highly probable that Charlemagne, too, was trying to cartelize markets and confer privileges on market owners.

Every arbitrary price decree of the Carolingian officialdom was of course revered by the Carolingians as the 'just price.' Probably this coerced price was often near what had been a customary or current price in the neighbourhood; otherwise it would be difficult to conceive how the Carolingian officials would discover what price was supposed to be just. But this meant a futile and uneconomic attempt to freeze all prices on the basis of some past market *status quo*.

The problem, then, is that later canon law incorporated the idea of the just price as being the state-decreed price. The banning of any price higher than the current market price was reimposed by the late Carolingian Emperor Carloman in 884, and incorporated into the canon law collection of Regino of Prum in 900, and over a century later into that of Burchard of Worms.

Remarkably, the two contradictory legal strains: the *laissez-faire* theme of the Theodosian Code, and the statist Carolingian *motif*, both found their way into the great collection at the basis of the medieval discipline of the canon law: that of Bishop Ivo of Chartres, at the turn of the twelfth century. There, in the same collection, we find the view that the just price is any price voluntarily arrived at by buyer and seller, *and* also the contradictory view that the just price is one decreed by the state, especially if it be the common price in general markets.

2.4 Canonists and Romanists at the University of Bologna

The High Middle Ages were established by the commercial revolution of the eleventh to thirteenth centuries, in which trade, production and finance flourished, living standards rose markedly, and the institutions of commercial capitalism developed in western Europe. With the advent of economic growth and prosperity, canon and Roman law, learning and social thought, also began to flourish once again.

The fountainhead and great centre of both canon and Roman law studies during the High Middle Ages was the University of Bologna, in Italy, flourishing from the early twelfth century to the latter part of the thirteenth. During those two centuries, both canon and Roman law, including the Justinian Code, were revived at Bologna, influenced each other, and penetrated to the rest of western Europe.

The great and definitive collection of canon law, the *Decretum*, was published around the year 1140 by the Italian monk, Johannes Gratian, who founded canon law studies at the University of Bologna. The *Decretum* was the definitive canon law work from that point on, and for the remainder of the twelfth century Bolognese scholars, known as the decretists, elaborated, discussed, and wrote glosses on Gratian's work.

Gratian himself and his early glossators took a traditional zealous anti-merchant position. Speculation, buying cheap to sell dear – purely mercantile activities – were *turpe lucrum* and inevitably involved fraud.

The first decretist to begin to take an intelligent position on the activities of the merchant was Rufinus, a professor at Bologna who later became bishop of Assisi and then archbishop of Sorrento. In his *Summa* (1157–59) to the *Decretum*, Rufinus pointed out that artisans and craftsmen could buy materials cheaply, work on them and transform them, and then sell the product at a higher price. This form of buying cheap and selling dear was justified by the craftsmen's expenses and labour, and is permissible even to the clergy as well as to the laity. However, another activity, practised by the pure merchant or speculator, who buys cheap and sells dear without transforming the product is, according to Rufinus, absolutely forbidden to the clergy. The lay merchant, however, could honourably engage in these transactions provided that he had either made heavy expenditures or was fatigued by hard labour. But a pure entrepreneurial cheap purchase to be followed by a sale when market prices were higher was condemned unconditionally by Rufinus.

This partial rehabilitation of the merchant by the decretists was included in the important *Summa* of 1188 of Huguccio, professor at Bologna, later chosen bishop of Ferrara. Huguccio repeated the views of Rufinus, but shifted the justification of the merchant from labour or expenses to actions that provide for the needs of the merchant's family. Huguccio's stress, then, was not on objective costs but on the subjective intentions of the merchant, supposing that they could be discovered: was it mere greed or was it a desire to fulfil his family's needs? Clearly, Huguccio allowed considerable room for mercantile activities.

Moreover, Huguccio began a radical reconstruction of Patristic teachings about private property. From the time of Huguccio, private property was to be considered a sacrosanct right derived from the natural law. The property of individuals and communities was, at least in principle, supposed to be free from arbitrary invasion on the part of the state. As 'moderator and arbiter' of his own goods, an individual owner could use and dispose of them as he saw fit, provided that he did not violate general legal rules. A ruler could only expropriate the property of an innocent subject if 'public necessity' required it. This, of course, was a hole in the system of rights, since 'public necessity' could be and was an elastic concept. But this concept of private property was an enormous advance over patristic teachings.

