

A Companion to Early Modern Spanish Imperial Political and Social Thought

Edited by

Jörg Alejandro Tellkamp



BRILL

LEIDEN | BOSTON

Contents

Acknowledgments VII
Contributors VIII

Introduction 1
Jörg Alejandro Tellkamp

PART 1

Historical Foundations

- 1 Spanish Theories of Empire: A Catholic and Polycentric Monarchy 17
Manuel Herrero Sánchez
- 2 Before Vitoria: Expansion into Heathen, Empty, or Disputed Lands
in Late-Mediaeval Salamanca Writings and Early 16th-Century
Juridical Treatises 53
José Luis Egío and Christiane Birr
- 3 The “School of Salamanca” and the American Project 78
Miguel Anxo Pena González

PART 2

Towards New Normative Orders

- 4 Colonial Law: Early Modern Normativity in Spanish America 105
Tamar Herzog
- 5 Natural Law and Natural Right in the Spanish Scholasticism 128
Merio Scattola †
- 6 Dominion Rights: Their Development and Meaning in the
History of Human Rights 149
Virpi Mäkinen
- 7 Princes and Prices: Regulating the Grain Market in Scholastic
Economic Thought 172
Wim Decock

PART 3

Ethics and Politics of the Conquest and Colonization

- 8 *Conquista* and the Just War 199
Christian Schäfer
- 9 The Debate of Valladolid (1550–1551): Background, Discussions, and Results of the Debate between Juan Ginés de Sepúlveda and Bartolomé de las Casas 222
Francisco Castilla Urbano
- 10 Caramuel on the Right of Discovery 252
Daniel Schwartz
- 11 Spanish Colonialism as Perpetual Dominion in the Writings of Juan Solórzano Pereira 273
Felipe Castañeda
- 12 The Debate over the Enslavement of Indians and Africans in the Sixteenth- and Seventeenth-Century Spanish Empire 295
Luis Perdices de Blas and José Luis Ramos Gorostiza
- 13 The “New World”: The Shaping of Utopia 318
Beatriz Fernández Herrero
- General Bibliography 341
Index of Historical Names 368
Index of Modern Names 370
Index of Subjects 373

Princes and Prices: Regulating the Grain Market in Scholastic Economic Thought

Wim Decock

1 Introduction

As the Cambridge historian Sir John Elliott famously noted, Castile began its imperial career “with a distinctly unhealthy agrarian system”.¹ With Ferdinand and Isabella favoring the wool trade over grain production, arable farming soon started to suffer from neglect only to be confirmed in its unhappy position as the “Cinderella of the Castilian economy” in the course of the sixteenth century.² The plight of the grain farmers was already aggravated in 1502, when serious harvest failures led the government to import foreign grain and regulate the grain market by introducing the *tasa del trigo*, a maximum price for grain. The fixed price for grain was adopted again by Charles V in 1539 and became permanent as of 1558 in large parts of Spain. The deleterious effects of these price-fixing policies haunted Spanish agriculture for more than a century.³ Peasants saw their profit margins reduced while their debts accumulated, since lack of investment in irrigation technology left them with no choice but to break new soil, which had to be acquired by selling rents (*censo*).⁴ A succession of bad harvests easily resulted in default on those debts, leaving poor peasants dispossessed from their lands by creditors from the towns.⁵ By the beginning of the seventeenth century, agriculture was in a state of decay, worsened by continuous deprivations committed by licentious soldiers.

1 Elliott, J.H., *Imperial Spain 1469–1716*, London, 2002, 120 and 295–298.

2 Elliott, *Imperial Spain*, 119.

3 Del Vigo Gutiérrez, A., *Economía y ética en el siglo XVI. Estudio comparativo entre los Padres de la Reforma y la Teología española*, Madrid, 2006, 183.

4 Elliott, *Imperial Spain*, 189. On the origins of rente contracts (*census*) in late medieval and early modern private agricultural finance, see Munro, J.H., “Rentas and the European Financial Revolution”, in Caprio, G. (ed.), *Handbook of Key Global Financial Markets, Institutions and Infrastructure*, Oxford, 2013, vol. 1, 236–237. The sixteenth-century debate among canon lawyers and theologians on the compatibility of the rentes with the interest prohibition is discussed in Schnapper, B., *Les rentes au XVI^e siècle. Histoire d’un instrument de crédit*, Paris, 1957.

5 Elliott, *Imperial Spain*, 294–295. On the problem of peasant debt in early modern Spain, see also Casey, J., *Early Modern Spain. A Social History*, London/New York, 1999, 58–59.

Against this background, it is not surprising to find that price-fixing and the regulation of the grain market became the subject of a protracted debate among scholastic theologians in early modern Spain. As is widely known, the Spanish scholastics responded to some of the most pressing social, political and economic needs of their time.⁶ Their sharp analysis of trade, commerce and finance has even earned them the title of “fathers of modern economic analysis” in the work of historians of economic thought such as the late Joseph Alois Schumpeter (1883–1950), Murray Newton Rothbard (1926–1995) and Marjorie Grice-Hutchinson (1908–2003).⁷ Scholastics agreed that government intervention in the market, especially through price controls, can be justified on certain grounds.⁸ The right of the prince to introduce legal prices for the sake of the public good was rarely questioned.⁹ However, less unanimity existed as to the relationship between the legal price (*pretium legitimum*) and the ordinary market price (*pretium naturale*), the expediency of fixing the price of grain, and the bindingness in conscience of laws punishing peasants who violated the maximum prices. An additional issue that gave rise to debate among the scholastics was whether clerics’ jurisdictional privileges meant that they could ignore price controls. The latter debate goes beyond the scope of this article, but it mattered, indeed, if only because the clergy played an important role in the collection and distribution of grain and bread, not in the least because of the tithe-system.¹⁰

This chapter will concentrate on two opposing views on the issue of price-fixing in the work of Tomás de Mercado (c. 1520–1575) and Luis de Molina

6 Specht, R., “Die Spanische Spätscholastik im Kontext ihrer Zeit”, in Grunert, F. and Seelmann, K. (eds.), *Die Ordnung der Praxis. Neue Studien zur spanischen Spätscholastik*, Tübingen, 2001, 3–17. Barrientos García, J., *Un siglo de moral económica en Salamanca (1526–1629)*, vol. 1, *Francisco de Vitoria y Domingo de Soto*, Salamanca, 1985.

7 For references to further literature, see Decock, W., “Spanish Scholastics on Money and Credit: Economic, Legal and Political Aspects”, in Ernst, W. and Fox, D. (eds.), *Money in the Western Legal Tradition: Middle Ages to Bretton Woods*, Oxford, 2016, 267–283.

8 Gordley, J., *Philosophical Origins of Modern Contract Doctrine*, Oxford, Clarendon, 1991, 98; Chafuen, A.A., *Faith and Liberty. The Economic Thought of the Late Scholastics*, Lanham, 2003, 140; Langholm, O.I., “Monopoly and Market Irregularities in Medieval Economic Thought: Traditions and Texts to AD 1500”, in *Journal of the History of Economic Thought* 28 (2006), 395. On the scholastic doctrine of just pricing more generally, see Gómez Camacho, F., *Economía y filosofía moral: la formación del pensamiento económico europeo en la Escolástica española*, Madrid, 1998, 141–212 and Monsalve, F., “Scholastic Just Price Versus Current Market Price. Is it Merely a Matter of Labelling?”, in *The European Journal of the History of Economic Thought* 21 (2014), 4–20.

9 De Roover, R., “Scholastic Economics: Survival and Lasting Influence from the Sixteenth Century to Adam Smith”, in *The Quarterly Journal of Economics* 69 (1955), 186.

10 Casey, *Early Modern Spain. A Social History*, 56.

(1535–1600), respectively, two major representatives of Iberian scholastic economic thought in the second half of the sixteenth century, the period in which the debate on maximum prices for grain reached a peak.¹¹ Though usually remembered as an advocate of free markets, Mercado developed a remarkable plea in favor of price controls in the grain market in his influential *Suma de tratos y contratos* (Seville, 1571), the extended version of a treatise on business contracts that came out two years before at Salamanca.¹² Mercado shared an outspoken preference for legally fixed prices with Juan de Medina (1489–1545) and with Domingo de Soto (1494–1560).¹³ Their almost unconditional endorsement of legal prices contrasts with the much more critical attitude towards price regulation that can be read in Luis de Molina's *De iustitia et iure*, first published at Cuenca in 1593.¹⁴ Molina's rejection of the public regulation of the grain market was inspired by Martín de Azpilcueta (also known as Dr Navarrus, 1492–1586) and became popular with other Jesuits in the first half of the seventeenth century.

