

In eam (1571): the exchange contract regulated

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The third codification concerned exchange. On 28 January 1571 Pius V issued the bull *In eam*, which condemned all forms of "dry" and fictitious exchange. A dry exchange (*cambio secco*) was a transaction in the form of a bill of exchange in which no money was actually transferred between places: the bill was drawn on a foreign place and immediately redrawn, so that the operation amounted to a loan at interest in the disguise of an exchange.¹ The bull followed the opinion of Cardinal Cajetan, who had condemned dry and fictitious exchange whether or not bills were actually sent abroad, because such contracts served to draw a profit from a loan disguised as exchange. Cajetan had defended this distinction in his treatise on exchange of 1499, treating the genuine *cambium* as a purchase and sale of money at different places that was subject to the rules on the just price and not to the prohibition of usury. De Roover observed that the bull did not end the controversy: it "erupted into a new paroxysm" as theologians disputed its interpretation.²

1 Borromeo's legislation and the confessor

Borromeo applied this doctrine in Milan. His provincial councils and synods included decrees against usurious contracts, against fictitious sales and annuities and against the abuse of pledges. They also required confessors to examine penitents who were merchants, money-changers or notaries on the lawfulness of their contracts.³ The confessor became an auditor of commercial conscience. A penitent who had profited from a usurious contract could not receive absolution without promising restitution, which obliged the confessor to judge whether the contract fell under one of the licit forms. Manuals for confessors, which multiplied after Trent, contained detailed sections on contracts, interest and restitution. In a society where almost everyone confessed at least once a year, at Easter, this created a decentralized system of moral supervision of credit, administered by the clergy and binding on the conscience of the lender.⁴

The later history of the doctrine can be told briefly, since it lies outside the period of this chapter. Benedict XIV's encyclical *Vix pervenit* of 1745 reasserted the scholastic condemnation of usury, but in the early nineteenth century the Roman congregations answered questions from confessors with rulings that allowed lending at the moderate rates fixed by civil law without sin.⁵ The Code of Canon Law of 1917 declared it not illicit in itself to take the legal rate of interest on a loan of fungible things, unless that rate was immoderate in itself, and allowed a higher return where a just and proportionate title supported it. The Code of 1983 no longer contains a provision on usury and treats the investment of church funds as a matter of prudent administration.⁶ What remained of the medieval doctrine in Catholic teaching is the condemnation of excessive interest that exploits the need or weakness of the borrower. Modern Swiss law contains the same principle in civil and criminal form: Art. 21 CO on unfair advantage (*lésion*), Art. 157 SCC on usury (*Wucher, usura*) and the maximum interest rate under the Consumer Credit Act, which the Federal Council has tied since July 2021 to the three-month SARON plus ten percentage points, with a floor of 10 % (12 % for overdrafts and credit cards).⁷

2 Notes

1. Thomas de Vio Cardinal Cajetan, "On Exchanging Money (1499)", transl. Patrick T. Brannan SJ, with an introduction by Raymond de Roover, *Journal of Markets & Morality* 10/1 (2007), <https://marketsandmorality.com/index.php/mandm/article/download/278/269> (Pius V "issued, on January 28, 1571, the bull *In eam* that, in line with Cajetan's opinion, explicitly condemned all forms of dry and fictitious exchange"). ↩
2. Cajetan / de Roover (as above). ↩
3. *Acta Ecclesiae Mediolanensis* (Milan 1582), decrees of the provincial councils on usury and contracts. ↩
4. Paolo Prodi, *Settimo non rubare. Furto e mercato nella storia dell'Occidente* (Bologna 2009). ↩
5. Jones, "Usury" (above). ↩
6. Code of Canon Law (1917), can. 1543, in the English translation quoted by Wikipedia (consulted as a last resort), "Usury", <https://en.wikipedia.org/wiki/Usury> ("in the loan of a fungible thing, it is not by itself illicit to reap a legal profit, unless it can be shown to be immoderate of itself, and even greater profit [can be made] if there is a just and proportionate title so supporting"). Code of Canon Law (1983), cann. 1284 § 2 and 1294 § 2. ↩

7. Swiss Code of Obligations, SR 220, Art. 21 (unfair advantage: "clear discrepancy between performance and consideration" resulting from exploitation of "straitened circumstances, inexperience or thoughtlessness"), English and Italian text as reproduced by droit-bilingue.ch, <https://www.droit-bilingue.ch/en-it/2/22/220-21-25.html>; Swiss Criminal Code, SR 311.0, Art. 157 (profiteering, custodial sentence of up to five years or monetary penalty), English text as reproduced by lawbrary.ch, <https://lawbrary.ch/law/art/STGB-v2025.01-en-art-157>. Federal Act of 23 March 2001 on Consumer Credit (CCA), SR 221.214.1, Art. 14, German and Italian text as reproduced by droit-bilingue.ch, <https://www.droit-bilingue.ch/de-it/2/22/221.214.1-14-17.html>; Ordinance of 6 November 2002 to the CCA, SR 221.214.11, Art. 1 paras 1–4 in the version of 19 May 2021, in force since 1 July 2021 (AS 2021 319), <https://www.droit-bilingue.ch/de-it/2/22/221.214.11-1-4.html> (compounded three-month SARON plus 10 percentage points, at least 10 %; for overdrafts on current accounts and credit and customer cards plus 12 points, at least 12 %; review by the Federal Department of Justice and Police at least once a year). ↩

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