JOHANNES MALDERUS (1563-1633), INTELLECTUAL AT THE CROSSROADS

AN ANALYSIS OF HIS LEGAL-ECONOMIC THOUGHT

1. Introduction

There are people who were important during their own lifetime, but are barely remembered today. Johannes Malderus (1563-1633) is one of them. Famous in his own time as doctor and professor in Theology, rector of the *Academia Lovaniensis* and Bishop of Antwerp, he has received little attention in literature. This is remarkable given his involvement in the conflict between Protestants and Catholics in the Netherlands during the 17th century, the numerous reforms in his diocese and the many works he wrote.

This contribution seeks to address this, at least partially. It investigates Malderus's ideas on economic activity, and more specifically his influence on the validity of sales contracts in the case of one party holding a dominant position over the other. Following this analysis, the alleged link between him and Jesuit theologian Leonardus Lessius (1554-1623) is examined. The working hypothesis of this article is that influence existed, given the assumption in secondary literature that Johannes Malderus was a pupil of Lessius. The latter's generally more laxist and individualistic interpretations of questions of law, economics and morality may thus arguably have influenced Johannes Malderus.[1] The origin of this influence is usually ascribed to his attendance at some of Lessius's classes at the Leuven Jesuit College during the 1580s. Influence is this case is defined as existing if Malderus followed Lessius's particular solutions to theological questions within the framework of 17th-century scholasticism, or if at least the goalposts of the debate were moved by Lessius and thus caused

[1] Wim Decock, *Le marché du mérite. Penser le droit et l'économie avec Léonard Lessius*, Brussels, 2019, p. 13-27.

Malderus to render more laxist judgements than the generations before Lessius.

The relevance of such an enterprise lies in the uncovering of unstudied ideas of a very influential public figure in the Netherlands during the early 17th century. On the literal and figurative battlefield the Netherlands had become at this point, Johannes Malderus stepped forward as a zealous defender of the Catholic faith. A personal favourite of Archdukes Albert and Isabella, Malderus presided as prelate over one of the most populous and contested dioceses in Europe for over two decades at the height of the Reformation, and can grant us insight into the mindset of the Catholic elites in the Southern Netherlands during a crucial period for the entire region, and effectively Europe as a whole. Despite this societal prominence during the 17th century, the content of his work has not been studied extensively. There is —as paragraph 2 will explain— a real gap in the knowledge concerning Malderus's work, and specifically those portions of the work related to matters other than acceptance of Protestants in Antwerp. The latter is only a rather marginal part of his entire work. Therefore, this article seeks to make a first step towards better understanding Johannes Malderus and his vision of contracts, sales and the morality of the market. By analysing the passages of his works discussing undue economic dominance, this paper will strive for a better insight into his opinions on the novel economic policies of the early modern period (see paragraph 3, *infra*). This might help us understand why and how the Catholic elites of the Southern Netherlands rejected or accepted certain ideas, how intellectual networks functioned, and what their impact might have been on political, economic, religious and legal practice.

Having discussed this central legal-economic issue in the work of Johannes Malderus, this paper then sets out to assess the alleged influence of Leonardus Lessius. Was this truly a case of following the "Oracle of the Netherlands", or is more nuance required in describing Johannes Malderus as a "pupil of Lessius"? As will become clear from the reasoning in paragraph 5, the latter option seems to be preferable, at least as far as the issue of *monopolia* is concerned. Finally, a few potential alternative explanations are offered to estimate how and why Johannes Malderus might have come to his ideas on *monopolia*, and why they differed from those held by Lessius.

2. *Status quaestionis* on Malderus's life and work

2.1. Biography

The life of Malderus is well-documented.[2] In the 19th century, Belgian and Dutch initiatives included Malderus in encyclopaedia-like overviews of prominent persons who had inhabited their territory.[3] There is also a biography by Vissers from 1858, including Malderus's last will and testament.[4] Their content is mostly a translation of the eulogy pronounced by Jan Hemelaers (1570-1655) at Malderus's funeral,[5] combined with research at the archives of the old University of Leuven.

Johannes Malderus (also Jan Van Maldere[n] or Jean Malderus) was born in Sint-Pieters-Leeuw near Brussels on August 14, 1563. His education was taken on by his uncle, also called Jan Van Malderen,[6] who sent him to a secondary school in Brussels. Afterwards, he studied philosophy in Dowaai (Douai) and theology in Leuven. In Leuven, he attended classes by Leonardus Lessius for some time, even though the latter was a member of the Jesuit College. This was common for university students, as the teachers at the College had a good reputation. As was stated in the introduction, this is the classic reason for describing Malderus as "a student of Lessius".[7]

[2] This section is a summary of Abraham Van der Aa, *Jan van Malderen*, in id. (ed.), *Biografisch Woordenboek der Nederlanden*, vol. 12, Haarlem, 1864, p. 129-131; Charles Piot, *Johannes Malderus*, in id., *Biographie nationale*, vol. 13, Brussels, 1895, p. 119-120; Pieter Vissers, *Gedenkschrift over den Hoogwaerdigen en geleerden Heer Johannes Malderus, vijfden Bisschop van Antwerpen*, Antwerp, 1858, p. 5-34; Johannes Malderus, *In primam partem D. Thomae commentaria, de sancta Trinitate, creatione in genere, et angelis*, Antwerp, 1634, p. xiii-xxiii.

[3] The most important are Van der Aa, *Jan van Malderen*... [see n. 2], p. 129-131; Piot, *Johannes Malderus*... [see n. 2], p. 119-120.

[4] Vissers, *Gedenkschrift over den Hoogwaerdigen*... [see n. 2], p. 5-34.

[5] Posthumously published as the introduction to Malderus's commentary on the first part of the *Summa Theologiae*: Malderus, *In primam partem*... [see n. 2], p. xiii-xxiii.

[6] Vissers, *Gedenkschrift over den Hoogwaerdigen*... [see n. 2], p. 6 calls him "Jan Walravens".

[7] Wim Decock, *The Catholic Spirit of Capitalism? Contrasting Views on Profit-Making Through Capital Investment in the Age of Reformations*, in id., Jordan J. Ballor, Micha Germann and Laurent Waelkens, *Law and Re-*

After his studies, he became lecturer in philosophy at *Het Verken* ("*The Pig*") in 1586, one of the four "pedagogies" (centres of preparation for university studies) of the old University of Leuven. He became Doctor of Theology in 1594, and accepted the new chair of Thomism.[8] He was also president of the priestly seminary called *Koningscollege* ("*King's College*") from 1598 to 1602, when he was named *rector magnificus* for a year. In 1611, Archdukes Albrecht and Isabella called him to the position of Bishop of Antwerp. He died in office in 1633.

Malderus's health was precarious. "A chest ailment" kept him from preaching, but not from writing. He also regularly travelled, convened meetings and met with subjects. A fierce opponent of Protestantism and Judaism, he took several measures to win back souls, such as banning church funerals for people who did not attend Mass regularly. His long episcopate also allowed him to reform the organisation of his diocese. He furthermore intervened in the conflict between the Jesuit College in Leuven and the Faculty of Theology of Leuven University on the latter's behalf,[9] in what was a combination of theological controversies about grace and a struggle for funds (see *infra*, part 6).[10]

As a professor and a bishop, Johannes Malderus died a man of means. His will included three houses with surrounding grounds, as well as the establishment of the "Malderus College" in Leuven. This came with a grant for at least three students, as well as his nephews. Significant donations were also made to religious orders and abbeys. He was buried in the choir of the Antwerp cathedral.

2.2. Work

The picture is different for his works. They remain largely unexplored.

ligion: The Legal Teachings of the Protestant and Catholic Reformations, Göttingen, 2014, p. 22-44.

[8] Jan Roegiers, *Awkward Neighbours: the Leuven Faculty of Theology and the Jesuit College*, in Rob Faesen and Leo Kenis, *The Jesuits of the Low Countries: Identity and Impact (1540–1773). Proceedings of the International Congress at the Faculty of Theology and Religious Studies, KU Leuven (3–5 December 2009)*, Leuven, 2009, p. 165.

[9] Toon Quaghiebeur, *Pro aris et focis: theologie en macht aan de Theologische Faculteit te Leuven*, vol. 1, Doctoral thesis, KU Leuven, 2004, p. 78-79.

[10] Roegiers, *Awkward Neighbours…* [see n. 8], p. 164-166.

As stated, Malderus strongly supported Catholic reconversion and at times even supported banishing Protestants from Antwerp.[11] However, there has been no examination of his dogmatic arguments, notably in his *Anti-Synodica*.[12] Other references are very brief. For example, Schwartz mentions Malderus's view on historians revealing secrets about dead persons,[13] and De Ridder-Symoens indicates how Malderus encouraged lawyers in Antwerp to work for fair rates.[14]

The situation for his ideas on contracts looks even more bleak. The only author who mentions them more than in passing is Decock, even if he mainly focuses on other authors. His main insight pertains to the so-called "triple contract" or *contractus trinus*. This construction was used to circumvent the usury prohibition, and to invest with a guaranteed return. Three contracts were concluded to achieve this.[15] 1) First, a merchant and his investor(s) made a contract of *societas*, a type of association. The merchant contributed his labour, while the other(s) contributed only money (or other forms of capital); 2) The second was an insurance contract, whereby the merchant insured the capital invested by the partner(s). The premium was usually *c.* 5 percent; 3) Finally, a contract was concluded ensuring a certain profit for the investor. In exchange, the merchant was entitled to all profits which exceeded the capital and the "interests".[16]

[11] Marie Juliette Marinus, *De Contrareformatie te Antwerpen (1585–1676): kerkelijk leven in een grootstad*, Brussels, 1995, p. 337.

[12] Johannes Malderus, *Anti-Synodica, sive animadversiones in decreta conventus Dordraceni*, Antwerp, 1620.

[13] Daniel Schwartz, *Moral Theology and the Historian's Conscience: Is There a License to Besmirch?*, in *Intellectual History Review*, 32/1 (2022), p. 15-31. Malderus is mentioned on p. 17, p. 19 and p. 26.

[14] Hilde De Ridder-Symoens, *The Growth of Civil Society: The Emergence of Guilds of Lawyers in the Southern Low Countries in Its European Context*, in Arjan van Dixhoorn and Susie Speakman Sutch (ed.), *The Reach of the Republic of Letters: Literary and Learned Societies in Late Medieval and Early Modern Europe*, Leiden, 2008, p. 337-352. Malderus is mentioned on p. 348.

[15] For Malderus specifically: Wim Decock, *In Defense of Commercial Capitalism: Lessius, Partnerships and the* Contractus Trinitus, Frankfurt, 2012, p. 1-36. References are made aplenty there.

[16] *Ibid.*, p. 15 calls this a sale of potential profits, whereas for example John Noonan, *The Scholastic Analysis of Usury*, Harvard, 1957, p. 209 calls it a second insurance contract.

This combination of three contracts resulted in a loan with an interest rate of 10-15 percent. It allowed the investor to have a fixed interest, and the merchant to keep the profits beyond the interest. Strikingly, Malderus accepted its validity in theory,[17] but supported its prohibition in the customs of Antwerp.[18] Franciscus Zypaeus (1580-1650), secretary and *officialis* (ecclesial judge)[19] under Malderus, blamed his theoretical acceptance on Leonardus Lessius.[20]

Decock also describes how Malderus was more constringent in his interpretation of sales of debts (see *infra*).[21] Finally, he compares Malderus's and Lessius's ideas about the *Montes Pietatis* ("*Mounts of Charity*"). Those were institutions originating in Italy providing loans at a low interest rate. However, the chronology of ideas is complicated. While Lessius first uttered his sympathy in 1605, his main defence came only in 1623. This was after Malderus had defended their implementation in Antwerp.[22]

The notion of influence by Lessius is a consistent element in the scarce references to the Bishop: Malderus is said to have been influenced by Leonardus Lessius, because he followed some of his classes in Leuven.[23] No further evidence is provided for this claim,

[17] Johannes Malderus, *De virtutibus theologicis et iustitia et religione. Commentaria ad Secundam Secundae divi Thomae*, *Tractatio* 5, Antwerp, 1616, *Caput* II, *Dubium* IX, f^os^ 425-428.

[18] Decock, *In Defense of Commercial Capitalism*… [see n. 15], p. 31, n. 133; Victor Brants, *L'économie politique et sociale dans les écrits de L. Lessius 1554–1623*, in *Revue d'histoire ecclésiastique*, 13/1 (1912), p. 311-312.

[19] Wouter Druwé, *Franciscus Zypaeus*, in Wim Decock and Jan-Willem Oosterhuis (ed.), *Great Christian Jurists in the Low Countries*, Cambridge, 2021, p. 80-96.

[20] Franciscus Zypaeus, *Notitia iuris belgici*, Antwerp, 1635, Book 4, § *De usuris & nautico foenere*, p. 107-109.

[21] Decock, *Le marché du mérite*… [see n. 1], p. 119.

[22] *Ibid.*, p. 152-154.

[23] Victor Brants, *La création de la chaire de théologie scholastique et la nomination de Malderus à l'Université*, in *Analectes pour servir à l'histoire ecclésiastique de la Belgique*, 34, Leuven, 1908, p. 44-56; Angel Manuel Fernandez, *The Institutional Evolution of Property and Subjective Rights in* XVI *and* XVII *Centuries in Spain*, in *Esic Market Economics and Business Journal*, 45/2 (2014), p. 327-356; Gert Gielis, *Hemelbestormers, Leuvense theologen en hun streven naar geloofseenheid en kerkvernieuwing (1519–1578)*, Doctoral thesis, KU Leuven, 2014, p. 480.

however.[24] The only primary evidence is the aforementioned quote by Zypaeus.

In sum, Malderus's work has usually been studied in the light of his struggle against Protestantism, even if attention has been scarce since the 19th century. Generally, he is considered to be a representative of the School of Salamanca in the Low Countries, or at least a scholar who was very strongly influenced by the Salamancan approach to Scholasticism. His ideas on contracts, in particular, remain unexplored. Except for a few considerations by Decock, there has been no analysis. The only consistent element is the alleged influence of Lessius.

3. A context of change and uncertainty

In order to fruitfully conduct an analysis of the legal-economic elements in his work, it is necessary to first consider the material context in which Johannes Malderus, and by extension all early modern scholars, lived and worked. Without an understanding of the fundamental economic, political and legal shifts hallmarking the birth of a new era in the late 15th and early 16th centuries, every analysis of early modern intellectual effort remains incomplete.

The evolutions laid out in this section were the main reason for intellectual innovation on the topic of contracts of sale in general, and on situations where economic dominance by one party may occur specifically. They are, therefore, too important not to be part of this contribution.

The relevant evolutions can be divided largely into two categories: the establishment of new spice trading routes between Europe and Southeast Asia, and the growing economic importance of the mining industry in Central Europe. The magnitude of their impact can scarcely be overestimated, especially given the dynamic between these two evolutions which developed from the late 15th century onwards.

