

LATE SPANISH DOCTORS ON USURY, AND THE EVOLVING SCHOLASTIC TRADITION

BY
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The scholastic intellectual tradition was the dominant scientific paradigm for nearly five centuries in western Europe. That the economic issues of interest to these scholars were similar throughout the period is undisputable, but were the individual views on these issues also similar? This is a pertinent question, upon which an evaluation of the evolution of this intellectual tradition, which often has been considered as monolithic, can be based.

This paper focuses on the analysis of the so-called “natural law case” against usury, and tracks how the lines of intellectual reasoning subtly evolved between early and late scholastics. While the issues, methods, and purposes of scholastic thought remained the same in this period, there also was a systematic evolution within this tradition that makes the essence of the scholastic doctrines conformable to economic realities.

By a common denominator we may perhaps describe the economics doctrines of the medieval theologians as a set of compromises, codes of economic conduct which must be operational while ‘abandoning as little as possible of the Christian vision of society’.

Langholm 1992, p. 565

I. INTRODUCTION

Scholastic doctors tried to harmonize the challenges of economic interactions to human behavior with the Christian view of a just society. This intellectual effort gave rise to “scholastic economics,” which (Decock 2009, pp. 57–58) synthetically described as follows: “(i) market relations are personal, and morally ruled by the virtues of charity and justice; (ii) intention matters, as one cannot account for a deed by appealing to impersonal market forces; and (iii) merchants have a sense of duty toward other merchants and the community as a whole.” Scholastics envisaged humans as “agents of creation”—not its simple products—“blessed with reason” and “capable

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of acceding to an understanding of the common good and of working to its achievements” (Lapidus 1994, p. 439).

Considering this ethical interpretation, scholastic economics appears to be an intellectual effort to rationalize a particular “vision of a Christian economy,” which is characterized by the possibility of benevolence, the ideal of mutual benefits via a just and free exchange, the social responsibility of individuals to others, and the instrumental use of money and wealth to satisfy human necessities (Langholm 1992, ch. XXII). In the particular case of usury, this “ethic of fraternity” challenges the double standard “for the Brother and the Other,” which seems to arise from a literal reading of Deuteronomy 23: 19–20.¹ Whether Hebrew tradition forbids or permits charging interest is a matter of controversy,² but the substantial aspect concerning scholastic tradition is the stress on the “brotherhood dimension.” As Thomas Aquinas put it: “to take usury from any man is evil simply, because we ought to treat every man as our neighbor and brother, especially in the state of the Gospel, whereto all are called” (Aquinas 1947, IIa–IIae, q. 78, a. 1, ad. 2). The scholastic usury approach can be likened to a conscientious merger of nature and faith; that is, “Brotherhood of Man” with the “command to love your enemies.” For instance, the scholastic concept of a “just price” is more than a moral precept; it is also a logical requirement for living in a society (Monsalve 2010), and thus, is different from the competitive market price (Monsalve, 2012).

A recent strand of literature on usury seems to concede less relevance to ethics in favor of an evolutionary approach in which the institutional environment, as well as the individual and organizational incentives, became the key elements to explain the regulations of usury in the medieval and modern periods in western Europe. For instance, the seminal rent-seeking model of the Roman Catholic Church by Ekelund, Herbert, and Tollison (1989), the Social Welfare approach by Glaeser (1998), the linkage of usury prohibitions to pooling and charity by Reed (2003), and the barrier-to-entry explanation by Koyama (2010) all stressed in some way the vested-interest dimension of the usury prohibition. A common feature in these new approaches is the emphasis placed on the concept of “homo-oeconomicus” rationality (utility maximization) over justice and moral concerns. These evolutionary approaches seem to shrink the moral dimension of scholastic economy, which would appear as an *ex post* attempt to legitimize the particular doctrinal position of the Roman Catholic Church on this matter without seeing much merit in its logical reasoning. Surprisingly, the fundamental fact that usury was restricted to the “contract of *mutuum*” is often overlooked in this literature. These formalistic approaches may be at odds with the

¹–¹⁹Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of any thing that is lent upon usury. ²⁰Unto a stranger thou mayest lend upon usury; but unto thy brother thou shalt not lend upon usury: that the Lord thy God may bless thee in all that thou settest thine hand to do in the land whither thou goest to possess it” (Deuteronomy 23: 19–20).

²Nelson favors the “double standard” interpretation, which permits charging some interest to foreigners and concludes that the Hebrew rule “appeared mysterious, paradoxical, anachronistic, and vicious to Christians, who were fascinated by the vision (or vocabulary) of a morality rooted in the Brotherhood of Man under the Fatherhood of God. It seemed altogether incompatible with Christ’s summons to love our enemies” (Nelson 1969, p. 8). Nonetheless, another interpretation makes sense if we consider the passages Exodus 22: 24–26 and Leviticus 25: 33–37, in which what was forbidden was the interest on a consumption loan, vital for the borrower, which concerns both the Hebrews and the foreigners. Following this strand of interpretation, what was prohibited in Deuteronomy concerned loans between merchants, and not consumption.

methodology adopted in this paper, which will focus on the logic of the scholastic argument and its evolution.

The scholastic scientific paradigm prevailed in western Europe from the early thirteenth century to the middle of the seventeenth century.³ To a great extent, this longevity was due to both its rational basis and its peculiar methodology. First, Divine Law sets the general theme for reference; nonetheless, a characteristic peculiar to this tradition is the “effort to build a moral code on rational grounds ... in which no moral command, save some concerning the sacraments, stands only on the basis of a divine fiat or divine revelation” (Noonan 1957, p. 3). In fact, to erect a vision of the world that is in harmony with its religious background, upon the contemporary, *prevailing, intellectual foundations*: Roman law, natural law, and Aristotelian legacies, which became closely intertwined could be considered as the paradigm’s major accomplishment. From a juridical point of view, this intellectual effort contributed to the development of a systematic and morally based contract law based on the founding principles of freedom and fairness (Decock 2012). Second, the particular scholastic epistemology also contributed to the long survival of the paradigm. Scholastic doctors faced the problem of applying the *general and immutable* principles of natural law to the *historical* circumstances in the context of uncertainty and imperfect information that makes human knowledge fallible. Consequently, casuistry emerged as “a methodological necessity ... to establish an adequate relationship between the general principles and the singular case in a changing society” (Gómez Camacho 1998, p. 510). In other words, due to uncertainty, doctors could hold probable opinions but not truths. As Lugo pointed out, “we cannot ascertain what the mathematical just value of things is; some people think it would probably be one hundred, while some claim ninety and others ninety-five. Because all of these opinions are prudent and probable, any of them could potentially be the just price in practice” (Lugo 1848, 26:40).⁴ Because scholastic doctors held “opinions” but not “truths,” controversies arose. These controversies encouraged fruitful debates that allowed scholastics to preserve the core of the paradigm as well as to offer updated answers to the moral challenges that came with the new mercantile practices and contracts.⁵

³The term “scientific paradigm” will be used, following Gómez Camacho (1981), to refer to “a group of authors who share the same vision of the social world, characterized by the communal and moral dimensions of men and of the virtues of justice; and where the term prevails over the fulfilment, to those who agree on the problems which deserve to be looked into, and the methodology to find the answers; who rely on the rational capacities of human mind to harmonize Civil, Natural and Divine Law; and, finally to those who use the same handbook, *summa theologica* in their teachings and researches.”

