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THE

ETHICS OF INTEREST.

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The Ethics of Interest.*

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The question to be discussed in this pamphlet is whether or no it is morally right for a lender of money to demand that the borrower shall pay him something for the loan. That lenders should make this demand has, of course, been a common practice for centuries, as it is to-day. But the mere fact that this has been the practice does not prove that it is morally right; indeed the Catholic Church and her theologians have in the past condemned certain money-lending practices most unequivocally. On the other hand it is undeniable that many Catholics to-day demand and receive interest on money lent without in any way falling under the censure of the Church. Hasty critics have sometimes concluded from this fact that the Church has changed her principles in this matter, some congratulating her on moving with the times, others reproaching her with yielding to the spirit of the commercial world. In consequence, it is impossible to confine our discussion to the ethical principles at stake; a brief account must also be given of ecclesiastical legislation in the matter and of the teaching of Catholic moralists at least from the time of St. Thomas Aquinas in the 13th century.

ECCLESIASTICAL LEGISLATION.

In 1917 appeared the Code of Canon Law, compiled by order of Pope Pius X and promulgated by

* A lecture delivered at the C.S.G. Summer School, 1926.

Pope Benedict XV. Canon 1543 reads as follows:

> If a fungible thing is given to someone in such a way that it becomes his and that later something of the same kind and amount is to be returned, no profit can be taken on the ground of this contract; but in lending a fungible thing it is not in itself illicit to contract for the payment of profit (*i.e*, interest) allowed by law, unless it is clear that this is excessive, or even for higher profit (*i.e*, interest) if a just and adequate title be present.

A "fungible" thing is one which perishes in the act of serving its natural purpose, one the natural use of which is to be used up. The natural and normal use of a loaf of bread, for instance, is to be eaten; of a cigarette, to be smoked. The loaf and the cigarette are "fungible" things. It is essential to their normal use that they should be used up: the very act of using them thus destroys them: their normal use and their destruction are identical. Not all material things, however, are fungible things. A motor-car, for instance, is not necessarily destroyed by using it. It is true that an unskilful or unlucky driver may destroy it, but that is not essential to the use of the car. The majority of cars run away and live to run another day. It is true too that in course of time even fair wear and tear will destroy the car, will wear it out; but this is not essential to the use of the car. An everlasting, imperishable car would render just as good service as a perishable one, other things being equal, whereas an imperishable cigarette or an indestructible loaf of bread would not serve their purpose of nourishing or soothing the user of them. No one can both have his cake and eat it at the same time, but one may both have a car and use it, have

a house and live in it, own a field and farm it.

The Canon Law, then, provides that if a man contracts to transfer to another the ownership of a fungible thing he cannot demand from the other party, merely on the ground of the transfer, anything over and above the exact equivalent of the thing transferred. To make such a demand would be, in the language of the mediaeval theologians, the sin of *usury*. It will be noticed that they employed that word in a sense different from that which it bears in current language to-day. For them usury did not mean excessive interest, as it does to-day, but a charge made for the transfer of a fungible thing on no other ground than that of the fact of transferring its ownership. Their reason for condemning usury will be explained later.

Let us now review similar legislation in the past. As long ago as the fourth century clerics were expressly forbidden to take usury by the Council of Arles (314) and the Council of Nicaea (325). Lay usurers were disapproved of, though not formally condemned, by the Council of Carthage (345) and the Council of Aix-la-Chapelle (789). In the ninth century the Synod of Meaux (845) ordered bishops to suppress Christian usurers. In his *Economic History*, a work of high authority, Professor Ashley states that the prohibition of usury was extended to the laity in Western Europe by the Capitularies of Charles the Great and the Councils of the ninth century.

Little more is heard of the subject till the 12th century. Ashley connects the renewed attention given to it with the revival of Roman law, which permitted the loan of money for gain. Accursius (12th century) commenting on the Roman civil law,

permitted usury, and cited Irnerius and Bulgarus, his predecessors of the 11th century, in the same sense.