After the late twelfth century, the decretist movement in canon law gave way to the decretalists, who based themselves on a stream of papal edicts or decretals, from the late twelfth to the thirteenth century. Since the pope is supreme in the Catholic Church, the decretals pronounced by him and his

Vatican *curia* automatically became incorporated into the body of canon law. In this way, canon law came to differ from that of Gratian and the Decretists, who built the law chiefly on ancient sources. But the new decretals were scarcely arbitrary; they built on and elaborated previous canon law. The continuity of the building process was greatly aided by the fact that several of these popes were former Bolognese. Thus, Pope Alexander III (Roland Bandinelli), who initiated the new decretal process and who enjoyed a long papal reign from 1159 to 1181, had studied both law and theology at Bologna, was probably a professor there, and had direct contact with the great Gratian. A distinguished legal scholar, who himself had written an early *Summa* to Gratian's *Decretum*, Alexander became cardinal and chancellor before being elected to the papacy. Another significant papal decretalist, Pope Innocent II (Lothaire de Segni), who reigned from 1198 to 1216, had studied canon law under Huguccio at Bologna. Finally, Pope Gregory IX (Ugolino de Segni), a pontiff from 1227 to 1241, commissioned and published the momentous *Decretals* in 1234, incorporating Gratian's *Decretum* of a century before in addition to the various papal decretals. Gregory IX's *Decretals* became the standard work of canon law from that point on.

The decretalists had a far more favourable attitude towards merchants and the free market than had the early decretists. In the first place, instead of the negative patristic attitude toward merchants and trade, the decretalists, beginning with Pope Alexander III and continuing through Gregory IX, incorporated the free market attitude of the Roman law. Unfortunately, it was not the pure *laissez-faire* attitude of the Theodosian or even Justinian law. For when the Justinian Code came to Bologna and western Europe at the beginning of the twelfth century, the French author of the *Brachylogus* took up the *laesio enormis* principle of the Justinian Code and greatly changed its meaning. Instead of applying the concept of 'just price' differing from the actual price to the assessment of damages as in the Justinian Code, the *Brachylogus* expanded the concept from real estate to all goods, and from assessing damages to actual sales. In the hands of the *Brachylogus*, if any sale, even a voluntary one, had been made at less than half the 'just price', the seller could present the buyer with the choice: either pay me the difference between the sale price and the just price, or else rescind the contract, with the buyer returning the goods and the seller returning the payment. It has been pointed out that this was not a cartelizing device, since neither third parties nor the state could step in to enforce *laesio enormis*; the enforcement had to be done on a charge made by the seller himself.

The Roman law developing during the twelfth and thirteenth centuries was largely the product of the University of Bologna, where Roman law studies had been founded by Irnerius in the late eleventh century. In the mid-twelfth

century, the Bolognese Roman jurists began to incorporate the broader concept of *laesio enormis* of the *Brachylogus*. About 1150, the Provençal *Lo Codi*, a popular adaptation of a recent Bolognese *Summa*, added another fateful expansion of *laesio enormis*. For the first time, this Provençal work included *buyers* as well as sellers as suffering from *laesio enormis*, when the sale price was significantly higher than the just price. In the *Lo Codi*, if a buyer had paid more than twice the true value, or just price, of a product, then the seller had the option either to pay the buyer the difference between the just and the sale price, or else rescind the contract. Remarkably, when the *Lo Codi* was translated back into Latin, this new extended restriction on *laissez-faire* was added to the Roman law, particularly by Albericus, professor of Roman law at Bologna, in his canon law collection at the end of the twelfth century.

The burgeoning principle of *laesio enormis* reached its final extension in the late twelfth century work of the Bolognese-trained Petrus Placentinus. Placentinus lowered the maximum permissible price to 1.5 times the just price, beyond which the principle of *laesio enormis* went into effect. This final expansion was incorporated into the works of the three great Bolognese Roman law professors of the thirteenth century: Azo (c.1210); Azo's highly influential student and follower Accursius (c.1228–60), a native of Florence; and the culmination of the Bolognese school in Odofredus, in the mid-thirteenth century.

While it is true that the twelfth and thirteenth century Romanists took the trivial concept of *laesio enormis* and made it a significant restriction on freedom of bargaining and *laissez-faire*, at least by the late twelfth century they also made clear that there was to be full freedom of bargaining and freedom to outwit the other, *within* the matrix of *laesio enormis*. The decretalists, beginning with Pope Alexander III, incorporated much of this developing Roman law. This meant that Church law now included not only the patristic fulminations against merchants *per se*, but also the contrasting Romanist tradition of full freedom of bargaining within the *laesio enormis* matrix. The decretalists reached their culmination, after building on and glossing the *Decretals* of Gregory IX, in the works of Cardinal Henricus Hostiensis de Segusio, first in the late 1250s and finally in 1271, the year of his death. Hostiensis had studied canon and Roman law at Bologna, had taught in England and France and was cardinal–archbishop of Ostia.

