CREDITO E USURA
FRA TEOLOGIA, DIRITTO
E AMMINISTRAZIONE

LINGUAGGI A CONFRONTO
(SEC. XII-XVI)

a cura di
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EXTRAIT

ÉCOLE FRANÇAISE DE ROME
2005
CHANGING DEFINITIONS OF MONEY, NATURE, AND EQUALITY C. 1140-1270, REFLECTED IN THOMAS AQUINAS’ QUESTIONS ON USURY

In the century and a quarter separating Gratian’s treatment of usury in the Decretum from St. Thomas’ final questions on usury in the Summa theologica and De malo, the awareness, comprehension, and theorization of usury underwent great development. The intersection of a (theoretically) fixed and eternal, biblically mandated condemnation of usury with an expanding economy in dire need of credit and remarkably inventive of new forms of contractual relationships, created deep tensions and numerous questions. My paper focuses on the intellectual construction of usury as a sin against natural justice and nature itself in the writings of St. Thomas Aquinas. It is a position he expresses with characteristic clarity in his Quaestiones De malo: [usuariae] nec ideo est peccatum quia est prohibitum, sed potius est prohibitum quia est secundum se peccatum: est enim contra iustitiam naturalem.

The natural law case against usury that developed in the half century preceding Thomas took many forms. When one looks to see what the different strands of the argument had in common, one finds that they all share three primary components: a particular definition of money, a particular conception of nature, and a particular notion of natural equality or equilibrium. Of the three components, equality is probably the least commonly recognized as essential to the equation, and for that reason (among others), I make it the center of my focus in this essay.

If these three definitional pillars of usury (money, nature, and equality) had remained constant between the time of Gratian and St. Thomas, then the history of the natural law case against usury in this period could be read as the progressive application of a

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1 I would like to thank Caroline W. Bynum and Lisa Tiersten for their helpful comments on drafts of this paper.

2 Quaestiones disputatae De malo, Rome, 1982, q. 13, art. 4, resp. (Sancti Thomae de Aquino opera omnia, 23).
consistent set of religious and philosophical requirements to cases generated by a rapidly expanding economy. But they did not. Indeed, in the little more than a century and a quarter that separated Gratian’s treatment of usury in the Decretum from St. Thomas’ final treatment of the question in the De malo and the Summa theologica, the definition of each of these terms changed profoundly. For this reason I will consider St. Thomas’ position on usury less as a response to a persistent set of economic and moral questions than as a response to profound changes in the lexical and conceptual landscape that occurred over the thirteenth century.

I will first outline the critical changes that occurred in the definitions of the three primary terms over this period, and then consider the impact of these changes on the treatment and definition of usury in the work of St. Thomas. My consideration of two of these terms, money and nature, will be very brief. Conceptions of money and nature are well understood to have changed over the course of the thirteenth century, and their place in the natural law position against usury does not have to be demonstrated. I treat them here primarily in order to illustrate the intersection of these two components with ideals and conceptions of equality, and to suggest the benefits of considering these three terms, taken together, as forming the pyramidal base of the natural law against usury.

The conception of equality requires and receives a more detailed discussion here for two primary reasons. While many scholars engaged in the study of usury have recognized the central place held by the ideal of equality, more emphasis and analysis in this area can only, I think, bring us closer to the reality of the situation. More importantly, even those who have recognized the centrality of equality in usury theory have generally failed to discuss it as a concept in evolution, or even as a concept capable of evolution. When spoken of, equality is represented as an essentialized ideal, a conception without a history, the same for Gratian as it was for St. Thomas, and, indeed, as it is for us. An important, if secondary, goal of this essay is to suggest that conceptions of both equality and equilibrium (the process through which equality is attained or maintained) have a history; that while the same words (aequitas, aequalitas, aequatio, adequatio, etc.) continued to be used in law and theology, the definitions and processes denoted by these words changed dramatically between the time of Gratian and St. Thomas; and finally, that changes in the definition of equality had a direct and deep impact on the structure and content of St. Thomas’ writings on usury.

I conclude this introduction with caveats concerning my use of Gratian and St. Thomas as starting and ending points of this study. It is, I realize, impossible to treat Gratian’s treatment of usury as characteristic of mid-twelfth century attitudes. The canonists he cites are those of the Fathers, most from the fourth to the sixth centuries, with the most recent from the early ninth century. All are essentially borrowed from earlier canon law collections. Moreover, the early glosses on the Decretum, particularly those from the first decades of the thirteenth century, indicate a level of economic knowledge and sophistication considerably in advance of that found in Gratian’s text. Nevertheless, judging solely from the evidence of the text, the opinions Gratian selected possessed for him an intellectual coherence and weight sufficient to provide a strong and defensible position against usury. They served, moreover, the great glossators as the starting point on the question of usury for centuries to come. For this reason, they can, I think, serve as the starting point of this study as well.

The importance of St. Thomas to the development of usury theory has at times been overstated. He derived many of his technical arguments directly from Roman and canon law, with further borrowings from Aristotle and earlier theological treatments. Although he came back to the question of usury a number of times throughout his life, and although he clearly thought the question important, he devoted only a tiny fraction of his writings to it and, in general, to subjects we would now consider to have an economic component.

While his discussion of usury was largely derivative, the arguments that he put forth represent an extremely careful and narrow choice taken from the wide array available to him. Indeed, the closer one looks at his writings, both early and late, the more careful and more narrow his choices appear. His caution, I believe, resulted in large part from his remarkable sensitivity to the changing definitions of the major terms in the equation of usury.

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1 The writings of Giacomo Todeschini have been especially important for revealing the connections between lexical development and the evolution of medieval economic thinking. See, in particular, Il prezzo della salvezza. Lessici medievali del pensiero economico, Rome, 1994.

2 For this reason, I intentionally exclude from my discussion Efficitus (added c. 1180) and other relevant paleae to Gratian’s canons on usury.
The profound shift in meaning of the three constituent terms — money, nature, and equality — when fully comprehended, rendered many of the oldest and most commonly held positions untenable. It is not, then, Thomas’ status as an innovative “economic” thinker that has led me to focus on his writings here, but rather his sensitivity to definitions and their implications. The evolution of these definitions in the period separating Gratian and St. Thomas is as much the subject of this paper as is St. Thomas’ recognition and manipulation of them in his questions on usury.

Now to the discussion of the terms themselves. In Gratian’s terse treatment of usury in causa XIV, question 3, there is no explicit definition or understanding of money offered; it can only be inferred from the canons themselves. In each of the canons money is identified as the numerical physical coin of specified and unchanging weight and value. This identification is underscored through the linking of the coin to fixed and quantifiable measures of wheat, wine, and oil.

Si feneraveris hominem, id est si tu mutuum dederis pecuniam tuam, a quo plus quam desistti expectes, non pecuniam solam, sed aliquid plus quam desistti, sive illud tritici sive, sive vitam, sive oleum, sive quodlibet aliquid, si plus quam dedisti expectes accipere, fenerar es, et in hoc improbandus, non laudandus.

Since the measures of all these commodities were, in Gratian’s universe, capable of being fixed and known, it would be possible to recognize immediately any addition to the measure resulting from paying back more than the sum lent (ultra sortem) and to condemn that unnatural production of an excess as usury — the production of inequality: et quodcumque sorti accidit usura est; et quodcumque velis et nomen imponas, usura est.

While St. Thomas’ understanding of money was considerably more complex and capacious than was Gratian’s, he continued to utilize the definitional equivalence between measures of coin and measures of wheat, wine, and oil found in Gratian (and repeated continuously over the following century in the glosses), as an important element in his own argument against usury. In Thomas’ hands, with the aid of Roman law distinctions, this will become the basis for his identification of money as a fungible good, which in turn formed the basis of his argument against charging for the use of money (or wine, wheat, oil, or other fungibles) in the loan contract or mutuum.

