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THE MORAL PROBLEM
OF DISCOUNTING GENOESE *PAGHE*, 1450-1550 *

BY
JULIUS KIRSHNER

Formal consistency was the keystone of the medieval prohibition against usury. By the end of the *quattrocento*, the prohibition had weathered many storms, as its universality and staying power was tested over and over again in specific cases. Yet the prohibition remained a monument of natural and divine law. The weathering was largely produced by the invention of credit techniques and arrangements, the lynchpins of the financial and commercial markets of the late Middle Ages and Renaissance. Each permutation in credit was placed on the swollen agenda of professional moralists, to be scrutinized for its potential in theory and in practice to contravene the usury prohibition and related doctrines. Some credit inventions were permanently outlawed; some perpetually questioned yet tolerated; and many were approved—rarely were they ignored¹. To conceive the relationship

* A draft of this paper was read before the faculty seminar of the Anthropology Department of the University of Chicago, and I wish to thank its members, especially Marshall Sahlins and Michael Silverstein, for their imperatorious criticism. I gratefully acknowledge the help of Diane Owen Hughes, Anthony Molho, Milagros Rivera, Peter Herde and Thomas Frenz. I also wish to acknowledge the generous support of the Division of Social Sciences of the University of Chicago. All references to the Digest, hereafter cited as Dig., to the Code, hereafter cited as Cod., and to the Institutes, hereafter cited as I., are found in *Corpus iuris civilis*, eds. T. H. Mommsen, W. Kroll, P. Krueger, and R. Schoell (2 vols., Berlin, 1928-29). References to the Decretals of Pope Boniface VIII, hereafter cited as VI, and to the *Extravagantes Communes*, hereafter cited as *Extravag. Com.*, are found in *Corpus iuris canonici*, ed. E. Friedberg (Leipzig, 1879), Vol. II. The abbreviation ASLSP has been used for the splendid collection, *Atti della Società Ligure di storia patria*.

¹ The literature on the usury prohibition is vast, and only several works, treating the prohibition from different angles, can be cited here: T. P. McLaughlin, "The Teaching of the Canonists on Usury (XII, XIII and XIV Centuries)", *Mediaeval Studies*, I (1939), 81-147 and II (1940), 1-22; B. Nelson, *The Idea of*

between the business of the moralist and the morals of the businessman as one of binary opposition—in which traditional ecclesiastical fiat militates against and curbs the rational calculus of the marketplace, or conversely, in which the marketplace militates against and triumphs over the usury prohibition—would be a reversal of the way in which the inhabitants of the late Middle Ages and Renaissance consciously viewed their own interrelationship and interdependency.

Professional moralists and businessmen conceived their relationship within a framework of complementary expectations, within which both sides struggled, by means of analogy, metaphor, fiction, redescription, and other linguistic strategies, to stay clear of the notorious gulf dividing theory from practice and intention from action, to avoid inconsistency, contradiction, and invalid inference. Absolute symmetry, it hardly needs saying, never existed. Indeed violations of logic and ill-founded categorizations often served to produce surface consistency and acceptable inferences. But each side apprehended that the alternative to *formal symmetry* was spiritual chaos. The following case-study on discounting in fifteenth-century Genoa explores the internal dynamics of this structural interdependency.

THE CASE

To feed the commune's military budget, the governments of late medieval Genoa repeatedly and successfully sought to increase the commune's revenue base and to open up new lines of credit². By the

Usury. From Tribal Brotherhood to Universal Brotherhood, 2nd ed. (Chicago, 1969); J. T. Noonan, Jr. *The Scholastic Analysis of Usury* (Cambridge, Mass., 1957). Readers will profit from O. Capitani's "Sulla Questione dell'usura nel medio evo (a proposito del volume di J. T. Noonan)", *Bulletino dell'Istituto storico per il medio evo*, LXX (1958), 537-66; J. W. Baldwin, *The Social Views of Peter the Chanter and His Circle* (Princeton, 1970), I, pp. 261-311; R. de Roover, *La pensée économique des scolastiques. Doctrines et méthodes* (Montreal, 1971). For a positive critique of de Roover's work, see J. Kirshner, "Les travaux de Raymond de Roover sur la pensée économique des scolastiques", *Annales (ESC)*, XXX (March-June, 1975), 318-38.

² On Genoese public finance, see H. Sieveking, *Studio sulle finanze genovesi nel Medio Evo ed in particolare sulla Casa di S. Giorgio*, in *ASLSP*, parts 1 and 2 (1906); J. Heers, *Gênes au xv^e siècle* (Paris, 1961); D. Gioffrè, *Il debito pubblico genovese. Inventario delle compere anteriori a San Giorgio o non consolidate nel banco (sec. XIV-XIX)*, in *ASLSP*, LXXX (1966); G. Airaldu, *Genova e Spagna nel secolo XV: Il "liber damnificorum in Regno Granate (1452)"* (Genova, 1966).

mid-fifteenth century, military campaigns against feudal lords in neighbouring territories, against the king of Aragon in the West, and against the Turks who were attacking Genoese colonies in the East, had made the search for new funds an all-consuming passion. The commune's chief source of funds were citizen, but also foreign, creditors, who purchased shares (*luoghi*) in public funds (*compere*). The largest public fund was the *compere* of San Giorgio, a consolidated fund and principal overseer of the commune's public debt³. Purchasers of *luoghi* received interest (*paghe, proventi*). In the fourteenth century, *paghe* were dispersed quarterly, in May, August, November, and February. In the fifteenth century, San Giorgio declared quarterly interest but actually distributed *paghe* annually. Both *luoghi* and *paghe* were negotiable. One could sell one's title to future payments of *paghe*, while retaining *luoghi*. Sometime in the 1440's, or perhaps earlier, San Giorgio scuttled annual payments of *paghe* in cash. When interest now fell due the amount was listed under the name of the creditor in a special register.

Accrued interest was officially termed *lire de paghe*, although the documents commonly refer to such interest as *paghe*. Claims upon *lire de paghe* were fully negotiable: they were loaned, mortgaged⁴, used to purchase merchandise, real property, and even indulgences. They were also used to pay gabelles, which removed them from circulation, thus helping to reduce San Giorgio's carrying charges⁵; and they were used to purchase additional *luoghi*, which helped to refund San Giorgio's debts. By the time San Giorgio redeemed *lire de paghe* for cash, which could take as long as seven years from the official date of settlement, only a minute portion of these *paghe* remained outstanding. The actual cash outflow to creditors was therefore minimal. Coping with the chronic shortage of metallic currency by monetizing a large segment of the public debt provided the compelling motive behind San Giorgio's

Heers' extremely valuable book has been critically reviewed by R. Lopez, "Quattrocento Genovese", *Rivista storica italiana*, LXXV (1963), 709-727.

³ The following description of San Giorgio's policies towards *lire de paghe* and *paghe floreni* is largely based on Heers' work, cited in the previous note.

⁴ J. Heers, "La vente des indulgences pour la croisade, à Gênes et en Lunigiana, en 1456", *Miscellanea di storia ligure*, (Istituto di storia medievale e moderna d'Università degli Studi di Genova), III (1963), pp. 73-74.

⁵ For an analogous operation in contemporary Florence, where overdue *paghe* due on credits in the public debt (*Monte Comune*) could be used to pay general communal obligations (*onera*), see *Archivio di Stato, Firenze, Provvisioni*, 132, fol. 6^r (27 March 1441); *Ibid.*, 134, fol. 144^{r-v} (4 Oct. 1443), fol. 232^v (28 Feb. 1444).

disbursement policy. *Lire de paghe* served, in effect, as a surrogate for cash and were of crucial importance to the smooth running of the Genoese economy.

In the late 1440's and early 1450's the government in tandem with San Giorgio embarked upon a new policy aimed at raising additional revenue for the commune and at stimulating the market in *luoghi*. A tax, called the *paghe floreni*, was levied on *paghe*. The government did not actually collect the tax, but instead borrowed against its anticipated collection. The commune received sums of money and blocks of *luoghi* (which it sold) from San Giorgio. In return, San Giorgio received a portion of the commune's rights to *paghe floreni* which it then sold in the market. This transaction was apparently very lucrative for San Giorgio. At first, the government allowed creditors to deduct a percentage of the new impost from their *avarìa* assessments, the communal tax on moveables. In 1450 a deduction of 20 *soldi* for each *paghe floreni* paid was permitted, a boon to the commune's creditors. As Jacques Heers has demonstrated, the new policy did indeed fuel the market in *luoghi*, buoying prices upward as well as increasing dramatically the volume of *luoghi* emitted by San Giorgio. *Paghe floreni* were negotiable and a market in these *paghe* soon flourished alongside the market in *luoghi* and *lire de paghe*.

The government took full advantage of its new opportunity to obtain credit. It began to borrow against the *paghe floreni* not due for three or four years. In 1450 it ceded the *paghe floreni* of 1454 to San Giorgio which had delivered 42,000 *mine* of salt to Francesco Sforza on behalf of the commune. In 1456 San Giorgio acquired sizeable blocks of *paghe floreni* not due until 1464, 1465, and 1466. San Giorgio, of course, could ill-afford to hold its fiscal breath for eight to ten years until these *paghe* fell due. The marketing of these blocks of *paghe floreni* was imperative. To attract investors, San Giorgio offered them at a discount, but there was a stumbling block. Certain prospective buyers hesitated to purchase these *paghe floreni*, because they were perplexed about the licitness of the transaction. Their hesitation to participate in the offering prompted the governing body of San Giorgio (*protectores*) to petition (most likely in April of 1456) Pope Calixtus III for a concession, that is, formal authorization to discount the *paghe floreni* of '64, '65, '66. The pope granted the request in a letter dated 6 May of the same year⁶.

⁶ San Giorgio's request was cited in Calixtus' concession which is edited below, doc. I.

A parade of questions march forward from this telegraphic narrative. Who were the prospective buyers lacking confidence in the morality of San Giorgio's offer? On what grounds did their inaction rest? What was San Giorgio's current relationship to the Papacy? Was its request for authorization extraordinary? How did Calixtus justify authorization? What doctrinal repercussions followed in the wake of his ruling? To answer these questions is to confront the conjuncture of circumstances producing the moral tremor of the spring of 1456.

Almost every historian who has discussed Calixtus' concession has misunderstood its text and/or context. In his book on the public debt of Genoa, published in 1842⁷, Carlo Cuneo explained that San Giorgio was in desperate fiscal straits in 1456, owing to the large sums of money it poured into the defense of Genoa's Black Sea colony, Caffa. San Giorgio was forced to reduce the interest it paid on *luoghi* from 7 *lire* to 1 florin and prorogued payments of interest for three years. There were many churches and religious corporations among San Giorgio's creditors which could not go along with the reduction and prorogation of interest "senza timore di gravare le coscienze". San Giorgio was therefore compelled to ask the pope for permission to reduce and delay payment of interest as well as sell at a discount *paghe* of three future years. Cuneo's explanation contains the following errors: 1) San Giorgio's request pertained to the discounting of *paghe floreni*, not, as he claimed, *paghe* or *proventi*, 2) There is no evidence to support the statement that San Giorgio asked the papacy before, after, or during 1456, for permission to reduce and prorogue interest, nor was such permission required by civil, canon, or municipal law. 3) No evidence has yet been set forth to support the statement that ecclesiastical and religious creditors had scruples of conscience about the reduction or prorogation of interest or sale of discounted *paghe floreni*.

Cuneo was correct, however, on one count: a majority of religious and charitable organizations in Genoa were creditors of the city⁸. These foundations became creditors by exchanging (*permutatio*) real

⁷ Memorie sopra l'antico debito pubblico: mutui, compere e banca di S. Giorgio in Genova (Genova, 1842), pp. 119-20.

⁸ Heers, Gênes, p. 176; M. Leoncini, "Il liber locorum di Santa Maria di Belvedere (1423-1508)", "Documenti sul quattrocento genovese" (Genova, 1966), pp. 205-225; A. M. Boldorini, "L'imperatore Enrico VII e il capitolo di S. Lorenzo di Genova", Miscellanea di storia Ligure, XII (Istituto di storia medievale e moderna d'Università degli Studi di Genova) (Genova, 1966), p. 137.

estate for *luoghi*⁹. Convents customarily acquired *luoghi* from dowries brought by new entrants into the monastic profession. Monasteries, chapels, confraternities and hospitals received *paghe* from testamental bequests. Archbishop Giacomo Imperiale, for example, in a testament dated 10 November 1452, instructed his *fideicommissarii* to purchase, after his death, *luoghi* bearing an annuity of 200 *lire* from San Giorgio. The beneficiary of the annuity was the sacristy of San Lorenzo, the Cathedral of Genoa¹⁰. Two traditional stipulations were fastened upon the bequest. The canons of San Lorenzo were obligated to celebrate an annual mass "pro anima et in remedium anime ipsius domini testatoris", and under no circumstances were the *luoghi* to be sold or alienated.

P. Amadeo Vigna edited Calixtus' concession in his monumental study and collection of documents relating to Genoa and her eastern colonies, published in 1868¹¹. Vigna's interpretation of the concession is an improvement over Cuneo's¹². He recognized that Calixtus had granted authorization with respect to the discounting of *paghe floreni*. Like his predecessor, however, he ascribed motives to San Giorgio's request for which he furnished no evidence. He stated that the plan to reduce the prorogued interest would damage churches and religious corporations, and San Giorgio therefore could not in conscience deprive them of their just and certain income, without violating natural law as well as infringing on the prescript of sacred canons protecting religious persons and communities. Neither Calixtus' concession, nor any other contemporary document of which I am aware, singled out the special obligation of San Giorgio to ecclesiastical and religious creditors under the canon law of the church. In any case, under the system of *lire de paghe*, the Genoese church would receive "revenue" regardless of the liquidity of San Giorgio, thus invalidating Vigna's interpretation of San Giorgio's motives.

Heinrich Sieveking, in his pioneering and still valuable study of Genoese public finance, presented an accurate description of the papal

⁹ Such exchanges required formal approval of the papacy. See *Suppliche di Martino V relative alla Liguria*, eds. B. Nogara, D. Puncuh, and A. Roncallo, ASLSP, LXXXVII (1973), 26.

¹⁰ V. Polonio, "Crisi e riforma nella chiesa genovese ai tempi dell'arcivescovo Giacomo Imperiale (1439-1452)", *Miscellanea di studi storici*, ed. G. Pistarino (Genova, 1969), I, pp. 311-12.

¹¹ *Codice diplomatico delle colonie tauro-liguri*, ASLSP, VI (1868), pp. 625-27.

¹² *Ibid.*, pp. 475-76.

concession, except for one point¹³. For him, the motive behind San Giorgio's position was directly related to the pangs of conscience afflicting ecclesiastical creditors who feared that the "sale" of discounted *paghe floreni* constituted a breach of the prohibition against usury. Although there is not a shred of specific evidence to sustain Sieveking's interpretation, it is at least within the realm of historical possibility. Yet the question is begged: what did these ecclesiastical creditors fear? Were they agitated because as shareholders in the *compere* of San Giorgio they would be indirect participants in a usurious transaction? Did they desire to purchase *paghe floreni*, but hesitate because of pangs of conscience? Were they opposed to the transaction on moral grounds and in expressing their opposition inadvertently ignited fears among lay creditors? Were all ecclesiastics troubled by the sale or just a vocal minority?

Frankly, we remain ignorant of the names and social affiliations of the potential but hesitant buyers. They were referred to by San Giorgio and Calixtus as "some few persons (*nonnulli*)". This indefinite pronoun, as well as commonplace (*stilus curie*), is hardly the prop upon which to rest a case for ecclesiastical or lay scruples of conscience. San Giorgio's petition to Calixtus made clear, however, that ecclesiastical and religious establishments would be aided by the offering, not by directly making a profit from the purchase of discounted *paghe floreni*, but rather from the proceeds of the transaction, which in theory would be used to pay them interest on *luoghi*. My own conjecture is that simple moral pressure alone would not have been sufficient to prevent the transaction, and that San Giorgio was responding to the moral doubts of prominent speculators like Eliano Spinola who would acquire 45,000 *lire* of *paghe floreni* out of a total of 69,000 *lire* of *paghe floreni* of 1466 conveyed to San Giorgio¹⁴. This *post hoc ergo propter hoc* conjecture awaits future rejection or confirmation based on fresh archival research.

LEGAL AND THEOLOGICAL ISSUES

Whether or not San Giorgio's offer violated the usury prohibition or just price doctrine was more an issue of interpretation than of facts. Usury constituted anything given and received beyond the principal of

¹³ Studio, II, p. 107.

¹⁴ Heers, Gênes, p. 165, n. 2.

a loan (*ultra sortem mutui*). Did San Giorgio's offer constitute a loan, a sale, or a contract of exchange? What was being sold or exchanged: money, property, a right to money, a right to property? The critical text in answering these questions was Pope Gregory IX's decretal, *Naviganti* (1234), which treated the case of a purchaser receiving a discount, because he paid in advance for goods to be delivered at a later date¹⁵. This contract was categorized as an *emptio ad terminum*. Gregory permitted the discount if, when payment was made, there was real doubt about the future value of the goods. This licit contract became known as a *venditio sub dubio*. If the future value was certain and invariable, as it seemed in the case before us, the transaction was forbidden. Furthermore, *Naviganti* referred to commodities and not to city-state revenues. Those opposed to the transaction could claim that the purchase of *paghe floreni* was a lending arrangement concealed under the cover of another contract, in which profit was guaranteed *ab initio*, and therefore was usurious. They could also claim that persons who derive profit from discounting *paghe* violate the universal law prohibiting the sale of time (*faciunt contra legem universalem, quia vendunt tempus, quod est commune omnium creaturarum*). On the other side were canonists and theologians who could claim that the arrangement was a sale or an exchange of a right (*ius*) to an uncertain income. The transaction could also be defended on the grounds that the discount would not arise from a lapse of time (*ex lapsu temporis*), but from the risk undertaken in acquiring this *ius*.

Such arguments had been brought into play in contemporary controversies swirling around credit sales of *luoghi* and *lire de paghe*. For example, the lay Genoese statesman and jurist and holder of *luoghi*, Bartolomeo Bosco (d. ca. 1437), was consulted on the practice of buying and selling *luoghi* on time (*ad tempus*). In 1428 San Giorgio sold 10 *luoghi* to a certain Martino. Each share had a market value of 58 *lire* and carried a yearly return of 5 *lire*, 9 *soldi*. The purchase price

¹⁵ X. 5. 19. 19. Among the most solid discussions of the *Venditio* and *emptio ad tempus* or *ad terminum*, see Noonan, pp. 90-95; McLaughlin, I, 117 ff.; O. Capitani, "La venditio ad terminum nella valutazione morale di San Tommaso d'Aquino e di Remigio de' Girolami", *Buletino dell'Istituto storico per il medio evo*, LXX (Rome, 1958), 229-363; Baldwin, pp. 274-75.

¹⁶ *Consilia*, (Loano, 1620), cons. IXC, p. 167. For a recent bio-bibliographical sketch of Bosco, see *Dizionario biografico degli Italiani*, XIII (Rome, 1971), pp. 203-204.

¹⁷ Cons. IXC.

for one share was 63 *lire*, 10 *soldi*, to be paid at the end of the year, plus 5 *lire*, 10 *soldi* to be paid at the various times *paghe* fell due. Was the contract usurious? Was gain from the contract shameful (*turpe*)? No, argued Bosco:

... the prices of *luoghi* vary everyday, for they move up and down in line with the opinions which citizens form from events relating to the good and bad condition of the city, as is well known, on account of which one can very likely doubt whether *luoghi* are worth more or less at the time of payment. From this premise, I say that, if *luoghi* were sold on time for a slightly higher price than they are now worth in cash, by reason of such doubt the contract is licit and not usurious¹⁸.