The decretalists justified speculative buying and selling, freeing it from the sin of *turpe lucrum*, by adopting and expanding the Huguccian line that speculation was permissible if the speculator was acting to fulfil the needs of his family. In the *Gloss* of the French Dominican canonist William of Rennes (c.1250), this area of freedom was broadened still further. A merchant's or speculator's actions were not considered sinful unless he was driven by 'a

wanton desire for having temporal riches, not for necessary use or utility, but for curiosity, so that the fancy is charmed by such, just as a magpie or a crow is enticed by coins, which they discover and hide away'. Surely this kind of stricture, which can only apply to a few persons in the real world, had come very far from the patristic denunciations of merchants and traders *per se*.

Another loosening of restrictions came with Alanus Anglicus, an English-born professor of canon law at Bologna, writing in the first two decades of the thirteenth century. Alanus declared that no *turpe lucrum* (or usury, for that matter) could exist if the future price of a good was uncertain in the mind of the merchant. Not only is uncertainty always present in the market, but also it is impossible for outside courts or authorities to prove that a merchant did *not* feel uncertain when he bought or sold. In effect, all *turpe lucrum* restrictions on trade or speculation had now been removed.

In analysing business profits, the later thirteenth century canonists added to the older justification of profit as covering labour plus expenses. This was the element of risk, present in every business situation. Increase of price as a consequence of risk was first justified in the prominent canon law commentaries of Pope Innocent IV (Sinibaldo Fieschi), published between 1246 and 1253. Before becoming pope, Innocent had been a native of Genoa and a student of Roman and canon law at Bologna, a professor of Roman law at that university, and finally a cardinal and a famous statesman.

If transactions were to be sinful and illegal beyond a certain zone above or below the just price, then the Church and the authorities had to find some way of figuring out *what* the just price was supposed to be. This had not been a problem before the twelfth and thirteenth centuries, since the doctrine of *laesio enormis* had not really been applied before. The Romanist and canonist solution, reminiscent of Carolingian doctrine, was that the just price was the going, current, common market price (the *communis aestimatio*). This meant *either* the competitive, general market price as contrasted to single isolated transactions, *or* it could refer to prices fixed by governments or government-privileged guilds, since such controls, by strict legality, would *be* the going *de jure* price. Perhaps it would have been beneath the dignity of these jurists to sanction or even recognize any black market prices that violated such regulations.

Placentinus used this criterion in late twelfth century Roman jurisprudence, as did in particular Azo in the early thirteenth. Azo was liberal enough to refer to the price of a sale equalling that of any other comparable sale as being a 'just price', but Accursius, and after him Odofredus, explicitly referred to the general or common market price as being the standard of justice. As Accursius put it, 'a thing was valued at that for which it could be commonly sold'.

The canon lawyers adopted the same criterion for the just price. Influenced by Carolingian practice, and by hints from the sixth century Rule of St

Benedict, the late twelfth century canonist and student of Gratian, Simon of Bosignano, first described the true value of goods as the price for which they commonly sold. The same position was then taken by the decretalists in the thirteenth century. Canonists and Romanists alike were now agreed on the common price of a good as the just one.

But still the developed canonists of the thirteenth century had a problem. On the one hand, they had adopted the Roman law view that all free bargaining was legitimate except for a zone more than a certain degree above or beyond the 'just price', which they held to be the going, common market price. But on the other hand, they had inherited from the Church Fathers and the earlier decretists a hostility toward mercantile, especially speculative, transactions. How could they square this contradiction?

Partly, as we have seen, they were able to weaken the extent of shameful speculation. Also, from the thirteenth century on, the Church and its canon lawyers largely solved the problem through the highly sensible doctrine of the 'two forums' over which the Church exercised jurisdiction. The 'external forum' – the *jus fori* – judged the social activities of Christians in public ecclesiastical courts. There the courts judged offences against the Church and her common law in much the same procedures as the secular courts. On the other hand, the 'internal forum' – the *jus poli* – was the confessional, in which the priest judged individual Christians on the basis of their personal relation to God. The two forums were separate and distinct, the respective judgements on two different levels. While the Church presumed to rule over both, the one was external and social, the other private and personal.

