

# ***Origins and Evolution of the Medieval Church's Usury Laws: Economic Self-Interest or Systematic Theology?\****

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## **1. Introduction**

In studies of ecclesiastical teachings against usury during ancient and medieval times, historians have attributed the emergence and evolution of the laws to two main reasons. For older historians, the usury prohibition was based on systematic theology; but more recently, some economic historians have taken a position similar to Karl Marx's and have argued that the Church manipulated the doctrine for its own economic gains. Yet, as the laws which made up the prohibition were not a monolithic whole, but had instead evolved over the scholastic period (1100-1500), identifying one motivating factor behind the various legal developments oversimplifies the functions and philosophies of the Church. This article contends that, although the initial impetus to outlaw usury found its basis in theology, the shape of later regulations was determined by legal principles and, more importantly for present purposes, Rome's economic self-interest to some extent. It, however, shows that the Church's economic gains from the doctrine were different from those that historians have supported and that the rational-choice explanation was too broad to adequately account for the complex nature of the usury laws.

Theologians were scrupulous in their hermeneutical exercises when they studied the morality of usury. The principle of charity dominated the initial discourse, as the relevant theology was concerned with caring for the weak, indicating that the prohibition was not conceived in economic self-interest. Later discussions by the clergy turned on the principle of justice and the idea

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of reparation for wrongdoing. Similarly, the canonists followed systematic and consistent legal principles of liability, ownership and risk when developing the body of law, and included precise restrictions and exceptions to its jurisdiction. However, to the extent that the prohibition was an organ of the Church, its declaration, emphasis, intensity and implementation varied according to its responses to the tumultuous circumstances of the Middle Ages and to the dominant influences of the era. Rome did at various times exploit the ban to enrich itself, as was evident in its role in encouraging restitution by usurers in the form of philanthropy to the Church. The origins and developments of the usury laws were therefore principled, but the evolution of their application was sometimes altogether worldly.

This article focuses on the theological and economic explanations for the prohibition and leaves aside the legal and canonical arguments, which have been discussed in detail elsewhere.<sup>1</sup> It will proceed as follows: First, the theological basis of the prohibition is studied, together with the arguments of older historians who believed that the laws were expressions of religious principles. Second, the existing arguments for the hypothesis of economic self-interest are examined and found wanting. Instead, new evidence for an economic explanation is presented. Finally, this article considers the anti-Semitic attitudes behind the usury laws.

## **2. Theological and Philosophical Bases of the Prohibition**

Traditional historians have believed that the scholastic theory of usury originated from theology and that the prohibition stemmed from neither economics nor law. “Originally and primarily [the doctrine was] a theological creation” that was built upon reason.<sup>2</sup> In addition, Jacob Viner writes that the predominant consideration of the Church when condemning usury, or other economic activity, was the injustice or negative impact on social morals associated with it.<sup>3</sup> The Church was

<sup>1</sup> On the legal dimensions of the prohibition, see E. S. Tan, “An Empty Shell? Rethinking the Usury Laws in Medieval Europe”, *Journal of Legal History*, Vol. 23, No. 3 (2002), December, pp. 177-96.

<sup>2</sup> J. Noonan, *The Scholastic Analysis of Usury*, (Harvard 1957), pp. 3-4.

<sup>3</sup> J. Viner, *Religious Thought and Economic Society: Four Chapters of an Unfinished Work*, J. Melitz and D. Winch, (eds.), (Duke 1978), pp. 31-2. Other examples include J. Gilchrist,

constantly concerned with making particular applications of religious teachings and responding to new circumstances. Its laws tend to have a two-fold character: they are based on customary law derived from Apostolic preaching as well as the great number of decisions delivered by the pope and the councils. Canonical laws were regarded as the expressions of the mind of Rome. For the case of usury, Rome drew upon biblical sources, writings of early Fathers as well as decrees of previous councils to develop its teachings. These texts by themselves were not authoritative and did not constitute Christian tradition; instead, doctrines derived their power from the pronouncements of the Church, which alone could interpret and declare the meaning of these sources. The sole concern for theologians and canonists at each stage was to understand and build upon teachings of ecclesiastical authority.<sup>4</sup>

In the early period before scholasticism, usury was regarded as a transgression of divine law and was part of the wrongs categorized as *turpe lucrum*, or dishonest and shameful dealings. Since most borrowing was by the poor, usury was a sin against charity and was incompatible with Christian love as it made them more wretched. This was in connection with, and as consequence-oriented as, the Hebraic tradition of viewing usury as principally the exploitation of the weak by the strong, in part because of the Church's use of Old Testament references to justify a ban on usury. For the Jews, avoiding usury was a tradition founded upon the basis of a shared Peoplehood. Usury by its nature was opposed to the spirit of brotherly love within the group and came to be seen as one of the worst sins.<sup>5</sup>

Specifically, there are three instances in the Jewish legal code, the Torah, which prohibit usury:

*The Church and Economic Activity in the Middle Ages*, (Macmillan 1969), pp. 50, 63-4; J. Le Goff, *Your Money or Your Life*, (Zone Books 1990), p. 70.

