

ECONOMIC RATIONALITY OR RELIGIOUS IDEALISM:
THE MEDIEVAL DOCTRINES OF THE JUST PRICE
AND THE PROHIBITION OF USURY.

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PREFACE

On completion of a study such as this, which has occupied so many hours and involved so much concentration and effort, one is inclined to be more conscious of that which has been expended than of that which has been extracted. However, it is the latter which is ultimately of far greater importance. This work has not only provided a more extensive appreciation of the workings of the medieval economy, it has necessitated a consideration of the moral and ethical aspects of economic relations, which has made of it a study at once interesting and edifying. It is a measure of the perception of my supervisor, Dr A.B. Lumby, that a topic so congenial to my taste was suggested for research.

The task of supervising post-graduate study is too often a thankless one during its course. It is, therefore, all the more obligatory to acknowledge, once it is over, the debt of gratitude owed to one's mentor. Dr Lumby has, with unflagging patience, keen insight and unfailing good humour elevated what might have become drudgery into intellectually satisfying endeavour. For this, as well as for all the more concrete assistance he has rendered, I extend most grateful thanks.

I also wish to thank the librarians of the University of Natal who have been most helpful in obtaining material, particularly through inter-library loans.

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The encouragement and support which has been unstintingly extended by my family and friends has continually brightened my way and sustained my spirits. A special thank you must also go to my mother for the financial aid which made this undertaking practicable.

Finally, I wish to express my appreciation to Mrs Connie Munro, for typing the script at my convenience rather than her own, and for doing it calmly, efficiently and accurately.

I hereby state that this thesis, unless specifically indicated to the contrary in the text, is my own original work.

Durban,
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We are like puny dwarfs perched
on the shoulders of giants....
We see more and farther than
our predecessors, not because
we have keener vision or greater
height, but because we are lifted
up and borne aloft on their
gigantic stature.

Bernard of Chartres (fl.1114-1124)

CHAPTER ONE

INTRODUCTION

Recorded European history has traditionally been divided into at least three distinct and fairly sharply divided periods: ancient, medieval and modern. Generations of historians, observing the achievements of Ancient Greece in the philosophic, scientific and artistic spheres, and the splendours of the Roman Empire in terms of military might, great feats of engineering and the creation of admirable systems of government and law, concluded that these were indubitably glorious epochs in the history of Europe. The modern age, represented by the triumphant march of technology from the first tentative reliance on navigational instruments in venturing beyond the confines of the Mediterranean to the conquest of space, has been regarded with some complacency as an era of phenomenal progress. The Middle Ages were, for many years, considered to be the rather unfortunate doldrums which intervened between two far more spectacular episodes in the story of Europe's past. The society which emerged from the ruins of the Roman Empire was thought to have been stagnant, reactionary, unproductive and remarkable for little more than the construction of magnificent cathedrals.

Modern scholarship has, fortunately, considerably revised this denigratory attitude to the achievements of medieval society. It is now recognised that the heritage of Greece and Rome was not buried until the Renaissance, but was fostered, developed and transmitted throughout the Middle Ages. It has also become obvious that the advancement occasioned by the voyages of discovery was considerably aided by the fact that they set out from a flourishing and soundly-based economic system in Europe. By the mid-fifteenth century, developments in agriculture, industry and commercial techniques had contributed to the establishment of a Europe able to take the fullest advantage of the opportunities created by expansion. The Middle Ages are now visualized as a link, rather than a hiatus, between ancient and modern Europe. It was not a time of stagnation, but a time of preservation and development. And a full appreciation of how European

society and economy have reached their present position cannot hope to be achieved unless some attempt is made to assess the contribution of the Middle Ages.

The importance of medieval studies having been recognised, considerable research has been undertaken in this field by both historians and economic historians among others. On surveying this literature it becomes apparent that an aspect of medieval life which has been regarded as having had a profound effect on the social and political development of Europe has been virtually ignored as an influence on economic development. Whether viewed from the aspect of its political and even military involvement, or from the point of view of its social, educational and cultural contribution, the Church is almost universally recognised by general historians as the supreme shaper of Europe's destiny. The work of the economic historians presents a very different picture. Demographic changes, agricultural advances, technological improvements, the rise of towns, the organization of guilds, the expansion of trade and the development of commercial and financial mechanisms, have all been focused upon and explored in considerable detail, but the role of the Church in this flurry of economic activity has been given but scant and cursory attention. The general opinion appears to be that the influence of the Church was directed towards retarding economic development, but was not particularly effective.

This attitude on the part of economic historians may in part be attributed to the influence still exerted by the theories of Weber and Tawney. The numerous and varied criticisms of the work of these two writers have chiefly been levelled at their conclusions regarding post-Reformation economic development. Their stigmatization of the medieval ideological system as essentially 'anti-capitalistic' has remained virtually unchallenged. It is now generally acknowledged that the economic forces which were ultimately to produce the capitalist system can be traced back to the late Middle Ages, but these forces are regarded as having been directly opposed to the ethos created and propagated by the medieval Church. It cannot be denied that the ideology of the Middle Ages has been replaced and that economic development both contributed to and benefited from this change. The Reformation

and the eventual triumph of classical liberalism in all probability did have a stimulating effect on economic growth, and this has led to the conclusion that similar ideological conditions are essential to the growth of a capitalist system. The economic development which did occur in the Middle Ages, therefore, is considered to have taken place in spite of and without being greatly influenced by the Church.

A specific illustration of this general attitude to the role of the medieval Church in economic affairs is the treatment of the doctrines of the just price and the prohibition of usury by historians. Because the Church has been virtually dismissed as an influential force in economic development, its economic doctrines have not been considered worthy of analysis. The traditional view of these doctrines has been reiterated so often that in the more modern texts they are scarcely found to be worthy of mention. They are considered to have been retardative in theory and of virtually no effect in practice.

The traditional view of the just price is that it was a subjective, socially determined price formulated without regard to market conditions. It was an idealistic concept promulgated by the Church with the aim of keeping the members of medieval society in their divinely-appointed stations in life. ⁽¹⁾ This idea of the just price was adopted by the writers of the German historical school in the nineteenth century on the authority of an obscure fourteenth century scholar, Henry of Langenstein. It was admirably suited to their conception of medieval society as relatively static and confined in a strictly ordered hierarchical structure. Twentieth century medieval studies have shown this conception to have been largely erroneous. Economic historians; in particular, have presented a view of a society which was far more dynamic and allowed for more social mobility than that described by nineteenth century historians. The view of the just price remains unchanged, but, because it no longer fits the modern concept of medieval society, it is dismissed as having been idealistic and well-nigh impossible to apply in practice. The possibility that a doctrine which appears to be so entirely at odds with the economic structure might have been misinterpreted does not appear to have suggested itself to the economic historians.

1. This view may be found in such general texts as: W. Ashley, *An Introduction to English Economic History and Theory* (1920), Vol. 1, Part 2, p. 391, S. B. Clough and C. W. Cole, *Economic History of Europe* (1946), pp. 31, 68. H. Heaton, *Economic History of Europe* (1936), p. 204. D. Dillard, *Economic Development of the North Atlantic Community* (1967), p. 30. This list is representative, but by no means comprehensive.

The explanation of the doctrine of the prohibition of usury which is reproduced in most general texts is that it was a blanket ban placed on the taking of interest on loans. ⁽²⁾ That this bald statement requires some qualification in view of the increase in commercial activity after the eleventh century is usually admitted. J. Bernard provided an example of a widely accepted view by writing that '...many tricks made it possible to conceal interest, and thus obey the letter of the canons but not their spirit.' ⁽³⁾ In the same vein, H. Heaton pointed out that the Church itself was a large borrower and hence was forced to 'admit exceptions' to the usury rule. ⁽⁴⁾ A commonly held opinion is that expressed by G.A.J. Hodgett - that commercial expansion between 1000 and 1350 was held back to some extent by the fact that the Church's teaching on usury became 'increasingly specific.' ⁽⁵⁾

The reasoning that the Church, by its attitude in general, and more specifically by the doctrines of the just price and the prohibition of usury, attempted, without a great deal of success, to stifle economic development, suffers from one serious flaw. It fails to take cognizance of the power which the Church exerted over the actions and the minds of the members of medieval society. This power may not have been absolute, but it was certainly a great deal stronger than many historians have been prepared to admit. Apart from a few minor exceptions, notably the Jews, to be a member of medieval society meant being a member of the Church, and this was not a token membership - it required considerable involvement. This gave the Church the ability to disseminate its doctrines, and this was augmented by its almost complete monopoly of educative facilities. Moreover, the Church not only preached its rules, it enforced them. The jurisdiction of the ecclesiastical courts was not confined to spiritual matters, and the sanctions which they had it in their power to apply were sufficiently severe to make medieval Christians decidedly chary of incurring them. It would seem,

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2. J. Bernard, 'Trade and Finance in the Middle Ages 900-1500', in *The Fontana Economic History of Europe*, Vol. I (1972). G.A.J. Hodgett, *A Social and Economic History of Medieval Europe*, (1972). H. Heaton, *op.cit.* D. Dillard *op.cit.*
 3. J. Bernard, *op.cit.*, p.311.
 4. H. Heaton, *op.cit.*, pp.191-193.
 5. G.A.J.Hodgett, *op.cit.*, p.64.

then, that had the Church been as opposed to economic development along capitalist lines as the traditional view suggests, it ought to have been a great deal more successful. In view of this, a reassessment of the role of the Church, particularly with regard to the doctrines of the just price and the prohibition of usury, is necessary.

The fact that most economic historians have dismissed the doctrines of the medieval Church as idealistic and out of touch with economic reality, and hence scarce worthy of attention, does not mean that they have been entirely ignored by modern scholars. Indeed, intensive research has been undertaken in the attempt to discover the true nature of the Church's teaching on economic affairs. The results of this research are of considerable value in the light of their relevance to medieval economic development, but this has remained unnoticed by the majority of economic historians. Part of the reason for this is that these studies have not stemmed from a desire to gain a more thorough understanding of the medieval economic system.

The doctrine of the just price has been the subject of considerable research because it has been dragged into an ideological conflict. The Marxist school of historians proposed the view that the just price embodied a labour theory of value. ⁽⁶⁾ This provoked attempts on the part of non-Marxist scholars to prove that it was nothing of the kind, but simply a market price. ⁽⁷⁾ The question at issue has not been the role of the just price in medieval economic development, but its effect on the development of economic theory. This debate reached an impasse due to the fact that both sides relied almost exclusively on the work of St Thomas Aquinas for evidence of the medieval attitude to the just price. ⁽⁸⁾ The teaching of Aquinas on this subject appears ambiguous when viewed out of context, and has been used to support the arguments of either side. The work of

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6. The most careful exposition of this thesis is to be found in S. Hagenauer, *Das 'justum pretium' bei Thomas von Aquino* (1931).
 7. To name but a few of these, B.W. Dempsey, 'Just Price in a Functional Economy', *American Economic Review*, Vol.25, September, 1935. G. O'Brien, *An Essay on Medieval Economic Teaching* (1920). R. De Roover, 'The Concept of the Just Price: Theory and Economic Policy', *Journal of Economic History*, Vol. 18, December, 1958. S. Hollander, 'On the Interpretation of the Just Price', *Kyklos*, Vol.18, No.4, 1965.
 8. Appendix C contains a brief biographical sketch of each medieval scholar mentioned in the text.

J.W. Baldwin has been valuable in placing the writings of Aquinas in context in terms of medieval scholasticism. ⁽⁹⁾ He has pointed out that there were three major groups of medieval scholars - the Roman lawyers, the canon lawyers and the theologians - and Aquinas' teaching on the just price can only be properly appreciated in relation to the work of the other medieval scholars. The conclusion which Baldwin reached was that the just price was the market price. Although this study was primarily aimed at refuting the Marxist view of the just price, it has had the effect of showing that the traditional attitude of the economic historians is equally erroneous.

Considerable information has also been made available on the development of the doctrine of the prohibition of usury. Scholars such as J.T.Noonan, B.N.Nelson, T.F. Divine and T.P.McLaughlin have provided a wealth of information on almost every aspect of this doctrine. ⁽¹⁰⁾ The foundations of the original prohibition, the increasing complexity of the doctrine as it was developed between the eleventh and the fifteenth centuries by the canonists and theologians, and even the 'tricks' whereby the law could be evaded have been examined in considerable detail. This mass of material has been gathered partly in the process of researching the origins of modern economic theories on interest and money, and partly to elucidate the development of Catholic dogma. Its importance in relation to the economic structure of medieval Europe has been largely ignored.

The re-assessments of the doctrines of the just price and the prohibition of usury have revealed that they underwent considerable modification and development during the Middle Ages. It is not unreasonable to suggest that the evolution of these doctrines not only affected the course of economic development, but was, in fact, instigated in response to economic change. While both the development of the Church's doctrines and medieval

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9. J.W. Baldwin, 'The Medieval Theories of the Just Price', *Transactions of the American Philosophical Society*, New Series, Vol.49, Part 4, 1959.
10. J.T. Noonan, *The Scholastic Analysis of Usury*(1957). B.N. Nelson, *The Idea of Usury*(1949). T.F. Divine, *Interest: An Historical and Analytical Study in Economics and Modern Ethics*(1959). T.P.McLaughlin, 'The Teaching of the Canonists on Usury (XII, XIII, and IV centuries', *Medieval Studies*, Vol. I, 1939; Vol.II, 1940.

economic development have been the subject of intensive research, the integration of these two well-documented areas of study has received but little attention. The only attempt which has so far been made in this direction is to be found in the work of J. Gilchrist.⁽¹¹⁾ This study represents an admirable breaking of ground in the hitherto largely untouched area of the role of the Church in medieval economic development. The variety of aspects which have been covered has precluded the possibility of dealing with any of one of them in much detail. The re-interpretations of the doctrines of the just price and the prohibition of usury have been given in outline and their practical application has been briefly dealt with. The scope of the study, however, did not allow for a detailed consideration of the interaction between the doctrines and medieval economic development.

The object of this study, then, is to use the work of those authorities who have re-assessed the doctrines of the just price and the prohibition of usury to demonstrate that they were far more subtle and complex than the orthodox view currently accepted by most economic historians. The teachings of the medieval scholars will be examined in detail against the background of the contemporary economic developments in order to show that they were not mere idealistic vapourings, but concrete and practical attempts to deal with economic change within the structure of medieval society while attempting to keep that system intact. The practical application of the doctrines will also be discussed in an attempt to show their influence on the course of economic development.

It must be admitted that a study of this nature is fraught with difficulties. The problem of the influence of the medieval Church on economic development involves a consideration of the interaction between ideological and socio-economic forces. This is inevitably an area in which, at best, speculative conclusions may be drawn on the basis of tenuous evidence.

11. J. Gilchrist, *The Church and Economic Activity in the Middle Ages* (1969).

There is no method whereby the influence of a mode of thought on economic development may be quantified, but it cannot be denied that such influence exists. If no cognizance is taken of it, then economic history, instead of being an attempt to understand the process of economic change, becomes merely an attempt to reduce it to statistics. If due regard is not paid to the ideological structure of Western Europe during the Middle Ages, or if that complicated arrangement is over-simplified to the point of absurdity, then the economic changes which took place during this important formative period cannot be fully understood. Studies in this area may not provide any definitive conclusions, but they can suggest more appropriate perspectives from which the available evidence may be surveyed in order to enhance understanding of that evidence.

On a more practical level, the problems inherent in any study of the Middle Ages are legion. The sketchiness and incompleteness of the data which has survived, the length of time involved, which is more than a millenium, the geographic expanse of Western Europe within which local differences abounded, are difficulties which confront every researcher in this field. These problems have, to some extent, been overcome by those who have published work in this area of study. It must always be borne in mind, however, that any statement made about 'the Middle Ages' or 'Western Europe' must be a generalization conditioned by the difficulties inherent in the research. This is not to say that there is no value in this area of research. Despite the difficulties, enough material still exists to enable the careful researcher to come to fairly reliable conclusions about this highly significant period in the development of the Western European economy and society.

Problems associated with language also confront the medieval researcher, both at the level of primary material and with regard to secondary material. Primary material exists in the form of documents written not merely in classical Latin, but in medieval Latin. For the purpose of this study, this did not present an insurmountable barrier. Eminent scholars who are in possession of all the requisite skills - notably, McLaughlin, Baldwin and Noonan - have examined, in minute detail, a wealth of original sources, many previously untranslated, on the doctrines of the Church, and have presented their findings in English. The writings

of St Thomas Aquinas, the most notable of the medieval theologians, relative to both the just price and the prohibition of usury, have been collected in translation by A.E. Monroe. ⁽¹²⁾ Without the availability of such material this work could not have been contemplated.

With regard to secondary sources, it must be noted that a considerable volume of research has been published on medieval economic history in languages other than English, notably in French and German. Detailed medieval studies, in fact, tend to be local in nature, each country's scholars tending to specialize in the area of their own nation's past. This means that general works on Western Europe must of necessity take account of all these local studies, which to a great extent makes reading of the original publications unnecessary. These broad studies have been adequate for the provision of the general historical background necessary to this work, although wider reading on more specific topics has been required to help the formulation of ideas.

The economic historiography of the Middle Ages, as it stands at present, is by no means complete. Archives replete with primary material are still awaiting examination. ⁽¹³⁾ However, the unearthing and inspection of further economic minutiae can not be expected to alter significantly the reasonably accurate picture of the mechanics of medieval economic development which has been assembled to date. Closer attention to the role of the Church - apart from its acknowledged practical significance in terms of being the greatest landowner in Western Europe, and its contribution to agricultural developments - does provide a new perspective on the changes which occurred in the economy of Western Europe during the Middle Ages. In pointing this out, and in indicating the way in which this new perspective enhances understanding of the medieval economic development of Western Europe, it is to be hoped that this study will make some contribution to the historiography of this area.

12. A.E. Monroe (ed.), *Early Economic Thought*(1924).

13. The Datini Archives in Prato, for example, contain some five hundred ledgers and account books, about three hundred deeds of partnership, insurance policies, bills of lading, bills of exchange, cheques and approximately 140 thousand letters.

CHAPTER TWO
ECONOMIC DEVELOPMENT AND ECCLESIASTICAL
REACTION: 500-1500

'The merchant can please God only with difficulty'
Jerome (c.342-419)

'In the name of God and Profit'
*Frontispiece to the great
 ledgers of Datini, Merchant
 of Prato (c.1335-1410)*

The one aspect of the traditional estimation of the doctrines of the just price and the prohibition of usury which is most prejudicial to a thorough understanding of their nature is the implication that, while the Church's teaching influenced economic development, there was scarcely any reciprocity in this relationship. The impression created by the generally accepted view is that the doctrines were immutable pronouncements, formulated in seclusion and imposed on a recalcitrant populace. This impression is sorely in need of correction. Whether the evolution of the doctrines is examined without regard to medieval economic development, or *vice versa*, a distorted picture must emerge, because comprehension of the interaction between the two is crucial to the appreciation of either. Therefore, before a re-appraisal of the doctrines and their practical application is attempted, some contextual background must be provided.

Firstly, then, this chapter will provide a chronological perspective on the millenium between 500 and 1500; the dates which, for convenience, are accepted as demarcating the 'Middle Ages'. Once this has been established, the economic developments which were of most importance in relation to the doctrines of the just price and the prohibition of usury will be discussed. This will be followed by an assessment of the extent of the medieval Church's influence on economy and society during this period. It is essential that some attention be paid to this aspect, because the mere preaching of a doctrine does not spontaneously entail either its acceptance or its enforcement. Finally, the reaction of the Church to the economic changes will be considered in general terms. Collectively, this chapter is intended to provide a framework within which the specific teachings of the Church on economic matters may be more fully appreciated.

The problem of periodization is as difficult of solution with regard to the Middle Ages as it is for any other historical era. History is a continuum which must always frustrate the attempts of researchers to divide it into neat compartments. The Ancient World, the Middle Ages and the Early Modern era are labels applied to distinctive social systems which are clearly distinguishable from each other. It is not possible, however, to define with any degree of accuracy at what point one system ended and another began. Nevertheless, although the periods of transition were both long and turbulent, there was a time, roughly between the eleventh and the thirteenth centuries, when there existed '...a distinct and extremely fascinating civilization...that we call medieval.' (1)

The transition from the ordered world of the Roman Empire, which had flourished under the *pax Romana*, to medieval civilization at its height involved upheavels of a magnitude almost sufficient to sink Western Europe into unrelieved barbarism. Convulsive population movements, notably the Germanic expansion in the fourth and fifth centuries, the Islamic incursions during the seventh and eighth centuries and the Viking raids of the ninth and tenth centuries, kept Western Europe in an almost continual state of turmoil. (2) Apart from the order imposed by Charlemagne on his empire, which did not outlast his own life-time, (3) the stable conditions which are an essential pre-requisite for civilized social and economic development were almost entirely lacking. It is not without some justification that this period of European history has been labelled the 'Dark Ages'.

After the relative stability of the high Middle Ages, the fourteenth and fifteenth centuries were again a period of insecurity and ferment. War, famine and epidemics, although never absent during the preceding three centuries, intensified to a level sufficient to wreak havoc on the population of Europe. According to C.M.Cipolla, the demographic expansion between the eleventh and the thirteenth centuries outstripped technological and productive levels. This led to an increased incidence of famine in the fourteenth

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1. S. Painter, *A History of the Middle Ages: 284-1500* (1953), p.5.
 2. G. Leff, *Medieval Thought: St Augustine to Ockham* (1958), pp.25-27.
 3. N.F.Cantor, *Medieval History: The Life and Death of a Civilization* (2nd Ed., 1969), p.211.

century.⁽⁴⁾ The concentration of population in towns which were often restricted by walls from outward expansion, together with a lack of knowledge of medical and public health care significantly increased the devastation caused by epidemics. The most catastrophic of these was the Black Death (1348-1351) which reduced the population of Europe from about 80 million to about 55 million, and established the plague in a more or less endemic form.⁽⁵⁾ The increased incidence of wars, of which the most devastating was the Hundred Years War (1337-1453), also took its toll during this period. These disasters were accompanied by, and to some extent the cause of, a pervasive decay in medieval institutions. The feudal system was beginning to crack under the pressure of rising nationalism,⁽⁶⁾ and the Church was being challenged by heretical movements which, although suppressed, were laying the foundations of the Reformation.⁽⁷⁾

The period between the eleventh and the thirteenth centuries, although never free from the problems which beset the preceding and succeeding segments of the Middle Ages, emerges distinctly as the time during which the full flowering of medieval civilization was achieved. According to G. Leff, it is during this period that:

...we can see a society that is at once stable and expanding, a society that is coherent politically, socially, and economically, a society with its own forms of law, its own culture, its own ethos, a society, in short, no longer governed by a series of fleeting makeshifts but firmly based.⁽⁸⁾

The unifying factor which created this cohesive and distinctive society from all the disparate elements of Western Europe was the medieval Church. It was the dominant institution throughout this period and wielded enough power to maintain a relatively harmonious relationship between ideological and socio-economic forces.

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4. C.M.Cipolla, *Before the Industrial Revolution: European Society and Economy, 1000-1700*(1976), p.153.
 5. *Ibid.*
 6. S. Painter, *op.cit.*, pp.365-366.
 7. *Ibid.*, p.400.
 8. G. Leff, *op.cit.*

The division of the Middle Ages into three periods, with turning-points roughly between the tenth and eleventh centuries and again between the thirteenth and fourteenth centuries, fits the broad trends in economic activity reasonably well. Without attempting to distinguish clearly between cause and effect, the observation may be made that the greatest economic expansion occurred during the period of greatest stability. During the Dark Ages, the constant threat of violent upheaval and the lack of any powerful central authority caused the contraction of society into self-contained, defensible units, thereby reducing economic interaction to a minimum. The more peaceful and settled conditions which prevailed between the eleventh and thirteenth centuries at least allowed for considerable economic expansion. This was particularly noticeable in the rise of towns and the revival of trade, industry and commerce. The fourteenth and fifteenth centuries, afflicted by plague, famine and war, were less favourable to economic expansion, although economic development, particularly in the area of commercial techniques, continued. (9)

Perhaps as convenient a starting point as any, for the history of medieval Europe, is the severance between the Eastern and Western remnants of the Roman Empire which was finalised in the seventh century. This split had the effect of uniting the Mediterranean world with the northern half of the continent under the aegis of the Roman Church. The spread of Catholic Christianity to the Franks between 496 and 506, (10) and to the kingdoms of Spain, Gaul and Britain through the missions initiated by Pope Gregory I (590-602) laid '...firm foundations...for the impressive ideological edifice of what was later to become Latin Western Europe.' (11) As yet, however, Western Europe showed little promise. As C.M. Cipolla described it:

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9. R. De Roover, 'The Organization of Trade', in *The Cambridge Economic History of Europe*, Vol.III,(1963),p.44.
 10. R.H.C.Davis, *A History of Medieval Europe*(1957),p.109.
 11. W. Ullman, *A Short History of the Papacy in the Middle Ages*(1972) p.55. *Vide* Appendix C.

It was a poor and primitive Europe, a Europe made up of numberless rural microcosms - the manors, largely self-sufficient, whose autarchy was in part the consequence of the decline of trade and to a large extent its cause as well....The arts, education, trade, production and the division of labour were reduced to a minimal level....The population was small, production meagre, and poverty extreme. (12)

Although this bleak picture is substantially correct, the seeds of future development were contained within this seemingly primitive social and economic order.

The system of agricultural organisation, which is denoted by the generic term 'manorialism', defies easy definition as there were considerable local variations throughout Europe. One feature of the system which was of major importance was that it provided nuclei which, however small, could attain some level of order and stability amid the surrounding chaos. This allowed for some measure of technological advance between the seventh and the tenth centuries. As the European economy was so overwhelmingly agrarian, these innovations were largely confined to improving agricultural productivity and included '...the heavy plough, the three-fields rotation system, new methods for harnessing horses, and improved integration of agriculture and herding.' (13) Productivity was also improved during this period by expansion into new areas, by clearing forests and wastes and by increasing the arable cultivation of virgin soil. (14) Halting and discontinuous as these developments were, they were ultimately able to provide the basis of support for the rapid growth in population after the tenth century, and the surplus necessary to sustain the expansion of urbanisation.

With regard to trade, the early Middle Ages, 'Dark' as they may have been at their nadir, were to some extent a formative period and not merely one of disruption and decay. Although both local and inter-regional trade declined, neither disappeared completely. The self-sufficiency of

12. C.M.Cipolla, *op.cit.*, p.140.

13. *Ibid.*, p.15.

14. G.A.J. Hodgett, *op.cit.*, pp.20-22.

the manor was an ideal to be striven for rather than an actuality which could be achieved. The successive invasions were certainly disruptive, but they were not all wholly detrimental to trade. Hodgett reached the following conclusion:

Neither Germanic invasions nor Moslem advance completely killed trade and compensating trade links existed elsewhere. In the north, trade flourished in the sixth century and in the later eighth and ninth centuries and was connected with a great trade revival effected by the Vikings, who established trade links from Scandinavia to Constantinople through Russia. (15)

This linking of northern Europe with Byzantium via the Varangian route helped to establish northern commerce and increased its importance *vis-a-vis* the south. (16)

The substantially agrarian economy of Europe during this period diminished the importance of urban centres. As H. Van Werveke noted, '...a human community whose numbers are pre-dominantly engaged in agriculture is unlikely to exceed a village in importance.' (17) The decline in trade also contributed to the considerable contraction in urban settlement. Towns continued to survive chiefly because '...although the ancient towns lacked real urban life they were centres of both lay and ecclesiastical administration.' (18) These remnants of town-life differed from the thriving centres of the high Middle Ages in that they operated mainly as consumers, the inhabitants living on dues collected from the surrounding countryside. (19) Artisans and craftsmen were retained for the maintenance of the town's castle or church, rather than free to engage in independent operations. The reciprocal exchange between town and countryside, which is vital for the maintenance of a vigorous urban population, was essentially lacking before the revival of the eleventh century.

15. *Ibid.*, p.46.

16. *Ibid.*, pp.54-55.

17. H. Van Werveke, 'The Rise of Towns', in *The Cambridge Economic History of Europe*, Vol.III, (1963), p.3.

18. S. Painter, *op.cit.*, p.226.

19. H. Van Werveke, *op.cit.*

Once a certain measure of calm had been re-established in Western Europe after the convulsions of the tenth century, the foundations for economic expansion had already been laid. Agricultural productivity had improved to a level which would allow for population growth, and for the support of an increasing number of urban dwellers who were not directly engaged in growing their own food. Although trade and urban life had contracted, they had not been completely destroyed. Ancient trade routes still existed, and new ones had been created along which the increasing flow of trade could be channelled. Towns had survived to provide the nuclei around which urban expansion could occur. There was, therefore, no actual discontinuity between the Dark Ages and the high Middle Ages, but this does not mean that the changes which occurred were not startling in their magnitude. The stagnation and depression which had held Western Europe in thrall for at least six centuries gave way to a prodigious burgeoning of economic activity.

The most striking feature of this economic expansion was the rise of towns and the revival of trade. The determination of the origins and exact dating of these two phenomena has given rise to a great deal of controversy. (20) There can be little doubt that the two were intimately connected. The link between them seems to lie in the rising numbers of merchants who were responsible both for increasing the volume of trade and for swelling the population of the towns. Whether the urban renaissance encouraged the revival of trade or *vice versa* is not important for the purposes of this study. What is of importance is the fact that '...from the eleventh century, urban life played a more important part in the European economy, than it had done for 600 or 700 years previously.' (21) The towns were the foci of intense activity in the areas of trade, industry and commerce. The economic life of Western Europe was not merely expanding, it was developing in new directions.

20. G.A.J. Hodgett, *op.cit.*, p.55.

21. *Ibid.*, pp.55-56.

The most obvious symbol of these changes was the increasing importance of monetary exchange. While Western Europe had never entirely reverted to a 'natural' economy based on barter, the payment of feudal dues in service or produce and the diminution in trade during the Dark Ages had considerably lessened the need for and hence the importance of coinage. The dwindling supply of precious metals was not of crucial importance during this period; gold was simply not available for minting and most currency was in the form of small denomination silver coins. (22) The commercial revival, however, drastically increased the demand for coinage. The problem was to some extent alleviated by the gradual redress of the unfavourable balance of trade between West and East and the consequent influx of Muslim gold into Europe. (23) Throughout the period between the late tenth and the late fifteenth centuries, the supply of precious metals never quite kept up with the demand for currency, but the quantity of money in circulation did increase considerably. (24)

The economic developments during this period of rapid growth in Western Europe, dramatic as they undoubtedly were, must be viewed in perspective. 'In relation to agriculture the development was largely the result of more people working on a greater acreage of land and so increasing the total product.' (25) The agrarian sector continued to be overwhelmingly the most important one in the medieval economy. Urbanisation in the eleventh, twelfth and thirteenth centuries never even remotely approached the scale of that in the nineteenth century. Thus, the developments which occurred in trade, industry and commerce only affected a relatively minor proportion of the population. The social and political structure of Western Europe was erected on an agrarian foundation, and that framework remained undisturbed during these three centuries. Economic advance in the agricultural sector was not of the kind to cause structural changes, and the expansion in trade and urbanisation was not great enough to challenge the existing order.