The doctrine of the two forums enabled the canonists to resolve the seeming contradiction in canon law. The free-bargaining, *laesio enormis*, common market principle was the realm of external law and the open court, where, in other words, a roughly free market could prevail. On the other hand, the strictures against mercantile profits going beyond labour, costs, and risk were a matter not for the state and external law, but for conscience in the confessional. Even more obviously for the confessional alone were the injunctions against trade or speculation based on avarice as going beyond honourable need to support one's family. Clearly, only the man himself, internally in his conscience, could know his intentions; they were scarcely observable by external law.

2.5 The canonist prohibition of usury

The great relaxation of moral and legal restrictions and prohibitions against trade that permeated the canonists and Romanists in the Middle Ages, unfortunately did not apply to the stern prohibitions levelled against usury. Modern people think of 'usury' as very high interest rates charged on a loan, but this was by no means the meaning until recent times. Classically 'usury'

means *any* rate whatsoever charged on a loan, no matter how low. The prohibition of usury was a prohibition against any interest charge on a loan.

With one exception, no one in the ancient world – whether in Greece, China, India or Mesopotamia – prohibited interest. That exception was the Hebrews who, in an expression of narrow tribal morality, permitted charging interest to non-Jews but prohibited it among Jews.

The fierce medieval Christian assault on usury is decidedly odd. For one thing, there is nothing in the Gospels or the early Fathers, despite their hostility to trade, that can be construed as urging the prohibition of usury. In fact, the parable of the talents in Matthew (25:14–30) can easily be taken as approval for earning interest on commercial loans. The campaign against usury begins with the first Church council, in Nicaea in 325, which itself prohibited only the clergy from charging interest on a loan. But the Nicene council grabbed on to one phrase of Psalm 14 in the Old Testament, 'Lord, who shall dwell in thy tabernacle? He that hath not put out his money to usury', and this was to become the favourite – and virtually the only – biblical text against usury during the Middle Ages. The Nicene injunctions were repeated in later fourth century councils at Elvira in Spain and at Carthage, and then in the fifth century Pope Leo I extended the prohibition to the laity as well, condemning lay usurers as indulging in *turpe lurcum.* Several local councils in Gaul in the seventh century repeated Leo's denunciation, as did Pope Adrian and several English church synods in the eighth century.

But the prohibition of all usury enters secular legislation for the first time in the all-embracing totalitarian regime of the Emperor Charlemagne. At the fateful imperial synod of Aachen in 789, Charlemagne prohibited usury to everyone in his realm, lay and cleric alike. The prohibition was renewed and elaborated in the later council at Nijmegen in 806, where usury is defined for the first time, as an exchange where 'more is demanded back than what is given'. So that, from the time of Charlemagne, usury was intensely held to be a special and particularly malevolent form of *turpe lucrum*, and attempts to relax this ban were fiercely resisted. The sweeping definition, 'more demanded than what is given', was repeated intact by canonists from the tenth century Regino of Prum through Ivo of Chartres to Gratian.

But oddly, though the hostility towards usury continued and was indeed greatly strengthened among the canonists, the explicit *basis* for the antagonism changed considerably. During the first centuries of the Christian era, usury was shameful as a form of avarice or lack of charity; it was not yet considered a vicious sin against justice. As commerce began to revive and flourish in eleventh century Europe, indeed, denouncing interest-taking as a form of lack of charity began to be considered wide of the mark, since charity had little to do with commercial loans. It was the Italian monk St Anselm of

Canterbury (1033–1109) who first shifted the ground of attack to rail against usury as 'theft'. This new doctrine was developed by St Anselm's disciple Anselm of Lucca, a fellow Italian and native of a city with a burgeoning textile industry. In his collection of canons, made about 1066, Anselm of Lucca explicitly condemned usury as theft and a sin against the Seventh Commandment, and demanded restitution of usuries to the borrower as 'stolen goods'. This expansion of 'theft' to a voluntary contract where no coercion was used was surely bizarre, and yet this outrageous new concept caught hold and was repeated by Hugh of St Victor (1096–1141) and by the collections of Ivo of Chartres.

In 1139, the second lateran council of the Church explicitly prohibited usury to all men, laity as well as clergy, and held all usurers to be infamous. The council vaguely declared that the Old and New Testaments mandated such a prohibition, but gave no explicit reference. Nine years later, Pope Eugene III moved against the common practice of monasteries charging interest on mortgages.

Finally, the canon law reached mature form with the *Decretum* of Gratian. Gratian hammers away against usury with whatever weapons he can find from Psalm 14 to the new view that usury is theft and therefore requires restitution. Expounding on the strict prohibition of usury, Gratian extended it to the loan of goods as well as money, so long as anything is demanded beyond the principal, and he expressly declared that, in such a case, the 'just price' was *not* the common market price but zero, i.e. the exact equivalent of the goods or money lent.

