*Michael Milgate**

PARIS, ROBERT, THOMAS AND THE 'HEINOUS SIN' OF USURY

From about the middle if the thirteenth century onward, it is possible to distinguish more or less sharply between the traditions of economic thought which developed within the university faculties of law, philosophy and theology, respectively. Constant attention must be paid, throughout the Middle Ages, to the interactions that existed between these traditions. In the case of the economic doctrines of the theologians, which form the subject of this study, their dependence on legal concepts, arguments and authorities is particularly heavy during the early stages of their development. The teaching of the late twelfth-century Paris School of Peter the Chanter has been well described as 'that mixture of theology, law and casuistry which is the hall mark of the moral theologian with theology as the dominant element'.[1] This characterisation is that of the modern critical editor of one of the authors who are to be presented in this article. Robert of Courson and Thomas of Chobham are the Chanter's pupils who wrote most extensively on economic subjects. They represent the first stage in thirteenth-century development of economic doctrines in the theological tradition. Yet they often write very much like lawyers and were at one time classified as such. It is therefore useful to start by sketching briefly the Roman and canon law sources that originally nourished the growth of economic thinking in the Paris theological milieu.

The basic text of Roman Law as studied in the European (and mainly Italian) universities since the late eleventh century was the *Corpus Iuris Civilis*. This is a collection of laws and legal interpretations developed under the sponsorship of the Emperor Justinian in the late sixth century CE. The parts of interest here are

---

* Lecturer, Department of Business, Macquarie University, New South Wales.

1 F Broomfield, Thomae de Chobham Summa confessorum, *Analecta Mediaevalia Namurcensia* 25 (1968), Introduction, xxiii.

the *Institutes* (in four books), the *Digest* (in fifty books) and the *Code* (in twelve books). A surprisingly large number of medieval scholastic economic concepts and definitions originated in the body of civil law. Equally important are general legal principles which often become common property in the form of striking *dicta* or maxims, and which the scholastic theologians and moral philosophers either adopted for their own purpose as they were, or otherwise felt called upon to alter or modify. Some of these principles were suggested in the legal text but found their popular form only as glosses. The University of Paris was not a leader in the study of Roman law, and the direct influence of the early glossators on the economies of the Paris theologians was moderate. It was more often transmitted through canon law literature, which served for the schools of theology as a bridge to the foreign territory of civil law.

Canon law may for our purposes be defined as the totality of rules and regulations (canons) concerning human behaviour which had been determined and codified by the Roman Catholic Church. The later medieval collection known as the *Corpus Iuris Canonici* consisted of several parts not yet included at the time of Courson and Chobham and of one important part then already in existence, namely the *Decretum* of Gratian. Compilations of canons had been made since the earliest period of the Church. Shortly before the middle of the telfthth century, a Bolognese monk named Gratian completed his *Concordia Discordantium Canonum* (Reconciliation of Contradictory Canons), later commonly referred to as the *Decretum* and soon accepted as the definitive canonical collection. The material assembled by Gratian *is* quite varied. Besides decisions of popes and Church councils, he drew on Scripture and the Fathers as well as on non-Catholic legal codes. They were known as *paleae.* Some of these *paleae* were also taken from earlier sources. In the case of canon laws regulating economic life, a remarkable number of the decisive ones to be found in the *Decretum* are of patristic (pseudo-patristic) origin.

Gratian's *Decretum* created a new intellectual pursuit, the study of canon law, which became an academic discipline distinct from both

Roman law and theology. A new literature of glossaries and commentaries on Gratian developed. The centre of law studies was Bologna, where some of the greatest teachers were 'doctors of both laws'. If the similarities and dissimilarities between canon and Roman law were to be stated in very simple terms, one might say that while many of the concepts were borrowed by the one from the other, their rulings would more often differ, canon law being on the whole the more restrictive of the two. This can be explained both by the age and origins of the individual laws and by the different purposes which the two bodies of law were made to serve. Usury provides a good example. It is defined in very similar terms in both laws. Canon law, based on Scripture (as then interpreted), prohibited usury as sinful. Civil law (any civil law) must to some extent permit usury, and Roman law does so. A main problem for the Decretists, therefore, was to decide which elements of the *Code* and the *Digest* of Justinian could be considered *canonised* and thus valid for ecclesiastical purposes.

The area regulated by the law of the Church was quite extensive and sometimes crossed the boundaries of traditional theology. When theology insists on a connection between temporal behaviour and eternal salvation (as Catholic theology does) it enters a field also regulated by canon law. When covering the same area, the canonists tended (as lawyers will) to be more formalistic and concerned with the correct interpretations of individual laws, while the theologians wrote under a larger perspective, using positive Church law as an auxiliary only. One possible area of lapping was the spiritual counselling of the confessor. In the confessional, the cleric, often of lowly status, exercises the authority of the Church in personal confrontation with the penitent. This is the internal forum of conscience, as distinct from the external forum of positive canon law. Increasingly aware of the poor qualifications of much of the clergy for the important role of confessor, the Church encouraged the production and distribution of handbooks for confessors. Robert of Courson composed a *Summa* of moral theology with an emphasis on the sacrament of penance. Thomas of Chobham was the author of a popular confessional manual. Later, the most influential books of this genre came to be written by men whom it is natural to

classify as canonists rather than theologians, although, needless to say, they had mastered both disciplines. Anyhow, after Courson and Chobham and until the middle of the following century, no author of such a book, which contributed notably to the development of economic doctrine, was closely associated with the faculty of theology of the University of Paris. But in the early thirteenth century it was within the context of penance that an economic tradition emerged among the Paris theologians.

ROBERT OF COURSON

Robert of Courson was an Englishman, perhaps a native of Devon, but the exact place and date of his birth are unknown. He may have studied at Oxford and certainly studied at Paris in the late twelfth century. By 1200, he was already a master. He taught theology at the University of Paris throughout the first decade of the thirteenth century, while holding prebends as a canon in the provinces and later in the capital. In 1212 he was created a cardinal by Innocent III, and in 1213 he was commissioned as papal legate to preach the fifth crusade and to prepare the Fourth Lateran Council, which was to take place in 1215. It was during these two or three years, before going to Rome for the Council, that Courson appeared briefly in the limelight of history. Travelling extensively throughout France, he convened a number of local councils and enacted reforms that did not all endear him to the clergy. Only fragmentary evidence of his sermons has survived, but it suffices to indicate what kinds of subjects lay closest to his heart. One of them was economic morality and, particularly, the need to repress the practice of usury. Some harsh legatine decisions bear witness to his attempt to put this program into effect. In 1215, Robert of Courson performed the official function for which he is best remembered in academic history. Shortly before leaving Paris for good, he promulgated the new statutes of the University. They included a detailed specification of the curriculum and placed a number of works of Aristotle on the prohibited list. The *Ethics* (what was then known of it) was to be taught on feast days only and not in regular courses. After the Lateran Council, Robert of Courson was detained in Rome

until dispatched by the new pope, Honorius III, on the crusade to the East. He died in Egypt in 1219.[2]