3.1. Spice flow, life flow: the push for Southeast Asia

The first crucial evolution was the establishment of new spice trading routes between Europe and Southeast Asia. Due to the

[24] E.g. Bernardus A. Mensink, *Jan Baptist Stalpart van der Wiele, advocaat, priester en zielzorger, 1579–1630*, Nijmegen, 1958, p. 237.

growing influence of the Ottoman Empire in the Eastern Mediterranean, Europe's princes were confronted with a single player dominating the influx of spices into Europe, which had classically taken place through the ports of Constantinople (conquered by the Ottomans in 1453) and Alexandria (conquered by the Ottomans in 1517).[25] This gave the search for an alternative spice route not only an important economic dimension, but also a geopolitical and even a religious one —the grand Muslim empire of course being, at least theoretically, the mortal enemy of Christian Europe. As a consequence, the search for spices from either a Western or Eastern sea route became a prominent concern for most European sovereigns during the 15th and 16th centuries.

Thanks to its geographical position, and its tradition of being involved in the trade of gold, ivory and slaves in Western Africa, it was the Portuguese kingdom under Manuel I (1469-1521) which first managed to circumvent the African continent to discover a direct (eastern) route to the Southeast Asian sources of spices such as cloves, pepper, nutmeg or cinnamon. This discovery was hailed as a great success, and encouraged the Portuguese Crown to increase its efforts in establishing a profitable trading network across the Atlantic and Indian Oceans. During the 16th and early 17th centuries, the Portuguese established themselves in the region through a system of fortresses and fleets in strategic locations, *inter alia* in St. Anthony (Ghana), St. Cajetan (Mozambique), Socotra (Yemen), Kerala (Southwest India) and Malacca (Malaysia). This had a twofold purpose. On the one hand, it allowed them to be the sole European power capable of importing spices via the Cape route, or at least control which European merchants were allowed to make the journey. On the other, it provided them with the possibility of excluding local and Arab merchants to such a degree that their own spice route remained profitable.[26]

[25] David Jacoby, *Constantinople as Commercial Transit Center, Tenth to Mid-Fifteenth Century*, in Paul Magdalino, N. Necipoğlu (ed.), *Trade in Byzantium: Papers from the Third International Sevgi Gönül Byzantine Studies Symposium*, Istanbul, 2016, p. 193-210; Nicholas Mirkovich, *Ragusa and the Portuguese Spice Trade*, in *The Slavonic and East European Review. American Series*, 2/1 (1943), p. 174-187.

[26] The income was used to maintain the Portuguese fleet and naval fortifications in the region, as well as to further its ambitions to conquer territory which would grant Portugal direct access to cinnamon and other plants. See Anthony Disney, *A History of Portugal and the Portuguese Em-*

By the time of Malderus, this system had established itself as a regular feature of economic life. On a yearly basis, a Portuguese fleet —or a fleet of private merchants acting with the approval of the Portuguese Crown— would set out for Southeast Asia, buy spices in bulk there, and sale back to Lisbon. There, the spices were sold on to European merchants in the *Casa da Índia*. Crucially, the Portuguese Crown only sold to those merchants who could trade the spices for copper, because copper held great value on the shores of Western Africa and India.[27] This seamlessly leads to the second catalyst of economic change in early modern Europe: the Central European mining industry and its economic boom in the 16th century.

3.2. The bleeding veins of the Earth: how Central Europe re-invented mining

A proper understanding of underlying early modern economic dynamics, crucial to changing ideas in the works of theologians and lawyers, can only be achieved by studying this second development. It could be described as a process of proto-industrialisation in the Central European mining industry (Saxony, Hungary, Slovakia, etc.), which increased the output and range of metals produced such as copper, lead, silver or mercury.

Technical developments *in se* fall outside the scope of this article, and it suffices to state here that a number of technological advancements such as new smelting processes and improved drainage practices played a key role in facilitating this process of proto-industrialisation. As ever, on the other hand, technological developments alone are not sufficient to trigger an economic revolution. The fertile soil of innovation can only blossom through the nutritious rain of investment and resources. That is precisely what happened in the 15th and early 16th centuries in Central Europe. Political rulers, who themselves lacked the funds to finance the mining industry out of their own tax revenues, granted con-

pire, Cambridge, 2009, p. 145-171; Ruby Maloni, *Control of the Seas: The Historical Exegesis of the Portuguese "Cartaz"*, in *Proceedings of the Indian History Congress*, 72/1 (2011), p. 476-484.

[27] Carla Rahn Phillips, *The Growth and Composition of Trade in the Iberian Empires, 1450–1750*, in James D. Tracy (ed.), *The Rise of Merchant Empires: Long-Distance Trade in the Early Modern World, 1350–1750*, Cambridge, 1990, p. 34-101; Maloni, *Control of the Seas…* [see n. 26], p. 476-484.

cessions to wealthy investors from Upper Germany (the Fuggers being the most famous among them) in order to attract investments. The near unlimited financial wealth of these Upper Germans made the implementation of new technologies possible, as well as the prospection of new ore veins and even entire mines. Initial successes during the late 15th and early 16th centuries in turn attracted artisans, prospectors, miners, doctors, bureaucrats, merchants, prostitutes, and people from all other walks of life necessary to make a town flourish.[28] This led to history's first "boomtowns", springing out of the ground in a matter of years in places where there had not previously been human civilisation. The most famous among them was Joachimstahl (now Jáchymov in the Czech Republic), which would lend its name to the "dollar" ("Thaler"). This not only led to fascinating new social realities and developments in all fields from folklore to medicine, but, crucially to this contribution, also led to a fivefold increase in the production of metals throughout Central Europe.[29]

Economically speaking, the shift in power structures and control over the mining industry was remarkable as well. A situation emerged where the rich mines were mainly owned and dominated by wealthy families from Upper Germany, such as the Fuggers or the Hochstetters. They either bought proto-shares in the mines known as "*Kuxe*", or they were granted exclusive concessions in exchange for loans to the government. That government could be local, more regional (e.g. the Duke of Saxony) or even imperial. Especially under Charles V (1500-1558, r. 1519-1556), the Fugger family was extremely close to the imperial court and the favours it granted (as well as the loans it required).[30] The close inter-

[28] Tina Asmussen, Pamela O. Long, *Introduction: The Cultural and Material Worlds of Mining in Early modern Europe*, in *Renaissance Studies*, 34/1 (2020), p. 8-30; Tina Asmussen, *Spirited Metals and the Oeconomy of Resources in Early Modern European Mining*, in *Earth Sciences History*, 39/2 (2020), p. 372-375.

[29] Ekkehard Henschke, *Landesherrschaft und Bergbauwirtschaft: Zur Wirtschafts- und Verwaltungsgeschichte des Oberharzer Bergbaugebietes im 16. und 17. Jahrhundert*, Berlin, 1974, p. 443.

[30] Tina Asmussen, *The Kux as a Site of Mediation: Economic Practices and Material Desires in the Early Modern German Mining Industry*, in Susanna Burghartz, Lucas Burkart, Christine Göttler (ed.), *Sites of Mediation: Connected Histories of Places, Processes, and Objects in Europe and Beyond, 1450–1650*, Leiden, 2016, p. 159-182.

twinement between wealthy merchant families and the princes of Europe is what linked the mining industry to the international spice trade, which was discussed in the previous point. The similar situations in both industries led to a dynamic of dominance which was greater than the mere sum of its parts. It would shape economic life in Europe, as well as the legal and moral rules regulating it, so fundamentally that its effects were felt for centuries to follow.

3.3. Triggering the mercantilist movement

The link with Johannes Malderus, however, is not immediately apparent. Clarification comes from more closely considering this enormous impact.

First of all, economically speaking, the nature of investments in both the mining industry and the international spice trade rendered it near impossible for all but the wealthiest individuals to invest. Due to the enormous funds required for intercontinental trade and ore mining, an impetus was given to the accumulation of capital in the hands of a very limited group of individuals, and more precisely the Upper German trading houses and their agents. This new, true capitalist class could then invest the profits it had made in the one sector —profits which were by all measures incredible— to further establish itself in the other.[31] Specifically for the spice trade, I have already indicated above how dominating the mining of copper inherently increased the likelihood of gaining entry into Portugal's closed system. Because of this dynamic, some of the most crucial and valuable goods of early modern European society became inseparably connected, with their production and trade being dominated by a very limited number of actors. Those actors consequently achieved what is known today as "market power". Through their position as (quasi-)sole suppliers of pepper, cinnamon, copper, mercury or nutmeg, they could increase prices, create artificial scarcity, and even famine.[32] This idea of a seller imposing their will on buyers *vis-à-vis* the price

[31] Martin Lynch, *Mining in World History*, London, 2002, p. 19-22; Bernd Mertens, *Im Kampf gegen die Monopole*, Tübingen, 1996, p. 41-50.

[32] Jürgen Pöhle, *Sugar, Pepper, Precious Stones: The Economic Impact of the Portuguese Overseas Expansion in the German World around 1500*, in *Rivista dell'Instituto di Storia dell'Europa Mediterranea*, 9/2 (2021), p. 16-23; Mark Häberlein, *Connected Histories: South German Merchants and Por-*

level is precisely one of the central notions protested against by learned theologians such as Johannes Malderus, which will be explained in part 4. This is therefore a first element within the scope of this contribution where context may have influenced intellectual currents such as those found in the School of Salamanca.

Secondly, on the political and legal level, European rulers envied the Portuguese system of working with privileges to regulate the most important sectors of economic life, especially after the Spanish had begun using a similar system. By the end of the 16th century, monopolistic privileges were introduced in most European polities, with the 17th century witnessing a further increase in their popularity.[33] The main purpose of this system, historically labelled as "mercantilism", was the ensuring of stability to keep the elites —both merchants and nobility— in power. Its first and most important purpose was societal order, which it sought to achieve through stable price levels, a stimulation of domestic production, full employment and a positive balance of trade.[34] The widespread use of monopolistic privileges posed a problem for intellectuals —many of them members of one of the two classes benefiting from the system— because of the double nature of such policies. On the one hand, they were deemed useful due to their capacity to facilitate the production, import and circulation of crucial, precious goods. On the other hand, it was clear from the many controversies and abuses that arose virtually immediately that the system required some form of restraint mechanism to avoid excesses. As early as the 1520s, legislation was adopted in the Holy Roman Empire to combat these excesses, or at least give the impression that the imperial government was concerned about them.[35] This exercise of equilibrium between (perceived) societal benefits and potential harm through excesses within the system was a second crucial challenge for the members of the School of Salamanca. It required an approach that was nei-

tuguese Expansion in the Sixteenth Century, in *Rivista dell'Instituto di Storia dell'Europa Mediterranea*, 9/2 (2021), p. 35-53.

[33] Phillip Rössner, *Freedom and Capitalism in Early Modern Europe. Mercantilism and the Making of the Modern Economic Mind*, Cham, 2020, p. 175; Lars Magnusson, *The Political Economy of Mercantilism*, Milton Park, 2015, p. 242 (notably chap. 1 and 3)

[34] Sanjukta Paul, *Recovering the Moral Economy Foundations of the Sherman Act*, in *Yale Law Journal*, 131/1 (2021), p. 175-255.

[35] Mertens, *Im Kampf…* [see n. 31], p. 41-50.

ther one-sidedly prohibitive, nor solely tolerant, and inherently called for a balance to be struck between acceptance and rejection. Such debates were very prominent in the methodology of the early modern scholastics, notably the School of Salamanca.

In summary, it is clear that thinkers from the early modern period were faced with new situations of economic collusion between merchants and princes. Even though the legal instruments used to achieve them —privileges and concessions— were not entirely new, their proliferation and ubiquitousness so drastically differed from medieval reality that the existing sources did not allow for an easy application of principles to new cases. They were virtually unknown to the existing medieval frameworks of both the *ius commune* and moral theology, and as such required early modern scholars to reassess traditional ideas and concepts. Under the impulse of thinkers such as Konrad Summenhart (1450-1502) and Domingo de Soto (1494-1560), the term put in place to discuss these new forms of economic collusion was *monopolium*.[36] Discussions on a range of issues related to competition and undue dominance in contracts of sale would be brought under this term, which would therefore have a much broader scope than the modern term "monopoly".[37] Consequently, this term is the central one in the present analysis of the ideas of Johannes Malderus, given its importance, relevance and broadness of scope during the early modern period. In its quality as an essentially early modern term —or at least a term the definition of which was discussed and fundamentally altered during the early modern period— it also serves as an appropriate proxy value to assess the influence of Leonardus Lessius and other thinkers.

4. More money, more problems: the intellectual foundations of the School of Salamanca

As Johannes Malderus was generally considered a member of the School of Salamanca (see *supra*, Parts 1 and 2), it is appropriate to analyse the major theories on situations of economic dominance and its effect on the moral validity of sales contracts.

[36] Wout Vandermeulen, *Modest Building Blocks: The State of the Art of Monopoly Thinking at the Turn of the Middle Ages and the Early Modern Period in the Works of Lawyers and Theologians*, in *The Legal History Review*, 91/3-4 (2023), p. 427-470.

[37] Riccardo Rosolino, *Countervailing Powers*, New York, 2020, p. 58-67.

While there existed no unanimity, the School of Salamanca was characterised by a number of general tendencies in this regard.

4.1. The School and its outlook on contracts of sale in general

4.1.1. Defining the School

To facilitate such an analysis, a clear definition of "the School of Salamanca" should first be given, as well as a summary of the intra-Catholic theological conflicts which may help explain the positions held by Johannes Malderus on certain issues. I follow the assessment of Duve[38] (which is also expressed in other sources such as Decock and Birr).[39] He describes the School of Salamanca as an "epistemological community" of theologians, lawyers, clergymen, merchants and other legal and economic actors who sought to find answers to the challenges arising from the changing legal, economic and political circumstances of the 16th and early 17th centuries, starting from a shared set of beliefs and practices. Those beliefs included confidence in the *ratio* of actors, and not blindly following the *auctoritas* of older sources, as well as the characteristic combination of and dialectic between theory and practice. There was of course the very famous *De iustitia et iure* genre which grew from this movement, but the most recent literature has also shown the importance of, e.g., the *Consilia* written by theologians, or the more practice-orientated handbooks such as the *Summa de tratos y contratos* by Tomás de Mercado (1523-1575).[40] Earlier research mostly focused on the work of theologians —especially Thomists from the Dominican order, and later Jesuits as well— but other actors have also come to the fore in more recent literature. It is no surprise that the foundations of legal-economic analysis as we know it today started in the early modern period. The previous section already explained how and why the shifts in the spice trade and mining industry set the Western economies on a track leading from the land-based feudal legal-economic system to a money-based capitalist economy

[38] Thomas Duve, *The School of Salamanca: A Case of Global Knowledge Production*, in id., José L. Egío, Christiane Birr (ed.), *The School of Salamanca. A Case of Global Knowledge Production*, Leiden, 2021, p. 4-7.

