

# THE MERCHANT IN THE CONFESSIONAL

*Odd Langholm*

BRILL

## THE MERCHANT IN THE CONFESSIONAL

# STUDIES IN MEDIEVAL AND REFORMATION THOUGHT

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ODD LANGHOLM

THE MERCHANT IN THE CONFESSIONAL



# THE MERCHANT IN THE CONFESSIONAL

TRADE AND PRICE IN THE PRE-REFORMATION  
PENITENTIAL HANDBOOKS

BY

ODD LANGHOLM



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## PREFACE

Current knowledge of medieval economic thought is based on primary sources in which economic activity is examined from many different points of view. This study deals with a literary tradition that examines economic activity from the point of view of sin and penance as taught by the medieval Church. It is a broad study in terms of the size of its source material. The penitential handbook as a genre spans many centuries and comprises works varying greatly in size and complexity. The numerous minor works, briefly presented and quoted together in some of the chapters of this book, are as relevant for a true picture of the tradition as the major works granted a chapter of their own or a large part of a chapter. The study is a narrow one, however, in that it focuses on a subset (albeit a central one) of economic subjects. It is narrow also in that it largely disregards the different circumstances of time and place in which these many books were written. Intellectual history cannot be told without regard to material and institutional history, but considerations of space in the monograph format hopefully justify this restriction of scope. Some fine critical editions of penitential handbooks have appeared in recent decades, but the large majority of works included in the study are available only in early printed editions or remain still in manuscript. Some of the printed versions proved to be corrupt and called for recourse to the manuscript traditions. Some of the manuscripts are rare, unreliable, or in poor condition. A certain amount of collation was required. For financing the search for serviceable texts I thank the Norwegian Research Council. Special thanks are due to Elisabeth Stiegler, who produced the printable form of this book from my succession of drafts. Most of all I thank my wife, Grethe, for companionship and encouragement on yet another expedition into medieval Europe.



## INTRODUCTION

Most studies of economic thought in Europe in the centuries prior to the Reformation are based on academic texts, composed by and for professionals in the fields of philosophy, theology, and law. Less attention has been paid to pastoral and other religious literature of a more popular nature. The source material of the present study is one branch of pre-Reformation religious literature, namely, the handbooks for confessors or, more widely defined, the penitential handbooks. In these books, individual believers, including merchants, are examined and instructed regarding sin in general and with reference to their particular states and professions. The focus of the study is on trade and price, because price is the principal economic parameter. Adjacent subjects, like moneylending and usury, or labour relations and wages, are reported on only insofar as they shed light on price doctrine. The original intention was to limit the study to the large Italian penitential *summas* composed on the eve of the Reformation. It soon became evident, however, that these works could not be properly evaluated and their message communicated to the reader unless they were seen as end products of a long and complex literary tradition. Hence the decision to chart the whole tradition from its origins, rather than bring it in piecemeal and ad hoc.

Books I and II can then be read as a history of the pre-Reformation penitential handbook as a literary genre, with emphasis on the handling of sins related to trade and price. Some works less concerned with these subjects are included because they indicate different trends in the material or because they may be useful for scholars intent on studying some other subjects, not necessarily an economic one, in the same sources. The authors whose works are examined are presented in the table on the following pages, according to a combined geographical, denominational, and chronological classification. An attempt was made to mirror this threefold classification in the analysis of the texts. Works by transalpine and Iberian authors are analyzed in Part I and works by Italian authors in Part II.<sup>1</sup> Members of the

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<sup>1</sup> "Transalpine and Iberian" was preferred to the negative sounding "non-Italian". There are only a handful of Iberian authors in the material examined, most of

PRE-REFORMATION AUTHORS OF PENITENTIAL HANDBOOKS

Miscellaneous authors		Dominican authors		Franciscan authors	
Transalpine and Iberian	Italian	Transalpine and Iberian	Italian	Transalpine and Iberian	Italian
Bartholomew of Exeter Alan of Lille Peter the Chanter					
1200					1200
Robert of Courson William de Montibus Robert of Flamborough Peter of Poitiers John of Kent Thomas of Chobham Robert Grosseteste Odo of Cheriton Jacques of Vitry Alexander Stavensby Walter of Cantilupe Johannes de Deo		Paul of Hungary Raymond of Peñafort Conrad of Hörter William of Rennes			
1250					1250
Robert of Sorbon		Burchard of Strasbourg	Albert of Brescia	Peter Quesnel	Monaldus of Capodistria
Peter of Sampsona		John of Freiburg			Chiaro of Florence Servasanto of Faenza
1300					1300
Bérengar Fré dol William of Pagula		William of Cayeux <i>Summa rudium</i>	Bart. of S. Concordio Raniero of Pisa	John of Erfurt Durand of Champagne	Marchesino of Reggio Astesanus of Asti

Miscellaneous authors		Dominican authors		Franciscan authors	
Transalpine and Iberian	Italian	Transalpine and Iberian	Italian	Transalpine and Iberian	Italian
William Doune Herman of Schildesche Guy of Monte Roterio			Domenico Cavalca	Jean Rigaud	
1350					1350
Henry of Hesse Matthew of Cracow		Adam of Gladbach Berthold of Freiburg	Jacopo Passavanti		
1400					1400
Jean Gerson Andreas of Escobar Nicholas of Dinkelsbühl Johannes of Auerbach		John Nider	Antonino of Florence		Bernadino of Siena Nicolò of Osimo
1450					1450
Jacob of Jüterbog Johannes of Hagen Jean Quentin	Jacopo of Traietto Benedetto of Siena Galvano of Padova Paolo Attavanti		Teodoro of Sovico Girolamo Savonarola	Oilivier Maillard Antoine Faren	Alexander Ariosto Michele Carcano Bartolomeo Caimi Pacifico of Cerano Bernardino of Feltre Francesco of Mozzanica Angelo Carletti Battista Trovamala
	Paolo of Faenza Marino Baldi Celso Maffei				
1500					1500
Engelhard Kunhofer Jodocus Windsheim Godescalc Rosemond	Teofilo Vegio Jac. Fil. Foresti Jacopo Caviceo		Silvester Mazzolini Giovanni Cagnazzo Thomas Cajetan		Mattia of Milan Jacopo Mazza Matteo Corradoni

two large mendicant Orders are allotted separate chapters, whereas all other authors, whether secular clerics or members of other religious Orders, are grouped together. As far as possible given this arrangement, chapters are ordered chronologically within each of the two parts. Drawing on Parts I and II with an emphasis on the late Italian handbooks, the first two chapters of Part III present the pre-Reformation penitential doctrine on trade and price in a sort of ideal form. The final chapter places this doctrine in opposition to secular economic thought in the Renaissance and later.

One of the authors appearing in the table on page 2 is the English theologian and churchman Thomas of Chobham. He also wrote a *summa* on the art of preaching, another pastoral genre. In a sample sermon, virtue is figuratively described in terms of money, as follows. "We are like a merchant on his way to market, carrying money in his purse with which to buy certain precious goods, and a thief may come along and cut open his purse so that he has no money left with which to pay. It is the same with us. The money that God gave us are virtues by means of which we may buy eternal life. And along comes the devil and, cutting open our purse, that is, our heart, snatches away our money, that is, our virtues, so that we have nothing left with which to pay for a thing that precious."<sup>2</sup> Commercial metaphor was not uncommon in medieval religious works. It is not at all surprising to find examples of it in Chobham who, in his better known *summa* for confessors, devoted more space to economic subjects than any contemporary contributor to that genre. In those sections of the penitential handbooks that are the subject of the present study, the merchant and his purse remain on the metaphorical level even as trade and price are discussed in real terms. No other medieval or early modern genre is more directly oriented to the pursuit of salvation. The metaphor can be applied to all areas of human activity, but in the case of trade and price it mirrors reality more clearly than in any other area. To the real life merchant, the temptation to profit by dishonourable means lurks at every crossroads, threatening to steal his virtue. It is a dangerous course for man to embark upon, a course fraught with the risk of damnation. Not without reason, the Age of Faith, which this study covers, has come to

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them of little account, and the group could have been omitted were it not for the seminal contribution of Raymond of Peñafort.

<sup>2</sup> *Summa de arte praedicandi*, VI,2: 155.

be renamed the Age of Fear.<sup>3</sup> On the other hand, the Age of Faith placed before men an incomparable prospect of Felicity. Its instrument was precisely the sacrament of penance, whereby the torn purse of the heart is repaired and replenished through the grace of God.

Penance is one of the seven sacraments of the Roman Catholic Church. Sacraments are signs instituted by Christ to symbolize and confer grace. The sacrament of penance confers grace through the forgiveness of sin. The system practised since the early Middle Ages was that of secret, auricular confession. Having been brought to true repentance (contrition), the penitent (or confessant) confesses his sins orally and in secret to the priest (the confessor), who imposes an appropriate penance and absolves the penitent, on the understanding that satisfaction is to be made through the performance of the penance. Penance was an integral part of pastoral care. It called for theoretical instruction and practical guidance which, from early on, found expression in the penitential handbooks as a literary genre and tradition. These terms should not be taken to comprise all medieval texts and traditions relating to confession and penance. The handbook literature does not include general treatises of sacramental theology, whether appearing as separate works or as parts of larger works. The extensive literature of penitential sermons, exhortations to penance, and the like, are likewise excluded. In principle, the same applies to the plethora of tracts on the virtues and vices, on the seven capital sins, etc., if a clear indication of their use as confessional aids is lacking, but this criterion of selection is necessarily a bit arbitrary.<sup>4</sup> As regards the handbook literature proper, works dealing exclusively with matters of procedure are irrelevant. Many handbooks include sections on how to receive and comfort the penitent, how to conduct the examination and guide the penitent through the stages of the penitential process. Whether or not such is the case, the decisive criterion of selecting the material studied is that the handbook, at one or several points, descends to the level of individual sins and has something to say about sins in the economic sphere.

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<sup>3</sup> On this theme, cp. the fundamental study by Delumeau, 1983.

<sup>4</sup> A number of the works studied are included in Bloomfield-Guyot's list of incipits of medieval works on the virtues and vices. This list runs to 6553 items, including variants. Much can be eliminated at a glance, and a lot was eliminated after inspection, but the work remains a fruitful hunting ground for additional bibliographical research.

The word “handbook” is used as a generic term both because of its comprehensiveness and in order to avoid specific association with any of the titles under which these texts circulated or with the various designations that are used in modern critical and bibliographical literature. It should be taken in the broad German sense of a *Handbuch*, which can mean a book of instruction or guidance of almost any size and complexity. In the case of the material studied here, it ranges from ponderous tomes of a thousand pages to slim memoranda of a few sheets in the hands of simple clerics in the confessional of their parish churches or carried by itinerant friars called upon to hear confession. The former class of works may state established doctrine at length and in detail. They would be cumbersome in everyday use and most likely unintelligible to many confessors, but rather served as reference works or as textbooks in the training of confessors. By these means, or through intermediate works, the essence of their doctrine would seep down to the grass roots level.

Some of the larger handbooks were lexica of alphabetically ordered articles, brief and long, including a more or less standardized set of articles on economic subjects. A number of other forms are represented. Many authors favoured a systematic treatment; other works were mainly collections of cases of conscience. Quite a number of handbooks contained, or consisted almost entirely of, interrogatories, that is, various schemata designed for a systematic examination of the penitent. They might be organized on the basis of the ten commandments, the seven capital sins, or other configurations, often combining several. Some of them included “estate interrogatories” (*interrogatoria ad status*), suggesting questions to be asked persons of different states and professions. These regularly included chapters or sections on merchants. A minority of penitential handbooks were designed as aids for the penitent rather than the confessor. Some would be useful both for the priest and for the educated layman preparing himself for confession. Two prominent authorities of the genre have suggested principles of classification. Michaud-Quantin argued for a first distinction between the firmly structured *summas* offering a systematic treatment supported by casuistry and *manuals* of practical instruction and guidance.<sup>5</sup> Boyle presents a detailed nomenclature as part of an overall typology of pastoralia.<sup>6</sup> Instructive

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<sup>5</sup> Michaud-Quantin, 1962, 9.

<sup>6</sup> Boyle, 1982, 231.

though they are in theory, I found it impossible to adopt either terminology owing to the occurrence of hybrids and the inconsistency of titles under which the handbooks actually circulated.<sup>7</sup>

If the earliest forms are included, this type of literature covers a period of almost a thousand years, from the late sixth to the early sixteenth century. With the Reformation, things changed, on both sides of the schism, and the study breaks off there. The beginning is less clear-cut. There is no firm line of tradition that ties the medieval practice to penance in the ancient Church. As a matter of fact, the forerunners of the handbooks designed as aids in connection with secret, auricular confession did not originate in Roman circles but in the distant Celtic Church. They were brought to the Continent of Europe by missionary Irish, Welsh, and Anglo-Saxon monks and were adopted and extended by the Frankish Church. These early penitentials or *libri poenitenciales* consisted mostly of fixed penitential tariffs for long lists of specific sins. For the student of the history of economic thought they yield a meagre harvest. Their approach to penance was not as automatic as this tariff system suggests, however; they often made room, in prefaces and textual sequences, for procedural instruction. The transition from the *libri poenitenciales* to the genre that succeeded them is not as abrupt as traditionally claimed. Over a certain period of time, old lists of penitential canons formed part of the penitential handbooks, and new lists were put together throughout the Middle Ages. From about a century or two into the new millennium, however, the overall tendency was to cast them aside.

A number of factors called for, or contributed to, a renewal of the literature designed for the education of confessors and as reference material in the confessional. It was foreshadowed by the Gregorian reform of the Church in the eleventh century. In the twelfth century it was hastened by the attention paid to pastoral care in the Paris theological circles and in the canonistic circles of the University of Bologna. It was sealed by the decree *Omnis utriusque sexus* of the Fourth Lateran Council of 1215, which made annual confession to

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<sup>7</sup> Partial surveys and studies of penitential handbooks were made by Dietterle, Teetaert, Michaud-Quantin and, more recently, Rusconi, Muzzarelli and Turrini. Works useful for locating relevant texts also include the bibliographies of the religious Orders and, for early printed Italian vernacular books, the "finding list" of Jacobson Schutte. See also Chapter 1, note 1.

their own parish priest compulsory for everyone over the age of discretion. This was not a new practice, but it enhanced the demand for handbooks with a more personal and humane approach to penance. In the ensuing literary tradition, priests were instructed to take account of the age, sex, and state of the sinner and to exercise judgement regarding aggravating or extenuating circumstances.

The sacramental theology of the Catholic Church in the Middle Ages held no unanimous view either of the order or of the significance of the successive stages of the penitential process, namely, contrition, confession, absolution, and satisfaction. Thus, the question to what extent absolution could anticipate satisfaction remained an issue. It was a question of some importance in the case of sins in the economic sphere, where absolution often presumed restitution of considerable amounts of ill-gotten gains. A different question in sacramental theology concerned the nature of contrition required for absolution. Perfect contrition was a sorrow for having sinned, combined with a true detestation of sin and a sincere purpose of amendment, arising from a love of God. If such a state of mind in itself produced grace, it might be argued that formal absolution by a priest, and indeed the intervention of a priest at all, were unnecessary for salvation. This position might seem to anticipate the abolition of the sacrament of penance by the Protestant churches, but on this point, Luther's original break with traditional dogma was at once both simpler and more fundamental. When faith in Christ as Saviour opens the sinner's door to immediate and unconditional grace, the nature of his contrition becomes, at best, a secondary issue.

In the medieval Catholic tradition, however, the "contritionists", that is, those who insisted on perfect contrition preceding absolution and who claimed Thomas Aquinas as their foremost authority, also insisted on the significant role of the priest. It was the priest's words "I absolve you" that produced grace, because he held, by delegation, the *potestas clavium*, that is, the power to forgive sin that was vested in the pope as the successor of St. Peter. If the penitent's contrition was imperfect in the sense that it did not arise from his love of God but from his fear of divine punishment, it was known as attrition. The period of High Scholasticism witnessed the origin of an "attritionist" tradition in penitential theology. Claiming John Duns Scotus as its main authority, it emphasized the essential role of the priest's words of absolution just as strongly as the "contri-



tionist" tradition, or perhaps even more strongly, for it held that these words efficaciously absolved the sinner even if his contrition was not perfect but amounted to little more than fear-induced attrition. It should be noted that these two labels did not arrange the Dominicans and the Franciscans in fixed confronting positions. With time, they reached a sort of reconciliation whose main point was the power of the keys to convert attrition to contrition provided that the penitent did not place obstacles in the way but subjected himself to the mystery of the sacrament. This doctrine doubtless brought consolation of many troubled souls. Few persons possess the power of introspection and the spiritual integrity that enable them to say with conviction that they regret their sins with a perfect contrition. A person in dread of damnation, however, will be in no two minds about it. The case of the merchant would seem to be a typical one in this respect. Many a medieval merchant had reason to fear Hell. Perfect contrition must have been a rarer commodity.<sup>8</sup>

Taken together, the members of the two large mendicant Orders wrote almost exactly fifty percent of the penitential handbooks reviewed in this study. In size and influence, their contributions amount to much more than that. Their combined leadership in the penitential genre is not historically difficult to explain. The Dominicans and the Franciscans received special papal licenses to hear confession and became, in this area, the primary and most direct instrument of the Holy See. It was a task for which the mendicant friars were well situated and equipped. Once again, this was typically the case as regards economic activity. The friars appeared on the scene at a time when the feudal system was breaking down and the economies of Western Europe were on their way to becoming fully developed exchange economies. The changed socio-economic structure created, or brought to the fore, ethical problems relating to trade and price and, increasingly, to an urban environment. Unlike the members of the older monastic orders, and unlike the majority of the parish clergy, the friars tended to congregate in the towns. They observed commercial life and saw the need of moral guidelines for merchants, professionals, capitalists, and employers. They preached about these matters to the townspeople, soon earned the reputation of an understanding

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<sup>8</sup> On the history and theory of mandatory confession in the Western Church, cp. the study by Ohst, 1995, supplementing that of Tentler, 1977.

of, and a sympathy with, the ethical difficulties encountered by members of the merchant class and so, naturally, became their favoured confessors.

Nearly three decades ago, the real purpose of the penitential handbooks became one of the main issues of a controversy that took place between two prominent figures in the field of modern research into medieval penitential doctrine and literature, Thomas N. Tentler and Leonard E. Boyle. Limiting his scope to the major works classified by Michaud-Quantin as “summas for confessors” (counting ten from the *Summa Raimundi* to the *Summa Silvestrina*), Tentler examined the role of these works as “instruments of social control”. Raymond of Peñafort, according to Tentler “introduced [his] obsession with positive law into the genre”, and his successors followed suit, making “the exposition of legal cases . . . perhaps the most prominent feature of the summas. Their task was to represent law in the forum of penance and make conformity to the regulations of the hierarchy a strict matter of conscience”.<sup>9</sup> Boyle found the separation of these ten summas as a particular genre arbitrary and pointed out that at least one of the summists in question, John of Freiburg, observed a “balance of law and theology that provided the headline for most of the manuals and *summae* for confessors after 1300”. Above all, Boyle objected to the characterization of the task of the penitential handbooks as that of “social control”. Their first and foremost task was rather “to present confessors (and their penitents through them) with a detailed and informed exposition of the law of God and of the basic requirements of Christian belief and practice: the commandments, the sacraments, virtues and vices, etc.”.<sup>10</sup>

The question at issue in this dispute is not merely terminological. “Control” is in principle acceptable as a neutral term for an integral part of any system of guidance, even one whose ultimate goal is otherworldly. The offensive word is “social”; however, even if the purpose of the penitential system was salutary guidance of the individual towards grace and salvation, it must include a certain element of social control because virtue has a social dimension. The substantive point at issue is rather one of historical reconstruction and interpretation. Is it possible to achieve any meaningful insight into pre-Reformation penitential doctrine and literature by a study

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<sup>9</sup> Tentler, 1974, 117.

<sup>10</sup> Boyle, 1974, 129–30.

whose scope is limited to the secular interests of the Church? Whatever one's reply to that question, it should be noted that Tentler's analytical premises are neither original nor very extreme. Nor does he focus on the Church's economic interests as narrowly as some other scholars have done. More than a century ago, H.C. Lea, a prominent church historian critical of the penitential system, suggested that "the Holy See . . . exercised a most demoralizing influence in familiarizing the minds of men with the idea that salvation was a sort of merchandise to be bought and sold".<sup>11</sup> Exactly a hundred years later, a team of American economists published a volume where they set out to analyze "the medieval Church as an economic firm".<sup>12</sup> The product offered by that firm was "assurances of eternal salvation"; "the route to paradise was a toll-road, and the Church's spiritual activities provided it with a source of tangible revenue"; "the Church generated huge material benefits for itself and its agents through the provision of penitential and legal sanctions. In other words, penance was profitable." In the end, however, "Luther's innovations provided an all-or-nothing offer of the afterlife with a still lower entry price (i.e., salvation was determined by faith alone)".<sup>13</sup>

In order to place the present study in the context of these analyses, it is necessary to establish a distinction between the Church's pastoral functions and its proprietorial involvements in the secular economy. As regards the latter, it can be reasonably argued that a critical study of scholastic (and penitential) usury doctrine must take account of the Church's interests both as a lender and as a borrower of money. The present study is not concerned with usury, however, except insofar as discussions of contracts involving time may throw some light on price doctrine. In the area of commodity exchange and price, the participation of the Church as an actor in secular markets can only have influenced doctrine to a much more modest extent. Due account may be taken of it when it does occur, in connection with official price setting, monopoly grants, and the like. When the Church, in its pastoral capacities, granted indulgences and commutations and prescribed fees and fines related to the sacraments and specifically to penance, it is of course possible to construe a stricter moral code in the forum of conscience as being

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<sup>11</sup> Lea, 1896, II, 415.

<sup>12</sup> Ekelund, Hébert, et al., 1996, subtitle.

<sup>13</sup> *Ibid.*, 60, 62, 69, 162.

motivated by greater income for the Church, not in the secular market, but in a “salvation market” of its own invention. This interpretation can be applied to ethical codes of conduct in any area, including business conduct. As regards trade and price, however, there is not, *prima facie*, any reason to accord greater credence to that interpretation than to one that accepts the Church’s moral doctrine at face value, as a standard of business behaviour dictated by the law of God.

PART ONE

TRANSALPINE AND IBERIAN AUTHORS

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## CHAPTER ONE

### THE *LIBRI POENITENTIALES* AND THEIR EARLY SUCCESSORS

The social framework readily explains the paucity of material relating to economic activity in the Irish, Welsh, and Anglo-Saxon *Libri poenitentiales* of the early Middle Ages. The main concern of the authors of these lists of sins and penitential tariffs was monastic discipline. When laymen are addressed, there is an emphasis on sins of the flesh. Canons about murder and physical violence regularly occur. Canons about theft, perjury and fraud appear as well, but sins of this character remain unspecified. There is some uncertainty about the contents of the Insular penitentials because most of what is extant is preserved in Continental manuscripts of Frankish origin, in which it is difficult to distinguish the nucleus from later additions.<sup>1</sup> A case in point is offered by the Ambrosian penitential, thus named after the Ambrosian Library at Milan, in which the single known manuscript of it was discovered.<sup>2</sup> This manuscript is a copy made in the late ninth or early tenth century, but the place and date of the original are estimated to a British or Irish convent between c. 550

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<sup>1</sup> Systematic, critical research in the large and complex source material of the early medieval penitential tradition began in earnest with the studies and editions by Wasserschleben (1851). They were followed up before the turn of the century with the two volumes by Schmitz (1883; 1898) and shortly afterwards with the briefer studies by Albers (1901) and Zettinger (1902). These works are still basic. The three-volume, heavily polemical work by Lea (1896), with its focus on absolution and indulgences, initiated a digression from textual research. The study by Hödl (1960) covers part of the same period as the present chapter but focuses on the penitential doctrine of the leading theologians rather than on the penitentials as a literary genre. The second volume of Watkins's history of penance (1920) deals with penance in the Western Church from 450 to 1215 and is highly instructive. Cp. also the article by Oakley (1940), and the general survey by Vogel (1978). McNeill and Gamer's (1938) volume of English translations, complete or in part, of some of the penitentials mentioned in the first part of this chapter, with introductions and general comments, is invaluable as a handy point of orientation. Fortunately, critical work on the individual texts has been resumed on a large scale in the course of the last decade, issuing in studies such as those by Haggenmüller, Körntgen, and Kotje mentioned below.

<sup>2</sup> B*A*mbros G 58 sup., described by Körntgen, 1993, 10–13.

and c. 650.<sup>3</sup> In the longer run, this work is interesting because it is partly organized according to the eight principal vices listed by St. John Cassian.<sup>4</sup> In Chapter 3, on Avarice, there is a canon condemning robbery, fraud, pillage, theft, perjury, deceit, shameful gain, and usury.<sup>5</sup> Shameful gain (*turpe lucrum*) could be made in different ways and often referred to prostitution, but the term was also used more broadly for all those kinds of illicit economic gain that did not fit the label of usury (*usura*) which, though still vague, mostly meant profit on loans. This canon does not reappear in the seventh-century Irish penitential attributed to a certain Cummean the Long, of which the Ambrosian is a main source.<sup>6</sup> There is nothing similar in the Insular nuclei of two other main penitential traditions. I refer to that of Columban (c. 543–615), essentially a Celtic work but with Frankish elements, probably composed during the Irish saint's missionary activity in Burgundy or Italy,<sup>7</sup> and to the one questionably attributed to Archbishop Theodore of Canterbury (602–90), which only survives as part of the work of a later scribe.<sup>8</sup>

In the penitential previously believed to be that of Cummean and now generally known as the *Excarpus Cummeani*, however, there is a ruling that was destined for a long life. This work is believed to have been composed at Corbie in the second quarter of the eighth century.<sup>9</sup> Like the Ambrosian and the genuine Cummean, it is organized on the basis of the principal vices contrary to human salvation, a scheme later to be reconstructed in terms of the seven capital sins and in that form serving as a main organizing principle of penitential handbooks throughout the medieval and early modern periods. Chapter VIII of the *Excarpus Cummeani* deals with usury and avarice, and its first canon reads as follows. "If someone exacts usury from anybody, he shall do penance for three years, one of these on bread and water. If he persists in avarice, he shall be expelled".<sup>10</sup>

<sup>3</sup> Ibid., 86.

<sup>4</sup> St. John Cassian, *Institutes*, V,1: PL 49, 202–3; *Collationes*, V,2: PL 49, 611.

<sup>5</sup> III,5: "Qui per rapinam vel fraudem, latrocinium, furtum, periurium, circumscriptioem, turpilucrum usuramque aliena diripuerit, arguatur. Si non emendat, excommunicetur." (Körntgen, 1993, 262.)

<sup>6</sup> Ibid., 7–9 and *passim*; cp. Zettinger; McNeill and Gamer (henceforth M/G) 98–9.

<sup>7</sup> M/G 249–50; ed. Wasserscheben (W) 353–60; Schmitz, 1883 (S I), 588–602.

<sup>8</sup> M/G 179–82; ed. W 182–219; S I, 510–50.

<sup>9</sup> Körntgen, 1994, 823.

<sup>10</sup> VIII,1: "Si quis usuram undecunque exegerit, III annos poeniteat, I ex his in pane et aqua. Qui permanet in avaritia, alienetur" (W 460–93 at 482; S I, 602–76 at 634; cp. M/G 266–7).



This penitential was widely influential. It is considered to be the form in which the Irish penitentials obtained their greatest popularity in Europe.<sup>11</sup> There is no doubt, however, that the specific three-year penance for usury originated on the Continent. A number of other Frankish penitentials of the eighth and ninth centuries contain this canon but omit the addition. The earliest ones are brief and summary lists of tariffs, extant in a single manuscript, after which they are named; some are extant in two or more manuscripts.<sup>12</sup> It seems, also, that the mentions of usury in the penitential material attributed, at one time or another, to the Venerable Bede and to Egbert of York, derive from the same Continental tradition.<sup>13</sup>

Two other Continental penitentials, dating from the ninth century and from the late eighth century, respectively, introduce another theme that points forward. The Hubertense penitential was discovered in a manuscript from the monastery of St. Hubert in the Ardennes. The author specifies a three-year penance for usury. He omits the clause about bread and water but adds another clause about exclusion from holy orders or deprivation of rank therein for those who charge usury.<sup>14</sup> In a later canon, the Hubertense prescribes a seven-year penance for anyone who "commits any kind of falsification, either in writings or in measurements or in weights".<sup>15</sup> The Simple St. Gall penitential deals with these crimes in a single sentence: "If anyone should make use of usuries or fraudulent measures or scales, three years".<sup>16</sup> Theft, fraud and perjury are ubiquitous sins; the specific condemnation of the use of false weights and measures speaks of a changing economic environment, a development towards a market exchange system. The canons quoted from the Hubertense and

<sup>11</sup> M/G 266.

<sup>12</sup> Penitentials following the *Excarpsus Cummeani* on usury, in full or in part, include the *Burgundense* (ed. Kottje, 1994 (K), 64; Schmitz, 1898 (S II), 321; transl. M/G 275), the *Bobbbiense* (K 69; W 409; S II,324), the so-called *Simple Parisian* penitential (K 75; W 413; S II,328), the *Sletstatense* (K 84), the *Oxoniense I* (K 90), the *Floriacense* ("one whole year": K 99; S II,342), the *Tripartite St. Gall* penitential (W 517), the *Martenianum* (W 296—named after E. Martène, who first published it), the *Pseudo-Theodore* (W 594), the penitential of *Halitgar of Cambrai* (W 369; S I,481; transl. M/G 307), and a number of others.

<sup>13</sup> The Bede-Egbert traditions are especially complicated. It seems, in view of the reconstructions of Albers and Haggenmüller, that the canons on usury at W 254 and W 329 are later additions.

<sup>14</sup> Ed. Kottje 110; W 380; S II,335; transl. M/G 292.

<sup>15</sup> Ed. Kottje 111; W 381–2; S II,336; transl. M/G 292.

<sup>16</sup> Ed. Kottje 120; W 427; S II,347.

the St. Gall penitential are related to those of some contemporary Frankish councils. In 813, Charlemagne assembled a number of provincial councils, including one at Arles and another one at Tours. Canon 15 of the Council of Arles commands that weights and measures be everywhere equal and just, as stated in Lev. 19.36 and Prov. 20.10.<sup>17</sup> The wording of Canon 45 of the Council of Tours is similar, scriptural authority being Prov. 11.1 and Matt. 7.2.<sup>18</sup>

A few years after the date of these councils, Ansegisus of Luxeuil (d. 833) published a collection of capitularies, one of which deals with weights and measures and reads as follows. "That all should have equal and correct measures and just and equal weights, whether in towns or in monasteries, whether for mutual giving or receiving, as we have it in the precept of the Lord's law".<sup>19</sup> Regino of Prüm (d. 915) copied these lines nearly verbatim in his work on ecclesiastical discipline,<sup>20</sup> and a century later, Burchard of Worms (d. 1025) paraphrased them in his *Decretum*. The nineteenth book of this work deals with penance, and Burchard furnished his version with an addition that turned it back into a penitential canon: "If anyone, for the purpose of gain, undertakes to alter just measures and just weights, he shall do penance for twenty days on bread and water".<sup>21</sup> This rule was frequently to be copied and was subsequently included in the *Decretals* or *Liber extra* of Pope Gregory IX. In the last decade of the twelfth century, Bernard Balbi of Pavia published a compilation of papal and synodal edicts, whose structure became the model for four other such compilations, soon to follow, as well as for the definitive collection of Gregory IX, for which the five earlier ones provided much of its material. Burchard of Worms on weights and measures passed via the *Compilatio prima* to the *Liber extra* with a single substantial alteration, presumably made by Bernard of Pavia, namely, an extension of the period of penance from twenty days to thirty days.<sup>22</sup>

<sup>17</sup> *M.G.H., Concilia*, II,i, 252.

<sup>18</sup> *Ibid.*, 292.

<sup>19</sup> *Collectio Capitularium*, III,90; *M.G.H., Capitularia*, I,434.

<sup>20</sup> *De synodalibus causis et disciplinis ecclesiasticis*, II,436; ed. F.G.A. Wasserschleben, Leipzig 1840, 385.

<sup>21</sup> *Decretorum libri XX*, XIX,148; Cologne 1548, f.217vb. It also appears, slightly different, in the long Chapter 5 of Book XIX; ed. cit., f.197va-b.

<sup>22</sup> *Compilatio prima*, III,15,3; *Quinque compilationes antiquae*, ed. E. Friedberg, Leipzig 1882, 31; *Liber extra* (henceforth *X*), III,17,2; *Decretalium collectiones*, ed. Friedberg, Leipzig 1879, 518. Early publishers of this canon, from the editors or Burchard of Worms to Friedberg, refer to a Council of Mainz for its origin. In his extremely

Ten days more or less on bread and water would certainly make a difference to the penitent but it pales in comparison with a reduction from a matter of years to a matter of days. The case of falsifying weights and measures is not representative in this respect, however; penances extending over many years are still to be found in Burchard of Worms. While thus perpetuating older traditions, there is one important respect in which he points forward. One of the principles adopted by the new type of penitential handbooks which were soon to replace the literature examined above, was that penance should be arbitrary, not, to be sure, in the sense of being capricious and undetermined, but in the sense of being based on judgement and arbitration on the part of a confessor who would consider the condition of the sinner and the circumstances of the sin. Though Burchard of Worms to a large extent relies on the traditional tariff system, he clearly seeks to fit the punishment to the crime. Burchard gives his book on penance the title “Corrector et medicus”. He did not invent the medical analogy but developed it at some length. Just as *corporum medici* compose different remedies for different bodily ailments, *spirituales medici* must use different cures for the soul’s wounds. Because these are fewer, the confessors are positively admonished not to base their cure on their own ideas but on the canons and the tradition of the Fathers. In doing so, however, they should also take into account the sex of the penitent, his or her age, poverty and status, the cause of the sin and other conditions.<sup>23</sup>

In Book XIX, Burchard of Worms lists the principal vices and their brood of derived sins.<sup>24</sup> Similarities suggest that he draws on the penitential tradition of Theodore, perhaps the so-called Pseudo-

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thorough examination of Burchard’s work and its sources, Fournier notes the similarity to the canons quoted from the Councils of Arles and Tours and to Ansegisus and Regino but admits failure to locate the source in any known Council of Mainz (Fournier, 1910, 108). Note that the *Liber extra*, as well as the twelfth-century compilation of canon law by Gratian, copied a number of other Carolingian capitularies through Burchard of Worms. Two of them, the canons *Quicumque* and *Placuit*, deal with the regulation of commercial activity and are frequently cited as authority in this area by later authors of penitential handbooks. They are not included in Burchard’s Book XIX, on penance, however, and it seems more convenient to introduce them when they actually appear in the penitential tradition proper.

<sup>23</sup> XIX,29: f.205va. The author of the Cummean penitential, in the opening lines presents the work as a “healing medicine of souls” (*medicina salutaris animarum*), cp. Zettinger, 1902, 505. On the medical analogy in the history of penance, cp. McNeill, 1932.

<sup>24</sup> XIX,6: f.201va-b.

Theodore, a ninth-century text.<sup>25</sup> This is still an eightfold scheme but, following St. Gregory the Great rather than St. John Cassian, and quoting *Ecclesiasticus*, pride (*superbia*) is singled out as “the beginning of all sin”.<sup>26</sup> The other principal vices are vainglory (*vana gloria*—subsequently often placed among the offspring of pride, thus reducing the main list to seven), envy (*invidia*), anger (*ira*), despondency (*tristitia*—later more often sloth: *acidia*), avarice (*avaritia*), gluttony (*ventris ingluvia*—later: *gula*), and lust (*luxuria*). Pride is the principal sin according to Gregory,<sup>27</sup> because it is a revolt of the spirit against God, the proud man exalts himself before the Creator. Lust is the most earthly of sins: a revolt of the body against the spirit. With the subsequent development of the economy, an increasingly prominent position would be given to avarice in the many penitential handbooks partly structured on the capital sins. Avarice leads to a neglect of the spiritual life much as lust does, but it plays on fewer strings, its sole aim is to acquire, and hold on to, material wealth. Burchard of Worms names some of its offspring; they include theft, lies, perjury, robbery, violence, hardheartedness, as well as forgetfulness of future beatitude. There is no specific reference to trade, let alone price. The closest Burchard comes to these subjects is by quoting Pope Leo I in a chapter on how to behave while doing penance:<sup>28</sup> It is better for the penitent to suffer loss than to get involved in the perils of trade (*negotatio*), for it is difficult for sin not to intervene between buyers and sellers in commercial intercourse (*commercium*).<sup>29</sup>

While the old type of penitential, culminating with Burchard’s achievement, remained in use, new manuscript variants appearing by way of selection, combination and addition, the genre became increasingly obsolete as Europe underwent its great intellectual and social change in the first two centuries of the new millennium.<sup>30</sup> The characteristic late medieval and early modern types of penitential

<sup>25</sup> W 571–3; cp. M/G 341. On Burchard’s use of Theodorian sources, cp. Fournier, 1910, 82–3.

<sup>26</sup> Ecclus. 10.15.

<sup>27</sup> *Moralia*, XXVI,28: PL 76, 364–5.

<sup>28</sup> XIX,95: f.214ra.

<sup>29</sup> Verbatim from Leo, *Epistola* 167, Inquis. 11: PL 54, 1206.

<sup>30</sup> Many of the penitential handbooks presented in this and later chapters include lists of penitential canons or refer to them. Payer, 1984; 1999, has argued convincingly that the transition from the rigidity of the old tariff system to the flexibility of the new type of penitential handbook is a historical misconception of a much smoother and more gradual process.

handbooks became standardized only in the early thirteenth century. This is often associated with Canon 21 of the Fourth Lateran Council of 1215 and the famous decree by Pope Innocent III, commanding all Catholics above the age of discretion to confess their sins once a year to their parish priests.<sup>31</sup> It is also associated with the simultaneous foundation of the new Orders of mendicant friars. These events, however, are to a certain extent symbolically significant rather than historically decisive. Innocent's bull canonized a minimum requirement urged by councils and bishops for centuries, and the friars did not create a wholly new genre. The clergy had long since experienced a manifold need poorly satisfied by the old penitentials, namely, to be informed about right and wrong within a broader spectrum of lay activities and aspirations in the new social environment, to receive a modicum of instruction in sacramental theology, and to be told how best to receive and prepare the confessant and to conduct the examination. Before the coming of the friars, and for quite some time afterwards, these needs were met by a heterogeneous collection of intermediate forms of confessional literature. It is difficult to mark it off precisely from adjacent forms of pastoral, theological, and canonistic works. In some cases, instructions for the priest as confessor may form separate parts or books of more general pastoral works. Those works which deal specifically with confession, may vary from a few pages to heavy volumes.

Several of the early authors of these works belonged, or had at one time belonged, to the intellectual elite at Paris in the century prior to the foundation of the university there. One who apparently came from this background was Bartholomew, later bishop of Exeter and a prominent Anglo-Norman churchman (d. 1184). In the 1160s he composed a *Poenitential*. It is extant in seventeen medieval manuscripts,<sup>32</sup> and was critically edited, with a bio-bibliographical introduction, by A. Morey.<sup>33</sup> Bartholomew of Exeter's penitential consists of 135 brief chapters. The first forty of them are devoted to general principles regarding repentance, confession, and satisfaction, and to advice for the priest on confessional procedure. The rest of the work is mostly a collection of canons. Besides Burchard of Worms's

<sup>31</sup> *Omnis utriusque sexus*, in *Compilatio quarta*, V,14,2; cp. X,V,38,12.

<sup>32</sup> Bloomfield-Guyot 1159, cp. 3863. This work will be used as a standard reference to manuscript sources (giving entry numbers, not page numbers).

<sup>33</sup> *Bartholomew of Exeter, Bishop and Canonist*. Cambridge 1937 (Part I: Biography; Part II: The Penitential). Cp., also, Michaud-Quantin, 1959, 266-8; 1962, 16, 113.

*Decretum*, Bartholomew built on a later work thus titled by St. Ivo of Chartres and on Gratian's *Concordia discordantium canonum*, also known for short as the *Decretum*. This is a collection drawn from patristic, conciliar and papal sources. It became a standard text on canon law and constitutes the first part of the *Corpus iuris canonici*. In addition, Bartholomew used Peter Lombard's *Libri quatuor Sententiarum* (the "Sentences"), which was to become the standard textbook of systematic theology at Paris and in other schools of learning. Large volumes of commentary literature accumulated on the basis of these works. The later penitential handbooks tied in with this literature on all kinds of subjects, including economic ones. The flourishing of this commentary literature postdates Bartholomew, however, and he failed, on his own initiative, to react to the most promising invitations to discuss trade and price that are to be found in the underlying texts of Gratian and the Lombard. In a single, brief chapter on usury, he warns the clergy against the quest for *turpe lucrum* involved in trade, following Ivo of Chartres, and copies Burchard's twenty-day penance for falsifying weights and measures.<sup>34</sup>

The most famous exponent of a more flexible approach to penitential practice is Alan of Lille, *doctor universalis*, one of the great intellectual lights of the twelfth century, who taught at Paris and ended his days as a monk at Cîteaux in 1203. His literary output, which ranges from classically inspired works like *Anticlaudianus* to an alphabetical dictionary of the Bible, also includes a *Liber poenitentialis*.<sup>35</sup> It is extant in three manuscript redactions. My references are to the long redaction in the critical edition of J. Longère.<sup>36</sup> It is a work in four books. Alan states the new program in his prologue, and in the text he repeatedly emphasizes that penance should be "arbitrary",<sup>37</sup> and that the confessor's role is that of a *spiritualis medicus*.<sup>38</sup> These principles do not work out equally well in practice, however. Alan

<sup>34</sup> Chapter 92: 257–8: cp. Ivo, *Decretum*, XIII,11: PL 161, 805.

<sup>35</sup> On the life and works of Alan of Lille, cp. the introductory volume to J. Longère's edition of the *Liber poenitentialis*. On the place of this work in the history of penitential literature, cp. Michaud-Quantin, 1959, 270–6; 1962, 15–9, 113, 117; and Teetaert, 1926, 151–7. On attitudes to wealth and money in the works of Alan of Lille, cp. also Langholm, 1989.

<sup>36</sup> For the manuscript tradition of the three redactions, cp. Longère, 1965, I,32–103. The short version is in PL 210; of the middle version there is an early edition, Augsburg 1518.

<sup>37</sup> III,1;2: ed. Longère, 127, 128.

<sup>38</sup> I,2; II,1;7; IV,38;40: 25, 45, 51, 186.

of Lille by no means frees himself entirely from the old tariff system. Economic subjects are touched upon only briefly: There is no true penance for usury unless what was taken is restored or given in alms.<sup>39</sup> Penance for altering just weights and measures is twenty days on bread and water.<sup>40</sup> Alan also mentions fraudulent commerce (*negotiatio fraudulenta*) and couples that which is *extorted* by such means with what is extorted by violence, thus, implicitly, suggesting the notion of economic coercion.<sup>41</sup>

The central figure in Parisian academic circles in the late twelfth century was Peter of Paris, known as Peter the Chanter. Born at Hodenc in the Beauvaisis, he became a canon of Notre Dame in 1183 and died in the Cistercian abbey of Longpont in 1197. Peter's *Summa de sacramentis et animae conciliis* was critically edited by J.-A. Dugauquier.<sup>42</sup> This voluminous work of moral theology with a leaning towards canon law consists of three parts, viz I: *De sacramentis*; II: *Tractatus de poenitentia et excommunicatione*; III: *Liber casuum conscientiae*. Though not a penitential handbook proper, it anticipates, and exerted a strong influence on, later work designed for the instruction of confessors and must be reviewed briefly. Trade, according to Peter the Chanter, is a dubious activity in which it is difficult to avoid sin. It invites avarice and calls for particular attention on the part of the confessor.<sup>43</sup> Peter mentions the failure to reveal latent defects in merchandice,<sup>44</sup> and refers frequently to price. An increased price in the case of straight credit sales, or in sales with deferred payment in instalments, may involve usury.<sup>45</sup> In instantaneous sales, the just price is not to be exceeded;<sup>46</sup> however, the just price is not a fixed amount but may vary with time and place.<sup>47</sup> Economic coercion is hinted at in cases involving sellers "forced by need" (*necessitate compulsus*; *coactus necessitate*).<sup>48</sup> These remarks all point to subjects that were to be developed in the subsequent penitential tradition.

<sup>39</sup> II,10: 52; IV,37: 185.

<sup>40</sup> II,99–100: 98–9.

<sup>41</sup> II,11: 53.

<sup>42</sup> Louvain-Lille 1954–67. References are to consecutively numbered paragraphs and to main volume and page numbers. On Peter the Chanter's life, times, and work, and for a more thorough account of his economic ideas, cp. Baldwin, 1970.

<sup>43</sup> § 116: II,216–7.

<sup>44</sup> § 203: III,141.

<sup>45</sup> § 232: III,222; § 234: III,225.

<sup>46</sup> § 148: II,360.

<sup>47</sup> § 339: III,416–7.

<sup>48</sup> § 128: II,264; § 232: III,222.

Robert of Courson (d. 1219) was one of Peter the Chanter's students. An Englishman of noble birth, Courson became canon of Noyen, then of Paris, master of theology there, was created cardinal and was appointed papal legate to France.<sup>49</sup> Sometime between 1204 and 1208, he composed a *Summa* whose scope seems to have extended in the process of writing, in that it starts as a book of instruction regarding penance but proceeds to include a number of related and supporting subjects. Most of it is still in manuscript.<sup>50</sup> In Section X (of forty-six sections divided into chapters), there are some remarks about commerce, mostly regarding various forms of fraud.<sup>51</sup> Deceiving one's neighbour by selling above due price (*debitum pretium*) is a mortal sin. In order to avoid it, "the merchant should pay attention to the course of sales according to circumstances at the place and time and to the labour expended on the wares".<sup>52</sup>

These Paris masters were theologians with a leaning towards canon law. Their influence also found expression in works of more immediate usefulness to the confessor. In these works, the canonistic element might vary considerably. A prominent English churchman known to posterity as William de Montibus was the author of two or three brief works on penance where this element is virtually absent. Born at Lincoln about 1140, William studied under Peter the Chanter and taught in the schools of Paris but returned to his native city before the turn of the century. He became a canon of Lincoln Cathedral and chancellor in charge of the theological school, a position he held until his death in 1213. During this period he composed most of his works.<sup>53</sup> His *Speculum poenitentis* is a practical guide for parish priests. On its half a dozen leaves, the author advises the priest regarding procedure and discusses various categories of sin, supporting his teaching with an unbroken stream of scriptural and patristic authorities.<sup>54</sup>

<sup>49</sup> There is a biography of Courson by M. and C. Dickson. On his life and works, cp. also Kennedy, 1945; 1947; Baldwin, 1970, I, 19–25; II, 9–15; and *passim*; Weinzierl, 1936, 146–58; Langholm, 1992, 39–52; LTK 8 (1999) 1218.

<sup>50</sup> Manuscripts consulted: Paris BN lat. 14524 (P); Bruges BV 247 (B). Sections XI and XII, on usury, were edited, with a critical introduction and a French translation, by Lefèvre, 1902.

<sup>51</sup> X, 10–2: P, ff. 48vb–49vb; B, ff. 44ra–vb; X, 18–9: P, f. 51ra–va; B, f. 46ra–b.

<sup>52</sup> P, f. 51rb–va; B, f. 46rb: "mercator debet attendere cursum venditionis secundum statum terrae et temporis et laborem quem circa mercem (P: mercaturam) impendit".

<sup>53</sup> On William de Montibus and his confessional writings, cp. McKinnon, 1969; Bloomfield-Guyot 0504, 1410, 3812, 3901; and Goering, 1992, whose volume on William also contains editions of a number of his works.

<sup>54</sup> My references are to London BL Cotton Vesp. D.XIII, especially noted by McKinnon. It differs on minor points from Goering's edition; cp. op. cit., 187–210.



The twofold nature of the sin of avarice is indicated. Having first disassociated it from criminal acts like theft and robbery and classified it among sins of the spirit as a branch of cupidity, William goes on to interpret the “extortion and excess” (*rapina et immunditia*) of the scribes and Pharisees according to Matthew in terms of avarice.<sup>55</sup> In view of this phrase, it may be interesting to note that his standard warning to those tempted by material gain is to shun “usury and excess” (*usura et superabundantia*).<sup>56</sup> This warning presumably includes excess from nonusurious commercial activity, but this subject is not broached. For those who fail to pay their workers promptly, however, William offers what looks like two scriptural quotes combined, in that he cites Tobit but uses some of the wording of Leviticus: Do not let your workers’ wages, on which they live, abide with thee until the morning.<sup>57</sup> William also wrote a tract on the confession of monks. A strong case has been made for his authorship of the metric checklist for confessors known by its incipit as *Poeniteas cito peccator*, which remained hugely popular for centuries. It points to the seven capital sins as the source of all crimes. Not only springs: nay, rivers flow therefrom.<sup>58</sup> *Poeniteas cito* drew a large commentary tradition, but neither the text nor the commentaries need concern us here.

Two canons of St. Victor at Paris, Robert of Flamborough and Peter of Poitiers,<sup>59</sup> composed handbooks for confessors. Both had a background in the academic milieu of the French capital. Robert was an Englishman, who may have taken his local surname from a village in Yorkshire. At least part of his education was obtained at Paris. Before 1205, he became a canon of St. Victor, was priest penitentiary there, and died subprior of the abbey in or after 1224. Sometime between 1208 and 1213 he composed a *Liber poenitentialis*. Some two dozen extant manuscripts tell of a certain medieval diffusion. It was partly edited by Schulte in 1868 and, after more than a

<sup>55</sup> MS cit., ff.63vb–64rb; cp. Matt. 23.25.

<sup>56</sup> Ibid., f.61rb, 64ra, 65va. This phrase occurs at *Comp. I.V*,15,12 and passed from there to *XV*,19,10 *Consuluit*.

<sup>57</sup> Ibid., f.65rb; cp. Tob. 4.15; Lev. 19.13.

<sup>58</sup> PL 207, 1154.

<sup>59</sup> Or perhaps three. A brief *Summa de poenitentia iniungenda* (Bloomfield-Guyot 5112) used to be included among the works of Prevostin of Cremona (cp. Lacombe, 1927, 67–70). This work is now tentatively attributed to Richard, subprior of St. Victor in the first decade of the thirteenth century (not to be confused with the better known Richard of St. Victor, who was prior of the abbey and died in 1173). On the second Richard, cp. Bonnard, I,278. Among mortal sins the author lists avarice, cupidity, usury, perjury, and holiday labour (Vienna NB 1413, ff.129va–132rb).

century, it appeared in a modern critical edition by J.J.F. Firth.<sup>60</sup> The work is not restricted to confession of the clergy. It addresses many cases of conscience encountered by laymen as well, including economic ones, but nevertheless offers little to our particular purpose. It consists of five books, dealing with (I) the reception and examination of the confessant, (II) matrimony, (III) ordination, (IV) the capital vices, and (V) some penitential canons. Book IV is based on the eightfold classification of vices according to Pope Gregory the Great. Each sin is examined in terms of a dialogue between the priest and the penitent. The author is evidently concerned about the sin of avarice, for Chapter 6, which deals with this sin, occupies more than half the length of Book IV. Usury is associated with theft and robbery, and a number of cases involving usury are examined. On the subject of nonusurious but sinful commercial practices, however, there are only a few lines about fraud. Satisfaction should be made by those who count falsely or otherwise cheat in buying or selling or fail to reveal latent defects in merchandise.<sup>61</sup> Penance for altering just measures or weights is twenty days on bread and water.<sup>62</sup> The question of just pricing is not raised by Robert of Flamborough.

Shortly after 1215, Peter of Poitiers of St. Victor (not to be confused with his namesake, the master of theology who commented on the *Sentences*) composed a *Summa de confessione*, of which there is now a critical edition by J. Longère.<sup>63</sup> It consists of fifty-five chapters, mostly quite brief, and a conclusion. This work provides practical instruction for the priest on how to receive and interrogate penitents of different classes and circumstances, and on what penance to impose for a wide range of sins. In Chapter 23, on wrongful possessions, the confessor is advised to ask the confessant if he holds anything unjustly obtained by “theft, fraud, usury, violence or robbery”.<sup>64</sup> Chapter 26 deals specifically with the confession of laymen. Eight lines are devoted to merchants, but all they contain is a prohibition

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<sup>60</sup> On Robert of Flamborough and his penitential handbook, cp. Schulte I, 208–11; Dietterle, *ZK* 24 (1903) 363–74; Teetaert, 1926, 234–5; Weinzierl, 1936, 103–6; Ohst, 1995, 85–102; Kuttner, 1944, 492–9; Michaud-Quantin, 1959, 276–83, 292–6; 1962, 21–4, 115, 119; LTK 8 (1999) 1218; Bloomfield-Guyot 5149; Firth, 1960; 1961; as well as Firth’s preface to his edition of the work, Toronto, 1971.

<sup>61</sup> IV,6,206: ed. Firth, 184.

<sup>62</sup> V,8,322: 257.

<sup>63</sup> Turnhout 1980. On Peter and his penitential, see the editor’s introduction, as well as Teetaert, 1935; Baldwin, 1970, I,33–4 and *passim*.

<sup>64</sup> Ed. cit., 24.

of the use of false weights and measures.<sup>65</sup> Robert of Flamborough's penitential seems to have served as a source for the brief *Summa de poenitentia* by a certain Master John of Kent, probably the John of Kent who was chancellor of St. Paul's Cathedral, London, and later held a prebend in the diocese of Canterbury during the archbishopric of Stephen Langton. The author may also have been familiar with the work of Peter of Poitiers.<sup>66</sup> In the only complete manuscript, John's *Summa* consists of three books. Books I and II, both divided into chapters, relate mainly to the clergy and the laity, respectively. Book III, without chapter division, contains an interrogatory. Usury is discussed at some length in Book II and is touched upon again in Book III. In connection with the former discussion, the author notes that it is not usury, but *turpe lucrum*, if someone, from excessive avarice, buys cheap for storage in order later to sell dearer. Such activity is compared unfavourably with the honest labour of a craftsman.<sup>67</sup>

There is only one work from this period that combines the form of a penitential handbook with the depth and extent of Peter the Chanter's analysis, namely, the *Summa confessorum* of Thomas of Chobham (c. 1160–c. 1236). Thomas was an Englishman who studied at Paris and graduated master of theology but settled in his own country. He was rector of Chobham in Surrey when he wrote his *Summa*, finishing it about 1216. Later he became canon and subdean of Salisbury.<sup>68</sup> More than sixty manuscripts of the work have been traced,<sup>69</sup> quite an impressive number considering its size; in the critical edition by F. Broomfield,<sup>70</sup> the text runs to 572 pages. The work is divided into seven articles, the first six of which occupy less than sixty percent of its total length. These six articles deal with the sacrament of penance in general and its different forms, with classification and gradation of sins, the circumstances and states of confessants, the qualifications of the confessor, confessional procedure, the power of the keys, excommunication, reserved cases, and forms

<sup>65</sup> Ibid., 29.

<sup>66</sup> On this work, with an identification of the author and a list of contents, cp. Goering, 1988.

<sup>67</sup> II.21: London BL Roy. 9.A.XIV, f.221vb.

<sup>68</sup> On Thomas of Chobham and his *Summa*, cp. Broomfield's introduction to his edition; as well as Baldwin, 1970, I,34–6 and *passim*; and Langholm, 1992, 52–62.

<sup>69</sup> Broomfield 583–94; Bloomfield-Guyot 1145. There are also two anonymous, early printed editions, Cologne c. 1485; Louvain c. 1486: Hain 13153–4.

<sup>70</sup> Louvain-Paris 1986.

of satisfaction. The seventh article is a grand survey of human activity and the vices involved. Its principal structure is the seven mortal sins (vainglory having been subsumed under pride), but it is intersected with alternative classifications, which permit fornication to be examined in connection with lust, homicide in connection with anger, etc.

If Thomas of Chobham has earned a place for himself in the history of economic thought, it must be because he introduced the concept of a “conditional will” in the theory of usury. In some works reviewed previously, I noted an association of usury with theft and robbery. In the *Decretum*, however, Gratian quotes St. Ambrose of Milan stating that someone who charges usury is a robber.<sup>71</sup> Theft, according to Justinian’s *Institutes* in the *Corpus iuris civilis*, is taking what belongs to another against his will, and robbery is taking it against his will by force.<sup>72</sup> By combining these principles it follows that a debtor who agrees to pay usury does so, in a sense, against his will, because he is forced to do so. He chooses to pay rather than be without money because he needs money, but his is a choice conditioned by circumstances. In Chobham’s words, he does not pay usury “*voluntate absoluta sed voluntate comparativa*”.<sup>73</sup> This distinction, phrased in different ways, is an ancient one. It is to be found in Aristotle, in Roman law, and in St. Augustine, but always in connection with physical coercion. What Thomas of Chobham did, was to transform it from physical to economic categories, that is, from the threat of violence to the threat of whatever consequences might follow from being without money. Owing to its adoption by the famous theologian William of Auxerre, this “argument from conditional will” or “argument from economic coercion” was to assume a prominent position in the medieval arsenal of natural law arguments against usury.<sup>74</sup> I shall say no more about Thomas of Chobham on usury and I shall not refer to this particular argument again until its appearance in penitential handbooks in cases involving a needy buyer or a needy seller rather than a needy borrower.

Chobham did not apply the argument by analogy to buying and selling. In connection with his examination of different professions in the sixth article, however, he subjected trade to a more explicit

<sup>71</sup> Ambrose, *De bono mortis*, 12,56: CSEL 32/1, 752; cp. Gratian, *Decretum*, II,14,4,10.

<sup>72</sup> I.4,1,6; I.4,2, pr.

<sup>73</sup> *Summa*, VII,6,11,4: ed. Broomfield, 508.

<sup>74</sup> On the ancient traditions on coercion and the will, see Langholm, 1998, Chapters 1–3. On the restatement of the model in terms of economic categories and its use as an argument against usury, see *ibid.*, Chapter 4.

analysis than any of his precursors in the genre and had something to say about price. He quotes the old adage that it is difficult for sin not to intervene in commercial activity, but then goes on to explain what this means in practical terms. Commerce is to buy something cheaper in order to sell it dearer. Laymen are permitted to do this, even if they don't improve the goods between buying them and selling them. If commerce were forbidden, great shortage would be experienced in many regions, because merchants carry things from places where they abound to places which lack them. Merchants may therefore charge the value of their labour and transport and expenses, in addition to what they paid for the goods. They may also charge for improvement. But if they tamper with the goods so as to cheat the buyer they are thieves and brigands. Furthermore, whereas secular law states that no seller is permitted to charge an amount in excess of one-half above the just price, it is sinful to charge anything above the just price at all. The law fixes on one-half above the just price because a deceived buyer can demand back what he paid in excess of that amount. Then there are some who buy raw materials and add their workmanship and labour and make some new product. Thus, some buy wood or stones or metal to make utensils or tools; others buy hides and skins to make sandals and shoes. These persons are not called merchants but craftsmen. They are permitted to sell their works and their skills taught them with much labour, provided that they do not practise fraud in their crafts.<sup>75</sup>

One set of sources for this sketch of business ethics were the late-twelfth-century summists on the *Decretum*, mainly Rufinus and, most likely, Huguccio. According to the decretists, a layman (and, under certain conditions, a cleric) might exercise an honest craft and earn a living by his skill and labour. This was unproblematical; St. Paul himself had been a craftsman.<sup>76</sup> Regular commercial activity was traditionally considered to be more questionable. To judge about lawful commerce, the artisan could serve as a prototype. A layman (though normally not a cleric) might be a merchant provided that he emulate the craftsman in some important respects, namely, by shunning avarice and fraud and by spending some labour on his wares, for instance, by improving them physically.<sup>77</sup> Chobham mentions the

<sup>75</sup> VI,4,10: 301–2.

<sup>76</sup> Huguccio, *Summa decretorum*, to II,14,3, pr: Paris BN lat. 3892, f.217va.

<sup>77</sup> Rufinus, *Summa decretorum*, to II,14,3: ed. H. Singer, Paderborn 1902, 341–2; cp. Huguccio, loc. cit.; as well as to II,14,4,3: f.218rb; to II,14,4,9: f.218va.

more typical commercial function of transportation. This is probably an echo of St. Augustine's commentary on the Psalms. A fragment of this work was included as a *palea* (a later addition) to the *Decretum*. It had not yet collected a commentary tradition but it was known to the authors cited above. Augustine tells of a merchant arguing that he deserves a reward for his labour on which he subsists carrying merchandise from distant parts.<sup>78</sup>

The limit of one-half above the just price mentioned by Chobham is derived from the legal principle of *laesio enormis*. As stated in the *Code* of Justinian, this principle was designed to protect only sellers of land. A seller was entitled to legal redress if the price obtained was less than one-half of the just price.<sup>79</sup> At the hands of the canonists, it was extended to cover all sales and to protect buyers as well as sellers. Chobham extends it in both respects: A buyer is entitled to redress in the civil courts if the price paid is more than one-half above the just price. A corresponding limit below the just price applies to the seller. Within these limits, the parties are free to haggle and bargain. By the time of the publication of Thomas of Chobham's *Summa confessorum*, these principles were incorporated in two of the early compilations of decretals and it was later to be adopted by Gregory IX in the *Liber extra*.<sup>80</sup> And yet, according to Chobham, any amount charged in excess of the just price was sinful on the part of the seller. He stresses this again while discussing avarice: In human law, restitution is due only if the price exceeds the one-half-above limit; however, according to divine law, even a penny above the just price must be restored.<sup>81</sup>

### Summary

Neither the *libri poenitentiales* nor the early handbooks adopting a more arbitrativ approach to penance deal at any length or depth with the themes that constitute the main subjects of this study. The centuries covered by this chapter are best described as a gestation period

<sup>78</sup> *Decretum*, I,88,12; cp. Augustine, *Enarrationes in Psalmos*, to Psalm 70,17: PL 36, 836.

<sup>79</sup> C.4,44,8.

<sup>80</sup> *Comp. I*.III,15,4; cp. *X*.III,17,3; and *Comp. III*.III,14,2; cp. (split in two pieces) *X*.III,17,6 and *X*.II,20,42.

<sup>81</sup> *Summa*, VII,6,11,8: 514.

of penitential doctrine in the area of trade and price. Important compilations in theology and canon law were made in this period. Firmer frameworks of reference were thus constructed in the two main disciplines on which later penitential work would draw, each author finding his place somewhere in the broad border area between these disciplines. One of the main analytical structures favoured in the penitential tradition made its appearance, and a number of central themes were indicated, if only vaguely. The organization of confessional interrogation on the basis of the capital vices, or the mortal sins, harks back to the *libri poenitentiales*. This model invited a classification of sins in the economic sphere under the heading of Avarice. Whether appearing as an item in the whole catalogue or not, avarice is presented as the cause or common denominator of sins threatening the trader from Burchard of Worms, through Peter the Chanter, William de Montibus, Robert of Flamborough and John of Kent, to Thomas of Chobham. The individual sin most often mentioned is usury, but *turpe lucrum* and fraud appear early on. When forms of fraud are specified, emphasis is placed on falsification or fraudulent use of weights and measures. Referred to in the Frankish penitentials and capitularies, condemnation of this type of commercial malpractice was transmitted by way of the compilations of Ansegisus, Regino and Burchard, to the penitential handbooks of Bartholomew of Exeter, Alan of Lille, Robert of Flamborough and Peter of Poitiers. The question of the obligation to reveal latent defects in merchandise is raised by Peter the Chanter and Robert of Flamborough. Alan of Lille and the Chanter also make what may be interpreted as allusions to economic coercion. The latter refers to the just price as being in principle subject to variation. Criteria of estimating the just price or, stated differently, criteria justifying commercial profit, appear only towards the end of the period. Robert of Courson refers obliquely to the market, whereas John of Kent and Thomas of Chobham allude to the analogy between the merchant and the craftsman, practitioners of both occupations deserving, each in their own way, a reward for their labour and cost. A note should also be made of William de Montibus's mention of prompt payment of the wages of hired labour.

## CHAPTER TWO

### THE DOMINICAN TRADITION FROM RAYMOND OF PEÑAFORT

Shortly after the papal confirmation of the Dominican Order, its leaders initiated a literary project whose purpose was to equip its members, who called themselves Friars Preachers, with penitential handbooks, reasoning correctly that confession is a natural and intentional extension of preaching. Raymond of Peñafort's celebrated *Summa de paenitentia* does not seem to have been the earliest Dominican penitential. Several anonymous texts have survived, and at least one whose author is known. About 1219–21, Paul of Hungary, master of canon law and prior penitentiary of St. Nicholas at Bologna, composed a handbook that sometimes appears in the manuscripts with the same title.<sup>1</sup> It is a much briefer work. A general part about the sacrament of penance and about confessional procedure is followed by a catalogue of vices and virtues. Four vices cry out to God because they are unnatural, namely, sodomy, which works against nature, homicide, which extinguishes nature, oppression, which violates natural piety, and retaining the wages of labourers, which impairs natural equity.<sup>2</sup> There is nothing about trade or price. On these subjects, the Dominican tradition effectively started with the *Summa Raimundi*.

St. Raymond of Peñafort was born near Vilafranca del Penedès in Catalonia and died at Barcelona in 1275 at the exceptionally advanced age of almost a hundred years. He had graduated doctor of law at Bologna and was already a noted scholar when he entered the Dominican Order at Barcelona in 1222. Shortly afterwards, and most likely in 1224–26, he composed the first redaction of his *Summa de paenitentia*. Pope Gregory IX called him to Rome in 1230, appointed

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<sup>1</sup> On Paul of Hungary and his penitential handbook, cp. Quétif-Échard I,21; Schulte II,531–2; Teetaert, 1926, 351–3; Mandonnet, 1935; Ohst, 1995, 64, 110; Michaud-Quantin, 1959, 297–9; 1962, 25–6, 115, 120; Hinnebusch II,236–9, Bloomfield-Guyot 4919; and Kaeppli III,205–7, with additional references. The work is extant in upward of sixty manuscripts and was printed at Monte Cassino in 1880, on which edition my brief remarks are based.

<sup>2</sup> Ed. cit., 209–10.



him chaplain and papal penitentiary, and commissioned him to put together the collection of *Decretals* that bears the name of that pope. This task being completed with the papal promulgation in 1234, Raymond turned, among other things, to revising his *Summa* and eventually reissued it in a new redaction, bringing it up to date by including material from his own compilation of decretals. In 1238 Raymond was elected master general of the Order but he stepped down after two years and retired to Barcelona for good. For the rest of his long life he devoted himself to the conversion of Moslems and Jews; it was at his suggestion that Thomas Aquinas, in the early 1260s, composed what connoisseurs of medieval theology consider his finest work, the *Summa contra gentiles*. Raymond of Peñafort was canonized in 1601. In the preceding year, his *Summa* was printed at Rome for the first time and it was reissued there in 1603 and saw a number of later editions to 1744. It is now available in a modern edition by Ochoa and Diez, Rome 1976, based on select manuscripts of the second redaction and on the early Roman editions.<sup>3</sup>

The *Summa de paenitentia* runs to a total of about six hundred columns in the modern edition and consists of three books, each book being divided into titles and subdivided into paragraphs.<sup>4</sup> The books deal, respectively, with sins against God, sins against one's neighbour, and with the clerical office and the sacraments. This last book, much the longer of the three, concludes with a title on the sacrament of penance and the remission of sin, where Raymond explains the principles and procedures that apply in the confessional.<sup>5</sup> Books I and II are thus in the nature of an encyclopaedia of practical matters to which the confessor may refer back from Book III for guidance both as regards his examination of the penitent and as

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<sup>3</sup> The standard biography of Raymond of Peñafort is that of Valls Taberner, Barcelona 1936, reissued 1953, to which may be added a more recent, popular one, by Forcada Comins 1994, as well as the Prolegomena by Ochoa and Diez to their edition of the *Summa*. On this work, its genesis and manuscript tradition, purpose and structure and the author's penitential doctrine in general and his economic ideas, cp. Quétif-Échard I, 106–10; Schulte II, 408–13; Dietterle, *ZK* 24 (1903) 530–42; Teetaert, 1926, 354–7; 1928; Kuttner, 1953; Michaud-Quantin, 1959, 300–6; 1962, 34–42, 115, 120; Bloomfield-Guyot 5054; Hinnebusch II, 248–52; Kaeppli III, 283–7; McLaughlin, 1939, 117–9; Noonan, 1957; Baldwin, 1959, 42–57; Langholm, 1992, 111–4; 1998, 60, 89–90, 93–4.

<sup>4</sup> A fourth book, on matrimony, is often added to it, but this is a separate work.

<sup>5</sup> Book III contains a brief interrogatory *ad status*. It devotes two lines to merchants, who should be asked about perjury, lying, theft, fraud, and the like (*Summa*, III, 34, 35: 834).

regards the possible sinfulness of activities revealed therein. This arrangement of subjects was to some extent anticipated in the comprehensive summas of Peter the Chanter, Robert of Courson and Thomas of Chobham and it was to be adopted, in one way or another, in some of the major penitential handbooks of the following centuries. Comparing Books I and II, no exact distinguishing criterion is evident. It should be noted, however, that albeit some of the sins traditionally gathered under the heading of Avarice, such as falsehood and perjury, are in Book I, most of the sins motivated by avarice, from homicide through robbery, arson and theft, to usury and dirty business gain, are in Book II. According to Raymond of Peñafort in his *Summa*, sins committed in the economic sphere are sins against one's neighbour. In the short run, this classification meant a boon to analysis because it facilitated the establishment of the ethical paradigm centered on interpersonal justice in economic intercourse. In the longer run, it proved to be morally vulnerable.

To Raymond of Peñafort, the paramount sin in the economic sphere is usury. It is discussed at length in Title II,7, following titles on robbery and theft because (paraphrasing Ambrose of Milan), "usury differs little, or not at all, from robbery".<sup>6</sup> Since usury doctrine as such is not within the scope of the present study, we must pass over most of this discussion. Raymond was at one with Paul of Hungary, however, regarding the multiple manifestations of usury. He examines a number of cases of sales contracts involving time, and therefore possibly involving usury. Intentionally or not, his analysis of such cases may tell us, indirectly or by implication, something about the author's conception of the just price in instantaneous exchange. Raymond copies or paraphrases certain excerpts from three chapters of the title on usury in the *Decretals* of Gregory IX. These chapters are known by their incipits as *Naviganti*, which apparently originated as a papal communication to Raymond himself (addressed to "Brother R."); *In civitate*, a letter of Pope Alexander III (1159–81) to the archbishop of Genova; and *Consuluit*, a letter by Urban III (1185–7) to a priest in Brescia. The excerpts all deal with sales contracts with anticipated or deferred payment. Raymond places them end to end.<sup>7</sup> Their gist is as follows. If someone pays in advance for a certain commodity, he is not to be considered a usurer even

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<sup>6</sup> *Summa*, II,7, pr: ed. 1976, 537.

<sup>7</sup> *Summa*, II,7,3: 540.

if the goods turn out to be worth more at the time of delivery than at the time of payment, if there is reasonable doubt whether they would be worth more or less. Such doubt also excuses someone who sells on credit for more than the goods are worth at the time of delivery, provided that they are not intended for immediate sale.<sup>8</sup> If the goods are worth five at present and are sold on credit for six and there is doubt, "according to the common course of sale of such goods", whether they will be worth more or less than six, this is not usury—though it is advisable to refrain from this kind of contracts, "for it is impossible for man to hide his intentions from almighty God".<sup>9</sup> But if someone should sell on credit at a much higher price (*longe maiori pretio*) than the present value, it would be usury.<sup>10</sup>

The point of departure of these decretals is that price in the case of sales with deferred or anticipated payment should not, in principle, be different from a price paid cash on delivery. A higher price in the case of deferred payment or a lower price in the case of anticipated payment are not formally usurious and therefore not invalid in the external courts of law. They are judged to be usurious in the internal court if the buyer's or the seller's intent is usurious. While this is a matter of conscience, a practical rule of thumb may be to estimate whether the price difference is within or without a reasonable estimate of expected future price variations. A credit price very much higher than the cash price is an indication of usurious intent because a reasonable margin of doubt about future price movements would seem to have been exceeded.<sup>11</sup> The point in the context of the present study is not usury doctrine as such, but the assumption underlying the argument, namely, that the price—not only the actual price but the just price—may vary with time. According to Raymond of Peñafort, citing *In civitate*, a merchant is permitted, to some extent, to profit from temporal variations in price if his intention is not usurious (or otherwise suspect, as explained in a later paragraph). He may keep his wares in stock in the expectation of a price increase but, if he had planned to sell at present, the price to be charged is the present cash price even if payment is deferred (for to raise it merely for this reason would be patently usurious). Raymond does

<sup>8</sup> From the latter part of X,V,19,19 *Naviganti*.

<sup>9</sup> From X,V,19,6 *In civitate*; cp. *Comp. I.V*,15,8.

<sup>10</sup> From X,V,19,10 *Consuluit*; cp. *Comp. I.V*,15,12.

<sup>11</sup> On usury in sales contracts according to canon law, cp. McLaughlin, 1939, 117–20; Noonan, 1957, 90–5.

not state precisely why and how the just price may vary with time or what the just price is at any given moment in time. The reference to "the common course of sale" is suggestive. This phrase is not in the decretal but is Raymond's own contribution.<sup>12</sup> It is not unreasonable to associate it, in some loose fashion, with the current, competitive market price.

This interpretation is confirmed if these decretals, and Raymond's redaction and use of them, are considered from the point of view of *turpe lucrum*. The just price may vary with time and a merchant must be allowed to take advantage of such variations, but not to profit from speculation in prices generally. One typical form of speculation would be to pay less in advance when goods are plentiful and cheap, for delivery at a date when they are expected, without much doubt, to fetch a much higher price on resale because of seasonal or other foreseeable shortages. The formally usurious nature of such contracts is not immediately evident, but they are immediately vulnerable to the charge of *turpe lucrum*, because prices driven to the lowest or highest possible level through speculation are not just prices. The prime concern of Raymond and contemporary canonists being the campaign against usury, however, a much higher price and the absence of doubt could be taken to indicate usurious intent. From this point of view, the decretal *In civitate* can be seen as an extension of the old canon *Quicumque*, an injunction against speculation in foodstuffs being rewritten and added to the arsenal against usury.<sup>13</sup> This relationship is somewhat obscured in the *Summa Raimundi* because speculation is discussed separately, in a later paragraph.

Erroneously attributed in Gratian's *Decretum* to Pope Julius I (337–52), *Quicumque* harks back to Carolingian price regulation. It in fact originated as a capitulary of Charlemagne himself, issued at Nijmegen in 806. Before reaching Gratian, it appeared in a number of intermediate collections.<sup>14</sup> Gratian's version is somewhat abbreviated. It states

<sup>12</sup> In the modern edition of the *Summa* the line in question is rendered *secundum communem cursum venditorum* ("of the sellers"), but the variant *venditionis* is noted from two of the manuscripts on which the edition is based and it seems to me much more likely to be the original one. Cp. Robert of Courson in note 52 to Chapter 1.

<sup>13</sup> Johannes Teutonicus and Bartolomeo of Brescia, in the original and the definitive versions of the *Glossa ordinaria* to the *Decretum* of Gratian, indicate this relationship by referring to *In civitate* in a gloss to *Quicumque*; cp. Bamberg SB Can. 13, f.129rb; ed. Basel 1512, f.220rb. See also the important discussion by Baldwin, 1959, 46–52.

<sup>14</sup> *Capitulare missorum Niumagae datum 806*, c. 17: *M.G.H., Capitularia*, I,132; Ansegisus of Luxeuil, *Collectio capitularum*, I,125: *ibid.*, 411; Benedict Levita, *Capitularium col-*

that whoever, at time of harvest or vintage, not because of necessity but from cupidity, buys grain or wine, for instance, buys a measure for two pennies and keeps it until it is sold for four pennies, or six, or more, such a one reaps shameful gain (*turpe lucrum*).<sup>15</sup> Raymond of Peñafort paraphrases these lines without the numerical example and without the reference to motivation.<sup>16</sup> He then proceeds to elaborate and modify this old precept against profit on buying and selling necessities, constructing a casuistry partly based on the commentary tradition of the twelfth-century decretists. Gratian had placed *Quicumque* near the end of a series of canons dealing primarily with commercial activity on the part of the clergy. Much of the commentary tradition focuses on this subject, which is less relevant to the present study and which is only lightly touched upon by Raymond in this context.