Courson's main work[3] was composed in 1208 or shortly afterwards. In the form in which Robert of Courson left his *Summa* (it was probably never completed), it consisted of forty-six sections, each divided into a number of brief *capitula* or titles.[4] Starting with two sections on penance, it goes on to treat a number of subjects relating to the other sacraments and to faith, ethics and the regulation of clerical life. In the middle of the work, there are several sections about legal procedure, and elsewhere he also frequently argues in terms of the external forum of canon law rather than the forum of conscience. However, a number of sections deal with individual vices, and these tend to uphold the reference to penance and restitution. Material relevant to economics is to be found in Sections I (on the sacrament of penance in general and on some questions raised thereby), VIII-X (on simony, i.e. the sale of ecclesiastical offices or preferments, with some remarks and a concluding section on exchange in general), XI-XII (on usury), XV-XVI (on robbery and the use of property), and XXVII (on oaths and perjury). The two sections dealing with usury were edited by Lefèvre in 1902,[5] and the two initial sections on penance by Kennedy in 1945. The remaining sections are quoted from manuscript.[6]

---

2 On Robert of Courson, see M and C Dickson 'Le Cardinal Robert de Courson: Sa Vie' *Archives d'Histoire doctrinale et litteraire du moyen age*, 9 (1934) 53–142.

3 Courson also composed a commentary on the Sentences of Peter Lombard, now lost; cf Fredrich Stegmuller, *Repertorium commentariorum in Sententias Petri Lombardi,* (1947).

4 Cf V L Kennedy, 'The Contents of Courson's Summa' 9 (1947) *Medieval Studies* 81–107. This article reproduces the whole table of contents. The division into sections breaks off in the manuscripts before the end of the work and is completed by Kennedy.

5 Georges Lefèvre, 'Le Traité "De Usura", de Robert de Courçon', *Travaux et mémoires de l'Université de Lille*, Tome 10, Mémoire no 10) (1902).

6 Bruges BV 247.

The purpose of moral instruction, says Courson in the preface to his work, is to learn 'how to dwell in the midst of this crooked and perverse nation'.[7] The economic aspects of this program are of course not singled out, since the author did not yet possess a concept of 'economics', however frequently his advice embraces economic phenomena. We might state the economic aspects as those relating to the handling of material property under the dismal conditions described. This may remain apt as a declaration of what economics is still about, except that one would rather think of the purpose of economic instruction as being that of learning how to preserve and increase one's own property under adverse conditions of competition with conflicting property interests. That would be very far from Courson's intentions, as will be seen from his solutions to individual economic questions. The lines quoted contain an obvious allusion to a verse in St Paul's Letter to the Philippians: 'That you may be blameless and harmless, the sons of God, without rebuke, in the midst of a crooked and perverse nation, among whom you shine as lights in the world.'[8] To remain blameless and harmless, without rebuke, also in dealings related to material wealth is the object of economic instruction in Courson's *Summa* and might indeed serve as a motto for a large part of scholastic economic writing.

In a number of titles in Sections XV and XVI Courson enjoins upon his readers their duty to give of their surplus to those in need. The awful logic of a line in Gratian is brought to the fore again and again: 'Feed him who is dying of hunger; if he is not fed, you have killed him.'[9] The author does not shrink from posing some cruel dilemmas. What should I do when faced with two persons equally needy but having enough to save only one of them? How can I avoid being morally guilty of killing the one I reject?[10] A little further on a case is considered where a hundred poor are facing a

7 Kennedy, above n 5, 294.

8 Philippians 2:15, *Bibliorum Sacrorum Nova Vulgata edition Libreria Editrice Vaticana*, 1986.

9 *Decretum* I, 86, 21; *Corpus Iuris Canonici* (Friedberg, ed) (1879) vol 1, 302.

10 Ibid XVI, 8–9; ff 63vb-64rb (Bruges).

hundred wealthy of whom ninety-nine are indifferent to their needs. Should the one remaining of the wealthy reduce himself to the state of the hundred poor so as not to be guilty of murdering anyone of them? The answer is in fact a conditionally affirmative one, and the condition does not do much to reduce the austerity of Courson's teaching. It only stops short of suicide. The one charitable among the wealthy should share his wealth with the poor until what is left is needed for his own subsistence, at which point he might save himself rather than someone else, 'as in a shipwreck'.[11]

There is not much left of the moral right to property for the individual confronted with a doctrine like this. But that does not mean that the legal right is disputed by Courson. On the contrary, it is upheld most emphatically. Although in the latter example he goes out of his way to stress that each one of the hundred wealthy men could easily have supported one of the needy, there is no question of the one charitable among them infringing on the property rights of his unwilling and uncharitable peers rather than reduce himself to destitution. He might presumably preach Courson's doctrine to them, hoping that his burden could be shared, but that would be all. In the final analysis, each one must bear his own moral burden. To each one, the property rights *of others* are inviolate. This is not merely an inference drawn indirectly from other sections of the *Summa*, such as those on economics where, for instance, usury is compared to theft and the whole discussion is conducted in the shadow of the seventh commandment, 'Thou shalt not steal.' Courson faces the issue much more squarely. In this section just quoted, he includes the following case, referring obliquely to a number of patristic authorities apparently contradicting his own conclusion:

> Consider someone who has plenty, from whom I can take, in order to supply the need of this poor man dying of hunger, one loaf of bread which I cannot otherwise have. I take it from him for this purpose. Approval: According to natural law everything ought

11 Ibid XVI, 14 ff 64vb–65ra (Bruges).

> to be common,[12] that is, shared in time of necessity.[13] Also, everything belongs to the just,[14] therefore, as he who asks for it is just, everything belongs to him, therefore this as well. Also, when we relieve the poor we do not bestow on them what is ours but restore to them what is theirs.[15] Also, by wickedness was first said, 'mine' and 'yours'. This being so, since this just man suffers the greatest want, what is detained from him is his; consequently it should be restored to him even by force ... Solutiones: Since you ought to love the soul of your neighbour incomparably more than your own body,[16] my advice is that you do not take or seize from anybody, either for yourself or for another, that which serves the temporal life of anybody.[17]

If life is indeed threatened, says Courson in the sequel, commit yourself entirely to God, who will, after all, provide.

It is reasonable to attribute some of the extreme positions taken by Robert of Courson on these issues to the uneasy balance between positive law and moral dogma observed in his *Summa*, the theologian sometimes being outweighed by the canonist. Property rights are instituted by civil law and canonised by the Church; they must be upheld. Appeals to the natural law principle of communality, even by the best authorities faithfully recorded, are of no avail. All that can be mustered to combat material need is the

---

12 Cf *Digest* 1, 8, 2, or *Decretum* I, 1, 7 (Friedberg, above n 10, vol 1, 2), quoting Isidore of Seville, *Etymologies* vol 5, 4.

13 The dictum stating that everything is common is of uncertain legal origin. Huguccio, in his *Summa* on the *Decretum*, combines this and the preceding phrase as Courson does and may be Courson's immediate source; cf Paris BN lat.3892, f.1rb.