On the other hand, the canonist Gratian (12th century) held it to be illicit, and the Popes Alexander III and Urban III (12th century) in their decretals forbade it. The 3rd Council of Lateran (1179) excommunicated usurers. The 2nd Council of Lyons (1274) forbade the letting of houses to foreign usurers and declared invalid the wills of usurers who died without making restitution. The Council of Vienne (1311) pronounced excommunication against those who make laws in favour of usury or who do not revoke such legislation within three months. The Council declared it heretical to hold that the trade of usury ("exercere usuras") was not a sin.

By the middle of the 14th century the prohibition of usury was incorporated in the civil law and enforced in the civil courts.

The 5th Council of Lateran (1512) defined usury as the taking of profit for the use of a sterile object lent, when no expense, labour or danger is incurred.

In 1666, Alexander VII condemned the proposition that it was licit for a lender to receive interest on the ground that he had bound himself not to ask for repayment of the principal for a fixed time.

In 1679, Innocent XI condemned two propositions on usury: (1) that a creditor could, without being guilty of usury, exact from his debtor a larger sum than he had lent on the ground that everyone attaches a higher value to money which he actually possesses than to money which he is to receive in the future: (2) that it is not usury to exact interest as due in virtue of gratitude (as distinguished from justice).

In 1745 appeared the very important letter of Pope Benedict XIV to the Bishops of Italy, called the "Vix pervenit." It forbids the lender of a fungible thing to exact from the borrower, on the mere ground of the loan, any payment over and above the return of the thing lent. It denies the validity of the following excuses:—that the charge made for the loan is moderate or even insignificant; that the borrower is a wealthy man; that the borrower is going to use the loan to increase his fortune by buying land or engaging in business. But it admits that there may be sometimes "extrinsic titles" (as to which later) for charging *interest*, though it denies that these titles are always present: and declares that sometimes charity requires that a loan be made gratuitously. Finally, it states that there are other contracts distinct from that of *mutuum* (i.e. the loan of a fungible thing) in which stipulations for annual payments or for profits are not illicit.*

During the 19th century, the Roman Congregations of the Penitentiary, the Holy Office and Propaganda, in reply to inquiries, declared on some 13 occasions that confessors were not to refuse absolution to penitents who lent money at a moderate rate of interest so long as they were prepared to obey any future decree of the Holy See that might be issued on the subject.

The subject was one that was to have been discussed at the (unfinished) Vatican Council (1869-

* The occasion of this letter was a loan floated by the city of Verona at 4 per cent. which led to much controversy. The Pope abstained from any decision on the facts, but intervened to condemn the opinion that usury could be justified on the ground that the borrower was rich or was going to use the loan productively.

1870). Three postulata were submitted asking for a definite pronouncement, especially as to whether the civil law could give the right to receive interest. One of these was signed by twenty American Bishops. Whether the next ecumenical Council will take the question up remains to be seen. In the meantime, the official doctrine is contained in Canon 1543, already cited.

THE TEACHING OF CATHOLIC MORALISTS.

(1) Usury.

The question of the lawfulness of making a charge for the loan of money was one that greatly preoccupied theologians throughout the Middle Ages. It must be clearly understood that according to them money falls into the class of "fungible" things. They argue that the chief purpose of money is to serve as a means of exchange, to be given away in exchange for something else. No doubt a coin has a certain value on account of the metal it contains, but this value is quite distinct from the value of the coin as *money*. The coin known to us as a shilling, for example, does not contain a shilling's-worth of metal, so that its value as a means of exchange (as *money*) is quite distinct from its value as metal. Similarly a bank-note considered as paper is worth very little; considered as a means of exchange it may be worth £5.

Considering money as a means of exchange, it is clear that so far as the owner of it is concerned, to use it is to use it up. He cannot both have his pound and spend it at the same time. By the very act of using it to buy something he loses it. From this point of view money is exactly like the loaf of

bread or cigarette which we have already discussed. It is a fungible thing.

Now there is this great difference between fungible and non-fungible things; the substance of a non-fungible thing can be distinguished from its utility, the substance of a fungible thing cannot be so distinguished, since the very use of a fungible thing uses it up (at least so far as the user is concerned). The owner of a house, for instance, may let it to a tenant while retaining the ownership; or he may transfer the ownership of it to another and reserve the right to use it. But the proprietor of a restaurant cannot transfer to a customer the use of a meal and retain to himself the ownership of the food used, nor a chemist transfer the use of some medicine and retain the ownership of it. In short, to transfer the use of a fungible thing is necessarily to transfer the ownership of the thing.