The great decretalist Pope Alexander III might have been inclined towards a free market in other areas, but on the usury question he merely deepened and extended the ban, applying the condemnation to charging higher prices for credit than for cash sales. This practice was denounced as implicit usury, even though it was not explicitly interest on a loan. The third lateran council, presided over by Pope Alexander III in 1179, condemned usury, and excommunicated and denied Christian burial to all manifest usurers. The next pope, Urban III (1185–87), in his decretal *Consoluit*, dredged up a previously unused citation from Jesus, 'Lend freely, hoping nothing thereby' (Luke 6: 35), which from then on became the centrepiece of the theological condemnation of usury as a mortal sin; and not only that: even the very *hope* of obtaining usury was supposed to be a virtually equivalent sin.

So pervasive was the canonist obsession with usury that Gratian, his predecessors and his successors, largely worked out their theories of sale, profit, or just price in terms of whether or not any particular transaction fell under the dread rubric of 'usury'. Thus, late twelfth century decretists like Simon of Bosignano in 1179 and the great Huguccio in 1188, maintained the strict prohibition of any interest charged on a loan as usury, while allowing the

renting of a good or buying cheap in order to sell dear as *not* being cases of usury. Huguccio's tortured moral distinction maintained that a *commodatum* – a rental contract that transferred only the *use* of a good – was somehow morally very different from a *mutuum* – a pure loan where *ownership* was transferred for a time. Charging for a lease, a *commodatum* was all right because the owner retains ownership and charges for the use of his own good; but somehow it becomes sinful when a lender charges for the use of a good which he no longer (temporarily) owns. Profits on trade, too, could be legitimate and lawful as a reward for risk, but interest on a loan – where the risk is borne by the borrower and not the lender – was always usury.

The later decretalists, attempting to combat practices of merchants in disguising usury in various contracts, pressed on to condemn such contracts as 'implicit usury', provided, as we have seen in treatment of sales contracts, that there is no uncertainty on the future price in the minds of buyer and seller. The early thirteenth century canonist Alanus Anglicus declared that if there was uncertainty in such a contract, and buyer and seller stood equal chance to gain or lose, usury did not exist. Providing the first real, if small, loophole in the sweeping prohibition against usury, Anglicus explained that this form of implicit usury could exist only in the mind and could not be subject to legal enforcement. This uncertainty loophole was widened slightly in the *Decretals* of Gregory IX.

On the other hand, the canonists persisted in cracking down on evasions of the usury ban which the market kept creatively inventing. Contracts providing for deferred payment on a sale were treated with suspicion, and very high prices in such a contract were taken by the canonists to prove intent to commit usury beyond a reasonable doubt. The *Decretals* also went so far as to condemn creditors charging interest for loans to travelling merchants, even though the canonists realized that the interest was a direct compensation for risks. Although canonists after Innocent IV began to talk of risks justifying profits, so that a profit on risky investments was considered perfectly justified, any interest on a pure loan (or *mutuum*) was condemned as usury despite reasonably mitigating circumstances.

The usury prohibition was the tragic flaw in the economic views of medieval jurists and theologians. The prohibition was economically irrational, depriving marginal borrowers and high credit risks of any borrowed capital whatever. It had no groundwork in natural law and virtually none in Old or New Testament teachings. And yet it was clung to fiercely throughout the Middle Ages, so that jurists and theologians had to engage in ingenious and artful twists in reasoning in order to make exceptions from the prohibition and to accommodate the growing practice of lending money and charging interest on a loan. And yet the medievalists, especially the later philosophers and theologians, had a fascinating and important point: for what *was* the

moral or economic justification for interest on a pure loan? As we will see, medieval scholastics came to understand full well the economic and moral justifications for almost every aspect of interest charges: as an implicit profit on risk, as an opportunity foregone for making profits on investments, and many others. But why is there still interest charged on a simple, riskless, non-opportunity-foregone loan? That answer was not to come fully until the Austrian School of the late nineteenth century. Where the scholastics were gravely lacking was in not realizing that if interest was paid as well as charged voluntarily, that in itself is sufficient moral justification. And further that there *must have been* an economic explanation, even though economic science had not yet discovered it.