-
- 11 Lagares Calvo, M.J., "Seis incógnitas y algunas respuestas sobre la vida de Fray Tomás de Mercado", in *Iberian Journal of the History of Economic Thought* 3 (2016), 68–77. Dozens of other sources could be analyzed, of course, but Mercado's and Molina's voices have been particularly influential in the debate. For an overview of other sources in Spanish and Latin that contain more or less extended discussions of price regulation, see Del Vigo Gutiérrez, A., "Las tasas y las Pragmáticas reales en los moralistas españoles del Siglo de Oro", in *El Burgense* 22 (1981), 427–470, and Barrientos García, J., *Repertorio de moral económica (1536–1670). La Escuela de Salamanca y su proyección*, Pamplona, 2011.
- 12 A facsimile of the 1569-edition *Tratos y contratos de mercaderes y tratantes* was published in 2015 by the University of Salamanca, including introductory articles by Francisco Gómez Camacho, Antonio-Miguel Bernal and Margarita Becedas González. The use of the Seville 1571-edition proved nevertheless to be mandatory here, since the first edition did not contain the third book on the *Pragmática del trigo*. Therefore, the text used for this contribution is the Madrid 1977-edition by Nicolás Sánchez-Albornoz, available online at <http://www.cervantesvirtual.com/nd/ark:/59851/bm1c1c1t9> (last consulted on 15 October 2016). Unfortunately, the third book of the *Suma de tratos y contratos* is lacking in the Madrid 1975 edition by Restituto Sierra Bravo.
- 13 Popescu, O., *Studies in the History of Latin American Economic Thought*, New York, 1997, 39–40.
- 14 Decock, W., "Luis de Molina: De iustitia et iure (1593–1609)", in Dauchy, S. et al. (eds.), *The Formation and Transmission of Western Legal Culture. 150 Books that Made the Law in the Age of Printing*, Heidelberg/New York, 2016, 129–131, including references to further literature.

2 Tomás de Mercado: The Case for Market Regulation

2.1 *King Philip II's Pragmática del trigo*

Starting point for Mercado's discussion were the definitive establishment of a maximum price for grain in March 1558 by virtue of Philip II's so-called *Pragmática del trigo* and the subsequent amendments of that regulation, especially in 1567 and 1568.¹⁵ The geographical scope of the regulation was limited. Big parts of the northern provinces along the Cantabrian coastline, Catalonia and Valencia were exempted from the regulation, because it was important to provide incentives to grain traders to sell in those regions.¹⁶ But where the *Pragmática* applied, it was accompanied by severe sanctions—even if historical evidence reveals that, in practice, the maximum legal price was observed in barely half of the grain transactions.¹⁷ The *Pragmática* did not only provide for punishment in the external court, for instance exile, but also threatened offenders with the damnation of the soul and spiritual sanctions in the court of conscience.¹⁸ That was one of the main reasons why theologians such as Mercado felt competent to discuss the interpretation of the *Pragmática* in the first place. The theoretical framework that they used to assess the maximum grain prize established by Philip II was the theory of just pricing, which guaranteed fairness in exchange. Therefore, the next paragraph will briefly discuss some of Mercado's general ideas about just pricing, particularly regarding the just legal price.

2.2 *The Primacy of the Legal Price*

Mercado analyzed the economic value of goods in terms that are not wholly at variance with modern economic theories about market value—notably because he rehearses the traditional scholastic view that economic value corresponds to human need and not to the ontological value of things.¹⁹ There is

15 The *Pragmática del trigo* was included in the Nueva Recopilación, lib. 5, tit. 25 (*De la tassa del pan*).

16 Casey, *Early Modern Spain. A Social History*, 56–57.

17 García Sanz, A., "El contexto económico del pensamiento escolástico: el florimiento del capital mercantil en la España del siglo XVI", in Gómez Camacho, F. and Robledo, R. (eds.), *El pensamiento económico en la Escuela de Salamanca: Una visión multidisciplinar*, Salamanca, 1998, 27.

18 *Nueva Recopilación*, Madrid, 1745, vol. 1, lib. 5, tit. 25, l. 4, nr. 7, 832. See García Sanz, "El contexto económico del pensamiento escolástico", 26.

19 For a more extended analysis of scholastic price theory and its roots in Aristotelian philosophy about need and Saint Augustine's distinction between the economic and the ontological order (*De civitate Dei*, lib. 11, c. 16), see Chafuen, *Faith and Liberty. The Economic*

a fundamental difference, however, between Mercado's approach and liberal economic theory. In Mercado's view, prices are not the outcome of a mechanical weighing of impersonal market forces. Prices are set by men, and in Mercado's view, it pertains foremostly to the office of the prince to give all things that men need their right value.²⁰ Nature created things, but did not attach any objective value to the goods of this world, leaving that task up to the political authorities instead.²¹ This is entirely reasonable, according to Mercado, since political power is a divine gift to mankind to provide for the wellbeing of the commonwealth. The authorities decide what is necessary for good governance according to particular circumstances. Through their regulatory power, political authorities have the task of filling the gaps left by nature, whose vicar they are (*la potestad pública es su vicario*). The establishment of just prices is just one such gap that needs to be filled out by the commonwealth. In Mercado's eyes, a regulation laid down by the secular authorities is a gift from Heaven (*viene del Cielo*) inasmuch as it takes the place of natural law. Once it has been established by the political authorities, then, the observation of the legal price is a dictate of reason, obligatory by nature itself rather than positive laws.²²

In traditional scholastic fashion, Mercado distinguishes between the legal and the natural just price. Yet, he mostly uses the term "accidental price" (*precio accidental*) instead of "natural price". The accidental price was "introduced by time and the people", "by the populace without head".²³ The tone of Mercado's reference to the accidental price could have been more deferential. Mercado clearly prefers the legal price to the accidental price, since it is established by the commonwealth as a whole through the government. On that account, the force and virtue of the legal price are superior to the

Thought of the Late Scholastics. On Mercado's price theory, in particular, see Popescu, *Studies in the History of Latin American Economic Thought*, especially chapter 3.

- 20 Mercado, *Suma de tratos y contratos*, lib. 2, c. 6: "[...] Es su oficio apreciar y dar valor a todas las cosas que sirven a la vida humana, las cuales de suyo no tienen [...]".
- 21 Mercado, *Suma de tratos y contratos*, lib. 2, c. 6: "Pues si la naturaleza no tasa cuánto han de valer, cuántos reales, cuántos ducados, a quién más conforme a razón pertenecerá proveer esto, siendo tan necesario, que a la república, cuyo oficio es suplir con sus ordenaciones lo que la naturaleza falta, porque la potestad pública es su vicario, dada divinalmente a las gentes para que con ella ordenen lo que a su buen gobierno, conforme al tiempo, fuere más cómodo".
- 22 Mercado, *Suma de tratos y contratos*, lib. 2, c. 6: "Demás de esto, certísimo es que todos están obligados a vender cada cosa por lo que vale. Esto es un dictamen natural de la razón, que, sin doctor ninguno ni ley positiva, lo enseña a todas las naciones".
- 23 Mercado, *Suma de tratos y contratos*, lib. 2, c. 6: "Demás de esto, basta el vulgo sin cabeza apreciar cualquier mercadería de tal manera que obliga a guardarlo—que es el precio accidental que el tiempo y el pueblo introduce—y es necesario en conciencia vender como al presente valiere en público [...]".

accidental price.²⁴ Through price controls, the authorities can better guarantee the observation of the natural dictate of commutative justice. It is the best way to make sure that equilibrium is preserved in contractual exchange.²⁵ Especially the price of goods that are necessary for human life, such as grain and meat, are subject to regulation, but that must not prevent the authorities from fixing the prices of other goods, too, even if they are luxuries, although that proves to be difficult.²⁶ In practice, princes delegate the task of setting prices to magistrates and bureaucrats. That does not mean that it is beneath the dignity of the prince to regulate prices. On the contrary, price-fixing is the expression of royal dignity and office.²⁷ Therefore, princes never delegate the task of determining the legal price to private people or merchants, contrary to what certain wicked businessmen in the New World contend.

2.3 *Economic and Cultural Protectionism*

Mercado's praise of the legal price might sound surprising. In reality, it fits neatly with his broader plea for market interventionism, precisely in the chapter in which he deals with the legal price. Fixing prices is only one of three major interventionist policies that Mercado advocates for the sake of the common good, besides trade restrictions and legal monopolies. Mercado grants large regulatory powers to the public authorities because he sees a major conflict of interest between merchants and the state. The vicious desire of merchants is

24 Mercado, *Suma de tratos y contratos*, lib. 2, c. 6: "Cuánto mejor bastará la república, en quien reside toda la potestad y autoridad de todos los vecinos, y cuán más propio suyo será poner precios a las cosas y cuán más obligará a todos, por exentos alias sean, el que ella pusiere. Y así es cierto que el legal es de mayor fuerza y virtud y ata a todos en un punto señalado un cierto término, del cual adelante no se pueda nadie extender".