[39] Wim Decock, Christiane Birr, *Recht und Moral in der Scholastik der frühen Neuzeit 1500–1750*, Berlin, 2016, p. 33.

[40] Tomás de Mercado, *Summa de tratos y contratos*, Seville, 1587.

via the development of the mercantilist system.[41] As also per the brief introduction in parts 1 and 2, this led to a growing need for answers that could reconcile the medieval model of reality with the development of a proto-capitalist economic, legal and moral world.[42] The School of Salamanca sought to do precisely that.

This definition of the "School of Salamanca" is broader than the one that was often used during the late 19th and early 20th centuries, which focused on Spain and on authors from the discipline of theology,[43] and it is also less clearly delimitated. It is, for instance, not always clear whether an author is considered a theologian or a lawyer. For this contribution, I have opted to divide authors into categories based on their studies and occupation. This means, for example, that Leonardus Lessius is considered a theologian, even though he is known to have studied Roman law in his free time at some points in his life. An author like Diego de Covarubbias y Leiva (1512-1577) is also considered a theologian, despite his studies in canon law as well as theology. In this case, the lack of studies in Roman law, his appointment as bishop of several dioceses, and the closeness of the structure of his work to the structure of other theological works rather than to works of contemporary lawyers lead to his categorisation as a theologian. It is my belief that the broadness and profoundness of the impact which the School had on Western legal, theological and economic thought is better captured by the "epistemological community" definition. In what follows, I will focus on its ideas on the morality of contracts and contract law.

[41] Although, of course, the "track" here is only a metaphor. The development of a capitalist system can be explained as a product of historical factors, but it was nevertheless contingent. At certain points, deviations from its development may have occurred, but did not in the end materialise.

[42] Marjorie Grice-Hutchinson, *Early Economic Thought in Spain 1177–1740*, New York, 1978, p. 189; Oscar De-Juan, Fabio Monsalve, *Morally Ruled Behaviour: The Neglected Contribution of Scholasticism,* in *European Journal of the History of Economic Thought*, 13/1 (2006), p. 99-112; James Gordley, *The Jurists: A Critical History*, Oxford, 2013, p. 82-110; Giuseppe Franco, *Da Salamanca a Friburgo: Joseph Hoffner e l'economia sociale e di mercato*, Rome, 2015, p. 368.

[43] Raymond De Roover, *Monopoly Theory Prior to Adam Smith: A Revision*, in *The Quarterly Journal of Economics*, 65/4 (1951), p. 492-524; Marjorie Grice-Hutchinson, *The School of Salamanca: Readings in Spanish Monetary Theory*, London, 1952, p. 135; Joseph Schumpeter, *History of Economic Analysis,* London, 1954, p. 70-138.

The attempt at reconciliation of practice and theory, and of *ratio* and *auctoritas* inspired the School to perform a thorough examination of all types of new contracts and practices that saw the light of day. Theologians specifically took it upon themselves to try and offer moral clarity to societal actors. Even if they recognised potential problems and moral vices that came with a growing trade network, they were also very aware that the arrival of more and new types of goods was beneficial to society. They thus had to indicate when merchants or artisans were acting morally, and when they were sinning. The "moral imperative," as one might call it, inevitably forced them to become acquainted with these new market practices. For they argued that to judge properly, they would have to be knowledgeable of what was happening in the marketplace.[44]

4.1.2. The Salamancan position in broader intra-Catholic controversies

The School of Salamanca —and especially the Jesuit authors deemed to be a part of it such as Leonardus Lessius— held a very specific place within the broader intra-Catholic conflicts that took place during the early modern period. Their unique approach of casuistry through the aforementioned combination of *ratio* and *auctoritas* brought many of them —and again the Jesuits deserve special mention here— into conflict with other currents within early modern theology.

Crucially, the School was born at a time where the importance of individual conscience was on the rise. Under the pressure of the Reformation and the European discovery of the American continent, where "truly ignorant" pagans lived, the Salamancan authors were forced to give a stronger focus to practical, individual issues and thus to pastoral work and teaching, in order to attempt to introduce people to the true faith, and achieve (or maintain) unity within Christian faith.[45] This approach strongly stressed the aforementioned reason of individuals, and often re-

[44] Wim Decock, *Knowing before Judging: Law and Economic Analysis in Early Modern Jesuit Ethics*, in *Journal of Markets and Morality*, 21/2 (2018), p. 309-330; Duve, *The School of Salamanca…* [see n. 38], p. 7-21.

[45] Cristophe Grellard, *Theology*, in Harald Braun, Erik De Bom, Paolo Astorri, *A Companion to the Spanish Scholastics*, Leiden, 2022, p. 31-57.

lied on the intrinsic human capability to achieve one's own salvation through effort. Thus, due to the influence of the Parisian Nominalist School, there was from the very outset in the work and teaching of Francisco de Vitoria a strong stress on the role of the natural reason of the individual in the achievement of salvation. Soon, these theories began to drift so far onto the path of individual reason, that accusations of Pelagianism followed (e.g., for the work of Domingo de Soto), even though there were also Salamancan theologians who found this too far-reaching and relied more on the role of grace, preaching and faith in salvation.[46] In general, however, a strong stress on free will and reason remained prominent in most authors of the School of Salamanca.

This was especially true for Jesuit authors. Driven by a quest for practical knowledge and a general aversity to the application of too rigorous, abstract principles, an openness to the capability of achieving one's own salvation and the freedom to act became central tenets of the theology of the members of the Society of Jesus.[47] Leonardus Lessius and his colleague John Hamelius (1554-1589) would hold the most controversial positions on grace in this debate in the Southern Netherlands. In particular, their belief in the necessity of acceptance of divine grace by human beings caused controversy. For if humans must accept out of their own free will the grace that God bestows upon them, does that not mean that a human could also refuse God's offer?[48] This was deemed blasphemous by many theologians. In the context of the Netherlands, there were also, after all, other currents that sought radically different solutions to the problems raised especially by the Reformation. In particular, the (proto-)Jansenist movement at the Faculty of Theology of the University of Leuven would focus much more on the role of divine grace in the obtainment of salvation. This current rejected the teachings of the Jesuits as Pelagianism, and urged all theologians to reject notions of reason and freedom found in or inspired by ancient (pagan) philoso-

[46] *Ibid.*, p. 47-51

[47] Paolo Vismara, *Moral Economy and the Jesuits*, in *Journal of Jesuit Studies*, 5/4 (2018), p. 610-630; Decock, *Le marché du mérite…* [see n. 1], p. 39-82.

[48] Wim François, *The Schools of Louvain and Douai: The Bible, Augustine and Thomas*, in Kenneth G. Appold, Nelson H. Minnich (ed.), *The Cambridge History of Reformation Era Theology*, Cambridge, 2024, p. 201-217.

phy.[49] As such, in the Southern Netherlands, there seem to have been two theological reactions within Catholicism which had the same goal, but differed fundamentally in their means of achieving their end. Both were aimed at combatting Lutheranism and Calvinism, currents driven strongly by their focus on grace and predestination; but both at the same time believed there to be a fundamentally different solution to this problem. The Jesuits and adjacent theories believed that a strong focus on the individual, their free will and their reason were the best means to counter Protestantism, while the (proto-)Jansenists seem to have taken up the challenge of Protestantism by devising a Catholic theology aimed at defeating the Protestants on their home soil: the role of grace and predestination.[50]

These intra-Catholic conflicts at times were close in fierceness to the conflicts between Catholics and Protestants. Notably in the Netherlands, where the Protestant Northern Netherlands and several reformed German regions were very close, this conflict at times threatened to cause an internal schism between proponents of Jesuit-like theories, and proponents of the Jansenist model. Within this conflict, Johannes Malderus attempted to reconcile both factions, and aimed principally at the confessional unity of the Catholic Church, as I will explain *infra*. The main point here is that the School of Salamanca was involved in intra-Catholic controversies, and that it tended to side mainly with the idea that salvation was achieved through free action and natural reason —induced by divine grace, according to most authors— which often brought them into conflict with those currents arguing for a more faith- and grace-orientated theory of salvation.

4.1.3. Applying the principles of the School to contracts of sale in general

Let us then consider, for the sake of the topic of this contribution, how this theory of reason and free will was applied to legal-economic questions, and specifically issues of contract law.

[49] Jarrik Van Der Biest, *From Cathedral of the Mind to Bulwark of Orthodoxy: The Professionalisation of the Theology Curriculum at the University of Louvain, 1432–1600*, in Mordechai Feingold (ed.), *History of Universities*, vol. xxxvi/*2*, Oxford, 2023.

[50] Roegiers, *Awkward Neighbours…* [see n. 8], p. 154-175.

In contract law, it first and foremost led to the emergence of the central idea of *iustum pretium*, a "just price". This notion, which has its origins in Roman law, already existed in some form in the works of medieval theologians such as Thomas Aquinas. It was based primarily on the virtue of "commutative justice", which moral theologians believed should always be present in contracts. It demands that neither party to a contract lose out because of the contract, and the obligations of both parties be equal in value. In the context of a contract of sale, the price must therefore match the value of the goods sold. The basic principle is that a sale is morally valid if the price is just, and invalid if it is unjust.[51] As part 5 will set out, this corresponds well to a system where sellers tend to have more market power than buyers, yet lacks formal, legal rules to enforce a more balanced situation. Salamancan theologians therefore used another forum to correct excesses: the *forum internum* (see again part 5).

The problem is that this explanation merely shifts the question from the price to the correct calculation of the value of goods. The scholastics of the School of Salamanca also developed ideas about this. They discerned two types of just price: the *iustum pretium legitimum* established by the Prince, and the *iustum pretium vulgare*, established by "the people". The former pertains to the situation wherein the public authorities imposed a maximum or minimum price. However, when establishing this price, the Prince needed to consider the elements that were relevant to the formation of the other type of just price.[52] The way in which

[51] This idea can be found in Question 77 of the *Secunda Secundae*. See Thomas Aquinas, *Secunda Secundae Summae Theologiae a Quaestione* LVII *ad Quaestionem* CXXII *ad codices manuscriptos vaticanos exacta, cum commentariis Thomae de Vio Caietani Ordinis Praedictorum*, in ID., *Sancti Thomae Aquinatis doctoris angelici opera omnia*, vol. 9, Rome, 1897, Question 77, p. 147-154.

[52] This idea can be found in nearly every theologian of the School of Salamanca writing on this issue. Non-exhaustive examples include: Martin DE AZPILCUETA, *Manual de confessores y penitentes*, chap. 23, n. 79-80, Zaragoza, 1555, p. 328; Diego DE COVARRUBIAS, *Variarum Resolutionum ex jure pontificio regio et caesareo, libri* III, Venice, 1566, Book II, *Caput* III, n. 1-5, p. 417-423; Juan DE MEDINA, *De poenitentia, restitutione, et contractibus*, Ingolstadt, 1581, Book 2, *Quaestio* 31, p. 195-196; Leonardus LESSIUS, *De iustitia et iure caeterisque virtutibus cardinalibus*, Antwerp, 1612, Book 2, *Dubitatio* 2, f^os^ 274-275; Juan DE LUGO, *Disputationum de Iustitia et Iure*, vol. 2, Lyon, 1646, *Disputatio* 26, section 4, f^os^ 311-314.

that *iustum pretium vulgare* was calculated is more complex. It was the price that comes into being based on the actual economic circumstances and behaviour of economic actors. There has been discussion in secondary literature about the alleged (quasi-)interchangeability of the terms "*iustum pretium vulgare*" and "market price", but those controversies fall outside the scope of the present contribution.[53] Let it merely be said here that the scholastic authors of the 16th and 17th centuries stressed the idea that the value of an item was determined not by its natural virtue or quality, but primarily by its scarcity and usefulness to human activity. Many scholastics also added that secondary factors could help establish this price, such as the risk taken by the merchant, the labour invested in the acquiring and offering of the item, or the expenditures incurred for the same reason. However, this value —and thus the just price— was not to be judged by one single person, but by the *aestimatio communis*, the "common judgement" of society as a whole. Situations of fraud or duress also fell outside of the notion of a "just price". Additionally, some scholastic authors stressed that it was not just any lay person's opinion that determined the just price, but the common opinion of experts well-versed in the trade of the goods in question. Finally, under the influence of the Nominalist School and its scepticism towards all human categorisations, the authors of the School of Salamanca recognised that there was no mathematical certainty possible in the establishment of the just price. There was no unique just price that could be found through meticulous research. They believed that the just price was constituted of a range of values, a *latitudo,* within which all were morally just. Within this *latitudo,* there was a *iustum pretium infimum* (lowest), *medium* (middle) and *summum*/*rigorosum* (highest). How wide this *latitudo* was remains shrouded in mystery. It is safe to assume that the *latitudo* talked about by moral theologians was narrower than the *laesio enormis* regulation from Roman law. That rule determined that a sale was

[53] See mainly Odd Langholm, *The Legacy of Scholasticism in Economic Thought: Antecedents of Choice and Power*, Cambridge, 1998, p. 87-88 (including n. 36 for references); George E. McCarthy, *Last of the Schoolmen: Natural Law and Social Justice in Karl Marx*, in *Studies in Critical Social Sciences*, 74 (2015), p. 192-232; Fabio Monsalve, *Scholastic Just Price Versus Current Market Price: Is It Merely a Matter of Labelling?*, in *European Journal of the History of Economic Thought*, 21/1 (2014), p. 4-20.

invalid if the price paid was 50 percent higher or lower than the true value (which in itself leaves much to debate). Moral theologians were stricter than this by their own accord.[54] The lack of clarity as to the exact limitations can again be attributed to the idea that the price could not be set with mathematical precision. That said, it was also the opinion of many scholastic authors that the Prince should consider these factors when he was imposing a just price himself.

4.2. The School of Salamanca and economic dominance: the issue of monopolia

Let us then also examine the general ideas of the School of Salamanca on situations of economic dominance by one party, which were —as was mentioned in part 2— usually discussed under the term "*monopolium*". I will limit myself here to the most important developments which had occurred at the dawn of the 17th century.

