aquinas' study of an alternative case, where the just price is contained between the two reservation values, but where the buyer derives considerable advantage from the good he wishes to acquire - that is, if his reservation value is high: "if somebody draws much advantage from the thing that he received from someone else, and if the one who sold does not suffer any loss when parting with it, he should not sell it for more [than the just price; A.L.]. For the utility which benefits his partner does not come from the sale [the act of selling, on the seller's initiative; A.L.] but from the

conditions of the purchase; now, though it is permitted to sell the loss one suffers, no one should sell what he does not own” (*Ibid*, a. 1, resp.)<sup>39</sup>.

Such a conclusion can easily be extended to the last possible case - with which Thomas Aquinas does not deal explicitly - of a just price being above the buyer’s reservation value. If the good had been sold at its just price, the loss (then equal to the difference between this just price and the buyer’s reservation value) would have been borne by the buyer; the induced compensation, granted by the seller, should therefore be implemented in a transaction price of the same amount as the buyer’s reservation value.

### 2.2.2. The price of friendship

More general statements can now be established about the compensation which occurs within exchange by accident in the typical situation of friendship founded on utility. This kind of compensation takes place when giving up the anonymity of exchange in itself makes it possible for either party to be informed about the potential loss incurred by the other, that is, about the other’s reservation value. When the just price is located between the seller’s and the buyer’s reservation values, no one will be cheated - and no utility will be induced - if the transaction price is set at the just price. As in exchange in itself, compensation henceforth rests on the “equality of things” which governs commutative justice. On the contrary, when the just price is located out of the set of prices contained between the seller’s and the buyer’s reservation values, compensation is achieved if the price cancels out either party’s loss, i.e. if the transaction price is equal to their reservation values.

If one could admit that this kind of compensation assures the concerned party that the other is not wronged by the transaction, the identification of the critical value of a virtuous conjecture becomes its immediate consequence, in some cases if not in all of them. Let us firstly consider the buyer, when the just price is below his own reservation value. The prices he thinks are in keeping with his partner’s interests are superior or equal to a critical value which is the maximum of the just price and the seller’s

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<sup>39</sup> The Latin text runs as follows: “*Si vero aliquis multum juvetur ex re alterius quam accepit, ille vero qui vendidit non damnificatur carendo re illa, non debet eam supervendere. Quia utilitas quae alteri accrescit non est ex vendente, sed ex conditione ementis: nullus autem debet vendere alteri quod non est suum, licet possit ei vendere damnum quod patitur*” (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 1, resp.). See also the similar analysis in *De Malo*, q. 13, a. 4, ad 7. However, after having explained that there was no reason, in this case, for the price to be above the just price, Thomas Aquinas adds that the buyer “can, of his own will, give something extra in addition to the sale; which tends to be honesty on his part” (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 1, resp.). But it should be noted that this “something extra” is not part of the reciprocal obligations of the exchange, and that it comes after the transaction, only initiated by one of the parties. If one can speak of a greater virtue here, which is achieved thanks to the exchange relation, that virtue consists in a gift to a friend, and does not thereby come from that exchange relation.

reservation value. The symmetrical case is that of the seller, when the just price is above his reservation value. The set of prices acceptable to the buyer (resp., the seller) is thus constructed by bounding his conjecture from above (resp., from below) by his reservation value.

However, the problem is not yet completely solved. Only in the case where the just price is included between the two reservation values is the previous procedure able to determine two compatible sets of acceptable prices, which share one element in common - the just price -, this last constituting the single element of the negotiation set, henceforth the transaction price: exchange by accident here leads to the same solution as exchange in itself (see *infra*, the second line of Table 1). In the other two cases, when the just price is either below the seller's, or above the buyer's, reservation value, the same procedure seems to lead to a dead-end.

Let us, for instance, imagine the first case. The virtuous buyer would find acceptable prices included between his partner's and his own reservation value. He would then propose to settle on a price strictly above the just price. But what would the virtuous conjecture of the seller be? At first sight, if his understanding of what involves his partner in loss is the same as in the framework of exchange in itself, he wishes to sell for a price equal or inferior to the just price. Now, he is unable to do so, because this price would be strictly below his reservation value; as a result, his set of acceptable prices, just as the negotiation set, would be empty. But on reconsideration, we know that this interpretation is inadequate, for it bypasses the singularity of friendship founded on utility. In this particular context, the object of the compensation has shifted, for the buyer, from the thing to the utility. As the exchange is not anonymous, this move is acknowledged by the seller. It thus becomes meaningless for him to assume that any price above the just price would wrong his partner. Insofar as the latter agrees to pay more than the seller's reservation value, this becomes the critical value above which he knows that he would cheat the buyer. Moreover, both partners know that the nature of their relation - friendship founded on utility - allows each of them to expect the benefit of similar exchanges in the future. The set of prices acceptable to the seller is hence compounded of one single element: his own reservation value. As the buyer's set of acceptable prices is bounded from below by the seller's reservation value, and from above by the buyer's reservation value, the only possible transaction price cannot differ from the single element of the negotiation set, i.e. the seller's reservation value.