22. S. Painter, *op.cit.*, p.235.

23. J. Bernard, 'Trade and Finance in the Middle Ages', in *The Fontana Economic History of Europe*, Vol.I, (1972), pp.288-289.

24. C.M.Cipolla, *op.cit.*, pp.187-189.

25. G.A.J. Hodgett, *op.cit.*, p.94.

This position of equilibrium, reflected by the ordered structure of medieval economy and society, began to be overturned in the fourteenth and fifteenth centuries. This was a time of severe political and social upheaval. Major conflicts - such as the Hundred Years War (1337-1453) in France, the Civil War (1462-1472) in Catalonia and the Wars of the Roses (1455-1485) in England - were interspersed with numerous minor clashes. Indeed, '...in Europe, war was as endemic as plague.' (26) Social unrest manifested itself in the form of several serious peasant revolts which occurred in many areas of Europe. (27) Even the power of the Church was considerably shaken during this period. The Great Schism, which lasted from 1378 to 1418 during which time rival papacies existed, one in Avignon and one in Rome, '...scandalized Christendom and sowed doubt and confusion in all directions.' (28) The heretical movements which were openly opposed to Roman Catholicism were also gaining ground rapidly and challenging the supremacy of the Church. (29)

To determine the progress of economic development amidst all this turmoil is not an easy task. Considerable debate exists as to whether the economy experienced depression, stagnation or modest growth during this period. The dearth of statistical evidence, and the lack of agreement about the economic effects of the Black Death, have considerably complicated the issue. (30) Research has shown, however, that despite the set-backs due to famine, plague and war economic development, if not expansion, continued. (31) J. Bernard expressed this in the following terms:

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- 26. C.M. Cipolla, *op.cit.*, p.200.
 - 27. G. Leff, *op.cit.*, pp.257-258.
 - 28. N.F. Cantor, *op.cit.*, p.534.
 - 29. S. Painter, *op.cit.*, pp.400-428.
 - 30. G.A.J. Hodgett, *op.cit.*, pp.198-217.
 - 31. The research of R. De Roover has been of great value in this area.

In the fourteenth century...began a truly new era in the organisation of large-scale trade. Closely tied to this was the use of a number of more sophisticated techniques, in methods of association, representation and communication, in insurance, methods of payment, exchanges, credit, banking and accounting. At this level, the capitalistic nature of major commerce and international finance becomes clearly apparent in the fourteenth and fifteenth centuries. (32)

The outward expansion, which began during the fifteenth century with the voyages of discovery, could be turned to the greatest advantage in terms of trade because of the sound economic base which had been constructed during these two centuries.

The purpose of this brief sketch of economic developments in the Middle Ages has not been simply to provide an overview. It has rather been an attempt to highlight the areas which were of most significance in terms of the influence of the Church on economic development. Before discussing the reaction of the Church to the specific economic changes outlined above, some attention must be paid, firstly, to the role of institutions in society in very general terms, and, secondly, to the influence of the medieval Church. The latter will include a consideration of how the Church attained its position of authority and the methods whereby it exerted its influence.

On a theoretical level, in any society institutions form the intermediary link between the prevailing ideology and the existing socio-economic relations. (33) Institutions are shaped by both forces and, in turn, exert an influence on both. During times of relative stability - in radical terms, a non-revolutionary period - the dominant ideology is accepted by the majority of the population. This ideology reflects the existing socio-economic structure and is re-inforced by the existing institutions. This is not meant to imply a static condition; human society is too complex to be regarded as unchanging for any lengthy period of time. It means, rather, that during such a period the dominant institutions are able to adapt themselves and the ideology to changing socio-economic conditions in such a way that the structure of society is maintained. When institutions lose this

32. J. Bernard, *op.cit.*, p.309.

33. The following brief theoretical discussion was chiefly provided by the summary of E.K. Hunt and H.J. Sherman in *Economics: An Introduction to Traditional and Radical Views*(3rd Ed., 1978), pp.xxviii-xxix.

power to adapt, either because of internal decay, or because the forces of change become too strong for them, they are forced to give way to more appropriate institutions and a new ideology.

The relatively stable period of the Middle Ages, between the eleventh and thirteenth centuries, represents a time during which ideology, institutions and socio-economic relations were more or less in harmony. These inter-relationships are inevitably extremely complicated, but there are some aspects of medieval ideology, during this period, which alleviate to some extent the difficulties inherent in this type of analysis. Medieval ideology was not some nebulous set of ideas in which 'everyone believed' more or less devoutly. Neither was it divided into separate sets of notions which were severally applicable to morality, religion, economic dealings, social relations and political ideals. It was, explicitly, contained in the Christian religion under the control of the Church. This comprehensive set of beliefs was not only preached in the churches but was collected into and enforced by Canon law. It affected every facet of medieval life and was accepted almost without question. Although this simplifies the problem to some extent, it must be noted that the body of dogma which the Church assembled was itself extremely complicated. To reduce the entire ideology of the Middle Ages into the space of a few pages and label it the 'Christian paternalist ethic', as E.K. Hunt has done is to over-simplify it to the point of inaccuracy. (34)

The pervasiveness and almost unquestioned acceptance of this ideology were due to the dominance and power of the institution which controlled and disseminated it - the Catholic Church. According to B.W. Dempsey:

A medieval man would no more think of himself as being opposed to the Church than he would think of himself as being opposed to the weather. He might be furious over the fact that it rained on a given day, or that Rome or the bishop had decreed thus and so; but he did not set out to abolish either the weather or the Church. (35)

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34. E.K. Hunt, *Property and Prophets: The Evolution of Economic Institutions and Ideologies* (2nd Ed., 1978), pp.7-9.
 35. B.W. Dempsey, *The Functional Economy* (1958), p.95.

The ascendancy of the Church in Western Europe was neither easily nor quickly won and it was not maintained indefinitely. The time of its greatest power coincides with that period which is most distinctly recognisable as 'medieval'.

According to W. Ullman,⁽³⁶⁾ it was the institutionalisation and the hierarchical structure of the Church which ensured its prestige and influence at a time when, as far as temporal power was concerned, '...a state was as strong as its ruler and liable to sudden collapse when he died.'⁽³⁷⁾ This conformation was achieved partly through the use of organisational skills, including jurisprudential techniques which the Church had inherited from the Roman Empire.⁽³⁸⁾ The establishment of the primacy of the papacy as undisputed leader of the Church under no authority but that of God involved a long and bitter struggle with the Imperial power still residing in Constantinople. The result was a final split between East and West: '...the Greek half had, so to speak, opted out of Europe because it was not Roman. Europe was Roman and Latin.'⁽³⁹⁾ Of great significance for the maintenance of the ideal of papal supremacy was the separation of the objective office of the papacy from the subjective personality of the pope. This enabled the institution of the papacy to survive despite any number of unfit holders of the office.⁽⁴⁰⁾

By the eleventh century, the Church was institutionalised and ordered in a stable structure. The supremacy of the pope and the strict hierarchical ordering of the ranks within the Church ensured that decisions taken in Rome could be disseminated throughout Western Europe. The unquestioning acceptance of the Church's teaching was due in large measure to the fact that '...the world of ideas was almost an ecclesiastical monopoly.'⁽⁴¹⁾ Education was almost exclusively the province of the Church, with the result that learning, even on a practical level, could only be obtained within the framework of

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36. W. Ullman, *op.cit.*
 37. G. Leff, *op.cit.*, pp.77-78.
 38. W. Ullman, *op.cit.*, pp.5-11.
 39. *Ibid.*, p.96.
 40. *Ibid.*, pp.20-21.
 41. S. Painter, *op.cit.*, p.124.

Christian doctrine. Furthermore, although the Church, except when it was backed, as it occasionally was, by a vigorous temporal power, had no physical means of enforcing its laws, its spiritual power was enormous. 'The ban of excommunication was a far deadlier weapon than even the strongest of strong-arm methods employed by a secular ruler.' (42)

This assessment of the influence of the Church on medieval society would not be complete without some mention of how that influence operated on the individual members of the society. To start with, the size of the Church ought to be appreciated. R. Roehl made it clear that:

Any institution operating on such a scale as did the medieval Church must have left a firm imprint upon the society if for no other reason than sheer numbers....To start with, there were the members of the ecclesiastical hierarchy, from lowly parish priest to papal curia. In addition, there were the regular clergy, the canons, monks, and so on....Cathedrals and monasteries proliferated as the older orders expanded and new ones were established at intervals. (43)

Each individual member of the Christian laity was in direct contact with at least one member of the clergy through the institution of the confessional. The '...genuinely religious attitude of probably the majority of medieval men...' must not be lost sight of. (44) Salvation was vitally important to medieval people, and it could not be achieved outside the Church. Confession and absolution, which could be withheld if insufficient repentance or reparation were suspected, were indispensable if the torments of Hell were to be avoided. The doctrines of the Church were not diffusely scattered among the populace, they were directly and individually applied.

The period between the eleventh and the thirteenth centuries was that during which the Church had the most power to influence economic development, and that power at its height was formidable. However, this period was also that during which the greatest economic expansion occurred.

42. G. Leff, *op.cit.*, p.80.

43. R. Roehl, 'Patterns and Structure of Demand 1000-1500', in *The Fontana Economic History of Europe*, Vol.I, (1972), p.125.

44. J.T. Noonan, *op.cit.*, p.36.

It would seem then that the traditional view that the Church stifled economic growth is in need of revision. The attitude that the Christian ethic was '...antithetical to the functioning of a capitalist market system', (45) and hence inimical to economic growth, cannot remain unchallenged. In broad terms the principles of universal brotherhood and mutual obligation do, indeed, present a striking contrast to the 'every man for himself' system of *laissez faire* capitalism. There are no grounds, however, on which to deduce from this that because the latter system encourages economic growth the former must have actively discouraged it. The Church's disapprobation of greed, self-aggrandisement and acquisitiveness was unequivocal, but it cannot be inferred simply from this that the teaching of the Church prohibited any accumulation of wealth or improvement in status.

Generalizations of this nature on the attitude of the Church to economic questions in general have been extended to the specific doctrines of the just price and the prohibition of usury. The former has been dismissed as merely a mechanism for the maintenance of the social *status quo* while the latter has been regarded as '...an example of the Church's condemnation of acquisitive behaviour.' (46) The Church is represented as having exerted its power to prevent both the accumulation of material wealth and the rise in status which must ensue. The inescapable conclusion to be drawn from this is that the Church attempted to stifle economic expansion, because it is difficult to envisage how this could occur without any accumulation of wealth. The only way expansion could have been possible, if this reasoning is followed, would have been by disregard for the Church and its teaching on the part of those engaged in commerce.

The entire process of interaction between economic expansion and the teaching of the Church during this period was, in fact, far more complex and dynamic than this type of reasoning would suggest. The doctrines of the just price and the prohibition of usury certainly could not be other than firmly fixed within the framework of the Christian ethic. However, the system of ethics itself has to some extent been misrepresented, and the economic doctrines in particular were far more flexible than the traditional view has

45. E.K.Hunt, *op.cit.*, p.11.

46. *Ibid.*, p.10.

allowed for. It is no coincidence that the time of economic expansion slightly pre-dates the period during which the doctrines of the just price and the prohibition of usury assumed their greatest importance for the scholars of the Church. The development of these doctrines was the response of the Church to the urban revival and to the expansion of trade, industry and commerce. It was not, however, merely an attempt to stifle this expansion. Had this been the case, then it is surely arguable that either the expansion would have been contained or the Church would have lost its position of authority. The tension and possible conflict which must have resulted from a resolutely antagonistic stand against economic growth on the part of the Church, simply did not materialise. The reaction of the Church to economic development in the Middle Ages requires closer scrutiny than it has yet received.

During the early Middle Ages, the manorial system was taking shape as the basis of the almost entirely agrarian economy. The feudal system which ordered social and political relationships was concomitantly being established. Together these two systems provided a cohesive social and economic structure which suited the conditions of the time. The Church was not merely an institution which provided ideological support for this structure, it was fully integrated into the system. The Catholic Church had been the largest landowner in Western Europe since the end of the sixth century. ⁽⁴⁷⁾ Ecclesiastical landholdings were organised in the same fashion as secular estates; '...the manor might be secular or religious..., but the essential relationships between lord and serfs were not significantly affected by this distinction.'⁽⁴⁸⁾ The Church's teaching on the natural and God-ordained ordering of classes within the hierarchy, suited this system and was not challenged by it. At the same time, the Christian conception of the value of manual labour, which was given practical expression on the monastic estates, added some measure of dignity to the lot of the serfs.

47. W.Ullman, *op.cit.*, p.49.

48. E.K.Hunt, *op.cit.*, p.6.

The relative unimportance of trade and the decline in urban life during this period left the Church's traditional attitude of distrust towards commerce undisturbed. 'To a large extent this attitude was transmitted to the Middle Ages through the revered writings of the ancient Church Fathers.' (49) Fulminations against the accumulation of riches, monopolistic practices, the greed which prompted engagement in mercantile activity and the prevalence of lying, cheating and fraudulent practices in commercial transactions were to be found in the writings of Tertullian (fl.c.198), Basil (c.330-379), Ambrose (c.339-397) and Jerome (c.342-419), to name but a few of the more influential Fathers. (50) There was scarcely any reason to revise these opinions during the Dark Ages. As Cipolla pointed out:

Only tough characters dared travel about in the forested, troubled, insecure Europe of the Dark Ages. Only greedy adventurers dared face all the hardships of a dangerous, itinerant life for the sake of pecuniary gain. Only unscrupulous men would so openly defy the moral condemnation of the Church and enter a profession held in low social esteem. (51)

The profession of merchant was hardly a respectable one at that time, and the Church's opinion was not ill-founded. This attitude, however, was not so firmly rooted that it was incapable of alteration in the face of changing circumstances.

The economic expansion between the eleventh and the thirteenth centuries did not disturb the feudal order which prevailed in the agrarian sector. The roots of medieval society were secure, and there was no necessity for the Church to revise its ideas at this level. The developments which occurred in trade and commerce originated in the nascent towns which were separated from the countryside and free of the feudal order. Cipolla made this explicit in the following passage:

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49. J.W. Baldwin, 'The Medieval Theories of the Just Price', *Transactions of the American Philosophical Society*, New Series, Vol.49, Part 4, 1959, p.12.
50. J.W. Baldwin, 'The Medieval Merchant Before the Bar of Canon Law', *Papers of the Michigan Academy of Science, Arts and Letters*, Vol.44, 1959, p.289. *Vide* Appendix C.
51. C.M. Cipolla, 'The Origins', in *The Fontana Economic History of Europe*, Vol.I, (1972), p.13.

Towns were filled with people who had left behind the rural and feudal world without regret, for a new, different world. The urban society grew and developed in sharp contrast to the surrounding countryside. The walls of the town had a practical purpose but also a symbolic significance; they represented the boundary between two cultures in conflict. (52)

The new air of freedom to be found in the towns, expressed most aptly by the German phrase, '*Stadtluft macht frei*', provided an atmosphere in which the strict feudal relationships of the rural economy were unable to survive. (53)

While the urban movement did not take place on a scale great enough to disturb the prevailing social structure, it was certainly significant enough to engage the attention of the Church.

The growing complexity of the urban economy presented the Church with several difficulties which it could not afford to ignore. Since the pontificate of Gregory the Great (590-602), the papacy had considered itself to be '...an institution charged with the leadership, guidance and government of the Christian people by the law which was based on faith....' (54) In order to fulfil its self-imposed task, it was necessary for the Church to re-examine its existing body of law which was inadequate to deal with the new conditions brought about by the urban revival. A settled class of merchants and traders began to replace the itinerant vagabonds who had been content to remain outside the pale of society. This nascent bourgeoisie acquired wealth and influence and considered themselves no less Christians than the rural landlords. They looked to the Church for guidance on matters which were, as yet, unprovided for in the dogma. One such matter was the question of social mobility. Status in the towns was no longer simply determined at birth. This meant that the question of the morality of using wealth gained through trade or industry to acquire an improved social position had to be re-considered. While the idealized self-sufficiency of the manor had fostered the denigration of the importance of buying and selling, the very survival of the towns depended on commerce. In this new context, it could no longer be regarded as something scarcely necessary and barely to be tolerated.

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52. C.M.Cipolla, *Before the Industrial Revolution: European Society and Economy, 1000-1700* (1976), p.142.
 53. J. Le Goff, 'The Town as an Agent of Civilisation 1200-1500', in *The Fontana Economic History of Europe*, Vol.I, (1972), p.79.
 54. W.Ullman, *op.cit.*, p.69. Vide Appendix C.

To some extent, no doubt, these changes represented a challenge to the authority of the Church, and to its control over medieval society. The perception of this, however, although obvious to posterity, was possibly not as clear from the contemporary point of view. It must be borne in mind that the Church perceived its role as governor of medieval society as one which was divinely ordained and ultimately for the good of each member of that society. The fact that it was simultaneously good for the Church in terms of power and affluence need not mean that the Church operated solely in terms of self-interest. The view, expressed by Hunt, that Christian dogma was used chiefly to defend '...the great inequities and intense exploitation that flowed from the concentration of wealth and power in the hands of the Church and nobility', seems rather too harsh an assessment. (55) Dempsey, on the other hand, was probably being over-idealistic when he wrote:

In such an organisation of society, the tension of class conflict, which is unnatural and philosophically as well as practically inhuman, is relieved because men, on a basis of what they are, stand united according to what they do, not divided according to what they have or have not. There is achieved not a sterile and futile socialization of goods, but a natural and fruitful socialization of men. (56)

If the motive behind the Church's reaction to these economic changes was, indeed, to maintain its own position, this naturally included some element of self-interest, but this should not be regarded as its only priority.

Setting aside the question of the ultimate aims of the Church, it may be argued on a more superficial level that the Church reacted to changing circumstances in the manner which was most appropriate in terms of its professed ideals and its position in medieval society. The situation which confronted the Church was expressed by J.Gilchrist in the following way:

55. E.K. Hunt, *op.cit.*, p.10.

56. B.W. Dempsey, 'Just Price in a Functional Economy', *American Economic Review*, Vol.25, September, 1935, p.486.

(The economic changes)...not merely created for the Church an atmosphere alien to the traditional thought, and forced churchmen to consider their teaching on trade, capital and the merchant anew, but they also directly, and immediately, involved the Church and its clergy scattered throughout the society in which the changes occurred. (57)

The reaction of the Church to this situation came on two levels: the practical and the ideological. In the absence of any strong central government, and of almost any form of education outside the ecclesiastical structure, it became a matter of practical necessity that the Church should provide a legal framework within which these increasingly complex commercial transactions could occur. On the ideological level, the teaching of the Church had to be adapted to suit the changing conditions without alteration of its essential structure. The revival of Roman law and the codification and expansion of Canon law provided the necessary legal framework, while theological studies concentrated on spiritual matters.

The revival of the study of Roman law was begun towards the end of the eleventh century. In view of the Church's role as the custodian and transmitter of learning, no study could be undertaken outside its jurisdiction. The men who re-discovered the legal system of the Roman Empire were '... medieval Christians well acquainted with the teaching of the Church....' (58) Furthermore, the school at Bologna which housed the medieval Roman lawyers also became the most important centre for the study of Canon law. Thus the Church was intimately concerned with the study of civil law and considerably affected its medieval development. Nevertheless, the revival of Roman law remained to some extent a secular movement. The purpose of the school at Bologna was not simply to carry out research on Roman law, it was a practical training ground which provided Western Europe with '...the central and ubiquitous figure of the professional lawyer', a figure unknown to society in the Dark Ages. (59) Canon 9 of the Second Lateran Council, held in 1139, forbade the practice of civil law for purposes of gain to all clerics. (60)

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57. J. Gilchrist, *op.cit.*, p.27.
 58. T.P. McLaughlin, *op.cit.*, p.83.
 59. N.F. Cantor, *op.cit.*, p.337.
 60. *Vide* Appendix A.

The tendency, therefore, was for those who taught and those who were trained in civil law to belong to the laity.

It was no coincidence that the rediscovery and intensive study of the *Corpus iuris Civilis* occurred in Western Europe at this particular time. (61) The compilation of the Roman Emperor Justinian in the sixth century constituted a legal system designed to suit an urbanised and commercially sophisticated society. 'In no European country in 1100, and not even in the Church, was there anything approaching a comprehensive and organized legal system.' (62) The customary and largely unwritten Germanic codes became increasingly inadequate as a legal system in the face of the growing complexity of the economy. It remains uncertain exactly how the Justinian code was rediscovered by medieval scholars, but according to N.F. Cantor:

It is not important how they came by the text; it was not hard to come by, and it had been ignored in western Europe for five centuries because it was irrelevant to the circumstances of early medieval society. What is significant is the great social value which these pioneering scholars...attributed to the Justinian code....The codification of the legal system of an advanced civilization into a summary which was written, systematic, comprehensive, and rational suited ideally the legal needs of western Europe at this time. (63)

This adoption of an entire legal system did not immediately negate the customary law which had prevailed up to that time. It did, however, fill a gap which was becoming increasingly problematic for both state and Church in Western Europe, and its consequences were profound for both political and economic development.

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61. This systematic codification of Roman Law consisted of four books; the Code which contained the body of the laws, the Digest which was a collection of extracts from famous Roman lawyers, the Institutes, designed as an introduction to the principles of law and the Novels which were the constitutions of Justinian. J.Gilchrist,*op.cit.*,p.253, n.27.
62. N.F.Cantor, *op.cit.*,p.338.
63. *Ibid.*,p.339.

Although the comprehensiveness of Roman law was fully appreciated by the medieval scholars, it was not accepted unequivocally. It was rather used selectively as the need arose, and only where it did not clash with the Christian tradition. This had been continuously developed since the days of the early Church Fathers and could not lightly be discarded. An example of this selectivity was that Roman law rejected the *nudum pactum*, or simple verbal agreement, while the Church insisted that such contracts were binding. In the opinion of the Church, the breaking of such an agreement made one of the parties guilty of the sin of lying. (64) 'It is hardly necessary to stress the importance this concept of "my word is my bond" had for the development of a free economy.' (65) The modification and adaptation of Roman law to suit the conditions of medieval Europe meant that no courts administered it in its pure state. Perhaps one of the most significant contributions made by Roman law was that it provided '...excellent training in legal thought and supplied ideas that slowly took their place in the legal systems of Western Europe.' (66)

Roman law also exerted considerable, though not unqualified, influence on the development of the law of the Church. 'Roman law had no need for a *sub rosa* entry into the ecclesiastical precincts. It penetrated the Canon law with the full cognizance of the authorities of the Church.' (67) Pope Lucius III (1181-1185), in the bull *Intelleximus*, officially declared that Roman law was permitted to speak where Canon law was silent. (68) The qualification - that Roman law could not be allowed to contradict Canon law - was vitally important to the development of the doctrines of the just price and the prohibition of usury. At the beginning of the high Middle Ages, the Church had virtually no concrete rulings on the question of buying and selling. Thus the very concept of the just price, although considerably modified by the requirements of the Christian ethic, was originally drawn from Roman law. The prohibition of usury, on the other hand, had been incorporated into Canon law centuries before Roman law was rediscovered.

64. J. Gilchrist, *op.cit.*, p.15.

65. *Ibid.*

66. S. Painter, *op.cit.*, p.438.

67. J.W. Baldwin, 'The Medieval Theories of the Just Price', *Transactions of the American Philosophical Society*, New Series, Vol.49, Part 4, 1959.p.42.

68. *Ibid.*, p.43. *Vide* Appendix C.

Hence, although devices taken from Roman law were used to elaborate and refine the usury doctrine, the moral objection to its practice was not removed by the fact that it was not illegal under the Roman system.

The study of the code of Justinian, and the absorption of the principles of a coherent, written and annotated body of law, facilitated the systematization of the ecclesiastical legal code. This had become an urgent necessity due to the same factors which had led to the revival of Roman law. The Church was not merely the mentor of an increasingly complex society, it also formed an integral part of it. Indeed, 'The Church's secular interests constituted a large part of the economic expansion of the time.'⁽⁶⁹⁾ Ecclesiastical estates were operating on an increasingly sophisticated level, and the Church was required to provide the rules for their administration. Canon law at the beginning of the twelfth century was in so chaotic a state that it was incapable of dealing with these problems. Hence an intensive effort to provide a comprehensive codification of Canon law was begun, at the school which was established alongside that of Roman law at Bologna.

Canon law had been accumulating over centuries and was by no means a cohesive set of doctrines. The Christian principles contained in the Gospels were too generalized to provide much guidance on how everyday affairs should be conducted. For this reason the early Church Fathers had attempted to provide more practical advice, and their opinions carried great weight. These writings, together with the decretals of popes and the canons of Church councils, formed the main body of Canon law.⁽⁷⁰⁾ Papal decretals and conciliar canons were issued in response to specific issues - that is, they were a form of 'case law' rather than a coherent set of rules. It is not difficult to envisage how unwieldy this mass of material had become by the beginning of the twelfth century. Some attempts had been made during the early Middle Ages to introduce some order by the making of 'collections'.

69. J.Gilchrist, *op.cit.*, p.38.

70. J.W. Baldwin, *op.cit.*, p.31.

The most notable of these were the Dionysiana (c.574), the Pseudo-Isidore collection(c.846-852), the *Decretum* of Burchard of Worms(c.1008-1012) and the collections attributed to Ivo of Chartres (1094-1095). (71)
 Although these collections were unsystematic, they did provide the raw material when proper codification became essential.

This enormous task was finally brought to fruition in 1140 when Gratian, a Bolognese monk published his monumental work, the *Decretum*. (72)
 This work marked the starting point of '...the truly scientific study of Canon law in the Middle Ages.' (73) In the *Decretum* the canons of the Church were grouped systematically, according to subject, and Gratian provided a personal commentary which made some attempt to deal with contradictions in the text. A measure of the significance of this work is that it formed an integral part of what came to be known as the *Corpus iuris canonici* which, '...however modified and revised, [was] the law of the Church until the complete revision of canon law in the new Code in 1917.' (74)

The *Decretum* of Gratian provided the framework within which the medieval canonists developed and refined their doctrines on all matters pertaining to the practical organization of daily life. Throughout the succeeding period of the Middle Ages, as the commercial system grew in importance and complexity, the canonists improved and expanded their economic doctrines. The work upon which they were engaged ought not to be confused with that of modern economic theorists. They were obliged to operate within the constraints set by Canon law, and were concerned not with analysing how the economic system worked, but with how business affairs ought to be conducted. Some knowledge of the former, however, was essential in order that rational decisions could be made about the latter. The canonists were far from being unworldly theorists; they were immediately and vitally concerned with practical matters.

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71. J. Gilchrist, *op.cit.*, p.12.
 72. T.P. McLaughlin, *op.cit.*, p.82.
 73. J. Gilchrist, *op.cit.*, p.12.
 74. J.T. Noonan, *op.cit.*, p.18.

The medieval theologians, in contradistinction to the canonists, were concerned not with detail but with the whole. According to J.W. Baldwin, they were attempting:

...to construct an all-embracing system of human ethics in which the virtue of justice formed the foundation of the good life on earth. (75)

The beginnings of this movement can be traced to the intellectual re-awakening which accompanied the economic revival of the eleventh century. Here, 'For the first time reason, as expressed in dialectic, was asserting itself and making claims to discuss all that belonged to faith.' (76) This scholastic movement gained considerable momentum as a result of the impetus provided by renewed contact with the East. The Crusades, which began at the end of the eleventh century, not only re-opened trade links between East and West, but also brought Western Europe once more into contact with the intellectual heritage of the ancient world which had been more sedulously preserved in the Eastern half of the Roman Empire. (77) The impact of the revival of Roman law on the study of Canon law had its parallel in the ferment which the arrival of the works of the Greek philosophers created among students of theology.

These works of pagan antiquity were at first viewed with deep suspicion by the authorities of the Church, but their appeal to reason could not be ignored by the great thinkers of the twelfth and thirteenth centuries. As Cantor described the situation:

...European scholars could no more afford to reject the opportunity of acquainting themselves with the intellectual riches of Greek civilization than legal scholars could have turned their backs on the Justinian code. (78)

75. J.W. Baldwin, *op.cit.*, p.8.

76. G. Leff. *op.cit.*, p.93.

77. S.B. Clough, N.G. Garsoian and D.L.Hicks, *A History of the Western World - Ancient and Medieval* (2nd Ed., 1969), pp.296-297.

78. N.F.Cantor, *op.cit.*, p.389.

Of all the writings which filtered back into Western Europe, those of Aristotle received the greatest respect. So great was his authority that he came to be generally referred to simply as 'the Philosopher'. It was, however, unthinkable at that time that the Christian faith could be abandoned in favour of this ancient system of philosophy. The solution to this dilemma was seen to lie in creating a synthesis which would combine the two systems into one coherent body of philosophy. This formidable task was initially undertaken by Albertus Magnus(1206-1280), but was brought to fruition by his pupil, St Thomas Aquinas(1225-1272). The latter, in his *Summa Theologica*, '...created a vast, complex, subtle, and ordered system which integrated to the fullest possible degree Aristotelian science and the Christian revelation.' (79)

It might be supposed that, in view of the immense problems which faced the theologians in the ethical and philosophical spheres, they would have but little time for the consideration of such mundane matters as economic affairs, but this was by no means the case. The theologians were, of necessity, well versed in Canon law; and the problems which beset the canonists were equally important, albeit on a higher plane, to the philosophers. The second part of the second part of the *Summa Theologica*, contains Aquinas' detailed teaching on individual moral topics. (80) Questions 57 to 80, which deal with justice, contain detailed discussions of the just price and the prohibition of usury. As will be shown in the following chapters, this analysis was concerned with absolute moral values rather than with the provision of practical guidelines to behaviour in an imperfect world. It none the less provided an authoritative ideological structure within which the canonists could work to provide more practical rules.

The Church reacted to the economic expansion which took place in Western Europe on two different levels which corresponded to the two forums through which it exerted its authority on medieval society. The purpose of the external forum was to deal with matters of correspondence between people, including economic transactions. This business was conducted in the Ecclesiastical courts, and the rules to be applied were provided by the

79. *Ibid.*, p.469.

80. A. Kenny, *Aquinas*(1980),p.23.

canonists. The internal forum, on the other hand, was instituted to deal with matters of conscience through the medium of the confessional. The task of the theologians was to provide principles which would assist the solution of these more spiritual and moralistic problems. On both levels, the Church displayed a flexibility which allowed for economic expansion, while simultaneously keeping intact the Christian ideological framework.

CHAPTER THREE
THE DOCTRINE OF THE JUST PRICE

'All virtue is summed up in dealing justly'

Aristotle.

It may seem platitudinous to begin this chapter by observing that the just price is a medieval concept which must be investigated within the context of the Middle Ages if it is to be understood. It is none the less essential that this be borne constantly in mind if the teaching of the Church on this doctrine is to be correctly interpreted. The highly unsatisfactory present condition of the debate about the meaning of the just price may be attributed to the fact that the authors engaged in it have lost sight of this fundamental principle. The re-examination of the just price has at least established that the traditionally accepted view is substantially incorrect, but the removal of the doctrine from its context has resulted in unnecessary confusion. The conventional attitude towards the just price will be considered first, after which the re-appraisals which have been offered, and their deficiencies, will be discussed. This will enable the problems of interpretation to be identified. An attempt will then be made to resolve these difficulties by viewing the doctrine within the context of medieval thought.