The most important finding regarding monopolies is that it was one of the topics in the economic field where contribution of the School of Salamanca was most significant and revolutionary. Whereas the medieval tradition in Roman law, canon law and moral theology had focused primarily on guilds and local merchants when discussing the phenomenon of *monopolia* (basing itself on the last paragraph of the prohibition of monopolies in the Codex of Justinian [C. 4.59.2.]), the later scholastic authors found themselves confronted with a fundamentally changing economic, legal and political reality. With the rise of international trading concerns, often backed by princes and governments, as well as the development of the mining industry in Central Europe, trade monopolies in goods such as spices, metals or alum became not only larger in scale, but also more international and potentially dangerous for the economic situation in Europe. These developments began, as part 3 testified, in the late 15th and early 16th centuries. It is striking to see how the earlier generations of authors of the School of Salamanca struggled with the concept for some time, before the last decades of the 16th century saw the de-

[54] This is explicitly mentioned by i.a. Azpilcueta, *Manual de confessors*... [see n. 52], p. 328, n. 79, and Lessius, *De iustitia et iure*... [see n. 52], fo 275.

velopment of a more or less "standard" format in which the later generations of the School would discuss the topic.

The main idea, both in earlier and later generations, was that monopolies were 1) one of the possible ways in which the just price could be overturned and contracts be rendered unjust, and 2) because of this, in principle illegitimate. Definitions of the phenomenon are lacking in clarity in earlier authors of the School such as Martin de Azpilcueta (1491-1586) or Domingo de Soto (1494-1560).[55] In the early 17th century, however, it became common practice among scholastics to speak of monopolies as consisting of roughly four types.[56] The first was the monopoly through the privilege of the Prince. This typical element of mercantilist policies was well known by scholastic authors, and quite readily accepted, too. The main conditions imposed by scholastic authors was that the privilege should be granted for the common good —the privilege for wine or grain, for the spice trade, or for printers and writers being typical examples— and that the price set in the privilege should be a just price, based on the *iustum pretium vulgare*. The second type of monopoly is the situation we would now refer to as "hoarding" of goods to raise prices. It was known in the early modern period as *coëmptio*. Discussion existed among scholastics about the degree to which this was acceptable. Most authors supported the idea that it was in fact acceptable, if the resulting price was not higher than the highest just price

[55] Azpilcueta, *Manual de confessors*... [see n. 52], chap. 23, p. 332-335, n. 92-99; Domingo de Soto, *De iustitia et iure, libri decem*, Salamanca, 1569, Book 6, Question 6, Article 2, f^os^ 533-536. Also e.g. de Mercado, *Summa de tratos y contratos*... [see n. 40], vol. 2, chap. 8, p. 48-50; Bartolomé Medina, *De Instructione Confessariorum*, Basel, 1600, Book 1, chap. 14, §25, Rule 5, p. 223-224.

[56] The first roots of this model can be traced back to the work of Konrad Summenhart. See Konrad Summenhart, *Opus septipartitum de contractibus* (in later editions also known under the title *De contractibus licitis atque illicitis tractatus*), Haguenau, 1500, *Tractatus* 3, *Quaestio* 51. Another crucial author in this regard is Luis de Molina. See Luis de Molina, *De iustitia et iure*, Cologne, 1614, Book 2, *Tractatus* 2, *Disputatio* 345, col. 387-390. The oldest author I have been able to find who uses the four-type model which would become dominant is Luis Lopez, a Spanish Dominican, who discusses it in chap. 42 of Book 1 of his *Instructorium Negotiantium*. See Luis Lopez, *Instructorium Negotiantium duobus contentum libris*, vol. 1, chap. 42, Salamanca, 1589, p. 150-155. It can then be found in nearly every work of theologians belonging to the School of Salamanca.

that would have existed had it not been for the hoarding. Others disagreed, and claimed that it was never allowed. There was no doubt that it was forbidden when it raised prices outside the scope of the just price. The third type of monopoly was chasing off competitors. Most scholastic authors saw this as a legitimate strategy, if the merchants in question did not use fraud or violence. The fourth and final type of monopoly was a conspiracy of merchants agreeing not to sell (or buy, they had no distinct concept of "monopsony" yet) below a certain price, which we would call "price fixing" today. They often extended this to artisans or builders who dared to agree among themselves not to work below a certain fee, or not to finish the work that another artisan or builder had started.

There were of course many more nuances to this debate, and many authors stressed particular points within this broader framework according to their own circumstances, goals and experiences. The "four-type" model, however, indisputably remained their most important reference point until deep into the 17th century.[57]

This is the intellectual context in which Johannes Malderus functioned, and the tradition which had the largest influence on his ideas on sales contracts and their morality.

5. A theologian goes to the market: the ideas of Johannes Malderus on contracts of sale and situations of economic dominance

Having established the outlines of both the material and economic context in which Malderus worked, an analysis can now be made of his ideas on sales contracts in general, and situations of economic dominance specifically. Malderus's main contribution on contracts of sale can be found in his commentary on the *Secunda Secundae* of Thomas Aquinas, published in 1616,[58] in the second chapter of Tractate 5, *De Emptione & Venditione* ("On buying and selling").

[57] The last important author to my knowledge who still strictly adhered to this four-type model within the School of Salamanca was Spanish cardinal Juan de Lugo in 1642. See DE LUGO, *De iustitia et iure…* [see n. 52], vol. 2, *Disputatio* 26, Section 12, fos 341-343.

[58] MALDERUS, *De virtutibus theologicis…* [see n. 17], *Tractatio* 5, *Caput* II, fos 415-434.

I will sketch those ideas, their context and their intellectual tradition with a specific focus on situations of economic dominance. After all, as was explained in part 3, such situations became more present and controversial during the early modern period. Then I will assess the influence of Leonardus Lessius.

5.1. Malderus's ideas on the moral validity of sales contracts

Malderus begins his chapter on buying and selling with two *Dubia* on the "just price".[59] Already introduced in part 4, this was a theological idea based on Roman law and the virtue of "commutative justice": the value of contractual obligations of both parties must be equal. This translated into a "just price" for goods, which had two forms. The first was a price set by the prince, called *iustum pretium legitimum*. The second was a price formed by the *aestimatum commune*, the "common judgement", known as the *iustum pretium vulgare*. Malderus describes exactly this in the first *Dubium* of *De Emptione & Venditione*,[60] entitled: *What should be considered the just price of an item?*[61] The centrality of the just price is clear immediately: Malderus does not start his chapter on buying and selling with a definition of a sales contract, but with the just price. The second *Dubium* is crucial, too. Its title is: *Is it allowed to sell an item for more than it is worth, or to buy for less?*[62] It forms a further elaboration of the first.

In the first *Dubium*, Malderus stresses that "[i]n estimating the price of commodities it is not so much the physical quality that should be considered, but rather the utility for the life and use of men."[63] He lists several factors that might influence it. Primarily, the amount of goods and number of buyers determine the price, and secondarily the average labour invested by the merchant, the risk he underwent, his expenses, his care and his *industria*. This last element was a term for the work ethic and skill that merchants ought to possess. *Nota bene* that Malderus did not say that

[59] The Latin quotes in the footnotes below belong to the section which is being discussed, unless other information is provided. All translations are my own.

[60] Malderus, *De virtutibus theologicis*... [see n. 17], f^os^ 415-416.

[61] "Quodnam censeri debeat iustum rei pretium?"

[62] "Utrum liceat rem vendere pluris quam valeat, aut emere minoris?"

[63] "In rerum venalium aestimando pretio non tam physica rei praesentia quam utilitas ad vitam & usum hominum consideranda."

this was how the *iustum pretium vulgare* was established, but the just price as such. Therefore, if the Prince imposes a price, he should consider these circumstances. The *iustum pretium vulgare* was constituted by the same factors, considered by "intelligent merchants and other intelligent people".[64] This again fits perfectly within the framework of Salamancan thought, described in part 4.

Malderus situates the main difference between the two types of just price not in their *level*, but in their *divisibility*. The *iustum pretium legitimum* is a single price, deviation from which is forbidden. The *iustum pretium vulgare*, however, has a *latitudo* ("range") within which it may vary without being unjust. One price has precise value while the other does not, because the *iustum pretium legitimum* is established by one person, whereas the *iustum pretium vulgare* is determined by the opinion of many people. Because people *varii sint* ("are different") they do not all arrive at exactly the same price, and variation (within reason) is possible. This again corresponds perfectly to the teachings of the most prominent members of the School of Salamanca on this topic.

He then raises six objections, only to refute them immediately. I focus on the second, third, fifth and sixth. In the second, he says that the *iustum pretium legitimum* is considered to remain just, even if circumstances change. The Prince is presumed to be right. Only if the *iustum pretium legitimum* is clearly unjust out of error, hatred, or favouritism,[65] may people abandon it for the *iustum pretium vulgare*.[66] This, in my view, indicates perfectly the sort of balancing exercise effected by scholastics such as Malderus, as well as hallmarking the general sympathy the scholastics had for mercantilist policies. It is representative of the balancing exercise because it does condone the fixing of prices by the Prince, yet also introduces a type of marginal test for the moral validity of his actions: a price that is manifestly unjust should be corrected. On the other hand, it represents sympathy because of the large leeway it gives the sovereign. He is not forced to reassess his initial price every time circumstances change slightly. Only when fundamental problems occur should action should be taken.

[64] "Intelligentium mercatorum & aliorum."

[65] "Si manifesta sit iniquitas, ex errore, odio aut favore proveniens..."

[66] He refers to DE MEDINA, *De poenitentia*... [see n. 52], Book 2, *Quaestio* 31, p. 195-201.

The third objection and its refutation show another crucial element. The question is: what if no just price has been established yet, for example because the item is new? Malderus says that one should follow "an intelligent estimator, or multiple estimators, if they can be found".[67] When a gem is brought to the market, it is not the opinion of lay people that should be followed, but that of jewellers.[68] In objections five and six, he explains how the price is not any price that can be fetched, but that which can be fetched without fraud, duress or cheating. And while people are masters of their own goods and may sell, no one may sell for any price. Either the law or "common judgement" must be preferred.

The second *Dubium*[69] elaborates on this. It is a list of cases about whether the just price remains valid. The answer in nearly every single case is yes. The first question is again that of the legitimacy of the *iustum pretium legitimum* under changing circumstances. Expanding upon it, Malderus states that the *iustum pretium legitimum* binds everyone unless it is manifestly unfair.[70] The next few questions are not relevant to this paper.[71] More relevant is Malderus's discussion of the difference between the "just price" theory of the scholastics, and the idea of *laesio enormis* in Roman law. He uses theological authors such as Silvester Mazzolini (1457-1527)[72] and Diego de Covarrubias (1512-1577),[73] as well

[67] "Iudicio alicuius intelligentis aestimatoris, aut plurium, si haberi possint."

[68] "A vulgo gemmariorum."

[69] Johannes Malderus, *De virtutibus theologicis*... [see n. 17], *Dubium* II, f^os^ 416-418.

[70] "Itaque formaliter verum est, quatenus taxatum, esse necessario servandum, modo alias aestimatio Legis non sit manifesta iniqua."

[71] They are: a) Should an item be sold for the just price of the place where it is sold, or the place where it is handed over to the buyer? Answer: the place where the sale is concluded, but the seller can still add the costs of transportation to the price if he conducts the transport himself; b) May a seller double the price of a ring because it was given to him as a parting gift by his father? Answer: no, and even someone who steals the ring does not owe him the double price in restitution; c) Is it permissible to sell dearer to foreigners? Answer: no, unless there is a law in place fixing the price for selling to citizens. In that case, it is allowed, but only within the *latitudo* of the just price.

[72] Silvester Mazzolini, *Summa Summarum, quæ Sylvestrina dicitur*, Strasbourg, 1518 (original edition in 1516), Book 1, chap. *De Emptione*, *Quaestio* 8, f^o^ 154^r-v^.

[73] Diego de Covarrubias, *Variarum resolutionum ex jure pontificio regio et caesareo, libri III*, Venice, 1566, Book II, *Caput* III, p. 417-434.

as fragments from Roman[74] and canon[75] law to explain how the rule of *laesio enormis* worked. If the price received is lower than half of the value of the goods, then the contract may be rescinded. Malderus poignantly contrasts this with the teachings of moral theologians:

> Even if the *forum exterius* would not correct the sale, except if it would exceed the just price by half of it, and the purchase only if less than half of the just price would be given, the *forum conscientiae* always condemns him of a sin, and of restitution, who were to noticeably sell for more or buy for less than the just price according to its total *latitudo*.[76]

This captures the essence: while legal rules regulating sales exist, the *forum internum* is stricter and requires each injustice to be compensated. Interestingly, Malderus believes that the just price retains its value *in foro externo*, even if infractions are punished less severely. For example, D. 19.2.22 says that cheating in buying and selling is natural, but Malderus reads this as "cheating and selling within the limits of the just price".[77]

Next, Malderus lists nine deviations from the just price. They are very specific, and he usually limits their applicability. The first is a *subhastatio* (public auction), where the *concursus* of buyers and sellers may determine another price, if there is a special legal regulation for it. Referring mainly to Pedro de Navarra[78] and Dominican theologian Luis Lopez (1520-1596),[79] Malderus signals that the *laesio enormis* rule is still valid. The second exception is when a seller undergoes damage or misses out on profit because the buyer asks him to sell in one place while the item is more expensive elsewhere. However, when he suffers no real dam-

[74] C. 4.44.2.

[75] X. 3.17.3 and X. 3.17.6.

[76] "Verum quamvis forum exterius non corrigat venditionem, nisi excedat iustum pretium in dimidio eius & emptionem nisi minus datum sit quam dimidum iusti pretii, forum tamen conscientiae semper eum peccati damnat & restitutionem, qui notabiliter pluris vendiderit aut emerit minoris iusto pretio secundum totam suam latitudinem considerato."

[77] "Circumscriptionem illam Iure gentium adeoque naturaliter licere intra latitudinem iusti pretii, & hoc Legem voluisse."

[78] Pedro de Navarra, *De ablatorum restitutione in foro conscientiæ, libri quatuor*, Toledo, 1597, Book 3, *Caput* II, n. 37, p. 245-246.

[79] Luis Lopez, *Tractatus de contractibus et negotiationibus*, Lyon, 1594, Book 1, *Caput* 29, p. 156-162.

age, the item being more expensive in another place is just a stroke of luck for the buyer. Malderus does not mention a criterion for determining damage. He again refers to Mazzolini.[80] The third exception is when the price has been raised or lowered due to a conspiracy (see *infra* point 5.2.). The fourth is when a seller explicitly asks the buyer to buy below the just price. The fifth is when it is known that the price will rise in the future. Malderus refers to Angelo Carletti di Chivasso (1411-1495),[81] another Italian theologian who had a profound influence on the School of Salamanca. However, he fails to provide a definition of "knowledge of future prices". The sixth exception consists of the situation where an item can only be imported by one merchant. In that case, his personal expenses may be calculated into the just price, provided that the item is so exotic that it has no *iustum pretium vulgare* or *legitimum*. Otherwise, Malderus maintains that the expenses considered are the *expensae ordinariae*, the average costs. Lower or higher individual costs have no influence "because this is part of the good or bad luck of merchants".[82] Exception seven is the question of the "donation" of the excessive part of the price. Did a person donate the part of the price falling outside the just price? Malderus is nuanced: it is possible, but it must be clear and explicit. Donation is never presumed.[83] The eighth exception occurs when both parties are genuinely ignorant of the just price. However, the just price then returns "through the back door". Those who out of ignorance receive too much must return the excess when learning of their mistake, unless the prescription period has already passed. Finally, a merchant may sell to a lay person beyond the just price if that lay person is involved in what is usually the trade of merchants, because merchants live off trade.

