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Language

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Martin Schlag

(University of St. Thomas, Minnesota)

Socio-Economic-Political Concepts in Late Iberian Scholasticism

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Martin Schlag

(University of St. Thomas, Minnesota)

Abstract

The School of Salamanca, and Iberian late Scholasticism in general, had the merit of transposing the wisdom of medieval scholasticism into the coordinates of early modernity. Due to the economic growth after the discovery of America, economic terms and moral problems become a central focus for moral theologians. In this article, I consider important key economic concepts that deliver a surprising wealth of insights into the modernization brought about by the leading scholars of the time. Social mobility, the principle of majority decision, the inviolability of property, human rights of the person, limited political power of the pope, and other key concepts that were decisive for the development of democracy and modernity are to be found in the works of the School of Salamanca in connection with economic issues.

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The project of creating a lexicon of the main socio-economic-political concepts in late Iberian Scholasticism is fascinating, and I am happy to contribute some possible keywords to the list of lemmata that has already been established.¹

Allow me to start with some preliminary observations. It was relatively easy for me to locate relevant concepts in authors who follow the structure of the *Summa Theologiae*. Others like Luis de Molina and Tomás de Mercado structure their works differently, and the concepts are dispersed throughout their publications. This makes it more difficult to locate the keywords one is seeking. It is also important to know that some of the concepts are only to be found in Spanish, or the Spanish words specify the Latin concept, and I have referred to it in my text.

In what follows, I comment on the list of concepts that might be useful for the projected lexicon. I have not included the words already present in the list of *lemmata*. Some concepts in the list that I was given (attached to my text) and are of great significance for economic life have been inserted but crossed out, because the projected lexicon already includes them.

A General Principles Referring to the Socio-Economic Order

For me, as a moral theologian, the School of Salamanca is of great interest for many reasons among them the question of methodology. As the projected lexicon will reference only authentic concepts used by the authors themselves and wishes to focus on the original meaning without projecting modern notions backwards in an anachronistic fashion, perhaps it would contradict the philosophy of the lexicon to enter *casus* as a keyword of its own. However, given the enormous importance of method, I think it should be treated somewhere in the Lexicon, perhaps under the heading natural law. Despite a clear leaning towards juridicism that it shares with the Latin Catholic moral tradition as such, the whole of the School of Salamanca still tends to follow the interesting methodological observation by Francisco de Vitoria regarding the difference between canonists and theologians. *“Theologi differunt a canonistis quia canonistae non sciunt nisi determinare casus*

¹ These lists are attached at the end of this article. Without them my article would probably be difficult to understand.

particulares, theologus vero casus universales, sicut in materia de usura et simonia."² This is a fascinating quotation. It manifests great insight into the usefulness and limits of cases; the notion of a universal case; and the association with usury and simony (which was a playground for casuistry), even though Francisco de Vitoria is writing in the context of superstition, (specifically whether it is allowed to carry words of holy Scripture around your neck).

Another suggestion I want to make is the following. Tomás de Mercado vividly describes the incipient commercial society in Seville, of which he is very proud. In general, Mercado is refreshing, less theoretical and more descriptive, even though he is rather prescriptive and scholarly. Somehow, I think that in the projected lexicon there needs to be an explanation of what Spanish society was like, what it meant to be a *hidalgo*, a *mercader*, to live in different parts of the country. Spain never truly managed to develop into a commercial society but there were kernels of it in the 16th century that are reflected in the works of our authors.

On the scholarly level, our authors were heavily influenced by Aristotle's and Aquinas's vision of the "*pars totius*"-doctrine,³ and therefore I suggest including "*Amor, amicitia, caritas*" as keywords because they reflect the basis of the late scholastic understanding of society. Francisco de Vitoria and Domingo de Soto have long paragraphs on friendship. In the Thomist tradition friendship is the basis of society. (Once again, Tomás de Mercado is more realistic about the fundamental importance of self-interest, and so are the others when it comes to defending private property.) These concepts are also closely linked to the concept of "*bonum commune*" that, I think, needs to be a separate keyword from "*bonum*". *Bonum commune* is the central definitory element in the definition of law, and of the whole construction of society.

Francisco de Vitoria takes it as an established principle that we are obliged to love the common good more than our individual good: "*dicitur quod quaelibet pars debet potius velle bonum commune quam bonum proprium.*"⁴ His discussion turns around the question

² See Francisco de Vitoria, *Comentarios a la Secunda secundae de Santo Tomás*, vol. 5, *De Justitia et fortitudine* (qq. 89-140), edited by Vicente Beltrán de Heredia (Salamanca: Biblioteca de Teólogos Españoles, 1935), q. 96, a. 4, n. 10, p. 82. Translation: "Theologians differ from canon lawyers because canon lawyers only know how to determine particular cases, whereas a theologian determines universal cases, as for example in the subject matter of usury and simony."

³ "Part of the whole". This doctrine formulates the need of the human person to be integrated into a community, in order to develop human traits and moral standing.