25 On equality in exchange in scholastic contract law, see Gordley, J., "Equality in Exchange", in *California Law Review* 69 (1981), 1587–1656, and Decock, W., *Theologians and Contract Law. The Moral Transformation of the Ius commune (ca. 1500–1650)*, Leiden/Boston, 2013, 507–604.

26 The distinction between goods necessary for life and luxuries is a constituent part of early modern scholastic economic thought, see Langholm, O.I., *The Legacy of Scholasticism in Economic Thought. Antecedents of Choice and Power*, Cambridge, 1998, 93. But the degree to which theologians and jurists wished to take this distinction as the basis for the treatment of certain questions or not varied; see Van Houdt, T., "The Economics of Art in Early Modern Times: Some Humanist and Scholastic Approaches", in *History of Political Economy* 31 (1998), 314–320.

27 Mercado, *Suma de tratos y contratos*, lib. 2, c. 6: "Así vemos que la misma majestad real se baja muchas veces a poner precio en cosas muy bajas, aunque no es bajar ni abatirse, sino ejercitar su dignidad y oficio [...]".

to buy low and sell high, while the commonwealth wants traders to sell as low as possible for the sake of the public good.²⁸

Mercado is even more suspicious of foreign merchants. Their natural desire will be to promote the interests of their own country, not those of Spain, thus Mercado.²⁹ That is perfectly normal, as Spanish merchants abroad do the same. Moreover, foreign merchants bring foreign customs, rituals and beliefs with them. It is only normal that they wish to persuade Spanish natives to adopt their culture. Since the people are capricious and eager for new things, foreign custom infiltrates their minds very easily, corrupting local culture, damaging societal ties and destroying national wealth. Even if foreign culture is not detrimental to local interests, it still fits its land of origin much better than Spain. Therefore, the government should have the power to expel foreigners, raise national barriers and restrict trade.

As a substitute to foreign traders, Mercado recommends public authorities to appoint a handful of merchants responsible for importing and exporting goods.³⁰ They should be paid a moderate salary by the public treasure, just like state officials. Peru and New Spain, in particular, would benefit a lot from adopting such a protectionist policy, since foreign traders now plunder the silver and gold mines, destroying the local economy. Moreover, merchants enrich themselves without improving the common good. Even if it will never happen, Mercado cynically remarks, the ideal would be to have state officials trading

28 Mercado, *Suma de tratos y contratos*, lib. 2, c. 6: “El deseo del mercader es el universal de todos, aunque, como dice San Agustín, es, con toda su generalidad, vicioso, conviene a saber: querer mercar barato y vender caro. [...] El intento y deseo de la república es, al contrario, que se venda lo más barato que se pudiere, porque le pertenece promover toda la utilidad y provecho a los vecinos”.

29 Mercado, *Suma de tratos y contratos*, lib. 2, c. 6: “Mas, si son de fuera, mayormente de otro reinos, es admitirlos destruir y disipar toda su prosperidad y meter unos públicos despojadores de su riqueza y abundancia y aun unos labradores o sembradores de abusos y vicios, porque todo hombre desea naturalmente honrar y ennoblecer su patria y procurar de pasar a ella todo el bien y tesoro que a esta pueda coger y despojar; y lo mismo hacen los de aquí cuando están allá. Demás de esto, como se aman y agradan tanto las costumbres, usos, ritos y trajes en cada uno se cría, en cualquier parte que va las quiere injerir y plantar y las predica y persuade, y, como el vulgo es tan antojadizo y novelero, al momento las imite y recibe; las cuales muchas veces son de suyo dañosas y corruptas, y, si no lo son, a lo menos no convienen a esta tierra como a la suya”.

30 Mercado, *Suma de tratos y contratos*, lib. 2, c. 6: “Negocio sería, si alguna ciudad lo hiciese—negocioso y trabajoso, yo lo confieso, mas sería juntamente tan provechoso que el gran provecho fuese paga y recompensa del poco trabajo—dar a dos o cuatro la misma república el dinero con que traigan lo necesario, señalándoles por su factoría un tanto, y no dándoles el caudal, sino que ellos lo pusiesen, concederles una moderada ganancia que fuese a todos leve y fácil”.

the precious metals, who are paid a salary that covers the cost of their trade and allows them to make a moderate profit.³¹ That would be advantageous to the public treasury in Spain and to the overseas economies.

2.4 *Limits to Political Discretion*

From the above it is obvious that Mercado is in favor of strong government intervention in the economy. True to the spirit of scholastic political philosophy, he nevertheless remains loyal to the proposition that with power comes responsibility. The prince should keep in mind that not everything that lies in his power is at the same time expedient. Mercado adduces Saint Paul's admonishment to Church leaders that the power they received should be used in the interest of the faithful—a warning that equally applies to secular princes.³² Prices should not be fixed in an arbitrary way, but after careful consideration of several circumstances. By the same token, while Mercado acknowledges that state-appointed merchants and sale monopolies can be useful for the republic, he also warns against abusive practices. When the state seeks to control trading in a particular good, it should proceed carefully. For example, government stores are legitimate, but the prince should appoint his officials to run those stores. He should not try to sell the right to run such a store to a private individual.³³ If the prince nevertheless takes the unwise decision to sell a legal monopoly to a private merchant, he should at least fix the price to prevent the people from being exploited.

The circumstances that should inform the prince's calculation of the just legal price include the average costs and risks that farmers incur in producing the goods, the expenses that merchants ordinarily make in trading goods, the scarcity or abundance of the good, the relationship between supply and demand, the level of cash money. Producers and traders should also be allowed

31 Mercado, *Suma de tratos y contratos*, lib. 2, c. 6: "Mas, esto dado, yo lo digo muy de veras, bien entiendo no se hará, ni aun de burlas, porque ya no hay Catones, Censorinos ni Escipiones, ni Régulos, ni Camilos en los regimientos celosos de su república, que procuren con solicitud y trabajo su acrecentamiento, sino, cuando mucho, el que viniere a la mano y se ofreciere".

32 Mercado, *Suma de tratos y contratos*, lib. 2, c. 6: "Lo que digo de la república se entiende también de su príncipe y cabeza, los cuales deben siempre tener en la memoria la sentencia de San Pablo hablando de la potestad que Cristo le había dado en su Iglesia. Dice: no la recibimos para dañar y disipar, sino para aprovechar a los fieles y edificarlos".

33 Mercado, *Suma de tratos y contratos*, lib. 2, c. 6: "Especialmente se debe advertir que, cuando quisiere por buenos respectos traer de fuera y vender alguna mercadería, no venda ni de en ninguna manera a ningún particular este privilegio—porque son gran perdición para el pueblo estos estancos—sino ponga sus oficiales que lo tengan y ejerziten".

to make a moderate gain.³⁴ Once a legal price has been established on the basis of all these factors, it should be modified regularly in accordance with changing circumstances of scarcity and abundance, supply and demand, and market liquidity.³⁵ It is of great importance, indeed, that legal prices are not kept the same forever. They must be continually adapted according to time and circumstances. That is one of the main reasons why God delegated the power of economic governance to the public authorities in the first place.³⁶ If he had decided to provide the details of price-fixing in the Gospel, there would have been a perpetual need for new divine revelations to update the Gospel. That may have happened for a brief period of time, namely when God guided Moses out of Egypt and regularly appeared to him to provide details on the policy to follow, but that mode of divine governance could not be perpetuated. It would be unbecoming His divine majesty and disturb the stability of the flock's expectations.

2.5 *Costs and the Condition of Merchants*

While Mercado defended the idea that the legal price should reflect the costs and risks incurred by the farmers and traders, it is important to specify that he would only recognize compensation for the average such expenses that merchants and producers ordinarily incur. In this regard, his standpoint cannot be regarded as a full endorsement of the modern, so-called “cost of production theory of value”. Mercado rather endorses the view that economic value is principally determined by utility. Contrary to the so-called cost theory of value, the “utility theory of value” determines the economic value of goods exclusively on the basis of their capacity to satisfy human need, without taking

34 Mercado, *Suma de tratos y contratos*, lib. 2, c. 7: “Débese considerar lo que a ellos les cuesta, las costas que hacen en traerlo, el riesgo a que lo exponen, por mar o por tierra, el tiempo que tienen ocupado en ello su dinero hasta que se saca; ya junto esto, añadiendo un moderado interés, se hallará y pondrá el precio justo”.

35 Mercado, *Suma de tratos y contratos*, lib. 2, c. 7: “Puesto el precio, para aumentarlo o disminuirlo basta, o debe bastar, una de tres circunstancias o todas ellas, conviene a saber: si hay ahora muchas más mercaderías o muchas menos que cuando se apreciaron; si hay muchos o pocos compradores; o más o menos dineros y se suelen vender de contado”.