It is clear from these exceptions that the just price is the standard. Deviations are nuanced and only accepted if additional conditions are fulfilled. Once again, the context of the early modern

[80] Mazzolini, *Summa Summarum*... [see n. 72], f° 154r.

[81] Angelo Carletti di Chivasso, *Summa Angelica de casibus conscientiae*, Venice, 1490, chap. *Emptio*, n. 7, f° 83r-v.

[82] "... quia hoc ad prosperam aut adversam fortunam perninet mercatorum."

[83] References are made to Summenhart, *Opus septipartitum*... [see n. 56], *Tractatus* 3, *Quaestio* 57.

period helps explain why this issue was so crucial to Malderus (and to other Salamancan authors as well). In a world without government institutions —let alone international institutions or watchdogs— capable of enforcing some degree of competition or economic balance against the interests of the sovereigns and merchant families who dominated international trade and effectively prevented any form of real competition developing, the School of Salamanca appealed to the moral conscience of the economic actors in question. While they could not and would not impose hard (legal) restrictions on the freedom of princes or merchants, they appealed to the forum in which they held authority: the forum of morality. This should not be brushed over lightly, nor dismissed immediately as a form of *Ersatz* solution by lack of "hard" power restrictions or regulations. In early modern society, the moral plane was a much more powerful weapon than it is today. In a world where society collectively professed its belief in a form of reckoning on Judgement Day, the call to cease certain economic activities lest their eternal souls were put at risk of damnation would have appealed much more strongly to the community of merchants than it would today.[84] Therefore, the strong adherence to a concept like the just price, which intrinsically called for some degree of equality between parties, forms a prime example of the School of Salamanca's attempt at reconciling the social benefits of increased commerce and its potential abuses. The usefulness of the goods imported was not questioned, nor merchants' fundamental right to exist —commerce itself was seen as "morally neutral", and only immoral actions of individual merchants and princes could be censored. However, excesses had to be combatted, and the general wellbeing of society took precedence over the right to profit of individual merchants. Referring to the metaphor of "society as a natural body", the Salamancan scholastics argued that while any individual may work to further their own interests and reap the rewards of their efforts, no one had the right to harm society in such a way that it could no longer function. After all, every member of society was subject to the axiomatic principle of serving the common wellbeing of society as a whole. While early modern theories were already diluted in comparison to medieval ideas on this notion,

[84] Decock, *In Defense of Commercial Capitalism*... [see n. 15], p. 24-31.

no Salamancan would ever concede that a merchant was allowed to cause his fellow citizens to fall into starvation or other forms of serious poverty or shortage.

5.2. The omnipresence of the just price

This need for balance between private gain and societal survival remains a common theme throughout the rest of Malderus's chapter on contracts of sale. For not only does the just price form the topic of the first two *Dubia* of Malderus's chapter on buying and selling, it is consistently used as benchmark of moral validity throughout the chapter. Even when merchants are allowed to act strictly for their own benefit, they remain bound by the just price, and thus by the alleged inherent need of society for some minimum amount of consideration on the part of their fellow citizens. They were allowed to sell their spices, their books, their metals and their gem stones for a profit, if necessary even with governmental permission to be their sole vendor, but they were not allowed to cause undue harm to their fellow citizens by extorting from them prices to which they never would have freely agreed.

Let us examine the third *Dubium* to this end.[85] It discusses the so-called "merchant of Rhodes". This story —known at least since Cicero[86]— is about a grain merchant arriving at a place where grain is expensive (originally Rhodes). However, the merchant knows of the imminent arrival of a merchant fleet selling grain. Does he have a duty to inform the locals? Does he have to tell them spontaneously, or only when asked? Or does he not have to reveal this at all? In answering these questions, Malderus shows that his tolerance towards merchants' freedom to act is large, but that the moral validity of their actions still depends on the just price. He finds arguments in authors like German theologian Gabriël Biel[87] (*c.* 1420-1495), Silvester Mazzolini,[88] Domingo

[85] Malderus, *De virtutibus theologicis*... [see n. 17], f^{os} 418-419.

[86] Marcus Tullius Cicero, *De Officiis*, Antwerp, 1534, p. 75^{v}-86^{r}.

[87] Gabriël Biel, *Super quatuor libros Sententiarum*, Lyon, 1519, Book 4, Distinction 15, Question 10, Article 3, *Dubium* 3, unnumbered edition.

[88] Mazzolini, *Summa Summarum*... [see n. 72], f^{o} 155^{r}.

de Soto,[89] Diego de Covarrubias[90] and Luis de Molina.[91] They all allowed selling at the current price, and Malderus agreed (unlike Cicero and Juan de Medina).[92] The just price is based on public, not private knowledge. The final part of the *Dubium* debunks six counterarguments. They are not very interesting *in se*, but illustrate how Malderus defends the just price as sole criterion for judging sales contracts.

The same elements are crucial to *Dubium* 4,[93] where Malderus discusses the moral legitimacy of selling goods for more than they were bought. He gives a particular interpretation of elements of the Bible, medieval theology and canon law which were seemingly hostile to trade. He starts by saying that "*oeconomica* is quasi-natural and necessary when a thing is traded for another thing or for a price, for the necessity of life"[94] and that "it is evident that this is not only legitimate, but praiseworthy".[95] Trade may persuade merchants to sin, confessors often prohibited trading and trading was forbidden for clerics and monks, but Malderus counters and nuances this. Examples include the fact that clerics may be forgiven occasional trade, and are allowed to buy resources and process them. He refers i.a. to Molina.[96] Clerics may also work for the needy, and sell goods they own with profit, if the buyer has greater need for them and they had not bought them to resell. Also, Malderus says that Jesus drove the merchants out of the temple not because they were merchants, but because they were trading in the temple, and for unreasonable prices. They were not punished for trading, but for making a profit of religion and turning the temple into a *spelunca latronum* ("cave of robbers").[97] It is thus clear again that Malderus does not necessarily

[89] DE SOTO, *De iustitia et iure*… [see n. 55], Salamanca, 1559, Book 6, Question 3, Article 2, f^os^ 512-516.

[90] Diego DE COVARUBBIAS, *In regulae Peccatum, De regulis iuris, lib. VI.*, Venice, 1569, *Relectio*, part 2, §4, n. 6, p. 88-89.

[91] MOLINA, *De iustitia et iure*… [see n. 56], Book 2, *Tractatus* 2, *Disputatio* 354, col. 431-435 (Malderus mistakenly refers to *Disputatio* 254).

[92] DE MEDINA, *De poenitentia*… [see n. 52], *Questio* 35, p. 214-217.

[93] MALDERUS, *De virtutibus theologicis*… [see n. 17], f^os^ 419-421.

[94] "Oeconomica est quasi naturalis & necessaria, quando res cum re aut pretio pro vitae necessitate permutatur."

[95] "Hanc non licitam solum, sed laudabilem esse, est evidens."

[96] MOLINA, *De iustitia et iure*… [see n. 56], col. 375-382.

[97] Mt 21:12-17.

reject the activity of merchants as such. Early modern scholastics, and especially those belonging to the School of Salamanca, had embraced society's need for trade and the increased velocity of the circulation of goods thanks to the developments described in part 3, *supra*. Consequently, the main argument Malderus proposes is that there should be no abuses, a common theme throughout his chapters and fully congruent with the real demands of society during the early modern period. As was mentioned in the introduction, the development of new industries had created new risks for economic dominance and exploitation, while at the same time bringing new goods and more prosperity to (the wealthier *strata* of) European societies. It is clear from the outset of his chapter that Malderus does not reject the economic activity of merchants, but rather embraces them as long as they do not abuse the general population. This is congruent with the thought of the School of Salamanca, and seems to have been part of a pragmatic approach aimed at the (perceived) best possible improvement of society as a whole.

Similar observations can be made for *Dubium* 5. This *Dubium* has already been analysed by Decock.[98] It discusses a creditor selling his contractual claim below its nominal value. For example: merchant A is owed 50 pieces of silver by the 1st of June of year 1 by merchant B. Can A sell that claim to banker C on the 1st of October of year 0 for 40 pieces of silver? Lessius allowed for a deviation of the just price, as speculation was seen as a different concept with its own rules. Malderus is stricter: this can only be accepted if there is a real risk of non-payment. Otherwise this is a "*quasi mutuum*", a forbidden, usurious contract of money exchange. He refers i.a. to Mazzolini,[99] Carletti di Chivasso[100] and Molina.[101] As an example of the contrary opinion, he mentions Tommaso de Vio[102] ("Thomas Cajetanus") (1468-1534). What is crucial here is the just price as benchmark. Deviations are not tolerated further than strictly required, because the just price is,

[98] Decock, *Le marché du mérite*... [see n. 1], p. 90-91, p. 119

[99] Mazzolini, *Summa Summarum*... [see n. 72], f° 154r-v.

[100] Angelo Carletti di Chivasso, *Summa Angelica*... [see n. 81], f° 311v-r.

[101] Molina, *De iustitia et iure*... [see n. 56], col. 464-465.

[102] Thomas Cajetanus, *Summula de peccati*, Paris, 1530, chap. *Usura*, p. 298-300.

in essence, the moral duty owed by sellers to their fellow citizens. Time and again, it is used as the principle defence against abuses by the more powerful party.

While *Dubium* 6 is too short to draw general ideas from, *Dubium* 7 further underlines the strong position of the just price. It is there that Malderus discusses "*monopolia*". This will be the subject of a later part of this article, so suffice it to say that he states that all types of *monopolia* are forbidden, unless they respect the just price.

The just price is less prominent in *Dubia* 8 to 10. They respectively pertain to the duty of a seller to indicate hidden vices (*Dubium* 8), the *contractus trinus* discussed in chap. 1, point B (*Dubium* 9), and the division of profits in a *societas* (*Dubium* 10).

In *Dubium* 11,[103] the just price returns in Malderus's analysis of sales on credit. Even if sales on credit were a distinct category, the variation of prices can be no greater than the limits of the just price in sales for real money.[104] Referring mainly to Summenhart,[105] Malderus explains the two factors allowing the sale outside of the scope of the just price: *damnum emergens* and *lucrum cessans*. The former is damage the seller suffered because of the sale on credit, and the latter is the loss of profits the seller has undergone for the same reason. However, the damage must be real, and not due to the seller's ignorance or carelessness.

Similarly, if the seller possesses the item between sale and payment, he is allowed to ask for more if the good's value increases. Otherwise, Malderus, refuting Cajetanus,[106] writes that ownership of the item passes at the moment the contract is concluded. That principle is known in law as *res crescit domino*, originating from the canon-law rules *Cum Delicti*[107] and *Naviganti*,[108] to which Malderus refers. He describes it as: "[The seller] transfers ownership of the sold item to [the buyer], by which, just like in the

[103] Malderus, *De virtutibus theologicis*... [see n. 17], f^os^ 429-430.

[104] "Non tantum iustum, sed etiam aequum esse, ut intra limites iusti carius vendas credito, ut omnes admittunt."

[105] Summenhart, *Opus septipartitum*... [see n. 56], *Tractatus* 2, Question 30, unnumbered edition.

[106] Thomas Cajetanus, *Secunda Secundae Partis Summae Sacrosanctae Theologiae Sancti Thomae Aquinatis, Doctoris Angelici*, London, 1558, Question 78, Article 2, n. 7, p. 269.

[107] X. 3,17,2.

[108] X. 5,19,19.

intrinsic value, increase happens in favour of the owner, so, too, it is in the case of an established price".[109] He supports his statement by referring to Giacomo Graffi (1548-1620).[110]

In the next paragraph, Malderus describes the second cause for deviation from the just price for sales on credit: avoidance of other securities. The sale on credit then becomes a security for the risk of non-payment. The price need not be lowered if the risk does not materialise,[111] for the seller only insured himself against the risk of non-payment, not its occurrence. However, Malderus does not approve of an unlimited price for a very large risk of non-payment. The potential price increase does not mean that there can never be a reasonable price. It remains unclear, nevertheless, how Malderus sees this limit. With reference to Molina[112] he indicates that the buyer should be informed of the risk considered, because it makes the contract *quasi novus contractus*. He thus protects buyers from abuse by overeager sellers, and again shows his general aversion to the idea of granting too much leeway to credit operations. As such, Malderus was likely influenced by the prominent discussions on the issue of *mutuum* (money exchange) and usury. In this debate, he seems to have followed a moderate line between a rigorous prohibition of usury, and the most laxist interpretations of Jesuits such as Juan de Lugo.[113] This indicates to my mind yet another example of Malderus granting some leeway to sellers and their economic freedom, while also attempting to ensure that abuses were limited and combatted.

The third way in which sale on credit is allowed is retail. If retailing is customarily done on credit, deviation from the just price is allowed. Malderus says that the *iustum pretium vulgare*

[109] "…transfert ei dominium rei venditae, quae sicuti in valore intrinseco melioratur domino, ita & in pretio imposito."

[110] Giacomo Graffi, *De arbitrariis confessariorum, quae attinent ad casus conscientiae, libri duo*, Napels, 1613, Book 2, chap. 71, n. 5, p. 301 (Malderus refers to it as "chapter 115", even though it is only chap. 113 when cumulating the chapters of Books 1 and 2).

[111] "…neque tenebitur venditor pretium minuere, quando tempore solutionis deprehenderit nullas molestias aut impensas invervenisse; quia non tam pro impensis, quam pro periculo earum quod vere subiit, pretium auxit."

[112] Molina, *De iustitia et iure…* [see n. 56], col. 439-441.

[113] de Lugo, *De iustitia et iure…* [see n. 52], vol. 2, *Disputatio* 26, section 12, f^os^ 341-343.

was then already heightened because of this custom. He describes Molina's argument for this,[114] but adds that in some cases it is legitimate even if the price is higher than the current just price. That is so if the sale of an item in the long term is beneficial to society, because the selling of goods in the long term is *quasi novum forum*. Within the broader context of a society where new and exotic goods were being brought in regularly, this further underlines the point of Malderus maintaining an open attitude towards the influx of new goods which were perceived as beneficial to society. Spices, hardwood, gold, etc. were important enough to the Salamancan movement to allow for leeway, even for authors such as Malderus who were generally sceptical of sales on credit.