	Set of prices acceptable to the buyer	Set of prices acceptable to the seller	Transaction price
Just price $\leq$ Seller's reservation value $<$ Buyer's reservation value	[Seller's reservation value, Buyer's reservation value]	{Seller's reservation value}	Seller's reservation value
Seller's reservation value $<$ Just price $<$ Buyer's reservation value	[Just price, Buyer's reservation value]	[Seller's reservation value, Just price]	Just price
Seller's reservation value $<$ Buyer's reservation value $\leq$ Just price	{Buyer's reservation value}	[Seller's reservation value, Buyer's reservation value]	Buyer's reservation value

**Table 1** - The transaction price and “friendship founded on utility”

So completed, this procedure can easily be applied to the symmetric case. Table 1 above summarises these conclusions<sup>40</sup>. Whereas the just price in exchange in itself is understood as a norm of distribution of the surplus of exchange between virtuous and informed partners, the analytical stake of friendship founded on utility for exchange by accident is to provide a similar norm when the surplus of exchange potentially still exists, but when the level of the just price forbids implementing, hence sharing it. In such cases, commutative justice cannot be achieved. But, though one of the partners appropriates the whole surplus of the exchange, this norm guarantees that the other will not see his situation deteriorate.

### 3. Vice, information and the transaction price

The above comments give some indication of the way various instances of virtuous behaviour interact in order for the partners to agree on a transaction price that may be distinct from the just price. It is remarkable that in each case the negotiation set is reduced to one single element. There is no need, therefore, to explore the process of negotiation further: if the transaction occurs, it can be concluded only at the price contained in the negotiation set. Now, this characteristic no longer prevails as soon as the virtue of the two parties fails, or when their information on the commodity differs.

This last point deserves special attention. The question of information first appeared, here, through the distinction between “exchange *in se*” and “exchange *per*

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<sup>40</sup>The general rule for determining the critical values can now be restated as follows: the critical value of the buyer (resp. the seller) is equal to the minimum (resp. the maximum) of the buyer's (resp. the seller's) reservation value and of the maximum (resp. the minimum) of the just price and the seller's (resp. the buyer's) reservation value.

*accidens*” (*supra*, § 2.2.): although this distinction was presented as an effect of the existence, or of the non-existence, of a rule of anonymity, it could be alternatively viewed as a mere consequence of ignorance or knowledge about the other party’s reservation value. Further on, lack of information concerning one of the parties’ virtue will be considered - from the moralist’s point of view - as a possible origin of control through incentives (*infra*, § 3.1.2.), or - from a virtuous seller’s point of view - as allowing strategic behaviour (*infra*, § 3.2.2.). But the information on the commodity is not so obvious to deal with. The reason is that it designates information either on the nature of the good exchanged, or on the needs which it might satisfy.

Such a distinction is revealed as being particularly fruitful when applied to the various examples of imperfect information given by Thomas Aquinas. For instance, the gold-brass example, in which the seller believes that he is selling brass, whilst the buyer knows that it is gold (*infra*, § 3.1.), can be acknowledged as a typical illustration of an information failure on the good itself - but not on the need. Similarly, the fact that the just price is, according to Thomas Aquinas, “not always determined perfectly, but most often consists in a certain assessment” (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 1, ad 1), might be understood as a consequence of imperfect information on the need - not on the good itself. If one admits this interpretation, it helps clarify the reason why, in the gold-brass example, when one partner announces a price, he communicates in the same time information on the nature of the good, whereas in the “one-eyed horse” example (*infra*, § 3.2.2.), where the uncertainty concerns both the good and the need, announcing a price does not mean that the information on the good is also communicated.

### 3.1. Deception

The problems raised by the interaction between virtue and vice on the one hand, and the information context concerning the good exchanged on the other, can be tackled through two examples dealt with in the *Summa Theologiae*: that of the book whose price is underestimated by an ignorant seller, and that of gold confused with brass. The purpose of these two examples was however of another order, and it is only indirectly that the effect of this interaction can be acknowledged.

The first example is borrowed from Saint Augustine. Its aim is to show that the “common desire [to sell dear and to buy cheap; A.L.] is not natural but vicious” (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 1, ad 2). Thomas Aquinas therein evokes the case of a man who “could get a book at a low price because of the ignorance [of the seller], but who decided to pay the just price for it” (*Ibid.*). Likewise, the object of the second

example was to determine the conditions of restitution when one of the parties has been cheated: “Indeed, the seller may happen to assess at the species of the thing less than it is worth; thus, when he sells gold for brass the buyer, if he is aware of the fact, is making an unjust purchase and is bound to return it” (*Ibid.*, a. 2, resp.).

The conclusion seems to draw on common sense: indeed, the virtuous buyer is expected to reveal the information he has - the nature of the book or of the metal - so that the transaction does not cheat the seller. This common sense, however, rests on some kind of implicit knowledge. Like Thomas Aquinas, the reader knows what would happen:

- 1- if the seller and buyer, both equally virtuous, had the same information as to the nature of the good exchanged, and if that information was correct;
- 2 - if, as in the previous assumption, the seller and the buyer were virtuous, but their information was erroneous;
- 3 - still within the same configuration, if only the buyer had the correct information;
- 4 - if only the seller were virtuous and if, as above, only the buyer had the correct information <sup>41</sup>.

Together these four alternative assumptions about the conditions of exchange can be linked in order to make intelligible either party’s expectation of a just price on the basis of the information they have, and the emergence of a transaction price from these expectations, from the distribution of the information and from the buyer’s virtue or vice.