This being so, to charge the recipient of a fungible thing both for the substance of the thing and also for the use of the thing is to charge twice over for the same thing, which is clearly unjust, and is *usury*, in the terminology of the mediaeval theologians. If the lender of £100 charges the borrower £5 for the use of the money, making him refund £105, on no other ground than the fact of the loan, he is charging him twice for the same thing. Nominally £100 is charged for the substance of the money and £5 for the use of it, but in reality the use is inseparable from the substance. The lender of money transfers the ownership of it and consequently has no right to charge for the use of what does not belong to him.

This teaching is common ground to the mediaeval

theologians and is set out very clearly by St. Thomas Aquinas in his *Summa Theologica* (2a. 2ae. qu. 78, art. 1). The first dissentient voice was that of Calvin in the 16th century, who maintained that the use of money could be sold and who was followed in his opinion by many Protestants. On the Catholic side attempts began to be made to discredit the traditional Catholic teaching, and in the seventeenth century one Pirot, wishing to justify the loan of money to merchants in France, put forward certain theories which were condemned by Rome in 1666 and 1679 (see previous section). In 1684 an anonymous writer (probably Le Correur) while condemning usury, attempted to distinguish between money lent for the purpose of consumption and that lent for the purpose of production, denying that a charge made for the latter was usury.

A great controversy raged in France on the whole of this question of loans to merchants in the 17th century. A similar controversy went on in the Netherlands, centring round the practice of lending money to bankers, until in 1658 a decree "van de Staten van Holland" pronounced in favour of the banks. But the controversy flared up again in 1730, and was the occasion of a book of great influence by the Jansenist Broedersen (*De usuris licitis et illicitis*) favouring usury on Calvinist lines, published in 1743. Under its influence, Scipio Maffei published in 1744 *Dell' Impiego del denaro*, in which he maintained that moderate usury was not unjust, though sometimes it might be against charity. This was to abandon the traditional Catholic teaching, and called forth the letter "Vix pervenit" of Pope Benedict XIV (see previous section), which to the unprejudiced reader seems directed against

Maffei's theories. Maffei, however, in 1746 published a second edition of his book, contending that it was in harmony with the Pope's teaching, and although the Dominican Father Concina and others demanded its condemnation by Rome, no notice was taken of it by the Roman authorities, possibly on account of the long-standing personal friendship between Benedict XIV and Maffei.

During the 18th century the controversy continued in France, where the anti-usury legislation was renewed in a severer form by Louis XIV and not revoked till 1789, when the law permitted interest at 5%. A similar permission was universal in Germany by 1654. In England Elizabeth definitely abolished the prohibition of usury. (See *A Discourse upon Usury*, ed. R. H. Tawney.) In Austria, Joseph II in 1787 fixed the maximum interest permissible at 5%.

Passing to the 19th century, the most important work to notice is that of Cardinal de Luzerne, published posthumously in 1823 at Dijon. He distinguishes four schools; (1) The system of the scholastics, "the most generally received amongst the severe Doctors"; (2) The theory that a charge may rightly be made for a loan if the civil law sanctions it; (3) The opinion of Calvin; (4) The theory which distinguished between a loan to be used for production and one for "consumption." This last he adopted, though he admitted it was opposed to the traditional teaching of the scholastic moralists from the time of Gratian. He postulated four conditions to justify a charge for lending money; the borrower must be a man in easy circumstances who does not need the money for his subsistence; the money must be intended for use in

commerce or for some lucrative undertaking; the loan-contract must not be against the civil law; the charge made must be moderate and proportionate to profits and risks.

This theory met with much opposition, but was accepted by many. Some of his opponents seem to have been more papal than the Pope, and interpreted the "Vix pervenit" in the narrowest spirit possible. In consequence the laity felt conscientious difficulties in the matter of lending their money, and the replies of the Roman Congregations referred to above were called forth by these anxieties. To judge by the words of the Instruction of the Congregation of Propaganda of 1873, the object of these extremely brief replies was to set the consciences of the faithful at rest on the question of the lawfulness of receiving interest on the single ground of the permission of the civil law.

