

John of Freiburg and the Usury Prohibition in the Late Middle Ages:  
A Study in the Popularization of Medieval Canon Law

by

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A thesis submitted in conformity with the requirements  
for the degree of Doctor of Philosophy  
Graduate Department for the Study of Religion  
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Abstract:

In this dissertation I provide an edition of the treatise on usury (*De usuris*, bk. 2, tit. 7) contained in the Dominican friar John of Freiburg's (d. 1314) *Summa confessorum* (ca. 1298) – a comprehensive encyclopedia of pastoral care that John wrote for the benefit of his fellow friar preachers and all others charged with the cure of souls. The edition is prefaced by a detailed biography of John of Freiburg, an account of the genesis of the *Summa confessorum* that places the work in the context of John's other literary productions, a commentary on the contents of the treatise on usury, and a study of the influence of John's treatise on subsequent confessors' manuals up to the end of the fourteenth century with a special concentration on the history of the *Summa confessorum* on usury in England. Based on an analysis of the social function of confessors' manuals and the reception history of John's treatise on usury, I contend that the *Summa confessorum* offers us a window into what many medieval men and women of all social classes in widespread areas of Europe might have known about the medieval Church's prohibition of taking interest in a loan. As a prominent vehicle for the popularization of medieval canon law, then, the *Summa confessorum* occupies a significant place in the intellectual and social history of the Late Middle Ages. Finally, I argue that John's choices in crafting his treatise on usury were ultimately influenced to a significant extent by the clash of economic interests between the old landed aristocracy and the rising burgher class in Freiburg, where John wrote the *Summa confessorum* and served as lector of the Dominican convent for over thirty years.

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## LIST OF ABBREVIATIONS

IIa-IIae	<i>Secunda secundae</i> , the second part of the second part of Thomas Aquinas' <i>Summa theologiae</i>
VI	<i>Liber Sextus Decretalium Bonifacii Papae VII</i>
arg.	<i>argumentum</i>
art.	<i>articulus</i>
Auth.	<i>Authenticum</i>
C.	<i>causa</i> , when citing Gratian's <i>Decretum</i> (e.g., C. 14 q. 6 c. 1)
C.	<i>Codex Iustiniani</i>
c.	<i>capitulum</i> , <i>canon</i>
Clem.	<i>Clementis Papae V. Constitutiones</i>
coll.	<i>collatio</i>
D., dist.	<i>distinctio</i> , a subdivision of Gratian's <i>Decretum</i>
de cons.	<i>de consecratione</i> , the third part of Gratian's <i>Decretum</i>
dict.	<i>dictum Gratiani</i>
Dig., ff.	<i>Digesta Iustiniani (Pandectae)</i>
Extra., X.	<i>Decretales Gregorii Papae IX</i>
Glos. ad Sum. Ray.	<i>Glossa ad Summam Raymundi</i> of William of Rennes
Inst.	<i>Institutiones Iustiniani</i>
l.	<i>lex</i>
lib.	<i>liber</i>
n.	<i>numerus</i>
Nov.	<i>Novella Iustiniani</i>
pen.	<i>penultima</i>
PL	<i>Patrologia latina</i> , ed. J. P. Migne
q.	<i>questio</i>
rubr.	<i>rubrica</i> , <i>rubricella</i>
SC	<i>Summa confessorum</i> of John of Freiburg
seq.	<i>sequenti</i> , <i>sequentibus</i>

<i>ST</i>	<i>Summa theologiae</i> of Thomas Aquinas
tract.	<i>tractatus</i>
ult.	<i>ultimo, ultima</i>
v., ver.	<i>sub verbo</i>

Abbreviations for Latin titles of the books of Bible conform to the norms set out in the Society of Biblical Literature's *Handbook of Style*.<sup>1</sup> Passages from canon and Roman law have been cited according to the norms set out in "Appendix I: The Romano-Canonical Citation System," in James Brundage's *Medieval Canon Law*.<sup>2</sup> As in the edition,<sup>3</sup> medieval works, such as Thomas Aquinas' *Summa theologiae*, John's *Summa confessorum*, Raymond of Penyafort's *Summa de poenitentia*, etc., have been cited according to their standardized internal divisions.

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1. Patrick H. Alexander et al., eds., *The SBL Handbook of Style for Ancient Near Eastern, Biblical, and Early Christian Studies* (Peabody, MA: Hendrickson, 1999), 87-88.

2. James A. Brundage, *Medieval Canon Law* (London: Longman, 1995), 190-205.

3. See p. 271 below.

## INTRODUCTION

“Qui enim perit de via iustitiae, cum magna miseria per vias iniquitatis errabit.”

St. Augustine, *In Psalmos* 2.10<sup>1</sup>

How we deal with one another in money reflects how we relate to one another as human beings. Economic matters are fundamentally matters of human justice, as every person who has been at the raw end of a deal understands. It is only recently, since the publication of Adam Smith's *Wealth of Nations* in 1776, that economics has been perceived as an independent, objective, scientific field, divorced from its connection to the social life of human beings.<sup>2</sup> Prior to this, economics was a sub-discipline of moral philosophy and moral theology.<sup>3</sup> The focus of theorists was not predominantly on how money worked as an objective phenomenon, but how it ought to work in order to realize a just society.<sup>4</sup> From at least the time of Aristotle up to the time of Smith, economic questions were almost exclusively analysed from an ethical perspective. Approaching the subject from this angle, medieval philosophers and theologians in particular produced an abundant literature of economic analysis that has received a voluminous body of scholarly commentary.<sup>5</sup>

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1. PL 36:72.

2. Cf. Raymond de Roover, *La pensée économique des scolastiques: Doctrines et méthodes*, Conférence Albert-le-Grand 1970 (Paris: J. Vrin, 1971), 10-11, 19-20, 41. This distinction became complete with the emergence of Neoclassical economics in the twentieth century.

3. Cf. Diana Wood, *Medieval Economic Thought* (Cambridge: Cambridge University Press, 2002), 1.

4. This tradition has been carried on in the West, parallel to the rise of modern economics, in the works of socialist intellectuals, both secular and religious, since the eighteenth century.

5. Some representative works include George O'Brien, *An Essay on Mediaeval Economic Teaching* (New York: Burt Franklin, 1968); Joel Kaye, *Economy and Nature in the Fourteenth Century: Money, Market Exchange, and the Emergence of Scientific Thought*, Cambridge Studies in Medieval Life and Thought: Fourth Series (Cambridge: Cambridge University Press, 1998); Wood, *Medieval Economic Thought*; J. Gilchrist, *The Church and Economic Activity in the Middle Ages* (New York: St Martin's Press, 1969); Raymond de Roover, "The Concept of the Just Price: Theory and Economic Policy," *Journal of Economic History* 18 (1958): 418-34; John W. Baldwin, *The Medieval Theories of the Just Price: Romanists, Canonists, and Theologians in the Twelfth and Thirteenth Centuries*, Transactions of the American Philosophical Society (Philadelphia: The American Philosophical Society, 1959); Odd Langholm, *The Merchant in the Confessional: Trade and Price in the Pre-Reformation Penitential Handbooks* (Leiden: Brill, 2003); Giacomo Todeschini, *Il prezzo della salvezza: Lessici medievali del pensiero economico*

It is within this lengthy tradition of the moral analysis of economics that the treatise *de usuris* of John of Freiburg's (d. 1314) *Summa confessorum* falls. John of Freiburg served for more than 30 years as lector of the Dominican convent of Freiburg-im-Breisgau in south-western Germany. He studied theology at the Dominican conventual school at Strasbourg under Ulrich of Strasbourg (d. 1277), who was a pupil of the renowned theologian Albertus Magnus (d. 1280). He likely also studied theology and canon law at Paris around 1277. After completing his studies, he became lector of the Freiburg convent, where he dedicated himself to producing pastoral guides for his fellow Dominicans. To this end he composed between 1290 and 1298 the massive *Summa confessorum*.

The *Summa confessorum*, John's magnum opus, is a manual of practical reference for confessors that continues the rich tradition of Dominican writings on confession reaching back to Paul of Hungary's *Summa de penitentia* (1221). These manuals aimed at instructing friars in the method of confession and the law and doctrine of the Church relevant to evaluating cases of conscience and administering penance in the internal forum of the confessional. In 83 questions on the Church's usury prohibition, discussed in Title VII of Book Two of the *Summa confessorum*, John defines usury; discusses the transactions that fall under its definition; notes those that seem to fall within its scope, but, in fact, do not; and describes the punishments and remedies for the sin of usury. As with the rest of his voluminous *Summa*, John compiled these questions for the benefit of his fellow friars and confessors throughout Europe, who had to deal with the presence of usurers in their own congregations and needed guidance on the Church's legislation of their crime.

On the basis of Luke 6:35, where Jesus says to his disciples, "Give a loan, hoping for nothing therefrom," the canon law of the Church forbade anyone to exact any interest

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(Rome: La Nuova Italia Scientifica, 1994). For further works on pre-modern economic thought, the reader can consult the bibliography and the notes to the individual chapters.

in a loan.<sup>6</sup> Not merely an excessive rate of interest, but anything that the lender received in addition to the principal of the loan constituted usuries and had to be restored to the debtor. The prohibition at first applied only to clerics, who were forbidden from lending at usury at the Council of Arles (314) and of Nicaea (325), but later it was extended to all Christians through Charlemagne's *Admonitio generalis* of 789.<sup>7</sup> The Church only lifted the ban on usury definitively in the early nineteenth century.<sup>8</sup> Thus, throughout the Middle Ages loans from Christians were supposed to be entirely gratuitous. Although the general principle seems straightforward and comprehensive, the usury ban was subjected in the Middle Ages to the most intense analysis. Its contents were unfolded and meticulously scrutinized in papal decrees, conciliar canons, and in the writings of medieval theologians and lawyers specializing in the canon law of the Church and Roman law. Controversy over the ban most often turned around the question of whether a given form of exaction in a loan contract constituted filthy lucre or should rather be interpreted as compensation for losses incurred by the lender that were extrinsic to the loan itself, and thus counted as no gain at all in virtue of the loan.

Central among the multitude of concerns raised by the usury prohibition was the concept of justice.<sup>9</sup> To demand more back in a loan than one had lent out was, for the medieval lawyers and theologians, a clear violation of justice, which required that each person be rendered his or her due. Usury amounted to theft of another person's goods – a

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6. "Mutuum date, nihil inde sperantes." *SC* 2.7.1.

7. On the early history of the usury prohibition, see A. Bernard, "Usure. I. La formation de la doctrine ecclésiastique sur l'usure," in *Dictionnaire de théologie Catholique*, vol. 15 (Paris: Letouzey et Ané, 1946), 2316-2336. For the text of the relevant decrees of the Councils of Arles and Nicaea, see C. 14 q. 4 c. 2 and D. 47 c. 2 respectively. Here is the relevant canon (c. 5) of the *Admonitio generalis*: "Omnibus. Item in eodem concilio seu in decretis papae Leonis necnon et in canonibus quae dicuntur apostolorum, sicut et in lege ipse Dominus praecepit, omnino omnibus interdictum est ad usuram aliquid dare." A. Boretius, ed., *Capitularia regum Francorum*, 2 vols., Monumenta Germaniae Historica, Leges II (Hanover, 1883), 1:54.

8. On the final stages of the Catholic prohibition of usury, see John T. Noonan, *The Scholastic Analysis of Usury* (Cambridge, MA: Harvard University Press, 1957), 377-93; De Roover, *La pensée économique des scolastiques*, 37-38.

9. Cf. Odd Langholm, *Economics in the Medieval Schools: Wealth, Exchange, Value, Money and Usury according to the Paris Theological Tradition, 1200-1350* (Leiden: E.J. Brill, 1992), 24; De Roover, *La pensée économique des scolastiques*, 43-44.

mortal sin.<sup>10</sup> As a violation of justice, one of the central Christian virtues, usury was a pressing moral concern for medieval theologians, lawyers, and confessors, who all strove to demonstrate how a Christian should lend in order to avoid endangering the fate of his or her soul.

The historiography of the usury prohibition in the Middle Ages and Early Modern era is extensive and well-established.<sup>11</sup> However, John of Freiburg's place in that history has not hitherto been sufficiently appreciated by scholars. In the standard works on the history of the usury prohibition, John receives little or no treatment at all.<sup>12</sup> The edition of his 83 questions on usury that I provide here is the first scholarly edition of any part of his *Summa confessorum*, and the studies of his life and analyses of his teaching on usury and

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10. In the brief introduction to the treatise on usury in the *Summa confessorum*, John notes that very little distinguishes usury from theft: "Dictum est supra de rapinis et furtis, sed quia parum aut nihil interest quantum ad restitutionis legem inter furtum, rapinam, et usuram, ut XIII, q. III, Si quis usuram, ideo de ea consequenter est agendum." SC 2.7.1. cf. Raymond of Penyafort, *Summa Sancti Raymundi de Peniafort Barcinonensis Ordinis Praedicatorum de poenitentia et matrimonio cum glossis Ioannis de Friburgo* (Rome: Joannes Tallini, 1603), 227 (2.7.1). Amleto Spicciati notes that the equation of usury with theft can be traced back to the Church Fathers and was enshrined as a commonplace in the scholastic analysis of usury through Gratian's inclusion in the *Decretum* (C. 14 q. 4 c. 10) of Ambrose's dictum that whoever accepts usury commits robbery. Amleto Spicciati, *Capitale e interesse tra mercatura e povertà* (Rome: Jouvence, 1990), 76. See also Odd Langholm, *The Legacy of Scholasticism in Economic Thought: Antecedents of Choice and Power* (Cambridge: Cambridge University Press, 1998), 59-60.

11. Only a sampling of the literature can be provided here: Max Neumann, *Geschichte des Wuchers in Deutschland bis zur Begründung der heutigen Zinsengesetze* (1654) (Halle: Buchhandlung des Waisenhauses, 1865); Jean Ibanès, *La doctrine de l'Église et les réalités économiques au XIII<sup>e</sup> siècle: L'intérêt, les prix et la monnaie*, Travaux et recherches de la Faculté de Droit et des Sciences Économiques de Paris, Série "Sciences Économiques" 4 (Paris: Presses Universitaires de France, 1967); Raymond de Roover, *Money, Banking and Credit in Mediaeval Bruges: Italian Merchant-Bankers, Lombards and Money-Changers, A Study in the Origins of Banking* (Cambridge, MA: Mediaeval Academy of America, 1948); Benjamin N. Nelson, *The Idea of Usury: From Tribal Brotherhood to Universal Otherhood* (Princeton, NJ: Princeton University Press, 1949); Noonan, *The Scholastic Analysis of Usury*; T.P. McLaughlin, "The Teachings of the Canonists on Usury (XII, XIII and XIV Centuries)," *Mediaeval Studies* 1 (1939): 81-147; T.P. McLaughlin, "The Teachings of the Canonists on Usury (XII, XIII and XIV Centuries)," *Mediaeval Studies* 2 (1940): 1-22; Gabriel Le Bras, "Usure: La doctrine ecclésiastique de l'usure à l'époque classique (XIIe-XVe siècle)," in *Dictionnaire de théologie Catholique*, vol. 15 (Paris: Letouzey et Ané, 1946); Gerhard Rösch, "Wucher in Deutschland 1200-1350: Überlegungen zur Normdidaxe und Normrezeption," *Historische Zeitschrift* 259, no. 3 (1994): 593-636; Hans-Jörg Gilomen, "Wucher und Wirtschaft im Mittelalter," *Historische Zeitschrift* 250 (1990): 265-301; Jacques Le Goff, *Your Money or Your Life: Economy and Religion in the Middle Ages*, trans. Patricia Ranum (New York: Zone Books, 1990); Lawrin Armstrong, *Usury and Public Debt in Early Renaissance Florence: Lorenzo Ridolfi on the Monte Comune*, Studies and Texts 144 (Toronto: Pontifical Institute of Mediaeval Studies, 2003); Ovidio Capitani, "Sulla questione dell'usura nel Medio Evo," in *L'etica economica medievale*, ed. Ovidio Capitani (Bologna: Società editrice il Mulino, 1974); Odd Langholm, *The Aristotelian Analysis of Usury* (Bergen: Universitetsforlaget AS, 1984). For further references to this extensive body of scholarship on the usury ban, the reader can consult the notes in the text and the bibliography.

12. For example, Odd Langholm dispatches with John's contributions to the history of the usury ban quickly and cursorily. See Langholm, *Economics in the Medieval Schools*, 115-16; Langholm, *The Merchant in the Confessional*, 49-60. John T. Noonan does not discuss John's contribution to the history of the usury ban at all nor is he mentioned in Diana Wood's overview of medieval economic thought. Noonan, *The Scholastic Analysis of Usury*; Wood, *Medieval Economic Thought*.

its influence have also never before been attempted comprehensively.<sup>13</sup> I offer the reader here the results of new, fundamental research into the writings of a fascinating figure in the intellectual life of the Late Middle Ages.

No doubt it is John's status as a compiler of extant traditions on the usury ban rather than as a theoretical innovator in usury analysis that is, in part, responsible for his having been overlooked by scholars to date. Historians particularly delight in the study of change, and hence have a tendency to give short shrift to moments of stability and synthesis of "common knowledge." From the standpoint of the history of ideas, this attitude can be forgiven in the case of John of Freiburg. John, as he himself admits, is no innovator. He does not offer anything new in terms of analysis of the licitness of lending at interest or the development of external titles to interest. Even the cases that John discusses are all borrowed from his sources. He claims that he is solely a reporter of the opinions of other famous teachers within the Church, not the author of a novel work.<sup>14</sup>

Why, then, go to the trouble of painstakingly editing and studying John's lengthy discussion of usury if all that can be found there can also be found in John's original sources? Apart from bringing to light the fascinating, but hitherto unknown, contributions to the history of the usury prohibition of William of Rennes, a fellow Dominican and the glossator of Raymond of Penyafort's *Summa de poenitentia et*

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13. However, for the study of John's life I am indebted to the pioneering work of Heinrich Finke, A. Fries, and P. A. Walz. H. Finke, "Die Freiburger Dominikaner und der Münsterbau," in *Festschrift zur Generalversammlung des Gesamtvereins der deutschen Geschichts- und Altertumsvereine zu Freiburg im Breisgau vom 23 bis 26 September 1901* (Freiburg im Breisgau: Friedrich Ernst Fehsenfeld, 1901); Heinrich Finke, *Ungedruckte Dominikanerbriege des 13. Jahrhunderts* (Paderborn: Ferdinand Schöningh, 1891); Heinrich Finke, "Der Dominikaner Johannes von Freiburg über die 'Dos' der Freiburger Ehefrau," *Zeitschrift der Gesellschaft für Beförderung der Geschichts-, Altertums- und Volkskunde von Freiburg, dem Breisgau und den Angrenzenden Landschaften* 36 (1920): 31-39; A. Fries, "Johannes von Freiburg, Schüler Ulrichs von Strassburg," *Recherches de théologie ancienne et médiévale* 18 (1951): 332-40; P. A. Walz, "Hat Johann von Freiburg in Paris studiert?," *Angelicum* 11 (1934): 245-49.

14. "Sed tantum aliorum famosorum in ecclesia doctorum sententias referens, et ut plurimum etiam ipsorum verba ponens librorum, nihilominus eorundem sententiarum et scriptorum de quibus sunt assumpta nomina et loca assignans. Relator sum, non inventor." John of Freiburg, *Summa confessorum reverendi patris Joannis de Friburgo sacre theologie lectoris Ordinis Predicatorum non modo utilis sed et Christi omnium pastoribus perquam necessaria, summo studio ex Raymundo, Guilhelmo, Innocentio, Hostiensi, Goffredo, aliisque viris perdoctis qui in vinea Domini laborarunt convexa, antea prelum non passa, luculento atque evoluto adhibito repertorio, ab innumeris insuper mendis per egregium iuris utriusque licentiatum dominum Henricum Vortomam de Norimberga emaculata, marginarisque doctorum notis insignita. Adhibitus est preterea epilogus totius ferme iuris canonici puncta complectens* (Lyons: Jacobus Saccon, 1518), v.

*matrimonio*, an intensive study of John's compilation of questions on usury is valuable in its own right, since the act of compiling produces an original synthesis of historical materials, even if the compiler adds little in the way of commentary. A study of the compiler's selection of materials is of great value to the social history of the Late Middle Ages, since this selection indicates the ethical questions that were pressing for confessors of the late thirteenth and early fourteenth centuries. It is also valuable as a description of the "state of the question" concerning usury in the domains of theology and canon law at the time the compilation was made.

A compilation provides the historian, therefore, with two historical subjects that are worthwhile to bring into sharper focus. It provides, firstly, a mass of material that offers a sort of précis of the state of knowledge on a given topic among members of the compilation's intended audience around the time of its creation and for the period of its influence, which is a significant contribution to intellectual history. If the audience of the compilation is sufficiently wide and the compilation is sufficiently popular, its contents can even provide the historian with a window into what constituted "common knowledge" of the topics that it treats, which is very valuable to social history. Secondly, since selection is a form of agency, prioritizing what is included in the compilation and declaring obsolete what is not, a compilation also provides the historian with a window into the unique social history of the compiler and his intended audience. Why the compiler chose to include what he did, in fact, include becomes a pressing historical question with implications for the study of intellectual, social, and economic life.<sup>15</sup>

Although they are admittedly at times drier and less intellectually stimulating than original treatises, the historian desiring insight into the intellectual and social history of the Middle Ages should not overlook compilations such as John of Freiburg's *Summa confessorum*. To do so is to perpetuate the error of studying the productions of a few

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15. Thus in Finke's judgement, "Unstreitig ist die Summa höchst interessant auch für den Historiker: sie behandelt eine Unmasse kulturgeschichtlicher, verfassungsgeschichtlicher, strafrechtlicher, sozialpolitischer Probleme aus der Höhezeit des Mittelalters neben dem rein theologischen Stoff." Finke, "Freiburger Dominikaner," 168-69.

outstanding intellects as representative of the general state of medieval intellectual and social life. To draw nearer to the ideas that were current among broader segments of medieval society, one must attend to compilations. This is especially the case with compilations of material for confessors, since they represent a double diffusion of ideas within medieval society. At the first level, the material culled in the compilation breaks free from its restricted, elite university setting and reaches a far greater number of confessors actively administering the pastoral care. At the second level, the material included in the compilation is transmitted indirectly to the most varied and diffuse segments of medieval society in the confessional itself, in the meeting between priest and penitent over the commission of some specific transgression. As Dr. Goering has shrewdly observed, the medieval confessional was the locus of popular contact with the legal and doctrinal traditions of the Church.<sup>16</sup> The study of confessors' manuals, therefore, provides a means of gaining insight into the formation of popular ideology in the Middle Ages.

In light of the above, in this dissertation I argue that John of Freiburg's *Summa confessorum* on usury, given its considerable popularity and influence on later manuals for confessors, gives us just such a window on what constituted "common knowledge" of the Church's usury ban in many parts of medieval Europe over almost a century after John completed his compendium. Through an edition of the section *de usuris* of the *Summa* and a careful commentary upon it, I show what constituted this popular awareness of usury. Subordinate to this overall aim, I offer an explanation for why usury was a pressing problem for John of Freiburg and his immediate audience.

In Chapter One I provide an extensive biography of John of Freiburg, synthesizing the secondary literature produced to date and expanding the story of John's life through

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16. Joseph Goering, "The Internal Forum and the Literature of Penance and Confession," in *The History of Medieval Canon Law in the Classical Period, 1140-1230: From Gratian to the Decretals of Pope Gregory IX*, eds. Wilfried Hartmann and Kenneth Pennington, History of Medieval Canon Law (Washington, DC: Catholic University of America Press, 2008), 380-81. Cf. Wood, *Medieval Economic Thought*, 3.

research into documentary records from his native Freiburg. I argue, somewhat controversially, that John studied both theology and canon law at the University of Paris in the late thirteenth century. I also show how John's theoretical knowledge of the law was put to work in judging real cases that were submitted to him. Finally, I highlight how John's involvement in an actual case of usurious lending, in which his fellow friars at Zofingen were entangled, may have shaped his handling of the Church's usury ban.