⁴It is worth remarking that the emergence of classical probability in the Enlightenment is closely intertwined with the required equity in aleatory contracts—those involving some elements of chance. As Lorraine Daston has pointed out, “the legal discussions all revolved around the same issue: as contracts, such agreements must assure all parties of maximum ‘reciprocity’ or equality of terms. How should the (certain) price of an uncertain gain be assessed in order to preserve the rule of equality?” (Daston 1988, p. 19).

⁵Paradoxically, the case-by-case analysis was a methodological strength as well as the main reason for its own decline and fall. The dialectic refinement and the embarrassing texts looking for detailed differentiations by examples made scholastic treatises difficult reading, as opposed to new methodologies and more concise writings. As Roover has pointed out, “But the impressive dialectical machine can no longer hide the fact that the scholastics had exhausted the possibilities of their method which, instead of more refinement, needed a complete transformation and a total revision. Unfortunately, the scholastics did not see that necessity and refused to evolve through the times. Assailed on all sides—by the Cartesians, the Jansenists, the Philosophers, the Encyclopedists and the Physiocrats—they still clung to their outdated methods, and their economic doctrines suffered the same fate as their philosophy falling into an absolute discredit” (Roover 1971, pp. 36–37).

In summary, the rational basis and the method of working out general principles from cases made the scholastic tradition an evolving paradigm and enabled it to survive for a long time. Viner also subscribed to this view: “Scholastics succeeded in finding a greater degree of harmony between revealed dogma and the current economic practices of the world.” However, he emphasized that “the Scholastic treatment of usury constitutes, I repeat, something of an exception in this respect” (Viner 1978, p. 111). This paper, nevertheless, tries to show that usury is not an exception. It argues that while the issues, methods, and purposes of scholastic thought remained the same, there was also an analytical evolution to bring the essence of the doctrine more in line with economic reality. In examining this issue, I compare the arguments of early scholastics from the original sources, as well as from the classical studies of Langholm (1994, 1998) and Noonan (1957), with those of late Spanish scholastics Luis de Molina⁶ and Juan de Lugo,⁷ both of whom championed the scholastic tradition at its final stage and who belong to the triad (together with Leonardus Lessius [1554–1623]) “who come nearer than does any other group to having been the ‘founders’ of scientific economics” (Schumpeter 1994, p. 136).

This paper is organized as follows: in section II, I provide a brief definition of the concept of usury. Section III focuses on the early rationalization of the arguments against usury, and section IV deals with the analysis and comparison of the main rational arguments against usury between early and late scholastics. In section V, I consider the licit interest cases, and, finally, I present my conclusions in section VI.

II. THE CONCEPT OF USURY

A “*Mutuum*” Matter

In its modern sense, usury can be defined either as the act of lending money at an exorbitant rate of interest, or as the exorbitant or unlawful rate of interest on a loan. For scholastics, usury was restricted to the particular loan contract called *mutuum*, referring to the sum repaid over and above the principal of the loan.⁸ In Lugo’s words:

we will define usury as the profit that comes from the *mutuum* as an immediate and owed thing. For example, if a hundred and ten be demanded in exchange for a hundred delivered in *mutuum*, the hundred are called capital (*sors*), and the other ten are called

⁶Luis de Molina was born in Cuenca in 1535 and died in Madrid in 1600. He entered the Society of Jesus at the age of eighteen. He taught philosophy for four years at Coimbra and theology for twenty years at Evora. After his professorship years, he retired to his native city of Cuenca to devote himself to writing and publishing his work. He was called to teach again in the new Imperial College at Madrid but he died in Madrid in 1600 before he held his new chair.

⁷Juan de Lugo was born in Madrid in 1583 but grew up in Seville, which is why his works are sung as “*Ioannes of Lugo Hispalensis*.” He entered the Society of Jesus at the age of twenty. He taught philosophy for four years in Medina del Campo, Monforte de Lemos, and León, and theology for six years in Salamanca and Valladolid. In 1621, he was summoned to Rome, where he held the Chair of Scholastic Theology and taught for the following twenty years. In 1643, Lugo was made a cardinal by Pope Urban VII, after which he gave up teaching and devoted his last years mainly to writing. He died in Rome in 1660.

⁸Molina warns about the ambiguity of the term because it refers to both the profit and the sin. Usury is commonly used in both senses in the scholastic tradition ([1597] 1989, p. 303).

usury, interest, or gain over the capital. Consequently, if the gain does not arise from a mutuum but from purchase and sale, however unjust, it is not usury; and likewise if it is not paid as an obligation due but from goodwill, gratitude, or friendship, it is not usury. (Lugo [1642] 1848, 25:6)

Thus, a pertinent question arises: if usury was restricted to only one particular contract among a great variety,⁹ why is it that “throughout the Scholastic period, and thereafter until the first half of the nineteenth century when socialism became an urgent problem, the usury issue was by far the most important and most debated economic issue in Catholic doctrine”? (Viner 1978, pp. 85–86). Relying on Lapidus’s asymmetries approach (1991), it is possible to track two reasons for this usury relevance. First, mutuum was the contract applicable to monetary loans, the financial operation *par excellence* and where the power of agents showed a first asymmetry: “the supplier of the present good—the rich man—is supposed to be vested with a greater power of negotiation than the supplier of the future good—the poor man. It is, then, easy to understand that the lender will be able to appropriate most of the surplus emerging from exchange.” Second, other economic contracts could be settled in such ways that would purposefully hide a mutuum. Thus, although “trade is not, by nature dishonest ... the discussions about usury showed that the suspicion of an intention of fraud progressively escaped from the initial money loan to contaminate nearly every economic activity, as long as imperfect information opens the door to strategic behaviour” (Lapidus 1991, pp. 4, 18). Therefore, mutuum could be formal (explicit), as in the former case, or informal (implicit), as in the latter case. Consequently, the true challenge was to elucidate, case by case, which contracts were usurious or simply unjust; that is, which loan is motivated by the intention to profit or issued with the hope of getting nothing back beyond the sum loaned. In other words, it is the intention that matters.

A Sin of Intention

From the theological point of view, an intention to sin, even though not executed, is a sin in and of itself. In relation to usury, this means that it is not the transaction itself that is condemned, but, rather, the lender’s intention to profit in monetary loans (mutuum). As William of Auxerre (1160–1229) argues, “a usurious will makes the usurer” (1500, L.III:21). Thus, a contract that requires something more than the principal to be repaid could be usurious—in case of usurious will—or it could simply be unjust, if there exists an unjustified inequality, even though the lender lacks the intention. The criterion of intention became “the great guide for a practical application of the usury prohibition” (Noonan 1957, p. 33). Early scholastics acknowledge the right of a businessman to profit in business transactions but (for reasons to be explored in the subsequent sections) not in monetary loans, either real or virtual. Consequently, the important task is

⁹Dempsey (1948, pp. 141–142), following Lessius and comparing with Molina and Lugo, wrote a list including the most common contracts, classified in two categories: a) contracts by which ownership is transferred: *promissio* (promise), *donatio* (gift), *mutuum* (loan for consumption), *emptio* (purchase), *venditio* (sale), *census* (annuity rent), *cambium* (monetary exchange), *locatio-conductio* (hire or rent), *emphyteusis* (fief), *societas* (partnership); and b) contracts with no ownership transfer: *depostium* (deposit), *commodatum* (loan for use), *fidejussio* (surety), *assecuratio* (insurance), *pignus* (pledge or pawn), *hipotheca* (a pledge to a creditor, not by actual delivery but by an agreement concerning it).

not to test the equality objective of the transaction but rather the state of mind or intention of the lender.