Bosco considered credit sales to have utility precisely because they allow the vendor to sell his *luoghi* or other merchandise when he believes prices will fall, while they allow the emptor to purchase them when he feels prices will rise. Commercial necessity and the desire for profit supply the rationale for this contract. There are many honest merchants lacking ready cash who would be driven from the world of trade, if they could not rely on credit arrangements. Bartolomeo reasoned that "to restrain licit enterprise was to restrain natural liberty which is odious and must be avoided, for it contravenes public utility, which enterprise and business confer upon the city of Genoa". This statement of fact, Bartolomeo added, is also true *de iure* "and in accord with conscience". He restricted the clergy from participating in credit transactions, though he defended their right to acquire *luoghi* in the market or from San Giorgio¹⁹.

¹⁸ Ibid.; "Pro cuius rei declaratione premitto quod pretia locorum variantur dietim, nam crescunt et decrescunt secundum opiniones quas cives ex occurrentibus sibi assumunt de bono et malo statu et esse civitatis, ut notorium est, propter que valde verisimiliter dubitatur, an dicta loca tempore solutionis sint plus minusve valitura. Ex quo capite dico quod, si loca venderentur ad tempus aliquanto maiori pretio quam nunc valeant ad numeratum, ratione talis dubii licitus esset contractus et non usurarius...".

¹⁹ Ibid.: "Hic contractus hac forma celebratus has utilitates continet scilicet, ut qui dubitat, ne pretia locorum decrescant, sic vendere possit, et qui sperat quod loca debeant plus valere, possit ad emptionem prosilire. Hi enim contractus nisi fiant impellente necessitate pro necessariis ad vitam, fiunt causa lucri, huiusmodi autem exercitium clericis prohibetur, laicis permittitur. Item continet aliam utilitatem, nam maior favor rectae mercantiae est, quod inveniantur emptores ad numeratum et ad tempus, dummodo fiat sine peccato, quam quod ad numeratum tantum. Multi etenim non habentes in presenti pecuniam numeratam et ipsam habere

Bartolomeo Bosco's *consilium* is remarkable for its clarity, its compression, and for its unqualified defense of speculation in *luoghi*, that is, the intention and act of deriving profit from conjectural fluctuations in prices rather than from the ordinary earnings of trade. It would be a mistake, in my opinion, to see this ratiocination as a radical departure from the scholastic tradition on credit sales. Less sophisticated but analogous applications of the *venditio sub dubio* to the purchase of shares in the public debt of Florence had been made in the mid-fourteenth century²⁰. Bosco's *consilium* was, moreover, limited to Genoa, where the natives routinely conceived *luoghi* as merchandise (*bona mobilia*)²¹, not as money (*pecunia*); where they routinely conceived the acquisition of *luoghi* as a sale (*compera*), not as a loan (*mutuum*); and where they believed the market in *luoghi* was indispensable to the existence of Genoese commerce and finance.

In another *consilium*, amply displaying Bosco's talent for redescription, he defended this conceptual scheme. He claimed that even when the Republic of Genoa forced its citizens to loan, all the conditions sufficient for a contract of sale—consent, a thing, a price and transfer of ownership—were present²². A consensual relationship between Genoa and her citizens had existed prior to the forced loan. What was sold? Bosco asserted that it was not money but merchandise (*merx*), called *luoghi*. The price corresponded to the sum of money citizens paid the city in taxes. Genoese citizens were not lenders but emptors (*comperisti*), who owned shares in the *compere* and undertook all the risks attached to *luoghi*. Transfer of ownership took place, for unlike a loan, where

sperantes in tempore possent contrahere ad tempus, promittendo pecuniam solvere in tempore, qui non possent contrahere de presenti. Et restringere mercantiam licitam est restringere naturalem libertatem, quod est odiosum et vitandum, et est contravenire publice utilitati, quam confert mercantia et negotiatio civitati Janue, ut notum est de se, et hoc de jure reputo verissimum et secundum conscientiam”.

²⁰ By the Franciscan, Francesco da Empoli, who in 1353 had defended the intention and act of purchasing credits in the public debt of Florence (*Monte Comune*) from those forced to loan to the city. J. Kirshner, *From Usury to Public Finance*, (Dissertation), Columbia University, 1970, p. 178.

²¹ Sieveking, I, pp. 98-99.

²² *Consilia*, cons. CCLXII: fol. 417. The classification of forced loans made by citizens to the government of Genoa as contracts of sale had been asserted in Giovanni da Legnano's (d. 1381) quaestio on the public debt of Genoa. J. Kirshner, "Conscience and Public Finance: A *Questio Disputata* of John of Legnano on the Public Debt of Genoa", *Philosophy and Humanism, Renaissance Essays in Honor of Paul Oskar Kristeller* (Leiden, 1976), pp. 434-453.

the principal must be returned to the lender, the purchase price of *luoghi* was never refunded by the city. The selling and buying of *luoghi* among private citizens was totally divorced from lending. Against those who continued to regard the *comperisti* as usurers, advising them to pull out of the market in *luoghi* for the sake of spiritual safety, Bosco countered that "in doubt every contract is presumed licit, unless it is proven illicit"²³. The purchase of *luoghi* was presumed to be a licit contract.

Yet there was another maxim that if one has doubts about whether an action would result in mortal sin, and performs the act, one has committed mortal sin (*est enim regula quod si aliquis dubitat de aliquo an sit mortale et facit illud, peccat mortaliter*)²⁴. This rule was embraced by San Bernardino (d. 1444) who condemned all purchases of *luoghi* as usury²⁵. For him the purchaser was a lender who cannot take com-

²³ Cons. CCLXII, fol. 418: "Item in dubio omnis contractus praesumitur licitus, nisi probetur illicitus". This maxim derived from Roman law. See *Cod.* 4. 32. 14, *Si ea pactione*. Versions of this maxim were common—for example, Baldo degli Ubaldi da Perugia (d. 1400), to *Dig.* 12. 1. 11, Rogasti § si tibi (Venice, 1615), fol. 17^{r-v}: "Actus dubius non debet iudicari usurarius ubi potest procedere sine vicio usure..."; Bartolomeo Socini (d. 1507), to *Dig.* 12. 1. 11 (Lyons, 1546), fol. 73^{v-b}: "...quod in dubio potius contractus debet iudicari licitus quam usurarius..." Bosco's assertion was meant to counter Pope Alexander III's (d. 1181) decretal (X. 5. 19. 6, *In civitate*) treating credit sales, in which a premium was charged for deferred payment. Alexander allowed the transaction if there was real doubt about the value of the goods at the time of purchase, but concluded the decretal with a tutoristic note: "Et ideo cives tui saluti suae bene consulerent, si a tali contractu cessarent, quum cogitationes hominum omnipotenti Deo nequeant occultari". This decretal was sent to the archbishop of Genoa, probably Ugo della Volta (1163-1188). See B. Nelson, "Blancardo (The Jew?) of Genoa and the Restitution of Usury in Medieval Italy", *Studi in onore di Gino Luzzatto* (Milan, 1949), I, p. 114, n. 3.

²⁴ O. Lottin, *Morale fondamentale* (Louvain, 1954), I, p. 333.

²⁵ *Quadragesimale de evangelio aeterno, sermo XLI* (De impraestitis Venetorum et de monte Florentinorum ac de Ianuensium locis, quae idem in substantia sunt), in *Opera omnia* (Quaracchi, 1956), pp. 329 ff. On Bernardino's life, see *Dizionario biografico degli Italiani*, XIII (Rome, 1967), pp. 215-26. For his preaching in Genoa and Liguria, see L. M. Levato, "Relazioni di S. Bernardino da Siena con Genova e la Liguria", *ASLSP*, LIII (1926), 223-237; D. Pacetti, *De Sancti Bernardini Senensis operibus. Ratio criticae editionis* (Quaracchi, 1947), pp. 81, 128. For his economic views, see Raymond de Roover, *San Bernardino of Siena and Sant'Antonino of Florence, the Two Great Economic Thinkers of the Middle Ages* (Boston, 1967); A. Spicciati, "Sant'Antonino, San Bernardino e Pier di Giovanni Olivi nel pensiero economico medioevale", *Economia e storia*, XVIII (1972), 315-341.

pensation on the grounds of an *emptio venditio*²⁶. Bitterly opposed to the advice offered by the Genoese jurist, he counseled that individuals intending to purchase credits in the public debts of Venice and Florence as well as Genoa, hoping to profit thereby, should abstain from such purchases *pro salute animae est semper via tutior eligenda*²⁷.

Sant'Antonino (d. 1459) rejected the proposition that in all cases of doubt the safest road must be adopted (*pars tutior est sequenda*)²⁸, and he rejected the conclusion that the purchase of credits (*iura*) in the public debt was essentially usurious. As he explained:

Simply speaking it is not true that to purchase these credits leaves one open to mortal sin. Such a statement holds only if we add this condition: we doubt that the action is lawful, we make no effort to find out what the truth is, and we act in accepting the possibility of sin. Now, a person who purchases credits (*iura*) may very well no longer have any doubt about the licitness of his action, and think that the action is permitted since it has not been prohibited by the Church, and that many wise and knowledgeable persons have asserted its licitness. On the other hand, one who would judge such a contract to be wholly unlawful would commit a sin in buying these credits²⁹.

²⁶ Sermo XLI, p. 327: "Volentibus igitur salvare animas suas haec est tutior via, scilicet a talibus contractibus abstinere, quam in tanta peritorum dubitatione alteram partem eligere minus tutam". I strongly disagree with Yves Renouard's assertion that "Bernardin de Sienne affirme la légitimité de l'intérêt et justifie comme utile à la communauté tout entière l'activité des hommes d'affaires, partant leur enrichissement". Les hommes d'affaires italiens du moyen âge (Paris, 1968), p. 318.

²⁷ Loc. cit.

²⁸ P. Delhaye, La conscience morale du chrétien (Tournai, 1964), pp. 188-92.

²⁹ Summa theologica (or moralis), pars. 2, tit. 7, cap. 77 (Verona, 1740): col. 190 XXXII: "Item cum dicitur a quibusdam, quod exponere se periculo mortalis est mortale secundum B. Thomam in 4, sed emere praedicta iura est exponere se periculo peccati mortalis, quia dubium est, utrum ibi sit mortale; respondetur negando minorem. Non enim emere praedicta iura est exponere se periculo peccati mortalis simpliciter loquendo, sed bene cum ista conditione adjuncta, scilicet dubitando ibi esse mortale, sumendo proprie dubium; cum scilicet non magis declinat ad unam partem, quam ad aliam secundum rationem. Sed qui emit praedicta, potest non dubitare de hoc, sed opinari licitum esse, ex quo per ecclesiam non est determinatum contrarium; et multi sapientes et periti licitum asseverant, et multo magis qui crederet omnino talem contractum esse illicitum, peccaret mortaliter illa emendo". Here I have followed, but have modified in minor details, the translation of Delhaye, p. 191. On sant'Antonino's life, see Dizionario biografico degli Italiani, III (Rome, 1961), pp. 524-32.

This advice, given in the *Summa theologica*, should be read in conjunction with Antonino's advice on the same nettlesome case given in his popular manual for confessors. Any confessor who must offer advice on this case, he forewarned, should be aware of the multitude of conflicting opinions: some say the transaction is licit, others usurious. Antonino's own advice was clear-cut: it is safer to abstain from the transaction. Nevertheless, the confessor was advised not to deny absolution to penitents holding a contrary opinion or to those who purchase such credits. Penitents are to be notified that they have fallen from a state of moral safety to one of moral doubt³⁰. If Antonino himself believed the safer road to be a better course, he nevertheless endorsed the doctrinal validity of the position which holds that when moral uncertainty exists about an intended action, one may imitate the opinion of some noted doctor which one believes to be probably correct³¹. As Noonan has accurately observed « here sant'Antonino will only counsel, not impose the safer way. Purchasers of bonds are to be advised to give their profits to the poor; but if they refuse this counsel, preferring another opinion, they are not to be denied absolution »³².

Sant'Antonino's keen sense of the moral complexities attendant upon the operations of the public debt of Genoa was brought to the fore once again in an opinion he rendered on the market in *lire de paghe*.

³⁰ Confessionale (Venice, 1497), fol. 18r: « ... de emptione iurium montis Florentie, vel imprestitis Venetiarum quod quidam dicunt esse usuram, alii licitum dicunt, et in multis huiusmodi; consultat tamen semper quod tutius est, scilicet, a talibus abstinere, extra, de sponsa. c. iuvenis (X. 4. 1. 3). Non tamen condemnet contrarium facientes seu contrariam opinionem tenentes, nec propter hoc denegat absolutionem ». Similar advice on this issue was given by the canonist Giovanni d'Agnani (d. 1457). To X. 5. 19. 6, *In civitate*: « Pondera ultimo, ad omnia praedicta quia possunt duo considerari, unum pro parte negativa, videlicet quod talis redditus non sit licitus; quia ex quo materia est dubia propter varietatem opinionum tutius est abstinere ... potest etiam ex parte affirmativa, unum considerari, videlicet, quod ille qui facit contra legem precepti, in cuius intellectu sunt varie opiniones, non peccat ». In quintum decretalium lectura dilucida (Lyons, 1553), fol. 180.

³¹ Confessionale, fols. 16v-17r: « Unde scire debet confessor si eaque exprimit sibi penitens, sive peccata vel non, puta an bella principum et ipsorum exactiones sint licita vel non, et utrum contractus qui fiunt sint liciti vel illiciti, et quando ad restitutionem teneatur et quando non, et an ei debeat prohibere communionem, vel concedere, quia si confessor iudicat licitum quod est illicitum, tam confessor quam penitens in foveam cadunt, nisi forte probabilis ignorantia eum excuset, puta si habet aliquem doctorem authenticum et famosum, cuius opinioni innititur ».

³² Noonan, p. 169.

Around 1446 sant'Antonino was consulted on the market in *lire de paghe* by the Benedictine monastery of S. Niccolò del Boschetto of Genoa. This model fact case was set before him. You ought to receive within one year or two 50 *lire de paghe* from your present holdings in *luoghi*. Needing cash immediately, you sell your right to 50 *lire de paghe* for 45 *lire* in cash. Was this transaction, *frequentissime fiat*, usurious and was the purchaser obliged to make restitution of the 5-florin profit³³? First, Antonino stated that the transaction is permitted with respect to the seller, since he was in evident need of cash. Secondly, the transaction was usurious with respect to the purchaser, since he gave less than the just price, which is equated with the value of *paghe* at maturity. Thirdly, the transaction was permitted with respect to the purchaser (a) if he expended great effort to procure the *lire de paghe* or (b) if he faced the risk of governmental default³⁴. Discounting was licit so long as the elements of labor and/or risk were present. Here, Antonino was applying orthodox rules to a new case, while giving leeway to the Benedictines of Genoa to determine whether the conditions were present which made the purchase of *paghe* illicit. Meanwhile, his contemporary, the important Genoese and Dominican theologian, Raffaello da Pornasio (d. 1468), gave wholehearted approval to the selling and buying of *lire de paghe*, extending his approval to purchases from ecclesiastical establishments³⁵.

Empirically speaking, it is not possible to gauge the precise impact of these and other theological and legal opinions upon the mind-set of Genoese investors. The moral universe in which such opinions were rendered was permeated by doubts and anxieties³⁶ which, in fact, led to the solicitation of guidance from an assortment of holy men and authorities in law and theology. Their competing and conflicting counsels and admonitions, instead of bringing spiritual comfort and safety to investors, constantly had the reverse effect of inflaming old and kindling new doubts and anxieties about daily commercial and finan-

³³ R. Creyten, "Les consilia de S. Antonin de Florence, O.P.", *Archivum Fratrum Praedicatorum*, XXXVII (1967), p. 322, n. 25.

³⁴ *Ibid.*

³⁵ J. Kirshner, "An Opinion of Raphael de Pornasio, O.P., on the Market in Genoese *lire de paghe*", forthcoming in *Xenia medii aevi historiam illustrantia, oblata Th. Kaeppli O.P.* (Rome, 1977).

³⁶ For indications of scruples of conscience among mid-fifteenth-century merchants in Genoa, see Heers, *Gênes*, pp. 256-265; and the author's *L'occident aux XIV^e et XV^e siècles. Aspects économiques et sociaux*, 2nd ed. (Paris, 1973), pp. 240-42.

cial activities. The very absence of doctrinal unanimity made the quest for formal consistency between *doctrina* and *mercatus* and the quest for spiritual safety and legitimacy tortuous and problematic. Yet consistency, safety and legitimacy were exactly what San Giorgio required to unload its *paghe floreni* and were exactly what San Giorgio requested from Calixtus III in 1456.

THE CONCESSION OF CALIXTUS III

Relying on its close bonds with the papacy, San Giorgio expected Calixtus to respond favorably to its position. The papacy had recently suffered a devastating blow with the fall of Constantinople in 1453 and with the loss of Christian territories such as Phocaea in 1455. In 1456 the Genoese colony Caffa was threatened. Eager to mount an aggressive campaign against the eastern enemy in the hope of regaining former Christian possessions, the popes had leaned heavily upon Genoa, who willingly gave the papacy her support³⁷. San Giorgio itself played a pivotal role by selling indulgences for the *thesauraria sancte cruciate* to inhabitants of Genoa and its environs. Indeed, by 28 April 1456 the *Officium Sancti Georgii Indulgentie* was collecting treasure for the eastern campaign³⁸. The letters passing between Genoa and the Holy See offer testimony to a thriving political interdependency. It is thus not surprising that San Giorgio's request to unload its *paghe floreni* was treated by the Holy See as an important diplomatic and political affair³⁹.

³⁷ See Vigna's work cited above (n. 11); W. Heyd, *Geschichte des Levantehandels im Mittelalter* (Stuttgart, 1879), II, pp. 365 ff.; A. M. Boldorini, *La predicazione della crociata di Callisto III a Genova* (Alessandria, 1967). For a brief and accurate bio-bibliographical profile of Calixtus, see M. Mallett, "Callisto III", *Dizionario biografico degli Italiani*, XVI (Rome, 1973), pp. 769-74.

³⁸ Heers, "La vente des indulgences pour la croisade", 71 ff.

³⁹ Calixtus' concession carried the *subscriptio* of Johannes Aurispa, papal secretary and familiar, indicating that the concession was an *expeditio per cameram* and thus a politically significant matter. On Aurispa, see W. von Hofmann, *Forschungen zur Geschichte der kurialen Behörden vom Schisma bis zur Reformation* (Bibliothek des kgl. Preussischen Historischen Instituts in Rom. XII-XIII), Rome, 1914, II, p. 111, no. 70; E. Pitz, *Supplikensignatur und Briefexpedition an der römischen Kurie im Pontificat Papst Calixtus III* (Bibliothek des Deutschen Historischen Instituts in Rom, XLII) (Tübingen, 1972), p. 73. Neither mention of San Giorgio's request, nor of Calixtus' concession is made in Pitz's monograph. On Pitz's work, see the critical review of Peter Herde, *Zeitschr. f. Rechtsgesch.*, kan. Abt. 91 (1974), 414 ff.