⁴ See Francisco de Vitoria, *Comentarios a la Secunda secundae de Santo Tomás*, vol. 2, *De Caritate et Prudentia* (qq. 23-56), edited by Vicente Beltrán de Heredia, (Salamanca: Biblioteca de Teólogos Españoles, 1932), q. 26, a. 3, n. 5, p. 103. Translation: "it is said that any part must prefer the common good to the individual good."

whether we are allowed or even obliged to commit a sin in order to serve the temporal or spiritual common good of the community. He denies such an obligation because friendship with God whom I offend by my sin is a higher good than the common good. “*Deus non ordinavit bonum meum spirituale ad commune bonum spirituale civitatis; non enim Deus fecit me capacem gloriae propter bonum commune...Deus est majus bonum quam sit communitas, et ideo peccare non debeo pro salute spirituali reipublicae.*”⁵ Here de Vitoria goes beyond Aquinas (who also affirmed that we are not completely *pars totius id est civitatis*) also because he dedicates more deliberations and distinctions to this question that had become more pressing in his times than it was in those of Aquinas. De Vitoria opens up the precondition for the possibility of human rights: only if there is something absolute in the human person, above and more important even than the public authorities, can there be the notion of a subjective personal right. Obviously, such a right is embedded in society and must not be turned against society: “*bonum spirituale proprium quod non est necessarium ad vitam spiritualem simpliciter, est postponendum bono spirituali communi.*”⁶

Another important element both in economic life and in political and social debate was “*servitus, servus*”. Our main authors (Domingo de Soto, Tomás de Mercado) reject Aristotle’s argument of “natural slavery” but justify “legal slavery”. Other authors do not reflect on slavery thematically but presuppose its admissibility (see Melchor Cano’s opinion on Church property). This is rather sad considering the reports and efforts of Bartolomé de las Casas, Peter Damian and others.

B Property⁷

There are two concepts that are so important for the socio-economic order that I suggest their inclusion: *avaritia* and *pauper(tas)*. *Avaritia* is decisive for the moral evaluation of commerce and social mobility that increased considerably in the Spanish Empire of the sixteenth century. *Paupertas* is not only a recurrent painful social phenomenon that exploded during Spain’s golden age but it is also the topic of the exciting debate on poverty

⁵ De Vitoria, *Comentarios*, vol 2, q. 26, a. 3, n. 6, p. 104. Translation: “God did not order my spiritual good to the common spiritual good of the political community; because God did not make me capable of receiving glory because of the common good....God is a greater good than the political community, and therefore I must not commit a sin for the spiritual good of the republic.”

⁶ De Vitoria, *Comentarios*, vol. 2, q. 26, a. 3, n. 7, p. 105. Translation: “one’s own spiritual good that is not directly necessary for one’s spiritual life comes after the common spiritual good.”

⁷ I omit *dominium, proprietas, potestas indirecta Romani Pontificis in temporalibus*, because they are already contained in the list of *lemmata*.

relief between Domingo de Soto and Juan de Robles. Besides, it is a frequently overlooked passage where St. Thomas and the scholastics drew the line for the right to private property.⁸

Avaritia is an important virtue for economic life, and there are surprising implications in it for society.

Francisco de Vitoria deals with it in his commentary on Aquinas's analysis of the vice of greed or avarice.⁹ De Vitoria defines money as a means and compares it to other means like food and drink. They are all measured by their aims, health and happiness, that as aims have no measure. The aim measures the means.

“Ergo pecunia cadit sub mensuram. Tunc probatur quod avaritia sit peccatum. Quia avaritia est quando quis appetit et quaerit bona temporalia ultra statum et decentiam suam; et hoc est peccatum, quia est inordinate appetere. Si quis vellet appetere bibere plus quam oportet bibere, esset inordinate appetere. Sed sic est quod appetere pecuniam plus quam oportet ad statum suum, est inordinate appetere et velle. Ergo est peccatum. Avaritia ergo nihil aliud est nisi appetere bona temporalia ultra statum et conditionem appetentis.”¹⁰

Francisco de Vitoria then asks the modern question: What Thomas Aquinas implies with this is that nobody must aspire to a higher station in life. Can this be true? Quoting Cajetan, Francisco de Vitoria (and also Luis de Molina) denies this consequence and “clarifies” Aquinas’s position. Only a desire for something outside of our human nature (e.g. immortality) or disproportionate to our individual capabilities is a sinful desire. However, we can legitimately strive to rise above our present state through proportionate efforts.¹¹ In other words, Francisco de Vitoria endorsed or at least accepted social mobility. This is an exciting develop of Aquinas’s doctrine who had excluded it, as De Vitoria noted. However, the changed social circumstances of the time and the spreading of wealth and prosperity among new classes of people had modified the medieval stratified hierarchies.

⁸ See Thomas Aquinas, *Summa Theologiae* II-II, q. 32, where he deals with alms. In order to delimit the obligation to give alms, he needs to define private property.

⁹ See Francisco de Vitoria, *Comentarios a la Segunda secundae de Santo Tomás*, vol. 5, *De Justitia et fortitudine* (qq. 89-140), q. 118, vol 5, p. 257-266.

¹⁰ *Ibidem*, n. 1, p. 257. Translation: “Therefore money is measured. Then it is proved that avarice is a sin. Because avarice consists in desiring and seeking temporal goods beyond one’s [social] status and decency; and this is sinful because it means desiring in an unorderly fashion. If anyone should wish to seek drink more than one should drink, that would be an inordinate wish. But in the same way seeking more money than is appropriate to one’s state in life is an inordinate desire and wish. Therefore, it is a sin. Avarice thus is pursuing temporal goods beyond one’s social status and condition.”

¹¹ See *ibidem*, n. 3, p. 258-9.