Chapter Two briefly describes the conditions under which John produced the *Summa confessorum*. I show how the *Summa* represents the culmination of John's prior works on pastoral care: his analytical table to Raymond of Penyafort's *Summa* and his *Libellus questionum casualium*. I discuss the dating, place of production, intended audience, and genre of John's works up to and including the *Summa confessorum*. I demonstrate the relationship of the *Summa confessorum* to Raymond's *Summa* and illustrate how significant an advancement John made over the work of his intellectual predecessor.

Chapter Three provides a careful commentary on the section *de usuris* of John's *Summa*. In the course of the commentary, I explain as clearly as possible the cases of usury that John takes up in the *Summa* and illustrate them with real contracts from Freiburg and the Breisgau around the time when John was writing. I contend that none of the 83 questions on usury in the *Summa confessorum* is merely an academic exercise, but each discussion is oriented towards practical application in the day to day interactions of the confessor with his penitents. Usury, I argue, was a real and urgent problem confronting confessors, and it was in order to fulfill a pressing, practical need for information concerning the Church's laws on money-lending that John composed such an extensive treatment of the usury prohibition.

In Chapter Four I trace the reception history of the *Summa confessorum*. First, I demonstrate the considerable popularity of the *Summa confessorum* in manuscript and in print and show how its teachings on usury were further diffused through John's

abridgement of the *Summa*, the *Manuale collectum de Summa confessorum* (1298 x 1314), and his shorter treatise on the procedure of confession, the *Confessionale* (1298 x 1314). Then, beginning with Guy de Toulouse's early use of the *Summa confessorum* in his *Regula mercatorum* (ca. 1315) and concluding with Bartholomew of San Concordio's adoption of most of John's questions on usury in his own *Summa de casibus conscientiae* (1338), I show how significant an influence John's compendium of information on usury was on later authors of pastoralia. Since many of these authors of works on pastoral care are relatively unknown, each receives an historical introduction describing his life and the nature and content of his works. The popularity of each of the works that John influenced is also demonstrated. Given the popularity of the *Summa* itself along with the popularity of the works it influenced, I contend that the *Summa confessorum* offers us a window into what might have constituted "common knowledge" of the usury prohibition in many areas of late medieval Europe.

In Chapter Five, I look back to the origins of John's discussion of usury in the *Summa confessorum*. Drawing on the theoretical work of Antonio Gramsci, I argue that John's reason for writing so extensively on the Church's usury ban as well as his selection and handling of the materials that he included in the *Summa* were influenced by the class struggle between the Church, the aristocracy, and the rising burgher class for dominance over the society of Freiburg. I show that for John of Freiburg the usury prohibition ultimately served to protect the landed interests of the old, indebted feudal aristocracy from exploitation at the hands of their creditors, the burghers, whose wealth derived predominantly from trade and finance, and for whom the usury prohibition was a bridle that had to be cast off. I conclude that John does not significantly emphasize the role of the usury ban as a protection for the poor from exploitation at the hands of moneylenders.

In short, then, I wish to show in this dissertation what many medieval people knew about usury and to provide some tentative first steps towards explaining why usury

was a significant social problem in the context of a specific society in the late thirteenth century. This book is in many ways a study of the popularization of medieval theology, law, and jurisprudence and of the impact that these lofty intellectual disciplines had on day to day life in the Late Middle Ages. It is a study of the practical implementation of the medieval ideal of justice. It demonstrates how ideas born within a restricted circle of university intellectuals were transformed as they trickled down to ever more popular spheres, coming into closer and closer contact with the gritty reality of the marketplace. From the university doctor, to the episcopal penitentiary, to the conventual lector, to the simple parish priest and confessor, and, finally, to the parishioner, the Church's usury prohibition traced a remarkable path. The *Summa confessorum* will be our guide along it.

## CHAPTER ONE: THE LIFE OF JOHN OF FREIBURG

Despite John of Freiburg's renown as lector of the Freiburg Dominicans and the popularity of his *Summa confessorum* and *Confessionale* throughout the Late Middle Ages, few details of his personal life have been preserved for posterity.<sup>1</sup> Roderich Stintzing exaggerates somewhat when he laments that nothing more is known concerning John's "withdrawn, monkish life" than his name, origin, position as lector, and the date of his death.<sup>2</sup> However, his exasperation with the paucity of sources concerning John's life accurately reflects the struggle with which the scholar is confronted if he wishes to come face to face with the author of one of the most influential works of canon law of the Late Middle Ages. John's very name and origin are matters of historical debate.

### IDENTITY

Since scribes variously referred to the author of the *Summa confessorum* as *Johannes lector* and *Johannes Teutonicus*, among other cognomina, there has been some debate in the historiography concerning his precise identity.<sup>3</sup> Tournon, following in the

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1. For general summaries of John of Freiburg's life, see Emil Michael, *Geschichte des deutschen Volkes vom dreizehnten Jahrhundert bis zum Ausgang des Mittelalters*, vol. 3, *Deutsche Wissenschaft und deutsche Mystik während des dreizehnten Jahrhunderts*, 3rd ed. (Freiburg im Breisgau: Herdersche Verlagshandlung, 1903), 238-43; J. Quétif and J. Echard, *Scriptores Ordinis Praedicatorum*, vol. 1 (Paris: J. B. Christophorus Ballard and Nicholas Simart, 1719), 523; Académie des Inscriptions et Belles-Lettres, *Histoire littéraire de la France*, vol. 28, *Suite du quatorzième siècle* (Paris: Imprimerie Nationale, 1881), 262-72; Johannes Dietterle, "Die Summae confessorum (sive de casibus conscientiae), von ihren Anfängen an bis zu Silvester Prierias," *Zeitschrift für Kirchengeschichte* 25 (1904): 255-68.

2. "Über dessen zurückgezogenes Mönchsleben Nichts weiter . . . bekannt ist." Roderich Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts in Deutschland am Ende des fünfzehnten und im Anfang des sechzehnten Jahrhunderts* (Leipzig: S. Hirzel, 1867), 508.

3. In the prologue to the *Libellus questionum casualium*, which is included in the prologue to the *Summa confessorum*, John refers to himself simply as "frater Johannes lector de ordine predicatorum minimus." John of Freiburg, *Summa confessorum reverendi patris Joannis de Friburgo sacre theologie lectoris Ordinis Predicatorum non modo utilis sed et Christi omnium pastoribus perquam necessaria, summo studio ex Raymundo, Guilhelmo, Innocentio, Hostiensi, Goffredo, aliisque viris perdoctis qui in vinea Domini laborarunt convexa, antea prelum non passa, luculento atque evoluto adhibito repertorio, ab innumeris insuper mendis per egregium iuris utriusque licentiatum dominum Henricum Vortomam de Norimberga emaculata, marginarisque doctorum notis insignita. Adhibitus est preterea epilogus totius ferme iuris*

steps of Quétif and Echard, notes that, among others, M. Dupin, in his history of ecclesiastical writers, mistakenly asserts that the author of the *Summa confessorum* was the fourth master general of the Order of Preachers, John of Wildeshausen (d. 1252), the former bishop of Diacovar in Croatia, who was known as *Johannes Teutonicus*.<sup>4</sup> Quétif and Echard, followed by many others, argue that it was rather John of Freiburg, lector of the Freiburg Dominican convent in the late thirteenth century, who composed the *Summa*.<sup>5</sup> As I shall show in the next chapter,<sup>6</sup> the *Summa confessorum* was completed around 1298, and thus John of Wildeshausen could not have been the author of the work. From the *Catalogus mortuorum* of the Freiburg Dominican convent, moreover, we learn that John of Freiburg, who wrote a *Summa confessoriorum*, was buried before the high altar of the Dominican church in 1314. This notice secures John of Freiburg's authorship of the *Summa*.<sup>7</sup> We possess, in addition, a letter of ca. 1294 from Hermann of Minden,

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*canonici puncta complectens* (Lyons: Jacobus Saccon, 1518), v. The front-matter of the Lyons 1518 edition of the *Summa confessorum* is not paginated. I have assigned roman numerals as page numbers (*not* folio numbers) for this section, beginning with the title page.

4. A. Tournon, *Histoire des hommes illustres de l'ordre de Saint Dominique*, vol. 1 (Paris: Babuty, 1743), 123.; Quétif and Echard, *Scriptores Ordinis Praedicatorum*, vol. 1, 525. Wharton was guilty of the same confusion. See William Cave and Henry Wharton, *Scriptorum ecclesiasticorum historia literaria a Christo nato usque ad saeculum XIV, facili methodo digesta . . . accedit ab alia manu Appendix ab ineunte saeculo XIV ad annum usque MDXVII* (Geneva: Samuel de Tournes, 1694), Appendix, 7. For a brief overview of John of Wildeshausen's life, see *Biographisch-Bibliographisches Kirchenlexikon*, s. v. "Johannes Teutonicus," by Meinolf Lohrum.

5. Leander Alberti, whom Quétif and Echard quote, had already asserted the distinction between John of Freiburg, the "devout man, outstandingly well-read," author of a "huge volume containing learned discussions and very necessary things," and John of Wildeshausen, the master general of the Order of Preachers. Quétif and Echard, *Scriptores Ordinis Praedicatorum*, vol. 1, 523. For John of Freiburg's authorship of the *Summa confessorum*, see Johann Frederick von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts*, 2 vols. (Stuttgart: Ferdinand Enke, 1875), 2:421; Thomas Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 4 vols. (Rome, 1970), 2:430 no. 2344; Amédée Teetaert, *La confession aux laïques dans l'Eglise latine depuis le VIIIe jusqu'au XIVe siècle* (Paris: J. Gabalda, 1926), 441; Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 501-10; Académie des Inscriptions et Belles-Lettres, *Histoire littéraire de la France*, vol. 28, *Suite du quatorzième siècle*, 262-72.

6. See p. 64.

7. "V. P. Joannes de Friburgo, tuba evangelica non solum in Germania sed et in Italia, scripsit preter varios libros summam confessoriorum, instauravit bibliothecam conventus; obiit plenus virtutibus ac meritis, sepultus ante summum altare 1314." A. Poinssignon, ed., "Catalogus mortuorum sive nomina fratrum ordinis Praedicatorum conventus Friburgensis qui ab anno foundationis MCCXXXVI pie in Domino obierunt usque ad praesentia tempora," *Freiburger Diöcesan-Archiv* 16 (1883): 42. That John was buried in the Dominican church is made clear by the notice concerning the translation of his remains from there to the Freiburg Cathedral in 1802. See below, p. 52. See also Heinrich Finke, "Der Dominikaner Johannes von Freiburg über die 'Dos' der Freiburger Ehefrau," *Zeitschrift der Gesellschaft für Beförderung der Geschichts-, Altertums- und Volkskunde von Freiburg, dem Breisgau und den Angrenzenden Landschaften* 36 (1920): 37.

the provincial of the German Dominican province, to “friar John, lector of the friars of the Order of Preachers in Freiburg.”<sup>8</sup> In the light of these observations and the numerous authorities supporting this conclusion, there is no reason to doubt that John of Freiburg (d. 1314) was the same *Johannes lector* indicated in the prologue as the author of the *Summa confessorum*.

John of Freiburg’s death in 1314 has already been mentioned.<sup>9</sup> However, we have no indication of the date of his birth. It would be imprudent to hazard a guess based on the date of his death, since there is no hint of his age at that time in the *Catalogus mortuorum* of the Freiburg Dominican convent or in Hermann of Minden’s letter to him of ca. 1294. Since John’s erudition and literary output were considerable, which must have been the product of many years of study and writing, it is likely that he reached an advanced age, but we can be no more precise than this.

The birthplace and family of John of Freiburg have been the subject of some confusion among bibliographers, since manuscript attributions of the *Summa confessorum* and the records of the Dominican cloister at Freiburg offer two possibilities. Poinsignon notes that a Bamberg manuscript of the *Summa confessorum* affirms that its author stemmed from the burgher Rumsick family. However, a Mainz manuscript of the *Summa* indicates that it was written by the lector at Freiburg, brother “Johans von Hasela” of the Order of Preachers.<sup>10</sup> In the *Anniversarium* of the Freiburg Dominican cloister, moreover, the anniversary of a Hanns von Haslach, “lessmeister” is recorded on 9 March, without any year. On the basis of the coincidence between the attribution in the Mainz

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8. “Karissimo sibi in Dei filio fratri Io(hanni) lectori adhuc Friburgensi fratrum ordinis Predicatorum.” Heinrich Finke, *Ungedruckte Dominikanerbriege des 13. Jahrhunderts* (Paderborn: Ferdinand Schöningh, 1891), 165.

9. See also Teetaert, *La confession aux laïques*, 440; Touron, *Histoire des hommes illustres de l'ordre de Saint Dominique*, vol. 1, 123. According to the *Anniversarium* of the Freiburg Dominican cloister, John (the *lessmeister* Hanns von Haslach) died on March 9th. See A. Poinsignon, “Das Dominicaner- oder Prediger-kloster zu Freiburg im Breisgau,” *Freiburger Diöcesan-Archiv* 16 (1883): 11. Karl Schuster also gives March 9th as the date of John’s death, but mistakenly reports the year as 1324. Karl Schuster, “Die Gräber im Münster,” *Freiburger Münsterblätter* 8 (1912): 4.

10. “Dis buch ist die sum in tütsch die der lesemeister mahte zu Friburg, der do hies Johans von Hasela in prediger orden.” Quoted in Poinsignon, “Das Dominicaner- oder Prediger-kloster,” 11.

manuscript and the *Anniversarium*, Poinsignon, followed later by Finke, concluded that John of Freiburg must have been the same person as John of Haslach, and that therefore the author of the *Summa confessorum* stemmed from the small village of Haslach just a few kilometres west of Freiburg.<sup>11</sup>

Confusion over the identity of John of Freiburg was put to rest by Otto Geiger's extensive unearthing of documentary and literary sources that unequivocally establish his identity with John of Haslach. Geiger unearthed two documents in the University and State Archives of Freiburg to which the Dominican lector John of Freiburg clearly affixed his name as John of Haslach. The first, confected on 22 April 1304 at Freiburg, which records John's involvement in a legal dispute over the dowry of Mathilda, the widow of the Freiburg burgher Hugo Kuchelin, concludes with the notice that "brother John, former lector of the Order of Preachers in Freiburg," has affixed his seal to the document. The legend of this seal reads, "[I]OH[ANN]IS DE [H]ASELA ORDI[NI]S PRED[ICATORUM]," thus confirming the lector John of Freiburg's identity with John of Haslach.<sup>12</sup> This identity is further reinforced by a second document of 23 June 1304 concerning the same matter, in which John's identity with John of Haslach is manifested within the body of the document itself.<sup>13</sup> To these indisputable pieces of documentary evidence that confirm John's identity with John of Haslach, Geiger adds the evidence of a

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11. Ibid., 11; H. Finke, "Die Freiburger Dominikaner und der Münsterbau," in *Festschrift zur Generalversammlung des Gesamtvereins der deutschen Geschichts- und Altertumsvereine zu Freiburg im Breisgau vom 23 bis 26 September 1901* (Freiburg im Breisgau: Friedrich Ernst Fehsenfeld, 1901), 164-65, n. 2. Johannes Meyer, in his *Cronica brevis Ordinis Praedicatorum* (1470), also refers to John of Freiburg as "frater Iohannes, dictus de Hasle, Teutonicus, lector Friburgensis, qui summas utiles et fructuosas fecit." It is unclear, however, whether this represents an independent witness to John's family origins or whether Meyer himself may have been drawing on the Mainz manuscript or the *Anniversarium*. Johannes Meyer, *Chronica brevis Ordinis Praedicatorum*, ed. H. C. Scheeben, Quellen und Forschungen zur Geschichte des Dominikanerordens in Deutschland 29 (Vechta: Albertus-Magnus-Verlag, 1933), 53. Finke also points to the possibility of Haslach im Kinzigtal, approximately 45 km northeast of Freiburg, as the family's place of origin. Finke, "Johannes von Freiburg über die 'Dos'," 37.

12. "Ego . . . sigillo reverendi in Christo fratris Johannis lectoris, quondam fratrum ord. praed. in Freiburg." Otto Geiger, "Studien über Bruder Berthold: Sein Leben und seine deutschen Werke," *Freiburger Diözesan-Archiv* 48 (1920): 24, n. 1.

13. "In Christo fratrem Ioh. de Hasela, quondam lectorem fratrum ord. praed. in Friburg. . . . Item dicebant frater Iohannes de Hasela quondam lector . . ." Ibid., 24, n. 1. Finke also notes the decisiveness of Geiger's discoveries for establishing the identity of John of Freiburg. See Finke, "Johannes von Freiburg über die 'Dos'," 37.

slew of manuscripts – either of Brother Berthold’s German version of the *Summa confessorum* or of the *Tugenden Buch*, a German translation of parts of the *secunda secundae* of Thomas Aquinas’ *Summa theologiae* –<sup>14</sup> which attribute the *Summa confessorum* to “Johannes von Hasela,” “Johansen von Haslach,” or “Johans von Hasla.”<sup>15</sup>

Thanks to the editorial exertions of Hefele in his *Freiburger Urkundenbuch*, we even have a description of John’s seal. A document of 15 January 1296, confected at Colmar, records the testimony of John, lector of Freiburg Dominicans, in a case before the court of Basel that was brought by the abbot of Salem against Mechtild, the widow of the Basel burgher Johannes des Apothekers.<sup>16</sup> At the conclusion of the document, John notes that in order to secure the decision contained therein, he has affixed his seal, together with that of his prior.<sup>17</sup> The legend of this seal reads, “FR[AT]RIS IOH[ANN]IS DE [HA]SELA ORDI[NI]S PRED[ICATORUM]. The red waxen seal is in a pointed oval shape, secured to the document by parchment strips; it depicts Mary lying down with her hands folded next to Joseph, who stands with a staff. Behind them the infant Jesus lies in the manger, over whom two cherubs stand with their hands raised to a star.<sup>18</sup> In light of Geiger and Hefele’s discoveries, John of Freiburg’s identity must be considered a settled matter. John of Freiburg, the author of the *Summa confessorum* and lector of the

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14. Three manuscripts of the *Tugenden Buch* attribute this translation to John of Freiburg. See Leonard E. Boyle, "The 'Summa Confessorum' of John of Freiburg and the Popularization of the Moral Teaching of St. Thomas and some of his Contemporaries," in *St. Thomas Aquinas 1274-1974 Commemorative Studies*, vol. 2 (Toronto: Pontifical Institute of Mediaeval Studies, 1974), 260.

15. Geiger, "Bruder Berthold," 24, n. 1.

16. See my discussion of John’s role in this case and in the one mentioned above in my discussion of the events of his life below, p. 49.

17. “In questionis igitur huius decisionis predictaeque ordinationis et declarationis testimonium hanc litteram tam prioris mei, quam meo sigillis tradidi communitam.” Hefele only gives an abstract of the document. For the text, I consulted Friedrich von Weech, ed., *Codex Diplomaticus Salemitanus: Urkundenbuch der Cisterzienserabtei Salem*, vol. 2 (Karlsruhe: G. Braunschen Hofbuchhandlung, 1886), 506-07, no. 937.

18. Friedrich Hefele, ed., *Freiburger Urkundenbuch*, vol. 3, *Texte* (Freiburg im Breisgau: Kommissionsverlag der Fr. Wagnerschen Universitätsbuchhandlung, 1957), 210-11, no. 186. In a note to the document, Hefele remarks explicitly that this document conclusively establishes that John of Freiburg stemmed from Haslach. Incidentally, John’s seal is a good illustration of the devotion of the Preachers to the cult of Mary.

Dominican convent at Freiburg during the late thirteenth century, was the same person as John of Haslach.

Although Geiger's considerable evidence establishing John of Freiburg's identity with John of Haslach will not be gainsaid by a solitary grain of evidence to the contrary, nevertheless, it should be noted that the *Catalogus mortuorum* of the Freiburg Dominican cloister, which Poinsignon edited, raises a slight problem for such an identification. In the *Catalogus mortuorum*, there is indeed an undated entry for the death of a subdeacon, Joannes de Haslach; however, there is also a much longer and more detailed entry for Joannes de Friburgo, who, as I noted above, is listed as the author of a *Summa confessoriorum*. This suggests that these were distinct men.<sup>19</sup> However, the entry for John of Freiburg does not rule out that he also stemmed from Haslach. It is possible that two persons named John in the Freiburg convent were at one time known as John of Haslach, and that one of them, John of Freiburg, was later better known by the name of the town in which he taught for a great many years as lector and served for a short time as prior of the Dominicans.

#### SOCIAL CLASS

John's family ties to Haslach may provide a clue to the social class to which he belonged before he entered the Order of Preachers. In a document of 17 May 1221, Count Egino von Urach, Lord of the Castle of Freiburg, proclaims that "at the petition of our friend, the abbot of Tennenbach, to Eberhard, our ministerial of Haslach," he grants that the abbot may donate whomever among his own servile men to the monastery with the Count's good will and permission.<sup>20</sup> This document opens the possibility that John of

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19. Poinsignon, "Catalogus mortuorum," 42. See n. 7 on p. 12.

20. "Ad petitionem amici nostri abbatis de Tennibach Eberhardo ministeriali nostro de Hasila." Friedrich Hefele, ed., *Freiburger Urkundenbuch*, vol. 1, *Texte* (Freiburg im Breisgau: Kommissionsverlag der Fr.

Haslach was a descendent of this same family of ministerials from which Eberhard stemmed.

Ministerials belonged to the lesser nobility and consisted of servile class of knights, who held offices from the greater free lords.<sup>21</sup> They constituted a hereditary, dependent class of warriors and administrators, upon whom the German imperial monarchy and local magnates depended to exercise their power and jurisdiction. Often ministerials occupied the important offices of marshal, chamberlain, butler, and seneschal for their lords or served as judges and advisers in the local courts (*Landgerichte*). In exchange for their service, lords rewarded their ministerials with grants of fiefs and, to a lesser extent, allods, establishing them as a “hereditary landowning order.”<sup>22</sup> Although ministerials were essentially the possessions of their lords, who ultimately controlled their marriages, mobility, and property, in terms of social position they ranked far above that of the other dependent class in medieval German society – the serf. Ministerials possessed their own serfs and enjoyed the same prestige as secular magistrates, lords, and knights. They did not owe any labour services to their lords and were exempt from taxes and tribute payments. Essentially, they lived an aristocratic life, which their dependent status did not hinder them from acquiring or enjoying.<sup>23</sup> In short, ministerials constituted a “noble landowning class with interests to defend.”<sup>24</sup> If John of Freiburg did in fact belong to a family of the ministerial class, then he would have stemmed from an economic background of moderate wealth grounded in the lands surrounding Freiburg, for the possession of which his family depended ultimately on the good graces of the Counts of

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Wagnerschen Universitätsbuchhandlung, 1940), 22, no. 37.

21. John B. Freed, *The Friars and German Society in the Thirteenth Century* (Cambridge, MA: The Mediaeval Academy of America, 1977), 119-28, 131.

22. Benjamin Arnold, *German Knighthood 1050-1300* (Oxford: Clarendon Press, 1985), 17-18, 21, 53-54, 141-42, 184-85, 188, 192-93.

23. *Ibid.*, 55-56, 66-67, 69.

24. *Ibid.*, 22.