The first systematic breach in the usury prohibition came with the last of the thirteenth century canonists, Cardinal Hostiensis. In addition to having been a distinguished law professor, Hostiensis was a worldly cosmopolite, having been the ambassador of Henry III to his friend Pope Innocent IV. First Hostiensis reverted to the old milder tradition that usury is uncharitable, but not a sin against justice. Then he listed no less than 13 instances in which the usury prohibition could be broken and interest charged on a loan. One is as surety required by the guarantor of a loan; another that a seller may charge a higher price for a good sold on credit than for cash, provided that there is uncertainty (as indeed there always is) about the future price of the commodity. Another important exception allowed a creditor to write a penalty clause into a loan so that the debtor would have to pay a penalty above the principal if he did not repay on the date due. This of course paved the way for covert agreement on both sides to delay payment so as to allow the 'penalty'. Another exception was that the creditor might charge for labour which he undertook in making the particular loan.

These were all some form of penalty or special payment. But, in addition, Hostiensis provided the first path-breaking argument for charging a rate of interest on a loan from the very beginning, a charge that does not involve delay or guarantees. This is *lucrum cessans* (profit ceasing), a legitimate interest charge by the creditor to compensate him for profit foregone in investing the money himself. In short, *lucrum cessans* anticipated the Austrian concept of opportunity cost, of income foregone, and applied it to the charging of interest. Unfortunately, however, Cardinal Hostiensis's use of *lucrum cessans* was limited to non-habitual lenders who lend money out of charity to a debtor. Thus lenders could not be in the business of charging money on a loan, even on the ground of *lucrum cessans*.

Another exception made by Hostiensis also provided an open channel for the charging of interest on loans. He allowed the debtor to give a free gift to the creditor, so long as the 'gift' was not required by the creditor. But in that case debtors, in particular Florentine bankers who received deposits, felt

obliged to make 'gifts' to their depositors, else the depositors would shift their funds to competitors who habitually made such 'gifts'. The making of a fake gift became an important mechanism in allowing the *de facto* charging of interest.

2.6 Theologians at the University of Paris

Theology, in the Middle Ages, was the queen of the 'sciences': i.e. the intellectual disciplines offering truth and wisdom. But theology had fallen on bad times during the Dark Ages, and the Roman and canon lawyers were left to apply ethical systems to law and human affairs. Theology began to flourish again in the early twelfth century at the University of Paris, under the famous Peter Abelard. From then on, Paris was the equivalent centre for theology during the High Middle Ages that Bologna was for Roman and canon law. But during the remainder of the twelfth century, the theologians were content to ponder and work out metaphysical and ontological questions and to leave social ethics to the jurists. It was typical of twelfth century theologians when Peter of Poitiers, later to become the dominant Regent of theology at the cathedral school of Notre Dame in Paris, declared that such doubtful questions as usury should be left to the canon lawyers.

After the turn of the thirteenth century, however, when canon and Roman law theories were already far advanced, the new university-trained philosopher–theologians turned to problems of social ethics with a will. Even before the turn of the thirteenth century, such influential theologians at the University of Paris as Radulphus Ardens and the Englishman – later Cardinal – Stephen Langton, began to write on problems of justice. Unfortunately, in dealing with the concept of 'just price', the theologians did not follow the Romanists and canonists in the sensible view that the free bargaining or market price is legitimate so long as it stays within a broad zone of the 'just price'. To the Paris theologians, it was immoral, sinful and illicit for the market price to be anything other than the just price. This of course meant that the just price became a weapon of compulsion instead of a broadly held standard. Ardens included a just price as a crucial criterion of a 'just sale'. More emphatically, his colleague and author of the first constitution of the University of Paris, the Englishman and later Cardinal Robert of Courçon (d. 1219), writing about 1204, termed selling goods above the just price an illicit practice, and the eminent Stephen Langton sternly called any seller who accepts more than the just price guilty of a mortal sin.

The theologians were well aware of their profound disagreement with the jurists, but clung to their new and extreme views. Thus, William of Auxerre (1160–1229), professor of theology at Paris, in 1220 wrote that divine law, which commanded that no sale be higher than the just price, must supersede human law, which followed *laesio enormis*. And his colleague, the English-

man Thomas Chabham, also writing about 1220, fanatically insisted that divine law demanded restitution from the seller even if the seller were only mistaken, and the mistake was only a penny.

If the theologians insisted that the just price must be strictly obeyed, then what in the world *was* it? While few of the theologians addressed this critical matter directly, it is clear that what they had in mind was the same just price as the canonists and Romanists, namely the current price at the particular place, either the common market or the government-fixed price, if such a regulation existed. The late twelfth century Paris theologian Peter Cantor (d. 1197), in treating the function of royal assessors, asserted that the just value of goods is their current price. More succinctly, the great Franciscan theologian at Paris in the first half of the thirteenth century, the Englishman Alexander of Hales (1168–1245) declared concisely that a 'just estimation of the goods' is 'as it is sold commonly in that city or place in which the sale occurs'. Even more clearly, the renowned thirteenth century German Dominican professor at Paris, Saint Albert the Great (1193–1280) put it thus: 'A price is just which can equal the value of the goods sold according to the estimation of the market place at that time'.