<sup>4</sup> W. Collins, "The Nature and Force of the Canon Law", *The Church Historical Society*, Vol. 6, No. XXXIV (1898); J. Noonan, *The Scholastic Analysis of Usury*, (Harvard 1957), pp. 11-12.

<sup>5</sup> P. Cleary, *The Church and Usury*, (M.H. Gill & Son, 1914), pp. 3, 8; R. Latouche, *The Birth of Western Economy: Economic Aspects of the Dark Ages*, (Methuen & Co. 1961), p. 52; M. Perlman, "Looking for ourselves in the mirror of our past: With what does economics cope? And the differences in the Jewish and Christian rationales for handling usury", in B. Price, (ed.), *Ancient Economic Thought*, Vol. 1, (Routledge 1997), pp. 61-75.

1. "If thou lend money to any of my people, even to the poor with thee, thou shalt not be to him as creditor, neither shall you lay upon him interest." (Exodus 22:24)

2. "And if thy brother be waxen poor... Take thou no interest of him or increase... Thou shalt not give him money upon interest, nor give him any victuals for increase." (Leviticus 25:35-7)

3. "Thou shalt not lend upon interest to thy brother; interest of money, interest of victuals, interest of anything that is lent upon interest. Unto a foreigner thou mayest lend upon interest; but unto thy brother thou shalt not lend upon interest; that the Lord thy God may bless thee in all that thou putteth thy hand unto, in the land thou goest in to possess it." (Deuteronomy 23:20)

Evidently, the Hebraic principles of the prohibition are two-fold: firstly, the ideal of charity, especially to the poor; and secondly, the drawing of a distinction between peoples, that is, charity in the context of kin selection. Similarly, the Church held that "it was contrary to mercy and humanity to demand interest from a poor and needy man", and in 306 forbade usury by clergy and laity. Yet the oldest exception in the canon law was the taking of usury from non-Christians utilizing the same kin selection principle of the Old Testament in favouring Christian brotherhood.<sup>6</sup> However, later clergymen argued that since a Christian ought not to desire harm on anyone, so no one was an enemy and usury was forbidden from all.<sup>7</sup> The use of natural law arguments in scholasticism would also have the same effect.

The Council of Nicaea (325), taking as its text Psalm 14, which said those who put out their money to usury would not dwell in the tabernacle of the Lord, was the first to condemn usury by clerics. It ruled that clergymen who demanded profits from loans would lose their orders. This law was probably in response to bishops taking usury and came after the first legislative enactment by the Council of Elvira in 305-6. A decree by Pope Leo the Great (440-461) forbade clerics to take usury and declared that laity who did so were guilty of *turpe lucrum*. Minor

<sup>6</sup> J. Mundy, *Europe in the High Middle Ages*, 3rd ed., (Longman 2000), p. 110.

<sup>7</sup> J. Noonan, *The Scholastic Analysis of Usury*, (Harvard 1957), pp. 101-2.

denunciations were regular and continued right up to the tenth century, with increasing citations of Old Testament texts. However, this period of development in the canon law and moral theology of usury was primitive and generated little interest within the Church beyond regarding it as an uncharitable act.<sup>8</sup>

From about 1050, with growing commerce around Europe, Rome began to take a more systematic look at the issue of usury, as it was beginning to be clear that commercial loans did not come under the auspices of the principle of charity. One of the earliest medieval canonists to suggest that usury was instead a sin against justice was Anselm of Canterbury (1033-1109), who likened usury to robbery. His disciple, Anselm of Lucca, regarded usury as stealing and demanded restitution as a corrective to the losses suffered by the borrower. The basis of such a view was the writings of earlier Fathers, such as Augustine, on justice and restitution which quickly became Church orthodoxy. The Second Lateran Council (1139) was the first explicit and infallible decree of universal prohibition, and it used texts from both Old and New Testaments. Twenty years later, Gratian's collection of canons, which was to become the legal textbook of the Church until 1917, included usury as a specific topic, thus formalizing Church opinions up to that point. Stronger decrees were issued in the twelfth century by Alexander III (1159-81), who reasoned that usury was a crime and not just a matter of ecclesiastical rule, and so was to be punished with excommunication and denial of Christian burial. A step further was taken by Urban III (1185-7) who was the first to quote Christ's words ("Lend hoping for nothing in return", Luke 6:35) in support of the prohibition. This text was to serve as the absolute divine proscription against gaining from loans.<sup>9</sup>

The economic background to these teachings is important. Europe in the first millennium had very high levels of indigence, for which Gregory of Nyssa blamed the usurers: if there were not such a

<sup>8</sup> P. Cleary, *The Church and Usury*, (M.H. Gill & Son 1914), pp. 42-3, 49-50; J. Noonan, *The Scholastic Analysis of Usury*, (Harvard 1957), pp. 15-17; J. Gilchrist, *The Church and Economic Activity in the Middle Ages* (Macmillan 1969), p. 155; J. Le Goff, *Your Money or Your Life* (Zone Books 1990), p. 71.