Urach, who ruled as Counts of Freiburg over the course of the thirteenth and fourteenth centuries.<sup>25</sup>

The possibility that John stemmed from the ministerial class is further enhanced by statistical probability. Through an extensive analysis of literary sources concerning German mendicants and prosopographical studies of mendicant signatories to German charters in the thirteenth century, John Freed has shown that the leadership of the mendicant orders in Germany at that time was largely drawn from the class of ministerials and urban patricians. On the grounds of his statistical analysis, Freed also notes that the German ministerial class preferred membership in Dominican convents to membership in Franciscan priories.<sup>26</sup>

As an explanation for this phenomenon, Freed points out the educational requirement for postulants to the Order of Preachers. Literacy was a minimum requirement for those who wished to enter the Order, which meant that postulants had to come from families who could at least afford to send their sons to school rather than to work, making it unlikely that many came from poor peasant or poor burgher stock.<sup>27</sup> Hence, membership within the Order of Preachers was restricted, at the minimum, to “moderately prosperous burgher families.” If the Cologne priory, for which extant records are much more abundant, can be considered representative, the Dominican membership was usually drawn from small urban property holders.<sup>28</sup>

Given that John of Freiburg rose to the rank of lector and then prior within the Freiburg convent, the penultimate and the ultimate positions of leadership in Dominican

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25. For the Counts of Urach and their relationship to Freiburg, see Jan Gerchow and Hans Schadek, "Stadtherr und Kommune: Die Stadt unter den Grafen von Freiburg," in *Geschichte der Stadt Freiburg im Breisgau*, vol. 1, eds. Heiko Haumann and Hans Schadek (Stuttgart: Theiss, 1996), 133-72.

26. Freed, *The Friars and German Society*, 119-28.

27. In Germany in particular, the tendency to draw members from the wealthy classes was exacerbated in the thirteenth century by the preference among German provincials for university graduates in the Order, leading Freed to conclude that “the Dominicans formed an educated elite within thirteenth century German society.” Ibid., 125.

28. Ibid., 125-27.

houses,<sup>29</sup> according to the probabilities generated by Freed's statistical analysis it is likely that he too came from the ministerial class. The connection of the Haslach name with the ministerial class, noted above, further increases this likelihood.<sup>30</sup> Although there is no incontestable evidence that places John within the ministerial class, the possibility may, nevertheless, prove to be useful as a heuristic device for understanding his approach to economic ethics, which I shall discuss at greater length in my analysis of his treatment of the usury prohibition in the *Summa confessorum* in Chapter Five.<sup>31</sup>

## EDUCATION

There is no direct evidence concerning John of Freiburg's education; however, Fries argues convincingly that he was a student of the renowned lector and provincial of Germany, Ulrich of Strasbourg (d. 1277). Fries notes that in the prologue to the *Libellus questionum casualium*, a preparatory work to the *Summa confessorum*,<sup>32</sup> John makes warm mention of Ulrich of Strasbourg, which gave rise to an initial assumption, shared by Grabmann, that John studied under Ulrich.<sup>33</sup> Fries advanced this assumption to an historically probable hypothesis in his article by demonstrating John's use of Ulrich's lectures, his personal counsel, and his lost commentary on the *Sentences* in the *Summa confessorum*.<sup>34</sup> In the prologue to the *Libellus*, which precedes the prologue to the

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29. Poinson, "Das Dominicaner- oder Prediger-kloster," 7.

30. See p. 16 above.

31. See pp. 205 ff.

32. The relationship between the two works will be discussed in the next chapter. See pp. 59 ff.

33. A. Fries, "Johannes von Freiburg, Schüler Ulrichs von Strassburg," *Recherches de théologie ancienne et médiévale* 18 (1951): 333-34; M. Grabmann, "Studien über Ulrich von Strassburg. Bilder wissenschaftlichen Lebens und Strebens aus der Schule Alberts des Grossen," in *Mittelalterliches Geistesleben. Abhandlungen zur Geschichte der Scholastik und Mystik* (Munich, 1926), 160.

34. Fries, "Johannes von Freiburg," 333-34. John of Freiburg's *Summa confessorum* is the only witness to the existence of Ulrich's *Sentences* commentary. Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 4:419-20.

*Summa confessorum*, in the course of listing the most significant authorities that he consulted in composing the *Libellus*, John describes Ulrich as follows:

The former lector of Strasbourg of the same Order [i.e., of Preachers], who although he was not a master in theology, nevertheless he was not inferior to the masters in erudition, which is manifest through his book, which he wrote as much concerning theology as philosophy, and as the number of famous lectors that have emerged from his school bears witness to. Whence afterwards, having laudably administered the office of the provincial of Germany, after he was directed to Paris to read, he was taken up there by the Lord before the beginning of his lectures.<sup>35</sup>

John's heartfelt praise of Ulrich of Strasbourg, together with the four additional references to Ulrich's unpublished works that Fries found in the *Summa confessorum*, suggests a close student-teacher relationship between the two. Fries notes, moreover, that when John refers to Ulrich's unpublished teachings in the *Summa*, he uses past forms (*concordavit, dixit*, etc.). Based on his close reading of the *Summa*, Fries asserts that John never uses expressions in the past to refer to works that he had in front of him, which suggests that in the case of these unpublished works John was making use of the oral instruction of Ulrich. In addition, John's use of Ulrich's lectures in the *Summa confessorum* naturally suggests that he heard them himself while he studied under the lector.<sup>36</sup> Perhaps, then, John was alluding to himself when he mentioned the number of famous lectors that Ulrich had trained.

That John of Freiburg's encyclopaedic intellect was formed in part by Ulrich of Strasbourg comes as no surprise given what we know of Ulrich's own education, thanks to Grabmann's essay on his life and work.<sup>37</sup> According to Grabmann, Ulrich stemmed

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35. "Item fratris Ulrici quondam lectoris Argentinensis eiusdem ordinis, qui quamvis magister in theologia non fuerit, scientia tamen magistris inferior non extitit ut in libro suo quem tam de theologia quam de philosophia conscripsit evidenter innotescit, et famosorum lectorum de scholis ipsius egressorum numerus protestatur. Unde et postea provincialatus Theuthonie laudabiliter administrato officio Parisius ad legendum directus ante lectionis inceptionem ibidem a domino est assumptus." John of Freiburg, *Summa confessorum*, v. As I shall show below, it is possible that the lecture referred to here was the master's inaugural lecture, or *inceptio*. See p. 22. Johannes Meyer, most likely drawing on the prologue to the *Libellus*, repeats the notice of Ulrich's death in Paris, giving 1277 as the year: "Frater Ulricus Engelbertus, quondam Teutoniae provincialis, Parisius ad legendum directus hoc tempore a domini [sic] ibidem est assumptus." Meyer, *Chronica*, 40.

36. Fries, "Johannes von Freiburg," 334.

37. What follows is a brief summary of Grabmann's researches in Grabmann, "Ulrich von Strassburg," 148-67. For a recent overview of Ulrich of Strasbourg's life and the influence of the sixth book of his *Summa de summo bono* on John of Freiburg's *Summa confessorum*, see Alessandro Palazzo, "Ulricus de

from Strasbourg and was primarily active in that city, which contended with Cologne for pride of place in the scientific life of thirteenth century Germany. Ulrich benefitted from the experience of both of these intellectual centres. In his youth, he heard the lectures of Albertus Magnus in Cologne after the latter had founded the *studium generale* there in 1248 and at some time before 1254, when Albert became provincial of the Order's German Province. With Albert as his teacher, Ulrich had at his disposal the great theologian's probing, universal mind and, perhaps just as significantly, his abundant library. Ulrich's *Summa de summo bono* demonstrates that, like Albert, he had a thorough knowledge of scripture, the church fathers, the early scholastics, Aristotle's writings and the commentaries upon them, and the works of the Arabic philosophers and neo-Platonist thinkers. Besides the excellence of his teacher, Ulrich was edified by the vibrant intellectual milieu generated in classroom discussions between himself and the fellow pupils of Albert, the renowned scholastics Thomas Aquinas and Ambrosius Sansedonius.

Ulrich's considerable erudition eventually won for him the office of lector in the Strasbourg Dominican convent. There his competence as a teacher earned him, although he himself did not desire it, the election to the position of provincial of Germany in 1272. As provincial, Ulrich became the intellectual, if not the direct, successor of Albertus Magnus. In addition to being an enthusiastic administrator, much occupied with visits to the convents under his charge to ensure their observance of the rule and constitutions of the Order of Preachers, Ulrich energetically pursued the advancement of the education of the friars throughout Germany.<sup>38</sup> His years of fruitful service as provincial of Germany at last convinced the master general of the Order, John of Vercelli, reluctantly to heed Ulrich's request to relieve him of his duties in order to pursue teaching once again.

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Argentina . . . theologus, philosophus, ymmo et iurista': Le dottrine di teologia morale e di pastorale penitenziale nel VI libro del *De summo bono* e la loro diffusione nel tardo Medioevo," *Freiburger Zeitschrift für Philosophie und Theologie* 55, no. 1 (2008): 64-97.

38. Finke has expertly summarized what is known of Ulrich's activity as provincial of Germany and published the letters pertinent to his administration. See Finke, *Ungedruckte Dominikanerbriefe*, 18-22, and no. 43-59, 63-73, 75-79, 81-82.

However, Ulrich did not return to Strasbourg. The master general honoured him with the opportunity to travel to Paris in 1277 to read the *Sentences* and prepare for the master's degree in theology at the university.<sup>39</sup> Unfortunately, Ulrich's weak constitution was further enfeebled by the journey to Paris. He died, as John of Freiburg tells us, before he could enter upon his duties as bachelor at the university.<sup>40</sup>

Fries set himself the task of identifying how far Ulrich had progressed in his studies at the university before his untimely death. Based on references to Ulrich's commentary on the *Sentences* in John of Freiburg's *Summa confessorum*, Fries argues that Ulrich likely commented on all four books; however, Fries concedes that it is unclear how much of this commentary Ulrich set down formally in writing. On the grounds that John usually uses the present tense (e.g., "ut dicit") when referring in the *Summa confessorum* to works that he had before him, Fries contends that Ulrich wrote a formal commentary at least on Book IV, since John writes, "ut dicit Ulrichus," in a reference to Ulrich on IV *Sent.* d. 30 (or 26). Fries confirmed this hypothesis through his discovery of an independent, anonymous treatise on the mendicants' privilege of hearing confessions and the jurisdiction of the parish that also refers to Ulrich's commentary on Book IV of the *Sentences*.<sup>41</sup> Fries goes on to note that in the thirteenth century the *Sentences* were read only in the *studia generalia* of the Order, such as Cologne, and then only cursorily for a period of one year. This, he asserts, makes it unlikely that Ulrich composed a formal, written commentary on the *Sentences* while he was lector at Strasbourg, a more elementary theological school; rather, Ulrich must have written it only once he had arrived in Paris.<sup>42</sup> Hence, Fries concludes that when John of Freiburg writes that Ulrich

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39. Ulrich was relieved of his post as provincial and directed to Paris by the general chapter held at Bordeaux in 1277. See *Ibid.*, 104, no. 81, n. 1.

40. According to Joannes Torquemada, he died "tempore Baccalariatus." Quoted in Grabmann, "Ulrich von Strassburg," 167.

41. Fries, "Johannes von Freiburg," 338-40.

42. *Ibid.*, 335. The notice of Ulrich's transfer to Paris at the general chapter of Bordeaux (1277) states explicitly that he was sent there "ad legendum sententias," which could imply that he had not yet begun to write on the *Sentences*. See Finke, *Ungedruckte Dominikanerbriefe*, 104, no. 81, n. 1.

died before the beginning of his lectures (“ante lectionis inceptionem”), we should not understand that he died before he could give any lectures. John’s use of Ulrich’s lectures on the *Sentences* in the *Summa confessorum* would make this impossible at any rate. We should rather interpret this to mean that Ulrich died before he could give his inaugural lecture as master of theology, which came after the candidate had already lectured at length on the *Sentences*.<sup>43</sup> That is, Ulrich died as bachelor of the *Sentences*, before he had completed the commentary necessary to advance. Ulrich was a teacher, but not yet a master.<sup>44</sup>

Although it seems likely that Ulrich did give lectures on the *Sentences* in Paris before his death, Fries’ contention that Ulrich only began to write on the *Sentences* at Paris is unsettled by Dr. Mulchahey’s recent research into the history of education within the Order of Preachers. Mulchahey demonstrates that as early as 1271 the general chapter of the Order held at Montpellier enjoined students at the Order’s conventual schools to attend ordinary lectures on the Bible and extraordinary lectures on the *Sentences* – a provision that was repeated at the chapter held in Oxford in 1280. In addition, Humbert of Romans, one of the most capable master generals of the Order and the codifier of its institutional ideals, instructs conventual lectors in his *Instructiones de officiis* (ca. 1265) to assist students with lectures on the Bible, Peter Comestor’s *Historia Scholastica*, and Peter Lombard’s *Sentences*.<sup>45</sup>

The problem with the usefulness of this evidence for ascertaining whether Ulrich lectured on the *Sentences* at Strasbourg is that the general admonition to give lectures on

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43. For the significance of “inception” (*aulatio, vesperiae, resumptio*) in the process of obtaining the doctoral license, cf. Hastings Rashdall, *The Universities of Europe in the Middle Ages*, 2 vols. (Oxford: Clarendon Press, 1895), 1:452-53, 1:473-74; William A. Hinnebusch, *The History of the Dominican Order: Intellectual and Cultural Life to 1500* (New York: Alba House, 1973), 61.

44. Fries, “Johannes von Freiburg,” 335. This contention is supported by the fact that Henry of Herford refers to Ulrich as “bacularius in theologia.” Henry of Herford, *Liber de rebus memorabilioribus sive Chronicon*, ed. Augustus Potthast (Göttingen, 1859), 204, and n. 2.

45. The general chapter at Marseilles in 1300 enjoined lectors to read the whole of the *Sentences* in their lectures. M. Michèle Mulchahey, “*First the bow is bent in study*”: *Dominican Education before 1350* (Toronto: Pontifical Institute of Mediaeval Studies, 1998), 135, 138.

the *Sentences* in the convents comes at the tail end of Ulrich's career as lector (1254-1272).<sup>46</sup> It is, therefore, not possible to say whether it was implemented in Strasbourg during his tenure as lector, and, consequently, whether from this we can extrapolate that Ulrich must have written on the *Sentences* before arriving in Paris in the course of carrying out his duties as lector. Moreover, Humbert of Romans' instructions must be considered as the expression of an ideal in Dominican education, and not as a reflection of the actual state of affairs ca. 1265. Lastly, the fact that the 1249 general chapter held at Trier urged conventual lectors to increase the length of their lectures on the Bible alone, with no mention of the *Sentences*,<sup>47</sup> should hold us back from concluding too hastily that courses on the *Sentences* were offered during this early period of the Order's history, when Ulrich served as lector at Strasbourg.

One wishes that we could draw inferences about the Strasbourg priory during Ulrich's tenure there from the later history of the Order's intermediate provincial schools of theology, the *studia particularia theologiae*. For Mulchahey conclusively shows, with evidence from the Roman province of the Dominicans, that the *Sentences* were taught comprehensively there as early as 1291. Her evidence for the teaching of the *Sentences* in the Order's provincial schools as a whole dates back to an ordinance of the general chapter of 1305 held at Genoa. She also cites an ordinance from the general chapter of 1314, held at London, that required "*cursores Sententiarum*" to be placed in all general and provincial schools. These *cursores* were responsible for providing a complete reading of the *Sentences* within the span of one year.<sup>48</sup> Unfortunately, since the first *studia particularia* were created in 1281 in the Roman province,<sup>49</sup> all of this evidence

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46. For this range of dates, see below, p. 33.

47. Ibid., 135.

48. Ibid., 330-40, see especially p. 332 n. 326 and p. 334 n. 333 for the relevant texts of the general chapters. Hinnebusch, in his analysis of the development of the provincial schools of theology, similarly bases the early history of this phenomenon on the acts of the Roman province, with his earliest evidence for the order as a whole stemming from a decree of the general chapter of 1315. Hinnebusch, *Intellectual and Cultural Life to 1500*, 29-30.

49. They were located in Lucca, Florence, Siena, and Naples. Mulchahey, *Dominican Education*, 323, 386-87.

comes too late, and from the wrong place, to shed any light on whether Ulrich lectured on the *Sentences* at Strasbourg. Moreover, the fact that the general chapter of 1314 thought that such an ordinance was necessary for the “reformationem studii” – so much so that a punitive clause was attached to it – suggests that lecturers on the *Sentences* were lacking in both *studia generalia* and *studia particularia*.

Despite the indications to the contrary noted above, one fact speaks for the possibility that Ulrich began to write and lecture on the *Sentences* in Strasbourg before he arrived in Paris: Ulrich had attended the *studium generale* at Cologne. During his period as a simple *auditor* in the school there, he no doubt heard lectures on the *Sentences* from a “cursor of the *Sentences*” under the regency of Albertus Magnus, who had himself not long before lectured on them at the University of Paris (ca. 1243-45).<sup>50</sup> One might even go so far as to imagine that Ulrich himself had begun to lecture on the *Sentences* cursorily while he was in Cologne. A lector of a Dominican priory school required at least four years of theological study.<sup>51</sup> If this was the extent of Ulrich’s stay at Cologne, then he would have just finished hearing his course of lectures on the Bible and been about to begin hearing the *Sentences*.<sup>52</sup> However, we do not know precisely when Ulrich took up his post as lector. Granted that when John of Vercelli conceded the honour of theological studies in Paris to Ulrich, it was for the purpose of reading the *Sentences*, and not hearing them, it is conceivable that Ulrich had passed at least eight years studying in Cologne, and had heard the two years of lectures on the *Sentences* and even passed two years as a lecturer on the Bible (*Biblicus Ordinarius*), which were both prerequisites to becoming a lecturer on the *Sentences* (*Sententiarius*), but had to leave Cologne to take up the post of lector at Strasbourg before he could complete his course of lectures on the Lombard and

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50. For a brief overview of Albert’s teaching career, see *New Catholic Encyclopedia*, 2nd ed., s. v. “Albert the Great, St.,” by J. A. Weisheipl. On the formation of a master of theology, for which purpose friars were sent to the *studia generalia* of the Order, such as Paris and Cologne, see Rashdall, *Universities*, 1:464-71. For the inclusion of the *Sentences* as a standard item in the curriculum of the Dominican *studium generale*, see Mulchahey, *Dominican Education*, 378-84.

51. Hinnebusch, *Intellectual and Cultural Life to 1500*, 21.

52. Cf. Rashdall, *Universities*, 1:464.

advance to the doctorate.<sup>53</sup> If this is correct, then John of Vercelli was providing Ulrich the opportunity to complete his theological studies, which must have satisfied a great longing within him. Since Ulrich was passionately committed to learning, as is clear from the erudition displayed in his *Summa de summo bono*, it is conceivable that he could have passed on his knowledge of the *Sentences*, gathered at Cologne, to his students at Strasbourg, and perhaps he even began to craft his own commentary to serve both his students and himself in anticipation of future theological studies.

In light of all of the above considerations, one cannot state categorically whether Ulrich did or did not lecture on the *Sentences* at Paris. The meaning of his death “ante lectionis inceptionem” is ambiguous and leaves both possibilities open. There is also the possibility that Ulrich began to compose a commentary on the *Sentences* at Strasbourg, which he intended to bring to completion in Paris.

Since Ulrich taught at Strasbourg and possibly also at Paris, it remains to be shown where and when John of Freiburg studied under him. This question dovetails with another contentious issue in the life of John of Freiburg: whether or not he himself studied at Paris. On the basis of John’s allusion to a form of absolution that he learned from the “lectionibus in scholis” of “magister Joannes de Verziaco” in a question from the *Summa confessorum* (3.34.89), Walz argues that John studied in Paris, since Jean de Varzy was, before his death in 1277, the leader of the Dominican school for natives in Paris. John’s reference to Jean de Varzy’s “lectures in the schools” means that he must have studied under the master at some time before 1277. As a foreigner from Freiburg, John would ordinarily have been under the tutelage of the master for foreigners, but Walz not unreasonably argues that John simply sat in on Jean de Varzy’s lectures or heard reports of them from fellow Dominican students while he was studying at Paris.<sup>54</sup>

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53. Cf. *Ibid.*, 1:465-66.

54. P. A. Walz, "Hat Johann von Freiburg in Paris studiert?," *Angelicum* 11 (1934): 247-49.

In the absence of any conclusive evidence that John of Freiburg was at Paris at some time around 1277, Walz's conclusion, as he himself admits, must remain only a tantalizing possibility. However, since John refers to the lectures of Ulrich of Strasbourg on the *Sentences* in his *Summa confessorum*, it is possible that he heard these while Ulrich was at Paris for a short time before his death, also around 1277. Fries acknowledges this possibility, but, due to the lack of independent evidence confirming it, ultimately rejects it, since the plainest reading of John of Freiburg's notice that Ulrich died "ante lectionis inceptionem" implies that Ulrich did not have a chance to lecture at Paris.<sup>55</sup> Nevertheless, John of Freiburg reports that Ulrich was sent to Paris "to read." For a man of Ulrich's erudition, but lacking the licence in theology, this could mean nothing else than to read the *Sentences*, and so Ulrich most likely began his formal, written commentary on them only once he had reached Paris, however much he may have engaged with them in the course of his former career as lector at Strasbourg.<sup>56</sup> Since John's *Summa* is the only significant textual witness to the existence of Ulrich's commentary,<sup>57</sup> it was probably not widely read in the Dominican schools or in the *studia generalia*. If so, citations by other authors and a wider diffusion of manuscripts would indicate its popularity. John's use of the commentary is idiosyncratic. Hence, John most likely used Ulrich's *Sentences* commentary in his *Summa* because he had heard his lectures while he was at Paris and, quite possibly, received his literary remains once he passed away. Since this is an argument from silence, it should be received with a grain of salt, but in the absence of direct evidence, it may be the most we can reasonably assert about John's reception of Ulrich's commentary. Given John's idiosyncratic use of Ulrich's *Sentences* commentary, it is probable that he did, in fact, study at Paris around 1277, when Ulrich of Strasbourg lectured there briefly before his death. This adds a great

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55. Cf. p. 22 above. Fries, "Johannes von Freiburg," 335.

56. See pp. 23 ff. above.

57. Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 4:419-20.

deal of credibility to Walz's claim that John also studied under Jean de Varzy at around the same time.

Further bits of circumstantial evidence also urge us to think that John studied at Paris. First, there is the notice in the *Catalogus mortuorum* of the Freiburg Dominican convent that John "renewed the library of the convent."<sup>58</sup> He might well have done so with books that he brought back from Paris. John's extensive, verbatim use of diverse theological and legal sources in the *Summa confessorum* suggests that he had many of the books he cites on hand in Freiburg, where he wrote the work. As my edition of his questions on the usury ban shows, John certainly had copies of Gratian's *Decretum* and the *Decretals* of Gregory IX, together with their glosses. He also possessed copies of Hostiensis' *Summa copiosa*, his *Apparatus* to the *Decretals*, Gottofredo da Trani's *Summa super titulis decretalium*, Innocent IV's *Apparatus* to the *Decretals*, and, of course, Raymond of Penyafort's *Summa de poenitentia et matrimonio*, together with the *Apparatus* of William of Rennes to it. In terms of theological sources, the section of the *Summa* on usury shows that John possessed a copy of the *secunda secundae* of Thomas Aquinas' *Summa Theologiae*.<sup>59</sup> Fr. Boyle has also drawn attention to John's extensive use of the writings of Peter of Tarentaise in other sections of the *Summa confessorum*.<sup>60</sup> What is significant about this list of sources is that, according to a price list generated between 1275 and 1286, exemplars of all of these volumes could be conveniently rented for copying from the booksellers of Paris. This list was written right around the time John is thought to have been in Paris. If John did rent and copy the volumes at Paris with which he renewed the library at Freiburg, he must have spent a fair sum on this library,

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58. "Instauravit bibliothecam conventus." Poinson, "Catalogus mortuorum," 42.

59. One wishes that an extensive critical reading of the entirety of the *Summa confessorum* were possible, since this would no doubt shed more light on the precise extent of John's library at Freiburg. Unfortunately, the imposing heft of the volume (an "ingens volumen" according to Leander Alberti, see n. 5 on p. 12) prevents such an endeavour within the space of a single book. It is hoped that, should the author's plans for an edition of the entirety of the *Summa confessorum* come to fruition, this issue will be resolved definitively.