Judging solely from the evidence of his commentary to Aristotle’s Nicomachean Ethics (c. 1270-71), Thomas was exposed to, and clearly comprehended, a range of thinking about money and its uses, far wider and, arguably, far more problematic when applied to the usury prohibition, than the narrow definition found in Gratian’s collection. Thomas’ close commentary to Aristotle’s wonderfully insightful discussion of money and exchange in Book 5 of the Ethics, reveals not only that he fully grasped the elements in Aristotle’s analysis, but that he was in a position, as a keen observer of economic life, to clarify and reinforce Aristotle’s argument at a number of points. As Thomas’ commentary makes clear, in the Aristotelian text, money as the medium of exchange functions in at least five primary ways: 1) as a divisible continuum, capable of being added to and subtracted from, so that gain and loss in economic exchanges can be proportioned and equalized; 2) as a graded and numbered measuring continuum, capable of expanding and contracting to meet the varied and shifting values of goods in exchange; 3) as a relational continuum, serving as the mid-term in the exchange of goods, permitting the wide array of goods and

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9 “Fungible”, as defined in Roman law, is a good freely exchangeable for another of like kind in the satisfaction of an obligation: wheat, wine, and oil are frequently cited as examples. The borrower is not bound to repay the same precise good, merely the same quantity of a similar kind, because the original good has been consumed in use. The implications of Thomas’ defining money in this way are discussed below.

10 Thomas was introduced to the Ethics through Albertus Magnus’ lectures at Cologne c. 1250, which were based on Robert Grosseteste’s Latin translation (1246-47). Thomas’ commentary was based on the revised Grosseteste translation, which has been dated to c. 1260. See J. Kaye, Economy and Nature in the Fourteenth Century, Money, Market Exchange, and the Emergence of Scientific Thought, Cambridge, 1998, p. 56. The edition of the commentary on the Ethics used here is Sancti Thomae de Aquino Sententia: Libri Ethicorum, Rome, 1949 (Sancti Thomae de Aquino opera omnia, 47/2).

11 For an analysis of Thomas’ reading of Ethics V and a discussion of his contributions to the understanding of money and exchange, see Kaye, Economy and Nature, p. 56-78.


13 Aquinas, Ethics V.9 (1969), p. 294, comment to 1133a19-30: Et ad hocus inventum est nummisma, id est denarius, per quem mensurantur pretia talium rerum, et sic denarius fit quodam modo medium, in quantum scilicet omnia mensurat et superabundantiam et defectum...
services to find commensuration in terms of their place on the common continuum of money; 4) as an instrument of proportionalization in the geometric *contrapassum* of exchange; 5) as a continuous connecting medium, literally binding the *civitas* as it brings together producers and their widely varying goods for sale.

Thomas shows no hesitation in recording and explicating these five aspects of money as measure described above, and yet accepting any one of them would render it difficult if not impossible for him to think of money in terms Gratian would have understood. Over the course of the thirteenth century, absolute value was giving way to notions of relational value in the area of economic life and thought. As this occurred, the search for perfectly knowable and numerable points of equality in economic exchange gave way to thinking in terms of approximative lines or «latitudes» of value. The canon lawyers who preceded Thomas were fully aware of this – necessarily aware, because it was their responsibility to fit the actuality of economic exchange and money's use to the ideal requirements of the usury injunction. Thomas, too, through his thorough knowledge of the Roman and canon law tradition, his mastery of the Aristotelian text, and his experience with the multiplication of money, credit, and market exchange in his own society, was fully aware of the problems that would ensue from fitting the dynamic actuality of money as line measure in the geometry of exchange to a

Usury prohibition that was theoretically fixed on the requirement for absolute numerical equality in the *mutuum*.

The great differences in conceptions of money between the mid-twelfth and mid-thirteenth century were reflected in equally momentous changes in the conception of nature. Nature, like money, is not specifically defined in any of Gratian's canons relating to usury, but one can discern its conceptual outline when one imagines the world in which the stated examples and definitions made sense. In Gratian's text, the usurious contract takes place in a nature that is static and absolute, made up of discrete entities that can be separated and treated in isolation. There is no sense in any of the canons that the loan contract is embedded in social, spatial, or temporal contexts that might effect its definition in the slightest. Value, too, is treated as an absolute and discrete entity. Ten *solidi* lent requires precisely ten in return, with, again, the absence of any sense that value might be subject to change over time or place or might shift in relation to personal or social situation.

Usura est, ubi ampliis requiritur quam quod datur. Verbi gratia si solidos decem dederis, et amplius questieres, vel dederis frumenti medium unum, et super aliquid exegeris.

St. Thomas' view of nature is markedly different in almost every respect. I have written elsewhere concerning the extraordinary changes that occurred in the conceptualization of nature in the two centuries following 1150. I have attempted, as well, to elucidate the many pressures – social, economic, demographic, and textual – that shaped this reconceptualization. Here I limit myself to a very brief consideration of Thomas' views.

Of primary importance was Thomas' (and Aristotle's) privileging of the continuum over the point in the analysis of nature. In contrast to Gratian's view, Thomas' nature was continuous rather than composed of discrete points; moving rather than static; flowing rather than fissured. The great moving system of nature was, in Thomas' view, fully interconnected: it could be divided into causal subsystems, but these were understood to intersect and influence each other at many points. Central to Thomas' new vision of a unified and continuous nature was a nascent recognition of the relativity of place and position. Within the moving whole, the position and value of individual things could rarely be perfectly defined or quantified, only approximated.

While this is far too short a summary to do justice to Thomas's

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17 I discuss this development at many points in *Economy and Nature*, esp. p. 124-26. Although Thomas, following Aristotle, insists that money is an artificial measure instituted by law (nomos = numismata), and as such should ideally remain fixed in order to insure its effectiveness, he also recognizes, as does Aristotle, that in reality its value does not remain fixed but fluctuates within a limited range. See Aquinas, *Ethics*, V.9 (1969), p. 295, comment to Iii3b10-14: *Vorunt est autem quod etiam denarios paupertas hoc idem quod aliae res, quod scilicet non semper pro eo homo accipit quod vult, quia non semper potest aequale, id est non semper est eiusdem valoris; sed tamen taliter debet esse institutum ut magis permaneat in codem valorem quae aliae res.

18 I discuss Thomas' solution to this problem below.

19 Gratian, *Decretum II*, C. 14, q. 3, c. 4.

views, I intend it only to underscore two related points: the
close and varied links between Thomas’ understanding of nature
and his understanding of the dynamics of monetized economic
exchange (both viewed as fluid, interconnected, relativized,
and approximative) and the great distance between Gratian’s
understanding of these constitutive terms and his own. Yet despite
the profound changes in conception and definition, Thomas was
faced with the difficult task of constructing an absolute case against
usury in a way that would be consistent with the ancient canons in
Gratian’s collection.21 The strength and success of Thomas’
intellectual project often disguise the serious problems he was
forced to work around and overcome: the seeming naturalness of
the product disguises the reality of very strenuous and purposeful
construction.

The third and last term in the usury equation to consider is
equality. I want to place particular emphasis here because the
impact of changes in the conception of equality on usury theory
and, indeed, on virtually all areas of medieval speculation has, I
think, not been fully appreciated. In the preceding sections outlining
the changing definitions of money and nature, I have relied almost
entirely on examples taken from Thomas’ understanding of the
Aristotelian text. But in regard to Thomas’ thinking about the ethical
and economic dimensions of usury, it is clear that legal
developments over the course of the thirteenth century, and
particularly developments in canon law, had more impact on
Thomas’ thought than did the Aristotelian text and its commentary
tradition.

One of the crucial intellectual intersections between canon law
and Aristotelian thought occurred in their joined emphasis on the
central place of equity/equality in the ordering plan for humanity
and nature. Both traditions positioned all forms of economic
exchange squarely within this category. Aristotle placed his most
concrete technical discussion of economic exchange in Book 5 of the
Nicomachean Ethics, the same chapter that contained his fullest
and most technical discussion of justitia and the forms of equality and

equalization that constituted it. For Aristotle, economic exchange
was, in its essence, a concrete form of social equalization, essential
to the life of the civitas.