A similar “intention” doctrine is held by the late scholastics, but they distinguish between “seeking for profit” and “hoping for profit.” To make the distinction clear, one should note that the late scholastics conceded that borrowers could voluntarily pay the usury; for instance, as a token of gratitude and liberality. There is nothing usurious in hoping for that gratitude. Lugo succinctly explains that doctrine by saying that “as the usury is essentially an injustice, this cannot exist when the payment is free-will and not involuntary; which happens when the payment is clearly given as a token of honest and simple gratitude” (Lugo [1642] 1848, 25:29).

In short, the intentions of the lenders matter. They give shape to the taxonomy of usury that Lugo categorized into four kinds: (i) *Apparent usury*, when interest is demanded openly in the price; (ii) *Palliated or hidden usury*, when the charge is more than the fair price for the delay in the payment; (iii) *Real usury*, when a pact exists among the two parties; and (iv) *Mental usury*, when the lender assumes having a right to it (Lugo [1642] 1848, 25:7). The same typology and a similar definition are found in Molina ([1597] 1989, 303).

III. THE EARLY RATIONALIZATION

The early, comprehensive, rationalization of the arguments against usury is found in the *Palea Eiciens*, which is extensively quoted.¹⁰

More cursed than all merchants is the usurer, for he sells a thing not bought, as do the merchants, but given by God, and afterwards takes back his good, removing that of another with his own; a merchant, however, does not take back a good once sold. Yet someone says: is not he who lends a field in order to receive a produce or a house in order to receive rent, similar to him who lends money at usury? Far from it. First, because money is put out for no use except to buy things; second, because one who has a field may get a fruit from it by cultivation, one who has a house gets from it the use of habitation. Therefore the lender of a field or a house is seen to give up his own use and receive money and in a way, as it were, to exchange gain for gain; from money laid up you get no benefit. Third, a field or a house deteriorates in use; but money, when lent, neither diminishes nor deteriorates.

This seminal passage contains, at least in an embryonic form, the main arguments against usury: (i) usurer sells time, which is God’s own (time argument); (ii) usurer takes something which does not belong to him; this could be referred to “man’s work” (industry argument) or to the specific case of the contract of mutuum (legal argument); (iii) money is naturally supposed to be a means of exchange (teleological argument); (iv) money is technically fruitless and useless (sterility argument); and (v) money does not deteriorate in use.

¹⁰This ancient text became part of the Canon law after it was incorporated by Gratian in his *Decretum* in the early twelfth century (cf. *Decretum Gratiani*, I, D.88, C. 11). It was falsely attributed to John Chrysostom (Pseudo-Chrysostom), and draws in a fifth- or sixth-century heretical, anonymous commentary to the passage about Matthew’s expulsion from the Temple (cf. Wood 2002, p. 112). I have quoted Langholm’s version (1984, p. 72).

The following sections examine these distinct lines of argument, that constitute the so-called “natural law case” against usury.

IV. THE NATURAL LAW CASE AGAINST USURY

Several Biblical passages explicitly condemn charging something above the principal in a loan contract¹¹; nevertheless, scholastics tried to make a rational case against usury instead of merely putting their trust in Divine Law. Implicitly, the thrust of their intellectual efforts was to expound the rational grounds of Divine Law or Revelation. Scholars realized that the Old Testament’s passages are very restrictive and may not suit the extrinsic-titles-addendum of the usury doctrine very well. As a result, scholastics put forth the following argument against them. The main texts against usury are in the Old Testament, whose precepts, when contradicting the natural law, ended with the New Testament (Lugo [1642] 1848, 25:9). In the New Testament, the main text against usury is in The Gospel of Luke, in which Christ says to “lend, hoping for nothing again,” but this could be read as both a counsel and a precept.¹² In conclusion, the only valid precepts against usury are those that follow from natural law. As Lugo warned, “the main difficulty lies in showing the natural reason of the malice of usury because it doesn’t appear clearly to the natural light”:

It is contrary to justice in the exchange of one thing for another to demand more than the thing is worth unless another title intervenes by reason of which more can justly be accepted. But one who accepts usury over and above the principal in the loan accepts more than what he gave is worth. Therefore, he sins against justice. The major premise and the conclusion are manifest. The minor premise is proved: If you gave ten and received back ten, you have already received as much as what you gave was worth. If therefore you receive 12 you are receiving more than the value of the thing given. (Lugo [1642] 1848, 25:10)

This syllogism must be understood in light of the Aristotelian–Thomistic virtue of commutative justice and the equivalence in contracts or “fairness in exchange” (Decock 2012, ch. 7), which could be considered as the key plank of scholastic economic thought.¹³

¹¹The main passages against usury are: Exodus 22: 24; Leviticus 25: 35–37; Deuteronomy 23: 20–21; Psalm 15: 5; Ezekiel 18: 8 and 22: 12; and Luke 6: 35.

¹²“And if ye lend to them of whom ye hope to receive, what thank have ye? for sinners also lend to sinners, to receive as much again. But love ye your enemies, and do good, and lend, hoping for nothing again” (Luke 6: 34–35).

In the Parable of Talents (Matthew 25: 27 and Luke 19: 23), the possibility of an interest from the money is acknowledged, but scholastics read it either in a figurative way for the increase of spiritual goods (cf. Aquinas 1947, IIa–IIae, q. 78, a. 1, ad. 1), or as referring to a licit gain (cf. Molina [1597] 1989, p. 304).

¹³Justice is one of the four cardinal virtues and is defined as “the constant and perpetual will of rendering to each his due” (Lugo [1642] 1848, 1:1). The scholastic doctors, following Aquinas, divided particular justice into two categories: distributive and commutative. The first “distributes the common benefits and burdens among the parts of the community” (1:43); it is ruled by a geometric proportion. Commutative justice “looks for an arithmetical equality between one thing and another” (1:45). The latter governs exchanges and contracts and, hence, is the outstanding one in economic relationships. The scholastics were mainly concerned about the dealings between citizens and, more generally, the justice in human relations. Commutative justice makes clear that no one should be in a worse position after a transaction. The contracting parties must exchange equivalent goods (Decock 2012, pp. 509–514).

From an analytical point of view, the previous quotation is more a truism than an expression of reasons to oppose usury. The true reasons remain to be explained.

The Sterility of Money

Strictly speaking, sterility of money means that money can't yield fruit itself. Aristotle provided a biological interpretation of the sterility in his seminal passage against usury.¹⁴ Nevertheless, according to Langholm (1984, pp. 58–62), this “biological” interpretation—money is an artificial thing that cannot generate any offspring—was taken by most scholastics as just a colorful biological simile. Apart from this literate interpretation, the concept of the sterility of money certainly played a prominent part in the scholastic reasoning about usury. In fact, we shall consider the sterility of money as the main argument against usury, or the core of the natural law case against usury, because the sterility principle is at work in the rest of the arguments, as will be seen in the following sections.