The traditionally accepted view of the just price was that it was an objectively calculated price, determined in such a way that the seller would be able to cover his costs and provide for himself and his family. The purported aim of this socially determined price was to keep the members of medieval society in the stations in life to which they had been born. Traced to its origins, it would appear that this view of the just price was discovered in the writings of Henry of Langenstein; a relatively unimportant, and certainly unrepresentative, fourteenth century scholar. ⁽¹⁾ It was adopted, without serious question, by the German Historical School, being first mentioned by Wilhelm Roscher in 1874. ⁽²⁾ Since then it has been

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1. R. De Roover, 'The Concept of the Just Price: Theory and Economic Policy', *Journal of Economic History*, Vol. 18, December, 1958, p. 419. *Vide* Appendix C.
 2. *Ibid.*

propagated, virtually unchanged, in almost every work devoted to the subject of the Middle Ages, by both historians and economic historians.⁽³⁾

Without unduly labouring the point some examples may be quoted to illustrate the manner in which the concept of the just price has been simplified and glossed over. Heaton, in his *Economic History of Europe* devoted half a page to the subject, stating that Aquinas' opinion of the trader was tainted with suspicion, but that he was allowed to operate within the constraints of the just price. In Heaton's words:

Let him be satisfied with a return which covered his material costs and paid him for his labour; let him meet the needs of a modest living standard and give any surplus to the poor; then his activities would be lawful and Christian. (4)

Brief and devoid of elaboration as Heaton's discussion is, it does contain the admission that other factors might be taken into account in the setting of a just price.

Dillard, whose *Economic Development of the North Atlantic Community* was published in 1967, merely defined the just price as, '...one which would enable a seller to maintain his customary position in society.'⁽⁵⁾ Bernard, writing in *The Fontana Economic History of Europe*, made no attempt even to define the just price, but merely remarked that it was a doctrine which was diametrically opposed to '...the frenzied search for profit which considered nothing save cold reason.'⁽⁶⁾ As these works are chronologically consecutive, the trend among economic historians appears to be towards ignoring the concept of the just price altogether. As a representative of the historians, Painter may be quoted:

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3. This view may be found in such general texts as: W. Ashley, *An Introduction to English Economic History and Theory* (1920), Vol.1, Part 2, p.391. S.B.Clough and C.W.Cole, *Economic History of Europe* (1946), pp.31,68. H.Heaton, *op.cit.*, p.204. D. Dillard, *op.cit.*, p.30.
 4. H. Heaton, *op.cit.*, p.193.
 5. D. Dillard, *op.cit.*, p.30.
 6. J. Bernard, *op.cit.*, p.311.

In general the church maintained the theory that there was a "just price" for everything. An artisan or merchant sold for a just price if he made just enough profit to live as his father had. (7)

These are but a few representations of a misconception which has become extremely widespread throughout the literature dealing with the medieval period. De Roover provided a list of eleven major works in which this viewpoint may be found, and added that it was by no means an exhaustive one. (8)

It is not surprising that this conception of the just price should have been so universally accepted originally. It was admirably suited to the traditional perception of medieval economic life. As Baldwin pointed out:

Because of the sluggish nature of the medieval economy, it was possible to compute effectively a just price. The markets were local, the buyers few, the supply of goods either known or elastic, and a cost-of-production price was possible. Finally, the doctrine of the just price harmonized well with the medieval regulated economy and the guild system. (9)

What is surprising is that, in view of the considerable volume of research, which has shown that the medieval economy was far more dynamic than the traditional view suggested, this perception of the just price has remained unaltered. The commonly accepted idea of the just price no longer fits neatly into the framework of medieval economic development, but instead of the traditional view being questioned the importance of the concept itself is being denigrated.

The medieval doctrine of the just price has, indeed, been fundamentally reassessed by several authors, but as far as the economic historians are concerned these have been voices crying in the wilderness. The problem has received attention from researchers who have not been concerned with economic development. For example, 'The doctrine of the just price...

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- 7. S. Painter, *op.cit.*, p.237.
 - 8. R. De Roover, *op.cit.*, p.418, n.1.
 - 9. J.W. Baldwin, *op.cit.*, p.7.

attracted particular attention from an influential group of writers, the varied critics of capitalism.' (10) Various writers of the Marxist school have proposed that Albertus Magnus and Thomas Aquinas '...had a labour theory of value and adumbrated Karl Marx.' (11) This has provoked other authors, notably G. O'Brien, (12) Noonan (13) and De Roover (14) to re-examine the doctrine with the purpose of refuting the basis of the Marxist position. Apart from this area of controversy, Dempsey was interested in the medieval system because of the lessons it might hold in the light of the '...powerful twentieth century trend toward a corporate economy.' (15) E.A.J. Johnson was concerned with the doctrine of the just price on the grounds that, in his opinion, it '...formed a very real part of the Rooseveltian political creed.' (16)

The common factor in all these re-assessments is that they are essentially unconcerned with the just price within the context of medieval economic development. Dempsey, at least, made this perfectly clear:

From this emphasis on principle, it should be clear that we shall not describe the archaic external trappings of medieval economic life, upon which undue emphasis has been placed by enthusiasts and critics alike. The question is one of radical economic principles, not of gargoyles or stained glass windows. (17)

It must be stated, however, that while modern economists are free to ponder pure economic theory, with scarcely any reference to modern gargoyles, this was by no means the case with medieval writers. Economic questions only entered medieval thought as part of a system of ethics, providing practical guidelines for everyday behaviour. The abstraction of the statements made by the scholastics about economic matters from their rightful *milieu* can only result in confusion.

This abstraction is particularly noticeable in the manner in which evidence is selected to support these varying points of view. The writer almost unanimously chosen as the spokesman for the entire medieval period

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10. *Ibid.*
 11. R. De Roover, *op.cit.*, p.421. *Vide* Appendix C.
 12. G.O'Brien, *op.cit.*
 13. J.T. Noonan, *op.cit.*
 14. R. De Roover, *op.cit.*
 15. B.W. Dempsey, *op.cit.*, p.471.
 16. E.A.Johnson, 'The Just Price in an Unjust World', *International Journal of Ethics*, Vol.48, January, 1938, p.165.
 17. B.W. Dempsey, *op.cit.*

is St Thomas Aquinas. While Aquinas was undoubtedly one of the most influential scholars which the Church produced, it ought to be remembered that he only began to lecture at the University of Paris in 1252, and that his writings only became generally regarded as theologically sound some fifty years after his death in 1274. ⁽¹⁸⁾ Although his ideas are to some extent representative of medieval thought during his own lifetime, his influence was only really felt in the fourteenth and fifteenth centuries. The more serious problem which arises from relying too heavily on the authority of Aquinas is that he was writing on a high level of abstraction. This makes it extremely difficult to follow his reasoning if no cognizance is taken of how other writers of the period were treating the same subjects on a more practical level. Evidence both for and against the opposing views that the just price represented a labour theory of value and that it was simply a market price, can be gleaned from the works of Aquinas. Any attempt to reconcile these contradictory views without considering the 'archaic external trappings of medieval life' must be doomed to failure. Aquinas never accurately defined the just price; his conception of its nature must be inferred from the passages in which he refers to it. This is a proceeding which can produce highly intriguing anomalies, as the following examples will show.

The two works within which Aquinas treated the problem of the just price are the *Commentary on the Nicomachean Ethics of Aristotle*, and the second part of the second book of the *Summa Theologica*. According to A. Kenny, these two works were being written at the same time, between 1269 and 1272. ⁽¹⁹⁾ Thus the possibility that Aquinas' thought may have evolved between an earlier and a later work, as suggested by Baldwin, does not seem likely. ⁽²⁰⁾ Neither is it feasible to suggest that in the *Commentary* he was merely discussing the work of an earlier philosopher, while in the *Summa* he was developing his own philosophy. It was the great task of Aquinas' life to complete what his teacher, Albertus Magnus,

18. A. Kenny, *op.cit.*, p.26.

19. *Ibid.*, p.20.

20. J.W. Baldwin, *op.cit.*, pp.78-79.

had begun - a reconciliation and integration of Aristotelianism and Christianity. Although the *Commentary* and the *Summa* ought, by these tokens, to be in harmony with each other, an apparently glaring contradiction appears to arise from his treatment of the just price in each of these works.

The section of the *Commentary on the Nicomachean Ethics* which is relevant to the subject of the just price is that in which Aquinas commented on Aristotle's treatment of corrective justice. This is contained in Book Five of the *Nicomachean Ethics* which is entitled 'What is Justice?'. The determination of the value of articles in exchange was considered to be part of corrective justice. This was the category of particular justice which dealt with private transactions. ⁽²¹⁾ In order that the requirements of corrective justice be fulfilled when two people exchanged articles, the articles needed to be equal according to arithmetical proportion. Now it is obvious that there can be no necessity for exchanging identical objects. Aristotle cited the example that two doctors will not exchange their products, but a doctor and a farmer will. ⁽²²⁾ The problem which requires solution, then, is how to reduce dissimilar objects to equality. According to Aristotle money was invented as a measure which would achieve this purpose. ⁽²³⁾ However, this still does not solve the problem because some standard is still required whereby goods can be measured in terms of money. Aristotle reached the following conclusion:

This standard is in fact demand; in every situation of the kind demand is the unifying factor. For if people should have different wants from what they do have, or no wants at all, there would be a different kind of exchange or none at all....demand is expressed in the form of money. ⁽²⁴⁾

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21. According to Aristotle there were two kinds of particular justice-distributive and corrective. The former '...is shown in the distribution of honour or money or such other possessions as can be divided amongst its members', while 'The other kind is shown in private transactions or business deals, where it serves the purpose of correcting any unfairness that may arise.' Aristotle, *The Nicomachean Ethics*, Trans. J.A.K. Thomson (1953), pp.144-145. *Vide* Appendix C.
22. *Ibid.*, p.152.
23. *Ibid.*
24. *Ibid.*, p.152-153.

This is quite straightforward, but appears to ignore the supply factor in favour of overemphasising the demand criterion in the determination of value.

Aristotle did not entirely neglect the factor of supply. He did mention that if producers were not recompensed for their labour and the materials which they used, justice would not be satisfied. However, this statement was not elaborated upon, and the comprehension of its meaning is complicated by the fact that there are several differing modern translations of the passage in question. ⁽²⁵⁾ For this reason the literature, as S. Hollander pointed out, contains several different interpretations of Aristotle's theory of prices. ⁽²⁶⁾ The traditional view, that Aristotle considered that value depended upon the cost of production, has been challenged by J.J. Spengler who suggested that:

Aristotle, with his emphasis upon demand and his neglect of costs was a forerunner of the Austrian, rather than the English classical school. ⁽²⁷⁾

Between these divergent views, a middle course has been proposed - that Aristotle assumed the coincidence of both criteria in the sense that '...that which is the more costly to supply (in terms of labour expended and skill exerted) will be that which is the more eagerly desired.' ⁽²⁸⁾

It is not crucially important to this discussion to determine what Aristotle meant; what is important is to ascertain what Aquinas thought he meant. As J.A.K. Thomson pointed out:

...it was not so much Aristotle in his own Greek that was read by the Schoolmen as Aristotle translated into Latin, refined upon by subsequent logicians and expounded by Latin and Arabic commentators. ⁽²⁹⁾

Furthermore, although Aquinas found no serious cause for disagreement with Aristotle's treatment of justice, '...it is not quite true to say that he

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25. Three different translations are to be found in: A.E. Monroe, *op.cit.*, p.152-p.27
S. Hollander, 'On The Interpretation of the Just Price', *Kyklos*, Vol.18, No.4, 1965, p.617, and J.A.K. Thomson, *op.cit.*, p.152.
 26. S. Hollander, *op.cit.*, p.618.
 27. J.J. Spengler, 'Aristotle on Economic Imputation and Related Matters', *Southern Economic Journal*, Vol.21, April, 1955, p.388, Quoted in S. Hollander, *op.cit.*
 28. B.J. Gordon, 'Aristotle and the Development of Value Theory', *Quarterly Journal of Economics*, Vol.78, February, 1964, pp.115-128. Quoted in S. Hollander, *op.cit.*
 29. J.A.K. Thomson, 'Introduction', Aristotle, *op.cit.*, pp.17-18.

merely repeated Aristotle *verbatim*...at certain critical junctures he clarified serious ambiguities.' (30)

One such juncture is the indefinite manner in which Aristotle dealt with supply as a factor in the determination of value. Aquinas, in the *Commentary on the Nicomachean Ethics*, made far more explicit statements, which will be quoted at length in order that his position may be fully appreciated.

The arts would be destroyed if the craftsman, who works at some handicraft, would not be supported, i.e., would not receive for his workmanship, according to the quantity and quality of what he produced. (31)

In order then to have just exchange, as many sandals must be exchanged for one house...as the builder...exceeds the shoemaker in his labor and costs. If this is not observed, there will be no exchange of things and men will not share their goods with one another. (32)

...proportionality must be employed in order to bring about an equality of things because the work of one craftsman is of more value than the work of another, e.g., the building of a house than the production of a penknife. (33)

It would appear from the foregoing passages that it is not unreasonable to argue that Aquinas did postulate a labour theory of value, and that he may indeed, be considered a worthy predecessor of Kark Marx. This line of reasoning has been most carefully followed through by Selma Hagenauer, in *Das 'justum pretium' bei Thomas von Aquino*, which was published in 1931.

Had Aquinas never made any other reference to the just price, a very strong case could be made in favour of his having equated value with labour. Hence it could be argued that he considered an objective, socially-

30. S. Hollander, *op.cit.*, p.618.

31. Aquinas, *Commentary on the Nicomachean Ethics*, Book V, Lecture VII, Quoted in S. Hollander, *op.cit.*, p.619.

32. *Ibid.*, Lecture IX.

33. *Ibid.*, Lecture VIII.

determined price to be the just price. However, in the *Summa Theologica*, there exists a passage which, in the opinion of De Roover, '...destroys with a single blow the thesis of those who try to make Aquinas into a Marxist, and proves beyond doubt that he considered the market price as just.' (34) This is to some extent an indirect 'proof', because although Aquinas advocated a strict adherence to the just price in the *Summa Theologica*, he never actually defined it. The passage from this work, to which De Roover was referring, was the one in which Aquinas cited as an example the case of a man who was taking wheat to market in an area which has been stricken by famine. For this reason the price of wheat in the market was abnormally high. The man in question knew that behind him on the road were further large supplies of grain *en route* to the market. The question to be decided was whether the man was bound in justice to disclose this information, thereby causing the price to fall, or whether he might take advantage of the prevailing high price. Aquinas answered that the man was not bound to disclose his information. He added the observation that the man would act more virtuously if he did so, but the strict dictates of justice did not require it. (35) The conclusion drawn by non-Marxist writers from this passage is that Aquinas did not subscribe to a labour theory of value, but considered the just price to be the market price.

Although various other medieval scholars are quoted by either side, depending on which thesis they appear to support, this apparent ambiguity in the work of Aquinas forms the crux of the debate. The fact that Aquinas never actually defined what he meant by the just price, but merely stated that it '...is not absolutely definite, but depends rather on a kind of estimate', has left the field wide open to speculation. (36) While it is undoubtedly tempting to argue that Aquinas, in all likelihood, did not state what he meant by a just price because he found it too obvious to need repeating, and then give one's own opinion of what was 'obvious', this can

34. R.De Roover, *op.cit.*, p.422.

35. Aquinas, *Summa Theologica*, Part II, Question LXXVII, Article III, in A.E.Monroe(ed.), *op.cit.*, p.60.

36. *Ibid.*, Article I, p.56.

hardly be regarded as sound academic practice.⁽³⁷⁾ It would be more fruitful, perhaps, simply to accept that the writings of Aquinas, taken out of the context of the time at which he lived, and the type of problem with which he was concerned, do not provide an accurate delineation of the concept of the just price.

The following analysis, then, will not be an attempt to discover medieval origins for modern economic theories, whether Marxist or non-Marxist, although some inferences regarding this problem may be drawn from the conclusions reached. Neither will it be directed towards finding moral guidance on modern economic and sociological questions. However fruitful these avenues of exploration may be, they unavoidably tend to cloud the issue if the purpose of studying the doctrine of the just price is to determine its influence on medieval economic development.

In order that a coherent account of the theory supporting the doctrine of the just price may be provided, two distinctions need to be made, which help to clarify the issue considerably. The first is the distinction which must be drawn between the various types of medieval scholars to whom the problem of the just price was important, and the second is the distinction between the just price *per se* and the just price as part of the larger doctrine on the nature and morality of profit making. The three separate categories of scholastic writers - the Roman lawyers, the Canon lawyers and the theologians - will be dealt with in turn. Each group will be discussed chronologically in order that changes in the doctrine over time may be elucidated. The opinions of each class on the question of profit will also be considered, because it is in this area, if anywhere, that a mechanism for maintaining the hierarchical *status quo* may be discovered.

It is necessary to distinguish between the three groups of writers who dealt with the just price - the Romanists, the canonists and the theologians - because their attitudes to the question differed, their spheres of influence in medieval society were separate and they were interested in differing aspects of the problem.⁽³⁸⁾ The medieval Romanists were concerned

37. G.O'Brien, *op.cit.*, p.112 and J.W.Baldwin, *op.cit.*, p.75.

38. J.W. Baldwin, *op.cit.*, p.8.

with interpreting and adapting Roman law, which was resuscitated in Western Europe at the end of the eleventh century. This form of law came increasingly to be applied in the civil courts. The Canon lawyers, after the compilation of Gratian's *Decretum*, which was published c.1140, were engaged in systematising and commenting on the law of the Church, as expressed in the opinions of the early Church Fathers, the Canons of Church Councils and the decretals of popes. (39) This provided the legal framework of the ecclesiastical courts. The theologians differed from both the other groups in being concerned not with the practical but with the ideal. They were regardful not of human, but of divine justice, and their pronouncements were directed towards the confessional. The differences between these groups is clearly illustrated by their attitudes to the enforcement of the just price. Baldwin described the situation as follows:

In reality only the theologians advocated the complete enforcement of the just price. The Romanists, on the other hand, maintained an opposing theory of freedom of bargaining. The Canonists, while making certain ethical evaluations, sided with their legal colleagues, the Romanists. (40)

The reasons behind this difference in attitude will become clearer as the three groups of writers are discussed in more detail. (41)

The medieval students of Roman law at the University of Bologna in Italy took as their 'text-book' the *Corpus iuris civilis* which was compiled by Justinian in the sixth century. This legal system provided the framework of the medieval legists' discussion of the just price. One feature of the Justinian Code deserves particular mention here as it considerably influenced the medieval attitude to the law of sale. Justinian divided the body of Roman law into two sections - public law and private law. Although, under private law, the principle of freedom of bargaining was recognised, under public law, control of the economy even to the extent of controlling prices was fully provided for. This dichotomy, as will be shown, became a consistent feature of medieval practice.

39. T.P. McLaughlin, *op.cit.*, p.82.

40. J.W.Baldwin, *op.cit.*

41. The discussion of the medieval Romanists and canonists which follows relies heavily on the work of J.W.Baldwin, who is the only author to have thoroughly researched the writings of these two groups of scholars on the question of the just price.

The phrase which best expresses the private Roman law principle of freedom of bargaining is *licet contrahentibus invicem se naturaliter circumvenire*, which, loosely translated, means that parties to a contract are free to get the better of one another.⁽⁴²⁾ Baldwin explained this principle in the following terms:

Buyers and sellers were permitted to outwit each other in the bargaining process - the one offering lower and the other demanding higher prices until they could agree upon a final price. This agreed price, as an expression of the wills of the contracting parties, was the legitimate price validated by law. (43)

Although this making of the wills of the two parties to the contract paramount in the setting of a price allowed considerable leeway, there was some safeguard in the proviso that both parties had to act in good faith. This precluded all forms of *dolus* or fraud, which was defined as '...any cunning, deceit, or contrivance used to defraud, deceive or cheat another.' (44)

An exception to the broad rule of freedom of bargaining which was to have considerable effect on the medieval doctrine of the just price was the principle of *laesio enormis*, or excessive violation. This was not a particularly important device in Roman law, but was to become an integral part of the medieval system, being, in fact, the vehicle by which the concept of a just price was introduced.⁽⁴⁵⁾ *Laesio enormis* applied to the sale of land and only the seller was entitled to have recourse to it. In effect, the possibility existed of remedying a contract of sale of land if the seller had received less than half the just price. The buyer then had the option of returning the land and regaining his payment, thereby cancelling the sale, or of making up the price he had paid to the full just price.⁽⁴⁶⁾

42. J. Gilchrist, *op.cit.*, p.59.
 43. J.W. Baldwin, *op.cit.*, p.17.
 44. Ulpian, Quoted in J.W. Baldwin, *op.cit.*
 45. J.T. Noonan, *op.cit.*, p.82.
 46. J.W. Baldwin, *op.cit.*, p.18.

Laesio enormis was not the only instance in which the determination of a just price was necessary. Cases involving the manumission of slaves, the restitution of stolen goods, the division of goods held in common and the settlement of marriage contracts and dowries, all required a fairly accurate estimation of the value of various articles. ⁽⁴⁷⁾ There are two texts from the *Digest*, one of the divisions of the *Corpus iuris civilis*, which illustrate the principles upon which the estimation of the just price depended. The first states that '...the price of things is not from the affection or utility of single persons, but from their common estimation', while the second identifies the value of a good with the price at which it can be sold. ⁽⁴⁸⁾ It seems fairly clear from this that Roman law did not attribute any intrinsic worth to various articles, but simply accepted the market valuation, according due weight to the time and place of sale.

These, then, were the provisions of Roman law for the processes of buying and selling, upon which the medieval Romanists commented and expanded. It must be pointed out that, although the Romanists studied the civil law, they were Christian scholars, and their training included a solid grounding in Canon law and theology. ⁽⁴⁹⁾ At the University of Bologna they worked alongside the Canonists, which accounts, perhaps, for some of the refinements which they introduced into Roman law. The Civil Law of Justinian was considered to be acceptable in most respects by the Christian lawyers. The essential principles of justice upon which Roman law was founded harmonised reasonably well with broad Christian precepts such as the Golden Rule. ⁽⁵⁰⁾ Where the Roman law conflicted with specific Biblical or Canonical prohibitions, as in the case of usury, it was used selectively. ⁽⁵¹⁾ This, however, was not the case with the principle of freedom of bargaining, which was accepted unequivocally by the Romanists.

47. *Ibid.*, p.20.

48. J.T. Noonan, *op.cit.*, pp.82-83.

49. T.P. McLaughlin, *op.cit.*, p.83.

50. 'All things whatsoever you would that men should do to you, do you also to them.' Matthew 7:12.

51. T.P. McLaughlin, *op.cit.*, p.94.

It is perhaps as a result of the close association between canonists and civilists that the concept of a just price became more important to the latter than the Roman law warranted. Freedom of bargaining, although accepted in principle, was circumscribed by the medieval civil lawyers by their widening of the application of *laesio enormis*. When this device was revived during the twelfth century it was immediately extended to apply not only to *fundus* (land), but to *res*, that is, all things. ⁽⁵²⁾ Thus, from the beginning, the Romanists held that recourse could be had to *laesio enormis* in the case of any disputed sale. The line was very clearly drawn that the extent of the injury must be that less than one half of the just price had been paid, '...and nothing short of this limit was considered sufficient to contest a sale.' ⁽⁵³⁾

During the twelfth century, the civilists accepted without question the fact that under Roman law, the remedy of *laesio enormis* was available only to the seller. Early in the thirteenth century, however, this protection was extended, without any apparent debate among the civilists, to include the buyer. ⁽⁵⁴⁾ Considerable controversy did arise over the question of the limits of this protection if the buyer was the injured party. The seller was entitled to contest a sale if he had been paid less than half the just price, and, initially, it was suggested that the buyer be allowed to claim if he had been paid more than double the just price. A rival theory was then advanced: that it would be more equitable to calculate half the just price and add this sum to the just price in order to define the limit of the buyer's protection. Two influential Roman law scholars, Accursius(d.1263) and Odofredus(d.1265), adopted the latter solution, and their authority was generally acknowledged by later writers. ⁽⁵⁵⁾ The effective nature of the device of *laesio enormis* has been described by Baldwin in the following terms:

52. J.W. Baldwin, *op.cit.*, p.22.

53. *Ibid.*

54. *Ibid.*, p.23.

55. *Ibid.* Vide Appendix C.

Laesio enormis ended as a broad generalized principle for both buyers and sellers of all kinds of goods in an effort to rectify gross economic injustice. In its transformation, it became commensurate and supplementary to the general Roman law theory of free bargaining. Gross mistakes of price in free marketing could be remedied by law. (56)

These efforts on the part of the civilists to entrench the enforcement of payment of at least half the just price on either side will perhaps appear more intelligible in the light of contemporary attitudes to commercial practices in general.

It has been seen that the Roman law inherited by medieval scholars allowed considerable leeway in the regulation of buying and selling. The seller was free to extract the maximum amount of profit from a transaction, provided that he did not actually engage in fraudulent dealing. This permissiveness, however, did not accord particularly well with Christian thought. Avarice was considered to be an ineradicable part of man's lower nature. St Augustine, in the fourth century, related the following story of an actor who promised to reveal to his audience what it was that they all wanted:

...a large crowd assembled on the appointed day, silent and expectant, to whom he is said to have announced, 'You wish to buy cheap and sell dear.' That actor, either from self-examination or from experience of others, came to the conclusion that to wish to buy cheap and sell dear was common to all men....As a matter of fact, it is a vice. (57)

This widespread tendency to avarice was something which, according to the Church, needed to be curbed as it could not be entirely removed. This idea was not given explicit attention in the writings of the medieval Romanists, but it probably motivated their attempts to curtail absolute freedom of bargaining in the market place.

56. *Ibid.*, p.27.

57. Quoted in B.W. Dempsey, *op.cit.*, p.475. *Vide* Appendix C.

The canonists, on the other hand, were explicitly concerned with the moral aspects of commercial practices. To begin with, in the *Decretum* of Gratian, '...the position of the merchant is hardly a complimentary one.' (58) Two of the canons included in this compilation forbade the practice of buying at a low price with the intention of selling later at a high price. (59) These canons were applicable both to the clergy and to the laity. Although these canons are included in the section dealing with the usury prohibition, they do not condemn speculative practices on the grounds that they are usurious, but because they constitute a form of *turpe lucrum* or shameful gain. In the words of one of the canons:

Whoever buys grain and wine in the time of harvest or vintage not out of necessity but for the sake of avarice - for example, whoever buys one measure for two pennies and waits until it is sold for four or six pennies or more - that one, we say, acquires shameful profit. (60)

This condemnation of commercial activity was further strengthened by the canon *Qualitas*, in the final section of the *Decretum*, which contained the warning that '...it is difficult to transact commercial affairs of buying and selling without committing sin.' (61)

Several inclusions were added to the original compilation of Gratian, after its publication, which were called *palea* after Paucapalea (fl.1140-1148), who contributed a large number of them. At least three of these, which were taken from Patristic sources and added, probably before 1188, to the *Decretum*, cast further approbrium on the profession of the merchant. (62) Although it was made clear that the term 'merchant' designated one who bought cheap to sell dear without expending any effort on changing the product, thus excluding the craftsman from this approbrium, the *Decretum* none the less pronounced a decidedly harsh judgement. Baldwin made the point that:

58. J. Gilchrist, *op.cit.*, p.53.

59. T.P.McLaughlin, *op.cit.*, p.124.

60. This text originated in the Carolingian period in one of the capitularies of Charlemagne. J.W.Baldwin, *op.cit.*, pp.33,36.

61. *Ibid.*, p.37.

62. J.W. Baldwin, 'The Medieval Merchant Before the Bar of Canon Law', *Papers of the Michigan Academy of Science, Arts and Letters*, Vol.44, 1959, pp.292-293. *Vide* Appendix C.

A lively economic atmosphere such as that of the twelfth century could hardly sustain such unequivocal condemnations of the merchant and commercial activity contained in the *Decretum* and the later *paleae*. The Decretists who as lawyers were sensitive to the practical tendencies of their day could not let such judgements stand uncriticized. (63)

One of the most pressing tasks of the medieval canonists, then, was to provide a more realistic assessment of the profession of the merchant than that which was contained in the *Decretum*.

The first step towards this re-assessment involved a more detailed analysis of the process of buying cheap and selling dear. During the twelfth century, three influential canonists, Rufinus, Huguccio and Hostiensis defined three separate categories of buying and selling. (64) The first category was that in which gain was the unintended result of a forced sale. If an article which had been purchased for personal use had, through force of circumstances, to be sold, it could be sold at the prevailing valuation. The gain made if the price of the article had risen in the interim was not regarded as *turpe lucrum*. The second category consisted of the selling of articles which had been improved in some way by the seller. Craftsmen, who laboured to produce their wares, were included in this category, and their gain was also regarded as *honestus* and not *turpis*. (65) On the question of *negotiatio*, or trading in the truest sense, Rufinus, writing between 1157 and 1159, made the concession that a merchant might sell at a higher than cost price if the article in question had been either transported or changed in any way. (66) Huguccio made a new departure by not attempting to justify the profit of a merchant on the basis of labour and expenses, but by concentrating on the motivation for seeking that profit. If the gain was being sought for a good cause it did not require justification. (67) In the final analysis, the canonists of the twelfth century concluded that the profession of the merchant might

63. *Ibid.*, pp.293-294.

64. *Ibid.*, p.294. *Vide* Appendix C.

65. J. Gilchrist, *op.cit.*, p.53.

66. T.P.McLaughlin, *op.cit.*, p.124.

67. J.W.Baldwin, *op.cit.*, p.295.

be honourably conducted, provided that profit was not sought out of an insatiable greed for excessive gain. This conclusion became the commonly accepted one in the thirteenth century. (68)

It must be stressed that this analysis of the morality of buying and selling did not include the concept of a just price. Indeed, the entire discussion was based on the assumption that prices would naturally change with time and place. When the canonists considered whether a man might buy cheap and sell dear, there was no suggestion that either the low or the high price was unjust. The question under consideration was simply to determine to what extent advantage might lawfully be taken of this natural fluctuation in prices. The conclusion reached - that a merchant was entitled to make a living for himself and his family in keeping with his station in life - accorded well with the Church's approval of a hierarchical society. The mechanism which the Church endorsed as suitable for maintaining the *status quo* was not some objective just price, which would clearly be impractical, but consisted rather of a policy of keeping watch on profits which were made and ensuring that they were funnelled into acceptable channels.

During the twelfth century, the Canon lawyers were chiefly concerned with the study of Gratian's *Decretum*. Roman law had not, as yet, formally penetrated Canon law, but the general rule laid down by Gratian that 'Roman law could be used in ecclesiastical affairs where Scripture and Canon law did not contradict its solutions' was generally accepted. (69) No formal Christian doctrine on the mechanics of purchase and sale existed at this time, and thus the canonists found no reason to reject the Roman law principle of freedom of bargaining. The modifications which were being made to the device of *laesio enormis* by the Romanists were also accepted without question by the canonists. During the thirteenth century, 'Three decretals issued from the *curiae* of Popes Alexander III and Innocent III permanently introduced the Roman law doctrine of *laesio enormis* into the body of Canon law.' (70)

68. J. Gilchrist, *op.cit.*, p.56.

69. J.W. Baldwin, 'The Medieval Theories of the Just Price', *Transactions of the American Philosophical Society*, New Series, Vol.49, Part 4, 1959, pp.42.-43.