60. Boyle, "The 'Summa Confessorum' of John of Freiburg," passim. John's sources in the *Summa confessorum* will be discussed in the next chapter. See pp. 65 ff.

since an exemplar of the *Apparatus* of Hostiensis alone cost 30 *solidi*, and the total cost of obtaining only the books mentioned above amounts to over 79 *solidi*.<sup>61</sup> When we consider that a *quartale* of rye, equivalent to the volume of 200 eggs,<sup>62</sup> in Colmar, approximately 50 km northwest of Freiburg, cost 3 *solidi* in 1278, and that vinedressers working in Basel, approximately 70 km southwest of Freiburg, earned one *solidus* in the currency of Basel, an idea of the relative size of the expense can be formed.<sup>63</sup>

John's extensive use of Hostiensis' *Apparatus*, evident from his treatment of usury in the *Summa confessorum*,<sup>64</sup> may also provide evidence that he spent time studying in Paris. Gabriel Le Bras notes that, unlike the *Summa aurea*, the *Apparatus* – which Hostiensis composed for his students in the Faculty of Decrees at Paris and completed between 8 June 1270 and 30 April 1271, shortly before John is thought to have been in Paris – did not have a large manuscript diffusion due to its daunting size.<sup>65</sup> John's possession and early use of the work may therefore indicate that he obtained it, along with the other works mentioned above, from the place where it was most convenient to obtain copies: Paris, where the *Apparatus* was produced and could easily be obtained

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61. Here is the list of individual prices for the exemplars of the texts: "Summa fratris Remundi, cum Apparatu," 3 *sol*; "Summa fratris Thome de Aquino super theologiam . . . secunda secundae," 4 *sol*; "Super textum Sententiarum" of Peter of Tarentaise, 84 *denarii* for all four parts; Gratian's *Decretum*, 5 *sol*; *Apparatus* to the *Decretum* 6 *sol*; *Decretals* of Gregory IX, 4 *sol*; *Apparatus* to the *Decretals*, 5 *sol*; "Summa Goffredi," 2 *sol*; *Apparatus* of Innocent IV, 10 *sol*; "Copiosa," i.e., *Summa aurea* of Hostiensis, 10 *sol*; *Apparatus* of Hostiensis to the *Decretals*, 30 *sol*. See H. Denifle and E. Chatelain, eds., *Chartularium Universitatis Parisiensis*, vol. 1 (Paris: Delalain Bros., 1889), 644-50, no. 530.

62. "In Columbaria 50 ova faciunt bicarium vel replent; bicaria 4 faciunt quartale; quartalia 9 faciunt omam; ame 21 faciunt carratam; carrata vini est vas vini, quod trahunt sex equi, vel quatuor fortes." Ph. Jaffé, ed., "Annales Colmarienses maiores," in *Monumenta Germaniae Historica*, ed. G. H. Pertz, *Scriptores* 17 (Leipzig: Karl W. Hiersemann, 1925), 222.

63. Ibid., 202, 215. It seems that the vinedresser's pay was given for a day's work, but the text does not permit a more specific conclusion: "solidus denariorum Basiliensis datus fuerat in vineis rustico laboranti." The comparison given here must be considered in light of the fact that the degree of equivalence between the money of Colmar and Basel, on the one hand, and the money of Paris, on the other, has not been taken into account. Given that Paris was located near the famed commercial fairs of Champagne, it is likely that its currency was more valuable than those of the Rhineland.

64. See SC 2.7.18, 32, 40, 49, 52, 54, 55.

65. Gabriel Le Bras, "La faculté de droit au moyen age," in *Aspects de l'Université de Paris* (Paris: Éditions Albin Michel, 1949), 95-96.

from the booksellers.<sup>66</sup> Hence, it is possible that it was with the store of books that he had amassed at Paris that John renovated the Freiburg convent's library collection.

Secondly, Walz suggests that John's extensive use of Thomas Aquinas' *Summa theologiae* in the *Summa confessorum*, which is also supported by the section on usury,<sup>67</sup> possibly reflected a desire on John's part to popularize and preserve the intellectual legacy of a teacher whom he had known personally at Paris.<sup>68</sup> Fr. Boyle has perhaps shown best the extent to which John's *Summa* served as a vehicle for the diffusion of the Angelic Doctor's teachings, and so Walz's conjecture may not be amiss.<sup>69</sup> If John did know Aquinas personally, then he must have already been at Paris at some time during the master's second regency, from 1269 to 1272.<sup>70</sup> Since we have good reason to believe that John was still in Paris around 1277, when he may have heard Jean de Varzy and Ulrich of Strasbourg's lectures, he likely studied with Aquinas towards the end of the latter's second regency. Here, then, we have another probable indication that John did, in fact, study at Paris.

Finally, there is literary evidence that strongly suggests that John studied at Paris and may have even become a master of theology. A manuscript from the year 1391, held in Zurich, contains a brief story entitled "The Twelve Masters of the Paris School" ("Die zwölf Meister der Pariser Schule"). This story is an imaginary account of a reunion of 12 former masters of theology of the University of Paris, during which each master speaks a useful religious truth. Aside from Albert the Great and Meister Eckhart, the remaining masters are anonymous. The sixth anonymous master describes how God rewards the soul rising up to him in prayer with the uncreated Good.<sup>71</sup> However, another section of

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66. John's use of Hostiensis' *Apparatus* may also reveal the source of his legal learning. See below, p. 38.

67. See SC 2.7.2-6, 16, 22, 32, 38, 43, 44, 61, 65, 77.

68. Walz, "Hat Johann von Freiburg in Paris studiert?," 249.

69. Boyle, "The 'Summa Confessorum' of John of Freiburg," 266-68.

70. For a brief overview of Aquinas' teaching career, see *New Catholic Encyclopedia*, 2nd ed., s. v. "Thomas Aquinas, St.," by W. A. Wallace, J. A. Weisheipl, and M. F. Johnson.

71. I provide the text of the account here so that the reader can compare it with the text of the second

the same manuscript demonstrates that the saying of this sixth anonymous master is actually drawn from a vernacular sermon of “Bruder Johann von Hasla,” which the compiler of “The Twelve Masters of the Paris School” abbreviated.<sup>72</sup> Wilhelm Preger, in his history of German mysticism, concludes that without a doubt the “Johann von Hasla” mentioned in this sermon is identical with John of Haslach, the lector of the Freiburg Dominican convent and author of the *Summa confessorum*.<sup>73</sup> Since we know that both Albert and Meister Eckhart studied at Paris, the compiler of the anonymous account might not have haphazardly inserted an abbreviated version of a sermon of John of Haslach among their sayings. Rather, considering it the advice of a fellow onetime student at Paris, he might have thought it fitting to insert John’s sermon alongside the sayings of the other Parisian masters.<sup>74</sup> Since this is a literary source, the possibility of poetic invention cannot be discounted. On its own, it provides no compelling evidence

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account given in the next note: “Der vj meister sprach ‘Da ein Mensche were das mit andaht vnd mit inrkeit ein pater noster spreche, der mensch möchte sprechen ‘Herre, behalt mir dis pater noster vntz an die iungsten zit das ich sin das ich sin bedarf.’ Vnd weri der Mensche künig vnd keiser vf ertrich gewesen, er möht an siner iungsten zit zuo unsrem herren ‘Herre, muessige dich: Ich han enwenig mit dir ze sprechenne. Ich gab dir an enr welt ein pater noster: das hast du mir vnvergulten. Du geb mir, herre, niut wan das du geschaffen hattest: da mit hast du mir vnvergulten din schuld.’ Also edel ist das andehtig pater noster.” See Wilhelm Wackernagel, “Die zwölf Meister zu Paris,” *Zeitschrift für deutsches Alterthum* 4 (1844): 496-98.

72. The text begins, “A preacher, named John of Hasla, preached of the nobility of prayer, and said . . .”. Here is the text in the original Middle High German: “Ein predier, heisset Johans von hasla, der prediet von der edelkeit des gebettes, vnd sprach: Sprech ein mensch zünserm herren ‘Herre, ich wil das du mir elliu minen guoten werk zehufen legest vnd das du mir siu gehaltenest in das ewig leben. Nv bin ich arn vnd wil dir das ze kouffenne geben, das du mir zerganklich guot dar vmb gebest, das ich mir selben min notturst da mit bessere.’ Vnd gebi got dem menschen alles das guot von ertrich, künkrich vnd keifertuom; Das mensch möht das niessen vntz an den iungsten tag nach alles sins herzen wille: Noch denne hetti got dem menschen sin pater noster als vnvergulten, das er an dem iungsten tag billich ze got sprechen solt, ‘Herre, vermuessege dich mit der welt: ich han ouch mit dir ze rehnend. Ich gab dir an ienr welt ein pater noster ze kouffenne: das hast du mir wenig vergulten. Du weist wol da3 ich enphangen han wan der ding die du geschaffen hast: das weistu wol das mir da mit min pater noster niht vergulten mag werden: gib mir, herre, dich selber, vnd gilt din schuld.” See Wilhelm Wackernagel, *Altdeutsches Lesebuch*, 2nd ed. (Basel: Druck und Verlag der Schweighauserischen Buchhandlung, 1847), 892. Wackernagel notes the connection between the two texts, both of which he edited, in a note to his edition of “Die zwölf Meister zu Paris.” See Wackernagel, “Die zwölf Meister zu Paris,” 498.

Wilhelm Preger provides a translation of the conclusion of the sermon into Modern German, from which I here provide an English translation: “Lord, halt with the world; I must also reckon with you. I gave you in that world a *Pater Noster* to buy, which you have repaid me for but little. You know well, that I have received the things that you created; this you know well, that thereby my *Pater Noster* cannot be repaid to me: give me, Lord, your very self and repay your debt.” Cf. Wilhelm Preger, *Geschichte der deutschen Mystik im Mittelalter*, 2 vols. (Leipzig: Dörffling und Franke, 1881), 134.

73. Ibid., 2:132-34.

74. For a brief overview of Meister Eckhart’s life, see *New Catholic Encyclopedia*, 2nd ed., s. v. “Eckhart, Meister,” by F. Vandenbroucke.

that John studied at Paris or that he ever attained the rank of master.<sup>75</sup> However, taken together with the less ambiguous evidence that John studied under Jean de Varzy and the possibility that he studied under Ulrich of Strasbourg and Thomas Aquinas at Paris, and given his impressive library of theological and legal sources at Freiburg, we have a substantial amount of circumstantial evidence that John did study for a time in Paris. How far he progressed in his studies, is, unfortunately, impossible to determine, since in this regard we lack both concrete and circumstantial evidence.<sup>76</sup> Given the quantity of sources that John cites and the great erudition that he displays in the *Summa confessorum*, it is very likely that he studied at Paris for a considerable period of time – at the very least the four years of theological studies required of a conventual lector.<sup>77</sup>

Since Fries rejects the possibility that John studied under Ulrich at Paris, he concludes that John must have been his student while Ulrich served as lector in the Strasbourg Dominican convent.<sup>78</sup> Fries' conclusion is highly plausible, since, apart from Ulrich's *Sentences* commentary, John makes use of his unpublished lectures and personal counsel in the *Summa*. This suggests an intimate, personal relationship between scholars that must have been the fruit of a prolonged period of study together, which could not have developed in the brief time that Ulrich was at Paris. However, since John likely gained access to Ulrich's *Sentences* commentary at Paris, where he resided at around the

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75. It is worth noting that in the prologue to the *Summa*, John never refers to himself as *magister*, but only *frater*. See John of Freiburg, *Summa confessorum*, v-vi.. Whether this is evidence that he never acquired the doctoral license or a testament to his humility unfortunately cannot be determined. However, the possibility that John attained the rank of master is suggested by a letter of the vicar of the provincial prior to him in 1294 confirming his election as prior of the convent. In the introduction, the vicar speaks generally of the benevolent activity of God, "qui de gradu doctorum pastores ordinat," in guiding the activities of the friars. Whether the vicar intended this as a reference to John's own status as a master lies open to interpretation. See Friedrich Hefele, ed., *Freiburger Urkundenbuch*, vol. 2, *Texte* (Freiburg im Breisgau: Kommissionsverlag der Fr. Wagnerschen Universitätsbuchhandlung, 1951), 168, no. 149; Finke, *Ungedruckte Dominikanerbriefe*, 165, no. 158.

76. The ancient bibliographers Alva and Jacques Tomasini note that a commentary on the *Sentences* by John of Freiburg existed in several libraries in Italy. However, the manuscripts of this commentary have not been found, and so we cannot be certain that it should rightly be attributed to John of Freiburg. If John did write a commentary on the *Sentences*, then we would have even more reason to believe that he attained the rank of master of theology, since this commentary was a prerequisite to attaining the honour. See n. 3 on p. 55.

77. See n. 51 on p. 25.

78. Fries, "Johannes von Freiburg," 335.

same time as Ulrich, one need not choose between Strasbourg and Paris as the locations where John studied under Ulrich. Rather, John could have first studied under Ulrich at Strasbourg, where he formed a close relationship with his teacher, and then later, when they were both in Paris, sought his instruction once again. Hence, the available evidence strongly suggests that John studied in Strasbourg and in Paris, where he heard the lectures of Jean de Varzy and Ulrich of Strasbourg, and possibly also those of Thomas Aquinas.

John must have been Ulrich's student in Strasbourg before 1272, when Ulrich was elected to the provincialate of Germany. As noted above, Ulrich was Albertus Magnus' student in Cologne at some time from 1248 to 1254, and therefore Ulrich could not have become the lector of the Strasbourg convent until after 1254.<sup>79</sup> Hence, John could only have studied with Ulrich at some time from 1254 to 1272. This eighteen year gap can be narrowed somewhat, according to Fries, if a certain John of Freiburg, who accompanied Albertus Magnus in 1268 as an advisor in matters of canon law on a papal mission to Mecklenberg to settle a dispute between the Hospitallers and their Slavic enemies, is identical with the author of the *Summa confessorum*. If this is the case, then in order to be of use to Albert in this matter John must have completed his foundational studies with Ulrich before 1268.<sup>80</sup>

Following Senensis' observation in his *Bibliotheca ordinis fratris praedicatorum* that John of Freiburg was very well educated in secular philosophy, like Albertus Magnus, Poinsignon suggests that John might have been Albert's student.<sup>81</sup> Although the possibility that John attended Albert as an advisor on a trip to Mecklenberg may suggest a close link between the two, there is no scrap of solid evidence to support Poinsignon's

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79. See p. 25 above.

80. Ibid., 336. For Albert's trip to Mecklenberg, attended by a certain John of Freiburg, see H. Ch. Scheeben, *Albert der Grosse: Zur Chronologie seines Lebens* (Leipzig, 1931), 85, 90. Walz also identifies the author of the *Summa confessorum* with the John of Freiburg mentioned in connection with Albert's trip to Mecklenberg. See Walz, "Hat Johann von Freiburg in Paris studiert?," 246. For my criticism of the possibility that John of Haslach accompanied Albert the Great to Mecklenberg see p. 42.

81. Poinsignon, "Das Dominicaner- oder Prediger-kloster," 11.

hypothesis. Rather, John's mastery of secular philosophy, which approximated Albert's, can be more readily explained by his studies under Ulrich of Strasbourg, who, we know, studied philosophy under Albert in Cologne. Albert's influence on John's education was likely mediated through the instruction of Ulrich at the *studium* in Strasbourg.

The sources of John's theological education have been traced rather securely to Strasbourg and Paris, but the source of his profound legal learning, evident from even a cursory glance at the *Summa*, is a complex problem, whose solution is the more difficult due to a lack of any direct evidence for his legal studies. The problem merits careful, historically informed conjecture, however, since the history Dominican legal studies has received little attention to date. Dr. Mulchahey, in her history of Dominican education, asserts that the friars learned their canon law, together with moral theology, in *collationes de moralibus*. These meetings were one way that the master of students could make use of the one or two mandatory weekly educational gatherings (*collationes*) of the friars at their convents. During these *collationes de moralibus*, students met and discussed the moral significance of passages from the Gospels, the Pauline Epistles, and canon law. Raymond of Penyafort's *Summa de poenitentia et matrimonio* and William Peraldus' *Summa de vitiis et virtutibus* (before 1250) were the primary resources for the discussion of law.<sup>82</sup> William Hinnebusch also points out that the 1259 *ratio studiorum* of the Order – a comprehensive educational curriculum whose authors included Albert the Great, Aquinas (d. 1274), and Peter of Tarentaise (d. 1276) – urges that in priories where there are no qualified professors to deliver formal theological lectures, friars should be appointed to lecture on Raymond's *Summa de poenitentia* or on Peter Comestor's *Historia scholastica* (1169 x 1173).<sup>83</sup> Apart from this, Hinnebusch concludes, "most

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82. Mulchahey, *Dominican Education*, 196-98.

83. Hinnebusch, *Intellectual and Cultural Life to 1500*, 251. On the 1259 *ratio studiorum*, see Boyle, "The 'Summa Confessorum' of John of Freiburg," 252; Leonard E. Boyle, "Notes on the Education of the Fratres Communes in the Dominican Order in the Thirteenth Century," in *Pastoral Care, Clerical Education and Canon Law, 1200-1400* (London: Variorum, 1981), 256.

friars probably learned their canon law through the study and use of confessional manuals.”<sup>84</sup> Among these, Raymond’s *Summa* was the standard reference work.<sup>85</sup>

The program of irregular and desultory instruction in canon law described above is not adequate to explain the level of legal learning that John of Freiburg possessed. His use of Gratian’s *Decretum*, the *Liber Extra*, and Roman law could certainly be explained by his use of Raymond’s *Summa* together with the extensive glosses of his fellow friar William of Rennes (1234 x 1254),<sup>86</sup> but this cannot explain his deeper knowledge of canon law, which he exhibits through his use of the *Ordinary Glosses* of Bartholomew of Brescia and Bernard of Parma to the *Decretum* and the *Liber Extra* respectively, since John adduces these works independently of Raymond or William.<sup>87</sup> Nor can it explain John’s extensive use of the jurisprudence of Gottofredo da Trani, Innocent IV, and Hostiensis.<sup>88</sup> Nor, finally, can it explain John’s use of the recently published decrees of the Second Council of Lyons (1274), prior to their inclusion in the *Liber Sextus* (1298).<sup>89</sup> We must, therefore, either assume that John was one of the most prodigious autodidacts in the Late Middle Ages or infer that he must have received advanced legal training somewhere. Given the esoteric nature of law and the complexities of legal interpretation, it is more sensible to conclude the latter.<sup>90</sup>

A tempting morsel of evidence concerning John of Freiburg’s life suggests a possible location for these legal studies. John’s entry in the *Catalogus mortuorum* of the

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84. Hinnebusch, *Intellectual and Cultural Life to 1500*, 247.

85. Humber of Romans, in his *Instructiones de officiis*, advises all priories to possess copies of Raymond’s *Summa* in their libraries for the convenient consultation of the friars. Ibid., 251.

86. For the date of Rennes’ gloss, see Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 500.

87. For John’s use of the *Ordinary Gloss* to the *Decretum*, see SC 2.7.16, 22, 38, 41. For his use of the *Ordinary Gloss* to the *Liber Extra*, see SC 2.7.1, 4, 25, 52, 54, 76.

88. In the 83 questions on usury in the *Summa confessorum*, John cites Innocent IV’s *Apparatus* 6 times, Gottofredo da Trani’s *Summa* 20 times, and Hostiensis’ *Summa aurea* and *Apparatus* 43 times. See tables 5-8 in Appendix I.

89. For John’s use of II Lyons, see SC 2.7.71, 72, 83.

90. Mulchahey’s observation that John “was trained as a theologian, not as a lawyer,” is thus somewhat dismissive regarding this aspect of his biography. Mulchahey, *Dominican Education*, 544.

Freiburg convent notes that he was “a trumpet of the Gospel not only in Germany, but also in Italy.”<sup>91</sup> Henry Wharton, moreover, in his supplement to Cave’s history of ecclesiastical writers, says of John that he was “so powerful in his sermons, that one time, when he was inveighing against usury in Bologna, there was a riot, and they cast the usurers out from the city.”<sup>92</sup> From a letter of the German provincial Wolfram, written before 1270, to his friars studying in Bologna, we also know that it was not unprecedented for German Dominicans to study there.<sup>93</sup> These pieces of evidence and John’s manifest expertise in canon law suggest that he may have studied at the most renowned institution for the study of law in the Middle Ages: the University of Bologna.

Despite this tantalizing evidence, the possibility that John studied at Bologna should be rejected. The reliability of the *Catalogus mortuorum* concerning the events of John’s life cannot be considered sacrosanct, since it exists only in a revised copy from 1777, which was made by a scribe whose Latin Poinson, the editor of the catalogue, describes as “shaky” and whose knowledge of Church history he characterizes as superficial.<sup>94</sup> Even if what the catalogue relates is true, this would only indicate that John preached in Italy, not that he studied in Bologna. As for Wharton’s tradition concerning John’s preaching in Bologna, it should be accepted with a grain of salt, since in his entry on John of Freiburg, Wharton conflates him with another John Teutonicus: John of Wildeshausen, the fourth master general of the Order of Preachers. It was he who became the bishop of Diocovari in Croatia, not John of Freiburg, as Wharton writes.<sup>95</sup>

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91. See n. 7 on p. 12 for the full text of the entry.

92. “In concionibus adeo potens, ut dum semel ad Bononiam in usuram inveheretur, vices tumultu facto usurarios urbe ejicerent.” Cave and Wharton, *Scriptorum ecclesiasticorum historia*, Appendix, 7.

93. Hinnebusch, *Intellectual and Cultural Life to 1500*, 246. The text of the letter is printed in Finke, *Ungedruckte Dominikanerbriefe*, 71, no. 33.

94. Poinson, “Catalogus mortuorum,” 41, n. 1.

95. “Joannes Friburgensis . . . tandem Episcopus Ossunensis in Hungaria.” Cave and Wharton, *Scriptorum ecclesiasticorum historia*, Appendix, 7. It is possible that Wharton simply reproduced the error of John Trithemius, who much earlier had conflated the fourth master general with the author of the *Summa confessorum*. See Johannes Trithemius, *Catalogus scriptorum ecclesiasticorum sive illustrium virorum, cum appendice eorum qui nostro etiam seculo doctissimi claruere* (Cologne: Petrus Quentell, 1531), 84v.

Given Wharton's confusion, we cannot rule out the possibility that the tradition concerning John's preaching in Bologna really belongs to John of Wildeshausen, for whom we have evidence of studies in Bologna.<sup>96</sup>

Paris, therefore, where there is good evidence that John studied theology, remains a viable candidate for the location of John's legal studies. However, before adducing the evidence in favour of this possibility, the consensus standing against it must briefly be summarized. Hinnebusch notes in summary fashion that the Order of Preachers desired for its friars to "study law only to the extent required for their ministry."<sup>97</sup> Although one might say the same thing about the Order's pursuit of theology, which it raised to the highest levels,<sup>98</sup> Hinnebusch intended this remark as an explanation for the lack of academically trained lawyers among the friars. He goes on to note that the study of Roman civil law was a pre-requisite to the study of canon law in Paris,<sup>99</sup> and on this account the friars were doubly prevented from pursuing degrees in canon law. Both the canon law itself and the constitutions of the Order forbade friars to study Roman law.<sup>100</sup> Although as early as 1163 Alexander III had decreed at the Council of Tours that no one who had taken a vow of religion could go out of their cloister to study medicine or civil law,<sup>101</sup> it was Honorius III's renewal of this decree in his own *Super specula* (16 Nov. 1219) that firmly established the prohibition, which threatened excommunication for

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96. See n. 4 on p. 12 above.

97. Hinnebusch, *Intellectual and Cultural Life to 1500*, 245.

98. On the Order's constant emphasis on the practical orientation of even the most refined theological studies, see Mulchahey, *Dominican Education*, 130.

99. The requirement, however, does not imply that civil law was regularly taught at Paris, since Honorius III, and later Innocent IV, had forbidden its teaching there in an effort to promote theological studies. See Denifle and Chatelain, *Chartularium Universitatis Parisiensis*, vol. 1, 91-92, no. 32, 261-62, no. 235. As a rule, students had to have completed their training in civil law elsewhere before matriculating in the Faculty of Decrees at Paris. For an overview of the status of civil law at Paris, see James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (Chicago: University of Chicago Press, 2008), 231-33.