<sup>9</sup> J. Noonan, *The Scholastic Analysis of Usury*, (Harvard 1957), pp. 17-20.

multitude of usurers, there would not be such a multitude of the poor, he wrote in the fourth century. During the period under study real wages were falling, even as famines were rampant. Families were always in danger of impoverishment: in normal times, a 10-percent fall in harvest yields would cause severe suffering, while a 20-percent decline spelt starvation.<sup>10</sup> The scope of economic precariousness was evident in England, where 46 percent of tenures in the thirteenth century were for just two to four hectares, when four to six were needed to sustain a family.<sup>11</sup> Charity from those who could afford, was a necessity.

Aside from the theological grounds, the Church also relied on philosophical teachings to justify the prohibition. Such appeals to reason and commutative justice between 1150 and 1350 imply that Rome did not only have charitable intentions, since these could be satisfied simply by appealing to biblical texts.<sup>12</sup> Specifically, these extra-scriptural precepts were natural law, the right to private property as well as the character of justice. In Aristotelian thinking, natural law bound all men and none could have dispensation from it. So a case against usury based on natural law would apply to all, including clerics, laymen as well as those outside the Church, and could not be overturned by human authority. The intrinsic, invariable sinfulness of usury was thus established. The individual's right to private property as upheld by theologians meant that theft was a sin since each person had a right not have his property taken away; otherwise it would be a violation of justice, when one could expropriate what was rightfully another's. Thus, the logical requirement was reparation of damage or restitution of loss, which was quite separate from the requirement of repentance and sorrow in a misdeed against charity. Justice and natural law also had greater implications than charity: while there was an exhortation to be charitable to the poor, there were

<sup>10</sup> P. Cleary, *The Church and Usury*, (M.H. Gill & Son 1914), p. 49; M. Mollat, *The Poor in the Middle Ages*, translated by A. Goldhammer, (Yale 1986), pp. 13-37; D. Fischer, *The Great Wave: Price Revolution and the Rhythm of History*, (Oxford 1996), p. 31.

<sup>11</sup> G. Sivery, "Rural Society", in D. Abulafia (ed.), *The New Cambridge Medieval History*, Vol. V (1198-1300), (Cambridge 1999) pp. 38-49.

<sup>12</sup> J. Melitz, "Some Further Reassessment of the Scholastic Doctrine of Usury", *Kyklos* 24.3 (1971), pp. 473-92.

requirements to be just to all, since precepts of justice and natural law applied to all men.<sup>13</sup>

The best statement of the synthesis of all these threads of thinking was Aquinas', who argued that, due to its very nature, money did not bear fruit and that its value laid in its use. That is, money was a consumption good whose use and substance were the same; it was also formally sterile and merely a measure, in that, where it was consumed, it was alienated from its possessor by being spent in exchange for a good of equal worth. Following Aristotle, as it was unnatural for a sterile good to yield fruit, so it was unnatural for money in loans to produce gains. Usury would also violate justice and the right to private property because the borrower had received something sterile and ought not to have to give up his property for it. By classifying usury as a sin against justice, the scholastics ruled that, apart from minors and widows, who were permitted to lend their inheritance out at interest, no *persons* could be exempted, even though many *contracts* were placed outside the ban.<sup>14</sup> However, these condemnations should also be seen in the light of clerical disdain for all worldly possessions, of which disapproval of usury was the most spectacular.<sup>15</sup>

The use of both theological and philosophical arguments against usury indicates that, while the prohibition emerged from the principle of charity espoused by the early Church, the more elaborate scholastic doctrine surrounding it originated from natural law and preoccupations with the principle of justice. The later developments, and the moral obligations they dictated, enveloped all the faithful, even as canon rules concurrently exempted many contracts. The exceptions were certain types of transactions, not certain classes of people, although the penalties faced by usurious clergymen were harsher than those for lay persons since, in addition to excommunication, they would also lose their religious

<sup>13</sup> J. Noonan, *The Scholastic Analysis of Usury*, (Harvard 1957), pp. 21-30.

<sup>14</sup> J. Noonan, *The Scholastic Analysis of Usury*, (Harvard 1957), pp. 50-7; J. Le Goff, *Your Money or Your Life*, (Zone Books 1990), p. 28; J. Mundy, *Europe in the High Middle Ages*, (Longman 2000), p. 111; E. S. Tan, "An Empty Shell? Rethinking the Usury Laws in Medieval Europe", *Journal of Legal History*, Vol. 23, No. 3 (2002), December, pp. 177-96.