Teleological Argument

Following Aristotle's statement that “money was intended to be used in exchange” (1999b, p. 17), scholastic doctors held that the *telos* of money was to overcome the inconveniences of barter and to be a means of exchange. Therefore, given that “money, according to the Philosopher was invented chiefly for the purpose of exchange: and consequently the proper and principal use of money is its consumption or alienation whereby it is sunk in exchange. Hence it is by its very nature unlawful to take payment for the use of money lent, which payment is known as usury” (Aquinas 1947, IIa–IIae, q. 78, a. 1, resp.). Money (M) transforms the exchange of commodities (C) from direct form (C-C') to indirect form (C-M-C'), and the other way around (M-C-M') is against natural law. This teleological issue, however, is, on its own, inadequate to make a rational argument unless it is entwined with the sterility of money. Insofar as money is an artificial thing unable to breed, there is no title to licitly charge something more above the principal in a loan when the money is the only element involved and there are no legitimate titles to be attributed to its surplus. As it is impossible to get fruit from a barren tree, so it was considered with money. Let us note that the sequence in a loan contract would be (M-M'), the money being, not the middle term, but the beginning and the end. If the beginning and ending terms differed, money being the only thing involved in the contract, the equality would break, which was considered unjust.

Late scholastics also supported this teleological approach, stressing the advantage of money to overcome the inconveniences of barter and the sterility of money in a contract loan.

¹⁴“There are two sorts of wealth-getting, as I have said; one is a part of household management, the other is retail trade: the former necessary and honorable, while that which consists in exchange is justly censured; for it is unnatural, and a mode by which men gain from one another. The most hated sort, and with the greatest reason, is usury, which makes a gain out of money itself, and not from the natural object of it. For money was intended to be used in exchange, but not to increase at interest. And this term interest, which means the birth of money from money, is applied to the breeding of money because the offspring resembles the parent. Wherefore of an modes of getting wealth this is the most unnatural” (Aristotle 1999b, p. 17). Langholm interprets Aristotle's intention in the sense that “it is not that money cannot breed, but rather that money should not be made to breed” (Langholm 1992, p. 588).

The Legal Framework: The Contract of Mutuum

As has been previously said, usury is restricted to the contract of mutuum. Other contracts could be unfair but not usurious, unless there were an implicit or virtual mutuum. A Roman law defines mutuum as: “A loan [mutuum] is so-called from this, that mine [*meum*] becomes yours [*tuum*]. That is a loan which, consisting in a quantity, is offered by me, while from you I shall receive back only as much as the same kind.”¹⁵

Two characteristics arose from this definition: the transfer of ownership and the ‘same kind’ requirement.

a) *The transfer of ownership and the “risk argument.”* Pioneer theologians such as Robert of Courson (d. 1219) and William of Auxerre set the Roman law arguments on the “passage of ownership” (and risk) as decisive in usury unlawfulness (cf. Noonan 1957, pp. 41–43). Alexander of Hales (1185–1245) makes an analysis of risk more original and rewarding. He argues that when the ownership is transferred, it has also transferred the risk related to the goods, such as loss, robbery, or deterioration; therefore, it is not licit to claim something over the principal on the basis of the concept of risk. Thus, it becomes necessary to distinguish between the risk of the goods (intrinsic) and the risk of the transaction (extrinsic). In the former case, the risk passes from the lender to the borrower. In the latter case, the risk remains with the lender; for instance, in such cases that involve difficulties in being repaid the loans. So, in the former case, it is usurious to claim something over the principal, not in the latter case. Alexander of Hales takes into account only the former case (cf. Langholm 1984, pp. 78–80).

Lugo followed the general opinion among the late scholastics that the risk the lender assumes when giving out a loan is a licit title, which is worth a price. He specifically distinguished between intrinsic and extrinsic risks. This distinction, in fact, permits splitting the formal loan into two, different, virtual contracts: mutuum and insurance. The distinction becomes more clear after the fifteenth century when “insurance is considered important enough to deserve its own specific discussion,” which eventually led to an explicit recognition that the risk was worth a price (Ceccarelli 2001, p. 620). The mutuum forbids claiming something more because the ownership and, subsequently, the risk of peril are passed to the borrower; if the objects perish, he must bear the loss, and this is the intrinsic and priceless risk. On the other hand, the lender could require the borrower to insure the good for uncertain perils or extrinsic risks. The insurance has a just price and could be bought from a third person or from the original lender; in the latter case, the lender could accept something beyond the principal (Lugo [1642] 1848, 25:77).¹⁶ A similar analysis of the double implicit contract is held by Molina.

¹⁵This definition is elaborated by Paucapalea paraphrasing Digest 12, 1, 2 (Noonan 1957, p. 39): “We make the loan called *mutuum* when we are not to receive in return the same article which we gave (otherwise this would be a loan for use or a deposit) but something of the same kind; for if it was of some other kind, as for instance, if we were to receive wine for grain, it would not come under this head.

(1) A gift of *mutuum* has reference to articles which can be weighed, counted, or measured, since people by giving these can contract a credit; because by payment in kind they perform the contract instead of paying in specie. For we cannot contract a credit with respect to other articles, because the creditor cannot be paid by giving him one thing in exchange for another, where he does not give his consent.

(2) A loan of this kind is so called *mutuum*, because the article becomes yours instead of mine, and therefore it does not become yours if the obligation does not arise.”

¹⁶Lugo also considers the loan to be hazardous if there is a danger that the borrower will not be able to pay back the loan and the collection of the debt is liable to be troublesome and expensive (Lugo 1848, 25:81).

Nevertheless, Molina stresses that the insurance compensation should not be claimed by the lender but freely given by the borrower, or else the contract would be rendered usurious (Molina [1597] 1989, 316). The receipt of something more than the principal does not break the equivalence required by the virtue of justice because of the extrinsic risk, which is worthy of price.

In short, late scholastics were aware of the relevance of the risks involved in the contract of *mutuum*, some of them intrinsic and priceless due to the transfer of ownership, some of them extrinsic and worthy of price because the lender bears the loss or the expenses. This position differs clearly from the only-intrinsic-risk approach of Alexander of Hales.

b) The fungibles. According to Roman law, the contract of *mutuum* was restricted to fungibles—goods consumed in use—which should be repaid, and in the same quality and value. Following is an examination of these two characteristics.

(i) The consumptibility argument. In the case of things whose uses are essentially for consumption (fungibles), there are no other uses other than those things themselves. This is the kernel of Aquinas' "consumptibility argument." To grasp the meaning of the argument, it is necessary to envisage money in material shape only (pieces of coin). Just as wine is drunk and wheat is used to feed, so coins are spent in exchange. Therefore, "if a man wanted to sell wine separately from the use of the wine, he would be selling the same thing twice, or he would be selling what does not exist, wherefore he would evidently commit a sin of injustice. On like manner he commits an injustice who lends wine or wheat, and asks for double payment, viz. one, the return of the thing in equal measure, the other, the price of the use, which is called usury" (Aquinas 1947, IIa-IIae, q. 78, a. 1, resp.). This is the true meaning of "consume." The use of the things is nothing other than its substances. If someone lends money on the agreement that the money be returned, and above that it will have a certain price for the use, it follows that he sells separately the use and the substance, which are the same, so he either sells what does not exist or sells the same thing twice. The whole argument rests on a physicist's conception of money as coins. The consumptibility argument is the way Aquinas understood the sterility of money.