In his *Summa decretorum*, Rufinus establishes a distinction between buying necessities for the purpose of resale at a profit, and buying them for one's own use and later, finding that all that was bought is not needed, as was originally believed, selling the rest at a profit. Such resale of an unexpected surplus bought for consumption, Rufinus teaches, is not shameful or unlawful, either on the part of the laity or on the part of the clergy.<sup>17</sup> Raymond adopts this position and states positively that the good in question may be sold "as it is commonly sold in the market (*prout venditur communiter in foro*), even if dearer than it was bought". Thus, once more, and more directly, Raymond invites a market interpretation of the just price. He goes on to observe that a cleric's sin is graver than that of a layman if they engage in illicit buying and selling; neither, however, need restore his profit to particular persons but ought to spend it all on the poor. Victuals may also be bought if a famine threatens, to prevent them leaving the region. If such purchases are not made for the purpose of resale at a higher price but rather to prevent hunger in the region, in the manner of Joseph (who interpreted Pharaoh's dreams and gathered all the food of the seven years of plenty and stored them against the seven lean years predicted),<sup>18</sup> the activity is highly

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*lectio*, I,265: PL 97, 734; Raoul of Bourges, *Instructio pastoralis*, c. 35: PL 119, 720–1; Regino of Prüm, *De synodalibus causis*, I,291: ed. Wasserschleben, 1840, 134–5; Burchard of Worms, *Decretum*, II,127: Cologne 1548, f.45rb–va; Ivo of Chartres, *Decretum*, VI,201; XIII,21; *Panormia*, III,162: PL 161, 489, 806, 1168.

<sup>15</sup> Gratian, *Decretum*, II,14,4,9.

<sup>16</sup> *Summa*, II,7,9: 547.

<sup>17</sup> *Summa decretorum*, to II,14,3: 341.

<sup>18</sup> Gen. 41.

meritorious. Those, however, who buy stores of victuals and thereby induce dearth (*caristiam inducant*), are to be detested like abominable monsters.<sup>19</sup> This phrase, which was destined for a long life, appears to derive originally from the canonist Laurence of Spain.<sup>20</sup>

Having concluded his extensive discussion of usury and related subjects, Raymond, in the following title, “as a kind of epilogue”, examines the lawfulness of trade in general. His point of departure is the serious warning sounded in patristic texts against engaging in commercial activity because of the sins involved in it. Raymond argues (not very enthusiastically) against this view. Buying and selling is not among those activities that are dishonourable in themselves. It may easily be rendered so, however, unless certain conditions are strictly observed as to why, when, by whom, where, and how it is conducted. Commerce is dishonourable *ex causa* if its intention is corrupt, that is, if it is motivated by avarice or some other evil purpose. It is honourable from this point of view if the merchant trades in order that he may “supply himself and his family with necessities by his labour” (*de suo labore sibi et suae familiae in necessariis providere*) or in order to exercise works of mercy.<sup>21</sup> Commerce is dishonourable *ex tempore* if conducted on holidays or in the night, for evildoers hate the light.<sup>22</sup> It is dishonourable *ex persona* if engaged in by the clergy. Raymond summons St. Paul and a number of patristic authorities quoted through Gratian against the idea that clerics should get involved in regular business activities.<sup>23</sup> Such activities, however, are “granted laymen” (*laicis vero sunt ista concessa*).<sup>24</sup> Raymond goes on to explain that clerics may exercise certain honest crafts that involve buying and selling; for instance, they may buy raw materials and sell the finished product.<sup>25</sup>

<sup>19</sup> Raymond, *Summa*, II,7,9: 547.

<sup>20</sup> The earliest occurrence known to me is in the *Glossa Palatina*, to *Decretum*, II,14,4,9: Vat. Pal. lat. 658, f.54rb; Durham C. III,8, f.88va. This Gloss was written between 1210 and 1215. The particular gloss about buyers “inducing dearth” was attributed to Laurence of Spain in the medieval commentary tradition on the *Decretum* (cp. Guido of Baiso, *Rosarium*, to *ibid.*: f.240ra), and a strong case for Laurence’s authorship of the *Glossa Palatina* was made by Stickler, 1966. Laurence of Spain was active at Bologna and was known to Raymond of Peñafort during the latter’s studies there.

<sup>21</sup> *Summa de paenitentia*, II,8,1: 558–9.

<sup>22</sup> *Ibid.*, 559.

<sup>23</sup> 2 Tim. 2,4; *Decretum*, I,88,9–10; 12.

<sup>24</sup> *Summa*, *ibid.*: 559.

<sup>25</sup> *Summa*, II,8,2: 561.

For this analysis, including the two lines quoted verbatim, Raymond draws on the decretists, most likely Rufinus again, and certainly Huguccio. Discussing trade, Rufinus made the same distinction between buying and selling on the part of a merchant and on the part of an artisan. The characteristic function of the latter is “to improve the thing with his labour and expenses” between buying it and reselling it.<sup>26</sup> Huguccio adds that to profit from craftsmanship is lawful for laymen and for clerics provided that the craft in question is suitable for clerics.<sup>27</sup> As regards the layman, he may also buy with the intention of selling at a profit because “commerce is granted him” (*ei concessa est negotiatio*), provided that he does not do so from avarice but “in order to provide for himself and his own” (*ut provideat sibi et suis*).<sup>28</sup> In another brief gloss to *Quicumque*, Huguccio repeats these terms.<sup>29</sup> By referring to the merchant’s labour spent in the support of his family, Raymond of Peñafort points to the analogy between crafts and commerce which lies at the root of the labour and cost interpretation of the just price.

Commerce is dishonourable *ex loco* if conducted in solitary and suspect locations or in exalted locations unsuitable for mundane affairs, such as in church. Raymond cites Origen’s commentary on Matthew about the cleansing of the Temple: a church should not be a house of commerce but a house of prayer.<sup>30</sup> In the forum of conscience, those who have sinned in buying and selling as to cause, time, person or place, should be told to spend their profit on the poor.<sup>31</sup> Although falsehood and perjury are examined in Book I as sins against God, Raymond returns to these subjects in connection with commercial transactions and devotes a paragraph to them in Book II.<sup>32</sup> Commerce can be dishonourable because of *how* it is conducted. What should the confessor do, Raymond asks, about merchants who don’t know how to buy or sell without lying and swearing falsely, cheating simple people by selling worthless or corrupt wares for good and otherwise resorting to whatever deception and fraud

<sup>26</sup> Rufinus, *Summa decretorum*, loc. cit.

<sup>27</sup> Huguccio, *Summa decretorum*, to II,14,3, pr.: f.217va.

<sup>28</sup> Ibid., to II,14,4,3: f.218rb.

<sup>29</sup> Ibid., to II,14,4,9: f.218va.

<sup>30</sup> Raymond, *Summa*, II,8,3: 562; cp. Origen, *Commentaria in Matthaeum*, to Matt., 21.12–3: PG 13, 1443–6; quoted through Gratian, *Decretum*, II,16,7,9.

<sup>31</sup> *Summa*, II,8,4: 563.

<sup>32</sup> Ibid., II,8,5: 563–4.

they can think of? Raymond replies that it is a mortal sin thus to cheat one's neighbour knowingly and deliberately. Therefore, restitution should be made, either by returning the profit obtained by such means to the person deceived or his heirs or, if the person is unknown, by letting the Church handle it or by giving it to the poor, as stated in the titles on robbery and usury.<sup>33</sup> Under certain conditions, however, falsehood in business may be a venial sin only. Such is the case if a seller in ignorance tells a lie believing it to be the truth, and occasionally if he knowingly tells a lie as well, but merely seeks to obtain the true value of his merchandise by lying about it, thus causing no real loss to the buyer. By way of concluding the paragraph on perjury and theft, Raymond repeats, through Gratian, the ancient warnings of Popes Leo the Great and Gregory the Great, that sin is hard to avoid in buying and selling.<sup>34</sup>

No other medieval handbook for confessors was as extensively copied, glossed, abbreviated and imitated, as to form or content, as the *Summa Raimundi*. Many of these derived texts are anonymous and of no consequence. Among known authors, the majority are German Dominicans. One of the earliest and most popular works in this tradition, but one whose authorship and whose relationship to Raymond's *Summa* are not quite clear, is a briefer handbook recently edited critically by J.P. Renard as the *Summula Magistri Conradi*.<sup>35</sup> It used to be dated before Raymond's work and believed to be one of its sources. Closer examination of internal and external evidence seems to favour the hypothesis that the direction of any demonstrable influence was the inverse one. The work must have been written in the period between the first and the second redactions of the *Summa de paenitentia*, probably about 1228. The geographical distribution of extant manuscripts, of which more than fifty have been identified, suggests

<sup>33</sup> Cp. *Summa*, II,5,44: 524–7; II,7,16: 555–6.

<sup>34</sup> Leo, *Epistola* 167, Inquis. 11: PL 54, 1206; Gregory, *Homilia* 24, 1: PL 76, 1184; cp. Gratian, *Decretum*, II,33,3 (*De paenitentia*), 5, 2; 5, 7.

<sup>35</sup> *Trois sommes de pénitence de la première moitié du XIII<sup>e</sup> siècle*, 2 vols. Louvain 1989. (Vol. I: Prolégomènes et Notes complémentaires; Vol. II: Textes inédites.) Renard's critical edition also includes two later, related works, with incipits "Quia non pigris" and "Decime dande sunt". The latter is partly an abbreviation of the *Summula Conradi*. The former has many points of similarity with it. Both are anonymous. Goering and Payer, 1993, argue for a Dominican origin, or association, of a third early anonymous handbook with the incipit "Cum ad sacerdotem", edited by these scholars from a number of manuscripts. It used to be falsely attributed to the Franciscan Jean Rigaud. These anonymous works are without relevance to the present study.



a German origin, and the attribution in some manuscripts to a certain "Master Conrad" or "Brother Conrad" led to the tentative, but not at all unlikely, identification of the author with Conrad of Höxter. This Conrad was a master of canon law who joined the Dominican Order at Bologna about 1220 and died as prior provincial of Teutonia in 1236.<sup>36</sup> Conrad's (if we may assume this name for convenience) *Summula* consists of forty chapters in three parts. Part I (Chapters 1–6) on tithes, vows, and the religious life, concludes with a discussion of lawful and unlawful business. In Part II (Chapters 7–28), on the sacraments, the penultimate chapter deals with penance. It is mostly about procedure and clerical competence and appears in different versions in the manuscripts. Part III (Chapters 29–40) deals with some main classes of sins and devotes a chapter to usury.

The chapter on lawful and unlawful business strongly indicates a dependence on Raymond, though the possibility of a common source in some still unpublished canonistic text cannot be ignored.<sup>37</sup> Buying and selling is not dishonourable in itself but may be rendered so *ex causa* (if the intention is corrupt), *ex tempore* (if conducted on holidays), *ex loco* (if conducted in church, for Christ evicted the sellers and the buyers), and *ex persona* (if conducted by clerics and monks, for such activity is forbidden to them). A poor cleric may earn his bread by some honest craft, and he may buy cheap and sell dear if the good in question is altered as to form.<sup>38</sup> In the chapter on usury, Conrad's main source is the French theologian William of Auxerre. Usury in credit sales is discussed following the decretals *In civitate* and *Consuluit* of the *Compilatio prima* (but, significantly, not *Naviganti*). Generally, to sell on credit at a price that is certain to be higher than the cash price, or to sell "much dearer" (*longe carius*), is usury.<sup>39</sup> An exception is noted. Such a sale is not usurious if the future price is estimated by a good and wise man. In this case, it is not the doubtful outcome but the right estimate that makes the contract nonusurious.<sup>40</sup> The reason is presumably that an independent

<sup>36</sup> On this work and its author, cp. Quétif-Échard I,21; Dietterle, *ZK* 24 (1903) 520–7; Weinzierl, 1936, 106–9; Michaud-Quantin, 1962, 24–5, 114, 118; Kaeppli I,283–5; Bloomfield-Guyot 1496, 2381; and, primarily, the prolegomena (Vol. I) to Renard's critical edition.

<sup>37</sup> Cp. Renard, I,54–8.

<sup>38</sup> *Summa Conradi*, I,6: ed. Renard, II,12–3.

<sup>39</sup> *Summa Conradi*, III,38: II,106–7.

<sup>40</sup> *Ibid.*, 107; cp. William of Auxerre, *Summa aurea*, III,48,3,2: ed. Ribaillier, 929.

estimate acquits the seller of the charge of usurious intent. Conrad's explanation of *Quicumque* sounds like a greatly abbreviated version of Raymond's casuistry, though it may well be a direct paraphrase of the canon, perhaps indicated by Raymond. For a person's own necessity, it is not unlawful, at the time of harvest or vintage, to pay two pennies for grain or wine later worth three pennies. If such a purchase is motivated by avarice, it is not usury but *turpe lucrum*.<sup>41</sup> Because of such dishonourable gain, the clergy is not allowed to engage in regular commercial activity, for it is difficult for sin not to intervene in buying and selling.<sup>42</sup>

In the early editions of the *Summa de paenitentia*, and in most of the manuscripts, Raymond's text is supplied with an apparatus of glosses by William of Rennes.<sup>43</sup> Born at Thorigné (on the river Vilaine, near Rennes), William was a master of canon law and held several official positions before joining the Friars Preachers at Orleans. Very little more is known about him. He died sometime before 1259, having composed his Gloss on the *Summa Raimundi* in the 1240s, that is, not long after the second redaction of the work. Some of William's glosses are brief notes explaining words or phrases. In more extensive glosses he modifies and (occasionally) contradicts Raymond's positions or raises issues only vaguely invited by Raymond. Though William of Rennes is a minor and hazy figure in ecclesiastical history compared to Raymond of Peñafort, his contribution to the overall impact and usefulness of the joint work is bound to have been considerable. On the subjects of trade and price he states a number of personal opinions of lasting importance for the penitential tradition. He may have had more experience of business than Raymond and may have found it easier to empathize with merchants, and he sometimes adds a touch of Gallic lightness to the austerity of the Catalan master.<sup>44</sup>

As an illustration of a sales contract obviously involving usurious intent, William poses the case of someone who pays in advance in the autumn for a certain amount of grain, wine or oil to be deliv-

<sup>41</sup> *Summa Conradi*, III,38: II,108.

<sup>42</sup> *Ibid.*, 110.

<sup>43</sup> The Roman edition of 1603, which I use here, and other early editions, erroneously attribute these glosses to John of Freiburg.

<sup>44</sup> On William of Rennes and his Gloss, cp. Quétif-Échard I,130-1; Schulte II,413-4; Dietterle, *ZK* 24 (1903) 542-8; Teetaert, 1926, 357-9; McLaughlin, 1939, 121-4; Baldwin, 1959, 47-51, 54, 56, 69-70, 86; Michaud-Quantin, 1962, 40-1, 114, 117; Kaeppli II,156-9; Bloomfield-Guyot 0356.

ered at Eastertide. In such a case there is no reasonable doubt, and in fact no doubt at all, that the price will have increased.<sup>45</sup> As regards deception in sales contracts where time is not an issue, William points to the distinction between the rules that apply in the external courts of law (*ius fori*) and the internal court of conscience (*ius poli*). This dichotomy is the source of much of the uncertainty attaching to the subject of the just price. The Church had jurisdiction in the public ecclesiastical courts, whose norms of justice would often conform with, or tend towards, those of the civil courts. The Church, represented by the priest in the confessional, held the keys that also gave it the power to judge and to absolve its members secretly according to the more severe norms of God's law. These two courts would rule differently about the justice of prices obtained within the limits of *laesio enormis*, that is, the limits observed in the secular courts. If one party to a sale confesses to having deceived the other, William of Rennes observes, and especially if the latter party is a naïve or simpleminded person (*simplex*), the former party should be told to make restitution, even if the price is within the limits of one-half of the just price. If he refuses to do so, however, the priest is not to deny him absolution, for the civil law supports him, in that it permits the parties to mutually deceive one another (*sese invicem decipere*), provided they do so without fraud (*sine dolo et fraude*).<sup>46</sup>

To the paragraph of the title on usury where Raymond of Peñafort paraphrases *Quicumque* and develops the idea expressed in the canon, William attaches a number of important glosses. He points out that Raymond's paraphrase fails to distinguish whether the motive of the purchase of grain or wine in the autumn is cupidity or not; the judgement of the canon is too harsh if it is understood without this distinction.<sup>47</sup> If motivated by cupidity, the activity described in *Quicumque* is a mortal sin whether it is committed by a cleric or by a layman, but if his motive is to provide for himself and his own (*providere sibi et suis*), it is not a mortal sin for a layman to buy produce or other commodities in order to sell them dearer.<sup>48</sup> Thus, William extends the license to profitable resale, from the case of an unexpected surplus as taught by Rufinus, to regular commerce, following Huguccio.

<sup>45</sup> To *Summa*, II,7,3: ed. Rome 1603, 228.

<sup>46</sup> To II,7,8: 235.

<sup>47</sup> To II,7,9: 235.

<sup>48</sup> *Ibid.*

The size of the profit and other circumstances are not irrelevant. Commercial activity is sinful if driven by greed. If the merchant's intention is to provide for himself from a moderate profit (*ex lucro moderato sibi providere*), it is unobjectionable, and the more so if he knows no other trade and has no other means of support.<sup>49</sup> As regards Raymond's statement that illicit gains are to be given to the poor, this is not compulsory according to William, but is to be understood as advice.<sup>50</sup> If produce is gathered in the expectation of a famine, in the manner of Joseph, it is to be sold when needed "according to the common market" (*secundum commune forum*).<sup>51</sup>

In connection with Raymond's discussion of lawful and unlawful business *ex causa*, William emphasizes that a merchant may earn enough to support himself and his family in necessities, not in superabundant wealth.<sup>52</sup> Further on he repeats that the obligation to give illicit gain to the poor is not a strict command but a counsel.<sup>53</sup> At the end of Raymond's discussion of sins committed in buying and selling, William, in a lengthy gloss, summarizes his own position on lawful commercial profit:

Although business can hardly be conducted without sin, merchants may receive a moderate profit from their goods for the maintenance of themselves and their dependants, for they work for everybody and conduct as it were a common business, carrying goods to and from fairs, "and should not be obliged to soldier at their own charges".<sup>54</sup> From their merchandise they may receive a moderate profit, which should be regulated by the judgement of a good man, since the amount of profit permitted cannot be determined exactly in shillings, pounds or pennies.<sup>55</sup>

In the last quarter of the thirteenth century, Burchard Anerbe of Strasbourg compiled a handy *Summa de poenitentia*. Modelled primarily on the *Raimundina* both as to structure and as to content, it is not a straightforward abbreviation but to no small extent an original work, in which judicially selected excerpts from the original, com-

<sup>49</sup> To II,7,9: 236.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid. The Latin phrase is rendered *secundum communem formam* in the 1603 edition and is corrected here from manuscript, cp. Florence BNaz Conv. Soppr. G.VII.927, f.87rb; Munich SB Clm 9663, f.101r.

<sup>52</sup> To II,8,1: 244.

<sup>53</sup> To II,8,4: 247.

<sup>54</sup> "nec teneantur suis stipendiis militare", presumably an allusion to I Cor. 9.7: "Quis militat suis stipendiis unquam?"

<sup>55</sup> To II,8,5: 248.

bined with extraneous material, express the author's own ideas and emphases. This interesting contribution to the Dominican penitential tradition became quite popular. Some forty manuscripts have been identified.<sup>56</sup> Usury and trade are discussed in some of the titles of Book II. Buying up victuals in order to induce dearth is a grave sin, but clerics as well as laymen are excused if they sell victuals bought for their own use, provided they do not sell dearer.<sup>57</sup> If this means dearer than they bought, it is not precisely what Raymond or his glossator taught. Restitution should be made for fraud. Such is the case if someone buys a thing for less than half its value, unless he buys from a knowing and willing person (*a volente et sciente*) or custom excuses it.<sup>58</sup> These extenuating clauses are not to be found in Raymond or William either.<sup>59</sup> Cheating in business by making merchandise look better than it is or by selling one thing for another is a mortal sin and calls for restitution as well.<sup>60</sup>

The annotated *Summa Raimundi* remained an influential work. Some points of its doctrine and some characteristic phrases were copied and recopied throughout the period covered by this study. There is reason to believe, however, that its influence was greater in other subject areas than those examined here, and it seems that its direct influence fell off rather rapidly. A main reason for its early obsolescence is the fact that its ideas were picked up and relaunched in

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<sup>56</sup> MSS consulted: Munich SB Clm 6014 (M1—leaves somewhat shuffled); Clm 7810 (M2). These and most manuscripts are in four books like Raymond's *Summa* if the fourth book on matrimony is included; some other manuscripts of Burchard are in five books due to a rearrangement towards the end. Burchard Anerbe is an elusive personage not to be confused with some better-known Burchards of Strasbourg. His *Summa* is generally believed to be independent of those of John of Freiburg, but a familiarity with the latter's *Libellus* (see following chapter) is not inconceivable. On the work and its author, cp. Quétiif-Échard I,466; Schulte II,423–4; *Histoire littéraire de la France*, Vol. 26, Paris 1873, 567–71; Dietterle, *ZK* 25 (1904) 268–72; Teetaert, 1926, 447–8; Michaud-Quantin, 1962, 42, 114, 120; Hinnebusch II,252; Kaeppli I,256–7; Bloomfield-Guyot 5744, 5748.

<sup>57</sup> *Summa de poenitentia*, II,43: M1, f.57rb; M2, f.37ra.

<sup>58</sup> II,44: M1, ff.58vb–59ra; M2, f.38ra.

<sup>59</sup> The clause regarding will and knowledge indicates a subsequently often cited legal principle canonized in the *Liber sextus* (the “*Sext*”), an addition to the five existing books of the *Liber extra* of Gregory IX, promulgated by Pope Boniface VIII in 1298. The *Sext* itself consists of five books. To the last book there is appended a series of eighty-eight legal rules, the twenty-seventh of which reads as follows: “No injury nor fraud is done to one who knows and consents” (*Scienti et consentienti non fit iniuria neque dolus*). For the Roman law background of this rule, cp. note 39 to Chapter 4.

<sup>60</sup> II,51: M1, f.60vb; M2, f.39ra.

other influential works both within and without the penitential genre proper. Its economic ideas were introduced in the Italian penitential tradition by Monaldus of Capodistria; later Italian authors would draw on the *Summa Raimundi* either directly or via the *Summa Monaldina*. North of the Alps, the Franciscan *Summa theologica* attributed to Alexander of Hales paraphrased Raymond on trade; the *Summa de summo bono* of the Dominican theologian Ulrich of Strasbourg used both Raymond and William. The most blatant copyist was Vincent of Beauvais, the Dominican compiler of the largest encyclopaedia of the late Middle Ages. Searching for suitable material on usury and commercial activity, he chose that of Raymond and William, copying, more or less verbatim, a large part of text and glosses under the two titles of the *Summa* reported on in this chapter.<sup>61</sup> A curious use of Raymond's text was made by the German Dominican Adam of Gladbach, whose *Summa metrica* (or *Summ(ul)a pauperum*) is a versified abbreviation of it. From the material in *Summa*, II,7, Adam fashions seventy lines on usury, but from II,8 there is nothing and the reader is therefore spared a metric representation of Raymond of Peñafort on trade and price.<sup>62</sup> It is more than likely that some of the many later anonymous handbooks not examined here were written by Dominicans influenced by Raymond. Note that the handbook tentatively attributed to Henry of Ghent copies the annotated *Summa Raimundi* in case discussions of economic subjects. This work is a compilation which occasionally contradicts Henry's known positions and may well have been written by a Dominican.<sup>63</sup> The most important redirection of the Dominican penitential tradition was engineered by John of Freiburg, whose works and their offshoots are the subjects of Chapter 3.

<sup>61</sup> *Speculum doctrinale*, X,102–33: Douai 1624, 956–80.

<sup>62</sup> *Summa metrica*: Cologne 1495, ff.111v–116r (verse and commentary). On this work, manuscripts and editions, and on the author, cp. Quétif-Échard I,734; Schulte II,427–8; Dietterle, *ZK* 27 (1906) 171–7; Michaud Quantin, 1962, 41, 113, 121; Kaeppli I,4; BBKL 1 (1975) 31; LTK 1 (1993) 140; Bloomfield-Guyot 2668, 5852, 6125.

<sup>63</sup> This *Summa de poenitentia* is in Saint-Omer BMun 259; cp. Macken, 1969; 1970; 1979, II,1116–7 (retracting suggested attribution and classifying the work as doubtful); Langholm, 1992, 250–1.

### *Summary*

The early Dominicans introduced two general models for the analysis of commercial ethics in the penitential tradition. Raymond of Peñafort presented one of them almost fully fledged, the other one only in an embryonic form. It was developed one step further in William of Rennes's Gloss on Raymond. Both reappear in some of the Catalan's other Continental confrères and became with time, in various versions, stock in trade of penitential literature. These models start with the assumption that commercial activity can, in principle, be useful and honourable, a point stressed more strongly, however, by William of Rennes than by Raymond of Peñafort. One model lists a number of factors rendering commerce sinful; they relate to cause, time, person, place, and manner. A version of this catalogue is reproduced in the *Summula* of Brother Conrad. The other model lists some potentially profitable forms of trade that are above reproach: planned provision for the good of the community against a foreseen shortage, sale of an unexpected surplus of goods bought for consumption, regular commerce for the maintenance of the merchant and his family (item added by William of Rennes). The form of business condemned in this model is deliberate speculation in necessities, as when a merchant, driven by greed, buys up large stocks when prices are low in order later to control the market. Abbreviated versions of this analysis appear in Conrad and in Burchard of Strasbourg. I shall call this set of cases "the tradition on *Quicumque*", referring to the canon that invited it and to the decretists who annotated the canon. The text of *Quicumque* condemns *turpe lucrum*. Raymond's comments on the title on usury in the *Liber extra* demonstrate the fine distinction between shameful gain and usury and confirm that the just price, in the absence of usury, can vary with time. No hard and fast criterion of just pricing is given. Raymond and William both refer to the merchant's labour, a natural consequence of comparing commercial profit with that of the "artisan prototype" of the decretists. Raymond, however, also refers to "the common course" and to how a good "is commonly sold in the market", whereas William mentions sale "according to the common market" as a reasonable standard. As in Chapter 1, a single author, Paul of Hungary, points to the sinfulness of withholding the wages of labourers. Discussing the manner in which business is conducted, Raymond condemns fraud

and falsehood but makes the rather uncharacteristic remark that lying in order to secure a just price may not be a mortal sin. William points to the distinction between the kind of deception that is permitted in civil law and the kind of regular fraud that the law forbids. A closer analysis of this distinction is premature, but note should be made of the author's mention of special considerations to be observed in dealing with simpleminded persons. A reverse case is described by Burchard of Strasbourg. A purchase made from a knowing and willing person, even at a very low price, involves no fraud.



### CHAPTER THREE

## THE DOMINICAN TRADITION FROM JOHN OF FREIBURG

The most complete summa for confessors written in the thirteenth century is the single one which bears precisely that title in the medieval manuscripts, namely, the *Summa confessorum* of John of Freiburg. Born at Haslach in Schwarzwald towards the middle of the century, John joined the Dominican Order at Freiburg-im-Breisgau. He studied theology at Strasbourg under Ulrich of Strasbourg and perhaps studied at Paris during Thomas Aquinas's second period as regent master of theology there (1269–72). He also knew Albert the Great personally and travelled with him. About 1280, John was appointed lector at the Dominican priory at Freiburg and he continued in this function even after being elected prior of the house a decade later. He died in 1314.<sup>1</sup> John of Freiburg composed three highly successful works for the confessional or for the instruction of confessors. Soon after taking up his post at Freiburg he wrote a *Libellus quaestionum casualium occurrentium in Summa et apparatu fr. Raimundi*. Some thirty manuscripts of this work have been identified.<sup>2</sup> It did not reach the printing presses, presumably because it was outrivalled by the author's *Summa confessorum* of 1297–8. This influential work is extant in upward of 150 manuscripts and saw at least six printed editions.<sup>3</sup> Almost as many manuscripts bear witness to the popularity of John's *Confessionale*, composed for the use of "simpler and less expert confessors".<sup>4</sup>

The full title of the *Libellus* may convey the impression that this work is just another adaptation of the annotated *Summa Raimundi*. The fact

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<sup>1</sup> On the life and works of John of Freiburg, cp. Quéatif-Échard I,523–6; Schulte II,419–23; Dietterle, *ZK* 25 (1904) 255–68; Teetaert, 1926, 440–4; Walz, 1934; Höffner, 1941, 77; Fries, 1951; Hinnebusch II,252–4, 276–7; Boyle, 1974; Michaud-Quantin, 1962, 43–50, 114, 120–1; Bloomfield-Guyot 4938, 5256, 5755; Kaeppli II,428–36; BBKL 3 (1992) 361–2; LTK 5 (1996) 907.

<sup>2</sup> MS used: Munich SB Clm 2683.

<sup>3</sup> Ed. used: Lyon 1518.

<sup>4</sup> MS used: Erlangen UB 548.

that both the *Libellus* and the *Summa confessorum* follow the same basic plan as Raymond's work may tend to confirm this impression and cause it to be extended to John's main work. Such a conclusion would be false. If it were true, it could hardly have accounted for the unique position in the early penitential tradition enjoyed by John of Freiburg. He had some knowledge of legal sources. Besides Raymond and William of Rennes, he quoted a number of textual commentators on Gratian's *Decretum* and the *Decretals* of Gregory IX. By training and inclination, however, he was primarily a theologian. The clue to his position is his consistent and nicely balanced combination of canonistic and theological sources and viewpoints. Throughout the *Libellus* and the *Summa*, he supplements and modifies the teaching of the canon lawyers by quoting contemporary theologians, including Ulrich, Albert and Thomas. In the case of the latter, it has been suggested that Thomistic moral doctrine was known to some leading fourteenth- and fifteenth-century authors of pastoral and penitential works mainly through its "popularization" by John of Freiburg.<sup>5</sup> In the area of commercial activity, John does not so much popularize Thomas as copy him verbatim in extensive sequences. The present chapter therefore affords a welcome opportunity to record some of Thomas's main opinions about trade and price, opinions that frequently recur in later penitential handbooks. The following presentation of John of Freiburg's works focuses primarily on the *Summa confessorum*, secondary references being made to the *Libellus*. Both works deal with usury and with buying and selling in Book II, Titles 7–8; however, each title is divided into numerous brief questions (differently numbered in the two works), rather than into fewer and lengthier paragraphs as in the case of Raymond's *Summa*. John's *Confessionale* is built on another last and will be discussed briefly afterwards.

John of Freiburg quotes Thomas Aquinas on usury from the *Secunda secundae* of the *Summa theologiae*; however, the focus of II–II,78, where Thomas discusses this subject, is on usury in regular loans, which is beyond our scope. On usury in sales contracts with anticipated settlement, John follows Raymond of Peñafort and William of Rennes,<sup>6</sup> adding the authority of two prominent summarists on the *Liber extra*, namely, Hostiensis (Henry of Susa, cardinal-bishop of Ostia, whence the appellation) in his *Summa aurea*,<sup>7</sup> and Godfrey of Trani in his

<sup>5</sup> Boyle, 1974, title. For some examples, cp. *ibid.*, 263–8.

<sup>6</sup> *Summa confessorum*, II,7,16: f.85rb–va.

<sup>7</sup> *Summa aurea*, to X.V,19, n. 8: Lyon 1537, f.250rb–va.

*Summa super titulis Decretalium*.<sup>8</sup> John also follows Raymond and his glossator in their explanation of the canon *Quicumque*, but in the middle of this paraphrase he inserts a verbatim quotation from Ulrich of Strasbourg on the subject in question. It is *turpe lucrum*, Ulrich states in *De summo bono*, to buy commodities, particularly victuals, and to sell them dearer; however, regarding this matter it is necessary to make many distinctions. John of Freiburg quotes:

Such a purchase may either be made for common convenience, the way Joseph bought grain in order to have wherewith to provide for the people at the time of famine, and this is praiseworthy; or it is made for private convenience, and then in three different ways. It may be made as provision, as when someone would buy such goods fearing that he would be obliged to buy them dearer later if he should need them, and later sells them dearer because he does not need them as he believed, and this is also licit, and all the more so if he does not buy more than he needs. Or he buys out of piety in order, from the profit made by selling them, to have something wherewith to take care of the poor, provided that this is done so moderately that the community does not suffer from dearth. Or it may be done according to commutative justice as merchants do, and these may lawfully accept a profit from their work, whereby to support themselves, provided that they don't intend to induce dearth. Or it may be done from avarice, in such a way that one person collects so much of this kind of good that people<sup>9</sup> are compelled (*compelluntur*) to buy from him at his pleasure and he therefore sells as dear as he wishes. And it is evident that these sin enormously, not only against their neighbour but also against the community of neighbours.<sup>10</sup>

Thus guided by his teacher, John of Freiburg brings out what lies at the core of the prohibition of speculation in foodstuffs, namely, economic coercion and exploitation of the needy. In his *Summa*, John proceeds to cite the prominent canonist Sinibaldo dei Fieschi (Pope Innocent IV) on buying cheap and selling dear. In his commentary on the *Decretals* of Gregory IX, Innocent notes the tendency for victuals to be exported from a given region when plentiful there. Moreover, there is a tendency for people of the region not to take due care of plentiful victuals but to squander them. Those who prevent this by buying up stores may, when famine arrives, sell them again "at the price at which they will be then sold" (*eo pretio quo tunc vendetur*)—a

<sup>8</sup> *Summa super titulis Decretalium*, to *ibid.*, n. 6: Lyon 1519, f.219vb.

<sup>9</sup> Ulrich: *omnes*; John: *homines*.

<sup>10</sup> Ulrich, *De summo bono*, VI,3,4: Erlangen UB Lat. 530/2, ff.105v–106r; John, *Summa*, II,7,40: f.87va; *Libellus*, II,7,6: f.55va.

rather ambiguous phrase. Those who buy and resell at a profit without regard to utility, sin.<sup>11</sup>

The sinfulness of inducing dearth is stressed again by John of Freiburg, along with an explicit definition of the just price, in his discussion of commercial activity in general. John first paraphrases Raymond of Peñafort and William of Rennes on the circumstances that make for dishonourable business.<sup>12</sup> He then turns to Albert the Great's analysis of this subject. In these modern times, John observes, quoting Albert, there are particularly three factors that render commerce illicit, namely, person, time, and manner (*modus*). It is illicit if conducted by persons in divine office. There are two ways in which it is illicit because of time, namely, if it is conducted on holidays or if it is conducted at times when it is likely to induce dearth. Such is the case when someone takes out large quantities of new corn or wine in order to sell these goods at his pleasure when others lack them. As to the manner in which business is conducted, it is unlawful if the contract is obtained by means of deception or fraud as to price. John quotes Albert the Great's definition of the just price: "But the just price is that at which the good sold can be valued according to the estimation of the market at that time".<sup>13</sup> Additional support for this position is established by quoting Hostiensis: "The just price is considered with respect to the time of the contract but regardless of whether [the good] is bought for more or sold for less or vice versa, or whether more is offered".<sup>14</sup> This statement, taken alone, is a bit ambiguous as well, but in the given context it must be taken to confirm the unlawfulness of speculation in price and quantity.<sup>15</sup>

The legal classification of fraud (*dolus*) is briefly examined by John of Freiburg.<sup>16</sup> In the version of the medieval canonists, this classification

<sup>11</sup> *Summa*, *ibid.*, f.87va–b; cp. Innocent IV, *In quinque libros Decretalium commentaria*, to X.III,50,1: f.175va.

<sup>12</sup> *Summa*, II,8,1: f.91ra–b; not in *Libellus*.

<sup>13</sup> *Summa*, II,8,1: f.91rb; *Libellus*, II,8,1: f.57va; cp. Albert the Great, *Comm. Sent.*, IV,16,46: *Opera Omnia*, Vol. 29, Paris 1894, 638: "Iustum autem pretium est, quod secundum aestimationem fori illius (John: istius) temporis potest valere res vendita".

<sup>14</sup> *Summa*, II,8,1: f.91rb–va; *Libellus*, loc. cit.; cp. Hostiensis, *Summa aurea*, to X.III,17, n.7: f.149rb.

<sup>15</sup> Hostiensis cites a number of laws of the title on the annulment of sales contracts in the *Code* of Justinian. They include C.4,44,8, one of the main loci of the prohibition of (physical) coercion in Roman law. He also cites C.4,44,4 and 6, however, and these laws propose a rather more liberal price doctrine than John of Freiburg's use of Hostiensis suggests in the given context.

<sup>16</sup> *Summa*, II,8,8: f.92ra–b; *Libellus*, II,8,4: f.57vb.

goes back at least as far as to Laurence of Spain in a gloss to the *Compilatio prima*.<sup>17</sup> It is fully presented by Godfrey of Trani, whom John quotes.<sup>18</sup> He also copies an example proposed by Hostiensis.<sup>19</sup> Three cases must be distinguished. *Dolus* may either be the cause of the contract, or incidental to the contract but not its cause, or it may be neither. In the first case, someone is fraudulently induced to sell something which he would not otherwise have sold. Such a sale is invalid. For example, a compilation of decretals which the owner meant to keep is sold because the buyer tells him a deliberate lie, saying that a new compilation is about to appear. In the second case a sale was intended, but the seller is induced by "circumvention" to sell it at an inferior price. Such a sale remains valid, but a remedy for loss is possible in law. In the forum of conscience, according to John of Freiburg, "the fraud is to be cleansed" (*purgandus est dolus*). In the third case the parties are permitted to "deceive" one another up to the limit of one-half of the just price. John omits this case in the given context but works it into his report on Aquinas. No attempt is made to explain the meaning of such deception.

John of Freiburg proceeds to reproduce Thomas Aquinas's analysis, in Question 77 of the *Secunda Secundae*, of the cheating (*fraudentia*) that is committed in buying and selling. He takes the four articles of the question in the order in which they appear in the *Summa theologiae*, copying the corpus of each article and some of the replies to the initial arguments contrary to Aquinas's own position. Aquinas at II-II,77 are probably the most widely known pages on trade and price in medieval literature. The main points quoted by John of Freiburg are as follows. It is altogether sinful, Thomas states, to have resort to fraud (*fraus*) in order to sell something at more than its just price. Leaving fraud aside for the moment, economic exchange can be considered in two ways, either generally or as tending, accidentally, to be more advantageous to one party than to the other party. Quoting the *Politics* and the *Ethics* of Aristotle,<sup>20</sup> he explains how buying and selling was introduced in order to satisfy

<sup>17</sup> This gloss is quoted from Laurence by Damasus in his *Apparatus* to the *Compilatio prima* at III,15,4 in Paris BN lat.3930, f.26va; and by Vincent of Spain in several manuscripts of his *Apparatus* to the *Decretals* of Gregory IX at the same chapter (*Quum dilecti*—now III,17,3), cp. Paris BN lat.3967, f.129vb; 3968, f.108ra; and Madrid BNac 30, f.177va–b.

<sup>18</sup> *Summa super titulis Decretalium*, to X.III,17, n. 7; f.136rb–va.

<sup>19</sup> *Summa aurea*, to *ibid.*: f.149ra.

<sup>20</sup> *Politics*, I,3: 1257a; *Nicomachean Ethics*, V,5: 1133a.

mutual needs, and for this purpose money was invented. Considered generally, just equality should be observed in exchange, for that which is established for the common advantage, ought not to be more burdensome for one party than for the other. Therefore, to sell a thing for more than its value or to buy it for less is unjust. It sometimes happens, however, that the seller has a great need of the thing sold, while the buyer will suffer if he does not get it. In such a case the just price will depend not only on the thing sold, but also on the seller's loss in parting with the thing. The thing may be sold for more than it is worth in itself (*secundum se*), albeit not for more than it is worth to the seller. If, on the other hand, the buyer derives great advantage by getting the thing, whereas the seller suffers no particular loss, the latter ought not to raise the price, for the buyer's advantage is not due to the seller but to a circumstance affecting the buyer. In short, the seller may cover his loss but not profit from the buyer's advantage, which is not his to sell. The buyer may, of his own accord, pay the seller something extra, but this is a matter of honour.<sup>21</sup>

This is Aquinas's celebrated "double rule" of just pricing. It does not tell us what a thing is worth "in itself". It condemns the exploitation of need and establishes a principle of indemnity. As regards the objection that the civil law permits sellers to sell above the value of goods and buyers to buy below it, this is not to be understood to mean that the law approves of such activity, John proceeds following Thomas, but merely that the law does not punish it. Human law is given to people among whom there are many lacking in virtue and forbids only that which is destructive of human intercourse. Consequently, if no fraud (*fraus*) is involved (clause omitted by John),<sup>22</sup> it holds prices above or below the just level to be lawful unless the

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<sup>21</sup> Aquinas, *Sum. theol.*, II-II,77,1,c; John of Freiburg, *Summa*, II,8.9: f.92rb; *Libellus*, II,8,5: ff.57vb–58ra.

<sup>22</sup> This omission occurs in both works and may therefore be assumed to be deliberate. If such is the case, it may indicate an inclination on the part of John of Freiburg towards the misinterpretation of the legal theory of fraud of which scholastic authors in general, including some authors of penitential handbooks, are sometimes claimed to be guilty (see following chapter). It may be noted, however, that even though Aquinas conditions his reply by the clause in question, he can hardly be read to mean that permissible deception amounts to no more than a mistake, for a mistake cannot be said generally to be contrary to virtue. The fact that he goes on to devote two articles (II-II,77,2–3) to discuss a number of specific cases involving defects and the extent of a seller's obligation to reveal defects, rather than face the general issue raised by the legists, may well indicate that he found the legal theory confusing and best left alone.

excess is too large; if one party is deceived (*deceptus*) beyond one-half of the just price, human law demands restitution. Divine law, however, leaves nothing unpunished that is contrary to virtue and demands compensation if the equality of justice is not observed in buying and selling, provided, that is, that the loss is notable (*notabile*). This condition is added because the just price of things cannot be determined to a point but rather depends on a sort of estimate, so that a moderate addition or subtraction does not violate the equality of justice.<sup>23</sup> At this point, John supplements Aquinas's analysis of fraud and deception by quoting the *Glossa ordinaria* to the *Decretum*. The legal theory on these subjects is complicated and calls for a closer examination. I pass over this theory here, because the following chapter offers a more convenient opportunity to discuss it in detail.

Goods in exchange can be defective as to substance, quantity, or quality. If the seller is aware of such a defect, the sale is unlawful and restitution is due. The same applies in the case of a buyer who knows the good sold to be more valuable than the seller believes.<sup>24</sup> It is true that measures are different in different localities depending on supply. If supplies are plentiful, measures tend to be larger. Sellers and buyers should use measures established by public authority or by custom in each place.<sup>25</sup> A seller is obliged to reveal hidden defects in goods if they are likely to cause danger or loss. He is not obliged to point out manifest defects because this might make it difficult to obtain a price that is just considering the defect. The seller may look to his own indemnity by withholding information about the defect.<sup>26</sup> If someone carries victuals to a place where they fetch a high price owing to scarcity, he need not reveal knowledge of the imminent arrival of plentiful supplies (which would cause an anticipated drop in prices) but may sell at the actual price. It would be highly virtuous to lower the price but as a matter of justice he is not obliged to do so.<sup>27</sup>

<sup>23</sup> II-II,77,1, ad 1; *Summa*, II,8,9: f.92rb; *Libellus*, II,8,5: f.58ra-b.

<sup>24</sup> II-II,77,2,c; *Summa*, II,8,11: f.92va; *Libellus*, II,8,7: f.58rb-va.

<sup>25</sup> II-II,77,2, ad 2; *Summa*, II,8,12: f.92va-b; *Libellus*, II,8,8: f.58va-b.

<sup>26</sup> II-II,77,3,c; *Summa*, II,8,13: f.92vb; *Libellus*, II,8,9: f.58vb.

<sup>27</sup> II-II,77,3,4 and ad 4; *Summa*, II,8,14: f.92vb; *Libellus*, II,8,10: ff.58vb-59ra. The case cited is of classical origin and is discussed at greater length by Cicero (*De officiis*, III,12: LCL 30, 318-23), who reports on a discussion between the Stoic Diogenes of Babylon and Antipater of Tyre, his pupil. The former held that information about an expected influx of grain may be withheld, the latter held that it should be disclosed. Thomas Aquinas (who knew the source but did not quote it), and John of Freiburg copying Aquinas, chose to side with Diogenes.

According to Aristotle in his first book of the *Politics*, there are two kinds of exchange. One kind is natural and necessary, its purpose being to satisfy need. The other kind is blameworthy, because its purpose is to satisfy the greed for gain.<sup>28</sup> It would seem that the activity of merchants is of the latter kind and that trade, therefore, has something base attached to it. Though merchants seek gain, however, nothing prevents gain from being directed to some necessary and even honourable end, and then business becomes lawful. For example, by trade a person may seek to acquire a moderate gain for the support of his house or for the subvention of the poor, or he may trade for the purpose of public utility, lest his country lack the necessities of life and seek gain, not as an end but, as it were, by way of payment for labour (*quasi stipendium laboris*).<sup>29</sup> He may then sell a thing dearer than he bought it, either because its value has altered with the change of place or time or because of the risk incurred in carrying the thing from one location to another or by having it carried by someone else.<sup>30</sup> Chrysostom (actually Pseudo-Chrysostom) states that whoever buys a thing in order to profit by selling it whole and unaltered is the merchant whom Christ evicted from the Temple,<sup>31</sup> and similarly Cassiodorus.<sup>32</sup> But they refer to trade for the purpose of gain and especially to trade in unaltered things. If someone sells an improved thing dearer, he may lawfully seek gain, not as an ultimate end but for some other, necessary and honourable end, as was stated previously.<sup>33</sup>

Thus Thomas Aquinas *apud* John of Freiburg. Early on, John breaks into this extensive series of quotations (much abbreviated here) with a chapter drawing on legal sources.<sup>34</sup> What if a seller will only

<sup>28</sup> *Politics*, I,3: 1257a–b.

<sup>29</sup> II–II,77,4,c; *Summa*, II,8,15: ff.92vb–93ra; *Libellus*, II,8,11: f.59ra.

<sup>30</sup> II–II,77,4, ad 2; *Summa*, II,8,15: f.93ra; *Libellus*, II,8,11: f.59ra–b.

<sup>31</sup> Pseudo-John Chrysostom, *Opus imperfectum in Matthaeum*, to Matt. 21.12: PG 56, 839–40; cp. Gratian, *Decretum*, I,88,11.

<sup>32</sup> Cassiodorus, *Expositio Psalmorum*, to Psalm 70.15: CCL, 97,634–5; cp. *Decretum*, I,88,13.

<sup>33</sup> II–II,77,4,1 and ad 1; *Summa*, II,8,15: f.93ra; *Libellus*, II,8,11: f.59rb.

<sup>34</sup> I don't wish to suggest that John drew on two mutually independent literary traditions. John of Freiburg was, for a theologian, remarkably well versed in canon law, but the great theologians he quotes on trade and price knew some law as well. They drew on some of the same texts as John, including the *Summa Raimundi*, as quotations above demonstrate. For fuller accounts of the economic thought of Thomas Aquinas, cp. Langholm, 1979, 85–95; 1992, 198–248. Similarly, on Albert the Great, cp. Langholm, 1979, 61–9; 1992, 168–97. Ulrich of Strasbourg's *De summo bono* is in the process of publication. A long-awaited critical study of this work will hopefully clarify relationships and crosscurrents in thirteenth-century scholastic thought.



sell at a price that is much too high?<sup>35</sup> John replies following Hostiensis. Initially, no one can be forced to buy or sell against his will.<sup>36</sup> “Nevertheless, if you put a good forward for sale, and the price at which you wish to sell it is unjust, you can be forced by the judge to show restraint” (*potes cogi per iudicem ut temperes*).<sup>37</sup> As to what constitutes a just price, John refers back to the opening question of Title 8, where he quotes Albert the Great’s definition of the just price as the estimation of the market at the time of the sale. In the *Libellus*, the argument ends at this point. In the *Summa confessorum*, the author adds a remark about price discrimination. Note, he says, that it is not permitted to sell a thing dearer to transients than what it is “commonly sold for in the market” (*in mercato communiter venditur*); otherwise the sellers in question may be compelled by the judge to do so. This is a reference to the subsequently highly influential decretal *Placuit*, which Raymond of Peñafort included when compiling the *Liber extra* for Pope Gregory IX but made no use of in his penitential *Summa*. Originating in 884 as a capitulary of Carloman, King of the West Franks, *Placuit* appeared in a number of intermediate collections before passing into Gregory IX’s *Decretals* via the *Compilatio prima*.<sup>38</sup> In its final version it calls upon priests to “admonish people to be hospitable and not sell dearer to those who pass through (*non carius vendant transeuntibus*) than they sell for in the market; otherwise transients should report to a priest so that, by his order, they sell to them with kindness” (*cum humanitate*). It may be worth noting that whereas the benchmark in *Placuit* is the market price, to John of Freiburg it is specifically the “common” or “usual” market price (*quam in mercato communiter venditur*, vs. *quam in mercato vendere possunt*).

What about merchants who make pacts or agree among themselves to sell at the same price or to let one of them be the only seller of a certain good? Having concluded his lengthy borrowings from Aquinas, John of Freiburg asks about collusion and monopoly and once more turns to Hostiensis for an answer. The canonists discussed these subjects with reference to Roman law. In 483, the

<sup>35</sup> *Summa*, II,8,10: f.92va; *Libellus*, II,8,6: f.58rb.

<sup>36</sup> Hostiensis, *Summa aurea*, to X.III,17, n. 1: f.147vb. His sources (not copied by John but common in later penitential texts) are C.4,38,11 *Invitum* and 14 *Dudum*.

<sup>37</sup> Hostiensis, loc. cit., verbatim in John of Freiburg.

<sup>38</sup> *Karolomanni capitulare Vernense 884*, c. 13: *M.G.H., Capitularia*, II,375; Regino of Prüm, *De synodaliibus causis*, II,427: ed. Wasserschleben, 1840, 380; Burchard of Worms, *Decretum*, II,168: Cologne 1548, f.48rb; Ivo of Chartres, *Decretum*, VI,259: PL 161, 500; *Comp. I.III*,15,2; *X.III*,17,1.

Emperor Zeno issued a decree which Justinian's compilers included as a separate title *De monopoliiis* in the *Code*. It states that no one is to "exercise a monopoly" in food or clothing or any other useful thing, nor are several persons allowed to "combine or agree" about a minimum price of any merchandise.<sup>39</sup> John, following Hostiensis, speculates about the etymology of "monopoly" and suggests that it can mean either "one seller" or "one (seller) in the city (*polis*)". Emphasis is also placed, however, on the unlawfulness of a "body or society of monopolists" (*corpus sive societas monopoliarum*).<sup>40</sup> The penitential tradition thus received a text which condemned both monopolies in the strict sense and cartels in restraint of trade.

Towards the end of the discussion of buying and selling, John of Freiburg's *Libellus* and his *Summa confessorum* part company. The *Libellus* concludes with a case proposed by Albert the Great. The *Summa* proceeds with some further material drawn from Raymond and his glossator and from Hostiensis. Albert's case concerns someone who fraudulently acquired a certain quantity of a necessary commodity like grain or wine and now wishes to make restitution. Can he do so by restoring the same physical quantity if the commodity is now worth less *secundum commune forum* than when it was taken? No, says John echoing Albert; he should pay the price difference as well. Satisfaction is complete only if the owner gets the full value at which he could originally have sold the commodity *secundum commune forum*.<sup>41</sup> The case appears in Albert the Great's commentary on the *Sentences* of Peter Lombard in immediate succession to, and in confirmation of, his market value definition of the just price, which John quoted in an earlier question. In the Dominican tradition, from Albert the Great through John of Freiburg, the just price can thus vary over time, with the market, even in the case of goods like grain and wine. It should, of course, be noted that John confirms this doctrine just a few lines after having condemned speculation, collusion and monopoly.

In the *Summa confessorum*, John devotes a long question to the way business is conducted. He notes, after Raymond of Peñafort, the widespread practice among merchants of lying and cheating their customers in order to make a profit. Through Raymond he quotes the old

<sup>39</sup> C.4,59.

<sup>40</sup> John, *Summa*, II,8,16: f.93ra; *Libellus*, II,8,12: f.59rb; cp. Hostiensis, *Summa aurea*, to X.I,39, n. 4: f.65va.

<sup>41</sup> Albert, loc. cit.; John, *Libellus*, II,8,14: f.59va.

adage about the difficulty of doing business without sin. On a lighter note, he quotes William of Rennes on the usefulness of merchants, who work for everybody, making goods available. They ought to be granted a moderate profit for the support of themselves and their dependants. He points out that William's observation, that the size of this profit cannot be determined with precision, is confirmed by Thomas Aquinas. William had suggested that it might be estimated by a good man. John notes this as well. He then concludes by recording a suggestion made by Hostiensis.<sup>42</sup> In order that merchants may exercise their office in good faith and without fraud, they could seek to learn, with the permission of their bishop, how much they may profit on a certain measure of grain or wine or the like, or for how much, in excess of the purchase price, they may sell a certain quantity of a good, as recompense for their labour and expenses.<sup>43</sup>

John of Freiburg's *Confessionale* is a much briefer work even than the *Libellus*. In a closely written folio-size manuscript, it covers eighteen leaves. It consists of two parts, each part containing an interrogatory. Part I is mainly organized according to the seven mortal sins or capital vices, whereas Part II addresses persons of different states and offices. Sins of the marketplace rate a page under the heading of Avarice and are reexamined more briefly as part of the interrogation of merchants and burgesses. In Part I, the penitent should be asked about avarice finding expression in the form of fraudulent business dealings. Buying corn or wine cheap in order to sell them dearer is sinful if motivated by avarice. Restitution should be made if a thing is sold for more than it is worth *secundum commune forum*, even if the price charged does not exceed one-half above the just price. Albert the Great's pricing formula is stated with an explanatory clause that is lacking in the original as well as in the *Libellus* and the *Summa confessorum*. The clause concerns the time at which the market estimate applies, a relevant enough point, considering the ubiquitous suspicion of usurious intent: "The just price is that at which the good sold can be valued according to the estimation of the market at that time, *at which the contract is made*".<sup>44</sup> Anticipated settlement at a lower price is sinful unless there is

<sup>42</sup> *Summa aurea*, to X.V,38, n. 61: f.286vb.

<sup>43</sup> *Summa confessorum*, II,8,18: f.93ra-b.

<sup>44</sup> "Iustum pretium est, quod secundum aestimationem fori illius temporis, in quo contractus fit, potest valere res vendita". Cp. note 13 above. The fact that John now has "illius" rather than "istius", indicates that he has checked Albert anew.

reasonable doubt about the price at the time of delivery of the goods.<sup>45</sup> In Part II, priests confessing merchants are advised to consult the section on avarice in Part I. Fraud and deceit are referred to again in general terms. Specifically, merchants should be asked whether they have sold anything at an excessive price or bought anything at a price that was much too low. This can be achieved by a seller keeping silent about defects in the goods or by a buyer keeping silent about their superior quality. Another trick is to use false measures. Merchants should be told that it is a grave sin to draw up common statutes binding them to sell at the same price or granting one among them the sole right to sell certain commodities.<sup>46</sup>

Because of its authority and the disadvantage of its size, the *Summa confessorum* of John of Freiburg naturally lent itself to abbreviations and adaptations. The *Confessionale* is the result of John's own efforts to make his work more available. Several other Dominicans addressed themselves to the same task. Three works stand out and deserve to be briefly reviewed here. The earliest of them was put together in the first decade of the fourteenth century by William of Cayeux. Born at Cayeux-sur-Mer in Picardy about the middle of the thirteenth century, William joined the Friars Preachers at Amiens, before moving to Paris. He was prior of St. Jacques, twice prior provincial of France, and vicar general of the Order 1299–1300. His penitential handbook appears in sources and critical literature with different titles. The most correct and descriptive one is simply *Summa confessorum abbreviata*. Some dozen manuscripts preserve this handy text.<sup>47</sup> Like the original, it consists of four books. Economic subjects are discussed in Book II, Titles 7–8, but the numbering of questions within the titles does not correspond either to that of the *Summa* or to that of the *Libellus* of John of Freiburg.

In the title on usury, William of Cayeux records the Dominican tradition on the canon *Quicumque*. The profit of those who, driven by greed, buy victuals cheap for the purpose of selling them dear, is shameful. A certain profit is licit if the buyer's purpose is above reproach, such as provision for the community in the manner of

<sup>45</sup> *Confessionale*: f.230r.

<sup>46</sup> F.240v.

<sup>47</sup> MS used: Bruxelles BR 2486. On William of Cayeux and the *Summa confessorum abbreviata*, cp. Quétif-Échard I,507; Schulte II,425; *Histoire littéraire de la France*, Vol. 26, Paris 1873, 564–7; Dietterle, *ZK* 26 (1905) 59–63; Hinnebusch I,265; Michaud-Quantin, 1962, 48, 114, 119; Kaeppli II,94–5; Bloomfield-Guyot 4778.

Joseph, or regular commerce for the support of the merchant's family or for the common good so that dearth is not increased (*ne caristia augeatur*—an original use and version of Laurence of Spain's phrase).<sup>48</sup> In the title on buying and selling, William summarizes Thomas Aquinas's "double rule" of just pricing and his explanation of deception according to human and divine law. He then adds, copying John of Freiburg, the alternative analysis of the *Glossa ordinaria* to the *Decretum*.<sup>49</sup> If someone offers a thing for sale but refuses to sell at a just price, he can be instructed to do so. Likewise, residents of a region can be instructed not to sell dearer to transients and pilgrims (*transeuntibus et peregrinis*) than they can sell for in the market.<sup>50</sup> On a single page, William selectively summarizes Aquinas through John of Freiburg on defective goods, on measurement, on the extent of a seller's obligation to point out defects, on his right to keep silent about the imminent arrival of additional supplies, and on merchants' just claim to profit for the support of their families or for some other honourable purpose. In price calculation, account may be taken of local and temporal variations, improvement of goods, and risk.<sup>51</sup> Hostiensis is quoted on the unlawfulness of monopoly and monopolistic associations.<sup>52</sup>

Somewhat later, most probably in the 1330s, an unknown German Dominican wrote a brief handbook for the use of "simpler and less learned priests" and named it *Summa rudium*. It is extant in upwards of fifty manuscripts and in three almost identical editions made at Reutlingen in 1487.<sup>53</sup> In his preface the author names John of Freiburg as his source along with a number of John's sources, but there is little formal similarity between this work and the *Summa confessorum*.

<sup>48</sup> *Summa*, II,7,40: MS cit., f.97rb.

<sup>49</sup> II,8,3: f.101va-b.

<sup>50</sup> II,8,4: ff.101vb-102ra. The Bruxelles MS is occasionally illegible; in the phrase quoted, the conjunction seems to have been omitted. It is in place in Baris BN lat.3727 A at f.90r. This MS attributes the work to William of Cayeux; however, some of the sections on trade and price are abbreviated compared to Bruxelles 2486. William's terminology indicates Hostiensis. In the original text at X.III,17,1, priests are told to see to it that things are not sold dearer "transeuntibus". Hostiensis's comments on the title on penance in the *Decretals* include a brief estate interrogatory, devoting a few lines to merchants. The phrase used there is "peregrinis et transeuntibus" (*Summa aurea*, to X.V,38, n. 41: f.276ra). In classical Latin, a "peregrinus" is any foreigner. In medieval Latin, it could mean, more specifically, a pilgrim.

<sup>51</sup> II,8,5-9: f.102ra-b.

<sup>52</sup> II,8,10: f.102rb-va.

<sup>53</sup> Ed. used: Hain 15171. On the *Summa rudium*, cp. Schulte II,528-9; Dietterle, *ZK* (1906) 78-81; Michaud-Quantin, 1962, 48, 116; Bloomfield-Guyot 5075.

The *Summa rudium* consists of forty chapters. Economic matters are to be found in Chapter 31, which contains an interrogatory combining different approaches. A survey of the seven capital sins is followed by an examination *ad status*. With reference to avarice, the penitent is to be asked about usury, about buying and selling, and about fraud, but no particulars are given regarding these activities.<sup>54</sup> They appear again summarily in connection with the examination of merchants and burgesses. They should be asked about selling at excessive prices or buying at prices that are too low, about false weights and measures, about lies and perjury, and about usury.<sup>55</sup> The confessor is instructed to ask the penitent whether he has made a pact with his associates to sell at the same price or to leave sales of certain goods to one of them.<sup>56</sup> Harsh treatment of villains is sinful.<sup>57</sup> Conversely, labourers are to be examined about fraudulently neglecting their work and thus not deserving their wages.<sup>58</sup>

At an unknown date in the fourteenth century, probably in the second half of the century, a certain Dominican friar named Berthold of Freiburg wrote a *Summa der beichtiger*. Popularly known as *Johannes deutsch*, it is not a direct translation but an alphabetical arrangement of material drawn from John of Freiburg and through John from his sources and from other authorities. Primarily intended for laymen, the *Summa* of Brother Berthold became hugely popular. No less than ninety medieval manuscripts and twelve early editions are on record. It recently appeared in a massive critical edition.<sup>59</sup> Berthold has a long article on “Wucher”, but all relevant material on trade and price is collected in an article on “Chauffen und verkauffen”. Broadly speaking, this article is structured as a catalogue of factors

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<sup>54</sup> Ed. cit., f.61rb.

<sup>55</sup> F.62va.

<sup>56</sup> F.62vb.

<sup>57</sup> Loc. cit.

<sup>58</sup> F.63ra.

<sup>59</sup> *Die ‘Rechtssumme’ Bruder Bertholds*, Tübingen 1987, 2395 consecutively numbered pages in four volumes, giving the different text versions in parallel columns, with companion volumes of critical studies, loci in John of Freiburg, and indexes. I shall refer to folio numbers of the edition Ulm 1484 (U) and to page numbers of the Tübingen edition (T). The author used to be identified with the Berthold of Freiburg who succeeded John of Freiburg as prior of the Dominican house in that city, but this hypothesis is now being questioned. On Brother Berthold and his work, cp. Quétif-Échard I,722; Dietterle *ZK* 26 (1905) 67–77; Koller 1959; Kaeppli I,238–9; Michaud-Quantin, 1962, 48, 114; BBKL 1 (1975) 552; LTK 2 (1994) 290–1; and, primarily, the bio-bibliographical introduction in Vol. I of the Tübingen edition.

rendering commerce sinful, namely, greed, fraud, wrong time and wrong place. Under the former two headings, a number of important principles are stated. The tradition on *Quicumque* finds expression in acknowledgement of the lawfulness of selling an unneeded surplus bought for consumption, or the laying up of stores “also Joseph tet in Egipten land”, and in the condemnation of those who forestall corn and wine in order to “ab chauffen nach irem willen”.<sup>60</sup> Fraud as to substance, quality and quantity of goods is sinful on the part of a buyer as well as on the part of a seller,<sup>61</sup> but Berthold emphasizes that there is no sin if terms of exchange are concluded according to “baider freyer will”,<sup>62</sup> and that the parties may *se mutuo decipere* (the whole legal maxim being copied in Latin) within one-half of the just price.<sup>63</sup> The double rule of just pricing is quoted from Aquinas,<sup>64</sup> and the prohibition of monopoly from the *Code*,<sup>65</sup> both presumably through John of Freiburg. A merchant is not obliged to disclose information about the imminent arrival of new supplies but may trade at the price current at the time and place in question.<sup>66</sup> Whereas Berthold also justifies moderate merchants’ profits with reference to labour, care and expenses,<sup>67</sup> the overriding principle, frequently stated, is just exchange “nach dem lauff des marckts”.<sup>68</sup> In fourteenth-century confessional literature, Brother Berthold is one of the staunchest advocates of the market principle of the just price.

A brief note on John Nider must be made before we close this chapter. Born about 1380 at Isny in Allgäu, Nider studied at Cologne and Vienna, was prior of the Dominican houses at Nürnberg and Basel (where he played an important role at the council), and dean of the faculty of theology at the University of Vienna. He died in 1438. A prolific author, Nider wrote a famous *Tractatus de contractibus mercatorum*. Unfortunately, the interest and insight in commercial mores and methods demonstrated by that work finds virtually no expression in his *Manuale confessorum*, also a widely used and influential work, extant in approximately a hundred manuscripts and fourteen

<sup>60</sup> U, f.36r; T, 1342–4.

<sup>61</sup> U, f.36r–v; T, 1344–8.

<sup>62</sup> U, f.36v; T, 1352.

<sup>63</sup> U, f.37r; T, 1354.

<sup>64</sup> U, f.37r; T, 1356–8.

<sup>65</sup> U, f.37v; T, 1360–2.

<sup>66</sup> U, f.39r; T, 1378.

<sup>67</sup> U, f.38v; T, 1374–6, and cp. the double rule.

<sup>68</sup> U, f.36r, 38v (twice), 39r; T, 1342, 1374, 1376, 1378.

early printed editions.<sup>69</sup> It is an elegantly composed booklet in three parts, treating, respectively, of what the priest should consider before, during, and after confession. In Part I, he is instructed about reserved cases and excommunicable offences, such as the falsification of money<sup>70</sup> and denying that usury is sinful.<sup>71</sup> Several chapters specify sins peculiar to clerics, monks, and laymen, usury and counterfeiting being mentioned again.<sup>72</sup> Part II is mainly a general account of confessional procedure. One sin is singled out as involving particular difficulty; it is neither *superbia* nor *avaritia* but *luxuria*. There is nothing about economic matters in Part II. The first subject discussed in Part III is restitution of ill-gotten gains. It should be made by usurers, fraudulent merchants, falsifiers of money, masters procrastinating the payment of wages, and labourers neglecting their duties<sup>73</sup>

### *Summary*

Among the numerous new features introduced in this chapter, mention may be made first of a formal one, namely, the twin interrogatory, structured on the capital vices and on the different estates of the confessants. It is adopted by John of Freiburg in his brief *Confessionale* and in the anonymous *Summa rudium*. Another feature, common to the *Summa rudium* and the *Manuale* of John Nider, concerns a side issue to the present study, namely, labour relations and wages. In the two works mentioned, the confessor is instructed to examine both the employer and the employee about their duties. The main focus of this summary, however, must be thrown on John of Freiburg's major works and their offshoots, particularly in the light of their dependence on Thomistic doctrine. Despite the enormous influence of Thomas Aquinas on the Dominican penitential tradition, an exhaustive analytical examination of Aquinas on trade and price is beyond the scope of our study, the more so because the economics of Aquinas is already the subject of a large critical liter-

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<sup>69</sup> Ed. consulted: Cologne 1470. On this work and its author, cp. Quéatif-Échard I, 792–4; Schulte II, 441–2; Michaud-Quantin, 1962, 78–9, 115, 120; Hinnebusch II, 262–7; BBKL 3 (1992) 502–5; LTK 5 (1996) 940–1; Kaeppli II, 500–15; Bloomfield-Guyot 4967.

<sup>70</sup> *Manuale*, I, 1: ed. cit., f. 4r.

<sup>71</sup> I, 2: f. 7r.

<sup>72</sup> I, 6: f. 23r, f. 25r.

<sup>73</sup> III, 2: ff. 50r–51r.



ature. Some main points influencing the future course of penitential doctrine ought to be touched upon. On the subject of fraud, the terminologically puzzling theory inherited from Roman and canon law (see following chapter) found an alternative or supplementary basis in Aquinas's down-to-earth case discussions regarding the failure to disclose information, which is, after all, what fraud is all about. Defects in merchandise as to substance, quantity or quality, the obligation to reveal hidden defects potentially damaging to the buyer, and the right to keep silent about manifest defects in order to secure a just price (a less extreme version of Raymond of Peñafort's refusal to classify a deliberate lie for the same purpose as a deadly sin) are subjects discussed by John of Freiburg on the basis of Thomas Aquinas. These discussions are copied, to different extents, by his followers. A significant addition is made by Berthold of Freiburg; there is no fraud if the price agreement is made with the free will of both parties. John of Freiburg draws on Albert the Great along with Raymond on factors rendering commerce illicit. As regards the tradition on *Quicumque*, the support of the poor is added from Ulrich of Strasbourg as another honourable business purpose. William of Rennes's insistence that merchants work for everybody, making goods available, is repeated. Discussing *Quicumque* through Ulrich, however, John also stresses more strongly than preceding authors the condemnation of economic coercion that lies at the root of the canon, namely, that those who buy up stores of victuals in order to induce dearth can compel others to buy at excessive prices. Versions on *Quicumque* are presented by William of Cayeux and by Berthold of Freiburg as well. Speculation in foodstuffs is condemned by John of Freiburg citing Albert the Great. The prohibition of monopoly and collusion stated in Roman law is stressed by John, by William of Cayeux, in the *Summa rudium*, and by Berthold of Freiburg. John and William extend the basis of this prohibition by recourse to the decretal *Placuit*, which forbids price discrimination of travellers, a practice which implicitly assumes collusion between residents. The benchmark in *Placuit* is the current market price. Though a just reward for the merchant's labour and expenses is mentioned both by John and Berthold of Freiburg, the overriding criterion of justice in pricing according to both is the common or current market price, a position strengthened by John's verbatim quotation, in all three works, of Albert the Great's unequivocal definition of the just price as the market price.

## CHAPTER FOUR

### THE FRANCISCAN TRADITION

A period of less than two decades from the late-thirteenth or the early-fourteenth century saw the publication of four penitential handbooks by Franciscan authors. Only partly related and adopting different approaches, they are all interesting contributions to the genre, each in its own way. The earliest of these works may be the *Directorium iuris in foro conscientiae et iudiciali* by Peter Quesnel. Peter was an Englishman belonging to the convent of the Friars Minor at Norwich. It is not known where he received his professional training, but he was highly reputed both as a theologian and as a canonist.<sup>1</sup> The use of the *Directorium* was not limited to England, though it does not appear to have been among the most popular works of its kind. Of the extant manuscripts, there are two at Oxford, ten on the Continent, and four in Italy.<sup>2</sup> It did not reach the early printing presses and has not yet been critically edited. Peter Quesnel's penitential is quite a voluminous work. In a closely written folio manuscript, it runs to some 350 leaves. It is in four parts, dealing, respectively, with (I) the Catholic faith and the sacraments in general, (II) sacramental and other ecclesiastical administration and subjects concerning justice and contracts, (III) crimes obstructive to the sacraments and their respective penalties, and (IV) judicial procedure. Contracts of buying and selling rate less than four pages in Book II, Title 27, whereas the ten pages of Part III, Title 44 are devoted to the crime and punishment of usury.

On these subjects, Peter Quesnel's main orientation is canonistic. He draws on the Dominican tradition from Raymond of Peñafort to John of Freiburg but is not a mere copier or summarizer. Discussing

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<sup>1</sup> On Peter Quesnel and his handbook for confessors, cp. Schulte II,262; Wadding 192; Sbaraglia II,357–8; Teetaert, 1926, 456–7; and his article "Quesnel, Pierre" in DTC 13, 1536–7; Michaud-Quantin, 1962, 42–3, 115, 120; Bloomfield-Guyot 1652, 2873, 4302, 4760, 5587.

<sup>2</sup> References here are to Oxford BodL Can. Misc. 463 (B), checked against Florence BLaur S. Croce Plut. I, sin 8 (F<sup>1</sup>); Plut. III, sin 2 (F<sup>2</sup>), Padova BAntoniana Scaff. 1, n. 28 (A); and Vienna BN 2146 (V).

trade and price he notes that no one can, initially, be forced to sell or buy, but if someone offers merchandise for sale and refuses to sell at a just price, he can be forced to do so.<sup>3</sup> Referring to *Placuit*, Peter states the rule against price discrimination. Most of the manuscripts consulted have a version that smacks of a scribal error: A commodity should not be sold dearer to transients than the price at which it can be sold for "to merchants" rather than "in the market".<sup>4</sup> Discussing fraud as to the substance of the good offered for sale and citing an example used by Aquinas, namely, that of selling copper for gold,<sup>5</sup> Peter quotes Gratian at length in a sequence where the same example is used in a discussion of errors invalidating consent to matrimony.<sup>6</sup> No one demanding gold would consent to copper nor buy it voluntarily. Buying requires consent and there is no consent without voluntariness.<sup>7</sup> It took some time and a crossing of the Alps before consent and the nature of the will became a central theme in the penitential literature. Peter Quesnel does not pursue it further. Still on the subject of fraud, Peter presents the canonists' threefold classification.<sup>8</sup> I propose to postpone further remarks about this enigmatic formula and its historical background until it reappears in the *Summa* of John of Erfurt (our next entry), who subjected it to a closer analysis and suggested a rather provocative interpretation of it. Peter Quesnel concludes his analysis of buying and selling by citing the old thirty-day penance on bread and water for altering measures and weights.<sup>9</sup>

Most of the discussion in the title on usury in the *Directorium iuris* focuses on loan contracts, the definition and nature of the *mutuum*, on arguments against usury, extrinsic titles to interest, the moral position of the borrower, penalties, and restitution. Exemption from the charge of usury in sales contracts *sub dubio* is discussed following the teaching of the canonists and the decretals *In civitate*, *Consuluit*, and

<sup>3</sup> *Directorium*, II,27: B, f.147rb.

<sup>4</sup> B, loc. cit.: "nec debet vendi carius transeuntibus quam mercatoribus vendi posset". Similarly, F<sup>1</sup>, f.92va; V, f.123rb: "nec vendi debet, etc." A is difficult to read due to damage by moisture but has "mercatoribus" (f.148va). F<sup>2</sup>, f.147vb: as F<sup>1</sup> and V, except "quam mercato" for "quam mercatoribus". Cp. X.III,17,1: "et non carius vendant transeuntibus quam in mercato vendere possunt".

<sup>5</sup> *Sum. theol.*, II-II,77,2,1 and ad 1.

<sup>6</sup> *Decretum*, II,29,1.

<sup>7</sup> *Directorium*: B, f.148ra.

<sup>8</sup> F.148ra-b.

<sup>9</sup> F.149rb.

*Naviganti*.<sup>10</sup> The most interesting part of the whole title is a brief section of less than a dozen lines attached to this discussion of usury in sales. Peter reports on a disagreement between Innocent IV and Hostiensis regarding an analogous application of the concluding lines of *Naviganti*. According to the letter by Gregory IX to “Brother R.”, which is the source of this decretal, doubt about the future price may be an excuse from the charge of usury for someone who sells a commodity for more than the current price if his original intention was to keep it and sell it later. Suppose, by way of analogy, that the goods in question were intended for sale at another place rather than at another time. Would the same excuse hold? In his commentary on the *Decretals* of Gregory IX, Innocent answers, conditionally, in the affirmative. The seller may charge what he is likely to have got for the goods in the intended location, provided that deduction is made for risk and labour saved by selling here and now. What holds for reason of time must hold for reason of place.<sup>11</sup>

Hostiensis does not seem to have touched upon this case in his *Summa aurea*, the first version of which was completed while Innocent was still pope (1243–54). In his *Apparatus* to the *Decretals*, however, with its closer comments on the individual chapters of the law, a work completed shortly before his death in 1271, Hostiensis takes issue with the former pope. With all respect, doubt about future prices is not the same as doubt about geographical price variations. A consignment of pomegranates, plentiful and cheap on the coast but costly at Paris and intended for sale there, is not likely to be demanded by anyone in the original location at Paris prices less labour and expenses paid cash. Innocent’s solution therefore opens the road to deceit and usury. I fear, says Hostiensis, that those words may drag many thousands of souls to Hell.<sup>12</sup> Peter Quesnel presents the opinion of Hostiensis first and that of Innocent by way of conclusion, an arrangement that normally indicates an agreement with the author quoted last.<sup>13</sup>

Roughly simultaneously with Peter Quesnel’s work, another voluminous summa for confessors was composed in a different corner of Europe, namely, that of the German Franciscan John of Erfurt. John

<sup>10</sup> *Directorium*, III,44: f.264ra–269vb.