14 St Augustine, *Epistola* 93, *12 Corpus Scriptorum Ecclesiasticorum Latinorum* 34, 493.

15 St Gregory the Great, *Liber Regulae Pastoralis* 3, 21; PL 77, 87.

16 St Augustine, *De Doctrina Christiana* I, xxvii (28); *Corpus Christianorum, Series Latinorum* 32, 22.

17 Courson, *Summa* XVI, 5 (Bruge), f.63va.

Christian duty of charity, which is, consequently, driven to the limit, and perhaps even beyond the limit, of what is reasonable in any exchange society. It does not bode well for Courson's teaching in the field of economics proper. One may well ask how it can be at all possible to formulate workable norms of economic exchange on an ethical basis which will simultaneously accommodate a duty to strip oneself of all wealth in order to succour the starving. There is nothing in Courson to indicate an awareness of the notion that extreme charity in economic agents may be detrimental even to the society of believers in the long run, because it may sap it of the wherewithal of commercial activity and thus slow down or even paralyse the supply of goods needed to provide for the temporal needs of wealthy and poor alike.

The impression of a basic contempt and suspicion of economic activity in Courson is something that builds up by the absence of any commendatory or understanding remark in the long sections where derogations abound. There are references to dealers, brokers and deceitful merchants,[18] to mixers of poisons and sellers of lazy horses and corrupt meat,[19] to fraud and deceitful commerce,[20] to merchants cheating on weights and measures,[21] to merchants overheard to perjure themselves,[22] etc. Several of the cases here referred to involve the pricing of merchandise, the sin committed by the merchant in question being that of selling at an excessive price. While best remembered for its analysis of usury, Courson's *Summa* also initiates the line of medieval theological texts which deal with that much disputed and misunderstood subject: the nature, significance and estimation of the just price. It is true that Courson's contribution is rudimentary. In most instances he merely mentions the term. In connection with penance he states at one point that what is acquired 'over and above the just value of the good' (*ultra iustum valorem rei*) is to be restored 'by the arbitration of the

18 Ibid I, 23; Kennedy, above n 5, 323; as well as X, 10 (Bruge).
19 Ibid X, 12; (Bruge), f. 44va.
20 Ibid X, 18; (Bruge) f. 46ra.
21 Ibid X, 19; (Bruge) f.46rb.
22 Ibid XXVII, 14–15; (Bruge) f.86rb–va.

priest,'[23] which presumably means that the officiating priest is to estimate this unlawful excess, but no criterion or formula is provided for that purpose. Elsewhere he is a little more explicit, half a column being devoted to the estimation of 'due price' (*debitum pretium*). Having quoted *Proverbs* and *Leviticus* on correct weights and measures, Courson proceeds to impose similar requirements on price:

> If anybody deceives his neighbour by selling his wares above the due price, he sins mortally. This we concede, saying that a merchant should pay attention to the run of sales according to time and place and to the labour expended on the wares; and if his wares are worth ten shillings and he believes by estimation that for his labour he ought to receive twelve pence, then he may sell for eleven shillings without oath and fraud; and if there is a hidden defect in the object, he should disclose it to the buyer. If, in fact, he sells his wares otherwise by deceiving his neighbour out of cupidity, he sins mortally and is obliged to make restitution for all that he has received above due price and due labour.[24]

The idea that honest labour deserves its reward is such an ingrained element of Christian philosophy as to be almost a truism. Anyhow, explicit acceptance of labour as a just price determinant was current in canonistic literature.[25] What appears to be a reference to market factors may be more troublesome. The phrase which deliberately is rendered vaguely as an obligation to 'pay attention to the run of sales,' reads in the original: *attendere cursum venditionis*. Baldwin interprets this to mean 'the course of market *prices*.'[26] On another occasion Courson states the requirement of certain contracts that

23 Ibid I, 43; Kennedy, above n 5, 324.
24 Ibid X, 19; f. 46rb (Bruge).
25 Cf, for instance, Rufinus, *Summa decretorum* II, 14, 3.
26 John W Baldwin, 'The Medieval Theories of the Just Price: Romanists, Canonists, and Theologians in the Twelfth and Thirteenth Centuries,' (1959) 49(4) *Transactions of the American Philosophical Society* 70–71.

they should be made *secundum solitum cursum venditionis vel emptionis*,[27] which Lefèvre renders as 'le course habituel fixé par l'offre et la demande.'[28] The latter is certainly an over-interpretation, since there is no reference in the context to supply and demand. On the other hand (although I should hesitate to translate *cursus* directly as 'rate of exchange'), the idea is clearly that *prices* currently obtaining in the market may be reflected in the just price. This was also a well-established legal principle.[29] What lends a certain interest to Courson's acceptance of these principles, is that the cost and market criteria of just pricing appear together, perhaps for the first time in the medieval theological tradition. The significance of this will become evident at a later stage. No more need to be said about Courson on price, and we can proceed to his analysis of usury.

Scholastic usury doctrine was partly based on authority in the widest sense and partly on rational arguments, either from authority or from some self-evident postulate of natural reason (the 'natural law case' against usury). One would expect to find the major and better bits of analysis along the last-mentioned line of approach. However, the different approaches are not mutually positively encouraged economic analysis. In Courson's case, some of the main authorities referred to were legal authorities. Lefèvre observed that one of the author's objectives was to combat the medieval legists who defended more lenient maxims and caused a legislation unfaithful to canonical regulation to prevail in the civil order. To arm himself for the battle, he went in search among the primitive rules of Roman law.[30] It is true that Courson, in order to argue against legal principles, had to state his own case partly in legal terms. But having done so, he does not proceed by way of legal commentary, but prefers to call the impressive army of scriptural authorities to the defence of his narrow position.

27 *Summa* XII, 2; Lefèvre 61.
28 Lefèvre, above n 5, 60.
29 On the early legal tradition on this point, cf Baldwin, above n 26, 28–29.
30 Lefèvre, above n 5, introduction, IX.

In accordance with medieval legal terminology, Courson limits usury to the particular loan contract called a *mutuum*, but he defines usury more widely than a lawyer would. Usury as an economic quantity is the increment (*rees superexcrescens*) which the creditor receives in excess of the principal (*præter sortem*) in repayment of the loan. Usury as a sin is to receive such an increment or to lend with the intention of receiving it.[31] Condemnation of sinful intent may not seem particularly relevant to economics; however, it is indirectly of some interest because of the type of authority that can be brought in to support it and thereby support the condemnation of the act as well. In a class of its own is the authority of the Lord himself exhorting his disciples in the Sermon on the Mount: 'and lend without any hope of return' (*mutuum date nihil desperantes* [*inde seperantes*]).[32] This is the only utterance by Christ which could be construed as a commandment regarding moneylending,[33] and the medieval theologian (as it appears, mistakenly)[34] interpreted it as a precept against hoping for gain in excess of the principal, while renunciation of the principal (turning the loan into a gift) was at most a counsel to charity and as such dropped out of economic discussions. In the Old Testament, positive injunctions against usury abound. Courson quotes some of them from *Exodus*, *Leviticus*, *Psalms*, and *Ezekiel*, as well as from *Deuteronomy*.[35] The distinction made in the latter book between usury from a brother

31 *Summa* XI; Lefèvre 3.