In assumptions 1 and 3, the transaction price turns out to be the just price, whereas a lower price is implied in assumptions 2 and 4 - even if, in the former, both parties are convinced that they are dealing with the just price. In assumptions 3 and 4 the expectations resulting from the available information lead to the appearance of an informational advantage which is either cancelled out in the process of negotiation (assumption 3), or exploited for the benefit of he who has it (assumption 4). It will be noticed that the first two assumptions refer to variations on the mechanism of exchange “in itself” when both partners are virtuous: that the expectations are erroneous in assumption 2 is irrelevant, provided that they are identical. On the other hand, the last two assumptions suggest that a different treatment should apply in the way the negotiation set and the transaction price are constituted.

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<sup>41</sup> These four alternative assumptions only depend on Thomas Aquinas' particular examples. Therefore, they do not cover exhaustively all possible cases, which are summarised below in Table 2.

The situation implied in assumption 4 makes it possible to give a more accurate content to the lack of virtue that characterises the buyer's behaviour. Indeed, it seems that this combines two elements. First, the set of prices acceptable to the buyer evidently runs counter to the evangelical principle whereby only prices which do not injure the other party are acceptable. Therefore, the buyer is vicious on account of his rejection of this evangelical principle<sup>42</sup>. Second, if this rejection is profitable to him, in the context set up by Thomas Aquinas, it is because the buyer takes advantage of having more information by not disclosing to his partner the private information that might have enabled him to rectify his expectation of the just price. The buyer is thus vicious in that he deceives his seller. These two considerations - the rejection of the evangelical principle and the resulting deception - will presently be dealt with in detail.

### **3.1.1. Prices acceptable to the vicious partner in the exchange**

The rejection of the evangelical principle only imperfectly accounts for the way a vicious partner identifies prices acceptable to him. One interpretation would be the exact symmetry of the virtuous conjecture: the buyer considers as acceptable the same prices (below the just price) that would wrong him if he were the seller. From a moral point of view, this conjecture is vicious in one particular way: it would transgress, specifically, the virtue of justice. Now, this transgression constitutes the prime target of Article 4 in Question 77 which concludes with the separation of trade, which is not illegitimate "in itself", in that it proceeds from an appropriation of external goods in order to satisfy human needs<sup>43</sup>, and of arbitrage activities which are condemned, in that the income they provide comes from a systematic transgression of commutative justice<sup>44</sup>.

Other than the case of trade, however, Thomas Aquinas does not seem to stress prominently the deliberate transgression of commutative justice: if it is to the advantage

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<sup>42</sup> For the sake of clarity, we shall from now on use the term "vicious" buyer or seller for the individual who deliberately adopts an attitude that departs from virtuous behaviour.

<sup>43</sup> Saint Thomas quotes Saint Augustine: "The greedy merchant is blasphemous when he suffers a prejudice, he lies and makes false oaths about the price of things. But these vices are vices of men, not of the art [of trade] which can take place without these vices". And he concludes: "Trading, in itself, is therefore not illicit" (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 4, sed contra).

<sup>44</sup> As trade is not vicious by nature, the virtuous merchant can obtain and sell goods at their just prices. On the contrary, the vicious merchant will turn away from goods proposed at the just price to try to acquire them at a lower price and sell them at a higher price. Hence, the condemnation is aimed at "the merchant whose ultimate end is gain, which mainly happens when a thing is sold at a higher price without having been transformed" (*Ibid.*, a. 4, ad 1). H. Defalvard [1989], p. 108 ff., sees in the possibility given to the merchant of re-selling at the just price the source of a second conception of the just price which might co-exist with the initial conception in Thomas Aquinas.

of the merchant in his relation to virtuous partners to buy below the just price a good that he will sell above it, the vicious buyer - who is aware of the nature of the book for sale, or who recognises gold in what is presented to him as brass - follows other principles. The prices he deems acceptable are merely below his reservation value, and are limited only by the seller's reservation value. Here, vice is not a habitus of injustice<sup>45</sup>, but more generally the expression of the various passions which, to the detriment of justice, lead to perceive no other limits than those of one's own possibilities, or those that are induced by one's partner's possibilities. Yet, in the one-to-one deal with the virtuous seller, the result is the same: the negotiation set is situated between the seller's reservation value and the just price that he incorrectly anticipates.

### 3.1.2. Negotiation, deception and control

If one keeps to the few analytical elements described above, the *raison-d'être* for deception is not self-evident. Its only consequence seems to be to restrain the negotiation set by excluding the prices that are the most unfavourable to the buyer: if both he and the seller know that the good to be exchanged is gold, the negotiation set is included between the seller's reservation value and the just price of gold. Any price inferior or equal to the just price of brass thus conforms to the vicious buyer's interests, and is part of the negotiation set, whether the seller is, or is not the victim of deception.

Hence, it is due to the working of the process of negotiation that such a singular solution as deception can be in conformity with the vicious buyer's interests. We have already mentioned that this process is far from being treated exhaustively in the *Summa Theologiae*. It is nonetheless possible to identify a few conspicuous instances, which are linked to a process which seems to follow a strict sequential model. The first price to be announced is therefore the seller's, and in the examples we are interested in, it is the expected just price, according to the information available to him. The next stage in the process - a counter-proposal made by the buyer - is introduced only in some clearly limited cases, such as when the virtuous buyer does not want to draw any advantage from private information. A pursuit of the negotiation thus corresponds to an improvement in the seller's information, as is shown by the revision of the price proposed by the buyer: the latter substitutes the just price of the book or metal he wants to purchase for the erroneous value announced by his partner (cf. assumption 3, above).