70. *Ibid.*, p.43. *Vide* Appendix C.

The system developed by the Romanists, of freedom of bargaining within the limits of *laesio enormis*, was accepted unequivocally by the canonists.

The device of *laesio enormis*, by setting limits at one half over and one half under the just price necessitated the formulation of a definition of the just price. According to Baldwin:

For the medieval legist, whether Romanist or Canonist, the just price or the true value of goods was simply the price which they currently fetched. This price could include either free competitive or officially regulated conditions. Since this price fluctuated according to different places, the just price was related to specific times and localities....This doctrine formed the contemporary legal setting for the theological counterpart of the just price. (71)

There seems to be no question then of the just price being a socially determined price. The Romanists and Canonists both agreed that the legal just price was the market price, unless officially set. The legal fixing of prices will be further discussed when the practical application of the doctrine is considered, (72) but it may be noted at this point that the scholastics appreciated the fact that a legal price which was too far out of line with the natural price could not be enforced. (73)

The proposition that canon law equated the just price with the market price does not negate the fact that the Church was in favour of maintaining a hierarchical society. It was the profits which were made under the system of free bargaining, and the uses to which they were put which came under the scrutiny of the Church, rather than the price fluctuations by which they were made. It is against this legal and practical background that the more idealistic writings of the theologians must be examined in order that their meaning may be properly assessed. The attitude of the theologians towards commerce in general will be discussed before their analysis of the just price is considered. After that an attempt will be made to show how these ideas fitted into the medieval ideological framework.

71. *Ibid.*, p.54.

72. *Vide infra*, Chapter 5.

73. G. O'Brien, *op.cit.*, pp.108-109.

During the twelfth century, discussion of the just price and the morality of commercial practices was almost exclusively the province of the Roman lawyers and the canonists. However, during the thirteenth century these problems were enthusiastically appropriated by the theologians. The renewed interest in Aristotelianism gave rise to a consideration of political and economic detail which the essentially unsophisticated Christian doctrine had hitherto ignored. It was to be expected that the theologians should take cognizance of the practical system being developed by the Roman lawyers and the canonists, but their tasks were set at a higher level of abstraction. The legists were organising the conduct of daily life within the framework of Christian doctrine, while the theologians were occupied with cementing and embellishing the framework itself.

The theologians, like the legists, separated the justification of profit-making from their consideration of the just price. When discussing the former, they simply accepted that profit could be made by means of various activities, and then set out to decide whether these gains were morally acceptable or not. The factors of labour and expenses were stressed, not as elements of a just price, but as a title to the profit which might be made in the market-place. No difficulty was ever encountered in justifying the livelihood of craftsmen and manufacturers. The theologians not only regarded it as just that producers should be rewarded for their labour, they perceived that it was socially necessary that this should be the case. Albertus Magnus argued that:

...the carpenter ought to receive the product of the tanner and in turn pay the tanner that which according to a just exchange is his....And when this equality is not preserved, the community is not maintained, for labor and expense are not repaid.

This might be thought to imply that a just price could be computed on the basis of labour and expense, but in the same passage the point is made that:

Properly, therefore, these things are exchanged not absolutely but with a certain comparison to their value according to use and need. Otherwise there would be no exchange. (74)

It would appear, then, that the craftsman was entitled to a reward for his labour and the expense which he incurred in creating his product. The extent of that reward, however, would depend not on his station in life, but on the value of his product 'according to use and need'.

Aquinas, working from the same Aristotelian base as Albertus Magnus, namely *The Nicomachean Ethics*, drew similar conclusions. Their discussions had nothing whatever to do with the concept of the just price as derived from Roman law. They were concerned with the justice governing human relations in an abstract sense and not with the concrete reality of buying and selling in a market-place. To propose that, in a just society:

...as many sandals must be exchanged for one house...as the builder...exceeds the shoemaker in his labour and costs.
If this is not observed, there will be no exchange of things and men will not share their goods with one another. (75)

is not to say that a specific shoemaker may only charge for his sandal as much as it cost him to produce it. The discussion of this problem is set forth in the abstract, and it never descends to specifics.

The theological justification of the profits of the craftsman was not as convoluted as it might at first appear. As O'Brien pointed out, '...questions of difficulty only arose when a claim was made for payment in a transaction where the element of service was not apparent.' (76) The profit of the craftsman was justified as a reward for labour, and the question of price needed no consideration. However, when the problem was the justification of the profit of the merchant, who did not labour directly in order to improve his merchandise, the question of price assumed considerable importance.

74. Quoted in B.W.Dempsey, *op.cit.*, p.477.

75. Aquinas, *Commentary on the Nicomachean Ethics*, Book V, Lecture 1X, Quoted in S. Hollander, *op.cit.*, p.619.

76. G. O'Brien, *op.cit.*, p.141.

It was by taking advantage of fluctuations in price that the merchant was able to make a profit. The fact that prices changed with place and time was regarded as natural and inevitable by the theologians.

Aquinas made this abundantly clear in the *Summa Theologica*, in his discussion of whether *in trading* it was lawful to sell a thing for more than was paid for it. (77) The question under consideration was whether the same article could be bought and sold at different prices, because, '...he who in trading sells a thing for more than he paid for it must have paid less than it was worth or be selling for more.' (78) In answer to this, Aquinas explicitly stated that the price might have changed '...with a change of place or time...' and that, therefore, '...neither the purchase nor the sale was unjust.' (79) The example which Aquinas used in this instance was that of the forced sale - that is, where the express purpose was not in order to gain by trading. This argument, therefore, does not provide a blanket justification of mercantile profits, it merely recognises the fact that prices do change with place and time. This was, however, a necessary pre-requisite for approval of the profession of the merchant. Had buying cheap and selling dear been found to be unjust, *in itself*, because the just price was some immutable quantity determined by the intrinsic worth of an article, in the same way that usury, *in itself*, was considered to be unjust, then no casuistry of the theologians could have made it just.

The foregoing analysis must inevitably lead to the conclusion that Aquinas did not regard the just price as something fixed and immutable. This would have been the case had he considered the just price to have been either based on the cost of production or socially determined. In either of these cases, an object would have been endowed, at the time of its first sale, with a definite value, fixed in money terms, which could not justly have been subject to change with variations in time and place. This conclusion is further supported by Aquinas' example of the man taking wheat to market, mentioned earlier, which indicates that he was prepared to accept

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77. Aquinas, *Summa Theologica*, Part II, Question LXXVII, Article IV. In A.E. Monroe(ed.), *op.cit.*, pp.62-64.
 78. *Ibid.*, p.62.
 79. *Ibid.*, p.64.

the market price as just. (80)

The conclusion, then, was that the act of buying and selling at different prices could not be reprobated. The trader, by taking advantage of fluctuations in prices, was not engaging in a practice which was forbidden by divine law. The motive for trading was subject to suspicion, but not the practice itself. The only possible motive for trade was the desire for gain, which did not '...logically involve an honourable or necessary end,' and trade itself was thereby rendered suspect. (81) Aquinas, however, pointed out that there was '...no reason why gain may not be directed to some necessary or even honourable end.' (82) The desire for gain was to be used for the support of the merchant and his family, for charitable works, or for the public welfare. Profit could be legitimately sought by the merchant, provided that it was pursued '...not as an end, but as a reward for his efforts.' (83)

The ethical justification of the profession of the merchant provided by Aquinas was substantially accepted by contemporary and successive theologians. The following quotation from St Antoninus, written in the fifteenth century, demonstrates this attitude:

The notion of business implies nothing vicious in its nature or contrary to reason. Therefore, it should be ordered to any honest and necessary purpose and is so rendered lawful, as for example, when a business man orders his moderate gain which he seeks to the end that he and his family may be decently provided for according to their condition, and that he may also assist the poor. Nor is condemnation possible when he undertakes a business as a public service lest necessary things be wanting to the state, and seeks gain therefrom, not as an end, but in remuneration for his labour. (84)

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80. *Vide supra*, p.44
 81. Aquinas, *op.cit.*, p.63.
 82. *Ibid.*
 83. *Ibid.*
 84. Quoted in B.W. Dempsey, *op.cit.*, p.483.

The similarity between this passage and Aquinas' treatment of the subject is striking, but not astonishing when the esteem in which Aquinas' work was held by later scholastics is considered.

The problem of what the theologians actually meant when they mentioned 'the just price' ought to be considerably simplified in the light of the above discussion. It has been shown that both the Romanists and the canonists regarded the just price as that which would prevail in a market under a system of free-bargaining. Aquinas, however, never explicitly stated that he agreed with this conception of the just price. The possibility that he regarded the just price as one which was based on the cost of production may be ruled out, but this does not necessarily imply that he was in full agreement with the legists. The passage in which he discussed 'Whether a man may lawfully sell a thing for more than it was worth' must be closely examined before this question may be decided. (85)

To begin with, Aquinas invoked the Golden Rule, 'All things whatsoever you would that men should do to you, do you also to them.' (86) After citing this he argued that because no man would wish to have something sold to him for more than it was worth, so no man should sell something to another for more than it was worth. Aquinas was not prepared to allow any leeway. In order that justice should be satisfied the exact just price, which was the value of the article in money terms, had to be paid. The only exception Aquinas allowed was in the case of a buyer wishing to obtain an article from a seller who would suffer some special injury in parting with it. In this case, the seller was entitled to charge a higher price as compensation for the injury because the article had a greater value to him personally than it would have in the common estimation. Special need on the part of the buyer, however, could not be taken advantage of by the seller. (87) Baldwin provided the following examples of these two cases. A man selling his only coat would be entitled to compensation for the hardship he would suffer in parting with it. However, a seller would be acting wrongfully if he charged

85. Aquinas, *op.cit.*, Article I, pp.53-56.

86. Matthew 7:12

87. Aquinas, *op.cit.*, pp.54-55.

a higher than just price to a man who required food but was unable to reach the market to acquire it because of a broken leg. (88)

This analysis still gives no clear indication of what Aquinas actually meant by the just price. From this point, however, he went on to reply to the argument which he had given earlier - that the civil law did not insist on a just price being paid, but allowed buyer and seller to deceive each other. This passage is of crucial importance and hence is quoted in full:

...human law is given to the people, among whom many are deficient in virtue, not to the virtuous alone. Hence human law could not prohibit whatever is contrary to virtue; it suffices for it to prohibit the things which destroy the intercourse of men, treating other things as lawful, not because it approves them, but because it does not punish them. Hence it treats as lawful, imposing no penalty, the case where a seller without deception obtains a higher price or a buyer pays a lower price; unless the discrepancy is too great, since in that case even human law compels restitution to be made; for example, if a man were deceived as to the just price by more than half. But divine law leaves nothing unpunished which is contrary to virtue. Hence, according to divine law, it is considered unlawful if the equality required by justice is not observed in buying and selling; and he who has more is bound to recompense the one who suffers loss, if the loss is considerable. I say this, because the just price of things is not absolutely definite, but depends rather on a kind of estimate; so that a slight increase or decrease does not seem to destroy the equality required by justice. (89)

In this passage Aquinas had quite clearly set out the Roman law principle of free bargaining (*licet contrahentibus invicem se naturaliter circumvenire*) within the medieval limits of *laesio enormis*, that is one half of the just price. His objection to this was not on the grounds of free bargaining, but on the provisions of *laesio enormis*. He was not advocating a different method of arriving at the just price to that proposed by the legists; he was merely insisting on a much closer adherence to it than the law allowed.

88. J.W. Baldwin, *op.cit.*, p.79.

89. Aquinas, *op.cit.*, p.56.

Baldwin's work has clearly demonstrated that the Romanists and the canonists regarded the just price as that price which an article would fetch at a particular place and time in the absence of interference with the market. Aquinas in this passage implicitly accepted their judgement. This was his reason for adding that the just price could not be determined exactly, but depended upon a 'kind of estimate'.

The conclusion that, to all three groups of medieval scholars, the just price was simply the market price, does not in consequence imply that they advocated a system of free enterprise and that the medieval economy was unhampered by ideological restrictions. The hierarchical system was considered to be the correct way of ordering society by legists and theologians alike. Unrestricted competition would inexorably have led to the destruction of this order, and this was recognised by the Schoolmen. De Roover commented on the fact that:

Although the whole discussion on the just price assumed the existence of competitive conditions, it is strange that the word "competition" never occurs in scholastic treatises until the end of the sixteenth century....(90)

In fact, this is not "strange" at all. The medieval concept of society was essentially non-competitive. The ideal to be striven for was that all men should work together for the common good. To apply this theory to the concept of the just price as a market price, it might be remarked that whereas a modern economist sees different groups as competing in the market place to achieve a rational price, a medieval thinker would have observed non-competing groups working together to set a price which was fair. The end result might, indeed, be the same, but the difference in perception of the way in which it might be reached is important. The medieval desire to maintain the hierarchical *status quo* was not incompatible with their conception of a market price.

90. R. De Roover, *op.cit.*, p.425.

CHAPTER FOURTHE DOCTRINE OF THE PROHIBITION OF USURY

'Lend, hoping for nothing again; and your reward shall be great.'

Luke 6:35

The teaching of the medieval Church on usury is, in at least one important respect, less difficult to comprehend than the teaching on the just price. The just price was to the scholastics a flexible and, indeed, rather nebulous idea. Their pronouncements upon it, therefore, are open to various interpretations by modern researchers. Usury, on the other hand, was a far more substantial concept, and could be discussed in such specific terms that the commentaries of the medieval writers are in most cases unambiguous. This is not to say that there was never any disagreement, or that the body of the Church's teaching on usury is concise and uncomplicated, but it is at least possible to apprehend what each authority taught without a great deal of difficulty.

It must be made quite clear initially that there is no such thing as a coherent, straightforward set of teaching which may be labelled 'the doctrine of the Church on the prohibition of usury'. Attempts to over-simplify this complex area can only result in the propagation of misleading notions. Statements that the Church prohibited the taking of 'interest' on 'loans', and that commercial activity required 'evasion' of the law, fail even to indicate the intricacy of the problem. It must be appreciated that the usury doctrine was a complicated, tangled, and sometimes even contradictory aggregation of rules. The reasons for this complexity require explanation as they provide the clue to the labyrinth of ecclesiastical usury legislation.

The first factor which ought to be borne in mind is that the teaching of the medieval Church was accumulated over one and a half millenia. Additions, commentaries and re-interpretations were frequent but very seldom was anything discarded. The canons of the First General Council, Nicaea I (325) were as legally binding as those of Lateran V (1512-17). The writings of St Jerome in the fourth century, of St Thomas Aquinas in the thirteenth century, and of St Antoninus in the fifteenth century augmented but never cancelled each other.

The second reason for the complexity of the usury doctrine was the bewildering variety of sources from which it was taken. Both the Old and the New Testaments of the Bible contained texts dealing with the question of usury. The Patristic writers, whose authority was highly regarded in the Middle Ages, had expressed opinions on the subject. The Canons of the General Councils of the Church, and the decretals of popes, constituted legislation which was later commented on by Canon lawyers. Finally, considerable weight was attached to the arguments of the theologians on the nature of usury and its inherent injustice. This body of teaching was to some extent circumscribed by the basic legislation, but there was always room for individual interpretation.

A third complicating factor in the development of the doctrine regarding usury was the constant pressure which was exerted upon it by the changing and developing medieval economy from the eleventh century onwards. There were other doctrines of the Church which, once fixed, required no further attention. Theft, for example, was a sin against justice, as was usury, but external circumstances could not alter the immorality of taking another's lawful property. However, the changes which were occurring in the medieval economy made it imperative that the nature of commercial transactions should be continuously and minutely examined to determine whether or not they were usurious. One reason for this was that the usury prohibition inevitably contained loopholes which the medieval merchants, bankers, and money-changers were skilled at detecting and turning to advantage. On

the other hand, the increasing complexity of commerce was also giving rise to financial transactions on which some return could legitimately be demanded.

A fourth source of confusion with respect to the teaching on usury is that which arises when no distinction is made between canonist and theological opinions. Noonan expressed the importance of this in the following way:

The distinction between a scholastic canonist and a scholastic theologian may seem trifling. Each was a servant of the Church; each was guided by the teaching of the Gospel, the natural law, and the canons. Yet the observer will note the differences in their approach to usury that seem best accounted for in terms of their different roles. The canonists were concerned mainly with solutions valid for the external forum of the Church; they were concentrating on the administration of the law. The theologians were focussing mainly on the confessional. Moreover, the canonists, fitting their commentaries to specific canons, made no comprehensive effort to reconcile the canons or to produce a synthesis. The theologians are at once more systematic, more logical, and often more severe. (1)

There must of necessity be some overlap, but the canonists and theologians were concerned by and large with different levels of the same problem. For example, the canonists simply accepted that usury was against the law, while the theologians attempted to clarify why it was against the law, and, even further, which particular law it violated. The canonists, working on the day-to-day application of the usury prohibition, paid more attention to evasions and disguised usury, while the philosophers were involved with the morality or immorality of business practices. As they were formulating general standards, they of necessity had to be more severe in order to prevent the prohibition being swept away entirely.

1. J.T. Noonan, *op.cit.*, p.48.

This chapter will follow a chronological sequence, divided into the same three periods as were used in the previous chapter, that is: prior to the eleventh century; the eleventh to the thirteenth centuries; and the fourteenth and fifteenth centuries. During the early period, the solid foundations of the usury doctrine were laid. The middle period was that in which the intricate and imposing structure reached its height, while in the last two centuries the cracks which were eventually to lead to its collapse may be seen to be appearing. Throughout the discussion, the accumulative nature of the doctrine, the wide range of sources, the pressure from external economic changes and the differing roles of the canonists and theologians must be borne constantly in mind.

The prohibition of usury before the eleventh century remained analytically rudimentary. Usury itself was very sketchily defined and no attempt was made to define a loan. The importance of the developments of this time lies in the fact that the usury prohibition became firmly entrenched in the law of the Church, and, through its inclusion in the Capitularies of Charlemagne, in the civil law of the Holy Roman Empire. This remained unquestioned by all the later writers, and there was never any attempt on their part to have the prohibition removed. The starting point of all the medieval canonists and philosophers on the question of usury was that it was against the law of the Church. Whether it was convenient, realistic or amenable to control or not was immaterial. They could work on why usury was against the law and in what it actually consisted, but the question of whether it was against the law had already been decided. What needs to be considered in this early period, then, is how the usury prohibition entered the law of the Church. Noonan has summed up the position as follows:

Taken together, the Bible, the patristic writings, and the Councils witnessed that the Christian tradition itself condemned usury, and it was the combined weight of these authorities, and no single authority by itself, that was responsible for the medieval position. (2)

2. *Ibid.*, p.11.

Each of these authorities requires consideration in some detail in order that the basis of the prohibition of usury may be appreciated.

The Biblical texts which were most influential with regard to the usury doctrine were Deuteronomy 23:19-20 from the Old Testament and Luke 6:35 from the New Testament. ⁽³⁾ The Deuteronomic texts entered Christian teaching during the fifth century when they were discussed by two of the early Fathers: St Jerome (342-419) and St Ambrose of Milan (339-397). ⁽⁴⁾ These Judaic texts forbade the taking of usury from 'a stranger' but not from 'a brother'. St Jerome's contention was that the New Testament had universalised the usury prohibition, probably referring to the text in Luke's Gospel, and that the correct interpretation of the scriptures was that it was forbidden to take usury from anyone. St Ambrose, on the other hand, concluded:

From him, it says there, demand usury, whom you rightly desire to harm, against whom weapons are lawfully carried. Upon him usury is legally imposed. On him whom you cannot easily conquer in war, you can quickly take vengeance with the hundredth. From him exact usury whom it would not be a crime to kill. He fights without a weapon who demands usury: he who revenges himself upon an enemy, who is an interest collector from his foe, fights without a sword. Therefore, where there is the right of war, there also is the right of Usury. ⁽⁵⁾

This impasse, of two highly regarded authorities at odds with each other, was left for the thirteenth century theologians and canonists to reconcile.

The other Church Fathers who dealt with the question of usury did so in a rather desultory fashion. St Basil (c.330-390) St Gregory of Nyssa (d.390) and St Augustine (354-430) were concerned with the evil effects of usury rather than with its intrinsic nature:

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3. Deuteronomy 23:19: 'Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of any thing that is lent upon usury.' 20: 'Unto a stranger thou mayest lend upon usury: but unto thy brother thou shalt not lend upon usury.' Luke 6:35: 'But love ye your enemies, and do good, and lend, hoping for nothing again; and your reward shall be great.'
 4. J.B. Nelson, *The Idea of Usury* (1949), p.3. *Vide* Appendix C.
 5. Quoted in *ibid.*, p.5.

...one can scarcely cite a single patristic opinion which can be said clearly to hold that usury is against justice, whilst there are, on the contrary, certain undercurrents of thought in many writers, and certain explicit statements in others, which tend to show that the Fathers would not have been prepared to deal so harshly with usurers, did usurers not treat their debtors so cruelly. (6)

The positive prohibition of usury, then, did not emanate from the patristic writings; they merely conveyed the impression that it was uncharitable and a form of *turpe lucrum*, or shameful gain.

The only mention of usury in the General Councils before the eleventh century is to be found in Nicaea I (325). (7) This canon specifically forbade the taking of usury by clerics, and imposed the sanction of deposition and removal from his order on any cleric found guilty of transgressing the rule. (8) The provincial Council of Elvira in 305 or 306 passed a decree against usury, which was important in that it affected later legislation, but it also almost certainly only applied to the clergy. (9) The extension of the usury prohibition to include the laity as well as the clergy in the Capitularies of Charlemagne had no foundation in conciliar legislation. It was based on the epistle, *Nec hoc quoque*, of Pope Leo the Great (440-461) which categorically forbade the taking of usury by clerics and declared that laymen who took it were guilty of seeking *turpe lucrum*. (10)

At the beginning of the eleventh century, then, there were sufficient grounds for the practice of usury to be regarded with suspicion by ecclesiastical authority, but the specific prohibition applied only to clerics. The economic revival, which caused such momentous changes in the commercial sphere, gave rise to a considerable increase in money-lending. This was viewed by the Church as a matter for grave concern, as both the extent and the nature of the usury prohibition were being called into question. The civil law of the Carolingian Empire, which had forbidden the practice of

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6. G. O'Brien, *op.cit.*, p.172.
 7. J. Gilchrist, *op.cit.*, p.155.
 8. *Vide* Appendix A. Nicaea I, Canon 17.
 9. G. O'Brien, *op.cit.*, p.169.
 10. J.T. Noonan, *op.cit.*, p.15.

usury to all was no longer effective, and there were other civil codes in Western Europe which allowed the taking of moderate interest on loans. ⁽¹¹⁾ Furthermore, the renewed study of Roman Law at the end of the eleventh century, disclosed that the Justinian Code did not prohibit usury, but provided for maximum rates of interest. ⁽¹²⁾ The indefinite position of canon law with regard to the taking of usury by laymen meant that the Church was impotent to oppose the permissiveness of these civil codes.

The doubt as to the grounds on which usury was prohibited also prevented the Church from curbing its growth during the eleventh century. The question of whether usury was a sin against charity or a sin against justice was significant in terms of the conditions under which usury could occur, and the requirements for forgiveness. To behave charitably was regarded as a virtue and was to a great extent a matter of personal choice. It was only a sin to behave uncharitably if aid was refused to a person in the extremities of want who had no other means of obtaining assistance. Should such a sin be committed, all that was required for absolution was internal repentance. A sin against justice was regarded by the Church as a far more serious matter. Christians were bound to act justly at all times in all social transactions without regard to the wealth or social status of the parties involved. Transgressions against justice required full restitution of the unjust gain to the injured party or parties. This was not merely a matter of obtaining absolution in the confessional, it could be actively enforced by the ecclesiastical courts. ⁽¹³⁾ Establishing the injustice of usury would considerably increase the Church's power to restrict its practice, but this was not accomplished before the twelfth century.

The ambiguity of the Church's position with respect to the Deuteronomic double standard, also contributed to the spread of usury in Western Europe. Although St Jerome had maintained that the Judaic permission for usury to be taken from 'strangers' was negated by Christian teaching,

11. T.P. McLaughlin, *op.cit.*, p.84.

12. *Ibid.*

13. J.T. Noonan, *op.cit.*, p.30.

the decision of St Ambrose that where there was right of war there was right of usury still had considerable authority. As B.N. Nelson pointed out:

Unqualified acceptance of Ambrose's teaching authorised Christians to demand interest from Moslems...but it also gave the Jews in Europe *carte blanche* to continue to exact usury from their Christian debtors. (14)

The position of the Church at the beginning of the twelfth century, then, was that although it reprobated the practice of usury, its power to combat it was severely hampered by the indefinite nature of the doctrine as it then existed.

The reaction of the Church during the twelfth century was to clarify the legal situation with regard to the usury prohibition. The *Decretum* of Gratian, which was completed around 1140, summarized the law of the Church as it then existed, and due attention was paid to the question of usury. The Second and Third Lateran Councils, in 1139 and 1179 respectively, passed canons which further entrenched the prohibition. Two twelfth century popes, Alexander III and Urban III, also made pronouncements with regard to commercial transactions which might be considered usurious. As this legislation formed the basis of the commentaries of the canonists and the discussions of the theologians of the twelfth and thirteenth centuries, it ought to be examined in detail.

Gratian dealt with the question of usury in two sections of the *Decretum*. In the first section he considered the question of whether the law of the Church forbade the raising to orders of one who had been convicted of usury, and whether a cleric found guilty of usury should be deposed. He collected eight canons to show that ordination was forbidden in the first case and deposition recommended in the second. ⁽¹⁵⁾ The second section was of greater practical significance because it dealt with the question of whether either clerics or laymen were permitted to take usury, that is, this was not a

14. B.N.Nelson, *op.cit.*, p.6.

15. T.P. McLaughlin, *op.cit.*, p.82.

question of being fit for office, but a matter of law. Within this second section usury was defined as 'whatever is demanded beyond the principal', citing the authority of the patristic writers: St Augustine, St Jerome and St Ambrose. (16) Using texts from the fourth, fifth and sixth centuries, chiefly the *Nec hoc quoque*; a biblical reference, Psalm 14; and two texts from a capitulary of 802, Gratian established the following points:

To demand or receive or even to lend expecting to receive something above the capital is to be guilty of usury; usury may exist on money or on anything else; one who receives usury is guilty of rapine and is just as culpable as a thief; the prohibition against usury holds for laymen as well as clerics but, when guilty, the latter will be more severely punished. (17)

This, then, was an authoritative statement that usury was unjust rather than uncharitable, particularly as Gratian also insisted that restitution be made, as in the case of theft. (18)

Of considerable importance to the development of the usury doctrine was a work known as the *palea Ejiciens* which was incorporated in Gratian about 1180. It was apparently composed in about the fifth or sixth century and erroneously attributed to St John Chrysostom. (19) It was the source, in rudimentary form, of many of the later descriptions of the nature of usury. For this reason, it is worthy of quoting at length:

Of all merchants, the most cursed is the usurer, for he sells a good given by God, not acquired as a merchant acquires his goods from men; and after the usury he reseek his own good, taking both his own good and the good of the other. A merchant, however, does not reseek the good he has sold. One will object: Is not he who rents a field to receive the fruits or a house to get an income similar to him who lends his money at usury? Certainly not. First, because money is only meant to be used in purchasing. Secondly, because one having a field by farming receives fruit from it; one having a house has the use of inhabiting it. Therefore, he who rents a field or house is

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- 16. J.T.Noonan, *op.cit.*, p.19.
 - 17. T.P. McLaughlin, *op.cit.*
 - 18. J.T.Noonan, *op.cit.*
 - 19. *Ibid.*, p.38.

seen to give what is his own use and to receive money and in a certain manner it seems as if he exchanged gain for gain. But from money which is stored up you take no use. Thirdly, a field or a house deteriorates in use. Money, however, when it is lent, is neither diminished nor destroyed. (20)

These arguments were to be developed and perfected by later writers: that one cannot sell time (a gift of God to all), and that one cannot take the fruits of another's labour, which occurs in the case of money but not in the case of renting a house or land. The reasons for this distinction were that money is barren, is only meant for consumption, and does not deteriorate when it is lent. These propositions were not explained, they were merely stated, but having been incorporated into canon law, they formed a legitimate source of argument for the canonists and theologians.

The fact that the usury question became the subject matter for the Church's General Councils, not simply as disciplinary measure for clerics, but for all Christians during the twelfth century, is understandable in terms of the Church's development. The Ninth General Council, Lateran I (1123), was the first to be held after the final break between East and West. The Roman Church had acquired ascendancy in the Western Empire, the Papacy had established its supremacy and the issues which had occupied the earlier councils, such as the apportioning of spiritual and temporal power between pope and emperor and various doctrinal matters, were no longer of overriding importance. As Gilchrist remarked, the work of the councils reflected the:

...concern of the papacy with discipline, organisation and reform of the Church...Their contents mirror most of the economic and social conditions of the time that were of interest to the Church - simony, pluralism, usury, tithes, provisions for the crusades, papal finances, the Jews, lay interference in Church matters, especially the administration of its property. (21)

20. Quoted in J.T.Noonan, *op.cit.*, pp.38-39.
 21. J. Gilchrist, *op.cit.*, p.19.

After the nadir of the Church's power in the tenth century, reformation both within and without the Church was imperative and this reformation reached its fullest expression in the work of the General Councils.

The seriousness with which the Church regarded the problem of usury is apparent from the wording of the canons dealing with it in Lateran II (1139), and Lateran III(1179). (22) Both these canons dealt with professional money-lenders. Obviously these were of concern to the Church as a whole because of the social consequences of their trade, not only in their impact on impoverishment among the laity, but also because religious foundations were at times forced to borrow in order to tide themselves over bad times, and were becoming heavily burdened with debt. (23)

Besides the activities of open or notorious usurers, however, the Church's attention was drawn to the fact that commercial transactions in themselves could be usurious. Pope Alexander III (1159-1181), when questioned on the morality of charging a higher price on credit sales, held that:

...although such a contract cannot be classified as usury, yet the action would be sinful on the part of the seller unless there were some doubt regarding the possibility of fluctuation of price between the time of sale and the time of delivery. Hence in the interests of salvation his subjects would do well to abstain from such contracts, "since human intentions cannot evade the knowledge of an omnipotent God." (24)

Pope Urban III (1185-1187) also condemned extra charges on credit transactions, pronouncing that:

...such men are to be considered as acting sinfully by reason of their intention of gain, since all usury and excess of value (*superabundantia*) are legally prohibited; and they are to be held to restitution of all such gains. (25)

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22. *Vide* Appendix A: Lateran II, Canon 13; Lateran III, Canon 25.
 23. J. Gilchrist, *op.cit.*, pp.107-108.
 24. T.F.Divine, *Interest: An Historical and Analytical Study in Economics and Modern Ethics*(1959),p.60.*Vide* Appendix C.
 25. *Ibid.*,p.61.*Vide* Appendix C.