The notion of *pauper* and *eleemosyna* are also important because of their immediate implications for the right to private property. Following Aquinas, de Vitoria defends the obligation (*de praecepto*) of giving alms. Any superfluous wealth, i.e. any wealth not needed for nature and status must be used to help those in need. The distinction between nature and status is important: nature refers to the basic means of subsistence and sustenance; whereas status refers to the expenses for the maintenance of one's status in society: horses, servants, feasts, buildings, jewels, etc. De Vitoria specifies (1.) that a rich man must reduce his status if necessary to help someone in danger of death. In a funny mix of Latin and Spanish that still today makes us experience the suspense he must have created in class, the class notes transmit his words: "*Tenetur dejar de casar tan bien sus hijas como las casara si no les socorriera; et si erat equestris, fiat pedestris; y si traia quatro mozos, que traya uno.*"¹² He (2.) also obligates the rich to give away their superfluous belongings (i.e. no reduction of status is implied) to a poor person who is in grave but not extreme need.¹³

In a breath-taking passage, Francisco de Vitoria asks, whether the judge or the king may coerce the rich to give to the poor. The answer is a differentiating affirmation, based on Cajetan. Note again the mix of Spanish and Latin, and his criticism of ecclesiastics at the end:

"Respondet Cajetanus dupliciter. Primo, quod in casu extremae necessitatis, licet sequatur aliquo scandalum, [In the line before, Francisco de Vitoria stated that the principle of property must not be violated except in the case of an obligation of justice. The scandal must refer to something that might be perceived as unjust.] potest iudex divites debito modo compellere ad dandam eleemosynam. Periclitant homines; et divites habent horrea plena tritico: potest iudex facere, non quod omnino expolientur, sed quod dent aliquid. Quia illi qui sunt in extrema necessitate possunt licite capere a divitibus et eos interficere si nollent dare, quia habent jus ad illa in tali necessitate. Sed majus dubium est extra extremam necessitatem. Et secundo dicit Cajetanus, quod princeps bene potest facere, non dicit quod iudices particulares. [The difference seems to be that the king has legislative power and can bind all the rich.] Ego non dubito nisi quod episcopus potest praecipere quod clerici divites in gravi necessitate dent eleemosynas, quia ille est princeps in suo episcopatu.- O contra, quia ista non fiunt.- Verum est, et fortasse propterea quia sequitur

¹² See Francisco de Vitoria, *Comentarios a la Segunda secundae de Santo Tomás*, vol. 2, *De Caritate et Prudentia* (qq. 23-56), q. 32, a. 5, n. 3, p. 170. Translation: "He is obligated not to marry his daughters as well [to such a rich husband] as he would if he didn't help; and if he rode a horse, he should walk by foot; and if he had four servants around himself, then he should take only one."

¹³ *Ibidem*, p. 168-191. This long passage also deals with important aspects of property. Francisco de Vitoria comes down on the side of government backed social justice, going beyond mere voluntary charity by individuals.

scandalum, vel fortasse et verius porque se les da bien poco por los pobres."¹⁴

Domingo de Soto does not concur with his friend Francisco on this point. He leaves poor relief in the field of mercy, thus charity: there exists an obligation to give superabundant goods to the poor on the basis of natural law; and that in extreme, evident and urgent need (not just big need) the poor can help themselves to whatever they need. However, the obligation of the rich to give to the poor, even in extreme need, is an obligation of mercy not justice. Not helping someone who is in lethal danger (hunger, exposure, disease) or in big need (this means that the person in need has to "loose his honor") in any case is a grave sin. The reason why Domingo de Soto classifies this duty as one of mercy and not of justice is that the property rights have been established by natural law and no rich person can and should be forced to give. However, the poor are justified if they help themselves: they are not stealing but exercising their right to the common use of goods.¹⁵

I also found the reflections on the origin of property fascinating and of major implications. I suggest "*appropriatio*" and "*divisio*" as sub-concepts for *proprietas*, and perhaps even the Spanish term "*mina*".

Our authors inquired, "how were things distributed at the very beginning of human history, or how are they distributed when new things are discovered?" Through division and appropriation by human law, was their answer. Francisco de Vitoria and Domingo de Soto actually postulated a kind of social contract that was at the origin of the division of property ("*inter se homines convenire taliter, quod dicerent: Tu cape hoc, et tu hoc, et ego habebam hoc.*"¹⁶) In most cases, however, the distribution would have happened in an implicit way,

¹⁴ Francisco de Vitoria, *Comentarios a la Secunda secundae de Santo Tomás*, vol. 5, *De Justitia et fortitudine* (qq. 89-140), q. 118, vol 5, a. 4, n. 3, p. 264-5. Translation: "Cajetan answers in a twofold way. First, that in an adequate way the Judge may force the rich to give alms to the poor in extreme need, even though someone might be scandalized [by the judge's decision]. [In the line before, Francisco de Vitoria stated that the principle of property must not be violated except in the case of an obligation of justice. The scandal must refer to something that might be perceived as unjust.] People are starving to death; and the rich have barns full of grain: the judge may make them give something without taking away everything. Because those who are in extreme need are allowed to take from the rich what they need, and kill them, if they do not want to give it to them, for they have the right to these goods in such dearth. However, the bigger doubt refers to a situation that is not extreme need. And Cajetan thus, secondly, says, that the ruler may well do that [oblige the rich to give] but not the individual judges. [The difference seems to be that the king has legislative power and can bind all the rich.] I do not doubt that a bishop can command the rich clerics to give alms to the poor in great need, because he is the ruler in his diocese. – But, you object, this does not happen. – That is true. Perhaps because they want to avoid scandal, or more probably, because they care very little about the poor."