<sup>11</sup> Innocent IV, *In quinque libros Decretalium commentaria*, to X.V,19,19: Lyon 1562, f.197ra.

<sup>12</sup> Hostiensis, *Apparatus super Decretales*, to *ibid.*: Strasbourg 1512, f.300ra.

<sup>13</sup> *Directorium*: f.266rb.

belonged to the Saxon province of the Friars Minor and is also known as John of Saxony. Biographical information is scanty. He was born about 1250. By 1275 he taught as lector at Erfurt and by 1285 at Magdeburg. He then went to Bologna to study law and graduated *doctor utriusque iuris*, before taking up his position again at Erfurt, where he died about 1320. John of Erfurt was a versatile author. He wrote a commentary on the *Sentences* of Peter Lombard, a dictionary of the Bible, and other theological works. He also assembled a lexicon of Greek and Latin terms and wrote on logic and natural philosophy. His legal training found expression in an alphabetical *Tabula utriusque iuris*, occasionally cited by authors addressing the internal forum,<sup>14</sup> and in his own later penitential handbook, which treats systematically and more extensively of the same subjects. The presentation in this chapter is based on the latter work. Its first and main version can be dated to the period 1300–2. It is preserved in the Munich manuscript Clm 8704, which was chosen as the best basis for a recent critical edition by N. Brieskorn.<sup>15</sup> Later alterations are documented in other manuscripts. Some dozen are identified. The work appears under different titles in these manuscripts, including *Summa Confessorum*, which is the title chosen by the modern editor, unfortunately inviting confusion with the work of John of Freiburg, which is always the one medieval authors had in mind when referring to this title without naming the author.<sup>16</sup>

There is a certain awkwardness about John of Erfurt's *Summa*, which is perhaps best explained as the result of an attempt to accommodate a juridically dominated source material in the literary form of a theological treatise. He does quote some theologians, but the majority of authorities quoted are legal authorities, mainly canonists, and John argues like a jurist in juridical terms. His *Summa* runs to more than sixteen hundred pages in the printed edition. Its structure, however, is a simple one. It is better suited for the briefer handbooks, in many of which we shall encounter it in the sequel.

<sup>14</sup> MS consulted: Munich SB Clm 8705.

<sup>15</sup> Frankfurt am Main 1980, three parts in three volumes. Part 1, a critical introduction, is published in a separate volume. Parts 2 and 3 contain the text of Books I and II in two large volumes with consecutive pagination. References here are to book and page numbers.

<sup>16</sup> On John of Erfurt and his works, cp. Schulte II,385–91; Wadding 138; Sbaraglia II,69–70; Doelle, 1910; Heynck, 1985; *Neue Deutsche Biographie* 10 (1974) 548–9; BBKL 3 (1992) 348–50; LTK 5 (1996) 904; Michaud-Quantin, 1962, 54–5, 114., 120; Bloomfield-Guyot 5212; and Brieskorn's introduction to his edition of the *Summa*.

The work consists of two books, each book being divided into parts. Book I has eight parts and deals, after a general part about confessors and confession, with the seven capital vices. Book II has nine parts and deals with nine of the ten commandments, the sixth commandment being omitted, presumably because it is discussed exhaustively in Book I. There is ample opportunity for this, because, unlike the briefer texts adopting this scheme, each part of John's work is divided into numerous titles of considerable length. As regards subjects relevant to the present study, the part on Avarice in Book I has a title on buying and selling (I,6,7) and the part on Theft in Book II has a title on usury (II,6,4). The author opens the final part of the work by stating, somewhat pleonastically, that the tenth commandment prohibits *concupiscentia avaritiae*.<sup>17</sup> It is therefore not inappropriate to append a question about buying cheap and selling dear at the end of the last regular title. The editor points out that this material is to be found in the title on buying and selling in another manuscript but suggests, on the basis of the reference symbols used, that it actually belongs in the title on usury.<sup>18</sup> However that may be, I shall refer to this concluding discussion of trade and price as an appendix, the way it is placed in Clm 8704 and in the printed edition.

John of Erfurt notes the prohibition of monopoly, citing the *Code*.<sup>19</sup> Referring to Godfrey of Trani and William of Rennes, he comments on the canon *Quicumque*.<sup>20</sup> The profit made by those who, driven by avarice, buy corn or wine at the time of harvest or vintage in order to store these victuals until they can be sold for more, is *turpe lucrum*. According to Godfrey, the profit need not be restored but ought rather to be given to the poor.<sup>21</sup> An unexpected surplus of provisions bought from fear of being short, may be sold at the current price (*pro illo pretio, quod tunc solvit*). As explained by William, goods may also be bought and resold at a moderate profit for the support of oneself and one's children.<sup>22</sup> It is not without risk, however, John adds, to tell confessants that such moderate gain need not be sinful, for it you offer them your palm, they will take your arm. Apart

<sup>17</sup> II,9,1: ed. Brieskorn 1542.

<sup>18</sup> Notes at 459 and 1552.

<sup>19</sup> I,6,7,22: 481.

<sup>20</sup> II,6,4,14: 1233.

<sup>21</sup> Godfrey of Trani, *Summa*, to X.V,19, n. 13: Lyon 1519, ff.221vb–222ra.

<sup>22</sup> William of Rennes, *Glossa to Summa Raimundi*, II,7,9: Rome 1603, 236.

from these brief discussions of standard cases, nearly all there is of interest regarding trade and price in John of Erfurt's *Summa* relates to fraud. It is sometimes alleged that authors of work for the internal forum misunderstood the legal doctrine of fraud. This allegation has not, as far as I know, been made in the case of John of Erfurt, who is certainly a glaring example of this misunderstanding. Before proceeding, it is necessary to devote a few pages to a sketch of the background on which he wrote.

The question of fraud was discussed in the medieval and early modern handbooks for confessors with reference to a theory received from Roman law via canon law. In classical Roman private law, a contract of sale (*emptio venditio*) belonged to a small class of "consensual contracts". This name denotes contracts that could be concluded *nudo consensu* (by formless consent). All contracts required consent, but consensual contracts required no additional formality, "no deed, no witnesses, no symbolic acts, no formulas, and no delivery of a thing as in real contracts".<sup>23</sup> A parallel distinction which was, however, in its developed form, a post-classical construction, was drawn between *bonae fidei* contracts (which included sales) and contracts *stricti iuris*.<sup>24</sup> In short, buying and selling was based on consent reached in good faith. In the *Corpus iuris civilis*, through which Roman law was received in the Middle Ages, the question of consent was a complicated one. Briefly, consent could be violated in two ways, either by force or by fraud. Fraud (*dolus*), in Roman law, meant deliberate disinformation or misrepresentation of the substance, quantity or quality of the good bought or sold. Unfortunately, the legal texts on which this principle is based derive from different periods and are couched in a confusing terminology.

By the middle of the twelfth century, the Romanists nevertheless had a theory of fraud that was maintained, more or less unaltered, during the period covered by this study. It found alternative or partial expressions in the works of famous legists like Vacarius,<sup>25</sup> Bulgarus<sup>26</sup> and Rogerius.<sup>27</sup> My references here are to the anonymous *Summa*

<sup>23</sup> Schulz, 1951, 524-6.

<sup>24</sup> Id., 35-6.

<sup>25</sup> Vacarius, *Liber pauperum*, IV,51: ed. Zulueta, London 1927, 155-6.

<sup>26</sup> Bulgarus, *De dolo* (a brief note): ed. Kantorowicz, *Studies in the Glossators of the Roman law*, Cambridge 1938, 243-4.

<sup>27</sup> Rogerius, *Summa codicis* IV, xlv: ed. Gaudenzi, Bologna 1913, 125-6.

*Trecensis* on the *Code*, a work erroneously attributed by its modern editor to Irnerius, the father of medieval Roman law.<sup>28</sup> According to this theory, a threefold distinction must be made. Fraud (*dolus*) is either the cause of the contract or incidental to the contract. In the first case the contract is void, in the second case the fraud must be remedied,<sup>29</sup> even if the deviation from the just price is of the magnitude “of a single coin” (*unius nummi*).<sup>30</sup> If there is no fraud of either of these kinds, but there is “insufferable deception concerning the thing itself” (*intolerabilis deceptio re ipsa*), as, for instance, if the deviation from the just price is more than one-half, the contract is rescinded or the discrepancy is to be made good. The generally accepted interpretation of legal historians is that this third class of deception does not involve deliberate fraud; there is not here a question of disinformation or misrepresentation, but of a genuine mistake about the value of the good bought or sold. If a statement by Bartolus, the most prominent of medieval Romanists, is thus construed, he says that it is lawful for the contracting parties, without fraud, to be mutually deceived about price (*In pretio . . . licitum est contrahentibus se decipere invicem sine dolo*).<sup>31</sup> “Without fraud” means that good faith is preserved. *Laesio enormis*, according to this theory, applies in cases where a price is too high or too low owing to a wrong estimate made in good faith.

This theory is problematical because a mistake is a passive phenomenon. To say that it is lawful to be deceived sounds like a truism and rather suggests that an active form of deception is intended. This suggestion is strengthened by alternative terminologies used in some of the main loci on fraud in the law. Thus, for instance, Pomponius states that “it is naturally lawful for the contracting parties to circumvent each other” (*naturaliter licere contrahentibus se circumvenire*).<sup>32</sup> Bartolus explains that this paragraph presumes the absence of *dolus* and presumes the deception (*deceptio*) not to exceed the limit of one-half above the just price.<sup>33</sup> The jurisconsult Paul uses an even more strongly suggestive phrase: “In buying and selling natural law

<sup>28</sup> *Summa Trecensis*, IV,41: ed. Fitting (*Summa Codicis des Irnerius*), 116–7. This text dates from about 1150, a decade or more after the death of Irnerius, and merely summarizes established theory. It is chosen because the terminology makes for easy reference to points made in preceding chapters of this study; cp. following notes.

<sup>29</sup> “Purgari debet deceptio”; cp. John of Freiburg.

<sup>30</sup> Cp. Thomas of Chobham.

<sup>31</sup> Bartolus, *In secundam Digesti veteris partem*, to D.19,2,22,3: 400.

<sup>32</sup> D.4,4,16,4.

<sup>33</sup> Bartolus, *In primam Digesti veteris partem*, to *ibid.*: 438.



permits the one party to buy for less and the other to sell for more than the thing is worth; thus each party is allowed to outwit the other (*invicem se circumscribere*).<sup>34</sup> To outwit someone is to get the better of him by ingenuity or cleverness. As regards *circumvenire*, Labeo defines *dolus* as “any cunning, deceit, or contrivance to defraud (*machinatio ad circumveniendum*), deceive, or cheat another person”.<sup>35</sup> The medieval Romanists did not overlook this terminological confusion. In the *Glossa ordinaria* to the *Digest*, Accursius states, in a gloss to the word *circumscribere*, that the paragraph in question is to be understood to mean that no *dolus* intervenes from either party and that it is improper there to speak of circumvention or deception (*improprie dicitur ibi circumventio vel deceptio*).<sup>36</sup>

Such was the theory of fraud received by the medieval canonists. The decretists discussed it in glosses and comments on the canon *Hoc ius*.<sup>37</sup> It contains a fragment dealing with the disposal of church property. A case is envisaged in which a representative of a church is offered a price much higher than he knows the property in question to be worth. Simon of Bisignano, who composed a summa on the *Decretum* shortly before 1180, states that if the price exceeds the limit of one-half above the just price, the seller sins because he deceives and circumvents the buyer. He then adds that “some say” that the church in a situation such as the one described cannot be said to deceive the buyer, “for no fraud is inflicted on a knowing and willing person” (*scienti enim et volenti dolus non infertur*).<sup>38</sup> The principle that no injury is suffered by one who acts voluntarily is a genuine Roman law principle. It is stated repeatedly in the *Digest*.<sup>39</sup> Huguccio, whose *Summa decretorum* postdates that of Simon of Bisignano by approximately a decade, addresses the same case. The church in question does not wish to deceive anyone. But suppose that someone, who is on his guard, by bidding offers an excessive price, perhaps twice the value of the property, or even more. Isn’t it sinful to accept such an offer? Huguccio refers to the principle that no

<sup>34</sup> D.19,2,22,3. The English translation is that of Zulueta, a prominent Oxford professor of civil law; cp. Zulueta, 1945, p. 136.

<sup>35</sup> D.4,3,1,2.

<sup>36</sup> *Digestum vetus cum commentariis Acurii*, to D.19,2,22,3: Lyon 1627, 1835.

<sup>37</sup> *Decretum*, II,10,2,2.

<sup>38</sup> Simon of Bisignano, *Summa super Decretum*, to *ibid.*: Bamberg SB Can. 38, f.21va.

<sup>39</sup> D.39,3,9,1: “Nullam enim potest videri iniuriam accipere, qui semel voluit”; D.47,10,1,5: “Nulla iniuria est, quae in volentem fiat”. This principle was canonized in one of the *regulae iuris* of the *Sext*; cp. note 59 to Chapter 2.

fraud is inflicted on a willing and knowing person. “But I believe”, says Huguccio, “that neither the church nor any man, from certain knowledge, ought to receive more than a thing is worth, especially if it is offered in the course of the bidding”.<sup>40</sup> In the *Glossa ordinaria* to the *Decretum*, Johannes Teutonicus confirms this conclusion: “What if someone offers more than the thing is worth? Then, nevertheless, the just price should be received, even though the law states that contracting parties may deceive one another (*se invicem possunt fallere*)”.<sup>41</sup> This gloss is preserved in Bartolomeo of Brescia’s revised and updated version of the *Glossa ordinaria*.<sup>42</sup>

The *Decretals* of Gregory IX mentions the principle of *laesio enormis* in two chapters of the title on buying and selling, namely, *Quum dilecti*, which was carried over from the *Compilatio prima*,<sup>43</sup> and *Quum causa*, from the *Compilatio tertia*.<sup>44</sup> The main locus of substantive comments by the decretalists is the former of these two; comments on the latter locus tended to focus on the mathematics involved; how was the one-half criterion to be understood and computed? The early decretalists inherited the terminological confusion of the decretists. According to the analysis attributed by a number of glossators to Laurence of Spain, a *bonae fidei* contract is valid if the price is within the one-half limit, provided that *dolus* is not the cause of the contract nor incidental to the contract, and provided that there is no circumvention.<sup>45</sup> For, Damasus adds, on these conditions it is lawful for the contracting parties mutually to deceive each other (*licet contrahentibus sese ad invicem decipere*).<sup>46</sup> A statement by St. Paul troubled the decretalists. In his First Epistle to the Thessalonians, the Apostle admonishes the congregation “that no man go beyond and defraud his brother in any matter”.<sup>47</sup> This is the wording of the Authorized King James Version of the Bible, but where this version reads “defraud”, the Vulgate has “circumveniat”. This admonishment could not be reconciled with legal doctrine without juggling the terms. In his commentary on the

<sup>40</sup> Huguccio, *Summa decretorum*, to II,10,2,2: Paris BN lat. 3892, f.181rb.

<sup>41</sup> *Glossa ordinaria*, to ibid.: Bamberg SB Can. 13, f.107va.

<sup>42</sup> Ed. Basel 1512, f.186vb.

<sup>43</sup> X.III,17,3; cp. *Comp. I*,III,15,4.

<sup>44</sup> X.III,17,6; cp. *Comp. III*,III,14,2.

<sup>45</sup> Cp. sources quoted in Chapter 3, note 17, and add Tancredus, *Apparatus in Compilationem primam*, to III,15,4: Paris BN lat. 3931A, f.34va; Paris BN lat. 14321, f.32va; Bamberg SB Can. 19, f.135va.

<sup>46</sup> Damasus, to *Comp. I*,III,15,4: Paris BN lat. 3930, f.26va.

<sup>47</sup> 1 Thess. 4.6.

*Decretals*, Innocent IV faces the Biblical text in comment on *In civitate*. If the parties to a contract such as those discussed in this decretal are deceived, Innocent suggests, there is no sin, for it is lawful for contracting parties mutually to deceive each other (*liceat contrahentibus se invicem decipere*). St. Paul's statement is not a valid negation of this license, for he may be taken to refer, either to such circumvention as is the cause of the contract, or to circumvention beyond one-half of the just price. Within this limit, Innocent remarks, parties to a contract "may deceive one another" (or "may be deceived": *possent se decipere*) in the external court (*iure fori*), "albeit perhaps not in the internal court (*iure poli*)".<sup>48</sup> This solution was preserved in the commentary tradition on the *Decretum* by Guido of Baiso.<sup>49</sup>

On the background of these various utterances on the part of leading Romanists and canonists, it is small wonder that authors of penitential handbooks were puzzled. Returning to John of Erfurt, we shall find, in consequence, considerable inconsistency between the places where fraud is discussed in his *Summa*. In the article on buying and selling, some fundamental distinctions are explained. There are two classes of contracts, *stricti iuris* and *bonae fidei* contracts. In contracts of the latter class, to which buying and selling belongs, fraud (*dolus*) may occur either as the cause of the contract or as incidental to the contract. The legal implication of each of these cases of fraud is explained. If *dolus* does not occur, and there is no deception, the contract is valid; however, one of the parties to a contract may be deceived about the thing itself in the absence of *dolus* on the part of the other party (*deceptus re ipsa sine dolo alterius*). Such deception may relate to the substance, quantity, or quality of the thing. If, because of deception, the price is higher or lower than the just price but within the limits of one-half above or below the just price, the contract is valid, unless, John puts in, the party harmed is a minor or a church. If the price is beyond this limit, the deceiving party may choose whether to withdraw from the contract or to pay the discrepancy.<sup>50</sup> Twice, before presenting this comprehensive statement, in earlier articles of the same title, partial statements are made. In one instance, deception is explicitly referred to as an accidental mistake regarding quality (*error . . . qualitatis accidentalis*). Such a mistake

<sup>48</sup> Innocent IV, to X.V,19,6: Lyon 1562, f.196rb–va.

<sup>49</sup> *Rosarium super Decreto*, to II,10,2,2: Milan 1508, f.192vb.

<sup>50</sup> *Summa*, I,6,7,22: 478–80.

does not invalidate the contract, unless one party to it were deceived beyond one-half of the just price (*deceptus esset ultra dimidiam iusti pretii*).<sup>51</sup> A few pages further on, John presents the common formula stating that it is lawful for the parties to a contract “mutually to deceive each other until one-half of the just price” (*se invicem decipere usque ad dimidiam iusti pretii*).<sup>52</sup> In the case envisaged here, the party assumed to profit from the deception is the buyer. If he has paid less than one-half of the just price, he may choose to pay the discrepancy or to withdraw from the contract and have the price returned.<sup>53</sup>

A few lines after the last quotation, another manuscript tradition of the *Summa* notes that this analysis of deception applies to the external court of law (*forum contentiosum*) and not to the internal court of conscience (*forum animae*), and there follows a discussion of just price according to the rules of the internal court, which the Munich manuscript and the critical edition have in an appendix.<sup>54</sup> The rest of John of Erfurt’s analysis, before the appendix, contains some less orthodox elements and demonstrates the ambiguity of the legal theory. By way of concluding the article just quoted, John observes that Jo[hannes Teutonicus, in the *Glossa ordinaria* to the *Decretum*] seems to be of the opinion that it is not lawful for the parties to a sales contract to deceive each other, even though the law allows it. This is not a misreading of the *Glossa* on the part of John of Erfurt.<sup>55</sup> Canon law demands correction if a mistake about the value of the goods results in a price beyond the limits of one-half of the just price; but even within the limits of *laesio enormis*, it forbids deviations from the just price obtained in full knowledge of the value of the goods. John of Erfurt nevertheless proceeds to argue against the position stated in the *Glossa ordinaria*. This, he says, I believe to be false because, if it were not permitted to profit on contracts,<sup>56</sup> the state would perish, in that no one would engage in commerce and thus necessary goods would not be available for sale. Hence, as it is necessary to grant permission to make a certain profit, it is also neces-

<sup>51</sup> I,6,7,7:454–5.

<sup>52</sup> I,6,7,9: 457, referring to X.III,17,6.

<sup>53</sup> Ibid., 458, referring to X.III,17,3.

<sup>54</sup> Ed. Brieskorn, note at 459.

<sup>55</sup> Cp. note 41 above.

<sup>56</sup> To this line the Munich manuscript has a note in a contemporary but different hand suggesting that Johannes Teutonicus refers to profit beyond the limits of one-half of the just price; cp. Clm 8704, f.59va.

sary to have law prefix a limit to profit, which it is not permitted to cross.<sup>57</sup> The point where this conclusion differs from the legal theory, is the meaning of the word “deception”. In the version of John of Erfurt, there is no question of deception and profit resting on a mistake. Merchants deliberately seek profit by deception and should be permitted to do so within the limits of *laesio enormis*. It is to be expected that someone unfamiliar with law might misread the legal theory of fraud along those lines and pose it in contrast to the rules that apply in the internal forum. The mistake is invited by the terminology. John of Erfurt, however, was a trained canonist. His interpretation expresses the need of a legal confirmation of what all knew to exist and to be necessary, namely, for merchants, without resorting to deliberate fraud, to higggle and bargain as best they could in order to survive and make a profit.

In the title on usury, John of Erfurt comments on the decretal *In civitate*. He refers to a number of prominent canonists commenting on this text.<sup>58</sup> From what he claims to be their interpretation, he draws the following conclusions. If someone is not deceived about the value of certain goods but knowingly pays more than they are worth because payment is deferred, the contract is usurious on the part of the seller. If the buyer is deceived, however, and in ignorance pays more than the goods are worth, there is no usury. This cannot be correct, John argues, for since it is evil to deceive (*cum enim decipere sit malum*), it seems to follow that the deceiver may lawfully obtain a profit from his evil deed which one, who does not deceive, is not allowed to obtain. Hence, furthermore, it follows that a merchant may sell dearer to a simple and ignorant rustic than to an experienced man. This state of affairs is not in accordance with law, which tends to support the ignorant rather than the knowledgeable. There are, however, two way in which a person can be deceived, John suggest, either in judging or in choosing. No one who knows can be deceived in judging, but someone who knows a thing to be worth less and yet pays more because of his affection for the thing, is deceived in choosing. He would rather pay the higher price than be without the thing desired.<sup>59</sup> In this sense deception is lawful

<sup>57</sup> John of Erfurt, *Summa*, I,6,7,9: 459.

<sup>58</sup> Including Innocent IV, loc. cit. in note 48; Hostiensis, *Apparatus*: f.297rb–va; Godfrey of Trani, *Summa*: f.219vb.

<sup>59</sup> These reflections evoke associations both with the notion of self-deception and

whether the other party is ignorant or knowing.<sup>60</sup> The point here is neither John of Erfurt's strange interpretation of the commentary tradition on *In civitate* nor his philosophical speculations, but his view of deception as an active phenomenon. It is not possible to understand his analysis in terms of a mistake about the value on the part of the *seller*. The seller deceives the buyer; the buyer either knows or does not know that he is being deceived. In both cases, a limited amount of deception is permitted in the external court.

The rules of pricing that apply in the internal court (*forum animae*) are discussed in the Appendix. John of Erfurt considers the question whether it is permitted to sell goods for more than they are worth or to buy them for less than they are worth. He replies, following the Franciscan theologian Alexander of Hales, that merchants are allowed a moderate profit for the support of themselves and their families.<sup>61</sup> It is therefore lawful for sellers to charge a moderately excessive price but not a greatly excessive one. What amounts to a moderate excess is indicated by means of a numerical example. Assume that one commonly pays twelve for pepper (*piper communiter solvit duodecim*). Someone is willing to sell for ten because he lacks money. I buy for ten, and thus the seller is deceived to the amount of two (*decipitur in duobus*). At a later date, when it is still usually sold for twelve, I get the chance to sell the same pepper for fourteen, thus deceiving the buyer to the amount of two. I thus have a moderate profit, namely four, two from buying and two from selling.<sup>62</sup> The author does not explain why these particular figures are chosen. It may be significant that four is less than one-half of the just price, indicating a somewhat stricter criterion regarding deception in the internal court than in the external court. This conclusion is based on the assumption that the just price is the price that pepper is usually sold for. John of Erfurt does not say this explicitly but it is clearly indicated.

John of Erfurt had no large following, but his ideas occasionally crop up in later works. Shortly after its appearance, his *Summa* was used as a model by Durand of Champagne. Little is known about

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with the principle of conditional voluntariness, which was to become a central concept of the theory of economic coercion. Neither line of analysis is pursued by John of Erfurt.

<sup>60</sup> John of Erfurt, *Summa*, II,6,4,9: 1230–1.

<sup>61</sup> Cp. Alexander of Hales, *Summa theologica*, III,490: Vol. IV, Quaracchi 1948, 723.

<sup>62</sup> John of Erfurt, *Summa*: 1549.

Durand, except that he was a Franciscan friar and confessor to Queen Jeanne of France and Navarre, wife of Philippe le Bel. His *Summa collectionum pro confessionibus audiendis* is preserved in two manuscripts at Paris and one at Pavia.<sup>63</sup> It is a largish work of upward of 250 leaves, in two books. Book I deals with the role and requirements of the confessor and with penance in general, as well as with the seven capital sins. Part II follows the order of the Decalogue. Discussing price under the heading of Avarice, Durand cites the legal principle of deception within and beyond one-half of the just price. Following John of Erfurt, he argues, against the *Glossa ordinaria* to the *Decretum*, that merchants must be allowed to profit in order for necessary commodities to be made available.<sup>64</sup> Whereas monopoly and monopolizing agreements are sinful,<sup>65</sup> merchants labour for everybody and may reap a moderate profit for the support of themselves and their dependants.<sup>66</sup> The tradition on *Quicumque* is reproduced in detail among material on usury in connection with the seventh commandment. Profit on resale is lawful under a number of circumstances, including regular commerce, provided that dearth is not induced. Those who, motivated by avarice, gather supplies of necessities and force others to buy from them at their will, sin enormously, not only against their neighbours but against the community of neighbours.<sup>67</sup> Durand thus draws on the Dominican tradition from Raymond of Peñafort and William of Rennes and from Ulrich of Strasbourg, probably through John of Freiburg, putting the substance of their teaching into the redactional scheme of John of Erfurt.

The span of forms and contents embraced by the penitential handbook as a literary genre is perfectly demonstrated by comparing the works of John of Erfurt and Durand of Champagne with that of Jean Rigaud. Jean, another French Minorite, was pontifical penitentiary and died bishop of Tréguier in 1323. Between 1309 and 1312 he composed a *Formula confessionis*. Some twenty manuscripts of this work are on record and demonstrate a fairly wide diffusion,

<sup>63</sup> MS consulted: Paris BN lat. 3264. On this work, and on the author, cp. Schulte II, 430; Wadding 72; Sbaraglia I, 239; *Histoire Littéraire de la France*, Vol. 30, Paris 1888, 302–33; Dietterle, *ZK* 27 (1906) 70–8; Michaud-Quantin, 1962, 55, 114, 118; Bloomfield-Guyot 2768.

<sup>64</sup> Paris BN lat. 3264, f.77rb–va.

<sup>65</sup> *Ibid.*, f.79va–b.

<sup>66</sup> *Ibid.*, ff.79vb–80ra.

<sup>67</sup> *Ibid.*, f.226ra–b.

mainly on the Continent, though copies are preserved both in England and in Italy.<sup>68</sup> The work is an early and most elegant example of a type of manual that was to multiply in the following centuries. These manuals will examine sins from a varying number of different viewpoints but are less inclined to go into specifics and are therefore, on the whole, less relevant from the point of view of the present study. Rigaud's *Formula* is a bit longer than its average successor. It opens with brief sections on the preparation and quality of the confession and concludes with sections on satisfaction and restitution as well as a summary on how to confess the various sins examined in the main, middle part, which occupies more than two-thirds of the total. This main part examines sins by way of abuse of the five senses, the seven mortal sins, sins by way of violation of the ten commandments, sins by neglecting or omitting works of mercy, sins by neglect or tepidity regarding the theological and cardinal virtues. The sins typical of commercial activity are listed summarily among the branches of avarice: deception, fraud, lies, and usury, selling bad merchandise for good, falsifying money, weights and measures.<sup>69</sup> Discussing the cardinal virtues, the author distinguishes between commutative and distributive justice, referring to Aristotle in *Ethics*, V. Merchants sin greatly against the former kind of justice. As regards the hire of labour, both parties sin against commutative justice, either by working less than they should or by paying poor labourers less than they deserve.<sup>70</sup>

In the centuries following the publication of these four early handbooks, Italians—and in particular Italian Franciscans—took over the hegemony of the genre and their works spread throughout Europe, while almost nothing issued from the pens of their transalpine confrères. Two titles may be placed on record to indicate the sort of work produced. Olivier Maillard, born at Yvignac in Brittany about 1430, preacher and reformer, professor of theology at the University of Paris and three times vicar general of the ultramontane Observants, composed a *Confession générale*. It was first published in 1481 and reissued at least twice.<sup>71</sup> In principle, this work belongs to the same class

<sup>68</sup> MSS consulted: Erlangen UB 548 (E); Florence BNaz Conv. Soppr. F.VI.855 (F). On Jean Rigaud, cp. Schulte II,425; Wadding 151; Sbaraglia II,123–4: *Histoire Littéraire de la France*, Vol. 34, Paris 1914, 282–98; Teetaert, 1946; Michaud-Quantin, 1962, 56–7, 115, 120; Bloomfield-Guyot 5707.

<sup>69</sup> E, f.277r–v; F, f.14va–16rb.

<sup>70</sup> E, ff.292v–293r; F, f.49rb–va.

<sup>71</sup> Ed consulted: Lyon c. 1485. On Olivier Maillard, cp. Wadding 181; Sbaraglia



of manuals as Jean Rigaud's *Formula* but radically differs from it in several respects. It is extremely brief (eight leaves in the edition examined), it is written in the vernacular, and it is self-accusatory on the part of the penitent (sins being confessed in the first person singular). Within its limited space, it runs through numerous classifications of sins, including the seven capital ones and sins against the ten commandments. The penitent confesses to have committed the sin of avarice by having lent money in the hope of usurious gain or by having sold merchandise on credit for more than its value.<sup>72</sup> He confesses to have broken the commandment not to steal by working less loyally for others than for himself.<sup>73</sup> The *Confessio utilis et necessaria* by Antoine Faren, another late-fifteenth-century French theologian and an Observant famous for his sanctity, is an even briefer work, covering a mere six leaves in the edition examined.<sup>74</sup> More than half of this space is devoted to the commandments. The twelve branches of sin against the seventh commandment include usury, fraud, and withholding the wages of labourers.<sup>75</sup> Usury and fraud are also listed as breaches of the tenth commandment.<sup>76</sup>

### Summary

The major part of this chapter has been devoted to the legal theory of *dolus* and *deceptio* and its reception in the penitential tradition. It can be summarized by the following sketch, which will apply to many of the works to be reviewed in the following chapters as well. Medieval authors of penitential handbooks, even some of those with a legal training, like John of Erfurt, found the legal distinctions confusing and irrelevant. A different theory emerged, which some critics interpret as a misunderstanding. According to this theory, regular fraud was condemned. Higgling and bargaining to obtain a better deal was granted some leeway, but the red flag signalling fraud

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II,298–300; Tentler, 1977, 44, 139, 376–7; Moorman, 1968, 518–42, 591; LTK 6 (1997) 1206.

<sup>72</sup> Ed. cit., f.4v.

<sup>73</sup> Ed. cit., f.6r.

<sup>74</sup> Paris 1495. There are two other Latin editions and a French edition. On Antoine Faren, cp. Sbaraglia I,80; Tentler, 1977, 44; GW 9718–21.

<sup>75</sup> Ed. cit., f.4v.

<sup>76</sup> Ed. cit., f.5r.

appeared much sooner in the internal forum than in the external forum. In numerical terms, the latter forum recognized only the limit of one-half of the just price, that is, the calculus of *laesio enormis*, whereas the former remained vague, an estimate rather than a fixed point, a moderate profit, etc. The question of a price increase by sale here of goods intended for sale elsewhere at this higher price was introduced by Peter Quesnel. Peter records the dispute among canonists whether this case could be solved by analogy to the case of a price increase by sale now of a good intended for storage in the expectation of a higher price in the future. The latter, temporal variant of the argument for a higher price turns on the question of usurious intent, in the absence of which it was generally accepted. The spatial variant demonstrates the thin line that separated normal business profit from shameful gain (as well as usury, transportation reintroducing the temporal element). The question continued to engage the canonists and to be mirrored in the penitential literature. Peter Quesnel cites *Placuit* on price discrimination, with a difference. The tradition on *Quicumque* is reproduced by John of Erfurt and, in the extended version of Burchard of Strasbourg, by Durand of Champagne. Both condemn monopoly. Wage contracts are mentioned by Jean Rigaud, who addresses both parties, and by the later authors Olivier Maillard, who focuses on the duties of the employee, and Antoine Faren, who focuses on those of the employer. A subsequently highly popular redactional scheme appears in the early Franciscan penitential handbooks, namely, a two-fold interrogatory structured on the seven capital vices and the ten commandments. It is used by John of Erfurt, Durand of Champagne, and Jean Rigaud, as well as, much later, by Olivier Maillard.

## CHAPTER FIVE

### MISCELLANEOUS WORKS

While Dominican and Franciscan friars wrote the majority of penitential handbooks appearing from the early thirteenth to the early sixteenth century and, with some late exceptions, typically paid more attention to commercial activity, a balanced picture calls for a record of works by other authors, primarily secular clerics. In this chapter I reach back to Chapter 1 and proceed with the tradition left there with the *Summa* of Thomas of Chobham, starting again by presenting the important contributions of Robert Grosseteste (c. 1170–1253). A native of Surrey like Chobham, Grosseteste studied at Oxford and Paris, became regent in theology at Oxford, chancellor of the University, lecturer to the Franciscans at Oxford, archdeacon of Leicester, and bishop of Lincoln. In the history of economic thought he is remembered for his annotated translation of the *Nicomachean Ethics* of Aristotle. The large literary output by this great churchman and scholar includes a number of pastoral works with an emphasis on confession. Leaving out some that must be classified as sermons, as well as some that are too brief or fragmentary to be of interest, there remain four handbooks, all available in recent critical editions.<sup>1</sup>

*De modo confitendi et paenitentias iniungendi*, a work in two books (or perhaps two works combined), was edited by J. Goering and F.A.C. Mantello.<sup>2</sup> Book I contains practical procedural advice for the confessor and includes an interrogatory. Book II opens with some pointers on how to modify and adapt the traditional rigid penitential canons using judgement and discretion and then proceeds to list a number of these old tariffs. The interrogatory runs through the seven criminal

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<sup>1</sup> On Robert Grosseteste, cp. the commemorative essays edited by D.A. Callus, 1955, and, for more recent references, BBKL 8 (1994) 444–6; LTK 8 (1999) 1219–20, and the study by McEvoy, 2000. S.H. Thomson's detailed catalogue of his works (1940) is still useful, if supplemented with those of the editors of individual works. On Grosseteste's *Ethics* translation with notes of interest for the history of economics, cp. Langholm, 1979, 37–60; 1998, 15–25.

<sup>2</sup> *Recherches de théologie ancienne et médiévale* 54 (1987) 52–112; text at 80–110. For manuscripts, cp. Thomson, 1940, 126; Bloomfield-Guyot 0280, 1161, 4112, 4341; Goering and Mantello, 1987, 75–80.

sins twice, first listing questions to be asked under each heading, next analyzing each sin more narrowly as being committed in the heart, by words, by actions, or by omission. Under the heading of Avarice, the penitent should be asked whether he has failed to pay the wages of labourers, whether he has lent at usury, and whether he has “circumvented his neighbour in any contract” (*si in aliquo contractu proximum circumvenerit*).<sup>3</sup> With Grosseteste, circumvention in business is clearly already a deliberate, sinful act. It is in fact mentioned again, along with shameful gain and usury, in a long list of sins of avarice by action.<sup>4</sup> Book II contains canons about perjury, theft and usury but does not mention commodity exchange or price.

A briefer *Speculum confessionis* was edited by the same scholars.<sup>5</sup> It consists of forty-three consecutively numbered sections, divided into two main parts, both partly arranged on the basis of the seven capital sins or principle vices. Part I is addressed to a monk. Part II deals with sins committed both in the cloister and in the world, and devotes a separate chapter to avarice.<sup>6</sup> Here, “circumvention” is listed along with usury, simony and theft. The penitent is also to be asked directly whether he has pestered anyone so as to extort from him the sale or gift of a thing that belonged to him.<sup>7</sup> Some sort of coercion is clearly envisaged here, but there is no safe reason to believe that the author had economic coercion in mind.

Grosseteste’s most widely diffused penitential work is his *Templum Dei*. All variants and fragments counted, it is extant in some ninety manuscripts. Goering and Mantello edited it from Cambridge, Emmanuel College MS 27, which they found to be the most satisfactory text.<sup>8</sup> It is a work in two main parts and consists of twenty-two consecutively numbered chapters, divided into paragraphs,

<sup>3</sup> I,16: 84.

<sup>4</sup> I,42: 90.

<sup>5</sup> *Revue Bénédictine* 96 (1986) 125–68; text at 148–68. Four manuscripts are known; cp. Thomson, 125; Bloomfield-Guyot 3889; Goering and Mantello, 1986, 148. Two manuscripts attribute the work to Grosseteste. Thomson had reservations about the authenticity of this work, but it was provisionally accepted by the editors. The work also appears under other titles (*De confessione*; *De vera confessione*). To avoid confusion it is often referred to by its incipit: “Perambulavit Iudas . . .” (I Mac. 3.8.)

<sup>6</sup> II,32: 162–3.

<sup>7</sup> Literally, in the second person singular: “Inquietasti aliquem extorquendo ab eo ut venderet vel daret tibi rem suam.”

<sup>8</sup> Toronto 1984. The division of the text is that of the editors. For manuscripts, cp. Thomson, 138–40; Bloomfield-Guyot 5982. The title is based on the incipit and is often read as *Templum Domini* but should rightly be as given by the editors (from 1 Cor. 3.17: “Templum enim Dei sanctum est, quod estis vos”).

frequently in the form of charts for mnemonic purposes. God's holy Temple is man; it has a twofold structure, a corporeal Temple and a spiritual Temple. The construction of the spiritual Temple by the theological virtues (Part I) and its building and conservation through confession (Part II) are described in architectonic terms. In both parts, the seven capital sins are all classified as sins against charity.<sup>9</sup> For the main "economic" sin, Grosseteste uses the word *cupiditas* rather than the subsequently more common and narrower term *avaritia*; in Part II, the branches of cupidity include usury, fraud, theft, ambition, and avarice.<sup>10</sup> Unless the editors are mistaken, *Templum Dei* was composed long before Grosseteste translated the *Nicomachean Ethics*,<sup>11</sup> yet the idea that virtue is a mean between the vices of excess and defect was already a favourite one with him. In *Templum* it is applied to a large category of virtues. Thus, for instance, prodigality and cupidity are vices opposed to munificence,<sup>12</sup> and munificence in works of mercy is recommended as penitential satisfaction in cases of avarice and cupidity.<sup>13</sup> Part II also contains a series of chapters on usury, tithes, and the restitution of ill-gotten gains. We are told, among other things, that resale at an increased price is usury unless the goods are improved,<sup>14</sup> that tithes should be paid of commercial profits less expenses,<sup>15</sup> and that restitution should be made for loss caused by fraud in measuring, counting, weighing, selling, buying and bartering.<sup>16</sup>

After his appointment to the bishopric of Lincoln, Robert Grosseteste composed the last of his works *De confessione*. It was edited from ten known manuscripts by S. Wenzel.<sup>17</sup> In some respects it recalls *Templum*

<sup>9</sup> I,v,5: 35; II,ix,1–11: 46–9.

<sup>10</sup> II,ix,8: 48.

<sup>11</sup> The three penitential handbooks edited by Goering and Mantello are relatively early works, composed while Grosseteste was still lecturing in the schools. Dating is uncertain. In the order in which they are presented here, the editors estimate the limits of their composition to 1214–1225, 1200–1230, and 1220–1230. Grosseteste's corpus on the *Ethics* was completed in 1246 or 1247, but it obviously took some years in the making. He began studying Greek in earnest in the early 1230s. He is also known to have had fragments of an earlier Latin translation of the *Ethics* at hand as a source for his own version.

<sup>12</sup> II,xi,9: 52.

<sup>13</sup> II,xix,8: 64.

<sup>14</sup> II,xiii,2: 55.

<sup>15</sup> II,xiv,2: 56.

<sup>16</sup> II,xv,1: 57.

<sup>17</sup> *Franciscan Studies* 30 (1970) 218–93; text at 239–93. This work is distinguished from similarly titled texts, by its incipit, "Deus est quo nihil melius . . .". For manuscripts, cp. *ibid.*, 224–7; as well as Thomson 176 (classifying the work as a sermon); Bloomfield-Guyot 1547.

*Dei* but is built on a simpler last. A preamble and a conclusion and a few pages on contrition, confession, and satisfaction leave four-fifth of the total length of the work to a systematic interrogatory. The confessor should ask about sins committed against the three theological virtues (Faith, Hope and Charity) and the four capital virtues (Prudence, Justice, Temperance and Fortitude). Sins against charity are the seven capital vices; however, as in *Templum Dei*, virtue is a mean between the vice of excess and the vice of defect. Thus, avarice and prodigality are sins opposed to munificence (*largitas*).<sup>18</sup> Species of avarice are usury, to which merchants are prone, as well as robbery, simony, and sacrilege.<sup>19</sup> In connection with justice, merchants should be asked whether they have committed fraud by circumventing anyone (*dolum fecerit circumveniendo aliquem*) or by cheating anyone (*fallendo aliquem*), which is frequently the case with those who deal in cloth, skins, wine, and grain.<sup>20</sup> Again, circumvention is a deliberate act of fraud. Usury is not mentioned in this connection.<sup>21</sup>

A few words about some works by contemporaries or near-contemporaries of Grosseteste may serve to fill out the picture of the state of the genre at this time and of the nature of its rather limited occupation with economic subjects. Odo of Cheriton (c. 1180–c. 1246), a widely travelled Kentish nobleman best remembered for his collection of fables, was also a master of theology from Paris and left a number of sermons and scriptural commentaries. His *Summa de poenitentia*, a brief text composed near the end of his life, is extant in upward of two dozen manuscripts.<sup>22</sup> It contains some graphic

<sup>18</sup> Ed. Wenzel, 275.

<sup>19</sup> Loc. cit.

<sup>20</sup> Ed. cit., 289.

<sup>21</sup> Note that the theologian William of Auxerre, in his influential *Summa aurea*, argued emphatically and explicitly against “some” (*quidam*) who claim that the Church takes action against usurers because usury is a sin against charity, the greatest of all virtues. This argument is invalid, according to William. Usury is a sin against justice, it is “contrary to that species of justice which obliges us to relieve a neighbour in need” (III,48,1,1: ed. Ribaillier, III,ii,910). This is both a graver and more specific charge and a more practicable principle. It was generally accepted by the theologians and adopted by authors of penitential handbooks. With the additional support of Roman and canon law and of Grosseteste’s translation of Aristotle’s *Ethics*, it was applied by analogy to commodity exchange and price. Whether Grosseteste figures among William’s *quidam* is doubtful. The *Summa aurea* can only be dated within a fifteen-year period or, at best, a ten-year period, after 1215. It predates *De confessione “Deus est”* but perhaps not *Templum Dei*. In *Templum Dei*, justice is not mentioned at all. The foundation, walls and roof of the Temple are faith, hope and charity.

<sup>22</sup> On Odo of Cheriton and his works, cp. Friend, 1948, as well as Schulte II,531;

descriptions of Hell fire with which to threaten usurers.<sup>23</sup> Merchants should be admonished to pay tithes of all profits.<sup>24</sup> The first volume of the seventeenth-century edition of the collected works of the French theologian William of Auvergne (c. 1180–1249) contains a *Tractatus de sacramentis* with an important section on penance, as well as a *Tractatus novus de poenitentia*. Neither work descends to the level of individual sins and therefore offers nothing to our purpose.<sup>25</sup> In the second volume of the *Opera*, however, the editors include what purports to be a *Supplementum* to the *Tractatus novus*, consisting, as it were, of Chapters 18–26 of that work. This supplement is a compilation of several pieces, two of which go into particulars regarding sin and touch briefly on economic matters. Their authorship has long been disputed. The best current opinion is that Chapters 22–5, which used, until recently, to be attributed to William, is in fact the treatise *De confessione* by the contemporary French theologian Jacques of Vitry (c. 1165–1240). It contains a brief interrogatory based on the seven mortal sins, the five senses, and the ten commandments. As expressions of avarice, in addition to usury, theft, robbery, raising fire and wasting fields and vineyards, the penitent should be asked if he has deceived anyone or committed any kind of fraud or “circumvented” his neighbour in business as to weight or measure or by other means.<sup>26</sup> A preceding section of the *Supplementum*, consisting of Chapter 20 and part of Chapter 21, contains a treatise *De confessione* now unanimously attributed to Robert of Sorbon (1201–1274). Robert, Paris master of theology and founder of the college that bears his name, composed two other such works as well. Distinguished by their incipits, the three works are *Cum repetes* (in William’s *Opera*), *Qui vult* (recently critically edited in its Latin version as well as in a French version), and *Ad sanctam* (quoted here from manuscript). Each of these works contains an interrogatory primarily organized on the basis of the seven capital sins, and all treat of usury under the heading of Avarice. In *Cum repetes*, this is all there is about economic

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Michaud-Quantin, 1962, 21, 115, 119; Teetaert, 1948, 326–9; Bloomfield-Guyot 3871; BBKL 6 (1993) 1113–4; LTK 7 (1998) 977.

<sup>23</sup> Paris BN lat. 2593, f.4rb, f.7rb; Munich SB Clm 7801, f.28r, ff.35v–36r.

<sup>24</sup> MSS cit., f.7va; f.36v.

<sup>25</sup> On William of Auvergne on confession, cp. L. Smith, 1998.

<sup>26</sup> *Supplementum tractatus novi de poenitentia*, in William of Auvergne, *Opera Omnia*, II,244 (in Chapter 24). On this work, and on the manuscript tradition, cp. Diekstra, 1994. On the author, cp. BBKL 2 (1990) 1493–5; LTK 5 (1996) 732–3.

matters.<sup>27</sup> In *Qui vult*<sup>28</sup> and in *Ad sanctam*,<sup>29</sup> fraud in business dealings is mentioned as an expression of avarice as well. As to price, *Ad sanctam* stresses the sinfulness of buying cheap from poor people or from a neighbour in need, for the purpose of profitable resale.<sup>30</sup>

In the thirteenth century, guidelines for parish priests in their role as confessors would also be drawn up as parts of diocesan statutes. The following are some typical examples from printed sources. The statutes of Alexander Stavensby, bishop of Coventry and Lichfield from 1224 to 1237, contain two consecutive pieces on the mortal sins and on penance, now available in Powicke and Cheney's edition of English *Councils and Synods*.<sup>31</sup> The former devotes three lines to usury under the heading of Avarice.<sup>32</sup> Much of the latter is an interrogatory *ad status*. If the penitent is a merchant, he is to be examined about false weights and measures.<sup>33</sup> Peter of Sampsona, a French canonist, at the request of the bishop in 1252 composed diocesan statutes for Nîmes.<sup>34</sup> Part II (of fifteen) deals with the sacrament of penance and mentions the confession of merchants in Chapter 13. They should be asked about falsehood, fraud and usury, and about unjust weights and measures.<sup>35</sup> In the statutes of Walter of Cantilupe, bishop of Worcester, issued at a diocesan synod held in 1240, mention is made of a manual of hearing confession which, unfortunately, is not included in Powicke and Cheney's edition of Cantilupe's statutes and was believed by these scholars to have been lost. It has since been argued that it is preserved in several manuscripts and that it in fact appears in print in Powicke and Cheney in the form of the *Summula* on confession added to the 1287 statutes of Peter Quivil, bishop of Exeter, indicating that Quivil copied

<sup>27</sup> Ibid., II,236–7 (in Chapter 21).

<sup>28</sup> Ed. Dickstra, 1993, 248–51 (French and Latin in parallel columns).

<sup>29</sup> Trier SB 572, f.69v. This manuscript contains *Ad sanctam* on ff.68v–72r and *Qui vult* on ff.63v–68r.

<sup>30</sup> Loc. cit. For references to recent work on Robert of Sorbon, cp. LTK 8 (1999) 1224. On manuscripts and editions of his confessional works, cp. Michaud-Quantin, 1962, 28–9, 115, 117; Bloomfield-Guyot 0288, 1207, 4659, 4766.

<sup>31</sup> Ed. cit., II,I,214–20; 220–6; cp. also Michaud-Quantin, 1962, 30, 113, 117–8; Bloomfield-Guyot 0312, 1183, 1578.

<sup>32</sup> Ed. cit., 218.

<sup>33</sup> Ibid., 221.

<sup>34</sup> Martène and Durand, *Thesaurus*, IV,1021–70; on penance, 1027–36. On the author and his works, cp. Schulte II,108–10; Michaud-Quantin, 1971.

<sup>35</sup> Ed. cit., 1030.



Cantilupe.<sup>36</sup> However that may be, the author of this brief handbook advises the priest to examine penitents with reference to the ten commandments and the seven mortal sins. Usury and fraud as to weight, number and measure are listed as sins against the seventh commandment.<sup>37</sup> Usury and fraud appear again as expressions of avarice.<sup>38</sup>

Johannes de Deo (João de Deus) was the most prominent thirteenth-century secular canonist to compose a handbook for confessors. Born about 1190 at Silves in Algarve, he studied at Bologna, graduated *doctor utriusque iuris*, and taught in the university there for many years. The persistent tradition naming him a Dominican is incorrect. About 1260 he returned to his native country where he died in 1267 as archdeacon of Lisbon. A number of works are attributed to Johannes de Deo, including summas of cases drawn from the *Decretum* and the *Decretals*. While at Bologna, probably shortly before 1250, he wrote a *Liber poenitentiarius*. This work enjoyed a large diffusion. It is extant in upward of eighty manuscripts, spread throughout European libraries and bearing witness to a complex tradition with many variants.<sup>39</sup> It is a work of middle length as these handbooks go. Depending on script and format, it runs to some thirty to fifty pages in the complete version. It consists of seven books. The first four books contain general instruction for the confessor, whereas the last three books are perhaps the best early example of a detailed interrogatory *ad status*. The priest is advised on which subjects to broach in the examination of different classes of clerics and religious as well as laymen of various ranks and walks of life. In Book VI there is a section on the confession of merchants.<sup>40</sup> The author refers

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<sup>36</sup> Cantilupe's statutes, without the confessional manual, are in *Councils and Synods*, II,I,294–325. Quivil's statutes are in *Councils and Synods*, II,II,982–1059; *Summula* at 1060–77 (Q). The work is attributed to Quivil by Michaud-Quantin, 1962, 30–1, 115, 117; Bloomfield-Guyot 0369. Boyle, 1956, II,47–8, drew attention to an anonymous *Summula* with the different incipit "Omnis etas" (Bloomfield-Guyot 3663) as being possibly the one recommended by Cantilupe. This work is preserved in four manuscripts, of which the better one is London Wellcome Institute 801a, ff.53ra–55rb (W). Goering and Taylor, 1992, argue for the authorship of Cantilupe. On Walter of Cantilupe, cp. that study, supplementing DNB 3,904–6.

<sup>37</sup> Q: 1064; W: f.53va.

<sup>38</sup> Q: 1068; W: f.54ra.

<sup>39</sup> On Johannes de Deo and his penitential, cp. Schulte II,94–107; the two studies by Sousa Costa, 1956; 1958; as well as Michaud-Quantin, 1962, 26–7, 50, 114, 117; Bloomfield-Guyot 0238; BBKL 3 (1992) 337–8.

<sup>40</sup> The summary given in the text is covered by either of the following manuscripts,

to the decretal *Consuluit* on usury hidden in credit sales at a much higher price, to the canon *Quicumque* on shameful gain obtained by buying and reselling unaltered goods at a higher price, and to the decretal *Placuit* regarding those who “sell dearer to strangers and transients than to neighbours” (*vendunt hospitibus et transeuntibus carius quam vicinis*). The wording of this paraphrase is intriguing. Johannes de Deo’s *Liber poenitentiarius* predates the *Summa aurea* of Hostiensis, whose version was referred to in connection with that of William of Cayeux. Unlike William, and unlike the original text of *Placuit* and the versions of John of Freiburg and Peter Quesnel,<sup>41</sup> the standard of comparison of price charged from travellers is not the market price but the price that is paid by residents. On this point, Hostiensis, in all likelihood, drew on Johannes de Deo. Hostiensis points out that merchants sin, “selling dearer to pilgrims and travellers than to neighbours” (*vendendo peregrinis et transeuntibus carius quam vicinis*). This version reappears in a somewhat later, anonymous handbook, the *Memoriale presbiterorum*, which has been tentatively attributed to a certain William Doune, an English secular cleric, and dated to the late second quarter of the fourteenth century.<sup>42</sup> The work contains an interrogatory *ad status* with a section on merchants and burgesses. A seller should be asked if he has charged a higher price “from pilgrims and other travellers than from his own neighbours” (*peregrinis et aliis transeuntibus quam vicinis suis propriis*).<sup>43</sup>

Outrivalled by the Dominican handbooks, new penitential texts were scanty in the fourteenth century and generally less concerned with trade and price. Four works, by a French, an English, a German, and a Spanish churchman, are chosen to illustrate the state of the genre in the first half of the century. In France, Bérengar Frédol (c. 1250–1323), from the region of Montpellier, canonist, bishop of Béziers, papal penitentiary, and cardinal, composted a *Summula in foro poenitentiali*. This simple guide for confessors is extant in some twenty manuscripts, of an average length of forty leaves, with considerable

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though the exact wording differs: Cambridge UL Kk. 4.20, f.40rb; Oxford BodL Laud. Misc. 112, f.336va; London BL Roy. 5 A.I, f.199r–v; Roy. 8 D.III, f.140ra; Munich SB Clm 3243, f.290ra–b; 3437, f.266ra–b; 5176, f.300v. Other manuscripts have shorter versions. Some excerpts are printed in PL 99, 1085–1108, but they do not include the section on the confession of merchants.

<sup>41</sup> See Chapter 3, notes 38 (with following text) and 50, and Chapter 4, note 4.

<sup>42</sup> Haren, 2000, 6–38.

<sup>43</sup> Cambridge Corpus Christi College 148, f.24ra.

textual variation.<sup>44</sup> Instruction about how to receive the penitent is followed by an interrogatory structured mostly on the ten commandments and the seven deadly sins. In connection with the seventh commandment, servants should be asked about working faithfully, and masters should be asked about prompt payment of wages.<sup>45</sup> Usury appears routinely under the heading of Avarice. If the penitent is a merchant, he should be examined about false weights and measures and about selling bad merchandise for good.<sup>46</sup> There follows a more detailed discussion of select subjects based on canon law, including usury but not price. The rest of the work deals with the sacraments in general, with excommunication, with matrimony, etc.

In England, William of Pagula, theologian and canonist, vicar of Winkfield in Berkshire, about 1320 composed a manual for parish priests, the *Oculus sacerdotis*. It consists of three independent parts, which approach much the same subjects from three different angles, namely, that of penitential practice, that of sacramental theology, and that of preaching. The first part, known as the *Pars oculi*, is thus in the nature of a modest penitential handbook.<sup>47</sup> It refers to economic activity in a brief interrogatory *ad status*, in a lengthy examination of the seven mortal sins, and by way of imposing penance. Merchants should be questioned about perjury and fraud.<sup>48</sup> Under the heading of Avarice, the penitent should be asked whether he has retained the wages of labourers, whether he has lent at usury, and whether he has cheated his neighbour in contracts of any kind or committed fraud in business.<sup>49</sup> Penance for falsifying just weights and measures is thirty days on bread and water.<sup>50</sup> In Germany, Herman of Schildesche (in Westfalen, c. 1290–1357), a Paris doctor of theology, lector at Magdeburg and Erfurt, provincial of the Order of the Hermits of Saint Augustine, vicar general and penitentiary at

<sup>44</sup> I have examined three manuscripts: Bamberg SB Theol. 159 (A): 226 (B); and Vienna NB 4926 (C). On this work and its author, cp. Schulte II, 180–2; *Histoire littéraire de la France*, Vol. 34, Paris 1914, 62–178; Michaud-Quantin, 1962, 51, 114, 118; 1967; 1971, 152, 159–62, 166–9; Bloomfield-Guyot 2625; LTK 4 (1995) 86; Brundage, 1995, 209.

<sup>45</sup> A, f.258v; B, f.218r; C, f.37r–v.

<sup>46</sup> A, f.259r–v; B, f.218v; C, f.38r–v.

<sup>47</sup> Some fifty manuscripts contain one or more parts of the work. MS consulted: Oxford New College 292. On the author, cp. DNB, 15, 66; Boyle, 1955; 1956; 1974, 128; 1982, 229; Bloomfield-Guyot 1088.

<sup>48</sup> MS cit., f.4ra.

<sup>49</sup> Ibid., f.4vb.

<sup>50</sup> Ibid., f.14ra.

Würzburg, wrote a brief *Speculum manuale sacerdotum*. It closes with a few pages on hearing confession. The priest is advised to avoid overly direct interrogation regarding the sin of avarice, lest he thereby opens the road to usury, shameful gain and fraud.<sup>51</sup> This line smacks of a familiarity with the following work.

In Spain, Guy of Monte Roterio, a parish priest in the diocese of Teruel, in 1333 completed what was surely the most successful work of its kind. More than 180 manuscripts of his *Manipulus curatorum* have come to light, and it appeared in almost a hundred early printed editions.<sup>52</sup> Guy's "maniple" consists of three books. Having explained the other six sacraments of the Church in Book I, the author devotes Book II to penance, both in general and in specifics regarding contrition, confession, and satisfaction. In the treatise on confession, Chapter 9 deals with the interrogation of the penitent, the importance of which is strongly emphasized. Guy suggests an arrangement on the basis of the seven mortal sins. These are reviewed in five steps, namely, (1) as the main roots of sin, (2) by way of enumerating the individual sins growing from each of these evil roots, (3) in terms of advice as to interrogation, (4) by considering penitents of different states and professions particularly prone to these various sins, (5) with a view to counselling. In the list of mortal sins, avarice is ranked second to pride. Among the branches of avarice are fraud and deception in buying and selling, as well as robbery, theft and usury.<sup>53</sup> The priest should be wary of going into too much detail about such practices, lest he put ideas into the head of the avaricious.<sup>54</sup> Merchants should be examined about fraud, falsehood and perjury and, along with burgesses, about usury.<sup>55</sup> Penitents tempted by avarice should be admonished to reflect on the brevity of life, on the instability and vanity of this world, and on the fact that they can take none of their riches with them beyond the grave.<sup>56</sup>

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<sup>51</sup> *Speculum*: Strasbourg c. 1481, f.16r. On other editions and manuscripts, and on the author, cp. Bloomfield-Guyot 0801, 2857, 3028, 5152; BBKL 2 (1990) 754–6; LTK 4 (1995) 1446.

<sup>52</sup> Ed. used: London 1508. On author, editions, and manuscripts, cp. Schulte II, 429–30; Michaud-Quantin, 1962, 11; 1971, 152, 169–70; Tentler, 1977, 37–8, 49; Bloomfield-Guyot 5019; Santiago Otero, 1980; *Dictionnaire d'histoire et de géographie ecclésiastique* 22 (1988) 1280.

<sup>53</sup> *Manipulus*, II,iii,9: London 1508, f.88r–v.

<sup>54</sup> *Ibid.*: f.91r.

<sup>55</sup> *Ibid.*: ff.93v–94r.

<sup>56</sup> *Ibid.*: f.94r.

In the briefer Book III, the author adopts the other most commonly used interrogative arrangement, namely, that of the ten commandments. Here, the command not to steal is said to include usury, fraud and deception, “and generally every illicit acquisition of another’s property in whatever wise concocted or disguised”.<sup>57</sup>

Three prominent theologians wrote brief works on confession but reserved their ideas about trade and price for separate treatises that are beyond the scope of the present study. Henry of Hesse (1325–1397) was master of theology and vice-chancellor of the University of Paris, later rector of the University of Vienna and reorganizer of studies there. His *De confessione* is extant in some thirty manuscripts.<sup>58</sup> The author examines sin with reference to the standard classifications, including the capital sins. Fraud in buying and selling, detainment of the wages of labourers, and usury are mentioned in passing under the heading of Avarice.<sup>59</sup> Matthew of Cracow (c. 1345–1410), professor of theology at Prague, later rector at Heidelberg and archbishop of Worms, composed two pieces on penance. Only the briefer one, *De modo confitendi*, is of interest here. It contains some lines on buying and selling and on usury under the heading of Theft. Matthew mentions deception in terms of number, weight or measure, hiding defects in merchandise, falsely praising one’s merchandise, and mixing false money with good.<sup>60</sup> The great French scholar, mystic and churchman Jean Gerson (1363–1429), chancellor of the University of Paris, composed three works that may be classified as penitential manuals. His *De arte audiendi confessiones* is strictly limited to procedural advice for the priest. *De confessione mollitiei* sets down a strategy for eliciting confession of sexual sins from youths. These works naturally

<sup>57</sup> III,3; f.132r.

<sup>58</sup> MSS consulted: Erlangen UB 547 (A); 548 (B). On this work, and on the manuscript tradition, cp. Michaud-Quantin, 1962, 77–8, 114, 121; Bloomfield-Guyot 6019. On the author, cp. BBKL 2 (1990) 679–81; LTK 4 (1995) 1390–1, with further references. Henry of Hesse’s *Tractatus de contractibus* used to be attributed to Jean Gerson and was printed in Gerson’s *Opera Omnia*, Vol. IV, Cologne 1484.

<sup>59</sup> Henry of Hesse, *De confessione*: A, f.151rb; B, f.247v.

<sup>60</sup> *De modo confitendi*, ed. Senko and Safranski, 311. A longer piece, *De puritate conscientiae*, was edited by the same authors; it deals mainly with sins of the flesh. In some of the numerous manuscripts of the latter work recovered, it is titled *De modo confitendi* as well, causing some confusion. Cp. Michaud-Quantin, 1962, 79–80, 115, 120; Bloomfield-Guyot 4945. Matthew of Cracow’s treatise on buying and selling is based on that of Henry of Hesse and is cited by John Nider in his tract on the contracts of merchants as being one of its main sources. For further references, cp. LTK 6 (1997) 1484–5.

yield nothing to our purpose.<sup>61</sup> There remains the *Opus tripartitum*, whose middle part, *De confessione*, is a conventional manual of confession structured on the seven capital sins and intended, it seems, primarily for the penitent but useful for the priest as well. It was widely diffused in manuscript, was printed early and appears in some editions of the collected works of Gerson.<sup>62</sup> In the section on avarice, the author lists the failure to pay servants and labourers, fraudulent commerce, and usury, without going into any detail.<sup>63</sup>

The concern with labour relations documented by some of these works found its fullest expression in those of Andreas of Escobar (1348–1448). Born at Lisbon, Andreas was briefly a Dominican, then joined the Benedictine Order. He served as penitentiary at the curia, was appointed bishop of Ciudad Rodrigo, later of Ajaccio and titular archbishop of Mégara. The most important of his penitential texts are *Modus confitendi*, *Interrogationes*, and *Lumen confessorum*.<sup>64</sup> The *Modus* is a brief manual addressed to the penitent. It is extant in manuscript and in more than eighty incunabula and other early editions.<sup>65</sup> The *Interrogationes* is a sort of companion volume intended for the priest. It was frequently printed as well.<sup>66</sup> These works are built on somewhat the same last. After a brief, edifying and motivating section (*Modus*) and a section on how to receive the penitent (*Interrogationes*), and before concluding sections on absolution, both works examine sins following a number of classifications. They include the seven mortal sins, sins against the ten commandments, sins by omitting works of mercy, and others. The *Lumen* is also intended for the confessor. It remains unprinted but is extant in a fair number of manuscripts. Though mainly intent on edifying the priest in his role of confessor

<sup>61</sup> They are both in *Oeuvres complètes*, Vol. VIII, Paris 1971.

<sup>62</sup> On work, manuscripts, and editions, cp. Michaud-Quantin, 1962, 80–3, 114–5, 117–9; Bloomfield-Guyot 0734, 0896, 2030, 4851. I use the edition Cologne c. 1467. The modern critical edition of Gerson's works has the French version, *Examen de conscience selon les péchés capitaux*, in Vol. VII, 1, Paris 1966. On the author, cp. BBKL 2 (1990) 229–30; LTK 5 (1996) 909–10, with further references. Gerson's *De contractibus* is in *Oeuvres complètes*, Vol. IX, Paris 1973.

<sup>63</sup> *De confessione*: f.21v; *Examen*: 396.

<sup>64</sup> On the author, his works, and their rather complex manuscript and print traditions, cp. LTK 1 (1993) 629–30, with further references, as well as Schulte II, 439–41; Michaud-Quantin, 1962, 71–2, 113, 118, 120; Bloomfield-Guyot 2358, 2986–7, 4989; Tentler, 1977, 39–41, 45; Ohst, 1995, 232; Rusconi, 1986, 201–2.

<sup>65</sup> Ed. used: Rome 1496/98 (Hain 1010; GW 1797).

<sup>66</sup> Ed. used: Antwerp 1490 (Copinger 3687; GW 7304). The early incunabula catalogues list this work under anonyma.

as regards authority, principles and procedures, this work also includes an interrogatory, somewhat on the lines of those described above.<sup>67</sup> There is little to our purpose in these works by Andreas of Escobar. Something about usury can be gleaned from all of them, but it is devoid of analysis. Under the heading of Avarice, the *Modus* and *Lumen* mention falsehood, fraud and perjury. The former work adds “unjust and iniquitous bargains”,<sup>68</sup> the latter refers to buying and selling without explaining what is wrong about it.<sup>69</sup> The *Interrogationes* merely mentions the purchase of stolen goods.<sup>70</sup> All three works, however, call attention to the failure to pay workers their due wages. These remarks occur in *Modus confitendi* in connection with sins of omission,<sup>71</sup> in *Lumen confessorum* in connection with absolution,<sup>72</sup> and in *Interrogationes* in connection with the commandment not to steal.<sup>73</sup>

Two German authors, active in the first half of the fifteenth century, composed handbooks for confessors dealing briefly with economic subjects. Nicholas of Dinkelsbühl (in Schwaben, c. 1360–1433) taught theology at Vienna, became dean of the faculty and rector of the University. His literary output includes a *Confessionale*. It is preserved in manuscript and was printed, along with a number of other tracts, at Strasbourg in 1516. It starts in general terms explaining about contrition, confession, and satisfaction but soon descends to particulars in an examination following the order of the capital vices. The section on avarice contains some lines about usury, open as well as hidden in sales contracts. Hidden usury occasions two remarks about the just price. The author mentions buying a thing and selling it when it is “common custom to pay more”, but a few lines further on he refers to what a commodity is “truly worth”. Following Aquinas, he condemns fraud as to substance, quantity and quality of goods. He adds, reasonably but unusually, that a person who is defrauded when buying a thing does not thereby obtain license

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<sup>67</sup> MSS consulted: Munich Clm 3712 (A); 7599 (B); Tübingen UB Mc 127 (C). The published *Interrogationes* is not, as sometimes alleged, an excerpt from the *Lumen confessorum*. This mistake is invited, and the relationship between these works confused, by the fact that some editions of *Interrogationes* are called *Lumen confessorum* in the explicit.

<sup>68</sup> *Modus confitendi*: f.4r.

<sup>69</sup> *Lumen confessorum*: A, f.4v; B, f.2rb; C, f.162ra.

<sup>70</sup> *Interrogationes*: f.2v.

<sup>71</sup> *Modus*: f.8r.

<sup>72</sup> *Lumen*: A, f.73r; B, f.29ra; C, f.199rb.

<sup>73</sup> *Interrogationes*: f.2v.



to defraud a third person when selling the thing. Wages are mentioned indirectly. Labourers sin if they work less than they ought to in view of their pay.<sup>74</sup> Johannes of Auerbach (or Aurbach, possibly from Auerbach in Oberphalz), vicar of Bamberg Cathedral and teacher in the cathedral school, about 1446 composed a *Summa de auditione confessionis et de sacramentis*. It is preserved in more than sixty manuscripts and in three incunabula editions. In addition to general procedural information, one finds instruction on how to hear confession of persons of different classes and professions. Merchants should be examined diligently with a view to the sickness of fraud and usury from which they tend frequently to suffer, for it is difficult for sin not to intervene in buying and selling.<sup>75</sup>

In the middle, or in the second half of, the fifteenth century, two German Carthusian monks contributed to the penitential literature with works touching upon trade and price. Jacob of Jüterbog (near Wittenberg, 1381–1465) originally entered the Cistercian Order, studied at Cracow where he graduated doctor of theology, obtained permission to become a Carthusian and withdrew to the Charterhouse of Erfurt, where he died. A catalogue of his large literary production lists two treatises on economic contracts of no great distinction and two authentic works for confessors (as well as one of doubtful authorship). A *Confessionale*, printed at Nürnberg in 1520, contains nothing to our purpose. The somewhat longer *De confessione audienda* is available only in a few manuscripts.<sup>76</sup> This work treats of the role of the confessor and of the penitential process and includes an interrogatory with a section on different professions. Merchants, the author warns, are wont to commit usury and fraud. They falsify weights and measures. Cheating in sales they excuse themselves by having been cheated in their purchases. They prefer to do business in dark

<sup>74</sup> Nicholas of Dinkelsbühl, *Confessionale*, Strasbourg 1516, f.149ra–b. On the manuscripts, cp. Bloomfield-Guyot 5379. On the author, cp. BBKL 6 (1993) 879–82; LTK 7 (1998) 849; with further references. This is the seventh treatise, of a total of eight, in the 1516 collection of works by Dinkelsbühl. Michaud-Quantin, 1962, 78, notes only the fourth treatise, *De tribus partibus poenitentiae*, a general dissertation. The sixth treatise, on the seven mortal sins, has three pages on economic subjects mainly based on Aquinas, but it cannot be classified as a penitential text.

<sup>75</sup> Johannes of Auerbach, *Summa*: Erlangen UB 548, f.182v; ed. Augsburg 1469, f.3v. On other manuscripts and editions, and on the author, cp. Bloomfield-Guyot 0252; LTK 5 (1996) 881.

<sup>76</sup> MS consulted: Frankfurt am Main SUB Praed. 25 On the author and his works, cp. Meier, 1955; BBKL 2 (1990) 1466–8; LTK 5 (1996) 728; Bloomfield-Guyot 0872.



places where the poor quality of merchandise is more difficult to detect. If goods are improved or brought to a different location, however, merchants may lawfully charge the value of their labour. Merchants who tamper with their wares are no better than thieves and robbers.<sup>77</sup> Labourers should be asked whether they fully and faithfully exercise the tasks for which they are paid. If not, they are thieves and robbers as well.<sup>78</sup> Johannes of Hagen (de Indagine, 1415–1476) was born near Stadthagen in Niedersachsen, studied at Erfurt, joined the Carthusian Order and served as prior at Eisenach, Erfurt and elsewhere. His *Tractatus de vita et regimine clericorum*, like most of his other works, remains in manuscript.<sup>79</sup> Part of it is devoted to the sacrament of penance and consists of an interrogatory *ad status* and an examination of the seven mortal sins. The priest is advised to ask merchants about unjust weights (using different scales for selling and for buying) and other forms of fraud, about the size of their profits and about conspiracies with fellow merchants to raise prices.<sup>80</sup> *Deceptio* and *dolus* are listed together as expressions of avarice.<sup>81</sup>

From the late fifteenth and the early sixteenth centuries, a large number of very brief texts on confession and penance are preserved in manuscript and print, intended either for the devote or for the confessor. Some are restricted to particular classes of penitents: youngsters, women, religious, the sick, the dying. Many are anonymous. Those by named authors may devote a few lines to economic subjects under one or another of the main classifications of sin. Thus, Jean Quentin, doctor of philosophy and penitentiary at Paris, wrote an *Examen de conscience pour soy cognoistre et bien se confesser*, a brief work of eight leaves. The penitent is instructed to examine his conscience with regard to the seven capital sins. He is to consider whether he has committed the sin of avarice by refusing to pay his servants or his labourers their salary, by falsifying merchandise, weights or measures, by lending at usury, or by desiring the dearth (*cherté*) of merchandise necessary to the people so as to make a profit.<sup>82</sup> In Germany, Engelhard Kunhofer, a preacher at Schwabach (near Nürnberg) composed a

<sup>77</sup> MS cit., f.245va.

<sup>78</sup> Ibid., f.245vb.

<sup>79</sup> MS consulted: Munich SB Clm 18411. On author and works, cp. Schulte II,383; Bloomfield-Guyot 4940; LTK 5 (1996) 914, with references.

<sup>80</sup> MS cit., f.132rb–va.

<sup>81</sup> Ibid., f.135vb.

<sup>82</sup> Jean Quentin, *Examen*. Paris c. 1500, ff.6v–7v. On the author, cp. Chevalier 3853.

slim *Confessionale*. Usury, falsifying weights and measures, selling bad merchandise for good, and the like, are prohibited by the seventh commandment, and the same sins are expressions of avarice.<sup>83</sup> Jodocus Windsheim published another brief text with a long title: *Institutiones succincte in rite faciendam ex vera penitentia confessionem sacramentalem*. The seventh commandment gives rise to questions about withholding the wages of labourers and about usury.<sup>84</sup> Among the branches of avarice are theft, robbery, usury and fraudulent contracts.<sup>85</sup>

The *Confessionale* of Godescalc Rosemond (c. 1483–1526) is a work of a very different calibre. Born at Eindhoven, Rosemond studied and taught at the University of Louvain and was a prominent humanist as well as a theologian. The work first appeared in the vernacular, then repeatedly in a Latin version.<sup>86</sup> It runs to 288 leaves and is divided into 21 chapters. The first seven chapters, occupying approximately one-half of the volume, deal with the mortal sins. The author then turns to other subjects relating to penance and to some of the other sacraments. Chapter 7, much the longest in the book, details the manifestations of avarice and includes a discourse on trade and price. In buying and selling, equality should be observed between commodity and price, but such equality cannot be determined to a point. There are eight ways in which the value of a commodity can be approached, namely, first, by reference to the common estimate by merchants who deal in the same good or in similar goods; second, to what the good in question is usually sold for; third, to labour, industry, care and expenses incurred in transport; fourth, to risk; fifth, to the volume and variety of such goods or their scarcity; sixth, to improvement and storage; seventh, to their usefulness to the community; and eighth, to legal statutes and custom. Rosemond states the Thomistic “double rule” of just pricing. He explains that fraud can be committed in commerce with regard to the nature, quality and quantity of goods as well as with regard to time, namely, if one party to a sales contract fails to settle in time, or if usury intervenes. He agrees with Aquinas that a merchant need not reveal informa-

<sup>83</sup> Kunhofer, *Confessionale*: Nürnberg 1502, f.6r, ff.9v–10r. On the author, cp. Chevalier 2727.

<sup>84</sup> Windsheim, *Institutiones*: Erfurt 1516, f.11r. On this work, cp. Tentler, 1977, *passim*.

<sup>85</sup> Ed. cit., f.12v.

<sup>86</sup> Ed. consulted: Antwerp 1518. On Rosemond and his work, cp. *Biographie Nationale de Belgique*, Vol. 20, Bruxelles 1908–10, 102–10; Tentler, 1977.

tion about the imminent arrival of new supplies which would have caused an anticipated drop in prices; however, it would be sinful under such circumstances notably to increase the price. By their monopolistic practices merchants frequently oppress and defraud the community, inducing dearth of victuals and other necessities. A monopoly may be based on an official grant, or merchants may agree among themselves not to sell below a certain price. This is not expedient, for the market of goods ought to be free (*liberum debet esse forum rerum*). Monopolies can also be established among artisans who prevent others from entering their craft or agree not to finish one another's work.<sup>87</sup> Godescalc Rosemondts addresses himself to the education of confessors on the very eve of Luther's break with Rome. He brings the pre-Reformation transalpine tradition to a fitting close, but does so partly by drawing on the Italian tradition, to which we now turn.