The concept of equity/equality (aequitas/aequalitas) was as
central to the project of medieval canon law as it was to Aristotle’s
thought. Paolo Grossi has recently made the case for this point with
force and clarity: “E di aequitas si parlerà ossessivamente in tutte le
grandi decretali dell’età classica...”22 The canonists had such
confidence in this ideal that they carried it directly into their
analysis of forms of economic life, using aequitas as their infallible
guide, and accepting it as the ultimate test of liceity in economic
contracts.23

In this essay, I have chosen to substitute the term “equality
(aequalitas) for the lawyer’s aequitas for a number of reasons. In
the English language (and, in the opinion of Grossi, in Italian as
well), the modern word “equity” simply fails to convey the weight
and complexity of the Latin aequitas. More to the point, the word
“equality” expresses the mathematical and quantitative dimension
of aequitas that was central to the concept as it was applied to usury
in the loan contract or mutuum. Even in Roman law the scope of
usury was explicitly limited to loans involving «those things which
are dealt in by weight, number, or measure».24 The limitation of
usury to the quantifiable and numerical, generally accepted by the
medieval legis, is clearly apparent both in the canons cited by
Gratian and in Thomas’ final determinations. Finally, unlike the
word “equity”, the word “equality” implies a precision and
knowability that, again, was central to the medieval discussion of
usury from Gratian’s time forward.

For all the implications of numerability and knowability that
the word “equality” still carries when used in its mathematical
sense, in our modern period it carries as well a great weight of
abstraction – the legacy, in part, of its connection to revolutionary

21 By “difficult” I do not mean to suggest that this was an unusual position
for Thomas to find himself in. His primary intellectual goal was, in effect, to
unite disparate parts based in seemingly different principles: to integrate the
social and political with the eternal, civis with fideles, and the ground of the
civitas with that of the congregetic fidelium. The dimensions of this project are
explored with great sensitivity in G. Todeschini, “Ecclesia e mercato nei
linguaggi dottrinali di Tommaso d’Aquino, in Quaderni storici, 105, 2000, p. 585-
621.


23 Grossi, L’ordine, p. 181-82: “[L’aequitas] sarà il campo della
rappresentanza, del contratto a favore di terzi, dei titoli al portatore, della
lettera di cambio, cioè il campo tutto nuovo dei nuovi traffici commerciali a pretendere
regole effettivamente calate nella realtà e di essa ordinatrici”.

24 Grossi, L’ordine, p. 177: “[L’aequitas ha] una realtà che il termine italiano
equità non può che immiserire.”

25 Digest, 12.1.2.1. T. P. McLaughlin, The Teaching of the Canonists on Usury
(XII, XIII and XIV Centuries), in Medieval Studies, 1, 1939, p. 81-147, esp. p. 95-
100, citing Huguccio, Summa, on C. 14. q. 3: Mutuum enim consistit in his rebus
qua ponderare, numero vel mensura constant veluti vino, oleo, frumento, pecunia
numarta, aere, argento, auro etc.
social and political ideals. I would like to suggest that the *aequalitas* championed by the canon lawyers and theologians, and applied by them to economic contracts, lacked many of these hazy tones. Although clearly an ideal, it was always more than merely an intellectual abstraction. It could be measured, weighed, known, and applied with a sense of certainty. As such, it was thought to have a real presence in nature and in the human condition, both personal and political, a presence that was experienced as a direct and sensible connection to the divine will. The knowledge and experience of equality, made concrete in law, provided humans with a golden key, as it were, to the divine order. In short, far from being simply an abstract intellectual construct in the thirteenth century, equality, as the quantifiable aspect of *aequitas*, was a concrete reality that could be experienced, known, and applied as an instrument toward the production and restoration of right order.

At the same time that the ideal of equality possessed such power, it was becoming increasingly clear that the ideal numerical equality demanded by Gratian’s canons was difficult, if not impossible, to impose upon the *mutuum* when it was embedded in the real world of economic exchange. Everyone who wrote on the problem of usury from the practical and legal side recognized that finding an equation between benefit and loss was extraordinarily complex in the loan contract, and even more so in the matter of restitution. Concrete solutions offered by lawyers to the judgment of usury and restitution from the thirteenth century on were necessarily latitudinarian in order to do justice to the actual complexities of the exchange and to provide equitable solutions to real problems. One might think that the recognition of the hazy mathematics of debt and obligation in practice would lead to the abandonment of the ideal requirement for perfect arithmetical equality in the *mutuum* found in the Decretum. Numerical equality would then give way to the acceptance of a proportional equalization within acceptable bounds. But the theoretical ideal was not abandoned; not by Thomas and other theologians, nor by the canon lawyers. Even when their practical decisions were latitudinarian, and even when they came to accept numerous exceptions and justifications of *interesse* that, in many cases, negated the requirement for numerical equivalence in the *mutuum*, they still remained committed to the ideal of perfect numerical equality between sum lent and sum returned as the key to *aequalitas* in the transaction.

The almost «obsessive» focus on *aequitas* in canon law, when attached to judgments concerning right economic behavior (as, indeed, it had to be), had some strikingly unforeseen and disturbing consequences, not least for the conception and definition of equality itself. The early solidification of the Church’s condemnation of usury, and the ever-increasing sense of danger and sin that was attached to the act, committed the church and particularly its lawyers to become expert in the ways of the marketplace in order to locate it and root it out. But economic life has its own rules and its own dynamic. It functions according to its own principles, very often at odds with the principles governing the Christian life. It functions around risks and probabilities rather than certainties; its value systems is relativized rather than hierarchical; its truths are provisional rather than absolute; its form is characterized by fluidity and change rather than fixity. The canon lawyers were confident that they could carry their measurable ideal of *aequalitas* into the marketplace as the essential test of usury. But the *aequalitas* that emerged from the marketplace in the mid-thirteenth century was far different from the one that had been brought into it in the decades following Gratian’s *Decretum*. By Thomas’ time, the understanding of a quantifiable equality had been complicated to an extraordinary degree by its absorption of new and radically destabilizing notions – doubt, risk, estimation and probability – acquired as a consequence of its forced residence in the marketplace.

We can see the shift in the conception of equality over the thirteenth century through an examination of two closely related

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24 Grossi, *L’ordine*, p. 180: «La conclusione generale, unanime, è che la parità – per essere giustizia e, quindi, anche ies – non può che essere parità di situazioni sostanziali, situazioni di fatti».


26 See the contribution of G. Ceccarelli in this volume.

27 Elsewhere I have made the point (*Economy and Nature*, p. 82-83) that the decision to make intention the final test of usury in the late twelfth century (through the new weight given to *Luke 6* as the primary biblical injunction, which established the oft-repeated principle, *sola spes facit usurariam*) was derived specifically to bridge the growing chasm between fixed arithmetical ideal and an increasingly complex economic actuality in which perfect equivalence was ever more difficult to establish with certainty or to enforce.

28 See, for example, Hostiensis who after admitting twelve practical exceptions to the requirement for perfect equality in loan contracts, continues to insist that the ideal itself remains intact and that *omnis usura inmoderata est, et idem hic et omnis usus usurarius infamis est*: *Summa Aurea*, Venice, 1574, reprint Turin, 1963, col. 1638. Hostiensis’ famous poem listing the exceptions is found on col. 1623.

29 A point often stressed by Christian thinkers and expressed clearly in the well known palea, *Eiectem*.
economic contracts that came under the watchful eyes of the canonists: time sales (venditto ad tempus) and annuities on property (census, redditus). Soon after Gratian completed the Decretum, it became clear to those whose task it was to regulate social activity that merchants were inventing new forms of contract to disguise interest-bearing loans in order to escape the penalties and opprobrium attached to usury. Pope Alexander III (1159-81), in the decretal In civitate, examined the common practice of credit sales (the selling of current goods for a future payment at a higher price than they could be bought for in the present), in answer to a question concerning its licitcy from the Archbishop of Genoa. Alexander’s answer was that insofar as it is the intervening time between payment and delivery that commands the higher payment, such contracts were clearly usurious. While Alexander’s intent was to close a contractual loophole and to enforce a rigorist position on usury, he unwittingly opened the door to a large field of potential equivocation by adding an exception. If, rather than certainty, there was a legitimate doubt as to whether the goods would be worth more or less in the future, then the future payment could be greater than the current price without there being disguised and illicit usury in the contract.