The intertwining interests of the Holy See and Genoa were engraved in Calixtus' concession. He began by solemnly affirming his supra-mundane authority, "to consider the vicissitudes of the times and to succor those in need and in danger by tempering the rigor of the law (*iuris temperando rigorem*)"⁴⁰. He then cited San Giorgio's petition which, in somber tones, had recalled the Turkish menace and the heavy burdens incurred in defending Caffa. These expenditures had siphoned off revenues customarily designated for *paghe*. San Giorgio's fiscal bind had become critical, and it seemed that it would only be able to pay a minimal part of the *paghe* of '55 "to the great detriment of the churches, pious places, religious persons, orphans, widows and others, the greater part of whose wealth is in the said *luoghi*". The crisis could be averted only by receiving a subsidy from the commune in the form of *paghe floreni*. The commune assigned the *paghe floreni* of '64, '65, and '66. San Giorgio decided to sell these *paghe* for other *paghe floreni*; or to exchange them for *lire de paghe* issued in 1455 for a lesser sum than the "emptores" and "permutantes" would receive in '64-'66. But some individuals, doubting whether the future revenues could be licitly sold, purchased, or exchanged in this manner, were very hesitant to subscribe to San Giorgio's offer. Unless it could persuade these potential subscribers that the transaction would be licit, San Giorgio predicted dire consequences. There would be a general fall in the market price and annual yield of *luoghi*, which would be especially harmful to the Genoese church and to widows and orphans. San Giorgio therefore entreated the papacy for permission to sell and exchange the future *paghe floreni*, and reminded the pope of two important particulars to be taken into account when making his decision. The first was that the *paghe floreni* and *lire de paghe* as well as the general revenues of the commune ought to be considered as immovable property (*immobilia*); and secondly, that the selling and buying of these revenues were regularly allowed by municipal law and take place daily.

⁴⁰ See below, doc. I. The *topos* of tempering or relaxing the rigor of the law was grounded on the general notion of equity and was an important judicial tool in the procedure of dispensation; on which, see J. Brys, *De dispensatione in iure canonico* (Bruges, 1925), pp. 83 ff.; G. Le Bras, Ch. Lefebvre and J. Rambaud, *L'âge classique 1140-1378. Sources et théorie du droit (Histoire du droit et des institutions de l'église en occident, Vol. VII)* (Paris, 1975), pp. 360, 366, 409, 419, 465, 503, esp. 515 ff.; J. Lederer, *Der Dispensbegriff des kanonischen Rechts* (Munich, 1957), pp. 28 ff.

Permission was authorized with care and appropriate consultation. Cardinal Lodovico Mezzarata Scarampi dell'Arena, papal chamberlain⁴¹, was charged with investigating the merits of San Giorgio's petition. After receiving the advice of "experts", he reported that such contracts should and can be permitted for reasons of necessity and utility. And Calixtus made it abundantly clear that the justification for authorization was urgent necessity and public utility, two very traditional and canonical *rationes* used to exempt the faithful from the rigors of the law in specific cases. If *necessitas* supplied both the cause and the justification for the transaction of '56, it also made the transaction conditional. Unless the *ratio* of necessity was present, the transaction appears to be on shaky moral and legal grounds, even though the pope did not explicitly state that. Calixtus refrained from approving all the operations of the public debt of Genoa as lawful, as San Giorgio had claimed. His silence did not, however, mean that, if he had been specifically asked to approve of other operations conducted by San Giorgio, he would have necessarily refused. The juridical scope of papal authorization was restricted in another way. It was specifically limited to one operation, the sale and exchange of the *paghe floreni* of '64-'66 to anyone willing to invest in them under the conditions outlined by San Giorgio and approved by the pope (... *tenore presentium hac vice dumtaxat licentiam elargimur*). Furthermore, part of the proceeds from this transaction were to be channeled into spiritually and socially useful ends: for the Genoese Church as well as for the deserving poor. The concession closed with a derogatory clause, declaring that Calixtus' ruling was valid, notwithstanding all apostolic constitutions and ordinances to the contrary. Most likely Calixtus was referring to the decretals *Naviganti* and *In civitate* on credit sales, and perhaps Alexander III's decretal, *Super eo*, which ruled that the Church cannot dispense from the prohibition against usury⁴².

⁴¹ On whom, see P. Paschini, *Lodovico Scarampi cardinale camerlingo* († 1465), *Facultas theologica pontificii athenaei lateranensis*, n.s., Vol. 5, n. 1 (Rome, 1939). It is not without interest that one of the important clerics in the Camera Apostolica and co-auditor of Cardinal Scarampi (who had numerous dealings with San Giorgio) was the Genoese Antonio Munteledo. See D. Cambiasso, "I vicari generali degli arcivescovi di Genova", *ASLSP*, LXXXVI (1972), 32.

⁴² X. 5. 19. 4, *Super eo*; *gl. ord.* to X. 5. 19. 4, *v. dispensationem* (Venice, 1572), col. 1017^a: "Arg. quod praetexta boni, malum feri non debet...". A key text, cited over and over again in the late fourteenth and fifteenth centuries, was that of the Bolognese canonist, Giovanni Calderini (d. 1365), who, in a *repetitio* on the decretal

What is striking about this concession is not that authorization was hedged with qualifications, but that in the exchange between San Giorgio and the Holy See there was no specific indication of the rule of law which would have been violated if authorization had not been forthcoming. In other words, did those individuals who shared doubts about the licitness of the transaction fear that they would be transgressing the usury prohibition? The laws governing unjust prices? Ill-gotten gains? Certainly, there were professional moralists in Genoa who could have made a strong case for any of these possible transgressions. The position of the "protectores" themselves was crystal clear. They believed these doubts to be unfounded. And they believed this and similar transactions were legal *de facto* and *de iure*. These beliefs were also conveyed symbolically. All the terms referring to the transaction connoted morally and legally sanctioned business forms and conduct: "proventus" for profit; "emptores" and "permutantes" for the participants; "venditio" and "permutatio" for the contracts. Nevertheless, San Giorgio's petition and Calixtus' concession would be meaningless, indeed this entire affair must be considered absurd, unless they had reference to law or laws such as those mentioned above. And yet it was believed to be contextually imperative to omit any specific references to usury, and certainly safer to omit references to anything that could be construed as usurious conduct, since even the law of the Church forbade the pope from giving dispensation from usury for any reason, including necessity and public utility⁴³.

Naviganti, attacked the argument that one could undertake a usurious contract in order to avoid a greater evil or to attain a good result: "Nec obstat per contractum usurarium posset multa bona sequi et multa mala vitari, ut est notum, quia non est faciendum quod est malum de sui natura propter evitacionem alterius maius mali vel propter bonum quod in se posset sequi..." Biblioteca apostolica Vaticana, Vat. lat. 2660, fol. 263^v. The ultimate source for this vision was Saint Paul (Rom. 3, 8): "et non sicut blasphemamur, et sicut aiunt nos quidam dicere, faciamus mala ut veniant bona? quorum damnatio iusta est". On this theme, see A. M. Hamelin, *Un traité de morale économique au XIV^e siècle. Le "Tractatus de usuris" de Maître Alexandre d'Alexandrie* (Louvain/Montreal/Lille, 1962), p. 81. The derogatory clause was *stilus curie*, a routine matter, and one perhaps should not place a heavy load of interpretation upon it.

⁴³ McLaughlin, I, 108; Noonan, p. 19. *Super eo* was cited by San Bernardino in rebuking the claim that the selling and buying of credits in the public debt rested on papal approval, ex privilegio Papae. Quoting *Super eo*, Bernardino flatly declared: "Ex his verbis colligitur primo quod aliqua dispensatio non est posita in usura; secundo quoque colligitur quod neque pro sustentatione viduarum vel pu-

There still remains one feature of the concession which deserves close scrutiny. San Giorgio's description of the public debt as a network of licit contracts of sale, in which the creditor was viewed as an emptor, purchasing an annuity from the commune, the vendor. Such an annuity was termed a *census*, and just like interest-bearing city-state loans, the morality of the *census* contract had been subjected to prolonged theological and legal debate since the thirteenth century⁴⁴. There existed a wide variety of *census* contracts, whose distinguishing characteristics

pillorum aut quorumcumque aliorum mutuum ad usuram aliquo modo licitum sit, sicuti quidam falsissime fabulantur (sermo XLI, pp. 325-26)". Bernardino's rigorous stance against papal dispensation from the obligation not to perform usurious acts had not eroded by the end of the Quattrocento. Mattia da Milano, O.F.M., who wrote a manual for the confessional at the turn of the century, summed up the traditional doctrine with these words: "... firmiter teneas quod nec per hominem nec etiam per papam dispensari posset, ut sine peccato exerceatur, ut expresse dicitur, in c. Super eo, extra, de usuris..." (Repertorium seu interrogatorium sive confessionale [Milan, 1516], no. 78). Even when the papacy allowed Jewish pawnshops to operate under a license granted by a city, moralists frequently argued that the papacy was not offering dispensation either to the Jews or to the rulers and councils licensing the pawnshops, but was merely tolerating an unavoidable evil. See Angelo da Chivasso, *Summa casuum conscientiae* (Venice, 1492), s. v. *Usura*, fol. 513: "Nam Papa non potest dispensare cum aliquo etiam iudeo ut mutuet sub usuris, d. c. super eo; quia, ut probavi, usura est malum in se et secundum se. Et ideo pro nullo bono potest licere, ut in d. c. super eo patet. Multo minus potest cooperari neque auxilium dare ut uxure exigantur: quia agentes et consentientes digni sunt morte, ad rom. primo. Si ergo non potest expresse nec etiam tacite. Et ideo de tali tollerantia dicitur quod permittimus non approbamus...". On papal policy towards Jewish bankers, see the splendid work of Léon Poliakov, *Les banchieri juifs et le saint-siège du XIII^e au XVII^e siècle* (Paris, 1965), esp. 52 ff. and 116-120.

⁴⁴ F. Veraja, *Le origini della controversia teologica sul contratto di censo nel XIII secolo* (Rome, 1960); P. Ourliac, "La théorie canonique des rentes au xv^e siècle", *Etudes historiques à la mémoire de Noël Didier* (Paris, 1960), pp. 231-243; B. Schnapper, "Les rentes chez les théologiens et les canonistes du XIII^e au XVI^e siècle", *Etudes d'histoire du droit canonique dédiées à Gabriel Le Bras* (Paris, 1965), II, pp. 966-995; Isidoro Soffietti, "La rendita vitalizia nel pensiero dei civilisti e dei canonisti fino alla metà del XIII secolo", *Rivista di storia del diritto italiano*, XLII-XLIII (1969-70), 79-175, especially pp. 146ff. On the various usages of the term *census* among civilians and canonists, see the fine piece by E. Cortese, "Intorno alla « causa impositionis » e taluni aspetti privatistici delle finanze medievali", *Annali di Storia del diritto*, II (1958), 155ff. The economic significance of the *census* is underlined by W. Trusen, "Spätmittelalterliche Jurisprudenz und Wirtschaftsethik dargestellt an Wiener Gutachten des 14. Jahrhunderts", *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte*, XLIII (1961), 111ff.; Trusen, "Zum Rentenkauf im Spätmittelalter", in *Festschrift für Hermann Heimpel* (Göttingen, 1972), pp. 140-158.

depended on the origin of income (real estate, personal labor, general income-producing capabilities of the city) used to fund the annuity; on the length of time the annuity would be paid (several years, for life, in perpetuity); on whether the annuity was fixed or varied in proportion to the income produced by the *census* base; and finally on redeemability of the annuity at the option of the seller or the buyer. As Noonan has observed:

By varying combinations of these various terms, one could approximate a loan in different degrees. An uncertain, real, perpetual *census* which was redeemable would be least like a loan; a certain, personal, temporary *census*, which was redeemable at the buyer's option, would be most like one⁴⁵.

A *census* funded from communal revenues was defended as licit before the fifteenth century by the theologian, Alessandro da Alessandria (d. 1314)⁴⁶, Astesanus, O.F.M. (d. 1330), and Lapo da Castiglionchio (d. 1381)⁴⁷. In the fifteenth century, the canonist Panormitanus gave his approval to this form of investment⁴⁸. On the other hand, the jurist, Giovanni da Legnano (d. 1383) and Lorenzo Ridolfi (d. 1443), disapproved the city-state *census* unless it was established on the "goods" (*bona*) of the "community," meaning probably its general revenue-producing ability, but both jurists are vague about what "bona" signifies⁴⁹. Sant'Antonino condemned the city-state *census* established on the "person" of the community, as did later fifteenth-century moralists⁵⁰. In this context, San Giorgio's classification of its revenue as *immobilia* was a bold and sweeping attempt to transform its operations—

⁴⁵ Noonan, p. 160.

⁴⁶ Veraja, *Le origini*, pp. 158-159. Alessandro defended the liceity of a perpetual annuity funded by Genoese gabelles on salt and bread.

⁴⁷ Noonan, p. 162.

⁴⁸ *Ibid.*; Schnapper, "Les rentes", 977-78.

⁴⁹ Noonan, 162, n. 38; Giovanni da Legnano, to X. 5. 19. 19, *Naviganti* (Lucca, Biblioteca Capitolare Feliniana, Cod. 227, fol. 314): "Habet statutum vel consuetudo civitatis quod rectores vendant de pecunia civitatis alicui et suis heredibus quinque marcas vel x annuatim, pro centum, quam pecuniam convertit civitas in utilitatem suam, an est usura. Hic pondero quod pecunia est mensura aliarum, ff. de fideiussoribus, l. si ita [Dig. 46. 1. 42], ff. de contrahenda emptione, l. i [Dig. 18. 1. 1]. Contractus ergo non est licitus et peccant rectores (licet non singuli), nisi consequantur bursale commodum. Posset tum defendi contractus, ubi civitas constitueret censum .x. marcarum qui concerneret bona civitatis, non autem quantitatem pecunie".

⁵⁰ Noonan, p. 162.

by means of redescription—into a real *census*. Given the moral and doctrinal ambiguities surrounding a *census* funded on communal revenues, it was unlikely that Calixtus would have approved it. It is noteworthy, however, that in his bull, *Regimini*, of 1455 Calixtus had sanctioned a real *census* contract, redeemable at the will of the seller ⁵¹.

With Calixtus' concession in hand, San Giorgio was now able to dispose of its *paghe floreni*. This operation was concluded within approximately a year ⁵². If papal authorization melted moral resistance to the transaction of '56, it did not sweep away once and for all nagging doubts and fears about the *venditio ad tempus* of *luoghi*, *lire de paghe* and *paghe floreni*. From the mid-fifteenth century onward, a brisk traffic in opinions flowed from the pens of sant'Antonino, Raffaello da Pornasio and many others, advising both Genoese ecclesiastics and laymen on the pros and cons of entering the market in *luoghi* and *paghe*. The Genoese government itself led an offensive against usury in this period. On 13 March 1467 the Doge convened an extraordinary council which declared war against usurers and usurious contracts: straight loans at interest, dry exchanges, and dealings in *paghe (mercato pagarum)*. This *mercato* apparently referred to private transactions of *lire de paghe* which were categorized as sales camouflaging loans ⁵³. No specific mention of the purchase of *paghe floreni* was made, but Heers ⁵⁴ seems to indicate that such purchases were included in the decree prohibiting usurious contracts. The crusade against usury was largely successful, especially in curtailing interest-bearing loans of *lire de paghe* ⁵⁵.

⁵¹ *Extravag. Com.* III, 5, 2, on which see the informative piece by L. Choupin, "Calixtus III. Le contract du cens d'après la bulle *Regimini*", *Dictionnaire de théologie catholique*, II (Paris, 1910), cols. 1351-1362.

⁵² Heers, Gênes, 109, 165. Much more work remains to be done on the chartularies in which these transactions were registered. The archival citations given by Heers are not perfect, as I have learned by attempting (not always with success) to order microfilm copies of the documents to which he has referred.

⁵³ Heers, Gênes, 256. Heers' account of this affair is extremely valuable and penetrating; he establishes that this moral offensive against usurious practices was tied to wider religious currents and to the reform of Genoese monasteries, particularly women's convents. Yet his chronology and partial transcription of the text of the decree emanating from this council leaves something to be desired. He gives four different dates for the council, 1466, 1467, 13 March 1456, 14 March 1466: the correct date is 13 March 1467. Heers, Gênes, 256; *Archivio di Stato di Genova*, Div. Reg. n. 86-581, fols. 81^r-82^v (13 March 1467). Edited in Appendix, doc. III.

⁵⁴ Heers, Gênes, 256.

⁵⁵ *Ibid.*, 262.

THE CONCESSION OF SIXTUS IV

It was only a question of time, if we remember the city's and San Giorgio's persistent lack of liquidity, that an appeal would again be made to the papacy for permission to market *paghe floreni* at a discount. And it is only surprising that San Giorgio did not act sooner than 1479, when it supplicated Pope Sixtus IV for this purpose. Like Calixtus, Sixtus had excellent relations with Genoa. He himself was a native of Liguria, and had been received as a citizen of Genoa⁵⁶. After Sixtus' involvement in the Pazzi conspiracy in Florence in 1478 ruptured his alliance with the Medici, he turned to Genoa for support⁵⁷. The pope, Genoa and Fernando of Sicily soon joined together in a league against Florence, whose aim was to oust Florence from Sarzana and other territories along the shores of the Tyrranean Sea⁵⁸. He also gave the Genoese the profitable monopoly over the papal alum mines at Tolfa⁵⁹. The government of Genoa and San Giorgio had every reason to think that Sixtus would honor their petition.

Sixtus' concession, dated 22 May 1479, opened with a lengthy extract from Calixtus' bull stressing that the paramount reasons for granting authorization in '56 had been necessity and public utility. Then, citing the petition of San Giorgio, it was noted that even after 1456 emergencies had arisen which were presently engulfing both the commune and San Giorgio. To meet the emergency head-on, the extraordinary measures of selling and exchanging *paghe floreni* in the same manner as before, that is, at a discount, was planned. Permission was requested of the Holy See so that men could freely participate in the transaction "without any scruples of conscience." If there were substantial similarities between the two petitions, the dissimilarities were even greater.

⁵⁶ A. Teetaert, "Sixte IV", Dictionnaire de théologie catholique, XIV (Paris, 1941), cols. 2199ff.; on his reception as a citizen of Genoa, see his concession, edited below, doc. II.

⁵⁷ Raymond de Roover, *The Rise and Decline of the Medici Bank, 1397-1494* (Cambridge, Mass., 1963), pp. 152ff.

⁵⁸ H. Sieveking, "Relazione sopra i Libri Iurium di Genova", *Giornale storico e letterario della Liguria*, VIII (1907), 421-22; A. Ivaldi, "La signoria dei Campofregosso a Sarzana (1421-1484)", *ASLSP*, LXXXI (1967), 141ff.; P. Lisciandrelli, "Trattati e negoziazioni politiche della Repubblica di Genova (958-1797)", *ASLSP*, LXXV (1960), 166.

⁵⁹ G. Zippel, "L'allume di Tolfa ed il suo commercio", *Archivio della società Romana di storia patria*, XXX (1907), 410ff.; Heers, *Gènes*, 469ff.

The spectre of the Turkish threat was missing, although Genoa had lost Caffa in 1478 and although the crusade against the Turks was an ever-present theme of papal policy and politics. The spectre of the economic plight of the Genoese church was also absent. The purpose of the transaction was explicitly to strengthen the liquidity positions of the commune and San Giorgio. Furthermore, the request for permission to exchange and sell *paghe floreni* was for as many years as it would be expedient (*pro tot annis fuerit expediens*) rather than for a limited number of years. San Giorgio was thus not requesting that Sixtus simply renew his predecessor's concession, as some historians have written, but that it be permitted to perform such transactions for as long as they were deemed necessary, meaning, in perpetuity.