These declarations were accompanied by general condemnations of all forms of usurious transactions.

These developments provided the legislative core around which the theologians constructed their arguments, and upon which the canonists based their commentaries. Some advance in the development of the usury doctrine was made in the twelfth century, apart from the legislative enactments described above. From the end of the eleventh century, the study of Roman Law had been undertaken at Bologna. The school of canonists which also settled there began to correlate Roman law and the usury prohibition. The Roman concept of the law of contracts was adopted and thus the contract of a loan, or *mutuum*, could finally be properly defined. Paucapalea, in about 1165, wrote:

A loan */mutuum/* is so-called from this, that mine */meum/* becomes yours */tuum/*. That is a loan which, consisting in a quantity, is offered by me, while from you I shall receive back only as much of the same kind. (26)

This statement of the transfer of ownership in a loan, and the fact that the same thing is not returned but only 'as much of the same kind', became the basis for the later theologians arguments that increase on a loan was unnatural.

The transfer of ownership in a *mutuum* was, according to the canonist Huguccio (fl.c.1187), what prevented a charge being made for it. The good was no longer possessed by the lender, and hence he could not expect to gain from it. 'The Roman law concession that a positive agreement to pay interest may be added to the contract is rejected.' (27) Another element of the Roman law which was adopted was that the *mutuum* consisted in the exchange of fungible goods, that is, ones which '...can be repaid by being returned in their species rather than individually.' (28) This meant that the peril

26. J.T. Noonan, *op.cit.*, p.39.

27. *Ibid.*, p.40.

28. Quoted in J.T. Noonan, *op.cit.*

remained with the borrower, because he was not obliged to return the same good, but merely a similar one should the loaned good be destroyed. It is mildly ironic that Roman law, which legitimized usury, should have been selectively used by the scholastics to provide one of the strongest grounds for its prohibition.

It was also during the twelfth century that the canonists, particularly Bernard of Pavia, who wrote between 1191 and 1198, distinguished clearly between usury and *turpe lucrum*, or shameful gain. Usury was only that which was exacted on a loan, and a loan, as noted above, had been clearly defined. (29) This does not, however, mean that a contract, in order to be declared usurious, had to be clearly stated to be a loan on which more must be returned than was given. It was already recognized that there were ways in which usury could be disguised, notably by contracts drawn up *in fraudem usurarum*. Bernard wrote:

Many people, avoiding the name of usury, but not the gain, find various ways of excusing themselves from sin, and impose other names upon the usury which they receive, calling it a gift, a penalty, a profit from business and so on. Now whatever exceeds the capital is usury no matter by what name it be called. (30)

What really mattered in these cases was the intention behind the contract, which was difficult to prove in open court, but which could be discovered in the confessional. The Church was obliged to make it quite clear that disguising a sin did not make it any less of a sin. In the case of something as easily disguised as usury, the spiritual sanctions had to be as strong as, if not stronger than, the temporal ones.

It was also established this early that it was not only a sin to exact usury on a loan, it was equally a sin to pay usury. Both parties to the contract, the lender and the borrower, were at fault. This question was much more fully discussed during the following centuries, but the principle itself was laid down by Pope Alexander III in the twelfth century. (31)

29. T.P. McLaughlin, *op.cit.*, p.97. *Vide* Appendix C.

30. *Ibid.*

31. *Ibid.*, p.108.

Although the usury prohibition was, generally speaking, far more severe and less amenable to exceptions at this stage than it became during the thirteenth and fourteenth centuries, the door was opened to the extrinsic titles which later allowed commercial practice to be virtually unhampered by the restriction on usury. This was brought about by the adoption of the concept of interest from the Roman law by the canonists. It ought to be made clear that this was by no means the same as the present-day concept. As Noonan pointed out, it:

...is never thought of as payment on a loan; it is the "difference" to be made up to a party injured by the failure of another to execute his obligations....It is accidentally and extrinsically associated with a loan. (32)

Thus, during the twelfth century, both Huguccio and Bernard of Pavia agreed that a penalty clause in case of failure in repayment might be decided upon between the parties to a loan, provided the intention is insurance against loss and not intention to gain. (33)

The twelfth century, then, had provided in rudimentary form the framework of the usury doctrine. The canon law and the comments of the early canonists were expanded in greater detail and explored at greater depth during the following centuries, but the underlying structure remained essentially unchanged. The decisions that usury was prohibited to every member of the body of the Church, that it was a sin against justice, and that both parties to it were equally guilty of sin were never challenged. The definitions of usury and a loan remained essentially unchanged, although the disguise of usury under contractual forms other than that of the *mutuum* continued to receive attention. The recognition that legitimate extrinsic titles existed by which more than the principal might be asked on a loan, was not withdrawn. The next substantial contribution to the usury doctrine was made by the philosophers of the thirteenth century.

32. J.T. Noonan, *op.cit.*, p.106.

33. T.P. McLaughlin, *op.cit.*, pp.140-141

The rational, philosophical analysis of the nature of usury may not at first appear to have had much practical significance. However, this was by no means the case, as Divine made quite clear:

For if the analysis had shown that usury was good by nature, it would be condemned for its evil consequences; if morally indifferent, then its justification or condemnation would rest entirely...on its social consequences. But since the conclusion drawn from the analysis was that usury was of its very nature unjust, its justification could not be effected by any social good it might achieve; and the presence of social evils would only aggravate its evil character. (34)

To put it another way, '...if usury was wholly wrong then a little usury was no more right than a little murder.' (35) This was of vital significance, considering the changing economic conditions. Once it became accepted that the taking of interest was not simply a case of grinding the faces of the poor, but that commercial loans had to be distinguished from consumption loans, usury could no longer be condemned in all cases for its evil social consequences. Instead of the usury prohibition being removed due to this development, the doctrine was continually forced to allow for new exceptions to the rule - these being the extrinsic titles. Thus it is necessary to discuss the grounds upon which the philosophers condemned usury as unjust in itself, before going on to the exceptions themselves.

Although St Thomas Aquinas was undoubtedly the first theologian to provide a firm philosophical base to the usury doctrine, it is nevertheless necessary to examine briefly some of the pre-Thomist writers in order to apprehend the direction which the usury doctrine was taking. Three of these earlier philosophers - Robert of Courcon (d.1219), St Bonaventure(1221-1274) and Alexander of Hales(1168-1245) - cited the condemnations of usury which existed in the canon law, and made use of the Roman law argument that ownership was transferred and that the risk was assumed by the borrower in a *mutuum*. (36) Robert of Courcon also mentioned that a leased article remained whole while the money transferred in a loan was consumed in use, but

34. T.F.Divine, *op.cit.*, p.41.

35. B.W.Dempsey, *op.cit.*, p.115.

36. J.T. Noonan, *op.cit.*, pp.41-48, *passim*. *Vide* Appendix C.

none of these arguments was logically developed. (37)

William of Auxerre (1160-1229) was a highly regarded authority throughout the later period, and his contribution was that he was the first theologian to mention that usury was against the natural law and, therefore, could never be licit. He did not develop this argument, however, and merely cited the Roman law principles given above to support his contention. On the question of credit sales he made the point, which was adopted by several later writers, that if the seller raised the price he was actually selling time, unless he was merely raising it to what the price might reasonably be expected to be at the time of payment. His reasoning was that time belonged indiscriminately to all creatures and therefore might not be legitimately sold. (38)

Albertus Magnus (1206-1280) did not add anything particularly significant to the theory of usury. What was important, however, was that through his commentaries on the *Ethics* and the *Politics*, '...Aristotle first formally enters scholastic thought on usury.' (39) Aristotle's general condemnation of usury on the grounds of its evil consequences and his distrust of commercial practices were very similar to those expressed by the Church Fathers. (40) He supported this, however, with the following rational analysis:

Usury by making of money a commodity and an end in itself diverted it from its natural function as a medium of exchange and measure of value. Involving as it did an exchange of two unequal sums it violated justice. For barren metal could not be made to breed its kind. (41)

It was this argument - that it was unnatural to treat money which was originally 'intended to be used in exchange' as a commodity which could be used to make more money - which was important to the scholastics.

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37. *Ibid.*, p.41.
 38. *Ibid.*, pp.43-44. *Vide* Appendix C.
 39. J.T. Noonan, *op.cit.*, p.46.
 40. T.F. Divine, *op.cit.*, p.212.
 41. *Ibid.*

Aquinas, in fact, made more use of Aristotle's definition of money as a measure, in the *Ethics* where usury is not mentioned, than of the formal Aristotelian argument against usury. Thus, in his earliest work, the commentary on the *Sentences* of Peter Lombard, he mentioned the Roman law argument about transfer of ownership and then introduced the Aristotelian concept that the purpose of money was to serve as a measure. From this he argued that charging for the use of money distorted its character, by deliberately changing the value which was integral to its nature. Aquinas had, therefore, extended the argument of Aristotle, who saw usury merely as a distortion of the purpose of money, by propounding that usury was a deliberate distortion of the formal character or nature of money. (42)

In the *Summa Theologica*, which marked the culmination of Aquinas' philosophical work, this attempt to prove the injustice of usury was used as a bolstering, perhaps, of the principal argument which was Aquinas' own. This argument made use of the Roman law distinction between fungible and non-fungible goods, and is quoted here in full. In answer to the question - Whether it is sinful to receive usury for money lent? - Aquinas wrote:

I answer that to receive usury for money lent is, in itself, unjust, since it is a sale of what does not exist; whereby inequality obviously results, which is contrary to justice. In proof of this, it should be noted that there are some things the use of which is the consumption of the things themselves; as we consume wine by using it to drink, and consume wheat by using it for food. Hence, in the case of such things, the use should not be reckoned apart from the thing itself; but when the use has been granted to a man, the thing is granted by this very fact; and therefore, in such cases, the act of lending involves a transfer of ownership (*dominium*). Therefore, if a man wished to sell wine and the use of the wine separately, he would be selling the same thing twice, or selling what does not exist; hence he would obviously be guilty of a sin of injustice who lends wine or wheat, expecting to receive two compensations, one as the restitution of an equivalent thing, the other as a price for the use, which is called *usury*.(43)

42. J.T. Noonan, *op.cit.*, p.52.

43. Quoted in A.E. Monroe, *op.cit.*, pp.66-67.

This, then, is Aquinas' philosophical explanation of why the transfer of ownership in a loan of fungible goods made it unjust to ask for any return other than the amount originally given. In the case of a non-fungible good, such as land, the use of the thing can be separated from the thing itself and can therefore be charged for, in the case of rent. A fungible good, on the other hand, cannot have its use charged for as its use is inseparable from itself. This principle applies to all fungible goods, of which money is an example, but Aquinas added the argument given above that usury on money *itself* is unjust because it involves a distortion of the nature of money. (44)

It must be made quite clear, however, that while the abstruse arguments of Aquinas were widely accepted by succeeding theologians and canonists, and formed the basis of anti-usury legislation, there were also simpler and more graphic arguments, which were used by the popular preachers of the time. Pope Innocent IV, elected in 1243, wrote a condemnation of usury which ignored the natural law arguments developed by the theologians and concentrated instead on the evil effects of usury. These would be felt in the agricultural sector, because '...the rich would place their money out at usury where the profit is greater and more certain...', leaving the poor without the necessary equipment for farming, and thus causing food to be scarce and expensive which would result in famine. Usury was also prohibited because it led to eventual poverty for the borrower, '...which is dangerous to men as only a special gift of God can make one desire and willingly accept poverty.' The third reason given was that usury was prohibited on behalf of the usurer, because one who indulged in this practice may become guilty of idolatry in putting his money before God. (45) Although Aquinas' reasoning gave a firm legal foundation to the usury prohibition, it may be seen that 'The social case against usury is not absent from scholastic thought.' (46)

44. *Ibid.*, p.67.

45. T.P. McLaughlin, *op.cit.*, p.111.

46. J.T. Noonan, *op.cit.*, p.81.

As mentioned earlier, the questions which had confronted the Church at the beginning of this period were: was usury a sin against justice or charity; could the civil law allow what the Church forbade; did the Deuteronomic double standard still apply in a Christian society; and when would the taking of something other than the principal on a loan be justified? The first question had been answered in a slightly ambivalent way. The most highly regarded authorities of the Church had provided convincing arguments that usury was indeed, against justice. The social consequences, and the avaricious and uncharitable nature of usury were not, however, disregarded or lost sight of. Nevertheless, the requirements of restitution for forgiveness and the precept that justice must be striven for in all dealings with all men, were firmly written into the usury law.

The question of whether the civil law could allow usury was considered by both the canonists and the theologians of this period. Aquinas, in discussing usury, mentioned the objection that the civil law - that is, Roman law - allowed usury and therefore it could not be against justice. In reply to this he pointed out, as he did in the case of the just price, that '...human laws leave some sins unpunished, on account of conditions among imperfect men...',⁽⁴⁷⁾ but that this did not alter the fact that usury was essentially unjust. On a more practical level, the teaching of the canonists was that:

...originally the civil law did permit usury to be taken on loans. As to whether that permission still remains, they are divided. But regardless of what answer they give to that question they admit usually that the civil law may not oppose the divine law and the canons. The same prohibition, they say, exists in both forums. Consequently where the Canon Law forbids anything to be received in excess of the principal the Civil Law must also be understood to forbid it; where the Canon Law allows such excess to be exacted the Civil Law may also permit it. (48)

47. Quoted in A.E.Monroe, *op.cit.*, p.68.
 48. T.P. McLaughlin, *op.cit.*, p.94.

This was essentially the same conclusion as that which was reached with regard to the just price, namely, that the civil law could be accepted as long as it did not contradict canon law. The interesting distinction is that the Roman Law dictum on the just price was acceptable to the Church whereas that on usury was not.

The Deuteronomic double standard, which was endorsed by St Ambrose and thence incorporated into Gratian, also attracted the attention of the theologians and canonists. The philosophers' treatment of usury as a sin against justice, and therefore *never* allowable, implicitly rejected the Ambrosian exception. Attempts were made to explain this contradiction by giving consideration to the situation of the Jews at the time the exception was made. As usual, the clearest explanation is given by Aquinas:

...it is to be said that the Jews were forbidden to receive usury from their brothers, that is, from Jews; by which we are given to understand that to receive usury from any man is strictly evil: for we ought to regard every man as a neighbour and brother....The permission to receive usury from strangers was not accorded them as something lawful, but as something allowed with a view to avoiding a greater evil, that is, lest through avarice, to which they were addicted(Isaias lvi), they should take usury from the Jews who worshipped God. (49)

The philosophers, then, rejected the double standard; however, the canonists, because the dictum of Ambrose was incorporated in Gratian, initially allowed it. Rufinus (writing between 1157 and 1159), Bernard of Pavia, Huguccio and Johannes Teutonicus (fl.1216) all legitimized the taking of usury from an enemy 'Whether pagan, Saracen, Jew, heretic or Christian when one has the right to wage war against him.' (50) By the mid-thirteenth century, however, encouraged by the legislation of Innocent III and the work of the philosophers, the canonists broke with tradition and, led by Raymond of Pennaforte (fl.1234), denied the right to take usury from anyone. (51)

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49. Quoted in A.E. Monroe, *op.cit.*
 50. T.P.McLaughlin, *op.cit.*, p.137. *Vide* Appendix C.
 51. J.B. Nelson, *op.cit.*, pp.17-18. *Vide* Appendix C.

The Church's teaching, as explained thus far, seems strict enough to justify the interpretation that the taking of interest on loans was unconditionally forbidden; and the construction which may be placed upon this, that the Church inhibited economic growth, seems not unreasonable. This must however, remain an unbalanced view until cognizance is taken of the legal exceptions to the usury law. The treatment of the extrinsic titles is a classic example of the difference in approach between the canonists and the theologians. The canonists confined themselves to discussing specific cases. A list of thirteen of these was compiled by Hostiensis in the mid-thirteenth century. The theologians, on the other hand:

...are more concerned with extracting the two or three general principles behind them all, and discussing their validity and general application than with the treatment of numerous concrete cases. (52)

A brief discussion of the cases mentioned by Hostiensis will give some idea of the complexity of the issues, whereafter the systematisation of the theologians will be better appreciated.

It must be made quite clear at the outset, however, that these extrinsic titles were not cases in which the taking of usury was allowed for various reasons. The taking of usury was never allowed for any reason at all. Henri Bohic (1310-ca.1350), discussing the list of cases given by Hostiensis, made the distinction quite clear:

At first sight, he explains, there appears to be a question of usury in them but in reality there is not. In these cases that which exceeds the capital is not usury but something resulting from a reasonable cause approved by canonical equity. According to this author there are no exceptions to the prohibition of usury. (53)

52. T.P. McLaughlin, *op.cit.*, p.145.
 53. *Ibid.*, p.126. *Vide* Appendix C.

This may seem a quibbling distinction but it is crucial to the whole doctrine. If usury itself had in any particular case been found to be justified, then the entire natural law argument of the theologians would have lost its force.

The list which Hostiensis drew up, with a brief description of the nature of each contract, is given in Appendix B. The bracketed numbers refer to the listing in the Appendix. Some of the contracts were obviously non-usurious - namely, (11) *gratis dans*, which was a free gift offered in gratitude for a loan; and (12) *socii pompa*, where even the loan of money might be charged for, provided it was going to be use for display purposes, and therefore would not be consumed. In this case, even Aquinas allowed that this would be a '...secondary use of coined silver', ⁽⁵⁴⁾ and that this use could be sold. The (5) *venditio fructus* was not a loan, but a sale. Although if the revenues of a piece of land were sold for a period of time, they might exceed the price paid, this was profit on a purchase and was justified due to uncertainty, because the opposite might also hold. ⁽⁵⁵⁾

A few of the contracts discussed involved the practice of the creditor receiving the fruits of a gage, that is, property given as security for a loan, for the period in which he held it, without these receipts diminishing the capital lent. This practice had been declared to be *in fraudem usurarum*. ⁽⁵⁶⁾ The exceptions in the case of (1) *feuda*, (4) *stipendia cleri* and (10) *lex commissoria*, were all based on the true ownership of the gage. Someone who had granted a fief remained the true owner of it, so that when it was returned as a gage he might legitimately receive the fruits. Likewise a benefice from the Church to a layman remained the property of the Church, and an article which had been sold with the proviso that it might be reclaimed was in fact the property of the buyer while he remained in possession. The case of (3) *pro dote*

54. Quoted in A.E. Monroe, *op.cit.*, p.69.

55. T.P. McLaughlin, *op.cit.*, p.136.

56. *Ibid.*, pp.113-115.

was a little more complicated because the fruits, then, ought to have been subtracted from the eventual payment of the dowry. The explanation most generally excepted was that these receipts were not usurious but justifiable as damages for the delay in paying the dowry, because the husband must support the marriage in the interim. (57)

Contracts (8) *pretium post tempora solvens*, (9) *poena nec in fraudem*, and (13) *labor*, were simple cases of charging for damages and will be more fully dealt with in the discussion of the extrinsic title *damnum emergens* in the following section. Contract (7) *Vendens sub dubio* was straightforward: sales on credit at a higher price might be a device to disguise usury, but were justified if there was doubt as to the likely value of the goods at the time of payment. It is interesting to note that Hostiensis still granted the right to take usury of an enemy: (6) *cui velle jure nocere*. The case of (2) *fidejussor* was of more practical than theoretical importance, because of the question of whether the guarantor could be made to pay the usury on the loan which he had contracted due to the default of the original debtor. (58)

The theologians, in their discussion of titles to payment of more than the principal, were not concerned with particular cases and did not discuss contracts outside that of the loan, or *mutuum*. It was agreed that usury could only exist on such a contract. The other forms of contract which could be used as a disguise for usury were left to the canonists to pronounce upon. They had no bearing on the philosophical discussion of usury itself. The extrinsic titles allowed by the theologians were granted on the same ground, in fact, as that upon which the prohibition of usury rested, namely, commutative justice. As O'Brien pointed out:

It was unjust that a greater price should be paid for the loan of a sum of money than the amount lent; but it was no less unjust that the lender should find himself in a worse position because of his having made the loan. (59)

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57. *Ibid.*, pp.126-145, *passim*.
 58. *Ibid.*
 59. G. O'Brien, *op.cit.*, p.184.

This, then, was the basis of the extrinsic titles - that while the lender should by no means be allowed to gain from making the loan, he also should not be required to suffer a loss.

The extrinsic titles were, in fact, borrowed from Roman law and can be divided into three categories: (1) *poena conventionalis*; (2) *interesse*, which included (a) *damnum emergens* and (b) *lucrum cessans*; and (3) *periculum mutui*.⁽⁶⁰⁾ At least during this period, the twelfth and thirteenth centuries, all these titles only became operative at the close of the original time set for the loan, that is, the loan itself had to be gratuitous for at least some time period. This was a necessary stipulation in view of the definition of a *mutuum* as a gratuitous loan.

The *poena conventionalis* was a practice which was never questioned by the scholastics. It consisted of adding a penalty clause to the loan contract whereby if the loan was not repaid on the date stipulated a further sum would have to be paid as a penalty. This was in theory a '...safeguard against dilatory tactics on the part of the borrower.'⁽⁶¹⁾ For this reason, the charge was allowed to be written into the original contract and no proof of actual damage arising from the delay was required. It must be noted, however, that the penalty itself was required to bear some relation to the actual damage likely to be suffered and could not be purely arbitrary.⁽⁶²⁾

The distinction, then, between *poena conventionalis* and *damnum emergens* was not very great. *Damnum emergens* was compensation for damage suffered due to a delay in payment of a loan, but was not written into the contract and had to be proved by the injured party. Albertus Magnus, Alexander of Hales and Aquinas, all had no difficulty in admitting title.⁽⁶³⁾ The most frequently quoted example of a valid title to claim *damnum emergens* was that of the lender being obliged to borrow at usury because the borrower failed to repay on time.⁽⁶⁴⁾ It must be immediately obvious that both the *poena conventionalis* and *damnum emergens* were open to abuse, in that the lender could deliberately set the date for repayment at a time when the debtor would be unable to pay. The theologians were

60. T.F.Divine, *op.cit.*, p.52

61. *Ibid.*

62. J.T.Noonan, *op.cit.*, pp.108-109.

63. T.F.Divine, *op.cit.*, p.54.

64. G. O'Brien, *op.cit.*, pp.186-187.

obliged, therefore, to stress that the intention behind claiming these titles must be the avoidance of loss and not the intention to gain.

While these titles were accepted without difficulty with the proviso mentioned above, that of *lucrum cessans* took much longer to establish. The distinction between *damnum emergens* and *lucrum cessans* was that the former covered actual damage suffered, while the latter concerned the profit which the lender might have made had he been in possession of his money. This title was acceptable in terms of Roman law,⁽⁶⁵⁾ but opinion was divided as to its validity among the scholastics. Some canonists, Hostiensis being an example, allowed it, while others rejected it.⁽⁶⁶⁾ The theologians did not distinctly allow it until the fifteenth century.⁽⁶⁷⁾ The position of Aquinas on the topic is ambiguous, and argument over this may have been a reason for this delay. In the early commentary on the *Sentences*, Aquinas '...declares that a debtor in delay is held also to repay the probable lost profits.'⁽⁶⁸⁾ However, in the article on usury in the *Summa Theologica*, he contended that:

Compensation for loss, however, cannot be stipulated on the ground that the lender makes no profit on his money, because he should not sell what he does not yet possess, and which he may be prevented in various ways from getting.⁽⁶⁹⁾

Divine argued that 'This conclusion was accepted as a condemnation of *lucrum cessans* by most of Aquinas' immediate successors.'⁽⁷⁰⁾ There was still room for doubt, however, as O'Brien has pointed out, due to the fact that when Aquinas discussed restitution he pointed out that if something was taken from a person, he suffered both from the loss of the article itself and from the loss of what he might have gained by the use of the article. Restitution therefore should be made for the original article, plus some compensation for what might have been produced from it, '...according to the condition of persons and things.'⁽⁷¹⁾ Noonan made

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65. J.T. Noonan, *op.cit.*, p.109.
 66. T.P. McLaughlin, *op.cit.*, p.146.
 67. G. O'Brien, *op.cit.*, p.190.
 68. J.T. Noonan, *op.cit.*, pp.109-110.
 69. Quoted in A.E. Monroe, *op.cit.*, p.71.
 70. T.F. Divine, *op.cit.*, p.54.
 71. G. O'Brien, *op.cit.*, p.189.

clear, the example which Aquinas used in this case encompassed both wheat, which was naturally fruitful, and money which was at other times considered sterile. ⁽⁷²⁾ There does not seem, therefore, to have been any clear authority before the fifteenth century for the acceptance or the rejection of the title of *lucrum cessans*.

The title, *periculum mutui*, that is, the right to some payment due to the risk that the capital might not be repaid, was rejected by both the canonists and theologians. ⁽⁷³⁾ It was, in fact, the sharing of risk which distinguished the contract of *mutuum* from that of the *societas* or partnership. *Periculum mutui* must, according to Noonan, be distinguished from *periculum sortis*, which was when the entire risk was assumed by a partner or insurer. As even this, much greater, risk was denied as a title to gain by a decretal of Gregory IX (1234), *Naviganti*, the question of risk on a normal loan was not even considered. ⁽⁷⁴⁾ It must also be noted that risk is implicit in every loan so that to admit it as an extrinsic title would in effect destroy the usury prohibition. ⁽⁷⁵⁾

At the close of the thirteenth century, then, the usury prohibition was possibly in its strongest and most entrenched form. Any wavering as to whether usury was unjust or uncharitable had been firmly removed by the authoritative writing of Aquinas. The extrinsic titles of the theologians and the 'exceptions' of the canonists did allow some leeway in the case of damages arising from having made a loan, but the central core of the theory remained intact, due to the fact that *lucrum cessans* was not generally allowed and *periculum mutui* was not even considered. The gradual whittling away of the central prohibition until usury '...for all practical purposes...meant an exorbitant, i.e., an unjust charge, for lending money...' ⁽⁷⁶⁾ only took place in the fifteenth and sixteenth centuries.

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72. J.T. Noonan, *op.cit.*, p.110.
 73. T.P. McLaughlin, *op.cit.*, p.147.
 74. J.T. Noonan, *op.cit.*, p.129.
 75. *Ibid.*, p.130.
 76. J.Gilchrist, *op.cit.*, p.65.

It is not to be supposed that the essential doctrine of the prohibition of usury changed during the fifteenth century. The natural law arguments were repeated continually by the writers of this period. The two theologians, St Bernadine of Siena (1380-1444) and St Antoninus of Florence (1389-1459), who are considered to be the greatest economists of the Middle Ages, were extremely firm in their denunciation of usury. St Bernadine:

...accepts the argument based on the unfruitfulness of money; the Aristotelian argument based on the purpose of money; and the Thomistic argument in its reformulation by Andraea. He adds a series of variations on the principle arguments: (1) usury is the selling of money, which is naturally non-vendible; (2) it is the unjust getting of a certain gain in returning (sic) for giving an uncertain one; (3) it is the selling of his own industry to the borrower; (4) it is against charity. (77)

Thus there is no question of the basic prohibition being softened. St Antoninus repeated the same arguments very systematically; indeed, he '...drew together all the strict rules of the usury teaching into a tight set of rules.' (78)

The crucial departure which took place, not without considerable ferment, in the fifteenth century, was the admission of the title *lucrum cessans* and, more importantly, the recognition that both *damnum emergens* and *lucrum cessans* could be claimed not only if there was delay in paying back a loan but from the very beginning. This development occurred as a result of the founding of the *montes pietatis*, which were religious charitable institutions similar in nature to the earlier *montes profani*. (79)

The *montes profani* constituted a system of public debt common in many Italian states, from the middle of the twelfth century. (80) They were forced loans exacted in order to meet emergencies, and an annual

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77. J.T. Noonan, *op.cit.*, p.72.
 78. *Ibid.*, p.130.
 79. T.F. Divine, *op.cit.*, p.57.
 80. G.O'Brien, *op.cit.*, p.195.

percentage was paid on them in order to prevent discontent. Opinion on the legality of this system was sharply divided: the Franciscans defended it, while the Augustinians and initially, the Dominicans opposed it. It was the Franciscan viewpoint which finally prevailed, chiefly on the authority of Laurentius de Ridolfis, writing in 1403. He argued the case as follows:

Usury is the seeking of profit from a loan. But a lender who is led principally by charity, just as a lender who is led by the force of the state, is not seeking profit. Therefore, he has a right to compensation for the loss he suffers and the gain he has lost in other enterprises. (81)

On the strength of this reasoning, the Franciscans started the first *mons pietatis* at Orvieto in 1462, after which they spread rapidly. (82) The original object of these institutions was to collect funds from wealthy subscribers in order to make gratuitous loans to the needy. Initially unobjectionable, these institutions were heavily criticized when they began to charge a small sum for their loans in order to defray expenses. The general opinion of the Church, however, and particularly the popes, was in favour of the *montes* (83) Finally, in 1515 the Fifth Lateran Council fully justified the *montes pietatis*.

The justification for receiving *damnum emergens* and/or *lucrum cessans* from the beginning of a loan had wider consequences than simply authorising the *montes profani* and the *montes pietatis*. The implication was that a businessman's money was a source of profit, and if he was deprived of that money, through making a loan, he was entitled to compensation for the profit he might have made, as well as any loss he suffered through not having the money on hand. The only essential difference between this doctrine and a true theory of interest is that the distinction was still made between money lent charitably by a businessman normally engaged in legal business and money

81. J.T. Noonan, *op.cit.*, p.124.

82. G. O'Brien, *op.cit.*, p.196.

83. *Ibid.*, p.197.

lent by a professional money-lender. Interest was lawful in the former case but still not allowed in the latter. ⁽⁸⁴⁾ It may be appropriate here to quote the definition of usury formulated by the Fifth Lateran Council in 1515:

For usury means nothing else than gain or profit drawn from the use of a thing that is by its nature sterile, a profit that is acquired without labour, cost or risk. (85)

The concept of usury had progressed considerably, from being 'Anything above the principal taken on a loan.' By the end of the fifteenth century, full justification existed for the taking of 'interest' on commercial loans. The modern concept of payment for opportunity cost, although not stated as such, had been admitted before the dawning of the early modern era. The stigma of usury had been removed from commercial loans by the scholastics, but, as will be seen in the following chapter, the doctrinal development lagged behind practice in this respect.

84. J.T. Noonan, *op.cit.*, p.132.

85. *Vide* Appendix A, Lateran V, Session X.

CHAPTER FIVE

THE DOCTRINES IN PRACTICE

'We greatly desire to entice
men avid to make great profits
in illicit ways to seek these
small profits in a licit way.'