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<sup>45</sup> As a vice, injustice is, according to Thomas Aquinas, linked to a habitus; if not, it is but an accidental effect of a passion. See *Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 59, a. 2, resp.

But in Question 77 there is only one example of a situation where the vicious buyer, who is not satisfied with the price announced by the seller, proposes a lower price: it is that of the “one-eyed horse” about which Thomas Aquinas clearly states that the buyer can propose a price that is below the just price<sup>46</sup>. One should be careful not to jump to any conclusions here. The author’s discretion about the negotiation process merely shows that what was important to him was both the situations before (the virtue or vice of the two parties) and after (the transaction price) this process had taken place. One might at most stress that in the case of the virtuous buyer the revision of the seller’s price is logically necessary. Evidently, assumption 3 is noteworthy insofar as it deals with a situation in which the negotiation set, understood as the intersection of the sets of acceptable prices to both the seller and the buyer, is initially empty. Hence, the very possibility of the transaction being completed entirely depends on the emergence of a negotiation set, which becomes the case as soon as the buyer’s private information becomes common to both parties.

It may be admitted that the priority granted to the seller in the negotiation process results from the application of an institutional rule which will not be discussed further here. On the other hand, it may be wondered why the first price announced by the virtuous seller is precisely the just price. A simple answer might be that for the seller the just price is then the very price that improves most his initial situation such as it is represented by his reservation value, without doing the buyer any harm. The discussion over the legitimacy of trade in Article 4 is one argument for such an interpretation; but it seems that Thomas Aquinas’ position rests on other elements. For one thing, there is the perspective of a confrontation with a vicious buyer. The already mentioned example of the “one-eyed horse” clearly shows that the buyer is in a position to obtain a price that is below the just price in the negotiation set. The treatment of this problem (*infra*, § 3.2.2.) reveals that Thomas Aquinas was careful to protect the seller from the buyer’s vice. Such a preoccupation is perfectly consistent with the analysis of justice in the *Summa Theologiae*, and it is not reduced to the urge to protect the seller’s immediate interests. Not only is commutative justice dependent on natural law, which accounts for its being sought after for itself, but it adds a higher virtue, even though its re-establishment does not redeem the sin of a buyer attempting to ignore it<sup>47</sup>. As the non-restitution of a deposit to its owner is in accordance with natural law when his will

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<sup>46</sup> See *Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 3, resp. The significance of the case of the “one-eyed horse” is analysed *infra*, § 3.2.2.

<sup>47</sup> For Aquinas, justice goes beyond all the other moral virtues for 1) it is dependent on will, that is, on the noble part of the soul, and not on the sensitive appetite; 2) it achieves a good in the relations to others, and not only in a virtuous man (see *ibid.*, q. 58, a. 12, resp.).

is seen to be depraved<sup>48</sup>, there is all the more reason for the virtuous seller - who knows he can only sell at the just price to a likewise virtuous buyer - to attempt to keep the same just price when he is aware that his partner is likely to be sinful in the transaction process<sup>49</sup>. Hence, it is because he cares about bettering his condition without doing any damage to his partner, as well as because he protects society as a whole “naturally” from the possibility of unjust acts, that the virtuous seller proposes the just price first.

Once again, with the exception of the case of the “one-eyed horse”, there is no other example among those quoted in Question 77, where in response to the price proposed by a seller, the vicious buyer offers a price that is lower without it being acknowledged as just by his partner. The typical example of the vicious buyer is that of a *manipulator*, who does not take advantage of a possible leading position in the negotiation to impose a price that differs from the one that his seller believes conforms to commutative justice, but who profits from his private information to present as just a transaction which is not. Such an omission may legitimately be a surprising one. In the following Question, which deals with the sin of usury, Thomas Aquinas clearly shows that he is able to appreciate situations in which the voluntary agreement of the parties in the transaction covers a negotiation where the lender’s power enables him to get hold of most of the surplus of an intertemporal exchange<sup>50</sup>. Hence, if restricting the buyer’s or the seller’s sin to deception alone conforms to the general theme of Question 77 - “fraud” - it cannot go without justification. Thomas Aquinas may not be very explicit about this, but at least he provides the elements that make it possible to reconstitute those justifications.

The types of behaviour that are analysed fall into an institutional framework that makes them subject to the threat of sanctions. These result as much from the power of the civil authorities as from that of the priest in his pastoral function. The extent of these sanctions is, however, restricted. Essentially, they are limited to the obligation to return what has been wrongfully obtained, so that commutative justice is restored. Although it is mentioned that in the case of theft, the principle of a punishment is added to the restitution<sup>51</sup>, it seems difficult to conceive of this being extended to trading transactions. Moreover, the priest who, in the exercise of his ministry, becomes aware

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<sup>48</sup> *Ibid.*, q. 58, a. 2, ad 1.

<sup>49</sup> That is why it is only “by accident” that somebody “bears an injustice voluntarily, for example if they voluntarily give another more than they owe him” (*Ibid.*, q. 59, a. 3, resp.).