Forty years later, in the decretal Naviganti, Pope Gregory IX brought Alexander’s ruling to the fore, confirmed it, and extended it to contracts in which one party advanced a certain sum of money for goods that would be worth more than that sum when they were delivered in the future. Again, Gregory reasoned that if the difference were due solely to the passage of time, then the contract was usurious. If, however, there existed legitimate doubt concerning the future price of the goods (including doubt relating to the risk of loss), then the contract was licit, and exchange or commutative equality was preserved, despite the manifest quantitative inequality between the two sums separated by time. These rulings became the basis of an evolving discussion within canon law that tended increasingly to expand (and obscure) the quantifiable and numerable test of commutative equality, on the basis of the existence of conjecture and doubt in economic contracts. Though initially intended as narrow exceptions, they soon formed the basis of a general legal justification of contracts in which doubt intervened (concerning future value or risk of loss), under the heading venditto sub dubio. As Hostiensis wrote in characteristically forthright fashion, et sic ratione probabilis incertitudinis multa sunt lícita quae alias non licent.

A second set of cases through which doubt entered the economic equation concerned the census contract, an agreement by which one party (effectively, the creditor) buys a census – a fixed annual return on another’s (effectively, the debtor’s) fruitful property – in exchange for a larger sum of money conveyed at the moment of contract. The census contract was of particular importance to canon lawyers because it was widely and profitably used by ecclesiastical institutions in this period, and its continuance was considered by many in the Church to be essential to their economic health. Such reliance underscores the reality that the interplay of surplus and need, lender and borrower, buyer and seller, renter and rentier – in short, the dynamic interplay of the marketplace that was of such concern to canon lawyers – was not the exclusive field of lay economic actors and commerants, but that Church institutions of every kind and size were heavily involved in it, and indeed, deeply embedded in it.

The question the lawyers asked of the census was a simple one: if a sum of money has been given by one party to another in exchange for smaller annual monetary payments (by the thirteenth century, most census contracts were stipulated in terms of pecunia numerata due annually), and those annual payments eventually total

excusatur, qui pannos, granum, vinum, oleum vel alia mercis vendit, ut amplius, quam tunc valent, in certo termino recipiat pro eisdem; si tamen ea tempore contractus non fuerat venditoris.

Hostiensis, Summa Aurea, col. 1523.

The classic work on the early history of the census contract is F. Veraza, Le origini della controversia teologica sul contratto di censo nel XII secolo, Rome, 1960. See also McLaughlin, Teaching of the Canonists, p. 120-22; Hamelin (ed.), Tractatus de usuris, p. 93-97. In the twelfth century the census was payable either in a fixed proportion of the fruits of the field or in its fixed monetary equivalent, but by the thirteenth century, annual payment was generally stipulated as a fixed sum of money (pecunia numerata).


Toeschini continually and properly reminds us that we cannot understand the development of medieval economic definitions, distinctions, and doctrines without keeping this firmly in mind.
more than the original sum advanced, is this not a usurious loan in its clearest definition (from Gratian): «where more is asked in return than was given»? Since the stipulated length of census contracts were either for the life of the seller (borrower) (restitutus ad vitam), or, even more problematic, in perpetuity (restitutus perpetuus, contractus perpetuus, i.e. attached to the land itself rather than to the contracting individual), there was only the smallest possibility that the original sum offered would equal (in any sense that Gratian might have understood) the eventual sum of the annual returns. If, for example, the contract of a restitutus ad vitam stipulates that the annual repayment will be 10% of the original buying price (or loan), the return will be precisely equal only in the unlikely case that the seller (borrower) dies after precisely ten years have passed. If the seller dies within that time, the buyer (creditor) will have received less than the original sum, if after the ten years, the seller (borrower) will have paid out more than the original sum. If the seller lives for fifteen, twenty or more years, then the repayment could be double or more the original sum, and if, as was increasingly common, the term of the contract was in perpetuity, then the possibility of a numerical equality is completely and necessarily destroyed. How is this not usurious?

I will confine myself to relating decisions on the census that came from canon law and that would have been well known to St. Thomas at an early point in his studies. Raymond of Penafort was the first lawyer to offer an opinion on the liceity of the census contract. Not surprisingly given the tradition before him, Raymond established as his guiding principle that liceity is linked to numerical equality: the annual payment must be pegged to the age and health and probable number of years left to the payer of the restitutus ad vitam. The sum of the return over the years must be approximated, insofar as possible, to the original sum offered (i.e., the price of the census.) If the original price was too low in relation to the sum returned, then the contract was in fraudem usurarum. Raymond here is attempting to fix this fairly new form of contract, very favorable to the economic health of ecclesiastical institutions, to the old definition of exchange or commutative equality, even though it has doubt and approximation built into it. It is not an easy fit. At this point, however, he is still holding firm to the traditional requirement of a numerically quantifiable equality in the exchange.

The next solution offered by the decrealist Godfrey de Trano, was very different indeed. He declared that the census contract was licit and not usurious because of its incertitude: propter conditionis incertum... et dubium mortalitatis eventum. Explicitly citing In civitate and Naviganti as precedents, he stated what he believed was the general principle governing his decision: propter dubium excusatur usura. Godfrey's position may have been regarded as disturbingly simplistic and permissive; in any case, it was not the one generally chosen by the decrealists who followed. That distinction fell to the treatment of the census authored by Pope Innocent IV (1243-54), appended to his commentary on In civitate in his great work on the Decretals. Innocent's argument, the most elaborate by a canonist of the thirteenth century, contained a number of parts, each of great interest and importance to the history of equality.

Innocent was clearly not satisfied with the previous decisions concerning the liceity of the contract, and he took a very different tack. His answer, which proved to be very influential, is that the census contract is not formally usurious because it is properly a contract of sale (venditio) rather than a loan (mutuum), and usury occurs only in the mutuum. If one accepts the understanding that the census contract is a sale, one is no longer bound by the perfect equality required by usury theory, but one is still bound by the knowable numerical limits of laesio enormis – one half above and below the common price – derived from Roman law, that was understood to separate the just sale from the unjust sale.

Innocent, however, extended his argument so that even these broader limits would not have to be respected in the sale of the

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47 Gratian, Decretum II, C. 14, q. 3, c. 31: si plus quam dedisti expectes accipere, fenerator es...
48 A 10% annual payment is common in the contracts that Veraja has examined, though he found evidence of returns ranging from 5%-12.5%.
49 Tellingly, Veraja has found that the terms for a perpetual return were generally the same as those for a life return (Contratto di censo, p. 20-23), indicating that there was simply no expectation of (or concern for) numerical equality over the life of the contract.
50 Veraja, Contratto di censo, p. 29.
census. By viewing the census in strict formal terms as a sale, he transferred the consideration of commutative equality from the actual, eventual outcome over the life of the contract, to the moment of contract. All that is necessary, he writes, is that the price agreed to by the parties of a census at the time of the sale conforms to the common price of other current census contracts. This current price, he asserts, represents an estimation, shared by both parties, that there is an equivalence between the promised annual return and the original buying price, and this estimation is sufficient to render the contract licit. Here not only the requirement for numerical equivalence, but the limits as well of laeso enormis over the life of the contract, have been completely superceded by a mutually estimated equivalence of advantage at the time of sale.

Once this is established, Innocent has no problem extending his argument from the redditus ad vitam to the redditus perpetuus. He recognizes clearly that there can be no possible numerical equality in this contract over its life, but that does not render the contract illicit. The same is true, he acutely notes, in all true sales of land, where it is clear that eventually the fruits of the land will surpass the price offered. But the sale of land is clearly licit, despite the built in inequalities that are ultimately unknowable because of the uncertainties involved.

Innocent's discussion of the census contract came in the section of his commentary devoted to the decretal In civitate. In concluding, it was necessary for him to separate the census sale from that class of credit sale that had been declared usurious by Alexander and Gregory. He condemned, as they had, sale contracts in which the certain passage of time was the basis of increasing price – in effect, the sale of time. The census, on the contrary, did not represent the sale of time because it was a contract made solely in the present.

Rather than certainty, there was an element of judgment and doubt involved, and this doubt, Innocent reasserted, was sufficient to render the contract licit.