¹⁵ See Domingo de Soto, *De la Justicia y del Derecho*, edited by Venancio Diego Carro and Marcelino González Ordóñez (Madrid: Instituto de Estudios Políticos, 1968) first published 1556, Book 5, q. 3, a. 4, p. 428 in volume III.

¹⁶ Francisco de Vitoria, *De iustitia: Über die Gerechtigkeit*. Teil 2. Lateinisch/Deutsch. PPR I, 4, edited by Joachim Stüben (Stuttgart-Bad Cannstatt: frommann-holzboog, 2017), p. 34. This is Francisco de Vitoria's commentary to Thomas Aquinas, *Summa Theologiae* II-II, q. 62, a. 1, n. 20. It is also printed in Francisco de Vitoria, *Comentarios a la Secunda secundae de Santo Tomás*, edited by Vicente Beltrán

by farming on land or working with whatever good in question. As soon as someone started tilling the land, the others respected it and moved on. These musings are reminiscent of the teachings on original acquisition by John Locke. Such a distribution of land need not be unanimous, adds Francisco de Vitoria, because “*est de iure naturali, quod maior pars semper vincat in consilio. Et illud est necessarium ad pacem.*”¹⁷ For the theory of democracy, such an expansion of Thomas’s argument for property based on peace, is an important step forward! As is well known, Aquinas had argued for private property because it helps promote peace. Now, De Vitoria expands it to decisions in councils and committee, noting that natural law requires the minority to abide by the majority decision. It shows De Vitoria’s acquaintance with voting processes in chapters of his religious Order. These were the cultural matrix from which Parliament emerged.

The scholastic precedence of the common good over the individual rights also is of great consequence for property. Some of Francisco de Vitoria’s statements that the human person and her goods and possessions belong more to the community than to him or herself, require correct interpretation lest they be understood in an anachronistic fashion (as justifying massive confiscation or nationalizations). Francisco de Vitoria had no experience with modern totalitarian systems, with which he would not have agreed. For instance, he defended the original right of the finder to the property of precious metal ores and minerals against confiscation by the Crown. In a time when Spain was discovering and exploiting the massive mines in Latin America the following statement was explosive:

*„...sequitur unum corollarium: quod illa quae non sunt divisa nec habent proprietarium, id est aliquem dominum, sicut thesauri absconditi et perdit, como las **minas**, sunt primo occupantis et invenientis de jure gentium. Si hoc non expediat reipublicae, illa erunt communia, et per consequens per omnes qui sunt in republica dividenda, nam homo naturaliter est dominus omnium. Hoc dico propter reges, qui non possunt sine causa rationabili sibi appropriare aliquod thesaurum. Bene propter rationabilem causam, scilicet propter necessitatem reipublicae, alias non, quia esset tyrannicum privare homines de illo quod est de jure naturali. Oportet enim quod sit illius qui primo invenerit.”*¹⁸

de Heredia, vol. 3, *De Justitia* (qq. 57-66) (Salamanca: Biblioteca de Teólogos Españoles, 1934). Translation: “the men agreed among with each other to the effect that they said: You take this, and you that, and I’ll have this.”

¹⁷ Francisco de Vitoria, *De iustitia*, q. 62, a.1, n. 22, p. 36. Translation: “it is of natural law, that the majority should prevail in council. This is necessary for peace.”

¹⁸ Francisco de Vitoria, *Comentarios a la Secunda secundae de Santo Tomás*, vol. 3, *De Justitia* (qq. 57-66), II-II, q. 66, a. 2, p. 323. Translation: “There follows one deduction: that, by law of the peoples, things that are not divided up nor have a proprietor, that is an owner, like hidden and forgotten treasures, like the mines, belong to whoever occupies and finds them first. If this is not good for the state, then these things will be of common ownership, and thus must be split up among all citizens because man is by nature the owner of all things. I say this because of the kings who cannot

C The Financial System

In the prologue (*prooemium*) to the sixth book of his monumental *De Iure et Iustitia*, Domingo de Soto explains that the jungle (“*sylva*”) of usurious contracts and exchanges was the reason for him to undertake the task of writing the whole treatise. He also explains that he changed the order in which St. Thomas dealt with commercial questions. Domingo de Soto starts with usury as the bigger injustice, and as the measure and reason for all other commercial injustice: “*iniquius enim est pretium inde quaerere, unde nullum debetur, quam unde iustum debetur, iniustum extorquere.*”¹⁹

Usura is already included as a key concept. It implies a series of other notions that are mentioned in connection with it in the sources: *mutuum, sors, capitale, interesse, periculum, tituli, damnum emergens, lucrum cessans, mora, contractus trinus*. Writing this voice in the lexicon will be a challenge!

Also *judaeus* and *inimicus* have important connotations in connection with usury.

Of course, money itself (*pecunia, moneda*) should be a key concept. As the scholastics are interested in economic topics from a moral point of view, their disquisitions on money go hand in hand with the exposition of the virtues of *liberalitas* and *magnanimitas*. In Aristotelian manner money is considered as measure of equality in exchange, as means of exchange, and as a storage of wealth.

Martin de Azpilcueta and Tomás de Mercado have been praised for their discovery of the quantitative theory of money, and its implications for currency trade (*campsoaria*).

