

Annuities, pledges and sales with a right of repurchase: the forms of credit in the sixteenth century

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Sixteenth-century credit took a variety of legal forms, several of which made it possible to remunerate a capitalist without concluding a loan in the strict sense. The most widespread was the constituted annuity (*rente constituée*). The capitalist paid a sum to a debtor, who undertook in return to pay him an annual rent, generally secured on real property. The capitalist could not demand repayment of the capital, since only the debtor could redeem the annuity by returning the sum received. This asymmetry made it possible to regard the transaction as a purchase of income distinct from a loan, which placed it beyond the reach of the canonical prohibition.¹ Constituted annuities financed households, communities and states for centuries.

The pledge loan was another common form. The borrower handed over an object — a jewel, a garment, a tool, tableware — as security for repayment. This credit, often of small amount, served the needs of daily life and reached modest populations. It exposed borrowers to abuse, because the lender could undervalue the pledge or demand excessive terms. It was this type of credit that the Italian *monti di pietà* sought to regulate.

The sale with a right of repurchase (*vente à réméré*) made it possible to conceal a loan under the appearance of a sale. The borrower sold an asset to the lender, with the option of buying it back within a set period, at a price higher than the sale price. The difference between the two prices constituted the interest. If the borrower did not buy the asset back, the lender became its owner, often for a value well below its real worth. The magistrates therefore had to assess whether the transaction was a genuine sale or a disguised loan.

Annuities, pledges and sales with a right of repurchase

Finally, acknowledgements of debt executed before a notary could state a sum higher than the one actually handed over, the difference representing concealed interest. Sales on credit, in which the price was increased on account of the payment term, followed a comparable logic.

The task of the authorities was to identify, behind these forms, the economic reality of the transactions. Contemporary law knows a similar approach. The tax authorities and the supervisory authorities apply the principle of the primacy of economic substance over legal form, and the courts recharacterise sham contracts. Repurchase transactions in securities, by which one party sells securities while undertaking to buy them back on an agreed date and at an agreed price, are economically secured loans, and they are treated as such in prudential and accounting regulation. The sixteenth-century sale with a right of repurchase and the twenty-first-century securities repo proceed from one and the same technique.

Sixteenth-century form	Mechanism	Contemporary equivalent
Constituted annuity	purchase of an annual income, capital not repayable on demand	perpetual bond, life annuity, subordinated debt
Pledge loan	credit secured by a movable object	Lombard loan, pawn loan
Sale with right of repurchase	sale coupled with an option to buy back at a higher price	securities repo, sale and leaseback
Inflated acknowledgement of debt	interest incorporated in the stated capital	zero-coupon loan, discounting
Sale on credit at an increased price	interest incorporated in the price	supplier credit, deferred payment

1 Notes

1. Dictionnaire historique de la Suisse (DHS; Historical Dictionary of Switzerland), art. “Usure” (Gilomen, Dubler): in the Middle Ages the Church condemned any charging of interest in addition to the return of the sum lent, but in 1425 Martin V authorised annuities constituted on real property at the customary price, with a right of redemption; Dictionnaire historique de la Suisse (DHS), art. “Intérêts” (Dubler): constituted annuities tied to landed property, such as the rent charge (lettre de rente) very widespread in Switzerland, were among the forms of credit allowed by the Church; in the sixteenth century, the authorities prohibited interest in kind and imposed a rate of 5% in cash, a rate which fell to 3% in the seventeenth century. ↩

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