There is more to the story of the census in the years both before Thomas and contemporary with him. In the generation following, the controversy flared into a genuine ideological battle, with the very definition of equality at its center. But I think Pope Innocent's position, which would have been well known to St. Thomas, contains elements sufficient to convey the difficulties that would confront any argument constructed to maintain the traditional ideal of perfect numerical equality in the mutuum. If doubt excuses usury, the question arises: in what economic exchange is doubt not present? When, as in the case of the census contract, and

ventit mercem proper terminum... quia penitus sunt illicita, quia hoc solemn modo vendit temporis pro illa pecunia...

31 Innocent IV, V.19.5 (517va): in casu nostro omnia sunt praesentia, nec vendit temporis, quia res ipsae de quibus dicimus, scilicet, redditus vel actio tantum valebit, vel ad minus creditor valere subsequenter temporibus, quantum modo valet, vel ad minus est dubium, et hoc sufficit ad hoc, ut contractus sit illicitus...

32 Thomas' near contemporary, Aegidius Lessinus, devoted an insightful chapter in his treatise on usury to the question, Quomodo sit empio redditu ad vitam incidat vitium usurae. In his defense of the census as a legitimate sale, he brings in many of the elements of the new equality: the recognition that value is determined by utility and need; that utility and need vary greatly according to time, place, and person; that contracts are excused from the requirements of arithmetical equality ratione dubii et percipi; and that the mere agreement to exchange based on the estimation of utility is sufficient to guarantee a just equality in the exchange. Aegidius Lessinus, De usuris in communit, Et de usurarum in contractibus, edited as part of Thomas Aquinas, Vives (ed.), Opera Omnia, Paris, 1889, vol. 28, p. 575-609, esp. ch. 9, p. 588-93. For theological treatments of this question in Thomas' day, including that of Aegidius, see Veraj, Contratto di censo, p. 84-99. For a discussion of Aegidius' treatise, see O. Langholm, Economics in the Medieval Schools, Leiden, 1992, p. 299-321; Todeschini, «Ecclesia», p. 612-15. Langholm dates the treatise somewhere between 1276 and 1293.

33 Evidence that the definition of equality was profoundly contested in this period appears shortly after Thomas' death in the writings of the theologian Henry of Ghent. Henry directly challenged Pope Innocent's decision on the census, stating that due to the essential numerical inequalities built into the contract, it was clearly usurious in practice and in form. Godfrey of Fontaines and other theologians and canon lawyers developed an argument against Henry's objections in which the equality demanded by commutative justice could be satisfied by an equality of doubt shared by the exchangers. Within this heated debate, the process of definitional destabilization reached yet another level, and as it did, it exerted further profound impact on the evolution of medieval economic thought. For further discussion on this subject, see Kaye, Economy and Nature, p. 101-15; Veraj, Contratto di censo, p. 48 ff.
particularly with the *redditus perpetuus*, even the mathematical limits of licit sale-price must be ignored because of the uncertainty and estimation built into the term of the contract, the notion of equality becomes ever more destabilized, and the quest for some test of equality between exchangers ever more problematic. Moreover, the very insertion of doubt into the equation introduced a host of related factors, all working against the older absolutist vision of equality. It was not doubt *per se* that rendered an unequal exchange licit, but reasonable, or *probable doubt*. If the numerical inequality stipulated in the contract (which was reputed to be caused by doubt), exceeded the range of difference it would commonly be expected to fall within, then the exchange was deemed usurious. As Pope Innocent wrote concerning the sale of the census, which in most cases he deemed legitimate: *Et si excedat communiter, non est licitus contractus*. Thus, from the mid-thirteenth century, the lawyers who were called on to judge the liceity of these contracts required to be intimately familiar with the vagaries of the marketplace and knowledgeable about the common course of price variation. They were, in effect, forced to comprehend the complex movement of price, forced to see the world in terms of approximations, latitudes, and probabilities. This was Thomas' inheritance from the canonists on the requirements for equality in commutative exchange. In striking ways, it dovetailed with the lessons on equality and equalization that he and his generation were coming to find in the Aristotelian text.

In Aristotle's discussion of forms of justice and equality in Book 5 of the *Ethics*, (the site, as well, of his discussion of money and exchange), he presented three distinct forms of equalization: 1. arithmetical (*iusstitia directa*), characterized by addition and subtraction to reach the midpoint of equality; 2. geometrical (*iusstitia distributiva*) characterized by multiplication and division to the end of proportional equalization; and 3. a hybrid of the two, translated by the Latin word *contrapassum*, specifically applicable to the equalization involved in economic exchanges. To the extent that economic transactions involve the equalization of unequal input (skill, labor, investment, need, risk, etc.), both Aristotle and Thomas recognized that they require the geometrical and proportional equalization proper to *iusstitia distributiva*. Within this form of proportionalization, unequal contributions require a numerically equal reward in order to insure equality in the exchange. Thomas clearly understood this insight, and in his commentary on the *Ethics*, he illustrated it with the example that if Socrates works twice as long as Plato, two days to one, then true equality requires that the reward be proportionally equal rather than numerically equal: that is, that Socrates be given two pounds in reward and Plato only one. Indeed, many scholastics commented favorably on Aristotle's point that where there are unequal contributions to an exchange, rewarding a numerically equal return to the exchangers, is, paradoxically, unequal.

Medieval commentators had few problems attaching the conception of proportional equalization to buying, selling, and other economic exchanges, as did Aristotle. But very serious consequences would follow if proportionality were attached to the loan contract or *mutuum*. If the lender were understood to have given more or suffered more from the loan than the borrower, or even if the borrower can be shown to have benefitted more from the loan than the lender, then the repayment of an arithmetically equal sum by the borrower (as usury theory required) would, in Aristotelian terms, be manifestly unjust and unequal. Applying proportional equalization to the *mutuum* would require the payment of interest by the borrower in recognition of the inequalities involved. This was, of course, not Aristotle's conclusion, but its traces can be seen in the Roman law solution to the question of permissible interest on loans.

Even were the *mutuum* to be removed from the geometric proportionality of distributive justice and placed firmly in the realm of directive justice, governed (as in Aristotle's scheme) by an arithmetical mean, still, equality in the transaction would require finding the mean between gain and loss (in Aristotle's scheme, literally bisecting the line of *lucrum-dannunum*), and, once again, the strict numerical equality between sum lent and sum returned required by usury theory, would in almost all cases, result in an unequal exchange. In short, with the translation, absorption, and comprehension of Aristotle's treatment of justice and exchange in the *Ethics* from the mid 1240's, Gratian's simple definition of arithmetical equality could not be unproblematically applied to the

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88 *Innocent IV, V.19.5 (517b)*: *On this subject, see McLaughlin, Teachings of the Canonists*, p. 118-19: *Note that the doubt of which it is a question in these texts [vendito ad tempus] must be a probable one*. He cites Raymond of Penafort, *Summa*, II, 7, n. 2: *Si tamen venderet ad terminum longe major pretio quam modo valeat, usura esset*.

89 *Aegidius Lessius' treatise, De usuris in communi, et De usurorurn in contractibus*, ed. cit., provides a clear example of how capable contemporaries of Thomas were in learning and applying these lessons.

mutuum. And yet this ideal requirement remained intact and, in effect, untouchable within usury theory. What kind of difficulties would this cause St. Thomas, a thinker so alive to subtle changes in definition? What difficulties would this present to the natural law case against usury?

I would like to turn briefly to examine the strategy Thomas crafted in response to these challenges. I will focus on three of his discussions on usury: the relatively early In quattuor libros Sententiarum, Book 3, distinction 37, 1-6, written 1254-56, and the two most complete of his later treatments: De malo (c. 1266-68), Question 13, article 4 and Summa theologica (1266-73), II.II.78.27. There are general statements that can be made about all of Thomas’ treatments of usury. Although he will suggest that lenders should be motivated by friendship, concern for God, and charity, his goal is not to construct usury as a sin against charity. This was too apparent to require rational proof. Rather, it is usury as a sin against justice, and in particular, that aspect of justice that is quantifiable and knowable – equality – that concerns him above all. For this reason, the language he employs in these questions is primarily legal and philosophical. The biblical exempla and injunctions that he does use are generally treated within the governing logic of the requirements he establishes for justice and equality.