Stating that he was fully informed of the facts of this case and that he carried a special affection for Genoa and its citizens, Sixtus approved the petition thusly:

that you (*compere* of San Giorgio) are permitted perpetually in the future and the *protectores* of the *compere* of San Giorgio then in office (are permitted), for however often evident necessity and utility should arise..., to sell and exchange revenues, or *floreni* and immature *paghe* of the same kind to whichever persons so that you can ameliorate the (fiscal) conditions of the *compere*, for as many years as it should be expedient, and to convert the money arising therefrom to the use of the *compere* and the commune. And also (we grant) to whichever persons to receive freely and licitly, without any scruples of conscience, such revenues, *floreni* or immature *paghe* in future years by reason of purchase or exchange⁶⁰.

The concession was valid, notwithstanding the statutes and customs of Genoa, the ordinances of San Giorgio as well as apostolic constitutions and ordinances. No specific law of Genoa was cited, but it is likely that the decree against usurious transactions involving *paghe*, promulgated on 13 March 1467, was the target of this derogatory clause. And it is not unlikely, although I have not been able to locate any evidence, that this decree had been incorporated into the ordinances regulating the operations of San Giorgio.

The papal concession did not liberate purchasers from all moral

⁶⁰ See below, doc. II. The *subscriptio* of Leonardus Griffus, *secretarius intimus et domesticus* of Sixtus' IV, indicates that the papal concession was an *expeditio per cameram* and thus a weighty political matter. On Griffus, see von Hofmann, II, p. 123.

constraints, nor did it quell disputes about the morality of *lire de paghe* and *luoghi*. The papacy had been formally silent on these burning issues, leaving the field open to theologians and jurists. Yet both Calixtus and Sixtus would be cited by moralists intent upon widening the scope of the papal concession to encompass the market in *lire de paghe* and eventually the whole plexus of operations which constituted the system of *compere*.

THEOLOGICAL CONTROVERSY

ANGELO DA CHIVASSO

Opposition to the *lire de paghe* market was led by the Franciscan Observant, Angelo Carletti da Chivasso (d. 1495)⁶¹. A prominent religious leader of the late fifteenth century, he was elected in 1462 to be vicar of the Observants of Genoa; advanced to the rank of Vicar General of the Order; and was appointed papal commissary by Sixtus IV, who charged him with preaching a crusade against the Turks throughout Italy. His opposition to the market in *lire de paghe* is found as a "case of conscience" under the rubric "Usura" in a work titled *Summa conscientiae*, popularly known as the *Summa angelica*⁶². He may have written parts or even the complete work between 1460-1480, but it was first printed in his native town, Chivasso, in 1486⁶³. This alphabetical moral guide to cases of conscience proved so popular among the laity and the clergy that it was reprinted again and again during the following fifty years. On cases pertaining to usury, Angelo normally advised his

⁶¹ We lack a sophisticated, modern biography of this moral theologian, preacher and administrator. For now, see M. Bessone, *Il Beato Angelo Carletti da Chivasso* (Cuneo, 1950).

⁶² A brief discussion of Angelo's *Summa* is given by P. Michaud-Quantin, *Sommes de casuistique et manuels de confession au moyen âge (XII-XVI)* (*Analecta mediaevalia namurcensia*) (Louvain, 1962), pp. 99-101.

⁶³ T. M. Guarnaschelli and E. Valenziani, *Indice generale degli incunaboli delle biblioteche d'Italia* (Rome, 1943), I, pp. 72-74, nos. 558-571. For later editions, see R. Stintzing, *Geschichte der populären Literatur des römisch-canonischen Rechts in Deutschland* (Leipzig, 1867), 536-37. According to M. Viora, the *Summa de casibus conscientiae*, "fu scritta intorno al 1462, quando cioè Padre Angelo fece lunga permanenza in Genova in qualità di Vicario di quella Provincia francescana", (*La Summa Angelica*", *Bollettino storico-bibliografico subalpino*, XXXVIII [1936], 446). Although Viora offers no secure evidence to back up his claim, he may be correct, because there was often a substantial lapse of time between the redaction and printing of a work in the late fifteenth century.

audience to take the safer road, to refrain from entering into contracts or other agreements, which, in his opinion, were usurious, despite opinions to the contrary⁶⁴. He was capable of reversing his opinion, approving a contract or an institution, after having condemned it, as he did in the case of the dowry fund of Florence (*Monte delle doti*)⁶⁵. "Take the safer road" was the advice given to those who had entered or were contemplating entrance into the *lire de paghe* market.

Angelo presented this model fact case: someone purchases 78 *lire de paghe* at the going rate of 15 *soldi* per *lira*. It is asked whether the contract was usurious, since the purchaser will, in all likelihood, receive 20 *soldi* per *lira* in two years, presumably when San Giorgio redeems *lire de paghe* for cash. There was no doubt in Angelo's mind that usury was committed here, but before launching his attack he first presented opinions differing from his own. He related that certain masters and doctors have greatly erred by asserting that the contract was not usurious, but only gave rise to ill-gotten gain (*turpe lucrum*). This distinction meant that the purchaser who received unjust profit is under no legal compulsion to make restitution. Some others, Angelo continued, have even said that the contract can be licitly made, providing four reasons to justify their position. First, it was a contract of sale, not a loan. Usury could not technically arise, although the contract could be considered unjust. Secondly, there was danger and labor in acquiring what is purchased. Thirdly, because the price paid for *lire de paghe* is commensurate with the market price (*communis estimatio*) and therefore was just. And fourthly, inasmuch as ripe and perfect fruit are worth more than unripe fruit, it logically follows that it was licit to purchase immature *lire de paghe* at a discount⁶⁶.

⁶⁴ Noonan, 162, n. 38, 175, 318, n. 31; R. de Roover, "Cambium ad Venetias: Contribution to the History of Foreign Exchange", in *Business, Banking and Economic Thought in Late Medieval and Early Modern Europe*, ed. J. Kirshner (Chicago, 1974), pp. 254-55.

⁶⁵ See my essay, "The Monte delle doti of Florence: Pursuing Honor while Avoiding Sin", forthcoming in *Studi Senesi*.

⁶⁶ *Summa casuum conscientiae* (Lyons, 1520), s. v. Usura, I, fol. 354^r, no. 64: "Utrum emens pagas, puta de LXXVII ad rationem de xv solidis pro libra, quia sic est communis eorum estimatio Ianue, sit usurarius, cum postea sit habiturus verisimiliter hinc ad duos annos xx (Text: xxx) solidos pro libra. Resp.: Quidam multum errantes conati sunt simpliciter asserere non esse contractus usurarius, sed solum turpe lucrum. Aliqui etiam dixerunt quod licite fit motus. Primo, quia talis non est contractus mutui sed emptionis, quo usura esse non potest sed solum iniustitia. Secundo, quia inest periculum et labor in rehabendo. Tertio, quia communis esti-

“Certainly these reasons,” Angelo protested, “are worth nothing.” If the contract formally satisfied the criteria used to identify an *emptio venditio*, it equally satisfied the criteria used to identify a *mutuum*. The purchaser hoped to receive something beyond the principal of a loan, but his intention is disguised *sub contractu emptionis*. The excuses of risk and labor are invalid, since the purchaser is going to receive the full amount due to him without risk and without expending any labor whatsoever. The discount (*minutio precii*), therefore, was only the result of delay. And the “*communis estimatio*” itself is corrupt and used to camouflage usurious contracts. Angelo assailed theologians who, without any basis in law, indeed interpreting the law (*Naviganti*) contrary to its true meaning, advised men that the contract was licit, thus leading them into error. They did not understand that when someone purchases an immature fruit at discount, if, after computing risk, the value of the fruit is *always* or is likely to be worth more at maturity, the transaction was usurious⁶⁷. There was one context in which the purchase of discounted *lire de paghe* could be justified. If one purchased *paghe* at the request of a friend in need, and employed funds that would otherwise have been invested in his own business, he could collect damages (*interesse*), presumably for the profit he licitly and probably would have, but was prevented from earning. The technical name for such profit was called *interesse lucri cessantis*⁶⁸. Angelo was extremely cautious in his

matio non plus iudicat valere. Quarto, quod sicut plus valet fructus maturus et perfectus quam acerbus, ideo licite quando est acerbus minus emitur”.

⁶⁷ Ibid., 354^{r-v}: “Sed certe iste rationes nihil valent: quia licet formaliter sit contractus emptionis, tamen equivalenter est mutuum, cum spe habendi ultra sortem, quod sepe cooperitur sub contractu emptionis, ut patet in c. Consuluit (X. 5. 19. 10) et c. In civitate (X. 5. 19. 6) et clarius in c. fi. (X. 5. 19. 19) de usu. Nec labor seu periculum excusat: quia verisimile non est quod non habeat totum et sine omni labore in tempore. Ideo minutio precii fit solum respectu temporis quod patet: quia quanto plus tarde habent solui tanto minus emuntur propter prematuram solutionem. Et communis estimatio est corruptela patet e memoria hominum, qui recolunt quod sub communi estimatione cadebat quod contractus usurarius esset et sic <non> perseverisset (Text: perseverasset), nisi fuissent quidam magistri in theologia non bone scientie qui, sine omni fundamento iuris, immo contra textum apertum, a contrario sensu in c. fi. (X. 5. 19. 19) de usu., licitus esse consulerunt, non intelligentes quod licet fructus agrestis minus possit emi quam maturus, non tamen minus quam quando computatis periculis semper plus sit valiturus quam ematur: quia etiam si ematur tanto minus propter prematuram solutionem, quod verisimiliter plus debeat quam minus valere, certa usura erit...”.

⁶⁸ On *lucrum cessans*, see Lange, *Schadenersatz und Privatstrafe in der mittelalterlichen Rechtstheorie* (Cologne, 1955), pp. 32-45. Angelo also approved of

application of this title to compensation. The *interesse* should be a modest amount, not to exceed 1 *soldo* per *lira*, equivalent to a total profit of 5%. According to Angelo this was the common rate of return of the hypothetical Genoese businessman⁶⁹. "If however, anyone purchases *lire de paghe* so that he may profit, Angelo warned, he is a usurer."⁷⁰ The purchaser will be subject to the jurisdiction of the internal forum, the court of conscience. This determination holds in spite of the fact that he had counselled on this issue before theologians and jurists in the *externum forum*⁷¹. Summing up his case, Angelo conceded that the contract was not formally usurious: "sed bene equivalenter in re et in conscientia et quoad deum, sicut in simili dicitur in d.c. *In civitate* (X. 5. 19. 6) et in c. fi. [*Naviganti*] (X. 5. 19. 19)"⁷².

To my knowledge, there is no published information on the case relating to *paghe* adjudicated in the *externum forum*, to which Angelo alluded in his *Summa*. Documentation does exist which details the decisive role Angelo played in a legal affair (concerning Genoese *paghe*) anterior to the publication of the *Summa* in 1486⁷³. In a codicil dated October 1481, the Genoese merchant Bendinelli Sauli instructed his son Pasquale to inspect his account books and business papers, after his death, for evidence of earnings made from illicit contracts, and if such evidence were found, to make restitution to whomever it was due. Soon after, Bendinelli died. Abiding by his father's wishes, Pasquale examined the accounts and discovered that his father had been party to illicit contracts of exchange and contracts of purchase and sale of *paghe* and other merchandise, from which the profits were gained solely due to fluctuations in price, in other words, speculation. Apprehensive that his family's patrimony would be subjected to lawsuits from those whom

compensation on grounds of *lucrum cessans* in his *Tractatus contractuum*, published in Milan in 1768, p. 437.

⁶⁹ Loc. cit.: "... et propterea mihi videtur ... quod si quis ad instantiam amici emit pagas predictas qui potius vellet negociari cum suis pecuniis quam talia emere, quod poterit tanto minus emere quantum estimat verisimiliter interesse suum, propter periculum vero vel laborem non credo posset plus de uno solido minuere quando iudicio communi non estimetur aut valde modicum quid".

⁷⁰ Ibid.: "Si vero quis ideo emit prefatas pagas ut sic lucretur usurarius est".

⁷¹ Ibid.: "Et sic serva in conscientia: quia non inveni quem posset aliter determinare, quamvis advocatus fuerim coram doctoribus et magistris pro ista materia".

⁷² Ibid.

⁷³ On this affair, see Michele Bruzzone, "Il Monte de Pietà di Genova (1483-1810)", ASLSP, XLI (1908), 30-33, 195-198, docs. V and VI.

his father had legally injured and seeking remediation for his father's sins, Pasquale wrote a letter to Pope Sixtus IV imploring him to provide absolution for Bendinelli and his heirs. In June 1483, the pope commissioned Angelo da Chivasso to make a thorough investigation of the case, granting him the faculty to arrange a full settlement. In a document of 1484, Angelo absolved Bendinelli and his heirs from all obligation of restitution arising from illicit contracts of exchange and sale, in which profits were derived *propter tempus*⁷⁴. Although the document granting absolution made no reference to *paghe floreni*, Bendinelli's name features prominently in the registers recording traffic in these *paghe*⁷⁵. Absolution was conditional. Pasquale was required to give 15,000 *lire* for charitable causes. 4,000 were earmarked for the *Monte di Pietà* of Genoa, an institution which Angelo had struggled to establish and which was in desperate need of funds. A rather large sum of *lire* was used to purchase *luoghi* whose earnings were to be used to purchase additional *luoghi* worth 300 *lire*. The income from this block of *luoghi* was to be assigned to the *Monte di Pietà* of Genoa for as long as Pasquale believed it was necessary to make amends for the damages wrought by his father.

BATTISTA TROVAMALA

It is likely that one of the theologians reproved by Angelo for upholding the licitness of the market in *lire de paghe* was his fellow Franciscan Observant Battista Trovamala de Salis (d. 1496). A member of the Observant province of Liguria, Battista is best remembered for his popular *Summa casuum conscientiae*, first printed in Novi in 1484, which underwent many successive editions. The original edition was called *Summa baptistiniana*, the revised edition, *Summa rosella*⁷⁶. Battista treated the question of the morality of purchasing *paghe* as a logical

⁷⁴ Ibid., p. 197: "...et animam Patris tui et omnes filios fratres tuos absolvimus et liberamus ab omni obligatione cuiuslibet restitutionis que vigore contractum factorum a dicto quondam Patre tuo in cambiis et emptione pagarum predictarum ac venditione seu emptione mercantiarum propter tempus pretio cariori et viliori..."

⁷⁵ Archivio di Stato di Genova, Sala 43/44, *Floreni pagarum.*, 1461. C, fols. 2^v, 3^r, 6^r.

⁷⁶ Guarnaschelli and Valenziani, *Indice Generale*, pp. 158-59, nos. 1203-4. A good bio-bibliographical profile of Battista Trovamala de Salis is provided by A. Teetaert, *Dictionnaire de droit canonique* (Paris, 1937), II, 201-203. I have used the Venetian edition of 1499.

extension of the question of the morality of purchasing *luoghi*. Purchases of *luoghi* from the corporate bodies emitting them, or from private parties who have just title to these credits, was defended as a licit *emptio* on the grounds of authority and custom: (1) that the doctors commonly hold such purchases to be non-usurious *ex forma contractus*; (2) the Church tolerates these transactions, that is, it forbears a questionable good and what it might condemn in other circumstances⁷⁷; and (3) usage sanctions traffic in *luoghi*. Now it seems justifiable to infer, Battista reasoned, that the purchase of *paghe* arising from licit income-producing *luoghi* was not usurious. This inference is demonstrated by way of the analogy that a good tree (*luoghi*) bears good fruit (*paghe*):

Since it appears that *paga* is nothing else than some fruit of this civil tree, which is called *locus*, it seems in accord with reason (to infer) that if the purchase of the tree is not usurious, neither is the purchase of its fruit, which is called *paga*⁷⁸.

The crude logic and the tortured analogy might seem bewildering to modern readers. But it should not deter us from observing that the principal thrust of Battista's analogical demonstration was to establish the identity of *paghe* as civil fruits (*fructus civiles*). This Roman legal construct signified legitimate profit which is derived from legal relations rather than from nature and labor. It was also employed to designate profit which is distinct from interest on a loan⁷⁹. The trust of Battista's

⁷⁷ "Ecclesia tolerat" does not mean that an act, intended or performed, is encouraged or approved by the Church; it means a negative acceptance, an awareness that an attempt to prevent and forbid the act might do more harm than good. On this theme, see J. Brys, *De dispensatione*, pp. 101-105; G. Olivero, *Dissimulatio e tolerantia nell'ordinamento canonico* (Università di Catania, Pubblicazione della facoltà di giurisprudenza, 18) (Milan, 1953), pp. 171ff.; T. Gilby, "Principality and Polity", *Aquinas and the Rise of State Theory in the West* (London, 1957), pp. 183-84.

⁷⁸ *Summa*, s. v. *Usura*, I, fol. 260^v: "Sic ergo concludo istam materiam: supposito per predicta prout communiter tenent doc(tores) et ecclesia tolerat et communis usus approbat emptionem locorum a persona privata habente illa in communi iure hereditario, vel aliter acquisita, non sit usurarius contractus ex forma contractus, concludendum videtur quod emptio pagarum ex ipsis locis provenientium non est usurarius, quoniam arbor fructus bonos facit, et cetera. Cum igitur paga nihil aliud videatur esse quam quidem fructus huius arboris civilis, que locus dicitur, videtur rationi consonum quod si emptio arboris non sit usuraria, nec etiam emptio fructus eius paga dicitur".

⁷⁹ The phrase "fructus civiles" is of medieval origin. See Max Kaser, *Römisches Privatrecht* (Munich, 1971), p. 384. The legal fiction employed by Tro-

argument would have been clearly visible to any of his contemporaries versed in the law.

In theory, purchasing *luoghi*, Battista observed, was nothing else than purchasing *paghe* in perpetuity. In practice, however, fluidity was the key variable of the *paghe* market, which was nothing else than a web of short-term speculative transactions, and the question was raised whether these short-term purchases were licit. Battista argued that the "doctors" who have sustained the licitness of traffic in *luoghi* and *paghe* made no distinction between short- and long-term purchases. It follows then that neither the purchase of *luoghi* nor *paghe* for short periods should be stigmatized, provided that the contract was not borne in *fraudem usurarum*⁸⁰. On purely formal grounds, the purchase of *paghe* cannot be construed as a simulated loan contract for three reasons. One is that risk (*periculum*) is transferred to the purchaser, who, after completing his purchase, is no longer obligated to the seller⁸¹. Secondly, the object of the sale is not money, which would make the transaction a loan, but a right (*ius*) to receive money⁸². Thirdly, the purchase price varies in relation to the state of maturity of the *paghe*; the price will be cheaper the longer one must wait for *paghe* to mature⁸³.

Thus fra Battista had restricted himself to the external and formal features of the *paghe* market. More slippery was the problem of intention: did the purchaser's desire and hope for profit itself constitute the sin of usury? Echoing Bartolomeo Bosco, Battista claimed that in a *contractus emptionis* hope for profit itself is not reprobate. This claim

vamala had already been worked out by Bartolomeo Bosco. cons. CCCCXXXVI, fol. 680^{r-a}: "... proventus autem locorum, licet secundum verum non sint fructus naturales, quia non natura nascuntur, sed iure percipiuntur, ut ff. rei vin. (Text: ven.), l. si navis (Dig. 6. 1. 62), tamen in hoc aequiparantur fructibus naturalibus, quia, sicut constat notorie dicti proventus non facto hominis, nec industria, nec cura, sed generali ordinatione et constitutione absque hominis facto, cura, vel industria percipiuntur".