Navarrus (1493-1586)

The Middle Ages constitute an era so far removed from our own both in ethos and in time that considerable caution must be employed in any attempt to describe it. As has been shown in previous chapters, enough evidence has survived and has been examined to provide a reasonably clear overall picture of medieval economic development. Furthermore, the writings of the Romanists, canonists and theologians have been assiduously preserved. Careful research has, despite some differences in interpretation, enhanced our understanding of the scholastic doctrines. Nevertheless, to descend to the level of the practical, day-to-day application of the doctrines of the just price and the prohibition of usury is no easy task. As S.L. Thrupp expressed it:

It is easy enough to grasp and expound the theoretical system of ethical ends which the schoolmen upheld, but it is less easy to follow the way in which public opinion assimilated the various points of the system, and extremely difficult to discover how successfully they were translated into practical aims in circumstances of flux and change. (1)

Written records from an age of such widespread illiteracy can only reveal the thought processes of a very small elite minority; what the bulk of medieval society understood and accepted of the Church's teaching remains shrouded in obscurity.

1. S.L. Thrupp, 'Social Control in the Medieval Town', *Journal of Economic History*, Supplement: The Tasks of Economic History, December, 1941, pp. 50-51.

Enough indirect evidence exists, however, to prevent the assessment of the practical application of the Church's economic doctrines from being an impossible task. This chapter will attempt to illustrate the interaction between the theories of the Church and economic development with the aid of some practical examples. The Dark Ages (before the eleventh century), the high Middle Ages (between the eleventh and the thirteenth centuries), and the late Middle Ages (encompassing the fourteenth and fifteenth centuries) each had distinctive economic organizations. The doctrines of the Church and their application in practice were conditioned by the economic developments which occurred during these three periods. The prevailing spirit throughout the Middle Ages was one of compromise between religious idealism and concrete economic reality.

Before the eleventh century, European society retreated into isolationism, in response to the recurrent threat of violence and destruction. The monastic ideal of seclusion and independence from the chaotic outside world came to be adopted by secular estates as the only means of ensuring survival. Town life and trade declined dramatically and monetary exchange dwindled in favour of a barter system. The Church was intent upon consolidating its position: by converting Western Europe to Roman Catholicism; by instituting the papacy as a supreme power removed from the jurisdiction of the remnants of Imperial authority in the East; and by establishing its rigidly hierarchical structure. During this period, the Church did not wield sufficient influence to engage in the direction of the economic practices of the laity. Moreover, the necessity probably did not arise - economic activity was neither sufficiently complex nor sufficiently important to warrant the attention of the scholars of the Church. The only interest which the ecclesiastical authorities did display in economic matters was directed towards the safeguarding of its own property and the government of the conduct of the clergy.

The attitude of the Church to these matters may be gleaned from the canons constituted by the first eight General Councils, as the following examples will show. ⁽²⁾ Canon 3 of the Fourth General Council, held at Chalcedon in 451, forbade the management of estates to bishops, clerics and monks. Canon 15 of the Seventh General Council: Nicaea II(787) condemned the practice of clerics serving two churches for material gain. The Eighth General Council: Constantinople IV (869-870), stated in Canon 20 that estates granted by a bishop could not be recovered by him without the consent of the official in charge of the particular city or region. These canons reveal the concern of the Church that its duly appointed officials should behave in a manner befitting their clerical status. It may be surmised then, that worldly grasping behaviour on the part of clerics was not uncommon, but was strongly reprobated by the Church. Concern for the conservation of Church property may be seen in Chalcedon, Canon 24, that consecrated monasteries might not revert to secular dwellings; and Canon 26, that stewards should be appointed to prevent the squandering of ecclesiastical property.

The doctrine of the just price did not become a feature of the Church's teaching before the revival of Roman law in the early twelfth century. In view of the scarcity of coinage and the inconsiderable volume of trade, the Church's lack of concern with the question of an ethical pricing system is understandable. The only attention to practical pricing policy during the Dark Ages appears to have been that paid by the Carolingian rulers. The Canon, *Placuit*, incorporated into canon law by Raymond of Pennaforte (1180-1278), was a capitulary issued by Carloman, a descendent of Charlemagne and King of the Western Franks between 879 and 884. ⁽³⁾ According to De Roover:

This canon states that parish priests should admonish their flocks not to charge more than the price obtainable in the local market...Otherwise, the wayfarers can complain to the priest, who is then required to set a price with "humanity". ⁽⁴⁾

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2. All the canons mentioned here are given in full in Appendix A.
 3. R.De Roover, *op.cit.*,p.421.
 4. *Ibid.*

It may be deduced from this that price discrimination was regarded as morally reprehensible. The Carolingians also endeavoured to curb speculative practices. The creation of monopoly power by buying up necessary food-stuffs in times of famine and the abuse of this power to drive up prices were sharply condemned. Rudimentary attempts at price fixing were also a feature of Carolingian administrations. ⁽⁵⁾ 'Although the enforcement of this program was discontinued, the remembrance of these efforts was not completely lost to posterity.' ⁽⁶⁾ The enactments were preserved and later became part of Church legislation.

The attitude of the Church to the problem of usury during the Dark Ages was likewise coloured by the prevailing economic conditions. By tradition stretching back to the Greek and Roman Empires, usury was regarded as a disreputable way of earning a living. It was perhaps for this reason, rather than through any philosophical appreciation of the injustice of usury, that its practice was forbidden to the clergy by Canon 17 of Nicaea I (325). ⁽⁷⁾ The undeveloped state of commerce did not provide sufficient demand to sustain a class of professional money-lenders. 'In the closed economy of the early Middle Ages, money-lending was often a by-employment intertwined with petty trade transactions and concealed under the form of credit sales and other devices.' ⁽⁸⁾ Nevertheless, it was sufficiently prevalent to arouse ecclesiastical censure. The fact that loans were almost exclusively sought for consumption purposes borne out of dire necessity made the taking of interest on these loans a distinctly uncharitable proceeding.

The social evils which emanated from the extortion of usury on loans for consumption were clearly perceived. The Church's condemnation was acceptable without it being sustained by any detailed analysis. The picture drawn by the early Fathers, Basil (c.330-390), Gregory of Nyssa (d.390) and Ambrose (c.339-397) '...of the poor debtor, who, harassed by

5. J.W. Baldwin, *op.cit.*, pp.33-34.

6. *Ibid.*, p.34.

7. *Vide* Appendix A.

8. R. De Roover, 'Money, Banking and Credit in Medieval Bruges', *Journal of Economic History*, Supplement: The Tasks of Economic History, December, 1942, pp.52-53.

his creditors, falls deeper and deeper into despair, until he finally commits suicide, or has to sell his children into slavery', (9) provided a sound enough basis for reprobating the practice without proving its injustice. The doctrine, therefore, remained analytically primitive during the Dark Ages. Usury was rather unspecifically defined as 'where more is asked than is given', and while it presumably occurred in loans, no attempt was made to define exactly what constituted a loan. (10) Thus, the extension of the usury prohibition to include laymen as well as clergy, in the Capitularies of Charlemagne, was based on the epistle *Nec hoc quoque* of Pope Leo the Great (440-461), in which usury was merely condemned as *turpe lucrum*; shameful gain. (11)

Between the eleventh and the thirteenth centuries the economy of Western Europe showed new animation and vigour. The isolationism of the Dark Ages gave way before the commercial revival which encouraged urbanisation, revitalized trade and commerce, improved communications and stimulated monetary exchange. The result of these organizational changes was that 'The use of money and credit, never absent in the agrarian economy, naturally came to play a more prominent role....' (12) The small, localized weekly markets of the Dark Ages became permanent trading centres as the towns began to engage in active, two-way traffic both with the surrounding countryside and with other centres. Simultaneously, inter-regional trade came to be conducted at the great trade fairs, and, as R.D. Face noted:

The whole complex structure of the commerce centering about the fairs of Champagne, with its extensive use of agency and partnership, its reliance upon the services of professional freighters, and its attendant system of couriers, was based entirely upon credit. (13)

The essentially agrarian economy of the early Middle Ages had not required any guidance from the Church with regard to pricing policy, and did not present any challenge to the doctrine of the prohibition of usury. The new

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9. G.O'Brien, *op.cit.*, p.171.
 10. T.F. Divine, *op.cit.*, p.30.
 11. J.T.Noonan, *op.cit.*, p.15.
 12. T.F. Divine, *op.cit.*, p.38.
 13. R.D.Face, 'Techniques of Business in the Trade Between the Fairs of Champagne and the South of Europe in the Twelfth and Thirteenth Centuries', *Economic History Review*, 2nd Series, Vol.10, No.3, 1958, p.437.

character of the economy presented problems which the Church, in view of its position in society, could not afford to ignore.

The medieval Church, by the eleventh century, filled a position of considerable importance in society. Gilchrist described this in the following way:

Not merely was the Church in its own right a vital part of society as a consumer and producer: it was also a supra-national society, a political body on a level with the "state", using that term in a very loose sense....The Church derived this position...from the combination of its spiritual authority and economic strength, with certain historical accidents which made it the only educative and civilizing force in the West for several centuries. (14)

The system of doctrinal teaching which the Church had developed through the Dark Ages was appropriate to that socio-economic system. The commercial revival introduced new elements which were outside the scope of that system, and thus in some respects caused it to become obsolete. On a practical level, the Church was obliged to adapt its system to changing circumstances, if only to retain the economic strength which was an important component of its power base.

The response of the Church was, firstly, to foster the revival of Roman law and to codify and rationalize the body of canon law in order to provide for the practicalities of the economic expansion. Secondly, on a philosophical level, the theologians endeavoured to reconcile the Christian faith with the practical ethics of Aristotle. In each of these areas there were three main foci of attention: the ethics of trade as a profession, the just price, and the prohibition of usury. The operations of the merchant had formerly been regarded by the Church with grave suspicion when they were not subject to outright condemnation. This attitude required re-assessment in the light of the obvious social benefits accruing from trade and the increasingly respectable and influential positions being attained by its practitioners. The concept of the just price, re-discovered in the *Code*

14. J. Gilchrist, *op.cit.*, p.9.

of Justinian by the medieval legists, was seized upon with alacrity by the Church as it provided the vehicle whereby Christian ideals of justice could be introduced into the market place. The doctrine of the prohibition of usury, if it was to retain its force, required careful scrutiny by all three groups of medieval scholars. The changing economic conditions had added the element of commercial loans to the erstwhile predominant borrowing for consumption purposes. This departure:

...demanded an extension of the concept of interest beyond that envisaged by early Christian teaching and the moral evaluation of such a concept that would apply to all debtor-creditor relationships. Thus the ethical criterion was shifted from considerations of the motive of the lender and the social consequences of the loan to that of the intrinsic nature of lending and borrowing. (15)

The practical results of these doctrinal developments require detailed analysis before their effectiveness may be assessed.

The decision of the Church that '...if the merchant was careful and wise he could live with honor in medieval society' (16) had practical as well as theoretical significance. The more accommodating attitude towards merchants was given expression in the General Councils of the twelfth century. Lateran I, II and III, enacted canons which extended the protection of the Church to merchants while travelling upon business and forbade the imposition of unauthorised tolls and duties along trade routes. (17) The effectiveness of the Church's protection of travellers is doubtful, as it is uncertain how substantial a ban of excommunication would have appeared to a highwayman. The more tangible protection provided by secular authorities was probably more instrumental in improving the safety of the roads. (18) However, these canons demonstrated the acceptance of the merchant as a legitimate member of society worthy of protection by the Church. The

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15. T.F. Divine, *op.cit.*, p.41.
 16. J.W. Baldwin, 'The Medieval Merchant before the Bar of Canon Law', *Papers of the Michigan Academy of Science, Arts and Letters*, Vol. XLIV, 1959, p.299.
 17. *Vide* Appendix A. Lateran I, Canon 14; Lateran II, Canon II; Lateran III, Canons 22 and 24.
 18. H. Pirenne, *Medieval Cities* (1925), p.90.

authority of the Church was exerted to greater effect in keeping within reasonable bounds the avarice of secular rulers for the revenue which could be extracted from transient traders. ⁽¹⁹⁾ In general, it may be noted that 'Nowhere do the decrees treat merchants as inferior Christians, and this helps to disprove the assertion...that merchants were regarded in the Middle Ages as inferior, second-class citizens.' ⁽²⁰⁾

Within this accommodating atmosphere, the medieval merchant was free to grasp the opportunities for legitimate profit which were furnished by the medieval economy. Hodgett remarked that:

...social mobility was a marked feature of these centuries of commercial expansion; apprentices rose to become masters and successful craftsmen became entrepreneurs while new men made fortunes in commerce and money-lending. ⁽²¹⁾

One well-documented case of such a rise in status is that of St Godric of Finchale. Originally of poor peasant stock, he graduated from petty peddling to long-distance trading and eventually amassed a considerable fortune. The contemporary account of his life asserted that his great success was mainly due to his '...intelligence, or rather business sense.' ⁽²²⁾ There does not appear to be any evidence from surviving contemporary sources which would support the view that the Church regarded social advancement through trade with disfavour. Once the initial justification of the merchant's profession had been formulated and accepted, the rise of a substantial merchant class was unimpeded by moral sanctions against the accumulation of wealth. The proviso remained that wealth thus acquired should be wisely and charitably administered, but this dictum applied equally to all possessions, whether inherited or obtained by any other means. Aquinas' discussion on the virtue of liberality, '...by which men use well all those exterior things which are given to us for sustenance', does not distinguish between wealth acquired by trade and other kinds of property. ⁽²³⁾

Although the teaching of the Church with regard to the morality of earning a living by engaging in trade does not appear to have hindered the merchant, it might still be argued that the doctrine of the just price was

19. *Ibid.*

20. J. Gilchrist, *op.cit.*, p.57.

21. G.A.J. Hodgett, *op.cit.*, p.60.

22. H. Pirenne, *op.cit.*, pp.82-83.

23. Quoted in G. O'Brien, *op.cit.*, pp.67-74.

designed to hamper his activities. Consideration of the theoretical exposition of the doctrine seems to refute this argument. It has been fairly clearly demonstrated that the generally accepted view was that the market price was to be considered the just price. Furthermore, only the theologians advocated strict adherence even to this price; the canon lawyers and Roman lawyers were prepared to allow for the considerable leeway of up to half the just price either above or below what the price ought strictly to be. The scholars of this period freely adopted the Roman law concept of freedom of bargaining, and this principle was translated effectively into policy. In the opinion of Hodgett:

Such growth as there was in the economy came as a result of a fair measure of freedom of competition. It was an economy, unlike that of the later fourteenth and fifteenth centuries, which was open to market forces; it was planned to some extent but not to the degree that occurred from the 1300s on. Navigation acts, hosting, exchange control, the staple, price control, the tightening up of regulations concerning the methods of production, belong in the main to the last two centuries of the Middle Ages. (24)

While the economy of Europe between the eleventh and the thirteenth centuries was undoubtedly less subject to regulation and control than it later became, it can by no means be asserted that it operated under a type of *laissez-faire* system. The Church's teaching cannot be regarded as so restrictive that it affixed 'just prices' to all saleable commodities, but it did not fail to take cognizance of the evils of unbridled competition.

The provisions of *laesio enormis* may have provided some restraint on the process of free bargaining, but in practice it was the medieval abhorrence of monopoly which had the greatest effect on price determination. This attitude originated with the Church Fathers, who '...vigorously attacked the traders' taking advantage of monopoly conditions to raise prices.' (25) It

24. G.A.J.Hodgett, *op.cit.*, pp.103-104.

25. J.W. Baldwin, 'The Medieval Theories of the Just Price', *Transactions of the American Philosophical Society*, New Series, Vol.49, Part 4, 1959, p.14.

continued to be generally accepted throughout the Middle Ages that monopoly profits were illicit. In the words of O'Brien:

There might be some doubt as to the positive justice of this or that price, but there could be no doubt as to the injustice of a price which was enhanced by the necessities of the poor, or the engrossing of a vital commodity. (26)

The medieval scholars were well aware of the fact that completely unrestricted competition could open the way to abuses such as cornering the market, which could be instrumental in forcing prices up to unacceptable levels. At a time when the towns were totally dependent on regular supplies of essential foodstuffs from the surrounding countryside, interference with the market could give rise to disastrous consequences for urban dwellers.

This was one area in which theory and policy harmonized effectively. Detailed and strictly enforced legislation was levelled against monopolists. As R.S. Lopez indicated:

Aquinas, a theoretician, lived in an epoch of rapidly fluctuating prices and of unstable balance between demand and offer. He conceded that the just price of grain could be influenced by circumstances of time and space; he did not concede that a merchant could artificially create these circumstances, that is, "create scarcity". Legislation in his time upheld the same views, with the support of popular opinion. (27)

This legislation could not have been applied to long-distance trade with any great effectiveness. The very essence of profit-making in this form of trade required the buying of goods in areas where abundance lowered prices and the sale of the same goods at a distance where scarcity had increased their value. (28) As merchants generally travelled in caravans, there was no lack of opportunities for collusion, and advantage had perforce to be taken of any method whereby the profits on these hazardous and costly ventures could be increased. (29) However, this trade was normally confined to

26. G.O'Brien, *op.cit.*, p.124.

27. R.S.Lopez, 'Italian Leadership in the Medieval Business World', *Journal of Economic History*, Supplement: The Tasks of Economic History, 1948, p.64.

28. H. Pirenne, *op.cit.*, p.86.

29. *Ibid.*, pp.84-85.

luxury items, and it was usually acknowledged that the seller was entitled to receive whatever the buyer was prepared to pay. (30) Exorbitant prices for luxuries could not be the cause of widespread distress as there was no obligation to pay them. Thus the legislation against monopolistic practices was directed rather towards maintaining free market conditions for the sale of essential commodities entering the towns from the surrounding countryside.

The most commonly used methods of acquiring monopolistic control of these essential commodities were:

a) forestalling, which meant obtaining goods before they had been offered to all comers in the open market - for example, by going out to meet a ship or caravan; b) regrating which meant buying for immediate resale at a higher price in the same market; c) engrossing, which meant obtaining a corner on the supply of a commodity in a given market. (31)

These practices were almost universally legislated against by municipal authorities, throughout Western Europe from Sicily to England. (32) In fact, 'Medieval records are full of references to engrossers or forestallers who were caught, dragged into court, and fined or punished with exposure on the pillory.' (33) This system of control was, indirectly, a practical expression of the doctrine of the just price. 'Disapproval of private monopoly prices was, in the final analysis, a logical corollary of the general principle that the just price was the current market price.' (34)

The agrarian base of the medieval economy was not sufficiently stable for the enforcement of market competition to be universally practicable. Supplies of basic commodities were often unreliable and they could seldom be easily or quickly supplemented. Poor harvests usually resulted in famine conditions. Under these circumstances, market forces, if allowed free rein, could drive prices up to levels at which basic foodstuffs became unobtainable to the majority of urban dwellers. During times of dearth, then, the municipal authorities suspended normal market operations and attempted to fix prices.

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30. R. De Roover, 'The Concept of the Just Price: Theory and Economic Policy', *Journal of Economic History*, Vol.18, December, 1958, p.427.
 31. B.W. Dempsey, *The Functional Economy* (1958), p.89.
 32. R. De Roover, *op.cit.*, p.429.
 33. *Ibid.*
 34. J.W. Baldwin, *op.cit.*, p.80.

Although price control became far more prevalent during the fourteenth and fifteenth centuries, evidence exists to show that it was not unknown before then. One device, which was implemented as early as the twelfth century, was to produce a 'standard loaf', the price of which remained constant while its size varied in relation to the scarcity or abundance of grain. (35) In England from as early as the twelfth century, '...the prices and quality of bread, ale and wine were controlled by a series of "assizes" administered by the local authorities.' (36)

The provision made by Roman law - that the state might intervene when necessary in economic affairs - was taken full advantage of by the medieval authorities. Furthermore, it ought to be noted that the regulation of prices, at least during this period, was undertaken in a spirit of disinterestedness with the object of promoting the common good of the town. In Thrupp's opinion:

...the social policies of the city magistrates were not framed, as might have been expected, solely in the interests of the dominant merchant classes, but took account of the whole of the urban population. It was only at a later period, when there was less stimulus to constructive energy, that the merchant patriciate began to lose sight of the common good. (37)

The market price was allowed to operate, and was considered to be the just price, as long as supplies were abundant, or at least adequate. During times of scarcity, the market price became unjust in terms of the common good, and, therefore, a more equitable 'just price' had to be fixed by the town authorities. Their right to intervene was never questioned by either the theologians or the jurists. 'In other words, the *pretium legitimum* was *ipso facto* the *justum pretium*.' (38)

When the role of the guilds in price determination comes under consideration, the interaction between theory and practice becomes more complicated

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35. A.B. Hibbert, 'The Economic Policies of Towns', in *The Cambridge Economic History of Europe*, Vol.III,(1963),p.177.
 36. E. Miller, 'Government Economic Policies and Public Finance 1000-1500', in *The Fontana Economic History of Europe*, Vol.I,(1972),p.353.
 37. S.L.Thrupp, *op.cit.*,p.41.
 38. G.O'Brien, *op.cit.*,p.108.

and less easily delineated. It is generally acknowledged that the guilds were of considerable service to their members in that '...they restrained competitive bidding that threatened to raise rents; they maintained extensive loan funds; and they dispensed relief in sickness and poverty.'⁽³⁹⁾ Offsetting this positive contribution, however, there may be found in the literature continual references to the fact that the guilds often enjoyed monopoly power which they abused by raising prices when selling and by depressing prices when buying. This is usually acknowledged to have been a distortion and debasement of the original aims of the guilds. The ideal behind the guild system of organisation was thought to have been the practical application of the just price. As De Roover described it:

For this purpose the guilds are presented as welfare agencies which prevented unfair competition, protected consumers against deceit and exploitation, created equal opportunities for their members, and secured for them a modest but decent living in keeping with traditional standards. (40)

Whatever effects the guilds may have had on other aspects of medieval economic life, their influence on the pricing system would appear to have been considerably misrepresented, as the following discussion will show.

According to the view suggested by Thrupp, the guilds' original purpose in forming associations had little to do with price determination:

The guilds everywhere represented congeries of special interests, loosely bound together, under the aegis of municipal authorities, *by a common care for the quality of goods sold.* (41)

This attitude is also supported by Cipolla who wrote that 'In their vigilance over the good quality of products the government and guild authorities gave one another mutual support.'⁽⁴²⁾ When the question of price fixing arose, this 'mutual support' became transmuted into open conflict. As Gilchrist

39. S.L. Thrupp, 'Medieval Guilds Reconsidered', *Journal of Economic History*, Vol. II, No. 2, 1942, p. 171.
40. R. De Roover, *op.cit.*, p. 418.
41. S.L. Thrupp, *op.cit.*, p. 167. Italics added.
42. C.M. Cipolla, 'The Economic Policies of Governments: V The Italian and Iberian Peninsulas', in *The Cambridge Economic History of Europe*, Vol. III, (1963), p. 423.

observed, 'The commonly held belief that the guilds had the *right* to fix the price of their members' products is a fallacy.' (43) The right to fix prices was the sole prerogative of the town authorities, and the guilds were subject to that authority. The attempts at collusion and price fixing on the part of the guilds, and the responses they elicited from town authorities and scholastic writers, feature more prominently in the later Middle Ages and will be dealt with below.

The just price in practice, during the period between the eleventh and the thirteenth centuries, appears to have been fairly closely related to the doctrine developed by the scholastics. Economic policy was to a very great extent formulated and enforced by the municipal authorities. (44) The guiding principle of these authorities, at least during this period, was the promotion of the 'commonweal', that is, the good of all members of the urban community. O'Brien came to the conclusion that:

When he exclaims that Production is on account of man, not man of production, Antoninus of Florence sums up in a few words the whole view-point of his age. (45)

The application of the just price as a market-price when conditions were favourable, but as fixed by law when they were not, the suppression of monopolistic practices, and the subjection of the guilds to the town authorities, can only be properly understood in the light of this mode of thought. Maximizing the benefit of the community was of greater importance than maximizing profit or production.

The commercial revival which began in the eleventh century provided the impetus for the formulation of the doctrine of the just price which had not before then been part of Christian dogma. The doctrine of the prohibition of usury, however, had its roots in the earliest recorded teachings of the Church. The demand for credit which was created by the expansion of trade and the rise of towns caused an increase in usurious practices which was viewed by the Church with considerable alarm. When Gratian collected

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43. J. Gilchrist, *op.cit.*, p.117.
 44. R. De Roover, *op.cit.*, p.428.
 45. G. O'Brien, *op.cit.*, p.9.

texts for his *Decretum* in the first half of the twelfth century, he arrived at the conclusion that the law of the Church forbade the practice of usury, not only to clerics, but to all Christians. The General Councils of the twelfth century supported his findings. ⁽⁴⁶⁾ The ecclesiastical reaction to the increasing prevalence of usury was to tighten rather than to loosen the prohibition. The words of Lateran III(1175):Canon 25 reveal the extent of the problem:

...almost everywhere the crime of usury has taken such hold that many pass over other professions to devote themselves to the business of usury, as if it were lawful....(47)

The Church, for the sake of its own prestige, and because of its self-appointed role as moral guardian of medieval society, could not afford to ignore this open flouting of one of its most stringent prohibitions.

It was not only the extent of the usury problem that gave the Church cause for concern during this period; the nature of lending itself was undergoing considerable change. It had been sufficient before the eleventh century to condemn usury on the grounds of its uncharitableness and its evil social effects, because most borrowing was for consumption. The change which was brought about by the commercial revival was that money began to be borrowed, not to provide essential sustenance for the borrower, but in order to make more money. No evil effects could be seen to attend the payment of interest on this type of loan. Unless the prohibition of usury was to be regarded simply as an autocratic pronouncement by the Church, it had to be provided with a more substantial rationale than that it was attended by evil social consequences. The canonists and theologians of this period, by demonstrating the inherent injustice of usury, provided this rationale. Divine observed that:

46. *Vide* Appendix A. Lateran II, Canon 13; Lateran III, Canon 25.
 47. *Vide* Appendix A.

...since the conclusion drawn from the analysis was that usury was of its very nature unjust, its justification could not be effected by any social good it might achieve; and the presence of social evils would only aggravate its evil character. (48)

The usury prohibition was thus firmly entrenched, although some leeway with regard to commercial loans was provided by the admission of extrinsic titles.

The effect of the doctrine of the prohibition of usury on economic development requires a closer look at how it operated in practice. In theory, the Church, although never prepared to abate the actual prohibition, provided some justification for taking more than the principal on commercial loans, as has been shown in the previous chapter. In practice, the same type of pattern emerges. The Church became increasingly severe on manifest usurers or pawnbrokers who dealt in consumption loans, while perforce becoming increasingly tolerant in the sphere of commercial credit. Three areas of practice require examination: methods of obtaining commercial loans which were free of any taint of usury; practices which in themselves were not usurious, but which could be used to disguise usury; and the unconcealed practice of usury. Each of these will be dealt with in turn.

The legitimate contract which assumed the greatest importance was the partnership or *societas*. This '...was to be one great and universal form of licit investment in commerce throughout medieval Europe.' (49) The contract itself was inherited from the Roman world and was described in the *Digest* as '...the union by two or more persons of their money or skill for a common purpose, usually profit.' (50) In practice, the *societas* could be formed in such a way that it fairly closely resembled a loan. This was the case when one partner contributed only money, while the other contributed only labour, to the venture. At no time, however, was there any confusion as to the clear distinction between a contract of *mutuum* and a contract of *societas*. The difference between the two which made profit

48. T.F.Divine, *op.cit.*, p.41.

49. J.T.Noonan, *op.cit.*, p.133.

50. Quoted in J.T.Noonan, *op.cit.*, p.134.

from the former wholly reprehensible, and gain from the latter perfectly legitimate, was the incidence of risk. The essence of the nature of the contract of *societas* was that the partners shared not only the rewards of the venture, but also assumed all the risks. There was no obligation on the working partner to repay the capital should the venture fail. The partnership does not appear to have been an attempt to evade the usury prohibition. According to O'Brien it '...was widely practiced and tolerated long before the Church attempted to insist on the observance of its usury laws in everyday life.' (51)

The *societas* was the most popular method of investment in commercial undertakings. The normal arrangement with regard to agricultural and State credit was a different contract, called the *census*. (52) This involved the sale of the right to receive rent on a piece of property. As O'Brien pointed out:

There was never any difficulty about admitting the justice of receiving a rent from a tenant in occupation of one's lands, because land was understood to be essentially a thing of which the use could be sold apart from the ownership; and it was also recognised that the recipient of such a rent might sell his right to a third party, who could then demand the rent from the tenant.(53)

The *census*, then, was a perfectly legitimate contract of purchase and sale, not a device for circumventing the prohibition of usury. (54) It was accepted by the Church and was never the subject of ecclesiastical censure.

This was not the case, however, with a credit-raising arrangement which became popular in the Mediterranean sea-ports from the twelfth century onward, namely the sea-loan or *foenus nauticum*. (55) This contract bore some resemblance to the partnership in that the lender assumed the risk of his capital for the time that the venture was at sea. If the ship failed to return to port the borrower was under no obligation to repay the loan.

51. G. O'Brien, *op.cit.*, p.206.

52. J.T.Noonan, *op.cit.*, p.154.

53. G. O'Brien, *op.cit.*, P.203.

54. E.B. Fryde and M.M.Fryde, 'Public Credit, with Special Reference to North-Western Europe', in *The Cambridge Economic History of Europe*, Vol. III, (1963), p.531.

55. J. Bernard, *op.cit.*, p.324.

However, despite this assumption of part of the risk by the lender, the contract remained, technically, a loan, because the business risk was still wholly assumed by the borrower. Provided the ship was not lost, the borrower was bound to repay the full amount of the loan, regardless of the profit or loss of the venture. Invariably, interest was included in the contract to provide compensation for the risk, although it was usually disguised rather than explicitly stated. (56) 'For this reason, the sea-loan fell under the suspicion of usury and was condemned in 1236 by Pope Gregory IX in his decretal, *Naviganti*.' (57) After this condemnation, and perhaps to some extent because of it, the use of the *foenus nauticum* declined in favour of a different type of contract, the *cambium nauticum*, or maritime exchange contract. (58)

One of the most important features of the development of the doctrine of the prohibition of usury was the increasingly specific legal definition of the nature of usury. It was established that usury could only be taken on a contract which could be specifically designated as a loan or *mutuum*. It followed, then, that contracts other than loans might be used to obtain a return on capital investment without the fear of ecclesiastical legal reprisals. For this reason the various kinds of *cambium*, or exchange contracts, assumed great importance in the medieval commercial system. Although originally designed to provide a means of exchange for the welter of different coinages in circulation, these contracts came to be a widely used method of extending credit. Simple, direct money-changing (*cambium minutum*) developed into a complex system of buying and selling foreign exchange which provided finance for long-distance trade. The mechanism whereby this operated was described by Noonan:

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56. R. De Roover, 'The Organization of Trade', in *The Cambridge Economic History of Europe*, Vol. III, (1963), p.54.
57. F. Edler De Roover, 'Early Examples of Marine Insurance', *Journal of Economic History*, Vol. V, 1945, p.175.
58. *Ibid.* This was essentially the same contract with a change of name. The reason for this will be clarified in the following paragraph.