### *Summary*

With the exception of the early contributions by Grosseteste, who is difficult to classify, and the late one by Rosemondts, who belongs to a different tradition, the most prominent common feature of the works reviewed in this chapter is formal rather than doctrinal. The large majority of them consist of, or include, an estate interrogatory or a twin interrogatory structured on the capital sins and the commandments. As to substance, the chapter serves mainly to demonstrate, by default, the dominance of the friars regarding price theory in the penitential literature. When sins committed in trade are discussed, most authors merely refer in general terms to usury and fraud, sometimes repeating the old injunction against the use of false weights and measures. The justification of commercial profit as a reward for labour makes the occasional appearance. Much greater attention is paid to wage relations. The obligation of employers to pay decent wages or, more often, to pay them promptly, is stressed in a number of handbooks, others focus on the corresponding duties of employees or examine both sides of the equation. Price discrimination, collusion, and exploitation of the needy in exchange are subjects touched upon briefly by a few authors. The market is hardly mentioned.

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<sup>87</sup> Ed. cit., ff.97v-110r.

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PART TWO

ITALIAN AUTHORS

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## CHAPTER SIX

### THE FRANCISCAN TRADITION TO BERNARDINO OF SIENA

The penitential handbook was not originally an Italian genre. Attempts to trace some of the *Libri poenitenciales* to a Roman rather than an Insular or a Frankish origin were frustrated.<sup>1</sup> The same is true of the attribution of a *Summa de poenitentia iniungenda* to the twelfth-century theologian Prevostin of Cremona.<sup>2</sup> It was only in the second half of the thirteenth century that Italian authors joined this genre. The earliest contributors were Franciscans. The most widely diffused of these early Italian handbooks was the *Summa aurea*, or *Summa casuum conscientiae*, or *Summa de iure canonico*, by a certain Monaldus. He used to be confused with several namesakes. It seems now to be established that the author of the *Summa Monaldina* was born and died at Capodistria (near Trieste) and that he belonged to the Franciscan province of Dalmatia, which he served as minister for a period about the middle of the century. According to a contemporary source he was dead by 1285. Internal evidence places the date of the *Summa* between 1250 and 1274, most likely towards the ends of that period.<sup>3</sup> It was printed once, at Lyon in 1516. This edition is unsafe.<sup>4</sup> It is checked against a Florentine manuscript,<sup>5</sup> and occasionally against other manuscripts.

Technically, the *Summa Monaldina* is, by a modest yardstick, an innovation, in that the subjects discussed are arranged in the form of an alphabetical dictionary. This was by no means a literary novelty, but it is a literary form that will necessarily influence doctrinal

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<sup>1</sup> M/G 64, 295–6.

<sup>2</sup> See Chapter 1, note 59.

<sup>3</sup> On Monaldus of Capodistria and the *Summa Monaldina*, cp. Wadding 176; Sbaraglia II, 261–2; Stintzing 503–6; Schulte II, 414–8; Dietterle, *ZK* 25 (1904) 248–55; Teetaert, 1926, 451–2; Baldwin, 1959, 45–8, 54–5, 68–70, 85; Michaud-Quantin, 1962, 42–3, 66, 115, 120; Nuccio, I, 2, 1569–82; Tentler, 1977, 33–4; Bloomfield-Guyot 4950.

<sup>4</sup> *Summa perutilis atque aurea*, Lyon 1516 (L). For later additions in this edition, see Langholm, 1992, 447.

<sup>5</sup> Florence BLaur S. Croce Plut. VIII, sin 3 (F). Cp. also Plut. X, sin 6 (G); Basel UB C.V.38 (B); Munich SB Clm 2715 (M); Clm 8023 (N); Oxford Lincoln Lat. E 74 (O).

orientation and focus. Like many other authors of penitential handbooks, Monaldus was clearly a jurist with some additional training in theology. One prominent medievalist describes his articles on economic subjects as “little less than Romanist treatises on the legal problems of sale”.<sup>6</sup> Another observes that “the alphabetical repertory of Monaldus [along with the *Summa Raimundi*] were setting the fashion of drawing theology into canon law”.<sup>7</sup> These statements are less contradictory than they may seem to be. The large majority of quotations in the articles on trade and price in the *Summa Monaldina* are quotations from legal sources. Although Monaldus freely quotes verbatim without naming his sources, canonistic authorities (including Raymond) probably outweigh Romanistic ones; however, there are Romanistic bases of much of the canonistic doctrine of sale. On the other hand, Monaldus is not exclusively concerned with the *ius fori* but points to (or “draws in”) the norms that apply in the *ius poli* as well, as any author of a penitential handbook must necessarily do, albeit to varying extents depending on his main professional orientation. The alphabetical form will permit anyone, whose main basis and references are legal, to draw in theology piecemeal, but it will involve a danger of losing sight of the theological overview. Much of what Monaldus teaches about trade and price might have been assembled under the heading of Avarice and might thus have brought home much more strongly the general character of the sins involved, but it is not natural for a jurist to write treatises on the mortal sins, and there is no article on Avarice in the *Summa Monaldina*.

His explanation of the norms that apply in the two forums regarding bargaining and fraud caused Monaldus to be accused of perpetuating a misrepresentation of legal doctrine on the part of theologians.<sup>8</sup> There are brief articles on *dolus* and on *fraus* in the *Summa*, but the main discussions of the problem of price and fraud are to be found in two separate articles *De emptione* and *De venditione*. A thing ought to be sold at a just price and by just measure, Monaldus proclaims in the article on buying. He then goes on to present his version of the Romanists’ threefold distinction regarding *dolus*. If *dolus* is the cause of the contract, the contract is invalid. If *dolus* is incidental to the contract, which means, according to Monaldus, that the seller is induced *per circumventionem* to sell at an inferior price, the contract is

<sup>6</sup> Baldwin, 1959, 46; similarly Moorman, 1968, 404.

<sup>7</sup> Gilby, 1963, 112–3.

<sup>8</sup> Baldwin, 1959, 68.



valid, but legal redress is possible because of the deception involved. If *dolus* is neither the cause of the contract, nor incidental to the contract, “nor [the seller] circumvented about the price albeit deceived about the price regarding the thing itself”, no legal action is available because of an inferior price unless it is less than one-half of the just price.<sup>9</sup> Further on in the same article, Monaldus applies the latter principle by analogy to a buyer who, through deception, is made to pay a price in excess of one-half above the just price, e.g., sixteen for something that is worth ten.<sup>10</sup> This discussion may be said to misrepresent legal doctrine by associating *circumventio* with *dolus* rather than with *deceptio*.

The bias of the alleged misrepresentation, however, is rather the reverse one. It occurs in the article on selling and the section in question is couched entirely in terms of *deceptio*. A sale is invalid if the seller is deceived beyond one-half of the just price, though the buyer has the option either to supplement the price or to rescind the sale. But within the limits of one-half of the just price, it is lawful for buyers and sellers, in their contracts, “mutually to deceive one another” (*ad invicem se decipere*). This is true according to divine law, for a seller sins “if he knowingly deceives the buyer by selling a thing for more than he is entitled to by means of lying and against his right conscience” (*si e mentem decipiat scienter rem plus debito vendendo cum mendatio et contra conscientiam rectam*).<sup>11</sup> This would be a misrepresentation of legal doctrine if the deception that the law permitted amounted to no more than mistakes of judgement. If it is conceded that deception and circumvention are part and parcel of the bargaining process, however, Monaldus can be taken to mean merely that the *ius fori* is more lenient in matters of bargaining than the *ius poli*.<sup>12</sup>

As to how the just price itself is to be determined, Monaldus makes a number of suggestions throughout the *Summa*. In his long articles *De restitutione* and *De usura*, he occasionally avoids the issue by calling upon the arbitration or estimation of a “good man” to determine the just price at different points of time, without furnishing this person with hard and fast criteria.<sup>13</sup> Discussing the different senses of the word *interesse*, he notes that a certain common interest applies in economic exchange, and that this fact finds expression in

<sup>9</sup> L, f.62va-b; F, f.37ra-b.

<sup>10</sup> L, f.63rb; F, f.37va.

<sup>11</sup> L, f.273vb; F, f.170ra. (*cum om.* L).

<sup>12</sup> See the discussion in Chapter 4.

<sup>13</sup> *De restitutione*: L, f.224vb, F, f.134vb; *De usura*: L, f.285rb, f.286rb; F, f.178ra, 178vb.

price. Monaldus paraphrases a subsequently much quoted legal dictum, which appears twice in the *Digest*. In the words of Monaldus, “the values of things are not estimated on the basis of the affection of single persons, but by a common estimate”.<sup>14</sup> In the legal context, this is a normative statement and it is not problematical to associate the common estimate with the just price. The market price is not mentioned in this context but appears elsewhere in the *Summa*. Having discussed deception in the article *De venditione*, Monaldus immediately proceeds to paraphrase the decretal *Placuit*. People are obliged not to sell their wares to transients for more than they are sold for in the market.<sup>15</sup> “And to this they ought to be compelled”, Monaldus adds, apparently quoting the canonist Alanus Anglicus, who taught at Bologna in the early thirteenth century.<sup>16</sup> In his article on usury, Monaldus records the Dominican analysis of the canon *Quicumque*, where the common estimate of justice made by the market is stated explicitly: a commodity may lawfully be sold “secundum commune forum”, “prout venditur communiter in foro”. Monaldus’s analysis is entirely unoriginal. His contribution is nevertheless important. With amazing compositional dexterity, he weaves the extensive glosses of William of Rennes into the text of Raymond of Peñafort, without losing more than an occasional word or phrase. He thus constructs a uniform casuistry based on the entire commentary tradition on this canon, from the early decretists to William of Rennes. On the following pages, William, Monaldus and Raymond on *Quicumque* are rendered in parallel columns.<sup>17</sup>

In one of the manuscripts of the *Summa Monaldina* in the Laurentian Library in Florence, some of the articles have marginal notes excerpted

<sup>14</sup> *Quot modis dicatur interesse*: L, f.100rb; F, f.65vb: *pretia rerum non ex affectione singulorum, sed communi aestimatione aestimantur*. Monaldus refers to D.35,2,63,pr, where the lines paraphrased read, in the original: *Pretia rerum non ex affectu nec utilitate singulorum, sed communiter funguntur*. Almost identically at D.9,2,33, pr.

<sup>15</sup> *De venditione*: L, f.273vb; F, f.170ra.

<sup>16</sup> The decretal *Placuit* passed into the *Liber extra* (X.III,17,1) via the *Compilatio prima* (*Comp. I*,III,15,2), to which Alanus Anglicus composed a gloss apparatus. To *Placuit*, there is a gloss reading, “possunt etiam ad hoc per excommunicationem compelli”. In manuscripts of the *Compilatio prima* with the *Apparatus* of Alan, this gloss is to be found in Paris BN lat.3932, f.30vb, and Munich SB Clm 3879, f.44va. It is also included, signed .ala., in Bernard of Parma’s *Glossa ordinaria* to the *Decretals* of Gregory IX: Mainz 1473, f.177ra.

<sup>17</sup> L, f.290ra–b; F, f.181ra–b. Note the following variants. a: *timetur* (Raymond, F, G, B, M, N, O); *videtur* (L). b: *commune forum* (William, F, G, M, O); *certum forum* (N). L has the meaningless word *crementorum*, cp. *currentem forum* (B). c: *monetas* (Raymond, F, G, M); *merces* (B, N, O, L).

**William of Rennes**

*Peccant*, sive sint clerici sive laici, et est mortale peccatum, quando fit ex cupiditate; . . .

*Necessitatem*, ut scilicet de illa annona, vel vinum vivat; idem credo de illo, qui emit annonam, et vino causa negotiandi, dum tamen non ex cupiditate hoc faciat, sed ut ex lucro moderato sibi provideat, maxime cum aliud genus negotiationis non novit, nec alias habet unde sustentetur.

. . . quando autem laicus non ex cupiditate, sed ut provideat sibi et suis, emit aliquid, ut postea carius vendat, sive annonam, sive aliud, non audeo dicere esse mortale. Clericus etiam, si rem aliquam emat, ut eam per suam industriam melioratam, vel mutata forma, vendat carius quam emerit, ut si pullum emat equum, et nutriat, vel si tabulam emit, et inde faciat imaginem.

*Debent erogare*, de consilio hoc intelligo, non de necessitate.

**Monaldus**

Item, qui tempore messis vel vindemiae emunt annonam ex cupiditate, vel vinum vilius, ut postea carius vendant,

peccant mortaliter, sive sint clerici sive laici,

et est turpe lucrum. Secus tamen si aliquis propter necessitatem emat, ut scilicet de illa annona vel vino vivat et postea non indiget sicut credebat; hic potest licite vendere prout venditur communiter in foro, licet vendatur carius quam emerit.

Item dicendum est de illo qui emit annonam vel vinum causa negotiandi, dum tamen non ex cupiditate hoc faciat, sed ut de lucro moderato sibi provideat, maxime cum aliud genus negotiationis non novit nec alias habet unde sustentetur.

Quando autem laicus non ex cupiditate, sed ut provideat sibi et suis et emit aliquid ut postea carius vendat, sive annonam sive aliud, dicunt quidam quod non est mortale. Quod si et clericus rem aliquam emat ut eam per suam industriam melioratam vel mutata forma vendat carius quam emat, ut si emat equum et nutriat vel tabulam emat et inde imaginem facit, non peccat.

Item quando ex cupiditate emunt sicut superius dictum est, gravius peccant clerici quam laici; neutri tamen tenentur ad restitutionem faciendam certae personae, sed debet erogari tale lucrum in usus pauperum,

de consilio sacerdotis, non tamen est hoc de necessitate.

Similiter potest emere annonam si timetur

**Raymond of Peñafort**

De quibusdam autem, qui tempore messis, vel vindemiae emunt annonam, vel vinum vilius, ut postea vendant carius, dico quod

*peccant*, et turpe lucrum est. Secus si aliquis propter *necessitatem* emat, et postea non indiget, sicut credebat, hic potest licite vendere, prout venditur communiter in foro, licet carius quam emerit.

In hoc tamen gravius peccant clerici, quam laici; neutros tamen dico teneri hic ad restitutionem faciendam certae personae, sed *debent erogare* tale lucrum in usus pauperum.

Potest etiam emere, si timetur caristia in terra, et

caristia in terra  
et videt victualia extrahi de  
terra, dummodo non ut  
carius vendat sed ne gens  
fame pereat exemplo Joseph,

victualia extrahi de terra,  
dummodo non ut carius  
vendat, sed ne gens fame  
pereat, exemplo *Joseph*,

*Joseph*, qui non ut frumenta  
carius venderet, set ut  
populum a fame liberaret,  
multa congregavit frumenta,  
quae tamen postea vendidit  
secundum commune forum.

qui non ut frumenta carius  
venderet sed ut populum a  
fame liberaret, multa  
congregavit frumenta quae  
tamen postea vendidit  
secundum commune  
forum,

**b**

et tales qui sic facerent  
merentur multum. Item, illi  
credendi sunt nephandi et  
detestandi qui ea intentione  
emunt aureas vel alias  
monetas vel res venales  
et praecipue victualia,  
ut de talibus caristiam  
inducant.

**c**

et crederem talem mereri  
multum. Illos, e contra,  
credo tamquam nefandas  
belluas detestandos, qui  
ea intentione emunt aureos  
vel alias monetas, vel res  
venales et praecipue  
victualia, ut de talibus  
caristiam inducant.

from a *Summa de casibus in foro poenitentiali* tentatively attributed to Chiaro of Florence.<sup>18</sup> Chiaro was a Franciscan, who had studied law, probably at Bologna, and who belonged to the Bolognese province of the Order. He served as chaplain and penitentiary to Pope Alexander IV. His cases of conscience are said to have been determined in the Roman curia, most likely sometime in the third quarter of the thirteenth century. They may thus have been composed either before or after the *Monaldina*. These cases are extant, in full or in part, in a number of collections. The most complete collection, on which the following presentation is based, contains 147 cases.<sup>19</sup> Scattered throughout the work, there are quite a number of cases dealing with economic subjects. Some thirty cases relate, in one way or another, to usury, without yielding anything to our purpose. A smaller number concern trade and price. An early case may serve to indicate the author's main viewpoint on this subject, as well as his main analytical principles and the nature of problems to which

<sup>18</sup> Florence BLaur S. Croce Plut VII, sin 8.

<sup>19</sup> Florence BNaz Conv. Soppr. F.VI.855. This manuscript attributes the *Summa* to Chiaro of Arezzo. Other manuscripts refer to the author as Brother Chiaro, or as Chiaro of Florence. Henquinet, 1939, who subjected these manuscripts to a minute examination, focused on the latter attribution and dug out what little there is to be known about this person. He suggested that the discussions and solutions of these cases were based on the teaching of Chiaro of Florence, but that Chiaro cannot have been the author of the collection in the form in which it is preserved, because he is referred to there in the third person. On Chiaro of Florence, cp. also Wadding 64; Sbaraglia I,209; Michaud-Quantin, 1962, 52–3, 114, 118–9; DBI 24, 594–5.

they are applied. To a question concerning a sale made at an inferior price, Chiaro replies as follows:

If he sells it knowingly, not coerced nor circumvented but knowing and voluntary (*non coactus neque circumventus sed sciens et spontaneus*), he has no right to demand it back, even if he sells it beyond one-half of the just price, or the other buys it, for that law applies to the ignorant and deceived (*de ignorantibus atque deceptis*). Others say that the law which states that it is permitted for contracting parties mutually to deceive one another (*invicem se decipere*), applies in the civil and contentious court, not in the court of God.<sup>20</sup>

In this reply, Chiaro of Florence presents himself, like Monaldus, as a canonist addressing the internal forum. Furthermore, a main problem solving principle is that of consent. If an agreement is made truly voluntarily, it is valid, but consent and voluntariness can be vitiated by ignorance, fraud, and coercion. Several other cases turn on the question of coercion, but the coercion considered is always of a physical nature.<sup>21</sup> Economic coercion is not mentioned.

On the subject of fraud, Chiaro offers a variety of cases. Tricks to defraud competitors are sinful.<sup>22</sup> So is failure to inform customers about substance, quality or quantity of merchandise. In three cases, Chiaro considers the sale of adulterated goods.<sup>23</sup> This is branded in each case as being no better than theft. But the fraudulent party may also be the buyer, and the case may be more complicated. Someone who discovers a treasure hidden in another person's field and obtains a purchase at the price of the field, withholding information about the treasure, cannot lawfully keep it. The same applies to anyone who knowingly buys something at a minimal price while keeping silent about certain conditions which he knows would have caused the seller not to let it go at that price if he had been told about them. Such a buyer is a cheat and a deceiver of his neighbour. If he did not know about the true circumstances in advance, however, but acted in good faith, he may lawfully keep the treasure or whatever is acquired in this way.<sup>24</sup> Elsewhere Chiaro suggests that a purchase obtained by such means may stand if the thing is bought at an adequate price

<sup>20</sup> Chiaro of Florence, *Summa*, Q.21: f.91ra.

<sup>21</sup> For some of Chiaro's cases of economic contracts with reference to physical coercion, cp. Langholm, 1998, 40–1.

<sup>22</sup> *Summa*, Q.42: f.93rb.

<sup>23</sup> Q.18: f.90va–b; Q.36: f.92vb; Q.59: f.96ra.

<sup>24</sup> Q.129: f.103vb.

(*pretio competenti*), though the buyer should do penance for fraud.<sup>25</sup>

A seller has a duty to make it known if his merchandise has some serious defect, but how explicit does he have to be? Chiaro of Florence discussed this question at some length. It is common among horse dealers in Tuscany to use some general phrase such as this, “I give you this horse as it is, poor, weak, shady, sciatic”. Will this kind of declaration suffice if the horse has some particular flaw or infirmity and the seller knows that the customer would not buy it nor pay half its value if he were to be told the truth? Chiaro cites two different opinions on this matter. Some say that such a general description is sufficient if the buyer does not ask specifically about other ailments. If he is fool enough to buy without asking, he must take the consequences. But if he does ask in specifics, he should be told. Others say, and better, that the seller is obliged to disclose, unasked, any defect of such a nature that he knows for certain that the customer would not pay half the price of the horse if the defect was specifically pointed out to him. The same principle applies to any merchant offering defective cloth or other merchandise for sale. General warnings often heard, like “Let your eyes guide you”, “Look closely”, are fraudulent if the seller knows about serious defects that would have decisively influenced the buyer.<sup>26</sup> Discussing some other cases, Chiaro mentions in passing the main market price determinants. He notes that reduced supply (of victuals, by removing some of them from the region) raises prices,<sup>27</sup> and that decreased demand (fewer buyers in wartime, owing to risk) lowers prices.<sup>28</sup> He does not identify the market price with the just price, however, nor does he suggest any other criterion of estimating the just price. This is not surprising, for the development of general principles is not invited by the case format used by Chiaro.

A few words suffice for two other early Franciscan penitential works. Servasanto of Faenza (c. 1225–c. 1300) studied at Bologna and perhaps at Paris. He was a preacher and moral theologian, active in Italy and mainly in Tuscany. His *Summa de poenitentia* is extant in half a dozen manuscripts and was printed as *Antidotarium animae*, Louvain 1485.<sup>29</sup> This large volume, divided into seventeen

<sup>25</sup> Q.87: f.98vb.

<sup>26</sup> Q.105: f.101ra.

<sup>27</sup> Q.34: f.92va.

<sup>28</sup> Q.39: f.93ra.

<sup>29</sup> On Servasanto and his work, cp. Wadding 210; Sbaraglia III,98–9; Kruitwagen,

treatises and 286 chapters, is mainly a general exhortation to penance, which seldom descends to the level of guidelines regarding practical issues. The author deals with avarice in Tract. III (on occasions to fall into sin) and in Tract. XIV (on how to resist temptation). The theme throughout is the vanity of worldly riches, Boethius being frequently quoted. The closest Servasanto comes to discussing trade is a remark in Tract. IX to the effect that the avarice of merchants and usurers may cause them to avoid confession or to confess badly because of reluctance to make restitution of ill-gotten gains.<sup>30</sup> Sometime before 1315, an unknown author, perhaps Marchesino of Reggio Emilia, composed a *Confessionale* which used to be attributed to St. Bonaventura and which is printed in some editions of the works of Bonaventura.<sup>31</sup> It consists of five chapters, each divided into particles. Chapter I contains general instruction for the confessor; Chapter II is an interrogatory mainly based on the capital sins and the commandments; Chapter III is a collection of penitential canons; Chapter IV deals with absolution and the keys; and Chapter V with irregularities and dispensations. The author offers little to our purpose. Failing to pay workers and servants what they deserve ranks among the worst expressions of avarice.<sup>32</sup> Usury violates the seventh commandment.<sup>33</sup> The canon that prescribes thirty days on bread and water for altering just measures and weights is cited with the addition that this rule is now less rigid.<sup>34</sup>

If the *Summa Monaldina* drew on canon law and the *Summa* of Chiaro of Florence supplied some Romanistic principles, the *Summa Astesana* completed the basis of economic ethics in the Italian penitential tradition by introducing the doctrines of the theologians. Such information as we possess about the author, even about his name, is uncertain. It mostly derives from the preface to his *Summa*. He calls himself Astesanus de Ast, which has a pleonastic ring to it, but from which it has been inferred that he was a native of Asti in

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1919; Michaud-Quantin, 1962, 10; Casagrande, 1996 (with list of contents); Bloomfield-Guyot 4956; BBKL 9 (1995) 1467–8; LTK 9 (2000) 491.

<sup>30</sup> Tract. IX,7: ed. 1485, f.146vb; cp. Munich SB Clm 12313, f.135v.

<sup>31</sup> Edition used: Opera, Vol. 7, Rome 1596. On Marchesino of Reggio Emilia and the *Confessionale*, cp. Wadding 166; Sbaraglia II,204–5; Michaud-Quantin, 1962, 55–6, 115, 118; Bloomfield-Guyot 2537. The attribution to Marchesino is uncertain; cp. Distelbrink, 1975, 105.

<sup>32</sup> II,6: 51.

<sup>33</sup> II,15: 52.

<sup>34</sup> III,20: 56.

Piedmont. He evidently had some training in law as well as in theology. It seems to be established with certainty that he died in 1330. The *Astesana*, or *Summa de casibus conscientiae*, was completed in 1317.<sup>35</sup> It is extant in numerous medieval manuscripts and in some fifteen early printed editions, bearing witness to its continued popularity and influence throughout the period covered by this study.<sup>36</sup> The work is in eight books, each book being divided into titles and articles. Books I and II deal with the divine precepts and with the virtues and vices. Concern about temporal things, Astesanus states in Book II, may be a good and indeed a necessary thing as a matter of prudence. It is evil, however, if it sickens the mind and leads to anxiety and avarice or to a lack of trust in God.<sup>37</sup> Astesanus declines this and other familiar invitations to discuss economic subjects. These subjects are postponed to Book III, on contracts, from which all the material for the following presentation is drawn. The remaining books deal with the sacraments. Book V, on penance, could stand alone as a proper, brief *confessionale*. It explains the steps of the penitential process, offers some practical advice for the confessor, and includes a list of penitential canons.

In Book III, the eighth title deals with buying and selling and the eleventh title deals with usury. In the course of the twelve articles of III,8, Astesanus mentions fraud and deception, weights and measures, forced sales, defective goods and the extent of the seller's obligation to reveal defects or to part with market information. He touches upon price estimation and concludes with an article on monopoly and collusion. Some of these subjects reappear as side issues in III,11. It seems more convenient, however, to start this presentation of the economics of the *Summa Astesana* with Article III,8,10, whose subject is trade and price in general. In support of his teaching in this article, Astesanus calls upon the authority of Thomas Aquinas, along with that of three prominent Franciscan theologians, namely, Alexander of Hales, Richard of Middleton, and John Duns Scotus. Occasionally,

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<sup>35</sup> On Astesanus and his *Summa*, cp. Wadding 33; Sbaraglia I,104–5; Schulte II,425–7; Stintzing 519–23; Dietterle, *ZK* 26 (1905) 350–62; Michaud-Quantin, 1962, 57–60, 113; Tender, 1977, 34, 321–4; Ohst, 1995, 246; Nuccio I,2, 1933–9; DBI 4, 463–5; Bloomfield-Guyot 0647; Babbini, 1981, 159–62.

<sup>36</sup> Ed. used: Lyon 1519. In this edition, the first four books, and the last four books, have separate paginations. In cases of doubtful reading, the edition is checked against Florence BNaz Conv. Soppr. G.III.803. (This manuscript breaks off in the middle of the title on usury in Book III, but it contains all the material reported on here.)

<sup>37</sup> Astesanus, *Summa*, II,10,5: f.75rb.



and mainly towards the end of the article, a number of contemporary canonists make an appearance.

Reaching back to the *Summa theologica* attributed to Alexander of Hales, Astesanus first considers the fundamental question whether commercial buying and selling is morally permissible at all.<sup>38</sup> The reason why this question had to be raised by the medieval theologians was the overall negative attitude to trade held by the Church Fathers, some of whose utterances on the subject had recently been copied into the *Decretum* of Gratian. Alexander turned the tables by redirecting condemnation to a number of exceptions to a general rule that left honest business activity as such in the clear. Closely following Alexander, Astesanus explains that commercial buying and selling is not among those activities that are evil in themselves, such as usury and fornication. Rather, it depends on circumstances whether it is sinful or not. There follows a list, partly based on Raymond of Peñafort but significantly extended by Alexander, of circumstances rendering commerce illicit. Firstly, it may be illicit "by the circumstance of person" (*ex circumstantia personae*), namely, if the trader is a cleric, for Augustine states that a person may do business before taking holy orders, but not afterwards.<sup>39</sup> Secondly, by the circumstance or cause, for it is forbidden to laymen as well if conducted out of cupidity or for some other evil purpose, and that is what Cassiodorus refers to when he condemns those merchants who are defiled by their boundless greed of money. Thirdly, by the circumstance of manner, for it is illicit if exercised with falsehoods and perjuries. This, in fact, is what Chrysostom has in mind when he comments on Christ's eviction of traders from the Temple and states that a merchant can't, that is can hardly, operate without sin.<sup>40</sup> Fourthly, by the circumstance of time, for it is unlawful to conduct business on feast days intended for prayer and divine worship. Fifthly, by the circumstance of place, for trade should not be conducted in a place of worship. For that reason, also, according to Matthew, the Lord drove the sellers and buyers from the Temple.<sup>41</sup>

<sup>38</sup> Astesanus, *Summa*, III,8,10: ff.125vb–126ra; cp. Alexander of Hales, *Sum.theol.*, III,490: IV,723.

<sup>39</sup> Augustine, *Quaestiones Veteris et Novi Testamenti*, 128: PL 35, 2385; cp. Gratian, *Decretum*, I,88,10.

<sup>40</sup> Cp. Chapter 3, notes 32 and 31.

<sup>41</sup> Matt. 21.12–3; cp. Mark 11.15–7; Luke 19.45–6; John 2.14–6.

Sixthly, says Astesanus, trade is illicit *ex circumstantia commercii* if things are sold dearer to those who pass through than to residents (*carius venduntur transientibus quam manentibus*). The latter is Alexander's phrase. Astesanus, still following Alexander, goes on to state the market price criterion, quoting *Placuit*. They thus have it both ways.<sup>42</sup> The original catchword, however, is confusing and contradicts the purpose of the whole exercise, which is to grant moral approval to commerce. Astesanus misquotes his source. According to the *Summa Alexandri*, commerce can be rendered illicit *ex circumstantia consortii*, that is, if merchants consort in order to interfere with price. It is this sort of collusion among local sellers that lends them power to overcharge travellers.<sup>43</sup> If none of these sinful circumstances are present, commerce is lawful, that is, if it is conducted by a proper person, for a necessary and pious cause, such as to provide for one's family or to exercise works of mercy, in a proper manner, at a proper time and place, and by a just estimation of the good and of trade, as it is commonly sold in that place where trade is usually conducted.

The rest of this article is a patchwork of quotations from a number of scholastic authorities. Astesanus draws on Richard of Middleton in a question included in Richard's second *quodlibet* collection, copying parts of an analysis that represents a high point in medieval economic reasoning.<sup>44</sup> Properly conducted, economic exchange is not only approved of by natural law; it is praiseworthy because exchange at a just price is profitable to both parties, whether residing in different regions or in the same region. The just price will naturally be higher where the good in question is scarce than where it is plentiful. Different goods abound in different regions. Long distances and dangers on the roads make barter difficult. Money was invented to meet this problem. Merchants carry goods from places of plenty to places of scarcity, buying and selling at prices favourable to the people of each region and yet making a profit on price differences. Similarly, in any given locality, where the relative just price is an expression of value equivalence between any two good, exchange at

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<sup>42</sup> Cp. Chapter 5 with backward references in note 41 and with the corresponding text.

<sup>43</sup> This misreading of Alexander of Hales is not limited to the printed edition of the *Summa Astesana* used here but was copied from manuscript; cp. Florence BNaz Conv. Soppr. G.III.803, f.138ra (*cm'tij*).

<sup>44</sup> Astesanus: f.126ra–b; cp. Richard of Middleton, *Quodl.* II,23,1 and 7: Brescia 1591, 65–6, 70.

just prices will be profitable to both parties in terms of personal utilities, because each will place a lower value on that of which he has more and desires to sell, than on that of which he has less and desires to buy. Moreover, says Astesanus, he may buy and make his profit elsewhere, carrying the good in question to a place where it will fetch a just price that is higher than at home.

The good merchant thus, Astesanus proceeds, now paraphrasing John Duns Scotus,<sup>45</sup> serves the community by conserving and transporting commodities, and for this he may justly and properly accept a reward corresponding to his labour, solicitude and industry. But there is a different class of blameworthy merchants, who neither transport nor conserve goods, nor improve them by their industry, nor certify their value for simple people, but merely buy in order to resell immediately at a profit. They ought to be banished from the state. Astesanus now turns again to Alexander of Hales in a paraphrase of St. Augustine.<sup>46</sup> If merchants lie and perjure themselves, the person is to blame, not his trade.<sup>47</sup> As regards price, he quotes Thomas Aquinas on the "double rule", which grants indemnity to the seller but condemns exploitation of the buyer.<sup>48</sup> He adds that Scotus supports this doctrine,<sup>49</sup> and notes that the *Glossa ordinaria* to Gratian's *Decretum* states that a just price should be charged even if more is offered by the buyer.<sup>50</sup> Next, Aquinas is quoted on the lawfulness of commerce in general.<sup>51</sup> As explained by Aristotle in the first book of the *Politics*, there are two kinds of exchange (*commutatio*).<sup>52</sup> One kind is concerned with providing for the household, or the city, or even the region, with necessities, and this is praiseworthy. The other kind is concerned merely with a quest for gain, and this is blameworthy in so far as it is motivated by cupidity. Commercial profit may be redirected at some necessary and honourable end, however, and then commerce is lawful, such as when a moderate profit is used for the support of one's family or for the subvention of the

<sup>45</sup> Astesanus: f.126rb-va; cp. Scotus, *Comm. Sent.*, IV,15,2,22-3: 317-8.

<sup>46</sup> Astesanus: f.126va; cp. Alexander of Hales, loc. cit., 722.

<sup>47</sup> Augustine, *Enarrationes in Psalmos*, to Psalm 70,15: PL 36, 886-7; cp. *Decretum*, I,88,12.

<sup>48</sup> Astesanus: f.126va-b; cp. Aquinas, *Sum. theol.*, II-II,77,1,c.

<sup>49</sup> Astesanus: f.126vb; cp. Scotus, *Comm. Sent.*, IV,15,2,16: 289.

<sup>50</sup> Astesanus, *ibid.*; cp. *Glossa ordinaria* to *Decretum*, II,10,2,2 *Hoc ius*: Johannes Teutonicus: Bamberg SB Can. 13, f.107va; Bartolomeo of Brescia: Basel 1512, f.186vb.

<sup>51</sup> Astesanus, *ibid.*; cp. Aquinas, *Sum. theol.*, II-II,77,4,c.

<sup>52</sup> Aristotle, *Politics*, I,3: 1256b-1257a.

poor, or when someone engages in trade for the common good, and profit is not made as an end in itself but as a payment for labour.

It is on the basis of this distinction, Astesanus teaches, once more drawing on Alexander of Hales,<sup>53</sup> that one should interpret the patristic authorities cited initially. According to “Chrysostom”, the traders whom the Lord chased from the Temple, are those who buy goods and resell them whole and unaltered, seeking profit as their ultimate end, desiring, out of cupidity, to accumulate riches without labour and care. But those who alter goods as to substance (that is, by improving them) or as to location (by transporting them from one place to another), and thus serve the community, are not touched by Chrysostom’s condemnation. They may justly charge an increment on resale, covering labour and risk. The same is true of those who store commodities from one period to another, thereby risking loss by deterioration, fire, or theft. Similarly, the merchants whom Cassiodorus berates are those who manage to take over the whole market of goods and later resell them at a higher price than they would otherwise have fetched in the market, and do this with grain and other necessities. Such people are abominable to God and are to be evicted from the Church according to Christ’s example. Thus Astesanus concludes his review of the trade and price doctrines of the leading theologians.<sup>54</sup> He closes the article in question by recording some supporting views on the part of the canonists.<sup>55</sup> He quotes Raymond of Peñafort on *Quicumque* and notes that this canon applies to those who buy cheap and sell dear with no thought of necessity or utility but solely out of cupidity. They need not make restitution to particular persons but ought to give their shameful gain in support of the poor. Godfrey of Trani is of the same opinion,<sup>56</sup> though William of Rennes considers this to be a counsel only.

The general principle that emerges from Astesanus’s review of these authorities is a certain, heavily restricted, freedom of bargaining. The restrictions with which the present study is mainly concerned are those that, in the final analysis, turn on the matter of price. In the article preceding the one just summarized in full, Astesanus raises

<sup>53</sup> Astesanus: ff.126vb–127ra; cp. Alexander of Hales, loc. cit., 723–4.

<sup>54</sup> For a more extensive account of the economic ideas of the three Franciscan theologians quoted by Astesanus, cp. Langholm, 1992, 117–41 (Alexander of Hales), 327–41 (Richard of Middleton), and 403–18 (John Duns Scotus).

<sup>55</sup> Astesanus: f.127ra.

<sup>56</sup> Godfrey of Trani, *Summa*, to X.V,19, n. 13: ff.221rb–222ra.

a question that had engaged the canonists: can anyone be forced to sell? Initially, he replies, no person can be forced against his will to sell his own thing; however, if someone offers his good for sale, and if the price he puts on it is unjust, he can be forced by the authorities to reduce the price.<sup>57</sup> But what is a just price? Astesanus occasionally calls upon a good man's estimate.<sup>58</sup> Discussing temporal price variations in comment on *Naviganti* he suggests that the price that is commonly paid for a certain good in a given season is a fair estimate of justice.<sup>59</sup> A different approach to the question of the just price is to consider the factors that may cause an unjust price to be paid, namely, fraud and force. Physical force or coercion is not an issue, but the point of a number of cases examined by Astesanus is economic coercion. Astesanus quotes the *Code* on monopoly and defines monopoly in terms of collusion. A monopoly, he explains, is a body or society of monopolists (*corpus sive societas monopoliarum*).<sup>60</sup> The point of the medieval tradition on *Quicumque* is likewise the monopolistic power to raise prices by forestalling the market of grain or wine. In another case, Astesanus points out that the use of false measures might enable a merchant to lay up stores of produce so that he later, alone, might sell at will (*solus venderet sicut vellet*)—a case of fraud engendering coercion. Such trickery is unlawful.<sup>61</sup>

The subject of fraud crops up in a number of places and in various guises in the *Summa Astesana*. Persons who seek to gain by altering weights and measures are liable to thirty days on bread and water.<sup>62</sup> On several points of doctrine, Astesanus draws on Thomas Aquinas. A person acts fraudulently if he knowingly sells defective goods, whether as to substance, quantity or quality. The same applies to a person who knowingly buys a precious object cheap from an unsuspecting seller.<sup>63</sup>

<sup>57</sup> Astesanus, *Summa*, III,8,9: f.125vb, referring to Roman law at C.4,38,11 and 14, and at D.1,12,1,11. In a gloss signed .t. for Tancredus in Vincent of Spain's *Apparatus* to the *Decretals* of Gregory IX, at X.III,17,1 *Placuit*, it is stated that no one is to be compelled to sell if either price or measure displeases him (Paris BN lat. 3967, f.129va; Madrid BNac 30, f.177va; cp. (unsigned) in Paris BN lat. 3968, f.107vb). Hostiensis, who is Astesanus's most likely source, adds the modifying clause cited by the latter; cp. *Summa aurea*, to X.III,17, n. 1: f.147vb.

<sup>58</sup> Astesanus, *Summa*, III,8,2: f.124ra; III,11,7: f.139ra; rb.

<sup>59</sup> *Summa*, III,11,4: f.132va.

<sup>60</sup> III,8,12: f.128va; cp. C.4,59.

<sup>61</sup> III,8,8: f.125vb; cp. D.48,19,37.

<sup>62</sup> III,8,8: f.125va; cp. *Canones poenitentiales*, at *Summa*, V,32: f.42ra (mentioning measures only).

<sup>63</sup> III,8,11: f.127vb; cp. Aquinas, *Sum. theol.*, II-II,77,2,c.

Faults in merchandise must be disclosed unless they are manifest and unless disclosure would cause the price to drop below the level at which the merchandise could have been justly sold given the fault.<sup>64</sup> The just price is not to reflect the future: a merchant commits no fraud if he fails to part with information about the imminent arrival of additional supplies, a fact which, if generally known, would be likely to cause an anticipated price reduction.<sup>65</sup> A separate article in the title on buying and selling is devoted to the legal theory of *error*, *dolus*, and *deceptio*. For most of his analysis, Astesanus relies on Hostiensis. He explains about causal *dolus* which invalidates a bona fide contract, and about incidental *dolus*, which does not invalidate such a contract but which permits of an action to adjust the terms. He then passes to cases in which one of the parties (“the deceived one”—*deceptus*) is deceived in the sense of being mistaken regarding the object of the sale (*deceptus in re ipsa*). If, in such a case, there is no *dolus* on the part of the other party (“the deceiver”—*decipiens*), the outcome depends on whether the price obtained is beyond or within a distance of one-half from the just price. In the former case, “the deceiver” has the option either to rescind the sale or to adjust the price. If, in the latter case, the contracting parties are mature, private persons, the deception is tolerated by law, “for it is lawful for contracting parties naturally to deceive one another, that is, in good faith” (*licet contrahentibus se invicem decipere naturaliter, id est, bona fide*). This is evidently so when a seller believes that the price charged is just—*decipiens* being, as it were, *deceptus* as well. According to Accursius, this conclusion also applies if the seller is not mistaken about the price, provided that he does not say anything by which the other party is moved to buy.<sup>66</sup> The matter is different if the person deceived is a minor suffering a heavy loss; restitution should then be made.<sup>67</sup>

Further on in the same article, Astesanus cites the opinion of Johannes Teutonicus on the subject of deception. In the *Glossa ordinaria* to the *Decretum*, Johannes states that it is *not* lawful for parties to a contract to deceive one another, even though the law seems to permit

<sup>64</sup> Ibid.: ff.127vb–128ra; cp. Aquinas, loc. cit., 3, c.

<sup>65</sup> Ibid.: f.128ra; cp. Aquinas, loc. cit., 3, ad 4.

<sup>66</sup> Accursius, *Glossa ordinaria*, to D.4,3,37: 489. Hostiensis attributes this gloss to Azo, whom Accursius quotes.

<sup>67</sup> Astesanus, *Summa*, III,8,7: f.125ra–b; cp. Hostiensis, *Summa*, to X.III,17, n. 7: f.149ra–b.

it.<sup>68</sup> In other articles, Astesanus further complicates his doctrine on deception. From John of Erfurt he copies the distinction between deception in judging and deception in choosing.<sup>69</sup> This seems to be the basis on which it is most reasonable to interpret the statement that a person who knows himself to be deceived because the other party to the sale unwittingly measures falsely, has no action, because he deceives himself.<sup>70</sup> As regards the lawful extent of deception in terms of price, the need for criteria applying in the forum of conscience, stricter than those of the civil law, is indicated by Astesanus but not resolved by him. Paraphrasing Richard of Middleton, he notes that the value equality required by natural law in buying and selling permits of a certain latitude. It is only when the discrepancy is clearly seen (*clare videtur*) or notable (*notabilis*) that this just equality is violated.<sup>71</sup>

For a long time after the death of Astesanus in 1330, no contribution of relevance to the present study was made by an Italian member of the Franciscan Order. The Black Death, which struck Europe in the middle of the century, marks the end of the medieval flourishing of scholastic economic thought. Until the first stirrings of the Renaissance, academic teaching, as well as its practical application, drew on what had been achieved. In the fifteenth century, members of the Italian Observance initiated a movement of popular preaching. One of its main attacks was directed at the lure of material gain and wealth that was strengthened by the opportunities offered in the dawn of the new capitalistic economy. The central figure in this movement was St. Bernardino of Siena (1380–1444). In his vernacular sermons in the Tuscan cities, and not least in the economic sermons of his Latin *Quadragesimale de Evangelio aeterno*, he urges repentance and a return to the medieval ideals of justice in exchange. Bernardino's sermons are not, as such, part of the source material of the present study. The *Quadragesimale* is a huge compilation of earlier texts. If Bernardino plays a part in a study of economics in the penitential tradition, it is because he supplemented these familiar sources with more recent juridical work and, above all, because he introduced the economic thought of Peter Olivi, a late-thirteenth-century Franciscan

<sup>68</sup> Astesanus: f.125va; and cp. note 50 above.

<sup>69</sup> Astesanus, III,11,4: f.133ra, following the version of John of Erfurt's *Tabula*: f.459rb–va, rather than the more extensive discussion in John's *Summa*.

<sup>70</sup> Astesanus, III,8,8: f.125va.

<sup>71</sup> Astesanus, III,11,5: ff.134vb–135rb; cp. Richard of Middleton, *Quodl.* II,23,3: 67.

associated with the Spiritual faction. Olivi composed a treatise on buying and selling that was all but forgotten when Bernardino unearthed it and copied a major part of it in his *Quadregesimale* (without ever naming this source). Next to Thomas Aquinas, no medieval author influenced the ideas of trade and price in the later Italian penitential tradition more markedly than Peter Olivi, transmitted by Bernardino.<sup>72</sup>

These developments are the subjects of later chapters. By way of concluding the present chapter, a few words may be said about Bernardino's own contribution to the penitential literature proper. It consists of two works in the vernacular, both available in modern editions.<sup>73</sup> His brief *Specchio di confessione* is conventionally structured on the mortal sins and the commandments and refers to usury in connection with avarice. A longer treatise, known by its incipit as *Renovamini*, mentions trade and price in simple terms far removed from the penetrating analysis of the *Quadregesimale*. The layout is familiar. After five general chapters on the Christian life, there are eight chapters on conditions for confession, one on each of the ten commandments, one on each of the seven mortal sins, one on the sacraments, one on the principal virtues, two on the works of mercy, and a concluding chapter. Chapter 28, on the sin of avarice, contains the following pithy synopsis of medieval economic ethics.

Furthermore, the penitent is obliged to make restitution for every kind of usury, which nowadays is committed in almost infinite ways. And most of all if, through avarice, he has bought grain or wine or oil, with a view to bring about dearth (*a fine di mettere carestia*), or if he has wished that there be dearth, so that he may sell his good for more. Furthermore, if he is considered to have sold his good for more than the just price or bought it for less than what would be the just price, it is important that he be obliged to make restitution, and this ought to be estimated according to the common course at the time of the sale or the payment.<sup>74</sup>

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<sup>72</sup> The literature on Bernardino's work in this area is vast. For a brief account, with further references, cp. De Roover, 1967. On the person, cp. DBI 9, 215–26; LTK 2 (1994) 279–80.

<sup>73</sup> *Operette volgari*, ed. D. Pacetti, Florence 1938, 49–212 (*Renovamini*); 213–61 (*Specchio di confessione*).

<sup>74</sup> Ed. cit., 173.



*Summary*

The penitential handbooks by the early Italian Franciscans differ greatly as to form, from the alphabetical lexicon of Monaldus of Capodistria, through the case collection of Chiaro of Florence and the interrogatory of Marchesino of Reggio, to the systematic treatise of Astesanus. An analytical summary must of necessity dwell upon the remarkable contribution of the man from Asti. Monaldus states a detailed version of the legal theory of fraud as understood by authors who addressed the internal forum. In comments on *Placuit* and *Quicumque* he associates the just price with the common estimate of the market. Chiaro examines the subject of fraud from a practical point of view, discussing defects as to substance, quality and quantity of merchandise and the obligation to reveal defects. He explains that consent requires knowledge and will and that consent validates contracts. He applies the Roman law principle of coercion in his case discussions but merely in terms of physical coercion. Marchesino cites the old canon about just weights and measures. Drawing on the great medieval theologians in addition to the canonists, the *Summa Astesana* contains all this and much more. Astesanus discusses fraud from a theoretical as well as a practical point of view. He states the circumstances that render trade unlawful, shows how exchange at a just price can benefit both parties and explains the double rule. Referring to *Placuit*, *Quicumque* and the title on monopoly in the *Code*, he condemns price discrimination, collusion and, by implication, economic coercion. He establishes the market price criterion of the just price while also justifying a moderate commercial profit with reference to the merchant's labour, solicitude and industry, and to cost incurred in transportation, storage and risk coverage. He explains that the just price cannot be fixed to a point. It alters with time and place and permits of a certain latitude. These pages in the *Summa Astesana* contain what is arguably the most satisfactory compact statement of scholastic trade and price doctrine by any fourteenth-century author regardless of literary genre. It is, however, a compilation. When Bernardino of Siena, who is represented in this study only with a minor work, put together his more extensive compilation a century later, he tended to bypass the *Summa Astesana*. Bernardino chose to reach back directly to its sources as well as to sources unknown to Astesanus, above all to Peter Olivi, who easily overshadows Astesanus in terms of insight and originality.

## CHAPTER SEVEN

### THE DOMINICAN TRADITION TO SAVONAROLA

As demonstrated in preceding chapters, the transalpine literature designed for confessors, thanks to John of Freiburg, managed to steer a middle course between canon law, primarily represented by the annotated *Summa Raimundi*, and theology, represented by a number of authorities, mainly Dominicans. In Italy, the Franciscans staked out a similar course between the canonists Raymond and Monaldus and a host of theological authorities, mostly (if not exclusively) of their own Order. By contrast, the Italian Dominicans based their early penitential handbooks almost entirely on the work of Thomas Aquinas, their great confrère and compatriot. This lent more quality than originality to their contributions. Albert of Brescia (d. 1314) was probably a direct student of Thomas. He taught in the Dominican house of his native city and considered his main task to be that of adapting the moral and sacramental theology of his master to the pastoral needs of the clergy. This program found expression in his *Summa de officio sacerdotis*. This is a work of considerable length. It runs to more than two hundred leaves in the complete version, of which some fifteen manuscripts are identified, as well as some fragments. There is no printed edition.<sup>1</sup> Albert's *Summa* consists of three books, each book being divided into treatises and chapters. The books deal with the cardinal virtues (I), their opposite vices (II), and the sacraments (III). The ninth treatise of Book II examines fraud in buying and selling, and the tenth treatise examines usury. In *Summa*, II,9,1–4 the author faithfully reproduces *Summa theologiae*, II–II,77,1–4, almost complete and almost verbatim, though somewhat shuffled. He quotes most of the corpus of each article, tends to omit the initial arguments but nevertheless renders Aquinas's replies to them.<sup>2</sup> (*Sum. theol.*, II–

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<sup>1</sup> On Albert of Brescia, cp. Quétif-Échard I,526–7; Schulte II,424; Dietterle, *ZK* 26 (1905) 63–7; Teetaert, 1926, 448–51; Grabmann, 1956, 323–51; Hinnebusch II,170; Michaud-Quantin, 1962, 60, 65–6, 113, 120; Kaeppli, I,27–8; Bloomfield-Guyot 5045; LTK 1 (1993) 330.

<sup>2</sup> Florence BNaz Conv. Soppr. G.II.253, ff.75vb–78va; Munich SB Clm 18407, ff.55ra–57rb.

II,78,1–4 receives a similar treatment in *Summa*, II,10,1–4.) We have already encountered these analyses on the part of Aquinas in John of Freiburg's adaptations and occasionally elsewhere, and we shall reencounter them in the sequel. There is no need to dwell on Albert of Brescia's use of them.

A more discriminating use of Aquinas on trade and price, combined with some canonistic authorities, was made by Bartolomeo of San Concordio in his *Summa de casibus conscientiae*, commonly known as the *Summa Pisana*. Born at San Concordio near Pisa in 1262, Bartolomeo joined the Dominican Order and studied law and theology at Bologna and later at Paris. Returning to Italy near the end of the century, he taught in the schools of his Order at Todi, Rome, Florence (Santa Maria Novella), Arezzo, Pistoia and Pisa. In 1335 he was appointed director of studies at Santa Caterina at Pisa, where he died in 1347. The *Pisana*, or *Pisanella*, was composed in 1338. It became hugely popular and remained, for centuries, one of the main conveyors of Thomistic economic thought, frequently through the intermediacy of John of Freiburg. The work is extant in more than 300 medieval manuscripts and numerous printed editions.<sup>3</sup>

The *Summa Pisana* is ordered alphabetically in the manner of the *Summa Monaldina*. Unlike Monaldus, however, Bartolomeo includes a brief article titled *Avaritia* where he considers the question whether avarice is a mortal sin. He replies, following Aquinas on this subject in the *Secunda Secundae*, that this particular sin can be understood in two different senses, namely, either as the unjust reception or retention of what belongs to another, or as an inordinate love of wealth. In the former sense, avarice is *sui generis* a mortal sin, though it may amount to no more than a venial sin in certain less serious cases of theft and the like. In the latter sense, avarice is a mortal sin if a person's love of wealth grows to such an extent that he does not recoil from acting against the love of God and his neighbour. A more moderate love of wealth is a venial sin only.<sup>4</sup>

In the brief article *Dolus*, Bartolomeo explains the difference between causal and incidental fraud.<sup>5</sup> He does not enter into the confusing

<sup>3</sup> Ed. used: Venice 1482. On Bartolomeo of San Concordio and the *Summa Pisana*, cp. Quétif-Échard I,623–5; Schulte II,428–9; Stintzing 524–6; Dietterle, *ZK* 27 (1906) 166–71; Michaud-Quantin, 1962, 60–2, 114, 120; Kaeppli I,157–68; Hinnebusch II,254–5; DBI 6, 768–70; LTK 2 (1994) 44; Bloomfield-Guyot 5052.

<sup>4</sup> *Summa Pisana*: f.20va–b; cp. Aquinas, II–II,118,4,c.

<sup>5</sup> *Summa Pisana*: f.107ra.

subject of nonfraudulent “deception” at this point, but that subject appears in the version of Aquinas as transmitted by John of Freiburg, in the article *Emptio et venditio*. This article is in the nature of an abbreviated summary of the four articles (in a different order) of Quaestio 77 of the *Secunda Secundae*, occasionally interrupted by brief inserts of canon law material. A seller may charge for his loss in parting with a thing he values but is not permitted to profit from the buyer’s circumstances (the “double rule”). Human law permits deception within the limits of one-half of the just price. Like John of Freiburg, Bartolomeo omits the proviso that there be no fraud (*fraus*). Divine law, however, requires equality in buying and selling, though restitution is due only if one of the parties suffers a notable loss, for the just price is not exactly determinable but is rather in the nature of an estimate. Thus far Aquinas.<sup>6</sup> Bartolomeo also refers to the canon *Hoc ius*, where it is stated that if more is offered than a good is worth, a church ought not to accept more than the just price, even though the law states that the contracting parties may mutually deceive one another (*se invicem decipere*), for a church ought not to commit fraud (*dolus*) in its contracts.<sup>7</sup>

Resale at a higher price is permitted if the profit is ordained to some necessary or honourable end, as when someone profits moderately in order to support his own house or subvent the poor or to serve the common good, and provided that the profit is not sought as an end in itself but as a payment for labour. A higher sales price is also permitted if the goods are altered as to place or time or if the increment is charged to cover risk. A person who knowingly sells goods that are defective as to species, as to weight or measure, or as to quality, commits fraud; the sale is illicit and restitution should be made. The same holds for a buyer who knows the goods to be of a more valuable species than the seller believes. A sale is illicit and the seller should pay damages for loss if he fails to reveal hidden defects in merchandise, but he is not obliged to draw attention to evident defects, provided that he charges no more than the goods are worth given such defects, because this might cause the price to fall below this just level. Nor is a seller bringing goods to a certain location obliged to reveal knowledge of the imminent arrival of other sellers,

<sup>6</sup> Ibid.: f.127ra–b; cp. Aquinas, II–II,77,1,c and ad 1.

<sup>7</sup> *Summa Pisana*: f.127rb; cp. *Decretum*, II,10,2,2. The argument cited is not in the canon but in the commentary tradition; cp. Chapter 4, notes 41–2.

thus causing an anticipated price reduction. It would be a mark of great virtue to do so but not a requirement of justice.<sup>8</sup> This paraphrase of Aquinas is followed by a reference to Hostiensis on monopoly and collusion between sellers,<sup>9</sup> and by a general condemnation of lies and perjury in business, based on Raymond of Peñafort.<sup>10</sup>

In the article *Negotiatio*, Bartolomeo quotes Raymond on how commerce can be rendered illicit *ex causa, tempore, persona* and *loco*.<sup>11</sup> Citing William of Rennes, he teaches that merchants can lawfully receive a moderate profit because they labour for everybody, making goods available.<sup>12</sup> By far the longest article treating of economic subjects is the one on usury. It is in six parts, the third part dealing with usury in buying and selling. Here one finds a fully developed representation of the commentary tradition on *Quicumque*. Bartolomeo states that it is “briefly adopted” from Raymond, William, Innocent and Hostiensis. The same authorities are named in or near the context of John of Freiburg’s version of *Quicumque*, which is modelled on Ulrich of Strasbourg, and Bartolomeo clearly owes something to Ulrich, probably through John of Freiburg.<sup>13</sup> According to Bartolomeo of San Concordio, the lawfulness or not of buying corn or wine cheap in autumn depends on motivation and circumstances. It is fully legitimate if the buyer’s purpose was (1) to build up stores for the community in the expectation of a famine (as Joseph did), (2) to provide for himself and his dependants, merely selling a surplus “as it was commonly sold in the market”, (3) to spend the profit on the poor out of piety, provided the community at large does not suffer a shortage, or (4) to engage in just commerce as merchants do, not with the intention of inducing dearth but to exercise his skill and earn a profit by his work. It is a great sin, however, for anyone to engage in such activity from avarice, selling dearer with no view to necessity or utility, but in order to induce dearth, so that people are forced to buy from him and he can sell at his pleasure.<sup>14</sup>

Roughly simultaneously with Bartolomeo of San Concordio, another Dominican and a native of the same region of Italy, composed a

<sup>8</sup> *Summa Pisana*: ff.127rb–128ra; cp. Aquinas, II–II,77,4,c and ad 2; 77,2,c; 77,3,c and ad 4.

<sup>9</sup> *Summa Pisana*: f.128ra–b; cp. Hostiensis, *Summa*, to XI,39, n. 4: f.65va.

<sup>10</sup> *Summa Pisana*: f.128rb; cp. Raymond, *Summa*, II,8,5: 563.

<sup>11</sup> *Summa Pisana*: f.278va–b; cp. Raymond, *Summa*, II,8,1: 558–62.

<sup>12</sup> *Summa Pisana*: f.279ra; cp. William, *Glossa*, to II,8,5: 248.

<sup>13</sup> See Chapter 3.

<sup>14</sup> *Summa Pisana*: ff.482vb–483ra.

handbook that became quite influential and that remained a publishing success for a long time. I refer to the *Pantheologia* of Raniero of Pisa. Born at Rivalto near Pisa, Raniero studied at Paris and subsequently lectured on the *Sentences* of Peter Lombard at Pisa and at major convents in the Roman province of his Order. He died at Pisa about 1348. Some thirty manuscripts of his large work have been identified, as well as some fifteen printed editions, from 1473 (an alleged edition of 1459 not having come to light) to 1670.<sup>15</sup> The *Pantheologia* is not now normally included in bibliographical surveys of works for the confessional, but it was sometimes described as a *Summa casuum conscientiae* in elder literature.<sup>16</sup> Its sources and arguments are almost entirely, but not exclusively, theological, just as the sources and arguments of works like those of Raymond of Peñafort and Monaldus of Capodistria are almost entirely, but not exclusively, canonistic. On the scale from theology to law, on which all the penitential handbooks find their proper location, Raniero and Raymond mark the opposite extremes, whereas Bartolomeo of San Concordio may perhaps be said to occupy an intermediate position.

The *Pantheologia* is also ordered alphabetically and includes an article *De avaritia*. Drawing heavily on Thomas Aquinas, Raniero quotes material not utilized by Bartolomeo and goes rather more deeply into the question of what kind of sin avarice is. In a narrow sense, avarice, or cupidity, denotes an inordinate love or desire of money. In a broader sense, its passion embraces everything that can be measured by money. In principle, this includes knowledge and honour. These are objectives normally associated with pride rather than greed. Is *avaritia* then the same thing as *superbia*? Not quite. The *superbus* seeks excellence in these things, the *avarus* merely seeks sufficiency. Moreover, *superbia* expresses an aversion to God, to whose precepts the proud man refuses to subject himself, and thus comprises all sins. *Avaritia* merely expresses a focus on transitory things. In that particular sense, however, avarice is the root of all sins.<sup>17</sup> The avari-

<sup>15</sup> Ed. used: Venice 1585. On this work, and on the author, cp. Quétif-Échard I, 635–6; Kaeppli III, 292–3; Bloomfield-Guyot 0002; LTK 8 (1999) 817.

<sup>16</sup> Thus Jöcher III, 1881.

<sup>17</sup> *Pantheologia*, art. *De avaritia*, I: 188–9; cp. Thomas Aquinas, *Summa theologiae*, I–II, 84, 2, c. The relationship between pride and cupidity is restated succinctly in the article *De superbia*, II, 1053 (second pagination). According to 1 Tim. 6.10, cupidity is the root of all sins. This is to be understood in terms of attraction, because inordinate attraction to the changeable good is the cause of all sins. But pride is

cious man, says Raniero, echoing Aquinas, sins against his neighbour, because he acquires and retains things at the cost of someone else, since one person cannot abound in temporal goods unless another person has less. He sins against himself, for the sin of avarice causes disorder in his affections. And he sins against God, insofar as he contemns the eternal good for the sake of temporal goods.<sup>18</sup>

The opposites of avarice are equity, charity, piety, liberality, and prodigality. The first four of these opposites are normally considered to be virtues. According to a different scheme, avarice and prodigality (fifth in the list) are considered to be the opposite vices of extreme compared to the virtue of liberality. According to Raniero of Pisa, avarice is a graver sin than prodigality, because (among other things) the avaricious man benefits neither himself nor others, whereas the prodigal man greatly benefits others by his spending.<sup>19</sup> The daughters of avarice include deceit (*fallacia*), perjury, fraud (*fraus*—with a reference to the article on selling and buying), and betrayal, as in the case of Judas, who betrayed Christ because of avarice.<sup>20</sup> Fraud is discussed in a brief article without reference to commerce. The main theme is rather the one encountered in the article on avarice. He who defrauds another, harms himself more than he harms his victim. “For what is a man profited, if he shall gain the whole world, and lose his own soul?”<sup>21</sup> The article on theft contains a reference to selling and buying, however,<sup>22</sup> and so does the article on justice. Exchange should comply with commutative justice, which requires equality between things exchanged.<sup>23</sup> Raniero devotes two pages to measures and weights. These instruments were invented in order to determine just equality between buyer and seller, as Aristotle states in *Ethics*, V. They are not equal everywhere, and they will vary with plenty and scarcity, Raniero explains, once more following Aquinas. Though that was part of their purpose, they don’t prevent fraud. Many sinful tricks are available to those who use weights and measures.

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the cause of all sins in terms of aversion to God. Aversion to the unchangeable good is prior to attraction to the changeable good, and therefore pride is prior to cupidity and the cause thereof.

<sup>18</sup> Art. cit., II: 190; cp. Aquinas, II-II, 118, 1, ad 2.

<sup>19</sup> Art. cit., IV: 192–3.

<sup>20</sup> Art. cit., VI: 195–6.

<sup>21</sup> Art. *De fraude*, III: 971; cp. Matt. 16.26.

<sup>22</sup> Art. *De furto*, II: 982.

<sup>23</sup> Art. *De iustitia humana*, II: 1191.

One set can be used for buying and a different one for selling. One arm of the scales can be made longer than the other. By soaking wool or by watering wine, or the like, weight can be fraudulently increased. A host of scriptural and patristic authorities are quoted against these and similar practices.<sup>24</sup>

Raniero gets down to discussing economic subjects proper in his two articles on selling and buying and on usury. The latter article yields nothing to our purpose, either directly or indirectly. The former consists mostly of several, somewhat overlapping, discussions based on familiar authorities, but the characteristic voice and vocation of the author himself are heard as well. Trade is not bad in itself. It is good and was invented for a good purpose; however, it can hardly be conducted without sin. Raniero proceeds to copy Alexander of Hales closely on the wrongs and rights of commercial procedure. Commerce can be rendered illicit for reasons of person, cause, fraudulence, time and place, as well as *ratione consortii*, as when a thing is sold dearer to transients than to residents. Trade is licit when conducted by a suitable person, for a necessary and just cause, in a proper manner without falsehood and perjury, at a suitable time and in a suitable location, and at a just price, as a thing is commonly sold in that city or place where trade is usually conducted.<sup>25</sup> On the following pages, these doctrines are repeated at greater length, mostly in terms of a much looser paraphrase of Aquinas. Buying and selling may be unlawful and unjust for a number of reasons. First, the good sold may have a latent defect as to species (one thing for another), quality (a sick animal for a healthy one), mixture (watered wine), and quantity (deficient measure).<sup>26</sup> A defect may be manifest or hidden. If it is manifest, the seller need not draw attention to it, because the buyer would then be inclined to lower his bid too much. If the defect is hidden, it should be revealed, for three reasons: To do otherwise, might expose the buyer to loss and risk, and it would amount to "circumvention", and the Apostle admonishes that no one

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<sup>24</sup> Art. *De mensura vel pondere*, II–III: 312–3. (The volume has a new pagination from the letter L.)

<sup>25</sup> Art. *De venditione et emptione*, I: 1152–3. The correct reading *consortii* rather than *commercii*, rules out Astesanus as an intermediary source.

<sup>26</sup> A thing may also be defective because of sophistication. Raniero and other authors who quote Aquinas at II–II,77,2 on defects in merchandise, pick up his reference to alchemy and sometimes elaborate a length upon this subject. I have consistently omitted these sequences.



“defraud his brother in any matter” (*circumveniat in negotio fratrem suum*).<sup>27</sup> One need not always tell every truth, but if silence is harmful, truth should be told.<sup>28</sup>

Second, buying and selling is unlawful and unjust when the price is too high. The price level may be considered with reference to the commodity itself. If someone buys a thing in order to profit by reselling it whole and unaltered he is, in the words of Chrysostom, like those merchants whom Christ evicted from the Temple. It may also be considered with reference to the buyer's utility, from which the seller is not permitted to profit, and to the seller's own need of the thing, of which account may be taken in the price charged—Aquinas's “double rule” stated the other way around. There are five reasons, Raniero explains (partly repeating himself), why a good may be sold for more than the amount at which it was bought, namely, the seller's indemnity, improvement of the good, variation in value with time and place, the merchant's labour, and the risk incurred in transportation.<sup>29</sup> Third, buying and selling is unlawful and unjust because of lies and perjury, to which merchants are prone,<sup>30</sup> and, fourth, because of deficient weighing and counting (referring back to the article on weights and measures).<sup>31</sup> Fifth, and last, buying and selling *may* be unlawful and unjust because time intervenes, but such is not always the case. There are five reasons for such delays, and four of them are unobjectionable, namely, (1) to buy when things are cheap, such as grain and wine at times of harvest and vintage, in order to provide for the community when things are dear, as Joseph did in Egypt, storing grain in preparation for the famine, (2) to buy for one's own use and to sell an unexpected surplus at a higher price, “as it is commonly sold in the market”, (3) to buy out of piety to subvent the poor when dearth arrives, provided the profit is moderate and the community in general does not suffer, and (4) to buy at times of plenty according to commutative justice, as merchants do, and to reap a moderate profit on which to live, both because of the labour involved and because of the benefit to the community, provided the intention is not to induce dearth.<sup>32</sup>

<sup>27</sup> 1 Thess. 4.6.

<sup>28</sup> Art. cit., II: 1153–4.

<sup>29</sup> Art. cit., III: 1154–5.

<sup>30</sup> Art. cit., IV: 1155–6.

<sup>31</sup> Ibid., 1156.

<sup>32</sup> Art. cit., V: 1156.

There is a fifth reason for a delay between buying and selling, however, that is objectionable, namely, avarice, which drives a person to buy at a time of plenty in order to profit by selling later at a time of dearth. On this subject, as well, a fourfold distinction can be made. First, the transaction can involve usury. Second, it can consist in several persons agreeing among themselves to sell at the same, excessive price. Third, it can involve monopoly in the literal sense of the word. (Raniero does not use this term but describes the phenomenon.) A single person gathers so much of a good at a time of plenty that other persons at a future time of dearth are compelled (*compelluntur*) to buy from him at his pleasure and he therefore sells as dear as he wishes. Such a person, or such persons, sin enormously against their neighbour and against the community. Fourth, certain persons can conceal things when they are cheap in order to sell them when they fetch a higher price or at a time of dearth. Of such persons it is stated in the Proverb: "He that withholdeth corn, the people shall curse him: but blessing shall be upon the head of him that selleth it".<sup>33</sup> This text can be explained literally as follows. He who withholds corn in order to sell it when famine is urgent, is cursed by the people. Blessing means eternal blessing, as stated in the Gospel according to Matthew: "Come, ye blessed of my Father. . . . For I was hungred, and ye gave me meat. . .".<sup>34</sup> Or it can be explained spiritually: He who withholds corn, that is, the Word of God, which is the food of the soul, like the servant in the parable of the talents,<sup>35</sup> is cursed by the people. Therefore, it is stated in the First Epistle to the Corinthians: "Woe is onto me, if I preach not the gospel".<sup>36</sup> Thus Raniero of Pisa on *Quicumque*.<sup>37</sup> Terminology proves that the textual tradition behind his elaborate discourse upon the canon had passed, at some point, through Ulrich of Strasbourg's *De summo bono*. It is likely, but not certain, that it reached Raniero by way of John of Freiburg. The Biblical scholar himself, however, put his stamp on it, and got the last word.

Two other prominent fourteenth-century Tuscan Dominicans wrote popular and successful works on penance, but their relevance for the study of economic ethics is at best marginal. Domenico Cavalca

<sup>33</sup> Prov. 11.26.

<sup>34</sup> Matt. 25.34–5.

<sup>35</sup> Matt. 25.18.

<sup>36</sup> 1 Cor. 9.16.

<sup>37</sup> Art. cit., V: 1156–7.

(c. 1270–1342) was born at Vico Pisano and made his home at Santa Caterina at Pisa. He is remembered as a great preacher, a tireless apostle among the poor and unfortunate and, not least, as the author of a number of treatises in the vernacular, which place him among the fathers of Italian prose. These works include the *Specchio della Croce*, a classic of christocentric spirituality, enormously popular in its own time and still published and used in Italy. The work that places him on the borderline of the present study, however, is the less widely diffused *Specchio dei peccati*. This is a brief and general “forma di confessione”. It is extant in less than ten medieval manuscripts and was printed once in the sixteenth century and twice in the nineteenth century.<sup>38</sup> This work is intended for the devote rather than for the confessor. Domenico distinguishes between three different forms of concupiscence, namely, carnal lust, pride and greed. The latter leads to numerous sins: war, homicide, betrayal, theft, robbery, simony, injustice, etc. Usury is not mentioned. Physicians prolong their treatment to make more money, lawyers defend the wrong persons for the same reason, artisans falsify their works.<sup>39</sup> Commerce is not mentioned, either, except in a reference to the cleansing of the Temple, in which Christ is said to have set an example by evicting the sellers.<sup>40</sup>

Jacopo Passavanti (c. 1302–1357), a Florentine by birth, studied at Paris and, upon his return to Italy, served his Order in various capacities before coming home and settling at Santa Maria Novella, where he was briefly prior. He was a man of great learning and experience and an eloquent preacher. His *Specchio di vera penitenzia* is preserved in some twenty manuscripts and saw at least twenty-six printed editions.<sup>41</sup> It is a sombre work. Pervaded by the atmosphere of terror that followed the outbreak of the Black Death, its main intention is to move the reader to confess his sins, but it will have been useful for the confessor as well, in that it explains his duties and qualifications. The body of the work consists of five distinctions, divided into chapters and dealing with the nature of penance, inducement

<sup>38</sup> Ed. used: Florence 1828. On the work and its author, cp. Quétif-Échard I,878; Hinnebusch II,344–5; Kaeppli I, 304–14; DBI 22, 577–86; LTK 2 (1994) 981–2.

<sup>39</sup> *Specchio dei peccati*, Ch. II: 16–7.

<sup>40</sup> Ch. III: 28. There is a similar passage in *Specchio della Croce*, Ch. 44: Bologna 1992, 356–7.

<sup>41</sup> Ed. used: Florence 1925. On Passavanti and his work, cp. Quétif-Échard I,645–6; Schulte II,430; Hinnebusch II,345–8; Orlandi, 1955, I,450–71; Michaud-Quantin, 1962, 66–7, 114; Kaeppli II,332–4.

to penance, impediments to penance, contrition, and confession. In the last of these distinctions, Passavanti mentions usury, buying and selling, barter, and other sources of dishonest gain, but refrains from offering any detailed instructions. Economic contracts, he states, are complex matters on which the learned differ, and on which the average confessor ought to refer the penitent to someone who understands them properly.<sup>42</sup> Among sins by way of taking or keeping what belongs to another, usury is mentioned again, along with robbery, gambling, and retaining the wages of another's toil.<sup>43</sup>

With regard to new confessional literature, the Dominicans, like the Franciscans, experienced a barren period in the second half of the fourteenth century and in the first quarter of the fifteenth century. The genre was brought to life again due to the practical experience and intellectual vigour of St. Antonino Pierozzi (1389–1459), archbishop of Florence from 1446. Antonino wrote a number of theological and pastoral works, but his reputation rests primarily on his *Summa moralis* (usually styled *Summa theologica*), which he laboured on for fifteen years and completed shortly before his death. In the area of economics, the stature of Antonino of Florence has shrunk a bit in recent years as more of the medieval sources of that work have come to light. Among other things, he drew on Peter Olivi, mainly, and perhaps entirely, through Bernardino of Siena. Antonino was not an outright compiler, however, for he drew attention to new areas and problems of economic ethics and thereby influenced subsequent authors of penitential works, Dominicans as well as others. The *Summa* cannot be classified as a penitential handbook and will be mentioned in the sequel only as the likely source of later handbooks. But Antonino wrote three slimmer volumes that belong within the scope of the present study. Distinguished by their incipits, they are the *Confessionale* “*Omnis mortalium cura*”, the *Confessionale* “*Curam illius habe*”, and the *Confessionale* “*Defecerunt*”. These works are not excerpts of the *Summa* but are generally held to have been composed earlier.<sup>44</sup>

“*Omnis mortalium cura*” is an early work in the Italian vernacular, intended for the devote. Some ninety manuscripts are identified, as

<sup>42</sup> *Specchio di vera penitenzia*, V,4: 144–5.

<sup>43</sup> *Ibid.*: 176.

<sup>44</sup> On the economic thought of Antonino of Florence, cp. De Roover, 1967, with references. Cp. also DBI 3, 524–32 (on life and works in general); Kaeppli I,80–100, and Orlandi, 1962 (on manuscripts and editions); and Michaud-Quantin, 1962, 73–4, 113, 118, 119 (on the penitential handbooks).

well as twenty-four incunabula editions and some later ones. It is mostly an explanation of the seven capital vices, ample space being devoted to avarice. Among its branches are usury and shameful commercial gain. Selling on credit at more than the just price is usury if the merchandise was intended for present sale but not if the merchant's intention was to store it until a time when he expected it to be worth more.<sup>45</sup> Commerce is lawful if conducted for some good purpose, but not if the merchant's purpose is to acquire wealth.<sup>46</sup> "*Curam illius habe*", much less widely diffused in manuscript and print, is a work in Italian intended for the priest. Its four parts deal with sins against the commandments and the mortal sins, with the sacraments, mainly penance, with the theological and the cardinal virtues, and with excommunication. Usury is discussed at some length in the section on the seventh commandment, which also mentions fraud as to species, quality and quantity of merchandise.<sup>47</sup> The section on avarice is brief and does not touch upon economic subjects. Usury and fraud are referred to as violations of commutative justice under the heading of the cardinal virtues.<sup>48</sup>

This is all very simple and conventional, and these two books are insignificant compared to the *Confessionale* "*Defecerunt*", which is one of the all-time best sellers of the genre. Counting all versions, it is extant in about three hundred manuscripts and in close to one hundred editions, in the original Latin and in Italian and Spanish translations. Summarized here in the order in which it is presented and in which it was presumably intended to be used, it may seem overly repetitive, but the author knew his métier: St. Antonino was reputed to have heard more confessions than any other person of his day.<sup>49</sup> Following some introductory material on the authority, qualifications and functions of the confessor, on reserved cases, and on excommunication, the work contains a guide for the interrogation of penitents, divided into two parts. The first, general part runs through an extensive list of crimes, including the capital sins and their offshoots and all manner of violation of the commandments. The slightly briefer second part addresses men and women of different social positions and professions.