⁸⁰ Loc. cit.: "... emere locum nihil aliud est quam emere pagas perpetuus ... nec video quod doc<tores> predicti qui diffuse tractant istam materiam de emptione locorum faciunt differentiam inter emere proventus pauci temporis et perpetui, dummodo in fraudem usure nihil fiat".

⁸¹ Ibid.: "In hoc etiam contractu non est mutuum, cum periculum remaneat supra dantem, et recipiens danti in nullo remaneat obligatus cuius contrarium est in mutuo".

⁸² Ibid.

⁸³ Ibid.: "Et quanto huiusmodi page distant a maturitate tanto vilius emuntur, sicut de fructibus vinee".

was firmly rooted in jurisprudential doctrine⁸⁴. Battista had no intention, however, of loosening all the moral clamps binding the investor's *libido lucrandi*; he was not encouraging the Genoese to enter the market in *paghe* so that they might gorge themselves on profit, nor, heaven forbid, to purchase *paghe* with the intention of selling it soon after at a higher price. He inveighed against individuals, especially the rich, who seek to accumulate profits in the market in *paghe* beyond the necessities of life. He offered as an example of a life necessity the provision of a dowry for one's daughter, an example to which Battista's audience would immediately and warmly respond, since dotal settlements in Genoa were frequently funded from income-bearing *luoghi*. And he severely reproved the rich and powerful who seek to advance their own economic and social position by purchasing *paghe* from "the poor," to whom they ought to give from their own profit in conformity with God and love. Although these men are not guilty of usury, their profit is censured as *turpe lucrum*⁸⁵. If Battista had severely trimmed his approval of the market in *paghe*, he had nevertheless, in the eyes of Angelo da Chivasso, not been severe enough.

SANTI RUCELLAI

Before the close of the fifteenth century the issue of *paghe* was taken up by fra Santi Rucellai (d. 1497). A former Florentine merchant, Rucellai spent the last few years of his life in the convent of S. Marco

⁸⁴ Ibid.: "Nec etiam verum videtur secundum aliquos quod etiam si emerent causa lucri, quod sic emendo peccent, quia in contractu emptionis non est reprobata spes lucri, extra, de emp. et ven. per totum (X. 3. 17)...".

⁸⁵ Ibid.: "Tamen consulendum est cum domino Laurentio de Rudolphis quod licet in emptione locorum ex forma contractus non cadat usura, non est tamen alicui suggerendum, qui aliter facere et vivere potest, quod omissis aliis exercitiis, reipublice fortassis magis utilibus se totaliter ad talia lucra convertat, ita etiam nec ad lucra que ex emptione pagarum proveniunt, presertim si sunt divites, qui non ob aliquam vite necessitatem, vel filias suas maritandas et huiusmodi, sed solum ad fastum, et ut divitibus ditiores fiant, presertim a talibus emendo pauperibus, quibus secundum deum et charitatem de suo dare deberent, et qui non quesiti vel rogati, sed ultro querentes a quibus emant lucrandi cupiditate, quia tunc etsi non ut usurarii, tamen ut avari, et ut turpis lucri sectatores essent arguendi". Lorenzo Ridolfi (d. 1443), the lay canonist of Florence, wrote a *Tractatus de usuris* (1403), which included a *Quaestio* on the morality of the operations of the public debts of Florence, Venice and Genoa. See *Tractatus de usuris et materiae montis*, *Tractatus universi iuris* (Venice, 1584), VII, fols. 15ff. On Lorenzo's views, see Kirshner, *From Usury to Public Finance*, pp. 126-131.

of Florence, where he composed a tract on the morality of exchange and on the operations of the public debt of Florence (*Monte Comune*)⁸⁶. Although Rucellai evaluated the moral problems of purchasing at a discount Florentine *paghe* (claims to interest due on credits in the *Monte Comune*), his tract merits consideration here because the issues confronting the Florentines and Genoese, if not identical, were similar. Previously, when theologians and jurists had treated the operation of the *Monte Comune*, he explained, the commune had faithfully fulfilled its promises to pay creditors on schedule, while in his day, default cast a pall over the fiscal life of the city. The commune's promises were frequently broken. The confidence of creditors in the commune's ability and determination to meet its maturing obligations was at a low ebb, a fact reflected in the market prices of *Monte* credits, which had plummeted to 10% of par value. Prices of *paghe* had not fallen so precipitously. *Paghe* were fetching about 40% of their nominal value, but the market in *paghe* was susceptible to violent fluctuations which were related to communal policy and practice in paying off its interest obligations⁸⁷. Like Genoa, Florence constantly searched for new techniques to refloat and/or extinguish its loan debts. One operation was to permit and allow citizens to substitute *paghe* for cash when paying taxes. Many citizens, Rucellai related, attempted to purchase *paghe* when prices were low, then use them to pay taxes. This was advantageous for the taxpayer, since the commune accepted *paghe* at par value. The licitness of this practice, Rucellai added, was *molto sospetta*. Rucellai denied, however, that this practice itself was illicit, for the uncriticizable reason that the purchaser ran the very real risk (*pericolo*) that the communal authorities would renege on its promise to accept *paghe* in lieu of cash. The purchaser had no legal recourse, since the commune's power is overwhelming "*perchè tucto è in sua potestà*." Purchasing discounted *paghe* for the purpose of paying taxes was licit, Rucellai opined, as long as the purchaser's intentions were upright and not corrupt. Those citizens

⁸⁶ Raymond de Roover, "Il trattato di fra Santi Rucellai sul cambio, il monte comune e il monte delle doti", *Archivio storico italiano*, CXI (1953), 3-41.

⁸⁷ For what follows, see *Ibid.*, 36-37. There is no work on the operations of the *Monte Comune*, so it is difficult to check the reliability of Santi Rucellai's figures. But he was a banker before he entered the convent of San Marco, and thus possessed first-hand knowledge of the money market in Florence. His statement on the depressed level of prices of *Monte Comune* credits dovetails with other sources. For example, on 17 March 1492 such credits were selling for 13% of par value; see *Biblioteca Nazionale, Firenze, Fondo Ginori Conti*, 29, 69, fol. 30.

who entered the *paghe* market seeking to make a profit by buying cheap and selling dear have a perverted conscience, and they are roundly condemned as sinners by Rucellai⁸⁸.

He neglected to explain why discounting, in this instance, was illicit, since the purchaser was always at the mercy of the vagaries of the marketplace. Yet for Rucellai, the very intention of hoping to profit from discounting outweighs all extenuating circumstances which provide *rationes* for transforming an illicit contractual relationship into a licit one. Rucellai also rejected as illicit the contemporary practice of a sale of *paghe*, in which the seller guaranteed the purchaser a set profit, if the commune failed to pay interest on schedule or recalled *paghe* without compensating the holder of *paghe*. The absence of risk coupled with corrupt intention put this contract outside the confines of liceity⁸⁹. Rucellai's tract played no role in the controversy over Genoese *paghe*, but it does illustrate that in the financial and commercial centers of Tuscany as well as in Liguria the practice of discounting *paghe* had spiritual as well as material consequences.

The controversy over Genoese *paghe* did not conveniently come to a screeching halt in the year 1500 but was propelled into the sixteenth century and beyond. Between 1500 and 1550 four Dominican Theologians, Silvestro Mazzolino da Prierio (d. 1523), Giovanni Cagnazzo da Taggia (d. 1521), Tommaso de Vio, better known as Cardinal Cajetan (d. 1535), and Bartolomeo Fumi (d. 1551), pronounced judgment on the market in *paghe*. Each one defended, in varying degrees, the licitness of this market.

SILVESTRO MAZZOLINO

Perhaps the most informed and analytically sophisticated defense of *paghe* flowed from the pen of Silvestro Mazzolino⁹⁰. Born near Savona ca. 1456, he joined the Dominicans in Genoa, and by the early

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ On whom, see Mikalshi, *De Silvestri Prieratis, Ordinis Praedicatorum, magistri sacri palatii* (1456-1523), *vita et scriptis* (Munster, 1892); J. Dietterle, "Die Summae confessorum", *Zeitschrift für Kirchengeschichte*, XXVIII (1907), 416-31; Michaud-Quantin, *Sommes de casuistique*, pp. 101-104. Michaud-Quantin suggests that the Silvestro composed the work ca. 1516. Yet there is an edition of this work published at Bologna, dated 1515. A copy of this edition is preserved in the Baker Library of the Graduate School of Business Administration of Harvard University, which I have seen, and which was used by Noonan, pp. 178, 236-237.

sixteenth century he was recognized as one of the leading theologians of the Church. Owing to the influence of Cardinal Cajetan, he was appointed by Leo X as master of the sacred palace in 1515, a position which he held until the plague struck him down in 1523. His *Summa summarum*, as he baptized it, also known as the *Summa sylvestrina*, was first published at Bologna in 1515. In this work, Silvestro endeavoured, not always with success, to reformulate as well as to offer fresh solutions to old but still nagging problems, which had become entangled in the web of doctrinal contrariety. This strategic design was evident in his handling of the case of Genoese *paghe*.

Silvestro acknowledged two authoritative treatments of the problem of *paghe*. One had been offered in the *Summa rosella*, attracting widespread adherence, which had defended the market in *paghe*. This position, Silvestro claimed, was faulty, for it conflated two distinct modes of purchasing *paghe*, thus clouding the issue with theoretical confusion. In practice, someone could acquire *paghe* by purchasing *luoghi*. In this case, an undetermined sum of *paghe* will be due, say in 5 or 10 years. The same person could also purchase *paghe* directly, to wit, *paghe* which had already fallen due but not yet paid. Here, the exact sum of *paghe* was known beforehand and was anticipated. He furnished a specific example of this latter practice. Someone owns *paghe*, due but not yet payable for 3 years, whose face value is 40 *lire*. These *paghe* are sold for 30 *lire*, at the going rate of 15 *soldi* per *lire*. Although the followers of Battista Trovamala sought to legitimate both modes of purchasing *paghe*, their arguments, Silvestro declared, were valid only for the first case, which is licit. The licitness of the second case is problematic, since one was purchasing a definite profit stipulated in advance for a price less than par value. In the second case, the term *paghe* seemed to refer to both *paghe floreni* as well as *lire de paghe*. Now, he acknowledged that the other authority on this case, Angelo da Chiavasso, had branded this mode of purchasing *paghe* as usury, an opinion with which he disagreed: "*Summa vero Ang. dicit quod non licit; ego vero dico sic*"⁹¹.

Silvestro agreed with Angelo that almost all the arguments advanced in defense of the market in *paghe* were deceptive, turning to dust upon

Another reason for supporting a date anterior to 1516 for the *Summa summarum* is that Giovanni Cagnazzo de Taggia cited Silvestro's solution to the problem of *paghe* in his own *Summa*, published in Bologna in 1515. See below, n. 106.

⁹¹ *Summa summarum* (Lyons, 1518), s. v. *Usura*, II, fol. 467^{v-b}.

close inspection. *Lucrum cessans* provided one rationale for the purchase of discounted *paghe*, but only in the paradigmatic case of a merchant purchasing from a friend in need and in so doing is deprived of employing his capital in a licit enterprise. If the merchant or anyone purchased *paghe* with the expectation of making a profit (the motive impelling most purchasers as Silvestro was, of course, aware), then they were usurers, not formally but equipollently, because the anticipated payment in this case had the defining characteristic (*ratio*) of a loan⁹². The triune defense used to exculpate investors from usury—risk, labor and expense—was not *ipso iure* invalid. But it was not always true that these variables were operative and they cannot be so presumed. Indeed, Silvestro insisted that the diminution in price was a function of time, the proof of which rested on the observation that the longer one waited for *paghe* to mature, the greater the discount⁹³. The fact that price paid for *paghe* conformed to the common estimation of their worth at any given time did not necessarily make the price just nor the purchase licit. Besides conformity to the common estimation of worth, a just price must be paid in cash by the purchaser when and where he received the merchandise, conditions not satisfied in this case. Otherwise, the market price itself was corrupt⁹⁴. The analogy between natural fruit and *paghe* was struck down, because the value of a natural fruit was an inherent property, while an alteration in the value of *paghe* stemmed from only a delay in time, a result denounced in the decretal *Naviganti*⁹⁵. The deduction that where the source is good, so is the fruit, does not hold, for although *luoghi* and *paghe* are themselves good, “the unjust purchase of *paghe* is evil”⁹⁶.

⁹² Ibid., fol. 467^vb-468^a: “Si enim emat quis ad instantiam amici, malens suis pecuniis negotiari vel aliud licitum querere lucrum poterit minori emere precio, secundum quod verisimiliter estimat suum interesse etiam lucri cessantis. Si vero hoc facit, volens per hanc viam lucrari, usurarius est, non formaliter sed equivalenter: quia solutio anticipata habet rationem mutui...”.

⁹³ Ibid.

⁹⁴ Ibid.: “Non obstat etiam quod communis estimatio plus eas non estimat vale-re: quia communis estimatio non facit iustum precium, nisi ad numeratum, quando eodem tempore et loco exhibetur precium et recipitur merces. Alias est corruptela”.

⁹⁵ Ibid.: “Non obstat etiam quod fructus agrestis minoris sit precii quam maturus: quia hoc verum est ratione qualitatis quam habet fructus in se, non ratione dilationis temporis, et ita in proposito, si summa immatura habeat in se pericula et labores que non habeat matura minus valet aliter non, sed est usura per textum apertum a contrario in c. naviganti. eo. ti.”.

⁹⁶ Ibid.: “Non obstat etiam quod si radix bona est, id est, loca et fructus: quia

Experts who have cited the concessions of Calixtus III and Sixtus IV as authoritative pronouncements legitimating the market in *paghe* have erred. The papal concessions apply to only the specific case in which the *protectores* of San Giorgio sell *paghe* at a discount for the benefit of the *compere* of San Giorgio and the commune of Genoa. Neither pope permitted individuals to purchase *paghe* from each other. Although Silvestro was intimately acquainted with both papal concessions, which specifically referred to the selling of *paghe floreni*, Silvestro himself appeared to be treating all discounted *paghe* as one indiscriminate category⁹⁷. In any case, both papal concessions have no universal scope. Purchasers of *paghe* have no moral claims to interest. In the light of the principles of moral philosophy, the purchase of *paghe* at a discount was undoubtedly usurious⁹⁸. Notwithstanding this indictment, however, the purchase of *paghe* at a discount is licit. Silvestro's turnabout rested largely on the civil law doctrine of the statute making powers (*ius condendi legem*) and the jurisdictional superiority (*superioritas*) of the city-state (*civitas*).

For Silvestro, the laws of Genoa are valid *de facto*, because they constituted an expression of communal will. Citing Baldus, he explained that a *civitas* recognizes no superior concerning temporal matters in territory under its jurisdiction. And from time immemorial Genoa has possessed *superioritas*. Like the emperor (*princeps*), the *civitas* possessed the authoritative right of expropriation, the capability of transferring property belonging to one citizen or subject to another within its orbit of superiority⁹⁹. This authority, which is the fountainhead of

fructus locorum sunt quidem page que sunt bone, non autem iniusta emptio pagarum que est mala”.

⁹⁷ Ibid.: “Non obstat etiam si dicatur quod Calixtus tertius et Sixtus quartus concesserunt eas emi posse sine scrupulo, ille quidem semel tantum, iste vero totiens quotiens: quia ut in eorum literis patet hoc concesserunt solum quando protectores comperarum Sancti Georgii hoc extimant cedere in utilitatem dictarum comperarum vel communis Ianue, quo casu papa tanquam princeps libere remittere intelligitur emptoribus qui ab ipsis protectoribus emunt. Unde in eis locum concessio pape, non autem in aliis ementibus a privatis”.

⁹⁸ Ibid.: “Et sic stando in principiis moralis philosophie ista emptio indubitanter esset usuraria”.

⁹⁹ Ibid.: “Que tamen est licita ex licentianto statuto quod sic declaro. Ianua nam, ex tanto tempore cuius initii memoria non extat in contrarium, non recognovit superiorem et condidit statuta et leges de facto... Civitas autem et dominus superiorem in temporalibus non recognoscens habet in suo territorio iurisdictionem quam in toto orbe de iure habet imperator, secundum Bal in c. i. de po. re. (VI. 5. 10. 1)”. Silvestro's conception of Genoa's *superioritas* was shared by the juris-

the *civitas'* revenue and fiscal operations, must be exercised, *ex iusta causa*—that is, for the public good. The custom of discounting *paghe* is ultimately linked to Genoa's authority to maintain and secure its sources of revenue and consequently its well-being¹⁰⁰. Furthermore, the benefits conferred by the *paghe* market were known to be true by every expert in this matter from retrospective observation¹⁰¹. Without the mechanism of the market, which allows citizens to liquidate their *paghe* holdings, citizens might not have the necessary cash to pay their gabelles¹⁰². If the commune of Genoa was as "sovereign" as Silvestro claimed, why did it ask the papacy for permission to discount its *paghe*? Silvestro's answer was implied. Whatever pertains to conscience, to the *forum poenitentiae*, falls under ecclesiastical jurisdiction, over which the pope reigns as *princeps*. Fully informed of Genoa's material predicament, the papacy willingly gave permission to the *protectores* of San Giorgio to discount *paghe*, not in recognition of the purchaser's right to reap profit by violating the just price, but in recognition of the benefits the city would reap from this custom¹⁰³.

It would be unwarranted, in my opinion, to infer from Silvestro's disquisition that he was adumbrating the so-called civil-law title to interest, a modern doctrine which accepts the jurisdiction of the civil law over the rate of interest charged on loans and contracts resembling loans¹⁰⁴. Silvestro deliberately sought to avoid this inference. He

consults. For example, Filippo Decio (d. 1536/37), *Consilia* (Venice, 1581), II, cons. DCXLIX, fol. 279^v: "Idem videtur in civitate Ianue quae, ut dicitur, non recognoscit superiorem: unde de illa debet sicut de principe iudicari...". On this civil law doctrine, see N. Horn, "Die juristische Literatur der Kommentatorenzeit", *Ius commune*, ed. H. Coing (Frankfurt am Main, 1968), II, 112-113; A. Solmi, "Alberto da Gandino e il diritto statutario nella giurisprudenza del secolo XIII", in *Contributi alla storia del diritto comune* (Rome, 1937), pp. 339-413; W. Ullmann, "De Bartoli Sententia: concilium repraesentat mentem populi", in *Bartolus da Sassoferrato studi e documenti per il VI centenario*, ed. D. Segolini (2 vols., Milan, 1962), II, pp. 707-33; L. Martines, *Lawyers and Statecraft in Renaissance Florence* (Princeton, 1968), 412ff.

¹⁰⁰ *Ibid.*, fol. 468.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ *Ibid.*: "Et sic papa intelligitur non quidem donasse emptoribus residuum iusti precii in dicta bulla sed declarasse veritatem, quod etiam hic colligitur: quia Sixtus hoc concessurus dixit, nos de huiusmodi plenam notitiam habentes concedimus, et cetera".