A concept that fills many pages in the scholastics’ handbooks are the notions linked to *cambium (cambio)* or (bill of) exchange: *campsoaria*, “*cambio a letra vista*”, *cambium siccum*, and others. In the expanding economy of the time and because of the geographical distances in the Spanish Empire, forms of non-monetary payment had to be used. These financial instruments had been invented in the 13th century. Some of these instruments were used to circumvent the prohibition of usury that provoked the ire of the Scholastic authors, and lead them into pages of distinctions.

appropriate these things without a reasonable cause. A reasonable cause well understood, that is a pressing need of the state, otherwise it is not allowed, because it would be tyrannical to deprive men of what is their due according to natural law. Things belong to who found them first.”

¹⁹ Domingo de Soto, *De la Justicia y del Derecho*, vol III, Prooemium lib 6, p. 505. Translation: “It is more unjust to charge a price when nothing is owed than to extort an unjust price when a just one is owed.”

Connected to exchanges is the “futures” markets. People wish to hedge their risk or they have a need for immediate liquidity, and sell future crops or produce at an estimated price. This very common business practice was dealt with frequently using words like: *Merces solvenda in futuro, pretium futurum*,...

Census, yes, means tax. Therefore it must be part of this lexicon. It also means a form of investment that we would call “life annuity”. After initial hesitation, certain forms of this investment were approved by the theologians. They discussed other questions as well, e.g. “*redditus (redimibilis)*” that were considered circumventions of the prohibition of usury.

D Obligations and Commerce

The two central concepts here that are missing among the lemmata are: *pretium* and *valor, valere*.

Apart from the vice of avarice, the key notion around which the moral reflections of the late Scholastics circled regarding commercial exchange was the just price (*pretium justum* rooted in *laesio enormis*). This was an *aestimatio* that could not be pinpointed in an exact way but allowed of a *latitudo*. Our authors repeat Aquinas’s double rule of pricing. They also quite unanimously endorse the legal fixation of prices especially for necessary basic goods (*pretium legale*). Domingo de Soto adds the distinction between *pretium rigidum, moderatum, pium*. In general, however, the just price was the market price. And here our authors use the word *forum* (in a sense that is missing in the list) or *plaza*. Tomás de Mercado writes about *precio justo* in book 2, chapter 8.²⁰ He agrees with the legal price for grain in chapter 7, and in chapter 8 he refers to those many goods for which there is no legal price: “*Este precio justo es el que corre de contado publicamente y se usa esta semana y esta hora, como dicen en la plaza, no habiendo en ello fuerza ni engaño, aunque es más variable, según la experiencia enseña, que el viento.*”²¹ This is the common formulation among the

²⁰ See Tomás de Mercado, *Suma de tratos y contratos*, edited by Nicolás Sanchez Albornoz, in two volumes, (Madrid: Instituto de estudios fiscales Ministerio de Hacienda, 1977; first published 1569), p. 118-127.

²¹ *Ibidem*, p. 118. Translation: “This just price is the usual one charged publicly, in this week and at this hour, as they say in the market, without coercion or fraud, even though a price is more volatile than the wind, as experience shows.”

scholastic authors. Domingo de Soto even uses the expression “free market” in his rejection of price manipulation by *monopolies* and *recatones*, “*quia liberum non permittunt forum*”.²²

The concept of *valor* (value) is obviously linked with that of *pretium* but not identical. Based on Augustine’s famous distinction between ontological and economic value, the late scholastics are known for their incipient theory of subjective value, which in reality is but a further development of medieval insights (see John Peter Olivi, Bernardin of Siena): *utilitas*, *raritas*, *complacibilitas* are the three components of our subjective interest for a good and thus its value. Clearly, *usus* and *utilitas*, for our authors, are the main element of this estimation.

Stipendium and *recompensatio* are central notions for the everyday economic life of dependent workers and employees, now and in the 16th century. The value of their work is measured by the wages they receive. Their formation too is subject to demand and supply, a law our authors are familiar with. True to their moral focus, the scholastics include moral correctives to the formation of wages. In his commentary on STh II-II, q. 77, a. 1, Francisco de Vitoria centers his thoughts on the common law principle of “*volenti non fit injuria quando secluditur fraus et dolus*.”²³ This means that whatever they agree on is the just price. However, there must be truly free will, which we cannot assume when one of the partners in the deal is in a state of dire need. This would be the case of a servant [in modern terminology a dependent worker]: if the master is not willing to pay the servant a just wage, he must give the lacking amount to the servant in restitution. “*Dico quod non fuit voluntarium simpliciter, sed habuit aliquid admistum de involuntario, porque no pudo más, por ver que se moría de hambre y no hallaba do ir*.”²⁴ Otherwise, Francisco de Vitoria is for the free formation of prices. He even rejects the principle of *laesio enormis* (when the price is more than double the real value) in the case of whim, artistic performances, medical or legal services in difficult situations, a general increase of demand (e.g. If the army is looking for horses, and thus the increased demand raises the price). From such cases where the buyer is the cause of the raise of price, or general circumstances that are valid for all, De Vitoria distinguishes individual need. If an individual is dying from famine or thirst, I must not raise the price. According to the scholastic double rule of pricing (the seller may raise

²² Domingo de Soto, *De la Justicia y del Derecho*, vol III, lib 6, q. 2, a.2, p. 545. Translation: “because they thwart the free market.”

²³ Francisco de Vitoria, *Comentarios a la Secunda secundae de Santo Tomás*, edited by Vicente Beltrán de Heredia, vol. 4, *De Justitia* (qq. 67-88) (Salamanca: Biblioteca de Teólogos Españoles, 1934), p. 123. Translation: “Apart from cases of fraud and dolus, a person who accepts risk cannot later claim compensation.”