The major exception here is with his treatment of the borrower’s obligation of friendship in return for the benefit granted him by the lender: this, he says, must be voluntary and motivated by the spirit of gratitude rather than by the letter of the law. Here, the introduction of a legal obligation on the borrower’s part to balance and commensurate the benefit conferred would, he writes, introduce a damaging necessitas, one that would destroy the spirit and spontaneity of the grateful return.28 This is, of course, in stark contrast to the rigid limitations on the lender’s rights to charge utra sortem imposed by natural and legal necessity. Thomas’ switching back and forth between the strict, precise, and legally mandated requirement for numerical equality binding the lender, and the non-quantifiable, non-enforceable, and non-necessary obligation governing the borrower’s grateful return, indicates the complexity of the strategy that he must employ.

Although the Commentary on the Sentences is a relatively early work, and the discussion of usury is rather tangential to the questions on the decalogue at the center of Distinction 37, the well-used argument that will be central to Thomas’ later treatment is already in place: in the loan (mutuum) the lender transfers ownership of money to the borrower (distinguishing the mutuum from the rent contract, or locatio), by which act the lender loses his right to charge the borrower for its use.29 In this early treatment, it must be noted, Thomas identifies the usurious charging for use as an exactio – a violation of the person of the borrower by the lender within each particular mutuum. Not yet fully in place at this point is Thomas’ mature, strongly Aristotelian conception of a nature so wholly integrated, that each usurious act could be seen to violate the impersonal integrity and equilibrium of nature itself.

At the same time that Thomas accepted the common argument against usury based on the transference of ownership, with its roots in Roman law, he rejected the equally common distinction between contracts of loan and rent based on the fact that proper objects of locatio, such as a house or a horse, deteriorate in use. This deterioration, the argument goes, can legitimately require compensation, while money does not deteriorate in use and so requires no compensation. Thomas’ reason for rejecting this argument is instructive: Sed ista ratio non est generalis. It lacks sufficient generality because it works in most cases but, as he demonstrates with particular examples, not in all.30 The case for mortal sin must be based on arguments of universal validity. Thomas’ search for universality (within the many competing and

27 There is debate over the exact chronology of these questions. I generally follow J. A. Weisheipl, Friar Thomas D’Aquino: His Life, Thought, and Works, Washington, D.C. 1983. Weisheipl (p. 210-12) discusses the contested datings of De malo but notes the general consensus that the treatment of usury in the De malo was completed before Thomas began work on ST II. II (1270-72). Cf. Todeschini, «Ecclesia», 586; Noonan, Usury, 51, n. 48, following Grabmann. The editorus used; In quattuor libros Sententiarum, Parma, 1858 (cited as Sent.); Quaesiones disputatae: De malo, Rome, 1982 (Sancti Thomasae de Aquino opera omnia, 23); Summa theologicae, New York, Blackfriars, 1964-81 (cited as ST).

28 ST. II. II, 78, 2, ad 2: Et tali debito non competi civilis obligatio, per quam inductur quaedam necessitas, ut non spontanea recompensatio fiat. For precedents in canon law, see McLaughlin, Teaching of the Canonists, p. 107-8.

29 Sent. III. 37, 1, 6, resp.: quia videlicet quando pecunia mutatur, transfertur dominium, quod non fit in domo et in alius rebus. Justum autem videtur ut pro usi rei quae mea remanuerit, scilicet domus, aliquid accipere possint; sed pro usu pecuniae, quae fit alterius ex hoc ipso quod mutatur, aliquid accipere, nihil aliud est quam accipere aliquid ab aliquo pro usi rei propriac; et idem videtur quod est quaedam exactio, et pecationum. For the treatment of this question before Thomas in canon law, see McLaughlin, Teaching of the Canonists, p. 99 ff.

30 Sent. III. 37, 1, 6, resp.: Quidam enim dicunt, quod ideo pecuniam pro certo lucrro concedere non licet, sicut domum vel equum, vel alia huiusmodi, quia pecunia non deterioratur ex usu, sed alius rebus aliquid deperit ex usu. Sed ista ratio non est generalis. Thomas follows Albert in rejecting this argument. See Noonan, Usury, p. 55.
seemingly contradictory elements surrounding the *mutuum* will continue to drive his thinking on usury in the decades that followed—despite, or in the face of, the latitudinarian and casuistic treatment of usury and restitution present in contemporary legal practice.

One final point about the early treatment of usury in Sentence III, 37. It contains an argument based explicitly on the Aristotelian identification of money as measure in exchange:

> Potest tamen aliæ ratio assignari; quia omnes aliae res ex seipsis habent aliquam utilitatem, pecunia autem non, sed est mensura utilitatis alicuius rerum, ut patet per philosophum in 5 Ethic. Et idem pecuniae usus non habet mensuram utilitatis ex ipsa pecunia, sed ex rebus quae per pecuniam mensuratur secundum differentiam eis qui pecuniam ad res transmutat. Unde accipere majorem pecuniam pro minori, nihil aliud esse videtur quam diversificare mensur in accipiendo, et dando; quod manifeste iniquitatem continet.

In his analysis of St. Thomas’ natural law case against usury, John Noonan put great weight on this particular argument. Thomas, he writes, fastens upon the statement [from *Ethics* V.9] that money is a measure. This will be for St. Thomas the essential definition of money; and as it is his custom to treat the essences of things, he will always consider money, formally, as a measure. Strange then, that in his most complete and final treatments of usury in the *ST* and the *De malo*, Thomas neglects entirely to associate the term measure with money: in fact, the word *mensura* finds no place at all.

Indeed, Noonan’s statement is very difficult to defend for a number of reasons. It is impossible to align with Thomas’ primary argument against usury in the later works based on the definition of money as a fungible consumed in use. Moreover, as I suggested earlier, the full implications of money as measure in the Aristotelian text were so complex, and (when fully comprehended) so destabilizing to the ideal of arithmetical equality, that holding to them would have confused and made more difficult Thomas’ search for a universal argument against usury, rather than simplifying it.

To the five complicating conditions attached to money as measure that Thomas was fully aware of (listed earlier), let me add here a sixth: money, as Aristotle fully recognized, does not and cannot directly measure goods in exchange. Money measures the human need (*indigentia*) attached to goods in exchange. Only in a secondary sense can money be said to measure the goods themselves. This lesson may not have been fully clear to Thomas when he wrote his commentary on the *Sentences*. At that point he had to rely on the Grosseteste translation of the *Ethics*, the terminology of which tended to muddy Aristotle’s discussion on this point. But by the time he wrote his questions on usury in the *ST* and the *De malo*, as well as his own commentary on Book V, he could use the revised translation of the *Ethics* (c. 1260), which made very clear the essential link between *indigentia* and monetary measurement.

While the recognition of *indigentia* as the measure of value (which, in turn, is measured by money) represented a truly monumental advance in the understanding of price formation in exchange, it carried, at the same time, implications that were unsupported when attached to the traditional requirement for arithmetical equality in the *mutuum*. Once relative *indigentia* enters the loan equation, the widely varying needs of borrower and lender would have to find just proportionalization through the instrument of money as measure in order for a true equality to be established. The introduction of need proportionalization would reveal the traditional ideal of arithmetical equality in the *mutuum* to be essentially unjust. It is for this reason, I believe, that the direct link between *pecunia* and *mensura* disappears in the later treatments. But it is not only money as *mensura* that disappears. Thomas’ treatment of money as measure in the commentary on the *Sentences* is, I believe, his last true attempt to integrate Aristotelian insights from the *Ethics* into his questions on usury. He will continue to use Aristotle’s general statements condemning usury (particularly the statement that usury is «maxime praetor naturam»); he will continue to cite Aristotle’s *Politics* and *Ethics* at points; and he will continue to use Aristotelian language in his analysis. But these gestures only serve to disguise what, I believe, is the underlying reality: by the time of his fullest and most mature treatments of usury in the *ST* and the *De malo*, Thomas has given up the idea that

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44 *Sent.* III, 37, 1, 6, resp. : «Another argument can, however, be assigned: all other things from themselves have some utility, money, however, does not but is the measure of utility of other things, as the philosopher makes clear in *Ethics* V. And therefore the use of money does not have the measure of its utility from money itself but from other things which are measured by money according to the different persons who exchange money for goods. So that to receive more money for less is seen to be nothing else than to diversify the measure in giving and receiving, which manifestly contains iniquity».