While the theologians, in wishing to enforce the current common price, were more restrictive than the canon or Roman jurists, they did constructive work in rehabilitating the image of the merchants from the low level to which they had sunk in the writings of the Church Fathers.

As late as Peter Lombard (d. 1160), Italian professor of theology at Paris and later bishop of Paris, the theologians had held the older view that a merchant could not perform his duties without sinning. The beginning of the full rehabilitation of the merchant came in the form of commentaries on the *Sentences* of Peter Lombard (strictly, the *Sententiarum quator libri*, 1150–51). The commentators, particularly after the turn of the thirteenth century, engaged in a systematic justification of the merchant and of mercantile profit-making. In the first place, the leading *Sentence* commentators, including the Dominican professors at Paris, St Albert the Great (*Commentary*, 1244–49), Peter of Tarentaise (later Pope Innocent V, d. 1276) (*Commentary*, 1253–57), as well as the Italian theologian at Paris, St Bonaventure (1221–74) a student of Alexander of Hales, general of the Franciscan Order and later cardinal (*Commentary*, 1250–51), all declared that merchants were essential to society. This conception was strengthened by the rediscovery of the works of Aristotle by the early thirteenth century, and the incorporation of Aristotelian philosophy into theology – first by Albert the Great and most especially by his great student Thomas Aquinas. To these new Aristotelians, and also to the English Franciscan Alexander of Hales, the division of labour was necessary to society as was the concomitant mutual exchange of goods and services. This was the path of the natural law in society.

More specifically, Thomas Chabham, despite his insistence on every penny of the just price, observed correctly that merchants performed the function of taking goods from areas of abundance and distributing them to areas of deficiency. Albert the Great repeated this insight later in the thirteenth century.

If trading is a useful and even necessary activity, it follows that profits for maintaining such activity are justifiable. Hence the theologians reiterated the twelfth century doctrine of the merchant being allowed to gain profits for the support of himself and his family. To the needs justification, the twelfth century theologians added the lawful nature of making profits in order to give to charity. The Franciscan Alexander of Hales was perhaps the first to call it a just and pious motive for trading to perform works of charity and mercy. It was unworthy, however – echoing the Huguccian doctrine – to gain profits for the sake of avarice or endless and insatiable cupidity.

If the labourer in the Christian tradition was 'worthy of his hire' (Luke 10:7), then profits from the useful activities of the merchant could be justified as covering his 'labour', or rather his labour and expenses as the jurists had already declared. Aquinas considered the earnings of the merchant a stipend for labour. For the theologians, 'labour' consisted of several types: transporting goods; storage and care; and – as had come in with the thirteenth century canonists – the assumption of risk. Thus mercantile profits were a payment or reward for the merchant's labour of transportation and storage, and his assumption of risk. The risk factor was stressed particularly by Alexander of Hales and St Thomas Aquinas. It should be noted, in contrast to many later historians, that the purpose of the jurists' and theologians' discussions of labour, cost, and risk was *not* to use these factors in determining the just price (which was simply the current common price) but to justify the profits obtained by the merchant.

Robert of Courçon was the first thirteenth century theologian to add a natural law angle to the traditional though flimsily grounded theological denunciations of usury. Courçon simply appropriated the canonist Huguccio's sophistical moral distinction between a lease and a loan, with the former being licit and the latter illicit because ownership of the money had temporarily been shifted to the borrower. More influential was fellow Parisian theologian William of Auxerre, who added a string of new fallacies to the mounting intensity of the Church's assault upon usury. William ranted that usury was intrinsically evil and monstrous, without really explaining why; he also did one better on the standard likening of usury to theft by actually comparing usury to murder, to the detriment of the former. Killing, he said can sometimes be licit, since only certain forms of killing are sinful, but usury is sinful everywhere and can never be licit. Since usury, according to William of Auxerre, is sinful by its very nature, this made it a violation of the natural law in addition to its other alleged iniquities.