Molina clearly stated that the thing borrowed could be consumed but also invested.

Let us note that a double use of the thing borrowed could be distinguished. The first is negotiation and profit, as in the case of selling at profit, exchanging it, taking it to another location, or hoarding it for another time is worth more; or, in the case of money, buying with it, transferring it to another place, or exchanging it by contract with the purpose of making profit. The second is not considered negotiation but just consumption of the borrowed thing: if it were money, by buying necessities as well as unnecessary things, paying a debt, or spending foolishly on prostitutes or other things of the same kind; if it were wheat, wine, or oil, by consuming in everyday use. (Molina [1597] 1989, 304)

In a similar vein, Lugo ([1642] 1848, 26:1 and 28:54, 63) distinguishes between the use of money as mere coins that are consumed in the exchange, and the use of money as capital as a businessman's tool. In the former case, there is no reason to claim "something more." Use and substance are the same. In the latter case, to charge a price is licit because the lender's lack of money could result in a potential loss of income.

Molina and Lugo subscribed to the consumptibility argument, but also considered the possibility of investing the money (or other fungibles). Aquinas argued that the proper use of money is to spend it in the exchange for other goods; otherwise, its use

is *contra natura*. However, he admitted *damnum emergens* (emergent loss) as a reason to charge something beyond the principal, but not the *lucrum cessans* (decreased profit) (Noonan 1957, pp. 117–118).

In summary, *strictu sensu*, money is always consumed, according to a strictly physicist's conception. Nevertheless, when the money is used "to negotiate and profit" (invested), it certainly disappears from the owner's hand, but it also gives way to certain rights, which permits a claim for something more. Late Spanish scholastics retained the argument, but with a wider vision of the investing (and not only consuming) possibilities of fungibles in general, and money in particular.

(ii) *Repayment of something with the same quality and value*. If the contract of *mutuum* is restricted to fungibles, does it mean that to charge something beyond the principal when the borrowed thing is a non-fungible good should not be considered as usury? This is a most pertinent question that challenges the consistency of the analysis. As we shall see in the following section, it is usurious to sell time. Hence, if time is the only element involved in a loan contract, whatever the difference between the borrowed and repaid should be considered as usury, independent of the inner characteristics of the thing subject to the contract.

Molina and Lugo considered the problem as "merely nominal." As far as every non-fungible could be weighed, measured, and counted, such goods would be similar to fungibles and, consequently, they could be the object of a *mutuum*.¹⁷ This is the way Spanish late scholastics sorted out the problem of selling time in non-fungibles. Leonardus Lessius, the other prominent late scholastic, held a contrary opinion and restricted the *mutuum* to fungibles (cf. Lessius 1605, 20:4).

As we have previously seen, Aquinas condemned usury because use and consumption of the good is the same thing and it is not licit to pay twice for the same thing. Molina and Lugo modified this reasoning, stressing that it is not the consumptibility, but the transfer of ownership, that is the essential feature in usury—when ownership is passed, the right to use is also passed, and thus it would be unfair to claim something for that.¹⁸ The emphasis on the ownership instead of the consumptibility allowed late scholastics to both dissociate usury from fungibility and to forbid, in any case, the selling of time.

When the borrowed thing is money, an additional difficulty arises. It should be repaid with something of the same quality and value, but what happens when the value of coins change? Which option should suffice for repayment: the physical (quantity of metal) or the formal dimension (coinage value)? Lugo held that "in the case of money it should not be taken into account the physical or material dimension of the gold or silver but its formal value, and it could be returned another coin of the same value"

¹⁷"It is frequently asked if as the same manner as the goods consumed by use namely fungibles as money, oil, wheat and things like are the object of loan, could also be the object of loan things like an ox, a horse or a sheep.... To deny it seems to be merely a nominal problem, because all the essential elements of the contract of *mutuum* are present, although something accidental is missed concerning the matter. Nevertheless, if it is looked at carefully, even the matter is not a problem, because items as gold and silver have a certain weight, stones and woods have a certain magnitude and oxen and sheep could be weighed and measured, and in the same ways as an egg could be loaned it also could be loaned a sheep" (Lugo [1642] 1848, 25:1). Cf. Molina ([1597] 1989, 299).

¹⁸"... when the ownership of a good is transferred to another person it also passes the right to use it and their right doesn't increase the price of the good. Because when the just price is fixed it is fixed both the price of the good and the right to use it" (Lugo [1642] 1848, 25:10).

(Lugo [1642] 1848, 25:1) Choosing the face value of the old coins as the value that should be repaid departs from the old, strictly physicists', vision of money. Molina held the same opinion (Molina [1597] 1989, 312). This stance could be related to the highly unstable monetary framework of the sixteenth and seventeenth centuries in Spain. In times of high inflation and debasement, as was the case, the physical value could differ greatly from the face value. Late scholastics considered that what should be repaid is the legal value of the old coins borrowed, unless the contracting parts agreed otherwise.

Time and Usury

The first *Palea Eiciens* argument against usury was the evil of selling "a thing not bought ... but given by God"; namely, time. Scholastics concurred and developed the rational arguments against the selling of time further than the simple theological reasoning: time could not be sold because it was freely given to all creatures and no one had a legitimate title to sell it.

Gerardo of Siena (d. 1336) argued that all fungibles are always equal to themselves in physical characteristics as well as in value. The intrinsic value doesn't change; each thing is congruent or equal to itself in time; hence, provides its own measure. In short, time does not deteriorate a fungible good, because time is nothing but an extrinsic measure of duration; and the converse exists in the case of non-fungibles. Time can distort some goods, and subsequently changes their intrinsic values. In the case of money, extrinsic value may change, but, in a mutuum, what matters is the intrinsic value only. A coin is a coin and money is the only measure of its own value. To say that fungibles have intrinsic permanent values, and to say that they are sterile, are similar ideas put in different words (cf. Langholm 1984, pp. 119–125). The same argument of the fixed value of fungibles is attributed to Joannes Andreae (1270–1348) by Noonan (1957), labelled "the Andrean argument." Early scholastics, therefore, understood the sterility of money as the logical consequence of the self-valuation of fungibles.

The logical relations set between the non-causality of time and the fungibility of money are similar in the late scholastics: "The Spanish scholastics distinguished between the mere *passing of* time itself and what *happens in the passing* of an item, and they held a concept of time and duration in accordance with the neutral (a-causal) passing of time; the passing of time or duration is 'external' to things which happen in time" (Gómez Camacho 1998, p. 544). As Dempsey has pointed out, the non-causality of time should be linked not with "the crudity of the Schoolman's concept of time, but the perfection of it," resting on "the problem of God's eternity and timelessness," and they "laid their emphasis on the fact that time in and by itself alters no values" (Dempsey 1935, p. 175). In short, the passing of time has no economic effects but, in the passing of time, events could take place that have economic effects.¹⁹

¹⁹Gómez Camacho's approach to the non-causality of time links scholastics' epistemology with the principle of the uniformity of nature, or the axiom of free mobility, in Bertrand Russell's terminology. In Gómez Camacho's own words: "Time cannot have a causal effect on a reflexive relation of equality because the passing of time cannot change a reflexive relation of equality, and this is the origin of the scientific and scholastic principle of the uniformity of nature. A value equal to itself can be a standard measurement of value when applied successively to measure another value because the nature of its value is uniform; it is a homogeneous value. A uniform or homogeneous value means that it can move freely in time and space, and this is the reason why Russell considered the axiom of free mobility a necessary logical condition of measurement of a quantitative magnitude" (Gómez Camacho 2005, pp. 183–184).