(2) Interest.

It has been mentioned above that Pope Benedict XIV, though condemning usury, permitted the lender of money to charge *interest* in certain cases. The difference between usury and interest must now be explained. Usury, as has been said, is a charge made for the loan of money on no other ground than that of the fact of the loan; interest is a charge made for the loan of money not based on the mere fact of the loan but on some other circumstance connected with the loan. These circumstances are the "extrinsic titles" to which the "Vix pervenit" alludes. The first of these titles to be recognised by theologians was called by them *damnum emergens* (loss arising out of the loan). For example, a lender who by parting with his money was hampered in the

development of his estate was permitted to charge the borrower interest by way of compensation for the damage. Then, by an easy extension of this principle of compensation, the title of *lucrum cessans* (profit ceasing) was admitted, as in the case of a merchant who lost opportunities of trading because he had lent money. He too could charge interest. Next arose the question whether the lender could make a charge in case he ran special risk of losing his capital, and it was agreed that he could, this title being known as *periculum sortis* (danger of loss of capital). Finally, in the 18th century certain writers maintained that if the civil law allowed interest to be taken no further justification was necessary, and this view is sanctioned by the Canon Law already quoted. Two arguments have been adduced to prove that the law can make the taking of interest morally right. Some authors maintain that the State simply declares that the economic conditions of the community are such that whoever lends money loses thereby an occasion to make a profit by investment in industry, so that the title of *lucrum cessans* is present for all lenders; others prefer to argue that the State is using its *altum dominium*, its right to transfer ownership when the common good requires it, for the common good demands that money should not be kept idle.

With regard to the title of *lucrum cessans* it should be borne in mind that in the Middle Ages not only might a man trade with his money but also might entrust his money to another as his agent for trading purposes. He might also go into partnership with others, each partner sharing in the profits or losses of the venture in proportion to his contribution to the joint capital; or he might purchase a

rent-charge, thus obtaining a regular income from his investment. None of these methods of using money fell under the prohibition of usury. Whoever then could prove that some such legitimate investment was open to him at the time when he agreed to lend his money was entitled to stipulate for interest to compensate him for probable profits he was foregoing, still more for profits that were certain. (Even the *probability* of profits is something that can be estimated at a price, as we see in the case of the sale of the good-will of a business.)

While usury, then, was condemned on the ground that it made the borrower pay twice over for the same thing, interest was permitted as being the just equivalent of some loss or probable loss to the lender as a consequence of his loan; thought it should be noticed that in the opinion of all Catholic authorities on this question charity may sometimes require that a loan be made free of all interest, as we saw when treating of the "Vix pervenit."

THE QUESTION OF INTEREST TO-DAY.

The replies of the Roman Congregations last century, referred to above, made it clear that the Church did not look upon the taking of interest as immoral, but in those replies no theory of the ethics of interest was expounded. It was left open to moralists to examine and discuss the reasons which justify the taking of interest as a normal practice, and various theories were put forward. In France, Claudio Janet and others maintained the thesis of Cardinal de Luzerne, that whereas in the Middle Ages money was normally lent for the purpose of buying things to be directly consumed by

the borrower, to-day it is normally lent to assist in production. This theory appears entirely unacceptable, not merely because it is in opposition to the "Vix pervenit" but also because it overlooks the fact that the use of money cannot be separated from its substance. The lender of money necessarily transfers the ownership of it, and any profits arising from its use belong to the borrower. In Italy, Ballerini, while admitting that usury is illicit, held that a charge for a loan is only usury if the lender intended to act from the motive of liberality; if his intention is to *invest* his money, he is really hiring it out and so can make a charge for the use of it. Apart from the difficulty of making the lawfulness of a charge for money depend on the subjective factor of the lender's intention, it may well be argued that Ballerini's theory does not really explain why *pure interest* is morally right, whatever may be thought of it as an explanation of the right to share in profits. In Germany, Dr. Funk and several other writers went so far as to deny the central position of the traditional Catholic thesis, *viz.*, that the use of money is inseparable from its substance. Dr. Funk admitted that he had against him the teaching of the Middle Ages and the "Vix pervenit." What has been said above about money as a fungible thing will, it is hoped, convince the reader that Dr. Funk is wrong, and Pope Benedict XIV right.