<sup>50</sup> See A. Lapidus [1991].

<sup>51</sup> *Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 62, a. 3, ad 4.

of an unjust exchange, can only urge the sinner to return what he remains a debtor of, whereas the only really coercive power lies in the hands of the civil authorities. But here again, such power is limited by a more tolerant legal framework. Thomas Aquinas stresses that according to civil laws, such as can be found in the Justinian Code, “the buyer and the seller are allowed to deceive each other” (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 1, obj. 1). Protection of the partners in the exchange is all the less rigorous as it only leads to restitution when one of the partners “has been deceived of over half the just price”<sup>52</sup>, and as Thomas Aquinas mentions the uncertainty that characterises the assessment of the just price of a good<sup>53</sup>.

Between a priest who is willing to repress any variation from the just price but who has no coercive means other than those afforded him by his religious authority, and a civil power which has the means to enforce its decisions, but which is devoid of legal dispositions that are as rigorous as the priest’s morals, the threat of restitution seems light. That threat, however, has some repercussions on the vicious buyer’s or seller’s behaviour, in that it institutes a first type of control by way of incentives.

Of course, one might envisage the civil authorities exercising strict control. Now, Thomas Aquinas rejects this possibility on the grounds of inefficiency: “The law cannot punish all that is contrary to virtue; its purpose is to punish what might tend to ruin men’s lives in common; one may say that it holds all the rest as permitted, not insofar as it approves of it, but insofar as it does not punish it” (*Ibid.*, a. 1, ad 1). This softer control becomes more credible in inverse ratio to its extension: it is impossible to come to terms with each breach of commutative justice, but at least one can attempt to deal with these transgressions, of which the magistrate is all the more informed since they are blatant. Thomas Aquinas’ stance thus appears as the result of a recognition of greater institutional efficiency.

Despite appearing to be a fairly loose device, the dyad made up of the civil and religious authorities in fact exerts a noticeable influence, which concerns the buyer’s or the seller’s sinful intentions quite as much as the behaviour of his potential victim<sup>54</sup>.

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<sup>52</sup> *Ibid.*, q. 77, a. 1, ad 1. It is here referred to the medieval heritage of *laesio enormis*, borrowed from Roman Law, of which aim was initially to protect the son of a seller of a land that might have been sold for less than half its just price.

<sup>53</sup> “He who has received more will therefore be liable to offer the one that has been damaged a compensation, if however the prejudice is noteworthy. If I add this precision, it is because the just price of things is not always determined perfectly, but most often consists in a certain assessment, so that a low increase or decrease does not seem to infringe the equality of justice” (*Ibid.*, a. 1, ad 1).

<sup>54</sup> See *infra*, § 3.2.1.

What appears the most clearly is, no doubt, the incidence this has on attempts at transgressing justice within a commercial operation. First, let us assume that both the buyer and seller have correct information about the nature of the good that is to be exchanged. The only element of uncertainty then concerns the perspective of a sanction which might strike, for instance, the vicious buyer trying to impose a transaction price that is below the just price. From the moment that the advantage which goes with a reduction in price is lower than the loss that goes with the perspective of a sanction, the vicious buyer is deterred from obtaining such a reduction; and if ever he imposes such a reduction, the restitution ordered by a magistrate most often offsets its effects. It is this efficiency that Thomas Aquinas seems to recognise in civil laws, in that they outlaw any loss that exceeds half the just price. Yet a less substantial reduction in the price is beyond the competence of the civil authorities. The loss related to the perspective of restitution will then have diminished, because it will have decreased in value, because the information about the effective conditions of the transaction are more difficult for the priest to obtain, and finally because the coercive power of the civil authorities is more limited. For some buyers, however, the sanction does not lie in the obligation to return alone, but is coupled with a moral and religious sanction whose weight can be decisive in deterring them from committing a sin. Simultaneously, the advantage that goes with the reduction in price diminishes, since it is associated henceforth with a less significant decrease. The result of all these contrary effects on the price announced by the buyer is not self-evident. Nevertheless, it may be noted that they induce him, in spite of his initial intent, if not to propose the just price, at least to moderate any variation from it.

Now, if the assumption of correct information shared by both parties is ruled out, one realises that it is when the buyer has an informational advantage that the most decisive consequences occur, and this by introducing a new strategy - deception. Considering that even in a situation where both parties are perfectly informed, it might happen that a buyer is not deterred from tempting to obtain gold at the price of brass, there is all the more reason for him to wish to take advantage of the seller's ignorance about the true nature of the good he is selling. Indeed, accepting a price that he pretends to believe to be just, enables him to avoid his partner's resistance capacities in the negotiation, and lessens the possibility of a sanction. The same reasoning may be extended to the case where the seller's uncertainty over the good to be sold - hence, over its just price - is greater than the buyer's.