The fungibility–time–a-causality logic brings a problem to light that challenges the consistency of the sterility–fungibility correlation in Spanish scholastics. If sterility is a consequence of both fungibility (immutable value over time) and a-causality of time (neutral course), and also if sterility is the main reason for “not selling time,” then why should Molina and Lugo apply the sterility logic to non-sterile goods, which change by themselves (non-fungibles), as noted in the previous section? Moreover, why did they consider it “merely a nominal” matter instead of a logical problem? The dilemma is to either modify the sterility logic, allowing “selling-time” in non-fungibles, or the logic of freely given time, forbidding “selling time” in whatever circumstance.

In relation to the time issue, it is interesting to ask how debasement would affect the equality in contracts. If a loan is set and the money is debased in the meantime, what value should be repaid? According to Langholm (1992), the general opinion among early scholastics was to consider the intrinsic value of money as the prevailing one in the money-changing contract (*camporia*), “although in mutuum it should be given back the same specie, as when returning wine by wine, oil by oil, etc. in the case of the money it mustn’t look at the physical or material characteristics of the gold or silver but the formal value ... (Lugo [1642] 1848, 25:1).

Hence, the price of coins could go up and down, but, in a mutuum, the loan should be repaid with the same value with which it was borrowed. Lugo’s solution to this problem necessitated a break with the early scholastic tradition regarding the physical concept of money. Money, he argued, could no longer be considered as merely a coin, for, while the price of coins could vary over time, equivalence concern dictated that it was the value of the sum borrowed that had to be repaid. Choosing the formal or face value guaranteed the equivalence because the effects of appreciation/depreciation of the coins would disappear. This new vision was important to conform to commutative justice, given the great monetary instability in western Europe, especially in Spain in the sixteenth and seventeenth centuries.²⁰

To summarize, Spanish late scholastics had a conception of a non-causal time. Therefore, to profit just because time passes is usurious. But “in” time, circumstances could appear that change the goods. In the former case, there is no reason to claim “something more” than the principal because time is non-causal (natural law) and it is given by God to everyone (Divine Law). In the latter case, there is a reason to make such a claim. On the other hand, Lugo deals widely with the problem of valuation of coins in times of monetary instability and thinks of money not merely as a coin.

The Industry Argument

If the borrower invests the money and thereby gets a profit, has the lender some lawful right over the profit that has been obtained with his money? Aquinas, consistent with

²⁰Lugo considers an exception to be when both the lender and the borrower agree to return the same material shape and not the face value. In such a case, the hypothetical variation of value will break the equity. Lugo admits this agreement only in the case of similar risk on appreciation/depreciation. With such a clause, the equivalence returns because the principal repaid could be higher or lower but both parties take the same risk. If there are doubts about the changing direction of prices (up or down), the agreement could be to return the same quantity because the final situation of the lender or the borrower will depend on luck. If there are some reasonable expectations over the direction of the change, the agreement should be to return the same value.

the fungibles consumptibility argument, asserted that “if such like things be extorted by means of usury, for instance money, wheat, wine and so forth, the lender is not bound to restore more than he received (since what is acquired by such things is the fruit, not of the thing but of human industry)” (Aquinas 1947, IIa–IIae, q. 78, a. 3). In other words, as the money is fruitless, the profit must be accounted for fully and completely by human industry; as well, the true owner of the money is the borrower because ownership of the money has been passed unto him. If the lender claims a higher price in return, he would benefit from the other person’s effort, which does not belong to him. So the lender has no right to claim a higher price above the principal when the loan is repaid.

This was also the common opinion of the late scholastics. The moneylender cannot benefit from the industry of the borrower. The “industry argument” is linked with the transfer of ownership. When the ownership passes, it also passes the potential benefits.

This prohibition of profit over the money lent in the contract of *mutuum* does not mean there is no possibility of lending money and accruing profits under other contracts, such as the *societas*.

*The Role of the Will: Necessity and Compulsion*²¹

The *telos* of money, the legal features of *mutuum*, the not selling of time, and the inalienable right of the borrower to the fruits of his industry shape the rational case against usury. Together with the classical arguments, Langholm (1984) has put the focus on another implicit reason: the need to borrow. This compulsion argument is closely linked with both the early scholastics’ picture of the world as a stationary economy (although growing, in fact) and the concern for the protection of the resourceless borrower from the resourceful lender in a non-competitive credit market.

The compulsion argument rests on the idea of usury as a robbery. However, if “no one is voluntarily treated unjustly” (Aristotle 1999a, p. 89), there is no usury when the borrower repays voluntarily something more than the principal.²² The relevant point in this dilemma is the principle of “freedom of contract.” As Decock has shown, from a juridical point of view, the early modern period saw the “turn towards a voluntaristic, consensualist and open law of contract,” which emphasized the “view of man as the owner of his will” and the contract as “the instrument of a self-conscious *dominus* who can decide to do whatever he wants with his private property.” Scholastics also recognized “that contractual obligations can be hindered by duress (*metus*) and mistake (*error/dolus*)” and conceded the option of nullity to the intimidated or mistaken party (Decock 2012, chs. 3–4.). Voluntariness became the crux of the matter. Aquinas sorted out this problem when he posited that “He who gives usury does not give it voluntarily

²¹This section summarizes and makes available to English speakers the main conclusions of a previous work on Lugo (Monsalve, 2006).

²²Chafuen’s interest analysis in late scholastics focuses on this voluntary payment dimension and acknowledges that some authors, such as Fray Felipe de la Cruz and Luis de Alcalá, were more prone to admit the licit charge of interest in money loans with different arguments, such as that it is licit for the lender to wait for a reward as a token of justice and gratitude, or that money is nothing more than merchandise susceptible to buying and selling. Nevertheless, Chafuen recognizes that this liberal interpretation was not the common opinion (Chafuen 2003, ch. 11).

simply, but under a certain necessity, in so far as he needs to borrow money which the owner is unwilling to lend without usury” (Aquinas 1947, IIa-IIae, q. 78, a. 1, ad. 7). In short, necessity always rendered the usury payment involuntary. This was the common opinion among early scholastics. The argument seemed to be abandoned in the period between the fourteenth and fifteenth centuries when scholastics acknowledged “the impracticality of refusing money to be lent at interest” and focused “on the concept and the catalogue of extrinsic titles, which were gradually extended” (Langholm 1998, pp. 68–69).

Molina and Lugo, following the early tradition, retained ‘voluntary’ as the key intentional element. Lugo’s passage is more concise here: “all injustice of usury arises from the involuntariness, hence if there is involuntariness there will be usury” (Lugo [1642] 1848, 25:55). This statement, however, did not prevent the acknowledgment of a voluntary payment as a token of gratitude (Lugo [1642] 1848, 25:IV, *passim*).