32 Luke 6:35; Courson, *Summa* XI, 2; Lefèvre, above n 5, 5.

33 The reproach for not having lent money at usury which occurs in the parable of the talents (Matthew 25:27) was not troublesome, since it was clearly meant to be taken allegorically; a papal letter confirming an interpretation in spiritual terms was in fact excerpted by Gratian in the *Decretum* (I, 46, 10). Cf Courson, *Summa* XI, 2; Lefèvre 7.

34 Many early Latin texts have nihil desperantes rather than nihil inde seperantes at Luke 6:35. This is alternative reading is adopted in the Revised Version, which has 'never despairing'. Most scholars agree that this is the correct one. Anyhow, it catches much better the spirit of carefree love of one's fellow man which is the essence of Christ's Sermon. No specific distinction between principal and interest is intended. The Greek mêden apelpidsontes is ambiguous.

35 Exodus 22:25; Leviticus 25:36; Psalm 14(15):5; Ezekiel 18:8, 22:12; Deuteronomy 23:19–20; Cf Courson, *Summa*, XI, 2; Lefèvre, above n 5, 5.

(forbidden) and usury from a stranger (permitted), which goes to the core of tribal economics and morality, was explained away by Courson as a difference in the matter of sanctions. Permitted in civil law, usury from a stranger is nevertheless a sin against God.[36]

Having thus been told by irrefutable authority that lending with a view to gain is forbidden, one might like to ask both why is it wrong and what can in this connection be called a gain. The second question is not answered by Courson, except by examples, until the end of his treatise of usury, and then not very clearly. The most straightforward case of usurious gain occurs when a sum of money is lent and repaid with a larger sum of money at the end of a stipulated period of time. But usury may be present even if the gain is not the same species as the principal and the contract appears on the surface to be something different from a loan. Thus, the sale of a piece of property with a resale clause at the same price is usurious if the buyer is to keep the usufruct accruing in the interval.[37] It is likewise usury for a servant to lend to his master on the condition that he is better fed, if he is also to receive back the principal undiminished (*totum capitale*).[38] On the other hand, it is not usury to lend to a thief so that he shall not (or need not) steal, or to a harlot so that she need not prostitute herself.[39] Thievery and whoring are both explicitly forbidden by the commandments; thus the gains are entirely the debtors' and they are entirely spiritual. It would not be difficult to construct a sequence of cases, curving in on the material gain to the debtor, through gains of various kinds to the community. At what point along that curve does usury logically start? (The seeds of the dilemma are in fact present in the case of the thief: does not each member of society benefit if theft is reduced?) When so inclined, the scholastics would rise to this type of logical challenge with alacrity. Not so Courson on the problem of usury. He ends up by stating a simple rule. Whenever it is given because of charity, it is deserving of eternal life.[40] This wisely

36 *Summa* XI, 2; Lefèvre, above n 5, 3, 7.
37 Ibid XII, 4; Lefèvre 63.
38 Ibid XI,3; Lefèvre 9, 11.
39 Ibid XII, 8; Lefèvre 77.
40 Ibid XII 8; Lefèvre 75.

leaves it to the lender and his confessor to search the heart and draw the line.

It is only when challenged to dispute by a 'layman bitten with cupidity'[41] that Robert of Courson seeks to explain by rational argument *why* usury is wrong. The objection and the answer are prototypes of an exchange that was to resound through scholastic texts. Pretending to be puzzled, the 'layman' asks:

> Run through in your mind all that can be valued: I may cede it all to my neighbour for a profit, like a house, a horse, a book, a servant, gold and silver vessels, garments; why cannot I similarly cede my money to him in expectation of some remuneration from him, since my money is equally necessary to me as a horse or a house?[42]

Courson's reply is an early version of the famous 'ownership argument' against usury:

> We distinguish between a lease (*locatio*) and a loan (*mutuum*), for in the case of a lease the object does not pass into the ownership of the receiver but remains his who leases it. The whole risk relating to the object must remain with the lessor because the object remains his entirely. Therefore he may receive a surplus for the damage and use of the object. But it is not like this in the case of a loan. It is called a loan (*mutuum*) because mine (*meum*) becomes yours (*tuum*) or vice versa. As the five shillings which you lend me are mine, ownership to them passes to me from you. It is therefore an iniquity if you should receive something for a thing which is mine, for nothing is due you from my thing.[43]

41 Against a slightly different version found in Lefèvre, above n 5, 13.
42 Ibid.
43 Ibid XI, 4; Lefèvre 15.

What is invoked here is principally the distinction between two types of contract. The preposterous etymology of *mutuum* cited by Courson is to be found in Roman law[44] and was transmitted by the Decretists,[45] but, of course it does not provide the real basis for the difference between a lease and a loan. The distinction rests on the classification of objects in which each of the two types of contract may be concluded. A *mutuum* is restricted to fungibles, i.e. to things which 'exist by weight, number or measure,' to quote the law, which lists commodities like wine, oil, grain as well as money (*pecunia numerata*).[46] Courson's list of valuable objects which may be leased at a profit (a house, a horse, etc) are all nonfungibles. The contract called a *locatio* presupposes that the identical objects are to be returned (the same house, the same horse). Ownership of the object itself in fact remains with the lessor; the contract only comprises the right of use. For this use value, as well as for damage and risk of damage (which must be born by the owner), an economic charge can justly be made.

If money were to be the object of a *locatio*, in other words, if the contract were to stipulate that the very same pieces of coin had to be returned at the end of the lease period, then a similar charge might be made for the use of money and this would not be usury. Robert if Courson points this out himself, taking for his example a ruse practised frequently, he claims, by princes, who borrow the riches of others and display them as their own in order to impress visitors.[47] However, this is not the normal procedure in the case of moneylending (or when other fungibles are lent). The normal assumption is that the coins received will *pass through* the hands of the borrower, being spent for some purpose or another, and that at the end of the contract period, some other pieces of coin (or different items of the same species of fungibles as that borrowed)

---

44 *Instit* 3, 15, preface *Digest* 12, 1, 2, 2.

45 Cf Paucapalea, *Summa*, to *Decretum* II, 14, 3 (J F von Schulte, ed) (1890) 83. Paucapalea was a prominent canonist whose *Summa* was written before 1150, shortly after the compilation of the *Decretum*. The paleae were named after him.

46 *Digest* 44, 7, 12; cf 12, 1, 2, 1, and *Institutes*, ibid.

47 *Summa* XI, 4; Lefèvre, above n 5, 15.

will be returned. What passes to the debtor at the original exchange is the *ownership of certain pieces of coin*, in return for a claim, ie in return for the ownership of a right to receive at a stipulated future date an equal sum of money physically represented by different coins. In a fully developed credit economy, the ownership argument against usury is meaningless. It makes sense only as long as money is conceived of in the physical shape of specie. Then it is a fungible, artificially invented to facilitate exchange, but otherwise subject to the same laws of contract as natural fungibles like wine and corn. It is with this idea firmly in mind that one must approach the early scholastic theory of usury.