Let us then assume that one of the partners has an informational advantage - that is the correct information about the good. Under these restrictive conditions, the

negotiation process appears to be less obscure. It implies a buyer and a seller who are not necessarily virtuous, but who both have strong enough incentives to put forward a price that their partner will consider as just. What might happen in such a configuration? The seller is the first to speak. He announces a price <sup>55</sup> he thinks his partner will consider as just - whether this price is effectively just or not; whether the seller is virtuous or vicious. This price gives information to the buyer about the nature of the good - gold or brass - that his partner wishes him to acknowledge. Of course, the buyer might contest this price. But he does so only if he is not satisfied with the information about the nature of the good communicated by its price, and if he is better informed than his partner. If he is virtuous, being unsatisfied with the price announced by the seller only means that the buyer knows that this price is not just, and he therefore announces, on the basis of his information, the just price, whether the latter be lower or higher. On the contrary, if he is vicious, he will contest the price only if his information allows him to propose a lower price, which his partner will consider as just. In any case, the price announced by the buyer is the last. From now on, one partner might know that this price is not just. But both believe that the other thinks it is just. Hence, the negotiation process may end at this transaction price.

In the negotiation process, it is then the nature of the control that provides incentives for the partners in the exchange to suggest a price likely to be acknowledged as just. Rather than the crude exploitation of a superior negotiating power leading to a recognisably unjust price, deception then appears as the typical behaviour of the vicious buyer or seller. In all cases, the negotiation process leads to the construction of a negotiation set made up of one element, exactly as in exchange in itself, when both partners were virtuous and informed. Starting from the example of gold and brass, Table 2 below systematises these conclusions according to different informational contexts, and highlights the effects on the transaction price of strategies in which the virtuous partner necessarily puts forward the just price that he anticipates, and the vicious partner chooses, whenever possible, between this just price and deception.

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<sup>55</sup> Let us suppose that this price is higher than the seller's reservation value and, more generally, that all the prices announced are located between the seller's and the buyer's reservation values.

		Informational advantage:				Common information:			
		to the seller		to the buyer		correct		incorrect	
Exchanged good:		Gold	Brass	Gold	Brass	Gold	Brass	Gold	Brass
Virtuous	Virtuous seller	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$	$P_1=P^*_B$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_B$ $P_2=P^*_A$ $P_T=P^*_A$	$P_1=P^*_A$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$	$P_1=P^*_B$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_B$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$
	Vicious seller	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$	$P_1=P^*_B$ $P_2=P^*_A$ $P_T=P^*_A$	$P_1=P^*_A$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$	$P_1=P^*_B$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_B$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$
Vicious	Virtuous seller	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$	$P_1=P^*_B$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_B$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_A$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$	$P_1=P^*_B$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_B$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$
	Vicious seller	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$	$P_1=P^*_B$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_A$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$	$P_1=P^*_B$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_B$ $P_2=P^*_B$ $P_T=P^*_B$	$P_1=P^*_A$ $P_2=P^*_A$ $P_T=P^*_A$

$P_1$  = price announced by the seller

$P_2$  = price announced by the buyer

$P_T$  = transaction price

$P^*_A$  = just price of gold

$P^*_B$  = just price of brass



= configuration within which, as a result of an informational advantage, one of the parties is a victim of deception

*In italics* : cases illustrated in Question 77 ( a. 1, ad 1; a. 1, ad 2; a. 2, resp.; a. 3, resp.)

**Table 2 - Deception: prices announced and transaction prices**

### 3.2. Elements of spontaneous regulation: towards an *a priori* control

#### 3.2.1. The threat of sanctions and the incentive to search for information

The limited power of institutions of control, that guarantee restitution only in the case of *laesio enormis*, effectively results in the buyer and seller being incited to obtain accurate information about the exchanged commodity.

This information about the commodity is discussed mainly in Articles 2 and 3 of Question 77<sup>56</sup>. It is analysed through a detailed classification of the defects of the commodity itself, as regards its nature, its quantity and quality (Article 2), and through

<sup>56</sup> Respectively: “Is a sale made unjust or illicit as a result of a defect of the thing sold?” and “Is the seller bound to reveal the vices of the thing sold?”.

its relation to a potential user - that is, the need it might satisfy (Article 3). At first sight, it is a matter of providing foundations for the necessity felt by the virtuous seller to make the relevant information concerning the commodity to be exchanged available to his potential buyer. Thomas Aquinas centres his analysis on the loss suffered by the buyer when commutative justice is broken, and even on the danger he might run: “the seller who puts something up for sale thereby provides the buyer with an occasion for loss or danger if that thing has vices such that he might suffer damage or be endangered: indeed, there is damage if as a result of this defect the thing to be sold is of a lower price [its just price is below the just price of the thing without the defect; A. L.], and if the price [once the transaction is concluded; A. L.] is not lowered correspondingly; there is danger if as a result of that defect the use of the thing is made difficult or harmful” (*Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 3, resp.).

The general conclusion appears to be that concealing that information makes the seller guilty of a sin and justifies the obligation of restitution. Yet, this has to be strongly qualified. On the one hand, the sin exists only when there has been deliberate concealment; if such is not the case, only the obligation of restitution remains: “If however the seller is ignorant of the defects in the thing sold, he does not sin, for he commits but a material injustice and his action is not unjust for it [...]; but when he is aware of it, he is bound to offset the buyer’s loss” (*Ibid.*, a. 2, resp.). On the other hand, even in the case of deliberate concealment, the sin is acknowledged and the obligation of restitution is required only when the defects of the commodity are “hidden” and likely to have an effect upon its use by the buyer<sup>57</sup>.