²⁴ *Ibidem*, n. 11, p. 129. Translation: “I say that it wasn’t simply voluntary but had something involuntary mixed into it, because he could not take more, because he was aware that he was starving to death and had nowhere to turn to.”

the price to cover his costs but must not raise the price because of special interest on the side of the buyer) this would be sinful. Any unjust price is a sin. “*Haec materia est gravis et necessaria negotiatoribus, et ideo oportet vos esse vigilantes.*”, is the sombre warning of De Vitoria to the future confessors he is educating.²⁵

The concept of “*res*” is of course central both to property law and law of obligations. The term is used by the scholastics in connection with topics such as *defectus, vitium, vitium manifestum, vitium occultum*, etc. in the course of commercial transactions. The concept of “*res*”, however, presupposes a profound preliminary legal-moral decision about the limits of what we consider to be a “thing”, and what we include in or exclude from commerce. In other words, the scholastics were engaged in what we call today commoditization. On the one hand, their notion of “*res sacra*” was keen, on the other hand, they included slaves, thus human persons, among the objects of trade.

Debitum, fraus, dolus, promissum are concepts that appear frequently but should, I think, be treated in connection with *negotiatio, mercatura* or *pretium justum*, which are already included in the *lemmata* of the lexicon or mentioned above.

I hope that these considerations are useful for the project of the lexicon and eagerly await its publication.

²⁵ Ibidem, n. 2, p. 117. Translation: “This is a grave and necessary matter [of confession] for merchants and therefore you must be vigilant.”

Attachment 1

Results of the Lemma Workshop (Febr. 2017): Group 1 ("must haves") with possible sublemmata

Red are those lemmata which were proposed and accepted during the workshop as additional candidats to the existing list.

- | | |
|--------------------------------------------|------------------------------------------------------------|
| 1. abrogatio legum | 31. beneficium |
| 2. absolutio | 32. bigamia |
| 3. acceptio personarum | 33. blasphemia |
| 4. accusatio | 34. bonum |
| 5. actio | 35. capitulum |
| 6. actus | 36. caritas |
| 7. administratio | 37. casus fortuitus |
| 8. adoptio | 38. causa |
| arregatio | c. finalis, c. iusta (<i>auch</i> : bellum), c. legalis & |
| 9. advocatus | iudicialis |
| 10. aequalitas | 39. causa legalis & iudicialis |
| 11. aequitas | 40. censura (ecclesiastica) |
| 12. aestimatio | cessatio a divinis |
| 13. aetas | 41. certitudo |
| 14. alea | 42. circumstantia |
| 15. alienatio | 43. civitas |
| 16. (altare) | civis |
| 17. apostasia | 44. clericus |
| 18. appellatio | archidiaconus, archipresbyter |
| 19. appetitus | 45. commenda/encomienda |
| 20. arbiter | 46. commodatum |
| 21. argumentatio iuridica | 47. communitas |
| 22. arrha | 48. compensatio |
| 23. ars/artifex | recompensatio |
| 24. auctoritas | 49. compromissum |
| 25. auditor | 50. concilium |
| 26. bannum | 51. concursum creditorum |
| 27. baptismus | cessio bonorum |
| aqua benedictus, coactio | 52. conditio |
| 28. beatitudo | 53. confessio |
| 29. bellum | c. delicti, c. sacramentalis, c. non |
| b. iustum, b. publicum, b. privatum, causa | sacramentalis, confessor, contritio, |
| iusta, guerra | indulgentia, satisfactio (<i>auch</i> : restitutio) |
| 30. benedictio | 54. confraternitas |
| | 55. coniuratio, conspiratio |

56. *constitutio*
57. *consuetudo*
mos
58. (*contestatio litis*)
59. *contractus*
60. *contumacia*
inoboedientia (auch: oboedientia)
61. *credulitas*
62. *crimen*
laesio maiestatis
63. *culpa*
dolus
64. *cura animarum*
65. *curiositas*
66. *daemon*
67. *decalogus*
68. **defectus**
caecus, castratus, corpus vitiatus, dementia, surdus
69. *delegatus*
70. *democratia*
71. *denuntiatio*
72. *depositum*
73. *Deus*
74. *dignitas*
75. *dioecesis*
76. *dispensatio*
77. *dominium*
divisio rerum, d. civile, d. iurisdictionis, d. politicum, d. seculare, d. utile, d. sui
78. *donatio*
79. *dos*
80. *dubium*
ambiguitas (auch: interpretatio), d. facti, d. iuris
81. *duellum*
82. *ecclesia*
corpus ecclesiae
83. *electio*
maioritas
84. *elemosyna*
85. *emphyteusis*
86. *emptio venditio*
mercator (auch: negotium, usura), mora/morosus, evt. obligatio
87. *episcopus*
archiepiscopus, coadiutor
88. *excommunicatio*
e. mario, e. minor, c. reservata
89. *exemptio*
90. *falsarius*
fraus, mensura
91. *familia*
domesticus, familiaris
92. *femina*
mulier, uxor
93. *feudum*
94. *fideicommissum*
95. *fideiussor*
96. *fides*
f. bona, f. mala
97. *fiscus*
98. *forum*
f. civile, f. conscientiae, f. ecclesiasticum, f. externum, f. internum, f. mixtum, f. poenitentiale
99. *furtum*
100. *gratia*
g. Dei, g. homini
101. *gubernatio*
102. *habitus*
103. *haereditas*
104. *haeresia*
105. *homagium*
106. *homicidium*
abortus (auch: matrimonium), assassinus, h. casuale, h. voluntarium, parricida
107. *homo, humanus*
108. *honestas*
109. *hospitalis*
110. *hospitalitas*
111. (*hypotheca*)
112. *ieiunium*
113. *ignorantia*
error facti, error iuris
114. *immunitas*
115. *impensae*
116. *imperium*
117. *indiani*
118. *indicium*
119. *infamia*
120. *infidelitas*
121. *iniuria*
contumelia, diffamatio
122. *innocens*
123. *inquisitio*
124. *insignia*
125. *institutio*
126. *intentio*