In Genoa, for example, exchange was thus, as the expression went, "bought on" the Champagne fairs....The exchange dealer, buying exchange, would finance a merchant customer who would deliver the exchange when he sold his commodity at the fair. (59)

This form of contract was originally described as *mutuum*, but the appellation was changed to *emptio-venditio* (purchase-sale) around the middle of the thirteenth century. This was almost certainly due to pressure from the Church. (60)

Cambium minutum involved a small fee to the money-changer. This was considered to be a legitimate charge on the part of the dealer as recompense for his own trouble and expense. *Emptio-venditio* could involve either gain or loss for the money-changer, depending upon fluctuations in the exchange-rate. Despite the change in name of the contract, the transaction remained in essence a loan, but the uncertainty of the profit removed the taint of usury. 'In the Middle Ages, it was usury to make a *certain* profit on a loan, no matter whether the profit was great or small.' (61) Besides these more or less legitimate exchange transactions, the contract known as *cambium siccum*, or dry exchange, was used as a deliberate cover for usurious exchanges of moneys of the same currency. (62) These were fictitious exchanges because no purchase or sale of foreign currency was either intended or carried out. They were condemned as usurious because they '... lost their speculative character by the fact that the rate of the rechange was fixed in advance.' (63) The rate of interest was simply concealed in the rate of exchange.

The commercial revival in Western Europe from the eleventh century was based very extensively on credit, chiefly because of the inadequacies of the monetary system. (64) It was not to be expected that this extension of credit should be made without any hope of return. Had the prohibition of usury really included all 'taking of interest on loans', the Church would have been attacking the very foundations of the commercial expansion. In

59. J.T. Noonan, *op.cit.*, p.176.

60. *Ibid.*

61. R. De Roover, 'New Interpretations of the History of Banking', *Journal of World History*, Vol. II, 1954, p.42.

62. G. O'Brien, *op.cit.*, p.157.

63. R. De Roover, *op.cit.*, p.41.

64. Major problems were counterfeiting, the instability and variety of currencies, the inadequate exchange relationship between gold and silver, and the shortage of specie. J. Bernard, *op.cit.*, p.322.

fact this was not the case at all. The trend, which was already discernable during this period and which was to become very distinctly marked in the fourteenth and fifteenth centuries, was for the Church to tolerate commercial credit, and, indeed, not even to regard most methods of conducting business as being usurious. The situation, according to B.N.Nelson, was that:

Partnerships, sales, and leases were normal, everyday affairs which did not spring into being as ways of circumventing the restraints upon increments from loans. The same is true of the extrinsic titles and the many so-called exceptions to the law of usury. We cannot argue that they were originally designed to provide loopholes in the law from the fact that they were often exploited by unconscionable creditors. (65)

The usury prohibition itself remained in force against money-lending for consumption purposes; the refinements of the doctrine were designed to allow for normal business practice.

Throughout the Middle Ages the demand for consumption loans remained high. As. M.M.Postan noted:

Squandering...was as a rule an inescapable incident of the feudal way of life. Students of thirteenth-century knighthood are now inclined to the view that the main economic problem of petty medieval landownership was the propensity of smaller landowners to live beyond their means. But the same also applies to many greater landlords, holders of baronial complexes of manors. (66)

This problem was not confined to the laity; '...the Church from the twelfth to the sixteenth century, from the lowest clergy to the papacy. existed by some form of credit financing.' (67) This need for ready money could only be met by recourse to those members of medieval society who had spare capital to loan out. Despite all the teachings of the Church it was never expected

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65. B.N.Nelson, 'The Usurer and the Merchant Prince: Italian Businessmen and the Ecclesiastical Law of Restitution, 1100-1550', *Journal of Economic History*, Supplement: The Tasks of Economic History, 1947, p.104.
66. M.M. Postan, 'Investment in Medieval Agriculture', *Journal of Economic History*, Vol. XXVII, 1967, p.580.
67. J.Gilchrist, *op.cit.*, p.107.

that these loans should be made gratuitously. Although loans were technically made *gratuite et amicableiter*, concealed interest was almost invariably added, and indeed not even held to be unlawful by the canonists in the case of necessity. (68)

During the eleventh and twelfth centuries money-lending was usually carried on as a side-line by wealthy merchants, both Jewish and Christian, and also by religious establishments such as the monasteries. (69) It was only during the thirteenth century that there emerged the figure of the public or manifest usurer, whose sole occupation was to provide consumption loans at interest. The municipal authorities tended to treat these practitioners as a necessary evil, they sought to contain the activities of pawn-brokers by issuing licences or fixing a maximum rate of interest. (70) The Church, however, directed the full force of its legal power encompassed in the external forum against the notorious usurer. In the words of Nelson:

The target of the basic legislation was assumed to be those public usurers who...resided in distinctive quarters in the town, were exclusively licensed to ply their traffic manifestly and notoriously, and who, by the strict terms of the agreement, were accessible to all. (71)

Manifest usurers were subject to trial in ecclesiastical courts and could be forced to make restitution. The sanctions against businessmen who engaged in occult or mental usury were applied by the internal forum.

It is impossible to say with any degree of accuracy how effective these measures were. They certainly did not succeed in removing usurers who, generally speaking, '...staved off and blocked even the most tenacious efforts of the Church to check their operations, accumulations, and transfers of ill-gotten gains to their descendants and heirs.' (72) Where the Church was successful was in casting a religious and social stigma on the profession,

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68. T.P.McLaughlin, *op.cit.*, pp.109-110.
 69. E.B.Fryde and M.M.Fryde, *op.cit.*, pp.443-445.
 70. M.B.Becker, 'Three Cases Concerning the Restitution of Usury in Florence'. *Journal of Economic History*, Vol. XVII, 1957, p.446.
 71. B.N.Nelson, *op.cit.*, p.108.
 72. *Ibid.*, p.114.

which, arguably, kept it within bounds. There were inevitably some members of the society who were unaffected by this odium. The Jews were set apart from Christian society, in any case, as can be seen in Lateran III(1179), Canon 26, and Lateran IV, Constitutions 67,68,69. The sanction of excommunication was obviously ineffectual. There were also Christians for whom the profits to be made from usury outweighed the social and religious ostracism which accompanied its practice. That the doctrine was not wholly without effect has been tentatively expressed by Pirenne in the following passage:

It certainly resulted in preventing the passion for gain from spreading without limit; it protected, in a certain measure, the poor from the rich, debtors from creditors. The scourge of debts, which in Greek and Roman antiquity so sorely afflicted the people, was spared the social order of the Middle Ages, and it may well be that the Church contributed largely to that happy result. (73)

Noonan also pointed out that in agricultural communities such as China, indebtedness has in the past been effective in checking economic growth. (74) By keeping usury within reasonable limits, it may be argued that the Church actually contributed to economic development.

As far as the present state of research allows, probability seems to favour the view that, between the eleventh and thirteenth centuries, economic practices and the teachings of the Church, harmonised reasonably well. The doctrine of the just price was conscientiously applied in the towns, by the municipal authorities for the benefit of all, insofar as possible. The market determined prices, under conditions of free-bargaining, which were ensured by the suppression of monopolistic practices. When this system became manifestly unfair, as in times of severe shortages, attempts were made to fix prices at reasonable levels. With regard to usury, the Church refined its doctrine so as to be as accommodating as possible to the burgeoning economic life of the time. Commercial practices such as *cambium*,

73. H. Pirenne, *op.cit.*, p.88.

74. J.T. Noonan, *op.cit.*, p.49.

societas and *census*, '...were not various devices indiscriminately employed by the medieval merchant in order to disguise his ordinary loans.'⁽⁷⁵⁾ They were legitimate business practices, not subject to disapprobation by the Church. Usury, in the strictest sense, continued to be openly practiced, despite the censure of the Church, but the Church's influence in all probability prevented it reaching economically dangerous proportions.

During the fourteenth and fifteenth centuries, the situation underwent subtle change. The economic advance of the previous three centuries was checked by the considerably increased incidence of famine, plague, war and social unrest. Economic development, however, particularly in the area of business techniques, which became increasingly sophisticated continued unabated. At the same time, the Church was slowly but steadily losing its power to influence all aspects of medieval society. Faced with serious challenges to its authority, on spiritual grounds from the great heretical movements of this period, and on temporal grounds from the rising nationalist movements, the Church had less attention to spare for economic minutiae. Pressure from an increasingly powerful and sophisticated business sector was inexorably changing the ethical system so painstakingly constructed during the high Middle Ages.

The economic changes of the fourteenth and fifteenth centuries did not significantly affect the doctrine of the just price. The analysis of Aquinas in the thirteenth century was accepted as definitive and no further development occurred. In practice, however, the concept of the just price underwent some modification, due to the change in conditions in the towns. In the opinion of Hibbert:

...conditions of adversity were sufficiently general and widespread to cause a hardening of attitude...in many cases; there was enough difficulty and hardship to encourage intense economic regulation, a deep antagonism to all outsiders, a contraction of the sphere of interest and a defensive approach to affairs in very many towns. (76)

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75. M.M.Postan, 'Credit in Medieval Trade', in E.M.Carus-Wilson (ed.), *Essays in Economic History*(1954),p.80.
 76. A.B.Hibbert, *op.cit.*,p.209.

Attempts at price fixing became much more prevalent during the later Middle Ages, and encompassed a wider range of commodities. From the fourteenth century onwards, Douai had assizes for wood, beer, hay, lime and even coffins, while the Mayor Of London was charged with setting prices for ale, beer, red wine, meat and poultry. ⁽⁷⁷⁾ The powerful influence of custom, which has been given such prominence in the area of feudal and manorial relations, has remained virtually unexplored with regard to pricing policy in towns. Thrupp has mentioned that it ought not to be ignored, but elaboration on this question does not appear to be available. ⁽⁷⁸⁾ It may tentatively be suggested, however, that with regard to manufactured items, by the later Middle Ages, custom may have been strong enough to have fixed prices which would have been regarded as just. The free working of the market, then, despite the theoretical assumption that the just price was the market price, probably did not feature largely in the towns of the later Middle Ages. The idea of a just price which was socially determined and capable of keeping people in their places does not seem quite so outlandish in the context of the later Middle Ages.

With regard to the guilds, their ability to institute restrictive practices for the purpose of enriching their members, appears to have increased considerably during the fourteenth and fifteenth centuries. Although monopolistic exclusion on the part of the guilds was hardly ever a practical reality, ⁽⁷⁹⁾ and there was a considerable amount of inter-guild competition, the power to restrict output and control prices was a feature of later medieval guilds. It is noteworthy, in this regard, that the only mention made of guilds by the scholastic writers of this period was to condemn their monopolistic tendencies. In the words of De Roover:

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77. J. Gilchrist, *op.cit.*, pp.116-117.
 78. S.L.Thrupp, 'Social Control in the Medieval Town', *Journal of Economic History*, Supplement: The Tasks of Economic History, December, 1941, p.42.
 79. S.L.Thrupp, 'Medieval Gilds Reconsidered', *Journal of Economic History*, Vol. II, No.2, 1942, p.169.

Thus, San Antonino(1389-1459) accuses the clothiers...of Florence of paying their workers in truck or in debased coins. In England John Wycliffe (ca.1324-1384) curses the free masons and other craftsmen because they "conspire" together to ask more than a right ful wage and to oppress other men. An equally virulent attack is found in the so-called *Reformation of Emperor Sigismond*(1437); the author of this proposal would abolish all guilds because they abuse their control of town governments to exploit the public. (80)

These restrictive tendencies on the part of the guilds in the later Middle Ages were by no means an expression of the just price in practice. 'In fact and through collusion, many guilds did succeed in fixing prices which favoured their members, but the just price was directed *against* this practice.'⁽⁸¹⁾

The doctrine of the just price remained unmodified in theory, although it was somewhat distorted in practice, during the later Middle Ages. The usury prohibition, on the other hand, underwent theoretical as well as practical modification. The most significant of these theoretical developments was the admission of the extrinsic title of *lucrum cessans* in the fifteenth century. The economic changes of the previous four centuries had demonstrated that profit could be made from investment in commerce and trade. The theologians still considered that such profit was due to the labour of the borrower and hence belonged in its entirety to him. However, by the fifteenth century, they were prepared to admit that a lender who normally engaged in trade would be foregoing an opportunity for profit by making a business loan. He was, therefore, entitled to compensation for risk, and thus the title of *lucrum cessans* was admitted.

This fundamental alteration to the usury doctrine, which went so far as to directly contradict the opinion of Aquinas, was not brought about by pressure from the business fraternity. It resulted from the decision of the Church to establish its own 'ecclesiastical pawnshops', *montes pietatis*.⁽⁸²⁾ Practical experience had shown that public usury could not be eliminated, and interest rates could not be brought below 35 per cent, by

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80. R. De Roover, 'The Concept of the Just Price: Theory and Economic Policy, *Journal of Economic History*, Vol.XVIII, December, 1958, p.431.
 81. A.B.Lumby, 'Justum Pretium: A Reconsideration' in *Medieval Studies* (1975), p.86.
 82. J.T. Noonan, *op.cit.*, p.295.

the exertion of moral pressure. (83) The Church came to the conclusion that it would benefit the poor if charitable institutions could be set up which would supply the need for small consumption loans. A delicate moral problem emerged because, laudable as this scheme was, such institutions could not operate without making some charge for its loans. While it would obviously benefit the poor to be able to loan money at low, rather than exorbitant, rates of interest, the establishment of the *montes pietatis* would nevertheless lay the Church itself open to the charge of practising what it so resolutely forbade to others. The strict interpretation of the usury prohibition did not survive the practical exigencies of the time. The legalization of the *montes pietatis* concomitantly legalized 'interest' on commercial loans.

Before this theoretical acknowledgement was made of the legitimacy of interest on business loans, it was coming to be taken for granted in practice. Research done by A. Sapori showed that:

...whatever the letter of the law, the merchant extending commercial credit was usually uncensured by lay and even ecclesiastical authorities. Nor was he really haunted by fear of hell. Usually he assigned in his will a token sum for restitution of interest charged "until the moment of death", thus showing that he had no intention of quitting lending practices up to the very last. (84)

The distinction between those who extended commercial credit as part of diversified and flourishing business concerns, and those who engaged in petty money-lending became increasingly wide. The former became highly respected and respectable citizens while the latter were degraded and sunk in infamy. (85)

The financial mechanisms developed during the fourteenth and fifteenth centuries still conformed to the letter of the law, but the spirit of the usury prohibition was openly flouted. Time deposits with bankers yielded returns which, although disguised as 'bonuses' or partnership shares, were, strictly speaking, usury. (86) Bills of exchange became popular instruments

83. *Ibid.*, p.294.

84. Cited by R.S. Lopez, *op.cit.*, p.65.

85. B.N.Nelson, *op.cit.*, pp.120-121.

86. R. De Roover, 'New Interpretations of the History of Banking', *Journal of World History*, Vol.II, 1954, pp.39-40.

for extending credit because they involved a contract of *cambium* rather than *mutuum*, but the exchange rate always included interest. (87) The usury prohibition was not totally ineffective with regard to bills of exchange. Throughout the medieval period they were never discounted, but simply bought and sold. For this reason, dealing in bills of exchange still remained to some extent speculative. Sudden exchange fluctuations could be severe enough to outweigh the concealed interest and cause loss rather than gain. (88) The situation has been succinctly summarised by Nelson:

Economic growth in the later Middle Ages and Renaissance was less inhibited by the Church than many imagine. It was the Church's willing assistance to and unwilling compromises with merchants and financiers that helped convert the merchant-usurers of the twelfth and thirteenth centuries into the merchant princes of the Renaissance. (89)

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87. R. De Roover, 'Money, Banking and Credit in Medieval Bruges', *Journal of Economic History*, Supplement: The Tasks of Economic History, December, 1942, pp.55-56.
88. R. De Roover, 'New Interpretations of the History of Banking', *Journal of World History*, Vol.II, 1954, pp.49-50.
89. B.N.Nelson, *op.cit.*, pp.121-122.

CHAPTER SIXCONCLUSION

It is arguable that historical research ought not to be merely an attempt to discover what occurred during a particular period, but should include an assessment of the relevance, if any, of those experiences in terms of their contribution to the present. In this regard, the economic development which took place during the Middle Ages in Western Europe provided the foundations for the moderate expansion of the early modern era which, in turn, led to the spectacular development which followed the 'industrial revolution.' As regards the specific area covered in this study, there were two aspects of medieval economic development which are of particular significance in terms of their surviving influence. The first of these is the formation of the basis of modern business techniques by medieval merchants, bankers and manufacturers. The development of banking practices, double-entry book-keeping, instruments of credit - notably the bill of exchange - the contract of partnership and the methods of organising public debt, to name but a few of the more important examples, can all be traced back to the Middle Ages. Secondly, the existence of anti-monopoly legislation, agricultural boards and consumer councils in modern Western economies bears witness to the fact that, despite the *laissez-faire* principles upon which capitalist economic systems are based, the rooted conviction remains that some system of 'fairness' or 'justice' ought to operate in relation to prices.

In view of these considerations, the failure to accord adequate weight to the role of the doctrines of the just price and the prohibition of usury in medieval economic development may be regarded as an unfortunate oversight on the part of economic historians. Medieval entrepreneurs were obliged to be perpetually aware of the intricacies and exigencies of the usury prohibition, which to some extent accounts for the level of sophistication which their business methods attained. An appreciation of the complexity and

influence of this doctrine is a useful aid to the understanding of this area of development. In a similar manner comprehension of the true meaning of the doctrine of the just price may improve understanding of both medieval and modern pricing policy.

The doctrines of the just price and the prohibition of usury were intricately related to economic advance during the Middle Ages. They were evolved and refined in response to economic conditions. This is evident from the close correlation which exists between the time of economic expansion and the time during which the doctrines received the greatest attention from medieval scholars. The period before the eleventh century was a time of economic contraction, during which the just price received little attention and the usury prohibition existed in a crude, rudimentary form. ⁽¹⁾ Between the eleventh and thirteenth centuries, the burgeoning economy created the necessity for the formulation of specific rules on buying and selling, and elicited stricter definition and greater embellishment of the usury prohibition. ⁽²⁾ The economic conditions of the fourteenth and fifteenth centuries did not exert any pressure on the doctrine of the just price, which remained substantially unaltered, but the usury prohibition was, if not broken, at least considerably bent with regard to commercial credit. The practical application of the doctrines also changed in response to economic conditions during these three periods during the Middle Ages. In order to assess the general trends in the development of the doctrines and their practical application, each will be summarised in turn.

The concept of the just price, apart from a minor mention in the *Capitularies* of Charlemagne, did not exist in the early Middle Ages. ⁽³⁾ It was adopted by medieval scholars from the *Code* of Justinian around the beginning of the twelfth century, when the study of Roman law was revived in Western Europe. The concept itself was not particularly important in Roman law, which placed scarcely any restriction on free bargaining. ⁽⁴⁾

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1. *Vide supra*, pp.93-95.
 2. *Vide supra*, pp.99-106.
 3. *Vide supra*, p.92.
 4. *Vide supra*, p.47.

To the medieval scholastics, however, it provided a basis for introducing the concept of justice into commercial transactions. Without discarding the principle of setting prices by free bargaining, the medieval legists extended and refined the device of *laesio enormis* in order to set legal limits to the 'mistakes' which might be made in arriving at a price by this method. (5) The Roman and canon lawyers concluded that errors within the range of half the just price either over or under the just price itself were legally acceptable. If the price were outside this range the sale could be contested, but not otherwise, except in the case of fraud. (6) The just price itself was considered to be a market price, in the sense that it was not subjectively determined according to any intrinsic value of the article, but was established according to conditions of supply and demand at the time and place of the sale.

The theologians accepted the findings of the legists with regard to the just price in most respects. Aquinas, as their chief representative, implicitly sanctioned the principle of freedom of bargaining in the setting of prices. His treatment of the just price in the *Summa Theologica* appears to take it for granted that the legal definition of the just price was acceptable philosophically. Aquinas, however, took exception to the considerably leeway allowed by the civil and canon lawyers. He concluded that, while the requirements of human justice could be satisfied within the limits set by civil law, divine justice demanded much closer adherence to the just price. (7)

It has been fairly clearly established, then, that the medieval just price was the price which was established in the market place under conditions of free bargaining. The practical application of the doctrine involved the maintenance of conditions of free bargaining by the severe suppression of monopolistic practices on the part of the municipal authorities. (8) This system of free marketing was allowed to operate as long as conditions of supply and demand were relatively stable. The doctrine did, however, allow for interference by the authorities when the public interest

5. *Vide supra*, pp.47-50.

6. *Vide supra*, p.49

7. *Vide supra*, pp.60-61.

8. *Vide supra*, pp.99-101.

demanded it. During times of severe shortage of essential commodities, it was normal practice for municipal officials to set prices, although not always successfully, at levels more equitable than those which would prevail under free market conditions. This system appears to have operated reasonably well during the high Middle Ages, when the economy was relatively free of restrictions. ⁽⁹⁾ The fourteenth and fifteenth centuries, however, appear to have been a time when the economy was undergoing some rigidification. Price setting was no longer so much a matter of free bargaining in the market place. Controls by town authorities, restrictive practices on the part of the increasingly powerful guilds, and the weight of custom combined to introduce an element of inflexibility into the price structure. ⁽¹⁰⁾ The idea of prices which were fixed at levels which could keep medieval merchants and craftsmen in their places does conform, to some extent, to actual conditions during this period. The doctrine of the just price, however, did not actively contribute to this state of affairs, and was, indeed, directly opposed to the attempts at monopolistic price-setting made by the guilds. ⁽¹¹⁾

The influence of the doctrine of the just price on economic development does not appear to have been restrictive. It was applied chiefly by the authorities of medieval towns in so far as possible in the interest of the common good. It was probably not a factor which actively promoted economic growth; those who applied it did not consider high levels of productivity to be of paramount importance. However, the idea that it was imposed to prevent people improving their economic and social positions and thereby inhibited economic expansion has been shown to be erroneous.

In contrast the doctrine of the just price, the doctrine of the prohibition of usury was not formulated in response to the economic expansion which took place after the eleventh century. It had formed part of the law of the Church since the early Church Fathers had begun to provide practical rules to supplement the idealistic teaching of the Gospels. ⁽¹²⁾

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- 9. *Vide supra*, pp.101-102.
 - 10. *Vide supra*, pp.113-115.
 - 11. *Vide supra*, p.115.
 - 12. *Vide supra*, pp.66-67.

During the early Middle Ages, however, it remained analytically unsophisticated. The great majority of loans were made for consumption purposes, and the uncharitableness and evil social effects of usury provided sufficient grounds for its disapprobation. The social stigma attached to those who practiced lending at usury caused it to be proscribed by the Church to the clergy as early as the First General Council in the year 325. As far as the laity were concerned, however, although the Church regarded the practice of usury as a form of *turpe lucrum*, or shameful gain, it was not specifically prohibited. (13)

The economic expansion which occurred from the eleventh century onwards brought about a widespread increase in the practice of usury and changed its character by introducing the element of commercial lending. The Church reacted to these developments by increasing the severity of the prohibition considerably, while at the same time introducing an element of flexibility by narrowing the definition of usury. The increased strigency was expressed in: the extension of the prohibition to include the laity as well as the clergy, the decision that the civil law could not allow what the canon law forbade, and the rejection of the Deuteronomic double standard. (14) These measures established the unlawfulness of usury, but it was the analysis of the nature of usury which was of paramount importance in determining the severity of the prohibition. The deliberations of the theologians, most notably of Aquinas, resulted in the conclusion that usury was unjust in itself and therefore against the natural law. The implications of this were that usury could never be legitimized, that neither the purpose for which a loan was made nor the person to whom it was made were material to the question, and that full restitution of usurious gains was obligatory. (15)

The element of flexibility which was introduced resulted from the recognition by the canonists and the theologians of extrinsic titles to the repayment of more than the principal on a loan. These were not, strictly speaking, exceptions to the usury prohibition- they merely recognised that in certain cases gains which might appear to be usurious were, in fact,

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13. *Vide supra*, p.67.
 14. *Vide supra*, pp.71-72, 80-81.
 15. *Vide supra*, p.80.

legitimate. The canonists concentrated upon specific contracts in which receiving something in excess of the amount lent could not be regarded as usury. ⁽¹⁶⁾ The theologians, on a more generalized level, considered the question of indemnification against loss, rather than titles to gain. This was, in the long run, the more important area of consideration as it eventually led to the admission of the legitimacy of interest on commercial loans. ⁽¹⁷⁾ This progression involved the admission of firstly, the right to include a penalty in a loan contract in case of late repayment; secondly, the right to claim compensation for damages resulting from late repayment of a loan; and, thirdly, the right to claim for gains which might have been made but which were lost due to late repayment. All these extrinsic titles only became applicable after a period during which the loan was gratuitous. ⁽¹⁸⁾ The final development of the medieval period came in the fifteenth century when it was admitted that compensation could be claimed from the beginning of a loan for damages incurred or gains forgone as a result of not having the money on hand. ⁽¹⁹⁾

The doctrine of the prohibition of usury, then, was less restrictive than the view that it was merely a blanket ban on the taking of interest on loans suggests, and in practice even more leeway existed. For economic development it was the extension of commercial credit, not the making of consumption loans, which was vitally important. Throughout the Middle Ages there existed methods of raising credit which were unaffected by the usury prohibition because they did not involve a loan contract. The *societas*, or partnership, as a means of combining capital and labour in commerce and industry, never had its legitimacy called into question. ⁽²⁰⁾ The sale of future revenues in return for a present sum of money (*census*) was, likewise, considered to be a legal method of obtaining credit. ⁽²¹⁾ The contracts which involved the changing of money (*cambium*) also came to be used as a method of financing business ventures, particularly in the case of long-distance trade. ⁽²²⁾ It was recognized by the Church that

16. *Vide supra*, pp.82-84.

17. *Vide supra*, p.87.

18. *Vide supra*, p.85

19. *Vide supra*, pp.88-90.

20. *Vide supra*, pp.106-107.

21. *Vide supra*, p.107.

22. *Vide supra*, pp.108-109.

such seemingly legitimate contracts could be used to disguise usurious exchanges and this was condemned unequivocally. Because of the nature of the contracts involved, these cases remained outside the jurisdiction of the ecclesiastical courts. Furthermore, there were several ways of disguising usury, even on contracts openly involving loans, in such a way that it could not be proved in court. (23)

It might be concluded from all this that the usury prohibition had little, if any, effect in its practical application. Before such a conclusion may be drawn, however, the influence of the internal forum, through the medium of the confessional, must be considered. It may have been easy enough to hide usurious practices from the sight of man, but in the Middle Ages it was universally accepted that nothing was hidden from the sight of God. Unfortunately, but inevitably, no evidence exists of how much influence the internal forum exerted, but the practice of providing for restitution of usuries in wills at least suggests that it was not wholly without effect. (24) The changing attitude of medieval businessmen themselves, as well as that of the Church, needs to be considered in this regard. What might have been unhesitatingly admitted to be a usurious transaction in the eleventh century, had in many cases come to be regarded simply as normal business practice by the fifteenth century, if not by clerical purists, at least by those who were actively engaged in commerce.

The prohibition of usury does not appear to have proved to be an insurmountable obstacle in the path of economic progress in the Middle Ages. On the one hand, the ingenuity of medieval businessmen appears to have been quite equal to the task of raising credit without incurring the sanctions of the Church, while, on the other hand, the sanctions themselves were not as harsh on commercial loans as they were on consumption loans. With regard to the latter, although the Church never succeeded in stamping out this form of usury - pawnbrokers plied their trade throughout the Middle Ages, and were even licensed to do so in many towns - the deleterious social and economic effects, which have attended the unrestricted expansion of this practice in other mainly agrarian societies, were to some extent contained. (25)

A detailed examination of the doctrines of the just price and the prohibition of usury strongly suggests that they were at least permissive

23. *Vide supra*, pp.116-117.

24. *Vide supra*, pp.111-112.

25. *Vide supra*, p.112.

to economic development, rather than inhibiting. On a more general level, as well as in these specific instances, the attitude of the Church to commercial practice was not as opprobrious as has been suggested. The making of profit through craftsmanship was fully justified on the grounds that labour was involved and that 'the labourer is worthy of his hire.' Earning a living by trade was initially viewed with disapprobation, but this attitude did not survive the commercial revival. Merchants could, and did, become wealthy and respected members of medieval society without in any way incurring the disapproval of the Church, provided that they were circumspect in their methods of conducting business and showed responsibility and charity in the management of their wealth.

In answer to the question, then, of whether the doctrines of the medieval Church represented religious idealism or economic rationality, it must be answered that they were a finely blended mixture of both. The concepts, themselves, were undoubtedly idealistic, and were rooted in the idea that Christians ought to treat each other justly at all times or they would endanger their immortal souls. The Church considered itself to be the guardian of all Christian souls, with the duty to enforce rules which could save them from perdition. Thus, while it would have been a great deal more convenient, and perhaps even in the Church's own interest, to remove the usury prohibition and simply regulate interest-rates, this was never even suggested. However, economic reality was never lost sight of by the medieval scholastics. The doctrines did not make economic development impracticable, nor was that their intention. They represent the desire of the Church to ensure that whatever business was conducted was carried on with due regard to the principle of justice.

APPENDIX A.

SELECTED CANONS AND CONSTITUTIONS OF THE
GENERAL COUNCILS

FIRST GENERAL COUNCIL: NICAEA 1 (325)CANON 17*On clerics who take usury*

Many clerics, motivated by greed and a desire for gain, have forgotten the scriptural injunction, 'he gave not his money to usury', and instead demand a monthly rate of one per cent on loans they make; therefore this holy and great council decrees that in future anyone taking interest or in any way whatsoever dealing in usury and demanding his fifty per cent profit or seeking some similar way of earning money is to be deposed and removed from his order.

FOURTH GENERAL COUNCIL: CHALCEDON (451)CANON 3*No bishop, cleric or monk may engage in estate management*

It has come to the knowledge of the holy council that some members of the clergy are administering other people's property and engaging in secular pursuits for profit. They neglect the divine ministry, spend their time in other people's houses, and, from motives of greed, undertake to look after their property. This holy and great council has decreed, therefore, that in future no bishop, cleric or monk shall supervise such estates or engage in commerce, unless it is a lawful obligation that he cannot escape, such as the guardianship of minors, or a God-fearing duty imposed by the bishop of the city to look after the affairs of the Church or of orphans and widows and of such persons not otherwise provided for, such as especially need the help of the Church. If anyone in future goes against this statute he shall be liable to the ecclesiastical penalties.

CANON 22

After the death of a bishop, his clergy may not seize his property

It is not lawful for clerics after the death of their bishop to seize his personal property, which has also been forbidden by the ancient canons; those who do so shall be in danger of deposition.

CANON 24

Consecrated monasteries may not revert to secular dwellings

Monasteries that have once been dedicated with the consent of the bishop shall remain monasteries for good, and all the property belonging to them shall be safeguarded as such, and no longer shall they be permitted to become secular dwellings. Those who permit this to be done shall be subject to the canonical penalties.

CANON 26

Stewards and their appointment as church administrators

Since in some churches, so we have heard, the bishops manage the ecclesiastical property without stewards, it has been decided that every church having a bishop shall also have a steward chosen from its own clergy who is to administer the church property in accord with the instructions of the bishop, so that the administration of the church may not be unattested and thereby ecclesiastical property squandered and reproach brought upon the priesthood. If he [the bishop] will not do this, he shall be subject to the holy canons.