Such requirements thus constitute a double incentive. The vicious seller is induced to use a strategy of deceit which, if it does not redeem him from his sin, at least allows this sin to remain concealed. But above all, they induce the buyer, whether virtuous or not, not to be satisfied with immediate information, as this could result in his being denied any compensation if, upon use, he were to discover that the commodity were defective, and if these defects had been “evident”. The asymmetry between the treatment of “hidden” and “evident” defects should be pointed out here. In the first case, the seller is both bound to reveal the information about his commodity and sell it at the just price; in the second case, however, he is exempt from the obligation to inform the buyer of an evident defect, but he is not so from proposing the just price<sup>58</sup>. The buyer’s search for information thus stems from the fact that although he is relatively protected

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<sup>57</sup> *Summa Theologiae*, II<sup>a</sup>-II<sup>ae</sup>, q. 77, a. 3, resp.

<sup>58</sup> *Ibid.*

from an unjust transaction, he is entirely helpless when he acquires at the just price a commodity that might not correspond to its expected use. The existence of an institutional device which protects only one of two joint risks subsequently induces the buyer to seek information about at least the “evident” characteristics of the commodity, in order to protect himself against the unprotected risk. Now, according to Thomas Aquinas, this search seems to concern all the information useful to the buyer. And, since such information is “evident”, the quest for it does not require “great science”, and it remains easy to obtain: “The seller or buyer need not know the hidden qualities of the thing sold; but only those that make it suitable for men’s uses [...]. Now, these are qualities that the buyer and the seller can easily discover” (*Ibid.*, a. 2, ad 3). As a result, an indirect consequence of this operation is that the information acquired makes a better assessment of the just price possible, hence reducing the risk covered by the civil and religious authorities.

### **3.2.2. The manipulation of information by the virtuous seller**

The case of the aforementioned “one-eyed horse” remains to be accounted for. This describes a situation in which the scheme of incentives analysed above does not reach the goal set for it: instead of a price anticipated as just by his partner according to the information available to him, the vicious buyer (resp., seller) will prefer to try to implement a lower (resp., higher) price. Thomas Aquinas comes to this at the end of a comparative analysis of hidden and evident vices that may affect a commodity: “But when the defect is evident, as for a one-eyed horse; or when the use of the thing, if it does not satisfy the seller, may however be satisfactory to others; if, as a result of this defect, he [the seller] decides on his own to lower the price, he is not bound to reveal the defect of the thing. For it is possible that as a result of this defect a buyer might want to reduce the price to lower than it should be. In this case, the seller can licitly wish to protect himself against any loss [*indemnati suae consulere*] by not disclosing the fact that the thing is defective” (*Ibid.*, a. 3, resp.).

The originality of this example compared to those previously presented lies in the fact that the announcement of a price does not prejudice the communication of information about the commodity. In the gold-brass example, when each buyer or seller tried to convince his partner of his own virtue, the announcement of a price presented as just was indissociable from the communication of information about this commodity - information that confirmed, or otherwise invalidated, the other party’s previous information: in refusing to buy gold at the just price of brass, the virtuous buyer supplied the seller with his information about the nature of the metal, while proposing

the just price for it. But here the price proposed by the seller is disconnected from the information he can at will retain or communicate. This is possible because the informational advantage or disadvantage concerns not only the nature of the good, but also the need to which it corresponds. If the one-eyed horse's seller is not perfectly informed, his expected just price could differ from the actual just price both because he is mistaken on the nature of the horse - healthy, or one-eyed - and because he is unaware of its precise use - which would unequivocally give rise to the knowledge of its just price. Consequently, even if the buyer knows that his seller is an outstanding model of virtue who considers the price he asks for as the just price, this price does not provide the buyer with any information concerning his partner's knowledge, either about the nature of the good, or about the needs it might satisfy. The retention or the communication of this information therefore has an influence not only on the price a vicious buyer might present as just in order to simulate virtue, but also on the price this buyer would be willing to announce if the threat of sanctions had failed to compel him to pretend to be virtuous.

This last price - let us call it "buyer's price", and in the symmetric case "seller's price" - is far from being discussed in detail in the *Summa Theologiae*. However, the few elements used to analyse the behaviour of the buyer or seller who might attempt to deceive his partner make the picture less blurred. It is still the perspective of a sanction in the event of the transgression of commutative justice that will rein in the passion urging a vicious buyer to obtain a price that is as low as possible. But his shrewdness in trying to have the price lowered also depends on what he thinks he knows about the information that the seller has. Hence, the buyer's price for a horse is lower when that buyer thinks his seller knows that the horse is one-eyed, than when he thinks that the seller knows it is healthy. The first sequences of the negotiation process can be reconstructed on this basis.

Let us suppose then, as in the "one-eyed horse" example, that the seller has the decisive informational advantage about the characteristics of the commodity to be exchanged. If the seller is virtuous, the price he will announce has to be the just price dictated to him by the information he has. But contrary to what happens in the cases studied previously, he can choose between two alternative strategies: either the communication or the retention of the information.

#### *a - Communication of information*

If the seller is faced with a virtuous buyer, one finds once again a now well-known pattern. Whatever the buyer's initial information, the seller's is now common to

both. As a result, the buyer is not mistaken about the characteristics of the good he wishes to acquire - a one-eyed horse - and the transaction is concluded at the just price.