A theory which has gained favour is one first put forward in 1879 by Fr. Lehmkuhl. He admits that money is in itself sterile, *i.e.*, that its use is inseparable from its substance, and that in consequence to charge for the loan of money is usury *unless other circumstances modify the nature of money*, giving it a "quasi-fertility." But if money is used in business

it helps to produce profits, and moreover, in so far as money *represents* things, the use of which is separable from their substance (*i.e.* non-fungible things) it partakes of their nature; in either case, the use of money can be valued quite apart from its substance, and interest can be taken. In the Middle Ages the opportunities of trading were limited to a few, nor could money be said to represent normally and for all men non-fungible things, such as land or machinery, for the former rarely came into the market and the latter hardly existed. Consequently interest was permitted only in those cases in which the lender could prove the existence of one of the extrinsic titles above described. But the conditions are entirely different to-day. The development of the limited liability company has made it easy for anyone to become a partner with others in industry, sharing in the profits and the losses of the business, and land can readily be bought. He argues from this that to-day it is no longer necessary for the lender to prove an extrinsic title, because the changed social and economic circumstances have made money "quasi-fertile."

With all respect for the distinguished author of of this theory and for those who have accepted it, it does not seem entirely satisfactory. No one will deny that it is very much easier to-day to become a partner in industry than it was in the Middle Ages, though it must not be forgotten that there was a great deal of commercial activity in Italy and Flanders in the 13th century, when the traditional teaching on interest began to be clearly formulated. But it is difficult to understand how a thing can be "quasi-fertile" (or "quasi-fungible"), sterile by its very nature and yet fertile owing to circumstances.

It seems clear that the primary purpose of money, whether used in business or not, is to be a means of exchange now as in the Middle Ages; and that being so, money is always a fungible (or "sterile") thing, for the mere use of which no charge can be made. Moreover, to say that money "represents" non-fungible things appears to beg the question, which is concerned not with what money *represents* but what it is in itself. Finally, why should we seek for a new theory of interest so long as the traditional one retains all its force and applicability? That it does so will now be proved.

We have just admitted that under modern social and economic conditions it is easy for almost anyone who owns money to become a partner in industry by buying shares in a company, with every probability of making a profit if he invests with prudence in a sound concern. He becomes an ordinary shareholder, and the dividends he receives are not interest but profit.* We have seen that in the Middle Ages such a transaction was regarded as perfectly lawful from the ethical point of view. This being so, whoever lends money to another normally foregoes the profit which his money would have gained for him when invested; in other words, the title of *lucrum cessans* is normally present for every lender to-day, so that he can claim compensation in the form of interest for his loss of profit. The only difference between the position of the lender in the Middle Ages and the lender to-day is that the former had to *prove* his loss of profit, whereas the latter may normally claim that the circumstances of modern industry are such

* Debenture holders are in a different position. They are creditors of the Company.

that whenever he lends money loss of profit may be presumed without proof. Of course it is conceivable that owing to special circumstances no loss of profit is incurred by a lender (if, for instance, for some reason his only alternative to lending is to keep his money locked up in a safe); in such a case the lender could not claim interest unless some other title (such as danger of loss of the money lent) gave rise to compensation. It will be noticed that the Canon Law, which is in entire harmony with this explanation of the moral justification of interest, expressly provides that "a just and adequate title must be present."

This theory of interest is then frankly a return to the theory of the Middle Ages. It has been sustained with great ability by Dr. van Roey *(now Archbishop of Malines) and by Fr. Macksey, Professor of Ethics in the Gregorian University at Rome.† It will probably recommend itself to the reader no less by its simplicity and lucidity than by the fact that it is founded upon the principles of Pope Benedict XIV and the great theologians of the Church.

* *De Justo Auctario ex Contractu Crediti:* Louvain: 1923.

† *Argumenta Sociologica:* Rome: 1918.