SEVENTH GENERAL COUNCIL: NICAEA II (787)CANON 12

No bishop or abbot shall alienate church property

If a bishop or abbot alienate or surrender any part of the revenues of the bishopric or monastery into the hands of princes or any other person, his act is invalid according to the canon of the blessed apostles, which says: 'A bishop has responsibility for all ecclesiastical property, and he must administer it as though God is his overseer. It is not lawful for him to appropriate any part of it to himself, or to give his relatives the things that belong to God. If, however, they are poor, let them be given alms, but this is not to be used as a pretext for despoiling the Church.' Even if they claim as an excuse that the land in question does not make a profit but a loss, it should still not be given to the local lord, but to clerics or farmers. If the ruler uses intrigue to buy the land from the farmer or cleric, the transaction is void, and the land must be restored to the bishopric or monastery. The bishop or abbot acting thus shall be put away, the bishop from his bishopric and abbot from his monastery, like one who squanders what he has not gathered.

CANON 15

No cleric may serve two churches

In future, no cleric shall be appointed to serve two churches, for such an act hints of base business dealing and is far removed from ecclesiastical usage. In fact we have the words of Christ himself: 'No man can serve two masters: either he will hate the one and love the other, or love the one and hate the other.' Therefore let each one - according to the words of the apostle - serve in the church to which he is called, and remain there. In ecclesiastical matters things that are achieved through material motives are alien to God. To obtain the necessities of life there are various occupations by means of which, if one so desires, one may satisfy the bodily needs, as St Paul said.* This rule applies in the imperial city, but in rural districts, because of the sparsity of population, exceptions may be made.

*Acts 20:34.

EIGHTH GENERAL COUNCIL:
CONSTANTINOPLE IV (869-70)

CANON 20

No bishop shall recover estates granted by him or on his behalf without the consent of the official in charge of the particular city or region
This holy council has learnt that in certain places some bishops have used their own authority, and without the consent of the persons properly concerned, to expel those who have taken property on lease on their estates, on pretext that the conditions of the agreement have not been fulfilled. Such action is entirely prohibited unless he who contracted the lease has first been told by suitable proper persons, namely that he will be expelled from the land held by him if he fails to give the agreed rent for three years. If he fails for that length of time, then the bishop shall take the matter to the local or regional court and argue his case against the leaseholder in their presence, proving his contempt. Only then, with the judgement of the court, may he take possession of the property. Let no one either personally or on his own behalf seize the aforesaid property; such action is suspect, as a sign of both greed and desire for gain. If any bishop or metropolitan shall seize property from anyone in defiance of this statute, under the belief that he is defending his own property, let him be deprived of his office for some time and let him return what he has so forcibly taken. If he persists in his action, refusing to obey the decision of this council, let him be deposed.

NINTH GENERAL COUNCIL: LATERAN I(1123)

CANON 14

Pilgrims and travellers to Rome and other holy places to be safeguarded
If anyone shall dare attack pilgrims and travellers going to Rome to visit the shrines of the Apostles and the oratories of other saints and rob them of the things they have with them or exact from merchants new imposts and tolls, let him be excommunicated till he has made amends.

TENTH GENERAL COUNCIL: LATERAN II (1139)CANON 9

[On monks who disregard their rule by the pursuit of law and medicine for gain]

A vicious and detestable system, so we understand, has arisen by which monks and canons regular, after having taken the habit and made their profession, disregard the rule of the holy masters Benedict and Augustine, by studying civil law and medicine for the sake of material gain. Instead of devoting themselves to psalmody and plain chant, they are led by the impulses of avarice to turn themselves into advocates, and, trusting in their fine delivery, they confuse by the variety of their statements what is just and unjust, right and wrong. The imperial constitutions, however, prove that it is absurd and disgraceful for clerics to want to become forensic experts. We decree, therefore, in virtue of our apostolic authority, that offenders of this kind be severely punished...

CANON 11

[All travellers, as well as rural workers and their stock, are to be secure from harm]

We also command that priests, clerics, monks, travellers, merchants, country people, coming or going, and those engaged in agriculture, as well as the stock cattle with which they till the soil and carry seed to the field, and also their sheep, shall at all times be unharmed.

CANON 13

[Usury forbidden]

We condemn that detestable, shameful and insatiable rapacity of money-lenders, which has been denounced by divine and human laws and throughout the Old and New Testaments, and we deprive them of all ecclesiastical consolation, commanding that no archbishop, no bishop, no abbot of any order, nor anyone in clerical orders, shall, except with the utmost caution, dare receive usurers; but throughout their life let them be stigmatized with the mark of infamy, and unless they repent let them be deprived of Christian burial.

ELEVENTH GENERAL COUNCIL: LATERAN III (1179)CANON 12

[Clerics may not act as advocates in secular causes]

Clerics of the order of subdiaconate and above, as well as those in minor orders, if they are supported from the revenues of the church, shall not act as advocates in non-spiritual affairs in the presence of a secular judge, unless such matters concern their cause or the cause of their church or that of those who are unfortunate enough not to be able to handle it themselves. Neither shall any cleric presume to accept the office of general procurator of a town or assume secular authority under princes or other seculars so as to become their justiciar. If anyone goes against this, which is the teaching of the Apostle: 'No man, who is a soldier to God, concerns himself with secular affairs' [2 Tim. 2:4] and engages in this fashion, let him be deposed from the ecclesiastical ministry, since, having neglected the clerical office, he devoted himself to secular affairs that he might please the powers of the world. Should a religious act contrary to any of the foregoing instructions, we decree that he is to be punished more severely.

CANON 22

[A renewal of Lateran II 11 on immunity for travellers and rural workers; also the prohibition of new tolls and impositions]

We renew the decree that priests, monks, clerics, lay brothers, travellers, merchants, country-dwellers going to and from their homes, and agricultural workers, as well as the animals that carry the seed to the field, are to enjoy suitable protection.

Nor shall anyone presume without the authority and consent of the kings and princes to impose new demands for tolls or to renew such impositions or in any way increase old ones. If anyone acts contrary to this and does not amend on being warned, let him be cut off from Christian communion till he has made satisfaction.

CANON 24

[On trade with the Saracens; on pirates]

Wanton greed has so taken possession of some men that, while they glory in the name of Christian, at the same time they supply the Saracens with arms, iron and stays for their galleys, and thus they become equal and even superior to them in malice, since they furnish them with weapons and other necessaries for attacking the Christians. There are some also who to satisfy their greed undertake to pilot the galleys and marauding ships of the Saracens. We decree, therefore, that all these are excommunicated for their wickedness, that their possessions are to be confiscated by the Catholic princes and magistrates of the cities, and that they themselves, if captured, are to be reduced to slavery by their captors. We command, furthermore, that excommunication be frequently and solemnly pronounced against them by the churches of the coastal cities.

They also are to be excommunicated who capture or despoil Latin and other Christians who are travelling by ship for business or other honest purposes. Moreover, those who are led by a spirit of avarice to rob ship-wrecked Christians instead of helping them, according to the rule of faith, are to be excommunicated if they do not restore what they have taken.

CANON 25

[On notorious usurers]

Seeing that almost everywhere the crime of usury has taken such hold that many pass over other professions to devote themselves to the business of usury, as if it were lawful, and thus disregard the strict scriptural prohibition, we decree that notorious usurers are not to be admitted to the communion of the altar, nor, if they die in that sin, to receive Christian burial. Neither shall anyone accept their offering. Anyone taking such an offering or giving them Christian burial, shall be compelled to return what he has taken. Furthermore, till he has satisfied the wishes of the bishop, let him remain suspended from office.

CANON 26

[On Jews and Saracens, their servants and the right of converts to inherit]

Jews and Saracens shall not, either under pretext of looking after children or for service or any other reason, be permitted to have Christian servants in their homes. Those who presume to live with them shall be excommunicated. The testimony of Christians against Jews is to be accepted in all cases, since they use their witnesses against Christians, and we decree that they be punished with anathema who wish that in this respect Jews be given preference to Christians, since it is proper that they be subject to Christians and be treated by them with kindness only. If by the grace of God any should be converted to the Christian faith, they shall not be disinherited, since converts ought to be better off after than before they received the faith. But if it turns out otherwise, then we enjoin the princes and rulers of those regions, under penalty of excommunication, that they ensure that their share of the inheritance and possessions be restored to them in full.

TWELFTH GENERAL COUNCIL: LATERAN IV (1215)CONSTITUTION 67

On Jewish usuries

The more Christians are restrained from the practice of usury, the more are they oppressed in this matter by the treachery of the Jews, so that in a shorttime they exhaust the resources of the Christians. Wishing, therefore, in this matter to protect the Christians against cruel oppression by the Jews, we ordain in this decree that if in future, under any pretext, Jews extort from Christians oppressive and excessive interest, the society of Christians shall be denied them until they have made suitable satisfaction for their excesses. Christians shall also, if

necessary, be compelled by ecclesiastical censure, from which there shall be no appeal, to abstain from all business dealings with them. We command the princes not to be hostile to the Christians on this account, but rather to try to stop the Jews from practising such excesses. Lastly, we decree that the Jews be compelled by the same penalty to compensate churches for the tithes and offerings owing to them, which the Christians were accustomed to supply from their houses and other properties before they fell into the hands of the Jews under some title or other. In this way the churches will be protected against loss.

CONSTITUTION 68

Jews must wear a dress that distinguishes them from Christians

In some provinces a difference of dress distinguishes Jews and Saracens from the Christians, but in others so much confusion has arisen that no difference is noticeable. Thus it happens that sometimes by mistake Christians mingle with the women of Jews and Saracens, and, likewise, Jews and Saracens mingle with those of the Christians. In order that such dangerous contagion, and its excesses, should not have an excuse of this sort for becoming more widespread, we decree that such people of both sexes in every Christian province and at all times be distinguished in public from other persons by a difference of dress, since even Moses enjoined this on them. On the days of the Lamentation and on Passion Sunday they may not appear in public, because some of them, so we understand, on those days do not shame to show themselves richly attired and do not fear to amuse themselves at the expense of the Christians, who, in memory of the sacred passion, are dressed for mourning. This we most strictly forbid, lest they should presume in some measure to burst forth suddenly in contempt of the Redeemer. And, since we ought not to be ashamed of Him who blotted out our offences, we command that the secular princes restrain presumptuous persons of this kind by suitable punishment, lest they presume to blaspheme in some degree Him who was crucified for us.

FOURTEENTH GENERAL COUNCIL: LYONS II (1274)CONSTITUTION 69*Jews are not to hold public office*

Since it is absurd that a blasphemer of Christ should exercise authority over Christians, we renew in this general council on account of the boldness of transgressors what the Synod of Toledo wisely enacted in this matter, prohibiting Jews from being given preference in the matter of public offices, since in such capacity they are most troublesome to the Christians. But if anyone should commit such an office to them, let him, after previous warning, be restrained by such punishment as seems proper by the provincial synod, which we command to be celebrated every year. The official, however, shall be denied commercial and other intercourse of Christians, till in the judgement of the bishop all that he acquired from the Christian from the time he assumed office has been restored for the needs of the Christian poor, and the office that he irreverently assumed let him lose with dishonour. The same we extend also to unbelievers.

CONSTITUTION 26*On usury*

Desiring to check the canker of usury which devours souls and exhausts resources, we command that the constitution of the Lateran Council* against usurers be inviolably observed under threat of divine malediction. And since the fewer the opportunities given to usurers the more easily will the practice of usury be destroyed, we decree by this constitution that no community or association, nor any individual, whatever their office, rank or status, shall permit strangers and non-residents of their estates, who publicly practise or wish to practise usury, to rent offices for this purpose on their territory or to retain those that they already have, or permit them to dwell elsewhere, but they shall expel all known usurers from their territory within three months and shall not permit their return in the future.

No one shall lease or under any other title whatsoever let them have the use of their houses for the purpose of practising usury. Those who act otherwise, if they are churchmen, patriarchs, archbishops, or bishops incur suspension; individuals of lower rank incur excommunication, and communities and other associations are placed under interdict. If, through obstinacy, they despise these censures for more than a month, their territories shall be placed and remain under interdict so long as the usurers remain there. If, however, they are laymen, then, notwithstanding any privilege, let their ordinaries restrain them from such excesses by ecclesiastical censure.

*Lateran III 25.

CONSTITUTION 27

[On usury]

Even though notorious usurers have made definite or general provision in their wills regarding restitution in the matter of illegally charged interest, church burial shall nevertheless be denied them till full satisfaction has been made to those to whom it is due, if they are available; in case of absence, to those who are authorized to act for them. If these also are absent, it is to be made to the ordinary of the locality, or to his vicar, to to the testator's parish priest, in the presence of witnesses residing in that parish (in this case the ordinary, vicar and rector may by the authority of this constitution receive in their name and in the presence of witnesses a pledge on which legal action may be based), or at the request of the ordinary a pledge concerning the restitution to be made may be given to a competent notary. If the amount of usury received is known, this is always to be expressed in the aforesaid pledge, otherwise the amount is to be determined by him who receives the pledge. However, he may not knowingly fix this amount at a lower figure than what he believes to be the correct one, otherwise he shall be bound to make satisfaction for the remainder. All religious and others who dare

in contravention of this constitution to admit notorious usurers to ecclesiastical burial, we decree that they incur the penalty prescribed by the Lateran Council* against usurers. No one may witness the wills of notorious usurers, and no one may hear their confession or give them absolution, unless they make full restitution or give a satisfactory pledge to that effect, in so far as their resources permit. Wills of notorious usurers that do not follow this injunction are *ipso jure* invalid.

*Lateran III 25.

FIFTEENTH GENERAL COUNCIL: VIENNE (1311-12)

DECREE [29]

[On usury]

Reliable sources inform us that certain communities in violation of the law, both human and divine, approve of the usury. By their statutes confirmed by oath they not only permit the exaction and payment of usury, but deliberately compel debtors to pay it. They also try by heavy statutory penalties and various other means and threats to prevent recovery by individuals who demand repayment of excessive interest. For our part, we want to put an end to these abuses and so we decree, with the approval of the council, that all civil officials of these communities, that is, magistrates, rulers, consuls, judges, lawyers and other similar officials, who in future make, write, or draw up statutes of this kind or knowingly decide that usury may be paid or in case of it having been paid may not be freely and fully restored when its return is demanded, incur the sentence of excommunication. They shall incur the same sentence if they do not within three months remove such statutes from the books of those communities (if they have the power to do so), of (sic) they presume in any way

to observe the said statutes or customs to the same effect. Moreover, since money-lenders frequently conclude loan-contracts in an occult or fraudulent manner, which makes it difficult to convict them on a charge of usury, we decree that they should be forced by ecclesiastical censure to produce their books on such occasions.

Finally, if anyone falls into the error of believing and affirming that it is not a sin to practise usury, we decree that he be punished as a heretic, and we strictly command the ordinaries of the localities and the inquisitors to proceed against those suspected of such errors in the same way as they would proceed against those accused publicly or suspected of heresy.

EIGHTEENTH GENERAL COUNCIL: LATERAN V (1512-1517)

SESSION X (4 May 1515)

On reform of the montes pietatis

Leo etc....Some time ago there was carried on among theologians and jurists, not without scandal to the people, a controversy, which, as we have learned, has recently been renewed, regarding the relief of the poor by loans to be made to them by the public authorities, a system of relief commonly known as *montes pietatis*, which have been established in many cities of Italy by the officials of the cities and other outstanding Christians for the purpose of relieving the needs of the poor by loans of this kind and thus protecting them against the avarice of usurers. This institution has been approved by devout men and has also been praised, endorsed and confirmed by several of our predecessors, the supreme pontiffs. In regard to the legality of the institution, the opinions of theologians and jurists were divided. Some maintained that those *montes* were illicit in which something beyond or in return for the money lent was demanded by the promoters from the poor to whom the loan was given and that these promoters could not escape the crime of usury or injustice, since, as St Luke testifies, Christ expressly forbade

that we should hope for anything more than we gave in return for a loan /[Luke 6:35]. For usury means nothing else than gain or profit drawn from the use of a thing that is by its nature sterile, a profit that is acquired without labour, cost or risk. The same theologians and jurists maintained further that those institutions militated against commutative and distributive justice, because the expenses for their maintenance were extorted solely from the poor to whom the loans were given. Moreover, they added, they were an incentive to delinquency, incited to theft, and promoted general laxity.

On the other hand, there were many theologians and jurists, in the Italian schools, who held the opposite opinion, and both in their writings and lectures supported such an excellent system, one that was so worthwhile to the rest of society, and which, in their view, was gratuitous and not a direct cause of the interest; the custody of the object pawned, however, and consequently the space, labour and personal responsibility involved were legitimate conditions or titles upon which a moderate interest could be demanded. One of the *rules of law* states that he who enjoys advantages ought also to carry responsibility, especially if Apostolic authority acquiesces. This opinion was approved by our predecessors, the Roman pontiffs Paul II, Sixtus IV, Innocent VIII, Alexander VI and Julius II, and was defended and preached to the people by saints and men held in high esteem for their sanctity.

Therefore, wishing to make suitable provisions in this matter and commending the exertions of both parties, one for its zeal for justice against the practice of usury, the other for its love of truth and devotion that the needs of the poor may be relieved, with the approval of the holy council we declare and define that the aforesaid *montes pietatis*, established by the civil authorities and thus far approved and confirmed by the Apostolic See, in which the loan is gratuitous, but for expenses and indemnity only a moderate rate of interest is received, are not to be declared a species of evil or an incentive to sin, nor are they in any manner or form to be condemned as usurious, rather they are meritorious and ought to be approved, and their

benefits and spiritual utility as well as the indulgences granted by the Apostolic See in connection with them ought to be preached to the people. Other *montes* similar to the above may be established with the approval of the Apostolic See. It would indeed be much more perfect and holy if such *montes* were entirely free, that is, if those who establish them would provide some fund or revenues that would cover, if not all, at least half the salaries of officials and assistants, which would lighten the burden of the poor. For the establishment of such funds the faithful ought to be invited by means of greater indulgences. All religious and ecclesiastics, as well as secular persons, who in the future presume to preach or argue by word or in writing against the contents of this constitution incur the penalty of excommunication *latae sententiae*, privileges of any kind whatsoever notwithstanding, and this includes Apostolic constitutions and ordinances and similar contrary decrees.

Source:

Gilchrist, J. *The Church and Economic Activity in the Middle Ages*.
London: Macmillan, 1969, pp. 155-225, *passim*.

APPENDIX B

EXCEPTIONS TO THE USURY PROHIBITION UNDER CANON
LAW AS LISTED BY HOSTIENSIS

- 1) *FEUDA*: In an ordinary mortgage the fruits of the gage were required to be used to diminish the debt. An exception to this rule was made in the case of a vassal returning a fief to the donor. The vassal would be freed from service and the fruits of the fief would accrue to the creditor without reducing the loan.
- 2) *FIDEJUSSOR*: If a guarantor was obliged to contract a usurious loan in order to pay a creditor, he could claim from the defaulting debtor both the original amount of the loan and the usury charge.
- 3) *PRO DOTE*: If a gage was given as security for an unpaid dowry, the fruits of the gage could be appropriated by the husband, without diminishing the sum agreed upon for the dowry.
- 4) *STIPENDIA CLERI*: If a layman held a benefice belonging to the Church and returned it as a pledge, the income from it would not diminish the debt.
- 5) *VENDITIO FRUCTUS*: The sale of the revenues of a piece of land for a certain time necessitated fixing a price. Should the revenues exceed that estimate this would involve receiving something in excess of the capital. This could not be regarded as usurious because the contract was one of sale.
- 6) *CUI VELLE JURE NOCERE*: The text of St Ambrose; '*ubi jus belli, ibi jus usurae*', where there is right of war, there is right of usury, was taken literally by some canonists to mean that an exception to the usury rule could be made in the case of an enemy.
- 7) *VENDENS SUB DUBIO*: An extra charge could be made for a sale on credit if some doubt existed as to the future price of the commodity.
- 8) *PRETIUM POST TEMPORA SOLVENS*: If payment promised for a certain date was delayed, the creditor could make an extra charge for any damages which he sustained as a result of the delay.

- 9) *POENA NEC IN FRAUDEM*: This was a penalty clause attached to a *mutuum* contract, which stipulated that compensation would have to be paid if the debtor failed to repay the loan on the agreed date.
- 10) *LEX COMMISSORIA*: This contract made provision for the seller of an article to regain his property within a fixed period of time by refunding the price paid. During this time any revenue from the article would become the property of the buyer.
- 11) *GRATIS DANS*: A free gift might be made to the creditor by the debtor in gratitude for the loan.
- 12) *SOCII POMPA*: If money was loaned for purposes of display, the contract was one of hire, and not one of loan, and therefore a charge might be made.
- 13) *LABOR*: If making a loan involved labour on the part of the creditor, he was entitled to charge for this.

Source:

T.P. McLaughlin 'The Teaching of the Canonists on Usury(XII,XIII and XIV Centuries)', *Medieval Studies*, Vol.I,1939; Vol.II,1940.

APPENDIX C

BRIEF BIOGRAPHICAL SKETCHES OF THE
MEDIEVAL SCHOLARS MENTIONED IN THE
TEXT

ACCURSIUS (d.1263). Celebrated Romanist at the school of law at Bologna. Wrote a gloss to the complete text of Justinian which became important for the interpretation of Roman law.

ALBERTUS MAGNUS (1206-1280). German Dominican professor of theology principally in Paris and in Germany (1228-1260) and Bishop of Ratisbon (1260). Prolific writer, began reconciliation between Aristotelianism and Christianity. *Commentaries* on *Ethics* and *Politics* of Aristotle composed sometime between 1254 and 1270. Teacher of St Thomas Aquinas.

ALEXANDER III (Roland Bandinelli). Canonist, theologian and Pope (1159-1181). Student of Canon law and theology at Bologna, where he studied under Gratian. During his pontificate he published numerous decretals important for canon law.

ALEXANDER OF HALES (1168-1245). An Englishman from Gloucester, he studied and taught theology at the Franciscan convent in Paris (1231-1238). He began his *Summa Theologica* in the 1230s, but it was completed by his followers.

ST AMBROSE (c.339-397). Latin Church Father. Archbishop of Milan(374-397), and during this time leader of the Latin Church. Advocated separation between church and state. State had no power over church which was to be autonomous.

ST ANTONINUS (1389-1459). Archbishop of Florence, Apostolic Commissary for the repression of usury in Tuscany, ecclesiastical administrator and judge. His *Summa Theologica* (1449) contained a highly developed analysis of the usury doctrine. He is regarded as one of the few writers of the Middle Ages who can be called an economist.

AQUINAS (?1225-1272). Born near Naples into great feudal family of Aquino. Educated at the University of Naples. In 1244 became a Dominican friar against the wishes of his family who desired that he should join the Benedictine order, which was more socially desirable. From 1248-1252 studied under Albertus Magnus at Cologne. Went to Paris where he lectured in theology until 1259. He then spent the years between 1259 and 1268 in Italy, teaching at Orvieto, Rome and Viterbo. Returned to Paris and taught there for the remainder of his life. Amongst his more important works were

the *Summa contra Gentiles*, and line-by-line commentaries on Aristotle's *De Interpretatione*, the *Posterior Analytics*, the *Nicomachean Ethics* and the *Metaphysics*. His crowning achievement was the *Summa Theologica*, or Summary of Theology. He was canonised on 21 July 1323. Although his work enjoyed considerable prestige during the Middle Ages, it was only in the nineteenth century that he was made the official theologian of the whole Roman Catholic Church by Pope Leo XIII.

ARISTOTLE (385-322 B.C.). Son of Nicomachus, physician at the Macedonian court. At seventeen became a student of Plato's Academy and studied under Plato until the latter's death in 348/7 B.C. In 342 B.C. became tutor to the son of Philip of Macedon who was to become Alexander the Great. Of his numerous publications, the most important to the medieval Scholastics were the *Nicomachean Ethics* and the *Politics*.

ST AUGUSTINE (354-430). Bishop of Hippo in North Africa, at the time of Alaric's sack of Rome and the Vandal invasion of the African Roman Empire. He was the last great thinker of the Patristic Age in the West and his influence was dominant until the thirteenth century when it was shared, but not overthrown, by the Aristotelian systems developed by Aquinas. His most important work, *The City of God*, divided all mankind into two cities, the terrestrial and the heavenly, and postulated that only Christians, through grace could attain the latter. He was largely responsible for the attitude that worldly things were unimportant in comparison with eternal salvation.

ST BASIL (c.330-390). Greek Church Father. Organiser of Greek Monasticism into a communal rather than anchoritic form. Emphasized honest labour in the monastic life.

ST BERNADINE OF SIENA (1380-1444). A Franciscan Friar and popular preacher. He waged a moral war against usury through the towns of northern Italy at a time when its practice had become extremely widespread. His analysis revealed a firm grasp of the economic realities of the day.

BERNARD OF PAVIA (d.1213). Professor of Canon law at Bologna and later Bishop of Faenza, and of Pavia. Wrote an important *Summa decretalium* between 1191 and 1198. He also composed the *Compilatio prima*, (1187-1191), in which he furnished the model for all the official collections of decretals.

ST BONAVENTURE (1221-1274). Teacher of theology at Paris between 1237 and 1257. Pupil of Alexander of Hales and contemporary and friend of St Thomas Aquinas. General of the Franciscan order (1257) and cardinal (1273). His most important work was the *Commentary on the Sentences* of St. Peter Lombard written between 1250 and 1251.

GRATIAN (?c.1100-c1159). Monk of the Camaldulensian monastery of St Felix at Bologna. Collection of canon law, commonly known as the *Decretum*. Proper title *Concordia Discordantium Canonum*. (Concordance of Discordant Canons) published c.1140. Initiated the medieval study of Canon Law.

GREGORY I the Great (590-604). Saint and Pope. Also regarded as a Church Father because of his doctrinal teaching. *Book of Pastoral Care* regarded later as definitive statement of the nature of the episcopal office. Responsible for programme which Christianized Western Europe in the tradition of Roman Catholicism.

GREGORY IX (Ugolino de Segni, d.1241). A Canonist by training, he became an influential Cardinal under Innocent III and Honorius III and finally Roman Pontiff (1227-1241). He officially promulgated the collection of papal decretals compiled by Raymond of Pennafort in 1234.

ST GREGORY OF NYSSA (d.390). Greek Church Father also known as Gregory Nazianzen. Patriarch of Constantinople, he was an enthusiast about the value of the study of Graeco-Roman literature by Christians.

HENRI BOHIC (1310-c.1350). Canonist who studied and taught at the Sorbonne. His principal, and perhaps only, work is called *Commentaria, Distinctiones, or Lectura*.

HENRY OF LANGENSTEIN (1325-1397), also known as Henry of Hesse. A theologian who taught both at the centre of scholasticism, Paris, and at the new University of Vienna. Known for his treatise on justice in contracts. His view of the just price was considered authoritative by the German Historical School, but was in fact outside the mainstream of Scholastic thought.

HOSTIENSIS (d.1271). The most celebrated Canonist of the thirteenth century, Henry of Susa, student at Bologna and professor at Paris, became cardinal-bishop of Ostia, hence the name Hostiensis. Amongst his works was the *Summa super titulus*, which became known as the *Summa Aurea*; an indication of the esteem in which it was held. This work, together with his *Decretalium librum commentaria* (1270-1271), contributed greatly to the development of both Roman and Canon Law.

HUGUCCIO (d.1210). Professor at Bologna, he was the most influential Canonist of the twelfth century. Later elected Bishop of Ferrara (1190). His *Summa* to the *Decretum* (c.1188) greatly influenced the Canonists of the thirteenth century.

INNOCENT III Lothiare de Segni, d.1216). Student of theology at Paris and law under Huguccio at Bologna, he contributed during his pontificate (1198-1216) numerous decretals important for the development of medieval Canon law.

INNOCENT IV (Sinibaldo Fieschi. d.1254). Roman pontiff and important canonist. Student, then professor, of Roman and Canon law at Bologna, he became pope in 1243. His commentary, *Apparatus (seu commentaria) super quinque libris decretalium*, was completed shortly after the Council of Lyons of 1245.

ST JEROME (c.342-419). Latin Church Father. Produced an authoritative translation of the scriptures from the available Hebrew and Aramaic texts: the *Vulgate*.

JOHANNES TEUTONICUS (d.1246). Provost of Goslar and Halberstadt and prolific Canonist. Studied Canon law at Bologna under Azo. His most important work was the *Glossa ordinaria* to the *Decretum*.

ST JOHN CHRYSOSTOM (d.407). Greek Father and patriarch of Constantinople. An advocate of classical culture in his writings and eloquent speeches which earned him the soubriquet, "golden-mouthed."

JUSTINIAN I (527-565). Byzantine emperor. Commissioned and directed the codification of Roman Law, which after the eleventh century slowly became the basis of the legal systems of all the European countries except England.

LAURENTIUS DI RIDOLFIS Although a layman, he was a teacher of canon law. Also served as an ambassador of the Florentine Republic. He wrote a treatise specifically on the subject of usury, *Tractatus de usuris*, in 1403.

LEO I (440-461). Usually called Pope Leo the Great. Actually Bishop of Rome as this was before the establishment of the papacy. He contributed much to the development of canon law, but is particularly noteworthy in being the first to perceive the claim to jurisdiction which could be made by the successor to St Peter.

LUCIUS III (1181-1185). Pope. Native of Lucca and a Cistercian monk. Exiled from Rome after 1182 when there was a succession of anti-Popes. Began preparations for the Third Crusade which was undertaken by his successor, Urban III.

ODOFREDUS (d.1265). Professor of Roman Law at Bologna. Contributed the *Lectura codicis*, which supplemented Accursius' gloss on the Justinian code.

PAUCAPALEA (fl.1140-1150). Canonist at the School of Bologna, and a disciple of Gratian. He added numerous texts to the *Decretum* after its completion by Gratian. These and subsequent additions became known as *palea* after him.

ST RAYMOND OF PENNAFORTE (d.1275). Canonist. A Dominican, a chaplain and *poenitentiarius* of the pope, he was commissioned by Gregory IX in 1230 to make an official collection of papal decretals. He also wrote the *Summa de casibus* between 1220 and 1227.

ROBERT OF COURCON (d.1219). Theologian. Canon of Noyan at Paris in 1195, cardinal and papal legate at the Council of Paris in 1213, director of the Crusade against the Albigensians in 1214, and author of the first constitution of the University of Paris in 1215. He wrote a *Penitential* for the use of confessors about 1202, and a *Summa* between 1204 and 1208.

RUFINUS (fl.1157-1159). Professor of Canon law at Bologna who wrote an influential *Summa* to the *Decretum*. Later became Bishop of Assisi (1179) and Archbishop of Sorrento (1180).

ST TERTULLIAN (fl.c.198). Latin Church Father in North Africa. Trained as lawyer then converted to Christianity in middle age.

URBAN III (1185-1187). Born in Milan became cardinal-priest of St. Lorenzo in Damaso, archbishop of Milan and finally Pope in 1185. He spent his entire pontificate in exile due to a dispute with the Roman senate over the government of the Papal states.

WILLIAM OF AUXERRE (d.1231). Professor of theology at Paris. He wrote a *Summa* which was a systematic discussion of theological questions based on the organization of the *Sentences* of Peter Lombard.

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