But when the buyer is vicious, he no longer considers the just price the best solution. It is with a buyer's price below the just price for the one-eyed horse that he responds to the seller's proposition. This corresponds precisely to the situation referred to by Thomas Aquinas when he writes that as a result of the horse's defect "a buyer might want to reduce the price more than it should be" (*Ibid.*). Yet, such a comment does not clarify the price at which the transaction is eventually concluded; it simply suggests that the buyer's price and the just price for a one-eyed horse constitute the lower and upper limits of the negotiation set.

#### b - *Retention of information*

Here, the virtuous buyer finds himself faced with a price that is below what he thinks is the just price. This situation is not explicitly dealt with in the *Summa Theologiae*, and thus nothing therein is said about the way the negotiation is concluded. It does not seem absurd, however, to admit that as either party does not wish to cheat their partner<sup>59</sup>, the seller will supply the information the buyer was unaware of at a later stage, so that the one-eyed horse is sold at its just price.

But clearly it is the confrontation with the vicious buyer that proves to be the most interesting. The buyer's price is subjected to the information about the good that the buyer thinks the seller has. As the seller has not provided him with his information, he thinks the horse offered to him is healthy. Two alternatives may be considered here: either the buyer's price for a healthy horse - necessarily below its just price - is higher or it is strictly below the just price for a one-eyed horse. Evidently, it is the first case that drew Thomas Aquinas' attention. As soon as the price put forward by the seller falls even lower than that which the buyer thought he could get it down to, the latter has no reason to refuse the proposition. Therefore, despite the buyer's vice and the relative inefficiency of the existing incentives, the transaction is concluded at the just price. But the second case does not raise any particular problem of understanding. In order to illustrate this, one can imagine the sale of a horse that is not one-eyed but, say, dumb, which, admittedly, would have very little effect on its capacities. The virtuous seller thus would have reduced the announced price by only very little, compared to the just price for a healthy horse. Presumably, the price of the buyer, who is still supposing that a healthy horse is being proposed to him, will be below the just price for the dumb horse. Despite the reduction made by the seller, he will hence try to get an even lower

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<sup>59</sup> See *supra*, § 2.1.

price, so that the negotiation set is bounded by the buyer's price and by the just price for a dumb horse.

Bringing these two strategies together - the communication and retention of information - throws new light on the approbation Thomas Aquinas gives to the virtuous seller who would adopt the second option. It has already been mentioned that if the achievement of justice in exchange does not rid the partners of their vices, it adds a greater virtue. Given both situations, in which the negotiation sets provide the only available information about the transaction price, the same requirements must then lead one to prefer that situation which would differ from the other only by a negotiation set that excludes prices that differ most from the just price. According to such a criterion, the retention of information strategy dominates the communication strategy: when the buyer is virtuous, the two strategies lead to an exchange at the just price; when the buyer is vicious, the retention of information is preferable, either because it leads to the just price, if below the buyer's price for a healthy horse, or because it excludes from the negotiation set prices included between the buyer's price for a one-eyed horse - or a dumb horse for that matter - and the buyer's price for a healthy horse. The virtuous seller's manipulation of his informational advantage thus has the same effects as a reduction in the buyer's vice.

Through the implementation of an inductive institutional device made up of the threat of mild sanctions and with the acknowledgement of the virtuous seller's right to retain information, the sheer ambition of Thomistic economic thought becomes apparent: beyond the analytical elements that allow the priest to control the validity of a transaction *a posteriori*, it aims to identify the means of *a priori* control of which the priest is no longer the immediate instrument. Paradoxically, it is no doubt to the light weighting of a strictly economic investigation as compared to a moral one in the works of Thomas Aquinas that its completion is due.

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## Abstract

This paper aims at putting forward the analytical stake of the few passages that Thomas Aquinas devotes to prices and exchange, mainly in the *Summa Theologiae*. At first sight, his objective is to enlighten a confessor vis-à-vis his penitent, or the judge in an ecclesiastical tribunal, by way of a group of normative prescriptions, tending to distinguish that which is just in commercial transactions from what is not. But on second thoughts, this objective leads the author to a more complex construction, which involves establishing a referential norm - the just price - to which the transaction price should be compared.

It is recalled here that resorting to the just price - the discussion of which chiefly takes place in the commentaries on the *Ethics* - avoids any consideration of individual behaviour. However, this last comes to the forefront when the issue dealt with is to explain the reasons why such a transaction price is equal to, or on the contrary departs from the just price. Thomas Aquinas' treatment of this issue allows one to acknowledge a) that individual behaviour is characterized by virtue or by vice in various informational contexts, and b) that the making of a transaction price is the result of a negotiation process between buyer and seller. In a context of correct information, where the partners are both virtuous, Thomas Aquinas explains why the transaction price is equal to the just price - in the exchange *in se* - or could differ from it - in the exchange *per accidens*. But focussing on the exchange *in se*, both an asymmetry of information and the vice of at least one of the partners give rise to deception strategies leading to transaction prices, presented as just by the party who knows it is not, and agreed upon as just by the deceived party. Lastly, the possibility of retaining information during the negotiation process paves the way for the opportunity for the virtuous seller to protect himself against the higher power of negotiation of a possible vicious partner.

Although aiming at a different goal, Thomas Aquinas thus provides a complete theory, not only of the just price, but more generally of exchange, in which ethical considerations become decisive in determining transaction prices.