The ownership argument permits a connection to be established between usury and theft. Since the debtor owns the money however he uses it, the creditor can claim no part of whatever is earned with it over and above the principal, and if usury is nevertheless paid, the creditor is no better than a common thief and should be made to make restitution as a condition for absolution. This raised some delicate secondary questions. What about a church built with money which turns out to be of usurious origin: should it be torn down?[48] What about the wife and employees of the usurer with duties to perform: do they live in sin if they accept his bread?[49] What about coins reminted by a prince from usurious money: should merchants refuse to use them in exchange?[50] Courson tends to answer such questions in the affirmative; albeit not unconditionally. It is worth noting that he seems inclined to accept the force of necessity more readily than in the case of regular theft. However, the governing principle is that if money gained by usury is spent in exchange for something else, this should be shunned as well. Courson quotes a statement of St Paul, 'if the root is holy, so are the branches holy,'[51] and reverses it, 'if the root is corrupt, so are the branches corrupt.'[52] Usury is like a rotten root that infects all that grows from it.

48 Ibid XI, 11; Lefèvre, above n 5, 35, 37.
49 Ibid XI, 13; Lefèvre, above n 5, 41, 43.
50 Ibid XII, 1; Lefèvre, above n 5, 51, 53.
51 Romans 11:16.
52 *Summa* XI, 10; Lefèvre, above n 5, 33; cf Matthew 7:18.

If the mere formality of who owns the actual coins which the debtor soon parts with anyhow, seems a slim basis on which to base a doctrine like this, matters are not much improved by Courson's reference to risk (*periculum*) in his statement of the ownership argument. The general assumption in contracts like these was that risk followed the ownership of the objects leased or lent. In a *locatio* the risk remains with the lessor, in a *mutuum* it is taken over by the debtor. If the use of a house or horse is granted to someone for a period of time and the horse dies or the house burns down during the lease period, the owner can claim no indemnity (beyond the rent agreed on); it is, therefore, reasonable for him to be permitted to stipulate a risk premium in the contract. Not so when money or some other fungible is lent. Then the creditor can demand repayment of an equal sum even if the capital is lost. What is not taken into account here is that the loss of the principal may render the debtor incapable of fulfilling his part of the contract. Courson's position is thus still based on a legal formality. If one considers only the terms of the contract, a risk premium in a *mutuum* seems like double payment.

Going on from there, Courson makes risk taking a criterion by which to identify usurious elements in a credit sales of commodities. If a contract is concluded stipulating delivery and certain quantity of a commodity whose just price is known constant in the foreseeable future, it would make no difference on Courson's principles *when* delivery is made or *when* payment is made. Any increase in price or quantity due to delay is usurious. If the just price varies according to a known future schedule, the price obtaining at the date of delivery should be charged, regardless of the date of payment. But one will hardly find a merchant who complies with this rule, according to Courson. If payment is made in advance, for ten bushels of corn to be delivered at harvest time when it is worth forty dollars, the buyer will receive little more than this owing to the delay of delivery (or anticipation of payment). This is usury since they run no risk of losing his capital. A higher price paid later for merchandise delivered now is usurious for the same

reason.[53] This would all be different if someone puts his own money at risk. Courson states the general principle:

> If he commits his capital to the risk of loss in the hope of receiving something more, this is not usury because both parties run a risk, if the contract is made following the usual course of buying and selling.[54]

One common arrangement for risk sharing was that of a commercial partnership where one partner provides funds only. Retaining ownership of this money, the passive partner carries his part of the burden of expenses and of risk of loss and takes his share of the profit, if any.[55] This arrangement is different from a regular loan where ownership passes to the active merchant and the investor's capital is safe. But the normal commercial partnership is one with several active partners. In concluding the case just cited, Courson is anxious to emphasise that the true source of profit is labour. Just as labour should be reflected in commodity prices, so does a merchant's labour, or the labour of his servant, justify a share of the earnings of a partnership. On a previous occasion Courson suggests that the authorities should see to it that everyone did some work, spiritual or corporal, so that each would eat only his own bread, i.e. the bread of his own labour. This, he muses, would do away with all usurers, troublemakers and thieves. Alms could be given and churches constructed and everything would revert to a pristine state.[56]

If labour is the true source of profit, a natural first reaction would be to deny any concession to what was to be called *lucrum cessans*, ie to the profit forgone by a creditor missing the opportunity for alternative employment of his capital. This is what Courson in fact does, without any argument at all (and apparently unaware of a logical difficulty inherent in his solution, which required yet some

53 Ibid XII, 2; Lefèvre, above n 5, 57, 59.
54 Ibid XII, 2; Lefèvre, above n 5, 61.
55 Ibid XII, 7; Lefèvre, above n 5, 71, 73.
56 Ibid XI, 11; Lefèvre, above n 5, 35.

time to be brought into the open). The remarkable fact is that Courson raises the objection at all. It is put in the mouth of an imaginary, conscience stricken debtor who wonders whether he does not do his creditor an injustice since the latter with his money (*in pecunia sua*) might have augmented his principal in business, whereas now he will get back only this principal. But this kind of thinking is resolutely stamped out by Courson with all the force of the Lord's command to 'lend without any hope of return.'[57] Only in the event that the agreed date of repayment is exceeded does Courson permit a penalty clause (*poena*) to be included in the contract, and this not with a view of retaining this increment but to distributing it among the poor. Courson alleges that illicit usury is frequently reaped in the guise of this kind of penalty.[58]

Lefèvre describes usury as understood by Courson as the desire to collect revenue while making sure that one's capital remains intact.[59] Le Bras considers Courson's main argument against usury to be that labour is the only source of wealth.[60] Each emphasises an important feature. What Courson bequeathed to his more analytically minded successors among the medieval theologians was a conception of usury which was to remain long in force: Usury is the evil desire to increase one's capital without risk of loss and without labour.

THOMAS OF CHOBHAM

The medieval penitential handbook was still in search of its form when, in 1215, yearly confession for all adults was made compulsory by Canon 21 of the Fourth Lateran Council. The date coincides roughly with the publication of the *Summa Confessorum* of Thomas of Chobham. Earnest attempts have been made to define and catalogue the broad literary genre to which this book belongs, a

57 Ibid XI, 4; Lefèvre, above n 5, 13.
58 Ibid XII, 5; Lefèvre, above n 5, 65, 67.
59 Lefèvre, above n 5, introduction, x.
60 Gabriel Le Bras, 'Usure: La Doctrine Ecclésiastique de l'Usure a l'Epoque Classique (XIIe–XVe Siècle)' (1950) 15 *Dictionnaire de Théologie Catholique* 2351.

task made difficult not only by the sheer volume of extant sources but also by multiplicity of titles, confusing titles and in many instances lack of titles, as well as by the existence of adjacent genres of theological and legal treatises.[61] Some manuals might cover a few pages, others ran to thick volumes. Some would focus on procedure, while others would place greater emphasis on ethical principles and practices. In the confessional the ordinary parish priest must be prepared to deal with all kinds of practical cases involving potentially sinful behaviour in which the rapidly developing societies of Western Europe might entrap their members. Much was left to the individual judgement of the confessor, and the need for written guidelines would be felt more or less strongly. If economics receives broad attention in some of these manuals, it was because most priests would lack personal knowledge of commercial institutions and practices, some of recent origin and some even invented for the precise purpose of deceiving the watchful eyes of the Church. Among early works thus oriented, Chobham's *Summa Confessorum* ranks prominently because of its ample and knowledgeable treatment of proper conduct in the economic sphere.