¹⁰⁴ On which, see Noonan, pp. 353-355, 378-382, 387-388, 391.

demonstrated that from the perspective of moral philosophy the custom of discounting *paghe* was palpably usurious. He neither advocated the principle that the *lex humana* can permit what the *lex divina* forbids, nor the principle that a *civitas* has the *de facto* right to enact legislation which legitimates the practice of usury. What then makes the custom of discounting *paghe* licit in the eyes of the Church? In this particular case, Silvestro appeared to be arguing that the Church tolerates a local custom enacted *ex iusta causa*, conferring visible benefits upon the city. To upset this custom would cause more harm than good. The Church neither formally condemns nor encourages this practice. Implicitly allied to this line of argumentation is the legal rule that what is not licit in law, necessity makes licit (*quod non est licitum in lege, necessitas facit licitum*). This orthodox rule permitted the Church to suspend its own laws, which, if obeyed, would lead to injustice. This rule, which was the *fulcrum* of the concessions of Calixtus and Sixtus, allowed the Church flexibility in a world where inelastic universals collided with discrete, contingent events.

If Silvestro's argument was orthodox, it would still not have convinced the opponents of the *paghe* market. They would have insisted that investors in *paghe* be judged by the criterion of intention; they would have denied, quite rightly, that the emperor, city-state or pope can permit, even on account of a public good, what is opposed to salvation; and they would have brandished Silvestro's open admission of the usurious nature of the *paghe* market as a weapon against investors in the *forum internum*. A valid defense of the *paghe* market not only had to be constructed upon the toleration of a just and beneficial custom, but also upon a demonstration that the act of discounting *paghe* itself was not usurious. That was exactly the strategy of Silvestro's contemporary, Giovanni Cagnazzo da Taggia.

GIOVANNI CAGNAZZO DA TAGGIA

Giovanni Cagnazzo received his theological and legal formation at the *studium generale* in Bologna, where he also attained the rank of inquisitor general. He served as prior of the Dominican convent in Genoa, and it is probable that he had firsthand knowledge of the operations of the public debt of Genoa and the moral problems they engendered. His defense of the *paghe* market appeared in his *Summa*, commonly called *Summa tabiena*, initially printed in Bologna in 1515¹⁰⁵.

¹⁰⁵ On Cagnazzo, see Dietterle, "Die Summae confessorum", 401-415; Dic-

Cagnazzo informed his readers that the licitness of discounting *paghe* had been widely disputed, and he went on to enumerate the arguments *pro et contra*, especially those of Battista Trovamala and Angelo da Chivasso. He was also *au courant*, for he cited the thesis in favor of Genoese *paghe* put forward by Silvestro Mazzolino:

Some dispute this question and conclude that in conformity with the principles of moral philosophy this (purchase) is usury, yet licit with respect to the statutory enactments of the Genoese people, who, possessing *merum imperium*, as the emperor possesses *de iure* throughout the whole world, are able to alienate that which belongs to another for a just reason, which is in the public good, advantageous to the city as well as to the sellers, all of which is clear from custom. And they conclude with this opinion, namely, that anyone can purchase these *paghe*, an opinion which is even more correct, especially in retrospect, and that Calixtus and Sixtus declared this voluntary alienation of property (*donationem*) to be proper...¹⁰⁶.

Acknowledging the diversity of opinions on discounting *paghe*, Cagnazzo stated, for the sake of argument, that in cases in which so many doubts were present, it was better to take the safer road, and better to hold that the purchase of *paghe* seems to be usurious (... *in dubiis securior via est elegenda; ideo cautius videtur tenendum esse usuram*)¹⁰⁷. Performing an about-face, he immediately rejected rigorism. He argued that one can follow those doctors learned in the law who had offered very strong reasons in support of the purchase of *paghe* as a licit *emptio*, and he denied that the market in *paghe* itself was corrupt. That one should follow the safer road was true, he admitted, but this rule pertained to a limited number of cases. Almost all purchases of *paghe* involved merchants (*mercatores*), who acted to help someone in need of cash. These merchants suffered damages, for money in the hand,

tionnaire de droit canonique, VI, col. 97. I have used the edition of the Summa printed in Venice in 1580.

¹⁰⁶ Summa, Usura, XIII (De pagis et scriptis quis accipere debeat), fol. 812^{r-b}: "Quidam disputant hanc quaestionem et concludunt quod stando in principiis moralis filosofiae est usura, sed est licita ex statuto Ianuensium qui habentes merum imperium, ut habet imperator in toto orbe de iure, possunt donare id quod est alterius ex causa iusta, quae est favor publicus, et expedit tam civitati quam vendentibus, quae omnia patent ex consuetudine, et concludunt quod ista opinio, scilicet quod aliquis posset istas pagas emere, est verior maxime post factum, et quod Calixtus et Sixtus declaraverunt hanc donationem esse veram...".

¹⁰⁷ Ibid., fol. 813^a.

was worth more than when tied up in *paghe*. These individuals were, therefore, entitled to collect compensation for a voluntary loss (*lucrum cessans*); they were not to be condemned for having strayed off the safer road. Cagnazzo also conceded that neither much risk is borne nor labor expended in recouping one's investment¹⁰⁸. However, the danger of losing one's investment, or at least of not collecting *paghe* on schedule was immediately real. He furnished the example of Venice, where payments on credits on the public debt (*prestiti*) had been prorogued in 1514 because of war. He could have pointed out with some justice that Venetian public finance had been thrown into a state of chaos since the battle of Agnadello in 1509¹⁰⁹.

The accusation that the purchaser expects to make a profit from *paghe* invariably worth more than the price paid—*prima facie* evidence of usury—was a prickly issue for the defenders of the transaction, and even so able a defender as Silvestro Mazzolino conceded the validity of the charge. Cagnazzo parted company with his illustrious contemporary, denying that *paghe* were actually worth more than the price paid at the time of purchase. *Paghe* were only *estimated* to be worth more, an estimation, moreover, thoroughly subject to the dangers inherent in the transaction which he had already outlined. For Cagnazzo the purchase of *paghe* qualified as a licit contract of sale (*venditio sub dubio*) from which the investor expected to make a profit¹¹⁰. Another common accusation was that the market price of *paghe* did not converge with the just price. Cagnazzo granted that there may perhaps be some injustice (*aliqua iniusta*) in the pricing of *paghe*, but that on the whole the price level of *paghe* is analogous to the price level of *luoghi*, both of which are geared to the market price and therefore seemed to be just¹¹¹. Yet all the moral theologians neatly distinguished the case of purchasing *luoghi* from the case of *paghe*, where profit was certain and already generally known. Cagnazzo also formally separated the

¹⁰⁸ Ibid., fol. 813^{a-b}.

¹⁰⁹ Ibid., fol. 813^b: "Et de hoc habes exemplum nunc, scilicet 1514 Venetiis, ubi propter guerras nihil soluunt in suis montibus qui sunt sicut loca Ianuae, nec potest negari quin sit possibile sic fieri Ianuae...". On the fiscal crisis in Venice, see F. C. Lane, "Venetian Bankers, 1496-1533", Venice and History, the Collected Papers of F. C. Lane (Baltimore, 1966), pp. 78ff., and the same author's "Public Debt and Private Wealth: Particularly in Sixteenth Century Venice", *Mélanges en honneur de Fernand Braudel* (2 vols., Toulouse, 1973), I, pp. 317-325.

¹¹⁰ Loc. cit.

¹¹¹ Ibid., fol. 814^a.

two cases. He nonetheless argued that the analogy between the market in *luoghi* and the market in *paghe* was tenable, (1) because just as it is permissible to sell a right to a whole thing (*luoghi*), it is likewise permissible to sell a right to one of its parts (*paghe*); and (2) because the profit received by the purchasers of *luoghi* as well as *paghe* is variable, owing to the oscillating price level of both markets. The markets in *paghe* and *luoghi* could be morally justified on the grounds that the typical profit earned by an investor over time was proportionate to an average (*medium*) profit¹¹².

It would be incorrect as well as anachronistic to see in this statement the nucleus of the concept of "average revenue" found in modern economic analysis. There was an intuitive and commonsensical appreciation of the forces operating independently of an individual investor which help determine the price level in the market of *paghe*. Still, the notion of average profit is employed as a moral justification of the market rather than as an analytical proposition. The Church, he continued, knows and tolerates the *paghe* market. He cited the concessions of Calixtus and Sixtus, indicating that they allowed purchases of *paghe* "*sine scrupulo*." He flatly rejected the literal interpretations of the papal concessions made by Silvestro Mazzolino, which restricted purchase of *paghe* from only San Giorgio. In modern times, Cagnazzo retorted, this distinction between purchases from San Giorgio and private parties is no longer made¹¹³.

For this Dominican summist the market in Genoese *paghe* was morally justified by three *rationes*: it was anchored in lawful custom, it conferred benefits upon the city, and it was permitted by the highest ecclesiastical authorities.

¹¹² Ibid.: "... quod autem possit vendi sic persuadetur, quia non minus videtur hic esse quoddam iuris percipiendi talem pagam sicut est ius locorum, quia videtur se habere ut totum et pars, puta: <ille> qui habet unum, habet ius percipiendi, omni anno in perpetuum, sed ille qui habet unam pagam habet ius percipiendi in uno anno autem ad totum tempus se habet sicut pars. Si igitur totum vendi potest, ergo et pars quia par ratio. Sed communiter tenetur quod loca possint vendi, aliter multos religiosos damnabimus et precium videtur iustum secundum quod currit. Nec valet quod quando emit loca non emit fructus certos sicut quando emit pagas, quia parum facit hoc in proposito, cum aliquando sit plus, aliquando minus, et hoc accipiunt medium, hoc etiam ecclesia scit et tollerat".

¹¹³ Ibid.: "Calixtus 3 et Sixtus 4 concesserunt eas, scilicet pagas emi posse sine scrupulo, nec valet quod quidam dicunt quod hoc valet quando emunt ab ipsis pro rectoribus, non autem in eumentibus a privatis, quia tempore moderno non fit amplius ista distinctio".

TOMMASO DE VIO

Tommaso de Vio (Cajetan) was the most prominent Dominican theologian defending the practice of discounting *paghe*. He served as Master General of the order for ten years (1508-18), entered the cardinalate in 1517, and was a staunch adversary of Luther¹¹⁴. He wrote extensively on moral questions relating to business and finance. His response to the question of the morality of Genoese *paghe*, written in 1523, appeared in his *Summula peccatorum* or *de peccatis*, printed two years later¹¹⁵. The style and format of Cajetan's defense was different from his predecessors'. There was concision and elegance not matched in earlier works. The *pro et contra* format was jettisoned. Allegations to theological and legal authorities and reflexive references to the concessions of Calixtus and Sixtus were noticeably absent. After noting these individuating traits, it must be underlined that the arguments employed on behalf of the *paghe* market were entirely conventional.

Cajetan's defense commenced with the assertion that the contract by which *paghe* was purchased was neither an implicit loan, nor a loan fraudulently disguised, but a licit *emptio venditio*. What was sold was not money but a right (*ius*) to collect *paghe*. Unlike a loan, risk was transferred with the *ius* from the seller to the buyer¹¹⁶. Both the price

¹¹⁴ On Cajetan, see J. F. Groner, Kardinal Cajetan, Eine Gestalt aus der Reformationszeit (Fribourg, 1951); and the excellent article by the late Raymond de Roover, "Cardinal Cajetan on 'Cambium' or Exchange Dealings", Renaissance Essays in Honor of Paul Oskar Kristeller, pp. 423-433.

¹¹⁵ I have used the edition of 1581 printed in Lyons. His disquisition on the case of *paghe* is found on pp. 585-587. The date of composition is derived from the explicit (p. 588). On the date of composition and on the date of the first edition, see also M.-J. Congar, Revue thomiste, LXXXVI-VII (November, 1934-February, 1935), 75. On the character of his *Summula*, see Michaud-Quantin, 104-106.

¹¹⁶ *Summula*, p. 587: "Respondeo, omissis disputationibus, quod hic nulla intervenit usura, quia est contractus non palliati aut impliciti mutui, sed emptionis et venditionis, quoniam Ioannes vendit ius suum quod habet super illas decem pagas, et non vendit ipsas pagas, nec aliquod mutuum accipit. Declaro singula. Quod non vendantur page sed ius pagarum, ex eo patet quod Ioannes non tenetur mihi assignare pagas, sed ius suum quod habet super pagas illas. Quod nullum accipiat Ioannes mutuum, ex eo patet, quia ad nihil restituendum obligatus est, sed solum ad assignandum mihi ius pagarum. Et rursus, quia quicquid periculi hic est, apud me eumentem restat quod est contra naturam mutui. Est igitur hic vera emptio et venditio iuris pagarum illarum".

and the contract were considered to be just, a conclusion demonstrated by way of syllogistic reasoning:

If the price is just, the contract will be just.

The just price is the market price in the absence of fraud.

If *paghe* are sold at the market price, no sin is committed¹¹⁷.

Discounting immature *paghe* was viewed as eminently rational since *paghe* are not as valuable now as they will be when mature, just as a field lying fallow is not as valuable as a field under cultivation¹¹⁸. It is noteworthy that the extrinsic titles *damnum emergens* and *lucrum cessans* were not trotted out, probably because Cajetan believed that these titles applied to a loan transaction, which, he resolutely insisted, was not the case here. Precisely because he treated the case at hand as an *emptio venditio*, questions about the intention of the purchaser and about the hypothetical facts that *paghe* will always be worth more when redeemed and that little effort is required to recoup the initial investment plus anticipated profit were deemed theoretically irrelevant and thus not critically confronted. The ghost of *Naviganti* hovered above discounting even in the sixteenth century, a ghost which could not easily be driven off, and ultimately Cajetan was forced to admit to its presence and speak to it.

He analyzed a case which, he maintained, was analogous to the discounting of *paghe*. It centered on the purchase of a *ius* to a 1,000 gold ducats, not payable until after a year, yet recoverable with little difficulty, for a price less than par value. The origin of this *ius*, that is, whether it arose from a *census* or from dealings in exchange or from other commercial and fiscal transactions, remained opaque. In theory, the discount was licit and is determined by both objective and subjective factors: according to the value of the thing itself and according to the estimated value of the thing, which reflected its utility. There were circumstances, moreover, which may prevent the purchaser from recouping his investment and from receiving the anticipated profit. All these factors led Cajetan to deny that the purchase at a discount of a

¹¹⁷ Ibid.: "Et propterea si iusto pretio emitur, iustus erit contractus. Iustum autem pretium constat esse quod communiter invenitur, absque fraude, etc. Et propterea si pagae huiusmodi venduntur pretio communiter tunc currente, nullum peccatum committitur".

¹¹⁸ Ibid.

1,000 ducats constituted a loan *ex natura* and to deny that usury is committed *ratio temporis expectati*, denials poised as a counterweight against the applications of *Naviganti* to this case¹¹⁹. The exact amount of discount was contingent upon temporal conditions (he most likely had in mind, wars, famines, civil strife, etc.) and upon the abundance or lack of money, factors to be considered by a panel of men informed of these matters (*boni viri*)¹²⁰. The linkages between the supply of money and the level of prices was not spelled out. And it would be rash to assume that he correctly expressed the relationship between the level of prices and the demand for and the supply of money, in other words, the quantity theory of money, which would be worked out by the theologians of Salamanca¹²¹. Turning to the public debt of Genoa, which he called *Monte*, Cajetan related that since he was not well-informed about the conditions in that city, he was not able to counsel on the particular operations of the Genoese *Monte*. He most likely was referring to speculation in *luoghi*.

The need for further disputations on this issue Cajetan concluded seems superfluous. For today, he blandly remarked, it is commonly recognized that the *Monte* of Genoa constitutes *in natura* a *census*, a *census* based on the general income-producing capability of the city¹²². The redescription of the operations of the Genoese public debt as a *census* was, of course, firmly rooted in thirteenth- and fourteenth-century legal *consilia* and theological tracts.

¹¹⁹ *Ibid.*, p. 588.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*: "Sed in communi loquendo certum est quod, si sunt annui census constituti super proventus civitatis, liciti sunt. Nec aliquid obstat, quin communitas possit se redimere. Et quoniam quomodolibet inceperint montes isti, hodie ut annui census communiter haberi videntur, ideo si sic est, scilicet quod in naturam transiere census, disputationes superfluae videntur". On the origins of the quantity theory of money, see Marjorie Grice-Hutchinson, *The School of Salamanca: Readings in Spanish Monetary Theory, 1544-1605* (Oxford, 1952); H. Hegeland, *The Quantity Theory of Money* (Göteborg, 1951); G. Otte, *Das Privatrecht bei Francesco de Vittoria* (Graz, 1964), pp. 90-117. See Alberto Ullastres' introductory essay, "Las ideas economicas de Martin de Azpilcueta", in Martin de Azpilcueta, *Comentario Resolutorio de cambios* (Madrid, 1965), pp. cvii-cxvii, cix ff.; Noonan, pp. 317ff.; and see the fascinating article of C. Nicolet, "Les variations des prix et la théorie quantitative de la monnaie à Rome, de Cicéron à Pline l'ancien", *Annales (E.S.C.)*, XXVI (1971), 1203-27.

¹²² *Loc. cit.*

BARTOLOMEO FUMI

Like his predecessor, Bartolomeo Fumi (d. 1545) expressed no reservation about the licitness of discounting *paghe*. In his *Summa*, called *Armillæ aurea*¹²³, which appeared at mid-century, this Dominican defended discounting on the grounds that the purchaser bore risk, that an immature fruit was worth less than a mature one, and that the object of the purchase was not money, but a *ius* or a claim to something in writing (*chirographum*). The distinction between purchasing money itself, which pointed to a loan transaction, and purchasing a written claim to money, which pointed to a contract of sale, had been made two hundred years earlier by the Franciscan theologian Francesco da Empoli in his defense of the public debt of Florence. Fumi equated the just price of *paghe* with its market price, although he emphasized the demand side of the market rather than the quantity of money in tabulating the market price. In any case, the correlation between just price and market price was best left to men knowledgeable about the ups and the downs of the marketplace. Discounting *paghe*, he stressed, is known and tolerated by the Church, a paradigmatic expression lifted from the *Summa tabiena*. "And although the doctors have produced many disputations, notwithstanding them, this is the final determination: such contracts are licit". There may be some individuals who purchased *paghe* with a corrupt intention, but their intention, he stated, arose from factors extrinsic to the contract¹²⁴.

For Fumi, the many operations of the public debt of Genoa are congruent with the Church's teachings and the teachings of the Church are congruent with the operations of the public debt:

De montibus Genuensibus iam diu factis a communitate, de quibus papa et totus mundus scit et tolerat et sunt a communitate facti suppono: quod sint liciti, ex eo quod ecclesia non reprobavit per tot tempora¹²⁵.

¹²³ On Fumi, moral theologian and Inquisitor General at Piacenza, see Quéatif-Echard, *Scriptores Ordinis Praedicatorum* (Paris, 1719-23), 2, pp. 7, 123. I have used the edition printed at Venice in 1554.

¹²⁴ *Usura*, fol. 466.

¹²⁵ *Loc. cit.*

CONCLUSION

Just as theologians of the late Middle Ages who treated the usury prohibition and related doctrines were obliged to contend with *Naviganti* and the ever-widening circle of interpretations surrounding Pope Gregory IX's decretal, historians of today who write about the usury prohibition, the doctrine on just price and so on are called upon to contend with Max Weber and the ever-widening circle of interpretations surrounding his thesis about the origins and nature of modern capitalism. With few exceptions, these historians are adherents of the teleological rationalization of economic efficiency as the quintessence of Europe's evolution; and they seek to confirm or deny an impact of the Church's economic ethics upon the ineluctable *evolution* of medieval capitalism¹²⁶. Their strategy of interpretation forces the meanings of theological and legal texts to converge with the behavior of socio-economic actors and forces the alleged intentions of the authors of these texts to converge with reconstructed historical events. Here, texts have become mere transcriptions of the outcomes to which they have or have not contributed. Individual theologians and jurists and whole religious orders—Franciscans, Dominicans, and Augustinians—are praised and blamed, depending upon the ideological stance of the historian, for stimulating or stifling medieval capitalism and for anticipating or barricading themselves against the onset of modern economic thought—in other words, for providing us with a worthy or unworthy heritage. Although this functionalist strategy provides material for scholars deconstructing the sedimentation of historical discourse, it is totally irrelevant to the interpretation of the texts and con-texts constituting the controversy over the markets in Genoese *paghe*.