100. Hinnebusch, *Intellectual and Cultural Life to 1500*, 245. See also G. Péries, *La faculté de droit dans l'ancienne Université de Paris (1160-1793)* (Paris: L. Larose et Forcel, 1890), 18.

101. "Statuimus, ut nulli omnino post votum religionis et post factam in aliquo loco religioso professionem ad physicam legesve mundanas legendas permittantur exire." Denifle and Chatelain, *Chartularium Universitatis Parisiensis*, vol. 1, 3, no. 1. This decree was incorporated into the *Decretals* of Gregory IX. See X 3.50.3.

religious who violated it.<sup>102</sup> Innocent IV, in his own renewal of the prohibition (*Super specula*, 12 Oct. 1253 x 27 April 1254), extended the ban on the academic study of civil law to all clerics.<sup>103</sup> In light of the pre-requisite of studies in civil law, it seems impossible that John, or any other religious for that matter, could have studied canon law at Paris. Indeed, in the *Summa confessorum* John himself notes that when monks, regular canons, and other clerics hear lectures in civil law or medicine, they incur the sentence of major excommunication.<sup>104</sup>

In spite of all the evidence to the contrary noted above, there are good reasons for thinking that John did study canon law at Paris. I have already noted how his use of Hostiensis' *Apparatus* ties him to the Paris academic scene,<sup>105</sup> and it is not too much of a stretch to infer that it ties him more directly to the Faculty of Decrees at the University, since it is hard to imagine how John could have come across the *Apparatus* in the course of his theological studies. John's use of the decrees of the Second Council of Lyons in

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102. "Quia tamen regulares quidam claustrale silentium et legem Domini animas convertentem et sapientiam dantem parvulis, quam super aurum et topation amare debuerant, respuentes, abeunt post vestigia gregum et illicite se convertunt ad pedissequas amplectendas, que plausum desiderant populorum, contra huiusmodi presumptores, exeuntes ad audiendum leges vel physicam, felicitis memorie A. predecessor noster olim statuit in Concilio Turonensi, 'ut nisi infra duorum mensium spatium ad claustrum redierint, sicut excommunicati ab omnibus evitentur et in nulla causa, si patrocinium prestare voluerint, audiantur.'" Ibid., 91-92, no. 32.

103. Ibid., 261-62, no. 235.

104. The ban against the study of civil law by clerics is the thirteenth case of major excommunication that John examines in the *Summa* (3.33.38). I quote here from Troyes, Bib. mun., MS 1492, fols. 309rb-309vb: "Tertius decimus est cum monachi, canonici regulares, archidiaconi, decani, prepositi, plebani, cantores, et alii clerici personatus habentes, necnon et presbyteri leges vel physicam audiunt, nisi infra spacium duorum mensium destiterint, Extra. ne clerici vel monachi, Non magnopere <X 3.50.3>, Super specula <X 3.50.10>. Hostiensis, in glossa super c. Super specula, dicit regulares ipso facto, id est, quando leges vel physicam audire incipiunt, esse excommunicatos, sed alios premissos, scilicet, seculares, post duos menses si non desistunt. Et addit quod absolvi possunt a suo episcopo dyocesano vel sub quo student. Innocentius autem in glossa ibidem et Gaufredus dicunt idem, scilicet, quoad duos menses de religiosis et de secularibus. Dicit glossa Willelmi hic et supra, eodem libro, tit. V, De prudencia ordinandi, super ver. Personatus, quod sub nomine plebanorum non continentur habentes simplicem curam animarum in parrochialibus ecclesiis, nec tales subiacent huic pene si leges audierunt vel physicam, nisi sint sacerdotes. Licet Bernardus notaverit contrarium, in glossa super c. Super specula: Plebani autem non habent simplicem curam animarum in ecclesiis parrochialibus, sed habent iurisdictionem in clericos ecclesiarum suarum et in parrochianos. Hec in glossa. Sed secundum Innocentium, in glossa ibidem, et Bernardus, et Hostiensis, omnes habentes curam animarum huic pene subiacent. Idem eciam, secundum Hostiensem, in glossa ibidem, si aliquis sit vicarius perpetuus, secus si temporalis. Alii personatus habentes sunt, ut dicit Hostiensis, in *Summa*, lib. III, Rubrica ult., §. ult., sicut primitivus, thesaurarius, castellarius, precentor et succentor, magister scholarum, custos, sacrista, archipresbyter. Et idem intelligas de aliis personatibus qui secundum diversas ecclesiarum consuetudines personatus habent."

105. See p. 29 above.

the *Summa confessorum* also speaks in favour of studies in the Faculty of Decrees at Paris.<sup>106</sup> In a bull of 1 Nov. 1274, Gregory X instructed the professors in the Faculty of Decrees at Paris to insert the council's decrees in their lectures under the appropriate titles.<sup>107</sup> This decree was published only a few years before John is thought to have been in Paris (ca. 1277). Hence, John's use of the council's decrees in the *Summa confessorum* quite probably reflects lectures that he heard in the Faculty of Decrees at Paris.

The possibility that John studied canon law at Paris can be reconciled with the ban on the study of civil law by religious and clerics if we look more closely into the pre-requisite of studies in Roman law in the Faculty of Decrees at Paris. As Marcel Fournier, one of the foremost authorities on legal studies at Paris, notes, the statute that prescribed this pre-requisite cannot be dated precisely.<sup>108</sup> The earliest recorded evidence of the requirement that no one be admitted to the Faculty of Decrees unless he had previously studied civil law for three years is a bull of Benedict XII of 20 June 1336.<sup>109</sup> Thus, the requirement may not have existed at the time John is thought to have been in Paris. Even if the requirement were in place earlier, it could have been dispensed with, as is evident from another bull of Benedict XII (23 Aug. 1336), in which he authorizes Bernard de la Tour to read the decretals at Paris even though Bernard had not studied civil law for three years.<sup>110</sup> Consequently, the pre-requisite of civil law studies no longer appears as so iron-clad an obstacle to John's legal studies at Paris.

We also have evidence from a later date that religious studied in the Faculty of Decrees at Paris, and that some students pursued canon law and another academic subject

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106. See n. 89 on p. 35 above for John's use of II Lyons (1274).

107. "Cum nuper in generali Concilio Lugdunensi et post quasdam constitutiones super certis articulis duxerimus promulgandas, universitati vestre per apostolica scripta mandamus quatinus eis, quas sub bulla nostra vobis transmittimus, uti velitis amodo tam in judiciis quam in scolis ipsas sub suis titulis, prout super eis exprimitur, inseri facientes." Ibid., 514, no. 449.

108. Marcel Fournier, ed., *La faculté de décret de l'Université de Paris au XVe siècle*, vol. 1, pt. 2 (Paris: Imprimerie Nationale, 1895), 14, no. 16, n. 1.

109. Ibid., 12-14, no. 15.

110. Ibid., 14, no. 16.

simultaneously, as I am arguing John did. In the most ancient statutes of the Faculty of Decrees, published on 12 Oct. 1340, the regulations for the dress code of students indicate that religious were in attendance at lectures on canon law. The statutes prescribe that religious “will have for their outer vestments a frock, or a cowl, or other habit, according to their religious state.”<sup>111</sup> In the statutes of 1370, the Faculty of Decrees even made explicit provision for religious students’ lack of the preparatory course in civil law: religious and others hindered from the study of civil law could only be admitted to the Faculty if they had already pursued a much longer course of preparatory study in canon law.<sup>112</sup> Finally, as a means of assisting overburdened pupils with their studies, the statutes of 1340 prescribed that students pursuing both canon law and another subject would have the time spent in lectures in each faculty reckoned as fulfilling their obligations within both.<sup>113</sup> Hence, students at Paris not only pursued canon law and another subject at the same time, but this was a practice that the Faculty of Decrees itself wished to foster.

Although we are treading on the dangerous territory of drawing inferences about the past from later practices, it is nevertheless possible that John’s status as a religious and as a cleric did not bar the way as decisively to the study of law when he was at Paris as has commonly been assumed. It is also possible that, earlier on, students at Paris were engaging in the same combination of academic specializations as those in the fourteenth century. A combination of the fruits of theology with the fruits of the study of canon law would be most beneficial in increasing the standard of pastoral care within the Order, which was one of its central concerns. Thus it may be that John was sent to Paris

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111. “Itemque, portabunt vestes, presertim superiores, honestas et decentes; religiosi vero pro vestibus superioribus habebunt flocum aut cuculam, vel alium habitum, secundum statum sue religionis.” Ibid., 15, no. 17.

112. “Statuimus et ordinamus, quod religiosi et alii seculares, impediti in legibus audiendis, qui per predictum tempus hujusmodi leges non audierint, non admittantur ad lecturam juris canonici, nisi in studio generali jura canonica audierint in sex annis per quadraginta octo menses completos et *Decretum* ordinarie vel extraordinarie a doctore per triginta menses completos, et tantumdem, scilicet per triginta menses, de mane; nec ad licentiam admittantur, nisi in quinque annis per quadraginta menses completos legerint jura canonica, ut premititur, in studio generali.” Ibid., 20-22, no. 25.

113. “Item, volumus quod, si cum auditione canonum auditio alterius scientie concurrat, ut utraque auditio computetur; quin ymmo, illum qui sic canones et aliam scientiam simul audiverit, juvari volumus, et tempus sibi computari in altera earum facultatum quam prius elegerit dumtaxat.” Ibid., 16, no. 17.

precisely to engage in this activity, whose product was his own creative fusion of law and theology in the *Summa confessorum*. Since it is very likely that John was at Paris studying theology, at the very least we cannot gainsay the possibility that, if he was not formally a student of canon law in the Faculty of Decrees, he must have crossed to the Clos Brunel regularly to sit in on the lectures of the law professors.<sup>114</sup> It is from his time spent there that John laid the foundation for the extensive legal learning that he would later display in the *Summa confessorum*.<sup>115</sup>

Since in attempting to pin down the precise trajectory of John of Freiburg's education I have had to weigh many diverse possibilities, a summary of what seems to me the most likely course of his studies is in order. John of Freiburg studied under Ulrich of Strasbourg at the Strasbourg *studium* at some time between 1254 and 1272. He later studied in Paris, at some time around 1277, where he heard the lectures of Jean de Varzy and, once again, received instruction from his former teacher, Ulrich of Strasbourg. It is possible that he was also a student of Thomas Aquinas during his second Paris regency from 1269 to 1272. Finally, while he was at Paris, in tandem with his theological studies John heard lectures on canon law in the Faculty of Decrees, where he became intimately familiar with Gratian's *Decretum* and the *Decretals* of Gregory IX, along with the significant body of commentary on these sources.

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114. Some general remarks of James Brundage, the eminent historian of canon law, support this supposition. He notes that Dominicans and Franciscans were generally "less rigid" than other orders about sending students for legal studies. He also remarks that "a minority of students from religious orders seem to have studied canon law." Brundage, *The Medieval Origins of the Legal Profession*, 279-80. Although it is very likely that John studied canon law, his knowledge of Roman law, in light of the ban on its study among religious, was probably derivative. For an indication of this, see my commentary on SC 2.7.14 on pp. 74 ff. According to Stintzing, John likely learned his Roman law only through Hostiensis and Gottofredo da Trani's works. Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 511. Cf. Boyle, "The 'Summa Confessorum' of John of Freiburg," 253.

115. We cannot discount the possibility that John studied law at Bologna or another centre of law, such as Orléans, before joining the Dominicans, which would circumvent the entire question of his status as a religious hindering him from the study of law. However, since there is no positive evidence for this, as, on the contrary, there is for his presence at Paris, I do not place any confidence in this alternative explanation for the source of his legal learning. Moreover, as I shall show in Chapter Three, John appears to have been ignorant of Roman Law. If he had studied law prior to joining the Dominicans, there would have been no barrier to the study of this subject. The fact that he did not know Roman Law, on the contrary, speaks in favour of his having studied canon law as a religious, since religious were definitively barred from the study of Roman Law. See below, pp. 74 ff.

In the course of tracing John of Freiburg's education, we have already mentioned the possibility that he accompanied Albertus Magnus on a trip to Mecklenberg as a legal advisor in 1268.<sup>116</sup> However, since John was likely studying at Paris closer to 1277, where he obtained his legal expertise, it is improbable, given the elementary level of education in canon law provided by the Order's schools,<sup>117</sup> that he would have achieved a sufficient mastery of law within them prior to his sojourn in Paris to be of use to Albert as an advisor. This chronological reckoning is not sufficient to deny the possibility that John served Albert in Mecklenberg, but we also have to admit the possibility that Fries conflated another John of Freiburg with John of Haslach. This, as I noted above, is also likely the case with Wharton's report of John's preaching activity in Bologna.<sup>118</sup>

After completing his studies at Paris, John was appointed lector of the Freiburg Dominican convent.<sup>119</sup> The earliest clear reference to John as lector of the Freiburg convent comes from a document of 30 November 1294.<sup>120</sup> However, he may have occupied the office considerably earlier, since in the prologue to his *Libellus questionum casualium*, John designates himself as "lector de ordine predicatorum," writing for the benefit of his fellow friars.<sup>121</sup> Since John mentions Ulrich of Strasbourg's death in Paris

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116. See p. 33 above.

117. See p. 34 above.

118. See p. 36 above.

119. During John of Freiburg's lifetime, Dominican lectors were chiefly responsible for delivering daily lectures on the Bible and the *Sentences* of Peter Lombard to their fellow friars within the convent. For a detailed history of the lector's role in conventual education within the Order of Preachers, see Mulchahey, *Dominican Education*, 130-203.

120. "Johanni lectori domus Friburgensis ex parte domus sue." Hefele, *Freiburger Urkundenbuch*, vol. 2, *Texte*, 186-87, no. 165.

121. John of Freiburg, *Summa confessorum*, v.

in the prologue, the *Libellus* must have been written after 1277.<sup>122</sup> If we can reasonably assume that John completed his *Libellus* before he began his *Summa confessorum*, which incorporates and supersedes it, then it was likely finished before 1290, which is the earliest date after which John could have begun the *Summa*.<sup>123</sup> Although we can only be certain that John was serving as lector of the Freiburg convent towards the end of 1294, it is possible that he took up the post between 1277 and 1290, when he likely wrote his *Libellus*.<sup>124</sup>

Before taking up his post as lector at Freiburg, John may have served as lector at the Basel convent for a time. An anonymous chronicle of events in the Alsace region composed in the thirteenth century mentions a certain “Johannes, lector Basiliensis” of the Order of Preachers, who wrote a *Summa* on Raymond of Penyafort’s *Summa*.<sup>125</sup> This certainly fits the description of John of Freiburg, whose *Summa confessorum* followed Raymond’s *Summa* closely in terms of structure, albeit expanding upon it rather than condensing it as a *Summa* of a *Summa* might suggest. However, there is no additional evidence that places John in an official capacity in Basel, and so it is equally possible that the chronicler simply erred when he placed John in Basel rather than in Freiburg.

Of particular interest to our study of John of Freiburg’s treatment of the usury prohibition is his involvement, as lector of the Freiburg convent, in the Order’s attempts to save the Dominican convent at Zofingen, approximately 100 km south of Freiburg in

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122. For the dating of the *Libellus*, see Finke, “Freiburger Dominikaner,” 165-66. Teetaert dates the *Libellus* to after 1280, but gives no justification sufficient to gainsay Finke’s argument for a *terminus post quem* of 1277. See Teetaert, *La confession aux laïques*, 440.

123. See the dating of the *Summa confessorum* in the next chapter, p. 64.

124. According to Otto Geiger, Brother Berthold, the translator of the *Summa confessorum* into German, may have been one of John’s students. Geiger, “Bruder Berthold,” 13. The editors of Berthold’s German *Summa*, however, call into question Geiger’s identification of a certain “frater Bertholdus,” mentioned together with John of Freiburg in a document of 24 June 1304, with the author of the *Rechtssumme*, since they date the latter to the second half of the fourteenth century. Georg Steer et al., eds., *Die "Rechtssumme" Bruder Bertholds: Eine deutsche abecedarische Bearbeitung der "Summa Confessorum" des Johannes von Freiburg. Synoptische Edition der Fassungen B, A und C*, 4 vols., Text und Textgeschichte 11-14 (Tübingen: Max Niemeyer Verlag, 1987), 1:1-7, 12-13. On the document mentioned here, see p. 50 below. On Berthold’s *Rechtssumme*, see ch. 4, p. 124.

125. Ph. Jaffé, ed., “De rebus Alsaticis ineuntis saeculi XIII,” in *Monumenta Germaniae Historica*, ed. G. H. Pertz, *Scriptores* 17 (Leipzig: Karl W. Hiersemann, 1925), 233.

Switzerland.<sup>126</sup> The Zofingen friars' mismanagement of the business of their convent had led to its financial ruin. In June of 1286, the Zofingen preachers purchased land within and without the walls of Zofingen for a sum of 200 marks of silver from counts Ludwig and Markwart von Froburg and their sister Elizabeth. However, in lieu of making prompt payment, the friars agreed to take over the counts' obligations to their Jewish creditors, with whom the counts had racked up grave debts under a growing burden of usuries. Matters only worsened when the friars ran afoul of the canons of the cathedral chapter of St. Mauritius. The canons claimed that the presence and building projects of the friars threatened the local rights of their church, while the friars, for their part, criticized the canons' opulent way of life. Relations between the two parties rapidly disintegrated, and in 1288 the canons destroyed the friars' church. Some friars may have been forcibly expelled from Zofingen; nevertheless, with the loss of the church, the convent's membership dwindled.

After the loss of the church, the friars' creditors became anxious over the security of their loan, and so they demanded additional pledges from the friars' remaining properties in Zofingen. Under the new terms of the loan, the friars were required to maintain tenants at their expense at the properties pledged as security until they could make full repayment of the loan, a type of security known as *obstagium*.<sup>127</sup> The burden of hosting their creditors' tenants, Christians of Freiburg, was considerable. In February of 1289, Hermann von Minden, the provincial of the German province, wrote to the lector of the convent at Krems, vividly describing the intolerable conditions of the *obstagium* in a

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126. Unless otherwise signalled in the notes, for the context of the economic trials of the Zofingen convent I have relied on Finke, *Ungedruckte Dominikanerbriefe*, 32-35. A brief account of the Zofingen controversy can also be found in Hinnebusch, *Intellectual and Cultural Life to 1500*, 207.

127. On the *obstagium*, see Charles Du Fresne, *Glossarium mediae et infimae latinitatis* (Paris: Librairie des sciences et des arts, 1937), s. v. "obstagium."; Rudolf Hübner, *A History of Germanic Private Law*, trans. Francis S. Philbrick, The Continental Legal History Series 4 (Boston: Little, Brown, and Co., 1918), 482-83. Hermann von Minden, in a letter of 1289 to the prior and lector at the Basel convent decries the injustice of the Jews' demand for additional securities, since their additional stipulations anticipated the end of the original term of the loan. Finke, *Ungedruckte Dominikanerbriefe*, 124-25, no. 104.

passage rich with biblical imagery. After relating the destruction of their church, Hermann continues:

Add to this debt to the Jews, the hosting (*obstagium*) of Christians, and the spectacle of angels and men, [and] whether, namely, our property, which is worth more than 40 marks, the Order considered as lost, and new [problems] arose worse than those of the past, with the nations looking upon our nakedness [Nah. 3:5]. Now due to our agreement [with the Jews], the tenants (*obsides*) have been called; they have entered, eaten, drunk, perhaps about to die there tomorrow. Let us, they say, possess the sanctuary of God as our inheritance [Isa 22:13; 1 Cor. 15:32; Ps. 82:13]. There the sons of leeches have cried, “Bring, bring!,” to use their words, whatever could be found within Hell [Prov. 30:15]. This was the exultation of those devouring the poor in secret [Hab. 3:14].<sup>128</sup>

To lift the *obstagium* and re-establish the Zofingen convent on a secure financial basis, a considerable sum of money would have to be collected. Kuno von Ygesdorf of the Zofingen friars led the effort to raise money via alms and gratuitous loans to the Preachers, but he lamented to Hermann that the need for ready money was so dire that he was even prepared to take on usurious loans if lenders could be found.<sup>129</sup>

Kuno therefore enlisted the help of the prior provincial, who in 1288 wrote to the prior and the lector of the Freiburg convent. Although the lector is not named in the letter, given the letter’s date the office might well have been filled by John of Freiburg. Acting in Kuno’s stead, Hermann asked the Freiburg Dominicans to act as intermediaries in obtaining loans for the Zofingen friars and granted them the authority to pledge the properties and goods of the Zofingen friars as security for repayment.<sup>130</sup> Another letter of

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128. “Accedit ad hoc Iudeorum debitum, Christianorum obstagium et angelorum et hominum spectaculum, utrum videlicet locum, qui plus quadringentis marcis constitit, pro derelicto haberet ordo et fierent novissima peiora prioribus, gentibus nostram aspicientibus nuditatem. Iam ex conducto vocati obsides intraverunt, comederunt, biberunt, cras forsitan morituri. Hereditatem, inquit, possideamus sanctuarium Dei. Ibi sanguisugarum filii clamaverunt: Affer, affer, ut eorum verbis utar, quicquid citra infernum poterit inveniri. Hec fuit exultatio pauperes devorantium in absconso.” Ibid., 126-27, no. 106. Hermann also describes the guests under the *obstagium* as devouring the poor in a letter of 1288 to the prior and lector of the Freiburg Dominicans. Ibid., 123-34, no. 103.

129. “Iam verecundia conspersus non audet etiam exiguum datum exigere, . . . set pro lucro computat, si possit, etiam tandem sub usuris mutuum invenire.” Ibid., 123-24, no. 103.

130. “Rogat [Cuno] ergo suppliciter, ut, si aliquis est vel aliqua vobis nota, que super afflictos pia gestare didicerit viscera, vobis mediantibus aliquantam sibi mutuuet pecuniam, secundum quod convenerit rependendam, pro qua habet auctoritatem meam et licenciam obligandi domos in Zovingen et omnia, que in earum ambitu continentur. Fidem insuper prestabit de solvendo specialem vel aliter puta pensionibus annuis respondebit.” Ibid., 123-24, no. 103. This letter is also excerpted in Hefele, *Freiburger Urkundenbuch*, vol. 2, *Texte*, 60-61, no. 50.

Hermann's in 1289 to the prior and lector of the Basel convent reveals that, to this end, the Freiburg Dominicans succeeded in obtaining a loan of 20 marks from "a certain deposit," which Hermann sent on to the Basel Dominicans to relieve them, since they had been particularly generous in helping the Zofingen friars. However, Hermann urged the Basel Dominicans to find, together with the Zofingen friars, a way to repay the Freiburg Preachers, lest they be unable to repay their creditors and "a greater scandal arise, and this be taken as an example to creditors not to lend to the Order." To repay the Freiburg Dominicans, Hermann enjoined the Basel and Zofingen friars to seek alms and to take loans at long or short terms, pledging securities if required, and even paying usuries for them if necessary.<sup>131</sup> Hermann's letter of 10 April 1289 to the prior, subprior, and lector at Freiburg reveals that the Freiburg friars, like the Basel friars, raised the sum of 20 marks by pledging their books for a loan – the "certain deposit" referred to above. To satisfy the creditor of these 20 marks, Hermann now ordered the Freiburg Dominicans either to sell the books individually or to pledge them with the Jews for a loan "under the accustomed usuries." If their own books did not suffice for this purpose, the Freiburg friars could dispose of the books that Hermann had sent on to his relative in Schlettstadt in the same way.<sup>132</sup>

The final outcome of this furious borrowing and begging activity on the part of the Alsatian friars, Hermann reported in a letter of February 1289, was that the Zofingen

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131. "Prior et lector Vriburgensis occulte de quodam deposito XX marcas acceperunt, que vobis per latorem presentium assignantur. Et quia hoc magna ex parte pro amore meo fecerunt, rogant et ego rogo, quatenus viam inveniatis cum vicario et fratribus Zouingensibus, qualiter et quando ipsis premissa pecunia rependatur, ne maius oriatur scandalum et trahatur hoc, ne ordini credant, a creditoribus in exemplum. Quamcumque insuper viam inveneritis mendicando, mutuum longe vel prope accipiendo, vel super que mutuari possint pignora postulando, ratum et gratum habeo, etiam si usuras oportet solvere competentes." Finke, *Ungedruckte Dominikanerbriefe*, 124-25, no. 104. This letter is also excerpted in Hefele, *Freiburger Urkundenbuch*, vol. 2, *Texte*, 76, no. 65.