Like Courson, Chobham was an Englishman. He took his local surname from a village in Surrey, where he was rector at the time when the work was written. He later rose to become subdean of Salisbury. Broomfield[62] tentatively dates the author's birth between 1158 and 1168. He died in the mid-1230s. He was a master when he appeared in England in 1189. References to Paris in Chobham's work suggest first hand knowledge of that city and its University. In all likelihood he studied there and may later have taught there for a period as well. Broomfield estimates that the *Summa* was

61 The penitential literature was surveyed by Johann Friedrich von Schulte, *Die Geschichte der Quellen und Literatur des Canonischen Rechts von Gratian bis auf die Gegenwart*, 3 volumes (1875–1880), who devoted twenty-five pages (II, 512–536) of his history of canon law sources and literature to works written for the internal forum.

62 Above n 1. The introduction contains a detailed biographical and bibliographical survey.

'completed and in circulation c. 1216.'[63] It was frequently copied and became highly popular; more than a hundred manuscripts have been located.[64] Although a large percentage of these manuscripts are of English provenance, and although Chobham takes many of his examples from English customs and institutions, the work is not provincial in a doctrinal sense. Among numerous theological authorities used, ancient as well as recent, Peter Lombard and the Peter the Chanter rank prominently. But both pale in comparison with Gratian's *Decretum* and other collections of canons, which appear on almost every page. In addition to such traditional canonistic material, Chobham is familiar with the more recent collections of papal decisions known to posterity as the 'five old compilations' (*quinque compilationes antiquae*) from which Raymond of Peñafort was soon to select most of the material for his definitive compilation of *Decretals*, promulgated by Gregory IX in 1234, and eventually to surpass the *Decretum* in importance as a reference work on canon law. For all this close attention to law, however, Thomas of Chobham, like Robert of Courson, was primarily a moral theologian. Concluding the pages on Chobham and rounding off his analysis of the early *Summæ Confessorum*, Michaud-Quantin once more raises the question: is it morals that are their subject, or is it canon law? The answer ought to be, he suggests (by coining a phrase translation cannot but spoil): *morale juridisée*.[65]

With its 575 pages in the printed edition, Thomas of Chobham's *Summa* is one of the more voluminous works of its kind. It consists of seven books, most of which are subdivided into distinctions, and these again into questions and sometimes subquestions or chapters. The first book treats penance in general and particular, sins and

63 Ibid LXI. Broomfield argues for this date on the basis of Chobham's somewhat superficial knowledge of the decrees of 1215 and his apparent lack of awareness of a charter issued in 1217.

64 There are also two anonymous, early printed editions: Cologne c 1485 and Leuven c 1486.

65 Pierre Michaud-Quantin, 'A Propos des Premières Summae Confessorum: Thélogie et Droit Canonique' (1959) 26 *Recherches de Théologie Ancienne et Médiévale* 295.

their circumstances, and various information necessary and useful for the confessor. Book 6 instructs the confessor in how to receive the penitent and what general advice to give them. It reviews certain occupations and their particular hazards; this is where the merchant's profession makes its appearance and where economics is, for the first time, discussed more than in passing. Finally this book summarises the seven means of obtaining remission for sins, and here again is something relevant to our broader purpose in connection with almsgiving. Book 7, which alone occupies almost as much space as the preceding books taken together, is structured on the capital sins. It contains a lengthy discussion of usury in Distinction 6, which deals with avarice. In connection with a preliminary list of the seven criminal sins of Book 3, where avarice is the fifth in order, Chobham cites a different name for it after John Cassian: it can also be called *philargia*, the love of money.[66]

Despite these austere contexts, Thomas of Chobham's attitude to business is not unfavourable.[67] His legal orientation may partly account for this. Civil law regulating commerce implicitly legitimises commerce as such. Canon law did not question this fundamental acceptance, all the while imposing a number of restrictions relating to the clergy doing business, to objects and services unsuitable for buying and selling, to time and place of exchange etc. But counter to this positive tradition a negative patristic tradition still ran strongly in the thirteenth century. Extremely hostile to business, some of the early Fathers verged toward a mass condemnation of the whole commercial profession. Had not the Lord himself thrown the merchants out of the Temple, meaning the living Church of Christ? Personal background and

66 *Summa* 3, 1, 5, above n 1, 24. One manuscript tradition has philargiria, as in John Cassian; cf *Conlationes* V, 2; *Corpus Scriptorum Ecclesiasticorum Latinorum* 13, 121.

67 There is an early mention of Chobham's economic ideas in Earnest Nys, *Recherches sur l'Historie de l'Économie Politique* (1898) 113. Baldwin rediscovered Chobham before the critical edition of the *Summa* and afterwards followed up with a fuller discussion of his social ideas. Cf Baldwin, above n 26, 64–9; Masters, Princes and Merchants, *The Social Views of Peter the Chanter and his Circle* (1970) 263–94. There is no other literature on his economics worth mentioning.

inclination would influence the balance between these contrary traditions as reflected in individual works. Chobham repeats the old adage that is difficult to prevent sin from intervening between buying and selling,[68] but then proceeds to make the fullest statement of the case for commerce yet to appear in a theological text:

> Commerce is to buy something cheaper for the purpose of selling it dearer. And this is all right for the layman to do, even if they do not add any improvement of the goods which they bought earlier and later sell. For otherwise there would have been great need in many regions, since merchants carry that which is plentiful in one place to another place where the same thing is scarce. Therefore, merchants may well charge the value of their labour and transport and expenses in addition to the capital laid out in purchasing the goods. And also if they have added some improvement to the merchandise they may charge the value of this. But if they have tampered with their merchandise so as to deceive the buyer, they are thieves and brigands. Moreover, the secular law states that no seller is permitted to receive for his goods more than one half above the just price, and nevertheless it is a sin if he has received anything above the just price. "...But there are some who buy the raw materials for things and add their workmanship and labour in order to make of them a new product. Thus some buy wood or stones or metal to make thereof utensils or tools necessary for human uses. Others buy hides and skins to make sandals and shoes. These are not called merchants but craftsmen and they are permitted to sell their works and their skills taught them with

68 *Summa* 6, 4, 9; 301; cf 6, 4, 1; 290. Chobham attributes this saying to Gregory the Great; it is to be found in Leo, *Epistola* 167; PL 54, 1206.