127. interdictum
 128. interesse
 noxa
 129. interpretatio
 ambiguitas (*auch:* dubium)
 130. irregularitas
 131. iudaeus
 132. iudex
 133. iudicium
 liberum arbitrium (*auch:* voluntas), *evt.*
 renuntiatio, sententia
 134. iuramentum
 iusiurandum, periurium
 135. iurisdictio
 legatus (*auch:* Papa)
 136. ius
 i. canonicum, i. divinum, i. gentium, i.
 humanum, i. naturale, i. publicum, i.
 privatum, i. civile
 137. **ius communicandi**
 communcatio
 138. ius patronatus
 139. **ius peregrinandi**
 140. **ius praedicandi**
 141. iusiurandum
 142. iustitia
 iniustitia
 143. legatum
 144. lepra
 145. lex
 abrogatio l., divisio l., efficiens l., effectus l.,
 finis l., iustitia l., latio/conditio l., l. odiosa,
 mutatio l., necessitas l., perpetuitas l.,
 promulgatio l., ratio l., subiectum l., vis l.; l.
 aeterna, l. canonica, l. divina, l. divina nova,
 l. divina vetus, l. humana, l. civilis, l.
 naturalis, l. poenalis
 146. libertas
 147. locatio conductio
 conductor
 148. lucrum
 149. ludus
 150. maleficium
 151. mancipium
 emancipatio, manumissio
 152. mandatum
 153. matrimonium
 abortus (*auch:* homicidium), adulterium,
 affinitas, clandestinum, coactio (*auch:*
 baptismus, vis absoluta), concubinarius,
 divortium, frigiditas, fornicator (*auch:*
 fornicatio, luxuria), illegitimus filius,
 impedimentum, nuptiae
 154. mendacium
 155. metus
 156. minor
 157. monarchia
 158. multitudo
 159. mutuum
 160. natio
 gens
 161. necessitas
 162. negotium
 assecuratio, mercator (*auch:* emptio
 venditio, usura)
 163. neophytus
 164. notorium
 occultum
 165. oboedientia
 166. **obligatio**
 167. occupatio
 168. odiosum
 169. officium
 170. omissio
 171. opinio communis
 172. orbis
 173. ordo
 174. pactum
 175. Papa, pontifex
 legatus
 176. parrochia
 177. patra
 178. **patronatus**
 179. pax
 180. peccatum
 181. peculium
 182. permutatio
 183. persona (publica)
 184. philosophia
 185. pignus
 186. poena
 187. poenitentia
 188. populus
 189. possessio
 190. potestas
 191. praebenda
 192. praeceptum
 193. praelatus
 194. praescriptio

195. princeps, rex
 196. privilegium
 197. probabilitas
 198. probatio
 199. procurator
 200. prohibitio
 201. promulgatio
 202. provincia
 203. prudentia
 204. ratio
 usus r.
 205. regula
 206. religio
 207. (renuntiatio)
 208. **res**
 corpus
 209. res publica
 210. rescriptum
 211. restitutio
 satisfactio (*auch:* confessio)
 212. sacerdos
 213. sacramentum
 character, Corpus Christi, eucharistia
 214. sacrilegium
 215. saraceni
 216. scandalum
 217. schisma
 218. scientia practica/moralis
 219. scrupulum
 220. seditio
 221. simonia
 222. simulatio
 astutia, hypocrisis
 223. societas
 appetitus societatis
 224. **status**
 ingenuus, peregrinus, servitudo/servitus
 (*auch:* mancipium), servus (*auch:*
 mancipium), subditus
 225. statutum
 226. superstitio
 alchimia, astrologia, constellatio, divinatio,
 incantatio, sortilegium
 227. suspensio
 228. suspicio
 229. testamentum
 Lex Falcidia
 230. theologia
 loci theologici
 231. tutela
 232. tyrannus, tyrannis
 233. universitas
 234. usura
 cambium, mercator (*auch:* emptio venditio,
 negotium)
 235. vasallus
 236. vicarius
 237. virtus
 humilitas
 238. **vis (absoluta)**
 coactio (*auch:* baptismus, matrimonium),
 violentia (*auch:* avaritia, ira,,*beide unter*
 vitium)
 239. vitium
 ambitio, arrogantia, avaritia,
 crapula/crabula, gula, invidia, ira, luxuria,
 superbis; *Sublemma zu avaritia und ira:*
 violentia (*auch:* vis); *Sublemma zu luxuria:*
 concubinaris & fornicator (*auch:* fornicatio,
 matrimonium), fornicatio
 240. voluntas
 liberum arbitrium (*auch:* iudicium)
 241. votum

Attachment 2

Results of the Lemma Workshop (Febr. 2017): Group 2 ("possibly") with annotations and work assignments

Red are those lemmata which were proposed and accepted during the workshop as additional candidats to the existing list.