For the remainder of the chapter (*Dubia* 12-17),[115] the just price comes to the fore less. This is due to the topics of the *Dubia*, namely buying back for real money what one has just sold on credit (*Dubium* 12), the allocation of risk between sale and transfer (*Dubium* 13), selling the same item twice (*Dubium* 14), keeping the fruits of the item as compensation in case of non-payment (*Dubium* 15), clauses of rebuying/reselling in contracts (*Dubium* 16), and a seller's obligation to indemnify the buyer if the item sold is claimed by a third party (*Dubium* 17).

In general, Johannes Malderus, like many scholastics of the School of Salamanca, strongly stresses the just price. He uses it as the only consistent benchmark for the moral validity of sales contracts. Exceptions are interpreted with caution, and deviation from the just price can only be accepted in specific cases. Overall, this fits well in a context of new potential abuses by economically powerful actors, such as large spice traders or mining conglomerates. Malderus seeks to tread the line between prohibition of mercantile activities and abuses by lack of (moral and/or legal) regulation. For this, he relies, like so many other theologians, on the concept of a just price, and preferably the just price as determined by the uninfluenced will of intelligent and knowledgeable people. This fits the context of early modern society, where a limited group of merchants and princes dominated some of the most crucial and growing new industries, such as the spice trade or the mining industry. In the absence of a state apparatus capable of

[114] Molina, *De iustitia et iure*... [see n. 56], col. 442-444.
[115] Malderus, *De virtutibus theologicis*... [see n. 17], p. 430-434.

imposing hard limitations on their freedom to act (even if their actions harmed society), Salamancan scholars such as Johannes Malderus concocted a system of moral limitations to the economic freedoms where the general wellbeing and the free will of the buyers were protected.

6. Assessing the influence of Lessius of Malderus

This leaves open the question of influence by Lessius. As was indicated in the introduction, influence would be deemed present either if Malderus adopted the solutions to concrete moral problems offered by Lessius with direct reference to the latter's work, or if the goalposts of the debates in previous generations had shifted under the influence of Lessius to a more laxist position in general, in which case there need not necessarily be a direct reference to Lessius by Malderus. Some more explanation of the latter element is required. Inspiration for defining this type of influence is found in the social sciences. Imagine there was a range of answers to a certain moral question offered by moral theologians reaching from one (the most rigorous answer, e.g., commerce in itself is always sinful) to ten (all economic actions are legitimate because God bestowed free will on individual humans and they can act with that free will as they please).[116] Over time, and under the influence of the increased societal importance of trade and commerce, the average position of moral theologians —and especially those belonging to the School of Salamanca— shifted away from the most rigorous position, towards more laxist views on economic activity. This was especially true for those belonging to the Jesuit Order.

As a consequence, positions they considered reasonable —or probable— also shifted from more rigorous to more laxist, in-

[116] In modern sociology and political science, this set of ideas is usually described as "acceptable speech" or "acceptable discourse", while their changing over time is known as "shifting norms" or simply "evolving social norms". Its most famous expression is the so-called "Overton window", named after American political scientist Joseph Overton (1960-2003), which supposedly represents the acceptability of policy initiatives ranging from "unthinkable" to "popular". An excellent recent analysis of the notion of acceptable discourse and changing social norms can be found in Russell Golmann, *Acceptable Discourse: Social Norms of Beliefs and Opinions*, in *European Economic Review*, 160 (2023), online publication.

cluding those positions they did not necessarily agree with but showed empathy for when held by others. I affirm that it would be an argument for influence by Lessius if it were found that authors such as Domingo de Soto, Luis de Molina, Juan de Salas, etc. held more rigorous views than Lessius in matters of commercial activities, while authors writing after Lessius had set out his ideas generally became more laxist, even if they did not necessarily go as far as adopting the most laxist opinions of the Oracle of the Netherlands. In other words: did Leonardus Lessius cause a shift in acceptable discourse in matters of contracts of sale to such an extent that Johannes Malderus held more laxist ideas than he would have held without the work of Lessius?[117]

In order to explore this question, this chapter will examine the topics both authors discuss under the title *De Emptione et Venditione*. Many of them are similar. However, this similarity can equally be observed for Luis de Molina,[118] Domingo Báñez[119] or Pedro di Navarra.[120] This is thus insufficient.

We know that Franciscus Zypaeus, a direct subordinate of Malderus, saw Lessius as responsible for Malderus's opinion on the *contractus trinus*. Consequently, influence seems to exist for at least one topic in the matter of sales contracts. However, research has also shown topics where the two authors disagreed, such as the sale of debts below their nominal value.[121]

[117] To give a more modern illustration of how this might work, consider the discussion on the right to vote in Belgium. A century ago, in 1924, universal suffrage for men had just been introduced (in 1919). At this point in time, it would have been considered a "reasonable" position within the public debate to claim that this situation was sufficient, and that women's suffrage should not be introduced. It was not an opinion universally held, but present in the public debate. Today —and probably at any given point since the social changes of the 1960s— arguing against the right to vote (or stand in elections) for women is one that would get its author marginalised and pushed out of the public arena immediately. This is what I mean by "reasonable" opinions: what is considered as an "acceptable" opinion can change over time and due to changing societal circumstances (*in casu* movements such as feminism and socialism).

[118] Molina, *De iustitia et iure*… [see n. 56], col. 346-577.

[119] Domingo Báñez, *Decisiones de iure et iustitia*, Douai, 1615, Book 4, *Quaestio* 57, f^os^ 267-289.

[120] de Navarra, *De ablatorum restitutione*… [see n. 78], p. 222-310.

[121] Decock, *Le marché du mérite*… [see n. 1], p. 152-154.

In what follows, I will nuance the idea that Malderus was strongly and directly influenced by Lessius on this topic. Focusing on the key issue of economic dominance during the early modern period, the *monopolia* question, this chapter seeks to prove that Malderus was generally not strongly influenced by Lessius. I will point out the lack of references as well as biographical elements making influence unlikely.

6.1. Why monopolia?

Let us first frame the topic of *monopolia*, and justify its importance when assessing the influence of Lessius on Malderus. In part 3 *supra*, the term was already introduced as the main term used during the early modern period for the description of anti-competitive behaviour in general. Much like the *contractus trinus*, it can thus be considered as quintessentially early modern. During the Middle Ages, there had not been a strong intellectual tradition on *monopolia*, even if the *Corpus Iuris* did prohibit them (C. 4.59.2). Discussions in the works of medieval lawyers mainly focused on guilds, and most even left out an analysis of *monopolia* altogether.[122] It would be moral theologians working during the transition from the Middle Ages to the early modern period who made the first extensive analysis with a link to commercial practice. The two most relevant currents were the "penitentiary" tradition and the Thomists. A key representative of the former is Silvester Mazzolini, who wrote a *Summa*[123] for confessors in the late 15th century. He formulated ideas on *monopolia* which would be picked up by the School of Salamanca.[124] The most prominent Thomist was Thomas Cajetanus. In his commentary on the 77th Question of the *Secunda Secundae*, he discusses *monopolia* with a focus on the "just price", which was the topic of that Question in Aquinas.[125] A final theologian of relevance aside from those two currents was Konrad Summenhart. In *Quaestio* 51

[122] Vandermeulen, *Modest Building Blocks*… [see n. 36], p. 427-470.

[123] Mazzolini, *Summa Summarum*… [see n. 72], f° 154r-v.

[124] He mainly does this in *Quaestiones* 13 and 18 of his chapter *De Emptione et Venditione*. See Mazzolini, *Summa Summarum*… [see n. 72], fos 246v-251r.

[125] Cajetanus, *Secunda Secundae Partis*… [see n. 106], p. 263-267. See again Vandermeulen, *Modest Building Blocks*… [see n. 36], for a more extensive analysis.

of his *De Contractibus*,[126] he gave one of the first clear definitions of *monopolium*. His analysis would become a standard point of reference.[127]

The changing context where large firms began dominating some of the most crucial economic sectors, would also be felt in scholastic works. The focus gradually shifted away from guilds, towards trading monopolies and ways of dominating the market. It is no coincidence that the aforementioned works of Mazzolini and Summenhart were published around 1500: it was then that the question of *monopolia* became increasingly prominent. There were other factors at play, such as the first "copyright" legislation in Venice in 1474,[128] but it was the shift in international trade and the dominant position of state-granted monopolies which inspired new ways of discussing the moral and legal acceptability of *monopolia*. One very important element in this was the School of Salamanca. Many of its authors included a discussion on monopolies, with the last decades of the 16th century seeing an evolution of no longer discussing it as one way in which sales contracts become invalid, but as a separate title (even if the moral acceptability of selling under a monopoly remained central).[129]

That is why I called the monopoly question "quintessentially early modern", and why studying the question in the works of Malderus and Lessius gives a good indication of influence.

[126] Summenhart, *Opus septipartitum*... [see n. 56], *Tractatus* 3, *Quaestio* 51, unnumbered edition.

[127] Vandermeulen, *Modest Building Blocks*... [see n. 36].

[128] Luke Bradford, *Inventing Patents: A Story of Legal and Technical Transfer*, in *West Virginia Law Review*, 118/1 (2015), p. 267-326.

[129] Petrus Aragonius, *In secundam secundae commentaria,* London, 1597, Question 77, Article 4, f^os^ 462-463; de Lugo, *De iustitia et iure*... [see n. 52], vol. 2, London, 1642, *Disputatio* 26, section 12, p. 341-343; Molina, *De iustitia et iure*... [see n. 56], col. 387-390; de Navarra, *De ablatorum restitutione*... [see n. 78], p. 266-267; Juan de Salas, *Commentarii in Secundam Secundae D. Thomae de Contractibus*, London, 1617, Tractate 1, *Dubium* 38, p. 70-74, and many others. For a recent analysis of one such theory, see Wim Decock, "Mercatores isti regulandi"*: Monopolies and Moral Regulation of the Market in Pedro de Oñate's* De contractibus, in *The Legal History Review*, 90/3-4 (2022), p. 462-488.

6.2. An argument against influence by Lessius

In order to assess this influence, it is important to recall that authors of the later generations of the School of Salamanca (after *c.* 1570) tended to divide monopolies into four types.[130] The first was the monopoly established through privilege granted by the prince. The second was hoarding goods to speculative ends. The third was chasing off competitors. Finally, the fourth consisted of "price conspiracies", which included both the present-day terms "price fixing" and "cartel forming".

Malderus and Lessius are no exception. For the comparison, I will maintain the order of topics used by Malderus in the 7th *Dubium* of the chapter discussed *supra*. As to Lessius, his monopoly theory can be found in Book 2, chap. 21, *Dubitatio* 21 of his *De iustitia et iure*.[131]

Both authors first discuss the monopoly formed by way of conspiracy, i.e., cartel forming or price fixing. They agree on the main points. They both stress that a conspiracy is a grave sin against Charity. However, they agree that if the price resulting from it does not exceed the *latitudo* of the just price that would have otherwise existed, the conspirators commit no sin against Justice, and are not held to restitution. It would nevertheless be an exaggeration to state that this similarity is due to direct influence. If we consider the monopoly ideas of older authors such as Luis de Molina[132] or Domingo Báñez (1528-1604),[133] we find identical opinions. The concern for balancing benefits and abuses was thus clearly already present in an identical way since the start of the early modern period.

The second type of monopoly is the hoarding of goods. Lessius discusses it third. There is clearly no influence in this case. Both authors fundamentally disagree on its sinful character. Lessius stresses the absolute nature of property rights of hoarders: as long as they bought at a price that was just at the time of purchase, they do not sin. He makes the analogy with a situation where the presence of many buyers causes prices to rise. That is not unjust, so why would another situation where prices rise due

[130] See previous footnote for examples.
[131] Lessius, *De iustitia et iure*… [see n. 52], f^os^ 294-295.
[132] Molina, *De iustitia et iure*… [see n. 56], col. 387-390.
[133] Báñez, *Decisiones de iure et iustitia*… [see n. 119], f^os^ 269-270.

to buyer behaviour be unjust? This far-reaching defence of private property is typical of Lessius.[134] However, within the topic of monopolies, he was not the first to hold this opinion. It was Luis de Molina who first defended the idea that the public has no intrinsic right to the goods, and that merchants who have bought for a just price may do with them as they please.[135] As was stated *supra*, it is apparent that Jesuits such as Molina and Lessius often argued for very laxist positions, and vastly preferred the freedom to act of individual merchants as well as holding a strong position for private property.

Malderus, however, disagreed. Even if the merchants had bought at a just price, they still sinned if the price rose above the just price that would have existed without their actions.[136] The difference is that Malderus considers the situation that would have existed without the hoarding to judge its moral validity, while Lessius (and Molina) look at the situation *post factum*.

Thirdly, Malderus analyses the creation of a monopoly by chasing off competitors. Lessius discusses this last. In general, both authors agree. Chasing off competitors is not prohibited, unless merchants use fraud or violence.[137] There is an argument to be made for influence here. Malderus claims that the chasing off is not sinful because it does not raise prices, but merely prevents

[134] This is the conclusion of virtually every contribution that has ever been written on Lessius. See i.a. Robert Beutels, *Leonardus Lessius 1554–1623: Portret van een Zuidnederlandse laat-scholastieke econoom: een biobibliografisch essay*, Wommelgem, 1987, p. 134; Brants, *La création de la chair de théologie…* [see n. 23], p. 44-56; Decock, *Le marché du mérite…* [see n. 1]; Wim Decock, *Lessius and the Breakdown of the Scholastic Paradigm*, in *Journal of the History of Economic Thought*, 31/1 (2009), p. 57-78; Toon Van Houdt, *Leonardus Lessius: Traditie en vernieuwing*, Antwerp, 2005, p. 174.

[135] Molina, *De iustitia et iure…* [see n. 56], col. 389-390.

[136] "Si talis sua immodica coëmptione secit ultra illud quod alioqui iustum fuisset accrescere pretium, & vendat postea enormi illo pretio, quamuis tunc iusto, peccat contra iustitiam & tenetur de illo excessu, quod bene probat ratio allegata. Si autem pretium quo vendit, non sit maius iusto rigido, quid fuisset citra monopolium, non peccat contra iustitiam." Malderus, De virtutibus theologicis… [see n. 17], f° 423.

[137] In Lessius: "without force or fraud" (*sine vi aut fraude*), in Malderus: "without force, fraud, deceit or lies" (*sine vi, fraude, dolo, mendaciis*). Lessius, *De iustitia et iure…* [see n. 52], f° 295; Malderus, *De virtutibus theologicis…* [see n. 17], f° 424.

a decrease.[138] The community has no right to the goods.[139] This reasoning is reminiscent of the type of arguments used by Lessius and other Jesuits. Two counterpoints could be made. The first is again that Lessius was far from the first to use this argument. Martin de Azpilcueta, Domingo de Soto, Luis de Molina, Juan de Salas, etc. were all familiar with this type of argument. Secondly, the ideas which Malderus and Lessius adhere to in this concrete context were not original. Authors such as Silvester Mazzolini,[140] the Dominican Francisco Garcia (1525-1585)[141] or Pedro di Navarra[142] already included an identical analysis.