> much manual labour, provided that they do not practice fraud in their crafts." [69]

What Chobham says about pricing within a limit of one half above the just price, is a reference to the Roman law principle of *læsio enormis*.[70] If it appears in theological literature it is normally by way of contrast to divine law which asserts, as Chobham does here, that any unjust price is sinful, the size of the deviation not being the decisive criterion. As to how the just price is to be estimated, Chobham, by mentioning scarcity, hints at the lawfulness of considering market factors, as Courson had done in rather different terms, but mostly Chobham relies on a cost criterion. The merchant, like the artisan, can reasonably expect to be paid for his labour and outlays. Note that the value of professional skills is explicitly recognised, as well as the labour which goes into the *acquisition* of skills. These individual features of an early version of the scholastic just price model may be stored for future reference. They should not cause us to lose sight of the most significant feature of Chobham's discourse in the chapter quoted, namely his unequivocal acknowledgment of the social usefulness of commerce. The craftsman was never a suspicious figure in Christian literature; was not Joseph a carpenter who bought wood and made useful objects? Here the merchant and the artisan are beckoned to the confessional together, presented with the same calculation formula and given the same warning against frauds and sophistications. Once this truly epoch-making acceptance of the merchant is recorded, one may ask why his function is described as though it consisted entirely in

---

69 *Summa* 6, 4, 10; 301–2.

70 Originally a provision meant only to protect the seller of land, *læsio enormis* was developed by the medieval Romanists and adopted by canonists as a general principle whereby any kind of sales contract was rendered invalid if the price deviated more than one half from the just price, thus protecting both seller and buyer. Cf. *Code* 4, 44, 2 and 8; *Compilatio Prima* III, 15, 4 (incorporated in the *Decretals* of Gregory IX at III, 17, 3). Note that Chobham reverses the rule so as to protect the buyer against the seller, who is the potential sinner here, and who was normally considered by the scholastics to have the upper hand, thus being the one more in need of moral admonition. In principle the problem of the just price is symmetrical in buyer and seller.

transportation, ie in adjusting supply and demand discrepancies over geographical distances. Normally the merchant is thought of as performing a storage function as well, that is, a corresponding adjustment over time. It is not by chance that the spatial dimension is allowed to be explored before the temporal one, and the reason is not hard to find: once time is involved, usury rears its ugly head.

The outline of Thomas of Chobham's analysis of usury is much the same as that of Courson's. He is richer than Courson in his rational arguments and in his use of authority. The arguments are scattered over several of his eight chapters about usury but are best presented together. Opening the first chapter by quoting Luke 6 about lending without hope of gain, he proceeds to limit usury to the *mutuum* and to argue against it in the following terms, some of which we recognise.

'Where there is a *mutuum*, ownership passes, whence *mutuum* means at it were "yours from mine" (*de meo tuum*).' Therefore, if I have lent you money or also grain or wine, immediately the money is yours, and the grain is yours and the wine is yours. Therefore, if I receive a fee for this, I profit from what is yours, not mine. Therefore the usurer sells the debtor nothing that is his, but only time, which is God's. Therefore, since he sells a thing belonging to another, he ought not to derive any profit from it. Furthermore, the usurer seeks to profit without any labour even while asleep, which is against the precept of the Lord, who says, 'By the sweat of your face will you earn your food'.[71]

Here we have the Roman legal argument from the formal definition of the loan contract and the moral argument about profit as compensation for labour. Labour has been discussed as a just price criterion: now it reappears in the context of usury where it was to be heard of again. Risk is not mentioned here, either as following ownership in a *mutuum* or as a cost element along with labour, but both relations are brought out in a later chapter where risk is used to

71 'In sudore vultus tui vesceris pane.' Genesis 3:19. *Summa* 7, 6, 11, 1; 50405.

distinguish different kinds of partnerships. If someone gives his money to a merchant on the condition that he gets it all back plus half of any profit, this is manifest usury, for neither does he work nor does risk threaten him (*quia non laborat nec periculum imminet ei*), but if he shares expenses and losses half and half with the merchant, then half of any gain is also rightly his.[72]

In addition to these now familiar arguments, Thomas of Chobham, in the long quotation above, tenders the peculiar proposition that the usurer sins because he 'sells time'. This, too, became a commonplace. Vibrant with existential undertones, it was much favoured by popular preachers who painted in glaring colours the fate awaiting those who sold the very dimensions of which God permits man to briefly partake. But the 'time' argument was also to undergo an analytical transformation which eventually enabled it to engage scholastic usury doctrine in a meaningful dialogue with the modern theory of usury. This lay in the future. It has been established that Chobham was not the first to use this argument.[73] The origin of the literal phrase is still obscure, but a likely textual invitation to it can be found in the *Decretum*.

Yet another argument against usury, this one destined with time to move into frontal position and certainly inspired directly by the text in question, is fleetingly referred to by Chobham in connection with restitution of usurious money. While the theologians agreed that profit from usury must be given back if possible (or else given as alms), Chobham raised the tricky question of what to do with secondary gains from legitimate business financed with usurious money. Suppose, for example, that a hundred dollars is exacted above the principal in a loan and then used to buy a vineyard which earns the usurer another hundred dollars. When restitution is to be made, is it enough to return the original hundred dollars and keep the vineyard and its yield? No, says Chobham, the usurer must return it all 'excepting a just stipend and the just value of his

72 *Summa* 7, 6, 11, 9; 516.

73 Peter the Chanter's commentary on Psalm 71(72):14. See also Peter's *Verbum Abbreviatum* PL 205, 157.

labour',[74] if in fact his own labour and some of the money were spent in cultivating the vineyard. This being so, what if the usurer had not bought the vineyard?

But if the usurer preserved in his money-box the hundred dollars which he had from another by usury, could not he who paid usury demand of him those hundred dollars and all the fruit which he could have received from those hundred dollars if he had them, just as, if someone had robbed someone else of his vineyard and it lay uncultivated, he whose vineyard it was might nevertheless demand of the robber all the fruit which he could have received from the vineyard with orderly cultivation. But this is not the same, for money inactive does not its nature bear any fruit, but a vineyard is naturally fruit bearing.[75]

This is our first encounter with the principle of the sterility or barrenness of money. Further comments must wait until we have identified the text which served for Chobham as a basis for this principle, and perhaps also for the notion that usury amounts to selling God's time. His most likely source is an early *palea* to the *Decretum*, inserted about 1180, and known from its incipit as *Eiciens*.[76] Much older than Gratian, it is taken from the *Opus imperfectum in Matthœum*, an anonymous fifth century homily on Matthew, commenting on the passage which describes how Christ entered the Temple and evicted (*eiciebat*) the merchants and money changers.[77] The medieval canonists and theologians attributed the text to John Chrysostom.[78] After a bitter diatribe against merchants, the homilist directs his attention to the usurer.

> 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,

74 *Summa*, ibid 514–5.
75 Ibid 515.
76 Gratian, *Decretum* I, 88, 11.
77 Matthew 21:12–13.
78 PG 56: 840.