45 Noonan, *Usury*, p. 52.

46 Odd Langholm also criticizes Noonan on this point. See The Aristotelian Analysis of Usury, Bergen, 1984, p. 82-85.


48 Aquinas, *Ethics* (1969), V.9, p. 295, comment to 1133a25-28 : *Dicit ergo primo quod ex quo omnia mensuratur per indigentiam naturaliter et per denarium secundum condicionem hominum, tunc iuste fiet contrapassum quando omnia secundum praedictum modum adequebuntur*.
the Aristotelian analysis of money and exchange can be made to fit the requirements of a universal case against usury.

A full discussion of the long and many-faceted treatments of usury in the ST and De malo is beyond the scope of this paper. I will focus here primarily on the core arguments within each that established the essential definitions of money and equality that were to be applied to the mutuum. Once Thomas establishes these definitions within the opening response to the primary objections in each treatment, he will use them again and again as the basis for the distinctions and responses that follow.

In the opening words of the first responsio in Summa theologiae II, II, 78, Thomas makes crystal clear that, for him, the pivotal requirement in the mutuum, and the pivotal component in the case against usury, is equality. He speaks here specifically of equalitas – the the theoretically measurable and quantifiable aspect of aequitas. And the equalitas he has in mind is as theoretically precise and arithmetical as the equality found in Gratian’s canons.

Dicendum quod accipere usuram pro preciua mutua es secundum se injustum, quia venditur id quod non est; per quod manifeste inaequalitas constituitur, quae justitia contrariatur46.

In order to support this claim, Thomas constructs an argument in two parts. For the first he draws on Roman law and developments within the canon law tradition after Gratian. He defines usury as, in essence, the lender’s selling, or charging for, the use of money that is no longer his to sell, once it has been transferred to the borrower in the mutuum. In support of this argument he can draw on the canons in Gratian that linked money with other measurable and fungible commodities such as wine, wheat, and oil. In Roman law, fungible goods have two qualities that set them apart from all other goods whose use can legitimately be charged for: 1. they can be freely exchanged (or replaced) by another of like kind and identical quantity in the satisfaction of an obligation, and 2. such substitution is necessary because the fungible (wheat, wine, etc.) is consumed in its use, so the original cannot be returned.

It is clear that money falls under the category of fungible in the first sense, but that it does so in the second sense is considerably more questionable and difficult to establish with universal validity. To bolster the problematic point that the substance of money is consumed in its use, Thomas employs the authority of Aristotle:

Pecunia autem, secundum Philosopnum, principaliter est inventa

46 ST, II, II, 78, 1, resp.
47 Thomas follows the same pattern in the De malo (Q. 13, art. 4, resp.) joining the argument equating consumption and use to a generalized citation from Aristotle: ita etiam et proprius usus pecuniae [est] ut expendatur pro commutatione aliarum rurorn sunt enim inventa summam commutationis gratia, ut Philosophus dicti in II Politec.
48 The argument in ST, II, II, 78, 1, resp. is identical to that in De malo, Q. 13, art. 4, resp.: Set in ills rebus quorum usus est eorum consumptio non est alium usum rem quam ipsa res, unde eius negotio concordit usus talium rurum concordit etiam et ipsius rurum dominium et e converso... usus autem pecuniae ut dictum est, non est alium quam eiusmod substantia, unde venditur id quod non est vel vendit idem bis, ipsum scilicet pecuniae cuius est consumptio eis, et hoc est manifeste contra rationem justitie naturalis...
49 Many of the serious problems in his presentation were realized in the following generations: Scotus, Olivi and others questioned the necessary identification of money’s use, substance, and ownership from a Franciscan perspective. Henry of Ghent, Johannes Andreae and others recognized that money cannot be said, by definition, to be consumed in its use. This, they
and what I find more telling, is what he does not say—what Aristotelian insights he is forced to omit and ignore—what ancient Christian elements of the argument he finds it necessary to jettison in his construction of a natural law case against usury. For a thinker who was not only fully familiar with Aristotle’s treatment of justice, equality, and exchange in *Ethics* 5, but who actually refined and expanded on Aristotle’s analysis in his commentary, it is striking that not one aspect of this discussion is present in Thomas’ final formulations on usury. Aristotle established that it was impossible to talk about justice or equality in exchange without talking about proportionality. Yet there is not a single word about proportionality in all of Thomas’ writings on usury. Indeed, how could there be? Attaching even the slightest notion of proportionality to the *mutuum* would destroy the ancient requirement for a perfect and simple numerical equality that lay at its core.

Thomas does briefly cite Aristotle to the effect that money was invented to facilitate exchange, but while doing so he ignores all the rich implications of money as *medium* in Aristotle’s treatment: he makes no mention of money as a divisible line making possible the equalization of gain and loss in exchange; no mention of money as a social connector; none at all of money as a store of value, even though this was explicit in the Aristotelian text. Again, how could he have brought these insights to his construction, as each would have worked against his essential definitional equation of money’s use and substance. In all his writings on usury, there is no hint of the central insight from the *Ethics*, that economic value is relative value, determined by a variable need or *indigentia* that is relative to time, place, and circumstance, nor that money’s primary use in Aristotle’s discussion was to serve as a measure of *indigentia*. But again, of course, notions of relative value and of a relative need measurable by money would destroy the requirement for numerical equality in the loan contract, where the needs of the borrower and lender are entirely different as are their gains and losses from the exchange. The conclusion seems unavoidable: in order to continue to make a natural law case against usury, St. Thomas had literally to eliminate the profound insights into the nature of money and equality contained in the *Ethics*—insights that, from the evidence of his *Ethics* commentary, he clearly comprehended and accepted.

But it was not only the lessons about exchange equalization from Aristotle’s *Ethics* that had to be ignored, so too did the many developments within thirteenth-century canon law that destabilized and, indeed, subverted the simple definition of arithmetical equality so clearly and unproblematically asserted in the *Decretum*; and so too did the focus on the ethics of the personal exchange between lender and borrower in the *Decretum* itself. By the time Thomas was writing, the complexities introduced into the equation of the *mutuum* by the acceptance of notions of approximation, probability, and doubt—an acceptance forced by the dynamic of commercial actuality in the thirteenth century—made it impossible to construct a universal case for arithmetical equality based on the personal relationship between lender and borrower in the loan. With both parties acting morally and ethically, that is, acting to insure true equality in the loan contract, the decision might very well result in an agreement to a mathematically unequal return.

One of the striking things about Thomas’ later treatments is his clear and unabashed recognition of the benefits to be gained by the borrower in a loan, even, as he explicitly admits, in loans contaminated by usury. The clearest statement of this in the *ST* and the *De malo* comes when Thomas explains why moderate usury is acceptable within the civil law.

ST: *Et ideo usuras lex humana concessit, non quasi existimans eas esse secundum ius naturae sed ne impeditur utilis utilitas multitum*.

*De malo*: *Et hoc modo ius positivum permissi usuras propter multas commoditates qua interdum aliqui consequuntur ex pecunia mutata, licet sub usuris*.

Where Thomas does personalize the damage inflicted on the borrower in the *mutuum*, he does so based on the premise of his impersonal proof, which is grounded in the definition of money as fungible consumed in use. Since the charge for use represents either selling something which does not exist or selling the same thing twice, any requirement to return more than the sum loaned becomes, *ipso facto*, an act of unjust exaction. The *exactio* here is

73 *ST*, II, II, 78, 1, ad 3. The official Dominican translation of this passage from Latin to English (Blackfriars, 1964) appears intent to overlook Thomas’ acceptance of usury’s benefits in this passage: «Human law, therefore, allows the taking of interest, not because it deems this to be just but because to do otherwise would impose undue restrictions on many people». For the medieval Roman law tradition on usury, see McLaughlin, *Teaching of the Canons*, p. 87-93.

74 *De Malo*, q. 13, art. 4, ad 6.