<sup>15</sup> R. Latouche, *The Birth of Western Economy: Economic Aspects of the Dark Ages*, (Methuen & Co. 1961), p. 51-2.

positions. It is important to note that, while the Church employed the principle of justice as a reason for the ban in the later period, it did not negate the significance of charity in the issue. Indeed, charity as an imperative to lend gratuitously was indirectly emphasized in Rome's soteriology, or theology of salvation. The Church taught that salvation was earned, in part, through the accumulation of good works, of which lending freely was one. This was, of course, in accordance with teachings about purgatory for the contrite deceased, whose scoreboard of good works left much to be desired. As much as taking usury was a sin, so non-usurious lending was meritorious.

### **3. Rome's Economic Gains from the Prohibition**

The hypothesis that the Church used the usury doctrines as a means to further its own interests has been advanced, earlier by Marx, and recently by some economic historians. Marx argues that, without the proscriptions against interest, Rome and its monasteries would not have had their wealth.<sup>16</sup>

Although modern economic historians, in particular Ekelund *et. al.*, "do not assert that the medieval Church invented the doctrine of usury...for its economic gain", they nevertheless argue that it "framed and altered the doctrine to suit its institutional interests during the Middle Ages".<sup>17</sup> Using a rational and public-choice model, they argue that Rome acted as a monopolist in lending, but as a monopsonist in borrowing. By suppressing usury, the Church, as a lender to clerics who had to pay taxes to the papacy, was able to shadow-price these loans and extract rents; and as a borrower, it was able to obtain credit cheaply. They refer to documents indicating that clergymen often had to borrow from papal bankers to make the required payments to the Church, as well as the preferential rate of interest enjoyed by the papacy. Even as the Medici

<sup>16</sup> K. Marx, *Capital*, Vol. III, (Penguin 1981), p. 748.

See Herman, S. (1993), *Medieval Usury and the Commercialization of Feudal Bonds*, (Duncker & Humblot), p. 14.

<sup>17</sup> Ekelund, R., Hebert, R., Tollison, R., Anderson, G. & A. Davidson, *Sacred Trust: The Medieval Church as an Economic Firm*, (Oxford 1996), pp. 117, 128.

Bank paid 5-10 percent on deposits in the fifteenth century, Rome was borrowing at mere rates of between 2.3 and 6.6 percent.<sup>18</sup>

There is some evidence for the hypothesis of the self-interested Church in outlawing usury, but not that presented by the proponents of the above model. Within the papal financial structure, taxes on benefices and clerical incomes were collected by agents, who kept them in monasteries for safekeeping until the funds were moved to bankers appointed by the Pope, such as the Medicis. These bankers took all the risks involved in transporting the funds to Rome, including shipwreck and robbery, and in cases where they could hold them in deposits temporarily, profits could be made by investing the capital in enterprises. The specie itself was, on occasion, brought to Rome or the transfers were made via bills of exchange.<sup>19</sup> Under the legal specifics of the usury prohibition,<sup>20</sup> risk was at times a title to interest and the bill of exchange was a licit contract, so profits made by the papal bankers were, indeed, legitimate. Moreover, lending to clerics who were cash-strapped and had to pay papal dues was carried out by the bankers, not the papacy itself. While the banking houses were closely associated with Rome, the two were not the same thing. The bankers had various titles with which to charge interest on loans to clerics, including risk and *lucrum cessans*, which the Church did not have, hence these transactions were not usurious.

This, then, begs the question as to why the papacy did not itself lend to its own clergy and instead relied on appointed bankers. A look at the Church's financial structure in the early Middle Ages points to an answer. Before the second half of the twelfth century, Rome did not have a systematic way of assessing and collecting dues, as it relied mostly on estate revenues and occasionally commissioned special agents to gather revenue. It was only from the mid-fourteenth century, after more than 150 years of development, that the papacy had a financial bureaucracy in which tenured

<sup>18</sup> Ekelund, R., Hebert, R., Tollison, R., Anderson, G. & A. Davidson, *Sacred Trust: The Medieval Church as an Economic Firm*, (Oxford 1996), pp. 113-30.

<sup>19</sup> W. Lunt, "The Financial System of the Mediaeval Papacy in the Light of Recent Literature", *Quarterly Journal of Economics* Vol. 23, No. 2 (1909), pp. 251-95.

<sup>20</sup> E. S. Tan, "An Empty Shell? Rethinking the Usury Laws in Medieval Europe", *Journal of Legal History*, Vol. 23, No. 3 (2002), December, pp. 177-96.

collectors and banking houses played important roles.<sup>21</sup> Therefore, since the Church received its revenues in large arrears during most of the medieval period, extending credit to its own clergy under such circumstances was difficult. More importantly, since clerics – and the Church itself – were forbidden from lending for gain, any papal loans to priests had to be entirely gratuitous in principle, because Rome could only charge interest on late payments. Indeed, William of Auxerre, who argued that penalties were reasonable and proportional to the costs incurred, justified those gains from lending by thirteenth-century popes and cardinals as disciplinary penalties.<sup>22</sup> However, gratuitous extensions of credit to clergymen, who owed the organization funds in arrears, would have created a huge moral hazard problem as priests would subsequently have felt less need to be scrupulous in making timely payments of papal taxes.