> however, does not take back a good once sold. Yet, someone says: is not he who lends a field in order to receive produce or a house in order to receive rent, similar to him who lends money at usury? Far from it. First, because money was intended for no use except to buy things; secondly, 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.[79]

A remarkable number of the arguments launched against usury by the thirteenth century scholastic theologians are contained, or at least indicated, in this passage. It has been suggested that the 'thing not bought but given by God' is time. Anyhow, it came to be read like that by some of the scholastics, whether or not it was *Eiciens* which originally suggested the 'sale of time' argument against usury to Chobham and other early exponents of it. The contrasting of 'money laid up' to a productive field is very similar to Chobham's 'money inactive' versus a vineyard, and there cannot be much doubt that he got the sterility argument from *Eiciens*, either directly or indirectly. In addition we find, according to pseudo-Chrysostom, that the usurer takes something which is properly the debtor's. In the first instance this confirmed the legal ownership argument which had been brought into the *Decretum* from a different source. Subsequently it was also to be given an economic interpretation and made to support something akin to a labour argument. What the usurer unlawfully usurps, is the debtor's *industry*, said some of the later scholastics.[80] Answering the query

---

79 Gratian, *Decretum* I, 88, 11 and 12.

80 John T Noonan, *The Scholastic Analysis* (1957) 56; John W Baldwin, 'The Medieval Theories of the Just Price: Romanists, Canonists, and Theologians in the Twelfth and Thirteenth Centuries' (1959) 49 *Transactions of the American Philosophical Society* 70–71; F

which compares money lending with leasing a field or a house, the anonymous homilist also puts forward a finalistic or theological argument against usury, namely, that its *purpose* is not to be lent and borrowed, and finally argues that other objects are usually worn out or exhausted by use, for which the owner should be compensated when they are hired out, whereas money remains the same. The three last mentioned arguments are not in Chobham, but were to appear before long in the theological literature. The theological argument had to await until the translation of Aristotle's *Politics* to be fully explored. The sterility of money too is now most often associated with Aristotle, but it had reached the Latin West through indirect channels, such as this fifth century homily.[81]

Elsewhere in Chobham's *Summa* there is a hint of another Aristotelian idea, which was not transmitted by *Eiciens*. It derives from the *Nicomachean Ethics*. The complete text of this wo rk was translated from the Greek shortly before 1250 and was preceded by the translation of some Arabic paraphrases in the early 1240s, but some parts of it were already in circulation when Thomas of Chobham was a student at Paris. In Book III of the *Ethics* Aristotle discusses the nature of voluntary and involuntary actions. Echoes of this discussion ring so loudly in a passage in Chobham's *Summa* that it is difficult to believe that the similarity is merely accidental. In a chapter which summarises a number of different cases of usury, Chobham arrests the claims by some creditors that their debtors pay usury freely and willingly.

> Also, however much someone who has agreed to pay usury says that he gives the creditor something voluntarily, all the same he does not give it voluntarily of an absolute will but of a comparative

---

Broomfield, *Thomae de Chobham Summa Confessorum, Analecta Mediaevalia Namurcensia* 25 (1968), introduction, xxiii.

81 The idea was a familiar one in patristic literature. Gratian included in the *Decretum* an ancient fragment stating that usury makes gold breed gold (I, 47, 8); cf also Gregory of Nyssa (PG 44:672, 46:441); Ambrose of Milan (CSEL 32:2, 540–4).

> will, because he wishes to give something, better than to be altogether without a loan.[82]

This is precisely Aristotle's distinction in the *Ethics*, put to use in an economic context. It was to grow on the scholastics and become a vital principle in all their social ethics, rooting them in firm opposition to the libertarian idea that a contract is valid and no injustice done if both parties are 'free to choose' between given alternatives, however unfavourable. The principle is already better and more fully stated by a near contemporary of Chobham, William of Auxerre, who hinted at the principle of *economic duress* as Thomas of Chobham's ultimate argument against usury.

Forced will in economics often means poverty or circumstantial need, and Chobham anticipates future developments by judging a number of cases of usury based on need and poverty. He who pays usury sins by giving his brother, the usurer, an occasion to sin, says Chobham, but not if he is in need and can find money by no other means.[83] Like Robert of Courson, he is interested in cases where some promise can be licitly extracted as usury from a borrower who is thereby the moral beneficiary himself, such as the promise of a more chaste life by a female borrower. Turning this question around, Chobham asks whether it is not by the same token permitted to pay usury to a poor creditor on the condition that he terminates this practice in the future. Many are in doubt on this issue, says Chobham.[84] Later, however, he records the opinion that a lender may, under certain conditions, take back in the form of usury money previously extorted by the borrower by theft, fraud or unjust exchange, or other previous debts unjustly withheld. But one of the conditions is that 'the danger of poverty is imminent'.[85]

Under normal conditions Chobham is disinclined to accept any claim to compensation on the part of the creditor. In a corollary to the case of the vineyard we saw that a claim amounting to the

82 *Summa* 7, 6, 11, 4; 508.
83 Ibid 509–10.
84 Ibid 509.
85 Ibid 7, 6, 11, 9; 517–18.

lawyers' *lucrum cessans* (profit ceasing) was explicitly denied the borrower with a hundred dollars outstanding in the repentant usurer's money box. However, Chobham is prepared to give his oral blessing to penalties for actual losses suffered or gains forgone by the creditor because of delay in repayment *beyond the termination of the stipulated loan period.* All kinds of eventualities may befall the creditor if the debtor fails to repay the loan in time, and Chobham describes them with considerable dramatic sense. The creditor may be thrown out of his home because he cannot pay the rent; market day may be near and the creditor, a merchant, may lack the capital needed to buy merchandise; shortness of funds may threaten the arrangement of his daughter's wedding. For such losses the debtor should be held responsible.[86] If the merchant, in advance of granting the loan, had foreseen that lending would place him in the situation described above and thus cause him to forgo a profit in the market *in the course of the stipulated loan period* and for this had asked to be indemnified by an increment to the principal as a regular part of the contract, then this would be a clear case of *lucrum cessans*. The other mishaps described, if similarly foreseen in the loan period, would be cases of what the lawyers called *damnum emergens* (loss arising), being a parallel title to interest in the civil law. In spite of his sharp eye for the embarrassments which lack of money can lead to, it seems to be quite clear to Chobham that the moral law cannot condone such indemnities from a debtor not in arrears.

The criterion of risk bearing (which is not in *Eiciens*) and the recourse to a 'good man' to estimate risk, are used by Chobham in the solution of some important cases. One of them is a variant of the agricultural *census* (rent contract). Against a fixed income for the owner, sheep (or cattle) are transferred to alien farmland whose owner keeps the fruits of the animals. If the enterprise is virtually riskless for the owner in the sense that his income would be forthcoming whether the animals lived or died, they were known ironically as 'iron' or 'immortal' sheep. Thomas of Chobham recommends the counsel of a good man who can inquire into the

86 Ibid 7, 6, 11, 7; 513.

conditions of the sheep as well as the pasture and decide whether there is a reasonable risk sharing or not.[87] The opinion of a good man can also be invited in the case of credit sales. If a merchant has planned to sell at a future date but is moved to sell now, the best solution is to wait and see to sell now on credit, charging the future price whatever it is going to be, the question whether or not he then commits usury depends on whether or not he knows with certainty that the future price is going to be higher than the present price. It is advisable to have this price risk assessed by a good and experienced man who can judge about future market conditions (*considerare eventus boni fori vel carioris*).[88] This is how the market once more briefly appears as a just price criterion in Thomas of Chobham. It is worth noting that it appears partly in the form of an estimate as to what the market price is *likely to be*. When buyer and seller are actually in the market together, it is impossible to exhort a price exceeding the market price, and the criterion is redundant. This elementary fact is often overlooked in discussions of the medieval theory of the just price.

87 Ibid 516–17.
88 Ibid 512.