<sup>45</sup> *Confessionale* "*Omnis mortalium cura*": Florence 1479, ff.83v–84r.

<sup>46</sup> Op. cit.; f.84v.

<sup>47</sup> *Confessionale* "*Curam illius habe*": Bologna 1472: ff.25v–26r.

<sup>48</sup> Op. cit.: f.73v.

<sup>49</sup> Coulton, 1947, 193.

The general part starts with robbery, which is followed immediately by the sins traditionally associated with economic activity: fraud, usury and shameful gain. If someone knowingly sells a thing for more than its just price or buys it for less, or if he does so in ignorance but later fails to make good the error, he commits fraud. Fraud can also be committed as to substance, quantity and quality of merchandise. Price fixing by agreement among merchants is fraudulent, and so is retaining the wages of labourers.<sup>50</sup> There follow two pages on usury. As to *turpe lucrum*, it is reaped by any merchant who makes profit his ultimate aim or seeks immoderate profit, who does business in a sacred place or on holidays, and by anyone who, driven by avarice, buys at times of harvest or vintage in order to sell dearer at a later date.<sup>51</sup> Thus, Antonino summarily explains the canon *Quicumque*. Further on, he runs through the list of the mortal sins. Avarice is a mortal sin, both because it violates the duty to love one's neighbour and because it leads to a neglect of what is necessary for one's own salvation. Among its manifestations, injustice and fraud in buying and selling are mentioned, as well as withholding the wages of labourers.<sup>52</sup> In the section on the ten commandments, the precept not to steal elicits a lengthy discussion of usury and some remarks about other commercial sins, one of which suggests a criterion of just pricing. A merchant commits fraud if he sells a good that is defective as to substance, quality or quantity, or if he sells some good at a much higher price than it is worth "according to the common estimate at that time" (*secundum communem aestimationem illius temporis*). These sins are mortal if the opposite party suffers a notable loss; otherwise venial.<sup>53</sup> Avarice, usury and *turpe lucrum* appear again in connection with the commandment against false testimony. An honourable purpose for engaging in trade is stressed once more, and the explanation of *Quicumque* is repeated.<sup>54</sup>

In the second part of the interrogatory, where Antonino addresses persons of different states and functions, a proper motivation on the part of merchants is once more emphasized, as well as the sinfulness of collusion:

<sup>50</sup> *Confessionale* "Defecerunt": Milan 1472, f.28r.

<sup>51</sup> Op. cit.: f.29r.

<sup>52</sup> Op. cit.: ff.42v–43r.

<sup>53</sup> F.56v.

<sup>54</sup> F.63v.

If a merchant makes a pact with other merchants not to sell a certain good at a lower price than the one agreed upon among them, this being an excessive one, so that other persons are forced (*cogantur*) to buy at a high price, this is sinful according to Hostiensis and prohibited by law.<sup>55</sup>

Artisans are next addressed. Antonino refers to a practice current in the textile industry, according to which the wages of workmen are paid "not in money but in various other things, such as cloth or silk or wheat, and the like, which, as they do not need them, they have to sell at a lower price than that at which they received them". Such arrangements are sinful on the part of employers unless the parties initially agreed upon this form of payment.<sup>56</sup> The *Confessionale* "*Defecerunt*" is believed to have been composed shortly before Antonino of Florence started work on the *Summa theologica*. Some of its themes were evidently in his mind already. In the *Summa*, Antonino repeatedly attacks the truck system.<sup>57</sup>

In the second half of the fifteenth century, the production of penitential handbooks was dominated by Franciscan authors. The Franciscans were particularly active in the last couple of decades of the century, which saw the appearance of a wide variety of texts. The Dominicans remained largely silent until they rejoined and definitely reoriented the penitential genre in the early decades of the sixteenth century. Two late-fifteenth-century works must be mentioned by way of concluding this chapter, one by a rather obscure Dominican friar, the other by one of the greatest religious figures of his age. All that we know about Teodoro of Sovico is that he was a master of theology and prior of the convent of St. Eusturgio at Milan. He composed a *Confessionario utilissimo a ogni persona*, first published at Milan in 1496 and reissued there at least eight times in the sixteenth century.<sup>58</sup> It is mainly an interrogatory, partly following the order of the capital sins and the commandments, partly addressed *ad status*. At the end there are some pages on absolution and penance. Under the heading of Avarice, illicit commercial gain is mentioned.<sup>59</sup> When merchants are examined, they should be asked about commerce

<sup>55</sup> F.92r.

<sup>56</sup> F.94r.

<sup>57</sup> *Summa theologica*, II,1,17,7-8: 267-9; II,2,1,18: 352; III,8,4,4-5: 313-7.

<sup>58</sup> Ed. used: Milan 1505. On Teodoro of Sovico and his work, cp. Rusconi, 1972, 136-43; 1986, 196; Turrini 482-3.

<sup>59</sup> *Confessionario*: f.29v.

motivated by avarice.<sup>60</sup> More specifically, they should be asked about collusion with other merchants for the purpose of forcing buyers to pay an excessive price, and about fraud in sales and barter.<sup>61</sup> Employers should be asked about abuse of the truck system.<sup>62</sup>

The overall impact of Girolamo Savonarola on religious life in the Italian Renaissance is a subject beyond the scope of the present study. An examination of his unpretentious contribution to the penitential genre proper can hardly do justice to him in that respect. Savonarola touched upon economic subjects in his political and philosophical works. They are less in evidence in his pastoral writings. Anyhow, *Della semplicità della vita cristiana* is not, strictly speaking, a penitential handbook, nor can his brief work on the ten commandments be thus classified. There remains his *Confessionale*, which was published, under various titles, a number of times in the sixteenth century.<sup>63</sup> After a fairly long introductory part on procedural and institutional matters and before a brief concluding part on absolution, the author presents an interrogatory primarily structured on the commandments, with the capital sins and other subjects neatly interwoven. Thus, a discussion of avarice appears under the heading of Theft. Avarice, in the sense of an inordinate love of wealth, is described as a sin against one's neighbour and against God in the terms used by Bartolomeo of San Concordio, though neither Bartolomeo nor Aquinas (the original source) is cited.<sup>64</sup> Among expressions of avarice, the author devotes two pages to usury and one page to buying and selling. The latter must comply with the equality of commutative justice, which can be established by law, by custom, or by prudent judgement. It is not punctual, a slight excess or defect does not violate justice. It is possible to distinguish five price levels, a deficient price, a moderate price, a highest (*summum*) price, which is not to be exceeded, an excessive price and a superexcessive price, which is notably higher than the *summum* price. If a price this high is charged,

<sup>60</sup> Op. cit.; f.65r-v.

<sup>61</sup> F.65v.

<sup>62</sup> F.66r-v.

<sup>63</sup> This work is a perfect example of a bibliographer's headache regarding early printed books of this kind. I compared the edition used, *Confessionale pro instructione confessorum*, Venice 1524, with the *Introductorium confessorum*, Paris 1510, and the *Eruditorium confessorum*, Paris 1517. The incipits and the texts of the sections referred to are identical.

<sup>64</sup> *Confessionale*: f.35v.



restitution is due.<sup>65</sup> Savonarola uses these different price levels to explain permissible differences between cash and credit sales. They recall a threefold scheme adopted by Antonino of Florence.<sup>66</sup>

### *Summary*

The whole range of textual arrangements are represented in this unequal collection of penitential handbooks by Italian Dominicans prior to 1500. In the case of the major authors, Bartolomeo of San Concordio, Raniero of Pisa, and Antonino of Florence (let alone Albert of Brescia, who copies Aquinas indiscriminately), the Thomistic influence is dominant, though some foreign lines of tradition are in evidence as well. The three authors mentioned received their lists of factors rendering commerce illicit from Raymond of Peñafort. The sinfulness of retaining the wages of labourers is pointed out by Passavanti and by Antonino of Florence. It is mentioned by Thomas Aquinas in the *Summa theologiae*, but this tradition on wages is older. Antonino, followed by Teodoro of Sovico, condemn abuses of the truck system. The discussions of fraud tend towards the practical approach of Aquinas. The justification of commercial profit as a reward for labour is of Thomistic origin as well. The common estimate as a just price criterion is less in evidence, but it is implied by the condemnation of collusion and/or monopoly emphasized by a number of the Italian Dominicans, either with reference to Hostiensis or in a more or less extensive rendering of the tradition on *Quicumque*. This tradition is apparently received in the version of Ulrich of Strasbourg, who brings out the coercive aspect of “inducing dearth” more clearly than the canonists. Bartolomeo, Raniero, Antonino and Teodoro all state explicitly that customers encountering monopolistic power are *forced* to buy on conditions dictated by the sellers. The fundamental conception of the nature of sin in the economic sphere that combine these heterogeneous contributions to the Italian Dominican tradition is wholly Thomistic. Avarice is a sin against one’s neighbour as well as a sin against God and thereby—though only Raniero spells it out explicitly—a sin against oneself as well.

<sup>65</sup> Ibid.: f.38r.

<sup>66</sup> Antonino, *Summa theologica*, II,1,8,1: 126.

## CHAPTER EIGHT

### THE FRANCISCAN TRADITION: NICOLÒ OF OSIMO, BARTOLOMEO CAIMI, PACIFICO OF CERANO

By and large, fifteenth-century penitential literature in Italy after Bernardino of Siena was dominated by other Franciscan authors, mainly of the Observance. Their contributions greatly outweigh that of the Dominicans reviewed on the concluding pages of the preceding chapter as well as that of some miscellaneous authors to be presented in Chapter 12. The late Franciscan tradition is the subject of this and the following three chapters. It culminated with the large alphabetical summas of Angelo Carletti and Battista Trovamala, each of whom rates a chapter of his own. They are followed by a review of a series of minor and later works. The present chapter is shared by three earlier authors, all of whom made major contributions that, for different reasons, stand out among works for the internal forum. Nicolò of Osimo chose to supplement a medieval summa rather than write his own. Pacifico of Cerano composed the only comprehensive Italian summa in the native tongue rather than in Latin. In doing so he drew extensively, in the main chapters dealing with trade and price, on the slightly earlier interrogatory of Bartolomeo Caimi, arguably the most useful and formally elegant of all the late medieval and early Renaissance handbooks for confessors.

A native of the city of that name (in the March of Ancona), Nicolò of Osimo studied at Bologna and graduated doctor of law. Shortly afterwards, however, he abandoned his plan to practise jurisprudence, joined the Franciscan Observants, and turned to the study of theology. He made the acquaintance of Bernardino of Siena and became one of the Saint's staunchest supporters and helpmates in the effort to reform the Order as well as in the revival of religious and moral life among the Italian laity. He died in the convent of Ara Coeli in Rome shortly after the middle of the fifteenth century.<sup>1</sup> Having earned renown

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<sup>1</sup> On the life and works of Nicolò of Osimo, see the study by Picciafuoco; as well as Schulte II, 435–7; Wadding 176; Sbaraglia II, 266–8; Stintzing 526–9; Dietterle,

as a preacher, Nicolò of Osimo left several collections of sermons. He composed a commentary on the Franciscan rule and a number of other theological, ascetic and canonistic works. His varied academic training and his practical experience were eminent qualifications for an author of works for the internal forum. Three such works dealing, in full or in part, with confession must be mentioned, but only one of them is of material relevance to the present study.

Nicolò's *Quadrige spirituale*, composed in the vernacular, is a catechetical work on the duties of the Christian life. It was printed four times in the fifteenth century. Its four parts deal, respectively, with faith, works of faith, confession, and prayer. Despite its title, Part III is beyond the scope of our study because it is mostly in the nature of a general treatise on confession, explaining what it means and which cases should be reserved for the bishop or the pope.<sup>2</sup> The Latin *Interrogatorium confessionum* is a straightforward penitential handbook. If it yields little to our purpose, this is partly due to its general character as well, and partly to its brevity; in the manuscript consulted, it covers a mere seven leaves.<sup>3</sup> On these leaves, the author provides instruction for the confessor regarding his conduct before, during, and after hearing confession. It lives up to its title insofar as the priest is advised to examine the confessant regarding the articles of faith, the sacraments, the capital vices, the commandments, and the works of mercy; however, the work does not contain a detailed interrogatory such as is encountered in many other works bearing that title, where the conscience of the confessant could be minutely tested against a battery of sins arranged under one or more of these various headings. In this work, Nicolò of Osimo does not descend to any specific sin except as regards the handling of manifest usurers<sup>4</sup> and on the subject of fornication.

Nicolò's handy guide to confessional conduct and procedure would thus serve its purpose better if the priest had some additional text

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ŽK 27 (1906) 183–8; Moorman 450–2; Michaud-Quantin, 1962, 62–6, 115; Bloomfield-Guyot 5033; BBKL 6 (1993) 921–3; LTK 7 (1998) 861. Note that the person is often hidden in bio-bibliographical texts and catalogues behind quaint Latinized spellings of his local surname, e.g. Ausmo, Auximo, etc.

<sup>2</sup> Ed. consulted: Iesi 1475. Unjust prices and other forms of fraud are mentioned in Part II: f.82r.

<sup>3</sup> Bologna BArch A.241. Twelve manuscripts are listed by Picciafuoco 112–3. Considerable textual variation is suspected. A printed edition, Venice 1489, is mentioned by Wadding and others, but no copy has come to light.

<sup>4</sup> MS cit., f.215ra, f.216ra.

at hand for consultation on specific sins or difficult cases, for instance, one of the systematic or alphabetical summas of the preceding century. Nicolò proves to have had an intimate knowledge of two such works, namely, the *Summa confessorum* of John of Freiburg and the *Summa Pisana* of Bartolomeo of San Concordio. It is tempting to speculate that he found these works somewhat out of date, and that he set out to bring ethical theory in the internal forum up to date by composing his own *Supplementum*. By far his most important work, it was finished in 1444. Its title does not, of course, refer to its usefulness as a companion volume to his own brief *Confessionale*, but rather to its particular editorial construction. While opting for an alphabetical arrangement, Nicolò did not compile his own list of articles but adopted those of Bartolomeo, making his own contributions in the form of numerous supplements alternating with the original text within each of Bartolomeo's articles. Many of these additions are quite brief, but some go on at greater length than the pieces of text that invite them. Nicolò of Osimo's *Supplementum Summae Pisanae* became one of the most popular penitential handbooks of the fifteenth century. Bartolomeo's rather dull work owes much of its publishing success to its association with the *Supplementum*. In the numerous printed editions, they regularly appear together.<sup>5</sup> This combined work is of interest to the historian because doctrinal changes and developments in the course of the intervening century can be examined subject by subject throughout the volume.<sup>6</sup>

In some brief notes to the article *Dolus* where Bartolomeo discussed causal and incidental fraud, Nicolò is mainly concerned with pointing out that the doctrine presented is also to be found in the *Summa confessorum* of John of Freiburg. When Bartolomeo, in other articles, copies Thomistic material, Nicolò likewise frequently notes that his immediate source is John. Formal corrections of this kind are the purpose of many of Nicolò's "supplements". Thus, in the article *Emptio et venditio*, where Bartolomeo cites the canon *Hoc ius* in support of Aquinas regarding the indeterminacy of the just price and on the restriction on deception in the internal forum, Nicolò notes that the proper locus is not in the text of the law but in the *Glossa*

<sup>5</sup> Ed. used: Venice 1482 (as in the case of the *Summa Pisana*).

<sup>6</sup> The article on usury was recently subjected to a study along these lines; cp. Durissini, 1994.

*ordinaria*.<sup>7</sup> Similarly, to Bartolomeo's list, in the article *Negotiatio*, of factors rendering commerce illicit (cause, time, person, and place), Nicolò adds manner (*modus*), citing Hostiensis through John of Freiburg.<sup>8</sup> Nicolò also made contributions of his own, however, or drew on canonistic sources directly. Treating conventionally of the subject of lawful and unlawful commerce in the article *Emptio et venditio*, he cites Aquinas and John of Freiburg, as well as the canonist Peter of Ancarano on the *Sext*, to the effect that resale at an increased price is not excused by a proper purpose unless the goods in question are altered in some way, either as to form, as to time, or as to place. He then adds that alteration as to form may be said to have taken place if the goods are bought wholesale and sold retail, for large quantities can usually be got cheaper.<sup>9</sup> To Bartolomeo's brief reference to monopoly and collusion among merchants, there is a long note in which a large portion of the title on monopoly in the *Code* is quoted verbatim.<sup>10</sup> On the subject of lies and perjury in commerce, there is another lengthy addition to a brief piece of text. Nicolò notes that profiting by such means may sometimes be a mortal sin and sometimes only a venial sin. He then proceeds to draw on some prominent authorities on the just price, apparently via John of Freiburg in a sequence of the *Summa confessorum* bypassed by Bartolomeo of San Concordio. William of Rennes is quoted on the lawfulness of a moderate profit, to be estimated by a good man, because the amount of such profit cannot be determined exactly. As an alternative to a good man's estimate, Nicolò suggests, following Hostiensis, that merchants consult the opinion of the Church on the question of a lawful reward for their labours and expenses.<sup>11</sup> These quotations are repeated in the article *Negotiatio*.<sup>12</sup>

By far the most significant contribution to trade and price doctrine in Nicolò of Osimo's *Supplementum* consists of a single sequence,

<sup>7</sup> *Supplementum*, art. *Emptio et venditio*: f.127rb; cp. *Glossa ordinaria* to *Decretum*, II,10,2,2: Bamberg SB Can. 13, f.107va (Johannes Teutonicus); Basel 1512, f.186vb (Bartolomeo of Brescia).

<sup>8</sup> *Supplementum*, art. *Negotiatio*: f.278vb; cp. Hostiensis, *Summa aurea*, to X.III,17, n. 7: f.149rb.

<sup>9</sup> *Supplementum*, art. *Emptio et venditio*: f.127va; cp. Peter of Ancarano, *Lectura super sexto libro Decretalium*, V,5,1: Lyon 1543, f.135rb.

<sup>10</sup> Art. cit.: f.128rb; cp. C.4,59.

<sup>11</sup> Art. cit.: f.128va; cp. John of Freiburg, *Summa*, II,8,18: f.93rb; William of Rennes, *Glossa* to *Summa Raimundi*, to II,8,5: 248; Hostiensis, *Summa*, to X.V,38, n. 61: f.286vb.

<sup>12</sup> *Supplementum*: f.279ra.

covering almost three columns in the printed editions, in the part of the article *Usura* that deals with usury in buying and selling.<sup>13</sup> It is prompted by a paraphrase of the decretals *In civitate* and *Naviganti*. In order better to understand these matters, Nicolò observes, regard should be paid to three different points. The first point concerns the means by which one can recognize whether a certain price is just. In reply to this question it can be said that the just price of a thing is the price the thing can commonly fetch in a given place by instant settlement. Nicolò refers to a place in the *Digest* of Justinian, where it is stated that “the values of things are not to be taken with respect to the disposition or the utility of single persons, but commonly” (*pretia rerum non ex affectu nec utilitate singulorum, sed communiter funguntur*).<sup>14</sup> Not unreasonably, however, this formula may be abandoned in the face of certain maliciously motivated obstacles. Such is the case if usurers or some others with money at hand, sell their wares on credit in order to profit more, so that honourable merchants are unable to sell, even at a just price. A different sort of impediment may be applied by a tyrant or powerful person who, without reasonable cause, sets a limit to the price or prevents the transport of merchandise to some other place. But neither civil law nor canon law demands submission to malice.<sup>15</sup> Furthermore, when considering what is a just price, account may be taken of the merchant’s labours and expenses. This should be understood to apply unless, in the place where the sale is conducted, there is another common price, not one introduced from malice as in the case explained above, but one deriving from the conditions of the time or of the trade in question. Thus, for instance, grain and wine tend to be valued at a lower price at the time of harvest and vintage, and likewise in other cases. When goods are abundant, they are sold for less; when penury occurs, they are sold for more. Just as a merchant may raise the price because of such variations in time and place, thus, also, he ought to lower it. The law states that price is to be considered with respect to place and time, not only as to increase, but also as to decrease.<sup>16</sup>

The second and third parts of Nicolò of Osimo’s lengthy supplement to Bartolomeo’s paraphrase on the two decretals deal primarily with

<sup>13</sup> *Supplementum*: ff.480rb–481ra.

<sup>14</sup> D.35,2,63,pr; also, almost verbatim, at D.9,2,33,pr.

<sup>15</sup> Nicolò refers to D.6,1,38 and to X.IV,11,2.

<sup>16</sup> D.12,1,22; D.50,17,10.

credit sales but are relevant to trade and price doctrine because of Nicolò's use of certain legal principles that apply in the case of instant sales as well. One of the questions asked in the second part is whether a seller is obliged to restore certain profits made from sales involving time. This obligation depends on a number of factors, but if there is doubt on this issue on the seller's part, he should make restitution, because, as the law states, "anyone is lord and master (*moderator et arbiter*) of his own thing",<sup>17</sup> and in case of doubt, the safest counsel should be followed. In the third part, Nicolò argues that a seller who charges more on credit than the current price of a certain commodity though not more than its just value, does not commit usury if his purpose is merely to obtain his rightful due, that is, the just price. To this solution the author rhetorically objects that such a situation, namely, selling on credit at a just price that is higher than the present price, is an impossibility, because a thing is worth the amount at which it can be sold at present. But this objection is invalid, for a thing is worth the amount at which it can be sold according to the common course, not in a single event. A person cannot be said to sell at a just price if he charges more than others commonly do, perhaps because of his buyer's greater desire or need of the good in question. By the same token, a seller is not paid a just price if the price he gets is lower than that which is commonly charged by other sellers, which may happen when the seller is in need or is unable to hold on to his goods as long as others can, and the like. The latter statement is rephrased on the opening lines of the following supplement: If a seller reduces the price because of need, the deal is unfair.<sup>18</sup>

The just-price theory propounded by Nicolò of Osimo, though confusingly presented, is reasonably consistent and clearly more advanced than those found in any of the previously reviewed penitential handbooks. In the long note on usury, as well as in a note on buying and selling, Nicolò mentions labours and expenses as norms of price calculation. He does not hold a simple cost theory, however, for cost coverage is evidently overruled by the working of the market. The word "market" is not used, but in Nicolò, as in other early authors, the repeated references to a "common price" may be taken to at least suggest this inference. A merchant has a

<sup>17</sup> C.4,35,21; cp. C.4,38,14.

<sup>18</sup> *Supplementum*, art. cit.: f.481ra.

right, to some extent, to profit from occasional variations in supply and demand—temporal, including seasonal, as well as spatial variations. He may take steps to evade unlawful restrictions on trade and price, even to the extent of secretly removing his goods from the region in order to make a better bargain elsewhere. On the other hand, the merchant has a duty, under certain circumstances, to relinquish opportunities to profit and reduce the price asked. This is stated explicitly in the long note on usury just quoted, and it is confirmed by the quotation from the *Code* on monopoly. The balance of right against duty in price setting is not clarified in the first part of the note on usury. Some limits in both respects may presumably be sought by recourse to a good man's estimate or to the advice of ecclesiastical authorities. The obligation to abstain from questionable profit is heavily underscored by Nicolò's remarkable interpretation, in the middle part of the note on usury, of the legal principle that anyone is "moderator and arbiter" of his own thing. This statement in the *Code* is usually considered to be one of the mainstays of the theory of property rights: anyone may do whatever he wishes to do, with what he owns. Nicolò insists that, in the economic sphere, though there is freedom of choice, freedom sometimes engenders duty, not right.

The "moderator and arbiter" principle is related to, and confirmed by, the maxim that states that "a thing is worth the amount at which it can be sold" (*res tantum valet quantum vendi potest*). With emphasis on *can*, this proposition is usually read as a legitimation of the use of economic power. It is not stated anywhere in the *Corpus iuris civilis*, but the text of the *Digest* repeatedly invites it, and it appears in at least five different places in the *Glossa ordinaria* of Accursius,<sup>19</sup> including the two places where value is related to a common assessment rather than a single person's disposition or utility. In both instances the commonality principle is stated by way of an addition to the maxim. The wording is nearly identical: "A thing is worth the amount at which it can be sold, understood (or 'that is') commonly" (*Res tantum valet quantum vendi potest, intellige* (or 'scilicet') *communitè*). With this addition, it is ascribed, in a number of early manuscripts, to Azo, the teacher of Accursius.<sup>20</sup> This is the version of the maxim

<sup>19</sup> D.9,2,33,pr; D.13,1,14,pr; D.35,2,63,pr; D.36,1,1,16; D.47,2,52,29: *Corpus iuris civilis cum commentariis Accursii*, I,1042; 1344; II,1597; 1648; III,1301.

<sup>20</sup> The gloss is signed Az. for Azo at D.9,2,33,pr in Paris BN lat.4458, f.75va; 4460, f.99rb; 4465, f.100rb; 4466, f.123vb; Bamberg SB Jur. 13, f.128rb; and in other manuscripts of the *Digestum vetus* with the *Glossa ordinaria*.



that Nicolò of Osimo, in the third part of his note on usury, paraphrases and repeatedly associates with the absence of economic coercion. The price at which a commodity is commonly bought and sold is a just price; a price is unjust if it is higher or lower than this common price, because of the buyer's or the seller's need. Nicolò does not say how this can happen but the inference is patent: A price higher or lower than the common price will only be paid when the transaction takes place under circumstances in which the party exploited lacks competitive alternatives, perhaps because he finds himself in an isolated situation without access to a market, or indeed because of interference with the competitive functioning of the market, by way of forestalling or regrating, collusion or monopoly.

The *Supplementum Summae Pisanæ* was finished in the year of the death of Bernardino of Siena. Though Nicolò of Osimo must have been familiar with many of the ideas and writings of his companion and model, the particular arguments and characteristic phrases of Bernardino, often copied from earlier sources, are not readily recognizable in the articles of the *Supplementum* that deal with trade and price. They found expression, however, in a number of important Franciscan handbooks printed in the last quarter of the fifteenth century. The precise chronological order of origin of these works cannot be established with any degree of confidence. Some of them will have circulated in manuscript for quite some time, and a certain amount of interchange of opinion can safely be assumed to have taken place among the authors before their respective handbooks reached their final printed forms. Except in one or two cases in which I believe the alleged chronology to be false and confusing, I shall make no attempt to identify "firsts" on matters of doctrine. What counts, in terms of earlier influences, is where and how each author drew on certain common sources. Material in principle available to all of them includes the sermons of Bernardino of Siena and the moral summa of Antonino of Florence. Furthermore, it includes medieval theological and confessional works, partly transmitted through the compilations of Bernardino and Antonino. Prominent among these transmissions are the ideas of the late-thirteenth-century Franciscan friar Peter Olivi, who put his stamp on economic thought for centuries, from the moment Bernardino laid his eyes on a copy of Olivi's treatise on buying and selling, usury and restitution. Finally, the source material includes a number of fourteenth- and fifteenth-century commentaries on Roman and canon law. These various influences found their fullest expressions in the huge summæ of Carletti and

Trovamala, published in the 1480s, but they are already in evidence in two handbooks that appeared in print in the preceding decade. I refer to the Latin *Interrogatorium sive confessionale* by Bartolomeo Caimi and the *Somma Pacifica* by Pacifico of Cerano.

Born about 1415 of a noble Milanese family, Bartolomeo Caimi studied at the University of Bologna and graduated doctor of theology. It is not known precisely when he took the habit of the Friars Minor, but it is clear that he advanced rapidly within the ranks of the Order and that he became one of the most distinguished exponents of the Observance. As early as 1449 he was elected vicar of the Milanese province. He died at Milan in 1496. Caimi was a great preacher and an experienced confessor of persons in all walks of life. His *Interrogatorium sive confessionale* was first printed at Milan in 1474 and proved highly successful. There are at least a dozen incunabula editions and some later ones.<sup>21</sup> The Synod of Basel in 1503 mentioned it among books that belonged in the hands of every priest and the Synod of Augsburg in 1548 repeated this recommendation.<sup>22</sup> It is a work of 174 leaves, in four parts. The relatively short first, second and fourth parts deal with the power of the confessor, with confession in general, and with penance and absolution. The interrogatory proper is in Part III, which occupies about four-fifths of the total length of the work. After some notes on procedure, the author in this part first instructs the confessor on how to examine the penitent generally with reference to the articles of faith, the sacraments, the commandments, the capital sins, and the works of mercy, next on how to examine each penitent specifically with regard to his or her social condition, office or profession. The general section of Part III is without a numbered subdivision. It corresponds in places with Chapter X of the *Somma Pacifica*. The section *ad status* consists of nineteen chapters. Merchants are addressed in Chapter 11 and artisans in Chapter 12. Of these two chapters the corresponding Chapters XVII and XIX of the *Somma Pacifica* offer what

<sup>21</sup> My references are to the first edition, checked against the manuscript Bologna BArch A.241. On Bartolomeo Caimi and his work, cp. Schulte II,453–4; Wadding 37; Sbaraglia I,119; Stintzing 531–3; Michaud-Quantin, 1962, 76, 105, 113, 117; Rusconi, 1972, 123–31; DBI 16, 346–7; LTK 2 (1994) 41.

<sup>22</sup> Modern bio-bibliographical notes and studies tend to accept the claim that Bartolomeo Caimi based his conclusions and arguments on those of Angelo Carletti, who is believed to have worked on his *Summa* as early as in the 1450s. There is no clear evidence of such an influence in the sections on trade and price, however, and the two works are presented here in the order in which they first appeared in print.

is basically a more or less close Italian paraphrase. Pacifico inserts the occasional explanatory note and supplies some additional references. Because of these notes and references, and because a sort of commentary is an integral aspect of every translation, the two versions ought to be reviewed together.

The author of the *Somma Pacifica* was born in 1420 at Cerano near Novara in Lombardy and is known in the bio-bibliographical literature both as Pacifico of Cerano and as Pacifico of Novara. Impressed by the person and activity of Bernardino of Siena, he joined the Franciscan Observants in 1445, the year following the death of the Saint. The claim that he studied theology at Paris with brilliant results rests on uncertain evidence. Anyhow, after taking holy orders in 1452, Pacifico embarked on the apostolic mission of an itinerant preacher, following in the footsteps of his great model on the roads and in the cities of Italy, mainly in the North. As in the case of other great preachers, Pacifico's written pastoral work can be seen as a logical extension of his oral sermons. His *Summa* was finished in 1473 and circulated in manuscript until its first edition at Milan in 1479. It was reprinted at least fifteen times at Venice and occasionally elsewhere.<sup>23</sup> Pacifico died at Sassari in 1482. Moved by his ardent apostolate, the people of his birthplace made Pacifico their patron and protector. In 1545 his body was brought home and buried at Cerano. Spreading throughout the area, his cult was confirmed by his formal beatification by Benedict XIV in 1745.<sup>24</sup>

Bernardino of Siena and the other Franciscans of the Observance who continued his program of evangelization, including Pacifico of Cerano, all preached in the vernacular.<sup>25</sup> They saw their primary purpose as that of communicating the message of the Gospel afresh,

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<sup>23</sup> References here are to the first edition. Students of fifteenth-century thought should be wary of late editions revised according to the decrees of Trent. In some areas of doctrine, a systematic study of these revisions may be an interesting research project. Even if they should happen to touch upon the subject of trade and price, they are irrelevant to the present study of pre-Reformation economic ideas.

<sup>24</sup> There is a comprehensive modern biography of Pacifico of Cerano by Stoppa and a useful later biographical article by Babbini. On his life and work, cp. also Wadding 181; Sbaraglia II, 302; Michaud-Quantin, 1962, 75–6, 115; BBKL 6 (1993) 1427; LTK 7 (1998) 1256–7.

<sup>25</sup> Historians of fifteenth-century economic thought have tended, to exclusion, to present Bernardino of Siena on the basis of his written Latin sermons. Records of his oral vernacular sermons in various Italian cities exist, however, and several collections have appeared in print. They lend a life and colour to his preaching that it is a pity to miss.

in a manner capable of raising the hopes and spirits of those who packed the squares of the Italian cities to listen to them. The majorities of these audiences were simple people with little education. So were some of the local priests who would later receive the same persons and guide them through confession. Hence rose the need to supplement oral preaching in Italian with written material in Italian, addressed either to the clergy or to laymen preparing for confession, or to both classes of readers. In the preface to his work, Pacifico states that he had been asked many times to compose a text of this kind "for simple confessors in the mother tongue".<sup>26</sup> Many other penitential handbooks in Italian will be reviewed in later chapters of this study. If Pacifico's contribution stands out among them, it is because of its size. In all but one of its sixteenth-century editions it bears the title of a *Somma* (or *Summa*) and I shall refer to it, for short, as the *Somma Pacifica*. In the three incunabula editions, however, its title is *Sommola* (or *Summola*) *di pacifica coscienza*. The diminutive form must be taken as an expression of modesty; the first edition runs to 243 leaves. The last two words of the title identify the author, but they also indicate (and the lower-case letters, surely deliberate, help indicate) the purpose of the book. I hope, Pacifico states in his preface, that it will serve to bring peace to the conscience.<sup>27</sup>

The plan of the *Somma Pacifica* is that of many briefer manuals, built to a much larger scale. The work consists of thirty-three chapters. There are three introductory chapters on how the confessor ought to receive and interrogate the penitent before confession, on how he ought to instruct and encourage the penitent to confess himself fully and on the circumstances necessary for confession, and on how he ought to interrogate the penitent regarding the articles of faith and the sacraments of the Church. Then follow seven chapters organized according to a combination of the commandments and the principal sins. Thus, Chapter IV deals with the first commandment and with pride and vainglory. Chapter V with the second commandment and with blasphemy and malediction, etc., until Chapter X, whose subject is the seventh and tenth commandments, avarice and works of mercy. The following fifteen chapters address the penitent *ad status*. There is a chapter on merchants and their

<sup>26</sup> *Somma Pacifica*: f.1r.

<sup>27</sup> Op. cit.: f.1v.

associates (XVII), one on bankers and their customers (XVIII), and one on craftsmen and their workers as well as farmers (XIX). Chapter XXVI reviews the material of the preceding chapters according to their numbers. The subjects of the seven concluding chapters are the power and knowledge of the confessor, reserved cases, the privileges of the mendicants to hear confession, confession of the sick, the imposing of penance, absolution and satisfaction, and the benefit of a true confession. These chapters contain nothing of direct relevance to trade and price theory. Those relevant are Chapters X, XVII, XIX, and XXVI. I shall discuss them in that order, tying the former three chapters in with the corresponding sections of the *Interrogatorium* of Bartolomeo Caimi.<sup>28</sup>

Like the Dominican authors presented in the preceding chapter, Caimi (in the general section of Part III) and Pacifico (in Chapter X) quote Aquinas on avarice and associate this sin with economic activity. It is a mortal sin if a desire of temporal riches ascends to such heights that a person is prepared to act against his love of God and his neighbour.<sup>29</sup> Masters and merchants may succumb to it. If a person hires someone for some work or service, it calls for restitution of all loss if he pays a wage that is much too low, or if he pays it much too late, or if he pays it in other things than money, things that those who receive them must sell at a loss.<sup>30</sup> Both authors here also state brief versions of the tradition on *Quicumque*. Citing Raymond of Peñafort but without naming the canon, they refer to someone who, at the time of harvest or vintage, buys grain or wine or some other produce in order to sell it at a time when it is dearer, not being a merchant of these kinds of good, nor doing it for reason of some necessity or utility but merely in order to hoard it so that others are forced to buy from him and he can sell at his will (*ceteri cogantur ab eo emere et ipse possit ad libitum vendere; li altri siano costretti a comprare da lui et esso possa ad sua voglia & beneplacito vendere*).

<sup>28</sup> The question of chronology is a delicate one. Both works may have circulated in manuscript before printing. In view of the fact that the *Pacifica* is claimed to have been completed in 1473, the respective dates of the first editions do not provide sufficient proof that Pacifico drew on Caimi and not the other way around. A conclusion must be based on a thorough examination of all internal and external evidence. I can offer only one bit of evidence that strongly indicates that Pacifico was in fact the copier. (Cp. note 53 below.)

<sup>29</sup> *Interrogatorium*, III: f.72r; *Pacifica*, X: f.64r; cp. Aquinas, II-II, 118, 4c.

<sup>30</sup> *Interrogatorium*: f.75r-v; *Pacifica*, f.64v.

Such merchants sin mortally, and similarly those who buy up money or other things in order to induce dearth (*ut caristiam inducant; per inducere poverta o carestia*).<sup>31</sup>

In the chapters dealing specifically with the examination of merchants, Pacifico of Cerano starts on a rather more positive note than Bartolomeo Caimi. Pacifico stresses, in terms that recall Aristotle, the mutual benefits of trade between regions abounding and lacking in different goods,<sup>32</sup> whereas Caimi defines a merchant (*negotiator*) as one who, in the words of Pseudo-Chrysostom, profits by buying things and selling them whole and unaltered.<sup>33</sup> From these different points of departure, however, the texts converge and run together, Pacifico's more florid Italian phraseology adding colour to Caimi's sober Latin style. It is most praiseworthy, Pacifico declares ("lawful for laymen", according to Caimi) to engage in commerce for a due and honourable purpose, namely, to provide for oneself and one's family, to support the poor with alms, or to serve the good of the community, so that necessities are not lacking in the region, "but indeed abundant, against the rapacious wolves who will devour everything with their insatiable appetite" (Pacifico), and provided that the merchant does not receive his gain as an end in itself but as a reward for his labour (*quasi stipendium laboris; como mercede di sua faticha*). But a person whose main purpose in trading is a different one, sins mortally, "and especially when the primary end is profit" (Caimi), "avarice or pride or ostentation or lust or envy or the like, even if he otherwise were to conduct business with all justice" (Pacifico).<sup>34</sup> Both authors cite Thomas Aquinas.<sup>35</sup> Pacifico adds Alexander of Hales,<sup>36</sup> "Nicole of Lyre, Matt. 6,<sup>37</sup> and St. Gregory, 18 *Moralium* and St. Ambrose, *Omnes*<sup>38</sup> and *Sicut hi*,<sup>39</sup> and St. Augustine, *Quicumque*,<sup>40</sup> and

<sup>31</sup> *Interrogatorium*: ff.74v–75r; *Pacifica*, f.68r–v.

<sup>32</sup> *Pacifica*, XVII: f.129r–v.

<sup>33</sup> *Interrogatorium*, III,11: f.115r.

<sup>34</sup> *Interrogatorium*, *ibid.*: f.115v; *Pacifica*, *ibid.*: ff.129v–130r.

<sup>35</sup> Thomas Aquinas, *Sum. theol.*, II–II,77,4,c.

<sup>36</sup> Alexander of Hales, *Sum. theol.*, III,490: IV,723.

<sup>37</sup> Nicole of Lyre, *Postilla super epistolas et evangelia*, to Matt. 6.19: Rouen 1497, f.23r–v.

<sup>38</sup> *Decretum*, I,47,3 *Omnes*; cp. Gregory the Great, *Moralia in Job*, XIX,49: PL 76, 129–30.

<sup>39</sup> *Decretum*, I,47.8 *Sicut hi*. Gratian attributes this canon to St. Ambrose of Milan, Sermon 81, but it derives originally from a homily of St. Basil. Gratian's version is a copy of a Latin translation; cp. Homilia III: PG 31, 1752.

<sup>40</sup> *Decretum*, II,14,4,9. Pacifico appears to attribute *Quicumque* to St. Augustine, unless the conjunction is due to an editorial error and Augustine is referred to sep-

Raymond".<sup>41</sup> If a merchant agrees or makes a pact with other merchants, to the effect that all sell at a certain price or that he alone sells a certain thing or merchandise and no one else, such an agreement or such a pact is unlawful according to Hostiensis<sup>42</sup> and the old law on monopoly, which states that those who exercise a monopoly should be deprived of their property and condemned to perpetual exile.<sup>43</sup> If, having secret foreknowledge that ships with cargoes of spices or other commodities have sunk or have come to harm or have been captured, someone buys all such goods in the city or region to which the ships are bound and where they are expected, such activity is unlawful for it is monopoly and incurs the penalty of the said law.<sup>44</sup>

In the following brief paragraph the two authors part company.<sup>45</sup> Both instruct the confessor to ask about usury in sales contract and about the sale of unlawful things like gambling equipment. Pacifico adds, for good measure, everything that merely serves for vanity and pomp, whereas Caimi goes on to include commerce on holidays and in church and commerce by means of lies and perjuries. They then embark upon a lengthy discussion of the nature of the just price, touching upon coercion as well as fraud and seeming to draw both on Bernardino of Siena and on Antonino of Florence, but without naming either of them.<sup>46</sup>

The merchant should be asked whether he knowingly has sold his goods at more than the just price or bought another's goods at less than the just price. If the price of these goods is set by the authorities, it is not lawful to sell for more or to buy for less. If there is no such established price, it is lawful for anyone to sell goods as they are commonly sold in that place where they are sold "at the time of the contract" (Caimi), according to the Gloss on *In civitate*<sup>47</sup> and to Antonio of Budrio.<sup>48</sup> If someone knowingly sells for more or buys for

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arately, for instance in *Enarrationes in Psalmos*, to Psalm 70,15: PL 36, 886 (quoted by Alexander of Hales, loc. cit.).

<sup>41</sup> Raymond of Peñafort, *Summa*, II,8,1: 558–9.

<sup>42</sup> Hostiensis, *Summa aurea*, to X.1,39, n. 4: f.65va.

<sup>43</sup> C.4,59.

<sup>44</sup> *Pacifico*: f.130r; paraphrasing *Interrogatorium*: loc. cit., with the references.

<sup>45</sup> *Interrogatorium*: ff.115v–116r; *Pacifico*: f.130r–v.

<sup>46</sup> *Interrogatorium*: f.116r–v; *Pacifico*: ff.130v–131r.

<sup>47</sup> Bernard of Parma, in *Decretales Gregorii IX cum Glossa ordinaria*, to X.V,19,6: Mainz 1473, f.269va.

<sup>48</sup> Antonio of Budrio, *Lectura super quinto Decretalium*, to ibid.; Venice 1578, f.63vb.

less, he is obliged to make satisfaction for the loss to the injured party “if it is notable” (Caimi), “according to an estimate, not an exact point” (Pacífico), as explained by St. Thomas<sup>49</sup> and by Scotus.<sup>50</sup> If it is done in ignorance or by an error in estimating how much a thing is worth, albeit no sin is then committed, satisfaction to the loser is nevertheless due, unless he is a person of particular acuteness “and one familiar with that trade” (Pacífico), who is not compelled to make that contract by poverty or need (*ad hoc necessitate vel paupertate coacta; constretta ad tale contracto per poverta o per altra inevitabile necessita*),<sup>51</sup> for then it is not likely that he was deceived (*deceptus; inganato*) when paying the excessive price but consented voluntarily (*voluntarie consentit; pur voluntariamente consente*), and to him who consents, neither injury nor fraud is done, as stated in the rule *Scienti* of the *Sext*.<sup>52</sup>

If the excess is a very small one, however, and the seller in good faith believes that his price is just, albeit a rigid one, “that is, a bit too high” (Pacífico), there is no sin and no obligation to make restitution. But if a seller or a buyer, against his conscience, has raised or lowered the price, even by a small amount, he sins, at least venially, for in conscience every deception and fraud (*omnis deceptio et fraus; ogni deceptione et ingano*) is sinful, and the profit in question must be given to the poor.<sup>53</sup> This obligation stands regardless of what is stated in the decretal *Quum dilecti*,<sup>54</sup> namely, that it is lawful for merchants mutually to deceive each other (*invicem decipere; insiema inga-*

<sup>49</sup> Thomas Aquinas, *Sum. theol.*, II-II, 77, 1, ad 1.

<sup>50</sup> John Duns Scotus, *Comm. Sent.*, IV, 15, 2, 15: 283.

<sup>51</sup> These lines smack of Peter Olivi via Bernardino of Siena; cp. the versions of Angelo Carletti and Battista Trovamala recorded in the following chapters.

<sup>52</sup> *Sextum Decretalium*, V, *De regulis iuris*, Regula 27: “Scienti et consentienti non fit iniuria neque dolus”. Pacífico renders the rule both in Latin and in the vernacular.

<sup>53</sup> One of the authorities cited by Caimi and Pacífico at this point is at first sight troublesome. They refer to *Decretum*, II, 14, 5, 14 and to Gerald Odonis and “Jo. de ripole”. The lines recalling Olivi could well derive from Odonis (cp. *De contractibus*, Q.4: Siena BCom U.V.8, f.81v, where Odonis draws on Olivi), rather than from Olivi via Bernardino, who used both. As to the last-mentioned reference, recourse to the manuscript tradition solved the puzzle. In Bologna BArch A.241, which, among other things, contains Caimi’s *Interrogatorium*, the reference in question is to “Jo de neapolis” (f.129ra). Checking the *quodlibet* collections of the fourteenth-century Dominican John of Naples, I found that Caimi’s true reference is to *Quodl.* IV, 18: Naples BNaz VII.B.28, ff.64va–65ra, where the author discusses the question of the just price, drawing copiously on Thomas Aquinas. This correction supports the hypothesis that Pacífico of Cerano drew on Bartolomeo Caimi and not vice versa, and that Pacífico used a corrupt text (perhaps that of the first edition) of Caimi’s *Interrogatorium*.

<sup>54</sup> X.III, 17, 3.



narse)<sup>55</sup> up to one-half of the just price. Granted that civil litigation is restricted to excesses beyond the one-half limit, “because the law is given to the community in which there are many who are imperfect” (Pacífico), divine law leaves no injustice unpunished, and a price is unjust if equality is not observed. On the aforesaid consider the opinions of Innocent<sup>56</sup> and Antonio of Budrio<sup>57</sup> on the *Decretals* and the Gloss<sup>58</sup> and the Archdeacon<sup>59</sup> on the *Decretum*.

Pacífico, following Caimi, goes on to quote Aquinas<sup>60</sup> and Scotus<sup>61</sup> on the “double rule” of just pricing, “Chrysostom” (through Alexander of Hales) on the unlawfulness of selling a good “whole and unaltered” at more than was paid for it, Alexander<sup>62</sup> and Scotus<sup>63</sup> on lawful profit on goods transported by the merchant with labour, stored with risk, or improved with industry, and Hostiensis once more on monopoly.<sup>64</sup> The subject of defective merchandise and the obligation to reveal defects is also discussed in the chapter on the examination of merchants. Aquinas is much in evidence albeit quoted sparingly.<sup>65</sup> If a merchant sells inferior or corrupt goods for precious and pure ones, and does so knowingly to deceive or intending to deceive his neighbour (*hoc scienter facit si decipit vel decipere intendit proximum; scienter inganando o intendendo dinganare lo proximo*), he sins mortally and is obliged to make restitution, but not if he acts in ignorance. If no risk or loss befalls the buyer, and the just price is not exceeded or merely exceeded by a small amount, and the buyer is a prudent person, and the good is offered in advance for his inspection, “and he is not forced by unavoidable need (*per inevitabile necessita constricto*)

<sup>55</sup> Pacífico’s translation here and in the sequence is interesting. The adverb *insiema* (modern Italian *insieme*: “together”, “simultaneously”) would be surprising were it not for the fact that Pacífico strives to keep his language on a colloquial level. The reflexive verb *inganarsi* (Pacífico: *inganarse*) means “to be mistaken”, but his repeated use of the noun *inganno* (*ingano*: “deceit”, “deception”, “trick”, “fraud”), and the transitive verb *ingannare* (Pacífico *inganare*: “to deceive”, “to cheat”, “to swindle”), leave no doubt that he is here concerned with intentional actions and not with passive states.

<sup>56</sup> Innocent IV, *In quinque libros Decretalium*, to X.V,19,6: Lyon 1562, ff.196rb–va.

<sup>57</sup> Antonio of Budrio, *Lectura super tertio Decretalium*, to X.III,49,8: Venice 1578, ff.204ra–205rb.

<sup>58</sup> See references in note 7 above.

<sup>59</sup> Guido of Baiso, *Rosarium super Decreto*, to II,10,2,2: Milan 1508, f.192vb.

<sup>60</sup> Aquinas, *Sum. theol.*, II–II,77,1,c.

<sup>61</sup> Scotus, *Comm. Sent.*, IV,15,2,16: 289.

<sup>62</sup> Alexander, *Sum. theol.*, III,490: IV,724.

<sup>63</sup> Scotus, *Comm. Sent.*, IV,15,2,22: 317–8.

<sup>64</sup> *Interrogatorium*: ff.116v–117r; *Pacifica*: f.131r–v.

<sup>65</sup> Cp. *Sum. theol.*, II–II,77,2–3.

to buy that good" (Pacífico), the seller is not obliged to point out a defect, especially if he does not hide it but merely seeks to obtain a just price.<sup>66</sup>

Fraud (*fraus; ingano*) in selling or buying as to quantity in terms of weight, number, or measure is mentioned briefly, and some numerical examples are given. In all such cases, if the buyers are defrauded in the just price (*in iusto pretio fraudantur; sonno del iusto precio inganati*), those who thus knowingly deceive (*scienter sic decipiunt; cosi scienter inganano*), sin mortally and are obliged to make satisfaction to the loser or, if the loss is a minor one, to the poor. It should be noted, however, that there is not, properly speaking, any fraud involved, and therefore no mortal sin, if such practices are common and known to all those involved.<sup>67</sup> In the case of barter (*permutatio rei ad rem quod vulgariter dicitur barato; permutatione de cose cioe barato*), one party can deceive the other either as to quality or as to price, and the principles that apply are the same. If there is fraud (*fraus, ingano*) only on the part of one of the exchangers who, for instance, knowingly gives the other a defective thing in return for a faultless thing, he sins mortally and should recompense the other. If both intend to cheat the other by giving bad merchandise for good, neither being aware of the other's fraud, both sin mortally by evil intention. As to satisfaction, however, recompense should merely be given so that neither is obliged to the other but both are equally cheated. Again, the rule of the *Sext* applies. If both parties know from experience that such practices are common, there is no fraud and neither party is obliged to the other.<sup>68</sup>

The chapters on the examination of merchants also contain a section on wages.<sup>69</sup> The authors point to the grave sin of paying labourers later or less than agreed upon or paying them in false money. They then proceed to paraphrase Antonino of Florence on abuse of the truck system, without quoting him by name.<sup>70</sup> On this subject, Pacifico, often more explicit on economic coercion, goes much further than Caimi in condemning it. If labourers are hired at a certain wage and, in lieu of money, are paid in certain victuals, the

<sup>66</sup> *Interrogatorium*: ff.117v–118r; *Pacifica*: f.132r–v.

<sup>67</sup> *Interrogatorium*: f.118r; *Pacifica*: f.132v.

<sup>68</sup> *Interrogatorium*: f.118r–v; *Pacifica*: ff.132v–133r.

<sup>69</sup> *Interrogatorium*: f.119r; *Pacifica*: ff.133v–134r.

<sup>70</sup> Cp. references in Chapter 7, note 57.

employer must make good any loss suffered by the labourers on this account. If they were hired on the agreement that one part of their wages should be paid in money and the rest in victuals estimated at a just price corresponding to what is paid in money, the arrangement is above reproach provided that the labourers knew and accepted it “and were not forced by need to do so but agreed with their free and spontaneous will (*non erano constretti per necessita cosi fare ma de sua libera et spontanea volunta cosi sono convenuti*), otherwise it would be an act of the greatest injustice, albeit common among avaricious merchants, thus to treat those poor labourers unable to find other employment” (Pacifico). But in the case of labour contracts, as well, the rule applies that no injury is done to one who knows and consents.

Artisans who sell their products are tempted by some of the same sins as merchants. In the respective chapters in which Bartolomeo Caimi and Pacifico of Cerano instruct the confessor on how to examine this and similar classes of persons, some of the subjects recorded above reappear, along with some new ones, generally in a sketchier form. The confessor should ask about moistening products to make them heavier, as sometimes happens in the case of pepper, ginger, saffron, wool, and the like.<sup>71</sup> He should ask about selling one thing for another, rotten for good, old for fresh, worthless for precious,<sup>72</sup> about selling dearer than others commonly do,<sup>73</sup> about selling dearer to simple persons or ignorant persons or travellers (*transeuntes; viadanti*),<sup>74</sup> and about selling by reduced weight.<sup>75</sup> There are also questions about due payment of wages,<sup>76</sup> but the duty of the master in this respect is countered by that of labourers not to neglect their work and not to cheat those who hired them.<sup>77</sup>

In the summing-up Chapter XXVI of the *Somma Pacifica*, some of these subjects appear for a third time: paying labourers too late or too little or in goods instead of money,<sup>78</sup> entering into monopolistic agreements, overcharging buyers and underpaying sellers, committing fraud in sale or barter, charging more from simple *viadanti*, failing to

<sup>71</sup> *Interrogatorium*: III,12: ff.122v–123r; *Pacifica*, XIX: f.138r.

<sup>72</sup> *Interrogatorium*: f.123r; *Pacifica*: loc. cit.

<sup>73</sup> *Interrogatorium*: f.123v; *Pacifica*: f.138v.

<sup>74</sup> *Interrogatorium*: f.125v; *Pacifica*: f.139r; both quoting the decretal *Placuit*.

<sup>75</sup> *Interrogatorium*: f.127r; *Pacifica*: f.139v.

<sup>76</sup> *Interrogatorium*: f.126r; *Pacifica*: f.140v.

<sup>77</sup> *Interrogatorium*: f.126v; *Pacifica*: ff.141v–142r.

<sup>78</sup> *Pacifica*, XXVI: f.180v.

work faithfully for one's pay,<sup>79</sup> and much more. This chapter, Pacifico explains in the introductory lines to it, is a brief and succinct interrogatory in itself, distilled from all the things contained in his work.<sup>80</sup>

### *Summary*

The works presented in this chapter span the half-century between Bernardino of Siena and Angelo Carletti, being placed either very early or very late within that period. Some familiar themes appear, as well as some important new ones. Nicolò of Osimo reproduces the old list of factors rendering commerce illicit. Nicolò and Bartolomeo Caimi point out that commercial profit requires that things bought should be altered in some way, the former specifying retail sale of things bought wholesale as one form of alteration satisfying this requirement. On the subject of fraud, the authority of Aquinas is surprisingly firm among these Franciscan authors, both as regards his interpretation of the legal doctrine on deception and as regards his practical approach. To illustrate the latter approach, Bartolomeo and Pacifico of Cerano present a catalogue of dirty tricks common among artisans. On the whole, however, there is a more marked focus, in all these authors, on the nature of the just price and on coercion, rather than fraud, as the main factor violating it. Some legal maxims are brought to bear on the discussion. Nicolò of Osimo takes a stand against the libertarian Romanist principles of free bargaining. He defines the just price as the current competitive cash price. It follows that it will vary with time and place. It will not always be available as a guideline. The merchant may then seek the advice of the authorities or of a good man. He may make an estimate based on labour and cost. He may avoid unjust price manipulation by competitors but should make sure, above all, not to exploit the need of others, either as a buyer or as a seller obtaining monopolistic power alone or in collusion with other sellers. These themes reappear and are further developed by Bartolomeo Caimi and Pacifico of Cerano, the vernacular form of the latter inviting a more colourful phrasing of his condemnation of the sin of avarice and its manifestations. They state the double rule of Aquinas and refer both to

<sup>79</sup> Ibid.: ff.189r–190v.

<sup>80</sup> Ibid.: f.175r.

labour and to market factors as bases for estimating a just price. Appeal may also be made to the authorities. Barter is analyzed by analogy with monetary exchange. Equality should be observed in economic exchange, but minor deviations from this norm are permitted, particularly if this is common practice or if the parties know and consent to the terms. Repeatedly, Bartolomeo and Pacifico quote the rule of the *Sext* on this subject. With equal force, however, they emphasize the absence of consent if need or poverty makes one party to a contract accept its terms. *Quicumque* is explicitly cited to this effect, and *Placuit* by implication. It applies to wages as well as to prices. Monopolistic practices are condemned in both areas. The sinfulness of economic coercion is brought home more emphatically in these two, closely related, Franciscan handbooks than in any previous contribution to the genre.

## CHAPTER NINE

### THE FRANCISCAN TRADITION: ANGELO CARLETTI

Among all the penitential handbooks of the fifteenth century, pride of place is commonly given, and rightly so, to the alphabetical *Summa de casibus conscientiae* by Angelo Carletti, known for short as the *Summa Angelica*. Impeccably presenting the state of traditional penitential doctrine on the eve of the Reformation, it became the most widely diffused and influential work of the genre, as well as the most notorious one. When Martin Luther, on 10 December 1520, outside the walls of Wittenberg, burned the papal bull *Exsurge Domine*, some hated books were committed to the flames as well. To represent the penitential literature, the “Summa diabolica” was chosen. By then, Angelo’s work had appeared in upward of fifty printed editions, and many more were to follow. It may be worth noting, however, that Luther would have had little cause to object to the excerpts of the *Summa* discussed here. His own later tract *Von Kaufshandlung und Wucher* proves that the Franciscan and the former Augustinian friar drew, though sometimes through different channels, on a common medieval core of economic ethics.

Angelo Carletti was born into a noble family at Chivasso (on the outskirts of Turin) about 1414. He studied in his native city and later at Bologna, where he is reputed to have graduated doctor of moral and speculative theology and of canon and civil law, though these impressive academic achievements are not fully documented. Upon his return to Chivasso, Angelo briefly held positions in the city administration but, before the age of thirty, he turned his back on secular life and joined the Friars Minor at Genova. During his long life of service in the Order he was, among other things, vicar general of the cismontane Observants. Besides his activity as an administrator, teacher, and preacher, he was repeatedly called upon to undertake missions on the part of the Holy See. Concern with social and economic problems found expression in his efforts to establish *monti di pietà* in the cities of Liguria. Angelo Carletti of Chivasso died in 1495 in a convent near Cuneo, where his mortal remains are preserved in the sanctuary of Santa Maria degli Angeli over-

looking the mountain valley. Renowned during his life for his asceticism and his rigid observance of fasting and penance, he was popularly elevated to the state of the blessed immediately upon his passing. This cult was confirmed by his formal beatification in 1753.<sup>1</sup> The first known edition of Angelo's famous *Summa* appeared at Chivasso in 1486.<sup>2</sup> In the eighteenth century, three other works were belatedly published. They include a treatise on restitution and another one on contracts. The latter is of interest for a comprehensive picture of the author's economic ideas but it is beyond the scope of the present study. The third work deals with the ten commandments and the seven capital vices and was intended for use in the confessional. It appeared at Milan in 1767. I shall refer to it occasionally by way of confirming the doctrines set forth in the *Summa*. Its incipit having been partly erased in the manuscript recovered, it is known, by an abbreviation of the long descriptive title under which it was published, as *Manuscriptum*.

Avarice, Angelo states in the article thus titled, means showing greater deference to gold than to God. It is the root of many sins, including those typically committed in connection with commerce, like usury, fraud, and dishonest gain. It also causes mental disquiet (*inquietudo*).<sup>3</sup> A general discussion of the conditions of lawful commercial activity appears in the article *Negotium*.<sup>4</sup> It is an extended version based on a familiar scheme. Angelo refers to Alexander of Hales,<sup>5</sup> and notes that the canonists Innocent IV,<sup>6</sup> Andreae,<sup>7</sup> and Panormitanus (Nicolò de'Tedeschi, 1386–1445, archbishop of Palermo),<sup>8</sup> are all in agreement with the medieval theologian. In itself, commerce (*negotiatio*) is neither evil nor illicit, but it can be rendered so

<sup>1</sup> On the life and works of Angelo Carletti, cp. Schulte II,452–3; Wadding 19; Sbaraglia I,43–4; Dietterle, *ZK* 27 (1906) 296–310; Stintzing 536–9; Bessone, 1950; Moorman 539–40; Michaud-Quantin 1962, 99–101, 113; Tentler, 1974, *passim*; 1977, 34–6; Ohst, 1995, 221–95; Babbini, 1981, 165–9; Rusconi, 1986, 195; DBI 20, 136–8; LTK 1 (1993) 654–5; Lupano, 1995; Manunta, 1995; Todeschini, 1998.

<sup>2</sup> An alleged edition, Venice 1476, has not been recovered and its existence is questioned. Edition used here: Venice 1487 (Hain 5383; GW 1925—one of two Venice editions of that year).

<sup>3</sup> *Summa Angelica*, art. *Avaritia*, § 4: f.18rb. *Manuscriptum*: 188 has *inquietudo mentis*.

<sup>4</sup> *Summa Angelica*, art. *Negotium*, § 2: ff.269vb–270ra.

<sup>5</sup> Alexander of Hales, *Sum. theol.*, III,490: IV,723.

<sup>6</sup> Innocent IV, *In quinque libros Decretalium*, to X.III,50,1: f.175va.

<sup>7</sup> Joh. Andreae, *Novella super tertio Decretalium*, to X.III,50,1: f.155rb–va.

<sup>8</sup> Panormitanus, *Super Tertio Decretalium*, to X.III,50,1: ff.362rb–363rb.

because of circumstances relating to cause, person, manner, time, place, as well as *commercium* (another word for commercial activity, prolonging the misreading of Alexander). Cause refers to cupidity or some other evil purpose. Those who make profit their ultimate aim, seeking to accumulate riches out of avarice, are “evicted from the temple of Paradise” according to Alexander, Angelo states. One’s own need and the utility of one’s neighbour or the community are legitimate causes of engaging in commerce. Person refers to religious and clerics. Manner refers to fraud and lies “or other pacts” or perjuries. Time refers to holidays. Place refers to locations appointed for divine worship. It is a mortal sin to do business in church except in case of great need or in the case of the sale of candles and the like. Having missed the specific reference invited by the original *consortium*, Angelo takes *commercium* to refer to the activity of professional merchants. They may serve the community by transporting, improving, and conserving goods but harm the community if they merely seek profit, for instance, by buying up the whole produce of grain and later selling it as they please. According to Chrysostom in the canon *Eiciens* and Scotus on the *Sentences*,<sup>9</sup> such practices are damnable.

Some of these themes are developed in other articles. Fraudulence is a recurrent theme. In the article *Emptio et venditio*, Angelo considers the question whether a buyer is obliged to reveal defects in merchandise. Rather than quote Aquinas, he refers to Panormitanus, who is a favoured authority throughout the *Summa*.<sup>10</sup> If a seller knows that a potential buyer would have declined the offer if he knew about a certain defect, for instance, if a horse has such a defect that the buyer would rather be without the horse, it is in no way permitted to conceal the defect. If the buyer would nevertheless have bought the merchandise, albeit not as willingly (*non ita libenter*), then, provided no risk or loss threatens the buyer, and the good is not sold above a price that is just considering the defect, and the buyer is a skilful person, the seller does not sin by not revealing the defect, in that he merely acts so as to obtain a just price. What is said about defects also applies in the case of goods mixed with inferior substances, such as diluted wine. If risk or loss threatens the buyer on account of the defect, however, it must be revealed; otherwise

<sup>9</sup> *Decretum*, I,88,11: cp. Scotus, *Comm. Sent.*, IV,15,2,22: 317–8.

<sup>10</sup> Panormitanus, to *X.III*,19,4: f.141ra–b.



the seller is obliged to make restitution for all ensuing damage.<sup>11</sup> The article *Falsarius* deals, among other things, with counterfeit money. As to those who falsify weights and measures, they are obliged to restore all losses. According to the old rule they should do penance for thirty days on bread and water, but this is now "arbitrary".<sup>12</sup> Several terminological distinctions are made regarding fraudulence. In the brief article *Fraus*, Angelo states that there cannot be *fraus* without *dolus*, but there can be *dolus* without *fraus*. *Fraus* belongs to *dolus* as a species within a genus.<sup>13</sup> In the longer article *Dolus* this distinction is explained by the fact that *fraus* is committed by acts, whereas *dolus* can be committed both by words and by acts.<sup>14</sup>

In the concluding paragraph of the latter article, Angelo makes the further distinction between causal and incidental *dolus* and relates it to *deceptio* and *laesio enormis*.<sup>15</sup> He starts by referring to such prominent authorities as Panormitanus on the *Decretals*,<sup>16</sup> Accursius on the *Code*,<sup>17</sup> and Bartolus on the *Digest*.<sup>18</sup> If *dolus* is the cause of a bona fide contract, the contract is invalid. If *dolus* is incidental to the contract in the sense, for instance, that *dolus* on the part of a buyer enables him to obtain a thing for less than its value, the contract stands but the buyer is obliged to pay up or to return the thing. In the forum of conscience, this holds for any discrepancy, in the external forum only if the seller is deceived beyond one-half of the just price. If *dolus* is neither the cause of the contract nor incidental to the contract, both parties being ignorant about the just price of the thing, the solution will depend on what the buyer would have done if he had known that the thing was worth more than he paid for it. If he would not then have bought it for more, because that was not expedient to him, he has not committed any sin and is not obliged to restore anything. If, however, he would have bought it for more if he had known that it was worth more, and the *deceptio* is notable, he

<sup>11</sup> *Summa Angelica*, art. *Emptio et venditio*, § 8: f.102rb–va. On watered wine and other forms of defects and frauds in buying and selling, cp. also *Manuscriptum*: 184–5 (on avarice).

<sup>12</sup> *Summa Angelica*, art. *Falsarius*, § 11: f.137rb.

<sup>13</sup> Art. *Fraus*, pr: f.148rb.

<sup>14</sup> Art. *Dolus*, pr: f.85va.

<sup>15</sup> Art. cit., § 9: f.86ra–b.

<sup>16</sup> Panormitanus, *Super Tertio Decretalium*, to X.III,17,3: ff.130vb–131ra.

<sup>17</sup> *Codex Iustiniani cum Accursii commentariis*, to C.4,44,2:1014.

<sup>18</sup> Bartolus, *In primam Digesti veteris partem*, to D.4,3,7: 419–24.

is obliged to return the thing or to make good the price. This, Angelo states, is how he understands the canonist Antonio of Budrio.<sup>19</sup> In a brief paragraph of the article *Fraus*, he states that those who know and consent cannot be defrauded, referring to the *Sext*.<sup>20</sup> In the article *Usura*, Angelo states that if a thing is sold on credit for more than the just price, not because of time but for some other reason, the sale is not usurious but unjust, unless it is made with the knowledge and will of the buyer.<sup>21</sup> For this principle, he refers back to the article *Emptio et venditio*, where it also occurs with a further reference to the article *Dolus*, and where knowledge, consent and will are the main criteria underpinning his theory of the just price.

The point of reference in the article on buying and selling is a long paragraph in which Angelo considers the question at what price a thing can be bought or sold.<sup>22</sup> In most of the rest of this presentation of Angelo's economic ideas I shall proceed along the lines of his reply to that question, frequently breaking off to introduce supporting arguments from other articles and paragraphs or to present his legal and theological sources. Angelo first states the principles and conditions of free bargaining, then explains how the just price may be estimated when these conditions are not satisfied. Opinions vary both among legists and among canonists, Angelo notes by way of introduction. Bowing to a better judgement, he will reply the way he understands the teaching of John Duns Scotus.<sup>23</sup> A thing may be sold for as much as the seller can contrive to get for it from the buyer, and it may be bought for as little as the buyer can contrive to get it for from the seller, provided that four conditions are met simultaneously. This formula recalls the value maxim of the Roman law.<sup>24</sup> The first of Angelo's four conditions had been anticipated by the Romanists. It is knowledge (*scientia*), that is, there must be no deception on the part of either party, but both seller and buyer must know the good and its quality and value. Substantively, this condition is a confirmation of what was said in the articles *Dolus* and *Fraus*, but

<sup>19</sup> Antonio of Budrio, loc. cit. in Chapter 8, note 57.

<sup>20</sup> *Sextum Decretalium*, V, Regula 27: "Scienti et consentienti non fit iniuria neque dolus"; cp. *Summa Angelica*, art. *Fraus*, § 3: f.148va: "Fraudare nemo videtur eos qui sciunt et consentiunt".

<sup>21</sup> *Summa Angelica*, art. *Usura*, I, § 61: f.389ra.

<sup>22</sup> Art. *Emptio et venditio*, § 7: f.102ra-b.

<sup>23</sup> Scotus, *Comm. Sent.*, IV,15,2,13-6; 22-4: 282-92; 317-21. Angelo's arguments are only loosely based on Scotus, most likely through Bernardino of Siena.

<sup>24</sup> See Chapter 8, note 19.

it is literally a paraphrase of the commentary tradition on the *Digest*. Angelo refers to the *Glossa ordinaria*. His precise point of reference is not any of the five loci where the value maxim appears in the Gloss, but a sixth one where the text of the law is similar to Angelo's paraphrase of the maxim. A thing held by a man (as a kind of donation) should be estimated at what may be got for it.<sup>25</sup> To this phrase, the *Glossa ordinaria* carries a gloss signed Accursius: "provided the man knows its condition".<sup>26</sup> In the fourteenth century, Bartolus at this locus states the value maxim with this addition, verbatim from Accursius: *Res tantum valet quantum vendi potest, homini scienti eius conditionem*.<sup>27</sup>

The second and third conditions that free bargaining must observe according to Angelo Carletti are freedom of the will (*libertas voluntatis*) on the part of the buyer and the seller, and that each is an intelligent or skilful (*prudens*) person. This means (second condition) that neither of the parties accepts the terms of the contract because of such need as excludes the judgement of his free will (*ex tali necessitate quae excludat rationem voluntarii*), and it means (third condition) that great levity of mind will render a contract unlawful (*magna mentis levitas redderet contractum illicitum*). The original version of these statements, and their transmission to Angelo, can now be established beyond doubt. In the late thirteenth century, the Provençal Franciscan friar Peter Olivi composed a threefold treatise on buying and selling, usury, and restitution.<sup>28</sup> In the very opening question of this work, the author argues against the Romanists' proposition that a thing is worth the amount at which it can be sold. Even after more than a century, the name and ideas of Olivi remained under a cloud because of his (partly undeserved) association with the Spiritual faction of the Friars Minor. When Bernardino of Siena composed his Latin *Quadragesimale de Evangelio aeterno*, he had access to a manuscript of Olivi that is still preserved at Siena,<sup>29</sup> and copied him extensively without ever referring to him by name. These quotations (verbatim or close paraphrases)

<sup>25</sup> D.39,6,18,3.

<sup>26</sup> *Digestum Novum cum Accursii commentariis*, to loc. cit.: 180.

<sup>27</sup> Bartolus, *In primam Digesti novi partem*, to loc. cit.: 197. Also elsewhere in Bartolus's commentary on the Digest.

<sup>28</sup> On the economic works and thought of Peter Olivi, cp. Langholm, 1992, 345–73.

<sup>29</sup> Siena BCom U.V.6, with marginal notes in Bernardino's hand. There are several other manuscripts and two recent printed editions of the questions on buying and selling, but the only version relevant to the penitential tradition is that of the Siena manuscript.

are cornerstones of Bernardino's economic sermons. Some of the material in question appears in the *Summa theologica* of Antonino of Florence as well, but Antonino cannot have been Angelo's immediate source. A comparison of the phrases used proves that Angelo's second and third conditions of free bargaining, being, as it were, modifications of the Romanists' value maxim, are based on Peter Olivi as transmitted by Bernardino of Siena.<sup>30</sup>

Olivi and Bernardino relate lack of will both to need and to mental levity. Angelo merely mentions prudence and levity in a couple of lines but pauses to examine the subject of need and the will more closely. One indication that a transaction has not been made with a free will relates to the nature of the merchandise. Check, says Angelo, whether the thing bought is a basic necessary, such as grain, medicine, wine, clothing, housing, and the like, without which no one can live. Such things are not to be subject to bargaining, but a just price estimate should be used. Attention should also be paid to the fact that there is no free will on the part of a person who has to buy or sell in order to avoid some great damage. If, for

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#### Peter Olivi

... nisi forte consensus eius ex tanta levitate et vitio suae voluntatis apertae et praesumptae procederet, quod nullum aut insufficiens robur iuris et iustitiae habere deberet; aut si ex tanta egestate vel alia necessitate compulsus hoc faceret, quod a mere grata et gratuita voluntate non posset reputari exire ...

... si utriusque partis in tale pretium vel taxationem consensus non possit censi involuntarius ratione ignorantiae et imperitiae, aut ratione alicuius necessitatis ad hoc quodammodo compellentis ...

*in add. marg.*

#### Bernardino of Siena

... si procedit ex ignorantia aut ex mentis levitate aperta sive praesumpta seu ex quacumque magna egestate sive ex quacumque alia magna necessitate ad hoc compellente, ex quibus comprehenditur quod talis contractus non procedit ex mere grata et gratuita voluntate ...

... si consensus utriusque partis in tale pretium vel taxationem non possit censi involuntarius ratione ignorantiae et imperitiae, aut ratione levitatis mentis apertae vel praesumptae, aut ratione cuiuscumque magnae egestatis seu ratione cuiuscumque magnae necessitatis ad hoc quodammodo compellentis ...

Olivi is quoted from Q.1: Siena BCom U.V.6, f.295vb and f.296ra. Bernardino is quoted from Sermo 33,2,7 and Sermo 35,1,3, in *Opera Omnia*, Vol. IV, 157 and 195.

instance, someone is bound to lose a major part of his wealth unless he sells or buys at a certain price, certainly such need and any fear that strikes a steadfast man exclude the freedom of the will. It is otherwise in the case of a lesser fear. The "steadfast man" (*vir constans*) is a Roman law prototype adopted by canon law. In order to assess the significance of Angelo's use of it in connection with buying and selling, we need a brief sketch of the legal theory of force and fear. The medieval canonists, as well as the Romanists, distinguished between absolute force (*vis absoluta*) and compelling force (*vis compulsiva*). Angelo Carletti does not use these particular terms. In a brief article *Coactio*, however, he rephrases the distinction in terms of absolute coercion (*coactio absoluta*) and conditional coercion (*coactio conditionalis*). A person subjected to the former kind of force or coercion is physically unable to resist. If, completely overpowered, his limbs are moved to perform an act that otherwise would have been a sin, he is excused. This type of situation is, needless to say, irrelevant to economics. A person subjected to the latter kind of force or coercion is not physically overpowered. In one sense he is free, in a different sense, he is coerced. Presented with two unpleasant alternatives, he must reject one and perform (or accept) the other. The way Angelo puts it, he "is forced to choose one of the two" (*cogitur ut unum de duobus eligat*).<sup>31</sup> If he performs (or accepts) a sinful alternative, he is not necessarily excused. This is the central issue of canonistic culpability doctrine. With a sword to his throat, a person is told to commit perjury or blasphemy. If he refuses, he dies. If he acts as told, does he sin?<sup>32</sup>

In Roman law, the operative word for this kind of situation is *metus*. It means fear but is both narrower and broader than *timor*. It is the fear or dread of something threatening but can also be used for the object of the dread. In the article *Metus*, Angelo quotes its definition from the *Digest*, "mental trepidation on the ground of urgent or apprehended danger".<sup>33</sup> The fear and the danger can be more or less severe. Just fear (*iustus metus*), Angelo explains, is a fear that can strike a steadfast man (*potest cadere in constantem virum*).<sup>34</sup> This phrase appears frequently in the law and in glosses and commentaries.

<sup>31</sup> *Summa Angelica*, art. *Coactio*, pr: f.43vb.

<sup>32</sup> For a fuller discussion of this subject, cp. Langholm, 1998, Chapter 3, with cases and references.

<sup>33</sup> *Summa Angelica*, art. *Metus*, pr: f.260ra; cp. D.4,2,1.

<sup>34</sup> Art. cit., § 1: loc. cit.