132. "Sicut fratrum Basiliensium caritatem laudare, cum traderent pro fratribus Zouingensibus titulo pignoris libros suos, ita eis, a quibus accepistis pecuniam mutuam, atque vobis de indemnitatem teneor providere. Quapropter ordino per presentes, quatenus ad octavam pasche libri prefati teneantur et extunc venditioni exponantur singulariter vel apud judeos sub usuris solitis obligentur. Proviso, quod hoc fratribus, quorum sunt, ad insinuationem vestram primitus innotescat. Hoc idem statuo de libris conventus vestri, qui sunt pro antedictis fratribus Zouingensibus una cum aliis libris similiter obligati, quod, si pignora Basiliensium et vestra pro solutione XX marcarum non sufficiunt, libros, quos ad hoc fratri Hermann cognato nostro in Sletstat assignabo, requiratis et de ipsis eodem iure, quo tenentur ceteri, disponatur." Ibid., 2:82, no. 70.

priory's debts to the Jews had been repaid over and above the original sum, "the principle and likewise the usuries."<sup>133</sup> The whole affair cost the Order more than 400 marks, greater than twice the original sum the friars had paid for their properties in Zofingen. Hermann enjoined the wandering Zofingen friars to negotiate with the canons of St. Mauritius concerning the transfer of their cloister to another part of the city, and thus the convent emerged from the series of events badly beaten.

What is significant about the Zofingen debacle for our purposes is that it shows that John of Freiburg had practical experience in dealing with usurious contracts. As a friar within the Freiburg convent during the events narrated above, he saw the trials of the Zofingen friars unfold before him through the letters of the prior provincial and took part in the effort to succour the hapless preachers. If John of Freiburg was, in fact, serving as lector at the time, he might even have been responsible for contracting usurious loans in order to repay the 20 marks his convent had borrowed in order to assist the Zofingen friars. Since the *Summa confessorum* was written after 1290, shortly after the Zofingen affair had reached its conclusion, John's prolonged discussion of the usury prohibition might have arisen, in part, due to his own frustrations with the demands of usurers on the Order and a consequent desire to inform his brethren about the laws of the Church protecting them from these financial abuses.

In the winter of 1294, John took part in the negotiations over the new boundaries between the Freiburg convent and the Basel and Colmar convents. The founding of the new Dominican cloister at Gebweiler, approximately 60 km west of Freiburg and located roughly in between the convents of Basel and Colmar on a north-south axis, made necessary an alteration of the boundaries within which the friars from the respective convents could legitimately preach and seek alms without infringing on the rights of other convents to do the same. The boundaries with Basel were fixed on 30 November 1294,

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133. "Redduntur cum supererogatis debita, sors pariter et usure. . . . In hoc succursu priores et lectores et fratres Basilenses et Vriburgenses primipilares et primicerii extiterunt, pauperes pauperibus servientes, opus misericordie miseris impendentes." Finke, *Ungedruckte Dominikanerbriefe*, 126-27, no. 106.

when John, representing the Freiburg convent, met with the prior of the Basel convent, Albert, and with the prior of the Zürich convent, Hugo, who acted as a mediator, in Neuenburg am Rhein, and they came to an agreement suiting all parties.<sup>134</sup> In the case of Colmar, the parties to the negotiation were John for Freiburg, Werner de Elrebach for Colmar, and Hermann von Minden acting as a mediator. According to Hermann's testimony in a letter of 1 Dec. 1294, the Freiburg and Colmar houses had already forged a clandestine deal over new boundaries, but Hermann, considering this deceitful and contrary to the customs of the Order, overturned it. He ordered that Breisach should now fall within the boundaries of Colmar, and that the hospice there should continue to serve both the Freiburg and the Colmar convents.<sup>135</sup>

Finke argues that it was shortly after the negotiation of new boundaries with the Basel convent in 1294 that John was elected prior of the Freiburg convent.<sup>136</sup> In a letter of ca. 1294 to John confirming his election, the vicar of the provincial prior laments that he must burden John with this additional office and asks that, until an alternative arrangement can be found, John retain the office of lector "per accidens," lest his convent suffer the loss of his "salutary doctrine."<sup>137</sup> John must have been getting on in years by this point, since in another letter to the subprior and convent of Freiburg confirming

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134. For the details of the new boundaries, see Hefe, *Freiburger Urkundenbuch*, vol. 2, *Texte*, 186-87, no. 165. For an analysis of the new limitation, see Augustin Dold, "Zur Wirtschaftsgeschichte des ehemaligen Dominikanerklosters zu Freiburg," *Zeitschrift der Gesellschaft für Beförderung der Geschichts-, Altertums- und Volkskunde von Freiburg, dem Breisgau und den angrenzenden Landschaften* 26 (1910): 208-10. Dold asserts that the friars met to discuss the new limitation at Neuchâtel in Switzerland, some 200 km southwest of Freiburg. However, Neuenburg am Rhein, just west of Müllheim, seems a much more likely meeting place, since it lies closer to the convents of all three parties to the negotiation. The new boundaries were announced and confirmed by the priors of Zürich and Basel in a letter of 7 Dec. 1294 composed at Basel. Hefe, *Freiburger Urkundenbuch*, vol. 2, *Texte*, 189-90, no. 167.

135. Ibid., 2:188-89, no. 166. This letter is also printed in Finke, *Ungedruckte Dominikanerbriefe*, 164, no. 157.

136. Finke, "Freiburger Dominikaner," 164.

137. "Verum ne conventus vester doctrine salutaris interim accipiat detrimentum, prioris per se et lectoris per accidens compleatis officium iuxta posse, donec auctoritas maior circa hoc aliud decreverit ordinandum." Hefe, *Freiburger Urkundenbuch*, vol. 2, *Texte*, 168, no. 149. This letter is also printed in Finke, *Ungedruckte Dominikanerbriefe*, 165, no. 158.

John's election, the vicar urges the friars to attend to John's convenience and well-being in exercising both offices in light of the weakness of his body.<sup>138</sup>

That John actually retained the office of lector after 1294 is evident from his involvement in a dispute over inheritance between the abbot of Salem (O. Cist.) and Mathilda, the widow of Johannes Apotekarius. In his written judgement of the case of 15 January 1296 John styled himself "lectorem fratrum ordinis predicatorum domus Friburgensis."<sup>139</sup> The dispute turned around the goods of the deceased, Johannes Apotekarius. The abbot claimed that since Johannes had died intestate, his goods devolved upon his brother Ulrich as next of kin, and since Ulrich was a monk in the monastery at Salem, the goods ultimately devolved upon the monastery. Mathilda claimed that Johannes had entrusted all his worldly goods to her before his death. Unable to come to an agreement, the abbot and Mathilda submitted the matter to the arbitration of John of Freiburg, who had full authority to investigate the matter, question witnesses, and present a binding decision "according to the way of law or amiable agreement." After John had interrogated the parties to the suit and other faithful witnesses and inspected numerous instruments pertaining to Johannes' estate, he ultimately decided that the abbot's claim was invalid. Although Johannes had not especially designated his wife as his heir by a special instrument, in light of his examination of the former's papers and the testimony of witnesses it was clear to John that Johannes had intended to entrust all his worldly goods to his wife. No indication arose from John's investigation that Johannes had wished to make any donation to his brother Ulrich's monastery. Nevertheless, John ordered Mathilda to pay one *libra* of *denarii* per year to Ulrich for his clothing, since Johannes had been accustomed to do this before he died, and to pay 8 *librae* immediately as restitution for having forgone this practice for the same number of years. Finally,

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138. "Unde pensata debilitate sui corporis ipsius oportunitatibus et commodis largius et graciosius intendatis." Hefele, *Freiburger Urkundenbuch*, vol. 2, *Texte*, 168, no. 150.

139. In a document of 22 April 1304, John is referred to as "lectoris quondam fratrum ordinis Predicatorum in Friburg," providing a *terminus ad quem* for his term as lector. Hefele, *Freiburger Urkundenbuch*, vol. 3, *Texte*, 47-48, no. 59.

Mathilda was to pay 2 *librae* per year from the returns of her properties to the monastery for an annual memorial service for her husband for the salvation of his soul, with one *libra* to be added for her own soul when Mathilda died.<sup>140</sup>

The last episode of John of Freiburg's life to come down to us also turns around his involvement in a dispute over inheritance.<sup>141</sup> A document of 24 June 1304 records the results of the friendly arbitration of a dispute over the inheritance of the deceased knight Hugo Kuchelin. The matter involved, on the one side, Hugo's executors – John of Haslach, former lector of the Freiburg Dominican convent, Rudolf Kuchelin, Hugo's brother, and Margaret, the wife of the knight R. Turner – and, on the other side, Hugo's widow Mathilda. Rudolf claimed that Hugo had initially made over all his goods on the other side of the Kaiserstuhl to him and his brother Konrad, and later, at Adelhausen, made over all his movable and immovable possessions, including those of his wife, to the three named executors, ordering them to pay 100 marks to his friends and for pious purposes, to make good on his debts, and to satisfy whatever damages he had inflicted on others. According to the customary law of Freiburg, the executors noted, husbands have the liberty of disposing of their own goods and the matrimonial goods of their wives as they please without the knowledge or consent of their wives. As for John's part in all this, the executors asserted that Hugo's widow Mathilda had made a promise to him for the period of her own and her son's life to make good on Hugo's last wishes. The executors therefore demanded from Mathilda restitution of all the possessions and incomes she had acquired after the death of her husband. In her defence, Mathilda argued that she had brought a dowry of 400 marks into the marriage, which had not been restored, and thus had rightfully entered into the possessions of her husband, since according to canon law the goods of the husband are tacitly pledged for the restoration of

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140. For the text of John's judgement, see von Weech, *Codex Diplomaticus Salemitanus*, vol. 2, 506-07, no. 937.

141. The following summary of events depends on Finke, "Johannes von Freiburg über die 'Dos'," 31-39. A notice concerning this document can be found in Hefele, *Freiburger Urkundenbuch*, vol. 3, *Texte*, 53-54, no. 66.

the dowry. The arbitrators of the dispute ultimately decided in favour of Mathilda, claiming that her argument was better supported by canon and Roman law, which prescribed that for an innocent woman the dowry must remain intact. In administering Hugo's estate, the executors had first to deduct the dowry and hand it over to Mathilda. As a token of goodwill regarding the harmonious resolution of the conflict, Mathilda had to pay the executors 10 marks in two instalments to be used for pious ends.<sup>142</sup>

John's involvement in these legal matters shows that his expertise in law was not limited to the classroom, but extended to actual practice. His reputation as a learned scholar of law in Freiburg must have caused interested parties to seek him out for his counsel and intervention in their causes.

As I noted above, John died in 1314. He was buried under the choir in front of the altar of the Dominican church in Freiburg.<sup>143</sup> Shortly after his death, his reputation had attained such heights that John XXII (1316-1334) possessed a personal copy of the *Summa confessorum* in his library. Johannes Meyer reports in his *Papstchronik* that John XXII even claimed that no better man from German lands had ever lived in the history of the Order of Preachers,<sup>144</sup> which, if true, is an extraordinary testimony to John's

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142. Finke rightly notes the peculiarity that John would support the executors' case in this matter, thereby upholding the customary law of Freiburg at the expense of the canon law of the Church, especially since he himself had expressly written on the necessity of preserving the dowry intact in the *Summa confessorum*. According to John's discussion of dowries in title 25 of Bk. IV, the dowry is the exclusive property of the wife in a marriage, and her rights to the dowry supersede those of all past and future creditors who do not possess an express security (*ypotecam*). Finke, "Johannes von Freiburg über die 'Dos'," 38-39. In his discussion of pledges in connection with his treatment of usury in Bk. II, tit. 7, John also notes explicitly, following Hostiensis, that "all the goods of the husband are tacitly pledged to the wife for restoring the dowry (*bona mariti omnia pro restituenda dote uxori tacite obligantur*)." See SC 2.7.74. It is possible that John preferred to support the Freiburg custom here on the grounds of D. 11 c. 6, where it is written that custom that does not injure the Catholic faith should be venerated, but this position is difficult to reconcile with the teaching of a preceding canon (D. 11 c. 4), which asserts that custom contrary to reason or ordinance is to be considered null and void. Freiburg's custom here clearly ran contrary to the canon law of the Church, and so it should have been rejected. In light of all this, why John supported the case of the executors remains a mystery in the absence of further evidence.

143. See n. 7 on p. 12.

144. "Johannes von Fryburg ein grosz gelerter man; der hot gar grosze schöne un auch vast nuczlich bücher gemacht von der gottlichen kunst unde von den geistlichen rechten. Unde die selben sin bücher man gar gemeynlichen in der cristenheit üben unde bruchen ist. Do seine bücher für den bopst komen, der ein vast gelerter man wasz, genant Johannes der XXII, von im hie noch geschriben ist, do hett der selbe bopst an den buchern dis bruders Johannes von Freyburg ein solches verwundern unde grosz wolgefallen, dasz er sprach: Ich meyne nit, das beszer mensche uff ertrich gelebt habe in zeiten prediger ordens von tutschen landen, dan er sey gewesen. Diszer starbe XXXIII ior noch des groszen Albertus tode und wart vor dem altar zu Fryburg in dem kor begraben anno domini MCCCXIII." Quoted in Finke, "Freiburger

reputation, since Albertus Magnus also stemmed from Germany. The story is perhaps not all that incredible, since Henry of Herford, writing of the illustrious men who flourished during the reign of Rudolf of Habsburg (1273-1291), ranks John alongside Peter of Tarentaise and Jacobus de Voragine, among others, as renowned doctors whom God placed in those times “like stars in the vault of heaven, shining in perpetual eternity.”<sup>145</sup> Much later, John earned the dignity of being buried in the cathedral church in Freiburg. On 19 July 1802, the parish priest Bernard Galura, together with the reverend doctors Ferdinand Weiß, Joseph Schwarz, and John N. Miller, exhumed John of Freiburg and Matthew Landwerling’s bones and transferred them to the *Münster Unserer Lieben Frau* without ceremony.<sup>146</sup> With his body having attained its final resting place, where it remains to this day, the story of John of Freiburg’s life may be brought to an end.

Hard facts concerning the life of John of Freiburg are difficult to come by, but much can reliably be inferred about his life, with John’s own *Summa confessorum* supporting a number of these inferences. John of Haslach, who began his advanced theological studies under Ulrich of Strasbourg at the Strasbourg convent, went on to complete them at Paris, where he studied under Jean de Varzy, and possibly also under Ulrich of Strasbourg and Thomas Aquinas. While at Paris, he crossed to the Clos Brunel regularly to hear lectures on canon law and took back with him to Freiburg a considerable legal library. There he took up his post as lector, which he exercised for many years up to, and even beyond, his election to the post of prior of the convent. John employed the

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Dominikaner," 168, n. 1. Fr. Boyle notes that this same saying of John XXII is repeated in the prologue to the *Summa rudium* (ca. 1338), a popular abridgement of the *Summa confessorum*. Boyle, "The 'Summa Confessorum' of John of Freiburg," 259. It may thus have served as the source for Meyer’s own description of John’s fame.

145. “Temporibus etiam istius Deus in ordine fratrum predicatorum sicut in firmamento celi doctores clarissimos, inter alios Robertum Anglicum, Petrum de Tharantasia, Ulricum Teutonicum, Gerhardum Mindensem, Thydericum de Vriberch, Johannem Parisiensem, Wilhelmum Lugdunensem, Jacobum de Voragine, Johannem Vriburgensem, Hermannum de Minda, Johannem dictum Cristoforus, locavit quasi stellas, qui luceant in perpetuas eternitates.” Henry of Herford, *Chronicon*, 204.

146. H. Flamm, "Die Grabstätte des Dominikaners Johannes von Freiburg," *Zeitschrift der Gesellschaft für Beförderung der Geschichts-, Altertums- und Volkskunde von Freiburg, dem Breisgau und den angrenzenden Landschaften* 31 (1916): 272. Cf. Schuster, "Die Gräber im Münster," 4. Schuster erroneously reports John’s death as having occurred in 1324, not 1314.

legal expertise he had acquired in Paris not only in the classroom, through the teaching of moral theology and the composition of his *Summa confessorum* and other works, but also in the external forum, by intervening in real legal disputes. He died and was buried in the church he had served for so long, where he remained for centuries until his remains were transferred to the cathedral church in Freiburg.

## CHAPTER TWO: THE GENESIS OF THE *SUMMA CONFESSORUM*

In his catalogue of Dominican writers, Leander Alberti writes of John of Freiburg: “Look at that German . . . walking with a ponderous step; he is John Teutonicus . . . , Lector of Freiburg, a devout man and most outstanding scholar, carrying on his back . . . the huge volume written by himself, containing a plethora of treatises that are indeed ingenious, learned, and very necessary.”<sup>1</sup> Alberti’s description of John as weighed down by the mass of his *Summa* accurately characterizes his literary production. The entirety of John’s scholarly output was directed towards the completion of his magnum opus, the *Summa confessorum*, and the subsequent clarification and diffusion of its contents. The *Summa confessorum* occupies so central a place in the works of John of Freiburg that Finke refers to him as a “vir unius libri.”<sup>2</sup> John’s life’s work was the production of the *Summa confessorum*, and it is in light of the predominance of this weighty tome that we must understand the genesis of all his other works.

### PREPARATORY WORKS: ANALYTICAL AIDS TO RAYMOND’S *SUMMA* AND THE *LIBELLUS QUESTIONUM CASUALIUM*

The first works of John of Freiburg for which we possess credible evidence are an alphabetical index to Raymond of Penyafort’s *Summa de poenitentia* and a marginal gloss to Raymond’s *Summa* and William of Rennes’ gloss to the same.<sup>3</sup> In the prologue to the

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1. “Adverte illum Germanum . . . gravi passu ambulanti, is est Joannes Teutonicus . . . , Lector Friburgensis, vir devotus et litteratura praestantissimus, portans super dorsum . . . ingens volumen ab se confectum, plura opuscula ea quidem ingeniosa docta et valde necessaria continens.” Leander Alberti, *De viris illustribus Ordinis Praedicatorum: Libri sex in unum congesti* (Bologna: Hieronymus Plato, 1517), 151r. Qtd. in J. Quétif and J. Echard, *Scriptores Ordinis Praedicatorum*, vol. 1 (Paris: J. B. Christophorus Ballard and Nicholas Simart, 1719), 523.

2. H. Finke, “Die Freiburger Dominikaner und der Münsterbau,” in *Festschrift zur Generalversammlung des Gesamtvereins der deutschen Geschichts- und Altertumsvereine zu Freiburg in Breisgau vom 23 bis 26 September 1901* (Freiburg im Breisgau: Friedrich Ernst Fehsenfeld, 1901), 165.

*Libellus questionum casualium*, which is included in the prologue to the *Summa confessorum*, John notes that prior to the aforementioned work he had diligently composed a “register or table in alphabetical order” of the text and the gloss of Raymond’s *Summa*, and added a marginal gloss (“in spatio”) to the same, in which he supplied teachings useful for emending or explaining the *Summa* that had been handed down by authoritative teachers after the publication of the two works.<sup>4</sup> Unfortunately, John’s amplifications to the gloss on Raymond’s *Summa* have not been found, which leads one to believe that John composed them for private use in his teaching at the Freiburg convent and as preparatory material for the *Summa confessorum*, which includes its own alphabetical table of contents.<sup>5</sup> Since these works were composed prior to the

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3. According to the ancient bibliographers Alva and Jacques Tomasini, a commentary on the four books of Peter Lombard’s *Sentences* by John of Freiburg existed in several libraries in Italy. However, the manuscripts have not been found, and since the incipit that Alva offers (“Quaeritur utrum theologia sit scientia”) is not unique among commentaries on the *Sentences*, an indisputable attribution of anonymous commentaries to John of Freiburg is not possible. See Académie des Inscriptions et Belles-Lettres, *Histoire littéraire de la France*, vol. 28, *Suite du quatorzième siècle* (Paris: Imprimerie Nationale, 1881), 270. Nevertheless, since it is very probable that John studied the *Sentences* at Paris at some time around 1277, one cannot rule out that he did compose his own commentary on the *Sentences* as part of his theological studies there. See ch. 1, p. 27. Kaeppli, however, does not list a commentary on the *Sentences* among John of Freiburg’s works. Thomas Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 4 vols. (Rome, 1970), 2:428-36. For the place of the study of the *Sentences* in the theological student’s career at Paris, see Hastings Rashdall, *The Universities of Europe in the Middle Ages*, 2 vols. (Oxford: Clarendon Press, 1895), 1:466-67. In the 1603 edition of Raymond of Penyafort’s *Summa*, the gloss is erroneously attributed to John of Freiburg. That William of Rennes is the true author is clear from the fact that several manuscripts prior to 1260 attribute the gloss explicitly to him. Vincent of Beauvais, moreover, quotes from the gloss in books IX and X of his *Speculum doctrinale* and refers to its author as “frater Guillelmus” or “Wilhelmus,” sometimes adding “Redonensis.” Finally, in the prologue to the *Summa confessorum* itself, John of Freiburg refers to the gloss as the “glossa Willelmi super *Summa* Raymundi.” See Académie des Inscriptions et Belles-Lettres, *Histoire littéraire de la France*, vol. 28, *Suite du quatorzième siècle*, 404. For the dating of Rennes’ gloss and his life, see Pierre Michaud-Quantin, *Sommes de casuistique et manuels de confession au moyen âge (XII-XVI siècles)*, *Analecta Mediaevalia Namurcensia* 13 (Louvain: Nauwelaerts, 1962), 41; Roderich Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts in Deutschland am Ende des fünfzehnten und im Anfang des sechszehnten Jahrhunderts* (Leipzig: S. Hirzel, 1867), 500; Amédée Teetaert, *La confession aux laïques dans l’Église latine depuis le VIIIe jusqu’au XIVe siècle* (Paris: J. Gabalda, 1926), 357, n. 3; Johann Frederich von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts*, 2 vols. (Stuttgart: Ferdinand Enke, 1875), 2:413.

4. “Primo, tam de textu quam de apparatu seu glossa summe venerabilis patris fratris Raymundi quondam magistri ordinis nostri qui penitentiarios dirigit registrum sive tabulam secundum ordinem alphabeti cum diligentia ordinaui. Secundo, ea que ad emendationem vel declarationem tam textus quam apparatus eiusdem summe a posterioribus approbatis tradita doctoribus utilia videbantur ipsi summe in spatio ascripsi.” John of Freiburg, *Summa confessorum reverendi patris Joannis de Friburgo sacre theologie lectoris Ordinis Predicatorum non modo utilis sed et Christi omnium pastoribus perquam necessaria, summo studio ex Raymundo, Guilhelmo, Innocentio, Hostiensi, Goffredo, aliisque viris perdoctis qui in vinea Domini laborarunt convexa, antea prelum non passa, luculento atque evoluto adhibito repertorio, ab innumeris insuper mendis per egregium iuris utriusque licentiatum dominum Henricum Vortomam de Norimberga emaculata, marginarisque doctorum notis insignita. Adhibitus est preterea epilogus totius ferme iuris canonici puncta complectens* (Lyons: Jacobus Saccon, 1518), v. For manuscripts of John’s index to Raymond’s *Summa*, see Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 2:428-29, no. 2340 and 2341. On John’s index, cf. also Michaud-Quantin, *Sommes de casuistique*, 44.