Animating this controversy was a struggle among simultaneously existing conceptions of time. There was time belonging to God which

¹²⁶ For example, J. Gilchrist, *The Church and Economic Activity in the Middle Ages* (New York, 1969); J. F. McGovern, "The Rise of New Economic Attitudes—Economic Humanism, Economic Nationalism—During the Late Middle Ages and the Renaissance, A.D. 1200-1500", *Traditio*, XXVI (1970), 217-253; J. Heers, "The 'Feudal' Economy and Capitalism: Words, Ideas and Reality", *The Journal of European Economic History*, III (1974), 609-53; Raymond de Roover, "Cardinal Cajetan on 'Cambium'", p. 433, writes that "Cajetan's treatise (on exchange) helped to lift the barriers which still opposed the *march of capitalism*" (italics mine).

could not be purchased, a conception never seriously challenged in the late Middle Ages and Renaissance¹²⁷. There was time organizing the experience of the merchant-venturer, which was discontinuous, a sequence of differing durations, charged with tension and uncertainty¹²⁸. This conception of time was fundamentally personal, organically fusing the merchant's concrete labor, concrete goods and concrete risk to the perceived present. The conception of risk (*periculum*) and uncertainty (*dubium*) found in the theological and legal texts examined in this paper refer to the time of the merchant-venturer. In the decretal *Naviganti* and the constructions placed upon it by canonists and theologians, the time of the merchant-venturer became codified as a norm serving to enfranchise and disenfranchise credit operations and contracts from the mid-thirteenth century onward. The markets in *luoghi, paghe floreni* and *lire de paghe* were also punctuated by differing durations of time. Yet these markets were fundamentally impersonal, functioning without the personal labor of the merchant-venturer, without concrete goods, and without a perceptible destination. These markets were a galaxy of abstract claims (*iura*) to distant, future outcomes which were *legally certain*, but in experience subject to the dislocations of war, pestilence, internal upheaval, expensive litigation, and the like. The principal accusation leveled by moralists who condemned the *paghe* market was that, whereas the merchant-venturer derived profit from concrete tasks whose outcome was conceptually uncertain, the *paghe* investor derived profit from fluctuations in price and from the realization of a

¹²⁷ Jacques Le Goff, "Temps de l'Eglise et temps du marchand", *Annales* (E.S.C.), XV (1960), 417-28. My interpretation differs from Ruggiero Romano, in *Tra due crisi: L'Italia del Rinascimento* (Turin, 1971), p. 113: "È ora, nel xv, xvi secolo, che acquistando un senso preciso del tempo, la memoria comincia a distinguersi dall'abitudine ed il tempo diventa un bene dell'uomo e non più di Dio. È ora che si consacra definitivamente, come è stato finalmente notato da J. Le Goff, il divorzio tra tempo della Chiesa e tempo del mercante. Divorzio che non s'è consumato soltanto in una sfera sociale ma che ha investito tutta la società italiana del Rinascimento si caratterizza in rapporto alla società medievale per questa conquista del tempo".

¹²⁸ Ugo Tucci, "Alle origini dello spirito capitalistico a Venezia: la previsione economica", *Studi in onore di Amintore Fanfani* (Milan, 1962), III, 545-57; Alberto Tenenti, "Temps et 'ventura' à la Renaissance: Le cas de Venise", *Mélanges en honneur de Fernand Braudel* (see above, note 109), I, 599-610. I have learnt a great deal about cultural conceptions of time from Pierre Bourdieu, "La société traditionnelle, attitude à l'égard du temps et conduite économique", *Sociologie du travail* I (1963), 24-44.

ius to a transpersonal future outcome whose value remained conceptually certain. Because discounting *paghe* assaulted a basic cultural norm as well as a tenet of the usury prohibition, there was no way that this practice could escape from the charge of usury.

Since discounting *paghe floreni* and *lire de paghe* was vital to the operations of Genoa's money market and public finances, the accusations brought by the carriers of the usury prohibition could not go unanswered. Lacking jurisdiction over the *internum forum*, San Giorgio could not soothe the pangs of conscience gripping potential investors. There was no other alternative than to turn to the Church. The interdependency of the papacy and San Giorgio made Calixtus III the likely candidate to rescue his partner from an impending fiscal crisis. The occasion of a text should not be, however, equated with its possible meanings and the meanings attributed to it through time. The unstated problematic of Calixtus' concession was to permit a discrete discounting operation, which, under the light of the usury prohibition, was palpably illicit, while avoiding the invalid inference that the commission of usury would follow in the wake of such permission. The chasm between rule and practice was bridged by *utilitas publica* and *necessitas*. These were also the *rationes* used by Sixtus IV in his concession which enlarged the permission given by his predecessor. Despite the protest of Silvestro Mazzolino, the papal bulls were recycled by the leading Dominican summists of the first half of the sixteenth century to justify all the *paghe* markets. These moralists employed a series of linguistic tactics to reduce even further the chasm between rule and practice. If these tactics served to legitimate the markets in *paghe*¹²⁹, they could not drive the polymorphous problem of discounting away.

Peering backward from the vantage point of the early seventeenth century, one discerns that the opinions of Cagnazzo, Cajetan and Fumi had not yet triumphed. Led by Domingo de Soto (d. 1560), the brilliant and conservative Dominican Professor of Salamanca, a new generation of Dominican theologians reacted against the doctrinal novelties

¹²⁹ It should be noted that *lire de paghe* were traded throughout the sixteenth century: C. M. Cipolla, "Note sulla storia del saggio d'interesse, corso, dividendi e sconto dei dividendi del Banco di S. Giorgio nel sec. XVI", offprint from *Economia internazionale* V (May 1952), 14 pp.; José-Gentil da Silva, "Le sconto à Gênes: A propos d'un croquis", *Annales (E.S.C.)*, XIII (1958), 150-53; D. Giofrè, *Gênes et les foires de change de Lyon à Besançon* (Paris, 1960), p. 106 ff.; E. Grendi, "Problemi e studi di storia economica genovese (secoli XVI-XVII)", *Rivista storica italiana*, LXXXIV (1972), 1044-45.

spawned by their immediate predecessors¹³⁰. Custodians of the usury prohibition, Francisco García (d. 1583)¹³¹, Luis López (d. ca. 1595)¹³², Tommaso Buoninsegni (d. 1609)¹³³ all Dominicans, and Miguel Bartolomé Salón (d. 1621)¹³⁴, an Augustinian, breathed new life into what they believed to be the doctrinally and spiritually safer rules on discounting implicit in the decretals *Naviganti* and *In civitate* and incapsulated in the opinions of sant'Antonino and Silvestro Mazzolino. The usury prohibition, the doctrine on just price and the injunction against selling time, they believed, was rapidly being emptied of significance by ill-founded categorizations, misplaced analogies and fallacious interpretations. If the reasons advanced by Cajetan were true, warned Francisco García, they would serve to justify usurious credit transactions and manifestly usurious loans¹³⁵. Persons ignoring the opinions of many weightier doctors who teach that Cajetan's opinion is false but sincerely believing in the truth and safety of Cajetan's and similar authoritative opinions, reluctantly admitted Miguel Salón, can cleave to their beliefs with a safe conscience. If probabilism saved these persons from outright condemnation, they are admonished by Salón that Cajetan's defense of the market in *paghe* is doctrinally fallacious, exceedingly perilous to the consciences of the faithful, and must be rejected for providing an open avenue to usury¹³⁶. Following Silvestro Mazzolino, López,

¹³⁰ On Domingo de Soto, see J. Larraz, *La época del mercantilismo en Castilla* (Madrid, 1943); M. Grice-Hutchinson, *The School of Salamanca*, pp. 11-14, 43-45, 55-57; Noonan, *passim*. Soto's treatment of usury and discounting is found in his magnum opus, *De iustitia et iure libri decem* (Salamanca, 1553), based on lectures given in Salamanca, 1540-41 and 1552-53. There were no less than twenty-seven editions of his work before 1600.

¹³¹ Quéatif-Echard, II, pars 2, p. 267; De Roover, *L'évolution de la lettre de change*, XIV^e-XVIII^e siècles (Paris, 1953), p. 184.

¹³² Quéatif-Echard, II, pars 2, p. 316; De Roover, *L'évolution*, p. 190; *Dictionnaire de théologie catholique* (Paris, 1926), I, part 1, p. 934.

¹³³ See the excellent bio-bibliographical account by U. Tucci, in *Dizionario biografico degli Italiani* (Rome, 1972), XV, pp. 261-64.

¹³⁴ On Salón, see J. Girbes Aliaga, *Los tributos y impuestos valencianos en el siglo XVI su justicia y moralidad según Fr. Miguel Bartolomé Salón (1539?-1621)* (Rome, 1972); De Roover, *L'évolution*, p. 200.

¹³⁵ *Trattato dei tutti contratti* (Brescia, 1596), Cap. XIX (*De la compra degli altri crediti et de la vendita de' proprii*), p. 298: "Ne solamente questi et altri simili tutti potriano giustificarsi per le ragioni del Gaetano, ma anco quelli, che manifestamente sono usurarii, quale è l'imprestare dinari ad interesse".

¹³⁶ *Controversiae de iustitia et iure, atque de contractibus et commerciis humanis licitis ac illicitis in disputationem, quam habet D. Thomas, secunda sectione,*

Buoninsegni and Salón opposed broad interpretations of Calixtus' and Sixtus' concession, which were used to justify the purchase of *paghe* at a discount by anyone with the hope of making a profit, in and outside of Genoa¹³⁷.

This reaction, which awaits detailed examination, was not a regrettable and isolated detour on the road to Modernity, but symptomatic of the militant campaign waged against all forms of usury by the Church of the Counter-Reformation¹³⁸. The morality of "selling time" would not be tolerated by the Church until the age of industrialism. And from the mid-sixteenth century until the end of the eighteenth century, discounting would be a fiercely contested issue among those in charge of the *cura animarum*.

secundae partis suae Summae Theologicae (Venice, 1608), II, controversia xvii, p. 310^a: "Ex his omnibus colligo opinionem istam Caietani, ab eo tantum tuta conscientia posse observari, qui videns a Caetano et Navarro et aliis haberi, bona fide illi adhaereret, credens esse veram et securam, et ignorans a pluribus et gravioribus doctoribus et communiter in scholis iudicari falsam. Absolute tamen et simpliciter illa omnino falsa est, et conscientias fidelium maxime periculosa et recitanda tamquam usuraria, vel saltem ansam praebens multis usuris et aditum parans tam ad vendendum carius expectata solutione, quam ad emendum vilius illa anticipata et multa cambia et recambia quae dicunt ficta...". Navarrus' opinion on discounting is found in his *Compendium manualis* (Burgos, 1594), Cap. XVII, p. 203: "Debita post longum tempus solvenda possunt iuste emi minoris".

¹³⁷ Lopez, *Instructorium conscientiae...* (Salamanca, 1585), II, Cap. LVIII (De pagis acerbis), col. 457; Buoninsegni, *Trattato de' traffichi giusti et ordinarii* (Venice, 1591), pp. 43^v-44^r; Salón, *Controversiae* II, controversia xvii, pp. 312^a-313^a.

¹³⁸ Giulio Mandich, *Le pacte de ricorso et le marché italien des changes au xvii^e siècle* (Paris, 1953), pp. 144 ff.; M. Venard, "Catholicisme et usure au xvi^e siècle", *Revue de l'histoire de l'église de France*, LII (1966), 59-74; C. Bauer, "Rigoristische Tendenzen in der katholischen Wirtschaftsethik unter dem Einfluss der Gegenreformation", in *Adel und Kirche: Gerd Tellenbach zum 65. Geburtstag* (Freiburg, 1968), pp. 552-79; H. Ott, "Die katholische Wirtschaftsethik und ihr Einfluss auf der wirtschaftlichen Aktivität der Katholiken am Beginn des industriellen Zeitalters", *Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte*, LVI (Oct. 1969), 289-98; B. Schnapper, "La répression de l'usure et l'évolution économique (xiii^e-xvi^e siècles)", *Tijdschrift voor Rechtsgeschiedenis*, XXXVII (1969), 47-75.

APPENDIX

DOCUMENT I

The concession of Pope Calixtus III of 12 May 1456 authorizing the *protectores* of San Giorgio to sell or exchange at a discount *paghe floreni* of 1464, 1465 and 1466. The edition is based on a copy of the concession found in the *Liber privilegiorum di San Giorgio* preserved in Biblioteca Civica Berio of Genoa. This MS had been edited by Amadeo Vigna, *ASLSP*, VI (1868), pp. 625-627. Vigna was a first-rate paleographer, and his edition is very good, but it does contain a few typographical slips, paleographical blemishes and silent corrections. With the aid of another MS of Calixtus' concession, preserved in the *Archivio segreto del Vaticano*, I have been able to emend Vigna's text.

ABBREVIATIONS

E Vigna, pp. 625-627

G Genoa, Biblioteca Civica Berio, *Liber privilegiorum* di San Giorgio, fols. 55^r-56^r

V Vatican City, Archivio segreto del Vaticano, Registra Vaticana, 442, fols. 218^r-219^v

- 1 Declaratio summi pontificis quod loca Sancti Georgii sint bona immobilia.
Calistus episcopus, servus servorum dei, dilectis filiis protectoribus Com-
perarum Sancti Georgii civitatis Ianue salutem et apostolicam benedictionem.
Decet Romanum pontificem, cui inscrutabilis providentia summi patris cun-
5 ctorum fidelium curam tanquam pastori precipuo provida dispensatione com-
misit, vices pensare temporum et rerum causas emergentiumque negotiorum
ac populorum, ingruentes necessitates solerti attentione metiri sicque eorun-
dem fidelium necessitati succurrere ac iuris temperando rigorem indigentis
providere quod, sublatis dispendiis atque periculis ipsorum, commodis et
10 quieti utiliter consulatur. Sane pro parte vestra nobis nuper exhibita petito
continebat quod, alias cum fama vulgaris deferret Turchorum ducem imma-
nissimum et christiane religionis impium eversorem civitatem Caphe obsi-
dere et diripere velle, pro ipsius civitatis tuitione vos temerariis ausibus Turci
huiusmodi resistere satagentes, cum ad vestrum officium ipsius civitatis regi-
15 men et defensio dignoscatur pertinere, graves propterea expensas et damna
plurima subiistis, propter que et nonnulla alia vobis incumbentia, onera et
diminutionem reddituum solitorum participibus et locatariis comperarum

1 Declaratio - immobilia om. EV 2 episcopus - dei] et cetera V 3 et -
benedictionem om. V 5 precipue G 6 causam E; causis G 8 succurrere G
10 consuletus E 11 defferret E; deferretur Turcarum G 13 Turce G

solitam annuam summam pro quolibet loco sicut hactenus solui consueverat
 anno proxime elapso, videlicet millesimo quadringentesimo quinquagesimo
 20 quinto, soluere et respondere minime potuissetis, in magnum detrimentum
 ecclesiarum et ecclesiasticarum etiam regularium personarum, pupillorum,
 viduarum et aliorum quorum substantia in dictis locis pro maiori parte locata
 est, nisi paga floreni unius proventuum comperarum huiusmodi per dilectos
 25 filios commune Ianuense pro singulo loco capi solita annorum trium futu-
 rorum, videlicet millesimo quadringentesimo sexagesimo quarto, millesimo
 quadringentesimo sexagesimo quinto et millesimo quadringentesimo sexage-
 simo sexto, vobis in subsidium assignata fuisset.

Cum autem sicut eadem petitio subiungebat vos adhuc participibus, loca-
 tariis et creditoribus dictarum comperarum proventus dicti anni proxime
 30 preteriti soluere nequeatis nisi dictos futuros proventus trium annorum vobis
 per ipsum commune assignatos huiusmodi plus offerentibus vendatis vel per-
 mutetis in alios proventus de anno 1455 prefato pro minori summa quam
 emptores vel permutantes in fine dictorum trium futurorum annorum sint
 35 recepturi, ac nonnulli, hesitantes an ipsi futuri proventus sic licite vendi,
 emi vel permutari possint, ab illorum emptione seu permutatione plurimum
 retrahantur, et cum venditio vel permutatio proventuum huiusmodi ad sub-
 veniendum instantibus necessitatibus opportuna sit et ex hoc ecclesiis eccle-
 siasticisque personis, pupillis quoque viduis et aliis miserabilibus personis
 40 pro earum victu et sustentatione subveniatur et si secus fieret loca predicta
 que opinione magna ex parte subsistunt in pretio et proventibus diminuerentur,
 nobis fuit humiliter supplicatum ut, premissis debita meditatione attentis,
 quodque dicti redditus annui super commune predictum et redditus civitatis
 qui inter immobilia censi debent constituti sunt et de illis contractus ven-
 45 ditionis et emptionis regulariter a iure permitti quotidie celebrenter ac ad
 occurrendum tantorum incommodis ac etiam detrimentis nec non ambigui-
 tates huiusmodi summoventum vobis proventus trium annorum futurorum
 per commune huiusmodi propter imminentes necessitates et incumbentia
 onera antedicta ut premittitur concessos et assignatos, pro ea summa que ex
 illis reperiri poterit libere et licite plus offerentibus vendendi seu pro aliis
 50 pagis permutandi a quibuscumque personis dictos proventus emere aut per-
 mutare volentibus eos licite emendi et permutandi licentiam concedere ac
 alias super his ecclesiarum locorum et personarum miserabilium eorundem
 indigentis paterna caritate succurrere et opportune providere, de benignitate
 apostolica dignemur.