Finally, Malderus discusses monopolies established through privilege granted by the Prince. This is second in Lessius's analysis. Lessius and Malderus agree that privileges are permissible on two conditions: they must be given for the *bonum commune*, and the price established should be within the *latitudo* of the *iustum pretium vulgare*. However, once again, most scholastics of the School of Salamanca followed this reasoning. The idea of privileges on two conditions had been around since the work of Innocent IV (1195-1254).[143] During the early modern period it was used by theologians to defend i.a. the privilege of a printer,[144] or those granted for the spice trade with the Far East.[145] This is perhaps the type of *monopolium* where the influence of the mercantilist model and early modern economic developments is most strongly visible. Most of the crucial economic sectors in early modern life were regulated by these types of privilege (see part 3 *supra*). The far-reaching defence of said privileges by many promi-

[138] "Talis non tam censetur addidisse excessum pretii, quam avertisse decrementum…"

[139] "Civitas enim non quamuis ius non hebeat ad istas merces."

[140] Mazzolini, *Summa Summarum*… [see n. 72], f° 331.

[141] Francisco Garcia, *Del tratado utilissimo y muy general de todos los contractos, quantos en los negocios humanos se suelen ofrecer*, chap. 13. I consulted the Italian translation, published six years after the Spanish original in 1583. See *Trattato di tutti I contratti che nei negotii, et comertii humani sognliono* occorrere, Brescia, 1589, p. 210-216.

[142] de Navarra, *De ablatorum restitutione*… [see n. 78], p. 266-267.

[143] Innocent IV, *In V libros Decretalium Apparatus seu Commentaria*, X 2.28.69, Paris, 1514, f^{os} 249^{v}-250^{v}.

[144] Craig Allen Nard and Andew Morriss, *Constitutionalizing Patents: From Venice to Philadelphia*, in *Review of Law and Economics*, 2/2 (2006), p. 223-322; Bradford, *Inventing Patents*… [see n. 128], p. 314-326.

[145] Molina, *De iustitia et iure*… [see n. 56], col. 387-388.

nent Salamancan authors shows not only their familiarity with actual, existing economic practice, but also their tolerant attitude to the Prince's actions (as well as the actions of the privileged merchants). What many scholastics essentially argued was an approval of the fundamentals of the new system, while condemning the excesses (and only the excesses).

In conclusion, Malderus and Lessius were no great innovators in the field of *monopolia*. In my opinion, this had at least two root causes. The first is that, by the early 17th century, discussions on the political level had more or less settled in favour of a broad tolerance towards *monopolia*, especially privileges. This evolution is usually labelled as the "mercantilist" movement. It was reflected in the works of many moral theologians by the diminishing of virtually all limits to trade, except for the just price. Compared to their medieval predecessors, theologians of the School of Salamanca had become very lenient.[146] The second is that intellectual debate within the School reached agreement towards the end of the 16th century, with a near-complete acceptance of the "four type" model.

Secondly, it is clear that Lessius was not the sole influence on Malderus for the latter's ideas on *monopolia*. Out of the four types, there are two with similarities most likely not due to direct influence, one with plain disagreement, and one where indirect influence may have been at play. The influence of Lessius on Malderus is indirect and partial at most. The statement that "Malderus was influenced by Lessius" should thus be reassessed, at least for situations of economic dominance by one party to a sales contract.

6.3. Censorship as explanation for the lack of influence?

Could the lack of influence be explained by the censorship Lessius faced during his career? His ideas on free will and grace led to enormous controversies within Catholicism. Both within and outside of the Jesuit Order, Lessius was reprimanded, sanctioned

[146] Raymond De Roover, *Scholastic Economics: Survival and Lasting Influence from the Sixteenth Century to Adam Smith*, in *The Quarterly Journal of Economics*, 69/2 (1955), p. 161-190; Decock, *Lessius and the Breakdown…* [see n. 134], p. 63-67; Odd Langholm, *The Legacy of Scholasticism in Economic Thought: Antecedents of Choice and Power*, Cambridge, 1998, p. 215.

and even censored.[147] Perhaps Lessius had already been forbidden to teach certain topics when Malderus followed his lectures?

As soon as Lessius started teaching in 1585, controversies arose. He had to defend himself from attacks by the Faculty of Theology of Leuven University as early as 1587, with the controversy becoming so grave that the Pope intervened in 1588. He ordered that neither party could continue to censor the other. Thus, the censorship would not have applied during the period when Malderus was following the lectures by Lessius, because the Pope only returned to the issue after Lessius had stopped teaching.[148] On the contrary, many merchants and even the rulers of the Southern Netherlands often consulted Lessius.[149] No indication exists that censorship would have led Malderus to be unfamiliar with Lessius's ideas on commerce and contracts. After all, Zypaeus claimed that influence from Lessius did exist for the *contractus trinus*. Malderus himself also refers to Lessius in this context.[150]

A final element are the course notes[151] attributed to Malderus, and made during Lessius's lectures on the *Summa*.[152] Unfortunately, those notes only pertain to Lessius's lectures on the *Prima Primae*, while economic matters are discussed in the *Secunda Secundae*. We do know that Lessius taught on the *Secunda Secundae* in Leuven, thanks to course notes of two other students.[153]

[147] Decock, *Le marché du mérite…* [see n. 1], p. 24; Quaghebeur, *Pro aris et focis…* [see n. 9], p. 20-24 and p. 579-580; Roegiers, *Awkward Neighbours…* [see n. 8], p. 160-161; Eleonora Rai, "Ex Meritis Praevisis"*: Predestination, Grace, and Free Will in intra-Jesuit Controversies (1587–1613)*, in *Journal of Early Modern Christianity*, 7/1 (2020), p. 111-150.

[148] Roegiers, *Awkward Neighbours…* [see n. 8], p. 161; Ludwig von Pastor and Robert F. Kerr (ed.), *History of the Popes from the Close of the Middle Ages*, vol. 21, London, 1932, p. 188-192 (English translation of the German original).

[149] Wim Decock, *De beroepsaansprakelijkheid van de advocaat in Lenaert Leys' Over rechtvaardigheid en recht*, in Martin Schermaier, Harry Dondorp, Boudewijn Sirks (ed.), "De Rebus divinis et humanis"*: Essays in Honour of Jan Hallebeek*, Göttingen, 2019, p. 91-92.

[150] Malderus, *De virtutibus theologicis…* [see n. 17], f° 426.

[151] I would like to thank my colleagues Shiri Roelofs and Prof. Dr. Toon Van Houdt for their tips about the student notes.

[152] Leuven, University Archives, OU, GVELDE, D.133.

[153] The notes of Phillipus Rovenius (1573-1651), kept in the Utrecht Archive, 439, and the notes of Thomas Walterius Tiringius (late 16th century), kept in the National Library of Belgium, ms. 945.

The potential explanations for the lack of notes by Malderus on the *Secunda Secundae* lectures are manifold. His final will indicates that he bequeathed his library to the new Malderus College, which was where the surviving notes were originally kept before being moved to the Leuven University Archives. However, the will does not give an inventory, and thus makes it impossible to verify if more notes existed.[154] Perhaps others were lost, remain undiscovered or are ascribed to another author. It is equally possible that Malderus simply did not attend later lectures, or less frequently. That would not be illogical, given his appointment as a teacher in 1586. It is possible that during 1585-1586 he attended most lectures, because that was the only year Lessius taught in Leuven when Malderus had no teaching responsibilities himself. During this year, Lessius indeed taught the *Prima Primae*.[155] When he got to the *Secunda Secundae* in 1593,[156] Malderus may have been too occupied to attend. Or perhaps he wanted to avoid the lectures due to the controversies surrounding Lessius. Or perhaps he lost interest. It is impossible to say. What is relevant, is that Malderus's presence at the lectures of Lessius on the *Prima Primae* as well as his ability to freely attend the courses of Lessius on the *Secunda Secundae* are clear from the primary evidence available at the archives.

6.4. Two alternative explanations

Rather than censorship, two other alternatives are more likely explanatory factors for the lack of references to or influence from Lessius.

6.4.1. Steering clear of controversy

The first is related to the controversial nature of Lessius's work, but is more indirect than censorship. It is not that Malderus did

[154] Vissers, *Gedenkschrift over den Hoogwaerdigen……* [see n. 2], p. 26.

[155] Antonio M. Artola, *El marco cronológico de las prelecciones del p. L. Lessio, de 1585 a 1600*, in *Scriptorium Victoriense*, 22/1 (1975), p. 100-116.

[156] *Ibid*., p. 111, speculated that this year would have been when Lessius taught the *Secunda Secundae*, but lacked primary evidence. As Van Houdt, *Leonardus Lessius…* [see n. 134], p. 190, n. 25 rightly says, Artola was unaware of the existence of the student notes of Rovenius which would have confirmed his hypothesis (the notes by Tiringius were only recently discovered by Shiri Roelofs).

not *know* about Lessius's ideas —which might have been the case had censorship applied— but rather did not *want* to refer to him. After its immediate inception in 1585, controversy only grew during the 1590s and 1610s.[157] In this period, Lessius even lost the support of Robert Bellarmine (1542-1621), who had been his friend and supporter for decades. Bellarmine, by then a prominent cardinal, realised that continued support for Lessius could result in a rupture between the Jesuits and other religious orders, and between the Leuven Jesuits and the Faculty of Theology of Leuven University.[158] He claimed to have "misinterpreted" Lessius's ideas, and now "rectified" his mistake: Lessius had to give up his theory on grace and free will. Lessius refused, arguing that Bellarmine and other ecclesial authorities had misunderstood him, and he could explain everything if they met with him.[159] They refused, and Lessius held on to his ideas. However, because Sixtus V (1585-1590) had expressly pronounced Lessius's ideas to fall within the teachings of the Church, he could not be excommunicated.[160] He could still be marginalised, of course, and he became *persona non grata* for many scholars and ecclesial authorities. That is why, by 1616, referring to Lessius had become unpopular. By this point, Malderus had been appointed as bishop of one of the most populated dioceses of Europe, which was also at the heart of both intra-Catholic and Catholic–Calvinist conflict. I believe that this position led him to a more "rigorous" approach. For reasons of confessional unity, he wanted to avoid controversy. He also announced this in the *Praefatio* to his commentary on the *Secunda Secundae*: he would attempt to return to the basic tenets of Thomas Aquinas by "amputating the excessive length of words [written by others]".[161]

It is furthermore also likely that Malderus wanted to defend himself against accusations made by the proto-Jansenist movement at the Leuven Faculty of Theology. After the creation of the chair of Thomism in 1594, Jacobus Jansonius (1547-1625) himself alleged that the Faculty of Theology had become too methodolog-

[157] See n. 114.

[158] Roegiers, *Awkward Neighbours…* [see n. 8], p. 162-168.

[159] Rai, "Ex Meritis Praevisis"… [see n. 147], p. 247-250.

[160] *Ibid.*, p. 244.

[161] "Verborum amputata prolixitas". See Malderus, *De virtutibus theologicis…* [see n. 17], *Praefatio*.

ically similar to the Jesuit College. The Jesuits in turn reinforced this impression by spreading rumours that this was true, which led to the Faculty promulgating a declaration in 1613 —only two years after Malderus had been called away— stating that it was, in fact, following its own teachings (which condemned the work of Lessius).[162] Malderus, whose work indeed does show clear influence from the School of Salamanca, thus seems to have perceived the necessity to defend himself against these allegations by invoking the need for confessional unity within Catholicism. Especially given the chronology of accusations of laxism made by the (proto-)Jansenists, it would have been difficult for him not to interpret this as a potential attack at least partially aimed at his own teachings.[163]

This apology accompanied by a call for unity does not only occur in the *Praefatio* to his commentary on the *Secunda Secundae*, but also in the Preface to his commentary on the *Secunda Primae*. Malderus is even more explicit there, and claims that, while scholastics should be able to discuss their differences within Catholic orthodoxy, their discussions should always be based on tradition, and specifically on the ultimate judge of the truth on grace and salvation: the Church.[164] When reading his chapter *De Gratia*, it also stands out that Malderus makes virtually no references to other theologians, and limits his source apparatus to the Bible and the Church fathers. St. Augustine in particular is referred to on multiple occasions. That is exactly what one would expect in the light of (proto-)Jansenist criticism: the anti-Pelagian work of St. Augustine was at the core of the discourse of the (proto-) Jansenists. Malderus generally did not include numerous references in his work, but in *De Gratia* the number of references becomes so sparse that in my opinion the silence on his part in this regard speaks volumes (especially because other chapters of this book do contain references at a higher frequency). He condemns both the position of Pelagius and that of Luther, claiming that both grace and free will play their respective part in salvation. His entire reasoning time and again returns to the work of St. Augustine, the opinion of Thomas Aquinas, the decisions of the Council of

[162] Roegiers, *Awkward Neighbours…* [see n. 8], p. 165-166.

[163] François, *The Schools of Louvain and Douai…* [see n. 48], p. 211-212.

[164] Johannes Malderus, *In Primam Secundae commentaria*, Antwerp, 1623, Preface.

Trent, and later papal decisions. In short: these were all opinions which were above any suspicion of heterodoxy relating to grace.[165] This is especially interesting because it is established from the aforementioned student notes in the Leuven University Archive that Malderus must have been familiar with Lessius's ideas on grace. He was a member of one of the only class groups which ever experienced the "unfiltered" teachings of the Oracle about grace. And yet, when reading his own work on grace, no trace of Lessius is anywhere to be found. There is not a single reference in a tractate on grace that is over 200 pages long and forms more than a third of Malderus's entire commentary on the *Prima Secundae*. It is my opinion that this is not a mere act of accidental omission, but rather a conscious avoidance of the ideas of the Antwerp Jesuit.

Again, it is clear that these discussions were not merely a dogmatic conflict between scholars, but a conflict which was also rooted in real, political circumstances and the interests of the different parties. The struggle for funds between the Faculty of Theology and the Jesuits and the desire to reunite the Church in the diocese of Antwerp as Malderus's main priority are elements which play in the background of these very technical discussions on the nature of human salvation.

Returning to the ideas of Malderus on contracts of sale and situations of unequal power relations in economic affairs, this would also explain why most references are made to authors like Mazzolini, Summenhart, Medina or Molina: those were more established and less controversial authorities, even if they were not immune to controversy either. My analysis shows that Malderus mentions Lessius only seven times,[166] whereas Molina is referred to over 100 times, as are Cajetanus and Petrus de Navarra. Juan de Medina and Soto are referred to over 50 times, while Summenhart sits at *c.* 40. Interestingly, Lessius is used as the sole source for a statement only once, on folium 618 about simony. In all other references, Lessius is only mentioned as the second, third or even later authority. This includes the reference in the context of the *contractus trinus*. To me, it indicates that Malderus actively avoided making references to Lessius. The *contractus trinus* seems to be a rare exception. Considering the broader social and religious con-

[165] *Ibid.,* Question 109-114, f^os^ 421-634.