36 Mercado, *Suma de tratos y contratos*, lib. 2, c. 7: “Una de las razones porque Dios comete el hacer leyes para el gobierno temporal de las gentes a los regimientos, príncipes y reyes y no las puso en su evangelio, es entender cuán necesario es se vayan, a modo de hablar, variando cada día. Y si Él por sí nos gobernara, no por ministros, fueran menester por momentos nuevas revelaciones y mudanzas en sus Escrituras y revocar y continuar aquella gobernación tan breve can que rigió su pueblo en el desierto, revelando por instantes a Moisés lo que se había de hacer según los casos ocurrían—cosa que ni entonces duró, ni ahora ya convenía a la majestad divina, ni tampoco a la firmeza y estabilidad de sus fieles, sino que lo cometa, como comete, a algunos de ellos”.

into account the costs of the producer or trader. Traditionally, scholastic economic thought is considered to be the cradle of the so-called “utility theory of value”, even if the opposite view also circulated among the scholastics, mainly due to the persistent influence of John Duns Scotus’ ideas about economic value (d. 1308).³⁷ Even the most liberal scholastic theologians, however, such as Leonardus Lessius (1554–1623), continued to make reference to the average costs of the merchants as one of the factors that must be taken into account in determining the just price of a good.³⁸ Therefore, the aforementioned economic theories—highly indebted as they are to modern debate between Marxists and capitalists—do not entirely fit the scholastic sources.³⁹

In the scholastic texts, the debate seemed to have centered more on the question whether only the ordinary costs incurred by the average merchant, or also the specific expenses made by an individual merchant should be taken into account for the establishment of the just price. In this regard, Mercado holds the firm opinion that individual costs do not matter for the calculation of the legal price. Extraordinary individual expenses also do not provide a justification for deviating from the legal price. In his exegesis of the *Pragmática*, Mercado admits that the king and the judge must account for the multiple costs that the majority (*la mayor parte*) of producers and merchants incur. They should also allow the farmers and corn traders to make a moderate profit.⁴⁰ But if the individual costs of a particular farmer or trader exceed those average costs, the legal price nevertheless applies, meaning that those particular

37 Noonan, J.T., *The Scholastic Analysis of Usury*, Cambridge, MA, 1957, 86–87. A good illustration of the coexistence of both paradigms in early modern scholastic economic thought is offered by D’Emic, M., “Market Liberalism and Antiliberalism in Spanish Late Scholastic Treatises (1541–1547)”, in *Journal of Markets and Morality* 15 (2012), 161–177.

38 Decock, W. and De Sutter, N. (eds.), *Lessius On Sale, Securities and Insurance*, Grand Rapids, MI, 2016, xliii–xliv. Therefore, it is difficult to accept the statement that Lessius, or, other scholastics, for that matter, “attacked the cost of production theory of value, pointing to market demand as the determinant of price, regardless of a merchant’s expenses”, as in Rothbard, M., *Economic Thought Before Adam Smith. An Austrian Perspective on the History of Economic Thought*, Cheltenham, 1999, vol. 1, 123.

39 Kirshner, J. (ed.), *Business, Banking and Economic Thought in Late Medieval and Early Modern Europe: Selected Studies*, Chicago, 1974, 15–16; Langholm, O.I., *Price and Value in the Aristotelian Tradition. A Study in Scholastic Economic Sources*, Oslo, 1979, 75–79.

40 Mercado, *Suma de ratos y contratos*, lib. 3, c. 2: “Por lo cual, dado que en esta pragmática del trigo el rey pretendió tasar de tal manera el pan que ganasen los labradores o los que en trigo tratan, y también el juez, tasando el pan cocido, pretenda, como debe pretender, conceder algún interés al que amasa, considera prudentemente solos aquellos costos y gastos que por la mayor parte suele tener el trigo amasado o en grano”.

persons will make a loss.⁴¹ Mercado is very formal about this. Since the average cost has already been included in the legal price, in individual transactions merchants cannot charge a surplus because the process of importing a good has been more burdensome and expensive than usual.⁴² This is the condition of merchants: just as today they can lose by making more expenses than usual, tomorrow they can make profits by lowering their costs in comparison with their competitors.⁴³ Merchants must accept their exposure to losses.⁴⁴

2.6 Moral Bindingness of Legal Prices

A major concern for Mercado in the discussion on maximum grain prices was to rebuke the misconception that legal prices are not binding in conscience. In fact, Mercado added a book on the legal grain price to the second edition of his treatise on commerce and contracts with the very aim to combat the pernicious ideas on the issue circulated in the *Declaración de la pragmática del trigo cuanto al foro interior del almo*, probably composed by Mexía, a Spanish jurist of whom little is known.⁴⁵ In this work, minor violations of the legal price are said not to constitute sin. Mercado, however, insisted that human laws regulating purely secular affairs fully bind in conscience if they are just and necessary for good governance, regardless of whether they embody principles of divine or natural law, or if the violation is small or big.⁴⁶ Examples include export bans on weapons, laws against abandoning property, or maximum prices. Nobody

41 Mercado, *Suma de tratos y contratos*, lib. 3, c. 2: “Fuera de lo cual, si a alguno por algún caso particular o accidental, le costo más caro o costeo mucho más, no per esto se invalida la tasa de la ciudad, ni dejará de estar el tal vendedor obligado a guardarla, aunque pierda en ello [...]”.

42 Mercado, *Suma de tratos y contratos*, lib. 3, c. 5: “Cerca de esta materia es de advertir que el justo valor no se ha de reglar por lo que costo al que vende, cuando ya está tasado, sino por lo que al presente se vende”.

43 Mercado, *Suma de tratos y contratos*, lib. 3, c. 7: “Es ilícitísimo pasar las tasas de la ropa o bastimentos o por haber costado más caros al vendedor o por ganar poco guardándolas. [...] Si ahora perdía, en otro tiempo o en otra venta que hiciese ganaría”.

44 Mercado, *Suma de tratos y contratos*, lib. 3, c. 5: “Demás de esto, si con el costo lícitamente se puede tener cuenta y se pudiese siempre vender por lo que a cada uno cuesta, nunca el mercader estaría obligado a perder, pues siempre puede—según éste afirma—sanear su principal. Lo cual es falso, que muchas veces, según mostramos, no sólo es necesario perder, pero está obligado a perder vendiendo [...]”.

45 For the attribution of the work to Mexía, see de Dios, S., *El poder del monarca en la obra de los juristas castellanos (1480–1680)*, Cuenca, 2014, 416–417.

46 Mercado, *Suma de tratos y contratos*, lib. 3, c. 9: “Esta obediencia legal no solamente se ha de tener a la ley humana cuando contiene y encierra en sí algún precepto natural o divino, sino también cuando manda alguna cosa meramente seglar y profana. Si es necesaria al gobierno del pueblo, obliga en conciencia”.

would have offended God by selling grain above the legal grain price before it was fixed.⁴⁷ But now that a legal price has been established for the sake of the public good, it is binding in conscience, even if the legal price did not enact a principle of divine or natural law. If regulating the market is necessary for the tranquillity and the peace of the kingdom (*estado tranquilo y quieto del reino*), then the prince not only has the authority to impose maximum prices, he is even under an obligation to do so, on pain of sin.⁴⁸

At the end of his exposition on the legitimacy of the *Pragmática del trigo*, Mercado developed a short theory about the unity of the law of the land and the law of conscience which is typical of what has been called the “anti-penalist” current in scholastic political thought.⁴⁹ As the name indicates, “anti-penalism” reacts against the proposition that some laws are merely of a civil or penal nature, viz. their violation does not constitute a sin in the court of conscience.⁵⁰ Mercado shared the “anti-penalist” stance with many theologians of his day, especially Francisco de Vitoria, Alfonso de Castro and Juan de Medina. For the sake of the tranquillity of the republic, they argued that crime and sin are inseparable, thus contributing to the internalization of positive law. In explicating the bindingness of the price controls, Mercado insisted that all just laws, whether preceptive or penal, are actually imperative in nature. The difference between purely preceptive laws, on the one hand, and penal laws, on the other, does not depend on the varying degree to which they bind conscience. According to Mercado, the real distinction between penal and purely preceptive laws is that penal laws are mainly addressed to the judge, whereas laws that do not impose sanctions are principally directed to the citizens.⁵¹ Both types of law are binding in conscience, however, as long as they are just. Violating a just

47 Mercado, *Suma de tratos y contratos*, lib. 3, c. 9: “Ejemplo claro de esto tenemos en esta tasa del trigo que explicamos, que, antes que se pusiese, ninguna ofensa de Dios era vender a doce reales; mas no dejará de errar el rey que, pudiendo proveer con la pragmática el bien universal de sus reinos [...]”.

48 Mercado, *Suma de tratos y contratos*, lib. 3, c. 9: “Y aun a las veces son estas tales tan necesarias al estado tranquilo y quieto del reino que no solamente tiene autoridad para mandarlas sino también obligación, y pecaría en no mandarlas, según la necesidad común las pide”.