On *why* usury was a sin against the natural law William was unclear; one of his innovative arguments in the anti-usury parade was that a man who charges interest on a loan is trying to 'sell time', which is properly the common property of all creatures. Since time is supposed to be common and free, William of Auxerre and later theologians could therefore use this argument to condemn as 'usury' not merely a loan but also charging a higher price for credit than for cash sales. In adding the 'free time' argument, William unwittingly touched on the later Austrian solution to the problem of pure interest on a riskless loan: the sale not of 'time', to be sure, but of 'time-preference', where the creditor is selling the debtor money, a present good (a good useful now), in exchange for an IOU for the future which is a 'future good' (a good only available at some point in the future). But since everyone prefers a present good to an equivalent future good (the universal fact of time-preference), the lender will charge, and the borrower will be willing to pay, interest on a loan. Interest is, then, the price of time-preference. The failure of the scholastics to understand or arrive at the concept of time preference was to do more than anything else to discredit scholastic economics, because of its implacable hostility to and condemnation of the universal practice of 'usury'.

William of Auxerre also tried to grapple with the voluntarist argument: how could the usury charge be evil and unjust if paid voluntarily by the borrower? In surely one of the silliest arguments in the history of economic thought, William of Auxerre conceded that the borrower's payment of interest was voluntary, but added that the borrower would have preferred a free loan still more, so that in an 'absolute' rather than a 'conditional' sense, the interest charge was *not* voluntary. William somehow failed to see that the same could be said of the buyer of *any* product; since any buyer would prefer a free good to the charge of any price, we could then conclude that all free exchanges are involuntary and sinful in an 'absolute' sense.

Despite the manifest absurdity of this argument, the 'conditional' voluntary as well as the other new arguments of William of Auxerre were highly influential and immediately incorporated into the standard theological arguments against usury.

The German Dominican St Albert the Great performed the enormous service to philosophy of bringing Aristotle and Aristotelianism back to Western thought. Born in Bavaria to an aristocratic family, Albert was for a time German provincial of the Dominican Order and bishop of Regensburg, but for most of his long life he taught at the Universities of Paris and Cologne.

Unfortunately, Albert was not nearly as good an economist as he was a philosopher, and in many ways he took scholastic economics down the wrong road. It is true that he performed the service of teaching his great pupil, St Thomas Aquinas, that the just price is the common market price, and that the

merchant is performing a legitimate social role. On the other hand, Albert unfortunately added the Aristotelian attack on usury as an unnatural breeding of a 'barren metal' to the accumulated hodge-podge of all the other arguments against interest. St Albert did not realise that Aristotle's attack on usury was only part and parcel of the latter's denunciation of all retail trade, since the Latin translation of Aristotle available to Albert rendered the Greek term for retail trade as a Latin word meaning 'money-changing'. Hence, Albert adopted this argument by mistake, since he would certainly not have gone along with the Aristotelian idea that all retail trade was unnatural and sinful.

Albert also did great damage to future thought in another of his misinterpretations of Aristotle's *Nichomachean Ethics*. Somehow he interpreted the Aristotelian determinant of value not as consumer needs or utility, but as 'labour and expenses', thus at least partially prefiguring the later labour theory of value.

2.7 The philosopher–theologian: St Thomas Aquinas

St Thomas Aquinas (1225–74) was the towering intellect of the High Middle Ages, the man who built on the philosophical system of Aristotle, on the concept of natural law, and on Christian theology to forge 'Thomism', a mighty synthesis of philosophy, theology and the sciences of man. This young Italian was born an aristocrat, son of Landulph, count of Aquino at Rocco Secca in the kingdom of Naples. Thomas studied at an early age with the Benedictines, and later at the University of Naples. At the age of 15 he tried to enter the new Dominican Order, a place for Church intellectuals and scholars, but was physically prevented from doing so by his parents, who kept him confined for two years. Finally, St Thomas escaped, joined the Dominicans, and then studied at Cologne and finally at Paris under his revered teacher, Albert the Great. Aquinas took his doctorate at the University of Paris, and taught there as well as at other university centres in Europe. Aquinas was so immensely corpulent that it was said that a large section had to be carved out of the round dinner table so that he could sit at it. Aquinas wrote numerous works, beginning with his *Commentary* on Peter Lombard's *Sentences* in the 1250s, and ending with his masterful and enormously influential three-part *Summa Theologica*, written between 1265 and 1273. It was the *Summa*, more than any other work, that was to establish Thomism as the mainstream of Catholic scholastic theology in centuries to come.

Until recently, historical studies of the just price typically began with St Thomas, as if the entire discussion had suddenly leapt into being in the ample person of Aquinas in the thirteenth century. We have seen, however, that Aquinas worked in a long and rich canonist, Romanist and theological tradition. It is not surprising that Aquinas followed his revered teacher, St Albert,