75 *ST*, II, II, 78, 1 ad 5: *Unde si amplius exigat pro usura ex re quam alterum usum non habet nisi consumptionem substantiae, exigit pretium ejus quod non est*. *Et ita est injusta exactio. De malo*, q. 13, art. 4, ad 7: *Ad septimum dicendum quod iste qui dat usaram patitur inustum non a se ipso set ab usurario, qui licet non...
essentially detached from the question of economic benefits and losses in the personal exchange. Given his recognition of the «utilitates» and «commoditates» gained by the borrower in usurious contracts, and his awareness of the destabilization of the definition of exchange equality within canon law following In civitate and Navigantij, Thomas recognized that he could not hope to establish a universal requirement for arithmetical equality in the mutuum based on the actual equation of gain and loss between lender and borrower in the loan contract.

This recognition had important consequences for Thomas' case against usury. The inequality that forms the basis of his case is not, in essence, personal, social, ethical, or moral: it is formal and definitional. It is based not on the personal search for equality in exchange but on the acceptance of rigid definition. This is, I think, unusual, not only in the context of scholastic thought, where «economic» questions were generally decided on moral and ethical grounds, but unusual in relation to Thomas' insistence on the role of personal responsibility and judgment in the establishment of just price, the second major area of his economic concern. In the primary argument against usury found in the first responses of both the ST and the De malo, the traditional social and ethical setting of the mutuum as an actual exchange between individuals has almost disappeared. Thomas considers the lender and his action entirely apart from the borrower. The usurious act violates the definition of money, and in so doing it produces an unnatural excess vis-à-vis nature itself, absent the borrower. For this reason, I think it is fair to say that in his later writings, Thomas centers the dislocation of

inferat ei violentiam absolutam, inferat tamen ei quandam violentiam mixtam, quia scilicet necessitatem habent accipere mutuum graven conditionem imponit, ut scilicet plus reddat quam sibi prestetur.

In both the De malo and the ST Thomas raises the question of «conditioned» or forced agreement on the part of the borrower. This serves the important tactical purpose of derailing the argument linking free agreement to commutative equality in the mutuum (as they were very often linked in contracts of sale), but Thomas seems intent on limiting its place within his overall argument. He is careful to qualify both the definition of «necessity» and the compulsion involved, e.g. De malo, q. 13, art. 4, ad 9: «quod illae qui dat pecuniam suam usurario non dat simplicitern voluntaris set quodammodo coactus; ST, II, 78, 1, ad 7: «quod ille qui dat usura non simpliciter voluntarie dat sed cum quodam necessitate, inquantum indiget pecuniam accipere mutuo quam ille qui habet non vult sine usura mutare.» Cf. O. Langholm, The Legacy of Scholasticism in Economic Thought: Antecedents of Choice and Power, Cambridge, 1998, in which the recognition of conditioned will is presented as the central pillar of usury theory.

Kaye, Economy and Nature, p. 96-99. Here the argument that the borrower is not considered a free actor in the mutuum must be taken into account.

usury more in the realm of physics than in the ethics of commutative equality.

The nature that the usurer's act violates in Thomas' treatment is a nature that cannot even be glimpsed in the canons of Gratian. The nature of the Decretum, in which each exchange is conceived of as a discrete entity, wholly separable from context, has been replaced by a nature newly conceived in Aristotelian terms as a dynamic, fully integrated, and interconnected whole. Integral to this new abstract vision of nature, and central to its function within the argument against usury, was Thomas' conceptualization of a cosmic equilibrium, comprehending the system of nature itself, capable of registering and requiring restitution from each definitionally unbalanced act. Nature itself is the actor here, the offended party that will demand balance and restitution. With nature constructed as a unified system in equilibrium, the slightest deviation from definitional equality, the slightest numerical difference between sum lent and sum returned, will register as the «inequalitas iustitiae» that constitutes true usury. Here Thomas' conceptions of equality and nature intertwine; here we can glimpse the strands that linked the histories of their definitional development over the course of the thirteenth century.

Indeed, we can see the definition of all three major terms—money, nature, and equality—working and moving together in this period: from point to continuum, from number to geometric line, from fixed to fluid, from discrete to integrally connected, from absolute to relational, and from certainty to approximation and probability. What might explain the coordination of this profound lexical shift? The reception and avid absorption of the Aristotelian corpus, to which Thomas greatly contributed, certainly provides part of the answer—but only a part. Elsewhere I have suggested that the conceptualization of nature forged in the late thirteenth century mirrored the form of the self-equalizing marketplace, and that it did so because, through a complex social and intellectual process, it came to be directly (if unconsciously) modelled upon it. Since that argument is available elsewhere, I would like merely to touch here on the implications of such a modelling insofar as it concerns Thomas' conception of «natural justice».

When we examine the sensitive equilibrium proper to Thomas' «natural justice," and the communication it assumes between each individual act and an abstracted whole, I think we can see the model

"This is a general theme of Economy and Nature, but see especially p. 12-15, 115."
of the self-equalizing community of exchangers lying behind it. As Thomas himself described it:

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\text{iustum commutativum continent contrapassum secundum proportionalityatem, quia per hoc commensur cives sibi invicem in civitate quod sibi invicem proportionali contrafaciaunt, prout sclicet si unus pro alto facit aliquid, alius studet proportionali facere pro eadem?}
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With his vision focussed by the brilliant analysis of the Aristotelian text, Thomas observed that money served as the connecting and equalizing continuum in the social geometry of exchange and, in addition, as the continuous medium that connected all producers and consumers in a living community of exchangers, binding all together within the civitas. It is a powerful image of dynamic interconnection and communication, and given the rapid growth of monetized market exchange during Thomas’ lifetime, one that was constantly reinforced by experience and observation.

But Thomas’ natural justice is so preternaturally sensitive to transgression and sin that it would seem to transcend the level of communication existing between the community of exchangers. It brings to mind yet another living community as possible conceptual model: the congregatio fidelium. Giacomo Todeschini has uncovered for us the intimate connections between these two communities within Thomas’ political and economic thought. In my view, the models of the two communities are so intertwined in Thomas’ thinking, and inform each other to such an extent, that it is difficult to say where the influence of one begins and the other ends. But their power is indubitable. For this reason I would like to suggest that Thomas’ lived experience of community – civic and religious, economic and spiritual – contributed as much to the complex ground of his brilliant abstraction as did the Aristotelian vision of nature, equalization, and monetized exchange he so deeply comprehended.

Thomas’ construction of usury as a sin against the balance of natural justice can be explained as the attempt by a great philosopher to situate his argument in its most universal context.

What better way to demonstrate that usury is a cosmic sin then to consider it formally as such, with only secondary reference to the ethical and social inequalities of the individual exchange? But I believe that Thomas chose this highly selective and narrow path primarily because he was aware of the definitional traps on every side: it represented, at the same time, a conceptual advance and a strategic retreat. He clearly recognized that in the realm of economic life the actual equality achieved between exchangers can never be more than approximate, and thus slight variations can never serve as the basis of a universal condemnation. In the specific case of the mutuum, he recognized the existence of benefits to the borrower and losses to the lender that would in many cases require an unequal return, if this relationship itself were made the basis of the equation.

In a world newly awakened to the place of continuous motion, proportionality, relativity, and probability in nature, where each of the major terms in the logic of usury were thoroughly imbued by these concepts, Thomas’ options were extremely limited if his intent was to continue to support the traditional ideal of perfect numerical equality between sum lent and returned in the mutuum. He had to shift the basis of his argument from the actual elements and processes of equalization in economic exchange to the realm of highly restricted formal definition. Then a more difficult task faced him: to construct an abstraction that could serve as an absolute impersonal arbiter in the absence of any grounds for universal human judgment. He did so by first recognizing the conceptual possibilities contained within the evolving definitions of nature and equality, and then by choosing carefully from among them to arrive at the overarching equilibrium of natural justice. Thomas’ solution to the question of usury is clear testimony to the profound changes in the definition of nature and equality over the course of the thirteenth century – changes that both complicated his search for a universal case against usury and, in the end, provided him with the philosophical grounds for its continuance.

Joel Kaye

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99 Aquinas, Ethics V.8 (1969), p. 291, comment to 1132b33; comment to 1133a31-b4: quando fit commutatio rerum oportet ducre res comandandas in diemerniem figurum proportionalityatis.

98 Todeschini, «Ecclesia» , passion, who regards the model of the congregatio fidelium as primary and dominant for Thomas.