[166] Id., *De virtutibus theologicis…* [see n. 17], f^os^ 426, 475, 544, 618, 653, 731, 792.

text of intra-Catholic conflict avoidance, I believe that Malderus's aversion to controversy and intra-confessionary conflict caused this.

6.4.2. Malderus as an intellectual in his own right

The second explanation I offer lies on the personal level. I argue that a direct and exclusive influence by Lessius is unlikely due to the education Malderus had already received by 1585, and the length of time between the lectures by Lessius and the publication of *De Virtutibus Theologicis*.

By 1585, Malderus had already received the title of *magister* in theology after an education in both universities of the Spanish Netherlands (Leuven and Douai).[167] He clearly had potential, as the University of Leuven made him head of the *paedagogium* "*Het Verken*" ("The Pig") in 1586, and gave him the opportunity to become a *Doctor*. He took up this position in 1586, not a year after Lessius started teaching at the Jesuit College in Leuven. I believe that the historical perception of Malderus as a young student attending the classes of a renowned professor is wrong: it was rather a trained theologian who attended the classes of a young professor. The idea of master and student lacks nuance. Lessius and Malderus —born only 9 years apart— were in my opinion on a more equal footing than is often assumed, even if Lessius held a more prestigious position in 1585-1586.

Furthermore, influence is often assumed due to Malderus's biographers mentioning his attendance at Lessius's classes. However, it is unclear if Malderus actually attended the lectures on the *Secunda Secundae* (*supra*, point 6.3). Even if he did, it is odd that his other teachers are not seen as influential. The two most notable names in that regard are Johannes Lensaeus ("Jean de Lens") (1541-1593) and Johannes Clarius (1547-1611). They introduced Malderus to the topics of philosophy and theology, but are never described as his mentors.

Malderus's status as an intellectual in his own right is further confirmed by the citations of his work by authors of the 17th and 18th centuries. Most citations pertain to dogmatic questions, but

[167] Piot, *Johannes Malderus…* [see n. 2], p. 119; Van der Aa, *Jan van Malderen…* [see n. 2], p. 129; Vissers, *Gedenkschrift over den Hoogwaerdigen……* [see n. 2], p. 5-6.

there are also references to legal-economic topics.[168] None of them give the impression that Malderus is a pupil of Lessius. That idea seems to appear in the 19th and 20th centuries. During his lifetime and in the decades after his death, many authors cited the Bishop as an authority supporting their opinion, or on the contrary attacked his positions. The lack of explicit references to the link between the two authors is of course no definitive proof. It is possible that later authors, too, did not want to attract controversy over their work by citing Lessius. Nevertheless, it seems unlikely they all referred to Malderus because they secretly wanted to refer to Lessius.

The only primary source to my knowledge explicitly alleging influence from Lessius on Malderus is Zypaeus. That reference is a condemnation of Malderus's ideas on the *contractus trinus* because he followed Lessius on this. However, would the influence in this particular case have had to be stressed so strongly, had it been established that Malderus did little more than follow Lessius? And would there not have been other potential topics where Zypaeus could have alleged this influence? The evidence from primary sources thus seems flimsy at best.

The second and most important reason is the length of time between Lessius's lectures in Leuven and the publication of *De Virtutibus Theologicis*. In between lie three decades where Malderus became doctor in Theology (1594), professor of Scholastic Theology (1596), head of the priestly seminary called "King's College" (*Koningscollege*) (1598), *rector magnificus* of the University (1602), and Bishop of Antwerp (1611).[169] Those appointments all hold a direct link to the topics discussed in *De Virtutibus Theologicis*, including contracts of sale. To state without reference to any primary source other than Zypaeus that, despite these experiences, Malderus was mainly influenced by Lessius because he attended some of his lectures in the 1580s is a conclusion which lacks ev-

[168] Examples include: Felipe Aranda, *In primam partem Summae Theologicae commentarii*, Saragossa, 1694, p. 763; Martinus Bonacina, *Tractatus de Legibus*, Milan, 1632, p. 490-571 (*c.* 50 references); Emanuel de la Conception, *Quaestionum moralium theologicarum*, vol. 4, Avignon, 1642, p. 14-31, p. 60-74, p. 93-97, p. 143-157, p. 190-191, p. 230, p. 255, p. 322 (*c.* 25 references); Juan Sanchez, *Selectae & Practicae Disputationes de rebus in administratione*, London, 1636, p. 14-21, p. 54, p. 89-91, p. 210-231, p. 258-269, p. 85-318 (*c.* 20 references).

[169] See again the sources in n. 1-5, and n. 130.

idence. Furthermore, we know of episodes where Malderus sided against the Jesuits, such as the aforementioned defence of the Faculty of Theology in one of its conflicts with the Jesuit College.[170] The impression emerges of an intellectual who sought to calm the worsening rivalry between the "proto-Jansenists" at the Leuven Faculty of Theology, and the Jesuits. This would explain his adherence to established authorities. It also strongly decreases the possibility of Malderus being a "student" of Lessius.

The combination of Malderus's education prior to Lessius's lectures, the professional positions Malderus held and the citations of Malderus by later authors contribute to my belief that Lessius was not the main influence on Malderus's work, at least for sales contracts. As was the case for early modern scholasticism and the challenges it faced, Malderus was a thinker at the crossroads: the crossroads between the Middle Ages and an early modern way of thinking, the crossroads between Catholicism and Protestantism, the crossroads between proto-Jansenists and Jesuits, and the crossroads between the present-day disciplines of theology, law, ethics, philosophy and economics. The influences, interests and inspiration guiding his thinking were much broader than Leonardus Lessius alone. Both the political and economic contexts, as well as the intra-Catholic conflicts of the late 16th and early 17th centuries shaped his thinking. It is my opinion that his ideas can much better be explained from this multipolar perspective of material and intellectual contexts, rather than simply referring to the work of Leonardus Lessius.

7. Conclusion

This contribution has sought to shed light on the ideas of Leuven Professor of Theology and Bishop of Antwerp Johannes Malderus (1563-1633) in the field of contracts of sale, with a specific focus on the influence of a dominant position of one party on the validity of the contract. It then assessed the claim that Malderus was a student of Leonardus Lessius (1554-1623).

In the former part, the central role of the *iustum pretium* was the main finding. This "just price" depended primarily on scarcity and the number of buyers/sellers, and secondarily on the average costs, labour, *industria*, etc. invested by merchants. Throughout

[170] Quaghebeur, *Pro aris et focis*... [see n. 9], p. 78-79.

his chapter on contracts of sale, it became clear that Johannes Malderus, like many authors of the School of Salamanca, abandoned virtually all moral objections to commercial activity, except for the just price. While this just price as a theory had existed since the Middle Ages, its relevance to situations of economic dominance in the early modern period became a central issue. The reason for this can be found in the economic context of the time. When large trading firms and privileged merchants began dominating the market for some of the most crucial goods —spices and metals— scholars of the School of Salamanca such as Johannes Malderus realised the potential danger accompanying these developments. At the same time, it was generally accepted in early modern intellectual circles that this emerging system, which would come to be known as "mercantilism", created undeniable social benefits. Therefore it could not be rejected out of hand, but required the striking of a careful balance between those benefits (e.g., the arrival and circulation of new/more goods) and potential abuses of power (i.e., artificial scarcity, price gouging, undue political influence, etc.) brought into existence by the changing legal-economic circumstances. Malderus's life unfolded right at the heart of these controversies. He was born near Brussels, the political heart of the Southern Netherlands, studied and taught in Leuven, the intellectual heart of the Southern Netherlands, and spent his ecclesial career in Antwerp, the commercial heart of the Southern Netherlands. This was undoubtedly the first great factor contributing to his nuanced approach to legal-economic problems about the issue of balance in sales contracts, encouraging him to reconcile potential societal benefits and losses in a typical Salamancan-inspired style of reasoning.

The influence of the School of Salamanca on Johannes Malderus is clear. The typical, practice-orientated approach to casuistry which spread from Spain during the early modern period dominates his work on contracts of sale. On the general level, it is clear that Johannes Malderus belongs to the Salamancan movement.

Having examined these ideas, I then evaluated the claim that Leonardus Lessius was the main influence on Malderus in contracts of sale. The case study of economic dominance, expressed by the term *monopolia*, was used. Analysis of both authors showed that influence was indirect and weak at best. There is little evi-

dence in the primary sources that Malderus either literally adopted some of the solutions offered by Lessius, or that the debate on this topic in general was pushed towards more laxist interpretations by Lessius himself. It rather seems to be the case that it was the generation of Salamancan authors before Lessius, and notably Luis de Molina, who were of crucial importance to the ideas of Johannes Malderus in this context.

The final section then tried to explain this lack of influence. The reason was not the censorship Lessius suffered. The main causes for the lack of influence I argued to be threefold: first, I indicated how the controversial nature of Lessius's ideas probably did cause Malderus, as member of the Church establishment, to steer clear of references to Lessius. The impact of the controversies surrounding Lessius thus seems to be indirect. Secondly, I stressed that Malderus was a theologian in his own right at the time of Lessius's lectures. Fundamental influence thus becomes less likely, due to a more equal relationship between both. Finally, the passage of time and the positions Malderus held between his attendance of Lessius's lectures and the publication of *De Virtutibus Theologicis*, were brought forward as an explanation. Malderus had become Doctor, Professor, Rector and Bishop between the 1580s and 1616. This could explain why his ideas were not (mainly) shaped by Lessius's teaching decades earlier. It left us with an impression of Malderus not as a student of Lessius, but rather as an independent intellectual who shaped his own ideas.

The last word has not been written on Johannes Malderus. More studies of his published works and of archives are required to amend, perfect and perhaps correct the analysis made in this contribution. Johannes Malderus was an important man, a learned bishop and one of the protagonists in the struggle between Catholics and Calvinists in the Netherlands. As an intellectual, he was nuanced. His ideas were shaped by the great scholastic movements in Spain and the rest of Europe in the 16th and 17th centuries. This led him to attempt to extensively analyse every topic in whatever field, where he tried to reconcile the different intellectual movements that had influenced him. This contribution has sought to offer a point of entry into his work, hopefully inviting other scholars to reconsider the work of Johannes Malderus as a relevant element in understanding the fundamentally changing political, religious, economic and legal scene in the Netherlands

during the early modern period. It is clear even from the scope of this contribution that his work reflected on these changes, and sought to incorporate them in an attainable way into the existing intellectual frameworks from both moral theological and learned legal traditions. Studying Malderus can therefore help understand the mindset and motivation of the elites in the Netherlands during one of the most formative periods in their history, and the history of Europe in general. This, in turn, might provide better insights into questions regarding congruency between the ideological purposes of certain policies and their actual results in practice, the factors considered in early modern decision making, and the more general ideological foundations of the "mercantilist" system. As this system would form the basis of European political and economic life for centuries, and eventually became a crucial stepping stone in the creation of modern economies, a better understanding of mercantilism contributes to the better understanding of Western (and global) history in general. It might also help explore and explain the role of theology and theologians in early modern ideas which influenced modern theories, and how intra-Catholic controversies had a potential impact far outside the scope of religious dogmatic discussions.

Katholieke Universiteit Leuven
Research Unit of Roman Law
and Legal History
Sint-Michielsstraat 6, box 3453
3000 LEUVEN
BELGIUM
WOUT.VANDERMEULEN@KULEUVEN.BE

WOUT VANDERMEULEN

Summary. — This contribution explores the thought of Johannes Malderus (1563-1633), professor of Theology in Leuven and Bishop of Antwerp. It focuses on his ideas on contracts and their morality. Having explored those, it zooms in on the alleged link between Malderus and Leonardus Lessius (1554-1623). Using the case study of the *monopolia* issue, supported by biographical and contextual arguments, the conclusion is that Malderus was far less influenced by Lessius than classically assumed in the scarce literature about him. I argue that his aversion of intra-Catholic conflict as a Bishop steered him away from the controversial work of Lessius. Secondly, the time which passed between the origin of the alleged influence and the publication of his work in 1616, as well as the many professional positions Malderus held during this period, all lower the chance of influence by Lessius. I conclude that Johannes

Malderus was an intellectual at the crossroads of many movements, developments and disciplines. In this, he was an intellectual theologian in his own right.

Résumé. — Cette contribution examine la pensée de Johannes Malderus (1563-1633), professeur de théologie et évêque d'Anvers. Elle se concentre sur ses idées concernant les contrats et leur moralité. Après les avoir exposées, elle se penche sur la relation présumée entre Malderus et Leonardus Lessius (1554-1623). En recourant à un cas concret, à savoir le problème connu sous le nom de *monopolia*, ainsi qu'à des arguments biographiques et contextuels, je conclus que Malderus a été beaucoup moins influencé par Lessius que ce qui est généralement supposé dans la littérature à son sujet. Je soutiens que son aversion pour les conflits au sein de la catholicité en tant qu'évêque l'a éloigné des travaux controversés de Lessius. Par ailleurs, le temps écoulé entre l'origine présumée de l'influence et la publication de son travail en 1616 ainsi que les positions professionnelles que Malderus a occupées durant cette période diminuent la probabilité d'une influence de Lessius. Je conclus que Malderus se trouvait «au carrefour» de nombreux mouvements, développements et disciplines. En cela, il était un théologien intellectuel à part entière.

Zusammenfassung. — Dieser Beitrag untersucht das Denken von Johannes Malderus (1563-1633), Professor für Theologie in Löwen und Bischof von Antwerpen. Er konzentriert sich auf seine Ideen zu Verträgen und deren Moral. Anschließend wird die angebliche Verbindung zwischen Malderus und Leonardus Lessius (1554-1623) näher beleuchtet. Anhand des Fallbeispiels der *Monopolia*-Problematik, unterstützt durch biographische und kontextuelle Argumente, wird die Schlussfolgerung gezogen, dass Malderus weit weniger von Lessius beeinflusst war, als in der spärlichen Literatur über ihn klassischerweise angenommen wird. Ich behaupte, dass seine Abneigung gegen innerkatholische Konflikte als Bischof ihn von dem umstrittenen Werk des Lessius ablenkte. Zweitens verringern die Zeit, die zwischen der Entstehung des angeblichen Einflusses und der Veröffentlichung seines Werkes im Jahr 1616 verging, sowie die vielen beruflichen Positionen, die Malderus in dieser Zeit innehatte, die Wahrscheinlichkeit eines Einflusses von Lessius. Ich komme zu dem Schluss, dass Johannes Malderus ein Intellektueller war, der im Schnittpunkt vieler Bewegungen, Entwicklungen und Disziplinen stand. In dieser Hinsicht war er ein eigenständiger intellektueller Theologe.