49 Del Vigo Gutiérrez, *Economía y ética en el siglo XVI*, 581, 584–585, 589.

50 Daniel, W., *The Purely Penal Law Theory in the Spanish Theologians From Vitoria to Suarez*, Rome, 1968.

51 Mercado, *Suma de tratos y contratos*, lib. 3, c. 10: “Todas las leyes son realmente preceptivas e imperatrices, mas unas veces mandan a los jueces que castiguen algunos delitos, otras a todos los sujetos lo que han de hacer y evitar. Así con razón se llaman unas preceptivas, do se manda o prohíbe alguna operación nuestra, otras penales, do solamente se manda a los jueces castigar algunos delitos, expresandoles la pena que han de ejecutar”.

law does not only constitute a crime, but also a sin that will be venial or mortal according to the gravity of the matter.⁵² Therefore, Mercado urged priests to be very strict to merchants who maintained in confession that they had good reasons to ignore the legal price.

3 Luis de Molina: The Case for Market Liberalism

3.1 *A Portuguese Case in the Making*

Molina recounts how, by chance, he was informed about a controversy surrounding the regulation of grain prices in Portugal.⁵³ The controversy must have taken place somewhere between 1568, the year in which Molina joined the University of Evora, and 1578, when Cardinal Henry (Dom Henrique) acceded to the Crown.⁵⁴ An unknown man had submitted a report to Cardinal Henry in which he warned against the evil consequences of establishing a legal price for grain. Upon consultation of the Senate, Cardinal Henry received expert opinions in favor of a maximum grain price. According to Molina, those expert reports fell into his hands by chance, urging him to react against them. However, the arrival of the news may have been less of a surprise than Molina suggests.⁵⁵ In any event, Molina tries to present himself as a distant observer of the case, whose age and long experience (*experientia*) nevertheless tell him to

52 Mercado, *Suma de tratos y contratos*, lib. 3, c. 10: “Todas las leyes [...] siendo justas, obligan en conciencia a su observancia, más o menos, esto es o debajo de mortal o venial, según la gravedad y peso de su materia y conforme a la necesidad que hay de guardarse [...]”.

53 Molina, L. de, *De iustitia et iure*, vol. 2, *De contractibus*, Mainz, 1602, tract. 2, disp. 365, col. 473, litt. c–d. (The edition used for this article is available online at <http://opac.plus.bsb-muenchen.de/title/BV012467312/ft/bsb10497094?page=1>—last consulted 15 October 2016).

54 Molina expressly mentions that Cardinal Henry was not yet crowned as a king at the time of the controversy. In 1578 Cardinal Henry became the last Portuguese king before the annexation of Portugal by Spain in 1580. In order to prevent the annexation from happening, King Henry had famously tried, but without result, to obtain papal dispensation by Pope Gregory XIII to marry so that he could produce an heir and prevent Portugal from falling into the hands of King Philip II, see MacKay, R., *The Baker Who Pretended to Be King of Portugal*, Chicago/London, 2012, 43–44.

55 Cardinal Henry had founded the University of Evora in 1559 and was very close to the Jesuits, to whom he had entrusted the University, see Kaufmann, M. and Aichele, A. (eds.), *A Companion to Luis de Molina*, Leiden/Boston, 2014, xv. Therefore, it is not improbable that Cardinal Henry and Molina, Evora’s “star professor of theology and philosophy” (see MacGregor, K.R., *Luis de Molina. The Life and Theology of the Founder of Middle Knowledge*, Grand Rapids, MI, 2015), got to know each other personally during Molina’s period as a professor in Evora from 1568 through 1583.

intervene and demonstrate that price controls are not a good way of promoting the common good.⁵⁶ He wants to enlighten the government on the detrimental effects of regulating the grain market, considering the negative impact of maximum prizes not merely on the material wellbeing of the people, but especially on the salvation of souls.

3.2 *The Primacy of “the Nature of Things”*

To fully understand Molina’s critique of the proposal to introduce maximum prices for grain, it is necessary to take into account the absence, in his opponents’ proposal, of any framework for the imposition of price controls in times of grain shortage. More precisely, the proposal does not make regulation of the grain market conditional upon establishing a legal price that respects the limits of the natural price. For Molina, that is a grave error, since the natural price is hierarchically superior to the legal price, meaning that the legal price must always reflect the nature of things and remain within the boundaries of the natural price.⁵⁷ The legal price can oblige grain farmers to sell at the pious or lowest natural price, but it should not go below that. Molina’s emphasis on the limits imposed upon positive legislation by natural law is apparent from the mere frequency with which the term “on the basis of the nature of things” (*ex natura rerum*) occurs in disputation 365, namely at least ten times. The ultimate yardstick by which just legal prices of grain are to be evaluated is the value which grain would naturally receive in times of shortage based on the nature of things, that is if you let the market forces play freely. Molina insists that the evaluation of the case should take place from the point of view of the nature of things (*ex naturis ipsis rerum*). As a result, theologians and moral philosophers specializing in natural law rather than positive lawyers should have the last word in the discussion on price-fixing.⁵⁸

56 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 473: “Et, cum longa multorum annorum experientia, ego quoque minime eas taxas expedire iudicarem, ductus potius gravissimis animarum periculis, quae deprehendebam, quam commodis aut incommodis temporalibus, eis rationibus respondere curavi, si forte lucem aliquam regimini bonoque publico afferre possem, opemque ferre, ut taxae illae deinceps non fierent [...]”.

57 For a full account of Molina’s doctrine of just pricing, see Luis de Molina, *La teoría del justo precio*, edited, translated and introduced by F. Gómez Camacho, Valladolid, 2011 (reproduction of the Madrid 1981 edition), 9–100.

58 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 476, lit. e: “Illud vero admonuerim, rem hanc iudicandam non esse ex iuris humani dispositione [...] sed ex naturis ipsis rerum esse iudicandam. Quo fit, ut examen ac decisio rei huius ad theologos potius, philosophosque morales spectet, quam ad iurisperitos”.

3.3 *The Public Good in Practice: Rent-Seeking*

The ultimate justification for setting the price of grain, even below the natural just price, is the notion that the common good of the state (*bonum commune reipublicae*) prevails over particular interests. The losses incurred by the farmers are offset by the gains for society as a whole, since price controls allow for the protection of poor consumers. Molina, however, is not convinced by this argument. He does not deny that the public interest is superior to that of individuals. But he doubts whether, in practice, the public good is served by setting the price of grain in the first place. Experience and empirical observation have rendered the Jesuit theologian from Evora suspicious about what really happens when the prince sets prices. The farmers, who are often poor themselves and who have produced the grain through their painstaking labour, are the ones who get poorer, while the price controls are of no avail to other poor citizens. Instead, the real benefits of low grain prices go to the Portuguese King, who can buy large quantities of grain, for instance for the supply of the naval forces, at much cheaper prices.⁵⁹ The king also benefits from the fixed grain price in that it allows him to win the favor of the wealthy and powerful by giving them the means to buy cheaply from poor farmers only for them to resell the grain at a profit. Members of the government, magistrates and judges, in particular—viz. people who are not poor at all, as Molina emphasizes—force poor farmers to sell them huge quantities of grain at the legal price only to distribute that grain to their rich friends and family or to set up businesses to resell the grain elsewhere at a much higher price.⁶⁰ In other words, Molina describes the negative effects of price controls in terms of what modern economists would conceive of as cronyism and rent-seeking behavior. Even followers of Mercado's viewpoint were not blind to that argument. For example, Miguel de Palacios, a student of Domingo de Soto, defended legal grain prices without failing to denounce the abuse of power by regulators keen to favor their own interest under the cover of promoting the common good.⁶¹ Molina, however, pushed this insight to its radical conclusion.

59 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 477, lit. e: "Praesertim cum rex in hoc Lusitaniae Regno usurpare sibi illo pretio soleat triticum ad classes praeparandas, et ad pleraque alia, et concedere soleat magnatibus et potentibus facultates ut, dominis tritici etiam invitis, magnatibus pretio taxato vendatur".

60 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 478, lit. a: "Et praesertim cum iudices, caeterisque ministri publici, qui non solent esse adeo pauperes non solum sibi sed et consanguineis atque amicis, quin et aliis, qui illud ad lucrum alio transportent, inita cum illis societate, accipere soleant triticum pretio taxato, invitis illius dominis, ut interim abusus alios ac vexationes quae tritici dominis fiunt, omittam".