The use of banking houses that could legally levy higher borrowing costs on clergy would, on the other hand, ensure that papal dues were paid, collected and received regularly by Rome. The Church therefore shifted most of the problems of financial delinquency onto the bankers. Moreover, it aided the whole process with threats of harsh treatment of clergymen who could not repay loans taken from papal bankers. Pope Urban IV (1261-4) threatened bishops who defaulted with excommunication.<sup>23</sup> These were not mere words: Hubert, Bishop of Limerick (1223-50), was excommunicated and had to have his debt restructured when he became insolvent.<sup>24</sup> In short, the proscription on usury did not appear to have helped the Church gain from lending to clergymen, since loans were undertaken by professional bankers.

As for the argument that the Church gained from the usury prohibition by enjoying preferential interest rates in its borrowing, Ekelund *et al.* have pointed to Rome paying less for loans in the fifteenth century than the capital costs in deposits incurred by the Medicis. This does not

<sup>21</sup> W. Lunt, "The Financial System of the Mediaeval Papacy in the Light of Recent Literature", *Quarterly Journal of Economics* Vol. 23, No. 2 (1909), pp. 251-95.

<sup>22</sup> J. Noonan, *The Scholastic Analysis of Usury*, (Harvard 1957), p. 109.

<sup>23</sup> Ekelund, R., Hebert, R., Tollison, R., Anderson, G. & A. Davidson, *Sacred Trust: The Medieval Church as an Economic Firm*, (Oxford 1996), p. 120.

<sup>24</sup> J. Gilchrist, *The Church and Economic Activity in the Middle Ages*, (Macmillan 1969), p. 107.

necessarily indicate that the Church had preferential treatment stemming from the usury ban, since the interest rate could have been low, as the result of bankers holding papal funds in other parts of Europe for which they did not receive deposit interest. Hence, the loans to Rome were offset by capital not yet brought to Italy; the costs paid by the papacy were in large part the costs for transfers and foreign exchange services, rather than for credit. Furthermore, it was not altogether clear that the Church obtained better borrowing terms than other borrowers of the same category. The state also had similarly low interest costs in long-term debt: Florentine public debt was at 5 percent by the end of the fourteenth century; in Venice, 5-8 percent was paid on government bonds in the thirteenth century.<sup>25</sup>

The cheaper loans could have been the result of the comparative advantage in borrowing enjoyed by large organizations over smaller ones, rather than the consequence of the usury prohibition. Still, it will be argued later that the actual interest rate paid by the Church might be lower than available figures suggest, once reparation to Rome is considered.

The historical record in ways different from those mentioned does show that the Church advanced, or made use of, the prohibition when it suited its economic needs. The flurry of anti-usury pronouncements between 1150 and 1250 came at a time of severe financial crises for the papacy. Expanding political and ecclesiastical concerns, including the crusades of the early thirteenth century, coupled with an undeveloped financial bureaucracy, forced popes to borrow heavily during the period that they were actively suppressing usury. For instance, Alexander III contracted many loans during his papacy,<sup>26</sup> while during his pontificate, the Third Lateran Council imposed in 1179 the harshest punishment yet on manifest usurers, banishing them from communion and denying them Christian burial.<sup>27</sup> However, it should be noted that virtually all of the Church's lenders were banking houses and high financiers, who were entitled to take interest under the various exceptions. In other words, even as Rome toughened its stance against usury, the prohibition did not

<sup>25</sup> S. Homer and R. Sylla, *A History of Interest Rates*, 3rd edn., (Rutgers 1996), pp. 95-103.

<sup>26</sup> W. Lunt, "The Financial System of the Mediaeval Papacy in the Light of Recent Literature", *Quarterly Journal of Economics* Vol. 23, No. 2 (1909), pp. 251-95.

in principle strengthen its position vis-à-vis its lenders. What the ban could have achieved was an indirect benefit in the increase of the capital available for Church and state borrowing, and hence lower interest rates, since some lenders might prefer papal and government loans to other circumstances in which they were compelled to lend freely.

The Church's more relaxed attitude toward usury, as seen in its approval of the *monte di pieta* (a public not-for-profit pawnshop financed by charitable donations), at the close of the scholastic period was in part due to its reduced dependence on loans. By this time, the papal financial structure was highly professional, organized and efficient, freeing Rome from the need to borrow extensively as well as from the impetus to suppress usury with the zeal it previously had shown. Since the prohibition was a public good, in that states and other borrowers benefited from controls on interest rates, it is unsurprising that when Rome began to yield ground to usurers, many states took up the burden of enforcing the ban, in effect participating in the provision of the suppression. For example, London, which passed a comprehensive enactment in 1460, when the Church was beginning to accept the *monte*, had the reputation of being better enforcers of the prohibition than ecclesiastical judges by this time.<sup>28</sup>