Langholm considers another two aspects in the compulsion argument against usury that are worthy of analysis. The first aspect is if the borrower sins when paying usury. According to Christian morality, a person sins when he consents or leads someone else to sin. Hence, does the borrower sin when he pays the usury because he leads the lender to sin? The general opinion among scholastic doctors was to consider this as an extenuating factor that released the borrower from the sin (Langholm 1998, pp. 67–68). Lugo ([1642] 1848, 25:230) shared the same opinion. The second and more problematic aspect deals with the passage of ownership of usurious money to the usurer. Some authors hold that ownership is not transferred because the payment was compulsory by the necessity. From the fourteenth century, the most common opinion was that ownership passes (because the lender wishes to be paid, if not in the absolute sense, at least in the conditional sense) but not in a true sense, because the borrower has the right of claiming back (restitution). Molina shared this second opinion (cf. [1597] 1989, 326). Lugo, however, differed from Molina and the rest of scholastics in this particular case. It is worth going further into this topic, because, in the line of argument, “Lugo makes two important observations ... both are devastating to the scholastic doctrine and point forward to another era, already dawning elsewhere in Europe” (Langholm 1998, p. 75).

The first observation is that “even though the efficacy of the transfer entails a certain aspect of involuntariness ... it is undeniable that the ownership of interest is effectively transferred.” Let us quote the whole passage:

Although the will [to pay usury] is mixed with something of the involuntary, it should be considered simply free, even though the efficacy of the transfer entails a certain aspect of involuntariness. For the involuntariness of the borrower’s payment of usurious profit is really no greater than the involuntariness of his payment of a just interest in compensation for a direct loss; and therefore it is undeniable that the ownership of interest is effectively transferred. So if the owner [of money] wants not just to carry out the superficial action of a transfer [for usury] but to transfer ownership effectively and absolutely, we see no reason why his will should not be considered done so long as there exists no positive law impeding him from transferring ownership nor the usurer from receiving it. (Lugo [1642] 1848, 25:206)

According to Langholm (1998, p. 75), Lugo’s words “rob the Aristotelian model of most of its meanings as an instrument of economic analysis.” Compulsion and voluntariness will no longer be the pre-eminent elements with which to evaluate the justice of contracts.

Voluntariness to pay the usury is one of the elements involved in the “terms” of an usurious contract. The other element is the contract itself and its mutual consent. In the following quotation, Lugo makes clear that although the borrower knows he has the right not to pay usury, he prefers to keep his word and fulfill the covenant with which he previously agreed. This second observation puts the emphasis on the keeping of covenants more than on their terms, which brings Lugo closer to Hobbes and the natural law philosophers.

Because the borrower well knows that he has no obligation according to justice, nor the usurer any right, the former’s intention cannot be to pay what is the latter’s due according to justice; that would be to intend something which is impossible. His intention is merely to pay what is the other’s due according to human faithfulness and because he promised to transfer ownership, not however, for nothing, but for the loan and the benefit received. Granted that this is not worth a price, he will give a higher value for what is worth less, because he promised it. (Lugo [1642] 1848, 25:207)

Langholm’s interpretation moves Lugo to the point of breaking with his own tradition. I agree with Langholm that the subtle nuances introduced by Lugo challenged the true essence of scholastic paradigm; that is, the compulsion argument (voluntary) and the justice vision (keep the promise instead of equality). Nevertheless, a comprehensive reading of the whole section concerning the question of ownership reinforced the notion of ‘voluntary.’ Lugo stressed that there is a true transfer of ownership only when “the owner wants to transfer effectively and absolutely the ownership, and not only to fulfill the agreement with this external action.” Following scholastic doctrine, Lugo reiterated that the issue depends on the lender’s will. The usurer acquires the ownership but in a weak way. Therefore, the borrower keeps the right of restitution (Lugo [1642] 1848, p. 204).

In summary, the transfer of ownerships depends on the absolute and effective free will of the borrower. If the usuries are paid voluntarily as a token of gratitude or to fulfill the contract, the ownership licitly passes. On the contrary, the transfer of ownership is weak and could be claimed back when the borrower paid without true intention and made the payment to get the loan or to redeem his promise.

It was generally agreed in scholastic tradition that need (compulsion) was an extenuating factor of the “voluntary” payment of money as usury, which, in fact, became involuntary. Lugo, however, acknowledged the possibility of true voluntary payments. In fact, he envisaged a situation in which a borrower is more prone to pay interest. The subtle change should be attributed to the evolving economy, which reduces or shades the limits between duress and a reasonable interest. Such a statement doesn’t imply that the will doesn’t continue to be decisive.

In conclusion, Langholm’s “breaking” reinterpretation is less radical than Lugo’s texts show. However, I fully agree with Langholm in the following two aspects. First, Lugo conceded the possibility of voluntary payments. Second, Lugo admitted that the transfer of ownership of money paid is usury because the borrower wants to redeem or fulfill the loan with “human faithfulness and because he promised to transfer ownership.” This sentence shifted the concept of justice from the covenant’s term to the fulfillment, which is totally opposite to the spirit of scholastic tradition.

V. THE LICIT INTEREST

Let me remark that usury is restricted to *mutuum*, a *voluntary* and *free* contract that strictly required the repayment of nothing more than the principal to fulfil the virtue of justice. In short, the borrower should repay to the lender the same value as borrowed; money on its own never carried an *intrinsic title to interest*. Does this imply that the lender should risk naively his money for nothing? Not necessarily. Scholastics were mainly concerned with reciprocity, and this standard licitly allows the lender to receive a payment beyond the principal in the following two scenarios.

First, extrinsic titles or particular circumstances can truly modify the equity of the *mutuum*. The most common titles were *poena conventionalis* (penalty by agreement; in case the borrower fails to repay at the agreed date), *damnum emergens* (emergent loss; a loss arising to the lender because of the loan), *lucrum cessans* (cessant gain; a gain that does not materialize because of the loan or the opportunity cost), and *periculum sortis* (the risk of not getting the principal paid back). Concerns about the distorted effect of these extrinsic titles appeared at an early date. Roman law granted the lender the right for an *interesse* or compensation in case of an eventual loss incurred through lending.²³ Early scholastics include this notion of a *compensation* exception, grasped by extrinsic titles, in their own tradition. Not all the extrinsic titles were admitted at the same time and with the same vigor. *Poena conventionalis* and *damnum emergens* were widely acknowledged among the early scholastics. *Lucrum cessans* were more controversial, on the grounds that a *mutuum* should always be gratuitous; nevertheless, in the fifteenth century, general opinion began to admit the cost of opportunity of lending money and, subsequently, the right for compensation on those grounds. The last extrinsic title, *periculum sortis*, was added to the tradition at a late stage by the Jesuit theologians (cf. Noonan 1957, chs. 5, 14). Relating to this title, Lugo stated that the “surplus” could be claimed on two grounds: first, considering the contract itself when “the person who lent money in a *mutuum*, or any other good, took on himself the risk of the capital lent”; second, considering the borrower’s trustworthiness, because, in case of doubt about the repayment, “it would be necessary to incur expenses and inconveniencies to get the money back” (Lugo [1642] 1848, 25:76). In fact, at the end of the tradition, all the extrinsic titles were directly reduced to the *damnum emergens*.