The cases and examples of it there are fear of death, fear of torture, of imprisonment, enslavement, and other forms of physical violence. In civil law, the pertinence of these constructions does not primarily derive from the question of culpability but from the question of the validity of contracts. The *Digest* transmitted two different (though not necessarily contradictory) principles regarding contracts obtained through threats. On the one hand, classical private law did not in general consider fear of physical violence to be incompatible with consent. *Metus* does not remove will, it rather causes the threatened person to change his will: "Although I should not have willed it if I were free, still, being forced, I willed it (*coactus volui*)".<sup>35</sup> That phrase gave birth to a maxim, favoured by Romanists and canonists alike: "forced will is will" (*coacta voluntas voluntas est*).<sup>36</sup>

On the other hand, praetorian law provided certain remedial actions for those having consented under threat. One praetor is quoted saying, "where an act is done through fear, I will not uphold it".<sup>37</sup> These actions would not succeed in the case of all kinds of threat. The standard criterion was that the threat should be such as to strike fear in a steadfast man.<sup>38</sup> Quoting Panormitanus,<sup>39</sup> Angelo Carletti in the article *Metus* discusses the question of the validity of contracts caused by just fear.<sup>40</sup> If a contract thus caused requires free consent (as a contract of buying and selling does), it is *ipso iure* void. Angelo cites the maxim that forced will is will.<sup>41</sup> This is true enough, he replies, but it does not apply to *free* will (*voluntas libera*), and "thus the quality of freedom that is the substance of contracts is lacking". There is not the slightest indication in Angelo's articles *Coactio* and *Metus* that anything other than fear of physical violence is intended, just as there is no such indication in the law. But in his article *Emptio*

<sup>35</sup> D.4,2,21,5.

<sup>36</sup> In the context of culpability doctrine, the canonists, and some theologians, would attribute this saying to St. Augustine (*De spiritu et littera*, 31, 53: PL 44, 234) through the canon *Merito* (*Decretum*, II,15,1,1), but this is correct only as to the sense; the literal phrase is not in Augustine.

<sup>37</sup> D.4,2,1. Historians of Roman law argue that the two fragments quoted are not contradictory because the latter would have been unnecessary in the absence of the former.

<sup>38</sup> On compulsion and contracts in Roman law, cp. Langholm, 1998, Chapter 2, with references.

<sup>39</sup> Panormitanus, *Super Prima Secundi Decretalium*, to X.II,13,17: ff.289ra–291ra; *Super Quartum Decretalium*, to X.IV,1,14: ff.10rb–11ra.

<sup>40</sup> *Summa Angelica*, art. *Metus*, § 7: f.260rb.

<sup>41</sup> Angelo refers to the canon *Merito*.

*et venditio*, in the lines which called for this excursion into legal principles,<sup>42</sup> he draws the crucial parallel. Fear of economic consequences can also strike a steadfast man. Formalized in legal terminology, economic coercion is on a par with physical coercion.

Returning to the paragraph of the article on buying and selling where Angelo lists the conditions that must be satisfied for the price to be left to the bargaining of the parties, there remains his fourth and final condition. It seems to be based on the teaching of John Duns Scotus, though his name is not specifically mentioned there. Angelo states, somewhat cryptically, that the buyer or the seller "must be able to give up what more is due to him". In his commentary on the *Sentences* of Peter Lombard, Scotus points out that it is impossible to determine exactly what a commodity is worth and that the seller and the buyer will have different opinions about the just price. When bargaining is left to them, they may nevertheless, each yielding a little, end up with a price which both consider equitable in view of mutual needs. If they are thus content, they are likely to have remitted what is lacking from the justice they originally sought. Exchange would indeed be difficult if men were not willing to do this, but to the extent that they are, every contract of buying and selling may be said to contain a gift element.<sup>43</sup> To sum up these four conditions: according to Angelo Carletti, pricing can only be left to the bargaining of buyer and seller if there is no exploitation of ignorance, need or imprudence on the part of either party, and if neither insists on his own idea of justice.

If one or more of these conditions are not satisfied, Angelo proceeds, a just price must be established, and anyone who knowingly sells notably above this just price or buys notably below it, sins mortally and is obliged to make restitution. There are two ways in which a just price can be established. One way is by looking to the common estimate. In support of this approach, Angelo refers to the Gloss on the canon *Hoc ius*<sup>44</sup> and to one of the places in the *Digest* where it is stated that the values of things are not to be taken with respects to the disposition or the utility of single persons, but commonly.<sup>45</sup>

<sup>42</sup> *Summa Angelica*, art. *Emptio et venditio*, § 7: f.102rb.

<sup>43</sup> Scotus, *Comm. Sent.*, IV,15,2,15: 283-4; cp. Langholm, 1992, 410-1. The Scotist gift principle is restated by Bernardino of Siena (*Quadr.*, Sermo 35,1,2: 193) and by Antonino of Florence (*Sum. theol.*, II,1,16,3: 257).

<sup>44</sup> See chapter 8, note 7.

<sup>45</sup> D.35,2,63.

The latter reference recurs in the article *Usura*.<sup>46</sup> In the article *Extimatio*, Angelo cites the Romanists' value maxim modified by the same reference.<sup>47</sup> This approach to the just price fails, however, "when there is no commonality of such trade" (*quando non est communitas talis commercio*). It is not quite clear what Angelo means by this phrase. Neither in the paragraph of the article on buying and selling where it occurs, nor in the other articles just mentioned, is there any specific reference to the market. Any association of the just price with the market price in Angelo must be based on inference. Anyhow, when there is no such common estimate, the just price is to be determined by the judgement of a "good merchant", pondering scarcity, labours and risks. There is a strong indication that this conjunction of scarcity with labours and risks is a summary of Peter Olivi through Bernardino of Siena.<sup>48</sup> Thus far Angelo Carletti in the paragraph explaining at what price a thing can be bought or sold.<sup>49</sup>

Some of the themes discussed or touched upon there appear elsewhere in the *Summa Angelica*, and mainly in the article *Usura*. In one of its paragraphs, Angelo indicates what amounts to a notable deviation from the just price. He considers the question whether a merchant or a craftsman is a usurer if he sells for less to a person who pays at once than to one who will pay later.<sup>50</sup> Referring to John Duns Scotus<sup>51</sup> and to Richard of Middleton,<sup>52</sup> Angelo points out that the valuation of useful things cannot be made to an exact point but only by way of a conjectural and probable opinion. The just price therefore permits of a certain latitude. Hence, to charge a higher price when payment is deferred is acceptable unless the excess is such that it can be seen clearly to violate the principle of equality. Thus, for example, nine or ten cash and twelve on credit would not be usurious, but thirteen or fourteen on credit would be usurious. Angelo refers to the decretal *Consuluit*.

In the following paragraph some of the yardsticks of just pricing reappear. Angelo refers to Aquinas<sup>53</sup> and to the fourteenth-century

<sup>46</sup> *Summa Angelica*, art. *Usura*, I, § 59: f.388vb. The common estimate of the just price is also in *Manuscriptum*: 185.

<sup>47</sup> *Summa Angelica*, art. *Extimatio* (spelled thus under the letter E), § 3: f.136ra.

<sup>48</sup> Cp. Olivi, op. cit., Q.2: f.296vb; Bernardino, op. cit., Sermo 35,2,2: 197–8.

<sup>49</sup> Art. *Emptio et venditio*, § 7.

<sup>50</sup> *Summa Angelica*, art. *Usura*, I, § 58: f.388va.

<sup>51</sup> Scotus, *Comm. Sent.*, IV,15,2,15: 283.

<sup>52</sup> Richard of Middleton, *Quodl.* II,23,3: 67.

<sup>53</sup> The reference to Aquinas may be either *De malo*, XIII,4: *Opera Omnia*, Vol.



theologian Gerald Odonis.<sup>54</sup> Part of his argument is also in Bernardino of Siena<sup>55</sup> and in Antonino of Florence.<sup>56</sup> Three cases are examined.<sup>57</sup> In certain localities it may be difficult for buyers to find sellers willing to pay cash on delivery because of the inveterate bad custom to buy for more on credit. The merchants in question may then do so as well if the purpose is merely to obtain a just price. This can be ascertained by checking whether the price covers due profit above labour et cetera. If so, any extra charge on credit is usury. If not, it is evident that the price is too low because of the excessive greed of moneyed people who buy in order later to sell at their pleasure. Then it is not usury to sell on credit at a price not exceeding what the good would have fetched in the absence of such corruption. Somewhat the same applies if a merchant operates in a locality where money is short and purchases are therefore made on credit. A higher price on credit may then be charged without committing usury if the purpose is merely to obtain a moderate profit above labours and expenses, and the like.

These conclusions do not apply, however, to someone who brings his goods to another location where he expected to profit greatly because of scarcity. If, seeing that he will make no profit to speak of or even suffer a loss because many others come after him, he sells at a higher price on credit in order to avoid losing, he commits usury. In this case the rule applies which states that a thing is worth the amount at which it can be sold at present. In the first mentioned cases this maxim applies to what the good could be sold for if the said abuses did not prevent it. As regards the principle that the values of things are not to be taken with respect to the disposition of single persons, but commonly, this is true unless the disposition is reasonable on the part of the seller, as it is in the first two cases but not in the third case. Angelo evidently considers the solution of the final case to be at one with that of Thomas Aquinas in the *Summa theologiae*, according to whom a merchant who knows that many others will come after him is not obliged by justice to

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23, Rome 1982, 253–8; or *De emptione et venditione ad tempus: Opera Omnia*, Vol. 42, Rome 1979: 393–4.

<sup>54</sup> The most likely reference is to Odonis, *Tractatus de contractibus*, Q.15: Siena BCom U.V.8, ff.94v–95v.

<sup>55</sup> Bernardino, *Quadragesimale*, Sermo 34,3,3: 188.

<sup>56</sup> Antonino, *Sum. Theol.*, II,1,8,3: 130.

<sup>57</sup> *Summa Angelica*, art. *Usura*, I, § 59: f.388va–b.

reveal this information and thus cause an anticipated price reduction, but may sell at the price commonly paid at the time.<sup>58</sup> This doctrine is briefly summarized and confirmed in the article on buying and selling.<sup>59</sup> By the same token, the merchant has to be content with the current cash price if the information is already out.

The proposition that a thing may sometimes be sold according to the disposition of the seller, provided that it is reasonable, is emphasized in the article on estimation.<sup>60</sup> Angelo there refers to the long paragraph on just pricing discussed in detail above, as well as to one of the following paragraphs in the article on buying and selling.<sup>61</sup> This paragraph contains a summary of the “double rule” of just pricing proposed by Thomas Aquinas, who is quoted<sup>62</sup> along with John Duns Scotus, who has a version of the double rule as well.<sup>63</sup> A more complete statement of the rule is to be found in the article on usury, where it is couched in terms of credit sales.<sup>64</sup> Aquinas and Scotus are cited. The question posed is whether a seller commits usury if he sells a thing on credit for more than the common estimate because of its greater value to the buyer or to the seller. In his reply, Angelo points to the common estimate as the principal standard. If the buyer’s utility were to be the basis of the price estimate, a medicinal herb that could cure a mortal illness would be of inestimable value.<sup>65</sup> It would clearly be usury to sell a thing on credit for more than the common estimate on account of its greater value to the buyer. The position of the seller is different. If the thing is of particular value to the seller, or if he were to suffer a loss by parting with it, it would not be usury to sell it on credit for more than the common estimate. This is in principle what Aquinas and Scotus say, with a significant amplification. Whereas the former compares these individual values with what the thing is worth “in itself” (*secundum se*), and the latter offers no particular point of comparison at all, to Angelo Carletti the benchmark, pointed out again and again, is the common estimate. This may perhaps have been what

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<sup>58</sup> *Sum. theol.*, II-II, 77, 3, ad 4.

<sup>59</sup> *Summa Angelica*, art. *Emptio et venditio*, § 26: f.103vb.

<sup>60</sup> Art. *Extimatio*, § 3: f.136ra.

<sup>61</sup> Art. *Emptio et venditio*, § 9: f.102va.

<sup>62</sup> Aquinas, *Sum. theol.*, II-II, 77, 1, c.

<sup>63</sup> Scotus, loc. cit., § 16: 289.

<sup>64</sup> *Summa Angelica*, art. *Usura*, I, § 61: ff.388vb–389ra.

<sup>65</sup> The corresponding paragraph in the article on buying and selling suggests the value of “a hundred ducats”.

Aquinas and Scotus meant, but they do not say so. Note, however, that Angelo does not refer specifically to the market. Note, as well, that the reference to the common estimate does not rule out cost. The part of the double rule that concerns the seller is essentially a matter of indemnity, that is, of alternative cost.

Angelo adds to the expanding literary tradition on the canon *Quicumque* in two paragraphs of the *Summa*.<sup>66</sup> In the article *Usura* he examines the question whether buying produce in the fall in order to sell it later at a profit is usury.<sup>67</sup> He replies in the negative but notes, citing *Quicumque*, that such activity may involve *turpe lucrum* if it is engaged in by clerics, or from avarice rather than from necessity or utility, the purpose being to induce dearth and to force others to buy at one's pleasure. Such is the case of those who stand at the city gates and buy up all the new grain, preventing it from reaching the *platea* and be sold there. This is the latinized form of a Greek word meaning a street. In late-fifteenth-century Italy it is obviously the *piazza* and, without stretching a point unduly, the *piazza del mercato*. This is as close as Angelo comes to mentioning the market. If someone buys for the common good, however, like Joseph, providing for the community lest people perish from hunger, the activity is meritorious. Similarly, if someone buys for the use of himself and his dependants and later sells an unexpected surplus at the going price (*pretio occurrenti*). Or if he does it by way of exercising just commerce, as merchants do, not to induce dearth but to earn a profit from his work by which to support his family. Or if he does it from piety, distributing his earnings among the poor. Then it is licit, if done with moderation, and provided that dearth is not induced. Laurence of Spain's phrase occurs three times in this paragraph. Angelo does not refer to Laurence here but to Raymond of Peñafort and William of Rennes,<sup>68</sup> as well as to the canonists Innocent IV, Hostiensis, Johannes Andreae, and Peter of Ancarani.<sup>69</sup>

The article *Negotium* has another version.<sup>70</sup> Citing Alexander of Hales,<sup>71</sup> Angelo discusses the lawfulness of buying cheap and later

<sup>66</sup> Also, briefly, in *Manuscriptum*: 192–3.

<sup>67</sup> *Summa Angelica*, art. *Usura*, I, § 70: f.390ra–b.

<sup>68</sup> Raymond, *Summa*, II,7,9: 547; William, *Glossa*, to *ibid.*: 235–6.

<sup>69</sup> Innocent, loc. cit. in note 6; Hostiensis, *Apparatus*, to X.III,50,1: ff.192vb–193ra; Andreae, loc. cit. in note 7; Ancarani, *Lectura super sexto libro Decretalium*, to V,5,1: Lyon 1543, f.135rb.

<sup>70</sup> *Summa Angelica*, art. *Negotium*, § 3: f.270ra–b.

<sup>71</sup> Alex. of Hales, *Sum. theol.*, III,490: IV,721–4.

selling at a profit in the same place. The conditions stated in the article on buying and selling must be satisfied. Moreover, if someone engages in trade like this merely to make money and harms rather than serves the community, he sins mortally, as stated in *Eiciens*. According to *Quicumque* and to Huguccio<sup>72</sup> and Laurence of Spain,<sup>73</sup> profit made by buying wine cheap at the time of vintage and selling it later is *turpe lucrum*. Thomas Aquinas<sup>74</sup> and Panormitanus<sup>75</sup> support this judgement. William of Rennes claims that restitution of such profit is a counsel, not a precept,<sup>76</sup> Angelo notes, but does not quite agree. In extreme cases, for instance, if all the produce is bought up in order to be sold later at a higher price, restitution of damage is due, if such damage would not otherwise have occurred. This concluding case is one of straight monopoly. In the article *Emptio et venditio*,<sup>77</sup> and in the article *Ars*,<sup>78</sup> Angelo condemns monopolizing collusion among merchants and among craftsmen, respectively, citing the *Code*.<sup>79</sup> In the case of craftsmen, the authority of Innocent IV is called upon as well.<sup>80</sup> This condemnation does not apply, however, to monopolies established for a good and lawful purpose.

Angelo's solution of a case of sale through a middleman was disputed by his successors. If someone is given a thing to sell at ten and he sells at twelve, he need not hand over the surplus of two to the owner. If twelve is in excess of the just price, the discrepancy belongs to the buyer. If the middleman manages to get twelve, this is due to his industry, and if twelve is a just price, he may keep the two. It makes no difference that he received a certain wage for his labour, for this was given him for finding a buyer at ten. The case is different if he was simply given the thing to sell, for then he was obliged to sell at the highest possible price and the whole sum must be restored to the original owner, the middleman having already received his wage.<sup>81</sup> In a brief paragraph in the article *Permutatio*,

<sup>72</sup> Huguccio, *Summa decretorum*, to II,14,4,4: Paris BN lat. 3892, f.218rb.

<sup>73</sup> Laurence, *Glossa Palatina*, to II,14,4,3: Vat. Pal. lat. 658, f.54rb; Durham C.III,8: f.88rb.

<sup>74</sup> Aquinas, *Sum. theol.*, II-II,77,4,c.

<sup>75</sup> Panormitanus, loc. cit. in note 8.

<sup>76</sup> William of Rennes, loc. cit.: 236.

<sup>77</sup> *Summa Angelica*, art. *Emptio et venditio*, § 27: ff.103vb-104ra.

<sup>78</sup> Art. *Ars*, § 1: f.17rb.

<sup>79</sup> C.4,59.

<sup>80</sup> Innocent IV, *In quinque libros Decretalium*, to X.II,28,69: f.129va-b.

<sup>81</sup> *Summa Angelica*, art. *Emptio et venditio*, § 28: f.104ra.

Angelo touches upon two subjects to which much attention was being given by contemporary summists, namely, cheating in barter contracts and cheating by paying labourers in truck rather than in money.<sup>82</sup>

Another much disputed case examined by Angelo is that of a merchant who plans to carry his merchandise to a different location where it is expected to fetch a better price but, on request, sells it at home at the expected foreign price less risk and labour saved.<sup>83</sup> Following Panormitanus, he quotes the opinions of Innocent IV, who accepts such a price as licit, and Hostiensis, who considers it usurious.<sup>84</sup> He then introduces a distinction suggested by Andreae. If the price is paid at once, Innocent's solution is correct, if credit is involved, the arrangement is suspicious of usury, and then Hostiensis is right.<sup>85</sup> This solution, Angelo notes, is supported by such distinguished canonists as Peter of Ancarano<sup>86</sup> and Henry Bouhic<sup>87</sup> on the *Decretals* and by Lorenzo Ridolfi in his treatise on usury.<sup>88</sup> For his own part, however, Angelo tends to agree with Antonio of Budrio. According to him, the contract is above reproach even if credit is involved, provided that it is certain that the increased home price is not due to the delay in settlement but to the higher price the merchant reckons he can get for his merchandise elsewhere.<sup>89</sup>

### Summary

In the *Summa Angelica* a number of decretalists, both old and more recent, are called upon to support and confirm the teaching of the medieval theologians and decretists based on Gratian and the Church Fathers. This approach characterizes Angelo's discussion of lawful and unlawful trade in general, as well as his discussion of fraud, though it does not prevent his prolongation of the confusion regarding

<sup>82</sup> *Summa Angelica*, art. *Permutatio*, § 11: f.298rb.

<sup>83</sup> Art. *Usura* I, § 16: f.383vb.

<sup>84</sup> Panormitanus, *Super quintum Decretalium*, to X.V,19,19: f.247ra, and see Chapter 4, with references in notes 11 and 12.

<sup>85</sup> Johs. Andreae, *Novella super quinto Decretalium*, to *ibid.*: Trino 1512, f.48vb. This case is discussed, and Andreae's solution is recorded, both by Bernardino of Siena (*Quadr.*, Sermo 34,1,3: 171–2) and by Antonino of Florence (*Sum. theol.*, II,1,8,7: 133).

<sup>86</sup> Peter of Ancarano, *Lectura super quinto Decretalium*, to *ibid.*: Lyon 1535, f.104ra.

<sup>87</sup> Henry Bouhic, *Super quintum Decretalium*, to *ibid.*: Lyon 1498: f.44va.

<sup>88</sup> Ridolfi, *De usuris*, Q.31: in *Tractatus universi iuris*, Vol. 7, Venice 1584, ff.22vb–23ra.

<sup>89</sup> Antonio of Budrio, *Lectura super quinto Decretalium*, to X.V,19,19: Venice 1578, f.67rb.

*dolus* and *deceptio* in the internal forum. The main significance of the *Summa Angelica* in the history of trade and price doctrine, is his introduction, through Bernardino of Siena's compilation, of the analytical model of Peter Olivi, in which the discussion of fraud and the discussion of coercion are reduced to a common formula. There are, in theory, two different approaches to the question of justice in economic exchange, either by suggesting criteria of determining the just price, or by suggesting criteria indicating the presence or absence of free bargaining. The former approach was the conventional one and there are traces of it both in Olivi and in Angelo, but the latter approach is more prominent in both. Moreover, within the common formula of Olivi, greater emphasis is placed on the problem of coercion than on the problem of fraud. Voluntariness validates contracts, but this criterion is violated in exchange with persons who are fooled about the terms of the contract or who are fools unable to understand the terms (being defrauded) and in exchange with persons who agree to the terms because of need (being coerced). Two particular features of Angelo's discussion of coercion not originating in Olivi's treatise are his own suggestion that the nature of the product as a necessary may indicate coercion, and Scotus's suggestion that a gift element in the contract indicates the absence of coercion. Angelo also reaches back beyond Olivi to the terminology of the Roman law, against whose libertarian economic principles Olivi clearly oriented his analysis without stating them explicitly. Angelo's careful reproduction of the commentary tradition on *Quicumque* with the vivid picture of the forestallers at the city gates demonstrates his concern with coercion, as does his repetition of the tradition elsewhere and his repeated condemnation of monopoly and collusion. Though Angelo does not emphasize the current competitive market as a standard of justice in exchange, he frequently refers to the common estimate. It speaks volumes of his theoretical insight that he associates the common estimate with Aquinas's value *secundum se* in the double rule. In the final analysis, the significance of the double rule is a reconciliation of the cost and market approaches to the just price.

## CHAPTER TEN

### THE FRANCISCAN TRADITION: BATTISTA TROVAMALA

In 1484, two years prior to the appearance of the first known edition of the *Summa Angelica*, another major Franciscan penitential handbook was published at Novi Ligure. This was the alphabetical *Summa casuum conscientiae* of Battista Trovamala. Born about 1435 at Sale (near Alessandria), Battista joined the Observants in Liguria and twice served as vicar of the Genovese province. His *Summa* was reprinted at Nürnberg in 1488 and at Speyer in the same year. In 1489 it was reissued at Pavia in an enlarged and revised edition. The number of articles was increased, and some of the original articles were supplied with new material, often distinguished by the heading *Additio*.<sup>1</sup> The author named this final version *Summa Rosella* (somewhat pretentiously suggesting a bunch of cases emitting the scent of roses). Little is known about Battista Trovamala's declining years. He is believed to have died about 1495.<sup>2</sup> His work remained popular, however, and it was frequently reprinted.<sup>3</sup>

To an even greater extent than in the case of the *Summa Angelica*, the bulk of material of the *Summa Rosella* relevant to the present study is presented in the article *Emptio et venditio*. The doctrine set down there is supplemented by some excerpts from the articles *Avaritia*, *Dolus*, *Negotiatio*, and *Usura*. The long article on usury is divided into six parts. The second part deals with usury in buying and selling.

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<sup>1</sup> I had occasion to compare the four incunabula editions, Nürnberg 1488, Pavia 1489 and Venice 1495 and 1499, in the Biblioteca Nazionale at Florence. Checking the articles quoted in the present study, I found that the Pavia edition and the Venice editions have a number of common alterations compared to the Nürnberg edition. Most often, the new material is inserted in the original text and marked *Additio*. Sometimes, but not consistently, the end of the addition is marked *Finis*. Occasionally, an addition replaces a briefer exposition of the same theme, or an addition is inserted without any marking at all.

<sup>2</sup> On Battista Trovamala and the *Summa Rosella*, cp. Schulte II, 448–50; Wadding 36; Sbaraglia I, 113; Dietterle, *ZK* 27 (1906) 431–42; Stintzing 533–6; Michaud-Quantin, 1962, 98–9, 113; Bellone, 1977; Babbini, 1981, 162–5; LTK 1 (1993) 1394.

<sup>3</sup> Ed. used: Pavia 1489.

There, when revising his work, Battista inserts a long *Additio* where he draws on what was taught about buying and selling in the articles mentioned above, stating succinctly and in general terms what is a just price of goods in exchange. In the article *Avaritia*, Battista considers the question whether avarice is a mortal sin.<sup>4</sup> He replies, following Aquinas on avarice in the *Secunda Secundae*,<sup>5</sup> apparently copying the corresponding article in the *Summa Pisana*, that avarice can be taken in two senses and that it can be a mortal or a venial sin in either sense depending on degree. He then proceeds immediately to examine, in the light of these conclusions, the question whether commercial activity is licit.<sup>6</sup> Citing Alexander of Hales,<sup>7</sup> he explains that commerce is indeed licit if it is conducted out of necessity, so that the merchant may support himself and his family “according to a state befitting him” (*secundum decentiam status sui*), or out of piety, in order, for instance, to distribute commercial gains among the poor. Commerce is illicit, however, if its purpose is to accumulate wealth, and it is a mortal sin if the greed for wealth grows to such heights that the merchant is ready to act against the love of God and of his neighbour. If the merchant’s concern with wealth does not take precedence over charity, however, it is merely a venial sin.

In a brief article thus titled, Battista explains the difference between causal and incidental *dolus*.<sup>8</sup> He does not raise the troublesome question of the nature of deception in the absence of *dolus* there, but reserves this matter for the article *Emptio et venditio*. This long article is primarily structured on the basis of the four articles of Thomas Aquinas’s question on fraudulence in buying and selling, taken in a more logical order than in the original. In four separate paragraphs, Battista considers the questions whether it is lawful to sell a thing for more than it is worth; whether, in trade, it is lawful to sell a thing at a higher price than what was paid for it; whether a sale is rendered unlawful through a defect in the thing sold; and whether a seller is obliged to point out a defect in the thing sold. In these paragraphs, Battista supplements the Thomistic material by drawing on other theological sources, as well as on legal sources.

<sup>4</sup> *Summa Rosella*, art. *Avaritia*, § 1: f.34rb.

<sup>5</sup> Thomas Aquinas, *Sum. theol.*, II-II,118,4,c.

<sup>6</sup> *Summa Rosella*, art. cit., § 2: f.34rb–va.

<sup>7</sup> Alexander of Hales, *Sum. theol.*, III,490: IV,723.

<sup>8</sup> *Summa Rosella*, art. *Dolus*, § 1: ff.90vb–91ra.



Is it lawful to sell a thing for more than it is worth?<sup>9</sup> According to Aquinas, selling a thing for more than it is worth (or buying it for less than it is worth) is unjust, unless the sale tends to the disadvantage of the seller, who is in great need of the thing in question. In such a case the just price will not depend only on the thing sold but also on the loss that the seller incurs by the sale. Therefore, he may charge more than the thing is worth *secundum se*, provided that he does not charge more than it is worth to himself. Yet if the buyer derives an advantage from the thing bought and the seller suffers no loss, the latter ought not to raise the price, because the advantage in question is not due to the seller but to the buyer's circumstances, and no one ought to sell what does not belong to him.<sup>10</sup> Proceeding from this succinct statement of the "double rule", Battista breaks into Aquinas's analysis by introducing some legal authorities. According to Innocent IV in a gloss to the decretal *In civitate*, the rule that permits the parties to a contract to "deceive each other" (or to "deceive themselves": *se decipere*) up to the limit of one-half of the just price applies in the external court (*iure fori*), not in the internal court of conscience (*iure poli*).<sup>11</sup> Positive law differs from God's law in that it disregards minor infringements but takes action only if the excess is a large one, such as when someone is deceived (*est deceptus*) beyond one-half of the just price. Azo explains this one-half principle to mean that the seller is unlawfully deceived if a thing worth ten is sold for four, whereas the buyer is unlawfully deceived if a thing worth ten is bought for sixteen; the critical limit being set at a deviation of five either way.<sup>12</sup> Some set the limit at ten, but this is absurd, as shown by Panormitanus, because it would reduce the minimum lawful price to zero.<sup>13</sup> Divine law, however, according to Aquinas considers all deviations from the equality of justice to be illicit. He who received too much is obliged to make compensation to him who suffered a loss, if the loss be considerable (*notabile*). This clause is added because the just price of things cannot be determined to a fixed point, but is rather in the nature of an estimate, so that

<sup>9</sup> *Summa Rosella*, art. *Emptio et venditio*, § 8: ff.117vb–118rb.

<sup>10</sup> Aquinas, *Sum. theol.*, II–II,77,1,c.

<sup>11</sup> Innocent IV, *In quinque libros Decretalium commentaria*, to X.V,19,6: Lyon 1562, f.196rb–va.

<sup>12</sup> Azo, *Summa Iuris Civilis*, to C.4,44: Basel 1563, 431.

<sup>13</sup> Panormitanus, *Super Tertio Decretalium*, to X.III,17,6: f.134ra.

a slight addition or subtraction would not seem to violate the equality of justice.<sup>14</sup>

According to some (*quidam*), Battista proceeds—once more elaborating his paraphrase of Aquinas by drawing on more recent sources—this equality of justice permits of a certain latitude and can be seen to have three degrees or levels (*gradus*). These *quidam* may include both Bernardino of Siena<sup>15</sup> and Antonino of Florence,<sup>16</sup> whose analyses are nearly identical. Battista appears to quote the former.<sup>17</sup> The lower, middle, and upper of these three levels may be called the pious, the discreet, and the rigid just price. Consider, for instance, two identical measures of cloth of the same quality and expense. If these goods are valued by different estimators, some may find that they are worth fifty ducats, and this may be called the pious price level. Others may estimate them at fifty and a half, others again at fifty-one, which are the discreet and the rigid price levels. And yet, all these prices are included within the equality of justice. If something is sold at a price notably beyond these limits of equality, however, restitution is due. There follows a somewhat abbreviated paraphrase from another sermon by Bernardino of Siena. Its gist is as follows. The obligation to restore unlawful gain obtained by notably overstepping the narrow limits of the just price is particularly firm if the price obtained reflects one or more of the following four circumstances on the part of the opposite party to the sale: First, ignorance. Second, mental levity, evident or presumed. Third, some great poverty. Fourth, some great and compelling need, from which it can be inferred that the contract in question does not proceed from a pure and free will. Such fraud in pricing is against charity, even though the contract appears to have the consent of both parties, because, according to the Philosopher in Book III of the *Ethics*, ignorance and coercion exclude the will.<sup>18</sup> It is on the basis of this doc-

<sup>14</sup> Aquinas, art. cit., ad 1.

<sup>15</sup> Bernardino, *Quadragesimale*, Sermo 34,3,1: 183–4.

<sup>16</sup> Antonino, *Sum. theol.*, II,1,8,1:126.

<sup>17</sup> Antonino most likely quotes Bernardino as well. Further research may well uncover an earlier common source. I have failed to do so. The editors of Bernardino refer to Olivi; cp. *Tractatus de usuris*, Dubium 1: Siena BCom U.V.6, f.304vb. Olivi's numerical example is different, however, and it lacks the middle term.

<sup>18</sup>

#### **Bernardino of Siena**

... si procedit ex ignorantia aut ex  
mentis levitate aperta sive praesumpta

#### **Battista Trovamala**

Primo si ex ignorantia, secundo  
si ex mentis levitate aperta vel

trine, Battista explains, by way of concluding the paragraph, that one should understand a distinction made by Antonio of Budrio,<sup>19</sup> and by Panormitanus.<sup>20</sup> The buyer may either be an acute person (*sagax*), or an ignorant one. In the first case, a seller who charges more than a thing is worth is not obliged to make restitution; in the second case, he is thus obliged. Panormitanus, in fact, goes further, Battista notes.<sup>21</sup> If both the seller and the buyer know the nature of the thing and its value, there is no sin involved even though the thing is sold at a higher or at a lower price. This conclusion, however, should be taken to apply only in the absence of great need, not otherwise, as was said before.

Battista's reference to the Philosopher in this paragraph signals the belated appearance, in penitential price doctrine, of the main root of the ancient traditions regarding the nature of the will in the case of behaviour prompted by coercion. Because an action can be blamed or praised only if it is performed voluntarily, Aristotle in *Nicomachean Ethics*, III,1 considers a person's moral responsibility for actions done from ignorance and from coercion.<sup>22</sup> Regarding coercion,

seu ex quacumque magna egestate sive ex quacumque alia magna necessitate ad hoc compellente, ex quibus comprehenditur potest quod talis contractus non procedit ex mere grata et gratuita voluntate, talis defraudatio in minus emendo aut plus vendendo non solum contra iustitiam est, sed etiam contra caritatem et contra naturalem hominis pietatem, licet ex utriusque partis consensu talis contractus procedere videatur. Nam, etiam secundum Aristotelem in III *Ethicorum*, ignorantia et aliqualis coactio excludit voluntarium.

praesumpta, tertio ex quacumque magna egestate, quarto ex quacumque magna necessitate ad hoc compellente, ex quibus comprehenditur potest quod talis contractus non procedit ex mera et gratuita voluntate, nam talis defraudatio in minus emendo contra caritatem est, licet ex utriusque partis consensu talis contractus procedere videatur, nam secundum Philosophum in III *Ethicorum*, ignorantia et aliqualis coactio excludunt voluntarium.

Bernardino is quoted from Sermo 33,2,7: p. 157. Battista is quoted from the article *Emptio et venditio*, § 8: f.118rb. The first part of Bernardino's analysis is based on that of Peter Olivi; cp. Chapter 9, note 30. The second part, with the reference to Aristotle, is not in Olivi. On this reference, see below in the text. Note that Battista only mentions a fraudulent low price, whereas Bernardino also mentions a fraudulent high price. Note, as well, that Battista only states that fraudulent pricing is contrary to charity, not that it is contrary to justice, whereas Bernardino states that it violates both but that it is first and foremost contrary to justice.

<sup>19</sup> Antonino of Budrio, *Lectura super quinque libros Decretalium*, to X.III,49,8: Venice 1578, f.205ra-b.

<sup>20</sup> Panormitanus, *Super Tertio Decretalium*, to ibid.: f.358ra.

<sup>21</sup> Id., *Super Secunda Secundi Decretalium*, to X.II,20,37: ff.100rb-104va.

<sup>22</sup> *Ethics*, III,1: 1110a-1111b. On the Aristotelian tradition on coercion and the

he makes a distinction very similar to, and perhaps being the source of, the legal distinction between *vis absoluta* and *vis compulsiva*.<sup>23</sup> One of his examples of a person exposed to the latter form of coercion is that of the captain of a ship in a storm at sea, who jettisons cargo in order to avoid shipwreck. Aristotle describes the captain's choice as "mixed" as to its voluntary or involuntary character; the Latin commentators coined the phrases "voluntary in a certain sense" versus "simply voluntary". The terms "conditional" and "absolute" will appear in theological sources as early as the *Summa* of Alexander of Hales.<sup>24</sup> When the legal doctrine on coercion and the will was transformed from physical to economic terms and applied to usury,<sup>25</sup> the association with Aristotle was made and his authority was brought to bear on the argument.<sup>26</sup> Peter Olivi, whom Angelo Carletti and Battista Trovamala quote through Bernardino of Siena, was instrumental in the analogous application of the doctrine from usury theory to price theory, but Olivi was averse to quoting Aristotle. Bernardino, far removed from the anti-Aristotelian controversies of the thirteenth century, did not share this reservation and thus Aristotle's *Ethics*, restated in terms of economic coercion, could finally find expression in the article on buying and selling in the *Summa Rosella*. The crucial point in all this is that, according to Battista, a price contract that does not "proceed from a pure and free will", that is, from mere conditional rather than absolute will,<sup>27</sup> owing to poverty or to great need, is *not* a morally valid contract. This firm position differs from those of Aristotle, Roman law, and canonistic culpability doctrine, all of which waver regarding the nature of the will behind actions prompted by the threat of physical violence, and regarding the judgement of the consequences of such actions.

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voluntary, cp. Langholm, 1998, Chapter 1. The medieval doctrine of fraud, that is, exploitation of ignorance, did not draw materially on Aristotle, except indirectly through Roman and canon law. Peter Olivi's conjunction of ignorance and coercion, however, indicates an Aristotelian influence, despite his reluctance to acknowledge it.

<sup>23</sup> Regarding these terms, cp. Chapter 9 in connection with the explanation of the legal background of Angelo Carletti's paraphrase of Bernardino of Siena.

<sup>24</sup> Alexander of Hales, *Sum. theol.*, I,301: I,434–5; quoted in Langholm, 1998, 55.

<sup>25</sup> See Chapter 1 on Thomas of Chobham.

<sup>26</sup> Thus Peter of Tarentaise, *Comm. Sent.*, III,37,3,4: Toulouse 1652, 309; quoted in Langholm, 1992, 107.

<sup>27</sup> Battista does not use these or the other Aristotelian terms in his article on buying and selling, but they occur in the article *Restitutio*, at XVI, § 1: f.339rb (*coactio absoluta* versus *conditionata*); and § 2: f.340vb (*voluntarium simpliciter* versus *mixtum et conditionatum*). Similarly in the article *Usura* at IV, § 10: f.403rb–va.

Can anyone be forced to sell? In the following paragraph Battista does without the support of Aquinas and relies entirely on legal sources.<sup>28</sup> According to Panormitanus,<sup>29</sup> expressing the common opinion, a principal distinction must be made between goods offered for sale and goods not offered for sale. If goods offered for sale are necessary to sustain life, the authorities can determine the just price, for it is in their interest to provide for the needs of their subjects and of the community. From this principle, Baldus infers that, because human life would be impossible without clothes and lodgings, fixed prices can be put on garments and on houses let out on hire.<sup>30</sup> The latter arrangement is in fact already established at Padova, where lodgings let to scholars are registered in a certain book, along with the annual rent. In the case of goods offered for sale, that are not necessary for human life, however, it is stated in the *Code* that no one can be compelled to sell his own thing and that no one can put a price on what belongs to another, but everyone is moderator and arbiter of his own thing.<sup>31</sup> Battista stresses the importance of this point: it is highly worth noting (*valde notabile*). It means that on objects like jewels and gems and similar things, that are not necessary for human life but rather for pomp and ornament, and whose value is based on affection, a seller is free to set his price at will. In the second principal case, that is, in the case of things not offered for sale, those who sit on large supplies of necessities can still be forced to sell at a just price if dearth is at hand, for then all victuals ought to be shared in common, as stated in the canon *Sicut hi* and in the Gloss to this canon.<sup>32</sup> Granted that the poor can not<sup>33</sup> act directly against the rich for this purpose, by an appeal to the judges, the latter can decree that victuals be shared.

Returning to Aquinas, Battista next asks whether it is lawful to sell a thing at a higher price than it was bought for,<sup>34</sup> and in the first lines of his reply he quotes the angelic doctor nearly verbatim

<sup>28</sup> *Summa Rosella*, art. *Emptio et venditio*, § 9: f.118rb–va.

<sup>29</sup> Panormitanus, *Super Tertio Decretalium*, to X.III,17,1: f.130ra.

<sup>30</sup> Baldus of Perugia, *In Codicem praelectiones*, to C.1,4,1: Lyon 1561, I, f.54vb.

<sup>31</sup> C.1,9,9; C.4,35,21; C.4,38,14.

<sup>32</sup> *Decretum*, I,47,8; *Glossa ordinaria*: Bamberg SB Can. 13, f.28rb; Basel 1512, f.48va.

<sup>33</sup> Thus Panormitanus, loc. cit. The negation is omitted in the Pavia edition of the *Summa Rosella* and in later editions, as well as in the *Summa* of Silvester Mazzolini, which was first printed at Bologna in 1515 and which follows Battista Trovamala quite closely in this paragraph.

<sup>34</sup> *Summa Rosella*, art. *Emptio et venditio*, § 10: f.118va–b.

on the lawfulness of commerce for a proper end and as a payment for labour.<sup>35</sup> Normally, a thing cannot be sold at a higher price than it was bought for unless a change has been made as to form, time, or place. Battista here refers to Peter of Ancarano on the *Sext*, but terminology proves that he quotes Peter through Nicolò of Osimo.<sup>36</sup> Among alterations as to form, the purchase of a large quantity resold in small quantities is expressly included. It is with reference to such factors as these that one should understand Chrysostom when he states that the merchant who is evicted from the Temple is anyone who profits by buying and reselling a thing “whole and unaltered”. What is meant by those words, says Battista, is explained by Astesanus following Alexander of Hales.<sup>37</sup> They apply to one whose ultimate purpose of trade is profit, and who accumulates wealth without labour and care. They don’t apply to one who engages in commerce for his personal need, or for the public good or for the love of his neighbour, nor to one who sells a good whole and unaltered as to substance but altered as to place, for such a one may lawfully seek payment for labour and risk or for the wages of his servants or the cost of storage. Nor do they apply to one who takes account of the risk of storage, for the goods that he buys may deteriorate or burn or be lost through theft, so that payment may be sought because of the uncertainty of future events and because of risk-taking. It is not at all certain that one who sells a thing whole and unaltered will make a profit. Antonino of Florence, in fact, goes further. Consider a merchant who buys at ten and sells at twelve in the same city or region, without or with very little transportation, and without any improvement of the goods. According to Antonino, this is lawful provided that the seller does not overstep the limits of the just price.<sup>38</sup>

When revising his *Summa*, Battista evidently felt the need to sum up this compilation of medieval scholastic authorities on trade and price. He does so by inserting and *Additio*.<sup>39</sup> It follows from the afore-

<sup>35</sup> Aquinas, *Sum. theol.*, II-II,77,4,c.

<sup>36</sup> See Chapter 8, with references in note 9.

<sup>37</sup> See Chapter 6, with references in note 38 and following notes.

<sup>38</sup> Antonino of Florence, *Sum. theol.*, II,1,16,3: 257. Battista fails to mention that Antonino’s numerical example only serves to illustrate the “double rule” of Thomas Aquinas. The twenty per cent difference between the purchase and sales prices suggested here cannot easily be harmonized with the two per cent difference between the pious (fifty) and the rigid (fifty-one) levels of the just price suggested by Antonino in a different context; see above, with reference in note 16.

<sup>39</sup> *Summa Rosella*, art. cit., § 11: f.118vb.

said, he explains, who that merchant is, who is to be evicted from the Temple. It is he who buys things with the intention of inducing dearth and then selling them whole and unaltered. It is also he who buys all the supply of grain or hides and the like, in order, later, to sell at his pleasure. And it is he who places his end in such commerce, as Astesanus says. Chrysostom is not to be understood literally, for then all merchants would be in a state of damnation. For he says that a merchant can never please God, and therefore no Christian ought to be a merchant, or if he wishes to be one, he is evicted from the Temple. He also says that no one can be a merchant without committing falsehood and perjury, which is untrue if taken literally and must therefore be understood as explained previously. Indeed, if a merchant buys a measure of cloth in order to make a profit on it and immediately sells it for more without any alteration as to form, place, or time, are we to say that he is to be evicted from the Temple? Certainly not, for account must be taken of servants' wages, rent of store-room, as well as time lost on the part of the merchant and others. We know from experience that this is done in all the world, even by the most God-fearing merchants.

Battista next reaches back to the discussion immediately preceding this addition and examines two particular cases. If someone wishes to sell me a book at ten and I don't wish to buy unless I first find someone willing to buy if from me at twelve, and then arrange this double transaction, I may keep the profit of two as reward for my industry, provided the just price is not exceeded.<sup>40</sup> On the case of the middleman who manages to get twelve for something given him to sell at ten, Battista disagrees with Angelo Carletti.<sup>41</sup> Provided that twelve is not in excess of the just price, the whole profit, less the wage of the middleman, should be handed over to the erstwhile owner.<sup>42</sup>

The following paragraphs of the article on buying and selling deal mostly with defective merchandise. Battista quotes Thomas Aquinas on defects as to species, quantity and quality. One who knowingly sells defective goods, commits fraud and is obliged to make restitution.<sup>43</sup> Regarding defective measures it may be asked whether an innkeeper is excused, who serves reduced measures of wine, such

<sup>40</sup> Art. cit., § 12: loc. cit.

<sup>41</sup> See Chapter 9, with reference in note 81.

<sup>42</sup> *Summa Rosella*, art. *Emptio et venditio*, § 13: f.119ra.

<sup>43</sup> Art. cit., § 14: loc. cit.; cp. Aquinas, *Sum. theol.*, II-II, 77, 2, c.

being the custom in the region.<sup>44</sup> Antonino of Florence replies in the negative, because the buyers are deceived, expecting to receive full measures. A bad custom is no excuse, unless it is necessary in order for the innkeeper not to lose or in order to make a modest profit; giving full measures might wipe out his profit, because he would have to raise prices, with the result that he would lose most or all of his customers.<sup>45</sup> In the wool industry, however, to count thirteen ounces in the pound is a bad custom but not, strictly speaking, fraudulent when the parties know about it, for “no injury is done to him who knows and consents”.<sup>46</sup> Concerning defects as to quality, a question may be raised regarding the sale of a horse that dies after a few days.<sup>47</sup> According to Panormitanus, following Cino of Pistoia on the *Code*,<sup>48</sup> no remedy is due if both parties knew the horse was sick, for “no injury, etc.”; if the buyer didn’t know, his claim depends on what he would have done if he knew. If the buyer was careless in his examination of the animal, the seller is nevertheless obliged to restore his loss because, according to Cino, although the buyer is guilty of negligence, the seller commits fraud (*dolus*), and fraud outweighs negligence.<sup>49</sup> On the obligation to reveal defects, Battista paraphrases Aquinas closely and adds an everyday example from his own circles. If someone offers a book for sale and he knows it to contain some corruptions, he need not make a prospective buyer aware of this if he makes a suitable reduction in the price.<sup>50</sup> Battista also agrees with Aquinas that a merchant is not obliged to inform buyers of the expected arrival of supplies that will reduce the price.<sup>51</sup>

Acts and agreements in restraints of trade are discussed at length in the *Summa Rosella*. In one paragraph,<sup>52</sup> Battista raises the question of merchants who agree among themselves that all sell at the same price or that only one of them should sell certain goods. According to Hostiensis,<sup>53</sup> he explains, such agreements are illicit, and likewise

<sup>44</sup> Art. cit., § 15: f.119ra–b.

<sup>45</sup> Antonino, *Sum. theol.*, II,1,17,5: 264–5.

<sup>46</sup> Ibid.: f.119rb; cp. Antonino: 264.

<sup>47</sup> *Summa Rosella*, art. cit., § 16: loc. cit.

<sup>48</sup> Panormitanus, *Super Tertio Decretalium*, to X.III,19,4: f.141rb; cp. Cino of Pistoia, *In Codicem commentaria*, to C.4,58,1: Frankfurt am Main 1578, f.272ra.

<sup>49</sup> *Summa Rosella*, art. cit., § 17: loc. cit.; cp. Cino: loc. cit.

<sup>50</sup> *Summa Rosella*, art. cit., § 19: f.119va; cp. Aquinas, *Sum. theol.*, II–II,77,3,c.

<sup>51</sup> *Summa Rosella*, art. cit., § 20: loc. cit.; cp. Aquinas, art. cit., ad 4.

<sup>52</sup> *Summa Rosella*, art. cit., § 23: ff.119vb–120ra.

<sup>53</sup> Hostiensis, *Summa aurea*, to XI,39, n. 4: f.65va.



if a person obtains the position of being the only seller in the city. If someone conducts business in this way, his property is to be confiscated and he should be sentenced to perpetual exile. Officials who allow such practices and don't take action against them are to be punished as well. This follows from the title on monopoly in the *Code*, Battista observes, and goes on to explain this title, extensively copying Azo.<sup>54</sup> Restricting trade to one person is forbidden, but the law extends its prohibition to pacts whereby no one is to be instructed in a certain craft except sons and nephews, or whereby other measures are agreed upon to prevent others to exercise some craft or business. The law forbids agreements to fix sales prices, but the same rule applies in the case of those who hire out things or hire out their own work, especially scribes who agree that work begun by one is not to be completed by another. "In short, there ought to be free opportunity for anyone in buying and selling or letting and hiring regarding price and regarding wage".<sup>55</sup> According to Innocent, however, Battista notes, the aforesaid, as well as the title on monopoly in the law itself, should be understood to apply when such practices are fraudulent and damaging to the community.<sup>56</sup> Monopoly is licit if a single person, for the public good, and for profit spent on the community, is authorized to sell bread or wine or salt and the like, as is observed daily in towns and other places. This should be noted, for it is quite common. Furthermore, as stated elsewhere in the *Code*, if someone has brought grain or some other commodity to the market, he may be compelled not to withdraw it until a sufficient quantity is sold. To make sure that the community is amply supplied and to prevent dearth, it may be decreed that a merchant go or dispatch someone to other parts to buy grain there to be sold to all. And it may be decreed that no one buy beyond his need, lest things become dearer or difficult to obtain.<sup>57</sup>

In the following paragraph, Battista further illustrates unlawful interference with the competitive market process by citing a number of cases mentioned in the *Digest*.<sup>58</sup> The price of victuals can be

<sup>54</sup> Azo, *Summa Iuris Civilis*, to C.4,59: 461.

<sup>55</sup> "Debet igitur esse cuilibet libera facultas in emendo et vendendo vel locando et conducendo circa pretium et circa mercedem". The statement is lifted virtually verbatim from Azo, loc. cit.

<sup>56</sup> Innocent IV, op. cit., to X.II,28,69: f.129va-b.

<sup>57</sup> C.1,4,1; C.1,9,9; C.10,27.

<sup>58</sup> *Summa Rosella*, art. cit., § 24: f.120ra-b; cp. D.47,11,6; D.48,12,2; D.50,11,2.

raised by impeding or detaining ships or sailors bringing home these goods. Those who perpetrate such obstructions should make restitution based on an assessment of what the goods would have been sold for if the ships had arrived, and they should be fined twenty bezants and suffer corporal punishment. Similarly in the case of those who reduce the supply of grain by buying all they can find and holding on to it until less plentiful times. It is not illicit, however, to buy in bulk from country people carrying grain to the city, so that they need not stay all day selling in small quantities, and when paying the rustics to subtract an amount corresponding to the work thus spared them. What was said about the accumulation of grain to raise prices, applies to all kinds of necessary and useful commodities. Thus, a merchant who gives earnest money for the buying of all the spice of the city in order to sell it later at a profit, having foreknowledge that ships bringing spice to the market are sunk, can be said to establish a monopoly and is liable to the appropriate punishment. In times of need and dearth, such people may even be forced to sell below the just price.

Battista Trovamala's direct appeal to civil law principles in these paragraphs is a bit unusual. Anyhow, it stands in contrast to his failure to identify some important works for the internal forum quoted in the *Summa Rosella*. The *Summa Pisana* of Bartolomeo of San Concordio is quoted repeatedly without acknowledgement. Thus, in the article *Negotiatio*, Battista states summarily that commerce can be rendered illicit for reasons of cause (referring back to the article on avarice), time, person, place and manner.<sup>59</sup> He cites Raymond of Peñafort, but his direct sources are clearly the *Summa Pisana* (for the first four reasons),<sup>60</sup> and Nicolò of Osimo (for the fifth reason).<sup>61</sup> Battista adds, quoting William of Rennes, that merchants can lawfully grant themselves a moderate profit because they labour for everybody and in a sense conduct business for the whole community.<sup>62</sup> Here, as well, the immediate source is Bartolomeo of San Concordio. In the article *Usura*, there is a summary exposition of the tradition on the canon *Quicumque*.<sup>63</sup> Battista cites Raymond, William, Innocent IV, Hostiensis and Monaldus, but most of his argument is lifted from the *Summa*

<sup>59</sup> *Summa Rosella*, art. *Negotiatio*, pr: f.266rb.

<sup>60</sup> See Chapter 7, with reference in note 11.

<sup>61</sup> See Chapter 8, with reference in note 8.

<sup>62</sup> *Summa Rosella*, art. cit., § 2: loc. cit.

<sup>63</sup> *Summa Rosella*, art. *Usura* II, § 23: ff.399rb–va.

*Pisana*. Reasonable profit on buying and selling is permitted, whether the buyer's purpose is the laying up of stores for the community, or private consumption (selling an unexpected surplus as it is commonly sold in the market), or to earn something to spend on the poor, or regular commerce as a livelihood, provided that dearth is not induced. If the merchant's motive is avarice and his purpose is to induce dearth, by gathering all the supplies available and forcing others to buy from him at his pleasure, he sins mortally.

The article on usury contains a long sequence on credit sales copied from the *Tractatus de usuris* by the early-fourteenth-century Franciscan theologian Alexander of Alessandria.<sup>64</sup> Three cases can be distinguished regarding the pricing of goods sold on credit. Two of them are blameless, the third is usurious. First, the seller simply quotes the present just price. Second, a higher price is charged for goods sold on credit but originally intended for storage because the price is expected to rise before settlement. Third, a higher price is charged because of the delay in settlement. Some<sup>65</sup> say that albeit the latter contract is wicked in itself, it can be excused on the part of the seller because of loss threatening due to further delay or other trouble in connection with settlement, for equitable estimation of price in such cases can take account of loss. The decisive criterion is whether the seller would rather sell for cash at the current price than sell on credit at the higher price. Battista adds that this solution is supported by Thomas Aquinas in reply to a certain question.<sup>66</sup> It is common practice, the purpose being merely to extort a just price. As regards the proposition that a thing is worth the amount at which it can be sold, it should be understood to mean the amount at which it can be justly sold. Elsewhere in the article on usury, Battista states the same solution referring to the decretal *In civitate*.<sup>67</sup> As regards the analogous case of someone who plans to carry his merchandise to another location rather than to store it for a future time, to get a better price, but is prevailed upon to sell here and now, Battista agrees with Andreae's distinction, quoted through Panormitanus.<sup>68</sup>

<sup>64</sup> *Summa Rosella*, art. *Usura* II, § 12: f.396va-b; cp. Alexander of Alessandria (Alexander Lombard), *Tractatus de usuris*, VII, 96-8:163-4.

<sup>65</sup> Including Hostiensis, *Summa*, to X.V,19, n. 8: f.250va.

<sup>66</sup> For references to Aquinas, see Chapter 9, note 53.

<sup>67</sup> *Summa Rosella*, art. *Usura* I, § 38: f.388rb.

<sup>68</sup> *Ibid.*, § 17: f.385vb. For references to Panormitanus and Andreae, see Chapter 9, notes 84 and 85.

When revising his work, Battista gathers together the main elements of his price doctrine in a long *Additio* to his analysis of usury in sales contract.

And in order that you, confessor, be not deceived, for that error is dangerous, in giving counsel seek, before everything else, to learn what is the just price of goods in exchange. I give you two rules about this. The first is this, that in a place where there is no established price of goods in exchange, a merchant may sell his goods with a moderate and decent profit, considering risk, labour, expenses, the quality of the goods and things like that. The second rule is this, that in a place where there is an established just price of goods sold for cash and where they are, for the most part, bought thus, the merchant ought to, and can, sell his goods at that price. I said first, “the just price”, because of the cupidity of certain wealthy men who frequently buy goods for cash at a lower price than they are justly worth in order, in the future, to sell them at their pleasure. There is also, in many cities, another corrupt practice, according to which artisans will not buy goods for cash except, perhaps, at a very low price. In these two cases, merchants who have goods and are unable to sell them for cash at a just price, may sell them on credit, in order thus to extort a just price. I said second, “for cash”, because of the exchange contract commonly called barter. I give an example. A merchant has pepper with a cash value of ten and wishes to exchange with another merchant who has cotton worth the same. He who has pepper exchanges it at a value of twelve and he who has cotton likewise exchanges it at twelve. In this case I say that the price of these goods is nothing but ten in reality, in that equal profits are eliminated by mutual compensation, and therefore it is reduced to ten. There is also another fraud involved in this, in that many artisans, who acquired grain or wine or the like through barter, give their labourers these goods at the [nominal] price at which they acquired them through barter, telling them that they bought them for that much; they should be held to restore the excess amount. I said third, “for the most part”, because the prices of things are not to be taken with respect to the disposition of single persons, but commonly. I said fourth, “ought to sell at that price”, because, assuming that a merchant bought his goods dear, if he brought them to a place where they were sold cheaper, he cannot sell his own goods at a notably higher price. I said last, “can sell his goods at that price”, because, assuming that he bought his goods at a very low price and brought them to a place where they fetched a very high price, then, with a safe conscience, he could sell them at that price. And thus the fat is compensated by the lean, and whereas in the first case he lost, in this one he profited greatly. In the first case the merchant should take care not to say, I have bought my goods at ten, I cannot sell them to you at eight; I wish to sell them to you on credit at ten, thus to keep myself indemnified. I say that this he can in no way do. Never-

theless, the just price cannot be determined to a fixed point but has three degrees, a pious, a discrete, and a rigid one. A merchant may sell on credit up to the ultimate rigid price that which the same merchant also often sells for cash. That which is said about selling on credit is said in order to extort a just price. But one may doubt whether anyone may sell on credit and make some profit above the just price. I say that where there should happen to be some artisan lacking money to buy for cash and wishing to buy on credit and you, moved by compassion, sells on credit with some profit above the just price, you should not consider this to be condemned if you would rather sell for cash than on credit with this profit. And because it was said above that a thing is worth the amount at which it can be sold, this should be understood to mean if the sale is made to a man who knows and understands the condition of the thing, as stated in a remarkable gloss to the *Digest*,<sup>69</sup> according to Angelo<sup>70</sup> and Johannes of Imola<sup>71</sup> on that work, and to Baldus<sup>72</sup> on the *Code*, who extols that gloss. If it is objected that a merchant ought to seek a moderate profit, etc., I say that this is true as a general rule. Often there are, among buyers, some poor persons and persons suffering no small need. Also, among buyers, there are persons who are ignorant and light-minded and the like. To such persons it is not licit to sell except at a just price with a moderate profit. In special cases, however, it is licit to sell for more, as in our case, and thus doctors who seem to hold different views are in agreement.<sup>73</sup>

### Summary

Anyone who compares the doctrines of trade and price set down in the *Summa Rosella* and the *Summa Angelica* will probably be struck at first glance by their similarities rather than note the differences between them. There are, however, certain systematic differences. If examined more closely, the significance of some of them can hardly be ignored. Like Angelo Carletti, and indeed like all the authors of the large penitential summas of the period, Battista Trovamala draws for his basic explanations of rightful and wrongful business on a familiar set of medieval theologians and canonists and their patristic sources. The reliance on Thomas Aquinas is more marked in Battista than in Angelo, and his recourse to more recent authorities

<sup>69</sup> *Digestum novum cum commentariis Accursii*, to D.39,6,18,3: Lyon 1627, 180.

<sup>70</sup> Angelo of Perugia, *In primam Digesti novi partem*, to *ibid.*: Venice 1579, f.20rb.

<sup>71</sup> Johannes of Imola, *In primam Digesti novi partem*, to *ibid.*: Bologna 1580, 136.

<sup>72</sup> Baldus, *In Codicem praelectiones*, to C.6,20,20: Lyon 1561, III, f.51ra.

<sup>73</sup> *Summa Rosella*, art. *Usura* II, § 13: ff.396vb–397rb.

is enhanced by the appearance of a number of canonists and Romanists. Pure greed as a commercial motive is just as strongly condemned by Trovamala as by earlier authors, but a new note of acknowledgement and respect for the merchant's profession finds expression in his insistence on the just claim of the merchant to maintain his household in a certain style. Discussing the just price, he makes several attempts to concretize Aquinas's "kind of estimate". At one point he refers to the three levels of the just price suggested by Bernardino of Siena and Antonino of Florence. The numbers attached to these levels do not grant the merchant much room for maneuver. Elsewhere, Battista favours the merchant by much wider limits of tolerance. The principle of consent and free will is stated from Olivi via Bernardino and is made to comprise both fraud and coercion. At this point, Battista in fact improves on Olivi by reaching back to the original Aristotelian model regarding absolute and conditional will. Angelo's list of necessities worthy of moral protection in pricing is copied in part, but the more signal aspect of Battista's handling of this subject is his explicit limitation of this category of commodities by leaving out luxury articles, on which the forces of supply and demand are evidently left to play freely. Battista condemns abuses of the truck system. It seems significant, however, that he concludes against Angelo in the case of the middleman engaged to sell at ten and finds a seller at twelve, siding with the principal rather than the agent. Merchants don't always profit, Battista Trovamala points out; they should be allowed to do so when they can. They may extort a just price if necessary; they may sometimes even cheat in order to retain customers at the going rate. Trovamala records and subscribes to the tradition on *Quicumque*. He condemns forestalling and regrating, monopoly and collusion, and obstruction to entry into crafts and trades. On subjects like these, the interests of competitors and customers are, of course, to some extent congruent. One is left with the impression, however, that the author's strong proclamation of equal opportunity in business is written with the former in mind at least as much as with the latter.

## CHAPTER ELEVEN

### THE FRANCISCAN TRADITION: MINOR AND LATER WORKS

Supplementing the large summas discussed in the preceding chapters, the Franciscan tradition was upheld in the late fifteenth century and carried forward into the sixteenth century by a number of other works, mainly by authors belonging to the Observance. Seven authors of such secondary works will be presented in this chapter. Some of them are quite prominent figures. About some of the others, much less is known, but they are all identifiable. It should be noted, however, that they represent a selection. A number of other works, purporting to derive from the pens of Franciscan friars, are omitted, either because the author is unknown or because the work in question contains nothing to our purpose. It is more than likely that further bio-bibliographical research in the late Italian penitential tradition will unearth names and titles that fully deserve a place in a short list of interesting Franciscan contributions.

Alexander Ariosto was born about 1420 into a noble family at Ferrara. After his early studies he joined the Franciscan Observants at Bologna and there completed his academic training in theology and canon law. In the early 1460s he worked as a missionary in Palestine and later visited the East once more. In 1475, Ariosto was appointed vicar general of the cismontane Observants. He died, probably at Bologna, about 1486. He left a varied literary output. It includes reports on his travels, an extraordinary commentary on the Franciscan Rule, a competent treatise of usury,<sup>1</sup> as well as an *Enchiridion sive interrogatorium*, a manual for confessors.<sup>2</sup> This is a work in three parts. Part I deals with the power and qualifications of the confessor. Part II is an examination of the penitent following the order of the commandments and the capital sins, passing very lightly over economic

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<sup>1</sup> This work saw a single edition, Bologna 1486. For some references to trade and price theory, cp. Langholm, 1998, 80, 84, 91, 111, 124.

<sup>2</sup> On the life and works of Alexander Ariosto, cp. Schulte II,448; Wadding 9; Sbaraglia I,13-4; Fussenegger, 1956; DBI 4, 166-8.

subjects. What there is on trade and price is in Part III, which addresses the occupants of particular offices and professions and subjects the profession of the merchant to a close scrutiny. This sequence bears a certain resemblance to the corresponding one in Bartolomeo Caimi's *Confessionale* and it is reasonable to assume that Ariosto used Caimi as one of his sources. The *Enchiridion* remained in manuscript until 1513, when it was printed at Venice.<sup>3</sup> There are at least ten later editions.<sup>4</sup>

The purpose of the merchant's profession, Ariosto states, should not be the accumulation of wealth, but the support of his household, aid to the poor, or service to the community. Cornering the market and forcing buyers to pay a higher price is abominable to God. Monopolistic practices are blameworthy even if permission is granted by the authorities. It is sinful to trade on holidays and in sacred locations and by means of lies that will harm one's neighbour. Hidden defects in merchandise should be revealed when harmful to the buyer, but a seller is not obliged to reveal manifest defects nor hidden defects if not harmful and provided a due reduction is made in the price. In cases where defects should be pointed out, the seller cannot get away with loose phrases. If someone sells a horse he knows to be diseased, saying: I sell it sick, prone to kick, to pull backwards, etc., he is obliged to make satisfaction because the defect was expressed insidiously.<sup>5</sup> Particular attention is paid to economic coercion. Someone who buys a thing at considerably less than its worth owing to the seller's ignorance or simplemindedness or absence of will should make satisfaction up to the just price. It is not unjust, however, to sell above or buy below value if the opposite party is aware of the size of the excess or defect and agrees voluntarily and not forced (*sponte et non coactus*). Generally, the just prices of things are measured according to the common valuation of the citizens (*pretia rerum iusta attenduntur secundum communem civitatis taxationem*).<sup>6</sup>

In the case of barter, rules about the obligation to reveal defects in merchandise are similar to those that apply in the case of buy-

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<sup>3</sup> According to the preface to this and later editions, the work was completed in 1475, the year after the first edition of Caimi's *Confessionale*. A reverse influence therefore seems unlikely.

<sup>4</sup> Ed. used: Lyon 1528.

<sup>5</sup> *Enchiridion*: ff.116rb–117va.

<sup>6</sup> Op. cit.: f.118ra.



ing and selling. If someone fails to point out that the thing he wants to exchange for another thing, has a hidden defect detrimental or dangerous to the opposite party, such as a lame horse or a ruinous house, he is obliged to make good all ensuing loss. If the defect is manifest, however, as in the case of a one-eyed horse, or wool plainly exposed for examination, it need not be pointed out explicitly if a proper reduction is made in the value estimate. If neither of the barterers will reveal defects in their merchandise, each intending to defraud the other, both sin mortally. No satisfaction is due, however, if both parties are equally deceived and equally experienced in discovering the defects in question, for no injury nor fraud is done to one who knows and consents.<sup>7</sup> Regarding the truck system, it is sinful to pay wages in other things than money, against the labourer's will, if payment in money was agreed upon in advance. If it was agreed, however, that one part should be paid in money and the rest in cloth or grain at a just and common price, and the labourer later finds that he must sell these goods at a loss, the merchant who hired him need not supply the difference, according to the same rule about knowledge and consent. If, on the other hand, payment is partly made in cloth estimated at a price much higher than its worth, so that the labourer does not receive what was agreed upon, the difference must be supplied, for, as stated in the Gospel, "the workman is worthy of his meat".<sup>8</sup> In the sequel, the author discusses usury at length. In connection with usury in sales contracts, he restates the merchant's right to a moderate profit and justifies this by reference to labour and industry.<sup>9</sup>

Michele Carcano made two unusual contributions to the penitential literature of the Italian Franciscans. Born of a patrician family at Milan in 1427, he is said to have been so deeply moved when, still in his early teens, he heard St. Bernardino preach there, that he joined the local province of the Order. Having been present at the celebration of Bernardino's canonization at Rome in 1450, he found his true vocation in that of the Saint and was soon established as one of the most eloquent and famous of the popular itinerant preachers of the epoch. In the history of economics he is best remembered for

<sup>7</sup> Op. cit.: ff.118vb-119ra.

<sup>8</sup> Op. cit.: f.119ra-b, quoting Matt. 10.10.

<sup>9</sup> Op. cit.: f.128va.

establishing the first *monte di pietà* at Perugia in 1462 and subsequently in other cities. He died at Lodi in 1484.<sup>10</sup> Several collections of Carcano's sermons appeared in early printed editions; they tend to lean heavily on those of Bernardino of Siena. Much of the material in one collection of lenten sermons also appears in the form of a series of *Casus conscientiae* which may, unlike the sermons, be considered to belong within the scope of this study. The collection in question consists of 111 cases arranged in groups of three, thus covering the thirty-seven days of Lent suitable for casuistic catechism. The author systematically addresses persons of different estates and devotes the second case of each day's triplet (Cases 2, 5, 8, 11 etc.) to subjects relating to commercial activity. This work, which was composed in Latin, is available only in manuscript.<sup>11</sup> A brief *Confessionale generale* by Carcano was printed in the vernacular in the year of his death and appeared in at least twelve editions at Venice.<sup>12</sup>

Though merchants tend to accumulate wealth merely out of greed, Carcano notes in his first case discussion of commerce, an honourable private or public purpose can justify it.<sup>13</sup> He cites John Duns Scotus on the benefits of trade and indicates the need of commercial capital: "It is a good thing to lay up treasure (*bonum est thesaurizare*) and carry goods to places of scarcity".<sup>14</sup> Nevertheless, on the following day, Pseudo-Chrysostom's interpretation of the cleansing of the Temple is taken as a point of departure for a renewed warning against the moral pitfalls of commerce,<sup>15</sup> before the author descends from the general level to a more detailed discussion of individual cases. A large number of cases deal with usury. Cases concerning exchange of merchandise where usury is not a main issue are relatively few and mostly deal with fraud. Frauds as to species, quantity and quality of goods are pointed out.<sup>16</sup> Following Aquinas, however, Carcano teaches that a seller need not point out defects in his goods if this would make it difficult to obtain a price that is just considering their

<sup>10</sup> Michele Carcano is in Wadding 174 (as Michael de Carcano) and 175 (as Michael de Mediolano); and in Sbaraglia II,253-4 (as the former) and II,257 (pointing out that they are the same person). For updated information about his life and works, cp. DBI 19, 742-4, with extensive references.

<sup>11</sup> MS consulted: Pavia BU Aldini 62.

<sup>12</sup> Ed. used: Venice 1529.

<sup>13</sup> *Casus conscientiae*, C.2: f.258rb-va.

<sup>14</sup> C.5: f.259rb.

<sup>15</sup> C.8: f.260ra.

<sup>16</sup> C.20: f.262va.

defects,<sup>17</sup> nor is he obliged to reveal information about an expected price decrease due to new supplies.<sup>18</sup> Whether a buyer may lawfully profit from the seller's ignorance about the true value of the goods depends on whether the former acts in good or in bad faith, but under no circumstances is it lawful to profit from the latter's need.<sup>19</sup> Carcano presents a complete version of the tradition on *Quicumque*, adding that "at these present times" (*hodiernis temporibus*) merchants are seen to hold back and hide victuals and to induce dearth.<sup>20</sup>

Economic coercion figures prominently in the few lines devoted to trade in Carcano's *Confessionale* as well. The printed text of this work covers a mere sixteen leaves. After a brief introduction on the reception and preparation of the penitent, it consists of an interrogatory running systematically through the commandments, the mortal sins, the senses, the principal virtues, the beatitudes, the gifts of the Holy Spirit, the sacraments, and the works of mercy. One-half of the volume is devoted to the seven mortal sins. Avarice rates two pages.<sup>21</sup> Its "daughters" or "branches" are robbery, theft, simony, pillage, fraud, violence, falsehood, perjury, stubbornness, restlessness, deception, stringiness, and cupidity. Trade is briefly touched upon in connection with fraud, falsehood, perjury, and deception. Physical coercion is mentioned in connection with pillage and robbery, but only in noneconomic contexts. There is nothing about physical coercion, either in an economic or a noneconomic context, in the four lines devoted to violence (*violentia*); the focus there is entirely on coercion in terms of purely economic categories. Violence occurs when someone unjustly brings about great need and, when offering his good for sale, says, "I want this measure of grain to be worth twenty shillings", when it is truly worth no more than ten; and because there are no other sellers, he has the power to charge it.<sup>22</sup> One would be hard put to it to find a cleaner and simpler statement of one of the main concerns of Franciscan economic doctrine.

The greatest name among the Franciscan preachers of the second half of the fifteenth century, and another ardent champion of the *monti*, was the blessed Bernardino of Feltre. Born Martino Tomitano

<sup>17</sup> C.17: f.262ra.

<sup>18</sup> C.47: f.268ra.

<sup>19</sup> C.11: f.260vb.

<sup>20</sup> C.29: f.264rb–va.

<sup>21</sup> *Confessionale generale*: ff.9v–10v.

<sup>22</sup> Op. cit.: f.10r.

at Feltre in 1439, he studied law at Padova but joined the Observants there in 1456 and from then on devoted himself almost entirely to preaching until his death at Pavia in 1494.<sup>23</sup> A recent three-volume edition of his sermons confirms his reputation as an engaging orator and a formidable denouncer of usury. On trade and price, however, they yield little. A number of brief penitential texts are attributed to Tomitano, but there is some doubt about authenticity. The following notes, such as they are, are offered with reservation on that point.<sup>24</sup> Among a number of editions, I have chosen two slim tracts of eight leaves, in question form, and naming Bernardino as the author, but otherwise quite different. A *Confessione*, Milan 1510, contains forty-one brief questions to be asked the penitent concerning the sin of avarice. Some of them relate to usury; a single one mentions price: has the penitent bought produce too cheap before harvest?<sup>25</sup> A *Confessione generale*, no place or date (probably Venice about 1525), contains a much shorter list of questions about avarice. It includes one about retaining or delaying the wages of labourers but none on price.<sup>26</sup> At the very end of the volume there are seven questions to be addressed to merchants. They include one about collusion to raise prices and one about unjust barter.<sup>27</sup>

Two other, less well-known Milanese Franciscans composed handy and interesting penitential handbooks. Francesco of Mozzanica graduated bachelor of arts at Parma in 1472 and taught in the faculty of arts at the University of Ferrara. He belonged to the Observants and was vicar general of the Milanese province in the last decade of the fifteenth century. His manual was completed in the convent of St. Angelo at Milan in 1509 and was published in that city in the following year.<sup>28</sup> In the heading of this edition it is presented as a *Brevissima introductione, maxime de done che se voleno ben confessare*, perhaps because it is dedicated to two noblewomen, but there is much

<sup>23</sup> On Bernardino of Feltre, cp. Wadding 43; Sbaraglia I,140; Barbieri, 1963; Moorman 523–4, 531; LTK 2 (1994) 278.

<sup>24</sup> On Bernardino's penitential texts, cp. the study by Monaco, 1988; and the lists of editions in Jacobson Schutte 79–80; and Turrini 390–1.

<sup>25</sup> *Confessione*: f.3v.

<sup>26</sup> *Confessione generale*: f.5r.

<sup>27</sup> Op. cit.: f.8v.

<sup>28</sup> Francesco of Mozzanica is neither in Wadding nor in Sbaraglia. Rusconi, 1972, 143–50, provides some personal data, a list of the contents of the printed edition, and references. Cp. also Piana, 1968, 112, 115–6, 171–2.

in it that is general.<sup>29</sup> And it is not all that brief. The whole volume consists of 102 leaves. A general part occupies the first three quarters of this space; the final quarter deals with the preparation for death. In the former part, brief lists of sins under the headings of the ten commandments and the seven capital sins are followed by a section on “vanity, pomposity, and curiosity”. The last and much the longer section of the penitential proper addresses persons of different states and positions, mentioning in particular a number of crafts and professions. The best way to present this pithy contribution to the genre is to reproduce the relevant items of Francesco’s moral memorandum for the good merchant:<sup>30</sup>

- Not to carry forbidden goods to the lands of the Saracens.
- To trade for a due purpose.
- Not to get together with other merchants to agree that all sell in the same way in order to profit more.
- Not to commit monopoly.
- To love the other merchants as oneself. Note this.
- Not to trade by means that are forbidden and naturally unjust, such as usury, or in goods with which mortal sins are usually committed, like dice or other things like that.
- Not to sell on holidays, except things that are necessary.
- Not to sell in church or in a sacred place.
- Not to use or voice lies, oaths, perjuries and duplicity.
- Not to sell or buy at more or less than the just price, except to experienced and sagacious persons. Note the circumstances.
- Not to sell for more on credit.
- Not to sell for more because the thing in question is of great value to the buyer.
- [Not] to sell an unaltered thing for more in the place where it was bought, in order to profit more.
- Not to commit fraud.
- Not to sell a thing keeping silent about its defects, especially if they are hidden.
- Not to cheat on number, weight and measure.
- To sell things pure without admixture.
- [Not] to make barter against one’s conscience.
- To pay everyone justly and not to give cloth, or the like.

<sup>29</sup> The two ladies belonged to the Trivulzio family. One of the two known copies of the single edition of the work (the one I consulted) is preserved in the Biblioteca Trivulziana at Milan. The other one is held by the Chapter Library of Seville.

<sup>30</sup> *Brevissima introductione*: ff.49v–50r.

Half a dozen years after the publication of Francesco of Mozzanica's *Introductione*, another penitential text by a somewhat obscure Franciscan friar appeared at Milan. It is a bit longer (151 leaves), and it is written in Latin. Its incipit presents it as a *Repertorium seu interrogatorium sive confessionale*, thus indicating its form, its use, and its purpose. The author was Mattia of Milan, about whom we know only what the book tells us, namely, that he belonged to the congregation of the Amadeiti (a group between the Observants and the Conventuals, which flourished briefly in that part of Italy), and that he composed it in their principal Milanese convent.<sup>31</sup> The work consists of ninety-one chapters, divided into paragraphs. After an introductory chapter, Mattia runs through the whole scale of the ten commandments (discussing trade at length in Chapter 7, on Theft), the seven vices or capital sins (spending a few lines on avarice, quoting Aquinas but without mentioning trade), the seven virtues opposed to these sins, the seven gifts of the Holy Spirit, the four cardinal virtues, the five corporal and the five spiritual senses, and the seven corporal and the seven spiritual works of mercy. From Chapter 27, Mattia switches to an interrogation *ad status* and along the line devotes Chapter 48 to merchants. From Chapter 76 to the end, there are sections on excommunication, on penance, satisfaction and absolution, and on reserved cases.