One of Rome's objectives in strengthening its stance during the scholastic era was the usefulness of forgiveness for Christians when the time to fight infidels came. It was probably no coincidence that the hardening of its position intensified during the time of the Crusades, most of which occurred during the period under study. Rome found it useful to raise armies through dispensing with restitution for those usurers who would volunteer to fight for the Holy Land.<sup>29</sup>

The strongest evidence that the Church was manipulating later rules on usury according to its economic interests was from the practice of making *incerta*, or indirect restitution and inquisition payments. Restitution was first ordered by the Synod of Pavia in 850. Usurers were required to make full amends to their victims, if living, or otherwise reinstate half of the gains to the heirs. Restitution was deemed to be a

<sup>27</sup> J. Gilchrist, *The Church and Economic Activity in the Middle Ages*, (Macmillan 1969), p. 173.

<sup>28</sup> W. Cunningham, *Christian Opinion on Usury*, (Macmillan 1884), pp. 45-6.

penalty, but such a conception changed two hundred years later when Anselm of Lucca demanded restitution of usury as stolen property,<sup>30</sup> endowing upon the act the characteristic of corrective justice. Reinstating the losses of others must also be complete: the Church taught that “the usurer’s only chance for salvation, since *all* his gain was ill-acquired, was to make *total restitution* of what he had earned”.<sup>31</sup> As it was only public usurers who were prosecuted, they were the only ones openly forced to make restitution, while inducement of private usurers was left to the performance of penance. *Certae* usury was restored directly to the actual victims or their heirs, while in instances where victims could not be identified, restitution for *incerta* usury – the level of which the bishop had the right to decide – was to be given to “the poor”, represented by ecclesiastical, especially monastic, foundations. Regardless of the method of conviction (either through external-judiciary or internal-confessional forums), *incerta* restitution spelt easy money for Rome. Thirteenth-century popes were known to set up *incerta* reparation from prominent *religiosi*, even their financiers, by arranging the level of payment, the appropriate pardons as well as the assignment of funds to various bodies.<sup>32</sup>

It is uncertain how often such forced reparations took place. But as a means to “claw back” some funds paid to the Church’s lenders, they imply that the growth of the rules on restitution (between 1139 and 1311) was used to reduce the real interest rates paid by the papacy. There were “hundreds of stories” during the late Middle Ages about clerics who manipulated the rules on *incerta* restitution to divert reparation from genuine victims to financing church construction projects.<sup>33</sup> Similarly, Church inquisitors were known to extort large sums of money from known usurers as immunity from interrogation. For example, the

<sup>29</sup> Ekelund, R., Hebert, R., Tollison, R., Anderson, G. & A. Davidson, *Sacred Trust: The Medieval Church as an Economic Firm*, (Oxford 1996), pp. 120-1.

<sup>30</sup> J. Noonan, *The Scholastic Analysis of Usury*, (Harvard 1957), pp. 16-17.

<sup>31</sup> J. Le Goff, *Your Money or Life*, (Zone Books 1990), p. 43, italics in original

<sup>32</sup> B. Nelson, “Religion: The Usurer and the Merchant Prince: Italian Businessmen and the Ecclesiastical Law of Restitution, 1100-1550”, *The Journal of Economic History*, Vol. 7, Supplement: Economic Growth: A Symposium, (1947), pp. 104-22.

<sup>33</sup> B. Nelson, “Religion: The Usurer and the Merchant Prince: Italian Businessmen and the Ecclesiastical Law of Restitution, 1100-1550”, *The Journal of Economic History*, Vol. 7, Supplement: Economic Growth: A Symposium, (1947), pp. 104-22.

Inquisitor of Florence, Fra Piero d'Aquila was known to have accumulated more than 7,000 florins between 1344 and 1346 from such extortions.<sup>34</sup> However, as it was widely known that stolen goods could not qualify as restitution or exemptions from inquisitions,<sup>35</sup> there was a limit to what the Church could extract from the usurers in exchange for absolution.

While the self-interest hypothesis explains certain aspects of the historical development of the usury laws, it is inadequate as an overall explanation of the prohibition. The rational-choice model has to be compared to two counterfactuals in order to establish its relative explanatory power. The first counterfactual is the absence of the usury ban: if the prohibition was developed and retained by the Church to obtain gains, then in its absence Rome would have made losses. The second is the alternative means through which the Church could have obtained the same gains that it got under the prohibition: a self-interested organization would persist with the usury laws only if the alternative means to achieving the same objectives were more costly. Otherwise, the Church would have preferred the alternative.