61 Miguel de Palacios, *Praxis theologica de contractibus et restitutionibus*, Salamanca, 1585, lib. 2, 56: "Et profitentes se velle consulere publico bono, illud evertunt." For scant

3.4 *Limits to Public Wealth Redistribution*

Molina does not only fear the negative consequences of regulating prices in practice. On a more fundamental level, he doubts whether the protection of the common good is truly at stake when the prince intervenes in the grain market. According to Molina, the common good of the republic is not threatened by the increase in grain prices following bad harvests or a temporary shortage of supply. In their essence (*in esse*), the state and the public good remain unscathed by rising grain prices. What is affected by the rise in prices is the relative wealth distribution within the state: some people lose, other people gain from the fluctuations in the grain price.⁶² The parts that make up the republic are being reshuffled, but, as a whole, society remains as prosperous as it was before. It is irrelevant to the public good, considered in its entirety, whether this or that part becomes richer or poorer. That is just a matter of good or bad luck, depending on the wheel of fortune (*ad fortunae aleam spectat*).⁶³ While every part of the republic has the right to move up the social ladder, no step on that ladder is acquired definitively by one specific part. Every part has the right to strive for and to acquire a better life, but no part can lay exclusive claim on a specific social rank. People can both win and lose. Making profits and climbing the social ladder is justified, precisely because they are not possible without risk. In many regards, the republic resembles the traditional conception of the nature of the partnership contract (*societas*): the partners can either win or lose; it is their exposure to risk and good luck (*alea/fortuna*), precisely, that justifies their profits.⁶⁴

biographical notes on Palacios, see Brett, A., "The Good Man and the Good Citizen. Miguel de Palacios and an Aristotelian Question in the Spanish Second Scholastic", in Grunert, F. and Seelmann, K. (eds.), *Die Ordnung der Praxis. Neue Studien zur spanischen Spätscholastik*, Tübingen, 2001, 246.

- 62 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 477, lit. b: "Caeterum, quando sine re aliqua potest respublica, in esse reipublicae, salva consistere, solumque defectu rei illius sit variatio in partibus reipublicae penes hoc, quod quaedam fiunt ditiores et potentiores, aliae vero in divitiis et potentia decrescunt, cum tamen partes omnes, in esse membrorum reipublicae, salvae maneant, tunc res illa necessaria non dicitur ad commune reipublicae bonum, quoniam bonum reipublicae integrum manet quoad omnes suas partes, tametsi partes variationem aliquam patiantur quoad divitias et potentiam".
- 63 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 477, lit. c: "Reipublicae autem bono parum refert, quod partes, quae antea ditiores erant, pauperiores reddantur, modo aliae in eadem republica crescunt in divitiis et potentia. Imo vero hoc ad fortunae aleam spectat, omnesque reipublicae partes ius habent conscendendi ad gradum superiorem, si cuiusque sors id tulerit, neque cuiquam certus quidam gradus debetur, quin descendere et conscendere possit".
- 64 It should be noted, though, that in the early modern scholastic tradition, the idea that the aleatoric element is of the essence of the partnership contract gradually disappears,

According to Molina's analysis, urging farmers to sell grain below the natural just price is tantamount to imposing a public obligation to give alms. As a rule, however, public authorities cannot force their citizens to be charitable. Neither can the prince take the money from the rich to redistribute it among the poor. "As the prince cannot steal the fortunes rightfully acquired by the richest merchants to redistribute them to the poor", Molina explains,⁶⁵ "so he cannot compel vendors to sell goods at a lower price than they are valued by virtue of nature, all circumstances considered." If he imposes charity, the prince exceeds his power. In the case of the grain market, where more often than not the farmers are actually the poor people, price controls would run into an additional absurdity. It would not make any sense to constrain the poor to give alms to the rich, but this occurs when the legal price is decreased below the natural just price. Historical evidence suggests, indeed, that the wealth redistribution effected by the legal grain price turned out to be in favor of the rich. Under pressure to pay rents and debts to rich creditors, peasants were obliged to sell their grain immediately to the rich at the low legal price after harvesting in the summer season, only to be obliged to purchase the grain back for sowing in autumn on the black market and at an inflated price.⁶⁶

Admittedly, in exceptional circumstances the prince is allowed to impose a duty of almsgiving on his citizens, according to Molina, for instance in a situation of extreme necessity, where people risk dying unless they receive aid. Even in that extraordinary case the prince cannot, however, put the burden of charity on the shoulders of just one particular group of people, for instance the grain sellers. In a situation of extreme necessity, every citizen will have to contribute according to his means.⁶⁷ If extreme necessity touches only a part of the population, the burden of alleviating those people should be shared collectively. In all other situations, no group of citizens, not even among the rich, can be compelled by the government to practice charity. Having said that, it

since moral theologians are obliged to justify the so-called "triple contract", where the investor is safe from making losses, see Decock, W., "In Defense of Commercial Capitalism: Lessius, Partnerships and the *Contractus Trinus*", in Van Hofstraeten, B. and Decock, W. (eds.), *Companies and Company Law in Late Medieval and Early Modern Europe*, Leuven/Paris/Bristol, 2016, 74.

65 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 477, lit. d: "Quemadmodum auferre non potest a ditissimis mercatoribus, qui iusto titulo suas compararunt divitias, ut illas pauperibus tribuat, sic etiam neque cogere possit, ut res minori pretio vendantur, quam ex natura rei, spectatis circumstantiis concurrentibus, valeant".

66 Casey, *Early Modern Spain. A Social History*, 56.

67 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 478, lit. b: "Neque tunc soli domini tritici essent cogendi subvenire pauperibus, sed cogendi simul essent alii divites contribuere eleemosynam, ut republica tota aequae, proportione quadam, gravaretur".

is important to remember that theologians such as Molina did emphasize the moral duty to give alms and practice charity on an individual basis.⁶⁸ The rich are under a moral obligation to give to the poor out of their superfluous goods, in particular, even if, in the sixth of his satirical *Lettres Provinciales*, Blaise Pascal would later quote the Jesuit theologian Gabriel Vasquez (1549–1604) saying that it is difficult to find superfluous goods among seculars, even in the case of kings.⁶⁹

3.5 *Changing Circumstances and Regional Arbitrage*

Apart from the more fundamental objections against price-fixing in the grain market, Molina also mentions practical obstacles to the establishment of effective price controls. Those empirical obstacles derive from perpetually changing circumstances and the diversity of places within the Portuguese realm. Even if the government wants to make the effort of fixing a price within the limits of the natural just price in order to comply with principles of natural law and justice, it is an almost impossible task to constantly monitor the market and adapt the legal prices to changed circumstances of demand and supply in the market. For legal prices have to be adapted according to new circumstances, indeed, if they want to be in accordance with natural justice. Even if, as a rule, legislators should not change laws constantly, since this is very harmful to the community, legal prices are an exception to this rule.⁷⁰ But experience teaches that senators and other governors barely have the time to follow the evolution of the market, busy as they are doing other things.⁷¹ As a consequence, even if they have the intention of respecting the natural price, they will end up treating market participants unfairly and punishing sellers unjustly because their response to developments in the market comes either too late or too soon. In this manner, the prince's soul will permanently be imperilled, and he will be liable to make massive amounts of restitution for the violation of commutative justice.

68 Deuringer, K., *Probleme der Caritas in der Schule von Salamanca*, Freiburg, 1959.

69 de Montalte, L. (B. Pascal), *Les provinciales*, Cologne 1657, Paris, 6th letter (10 April 1656), 2.

70 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 479, lit. b: "Licet enim in aliis legibus frequens mutatio noxia sit, in taxa tamen frumenti, quoniam pretium aequale esse debet merci, ut lex iniusta non sit, toties sub reatu culpae lethalis, onerisque restituendi, mutari debet lex, quoties mutatio circumstantiarum, quae frequentissimae esse solet, id postulaverit".

71 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 480, lit. e: "Ut probatum est, necesse est variari legem mutatis circumstantiis in decursu anni. Id autem difficile fit, senatoribus circa alia occupatis, neque id attendentibus, multisque prius iniustitia legis opprimuntur, et quod deterius est, iniuste postea puniuntur, quam id fiat, ut experientia ipsa testatur".

Apart from the ever-changing market circumstances, a policy of fixing the grain price will be difficult to implement because of major regional differences within the Portuguese kingdom, especially considering the privileged status of Lisbon. As a matter of fact, to give local and international traders incentives to import grain in Lisbon, royal dispositions had not only resisted maximum prices for grain in Lisbon, but also waived the levy of any customs duties on grain imports in that city.⁷² Protecting consumers in Evora or on the countryside against high grain prices will not have the desired effect, then, since it is impossible to generalize maximum prices across the whole of Portugal. Therefore, even if you impose a maximum price in Evora, merchants will exploit the regional differences and resort to price arbitrage strategies. They will ignore the regulations and offer grain sellers in Evora and poor farmers in the countryside much higher prices than the legal prices that apply there. Merchants will then ship the grain to Lisbon to sell at still higher prices. Farmers nor merchants will be able to resist the temptation to make profits by violating the maximum prices, falling prey to the lust of making more money.⁷³ By the same token, the price regulations do not apply to foreign merchants. Consequently, foreign merchants will also offer much higher prices to the local farmers than is allowed, only to transport the grain to Lisbon or other European grain markets and sell it even dearer.⁷⁴

3.6 *Obligation to Obey but No Duty to Make Restitution*

On the basis of the preceding argumentation, Molina rejects the bill to regulate the grain market. In his view, regulating the grain market in Portugal would not only be inexpedient. The legal price would also be inequitable. Should the Portuguese administration nevertheless decide to impose a legal price below the natural grain price, he warns that grain sellers will not be liable to make restitution of profits made in excess of that legal price, since they do not violate the natural law principle of equilibrium in exchange. Commutative justice is observed as long as grain is sold within the limits of the natural price. Farmers who ignore the legal price are nevertheless violating their duty to obey the

72 Freire Costa, L., Lains, P. and Münch Miranda, S., *An Economic History of Portugal, 1143–2010*, Cambridge, 2016, 87–88.