*Libellus questionum casualium*, they must have been composed before 1290, the *terminus ad quem* for the *Libellus*. It is likely that John began the works as aids in the process of preparing his own lectures on moral theology for the students at the Freiburg Dominican convent during his tenure as lector there, which began after 1277.<sup>6</sup>

Fortunately, we do possess several manuscripts of John's next composition: the *Libellus questionum casualium*.<sup>7</sup> The *Libellus* consists of a collection of questions by diverse authorities pertaining to the counselling of souls that had been hitherto dispersed among different volumes.<sup>8</sup> The historical context underlying the genesis of John's *Libellus* reaches back, ultimately, to the canon *Omnis utriusque sexus* of the Fourth Lateran Council (1215), which made annual confession to one's parish priest mandatory for all Christians.<sup>9</sup> In light of the new requirement, overworked bishops and their priests required assistance in fulfilling the pastoral duties of their office. To this end, Honorius III, in the bull *Cum qui recipit prophetam* of 4 February 1221, authorized the Preachers, originally founded, as their name suggests, to assist bishops in their duty of preaching, to act in addition as confessors within their dioceses.<sup>10</sup> This new undertaking by the

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5. Cf. Académie des Inscriptions et Belles-Lettres, *Histoire littéraire de la France*, vol. 28, *Suite du quatorzième siècle*, 263-64; Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 501.

6. For the beginning of John's tenure as lector at the Freiburg convent and the dating of the *Libellus questionum casualium*, see ch. 1, pp. 42 f.

7. For the location of the manuscripts, see Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 2:429-30, no. 2343.

8. See n. 12 on p. 57 below.

9. "Omnis utriusque sexus fidelis, postquam ad annos discretionis pervenerit, omnia sua solus peccata saltem semel in anno fideliter confiteatur proprio sacerdoti, et iniunctam sibi poenitentiam propriis viribus studeat adimplere, suscipiens reverenter ad minus in Pascha eucharistiae sacramentum, nisi forte de proprii sacerdotis consilio ob aliquam rationabilem causam ad tempus ab huiusmodi perceptione duxerit abstinendum; alioquin et vivens ab ingressu ecclesiae arceatur, et moriens Christiana careat sepultura" (X 5.38.12). W. A. Pantin also traces back the production of manuals for parish priests in fourteenth century England to *Omnis utriusque sexus*. See W. A. Pantin, *The English Church in the Fourteenth Century* (Notre Dame: University of Notre Dame Press, 1962), 191-92.

10. "Hinc est quod dilectos filios fratres ordinis Predicatorum qui paupertatem et vitam regularem professi verbi Dei sunt evangelizationi totaliter deputati vobis duximus propensius commendandos, universitatem vestram rogantes et hortantes attentius ac per apostolica vobis scripta mandantes quatenus, cum ad partes vestras accesserint, ad predicandi officium ad quod deputati sunt caritative recipiatis eosdem, et populos vobis commissos ut ex ore ipsorum verbi Dei semen devote suscipiant sedulo admonentes pro divina et nostra reverentia in suis eis necessitatibus liberaliter assistatis, benigne permittentes presbiteris eorumdem cum expedierit penitentium confessiones audire et consilium eis iniungere salutare, cum iidem fratres animarum intendentes profectibus discretos et cautos dirigant sacerdotes per quos salutare potest consilium preberi et remedium adhiberi et propter occasiones multiplices partiri expediat interdum in alios

Preachers, in turn, required that the friars engaged in pastoral care be thoroughly trained in the manner of hearing confessions and the canon law of the church relevant to this end, which gave rise to a steady stream of Dominican confessional manuals beginning with Paul of Hungary's *Summa de poenitentia* (1221), the *Flos summarum* (1222), Conrad Höxter's *Summa confessionis* (1224), and Raymond of Penyafort's *Summa de poenitentia* (1st ed. 1225; rev. ed. ca. 1234).<sup>11</sup> It is in this rich tradition of Dominican instructional manuals for confessors that John of Freiburg's *Libellus questionum casualium*, *Summa confessorum*, *Manuale collectum de Summa confessorum*, and *Confessionale* all stand. All are concerned with practically informing the friar about the content and method of the practice of confession, the administration of which was an essential duty of the friar preacher.

John's rationale for producing a new manual on confession is evident from his own remarks in the prologue to the *Libellus*. Since, as he notes, new doubts arise daily in determining cases of conscience, "modern" theologians and jurists have determined many cases that are not contained in the older compilations of canon law and emended and explained more precisely the existing texts for confessors. However, these new texts and emendations are dispersed over a wide range of volumes and thus out of reach of the busy friar who does not have the leisure to peruse them all. Likewise, they are inaccessible to the humble friar possessing only a modest library. For this reason, John gathered this new information relevant to the confessor into one handy volume.<sup>12</sup>

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sollicitudinem pastorem." Vladimir J. Koudelka and Raymund J. Loenertz, eds., *Monumenta diplomatia S. Dominici*, Monumenta Ordinis Fratrum Praedicatorum historica 25 (Rome: Institutum Historicum Fratrum Praedicatorum, 1966), 145-46, no. 143.

11. This trend in Dominican intellectual history has been well researched by scholars. See Leonard E. Boyle, "Notes on the Education of the Fratres Communes in the Dominican Order in the Thirteenth Century," in *Pastoral Care, Clerical Education and Canon Law, 1200-1400* (London: Variorum, 1981), 251-53; M. Michèle Mulchahey, "First the bow is bent in study": *Dominican Education before 1350* (Toronto: Pontifical Institute of Mediaeval Studies, 1998), 50-54; William A. Hinnebusch, *The History of the Dominican Order: Intellectual and Cultural Life to 1500* (New York: Alba House, 1973), 238-39; Joseph Goering, "The Internal Forum and the Literature of Penance and Confession," in *The History of Medieval Canon Law in the Classical Period, 1140-1230: From Gratian to the Decretals of Pope Gregory IX*, eds. Wilfried Hartmann and Kenneth Pennington, History of Medieval Canon Law (Washington, DC: Catholic University of America Press, 2008), 408, 419, 422.

12. "Quoniam dubiorum nova cotidie difficultas emergit casuum doctores moderni tam theologi quam

Specifically, John intended the *Libellus* as a supplement to Raymond of Penyafort's *Summa de poenitentia*, together with the gloss by William of Rennes. He added to it cases of conscience that are not contained or less fully explicated within the original.<sup>13</sup> Chiefly, John notes, these supplements were drawn from teachers within the Order of Preachers, including works by Albert the Great, Thomas Aquinas (especially the *secunda secundae* of his *Summa theologiae*), Peter of Tarentaise (later pope Innocent V), and Ulrich of Strasbourg. In addition to the friars, John drew supplementary material from the *Summa super titulis decretalium* of Gottofredo da Trani, the *Summa aurea* (or *copiosa*) of Hostiensis, and the new decretals of the popes.<sup>14</sup> Faithful to his intention to extend Raymond's *Summa*, John announces that he arranged these supplementary questions under the extant titles of the original work, following the original order. His only innovation was to supply rubrics concerning specialized issues under the appropriate existing titles.<sup>15</sup>

On the grounds that John refers in the prologue to Albertus Magnus as "quondam Ratisponensis episcopi," Schulte dated the *Libellus* to after the latter's death in 1280.<sup>16</sup> Finke, however, objected to Schulte's reasoning, adducing the fact that Albert is referred to as "the former bishop of Regensburg" in chronicles and other sources immediately after he resigned from the episcopate in 1262. A more secure rationale for dating the *Libellus*, according to Finke, is John's mention of Ulrich of Strasbourg's death in the

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iuriste plures casus et legendo et scribendo determinaverunt que in antiquioribus compilationibus non habentur. Ea etiam que priores scripta reliquerunt a posterioribus sunt in pluribus emendata et perfectius declarata. Cum igitur quam plurime questiones ad consilia animarum peritiles diversorum doctorum per volumina sint disperse, ego frater Johannes lector de ordine predicatorum minimus aliquas ex illis quas magis utiles iudicavi in unum decrevi colligere ad meum et aliorum fratrum profectum, ut si qui forte librorum copiam non habuerint vel ad tot summas et scripta transcurrenda non vacaverint, hic collecta sub compendio multa de his inveniant que requirunt." John of Freiburg, *Summa confessorum*, v.

13. "In isto libello questiones casuales que vel non continentur: vel minus plene continentur in ipsa predicta summa fratris Raymundi et apparatu eius quas in pluribus doctorum libris et scriptis inuenire potui in unum collegi." Ibid., v.

14. Ibid., v.

15. "Easque sub titulis eiusdem summe et eorundem librorum et titulorum ordine disposui aliquas insuper rubricellas de specialibus materiis quibusdam supponendo." Ibid., v.

16. von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts*, 2:420. Teetaert follows Schulte in dating the *Libellus* to 1280. Teetaert, *La confession aux laïques*, 440.

prologue.<sup>17</sup> Since Ulrich died in 1277, John must have begun the *Libellus* after that time.<sup>18</sup> In so far as the *Summa confessorum* builds on the material John assembled in the *Libellus*, it is likely that he completed the latter work before beginning the *Summa confessorum*. The *terminus post quem* for the *Summa confessorum* is 1290, and thus John must have written the *Libellus* at some time between 1277 and 1290, while he was serving as lector in the Freiburg Dominican convent.<sup>19</sup>

As John himself notes in the prologue, the *Libellus* is strictly a work of compilation, which he intended to serve as a practical reference work for his fellow confessors in the Order of Preachers. Of his own opinions on the questions he unearthed in his researches through diverse volumes, he has offered “next to nothing” in the *Libellus*.<sup>20</sup> He claims that he is solely a reporter of the opinions of other famous teachers within the church, not the author of a novel work on casuistry.<sup>21</sup> The same might be said for the *Summa confessorum*. It too is, by and large, a work of pure compilation.

For the time being, I shall postpone the discussion of the teaching of the *Libellus* on the usury prohibition to my discussion of the *Summa confessorum* on usury,<sup>22</sup> since the entirety of the *Libellus* on usury is absorbed into the much expanded *Summa*, as the following table of correspondences shows clearly:

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17. See ch. 1, p. 20.

18. Finke, "Freiburger Dominikaner," 165-66. Stintzing also dates the *Libellus* to after 1277. Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 510-11.

19. On the dating of the *Summa confessorum*, see pp. 64 f. below,

20. “Sed de qua materia nihil ab aliis tactum legi. Ea sicut scripta sunt, nec comprobando nec improbando, reliqui, quia de mea propria sententia quasi nihil in hoc sicut nec in presenti opusculo posui.” John of Freiburg, *Summa confessorum*, v.

21. “Sed tantum aliorum famosorum in ecclesia doctorum sententias referens, et ut plurimum etiam ipsorum verba ponens librorum, nihilominus eorundem sententiarum et scriptorum de quibus sunt assumpta nomina et loca assignans. Relator sum non inuentor.” Ibid., v.

22. See Chapter Three.

Table 1. Correspondence of Questions on Usury in the *Libellus questionum casualium* (LQC) to the *Summa confessorum* (SC) on Usury<sup>23</sup>

# LQC	# SC		# LQC	# SC
2.7.1	2.7.3		2.7.16	2.7.44
2.7.2	2.7.4		2.7.17	2.7.45
2.7.3	2.7.2		2.7.18	2.7.46
2.7.4	2.7.5		2.7.19	2.7.52
2.7.5	2.7.15		2.7.20	2.7.54
2.7.6	2.7.40		2.7.21	2.7.68
2.7.7	2.7.21		2.7.22	2.7.71
2.7.8	2.7.18		2.7.23	2.7.72
2.7.9	2.7.24	“Queritur ergo primo quid sit pignus?” <sup>24</sup>		2.7.73
2.7.10	2.7.37		2.7.24	2.7.77
2.7.11	2.7.38		2.7.25	2.7.83
2.7.12	2.7.39		2.7.26	2.7.74
2.7.13	2.7.31		2.7.27	2.7.80
2.7.14	2.7.20		2.7.28	2.7.79
2.7.15	2.7.32			

As the table indicates, the *Libellus questionum casualium* proved in the end to be a mere first draft of John’s vastly more ambitious and comprehensive *Summa confessorum*. In the *Libellus* he laid the foundation for the ponderous volume that would overshadow all of his other productions.

#### JOHN’S MAGNUM OPUS: THE *SUMMA CONFESSORUM* IN OVERVIEW

23. This table was constructed on the basis of a comparison of the *Libellus questionum casualium* on usury, as found in Basel, Universitätsbibliothek, MS C.V.45, fols. 82r-85v, and my edition of the questions on usury from the *Summa confessorum*, which can be found in Appendix III.

24. In the manuscript of the *Libellus* that I consulted, this *questio* bears no number, so I have included it in the table according to its *incipit*.

Like the *Libellus questionum casualium*, the *Summa confessorum*, John's *magnum opus*, is a manual of practical reference for confessors that continues the rich tradition of Dominican writings on confession reaching back to Paul of Hungary. The authors of these manuals aimed at instructing friars in the method of confession and the law and doctrine of the Church relevant to evaluating cases of conscience in the confessional and administering penance – a task that the Church entrusted to the Order early on in its history.<sup>25</sup> Essentially, the *Summa confessorum* is a massive extension and revision of John's earlier *Libellus questionum casualium*, taking up, in the section on usury, the entirety of the *Libellus*' text and incorporating significant amounts of new material on cases of conscience for the benefit of the practicing confessor.<sup>26</sup> As a result, like the *Libellus*, the *Summa confessorum* is ultimately a revision and extension of Raymond of Penyafort's *Summa de poenitentia*, whose organization it also follows, and to which it also adds rubrics for special topics under the relevant sections in Penyafort's *Summa*.<sup>27</sup> For example, in the section on usury John added a special rubric "On Pledges."<sup>28</sup> Thus, the *Summa confessorum*, like Raymond's *Summa*, is divided into four books that treat the same general subject matter as Raymond: the first treats of crimes principally committed against God; the second, which contains John's discussion of the usury ban, treats of crimes against the neighbour; the third book discusses the clerical state and impediments to ordination; the final book treats of marriage.<sup>29</sup>

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25. See pp. 56 f. above. For manuscripts and early modern editions of the *Summa confessorum*, see Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 2:430-33, no. 2344.

26. "Post priora opuscula hanc compilationem magis completam, omnipotentis Dei confisus auxilio, sum aggressus." John of Freiburg, *Summa confessorum*, v.

27. "In qua vero tamen casus qui in summa reverendi patris fratris Raymundi et glossa scripti sunt posui. In quibus que a posterioribus doctoribus plus vel minus approbentur adiungens quantum reperi. Sed etiam sub eisdem titulis cum rubricellis additis questiones in priori libello positas . . . addidi ut in uno volumine collecta animarum medici multa de his que requirunt inveniant." Ibid., v. Cf. Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 511.

28. *De pignoribus*. See SC 2.7.73-83.

29. John of Freiburg, *Summa confessorum*, v. For a more extensive discussion of the relationship of the *Summa confessorum* to Raymond's *Summa de poenitentia*, see Leonard E. Boyle, "The 'Summa Confessorum' of John of Freiburg and the Popularization of the Moral Teaching of St. Thomas and some of his

John wrote the *Summa*, as he notes in the prologue, for the welfare of souls and the utility of his neighbours, having been urged to take up his pen to this end by the desires and prayers of his fellow friar preachers.<sup>30</sup> The friars of the Freiburg convent, who attended John's lectures there, were thus the primary intended audience of the *Summa*, although no doubt John envisioned that such a comprehensive reference work would be of use throughout the Order in training its confessors.<sup>31</sup> It is these "doctors of souls" who will find from the concordance of opinions of diverse teachers within the Church the additional material they require to judge cases of conscience and administer penance more securely.<sup>32</sup>

Fr. Boyle argues that within the Dominican Order penitential *Summae* were directed principally to the *fratres communes*, those friars who were not selected for advanced study at a *studium provinciale* or *studium generale*, but who were engaged in the day to day business of hearing confessions and preaching to the public. These were the bulk of the Order's membership – its foot soldiers in the exercise of the pastoral care entrusted to the Order.<sup>33</sup> Following the 1259 General Chapter's admonition that no friars should be made lectors, confessors, or preachers unless they were as competent as

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Contemporaries," in *St. Thomas Aquinas 1274-1974 Commemorative Studies*, vol. 2 (Toronto: Pontifical Institute of Mediaeval Studies, 1974), 249-54.

30. "Saluti animarum et proximorum utilitati secundum ordinis mei professionem fraterna caritate proficere cupiens, votis quoque et precibus fratrum annuens . . ." John of Freiburg, *Summa confessorum*, v.

31. Historical conditions may have been ripe for the appearance of new penitential manuals to guide the friars. As Johannes Meyer notes in his chronicle of the Order, from the time of the seventh Master General of the Order Munio (1281) to that of the twelfth Master General Aymeric thirteen years later, the Order passed through six Master Generals. This administrative chaos led to a decline in devotion among the friars, which was in turn aggravated by the rapid founding of new convents and monasteries. Johannes Meyer, *Chronica brevis Ordinis Praedicatorum*, ed. H. C. Scheeben, Quellen und Forschungen zur Geschichte des Dominikanerordens in Deutschland 29 (Vechta: Albertus-Magnus-Verlag, 1933), 52. Hinnebusch notes that between 1290 and 1297 there were requests for licenses to found 17 new convents at the meetings of the Order's German province. By 1303, there were 100 priories extant within the provinces of Germany and Saxony alone, and 590 within the Order as a whole. William A. Hinnebusch, *The History of the Dominican Order: Origins and Growth to 1500* (Staten Island: Alba House, 1966), 252-53, 262. As such, there were perhaps never more Dominicans in need of more moral guidance than at the time that John composed his *Summa confessorum*. For the dating of the *Summa*, see pp. 64 f. below.

32. See n. 27 on p. 61. "Et ex diversorum concordia doctorum sciant quid sit probabilius et securius iudicandum." John of Freiburg, *Summa confessorum*, v.

33. "It was for them, principally, that Raymund, Guillaume Peyraut and John of Freiburg wrote." Boyle, "Education of the Fratres Communes," 253-54.

possible to exercise these duties without error, there was a clear demand for basic instruction in the art of administering confession competently. According to Fr. Boyle, it was this demand that manuals such as John of Freiburg's *Summa confessorum* sought to satisfy.<sup>34</sup>

While Fr. Boyle's remarks certainly apply to John's *Confessionale*, his own compendium of the *Summa confessorum*,<sup>35</sup> it is less clear that John wrote the *Summa* with the *fratres communes* foremost in his mind. In the prologue to the *Manuale collectum de Summa confessorum*, John's abbreviated edition of the *Summa confessorum*, he explicitly states that the *Summa confessorum* is directed specifically to "penitenciarios."<sup>36</sup> A *poenitentiarius* was a delegate of the bishop who oversaw the penitential discipline within the parishes of his diocese.<sup>37</sup> Specifically, he was authorized to absolve major cases of conscience that were reserved to the bishop. He had the power to hear confessions in the bishop's place and gave his judgement on doubtful cases in the penitential forum that were submitted to his superior authority. He also had the power to relax or alter the penances imposed by other confessors as he deemed fit.<sup>38</sup> Essentially, the *poenitentiarius* was an expert in the judgement of cases of conscience and the meting out of penance. This expertise required some advanced study in the law of the Church, which would seem to place the *poenitentiarius* beyond the level of the *fratres communes* whom Boyle had in mind as the intended audience of the *Summa confessorum*.

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34. Ibid., 254.

35. See my discussion of the audience of the *Confessionale* below, p. 129.

36. "Cum *Summa confessorum* penitenciarios specialiter dirigens . . ." Vat., Pal., MS lat. 712, fol. 1ra. At least one *penitentiarius* did, in fact, make use of the *Summa confessorum*: William of Pagula, *penitentiarius* of the diocese of Salisbury in 1322, who incorporated substantial portions of the *Summa confessorum* on usury into his own pastoral manual, the *Summa summarum* (1320 x 1322/3). See my discussion of William of Pagula's role in the reception history of the *Summa confessorum* in Chapter Four, pp. 31 ff.

37. Joseph Goering, *William de Montibus (c. 1140-1213), The Schools and the Literature of Pastoral Care* (Toronto: Pontifical Institute of Mediaeval Studies, 1992), 95-96.

38. On the duties of the *poenitentiarius*, see Charles Du Fresne, *Glossarium mediae et infimae latinitatis* (Paris: Librairie des sciences et des arts, 1937), s. v. "1. poenitentiarius"; Council of Arles (1260), canon 16, in J. D. Mansi, *Sacrorum conciliorum nova et amplissima collectio*, vol. 23 (Venice: Antonio Zatta, 1779), 1010-11. Cf. Robert of Flamborough, *Liber poenitentialis: A Critical Edition with Introduction and Notes*, ed. J. J. Francis Firth (Toronto: Pontifical Institute of Mediaeval Studies, 1971), 3-4.

Nevertheless, it may still be the case that John envisioned the *fratres communes* as indirect beneficiaries of the *Summa confessorum*. Since it is undeniable that John wrote the *Summa confessorum* as a teaching tool for use within the Order, the *poenitentiarii* that he had in mind were likely not restricted merely to the delegates of bishops mentioned above, but included those experts on penance within each convent of the Order: the conventual lectors and the masters of students who instructed the friars in moral science in periodic *collationes de moralibus*.<sup>39</sup> That is, John intended the *Summa confessorum* not as a direct resource for consultation by the *fratres communes* in their day to day exercise of hearing confessions, having composed other works for this purpose,<sup>40</sup> but as a textbook for the conventual lector and master of students who were responsible for educating the *fratres communes* for this task.

The *terminus ad quem* for the *Summa confessorum* can be fixed precisely to 1298, since nowhere in his *Summa* did John cite the *Liber Sextus*, the collection of canon law that Boniface VIII issued in 1298. Where he did use material that was later incorporated into the *Liber Sextus*, he cited it in the original. For example, in the section on usury, John referred to chapters 26-28 of the Second Council of Lyons (1274) directly, and not through the *Liber Sextus*, where they may be found at 5.5.1, 5.5.2, and 5.8.1 respectively.<sup>41</sup> It was only after he had completed the *Summa confessorum* that John composed a supplement to the work, the *Statuta Summae confessorum ex Sexto decretalium addita*, which he added as an appendix to the *Summa* to update it with the newly assembled laws.<sup>42</sup> Finke contends that the *Summa confessorum* must have been written after 1290, since John made use of Hermann of Minden's treatise on the interdict, which he compiled after he was removed as German Provincial in 1290 for his opposition

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39. See ch. 1, pp. 34 f.

40. See my discussion of the *Manuale collectum de Summa confessorum* and *Confessionale* in ch. 4, pp. 128 ff.

41. See SC 2.7.71, 72, 83.

42. Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 511. John did not make any additions or alterations to the section on usury in the updated appendix, leaving the references to Lyons II (1274) as is.

to the removal of Munio as Master General of the Order.<sup>43</sup> As for when in the range from 1290 to 1298 John composed his *Summa*, Boyle argues convincingly that the date of the *Summa* should be pushed closer to 1298 than to 1290. In the appendix to the *Summa*, where John added relevant statutes from the *Liber Sextus*, he writes that he chose to include these in an appendix rather than incorporate them into the text “lest the books of the *Summa confessorum* that I have already written should be torn apart by the apposition of the statutes of lord Boniface recently published in his sixth book of decretals.” This suggested to Boyle that the *Liber Sextus* was published when John had already completed a large part, but not the entirety, of the *Summa confessorum*, and thus the date of its completion should be fixed to around 1297 or 1298.<sup>44</sup>

The supplementary material that John added to Raymond’s *Summa* consists of the opinions of ecclesiastical jurists and especially the opinions of modern theologians, which are not at all included in Raymond’s *Summa*. If we put to the side, for the moment, the section on usury in the *Summa confessorum*, which I shall discuss in more detail shortly, Boyle demonstrated that in addition to the sources I shall mention below, elsewhere in the *Summa* John added to Raymond’s *Summa* from the theological works of Albertus Magnus, Aquinas’ *Sentences* commentary and quodlibetal questions, and Peter of Tarentaise’s *Sentences* commentary and quodlibetal questions. From the jurists, John excerpted material from William Durandus the Elder’s *Speculum iudiciale* and *Repertorium*, Peter Sampson, Garsias Hispanus’ commentary on the Second Council of Lyons, Burchard of Strasbourg’s *Summa iuris*, and Hermann of Minden’s treatise on the interdict.<sup>45</sup>

Turning to the section on usury (*SC* 2.7), we are struck by the quantity of additions John made to Raymond’s *Summa* from legal and theological sources.