In many ways, self-interest was plainly not the concern of canonists and theologians who formulated the rules, since there is evidence that the proscription ran counter to some economic interests of the Church. For instance, it was the monasteries that suffered most from Alexander III's order to convert mortgages, which did not count the fruits of the property toward the repayment of the principal, into contracts that did. Furthermore, the papacy, individual benefices and monasteries were well-endowed and were in fact net lenders to parties outside the Church.<sup>36</sup> Although some clergymen, such as bishops in fourteenth-century Tuscany,<sup>37</sup> were said to have lent at interest, it is difficult to judge if these transactions were licit under certain titles or were usurious. That the papal bankers did not usually pay interest on the deposits held on behalf of the Church indicates that the opportunity cost of the capital gains was high and that Rome could have stood to gain more without the usury ban.

<sup>34</sup> H. Lea, "The ecclesiastical treatment of usury", *Yale Review*, Feb (1894), pp. 356-85.

<sup>35</sup> M. Mollat, *The Poor in the Middle Ages*, translated by A. Goldhammer, (Yale 1986), p. 133.

<sup>36</sup> J. Noonan, *The Scholastic Analysis of Usury*, (Harvard 1957), p. 14.

<sup>37</sup> H. Lea, "The ecclesiastical treatment of usury", *Yale Review*, Feb (1894), pp. 356-85.

The actual costs incurred in maintaining the institutions supporting the ban should also be taken into account, although they are by nature difficult to estimate. There were costs in creating, modifying and using the enforcement mechanisms: the development of procedural law with regards to prosecuting public usurers, the trials in the ecclesiastical courts, as well as the monitoring and punishment carried out in the confessional; all had costs for the Church. To be sure, the institutions of the church judiciary and confessional were created and used for other purposes, such that the relevant institutional costs of enforcement were the marginal costs involved. Nevertheless, the expenditures of the Church in this department meant that supposed profits from the usury laws need to be offset by the costs incurred, and consequently, they imply that Rome could not have gained as much, and so the self-interest impetus was not as strong, as was previously reckoned.

The second counterfactual deals with alternative rules through which the Church could have received greater gains. Gilchrist argues that the Church was not acting out of selfish motives, since it would have been easier to sanction limited forms of usury, instead of the blanket ban. Moreover, the clergy had been forbidden to commit usury centuries before the proscription was extended to laymen.<sup>38</sup> As mentioned previously, canon regulations set certain transactions outside the writ of the prohibition, but did not exempt groups of individuals. A self-interested Church would have permitted special classes of people, especially its members, to practise usury; instead it was the state that licensed selected moneylenders and protected them from ecclesiastical courts, and those who faced the greatest punishments were the clergymen who took usury.

A different shape of canon laws against usury would also have brought the Church higher gains. Canon rule formation was premised on determining if the transaction was a contract (involving services, as in the bill of exchange, or investment, as in the *societas*) or a straight loan, using the criteria of risk, ownership and liability. While gains from contracting were legitimate, profits from straight loans that were not

<sup>38</sup> J. Gilchrist, *The Church and Economic Activity in the Middle Ages*, (Macmillan 1969), p. 63.

justified under the titles to interest were usurious. A contract, such as the sea loan, was condemned as a mere cloak for the straight loan if evasion was evident.<sup>39</sup> A fully self-interested, rational Church would have adopted different principles of rule formation to better further its economic interests. For example, decreeing that deposit lending by charitable organizations was entitled to interest, because of the services and labour rendered by their members, would have benefited the Church immensely. The legitimacy of deposit interest was instead determined by the ultimate use of those deposits. Rome could also have adopted the rule that since usury was a sin against charity, income from lending used for charitable, noncommercial purposes would be a greater good and would not count as a misdeed against charity. The largest beneficiaries of such a decree would, of course, have been the monasteries. Furthermore, if indeed the Church were pursuing its economic interests when developing the laws, it would have noticed and understood that papal and council rulings influenced the contractual choice of merchants through the reduced popularity of contracts deemed illicit.<sup>40</sup> Outlawing a transaction, perhaps in order to sell absolution or to extract restitution, would have been counterproductive in many cases where usage of the contract later declined. In short, canon law would have taken on a wholly different form under a Church keen only on advancing its economic interests. In conclusion, although the rational-choice model elucidates certain aspects of the prohibition, as well as a few historical events surrounding the ban, it is too general and too sweeping to be the sole explanation for the evolution and complex shape of the usury laws.

#### **4. The Church's Anti-Semitic Attitude**

Apart from considerations of theology, legal philosophy and self-interest, other reasons have been put forward to account for the shape of scholastic thinking on usury. One was the papal concern that usury

<sup>39</sup> E. S. Tan, "An Empty Shell? Rethinking the Usury Laws in Medieval Europe", *Journal of Legal History*, Vol. 23, No. 3 (2002), December, pp. 177-96.