The minor parts of this volume that are relevant to the present study, that is, some of the paragraphs of Chapters 7 and 48, are wholly unoriginal and, what is more, wholly without pretence to originality. One can picture Mattia writing with the *Summa Angelica* and the *Summa Rosella* at hand and picking and choosing from them. In Chapter 7, where the paragraphs are generally longer, whole sequences will sometimes be quoted from one or the other of these authorities. More often, and typically in Chapter 48, brief summaries of arguments or statements of doctrine are given. With very few exceptions, each paragraph will conclude with a reference to one or both of these sources. Mattia's references are admirably exact. The reader will find no difficulty in locating the precise places in the *Angelica* and the *Rosella*.

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<sup>31</sup> On Mattia of Milan, cp. Wadding 171; Sbaraglia II, 238; Rusconi, 1972, 150–6. Wadding indicates an edition Milan 1507 but its existence is questioned by Sbaraglia and it has not come to light. An edition Venice 1516 (simultaneous with the Milanese edition used here) is also mentioned by bibliographers but may be fictitious as well. On the Amadeiti, named after the founder of the group, Amadeo de Sylva, cp. Moorman 497–8.

Mattia of Milan presents us with a complete version of the principles of lawful and unlawful commerce built around the old canon *Quicumque*. To buy grain or wine in the autumn in order later to sell these goods at a profit is not usurious but the gain is sometimes *turpe lucrum*. First, if done by clerics. Second, if done from avarice, with no thought of necessity or utility. Or in order to induce dearth, so that others are forced to buy these necessities at the seller's will. Such is the case of those who stand at the gates of the city and buy all the new grain, preventing it from reaching the market. Buying and selling at a certain profit is lawful, however, if the purpose is to provide for the community, or for the merchant's family, or for the poor.<sup>32</sup> A merchant who buys up all the stores of certain necessities because of secret information that expected new supplies will not reach the city, sins mortally.<sup>33</sup> Collusion among merchants to raise prices is condemned both in the chapter on theft<sup>34</sup> and in the chapter on the examination of merchants.<sup>35</sup> The converse question, whether anyone can be forced to sell his goods, is discussed in the former chapter.<sup>36</sup> Both chapters have paragraphs on paying labourers too late or too little or in goods instead of money against the will of the labourers,<sup>37</sup> whereas merchants are to be examined about trade for personal enrichment,<sup>38</sup> about trade by means of falsehood and deception,<sup>39</sup> about falsifying weights and measures,<sup>40</sup> and about fraudulent barter.<sup>41</sup> In a later chapter innkeepers should be asked about selling dearer to pilgrims and ignorants.<sup>42</sup>

A predominant feature of the late Italian penitential literature is its geographical concentration. A very large majority of the works that I found relevant for a study of economic doctrine were written by men who were born in the North, worked and wrote there, and saw their works printed there. There are a number of obvious spiritual as well as demographic, economic, and technological reasons for this overrepresentation of the North. I close this account of the

<sup>32</sup> Mattia of Milan, *Repertorium*, Ch. 7, § 148: f.41ra–b.

<sup>33</sup> Ch. 48, § 28: f.100ra–b.

<sup>34</sup> Ch. 7, §§ 221–2: f.48va.

<sup>35</sup> Ch. 48, § 3: f.99ra–b.

<sup>36</sup> Ch. 7, § 215: f.48ra–b.

<sup>37</sup> Ch. 7, §§ 240–1: f.49rb–va; Ch. 48, §§ 20–1: f.99vb.

<sup>38</sup> Ch. 48, § 2: f.99ra.

<sup>39</sup> *Ibid.*, § 25: f.100ra.

<sup>40</sup> *Ibid.*, § 18: f.99vb.

<sup>41</sup> *Ibid.*, § 9: f.99rb–va.

<sup>42</sup> Ch. 54, § 11: f.102rb.

Franciscan tradition with the contributions of two friars born and active in the Mezzogiorno (though one of them had all editions of his work printed at Venice). Both wrote in the vernacular. Because little is known about them, I present them here in the order in which their respective works first appeared in print.

Jacopo Mazza, of Reggio Calabria, was minister of the Observants in that province in the early sixteenth century. He composed a *Lucerna Confessionis* at the request of the brethren in his care. A large volume of 241 leaves, it was published at Naples in 1519.<sup>43</sup> It consists of three parts. Part I deals briefly and in general terms with the sacrament of penance and the conduct of confession. Part III is mostly a résumé of the much longer Part II. This, the main part of the work, treats at length of sins against the commandments, and more briefly of the capital sins, and passingly of sins according to other classifications, before turning to sins characteristic of different states and professions, among which that of the merchant is, unfortunately, not included. Forty-six pages in 185 paragraphs are devoted to the seventh commandment in Part II, and some of the main points are repeated in Part III. Economic subjects do not figure prominently but a number of paragraphs are of interest. In the section about avarice, the author is largely content with referring back to what was said under the heading of Theft, and that section therefore offers nothing worth quoting. Discussing economic activity, Jacopo is unusually brief on the subject of loans and usury. He pays greater attention to sins committed in the conduct of other forms of exchange. The following references are to the paragraphs on theft in Part II and to such summaries as are to be found in Part III.

Jacopo Mazza goes against Aquinas regarding the duty to inform potential customers about an expected arrival of new supplies. It is all the more sinful, he adds, to positively advise against travelling to other parts where goods can be sold dear or bought cheap.<sup>44</sup> Restitution

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<sup>43</sup> The author is not to be confused with the close companion of St. Francis whose name is somewhat similar. Cp. Wadding 125; Sbaraglia II,13; as well as Petrocchi 143; 150. The *Lucerna Confessionis* was examined in the copy of the National Library at Naples. In this copy the leaves are badly shuffled and the correct order is sometimes difficult to ascertain. It is the only copy and the only edition known to me. Cp. Manzi I,80; Jacobson Schutte 272; Turrini 442–3. The distinction between two editions 1518/1519 is most likely the result of different dating.

<sup>44</sup> *Lucerna*, II,59: f.78r; cp. f.221r. By taking the opposite position to that of Aquinas, Jacopo Mazza sides with Antipater against Diogenes; cp. Chapter 3, note 27.



should be made of profit obtained by agreement among merchants not to buy above, or to sell below, a certain price.<sup>45</sup> There is a brief mention of wages, which ought to be those agreed upon according to what is usual at the time and place.<sup>46</sup> Part II has a long paragraph about the just price, of which only the introductory lines are reflected in Part III. It is sinful to charge more than the just price of necessities in times of need.<sup>47</sup> It is true that the just price is that at which a thing can be sold or bought, but this rule applies only if a thing of a certain quality and value is sold or bought voluntarily and not because of the need to avoid a major loss. The just price of a thing is that at which it is sold in the market and is commonly current (*quello che si vende nel foro e communemente curre*).<sup>48</sup> It is sinful to buy up grain, wine, oil, or the like, so that dearth comes about (*venne caristia*) and the stores can be sold dear in the same location.<sup>49</sup> Jacopo's main authority on these and other points of price doctrine is the *Summa Angelica*, which is cited repeatedly from different paragraphs.

Matteo Corradoni, of Cilento near Salerno, was Neapolitan provincial of the Observants in the early sixteenth century. He composed a *Speculum Confessorum* which was published at least ten times from 1525.<sup>50</sup> This is a much briefer manual than that of Jacopo Mazza. It contains a section *ad status* where that of the merchant does not appear, and a longer one on the commandments and the mortal sins. Some economic subjects are discussed in connection with the seventh commandment, under the heading of Usury. It includes some cases of sinful though nonusurious practices relating to price. The penitent is to be asked whether he has bought wine or oil or other things in great quantity in order to cause dearth to follow (*per fame seguire carestia*) or whether he has prevented others from bringing supplies to the region or agreed with them not to do so, so as to sell on his own terms and dear. If so, he will go straight to Hell. The same fate awaits those who take up a stand by the fairs or the markets and buy up all the supply and later sell it dear. The most mortal

<sup>45</sup> *Lucerna*, II,63: f.79r; cp. f.221v.

<sup>46</sup> II,97: f.82v; cp. f.222v.

<sup>47</sup> II,145: f.87r; cp. f.224r.

<sup>48</sup> II: *ibid*.

<sup>49</sup> II,161: f.89r; cp. f.224v.

<sup>50</sup> Ed. used: Venice 1536. On Matteo Corradoni and his work, cp. Wadding 170; Sbaraglia II,229–30; Sander I,389–90; Turrini 408–9.

of sins is committed by a merchant who enters into an agreement with other merchants of the city to buy all the supplies of a commodity together and sell them dear and on their own terms.<sup>51</sup> The author repeatedly refers to the canon *Quicumque* and to Angelo Carletti. Discussing the sin of avarice, he evidently finds it unnecessary to repeat this violent condemnation of speculation and collusion. The subject gives rise, among other expressions of greed, to the question whether the penitent has failed to pay his servants.<sup>52</sup>

### *Summary*

By an large, the secondary Franciscan texts assembled in this chapter take us closer to the actual confrontation between confessor and penitent, though their designs vary and their usefulness as practical manuals must have differed considerably. Except for Bernardino of Feltre (if the minor works mentioned are indeed authentic), all the authors put forward interrogatories structured on the commandments and the capital sins, as well as estate interrogatories. The Neapolitan Mazza, who stands a bit apart from the rest, boldly defines the just price as the current market price and indicates that just wages may be determined analogously. Ariosto, whose interrogatory is the most complete and informed one, mentions both labour and industry and the common estimate as just price criteria. The main approach adopted by all the seven authors, however, is the alternative one. Rather than establish just-price determinants, they focus on factors rendering prices unjust owing to fraud or force. For this purpose, some of the authors reach back to medieval authorities, Aquinas being much in evidence on the subjects of fraud and defective merchandise. Olivi's literal phrases echo in Ariosto. Ariosto, as well as Bernardino of Feltre, Francesco of Mozzanica, and Mattia of Milan mention fraudulent barter. The mid-fifteenth-century compilations of Bernardino of Siena and Antonino of Florence, and occasionally the later alphabetical *Summa Angelica* and *Summa Rosella*, serve both as original sources and as conveyors of medieval thought. In the spirit of Olivi, greater emphasis is placed on economic coercion than on fraud. Without

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<sup>51</sup> *Speculum Confessorum*: ff.27v–28r.

<sup>52</sup> *Op. cit.*: f.36r.

exception, these seven authors condemn collusion and/or monopoly. More or less complete versions on *Quicumque* are rendered by Michele Carcano, Mattia of Milan (who alludes to *Placuit* as well), Jacopo Mazza, and Matteo Corradoni. Failure to pay wages promptly is mentioned by Ariosto, Bernardino, Mattia and Corradoni. Ariosto, Mozzanica and Mattia of Milan condemn abuse of the truck system.

## CHAPTER TWELVE

### MISCELLANEOUS WORKS

In addition to the numerous works by Franciscans, and some by Dominicans, penitential handbooks by other authors proliferated in Italy in the late fifteenth century and in the early decades of the sixteenth century. Dozens of them were examined in preparation of the present study. Omitting some whose attribution to known persons is uncertain or obviously wrong, and many without even marginal relevance for our subject, ten manuals, mostly quite brief, remain to be examined in this chapter. They can but underscore the dominance of the two large mendicant Orders in the area of trade and price doctrine but they may, at the very least, offer a glimpse of a literary genre that ought to invite further bibliographical research as well as research into other areas of moral doctrine in the internal forum. Of the ten authors chosen, two were Benedictine monks, four were Servites, two belonged to the Lateran congregation of the Canons Regular of St. Augustine, one was an Augustinian friar, and one was a secular cleric.

Jacopo of Traietto (i.e., of Utrecht), OSB (1423–1503), was a Dutchman who joined the Olivetan congregation of the Benedictine Order. He spent most of his life in Italy and his work is entirely in the Italian tradition. His *Brevis doctrina ad confitendum peccata et ad interrogandum de eis* was composed during a lengthy stay in the monastery of Monte Oliveto at Naples and was published posthumously in that city in 1504.<sup>1</sup> This edition runs to 95 leaves. There is a brief introduction on the sacraments and a somewhat longer concluding section on excommunication and on absolution. The rest is, as the title indicates, an interrogatory. A general part, structured mainly on the commandments and the mortal sins, is followed by a detailed instruction on how to examine persons of different states and professions, lay as well as religious and clerical. In the list of mortal sins, Jacopo omits avarice, referring instead to what was said about sins against the seventh commandment. There, payment of wages in goods instead

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<sup>1</sup> On this author and his work, cp. Manzi I,127, with references; Turrini 427.

of money against promise and at loss to the labourers is said to be a mortal sin; consent on the part of the latter because they can find no work elsewhere is forced consent (*consenso coacto*) and thus no excuse.<sup>2</sup> It is equally sinful for merchants to make pacts that oblige buyers to pay more for their goods than they are worth.<sup>3</sup> In the part *ad status* there are two pages about merchants. It is a mortal sin to create dearth in a region by buying up grain or other things so that they may be sold again at an excessive price. The same is true of price agreements between merchants for this purpose. Cheating in barter contracts is condemned, along with other forms of fraud.<sup>4</sup>

Benedetto of Siena, OSB, of the monastery of San Pietro at Perugia, in 1490 composed a *Confessione con le sue circumstantie*, which was printed in or after that year in the city of its origin.<sup>5</sup> A slim volume of forty leaves, it deals (as the title announces) with the circumstances and conditions pertaining to sin and confession, before embarking on an interrogatory in which examination of the capital sins and of sins against the commandments are deftly interwoven in a common scheme. Chapter XV is devoted to theft and avarice, mostly in noneconomic contexts. Chapter XVI deals with usury. Merchants are warned about usury cloaked by contractual arrangements involving time, whereby goods are sold for much more than they are worth.<sup>6</sup> Chapter XVII specifically addresses buying and selling. The dominant theme is fraud: buying below value because of the seller's ignorance, selling one thing for another, falsifying, clipping or otherwise tampering with coins, using false weights and measures.<sup>7</sup> Having concluded this line of interrogation, Benedetto adds a series of chapters on specific subjects. They include the brief Chapter XXVII on illicit gain. Fraud and usury are mentioned in passing, but closer attention is paid to the kind of operation described in the tradition on *Quicumque*. The author strongly condemns those who, driven by avarice and cupidity, buy up and store necessities *per mettere carestia* and reap dishonourable gain.<sup>8</sup>

<sup>2</sup> *Brevis doctrina*: f.22r-v.

<sup>3</sup> *Ibid.*: f.22v.

<sup>4</sup> *Ibid.*: f.61v.

<sup>5</sup> What is known about the author is limited to what he tells us in the proem. The single edition is described in Sander I,153. There are copies at Perugia, Siena, Bologna and Seville. Turrini 387, sets a *terminus ante quem* as late as 1544.

<sup>6</sup> *Confessionale*, XVI: f.18v.

<sup>7</sup> XVII: ff.19v-20v.

<sup>8</sup> XXVII: f.34v.

Three of the Servite friars mentioned above wrote brief penitential handbooks of ten to fourteen leaves. Galvano of Padova, OSM, graduated master of theology and taught at Padova, Siena and Florence. His *Memoriale de confessione gentile*, published at Torrelbelvicino about 1478, is an interrogatory following the order of the seven mortal sins. Usury, fraud and falsification of weights and measures are mentioned under the heading of Avarice, as well as selling a thing for more than it is valued at *dalli stimatori del commune*.<sup>9</sup> Paolo Attavanti, OSM (c. 1445–1499), theologian, canonist, and humanist, is a better known Renaissance figure, frequenting the circle of Lorenzo de' Medici and Ficino. His considerable literary output includes a *Confessione utile et breve*, which saw several editions.<sup>10</sup> After a general introduction, it is an interrogatory mainly structured on the seven mortal sins. In the section on avarice, there are two lines on usury and a bit more on *turpe lucrum*. The penitent should be asked whether he has made a hoard and storage of grain in order to bring about dearth (*facto endica et maghone di biada per mettere carestia*).<sup>11</sup> Paolo of Faenza, OSM, master of theology, was prior of the Servite convent at Faenza for several periods in the late fifteenth century. His *De ratione absolutissimae confessionis* was published at Bologna in 1500. It touches upon our subject in a few lines about commerce conducted with improper intentions and improper means, and about withholding the wages of labourers.<sup>12</sup>

Marino Baldi, OSM, composed what is called in the preface a *picola opereta* of instruction for confessors on how to examine and interrogate sinners of all states and conditions. Still on the brief side, it runs to almost four times the average length of the works reviewed in the preceding paragraph. A native of Venice, Baldi studied at Padova and Piacenza and graduated master of theology shortly before the year 1500, when he appears in the sources as prior of Santa Maria della Consolazione at Ferrara. He was later vicar general of the Observant Servites for two periods, the last time shortly before his death in 1518.<sup>13</sup> Baldi's *Modo generale de confessarsi* was published

<sup>9</sup> *Memoriale*: f.4r. On this work and the author, cp. Besutti I,141–3; Turrini 74, 426.

<sup>10</sup> I consulted the first edition, Florence c. 1477. Later incunabula editions at Brescia and Milan. On Attavanti and his work, cp. DBI 4, 531–2; Besutti I,79–111, with Appendix by Serra 213–54; Rusconi, 1986, 212; Turrini 74, 363–4.

<sup>11</sup> *Confessione utile et breve*: f.5r.

<sup>12</sup> *De ratione*: f.6r. Paolo also composed a *Confessione* for women. On his life and works, cp. Besutti I,157–66; Turrini 74, 456.

<sup>13</sup> On Marino Baldi, cp. Branchesi II,36–7, with Appendix by Montagna at 301; Jacobson Schutte 62; Rusconi, 1986, 215; Turrini 74, 378.

at Venice at a date disputed by bibliographers.<sup>14</sup> It contains an introduction on the manner, conditions, and circumstances to be observed by the confessor, and a few concluding pages on reserved cases, excommunication, and Holy Communion. The body of the work is divided into two roughly equal parts. The first part is an interrogatory running systematically through the commandments, the mortal sins, the sacraments, the works of mercy, the senses, the articles of faith, the gifts of the Holy Spirit, the beatitudes, and the virtues opposite to the mortal sins. The second half fulfils the promise made in the preface. Here, Baldi instructs the confessor on how to examine different persons according to a detailed classification of ecclesiastical and lay states and professions. Economic subjects are touched upon repeatedly in both parts.

When examining the penitent on the subject of theft, the confessor is instructed to ask if he knowingly has bought anything for less than its value, whether he has conducted business on holidays or in a sacred place, whether he has sold anything dearer to foreigners or to persons lacking in judgement or in any other way has sought to deceive (*circumvenire*) buyers by words or acts, and if he has falsified merchandise or cheated on weights or measures.<sup>15</sup> On the subject of avarice the penitent should be asked about usury and about faulty contracts or faulty merchandise, and once more about commerce on holidays and about cheating on weights and measures.<sup>16</sup> Avarice fosters a multiple breed, including fraud and robbery. The former sin finds expression in selling one thing for another and in falsifying or mutilating money. A master who withholds the wages of a servant commits robbery.<sup>17</sup> If the penitent is a merchant, he should, yet once more, be asked about commerce in the wrong place or at the wrong time.<sup>18</sup> He should, furthermore, be asked whether he has sold anything for more than was paid for it in the same place—a distant echo of the palea *Eiciens*.<sup>19</sup> The question of false weights and measures should be raised. The merchant should be examined about

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<sup>14</sup> Estimates waver between 1490/92 and 1500/1. There does not seem to be a question of two different editions. There are two copies of the single edition in Italy, one in the Museo Correr at Venice, the other (which I examined) in the library of the Franciscan convent at Assisi.

<sup>15</sup> *Modo generale de confessarsi*: ff.7v–8r.

<sup>16</sup> *Op. cit.*: f.11v.

<sup>17</sup> F.12r.

<sup>18</sup> F.35v.

<sup>19</sup> *Op. cit.*: ff.35v–36r.

price fixing agreements damaging to the community. He should be asked whether he has sought or desired dearth (*zerchato o desiderato charestie*) and whether he has declined to bring grains to the marketplace (*piazza*) when needed (*quando le sta bisogno*).<sup>20</sup> A few lines are devoted to the examination of artisans. One of the questions to be put to an artisan is whether he has sold his products for more to a foreigner than to a resident of the area (*se a per piu venduto al forestiero chal teriero*).<sup>21</sup> This question, as well as the similar question recorded from the section on theft, clearly reflect the decretal *Placuit*, whereas the reference to seeking dearth recalls the canon *Quicumque*. Wool manufacturers should be asked about paying labourers in goods instead of money and estimated at a price that is too high.<sup>22</sup>

The two Lateran canons regularly mentioned initially composed general interrogatories for the confessional of very different lengths; one consists of eight leaves of print, the other of eighty. Celso Maffei, CanR Lat, of Verona, the author of the shorter work, was general of the Order for several periods from 1463. He also wrote a book of instruction for the confession of cardinals and prelates that saw several editions. His *Interrogatorio*, which is the work that concerns us here, was published at Brescia about 1502, the year before his death.<sup>23</sup> It is structured on the basis of the seven mortal sins and contains two pages about avarice. The penitent should be examined about usury in loans and in sales contracts. He should be asked whether he has sold or bought anything at an excessively high or low price and whether he has sold one thing for another or a corrupt thing for a good one.<sup>24</sup> He should furthermore be asked whether he has paid promptly the wages of poor labourers.<sup>25</sup>

Teofilo Vegio, CanR Lat (d. 1530), of Cremona, was the author of a *Confessionum memoriale*, which was said to be the fruit of his own long experience as a confessor.<sup>26</sup> It contains an interrogatory following

<sup>20</sup> F.36r.

<sup>21</sup> F.36v.

<sup>22</sup> Loc. cit.

<sup>23</sup> The single known copy of this work is held by the Cathedral Library of Seville. On Celso Maffei, cp. Schulte II,368; Rosini I,196–205; Chevalier 2947; Jacobson Schutte 253.

<sup>24</sup> *Interrogatorio*; f.4v.

<sup>25</sup> Op. cit.: f.5r.

<sup>26</sup> This work was apparently published only once, at Parma in 1518. I studied the only copy known to me, which is held by the Biblioteca Civica of Bergamo. On the author, cp. Rosini II,309–11; Turrini 84, 483.



the order of the commandments and the capital sins. In the section on theft the author raises the subsequently much discussed question of the secret wage. Teofilo teaches that a servant who furtively helps himself to the deficiency if he is not paid a due wage sins gravely but need not restore what was taken.<sup>27</sup> As authority for this conclusion he cites the Franciscan canonist Francesco Piazza.<sup>28</sup> Note, however, that Teofilo's *Memoriale* postdates the *Summa* of Silvester Mazzolini (cp. following chapter), who is the one who definitely put this question on the agenda, and whom Teofilo quotes elsewhere. Still on the subject of theft, Teofilo quotes Savonarola on the distinction between five price levels. Cash sales may be made at either of the two lower levels. Credit sales may be made at the middle (*summum*) level, "which is, as it were, punctual" and the absolute maximum level of the just price. Sales at either of the two upper levels are forbidden.<sup>29</sup> Knowingly to buy a thing at less than its value or to sell it at more, to cheat on weights and measures, and to falsify money are mortal sins.<sup>30</sup> In the section on avarice there is an interesting comparative treatment of wage and price. If a person hires someone for a certain task and reneges on paying the wage agreed upon in advance, causing the person hired to suffer a considerable loss, he sins mortally, for he acts against the precept of Leviticus, "The wages of him that is hired shall not abide with thee all night until the morning".<sup>31</sup> On the immediately following lines, Teofilo states that a buyer who will not pay the full price established in advance by a *just* agreement, likewise sins mortally.<sup>32</sup> In other words, price doctrine focuses on just terms (as well as on just settlement); wages theory focuses almost exclusively on the latter. This difference is particularly striking in Teofilo Vegio's juxtaposition of the two cases.

Jacopo Filippo Foresti, OESA, was born of a noble family at Solto near Bergamo in 1434. Having completed his studies with brilliant results in his native city, he joined the Order of the Hermits of St. Augustine. He is said to have accepted preferment with reluctance,

<sup>27</sup> *Confessionum memoriale*: f.13r.

<sup>28</sup> The place referred to is probably *Opus restitutionum*, § 87: Venice 1472, f.26v.

<sup>29</sup> *Confessionum memoriale*: f.14v.

<sup>30</sup> *Op. cit.*: f.15r.

<sup>31</sup> Lev. 19.13. This text is referred to by Thomas Aquinas in one of the very few places in his works where the economic aspects of labour are mentioned; cp. *Sum. theol.*, I-II, 105,2,6.

<sup>32</sup> *Confessionum memoriale*: f.39v.

but nevertheless served as prior at Imola, Forlì and Bergamo, where he died in 1520. The duties of his position still left him time to pursue his scholarly interests in science and letters. He left a number of works, being best remembered as a historian.<sup>33</sup> Foresti's *Confessionale* appeared at Venice in a Latin and an Italian edition about the turn of the century, or possibly a little earlier, and was reprinted a number of times.<sup>34</sup> It contains an interrogatory in the twin form by now familiar, in which a general examination based mainly on the commandments and the capital sins is followed by an examination *ad status*. The seventh commandment elicits questions about cheating on numbers, weights and measures;<sup>35</sup> in the section on avarice, Foresti recommends examination about collusion and monopoly.<sup>36</sup> The overriding interest concerning this work, however, is centred on its section on the examination of merchants, both because of its content and because it involves an intriguing bibliographical puzzle. It closely resembles Mattia of Milan's *Repertorium*, and the direction of influence is uncertain.<sup>37</sup> Anyhow, here are the relevant items of Foresti's version. Original or not, it was the first to appear in print and the one that saw the largest diffusion.<sup>38</sup>

Of a merchant inquire thus:

If he engages in trade primarily from avarice and in order to gather wealth, which is a mortal sin, especially if he places his end in profit and seeks profit by lawful and unlawful means.

<sup>33</sup> On Foresti and his works, cp. Ossinger 359–63; Perini II, 77–80; Jacobson Schutte 179; Turrini 74, 81, 216, 419–21.

<sup>34</sup> Goff dates the first edition (Hain 2814) to “about 1497”. IGI 5072–4, 5074A, dates this and three other editions to c. 1500. Edition used: Venice 1510 (in Latin).

<sup>35</sup> *Confessionale*: f.23v.

<sup>36</sup> *Op. cit.*: f.35v.

<sup>37</sup> Comparing this section, in its Latin version, with Chapter 48 of the *Repertorium* of Mattia of Milan, one finds that they are virtually identical, with the one difference that Foresti's version lacks the painstaking references to the *Summa Angelica* and the *Summa Rosella* with which the version of Mattia is furnished. Because the first printed edition of Mattia's *Repertorium* is definitely later than the first edition of Foresti's *Confessionale*, the coincidence of the texts must be explained on the basis of one of the following hypotheses. Either, that there exists (or existed) a version prior to both, but posterior to the large Franciscan *Summas*, with the references. Or, that Mattia copied Foresti (or an earlier version without the references) and, with infinite finesse, located and added appropriate reference points in the *Angelica* and the *Rosella*. Or, that Foresti had at hand a manuscript version of Mattia's *Repertorium* and, many years before its appearance in print, copied it verbatim, while taking out the references. I leave the proof or rejection of these hypotheses to any future bibliographer who may find them worthy of his professional attention.

<sup>38</sup> *Confessionale*: ff.65r–66r.

- If he has agreed with other merchants not to sell such and such a thing or commodity at a price below the one agreed upon between them; if that price is an excessive one, it is also prohibited by law.
- If, in the same place and on the same day, he has sold dearer than he bought; he has done wrong.
- If he has bought something at much less than its value from an ignorant person; if he knowingly did this, it is a mortal sin and he is obliged to make satisfaction.
- If he has engaged in some barter with someone else and has priced his own goods much higher than they were worth to the other, he has committed the crime of injustice, unless the other did him the same injustice.
- If he has committed fraud in weights and measures, he has sinned mortally and is obliged to make satisfaction or, in the love of God, to give alms.
- If he has delayed paying his hired workers the wages of their labour beyond their term, or subtracted something from the wages agreed upon, or given them something false, he is obliged to make satisfaction.
- If he has not given them money as promised, but cloth, silk, wine, corn, and the like, he has acted unlawfully, and especially if he did it against their will and with damage to them.
- If he has engaged in trade on holidays he has sinned mortally, unless it should happen to be when fairs are in operation, for then it is permitted to do so after having attended mass.
- If he has bought or sold in a sacred place he has done wrong no matter how, for it is altogether prohibited by canon law.<sup>39</sup>
- If, in the conduct of his trade, he has made use of lies, perjuries, oaths, and deceptions; for in extreme cases this is always a mortal sin, in other cases sometimes a mortal, sometimes a venial sin.
- If, arriving in a certain city, he has paid earnest-money for, or bought, all there is in that city of commodities such as spice, cotton, wool, silk, wax and the like, because he has heard that goods like that, on their way there, have sunk, he has sinned gravely and, according to law, should be fined and punished by exile.

On the following pages, there are some briefer sections on other crafts and trades. Artisans should be examined about falsehood and perjury, about false weights and measures, and about other forms of deception.<sup>40</sup> Wool manufacturers should be asked, much like merchants, about paying workers too late or less than the wage agreed upon, and about abuse of the truck system.<sup>41</sup> Similar subjects are

<sup>39</sup> Foresti (and Mattia of Milan) refer to *Decretum*, I,42,4.

<sup>40</sup> *Confessionale*: f.66r-v.

<sup>41</sup> Op. cit.: ff.66v-67r.

raised in the section on innkeepers. More specifically, they should be asked whether they have sold dearer to pilgrims and ignorants, for this is specifically forbidden according to the decretal *Placuit*.<sup>42</sup>

The last work to be reviewed in this chapter is a conventional one, but its author is probably the most colourful person of all those who contributed to our genre. Jacopo Caviceo (1443–1511), of Parma, studied law at Bologna and was ordained priest at Rome. After some trouble with the authorities he fled the country and travelled widely, partly in the East. Upon his return, he served as vicar general in the dioceses of Rimini, Ravenna, Florence, and Siena. Caviceo is primarily remembered for *Il peregrino*, a frequently printed and highly popular adventure story with novelistic elements, quite different from the rest of his literary production. His works include a *Confessionale utilissimum*, which appeared at Parma in 1509 and was reissued at least twice.<sup>43</sup> Headed by an introductory treatise on confession and penance in general, and followed by some concluding sections on the works of mercy, the articles of faith, the sacraments, and the gifts of the Holy Spirit, the body of the work is an interrogatory, partly in dialogue form, structured on the commandments and the capital vices. Caviceo passes through the pages on theft without mentioning trade and price. All interest therefore attaches to the section on avarice, where usury and justice in exchange are discussed following Aquinas and canon law. The lawfulness of buying cheap and selling dear depends on motive. If done entirely for profit it is sinful, but not if the purpose is public or private utility as, for instance, when stores are gathered to fend off starvation because necessities may otherwise leave the region, or if grain bought for one's own household is sold to a neighbour in need. In such cases, additional cost and risk may be covered, but the main rule is that a thing should not be sold dearer than it is generally sold in the whole town or region according to the common course.<sup>44</sup> This is a fair statement of a price doctrine based both on cost and on market factors but without indicating how these factors interact. On the next page, the different rules about "circumvention" in the external and the internal court are explained.<sup>45</sup> Restitution should be made in the

<sup>42</sup> Op. cit.: f.67v. Foresti (like Mattia of Milan) cites X.III,17,1.

<sup>43</sup> I consulted the first edition. On the life and works of Jacopo Caviceo (Cavizzi); cp. Michaud-Quantin, 1962, 76–7, 114; DBI 23, 93–7, with references.

<sup>44</sup> *Confessionale utilissimum*: 131–2.

<sup>45</sup> Op. cit.: 133.

case of fraud as to weight, number and measure.<sup>46</sup> There is no obligation to point out manifest defects in commodities. A seller may also keep silent about a defect if he fears that the buyer, having been made aware of the defect, would be inclined to lower his bid too much.<sup>47</sup> As to the hire of servants, it is a mortal sin to withhold their wages.<sup>48</sup>

### *Summary*

The influence of the massive penitential traditions of the mendicant friars is not difficult to detect in the works briefly reviewed in this chapter. Most of them are simpler works. Interrogation is based primarily on the mortal sins, often supplemented by the commandments, and in a few instances by examination *ad status*. There are occasional references to cost and to the common estimate as just price criteria. The preferred approach to trade and price doctrine in these authors, however, is the alternative one of establishing boundaries to free bargaining. Exploitation of ignorance and need through fraud and coercion in sales and barter is the recurrent theme. Echoes of *Placuit* and *Quicumque* can be heard in warnings against price discrimination and against the creation of dearth through forestalling, collusion and other monopolistic practices. A majority of the authors condemn failure to pay wages promptly and some condemn abuse of the truck system.

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<sup>46</sup> Ibid.: 135.

<sup>47</sup> Ibid.: 136.

<sup>48</sup> Ibid.: 137.

## CHAPTER THIRTEEN

### THE DOMINICAN TRADITION IN THE SIXTEENTH CENTURY

If Franciscan authors dominated the penitential genre in Italy in the late fifteenth century, the Dominicans made a massive comeback in the sixteenth. It was headed by the large alphabetical *Summae* by Silvester Mazzolini of Prierio and Giovanni Cagnazzo of Taggia, both published in the second decade of the century. They were followed, a decade later, by the equally influential *Summula* of Cardinal Thomas Cajetan. By a curious coincidence, two of these authors also played major parts in the developments leading to the Reformation. In 1518, Mazzolini, the papal court theologian, published a tract against Luther's "presumptuous conclusions". Later in the same year, Cajetan was the papal legate empowered to question Luther after the Diet of Augsburg. These events mark the watershed of the reformation process and led to the bull *Exsurge domine*. Needless to say, the issues raised had little to do with economic ethics. If Luther were to have burned a book because he objected to its doctrine of trade and price, however, he would have been better advised to choose one of these Dominican handbooks than that of Angelo Carletti, for they discard some of the basic premises of medieval scholastic economic thought, to which Luther remained faithful.

Silvester Mazzolini was born at Prierio in Piedmont in 1456 and died at Rome in 1527. He joined the Dominicans at Genova in 1471 and rose within the Order to become vicar general of the Lombard province in 1508. After his studies, Silvester acted as inquisitor at Brescia and Milan and taught at Bologna and Padova before being called to Rome in 1514 as professor of Thomistic theology at the Sapienza and master of the Sacred Palace. This was the platform from which he became embroiled in the Lutheran controversy, to which he contributed a number of tracts and for which he is best remembered in Church history. He also wrote on dialectics and cosmology besides theology and metaphysics.<sup>1</sup> A brief *Summario da con-*

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<sup>1</sup> All major studies of the Reformation deal with the role of Mazzolini. On his

*fessarsi* is attributed to Silvester Mazzolini. It was published a number of times along with some other pastoral opuscula in the vernacular, a collection generally known by the title of the first item as *Scala del sancto amore*. The bit on confession runs to less than fifteen leaves. It is structured on the commandments, the capital sins, and a listing of sins typical of different professions and offices. Under the heading of Theft, the confessant is warned against illicit economic gains and against falsification of measure, weight and number in exchange.<sup>2</sup> Merchants rate half a column. They are told about the sinfulness of collusion to raise prices and of usury in credit sales.<sup>3</sup> This work is a trifle compared to Mazzolini's monumental alphabetical lexicon for confessors, the *Summa Silvestrina*. It first appeared at Bologna in 1515 and was reprinted at least forty times in the sixteenth and early seventeenth centuries.<sup>4</sup>

According to a prominent student of late pre-Reformation confessional literature, the *Summa Silvestrina* (along with the *Summa Angelica*) are "stamped with the individuality of their authors".<sup>5</sup> Regarding Silvester on trade and price, it is useful to clarify in what sense this characterization is true. In the printed editions, the title of his work often presents it as a "summa of the summas" (*Summa Summarum*). This description is correct in a sense that was perhaps not intended. By examining the paragraphs relevant to the present study, one finds that a very large part of the text is lifted from the pages of Angelo Carletti or Battista Trovamala, along with their references to theological and canonistic sources, but generally without acknowledgement of the immediate sources utilized. Silvester's favourite authority is Antonino of Florence, whose *Summa theologica* is frequently cited. Silvester's use of this work speaks of an intimate knowledge of it, but he does not supply precise place references.<sup>6</sup> Moreover, in most

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life and works in general, cp. Quétif-Échard II, 55–8; Schulte II, 455–6; Michalski, 1892; and the more recent BBKL 7 (1994) 948–50; LTK 8 (1999) 557; with references.

<sup>2</sup> *Summario da confessarsi*: Bologna 1501, f.153vb.

<sup>3</sup> *Ibid.*, f.159vb.

<sup>4</sup> References are to the first edition. On this work, cp. Dietterle, *ZK* 28 (1907) 416–31; Michaud-Quantin, 1962, 101–3, 116.

<sup>5</sup> Tentler, 1977, 36.

<sup>6</sup> The procedure sorely tests the knowledge of the modern scholar as well, and matters are further complicated by the fact that Silvester does not quote Antonino by name but by the abbreviations *Arch.*, *Archi.*, or even *Archid.* The first and second forms are ambiguous and the third one is positively misleading. They invite a confusion of *Arch(iepiscopus)*, that is, Antonino, archbishop of Florence, with *Arch(idi-aconus)*, which was the common canonistic sobriquet for Guido of Baiso, archdeacon of Bologna, the author of the *Rosarium super Decreto*.

cases, rather than draw on Antonino directly, he must have identified the passages in the *Summa theologia* on which the Franciscan sum-mists drew, though they seldom followed Antonino at all closely and usually failed to supply place references as well. The very choice of material borrowed may indicate tendencies and directions in the thought of the borrower, a fact not to be overlooked in the case of Sylvester. A brief review of his loans is called for. The more rewarding approach, however, is to focus on those articles and paragraphs where he takes issue with his precursors, or pits one of them against the other or, above all, where new viewpoints are introduced. These are the places where his individuality shines through, and on these points the *Summa Silvestrina* had important and far-reaching effects.

Making his selection from the double layer of sources described above, Sylvester presents an extended version of Raymond of Peñafort's list of factors rendering trade illicit (wrong cause, time, person, and place), including both trade *ex commercio* (detrimental to the community) and *ex consortio* (unsuitable partnership).<sup>7</sup> He discusses fraud and deception in general,<sup>8</sup> fraudulent practices in the hostelry and wool trades,<sup>9</sup> fraudulent barter,<sup>10</sup> and the obligation to reveal defects in merchandise.<sup>11</sup> Examining Angelo Carletti's version of Peter Olivi's list of factors modifying the maxim which states that a thing is worth the amount at which it can be sold (coercion, ignorance, levity of mind, etc.), he faults Angelo for omitting fraud, citing Antonino of Florence.<sup>12</sup> He discusses credit sales and present sale of commodities intended for transportation elsewhere, drawing on Angelo, Battista, and Antonino.<sup>13</sup> His discussion of forced sale of necessities is constructed from two paragraphs in the *Summa Rosella*,<sup>14</sup> whereas a detailed statement of the tradition on the canon *Quicumque* seems to be based directly on Antonino. The sinfulness of "intending dearth"

<sup>7</sup> *Summa Silvestrina*, art. *Negotium*, § 2: ff.476vb–477ra; cp. *Summa Angelica*, *ibid.*, § 2; Antonino, *Sum. theol.*, II,1,16,2: 249–52.

<sup>8</sup> *Silvestrina*, art. *Culpa*, § 7: ff.136vb–137ra; cp. *Summa Angelica*, art. *Dolus*, § 9.

<sup>9</sup> *Silvestrina*, art. *Emptio et venditio*, § 19: f.206vb; cp. *Rosella*, *ibid.*, § 15; Antonino, *Sum. theol.*, II,1,17,5: 264–5.

<sup>10</sup> *Silvestrina*, art. *Permutatio*, § 2: f.513va–b; cp. Antonino, II,1,17,10: 270.

<sup>11</sup> *Silvestrina*, art. *Emptio et venditio*, § 20: f.207ra–b; cp. *Angelica*, *ibid.*, § 8.

<sup>12</sup> *Silvestrina*, art. *cit.*, § 9: ff.205vb–206ra; cp. *Angelica*, *ibid.*, § 7; Antonino, II,1,16,3: 256.

<sup>13</sup> *Silvestrina*, art. *Usura* II, § 1: f.654ra–b (cp. *Angelica*, art. *Usura* I, § 59; Antonino, II,1,8,3: 129); *Silvestrina*, art. *Usura* I, § 21: ff.651vb–652ra (cp. *Angelica*, *ibid.*, § 16; *Rosella*, *ibid.*, § 17).

<sup>14</sup> *Silvestrina*, art. *Emptio et venditio*, § 5: f.205ra; cp. *Rosella*, *ibid.*, § 9, § 23.



and of “compelling” others to buy at the seller’s pleasure is stressed.<sup>15</sup> Collusion and monopoly on the part of merchants are condemned following Battista, and such practices among craftsmen are similarly criticized following Angelo.<sup>16</sup> In a brief note, Silvester mentions collusion among buyers.<sup>17</sup> There is not much in these paragraphs that goes against the grain of traditional doctrine.

It may be worth noting that Silvester Mazzolini fails to respond to the invitations to point out the injustice of the truck system, offered by Antonino of Florence in his *Summa theologica*, as well as in the *Confessionale* “*Defecerunt*”. On the few occasions when Silvester touches upon the question of wages, he tends rather to side with the employer. Thus, in the case of the person who, for a fee or a wage, is given a thing to sell at ten and manages to sell it at twelve, he draws on Antonino to support Battista’s solution against that of Angelo. Even though the owner only mentions ten, Silvester argues, that sum was to be understood as a minimum requirement. If possible, he would of course prefer a higher price. The middleman has no claim on what he obtains in excess of ten. He cannot claim it as owner of the thing, nor because of his labour or industry, for his wage was given him for all his efforts in connection with the sale.<sup>18</sup> Elsewhere, Silvester introduces the subject of the “secret wage”. Whereas Antonino of Florence was mainly concerned with labour conditions in the textile industry, Silvester raises the question whether a domestic servant whose master will not pay him due wages, can lawfully help himself to the difference in secret. He quotes the opinion of Richard of Middleton, who considered the practice to be sinful, though the servant need not be held to restitution.<sup>19</sup> As regards a just wage in general, the master should pay what others would pay or he may set the wage himself with a view to what the judgement of a good man would indicate.<sup>20</sup>

<sup>15</sup> *Silvestrina*, art. cit., § 12: f.206rb; cp. Antonino, II,1,23,16: 327–8.

<sup>16</sup> *Silvestrina*, art. cit., § 18: f.206va–b (cp. *Rosella*, *ibid.*, § 23); *Silvestrina*, art. *Artes*, § 2: f.38ra–b (cp. *Angelica*, art. *Ars*, § 1).

<sup>17</sup> *Silvestrina*, art. *Monopolium*: f.473ra.

<sup>18</sup> *Silvestrina*, art. *Emptio et venditio*, § 24: f.207va; cp. *Angelica*, *ibid.*, § 28; *Rosella*, *ibid.*, § 13; Antonino, III,8,3,4: 305.

<sup>19</sup> *Silvestrina*, art. *Familia*, § 6: f.268vb; cp. Richard of Middleton, *Comm. Sent.*, IV,15,5,7: IV,225.

<sup>20</sup> *Silvestrina*, art. cit., § 4: f.268va–b. On this occasion, Silvester cites *Archi*. and his source is Guido of Baiso, archdeacon of Bologna, in *Rosarium super Decreto*, to II,1,1,114: f.116va.

Paying what others pay, that is, looking to a common estimate, or emulating a good man's estimate, are familiar principles of medieval just price theory. In the *Summa Silvestrina*, both principles appear in one of the paragraphs dealing with price. It is impossible to construct a consistent theory of the just price on the part of Silvester if account is to be taken of all the paragraphs where the subject is raised. When he leaves the safe ground of the Franciscan summas, he sometimes contradicts them, or contradicts himself. In an early paragraph of the article *Emptio et venditio*, Silvester takes Angelo Carletti's teaching as his point of departure.<sup>21</sup> The just price is the price that is commonly current (*quod communiter currit*) in the place where such contracts are made, and also at that time. It cannot be fixed to an exact point, however, and therefore the Gloss to the *Decretum* states that the just price is assessed by a common estimate, and the same rule is stated in the *Digest*. If there is no regular trade in a certain commodity, the price may be set by a good merchant familiar with the circumstances, because no other rule can be given. For this account, with the canonistic references, Silvester draws on the *Summa Angelica*.<sup>22</sup> These principles, Silvester goes on to argue, don't apply if fraud is involved, and they are also limited by the teaching of St. Thomas, as follows. When a sale brings loss to the seller, he may sell both the thing itself and his loss (a paraphrase of the first half of the "double rule" of the *Summa theologiae*), but this principle must be understood to apply only if the sale is made at the request of the buyer and in order to help him out, not if the seller is forced to sell by some need of his own, for then St. Thomas in *De malo* states that the buyer should pay what the thing is worth, not what the seller loses by parting with the thing. It is otherwise if the seller does not lose but the buyer greatly benefits from the sale because, this benefit not being due to the seller's circumstances, he would then be selling what did not belong to him (second half of the double rule).

The only place in *De malo* to which Silvester can have referred here is an article dealing with usury. In reply to the objection that a person who pays usury is not forced to do so but pays voluntarily, Aquinas states that albeit the usurer does not apply absolute force (*violentia absoluta*) on the borrower, he subjects him to a certain mixed force (*violentia mixta*), in that the necessity of having to accept the

<sup>21</sup> *Silvestrina*, art. *Emptio et venditio*, § 6: f.205ra-b.

<sup>22</sup> *Angelica*, art. cit., § 7.

loan imposes a serious condition on the borrower so that he must return more than he is given. "And it is similar if someone were to sell, to someone else reduced to need, a certain thing for much more than its worth, for that would be an unjust sale, just as a usurious loan is unjust"<sup>23</sup> In the price theory of Aquinas, the version of *De malo* is simply an alternative statement of the second half of the double rule, relating it to the Aristotelian dichotomy of absolute versus mixed will. If the buyer's circumstances are such that he benefits greatly from the sale (*Summa theologiae*), or if he is in great need of the thing sold (*De malo*), whereas the seller suffers no particular loss, overcharging the buyer is sinful on the part of the seller. Silvester misinterprets the latter version by reversing the roles. A needy seller takes the place of a needy buyer.<sup>24</sup> What emerges from his analysis is a price theory according to which a seller forced by need to offer a good for sale must expect to get less for it than someone approached by a potential buyer with a request to sell. This state of things is common enough in the business world, but it is not in agreement with the inherited scholastic doctrine of the just price and it certainly cannot be attributed to Aquinas. Silvester nevertheless repeats his interpretation in the following paragraph.<sup>25</sup> Breaking into Battista Trovamala's exposition of the double rule,<sup>26</sup> he makes the observation that it is sometimes licit, according to the rules of the court of conscience, to buy a thing at less than its value if it is highly advantageous for the seller to sell but not for the buyer to buy, as when someone buys the work of a pauper at cost price, lest he die of hunger.

In contexts where need is not a direct or main issue, Silvester's position on the subject of the just price is not consistent, a fact that perhaps can be attributed to the compilatory nature of his work. From Antonino of Florence he reproduces the theory of the three levels of the just price, with the narrow limit of tolerance between the lower and the upper levels.<sup>27</sup> Commenting on the case of him who buys a thing at ten and sells it unaltered at twelve, he claims

<sup>23</sup> Thomas Aquinas, *De malo*, XIII,4, ad 7: 256.

<sup>24</sup> The omission of a single word can explain Silvester's error. The first line of the statement by Aquinas rendered in quotation marks reads as follows in the original: "Et est simile si quis alicui in necessitate constituto venderet. . . ." If the word "alicui" is overlooked or missing in the text used, Silvester's reading follows.

<sup>25</sup> *Silvestrina*, art. *Emptio et venditio*, § 7: f.205rb.

<sup>26</sup> *Rosella*, *ibid.*, § 8.

<sup>27</sup> *Silvestrina*, art. *Usura* II, pr: f.654ra; cp. *Rosella*, art. *Emptio et venditio*, § 8; Antonino, II,1,8,1: 126. In Silvester's version the three levels are forty-nine, forty-nine and a half, and fifty.

that Battista Trovamala erroneously takes Antonino in support of his conclusion that the contract is valid. Antonino is not at all clear on the point, Silvester remarks, and states as his own opinion that the contract is clearly unjust.<sup>28</sup> This kind of commercial activity is precisely what Chrysostom, cited in the preceding paragraph, has in mind when he speaks of merchants evicted from the Temple of God.<sup>29</sup> Chrysostom's dictum is followed by a reference to labour, risk, and other cost factors as legitimate bases of a just price. Drawing on Antonino again, however, Silvester indicates how a common estimate of price will overrule a cost estimate. It would be unjust—Antonino says “most absurd and unjust”—if some stupid merchant, having bought a commodity where it is costly, should be able to sell it dear in a different place where it abounds and is therefore cheap according to the common estimate.<sup>30</sup> The market is not mentioned in this context but in the article *Usura* Silvester puts forward the most explicit statement of a market theory of the just price encountered in pre-Reformation penitential literature:

The just price is that which, according to a common estimate, is current in the market in the place and at the time of the sale, to be understood for cash, and when the good is delivered at present in the same place in which the price is paid, or in another place, unless the good should be of higher value to the seller than the common estimate would hold it to be worth, or unless there be fraud at work, the common estimate being decreased or increased by means of fraud.<sup>31</sup>

In 1517, a mere couple of years after the first edition of the *Summa Silvestrina*, and in the same city of Bologna, another huge alphabetical lexicon for the instruction of confessors appeared, namely, the *Summa Tabiena* by the Dominican Giovanni Cagnazzo. He is a much less prominent figure in the history of the Church than Silvester Mazzolini. A native of Taggia on the Ligurian coast (hence the title of his work), he joined the Friars Preachers at an unknown date, studied theology, and served as regent master of studies at Bologna, where he also filled the office of inquisitor for almost two decades. He died at Bologna in 1521. The diffusion of the *Summa Tabiena* was much more modest than that of the *Summa Silvestrina*. It was reissued once

<sup>28</sup> *Silvestrina*, art. *Emptio et venditio*, § 11: f.206rb; cp. *Rosella*, *ibid.*, § 10; Antonino, II,1,16,3: 257.

<sup>29</sup> *Silvestrina*, art. *cit.*, § 10: f.206ra.

<sup>30</sup> *Silvestrina*, *loc. cit.*; cp. Antonino, II,1,8,2: 128.

<sup>31</sup> *Silvestrina*, art *Usura* II, § 1: f.654ra.

at Bologna and three times at Venice in the course of the sixteenth century.<sup>32</sup> Like the *Silvestrina*, it was styled *Summa Summarum* on the title page, and justifiably so. While leaning less heavily on Antonino of Florence and drawing more directly on Thomas Aquinas, Cagnazzo, like Mazzolini, modelled his work on the large Franciscan summas of the late fifteenth century and copied or paraphrased them roundly in the articles on trade and price. The many points of detailed correspondence between the two Dominican summas leaves no doubt, however, that they are more closely related than a mere common set of sources can reasonably explain. The *Summa Tabiena* is known to have circulated in manuscript for at least five years prior to its appearance in print. This does not necessarily place its date of origin before the *Summa Silvestrina*, which may presumably have taken some time to get into print as well. Some sort of interdependence at the manuscript stage seems to be a safe assumption. Our study of very minor parts of the two works is a rather more shaky basis for the conjecture that determined the order in which they are presented here.

The major part of the following presentation is drawn from the article *Emptio*, occasionally supplemented by articles parallel to those of Silvester, and then mostly introducing material borrowed, as in the case of Silvester, from the Franciscan summas. In a paragraph of the article *Dolus*, lifted virtually verbatim from the *Summa Angelica*, Cagnazzo discusses causal and incidental *dolus* as well as deception in the absence of *dolus*.<sup>33</sup> Deception within and beyond the limits of one-half of the just price is discussed in the article *Emptio* with reference to Thomas Aquinas.<sup>34</sup> In a series of paragraphs in the same article, Aquinas is paraphrased on the subject of defective goods and the obligation to reveal defects, the *Summa Rosella* making an appearance as an intermediary source.<sup>35</sup> Regarding the obligation to reveal information about the imminent arrival of additional supplies, which would have caused an anticipated fall in price, Cagnazzo agrees with Aquinas and argues in favour of this opinion. Though present buyers

<sup>32</sup> *Index Aureliensis* VI, 160–1. An alleged edition Bologna 1515 is not listed in this usually reliable compilation of sixteenth-century printed books and is most likely the result of a confusion with the *Summa Silvestrina*. Ed. used: Bologna 1517. On Giovanni Cagnazzo and the *Summa Tabiena*, cp. Quéatif-Échard II, 47; Dietterle, *ŒK* 28 (1907) 401–15; DTC 2, 1302; Michaud-Quantin, 1962, 104, 114.

<sup>33</sup> *Summa Tabiena*, art. *Dolus*, § 7: ff. 141vb–142ra; cp. *Angelica*, *ibid.*, § 9.

<sup>34</sup> *Tabiena*, art. *Emptio*, § 4: ff. 165rb–va; cp. Aquinas, *Sum. theol.*, II–II, 77, 1 ad 1.

<sup>35</sup> *Tabiena*, art. *Emptio*, §§ 8–11: ff. 166va–167va; cp. Aquinas, II–II, 77, 2–3; *Rosella*, art. *Emptio et venditio*, §§ 14–15.

would benefit from the information and from the reduced price, a future circumstance will not render a good less worth at present but only in the future. The seller may therefore keep quiet about his knowledge.<sup>36</sup>

The forced sale of necessities is discussed by Cagnazzo following the *Summa Rosella* much like Silvester Mazzolini and referring to the same canon law and Roman law authorities.<sup>37</sup> Monopoly is also discussed in the article *Emptio*.<sup>38</sup> It is sinful if exercised merely for the benefit of the monopolist but not if it benefits the community, as explained by Innocent.<sup>39</sup> In the paragraph in question, the condemnation of fraudulent monopoly is extended to those who prevent others from being instructed in their crafts and (once more recalling the *Summa Rosella*) to those who manipulate the price of victuals by causing ships carrying such goods to be delayed, or by similar practices.<sup>40</sup> The subject of monopoly had already appeared in the article *Ars*, which contains a brief note based on Silvester or directly on Angelo Carletti, all of whom stress the sinfulness of collusion among craftsmen to prevent entry or to fix prices.<sup>41</sup> On the subject of wages, Cagnazzo agrees with Mazzolini. A master should pay his servants what they can get from other masters or offer a wage in accordance with a good man's estimate.<sup>42</sup> He follows Mazzolini in his support of Trovamala against Carletti in the case of the middleman who is paid to find a buyer at ten and manages to sell at twelve. The whole amount, less the middleman's fee, belongs to the original owner of the thing sold.<sup>43</sup>

Something can already be gleaned from this preliminary exercise in comparing paragraphs. In the case of Cagnazzo, just as in the case of Mazzolini, the condemnation of fraud and collusion is firm and unquestionable. On these points, the early-sixteenth-century Dominicans are as adamant as the late-fifteenth-century Franciscan summists and their precursors. What remains to be clarified, however, is to what extent those factors should be understood to restrict

<sup>36</sup> *Tabiena*, art. *Emptio*, § 12: f.167va.

<sup>37</sup> *Tabiena*, art. *Emptio*, § 5: f.165va–b; cp. *Rosella*, art. *Emptio et venditio*, § 9; *Silvestrina*, *ibid.*, § 5.

<sup>38</sup> *Tabiena*, art. *Emptio*, § 13: f.167va–b.

<sup>39</sup> Innocent IV, *In quinque libros Decretalium*, to X.II,28,69: f.129va–b.

<sup>40</sup> Cp. *Rosella*, art. *Emptio et venditio*, § 24.

<sup>41</sup> *Tabiena*, art. *Ars*, § 7: f.38va; cp. *Angelica*, *ibid.*, § 1; *Silvestrina*, art. *Artes*, § 2.

<sup>42</sup> *Tabiena*, art. *Familia*, § 6: f.220va; cp. *Silvestrina*, *ibid.*, § 4.

<sup>43</sup> *Tabiena*, art. *Emptio*, § 19: f.168rb; cp. *Silvestrina*, art. *Emptio et venditio*, § 24.

the freedom of bargaining. In some of the cases recorded where Cagnazzo sides with Mazzolini, bargaining seems to be granted a broader scope than in the earlier penitential handbooks. This leniency is underscored in the *Summa Tabiena* by the author's frequent reliance on the rule of the *Sext* which states that no injury nor fraud is done to one who knows and consents (*Scienti et consentienti non fit iniuria neque dolus*). If one thing is sold for another, both parties being aware of the fact, no injustice is done, because *scienti et consentienti non fit iniuria*. If it is a known custom in a certain trade to count falsely, there is properly no fraud nor deception, because *scienti*, etc. If a thing is sold with a defect known to the buyer, no restitution is called for, because *scienti non fit iniuria neque dolus*.<sup>44</sup> Elsewhere in the article *Emptio*, Cagnazzo touches upon the Scotist gift principle. If the seller knows the true value of a thing and sells it for much less than this, the difference may be interpreted as a gift, and then the rule applies, that *scienti* . . .<sup>45</sup> In the article *Usura*, the rule of the *Sext* is joined by the value maxim of the Romanists. When the buyer and the seller know the nature of the thing and also know the just price and there is no ignorance nor fraud on the part of either, nor any natural need, then, if the sale is made at more or less than the just price, there is a gift involved, according to the rule *scienti et consentienti* . . ., and the principle that states that a thing is worth the amount at which it can be sold and at which it is commonly valued (*res tantum valet quantum vendi potest et communiter appretiatur*).<sup>46</sup>

The first and second paragraphs of the article *Emptio* are devoted to explaining the nature of the just price.<sup>47</sup> Cagnazzo lists three properties that lend economic value to things, namely, their *virtuositas*, *raritas*, and *complacibilitas*. This triplet derives from Peter Olivi's treatise of buying and selling.<sup>48</sup> The precise terms appear, in the hand of Bernardino of Siena, in the margin of the Siena manuscript of Olivi's treatise discovered by Bernardino. In his economic sermons, Bernardino copied Olivi's explanations of these properties and their relationship to just pricing.<sup>49</sup> Cagnazzo most likely received this material from Bernardino via Antonino of Florence.<sup>50</sup> His explanations of them are

<sup>44</sup> *Tabiena*, art. *Emptio*, § 8: f.166va; § 9: f.167ra; § 11: f.167va.

<sup>45</sup> *Tabiena*, art. *Emptio*, § 2: f.165ra.

<sup>46</sup> *Tabiena*, art. *Usura* XIII: f.487rb.

<sup>47</sup> *Tabiena*, art. *Emptio*, §§ 1-2: ff.164vb-165rb.

<sup>48</sup> Olivi, op. cit.: Siena BCom U.V.6, f.295va.

<sup>49</sup> Bernardino, *Quadr.*, Sermo 35,1,1: 191.

<sup>50</sup> Antonino, *Sum. theol.*, II,1,16,3: 255-6.

briefly. *Raritas* translates easily as scarcity. At a time of dearth, Cagnazzo observes, grain is valued more highly than at other times and, quite generally, every rare thing is costly. This is no more than a truism unless scarcity is permitted to influence the *just* price to a certain extent, which is clearly the assumption in the given context. Cagnazzo, in fact, makes a point of relating all of Olivi's valuation bases to Aquinas's insistence that the just price cannot be determined with accuracy and to Antonino's distinction between its three levels. *Virtuositas* and *complacibilitas* do not lend themselves to exact translations in current English terminology. Rendered literally, virtuosity is need satisfying power in a general or "objective" sense, whereas complacibility expresses the same thing in a more particular or "subjective" sense. Cagnazzo now deftly conjoins the Olivian and the Thomistic models by associating the former's first and third terms with the latter's value *secundum se* and value *per accidens* as these terms are used in the statement of the double rule of just pricing. A seller cannot lawfully charge a price in excess of the virtuosity value of a thing merely because of the buyer's higher complacibility valuation, but he can seek indemnity for the loss of his own complacibility in the thing. The change of terminology may not make all that much difference, but it enhances the subjective nature of economic valuation and it tends to broaden the "accidental" value basis from Aquinas's "circumstance affecting the buyer",<sup>51</sup> which suggests need, to include the "pleasingness" of a luxury article.

This is not to say that Cagnazzo overlooks the role of true need in the matter of the just price. The absence of need is included, along with the absence of ignorance and fraud, in the statement of the gift principle quoted from the article *Usura* above. Paraphrasing Angelo Carletti's requirements of free bargaining, Cagnazzo lists knowledge, prudence, and free will, stressing the absence of need, as well as the readiness to offer a gift.<sup>52</sup> But the *Summa Tabiena*, like the *Summa Silvestrina*, contains contradictions. Discussing the lawfulness of selling a thing at a higher price than what was paid for it, Cagnazzo draws mostly on Aquinas with only secondary support in canonistic sources.<sup>53</sup> Unlike Mazzolini, he does not present a full version of the literary tradition on the canon *Quicumque*, which had been

<sup>51</sup> Aquinas, *Sum. theol.*, II-II, 77, 1, c.

<sup>52</sup> *Tabiena*, art. *Emptio*, § 2: f.165rb; cp. *Angelica*, art. *Emptio et venditio*, § 7.

<sup>53</sup> *Tabiena*, art. *Emptio*, § 14: ff.167vb-168ra; cp. Aquinas, II-II, 77, 4.



a main vehicle of Italian penitential doctrine on economic coercion since its appearance in the *Summa Monaldina*. There is a brief reference to the canon. A merchant sins if he "aims to bring about dearth". But there is no mention of "forcing" anyone to buy at the merchant's pleasure. Elsewhere, at a prominent point of the *Summa*, the author suggests that economic coercion and conditional versus absolute will are irrelevant issues in connection with trade and price. Antonino of Florence had stated that buying "requires a good, a price, and consent".<sup>54</sup> In the brief preface to the article *Emptio*, Cagnazzo offers a different version with a punch line that sounds very much like a motto: "Buying is a contract whereby the ownership of a thing passes to the buyer from the seller, by mutual will, and through the payment of a price. . . . Mutual consent is essential to buying, and conditional will is sufficient (*Mutuus consensus est de substantia emptionis, et voluntas conditionata sufficit*)".<sup>55</sup>

As a literary genre, the large penitential summas of the mendicant friars, composed on the eve of the Reformation, can be described as hybrids of the academic works of theology and law on which they drew and the simple handbooks of the preceding centuries addressing the average practising confessor or the average literate confessant. Their frequent reissues prove that they met a certain demand, but probably mainly as textbooks on the advanced level of pastoral training. The increasing gap between these summas and the brief *confessionalia* that proliferated in the same period called for an intermediate form which would combine a modicum of theoretical instruction with practical usefulness. The *Summula de peccatis* by Cardinal Thomas Cajetan was designed according to these specifications. In his preface, the author deplores the tendency of the late summas to include a lot of extraneous material and to reproduce the disputations and divergent opinions of the doctors. This complexity left the "less learned" confessors "confused and perplexed". He had been asked by many, he tells his readers, to put together a slimmer summa, retaining the alphabetical form and stating his own opinions as well as the best opinions of other authorities, while leaving them silent, that is, without quoting them by name. When this work was first published at Rome in 1525, Cajetan (1469–1534) was a man of great learning and experience. He had taught philosophy and exegesis at

<sup>54</sup> Antonino, *Sum. theol.*, II,1,8,14: 137.

<sup>55</sup> *Tabiena*, art. *Emptio*, pr.: f.164vb; cp. also art. *Usura* XVI, § 2: f.490va.

the Sapienza, had been master general of the Dominican Order, filled the positions of bishop and archbishop, and had served as legate to Germany (where he encountered Luther). He was a prolific author, best remembered for his epoch-making commentary on the *Summa theologiae* of Thomas Aquinas. By comparison, his *Summula de peccatis* is a minor work, but it was a huge publishing success. New editions appeared with brief intervals throughout the rest of the sixteenth century and sporadically in the seventeenth century.<sup>56</sup>

To call the work a *summula* is perhaps an exaggeration; it runs to almost five hundred (albeit small) pages. The space allotted to specific activities and their attendant sins, such as those that are typical in the economic sphere, is not as large as the number of pages might indicate, because Cajetan also sets himself the task of instructing “less learned” confessors in general confessional doctrine and procedure and includes a number of articles on such subjects as *Confessio*, *Conscientia*, *Contritio*, etc., to *Restitutio* and *Satisfactio*. Three pages are devoted to *Emptio*, a bit less to *Venditio*, twelve to *Usura*, a good dozen lines to *Permutatio*, and rather less than that each to *Dolus*, *Falsarius*, *Fraus*, and *Mercatura*. In the latter four articles the author has little to say except that deceit, fraud and the falsification of money, measures, weights, and writings may be either a mortal or a venial sin, and that the merchant’s trade is praiseworthy if it is conducted for a proper end and without injustice, fraud and falsehood.<sup>57</sup> All that seems even marginally worth noting in the article *Usura* are a reference to the three levels of the just price and a line associating the just price with the price that commonly can be obtained without fraud.<sup>58</sup> In the article *Permutatio*, Cajetan states that barter is unjust if the things exchanged are of unequal value or if fraud is involved.<sup>59</sup> The article *Venditio* is partly based on Aquinas. The double rule is sketched, and the sinfulness of trade by way of fraud as to substance,

<sup>56</sup> My references are to the first edition. Access to bio-bibliographical data is complicated by the fact that it can appear under any of the four initial letters of the name spelled Thomas de Vio Cajetan. He was born Jacopo de Vio and in religion took the name of Thomas Cajetan (Tommaso Gaetano) from Thomas Aquinas and from the city of Gaeta (on the gulf thus named, to the north of Naples) where he was born and was for a time bishop. Cajetan is in Quétif-Échard II, 14–21. For updated information and references regarding his life and work, cp. BBKL 1 (1975) 847–8; LTK 2 (1994) 884–5; On the *Summula*, cp. Michaud-Quantin, 1962, 104–6, 114.

<sup>57</sup> Cajetan, *Summula de peccatis*, arts. *Dolus*: f.51v; *Falsarius*: f.120r; *Fraus*: f.126r; *Mercatura*: f.176r.

<sup>58</sup> Art. *Usura*: f.239r; f.242r.

<sup>59</sup> Art. *Permutatio*: f.189v.

quality or quantity of goods, by way of monopoly, and by way of usury, is stressed. In the lines on monopoly, the original and peremptory voice of the cardinal can be heard:

[Trade is sinful] if the price is increased owing to monopoly, for monopoly is forbidden, and the more the price is increased because of monopoly, the more iniquitous is the price. Neither are merchants excused by concessions from sovereigns, nor are the sovereigns absolved of robbery, seeing that buyers are forced (*coguntur*) to buy at that much more, being unable to buy from anybody else. Such monopoly is not merely harmful to single individuals, but indeed offensive to common liberty and therefore not to be tolerated.<sup>60</sup>

In the article *Emptio*, Cajetan addresses the question of justice in exchange on the part of the buyer.<sup>61</sup> The basic principle is stated in the opening lines. Intentionally to buy a thing, or to pay for it, at less than the just price at the time and place in question, is a mortal sin, because the buyer thereby harms his neighbour the seller by giving him less than he ought to. Having explained at length what is meant by a just price, Cajetan proceeds to note that the civil law permits sales within one-half of such a price, whereas God's law is pure and does not excuse any notable harm to one's neighbour. Fraud as to substance, quantity and quality of merchandise is therefore illicit, as when a costly article is bought cheap from an ignorant seller. It is true that there is a limit to the buyer's obligation to point out the true character or value of the thing he wished to buy; he need not go into details if the seller could have taken more care to examine it or sought information about it from someone else. Moreover, the just price has three levels. If a thing is sold on credit at the upper (rigid) level, it is no sin on the buyer's part to buy it for cash at the lower (pious) level. All this, however, depends on what is to be understood by a just price. Cajetan devotes a full page to instruct his readers, the less learned confessors, on this crucial point of economic ethics:

The just price is not merely that which is commonly current in a country but that which commonly can be obtained now, here, and by a given procedure of selling or buying. Thus, even though a certain thing is sold by merchants in Rome at one hundred, if the same thing, offered for sale in Rome on the seller's initiative, at auction, or through

<sup>60</sup> Art. *Venditio*: ff.228v–230r at f.229r.

<sup>61</sup> *Summula*: ff.54v–56r.

a broker, cannot find a buyer except at seventy (both because goods thus offered become cheaper, and because few buyers are found at the time or because they do not need that thing or because they lack ready money for the thing or because they do not care to have it), the just price of that thing then and there is set at seventy. It follows that those who, seeing that a thing offered for sale can be had at a certain price, for instance, seventy, are persuaded to buy it, do not thereby sin. Nor is the price rendered unjust by the reason why it is sold (*ex causa*), for instance, someone selling involuntarily because he is moved by need to do so, for the want by which someone is forced to sell does not render the sale involuntary (*inopia qua cogitur quis ad vendendum non reddit venditionem involuntariam*), otherwise a sale would also be rendered unjust if it were made at the rigid price, which is patently false. The reason is the same, namely, that the just price is what usually can be obtained for a good now, here, sold or bought in a certain way. For that reason also the price is just if a house or a field or garden is bought very cheap indeed after a war or pestilence, because buyers cannot be found. For the same reason, jewels that may have been bought at one thousand are now bought at one hundred, because buyers cannot be found. Similarly, we see goods brought from elsewhere by ship being sold cheaper than they are worth there, because buyers cannot be found then at any other price. And likewise in similar cases. If you wish to see this subject discussed more extensively with its foundations, see our Commentary on the first article of Question 77 of the *Secunda Secundae*.<sup>62</sup> But for now pay regard to the difference in price between a good expecting a buyer and the selfsame good not expecting a buyer and your understanding will be clearer. A house expecting a buyer is sold at what it is worth absolutely, but a house not expecting a buyer is sold for as much as can be got for it. And then it is truly sold at what it is worth now, exposed here, though it is not sold at what it would be worth expecting a buyer. The just price, however, is not what it would have been worth given this expectation, but what it is worth here, now, and considering particulars actually obtaining at the moment.

In view of the modest space allotted to subjects related to trade in the *Summula de peccatis* and the rather perfunctory treatment of most of these subjects, this painstaking exposition of the nature of the just price stands out all the more clearly as a key to Cajetan's economic thought. It demonstrates the importance he attaches to this point of doctrine and the difficulty he envisages in getting it across to the confessors whom he addresses. In the case of readers attuned to the

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<sup>62</sup> On Cajetan's discussions of this subject in his commentary on Aquinas, as well as in one of his opuscula, cp. Langholm, 1998, 113–5.

ideas expressed in previous penitential literature up to and including the large Franciscan summas of the late-fifteenth century, these presentiments were not unfounded. Within the sixteenth-century Dominican tradition, however, Cajetan's contribution may well be viewed as a predictable prolongation of doctrinal developments that had already found expression in the *Summa Silvestrina* and the *Summa Tabiena*. Like Mazzolini, Cajetan holds that a good seeking a buyer is *justly* bought for less than a good sought by a buyer. Like Cagnazzo, he denies the relevancy to just price theory of the distinction between absolute and conditional will, noting, quite correctly, that the distinction is logically empty. On two other points, Cajetan carries the ideas of the Dominican summists a step further. With the exception of fraud and collusion, which can be viewed as deliberate interference with the market process and thus as crimes, just pricing is free within the limits set by suprapersonal or "objective" circumstances. The idea of a common estimate, while not rejected, is significantly reinterpreted as well. Overleaf from the end of the careful explanation of the just price quoted above, Cajetan copies the value maxim of the medieval Romanists, *tantum valet res quantum vendi potest*. No commonality, in the sense of a temporal, spatial or procedural aggregation, limits the validity of that rule. A thing is worth what can commonly be got for it, or what it can commonly be got for, any time, any place, and in any lawful way.

### *Summary*

Judged by their massive borrowings from works reviewed in previous chapters, the *Summae Summarum* of Silvester Mazzolini and Giovanni Cagnazzo are end products of the penitential tradition that started with Raymond of Peñafort and reached these sixteenth-century Dominicans mainly through the late fifteenth-century Franciscan authors. These aspects of their works require no additional summary here. If they are granted, and focus is placed on what is not thus accounted for, the *Summa Silvestrina* and the *Summa Tabiena* appear in a different light. They can be seen as heralds of a new doctrinal orientation, one which found an even clearer expression in the *Summula* of Cajetan. Though the condemnation of fraud and force by way of speculation, collusion and monopoly is as unambiguous as before, the sense of some key terms is subtly altering. The current price and

the current wage are the best estimates of justice, but currency admits of greater variability with time and circumstances. The requirement of consent is imperative, but the meaning of consent is changing. Cagnazzo's repeated appeal to the principle that the willing suffers no injustice must be read in light of his proposition that conditional will is sufficient. This position is confirmed by Cajetan's explicit statement that someone forced by need does not act against his will. Mazzolini's reinterpretation of Aquinas in *De malo* is similarly confirmed by Cajetan's insistence that justice in pricing can take no account of the reason why anyone engages in exchange. Each form of exchange establishes its own justice, which applies to anyone who adopts that form, regardless of his motivation. These suggestions made by Cagnazzo and Mazzolini and picked up by Cajetan come to the same thing. Justice in exchange is about to be viewed as something determined by the forces of supply and demand, forces that are essentially objective and impersonal. Justice is about to lose its foundation in the parties' mutual obligation to consider one another's needs, the foundation on which penitential doctrine on trade and price had built ever since its origin in twelfth-century theology and canon law.

PART THREE

DOCTRINAL AND HISTORICAL OVERVIEW

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## CHAPTER FOURTEEN

### THE PITFALLS OF TRADE

In this chapter and in the following Chapter 15 I shall attempt to assemble the main viewpoints and arguments recorded in Parts I and II and construct what may be called an ideal form of the penitential doctrine on trade and price. Originating with the English and French theologians of the late twelfth century and materially advanced by the Spanish canonist Raymond of Peñafort, this doctrine developed over a period of approximately three centuries. Its ideal form is not found fully fledged in any single work, but most of its elements are present in the large Italian *summas* of the late fifteenth century. The development was not a smooth and straightforward one in the sense that some of the many authors quoted did not disagree on this or that point. It was only in the sixteenth century, however, that serious breaks with an essentially common doctrine were effected at the hands of the Dominican authors presented in Chapter 13. Mention will be made of that doctrinal reorientation, but a discussion of its significance must be postponed to Chapter 16. In that concluding chapter, the penitential doctrine on trade and price developed from the Middle Ages will be placed in contrast to new trends of thought in the Italian Renaissance.

A prominent feature of trade and price doctrine, in the penitential tradition as well as in scholastic thought in general, is its focus on justice as the main criterion of right and wrong in economic intercourse. That such must be the case might appear obvious. It is nevertheless pertinent to indicate how it came about and to note some of its consequences. Justice as the main social virtue has a number of historical roots, one of which can be traced back to the *Nicomachean Ethics* of Aristotle. To the Greek Philosopher, particular justice (which Albert the Great erroneously divided into commutative and distributive justice only) was one item in the catalogue of individual virtues, whereas universal justice in a sense represented the social aspect of all virtue. In the version of the commentary tradition on the canon *Quicumque* which John of Freiburg adopted from Ulrich of Strasbourg (who leant on Albert as well), commerce is said

to be lawful if conducted “according to commutative justice” (*secundum commutativam iustitiam*). This important Aristotelian backing remained firm. It is interesting to note, and characteristic of how the handbook authors handled their borrowings, that the literal Aristotelian statement was rephrased in the Italian tradition. Bartolomeo of San Concordio, who drew on Ulrich through John, accepts the lawfulness of trade “by the exercise of just commutation” (*propter exercendam iustam commutationem*). This version reappears in the *Summa Angelica* and the *Summa Rosella*. Still later, Savonarola, an author well versed in Aristotelian ethics, calls for “equality of commutative justice” in buying and selling, echoing Raniero of Pisa.