There are three chief titles, which can cleanse a *mutuum* from the stain of usury: emergent loss, risk, and cessant gain; and these three can be comprehended under one; emergent loss. Risk and stoppage of gain are losses of a sort, which, however, are usually distinguished for the sake of clearness.... Emergent loss, taken in a strict sense, is distinguished from cessant gain by the fact that emergent loss causes detriment to

²³The evolution of the Latin word *interesse* into the English word “interest” is a tricky issue. Etymologically, it is compound of *inter* (between) and *esse* (be), which means ‘something in between.’ Hence, what Roman law means by *interesse* is best translated by “compensation”—to restore the equality—instead of “interest,” substantially associated in modern English with the meaning of profit. In fact, the modern meaning of “interest” best fits with the Latin word *foenus*. This distinction appeared more clearly among the early than the late scholastics. Since the sixteenth century, there has been some confusion about these two connotations; perhaps looking for a premeditated ambiguity, as Clavero has pointed out (Clavero 1984, p. 69ff).

goods possessed; but cessant gain causes a loss of goods which you expect to possess but do not. (Lugo [1642] 1848, 25: s. VI)²⁴

Although this was the ‘conventional wisdom’ about the licit interest among Jesuit theologians in the seventeenth century, another extrinsic title, first introduced by Lessius, remains to be discussed: *carentia pecuniae*. Lessius considers that when the lender accepts for a certain term the compromise of not seeking his money back, there is an obligation that can be separated from the loan contract itself and is worth a price or compensation. Similarly, the craftsman who licitly asks for a compensation deprives himself of the instrument of his art; also, the merchant who lends money can fairly ask for compensation because the money is, in fact, the instrument of his art (Lessius 1605, 20:14). Surprisingly, as Toon Van Houdt has pointed out in his comprehensive analysis of Lessius’ extrinsic title, the Belgian Jesuit was not willing to accept the new title unreservedly, not because of its being usurious itself, but “because he was faced with a serious problem, a problem of ‘moral hazard’: if the title were accepted, it would be impossible for him, as for any other ‘judge’, to determine a lender’s true motives for receiving interest” (Van Houdt 1998, p. 9). Molina would reject this title on the grounds that the obligation of not seeking money is inherent to the mutuum contract itself; on the other hand, this new concession would be extremely dangerous in opening the doors to usury (Molina [1597] 1989, 308). Following Molina’s main argument that the specific characteristics of mutuum prevent the *carentia pecuniae* from being taken into account, Lugo also rejected this title and asserted that otherwise the whole usury theory would become meaningless and “no contract could further be considered as usurious” (Lugo [1642] 1848, 25: III).

To summarize, late scholastics were aware that the reciprocity of the mutuum could require some kind of compensation, as early scholastics did, but the former substantially broadened the spectrum of circumstances that legitimized the compensation of the *damnum emergens*. This gradual extension of extrinsic titles could be read as the intellectual effort to harmonize evolving economic dealings with their particular vision of a Christian economy or, in other words, as the compromise between some concessions to reality in order to preserve the moral essences of the doctrine.

Subsidiary to this, scholastics acknowledged another licit way of a payment beyond the principal: gratitude. Undoubtedly, the lender gives not only money but also a favor, which deserves a natural obligation of gratitude. If the borrower freely and voluntarily pays for this favor, there will be no suspicion of usury. A different situation would be the case in which the lender demands a price for the favor.

As has been previously said, usury is a matter of intention, and the true difficulty for scholastics doctors was to discriminate the declared will from the inner intentions of the contracting parties. Undoubtedly, the danger remained of using extrinsic titles just to hide usury; nevertheless, this challenge to good faith (*bona fide*) did not lead scholastics to preach indiscriminately against these titles and to condemn them in all situations. Moreover, in good faith, these titles are worth a price, which should be admitted in principle.

²⁴In a similar way, Molina recognized that “cessant gain may also be called emergent loss, if the word, loss, is taken in a wide sense, for not to obtain a gain which one lawfully could have obtained but which one foregoes can with perfect right be called a loss in goods which one otherwise would have had” (Molina [1597] 1989, 314:5).

VI. CONCLUDING REMARKS

Successive generations of scholastic doctors for nearly five centuries introduced subtle changes in scholastic tradition in a permanent effort to keep their legacies up to date with mercantile praxis. The following table summarizes these changes concerning the “natural law case” against usury.²⁵

As we have seen throughout this paper, the early and late scholastics’ main arguments are substantially the same, but with some modifications. If this interpretation is correct, then such differences are due to two, intertwined reasons: (i) the changes in economic framework, from the perceived, though not necessarily real, quasi-stationary state by early scholastics to the economically dynamic framework of late scholastics; and (ii) the changes in the conception of money—late scholastics tended to consider money not just as a coin to change but also as a businessman’s tool. It could be consumed or invested as capital. These two reasons diminished the relevance of compulsion and opened the door for a voluntary payment of interest.

In conclusion, it is worth remarking that this adaptive strategy contains the seeds of destruction of the scholastic tradition, because, at some point, the compromises

The Natural Law Case against Usury

Original arguments	Molina and Lugo
1 Money was invented to change, not to profit. Teleological argument.	No change.
2 Usury—the profit in the contract of <i>mutuum</i> .	No change.
2.1 Transfer of ownership. Risk argument.	Change: Lugo admits the intrinsic risk in goods but also the risk inherent in the contract of <i>mutuum</i> .
2.2 The fungibles.	Change: <i>mutuum</i> could be made on non-fungibles.
2.2.1 The consumptibility argument.	Change: money can be consumed (<i>strictu sensu</i>) or be used in business (negotiation).
2.2.2 Repayment of something with the same quantity and value.	Change: when money should be considered at the face value and not the coin matter.
3 Non-causality time argument.	No change.
4 Industry argument.	No change.
5 Compulsion argument.	Change: some interest could be paid freely by the borrower.
5.1 Does the borrower sin when paying usury?	No change. It is no sin when paying under necessity.
5.2 Does the ownership of usurious money pass to the usurer?	Change: the transfer of ownership could pass or not, depending on borrower intention.
6 Extrinsic titles.	Change: there was a gradual extension of the extrinsic titles and the circumstances that legitimate a fair compensation.

²⁵This table is a modified version of a previous one, which I first wrote in my PhD dissertation (Monsalve 2002, p. 237).

between the Christian vision of society and the economic realities required concessions that led the scholastic paradigm to lose some of its deepest and most distinctive essences, such as the moral responsibility, in a non-return way, to the “depersonalization” (Langholm 1998, p. 99) or objectivization (Gordon 1975, p. 270) of the economy. It seems that this dismal conclusion is an ineludible tragic consequence of a growing humankind.

The road from clan comradeship to universal society is beset with hazards. When two communities merge and two sets of others become one set of brothers, a price is generally paid. The price, as this essay suggests, is an attenuation of the love which had held each set together. It is a tragedy of moral history that the expansion of the area of the moral community has ordinarily been gained through the sacrifice of the intensity of the moral bond, or, to recall the refrain of this sketch, that all men have been becoming brothers by becoming equally other. (Nelson 1969, p. 137)

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