<sup>40</sup> E. S. Tan, "An Empty Shell? Rethinking the Usury Laws in Medieval Europe", *Journal of Legal History*, Vol. 23, No. 3 (2002), December, pp. 177-96.

would divert investment away from agriculture. This reason was offered by Pope Innocent IV (1243-54) who viewed usury as a social evil because it prompted the rich to divert resources from agriculture to lending activities, thus leaving the poor to farm and invest in agriculture. The ultimate result would be low productivity in the countryside and threats of famine.<sup>41</sup> Despite the ban on usury, investment in the countryside did not increase during this period. For example, in England, agricultural investment was not forthcoming and what little was invested was investment in the extension of cultivation and the replacement of depreciated resources rather than technical innovation.<sup>42</sup> The Church could not have been ignorant of the failure of the ban to lead to higher investment and was unlikely to have continued with its anti-usury stance on this basis.

An important motivation over this period was the increasing anti-Semitic attitudes of the Church from the late twelfth century. Although moneylenders were not all Jewish, the trade had become increasingly associated with the Jews, as they were forbidden to own land and to engage in many professions.<sup>43</sup> "They became and remained...capitalists and moneylenders, and this alone, in a society without an understanding of the function and manipulation of money as capital, would have inspired distrust and envy."<sup>44</sup>

The clergy had frequently demanded that secular authorities freed Christians from what they saw to be the oppression of the Jewish moneylenders and to some extent even destroyed the sense of obligation to pay debts owed to Jews.<sup>45</sup> Throughout the early part of the scholastic period, the increasing intensity of the Church's anti-usury pronouncements in the Lateran Councils came alongside orders to distinguish Christians from those outside the religion, especially since Jews were, outside the

<sup>41</sup> J. Noonan, *The Scholastic Analysis of Usury*, (Harvard, 1957), p. 49.

<sup>42</sup> M. Postan, *Medieval Economy and Society*, (London 1972), pp. 42-4.

<sup>43</sup> L. Little, *Religious Poverty and the Profit Economy in Medieval Europe*, (Paul Elek 1978), pp. 42-5.

<sup>44</sup> Knowles, D. and D. Obolensky, "The Middle Ages", *The Christian Centuries*, Vol. II, (Darton, Longman & Todd, 1969), p. 380.

<sup>45</sup> S. Grayzel, *The Church and the Jews in the Thirteenth Century*, revised ed., (Hermon Press 1966), pp. 41, 48

jurisdiction of the Church courts. The more intense condemnations were therefore, not just in reaction to rising usurious activities, but also to stamp them out among those who ought to have known better. There was a view of Christian usurers as being “worse than the Jews”, since Semites themselves did not take usury of their brothers. Such an attitude was evident in Pope Honorius III (1216-27) who, when granting a privilege to a Jew, had based his decision on the fact that the Jewish man had not practised usury.<sup>46</sup> Hence, the Church during this time had sought, not just to separate its flock from practitioners of other religions, but had also used usury as a negative behavioural signal to distinguish the faithful from the rest.

## 5. Conclusions

This article has shown that, as the usury laws took centuries to develop, their origins were many and different at each juncture. The historical record indicates that the early Church outlawed usury out of compassion for the borrowing poor and to prevent their slide into perpetual bondage to their creditors. This principle of charity was in accordance with the Hebraic tradition as both were based on the same biblical texts. While the prohibition might have originated from charitable intentions, its later characteristics did not come from them. This can be seen from the additional authorities appealed to by the Church, as well as the fact that charity as a principle neither helped distinguish between a contract and a straight loan, nor explained the shape taken by later rulings. The universality, exceptions and titles to interest arose from the principle of justice that was founded upon philosophical arguments. While Rome’s motivation to advance its economic interests and its increasingly anti-Semitic tone are inadequate as general explanations for the origins of the usury laws, they do elucidate to some extent the timing of the Church’s hardening stance during the twelfth and thirteenth centuries.

<sup>46</sup> S. Grayzel, *The Church and the Jews in the Thirteenth Century*, revised ed., (Hermon Press 1966), p. 41; J. Le Goff, *Your Money or Your Life*, (Zone Books 1990), pp. 37-8.

## REFERENCES

- CLEARY, P., *The Church and Usury*, (M.H.Gill & Son 1914).
- GILCHRIST, J., *The Church and Economic Activity in the Middle Ages*, (Macmillan 1969).
- LATOUCHE, R., *The Birth of Western Economy: Economic Aspects of the Dark Ages*, (Meuthen & Co. 1961).
- LE GOFF, J., *Your Money or Your Life*, (Zone Books 1990).
- MELITZ, J., "Some further Reassessment of the Scholastic doctrine of Usury", *Kyklos*, Vol. 24, No.3, (1971), pp.473-492.
- MOLLAT, M., *The Poor in the Middle Ages*, translated by A. Goldhammer, (Yale 1986).
- MUNDY, J., *Europe in the High Middle Ages*, 3<sup>rd</sup> ed., (Longman 200).
- NOONAN, J., *The scholastic Analysis of Usury*, (Harvard 1957).
- POSTAN, M., *Medieval Economy and Society*, (London 1972).
- TAN, E.S., "An empty shell? Rethinking the Usury Laws in Medieval Europe", *Journal of Legal History*, Vol. 23, No. 3 (2002), December, pp.177-96.