73 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 480, lit. a–b.

74 Molina, *De iustitia et iure*, tract. 2, dis. 365, cols. 480–481, lit. e–a: “Quoniam alienigenis taxa non imponitur, taxa vero naturalibus solis imposita, in causa est, ut exteri multo magis in pretio ascendant, spolientque Lusitaniam pecunia. [...]. Cum Olyssiponensibus et exteris non sit pretium lege taxatum, id in causa est, quod caeteri non se contineant, sed vendant ultra pretium lege taxatum, praesertim mercatoribus Olyssiponensibus offerentibus ultra pretium lege taxatum”.

prince (*peccant contra obedientiam principis*), according to Molina.⁷⁵ In other words, he admits that his analysis results in a tension between the divergent duties a Christian citizen will experience as a matter of natural law and positive law, respectively. This is the tension that the Dominican theologians tried to avoid at all costs, even at the price of subjecting the forum of conscience to the dictates of the state.

Molina adopts a strategy opposite to that of Vitoria, Soto and Mercado. He urges the prince to follow the advice of the theologians, threatening the public authorities that their policies will otherwise not be backed up by theological authority. Moreover, he is not afraid to suggest that the theologians are much better informed about the reality on the ground than administrators, urging the senators to listen to the confessors and theology professors who are consulted on a daily basis about the moral duty to respect price regulations.⁷⁶ They will soon find out that their attempts to tinker with prices only result in the creation of black markets and risks for the spiritual salvation of the population, since legal prices tempt numerous people into fraud, corruption and favoritism. Since the political order must not only improve the material wellbeing of the people, but also be conducive to attaining the supernatural ends of life, the prince should take the spiritual good and the salvation of souls seriously and refrain from interfering with the grain market.⁷⁷

75 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 478, lit. c: "Esto in principe esset potestas ad condendam eam legem in publicum bonum, lexque illa vim obligandi haberet, nihilominus transgressores illius, quamvis peccarent, ad nullam tamen restitutionem tenerentur. Ratio autem est, quoniam ea lex non constitueret iustum commutativum, quod in aequalitate quoad valorem inter rem et pretium consistit, sed solum licite praeciperet frumentum eo pretio vendi in commune bonum, quare transgredientes eam legem peccarent quidem contra obedientiam principis et forte contra caritatem patriae ac proximorum, posita praesertim ea lege, non tamen contra iustitiam, et idcirco ad restitutionem non tenerentur".

76 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 480, lit. c: "Non, inquam, hoc dicant senatores, sed potius credant confessariis, theologiaeque professoribus, qui quotidie hac de re consultantur".

77 Molina, *De iustitia et iure*, tract. 2, dis. 365, col. 479, lit. d: "Ad legislatorem (praesertim Christianum) spectare, attendere non solum ad commoda aut incommoda temporalia, quae ex lege sua sequuntur, sed etiam ad spiritualia subditorum. Cum enim finis ipsius politicus ordinetur ulterius ad supernaturalem finem vitae aeternae, sane attendere debet ad spirituale bonum, salutemque animarum [...]".

4 Conclusion

The primary texts by Mercado and Molina analyzed in this chapter provide proof of the contradictory attitude to price-fixing in early modern scholastic economic thought. They are witnesses to the co-existence of both liberal and anti-liberal views of the market in the tradition of thinking about morality, law and economics in the School of Salamanca.⁷⁸ The texts examined in this contribution are also a vivid example of the practical engagement of the early modern scholastics with the real social, economic and political challenges of their time.

Since Mercado is often remembered as a father of modern liberal market theory, his staunch defense of price controls, especially in the grain market, might come as a surprise. It neatly fits, however, into his broader advocacy of state intervention in the economy and the protectionist tendencies expressed at the beginning of his chapter on the legal price. At the same time, the so-called “traditionalism” of Tomás de Mercado should not make us overlook the acuteness of his analysis of the market.⁷⁹ Even if it would not be appropriate to describe his views on economic value in terms of either the utility or the cost theory of value, he subscribed to the liberal view, shared by most modern economists, that individual costs do not determine the just price of a good. If a merchant runs into more expenses than his competitors, than he is either to blame himself or his back luck. In any case, he cannot charge a higher price than the legal price by virtue of those personal circumstances. That is the condition of merchants. Having said that, average costs, risks and expenses must be reflected in the legal just price, according to Mercado. The thrust, however, of Mercado’s analysis was to demonstrate that statutory grain prices established by the Spanish kings were not just civil measures to protect the public good. The *Pragmáticas del trigo* are not merely enforceable in the external courts. They are also binding in conscience. That is the fundamental difference in view between Mercado and Molina from a theological political perspective.

Molina anticipated modern liberal economic theories on rent-seeking, fraud and corruption ensuing from illiberal market policies.⁸⁰ He is undoubtedly one of the fathers of the neo-liberal critique about the bad consequences of government interference in the market, regardless of the noble motives of

78 Compare the conclusions by D’Emic, M.T., *Justice in the Marketplace in Early Modern Spain. Saravia, Villalón and the Religious Origins of Economic Analysis*, Lanham, 2014.

79 Casey, *Early Modern Spain. A Social History*, 71.

80 Baeck, L., “Monnaie, prix et développement en Espagne, 1550–1650”, in Blanc, J. and Desmedt, L. (eds.), *Les Pensées monétaires dans l’histoire*, Paris, 2014, 715.

the regulators. For example, in an effort to protect consumers against rising grain prices, especially in times of dearth, princes actually created a new class of poor people, namely the ordinary farmers.⁸¹ Molina was unhappy with the negative economic effects of maximum prices. He expressed even more concern about the spiritual perils to which price-fixing exposed powerful people, tempted as they were to favor their own interests and those of their friends and relatives with the promotion of the public good as an excuse. Justice in the marketplace was disturbed rather than fostered by granting the royal administration the right to regulate grain prices by virtue of the prince's office to protect the poor and weak. Molina's defense of the natural just price over the legal just price betrays a barely hidden distrust of regulators and an attempt to limit their arbitrary powers that it is consistent with Molina's overall liberal political and economic philosophy.⁸² He does not want economic governance that disrespects the "nature of things" to be binding in conscience. Much more than in the work of Mercado, natural law permeates arguments about justice in the marketplace in Molina's *De iustitia et iure*, functioning as a shield against political absolutism.

The controversy on the morality and legality of price regulation in the grain market did not come to a halt after Mercado's and Molina's thoughtful yet diverging evaluations of the matter. This was due at least as much to persisting ideological differences as to the continuing alteration of price regulations by princes and legislators. For example, Melchor de Soria (1558–1643) severely criticized Molina's liberal line of thought in his *Tratado de la justificación y conveniencia de la tasa del pan*, a treatise published in 1627, supplemented six years later by an *Adición*, containing a defense of the statutory grain price in Spain. At the same time, Soria rejected a new *Pragmática* for the regulation of the grain market enacted by King Philip III in 1619 on the grounds that it discriminated between rich land owners and poor farmers.⁸³ Pedro de Navarra (1555–1620) became another famous follower of Mercado's viewpoints about the need for government intervention in the grain market.⁸⁴ On the opposite end of the spectrum, many Jesuit theologians, such as Pedro de Oñate

81 Historians have confirmed this unhappy truth in the case of sixteenth-century Spanish agriculture, see Del Vigo Gutiérrez, *Economía y ética en el siglo XVI*, 183.

82 Schüssler, R., "The Economic Thought of Luis de Molina", in Kaufmann and Aichele (eds.), *A Companion to Luis de Molina*, 257–288.

83 Gómez Camacho, *Economía y filosofía moral*, 198. See also Gómez-Calero Valdés, P., "Melchor de Soria y Vera", in Sánchez Lissén, R. (ed.), *Economía y economistas andaluces (Siglos XVI al XX)*, Madrid, 2013, 113–126, including references to further literature.

84 Paradinas Fuentes, J.L., *Humanismo y economía. El pensamiento socioeconómico de Pedro de Valencia*, Huelva, 2014, 164–199.