	Anmerkungen
1. absens	prüfen, wie weit der semantische Sinn reichen kann
2. alimenta	prüfen; Tendenz: aufnehmen
3. canonica portio	
4. canonicus	Zuordnung zu einem übergeordneten Artikel möglich? Spezifisches in der SvSal?
5. cardinalis	
6. cautio	
7. citatio	Prozessrecht: förmliche Ladung, Fristen werden in Gang gesetzt, Anknüpfungspunkt für Rechtsnachteile
8. clausula (generalis)	rechtlich anerkannte Ausstiegsmöglichkeit aus eingegangenen Bindungen
9. clausula rebus sic stantibus	evt. Sublemma zu <i>clausula</i> ; Völkerrecht
10. cognitio	jur.: Prozeß
11. collusio	wahrscheinlich wenig spezifisch für die SvSal; juristischer Fachausdruck – Verteilung von Täterschaft + Verantwortung; evt. andere Zuordnung
12. compositio	evt. Sublemma zu <i>restitutio</i> ; Kreuzzugsbulle (Kompositionenbulle)
13. decima	Tendenz: aufnehmen
14. dominica & feriae	
15. eucharistia	Artikel „Sakramente“? politisch-gesellschaftliche Bedeutung?
16. facultas	Kontext: <i>ius, dominium, potestas</i>
17. fama & rumor	
18. fictio	wohl eher: <i>persona ficta</i> als Sublemma zu <i>persona</i> ; Abgrenzung zur <i>praesumptio</i>
19. foedus aequum/iniquum	Völkerrecht
20. idolatria, idola	<i>imagines</i> als Verweisstichwort behalten; Tendenz: aufnehmen

<p>21. legislator</p> <p>22. lis</p> <p>23. magistratus, magistrado</p> <p>24. maioratus</p> <p>25. methodus</p> <p>26. miles, militia</p> <p>27. miserabiles personae</p> <p>28. misericordia</p> <p>29. pauper</p> <p>30. praedo</p> <p>31. promissio, promissum</p> <p>32. tormentum, tortura</p> <p>33. transactio</p> <p>34. turpe lucrum</p> <p>35. utilitas</p>	<p>Anmerkungen</p> <p>evt. Sublemma bei <i>lex divina, lex humana</i></p> <p>evt. als Lemma für das Prozeßrecht, anstelle von <i>processus, ordo iudiciarius</i>; nachprüfen, wie gut die prozessualen Themen hier unterzubringen sind</p> <p>Herausbildung eines weltl. Ämterverständnisses; bei Solórzano mit Verweisen auf <i>corregidores, oídores</i> usw.; evt. Sublemma unter <i>officium</i></p> <p>Zusammenhang mit Familienfideikommissen; nachdenken über Kontext und Zuschnitt des Lemmas</p> <p><i>loci communes</i> (Barbosa), <i>loci theologici</i> (Cano); unter welchem Terminus behandeln die Autoren die methodischen Fragen?</p> <p>evt. Sublemma zu bellum; evt. finden wir etwas geistesgeschichtlich Interessantes (an Ignatius von Loyola + sein soldatisches Ideal denken)</p> <p><i>opera misericordiae</i> evt. mit politisch-sozialer Ausstrahlung</p> <p>Tendenz: aufnehmen</p> <p>prüfen (<i>praedum? praeda? praedo?</i>)</p> <p>Tendenz: aufnehmen</p> <p>nur im beweisrechtlichen Kontext? grundsätzliche Reflexionen?</p> <p>näher nachsehen, in welchem Kontext von Bedeutung: Vermögensverschiebung nachlesen: selbständig neben <i>lucrum</i>?</p> <p><i>utilitas publica + prudentia</i> als spätere Konzepte: Verwendung quantifizierend überprüfen</p>
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Attachment 3

Proposal Martin Schlag

General principles of the socio-economic order

Casus

Amor, amicitia, caritas

Bonum commune

~~Consuetudo~~

Servus, servitus

Property

(I omit dominium, proprietas, potestas indirecta Romani Pontificis in temporalibus, etc.)

Appropriatio (perhaps as subconcept)

Avaritia

Divisio

~~Eleemosyna~~

Mina

Pauper(tas)

Financial system

Cambium, campsor, “cambio a letra vista”, cambium siccum

Census, redditus (redimibilis)

Merces solvenda in futuro, pretium futurum

Pecunia, liberalitas, magnificentia

~~Societas~~, compañía, ~~assicuratio~~

Usura (mutuum, sors, capitale, interesse, periculum, tituli, damnum emergens, lucrum cessans, mora, judaeus, inimicus, contractus trinus)

Obligations and commerce

Debitum

Dolus

Forum, plaza

Fraus

Mercatura = negotiatio

Monopolium, monopodium (“monipodio”), recatón

Pretium (justum, latitudo, pium, moderatum, rigidum, legale)

Promissum

Res (defectus, vitium, vitium manifestum, vitium occultum, sacra...)

Stipendium, recompensatio

Utilitas

Valor, valere, utilitas, usus

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Rechtsgeschichte
Frankfurt am Main



MAX-PLANCK-GESELLSCHAFT



Contact

The School of Salamanca

Max-Planck-Institut für europäische Rechtsgeschichte

Hansaallee 41

60323 Frankfurt am Main

Tel.: + 49 69 789 78161

www.salamanca.school