19 mccccv° V 21 ecclesiasticorum E - pupillarum E 24 loco] anno G
 25-27 mccccxviii, mccccxv et mccccxvi V 28 aduch G 32 millesimo
 quadringentesimo quinquagesimo quinto E; mccccv V; minore E 43 illius G
 45 occurendum G; etiam *supra scr.* V 49 illis ex illius *corr.* V 50 aut] et G
 52 hiis E; iis G 53 charitate G

- 55 Nos itaque attendentes quod sedes apostolica plerumque rerum et temporum varietate ac urgenti ecclesiarum pauperum et miserabilium personarum necessitate causantibus et ad evitandum maiora damna atque incommoda, humilibus supplicantium precibus benigne solet annuere, ac volentes
- 60 ex relatione dilecti filii Ludovici tituli Sancti Laurentii in Damaso presbiteri cardinalis camerarii nostri, cui negotium ipsum cum peritorum consilio examinandum commissimus, huiusmodi contractus necessitate seu utilitate predictis suadentibus posse ac debere permitti comperimus, huiusmodi supplicationibus inclinati vobis proventus trium annorum predictorum quibusvis
- 65 personis cum quibus ipsarum comperarum conditionem efficere poteritis meliorem vendendi, seu permutandi ac pretium ex illis proveniens in ecclesiarum et piorum locorum nec non viduarum, pupillorum et aliarum personarum illos percipere debentium ac alias in earundem comperarum utilitatem convertendi ipsisque emptoribus vel redditus huiusmodi permutare volentibus libere et licite emendi seu permutandi auctoritate apostolica tenore presentium hac vice dumtaxat licentiam elargimur, non obstantibus constitutionibus et ordinationibus apostolicis ceterisque contrariis quibuscumque. Datum Rome apud Sanctum Petrum, anno incarnationis dominice 1456, quarto idus maii, pontificatus nostri anno secundo.
- 75 copia. Joannes Aurispa
Joannes de Collis

DOCUMENT II

The concession of Sixtus IV of 22 May 1479 authorizing San Giorgio to sell and exchange *paghe floreni* at a discount for as many years as it would be expedient. This edition is also based on a copy of the concession found in the *Liber privilegiorum di San Giorgio*. Another copy of Sixtus' concession has been edited by Carlo Cuneo, *Memorie sopra l'antico debito pubblico, mutui, compere e banca di S. Giorgio in Genova* (Genova, 1842), pp. 298-302. I have not been able to locate the copy used by Cuneo, to which he refers: «ex Archivio S. Giorgio ut in MS. penes me II, c. 137». Cuneo was not a first-rate paleographer, and his edition of Sixtus' concession is almost unreadable. What is remarkable is that so many scholars have cited his edition without ever registering a complaint about its obvious grammatical and paleographical defects. I have sought in vain for a copy of Sixtus' concession in the

57 necessitati E 60 titulo G 62 commisimus EV 65 commutationem E
67 ac priorum E 72 ordinibus E 73-74 millesimo quadringentesimo quinquagesimo sexto E; anno et cetera mcccclvi V 75 P. de Legendorf; Jo. de Collis V

Archivio segreto del Vaticano. The *Registra Vaticana* relating to Sixtus' pontificate are not as well preserved as those covering the pontificate of Calixtus. Experience indicates, however, that in the future some student of Sixtus' reign will find a copy of this historically important concession in the Vatican Archive.

ABBREVIATIONS

C Cuneo, pp. 298-302

G Genoa, Biblioteca Civica Berio, Liber privilegiorum di San Giorgio, fols. 62^r-63^v

- 1 Sixtus episcopus, servus servorum dei, dilectis filiis protectoribus comperarum Sancti Georgii communis Ianue salutem et apostolicam benedictionem. Sincere devotionis affectus quem dilecti filii communitas Ianuensis ad nos et Romanam gerit ecclesiam promeretur, ut ea vobis favorabiliter concedamus per que eorum et singularum personarum eiusdem presertim miserabilium ac piorum locorum commoditatibus valeatis utiliter et salubriter
- 5 providere. Dudum siquidem felicitis recordationis Calisto papa iii., predecessore nostro, pro parte tunc protectorum comperarum Sancti Georgii communis Ianuensis exposito, quod cum alias fama ingens deferret Turcos, im-
- 10 manissimos Christiane religionis hostes, civitatem Caphe obsidere et expugnare velle, pro ipsius civitatis tuitione ipsi protectores ad quorum officium ipsius civitatis regimen et defensio pertinere dignoscebatur dum temerariis ausibus eorundem Turchorum resistere conarentur, graves propterea expensas et damna plurima subierant, propter que et nonnulla alia tunc eis incumbentia onera ac diminutionem reddituum solitorum comperarum huiusmodi
- 15 participibus et locatariis comperarum earundem solitam annuam summam pro quolibet loco, sicut hactenus solui consueverat, anno tunc proxime elapso soluere minime potuissent, nisi paga floreni unius proventuum comperarum huiusmodi per commune Ianuense pro singulo loco capi solita annorum
- 20 trium tunc proxime futurorum eisdem in subsidium solutionis huiusmodi assignata fuisset, et in eadem expositione subiuncto, quod ipsi etiam participibus locatariis et creditoribus dictarum comperarum proventus dicti anni tunc proxime preteriti soluere nequibant, nisi dictos futuros proventus eis per ipsum commune assignatos huiusmodi plus offerentibus venderent vel
- 25 permutarent in alios proventus pro minori summa quam emptores vel permutantes in fine dictorum trium annorum essent recepturi, et nonnulli hesi-

3 communis C 4 gerunt C 6 utilius et salubrius C 7 papae C
 8 predecessori C 9 communis] Coss. C - Turcas CG 10 civitate C 12 et
 om. C 13 eorundem om. C; Turcarum C; Turcharum G 17 ea tenui G;
 consueverant C 21 subjunxit C 24 ipsum] dictum C; assignatis C

tantes an ipsi futuri proventus sic licite vendi, emi, vel permutari possent,
 ab illorum emptione seu permutatione plurimum retrahantur, et quod ven-
 ditio vel permutatio proventuum huiusmodi ad subveniendum instantibus
 30 necessitatibus erat plurimum opportuna et ex hoc clericis ecclesiasticisque
 personis, pupillis quoque viduis et aliis miserabilibus personis pro earum
 victu et substentatione subveniebatur si non alienarentur loca predicta, que
 opinione magna ex parte subsistebant in pretio et proventibus diminuerentur,
 idem Calistus predecessor, qui etiam ex relatione bone memorie Ludovici
 35 tunc tituli Sancti Laurentii in Damaso presbiteri cardinalis eius camerarii,
 cui negotium ipsum cum peritorum consilio examinandum commiserat,
 huiusmodi contractus necessitate seu utilitate suadentibus posse ac debere
 permitti compererat, dictorum tunc protectorum supplicationibus inclinatus,
 eisdem protectoribus proventus predictorum trium annorum quibusvis per-
 40 sonis, cum quibus ipsarum comperarum conditionem efficere possent melio-
 rem vendendi seu cum illis permutandi, ea vice dumtaxat licentiam concessit,
 prout in litteris ipsius Calisti predecessoris desuper confectis plenius con-
 tinetur.

Cum autem sicut exhibita nobis nuper pro parte vestra petitio continebat,
 45 etiam postmodum aliquando necessitates et cause urgentes evenerint et in
 dies eveniant, propter quas pro necessitate publica tam communis Ianuensis
 quam comperarum ipsarum Sancti Georgii expediret et summe necesse esset
 quod similes venditiones seu permutationes de proventibus predictis pro
 annis futuris percipiendis antequam tempus solutionis illorum eveniret fieri,
 50 ac page seu floreni huiusmodi immature vendi seu permutari possent, pro
 parte vestra nobis fuit humiliter supplicatum ut vobis et pro tempore existen-
 tibus protectoribus earundem comperarum, quotiescumque evidens necessitas
 vel utilitas pro eisdem comperis publici communis civitatis Ianuensis evenerit,
 proventus et florenos seu pagas immaturas huiusmodi quibusvis personis,
 55 cum quibus comperarum huiusmodi conditionem efficere poterunt meliorem
 pro tot annis pro quibus expediens fuerit vendere seu cum illis permutare,
 et pretium exinde proveniens in earundem comperarum vel reipublice com-
 munis Ianuensis utilitatem convertere, nec non quibusvis personis, ut huius-
 modi proventus florenos seu pagas immaturas pro annis futuris absque aliquo
 60 conscientie scrupulo libere emere seu ex causa permutationis recipere libere
 et licite valeant concedere aliasque in premissis opportune providere, de be-
 nignitate apostolica dignaremur.

27 vel post vendi *add.* C 28 retrahatur G; et] eo C 30 clericis] dictis C
 - Ecclesiasticis C 33 diminuerentur *om.* G 34 etiam] cum C 35 Lau-
 renti C 36 comiserat C 39 predictos C 41 vendi C 42 litteris] Breve
 C; confecti C 49 illius C - evinere C; ac] et C 56 fuerit *praem.* expediens
tr. C 58 utilitates C 60 seu 61 concedere *om.* C - providere C

Nos igitur, qui in eiusdem Ianuensis civitatis civem dudum recepti fuimus, et civitatem ipsam ac illius cives speciali dilectione prosequimur et
 65 complectimur in visceribus charitatis, de premissis plenarie informati, ut de cetero perpetuis futuris temporibus liceat vobis et pro tempore existentibus protectoribus comperarum predictarum quotiescumque evidens necessitas vel utilitas pro eisdem comperis civitatis prefate evenerit proventus seu florenos
 70 earundem conditionem efficere poteritis meliorem pro tot annis pro quot expediens fuerit vendere et permutare ac pretium inde proveniens in earundem comperarum vel dicti communis utilitatem convertere, nec non quibusvis personis huiusmodi proventus florenos seu pagas immaturas pro annis futuris absque aliquo conscientie scrupulo emere seu ex causa permutationis
 75 recipere libere et licite auctoritate apostolica presentium tenore concedimus. Non obstantibus premissis ac constitutionibus et ordinationibus apostolicis nec non civitatis Ianuensis et officii comperarum earundem statutis et consuetudinibus iuramento, confirmatione apostolica vel quavis firmitate alia roboratis, ceterisque contrariis quibuscumque. Nulli ergo omnino hominum
 80 liceat hanc paginam nostre concessionis infringere vel ei ausu temerario contraire. Si quis autem hoc attentare presumpserit, indignationem omnipotentis dei et beatorum Petri et Pauli apostolorum eius se noverit incursum. Datum rome apud sanctum petrum, anno incarnationis dominice millesimo quadringentesimo septuagesimo nono, undecimo kal. iunii, pontificatus nostri anno
 85 octavo

copia.

subscripta.

Gratis de mandato D. N. PP. P. de Spinosis
 Griffus

DOCUMENT III

The proceedings of the Council of 13 March 1467 dealing with, *inter alia*, usury, dry exchange and the market in *paghe*. Source: *Archivio di Stato di Genova*, Div. Reg., n. 86-581, fols. 81^r-82^v.

sententia concilii

super diversis negociis

† die XIII^a Martii.

Cum ad conspectum Magnifici ac Illustris domini Sagramori, Vicecomitis ducalis, Vicegubernatoris in Ianua, et Magnifici consilii dominorum Antia-

68 civitatis prefate] publica comunis Ianuen. C; venerit C 69 aut] et C
 71 ac] et C 74 emere om. C 76 ac] et C 79 roboratis] valeatis CG
 quibuscumque] quibusvis C 79 igitur C 80 temerarie C

norum communis Ianue vocata fuissent Magnifica officia Montis Sancti Georgii et preter ea cives fere ducentum et quinquaginta, ibique post consultationem de satisfaciendo comperis pro impensis factis in Famagusta habitam, propositum fuisset sub iis verbis.

Segnoi, la caxon de la convocation vostra è questa. Più volta è steto feto grande querela per monti religiosi et etiam seculari, che in questa nostra cité se viva cum tanto dexordem de questi contracti desordenadi de usure, de che oltra lo perigolo che ne ha l'anima, a che se de' haver avvertencia sovra tuto, se ne prende grande infamia per tuto lo mondo et è reputado etiam grandemente dannoxo a la terra. Per lo simile se fa grande caxo per li parlatoi, e ciascum chi vole vivere honestamente che questo dexordenado vivere de le monache po' produrre grande ira, da<n>do vergogna e scandolo in la terra da monte bande. In che, quantunche più volte sia dicto e deliberao de provei, pure non è mai seguïdo effecto alcun perché essendo questi doi caxi pericoloxi a l'anima et lo corpo, et essendo li jorni de pute a simili pensamenti, è par suo a questo Magnifico et Illustre governao' et Antiany de congrega<r>ve qui per haver lo vostro savio consiglio, arecordandove che a questi di fo deliberao de spachiare l'ambaxa a Roma per haver de li remedii necessarij a tale cosse et per altre caxony necessarie a la terra. Siché in summa ciascum arecorde quello che ge pare da fare in tale materia. A lo vicario de l'alcivesco s'era dato cura di far quell'i arecordi che se pareseno, et cossi ha facto: se ve piaxe che se lezam, e' se lezeram.

Et multi assurgere ac sententiam dicere iussi fuissent, tandem collectis vocibus compertum est sententiam nobilis Darii de Vivaldis, in quam voces unam et octoginta convenere, ceteris prevaluisse. Is quidem ita dixit.

Messer Dario de Vivaldo aprovando tutto quello chi è steto dicto indetestar (?), e devea la via de che s'è parla' in la posta, tra li altri che ham parlao se acosta a lo parer de messer Iacomo Iustiniam, excepto che unde ello ha dicto che se daga questa cura a' XII, ello vorria che fussem Octo, per non metere tanti citeni a li officii. Et unde ello dà l'arbitrio de mettere penna in li contratti usurarii a quelli XII, ello vorrerla che la penna se deliberasse qui, per non dare questo càrrego a li Octo, e ch'ella fusse de maior autorità, cioè che de quelli contratti che s'erano prohibiti, la penna fosse de restituire l'usura a quelli cum chi l'avesem facta, e altrettanto a lo comun. A quelli Octo hàbiam etiam la cura circa le cosse de le moneghe, per non far tanti officii. In le altre cosse ello afferma lo dicto de messer Iacomo Iustiniam, cuius sententia hec fuit.

Vir egregius Iacobus Iustinianus iussus assurgere et sententiam dicere affirmavit per sapientes qui ante eum sententias dixere, fuisse habunde dictum, et sententia sua se dicturum quod illi asseruerunt. Sed videri sibi apertius fore declarandum, cum id res exigere videatur. Nulli ignotum est nos vivere ex mercatura, et ultra spirituale damnum quod afferunt huiusmodi contractus de quibus sermo habetur, illa insuper afferre maximam iacturam cernitur toti civitati ac personis, quoniam convertendo pecunias in <h>iis con-

tractibus, diminuitur negotiatio navium et redditus commerciorum et totius civitatis, qui tanto quotidie extenuabuntur quanto videmus hunc esse morbum contagiosum, quoniam ipse qui nondum est quinquagesimus annus qui in bancis conversatur, recordatur quod qui cambio dabant, digito notabantur, nunc dici posset quis est hic, et laudabimus eum. Similiter e mercatio pagarum multum repudiabatur, nunc nihil advertitur, ita quod hec scabies crescit, et credi potest nisi adhibeatur remedium. Si hoc anno reperiuntur centum, sequenti habebimus centum et decem. Remedium providendi dictum fuit, quod videlicet habeatur bonus pastor: quod ipse approbat. Sed hoc sufficere non videtur sibi, immo providendum fore, quando penam spiritualem nihil timent, de temporalis. Et ob hoc laudat quod eligantur duodecim prestantes cives, qui eximantur ab omni alia cura angaria quoadusque huic negotio intendent, qui cum consilio duorum proborum religiosorum examinent et bene intelligant illos contractus quos prohibitos haberi volunt decetero, quoniam de preterito non videtur sibi habendam esse mentionem, sed nunc librum novum efficere, et hos tales contractus prohibeant cum illis penis de quibus ipsis videbitur, et illos per civitatem publicari faciant. Et quoniam nos affinitate et familiaritate coniuncti sumus invicem et molles alter versus alterum adeo quod innicte invicem repugnamus ut equum est, quod ipsi duodecim ad se vocent ipsum Iacobum Iustinianum et quemcumque alium contra quem sit procedendum, et auditis defensionibus suis et tanto quantum illis audiendum fore videbitur ad ballotollas albas et nigras sese absolvant si talis condemnari debet, et septem ballotolle ex ipsis duodecim, hoc est una supra dimidiam partem, sententiam efficiant. Circa quantitatem condemnationis id observetur quod alias fuit observatum in conficiendis conventionibus, videlicet quod quilibet ex parte et de per se scribat in una cedula in quanto sibi videatur tale fore condemnandum. Deinde omnes secrete coniciantur in urnam vel biretum et simul misceantur, et ex illis accipiantur quatuor de medio, hoc est non maioris neque minoris quantitatis, sed de medio, et omnes simul iungantur et una efficiatur summa, que postea dividatur per quartum, et hec pars quarta sit condemnatio. Qua facta, dicti officiales teneantur omnino exegisse intra dies octo immediate secuturos, sub pena solvendi de proprio. Circa partem monialium, que valde abominabilis est, videri sibi quod cum archiepiscopali vicario addantur duo probi religiosi et quatuor cives, qui omnes simul cogitent prout eis videbitur.

Quibus ita peractis, denuo proposita fuit hec propositio.

Apresso è steto arecordao che in la terra segue grande desordem in le segurté che se fano, in che non segue mai pagamento senza grande question, chi è caxon de fare che le segurté non se fazam liberamenti, de che ne segua de li danni asai. E per questo è steto arecordao che bem sereria decretare che c*>*ascum chi asegurerà, quam primum sia seguido lo caxo che lo asseguraio sia obligao de paga' cum dare segurté de restitui', quando fusse cognossudo ch'ello non fusse obligado, sì cum dar segurté de lo dopio de quello che se trovase essere commisso ruba<1>daria o ingano, sì cum altre sixe neces-

sarie a tal materia. Voi intendei quanto inporta lo assegurar in questa terra. Ciascum chi sia domandao diga quello chi ge occorre.

Apresso anchora se fa grande caxo de tante gratie quante se fano a questi de la mala paga, chi è caxum de fare che li debitor non hano studio a fare lo suo debito. È steto arecordao de provei a questi caxi perché in questo ognun diga lo so parer, arecordandove che a li sindicaor è regule chi provedem a li termini de le gratie loro et de esser missi in più strecte prexo im secundo la natura de li debiti. Et exquisitis sententiis super propositione securitatum, compertum est sententiam viri nobilis Philippi Centurioni in quam voces tres supra octoginta convenerunt, potioem habitam esse. Qui quidem dixit videri sibi quod pro decreto ac lege habeatur de cetero, quam primum deinceps superveniat casus sinistri alicuius navis, navigi vel vasis navigabilis, in quo facte sunt securitates, quod assecuratores omnino teneantur solvere absque ulla exceptione, termino et tempore constituto. Et qui securitates exiget, idoneam prestet fideiussionem restituendi tantum quantum erit summa securitatis petite et seu exigende et ultra a vigintiquinque usque in triginta pro centenario, casu quo pro exacta securitate conveniretur et in iudicio succumberet.

Rursusque collectis vocibus super ea parte carceratorum de qua in propositione fit mentio, inventum fuit Nicolaum de Furnariis, in quem voces septuaginta et due concurrerunt, summam concilii habuisse. Qui ita locutus est. Carceratos male page ideo non solvere quia commode in eo carcere permanent et eis melius cedit sic stare quam solvere. His exactis diebus pro quodam suo negocio contigisse sibi ad eum carcerem accedere et vidisse quod conventum faciunt, ludunt et stant ut dictum est, in modo quod ex duodecim mensibus anni duos carceratos non restant. Constitutiones nostras pulcras esse, sed molities Antianorum qui fuerunt huiusmodi gratias concesserunt, ex quo non videtur sibi aliquid innovandum fore super huiusmodi constitutionibus, sed eas in suo robore dimitti. Et ut futuri Antiani evitare possint has molestias, quod intelligatur ipsos non posse decetero alias gratias concedere quam ex antiqua consuetudine concedi convenerunt. Et tamen, si casus superveniret ex quo videretur aliter faciendum, id consultetur ac decernatur in concilio CL^{ta} convocatorum, nec aliter valeat vel fieri possit. Et ut intelligatur que sit antiqua consuetudo, intelligere se dixit quod in festo Nativitatis Domini fieri possit gratia pro diebus octo ante festum et totidem post festum. Item in festo Pasce Resurrectionis Domini pro diebus octo ante festum et totidem post festum. Item in festo gloriosissimi Precursoris pro diebus octo ante festum et totidem post festum.