The main input on justice in the penitential tradition did not derive from Aristotelian philosophy, important though it remained, but from law and theology. In Roman law, the *iustum pretium* was a post-classical construction. It is nowhere defined in the law but served as a benchmark for the computation of the one-half measure that defined *laesio enormis*. As such, it was adopted in canon law. It appears in the penitential tradition as early as in the *Summa* of Thomas of Chobham and became a staple in discussions of fraud. In the theological *Sentences* of Peter Lombard, known to Bartholomew of Exeter and subsequently a frequent source, as well as in the numerous interrogatories organized on the basis of the ten commandments, dishonourable trade appears under the heading of Theft, which is an offence against justice.

It does not follow from the prominence accorded to justice that the sister virtue of charity was overlooked. In Latin, the word for charity in the sense of a virtue (*caritas*) is not the same as the word for charity as a function or an act (*eleemosyna*: almsgiving), but the two are of course related insofar as the virtue inspires the act. In the *Decretum* of Gratian, and in some early post-Gratian additions to it, the mendicant friars and other early authors of the new style of penitential handbooks were faced with an old attitude to trade that underscored its dubious moral character. The spectre of *turpe lucrum*, which can be traced back to one of the earliest of the extant *libri poenitentiales*, the Ambrosian, was disinterred. The possibility of doing business without sin and pleasing to God was questioned. The Lord chased the traders from the Temple (read: the living Church of God) and therefore rightly no Christian ought to be a merchant. Medieval confessors could not very well advise all repentant merchants to abandon their trade, though records show that such advice was sometimes

given and acted upon. The merchant might even decide to enter a religious Order and turn all his unearned wealth over to the Church. This is one scenario that could be cited in support of the contention that the sacrament of penance was profitable to the Church; however, the mendicant friars knew well enough that society needed merchants.

The better strategy would rather be to stake out ways in which commerce could be conducted without sin and to the benefit both of the merchant and his dependants and of society. Merchants ought to strive to quench the avarice that threatened them and spend some of their honourably earned profit on charity. Authors of penitential handbooks who wrote in the traditions of Thomas Aquinas and Ulrich of Strasbourg suggested this solution to the ancient dilemma. It subsequently sounds in the texts examined throughout the pre-Reformation era. A late author who paused to ponder it more closely was Battista Trovamala. Commerce is lawful, Battista states, if the merchant, moved by piety, distributes some of his gain among the poor, though there is no moral objection to his supporting himself and his dependants in a certain style, provided that avarice does not get the better of him. Long before, Robert Grosseteste had suggested that avarice is a sin against charity and not, as Thomas Aquinas taught, as sin against justice. According to Battista Trovamala, avarice is a mortal sin if a person's love of wealth grows to such an extent that it takes precedence over charity. If not, it is still a sin, but only a venial sin. The Christian duty of charitableness was probably impressed on the penitent medieval merchant as strongly as the social duty of justice. Charity, however, cannot serve as a general ethical norm of economic intercourse. There is nothing in the *Summa Rosella* or in any of the other textbooks examined to suggest that such a norm was seriously contemplated. It would mean abandoning the marketplace to a hard-hearted and vicious majority. The most that could be hoped for, and that was therefore demanded in the confessional, was a certain measure of justice, which ensured that each party to a commercial transaction received his due.

There is thus no question but that a principle of justice in exchange or, in professional jargon, "the just price", lies at the core of medieval penitential doctrine on trade and price. Such is the case also of doctrines developed in some of the parallel genres on which the penitential handbooks drew, and of scholastic economic thought in general. Experience shows, however, that the signification of this theoretical construction, as well as the nature of, and relationship between, the

criteria by which the just price could be estimated, are subjects best approached indirectly, via some of the other subjects broached in the handbooks. A direct approach caused much early modern research to flow off at unfruitful tangents. Some of it failed because it chased a fiction, namely, an exact formula by which the just price of any commodity could be exactly computed. Aquinas's insistence that it could be no more than a sort of estimate was introduced by John of Freiburg and became common property. Scotus, quoted by Astesanus through Richard of Middleton, allowed for a certain latitude. Long before those two great schoolmen, Peter the Chanter pointed out that the just price might vary with time and place. It was frequently repeated and more often implied, presumably because it was considered a truism. It also follows indirectly from case discussions about usury. From Peter Quesnel to Battista Trovamala, some of our authors would consider the question whether goods originally intended for sale elsewhere or later could lawfully be sold here or now at more than the present and current just price. Regardless of the conclusion as to the usurious nature of such transactions, the fact that the question was raised at all, confirms the variability of the just price. So does, in fact, the very issue of uncertainty about future prices on which so much of the discussion of usury in credit sales turned.

Another unfortunate development in early modern research in medieval economic thought originated in the Aristotelian conception of justice as equality. It caused medieval authors to be accused of misunderstanding the nature of exchange. Why would anyone exchange when that which he got was of equal value to that which he gave, in money or in commodities? This misconception was exploded in the penitential tradition by Astesanus quoting Richard of Middleton. In agreement with other scholastic authors, but more fully and patiently than anyone else, Richard explains how buying and selling at equal and just exchange values, in long-distance trade or in a given locality, can leave both parties better off in terms of use values or utilities, because mutual preferences are different. The issue was not raised again in these texts. The main controversy regarding "the medieval just price", however, concerned the two classes of criteria by which justice in exchange could be estimated, namely, the labour, or labour and cost, criterion on the one hand, and the common estimate, or the market, criterion on the other hand. These criteria have been the subjects of an unfortunate anachronistic misconstruction in the critical literature, which associated them with an

ideological conflict that lay many centuries in the future. Both sets of criteria are abundantly represented in the texts examined and a harmonization of them is a major concern of the following chapter.

A number of penitential handbooks state that sellers who offer goods for sale at unjustly high prices may be instructed by the authorities to reduce them. The judgement of a good man is frequently appealed to as well. These references are not very helpful, for authorities and good men are as much in need of hard and fast rules of estimation as the traders themselves. Historians sometimes trivialize the whole issue of the just price by claiming that very much medieval trade was subject to official regulation of prices which were then automatically accepted as just. Bartolomeo Caimi and Pacifico of Cerano state positively that if the price of a certain commodity is fixed by the government of the city or the region, it is not lawful to sell it for more or to buy it for less. Battista Trovamala calls for price regulation of necessities and provides some examples. How frequently the question of justice in pricing was thus resolved and taken out of the hands of the traders (and of the confessors) is a matter of statistical computation that cannot be made in retrospect but which doubtless would have yielded varying figures over the geographical space and time span covered by this study. The fact remains that throughout that long period, in Italy and elsewhere, the authors of penitential handbooks were greatly concerned with just pricing in cases not subject to official regulation but left to the higgling and bargaining of the parties themselves.

The question of the validity, and thereby of the justice, of a bona fide contract made by the parties themselves without interference by any external agent, depends on one of the most fundamental principles of the European legal tradition, that of consent. A valid contract presumes, and rests fully on, mutual consent. Consent means a free and unhampered will to enter into the contract in knowledge and understanding of its terms. This principle forges a strong, direct link between justice and voluntariness. In the words of Aristotle, no one suffers injustice voluntarily. This ancient Greek legal dictum found several expressions in Roman law and it reached the penitential tradition through one of the rules of the *Sext*, from which it was frequently quoted by Italian authors: No injury nor fraud is done to him who knows and consents. By thus linking up the just with the voluntary and by taking the latter as a point of departure, it is possible to reach a better understanding of the signification of

the just price and of the nature of the relationship between the main criteria suggested for its estimation. From Raymond of Peñafort, supplemented by Alexander of Hales, the penitential tradition received a list of factors rendering trade unlawful: improper cause, time, person, place and manner. It was copied throughout the period studied and sometimes served as an organizing principle for the interrogation of merchants. The fifth and final item was occasionally associated with other improper practices, sometimes mentioned but most often bypassed in the present account, such as the sale of poisons and other dangerous substances, the sale of gambling equipment, the sale of cosmetics and female finery, the sale of weapons to the infidel, etc. As regards the manner (*modus*) in which business is conducted, it invited an examination of the two main factors that render trade unlawful and unjust because they violate the criterion of voluntariness. Raymond of Peñafort related it to fraud. Some of those who drew on Alexander of Hales tackled the problem of coercion.

Fraud in a contract of buying and selling is, for the purpose of gain, to deprive one party to the contract of relevant information which it is the other party's moral or legal obligation to disclose. The subject of fraud had a long and chequered history in the penitential tradition. It appears in the Ambrosian penitential and in the Hubertense, where special attention is paid to the use of false weights and measures. The condemnation of this particular form of fraud passed via various councils and capitularies to Burchard of Worms and Gratian and is mentioned in some of the early penitential handbooks of the new style, including those of Bartholomew of Exeter, Alan of Lille, and Peter of Poitiers. From the thirteenth century, few handbooks that dealt at any length with economic subjects, would fail to mention weights and measures when discussing fraud. Elaborations appeared, and many other fraudulent tricks were added: using different scales for buying and for selling, making one arm of the scales longer than the other, counting falsely, selling bad for good, a worthless substance for a precious one, a sick horse for a healthy one, rotten meat for fresh, soaking wool and certain spices to make them heavier, diluting wine or otherwise adulterating and mixing liquid goods, counterfeiting, clipping or otherwise mutilating coins, etc. These are all examples of deliberate, intentional fraud.

From the thirteenth century onward, the larger handbooks written by mendicant friars addressed the theoretical model for the analysis of fraud that originated in Roman law and was partly transmitted

through canon law literature. In essence, this legal theory establishes a sharp distinction between *dolus* in the sense illustrated above, whether causal or incidental to the contract, and deception in the sense of a mistake on the part of the party to a contract who might profit from the mistake. The account of John of Erfurt's struggle with this model, and the digression preceding that account, demonstrate the misgivings that must have befallen anyone who would try to apply it to a real business transaction in a commercial economy like those of the late Middle Ages. For one thing, the theory is presented in a varied and confusing terminology. It is said to have been misunderstood by authors writing for the internal forum. If so, it certainly invited misunderstanding.

For another thing, it disregards the large interval defined by the two extremes posed by the law. Without resorting to regular fraud, but without being mistaken about the things they offer either, sellers will extol the qualities of their merchandise and buyers will arrest such exaggerations as best they can and counter the sellers' claims. This is the very stuff of bargaining. Something must always be left to a *caveat emptor*, as well as to a *caveat venditor*—the principle works both ways. It applies in the case of barter as well, a form of exchange introduced in some of the later handbooks and a form rich in opportunities for fraud. It seems significant that Thomas Aquinas, who was not afraid of tackling abstract principles head-on, in his discussion of *fraudulentia* in the *Summa theologiae* merely mentions the legal theory briefly and prefers to descend to the level of casuistry, discussing defects in merchandise as to substance, quantity and quality and the obligation to reveal defects. The solution of the dilemma created by the legal theory of fraud, a solution to which Aquinas's approach in all likelihood contributed, was to grant free bargaining a narrower space in the internal forum than in the external forum. No agreement was reached regarding the variability of the "estimate" mentioned by Aquinas or the extent of the "latitude" of Scotus. Astesanus suggests vaguely that it should not be "notable". The multiple-level idea of the just price proposed by Antonino of Florence and Savonarola also met with a certain response. Regular fraud, however, was unanimously condemned, in both forums.

Fraud exploits lack of will through lack of knowledge and understanding. William of Rennes draws attention to the aggravating circumstances posed by the latter factor. A seller is not excused by parting with information which the buyer lacks mental capacity to

comprehend and act upon. Conversely, there is no fraud, regardless of the terms of the contract, if it is obtained from a knowing and willing person (Burchard of Strasbourg), with the free will of both parties (Berthold of Freiburg), if the parties consent (Peter Quesnel). Bartolomeo Caimi and Pacifico of Cerano point to established custom as an extenuating factor. If certain irregularities regarding counting, measuring or weighing are common and known to all, there is not, properly speaking, any fraud. The rule of the *Sext* applies. Angelo Carletti introduced Peter Olivi's teaching regarding fraud through Bernardino of Siena. It is above reproach, Carletti states, for each party to a contract to seek the best possible deal, provided that certain conditions are satisfied, the primary ones being knowledge, free will and intelligence, for great mental levity invalidates the contract. The most complete statement of this doctrine is that of Battista Trovamala, who cites Aristotle as well as Olivi. If the price agreed upon is below or above the interval that defines the lawful variation of the just price, restitution is due, especially under certain conditions relating to the contracting parties, among which must be counted ignorance and simplemindedness. These factors indicate fraud even though there appears to be consent, for ignorance is not compatible with voluntariness. Echoes of Olivi can be heard in Alexander Ariosto, Benedetto of Siena and Marino Baldi, as well as in Mazzolini and Cagnazzo. Some of the authors who commented on the decretal *Placuit*, including Bartolomeo Caimi and Pacifico of Cerano, would point out the sinfulness of overcharging simple and ignorant persons, thus indicating fraud. The main attack of *Placuit*, however, was not directed against fraud but against coercion.

The idea that economic exchange can sometimes involve a certain element of coercion, even though no physical force is applied, appeared quite early on in the penitential literature. Peter the Chanter repeatedly refers to economic actors "forced by need". A large part of the subsequent discussion of this phenomenon was based on the canon *Quicumque*. This old Carolingian text appears in the *Decretum* of Burchard of Worms (though not in Book XIX, on penance) and was included in the *Decretum* of Gratian. Initiated by Raymond of Peñafort, a casuistry in two related versions was developed on this text. One version was constructed by Monaldus, who worked the Gloss by William of Rennes into the text of Raymond's *Summa*. The other version was introduced in the penitential literature by John of Freiburg, who copied Ulrich of Strasbourg. Ulrich must have known



Monaldus, but his version is the richer one. It reentered the Italian tradition through Bartolomeo of San Concordio. Both versions invite acknowledgement of the lawfulness and even the praiseworthiness of trade, which can be conducted for the support of the merchant's family, for the common good, and for the relief of the poor. In the penitential handbooks, however, these positive aspects served mainly as a contrasting backdrop against which to stage the activity of the evil merchant, forever on the quest for shameful gain.

Through purchasing large quantities of produce cheap in the fall and storing them, speculators could "induce dearth" (*caristiam inducere*), that is, cause scarcity and raise prices. The literal phrase, borrowed by Raymond from Laurence of Spain, became a catchword that sounded throughout the entire tradition. In one form and language or another, it appears in Monaldus, Burchard of Strasbourg, Durand of Champagne, Bernardino of Siena, Angelo Carletti, Battista Trovamala, Michele Carcano, Mattia of Milan, Jacopo Mazza, Matteo Corradoni, Paolo Attavanti, and Silvester Mazzolini. Bernardino, along with Marino Baldi and Jean Quentin, judge it sinful even to wish that there be dearth. When dearth comes about, the hoarder can force customers to buy from him at prices set at his will. The explicit reference to coercion was introduced in Ulrich's version of *Quicumque*. It was repeated by John of Freiburg, Bartolomeo of San Concordio, Raniero of Pisa, Durand, Carletti, Trovamala, Mattia of Milan, and others. Carletti and Trovamala suggest that the nature of the merchandise is relevant to the question of economic coercion. Vigilance is called for in the case of necessities; luxury articles can be left to find their own prices.

The most pitiful victims of economic coercion are the poor and needy in demand for their daily bread. Robert of Sorbon points to the sinfulness of exploiting this class. Other authors are more specific. Bartolomeo Caimi and Pacifico of Cerano, followed by Mattia of Milan, refer to merchants who buy up all they can lay their hands on of a necessary commodity, acting on the foreknowledge that expected supplies will fail to arrive or fail to arrive in time. Battista Trovamala and Giovanni Cagnazzo mention those who actively delay ships bringing victuals to port. Matteo Corradoni condemns both those merchants who prevent other merchants bringing supplies to a region and those who consort with others to this end. The purpose of these various malpractices is to obtain monopoly power. This association with monopoly was made in the transalpine tradition by

John of Freiburg and William of Cayeux. The Roman law defines monopoly in terms which include collusion between sellers to create a cartel with monopoly power. The text in question was introduced in the Italian tradition by Astesanus. In the following centuries, monopoly and collusion were condemned by Caimi and Pacifico, Carletti, Trovamala, Mazzolini, Cagnazzo, and minor authors. Michele Carcano and Thomas Cajetan state outright that monopoly prices are obtained by coercion. Monopoly grants by the authorities were sometimes held to be lawful in the internal forum. This may be another subject on which the economic interests of the Church influenced penitential doctrine. Cajetan, however, condemns them. Through collusion it is possible to discriminate against certain classes of customers. The decretal *Placuit*, also a Carolingian text transmitted by Burchard of Worms, found its way into the *Decretals* of Gregory IX. A number of authors of penitential handbooks cited it and it was sometimes simplified so as to focus entirely on price discrimination. Astesanus, Raniero of Pisa, Johannes de Deo, William Doune and, much later, Marino Baldi, interpret it to mean that higher prices should not be charged from transients than from residents. Exploiting tourists is not a new phenomenon.

Possession of goods that others need lends power to the possessor. Nicolò of Osimo cites and counters the two Roman law maxims which state that a thing is worth the amount at which it can be sold and that anyone is moderator and arbiter of his own thing. These maxims are invalid in the internal forum if such power is enhanced by monopoly or collusion and used to exploit the needy through forestalling, regrating or price discrimination and force them to act against their true will. Coercion exploits lack of will through lack of free choice. It is imperative that this proposition be correctly understood in the economic context. Literally, no one can be forced to buy at a certain price unless physical violence (*vis absoluta*) or threat of such violence (*vis compulsiva*) is applied. Chiaro of Florence discussed some cases involving threat of physical violence, but it is not an issue here. In the words of Angelo Carletti, a person subjected to economic coercion can be said to be “forced to choose”. According to a modern libertarian slogan, such a person is “free to choose” between a set of alternatives. According to Carletti, his choice is forced because the set of alternatives is unduly restricted. Battista Trovamala, completing the argument of Carletti, supports this position by paraphrasing Olivi. A purchase or a sale compelled by great poverty or need (just

as a purchase or a sale made by a person defrauded or by an ignorant or backward person) does not proceed from a pure and free will, because ignorance and coercion exclude the will.

In addition, Carletti refers to the Roman law doctrine on compulsion, restated from physical to economic terms, whereas Trovamala appeals to the Aristotelian principle of conditional voluntariness. Both these arguments are questionable. In classical Roman law, *vis compulsiva* did not always invalidate economic contracts. It could not therefore be taken for granted that its economic version should invalidate economic contracts. As regards acts performed with conditional voluntariness, Aristotle held them to be more voluntary than involuntary, because they were, after all, chosen at the time. In the Latin tradition, arguments could be heard both ways. Thus, conditional will on the part of a needy borrower, and *vis compulsiva* on the part of the lender, were initially used as an argument against usury; later authors took the opposite view. This is how Giovanni Cagnazzo countered the Franciscan price doctrine in the sixteenth century. Throughout the articles on economic subjects in the *Summa Tabiena*, Cagnazzo relies on the rule that states that no injury is suffered by one who knows and consents. In the case of buying and selling, mutual consent is essential, but conditional will is sufficient for the contract to be valid in the forum of conscience. Cajetan adds what Cagnazzo fails to point out, namely, that the Aristotelian and the legal arguments from lack of free will are logically empty. Any price, even a just price, can be claimed by the buyer or the seller to have been paid or accepted involuntarily, because there will always be better alternatives not available to them. However low the price paid, the buyer would have preferred a lower one; however high, the seller would have preferred a higher one. If this were merely a formal objection, it would be a truism. It is important that it be taken for what it really is, namely, a substantive rejection of inherited penitential doctrine clothed as a formal rejection.

## CHAPTER FIFTEEN

### THE BENCHMARKS OF PRICE

It does not follow from the formal objection recorded at the close of the preceding chapter that the arguments from lack of will are ethically irrelevant. They are valid and true so long as it is patently evident that ignorant and needy persons are cheated and forced to accept terms of exchange which they would not otherways have put up with. It does follow, however, that some other criteria of justice in exchange would be welcome in order to arrest fraud and coercion. Two such criteria appeared early on in the penitential literature and were developed in the course of the period examined, namely, a market criterion and a labour and cost criterion.

Regarding the former, it is wise to recognize that the late medieval market, and the market in modern commercial parlance, are two different things. It used to be a place but has become an abstraction. It is true that allusions to the marketplace are still quite common, but this is mostly an affectation on the part of sedentary business leaders projecting the illusion of being out and about where things happen. It is true as well that there are still marketplaces in many Italian cities and elsewhere, but they count for a small percentage of the gross national turnover. To the authors of the pre-Reformation penitential handbooks, however, the market was always a place, the marketplace, where trade in certain commodities was regularly conducted. Local and regional fairs were likewise identified by specific locations. According to the original text of *Placuit*, quoted or paraphrased by Monaldus, Peter Quesnel (in the uncorrupted manuscript version), William of Cayeux, and Astesanus (in one of his references to the decretal), local sellers are told not to charge more for their goods than they could fetch in the market. Angelo Carletti and Mattia of Milan berate those who stand at the city gates, buying all the new grain so as to prevent it reaching the marketplace. Matteo Corradoni reserves his fiercest condemnation for those who take up a stand at the fairs or markets themselves for the same purpose. Marino Baldi instructs the confessor to ask the penitent merchant whether he has declined to supply the market with grain when in demand

there. The message conveyed by these statements is that the market would serve as some sort of guarantee of justice in exchange. This inference is confirmed by Albert the Great's definition of the just price, which John of Freiburg made sure to include in all of his three penitential handbooks: The just price is that at which the good sold can be valued according to the estimation of the market.

This persistent association of the market with the idea of the just price invites a number of questions. Is a price paid or received in the marketplace always a just price? If not, under what conditions is it a just price? Why is it a just price under those conditions? And, what is the significance of the idea of the justice of the market price in the confessional context? The first of these questions must clearly be answered in the negative. Paraphrasing Alexander of Hales's interpretation of Cassiodorus, Astesanus addresses the latter's condemnation of merchants to those merchants who "take over the whole market" of certain victuals or other necessities and sell them at a higher price than they would otherwise have been bought for in the market. The forestallers and regraters condemned in the penitential handbooks may also operate *in* the marketplace, having "taken it over" by their increased bargaining power. Those merchants who enter into pacts and collusions for the purpose of fixing unjustly high price levels, so frequently referred to in the works examined, may operate together in the same market or they may agree to leave sales there to one member of the group. This is very nearly the situation described in the title on monopoly in the *Code*, a frequently cited text. If the function of the market is thus insidiously manipulated, the emergent price is not a standard of justice.

What such a standard requires is indicated by a set of related phrases that appear throughout the penitential literature. Sometimes no direct reference is made to the market in the immediate context of these phrases. The just price is related to "the course of sales" (Robert of Courson), "the common course" (Raymond of Peñafort, Bernardino of Siena, Nicolò of Osimo, Jacopo Caviceo), "what is commonly current" (Silvester Mazzolini), "what is commonly paid" (John of Erfurt, Astesanus), "what it is common custom to pay" (Nicholas of Dinkelsbühl), "as goods are commonly sold" (Bartolomeo Caimi, Pacifico of Cerano), "a common price" (Alexander Ariosto); "a common estimate" (Antonino of Florence, Mazzolini), "what a good is commonly valued at" (Giovanni Cagnazzo), "the common valuation of the citizens" (Ariosto), "what a thing can commonly

fetch" (Nicolò of Osimo), "what commonly can be obtained" (Thomas Cajetan). Some of these expressions are indirect allusions to the price formula of the *Digest*, which some authors (Monaldus, Carletti, Trovamala) also quote or paraphrase more closely, namely, that the prices of things are not to be taken with respect to the disposition or utility of single persons, "but commonly". In some central texts, the market is specifically mentioned or described and coupled with a common price. A thing may be justly sold "as it is commonly sold in the market" (*in foro*: Raymond, Monaldus, Bartolomeo of San Concordio, Raniero of Pisa, Trovamala; *in mercato*: John of Freiburg), "according to the common market" (William of Rennes, Monaldus), "as it is commonly sold in that place where trade is usually conducted" (Astesanus, Raniero of Pisa), "The just price is that which, according to a common estimate, is current in the market" (Mazzolini) "The just price of a thing is that at which it is sold in the market and is commonly current" (Jacopo Mazza).

The words consistently translated as "common" and "commonly" in these quotation (even in the case of "the common market" which to the modern European ear carries different associations) are the Latin *communis* and *communiter* or the corresponding Italian *comune* and *comunemente*. These words can mean different things. In view of how little the texts themselves give us to go by, a consideration of these different senses is called for. The Latin *communis*, just as the English "common", can mean "joint", that which we do jointly or in common. In that sense, a common estimate need not be understood as a product of the market or to refer to the market. It may be a guarantee of justice if it is an estimate agreed upon jointly by good and experienced men or even by the whole community on the basis of long custom. There is a school of historians who tend to the opinion that this is mainly how "the medieval just price" is to be understood. As regards a joint market price, it is certainly not necessarily a just price. On the contrary, one of the ways monopoly power is established in a market according to the penitential handbooks is by several merchants joining together in a conspiracy to sell at the same, excessive price.

Alternatively and, in my view, more correctly in the particular literary context examined, *communis* and "common" can be taken to mean "ordinary" or "usual", that which ordinarily or usually or commonly is done or happens. (The words can also mean "general", which can be taken in both senses). It is in the latter sense that a

common price or a common estimate of price can be seen as a product of the market itself and as a standard of justice. The common (estimate of) price in that sense is the current price that will establish itself in a market free of disturbing interference with its competitive function. It is arguable that the opportunity to examine and compare the goods offered simultaneously by competing sellers to some extent serves as protection against fraud. In that respect, however, competition is not a very efficient guardian. That is perhaps the reason why the penitential handbooks devoted so much more space and effort to the subject of fraud than to the subject of coercion, in the case of which a reference to the common market price often carried the burden of the argument. The justice of the market is one of those truths that has descended unquestioned through the history of economics while its meaning, and the premises on which it rested, subtly changed. Casting aside all modern notions, the current competitive market price served as a standard of justice in the confessional handbooks insofar as it offered protection against economic coercion. In such a market, no one can force the price of individual transactions above or below the just market value, because there will be better alternatives. Competition between sellers will protect buyers, and vice versa. Under different condition, either could have the upper hand. The cases recorded in the handbooks indicate that it was most often assumed to belong to the merchant as a seller.

A competitive market price was not a universal standard of justice. As often pointed out in the penitential literature, the just price would vary with time and place. Merchants could lawfully follow what Berthold of Freiburg calls the "*lauff des marckts*", the run of the market. That was how they could make a profit on which to live. The worst kind of economic coercion is suffered by those who even lack the current price of bread. It might sometimes be a duty of charity for a merchant to succour a beggar who approached his stand in the marketplace—if he were not already chased away by the civil authorities. It would not be a duty of justice, even according to the norms of the internal forum. According to those norms, no one would be required, as a matter of justice, to charge less, or to pay more, than the current market price. In a given market, at a given time, competition will reduce the price to its own standard of justice. It follows, that when such a standard is imposed by the court of conscience, it will be redundant for anyone who actually

operates in that kind of market. This is a point apparently overlooked by some scholars discussing "the medieval just price". It answers the last of the four questions posed above.

The significance of the idea of the justice of the marketplace in the confessional context was its usefulness as a hypothetical corrective to those who confessed to having exercised undue economic coercion. The precept against economic coercion could be broken *in* the market by way of collusion or monopoly or other sinful interference with the competitive functioning of the market. It could also be broken *outside* the marketplace, in geographical locations that lacked the protective shield of competition. Cases of the latter kind may well have been as frequent and as important as cases of coercion by market manipulation. In medieval Europe, with its scattered population and its primitive means of communication, which caused uncertainty and hazards to be attached to the supply of necessities, buyers and sellers would frequently meet under circumstances that permitted undue bargaining powers to be brought to bear on the weaker party. A hypothetical competitive market price, estimated by a good and experienced man, or by the priest or the penitents themselves, might serve as a benchmark from which to measure the amount of ill-gotten gains to be restored or to be given in alms.

The interpretation of the market criterion of the just price given above is based on texts of different dates, from the early thirteenth century to the end of the period examined. Given the sketchy treatment of economic subjects in the early handbooks, it seems a reasonable criterion. When the penitential genre got on to a new start in Italy in the late fifteenth century, however, the line of earnest and competent Franciscan authors unfortunately did little more than elaborate on an analytical model that was then out of date. The premise on which that model rested was the possibility of relating justice to a market concept which, with the development of economic institutions, was no longer realistic. The sixteenth-century Dominicans therefore found no use for it. The medieval marketplace of old could no longer serve as a general standard. There are different methods and forms of exchange. A good may be sold at auction, through a broker etc. Each channel of exchange determines its own price, which varies with circumstances and does not lend itself to any estimate of what is just and fair. A person who chooses to sell his goods in a certain way must take what he can get for them then and there.



Just as Cajetan followed Cagnazzo in rejecting the relevance of the argument from conditional will because it is logically empty, he followed Mazzolini in rejecting the parallel argument that individual need is not to be exploited. Whether or not Mazzolini deliberately misunderstood Aquinas in the *De malo*, he came up with an idea that Cajetan, better attuned to the social realities of his day, found important enough to generalize. Monopoly is forbidden and prices should be just, but the reason why anyone engages in trade is irrelevant. If a seller can find no market for his goods, they are worthless. The less eager people are to buy them, the lower are their just value. A seller seeking a buyer must count on getting less for his goods than a seller sought by a buyer. It may well be that Cajetan merely considered the cause of exchange to be analytically irrelevant and relied on the market to establish justice in exchange. When the market concept is broken down and justice is whatever a good can fetch there and then and bought or sold in a certain way, the justice of the market offers no protection. The cause of exchange becomes substantially irrelevant as well. It is the poor and needy who must seek out buyers or sellers or use whatever means of exchange available. The rich and replete can afford to wait and get the better deal. The early sixteenth-century Dominicans thus herald a new way of economic reasoning where poverty and need are not included in the terminology and where the individual is subsumed in the aggregate forces of supply and demand.

Unless there is another common price reflecting the circumstances at the time and of the trade in question, Nicolò of Osimo states, the merchant's labours and expenses may be taken into account when the just price is to be estimated. A similar formulation occurs in the *Summa Angelica*. When there is no commonality (*communitas*) of a certain trade, Carletti teaches, the just price must be determined by the judgement of a good merchant considering scarcity, labours and risks. Scarcity is a relevant just market price determinant as well (provided that it does not derive from someone "inducing dearth"). Labours, expenses and risks, however, indicate a different approach to the just price in the penitential literature.

Before embarking on a discussion of labour and other cost factors as just price determinants, a digression on the subject of wage labour is called for. In early scholastic academic literature, the wages of servants and labourers and their corresponding duties are virtually

nonsubjects. Thomas Aquinas in the *Prima Secundae* urges prompt payment of the wages of hired labourers because they are poor and live from hand to mouth. Renewed textual research in theological and philosophical sources may uncover other remarks to this effect. The main sources, however, fairly closely examined in previous studies, yielded nothing. The surfeit of similar statements in the penitential literature, most notably in brief and popular works, bears witness to a concern in the confessional with a domestic problem that found no place, (or, from the point of view of the historian, no easily recognized place) in the curricula of the Schools. The main grievance was failure to pay wages in time (as in the case of Aquinas) or to pay them at all. Aquinas was not instrumental in launching this subject in the penitential tradition. It predates the *Prima Secundae* by half a century.

From early authors like William de Montibus and Paul of Hungary, to late ones like Faren and Windsheim on the Continent and Caviceo, Vegio and Baldi in Italy, the attention of confessors and/or penitents was drawn to the sinfulness of detaining or retaining the wages of labourers and servants. More than a dozen others could be named. Andreas of Escobar, one of the handful of Spanish contributors to the genre, composed three handbooks that pass rather lightly over economic matters but in all of them impress upon those who have others in their pay the importance of not neglecting their wages. Dinkelsbühl, Jüterbog and Maillard point to the corresponding duty on the part of labourers to work fully and faithfully for their wages. Some authors, including Rigaud, Fré dol, Nider, Caimi and Pacifico, address both parties to a labour contract. After Antonino of Florence, the practice of paying workers in other things than money was raised in a number of penitential handbooks. Caimi, Pacifico, Carletti, Ariosto, Mattia of Milan, and others, condemn abuses of the truck system.

The value of goods given in lieu of money, or the size of a straight wage in money, was less frequently a direct issue. Consent on the part of labourers was sometimes emphasized. Traietto states firmly that agreement to a truck arrangement on the part of a worker who could find no employment elsewhere, was forced consent. Trovamala mentions a double trick involving barter and truck whereby a merchant can cheat his workers of the difference between a common cash value and a fictitious barter value. In the case of ordinary money wages, Marchesino of Reggio Emilia, Jean Rigaud, Pacifico, Foresti and Mattia of Milan insist that they should be adequate, not

merely promptly paid, without offering any suggestion as to how this should be assessed. The question of how to estimate a just wage was addressed only at a time when Dominican authors had given greater concession to the forces of supply and demand. The same criterion could then be made to embrace both the just price and the just wage. Silvester Mazzolini and Giovanni Cagnazzo suggest that a master should pay what other masters pay or leave the matter to the judgement of a good man. Jacopo Mazza refers to common custom at the time and place. Mazzolini also introduced the question of the secret wage. If a servant considers his wage to be insufficient, he is not justified in supplementing it by secretly helping himself to his master's property by stealth.

Whereas wage labour frequently and typically engaged the authors of minor and popular works, the question of labour on the part of merchants was mostly reserved for the major summas. The logical relation between these two subjects is simple and straightforward. A merchant is normally self-employed; he does not earn a wage. As a matter of fact, he regularly occupies the function of employer in the wage relations discussed in the preceding paragraphs. Commercial activity, however, often involves a great deal of labour of one sort or another on the part of the independent merchant as well. In the memorable phrase of William of Rennes, copied by John of Freiburg, Bartolomeo of San Concordio, and others, the merchant "works for everybody". Hence, William argues, he should not be obliged to "soldier at his own charges", that is, work without pay. If he trades for an honourable purpose and earns a moderate profit, Thomas Aquinas taught, this profit can be viewed as a reward for labour (*stipendium laboris*). John of Freiburg copied this statement as well, along with Bartolomeo Caimi, Pacifico of Cerano (*mercede di sua fatica*), and Battista Trovamala, among others.

Historically, however, the merchant's labour was not originally introduced in the penitential literature as an element in the computation of the just price but as an argument for the lawfulness of trade, and the benchmark was not the hired labourer but the independent artisan. In the early addition to Gratian's *Decretum* erroneously attributed to St. John Chrysostom, the merchant who buys and then sells his wares "whole and unaltered" at a profit, is compared unfavourably with the artisan, who buys raw materials and works up a finished product, getting paid for his skilled labour. In England, these sentiments were expressed by John of Kent, whereas

Robert of Courson points out that merchants also spend labour on their merchandise, and Thomas of Chobham goes to some lengths explaining in what this labour consists. Merchants may also sometimes improve their goods before selling them. In addition, and more typically, they carry merchandise from places of plenty to places of scarcity, which involves labour as well as expenses. Raymond of Peñafort, the Spanish canonist who introduced *Quicumque* from the commentary tradition of the decretists, adds the storage function of commerce. In Germany, John of Freiburg counters Pseudo-Chrysostom's claim that merchants sell things whole and unaltered. That claim involves only physical alterations. The value of a commodity can also alter with time and place. Merchants make goods available when and where they are needed and may charge for the labour and risk incurred in transportation. Berthold of Freiburg in his *Summa der beichtiger* lists care, risk (fear), labour and cost ("sorg, vorcht/forcht, arbit, chost"). One or more of these factors are mentioned by other Continental authors.

The Italian tradition is especially interesting because that which originated as a justification of commerce was developed in the late works into formulas for calculating the just price, such as those quoted from Nicolò of Osimo and Angelo Carletti a few pages back. Astesanus points out that merchants serve the community by conserving and transporting commodities and may accept a reward corresponding to their labour, solicitude and industry. A merchant's appreciation of goods may serve to certify their value for simple people. They sometimes improve goods like craftsmen. In addition to labour and care, they store goods with risk of loss through deterioration, fire or theft. Bartolomeo of San Concordio mentions labour, alteration of goods as to time and place, improvement, and risk incurred in transportation. Nicolò of Osimo, in addition to the formula quoted before, points to the difference between wholesale and retail prices. Bartolomeo Caimi and Pacifico of Cerano grant merchants a profit on goods transported with labour, stored with risk, and improved with industry.

Nicolò's point is picked up by Battista Trovamala who explains it with reference to the time spent in the marketplace selling in small quantities. In addition, he presents a comprehensive list of different factors touched upon by previous authors and adds some of his own. They include the merchant's own labour, the labour of his servants, improvements, transport, rent of store-room and other storage costs, risk of deterioration, fire and theft. To summarize all this, Trovamala

inserts the *additio* which was quoted at the end of Chapter 10, instructing confessors on how to counsel merchants regarding the just price, stating two rules. The first of these rules is in all likelihood based on the *Summa Angelica*, which appeared in print shortly before Trovamala revised his own work. Emulating the formulas of Osimo and Carletti quoted earlier, Trovamala states as his first rule that in places where there is no established price, the merchant may charge a moderate profit considering risk, labour, expenses, the quality of the goods and thing like that. The second rule explains how market factors are permitted to influence the just price. Unfortunately, the author fails to tell us how the two rules are related.

The relation between cost and market is the crux of economic value theory. If supply and demand are given free play, labour and other cost elements that go into the production of a commodity offered in exchange will only be remunerated up to the level of the market price for the commodity. In long-run equilibrium this level will be exactly reached. That statement would be without meaning (or interest) to the authors quoted in this study. They faced a set of ethical problems caused by the ubiquitous disequilibria of the medieval economies. The purpose of their teaching was to root out fraud and coercion on the one hand, and, on the other, to grant merchants a reasonable payment for their professional labours and expenses. In principle, however, the structure of the relation observed in modern value theory is not entirely different from the relation between Aquinas's *stipendium laboris* and the common estimate of the competitive marketplace. In Aristotle's *Ethics*, translated into Latin in the middle of the thirteenth century, there is a strange formula and a diagram that were believed by the medieval commentators to express the just terms of exchange. It was alternatively interpreted by them in terms of labour and cost and in terms of market factors. The close textual proximity provided a shortcut to a dawning understanding of the relation between these two interpretations. Bits and pieces of the *Ethics* appear in some of the penitential handbooks, but in none of the texts examined is there a glimpse of Aristotle's exchange formula, nor would one expect to find it there. But many handbooks contain another formula which, if examined closely, can yield the same insight.

The principles of just pricing embodied in what I have chosen to call in this book the "double rule", were brought into the Continental tradition by John of Freiburg and copied there by William of Cayeux and others. In Italy, they were quoted verbatim or paraphrased in

the *Summa Astesana*, the *Pisana*, the *Pacifica*, as well as in Caimi's *Interrogatorium*, the *Summa Angelica*, the *Rosella*, and in the sixteenth-century Dominican summas. The rule originated in the *Summa theologiae* of Thomas Aquinas, whose version is the one most often used, but there are also references to John Duns Scotus, who has a briefer version in his commentary on the *Sentences* of Peter Lombard. Except for part of the terminology, it is a simple rule, as well as an eminently reasonable rule. In the original version, Aquinas takes his point of departure in what a commodity is worth "in itself" (*secundum se*). Modern readers will frown upon an expression like that, which was freely used in scholastic literature, much as we freely use expressions like "normal", etc.

Anyhow, in the first half of the double rule it is stated that if the sale of a thing at what it is worth in itself brings loss to the seller, he may increase the price so as to cover this loss. This is a straightforward principle of indemnity, that is, an alternative cost principle. No violence is done to it if the lawful price for which the merchant can justly claim indemnity is associated with the labour and various cost elements that were recognized as legitimate bases for just price computation in the penitential handbooks. The second half of the rule focuses on the buyer. If the sale does not cause the seller to suffer a loss, whereas the buyer derives a great advantage from receiving the thing in question, the seller ought not to raise the price, because this advantage is due to a circumstance affecting the buyer, from which the seller has no right to profit. What Aquinas means by a circumstance affecting the buyer is not explained in the *Summa theologiae*, but in the parallel argument in the *De malo* which Silvester Mazzolini chose to misinterpret, Aquinas states that if someone reduced to need were to be sold a thing for much more than its worth, the sale would be unjust. No violence is done to the rule if the circumstance affecting the buyer is understood as need or to include need. The second half of the rule then states the injunction against economic coercion and exploitation of the needy which is expressed with equal unanimity in the Franciscan and early Dominican handbooks.

In the *Summa Angelica* the double rule of just pricing is stated twice. On its second appearance, value *secundum se* is not mentioned but is in three instances replaced by the common estimate (*communis aestimatio*). As noted in Chapter 9, Angelo Carletti never states in so many words that the common estimate of price is the same as the current, competitive market price. The inference is close at hand,

however, and a number of Franciscan authors equated the one with the other. If this final step is taken, the full significance of the double rule emerges. It follows, that the market principle will trump both the labour and cost principle and the nonexploitation principle. If a thing is of little value to the seller, he can still, according to the Thomistic rule, charge the current, competitive market price from a needy buyer if the buyer can afford it, for no one is expected, as a matter of justice, to sell below the market price. If, on the other hand, the seller puts a high value on a good that the buyer needs, he can keep himself indemnified, that is, cover his cost, but only up to the level of the market price if the buyer has access to a competitive market, because the buyer then has a cheaper alternative there. Thus interpreted, Thomas Aquinas's double rule of just pricing contains, in a nutshell, the essential elements of penitential price doctrine. One is tempted to say, as is so often the case in scholastic thought, that "it's all in Aquinas". In the present case, considering the contribution of Carletti, it would perhaps be more correct to say that it's all in the *Summa Angelica*.

## CHAPTER SIXTEEN

### THE FORTUNES OF AVARICE

An alternative main ordering of the material presented in Parts I and II of this book may throw a different light on the historical development of the penitential handbook as a literary genre. A close inspection of the table of authors included in the Introduction will indicate what I have in mind. If the penitential handbooks by the ninety authors listed were to be ordered chronologically, one should probably find the median position to be held by some minor work composed in the course of the bleak and barren decades following the terrible outbreak of the Black Death in the mid-fourteenth century. The study could then be rearranged in two parts, consisting of a pre-Plague Part I and a post-Plague Part II. Such an arrangement was not found to be convenient in connection with the actual presentation and analysis of the individual texts. Its significance emerges when this main chronological division of the texts is tabulated against a geographical one.

In the pre-Plague period, the large majority of works examined are minor ones, composed by non-Italian authors. In the post-Plague period, the picture is the inverse one, though numerically not as striking. By a simple count, there are nearly twice as many Italian as non-Italian works in our sources from this period; if the size and influence of individual works are taken into account as well, the dominance of the Italians is striking enough. A familiar historical structure thus emerges, according to which a mainly medieval Continental tradition is taken over by a mainly Italian Renaissance tradition.<sup>1</sup> It may be recalled that Jacob Burckhardt originally dated the Italian Renaissance from the middle of the fourteenth century to the middle of the sixteenth century. Later assessments have moved these limits a decade or two in one direction or the other. Discriminat-

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<sup>1</sup> It ought to be recalled here that a number of Continental authors, including some whose minor penitential handbooks are mentioned in Part I, like Henry of Hesse, Matthew of Cracow, John Nider, and Jean Gerson, composed important treatises on economic contracts intended for the internal forum. They don't belong to the specific genre examined in this study and are eliminated merely on formal grounds.



ing historians have questioned the usefulness of placing limits like that on a multifeatured cultural phenomenon like the Renaissance at all and have even questioned the usefulness of the term itself. For the present purpose I use it to describe penitential literature from its resurgence after a period of relapse due to war, famine and pestilence in the fourteenth century, and until the study breaks off with the Reformation.

In view of the wealth of studies of other aspects of life and letters in Renaissance Italy, combined with the fact that the penitential handbook reached its most complete form in the Italian Franciscan *summas* of the late quattrocento, it is somewhat surprising to find that so little direct attention has been paid to the penitential genre in historical literature, including literature on the history of economic thought. Greater emphasis is placed on handbooks of commercial instruction written by and for merchants, on the new attitudes to wealth and trade fostered in certain humanist circles and, not least, on the search for a pre-Reformation "spirit of capitalism" in Italy, in order to refute the Weber thesis. If the penitential handbooks are ignored, the reason is probably to be sought both in who wrote them and in the sources on which their economic doctrine was based.

Nearly all the important authors were mendicant friars. In works for the confessional, just as in academic writing, the Dominicans got a head start on the Franciscans. In the area of trade and price doctrine, the early Dominican authors worked the teaching of the great medieval masters of theology of their own Order into the redactional schemes of Raymond of Peñafort and John of Freiburg. Raymond and John and their many imitators and abbreviators dominated the genre through the thirteenth and fourteenth centuries, primarily on the Continent. Some of their influence extended to Italy as well, and it touched some Franciscan authors. When penitential writing regained its vigour in the fifteenth century, the Dominicans had lost their hegemony to the Franciscans, and transalpine Europe had lost its initiative to Italy. Breeding ground of new social and economic attitudes, Italy was also the homeland of a Church in dire need of spiritual renewal. Though it could no yet be reformed from above, it was possible to reach out and awaken the lay populace, through preaching and urging repentance. It was the combination of this new social climate and the apostolic ardour of the Observant Franciscans that explains the remarkable outpouring of Italian penitential works in the fifteenth century. Except for Antonino of Florence,

the Dominicans, associated rather with the Inquisition and the repression of heresy, offered no competition until the sixteenth century. It may be more than a quirk of historical coincidence that of the three authors of penitential works whose names have been mentioned in connection with Luther, namely, Carletti, Mazzolini, and Cajetan, it was the former's *Summa* that was burned by the Wittenberg reformer, while it was the latter two who argued against him and examined his obnoxious theological positions. Along with Cagnazzo, however, those two sixteenth-century Dominicans belong (as they literally do in this study) in a chapter of their own. To the extent that they did not simply copy the Franciscans, they initiated a line of economic reasoning that is, in an important sense, anti-humanistic as well as post-humanistic. Its role in the subsequent history of economic thought is of the greatest importance.<sup>2</sup> In the quattrocento, however, the bearers of the penitential tradition were the Franciscans, and their economic doctrines, if studied at all, must have been felt to be foreign to the swell of new social ideas that is the hallmark of that century.

One reason why the penitential genre is largely overlooked in Renaissance studies can be found in the sources on which its doctrine was based. I once characterized the major names in medieval economic thought as theologians writing with a sidelong glance at canon law. This description will have to be considerably modified and clarified if it is to be applied to authors of penitential handbooks and if the period to be examined is extended from the Middle Ages through the entire pre-Reformation era. Many of the authors reviewed here looked rather more directly to canon law and not a few looked beyond canon law to its basis in Roman law. The legal element in penitential doctrine is further enhanced by the fact that much of the theological source material on which it built was formally legalistic. Omitting authors antedating Gratian and Peter Lombard, as well as authors of penitential handbooks who *also* made major contributions in works of theology or law utilized in the penitential tradition, a complete list of primary authorities quoted in this study runs to upward of forty names. If "doctors of both laws" are classified according to the work thus quoted, a little less than one-half of these authorities were canonists, a little less than one-fourth were Romanists, whereas only the remaining minority, a good dozen, were theologians.

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<sup>2</sup> I shall discuss this development briefly below.

A feature common to all these three classes of external authorities is the predominance of quite early authors. This feature is most striking in the case of the theologians, who don't count a single name of any significance after c. 1350. If number of quotations were to be counted, Thomas Aquinas would swamp all other theologians; however, their number include names like William of Auxerre, Alexander of Hales, Albert the Great, Richard of Middleton, and John Duns Scotus. Some of the theologians were introduced in the penitential tradition while their works were still quite fresh, and a few of these remained fixtures throughout the entire tradition. Others, however, appeared only long after they were written. The most conspicuous example of such delayed recognition of an important early theologian is that of Peter Olivi. Originating in the thirteenth century, Olivi's crucial analysis of economic coercion left no trace in penitential literature until its appearance in the late Franciscan summas through the intermediacy of the Latin sermons of Bernardino of Siena.

The case of the canonists is not very different. Most of the sources used date from the thirteenth century or earlier. Some of them, including Innocent IV and Hostiensis, were subsequently quoted in support of penitential doctrine on trade and price until the very end of our study. The most prominent exception to this overall reliance on early canonistic authorities is the late Italian summists' frequent use of Panormitanus, who died in 1445. Panormitanus was a Renaissance scholar in his own right, and an important one at that. In addition, however, he was an indefatigable systematizer who excelled in the task of bringing order and consistency to the huge body of commentary material accumulated by his predecessors. This is mainly how his enormous learning was utilized by Carletti and his successors. The canonistic authorities, including some later ones, sometimes served to mark the important distinction between trade and price doctrine in the external and the internal forums. This is true to some extent of the Romanistic authorities as well. There is an important distinction in that the latter were, on some issues, hostile authorities. Roman law and medieval theology held some contrary positions that were never fully reconciled but could be harmonized by the kind of distinctions that were typical of scholastic thought. A prominent example is offered by the question of the nature of contractual consent. After centuries of dispute in scholastic academic circles, a canonized version of the Roman law position on consent finally found its way into the penitential literature in the *Summa Angelica*. Most of

the Romanistic sources quoted were early ones as well, dating from the twelfth and thirteenth centuries. Some later ones appear, mainly via the canonists, who cite them in support of established doctrine.

There is one important conclusion that can be drawn from this sketch of a gradual assemblage of bits and pieces of arguments and conclusions from theological, canonistic and Romanistic sources. What finds its fullest and final expressions in the Franciscan *summas* composed at the flourishing stage of the Italian Renaissance is not, properly speaking, a Renaissance code of penitential doctrine but a medieval one. It is virtually without any contact with the different strains of thought that together form the multicoloured picture we think of as the Renaissance. Medieval scholars will have nothing to do with these late penitential handbooks. Renaissance scholars have found little reason to concern themselves with them either.<sup>3</sup> There were new trends of scholastic thought in the Renaissance, there were developments in law and theology, in addition of classical studies, rhetoric, arts and letters, all the expressions of humanism. Some of these genres touch upon economic matters only peripherally or not at all. But there were new strains of economic thought in the Renaissance as well, where scholars have sought new beginnings rather than occupy themselves with the culmination of old traditions. This is a choice that historians sometimes make at the cost of the larger historical perspective. In the present case, it may tend to obscure what modern economics had to sacrifice in order to establish its new set of premises.

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<sup>3</sup> Kristeller's approach to Renaissance humanism, which has found favour among later scholars, is, contrary to those of Burckhardt and other authorities, characterized by a focus on form rather than on subjects. The *métier* of the humanists was style and eloquence, which could be applied over a wide range of different subjects, including, occasionally, economic ones. By this criterion, however, books on penance are almost automatically beyond their range of interest. In an appendix to one of his many brief studies, dealing with the contribution of religious Orders to Renaissance thought and learning, Kristeller presents a list of some 250 names of "Humanists and Scholars of the Religious Orders". Eight authors of penitential handbooks are included, namely, Antonino of Florence, Attavanti, Bernardino of Feltre, Bernardino of Siena, Cajetan, Foresti, Maffei, and Savonarola. The works cited by these authors include sermons and some other religious genres but not their penitential writings. None of the major penitential *summas* composed by members of the mendicant Orders in the fifteenth or sixteenth century are listed. (Cp. Kristeller, 1992, 95–114, Appendix B at 126–58.)

Two distinct lines of economic reasoning, much later to be joined in the early modern classical tradition, had their origins in the Italian Renaissance. One of them is represented in these sources by the sixteenth-century authors of the last major pre-Reformation summas: Silvester Mazzolini, Giovanni Cagnazzo, and Thomas Cajetan. A distinction is sometimes made between a “first” and a “second” scholasticism. The first scholasticism flourished in the late thirteenth century and the early decades of the fourteenth century and had its nucleus at the University of Paris. The second scholasticism was mainly a Spanish phenomenon and lasted from the late sixteenth century through the following centuries and reached the classical tradition partly through offshoots in the Netherlands. It is often referred to as the School of Salamanca because many of its main protagonists, though far from all, were associated with the University of Salamanca. In the area of social thought, including economics, the main distinction between these two phases of scholasticism was a reorientation of their natural law doctrine from a deontology to a theory of natural rights. It does not seem to be generally recognized that the authors presented here in Chapter 13, mainly Mazzolini and Cajetan, fed some important new ideas into the Salamanca tradition. By dismissing the concept of conditional will and economic coercion as relevant factors in economic ethics and by permitting the forces of supply and demand to determine justice in exchange to a much larger extent, they invited the depersonalization of economics that was more fully developed by their Spanish successors.<sup>4</sup>

The other line of economic reasoning mentioned above is characterized by a new attitude to moneymaking and specifically to avarice as a motive of economic activity. Few men, of any place or period, will gladly admit to being motivated by avarice; the altered attitude is therefore, in most cases, merely implicit in what is described and taught. It thus stands in a twofold contrast to the penitential literature, which consistently and explicitly condemned avarice as a major sin. According to an early scholastic catalogue, man sins against God, against himself, and against his neighbour.<sup>5</sup> On this basis, Thomas Aquinas in the *Prima Secundae* of the *Summa theologiae* constructs a hierarchy of sins. Sins are inordinate acts. There should be

<sup>4</sup> For a fuller discussion, cp. Langholm, 1998, 74–6; 98–9; 112–7; 134–6.

<sup>5</sup> Cp. Peter Lombard, *Sent.*, II,42,4: I,569.

three orders in man, of which the second order contains and surpasses the first order, and the first contains and surpasses the third. The second order is in relation to the rule of divine law. He that sins in such matters alone, for instance by heresy, sacrilege, or blasphemy, sins against God alone. The first order is in relation to reason (which is comprised in the law of God). A man may sin in matters of reason against himself (and thereby, by the logic of the construction, against God), as in the case of gluttony, lust and prodigality. If man were by nature a solitary being, this twofold order would suffice, but because man is naturally a civic and social being, a third order is necessary. Man is directed according to the order of reason in reference to his neighbour as well. Examples of sins against one's neighbour (which are sins against oneself and against God as well) are theft and murder.<sup>6</sup> In the *Secunda Secundae*, in a sequence introduced in the penitential tradition by Raniero of Pisa, Thomas applies the same analysis specifically to the sin of avarice. Avarice is a sin against one's neighbour but, by the logic of the system, a sin against oneself and against God as well.<sup>7</sup>

Theft and avarice are thus, in the narrowest sense, social sins. Although some of the other capital sins have social dimension as well, they are less dominant than in the case of avarice. None of them are placed in the hierarchy of sins precisely as Aquinas places avarice and as he places theft and homicide among the breaches of the ten commandments. By thus subjecting theft and avarice to the same analytical formula, he does not merely highlight two prominent social sins but highlights precisely those two social sins from which all particular *economic sins* branch off in the various catalogues and configurations presented in the penitential handbooks. The core of the discussion of sin in the handbooks is the interrogatory. In many handbooks, and mainly in the briefer ones and in some of those of middle length, most of the discussion of sin in fact follows the order of the interrogatory. In works organized according to other principles, the interrogatory may be less prominently placed but it is frequently included, at least as a checklist.<sup>8</sup> As regards the main

<sup>6</sup> *Sum. theol.*, I-II, 72, 4, c.

<sup>7</sup> *Sum. theol.*, II-II, 118, 1, ad 2.

<sup>8</sup> The *Summa Angelica*, for example, among its alphabetically ordered articles contains an article titled *Interrogationes*, that runs to forty-three columns in the edition used, and in which the author refers to other articles, in which the subjects listed in the interrogatory are discussed in detail. Cp. *Summa Angelica*: ff. 191rb-202ra.

organizing principles of the interrogatories themselves, the general tendency of those arranged *ad status* was to examine merchants by reviewing cases and issues raised in interrogatories following the order of the capital sins and of the breaches of the ten commandments. In the latter, those two lists of sins occasionally overlap, coincide, or cross one another. They happen to coincide in precisely those two “economic” sins that are highlighted in the hierarchy of Thomas Aquinas, that is, theft and avarice. Pacifico of Cerano presents a simultaneous treatment of them. To Pacifico, avarice is a sinful mental state that motivates sinful acts, some of which can be classified as theft. The latter include the activities of merchants, whose avarice causes them to seek excessive gain and thereby harm others.

In the course of the last century and a half covered by this study, voices questioning this unqualified condemnation of avarice began to be heard. In the original version of his study of late medieval life and culture, the prominent Dutch historian Johan Huizinga suggested that Protestantism and the Renaissance gave avarice (“hebzucht”) an ethical content, legalizing it as a useful furthering of prosperity.<sup>9</sup> In the widely read English version of this famous book, *The Waning of the Middle Ages*, which is not a literal translation but a adaptation made under the author’s direction, the section in which these lines occur is omitted.<sup>10</sup> It is tempting to speculate that this deletion is motivated by a wish not to get embroiled in the debate caused by Max Weber’s thesis about the relationship between Protestantism and the “spirit of capitalism”. In the Catholic world, according to that thesis, there was a serious conflict between the accumulation of wealth and a way of life conducive to attaining salvation. In Protestantism, particularly Calvinism, this conflict was resolved. The successful merchant need not die in fear of Hell and leave his money to the Church, he could die happy in the knowledge of having served God in a socially beneficial calling and leave his wealth for his inheritors to continue the good work. Success in any worldly calling was confirmation of being one of the elect, predestined to be saved. This doctrine led, among other things, to a search for confirmation through an unceasing, frenzied accumulation of wealth for its own sake which, as though unintentionally, provided the basis of modern capitalism.

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<sup>9</sup> Huizinga, 1921, 40.

<sup>10</sup> Other translations, such as the German and the Italian ones, render the title literally, and retain the section referred to.

I don't wish to get involved in the still ongoing debate concerning the Weber thesis nor to gainsay the majority of contemporary historians who believe that it caused the history of economic thought to take off on a fruitless tangent.<sup>11</sup> I intend only to make two points, not because they support the thesis (which some may well find that they do) but because they concern the terminology of the pre-Reformation penitential handbooks and are therefore relevant to the new lines of economic reasoning in the Italian Renaissance that are also indicated by Huizinga. The first point is simply this, that, whatever other properties have been attributed to that strange theoretical creature, "the spirit of capitalism", it is, despite all disclaimers, closely akin to what the penitential handbooks called avarice. Anyone who cares to go back to the original text, will have it on Weber's own words. Having concluded his early, crucial quotations of Franklin, Weber suggests that one pause and consider the "peculiarity of this philosophy of avarice".<sup>12</sup> A few pages further on he returns to these quotations. The state of mind that they express, he remarks, "would both in ancient times and in the Middle Ages have been proscribed as the lowest sort of avarice".<sup>13</sup> The second point concerns theft. Whereas the penitential handbooks conjoin the ten commandments and the seven mortal sins, thus relating theft to avarice, the list of mortal sins does not figure, or figures much less prominently, in the writings of the Protestant divines, presumably because it is not of scriptural origin but harks back to patristic (that is, Catholic) thought. Released from this conjunction, the commandment against theft takes on a different complexion. Economic ethics becomes less occupied with the element of theft involved in the exploitation of need and ignorance by way of unjust commerce than with emphasizing the rights of private property. It is true that this description fits the Calvinist puritans, on whom Weber fashioned his "ideal type" of capitalist, better than the contemporary Lutherans and it hardly fits the Wittenberg reformer himself at all. Luther's economic ideas remained entirely medieval, though he may be said to point developments in the same direction by omitting the mortal sins from his two catechisms, both of which are built about the commandments, along with the Apostle's Creed, the Lord's Prayer, baptism and the Eucharist.

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<sup>11</sup> Cp. Schumpeter 80; Wilson 14; Pribram 40.

<sup>12</sup> Weber, 1930, 51.

<sup>13</sup> *Ibid.*, 56.



The Weber thesis invited a number of questions, each of which has engaged scholars in debate ever since. The first is an inherently unanswerable question of the hen-and-egg type: Was the "spirit of capitalism" (whatever that is) the cause or the effect of capitalism? The second question is this: How could Christianity, given its traditional view of avarice, give birth to an ethic that Weber at one point describes as a "devotion to the calling of making money"?<sup>14</sup> The readiest reply to the latter question, from a Catholic point of view is, of course, that it didn't; the ethic thus described was the product of an aberration of Christianity and would be incompatible with the Catholic creed. "It is the waning of faith that explains the establishment of a capitalistic spirit in a Catholic world," Fanfani observed, "but in a certain sense it is the establishment of the capitalistic spirit that brings about a waning of faith".<sup>15</sup> Here is another hen-and-egg enigma, but at least these statements pose some questions that lend themselves to historical examination: What about the state of faith, the economic ethics, and the altered attitude to avarice proclaimed by Huizinga, in Renaissance Italy before the Reformation, and especially in the advanced commercial centres of Tuscany? The findings will depend on the sources examined. The attempt to attribute a spirit of capitalism to religious authors of the quattrocento like Bernardino of Siena and Antonino of Florence, as Sombart and occasional later historians would, was doomed to failure.<sup>16</sup> On that point, the conclusions of the present study confirm the opinions of most scholars. The positions on wealth and economic activity held by those two Tuscan Saints and contemporary religious writers did not differ in essentials from traditional medieval doctrine.<sup>17</sup>

If new economic attitudes emerged in the Italian Renaissance, the places to look for them are clearly not religious works but secular works dealing, in one way or another, with commercial activity. A brief examination of a dozen such works, dating from the late-fourteenth to the early-sixteenth centuries, will indicate the trend. Most of the authors in question were Florentines and most of them had a commercial background.<sup>18</sup> First of all, there are the books of

<sup>14</sup> Weber 72; cp. Lessnoff 26.

<sup>15</sup> Fanfani, 1935, 178–9.

<sup>16</sup> Sombart 315; cp. Robertson 57; as well as the more recent critical studies by Bazzichi 1990; 1991.

<sup>17</sup> Kraus 87; Fanfani, 1933, 106–7; cp. Hyma 468; Viner 127.

<sup>18</sup> On the early manuals of merchant behaviour, cp. the studies by Meuvret, Bec, McGovern, and Day, with references.

instruction for merchants, such as those by Francesco Pegolotti, Saminiato de'Ricci, Giovanni da Uzzano, Paolo of Certaldo, and Benedetto Cotrugli. The first works mentioned consist mainly of market by market specifications of articles, currencies, weights and measures, and commercial practices in different countries. Pegolotti makes the occasional reference to finding "migliore mercato",<sup>19</sup> Saminiato to making "gran profitti".<sup>20</sup> Uzzano is more explicit. A merchant should seek to foresee when dearth is likely to come about, buy commodities in times of abundance and sell them when they are dear.<sup>21</sup> This is of course sound business advice, but it is also the practice which the tradition on *Quicumque* attributes to the avaricious merchant.

Certaldo's *Libro di buoni costumi* is in principle built on the same last but outgrows it, both in the detail and the nature of its advice. More than once, it recalls Weber. Check measures when you buy and sell.<sup>22</sup> Buy grain when it is cheap and you can't lose, for you will soon find yourself at an advantage.<sup>23</sup> Don't part with messages for other merchants before you have read your own dispatches and acted upon them.<sup>24</sup> Keep your mouth closed and your eyes open. Don't let your money lie idle. He who sleeps too much, loses time.<sup>25</sup> It is a beautiful and grand thing to know how to make money, but it is even better to know how and where to spend it sensibly. Don't cease when you believe that you have gained enough, or you may die poor.<sup>26</sup> It is not an impious work. Certaldo cites the commandments and the sacraments of the Church, tells the merchant to hear mass daily<sup>27</sup> and reminds him that almsgiving is pleasing to God.<sup>28</sup> The *Libro dell'arte di mercatura* by Cotrugli contains a systematic explanation of different aspects of commercial activity, such as the location of the firm, the choice of merchandise, the different forms of exchange, resource allocation, partnership, insurance, correspondence, record keeping and accounting, etc. It is, in short, the first regular

<sup>19</sup> Pegolotti, *La pratica della mercatura*: ed. A. Evans, 319.

<sup>20</sup> De'Ricci, *Manuale di mercatura*: ed. A. Borlandi, 118.

<sup>21</sup> Uzzano, *La pratica della mercatura*: ed. J.F. Pagnini della Ventura, 153.

<sup>22</sup> Certaldo, *Libro di buoni costumi*, § 152: ed. Schiaffini, 123.

<sup>23</sup> *Ibid.*, § 270: ed. cit., 157–8.

<sup>24</sup> § 251: 149–50.

<sup>25</sup> § 6: 64; § 356: 227; § 255: 152.

<sup>26</sup> § 81: 78; § 305: 173–4.

<sup>27</sup> §§ 3–5: 63–4.

<sup>28</sup> § 281: 162.

textbook of Business Administration. On these subjects the work is less poignant and quotable than that of Certaldo, but it contains one line that would have pleased Sombart: "For the merchant, the loss of time and the loss of money is one and the same thing".<sup>29</sup> This is not an impious work either. On the contrary, it devotes most of one of its four books to a collection of cases of conscience, citing, among other things, the penitential tradition on *Quicumque* and the double rule of Aquinas.<sup>30</sup>

Seven works, representing different genres, may serve to supplement these five manuals for merchants. They include the contemporary histories of Florence by Gregorio Dati and Giovanni Cavalcanti, the *Ricordi* of Giovanni Morelli and Francesco Guicciardini, the *Zibaldone* (commonplace book) of Giovanni Rucellai, Matteo Palmieri's *Vita civile*, and Leon Battista Alberti's *Della famiglia*. On the subjects so far reported on, their contributions vary. Morelli advises the merchant to have cash on hand at all times. Cash is his best friend and dearest relative.<sup>31</sup> If a merchant has grain for sale but wishes to keep it until it is worth more, he should hide this fact from poor people lest they blame and curse him and seek to plunder him and set fire to his house.<sup>32</sup> Guicciardini notes that profits in a certain trade are at their best before everybody recognize them, for then they are reduced through competition; hence, it is a great advantage to rise early (*levarsi a buon'ora*).<sup>33</sup> Alberti likewise (in Weber/Sombart fashion) stresses the importance of not losing time.<sup>34</sup> He prizes honesty, justice and friendliness, but mainly as means to an end. They make a merchant well-liked and bring him many customers. Such qualities can hardly be overestimated in continuously increasing his profit with the help of God.<sup>35</sup> Rucellai expresses the pious hope that with God's favour his trade will prosper and earn him ever greater profits (*guadagni maggiori*).<sup>36</sup> Merchants supply the needs of the community

<sup>29</sup> Cotrugli, *Libro dell'arte di mercatura*, I,8: ed. U. Tucci, 156. Cp. Franklin's crucial dictum quoted by Weber 48: "Remember, that *time* is money".

<sup>30</sup> Cotrugli, II,4: 198–201.

<sup>31</sup> Morelli, *Ricordi*: ed. V. Branca, 279.

<sup>32</sup> *Ibid.*, 256.

<sup>33</sup> Guicciardini, *Ricordi*: ed. R. Spongano, 190.

<sup>34</sup> Alberti, *Della famiglia*, III: ed. C. Grayson, 214.

<sup>35</sup> *Ibid.*, 204–5.

<sup>36</sup> Rucellai, *Zibaldone*: ed. A. Perosa, 5.

with the hope of gain (*con speranza di guadagno*), Cotrugli observes.<sup>37</sup> It takes hardship and endurance to make a large profit (*fare gran profito*).<sup>38</sup> Solicitude is the mother of wealth.<sup>39</sup>

Commercial wealth brings public esteem. A Florentine who is not a merchant, Dati notes, who has not travelled through foreign lands and returned a wealthy man, enjoys no repute at all. There are many such people, who went abroad in their youth and made money and gained experience, virtue and manners, as well as wealth.<sup>40</sup> Cavalcanti recognized that trade was the origin and foundation of this civic recognition; when he was poor, no one pretended to know him.<sup>41</sup> Private wealth and public esteem, however, are closely related to the merchant's service to society. Great merchant riches cause the city to prosper, Palmieri states, and benefit it greatly in various ways.<sup>42</sup> Alberti concedes that commerce may not be as glorious as some other nobler professions; however, merchants profit by serving the needs of others. If wealth thus obtained is used munificently for great and noble projects, they gain fame and prestige. The riches of private citizens are useful for supplying common needs. The state may be considered excellent only if it can count on the loyalty and justice of all wealthy citizens.<sup>43</sup> The dignity and office of the merchant is grand and sublime, Cotrugli proclaims, partly because of his wealth and lifestyle, and partly because of his contribution to the common good. The merchant supplies the community with commodities, as well as with money, jewellery and precious metals. He causes its various crafts to flourish, the earth to be cultivated, animal husbandry to prosper, he secures employment for the poor, increases public revenue through taxes and duties and thus fills the public treasury.<sup>44</sup>

There can be no denying the difference between the "economic spirits" that inform these works and the Franciscan penitential handbooks of the same period. Where the former glorify wealth and commerce, the latter warn against their moral pitfalls. But are the works of the economic humanists an expression of a "waning for faith"?

<sup>37</sup> Cotrugli, I,2:141.

<sup>38</sup> Ibid., I,3:144–5.

<sup>39</sup> III,7: 216.

<sup>40</sup> Dati, *Istoria di Firenze*, ed. L. Pratesi, 59–60.

<sup>41</sup> Cavalcanti, *Istorie fiorentine*, III,6: ed. G. Di Pino, 57.

<sup>42</sup> Palmieri, *Vita civile*, IV,185: ed. G. Belloni, 188.

<sup>43</sup> Alberti, II: 141–2.

<sup>44</sup> Cotrugli, III,1: 206–8.

Many historians have considered this question. Here are the views of three of them, all prominent scholars in their different fields. "The growth of an independent lay civilization in the cities", says Troeltsch, "created a powerful competition with the previous world of thought." "Political and economic interests freed themselves from the international control of the Church, and from its cramping economic ethic." "A nascent Capitalism . . . destroys the moderate recognition of natural requirements, which were all that the simple ecclesiastical ethic had known. The transformation of the conditions of life which was involved in the growth of possessions, and in political independence, created a civilization of the senses which set aside the ecclesiastical principle of a love of the world which could be combined with religion."<sup>45</sup> This view is opposed by Kristeller. Discussing the alleged paganism of the humanist movement, he points to "the steady and irresistible growth of nonreligious intellectual interests which were not so much opposed to the content of religious doctrine, as rather competing with it for individual and public attention". "Yet since the religious convictions of Christianity were either retained or transformed, but never really challenged, it seems more appropriate to call the Renaissance a fundamentally Christian age".<sup>46</sup> In a chapter on Paolo of Certaldo, Nuccio notes that the merchant-authors (*mercanti-scrittori*) of the Italian Renaissance had "revealed the simultaneity and the coexistence of two codes regulating behaviour, observed, without either minding or ignoring, the contrast between them: one was the code of religious precepts, the other the code of valid rules for the good life on this earth. They coexisted because [man of that time] and notably the merchant, had known, without effort and without traumas, how to reach a compromise".<sup>47</sup>

These assessments, however different, all describe an economic culture in a state of change. In the context of the present book, it is tempting to locate the decisive factor of that change in the economic drive that the penitential handbooks called avarice. A number of the authors quoted, including Rucellai, Alberti and Certaldo, denounce avarice.<sup>48</sup> Palmieri, however, attributes avarice to the petty peddlers but not to the grand merchants whose wealth benefits

<sup>45</sup> Troeltsch, I, 376–8.

<sup>46</sup> Kristeller, 1961, 72–3.

<sup>47</sup> Nuccio, I, 3: 2350.

<sup>48</sup> Rucellai 15; Alberti, II, 146; III, 164; Certaldo, § 342: 217–8.

society.<sup>49</sup> Cotrugli considers avarice incompatible with the urbanity of such merchants.<sup>50</sup> Elsewhere he makes the remarkable observation that avarice is a greater sin in the *signori* and *magnifici* than prodigality, but in the merchant the latter is the greater vice because the purpose of his profession is to be rich (*essere riccho*) and prodigality destroys and annuls his wealth.<sup>51</sup> The main point is that the economic humanists accepted and often praised the profit motive, and in traditional usage a profit motive that reaches beyond natural and social need satisfaction is avarice. It is no less avarice for not being called by that name. It is no less avarice for operating on a grand scale rather than a petty one. It took a different sort of humanist, however, to speak these authors' minds for them in plain terms. Poggio Bracciolini, a harsh critic of Bernardino of Siena and the Franciscans of the Observance, composed a brief work *De avaritia* in dialogue form. The contribution of one of the discussants (who did not get the last word but probably expressed the sentiments of the author) is a veritable eulogy of avarice. Again and again he returns to his main theme. Avarice is a natural phenomenon.<sup>52</sup> It is a virtue not a vice.<sup>53</sup> It is innate in man as something necessary for the conservation of the city and the civil law.<sup>54</sup> Early on, Poggio, through the mouth of his spokesman, anticipates Hume's famous dictum about avarice as the spur of industry.<sup>55</sup>

When ideas like these take hold, the argument against avarice as a social sin is weakened. Aquinas argued that avarice is a sin directly against one's neighbour because one man cannot overabound in external riches without another man lacking them, for temporal goods cannot be possessed by many at the same time. This argument expresses a stationary view of society: if you eat more than half the loaf, your neighbour will get less than half. If avarice spurs industry on to ever greater social wealth, it is no longer a question of sharing a loaf of a given size but of baking a larger one, thus increasing the portion of all those involved. This is, as we all know, the social philosophy underlying the economics of Hume's friend Smith

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<sup>49</sup> Palmieri, IV,180: 187.

<sup>50</sup> Cotrugli, III,10: 218–9.

<sup>51</sup> *Ibid.*, I,18: 181.

<sup>52</sup> Poggio, *De avaritia*: ed. E. Garin, 265.

<sup>53</sup> *Ibid.*, 269.

<sup>54</sup> 271.

<sup>55</sup> 261.

and his successors. This spirit of capitalism is a little different from, but can readily accommodate, both that of Weber, who envisaged a quest for wealth continuing of its own momentum after the religious fire that started it had died out, and that of the natural rights tradition mentioned earlier.

One of the things that this philosophy does not take into account is that avarice has other dimensions besides the social one. Avarice is not only a sin against one's neighbour; it is a sin against oneself as well, because it causes disorder in one's affections, and a sin against God, because it causes one to condemn eternal things for the sake of temporal things.<sup>56</sup> No one has said that as simply and clearly as Thomas Aquinas. The medieval authors of penitential handbooks ought not to be faulted for dwelling on the first of these lemmas at the cost of the second and third lemmas. The purpose of their works must have been felt to be best served by a focus on the concrete manifestations of avarice in social and economic intercourse: theft, perjury, usury, fraud, coercion and *turpe lucrum*—all primarily sins against one's neighbour. Ever since Burchard of Worms included hardheartedness and forgetfulness of future beatitude among the offspring of avarice, however, its offence against oneself and against God were recognized. In the Italian tradition, from the fourteenth century onward, a number of authors quoted Aquinas on avarice and reproduced his argument, in full or in part. Angelo Carletti restated it in his own terms. The greedy merchant reaps *turpe lucrum*, he denies himself mental quietude and defers to gold more than to God. Whatever its alleged long run social benefits, the corrupting effects of avarice on a person's character and spiritual life remained part of the message of the fifteenth-century authors of penitential handbooks. They impressed it upon their contemporaries, and upon later generations, as long as those books were reprinted and used.

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<sup>56</sup> Aquinas, loc. cit. in note 7.

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