(1568–1646), followed the liberal, anti-interventionist, natural law-based analysis developed by Luis de Molina. Others followed a middle course, such as Juan de Lugo (1583–1660). Lugo admitted that the question of price-fixing was a question for politicians rather than theologians to debate (*magis ad politicos spectat quam ad theologos*), if only there had not been such a controversy about the bindingness or otherwise of statutory grain prices in conscience.⁸⁵ He did not exclude the possibility that a legal price was just even if it went beyond the boundaries of the natural just price.⁸⁶ But that proposition did not refrain him from drawing up, in Molinistic fashion, a detailed list of sinful practices that ensued from the futile attempts by the prince to regulate the grain market.

Bibliography

Sources

- de Montalte, L. (B. Pascal), *Les provinciales*, Cologne, 1657.
 Lugo, J. de, *Disputationes de iustitia et iure*, Lyon, 1642.
 Mercado, T. de, *Suma de tratos y contratos*, N. Sánchez-Albornoz (ed.), Madrid, 1977.
 Molina, L. de, *De iustitia et iure*, vol. 2: *De contractibus*, Mainz, 1602.
 Palacios, M. de, *Praxis theologica de contractibus et restitutionibus*, Salamanca, 1585.

Secondary Literature

- Baeck, L., “Monnaie, prix et développement en Espagne, 1550–1650”, in J. Blanc and L. Desmedt (eds.), *Les Pensées monétaires dans l'histoire*, Paris, 2014, 703–742.
 Barrientos García, J., *Un siglo de moral económica en Salamanca (1526–1629)*, 1. *Francisco de Vitoria y Domingo de Soto*, Salamanca, 1985.
 Barrientos García, J., *Repertorio de moral económica (1536–1670)*. *La Escuela de Salamanca y su proyección*, Pamplona, 2011.
 Brett, A., “The Good Man and the Good Citizen. Miguel de Palacios and an Aristotelian Question in the Spanish Second Scholastic”, in Grunert, F. and Seelmann, K. (eds.), *Die Ordnung der Praxis. Neue Studien zur spanischen Spätscholastik*, Tübingen, 2001, 245–268.
 Casey, J., *Early Modern Spain. A Social History*, London/New York, 1999.

85 Juan de Lugo, *Disputationes de iustitia et iure*, Lyon 1642, tom. 2, disp. 26, sect. 4, nr. 50, 314 and sect. 5, nr. 52, 315.

86 Monsalve, F., “Economics and Ethics. Juan de Lugo’s Theory of the Just Price, or the Responsibility of Living in Society”, in *History of Political Economy* 42 (2010), 495–519, here 514.

- Chafuen, A.A., *Faith and Liberty. The Economic Thought of the Late Scholastics*, Lanham, 2003.
- Daniel, W., *The Purely Penal Law Theory in the Spanish Theologians From Vitoria to Suarez*, Rome, 1968.
- Decock, W., *Theologians and Contract Law. The Moral Transformation of the Ius commune (ca. 1500–1650)*, Leiden/Boston, 2013.
- Decock, W., “In Defense of Commercial Capitalism: Lessius, Partnerships and the *Contractus Trinus*”, in Van Hofstraeten, B. and Decock, W. (eds.), *Companies and Company Law in Late Medieval and Early Modern Europe*, Leuven/Paris/Bristol, 2016, 55–90.
- Decock, W. and De Sutter, N. (eds.), *Lessius On Sale, Securities and Insurance*, Grand Rapids, MI, 2016.
- Decock, W., “Luis de Molina: De iustitia et iure (1593–1609)”, in Dauchy, S. et al. (eds.), *The Formation and Transmission of Western Legal Culture. 150 Books that Made the Law in the Age of Printing*, Heidelberg/New York, 2016, 129–131.
- Decock, W., “Spanish Scholastics on Money and Credit: Economic, Legal and Political Aspects”, in Ernst, W. and Fox, D. (eds.), *Money in the Western Legal Tradition: Middle Ages to Bretton Woods*, Oxford, 2016, 267–283.
- Del Vigo Gutiérrez, A., “Las tasas y las Pragmáticas reales en los moralistas españoles del Siglo de Oro”, in *El Burgense* 22 (1981), 427–470.
- Del Vigo Gutiérrez, A., *Economía y ética en el siglo XVI. Estudio comparativo entre los Padres de la Reforma y la Teología española*, Madrid, 2006.
- D’Emic, M.T., “Market Liberalism and Antiliberalism in Spanish Late Scholastic Treatises (1541–1547)”, in *Journal of Markets and Morality* 15 (2012), 161–177.
- D’Emic, M.T., *Justice in the Marketplace in Early Modern Spain. Saravia, Villalón and the Religious Origins of Economic Analysis*, Lanham, 2014.
- De Roover, R., “Scholastic Economics: Survival and Lasting Influence from the Sixteenth Century to Adam Smith”, in *The Quarterly Journal of Economics* 69 (1955), 161–190.
- Deuringer, K., *Probleme der Caritas in der Schule von Salamanca*, Freiburg, 1959.
- Dios, S., *El poder del monarca en la obra de los juristas castellanos (1480–1680)*, Cuenca, 2014.
- Elliott, J.H., *Imperial Spain 1469–1716*, London, 2002.
- Freire Costa, L., Lains, and Münch Miranda, S., *An Economic History of Portugal, 1143–2010*, Cambridge, 2016.
- García Sanz, A., “El contexto económico del pensamiento escolástico: el floridamiento del capital mercantil en la España del siglo XVI”, in Gómez Camacho, F. and Robledo, R. (eds.), *El pensamiento económico en la Escuela de Salamanca: Una visión multidisciplinar*, Salamanca, 1998, 17–42.
- Gómez-Calero Valdés, P., “Melchor de Soria y Vera”, in Sánchez Lissén, R. (ed.), *Economía y economistas andaluces (Siglos XVI al XX)*, Madrid, 2013, 113–126.

- Gómez Camacho, F., *Economía y filosofía moral: la formación del pensamiento económico europeo en la Escolástica española*, Madrid, 1998.
- Gordley, J., "Equality in Exchange", in *California Law Review* 69 (1981), 1587–1656.
- Gordley, J., *Philosophical Origins of Modern Contract Doctrine*, Oxford, Clarendon, 1991.
- Kirshner, J. (ed.), *Business, Banking and Economic Thought in Late Medieval and Early Modern Europe: Selected Studies*, Chicago, 1974.
- Lagares Calvo, M.J., "Seis incógnitas y algunas respuestas sobre la vida de Fray Tomás de Mercado", in *Iberian Journal of the History of Economic Thought* 3 (2016), 68–77.
- Langholm, O.I., *Price and Value in the Aristotelian Tradition. A Study in Scholastic Economic Sources*, Oslo, 1979.
- Langholm, O.I., *The Legacy of Scholasticism in Economic Thought. Antecedents of Choice and Power*, Cambridge, 1998.
- Langholm, O.I., "Monopoly and Market Irregularities in Medieval Economic Thought: Traditions and Texts to AD 1500", in *Journal of the History of Economic Thought* 28 (2006), 395–411.
- MacGregor, K.R., *Luis de Molina. The Life and Theology of the Founder of Middle Knowledge*, Grand Rapids, MI, 2015.
- MacKay, R., *The Baker Who Pretended to Be King of Portugal*, Chicago/London, 2012.
- Monsalve, F., "Scholastic Just Price Versus Current Market Price. Is it Merely a Matter of Labelling?", in *The European Journal of the History of Economic Thought* 21 (2014), 4–20.
- Munro, J.H., "Rentas and the European Financial Revolution", in Caprio, G. (ed.), *Handbook of Key Global Financial Markets, Institutions and Infrastructure*, Oxford, 2013, vol. 1, 235–249.
- Noonan, J.T., *The Scholastic Analysis of Usury*, Cambridge, MA, 1957.
- Paradinas Fuentes, J.L., *Humanismo y economía. El pensamiento socioeconómico de Pedro de Valencia*, Huelva, 2014.
- Popescu, O., *Studies in the History of Latin American Economic Thought*, New York, 1997.
- Rothbard, M., *Economic Thought Before Adam Smith. An Austrian Perspective on the History of Economic Thought*, Cheltenham, 1999, vol. 1.
- Schnapper, B., *Les rentes au XVI^e siècle. Histoire d'un instrument de crédit*, Paris, 1957.
- Schüssler, R., "The Economic Thought of Luis de Molina", in Kaufmann, M. and Aichele, A. (eds.), *A Companion to Luis de Molina*, Leiden/Boston, 2014, 257–288.
- Specht, R., "Die Spanische Spätscholastik im Kontext ihrer Zeit", in Grunert, F. and Seelmann, K. (eds.), *Die Ordnung der Praxis. Neue Studien zur spanischen Spätscholastik*, Tübingen, 2001, 3–17.
- Van Houdt, T., "The Economics of Art in Early Modern Times: Some Humanist and Scholastic Approaches", in *History of Political Economy* 31 (1998), 303–331.