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43. Finke, "Freiburger Dominikaner," 167.

44. Boyle, "The 'Summa Confessorum' of John of Freiburg," 248-49.

45. Ibid., passim.

Beginning with legal sources, John added 46 references to Hostiensis' *Summa aurea* in 38 out of the 83 questions on usury in the *Summa confessorum*, along with 7 references to Hostiensis' *Apparatus super quinque libros decretalium*.<sup>46</sup> These references consist either of excerpts from the works or brief notations of the correspondence of the author's opinions with those John treated at length using other authorities. In addition to Hostiensis' works, John made 10 references in 7 questions on usury to Innocent IV's *Apparatus super quinque libros decretalium*, 23 references in 20 questions to Gottofredo da Trani's *Summa super titulis decretalium*, 4 references to the Ordinary Gloss to Gratian's *Decretum*, 6 references to the Ordinary Gloss to the *Liber Extra*, and 3 references to the decrees of the Second Council of Lyons (1274).<sup>47</sup> In terms of theological sources, John added 21 references in 16 questions to Ulrich of Strasbourg's *Summa de summo bono*, 14 references to the *Secunda secundae* of Thomas Aquinas' *Summa theologiae*, and a single reference to the Ordinary gloss to the Bible.<sup>48</sup>

In total, John added 134 distinct items to Raymond of Penyafort's discussion of usury in the *Summa de poenitentia* and to the gloss to the same by William of Rennes, the foundational sources of the *Summa confessorum*. Given the volume of additional material on usury that John brought forth to expand upon Raymond's *Summa*, one will not be surprised to learn that whereas Raymond dealt with usury and pledges in 18 brief questions, John of Freiburg's discussion of lending and security stretches to 83 questions, some of which are quite lengthy. For example, Question 16 on exceptions to the usury ban runs to just under a thousand words. In light of these figures, it is evident how considerably John of Freiburg revised his model.<sup>49</sup>

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46. See tables 5-6 in Appendix I.

47. See tables 7-11 in Appendix I.

48. See Tables 12-14 in Appendix I. Boyle notes that John makes use of these authors sporadically throughout in the *Summa confessorum*. Ibid., passim.

49. Nor did John seek out this material for its own sake. In the judgement of Stintzing and Finke, John's vastly expanded casuistry is not simply so much hot air, but represents a genuine attempt to add greater precision to Raymond's sometimes diffuse discussion of cases in his *Summa*. See Finke, "Freiburger Dominikaner," 169; Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 512-13. Cf. Académie des Inscriptions et Belles-Lettres, *Histoire littéraire de la France*, vol. 28, *Suite du*

The extent of John's revision of Raymond's *Summa* comes to the fore from a brief discussion of a specific *questio* on usury in the *Summa*, which is representative of his overall work of expansion. In the first question on usury, John delimits the crime, taking Raymond's definition of usury as "gain owed or exacted from a loan" as his starting point. However, John adds significantly to Raymond's discussion here. In terms of authorities, John includes the opinions of Gottofredo da Trani and Hostiensis in his *Summa aurea*, as well as a reference to Bernard of Parma's *Ordinary Gloss* to the *Liber Extra*. From these sources, John points the reader to three additional references to Gratian's *Decretum*, four additional references to the *Liber Extra*, and one additional reference to Justinian's *Digest*, considerably expanding the legal grounds for his definition of usury in comparison to Raymond of Penyafort's. Through Gottofredo da Trani and Hostiensis' works, John adds to Raymond's definition the criterion of the lender's subjective intention: if the lender only lends out of hope or expectation that he will receive back something in addition to the principal of the loan, then whatever he might accept beyond the principal is tainted with usury and must be restored to the debtor.<sup>50</sup>

The extract from Gottofredo da Trani is a substantial quotation, whereas John draws on Hostiensis in paraphrase. He draws on the *Ordinary Gloss* in this question merely to note a concordance of opinion. Throughout the section of the *Summa confessorum* on usury, John varied his use of legal sources in these three ways. For example, in Question 46, on whether bishops who subscribe to, or place their seal upon, usurious instruments are guilty of the crime, he quotes Hostiensis at length, while merely noting that Gottofredo da Trani completely agrees with his opinion that such bishops are, in fact, culpable if they do so wittingly.<sup>51</sup>

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*quatorzième siècle*, 266.

50. SC 2.7.1.

51. SC 2.7.46.

Since the archetype of John's *Summa*, Raymond of Penyafort's *Summa de poenitentia*, decidedly belongs to the juridical genre of writing in light of its nearly exclusive focus on the law of the Church, given John's inclusion of theological material in his *Summa* the question arises of whether the *Summa confessorum* represents a shift in the genre of confessional manuals away from jurisprudence and towards theology as the grounds for reflection on practical morality in administering confession.<sup>52</sup> Pierre Michaud-Quantin argues convincingly that John's inclusion of theological material does not so much represent a shift away from legal sources as the grounds for practical moral science, but rather reflects the rising interest theologians in the thirteenth century took in practical morality, which had traditionally been the subject matter of law. Peter the Chanter's *Summa de sacramentis et animae consiliis*, completed at the end of the 12th century, marked the first instance of this new concern among theologians for practical morality, whereas formerly their interests had been almost exclusively in the field of speculative ethics. Thus Michaud-Quantin concluded sensibly that in the *Summa* John remained rooted in the legal tradition, but turned to the works of the theologians because they themselves had entered upon his subject matter.<sup>53</sup>

As a result in the *Summa* John was able to produce a work that retained the practical orientation of the legal genre, while at the same time synthesizing the insights of both law and theology into a more comprehensive whole. The product, according to Amédée Teetaert, was a work in which "the detail and the multiplicity of the decrees and practical counsels, dispersed throughout the penitentials and the canonical collections, are ordered and attached to the principles of speculative morality."<sup>54</sup> The theoretical insights

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52. Boyle hinted at such a transition. Boyle, "The 'Summa Confessorum' of John of Freiburg," 252.

53. "Jean de Fribourg s'informe auprès des maîtres *in sacra pagina* parce que ceux-ci se sont placés sur son terrain." Michaud-Quantin, *Sommes de casuistique*, 46-47.

54. "Il est de la première génération des moralistes qui, poussant à fond l'oeuvre entreprise par saint Raymond de Peñafort dans sa *Summa casuum*, firent de la casuistique et de la pastorale une science, où le détail et la multiplicité des décrets et des conseils pratiques, dispersés à travers le pénitentiels et les recueils canoniques, sont ordonnés et rattachés aux principes de la morale spéculative." Teetaert, *La confession aux laïques*, 441. Cf. Michaud-Quantin, *Sommes de casuistique*, 47; Hinnebusch, *Intellectual and Cultural Life to 1500*, 253.

of speculative morality, garnered from theologians, made the *Summa confessorum* a much more effective manual for training confessors in the judgement of souls. Whereas the law told the confessor *that* something was wrong, theology could help him to understand *why* it was wrong, and could enable him, in turn, to explain this to the penitent, making it less likely that he or she will relapse. The fruitful combination of the practical treatment of discrete cases within the law and theoretical reflection on the licitness of actions considered more generically within theology was truly the best means of reforming the practice of the confessor and the penitent alike, and it was likely with this end in mind that John sought to integrate the two in the *Summa confessorum*.

The *Summa confessorum*, therefore, stands as the fruit of John's lifelong obsession with the pastoral care of souls, which began with his close studies of Raymond of Penyafort's *Summa de poenitentia* by means of his analytical table to the same and expansion of William of Rennes' gloss. His own independent researches began to blossom with his *Libellus questionum casualium* and reached their full flower in the *Summa confessorum*. John had always the same aim in mind: to provide a comprehensive guide to the moral teachings of the Church that would be of practical use to the confessor in the penitential forum. How brilliant and significant the *Summa confessorum* was within the genre of confessors' manuals will become apparent from the following chapters, in which I shall focus on the usury prohibition as one conspicuous area within the domain of pastoral care to which John contributed significantly – an area that also has important ramifications for social and intellectual history.

Now that we have surveyed the conditions of the *Summa confessorum*'s production, its general subject matter, and intended audience, the stage has been set to proceed to a specific analysis of its teachings on the Church's prohibition of usury. On the basis of Luke 6:35, where Jesus says, "Give a loan, hoping for nothing therefrom,"<sup>1</sup> the canon law of the medieval Church forbade anyone to exact any interest in a loan. Loans from Christians had to be entirely gratuitous.<sup>2</sup> Although the general principle appears relatively straightforward and comprehensive, the usury ban was subjected to the most intense scrutiny by intellectuals throughout the Middle Ages, which most often focused on the question of whether a given form of exaction in a loan contract constituted genuinely filthy lucre or could be interpreted as compensation for loss incurred by the lender, and thus as really no gain at all. It is against this background that John of Freiburg developed his 83 questions on usury in the *Summa confessorum*, which can be analyzed under the broad categories of usury theory, prevention of usury, punishment and restitution, and the examination of specific usurious contracts.

In what follows, I shall unfold the contents of the *Summa confessorum* on usury under these broad categories, clarifying the meaning of John's text where there is some doubt and demonstrating where possible the concrete historical situations to which the questions on usury in the *Summa confessorum* corresponded.<sup>3</sup> The usury prohibition was

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1. "Mutuum date, nihil inde sperantes." *SC* 2.7.1.

2. *SC* 2.7.1. For an overview of the Church's teaching on usury, see the sources listed in the introduction in n. 11 on p. 4.

3. Considerations of space and legibility of the text make it necessary frequently to omit the names of John's sources in discussing the section on usury in the *Summa confessorum*. The reader should keep in mind that John was first and foremost a compiler. The opinions discussed below were culled from other sources and were not John's original creations. References to the relevant questions in the *Summa confessorum* are provided throughout the commentary so that the reader may consult the edition of the text in Appendix III and discover the diverse authorities for John's opinions there. Due to the extent of the *Summa*'s treatment of usury, I considered it prudent to pass over some of its more self-evident sections without comment, trusting that the reader will readily grasp their contents from my edition of the text. This is particularly the case with John's treatment of pledges, which I have left out of this overview of his teaching on the usury prohibition, since much of it consists of an extension of principles that he laid down previously when discussing the usury ban or pertains to technical matters concerning the custody of pledges

a living law that sought to regulate real economic activities within medieval society, if not always in the bishop's court, then certainly in the internal forum of confession. If we are to grasp the Church's usury ban aright, we must understand that it arose through a dialogue with real medieval business and lending practices, which it sought to bring into line with the requirements of justice as articulated in the *lex divina*. Usury was an urgent problem of injustice within medieval society to which the Church sought to respond in the court of the usurer's conscience. Manuals such as John of Freiburg's *Summa confessorum* served as a means of training the judges of this court. Confessors needed to know how to handle usurers, because they, and the souls entrusted to their care, came into contact with them in their day to day life.<sup>4</sup>

#### THEORETICAL UNDERPINNINGS OF THE USURY BAN

John begins his discussion of usury in the *Summa confessorum* by stating Raymond of Penyafort's definition of the crime: "Usury is gain (*lucrum*) expected or exacted from a loan contract." This illicit gain, according to Ulrich of Strasbourg, must be gain in virtue of the loan itself, and thus does not include free gifts (*liberalis donatio*) from the debtor to the creditor, which the latter may receive without fault.<sup>5</sup> According to William of Rennes' gloss, such gifts must arise from the debtor's pure affection for the creditor and not from an implicitly understood compulsion to remunerate him for the act

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and legal actions concerning a pledge.

4. That usurious activities commonly fell within the purview of the workaday confessor is also evidenced by Dr. Boyle's discovery of an anonymous Dominican compilation of material pertaining to pastoral care from 1260 x 1280. The compilation, which was written by or for a lector who may have been located in Pontefract in Northern England, contains a series of cases of conscience that, in Dr. Boyle's words, "cover most of the practical aspects of the pastoral care with which an ordinary Dominican or *Frater communis* would be expected to be familiar." Included among these are cases pertaining to loans, usury, and restitution. Leonard E. Boyle, "Notes on the Education of the Fratres Communes in the Dominican Order in the Thirteenth Century," in *Pastoral Care, Clerical Education and Canon Law, 1200-1400* (London: Variorum, 1981), 261-63.

5. SC 2.7.1. Aquinas gives the same opinion at the end of SC 2.7.2, where he adds that things that have no pecuniary value, such as benevolence and love for the lender, can licitly be "exacted" in a loan contract.

of giving the loan. If the lender suspects that the debtor gave him something out of a perceived, though unstated, obligation for granting him the loan or an extension to it, he is bound to restore this, since it constitutes gain received in virtue of a loan.<sup>6</sup> Although the debtor has a natural obligation to give a reciprocal gift (*anthidota*) for the favour of the loan under Roman and Canon Law, this obligation, as John explains, quoting from Aquinas, is a “debt” of friendship. The “obligation” is spontaneous and is not measured with respect to the quantity of the loan, but in relation to the affection that motivated the creditor to lend. In terms of strict justice, the debtor is only obligated to return the principal of the loan.<sup>7</sup> Thus any gain over and above the principal that is received in virtue of the loan itself, whether it was given as a gift or exacted through a contract, constitutes usury – an unjust addition – and must it be restored to the debtor.

When we think of interest-bearing loans today, we usually conceive of the interest as a cash payment added to the loan over and above the principal. However, according to the medieval view of loan contracts as encapsulated in John’s *Summa*, usury was not restricted merely to superabundances of cash, but extended to any increase over and above the principal of the loan whose value can be measured in money, since, according to Aristotle, “everything is considered money, whose value can be measured in money.”<sup>8</sup> Following Aquinas in the *Summa theologiae*, John asserts that whoever receives something in addition to the principal in a loan whose value can be measured in money commits the same sin as the one who exacts usury in money directly.<sup>9</sup> Thus, in exchange for a loan one cannot exact compensation from the debtor’s manual labour, his personal service (*obsequium*), or his skill in speaking, since all of these have a pecuniary value.<sup>10</sup>

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6. The debtor may even retain other possessions of the lender that he has in his possession to compensate for this “voluntary” payment of *de iure* usuries. SC 2.7.8.

7. SC 2.7.1, 2.7.6.

8. Cf. *Nicomachean Ethics*, IV.1, 1119b25 in Aristotle, “Nicomachean Ethics,” in *The Complete Works of Aristotle: The Revised Oxford Translation*, trans. W. D. Ross, J. O. Urmson, 2 vols. (Princeton, NJ: Princeton University Press, 1984), 2:1767.

9. SC 2.7.2.

10. SC 2.7.5. Cf. SC 1.1.7, where, in the context of discussing simony, Raymond defines *munus a manu* as

For the same reason, scholars who deposit money with money-changers on the condition that the latter must lend to them whenever they should be in need are reckoned to be usurers, since the reciprocal loan (*remutuatio*) has a pecuniary value.<sup>11</sup> Not only money, therefore, but anything with a pecuniary value that is exacted over and above the principal of the loan constitutes usury and must be restored to the debtor.

John clarifies what Raymond means in his definition by “expected gain” by adding Gottofredo da Trani’s definition of usury. According to Gottofredo, usury is “whatever is added to the principal due to a prior intention or contract, for the vice of usuries is contracted through hope or expectation alone.”<sup>12</sup> If the principal motive that one has in lending is not charity or love of the neighbour, but to receive some gain in return, this expectation taints the contract as usurious. One can discern the presence of such a corrupt intention, according to Hostiensis, if the lender would not otherwise lend than from an expectation of gain. In the case of corrupt intention, whatever the lender received from the debtor in excess of the principal of the loan, even if it was granted freely out of affection for the granting of the loan or an extension to it, must be restored to him.<sup>13</sup> Thus, for example, if someone lends a supply of grain that has already been harvested (*annonam veterem*) in exchange for a future (*novam*) harvest with the intention to gain from the exchange (due to a favourable fluctuation in grain prices or the superior quality of the future harvest),<sup>14</sup> rather than to protect his own harvest from perishing or to help his neighbour in his need, he is to be reckoned a usurer and obliged to make

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money, *munus ab obsequio* as undue service, and *munus a lingua* as praise. See also C. 1 q. 1 c. 114.

11. SC 2.7.22. Similarly, a lord with rights over a mill cannot lend to millers on the condition that they will grind their grain in his mills, since he stands to gain from the fees he will receive from them for using his mill, which, if they were free to mill where they wished, they might pay elsewhere. By removing the freedom from the miller to mill where he pleases, the lord of the mill compelled him to render a superabundance for the loan over and above the principal, which constitutes usury. SC 2.7.10.

12. SC 2.7.1.

13. SC 2.7.1, 2.7.7.

14. This is the sense in which I understand Raymond and Hostiensis’ reference to the lender’s sinful desire to receive a “*melio rem*,” which is supported by the William of Rennes’ gloss towards the end of the question. SC 2.7.42.

restitution of any surplus to the debtor.<sup>15</sup> This criterion of pure intention dominates much of John and his sources' analysis of usurious contracts, and the reader will do well to keep it foremost in his or her mind.

Although medieval jurists commonly distinguished illicit, corporeal usury from licit, spiritual usury – the profit of good works that Jesus speaks of in the parable of the talents (Matt. 25:27)<sup>16</sup> – following Ulrich, John claims that only the former truly exists, since Jesus spoke merely figuratively of the latter. However, corporeal usury is itself divided into two species: usury of the principal and usury of usuries. The latter represents something akin to the modern notion of compound interest, wherein interest is exacted on the principal of the loan plus the interest accumulated thereon, and not simply on the principal. Usurers who exact either form of interest, according to Raymond, Hostiensis, and Gottofredo, commit a mortal sin and are *ipso iure* infamous under the law.<sup>17</sup>

Drawing on Raymond's text and William of Rennes' gloss, John also mentions several specific forms of interest that ultimately have their roots in Roman civil law.<sup>18</sup> In Gratian's *Decretum*, Raymond writes, there is mention of the *centesima* and *sextupla*, which he understood to be equivalent to a rate of 100% and 50% interest per year respectively. Under Roman law, however, the *centesima* was equivalent to 1% interest per month, or 12% per year, and although the *sextupla* did amount to an interest rate of 50%, it was only exacted on wet or dry fruits.<sup>19</sup> To these forms of usury, William's gloss adds the *trientes*, *semisses*, and *besses*. These categories of interest trace their origins in law to Justinian's *Codex*. They permitted different classes of persons in Roman

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15. SC 2.7.42.

16. "Thou oughtest therefore to have committed my money to the bankers, and at my coming I should have received my own with usury" (DRB).

17. SC 2.7.14.

18. SC 2.7.14.

19. See Adolf Berger, *Encyclopedic Dictionary of Roman Law*, Transactions of the American Philosophical Society N.S. 43, pt. 2 (Philadelphia: The American Philosophical Society, 1953), s. v. "centesima," 386; and Cod. Th. 2.33.1 in Th. Mommsen and Paulus M. Meyer, eds., *Theodosiani libri XVI cum Constitutionibus Sirmondianis et Leges Novellae ad Theodosianum pertinentes*, vol. 1, pt. 2 (Berlin: Weidmanns, 1905), 124.

society to demand varying degrees of interest in their contracts. As the example William gives of calculating the rates shows,<sup>20</sup> the interest rates for these different categories work out to 33.33%, 50%, and 66.66% or 12.5% respectively, depending on whether one reckons the *bes* as 2/3 or 1/8 of the whole. Unfortunately, William's scholarly precaution did not, or could not, extend so far as consulting the text of the law in the *Codex* itself, since this makes clear that the *triens* amounts to 1/3% monthly or 4% annually, the *semis* 1/2% monthly or 6% annually, and the *bes* to 2/3% monthly or 8% annually.<sup>21</sup> In light of the errors of John's sources in interpreting these extracts from Roman law accurately, and his own failure to correct them, it is likely that we are witnessing here the effects of the Church's prohibition against religious studying Roman law. The Dominicans, for the most part, had to work with these texts indirectly through the medium of compilations and the commentaries of those who worked with the *leges* at first hand and thus were on much less secure footing than in their interpretations of canon law and theology.

To explain why usury is sinful and illicit, in addition to the biblical proscription of usury in the Hebrew Bible and the New Testament,<sup>22</sup> John draws on the consumptibility argument of Thomas Aquinas as his primary rationale. Aquinas argues that in the case of things that are consumed in use, such as wine or money, use and ownership cannot be separated in a loan, since the consumption of the item entirely constitutes its utility to the lender, and thus the use-value of the item lent is identical to the value of the item itself.

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20. "Verbi gratia, sors si sit XXX, huiusmodi triens est X, semis XV, bes secundum quosdam XX, secundum alios bes est octava pars." SC 2.7.14.

21. "Ideoque iubemus illustribus quidem personis sive eas praecedentibus minime licere ultra tertiam partem centesimae usurarum in quocumque contractu vili vel maximo stipulari: illos vero, qui ergasteriis praesunt vel aliquam licitam negotiationem gerunt, usque ad bessem centesimae suam stipulationem moderari: in traiectionibus autem contractibus vel specierum fenori dationibus usque ad centesimam tantummodo licere stipulari nec eam excedere, licet veteribus legibus hoc erat concessum: ceteros autem omnes homines dimidiam tantummodo centesimae usurarum posse stipulari et eam quantitatem usurarum etiam in aliis omnibus casibus nullo modo ampliari, in quibus citra stipulationem usurae exigi solent." C. 4.32.26.2 in Paulus Krueger, ed., *Codex Iustinianus*, 5th ed., Corpus iuris civilis 2 (Berlin: Weidmanns, 1892), 173.

22. In SC 2.7.1, John cites, following Raymond, Lev. 25:37 ("You shall not give your money to usury, and every superabundance of fruits you shall not exact"), Deut. 23:19 ("Nor shall you accept usury of foodstuffs, nor of anything at all"), and Luke 6:35 ("Give a loan, hoping for nothing therefrom") as the biblical authorities supporting the usury prohibition. The translations are of the texts as they occur in John's *Summa*.

Furthermore, the use of such a thing in consumption cannot be conceded to another person without essentially conceding ownership (*dominium*) over the thing itself, which prohibits the lender from charging for the use of the item he has lent as if he still possessed it, but was only conceding its use for a time.<sup>23</sup> If, for example, you lend me a bottle of wine to drink, the purpose of the loan is for me to consume the wine by drinking it, and thus you have *de facto* conceded to me ownership over that bottle of wine. Since the wine's use is inseparable from the substance of the wine itself, I cannot consume it without appropriating its substance to myself. I cannot use the wine without drinking it and making it disappear down my gullet and out of existence for both you and me. For this reason, in the loan you have given up your proprietary right over the wine, and the corresponding right to charge for the use of a thing in your possession. Since you have lent me the wine to drink, moreover, you cannot charge me anything for the use of the wine beyond the value of the wine itself, since its entire use-value is exhausted once the last drop flows from the bottle – there is no more wine to draw utility from! The use-value of drinking a litre of wine is equivalent to a litre of wine and no more. To expect 1.25 litres of wine in return for drinking one litre of wine is to charge for something that does not exist, for the use-value of the wine is identical to its consumption-value.

In a loan for the purpose of consumption, then, one cannot separate the use of a thing from the thing itself, since its use is the consumption of that thing, and thus equivalent to the value of that thing. When the item lent is consumed in use, it becomes the property of the debtor, extinguishing any right that the lender may have to charge for its use. Therefore, one cannot charge something in addition to the value of a consumable for its use, since then one would be selling something that does not exist, which is fundamentally unjust. Justice requires only that debtor return its equivalent value to the lender. Since, according to Aristotle, money was invented principally for making

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23. SC 2.7.3.

exchanges,<sup>24</sup> its use is identical to its consumption, and thus it is essentially unjust to receive a price for its use in a loan.<sup>25</sup> In a similar fashion to the wine, if you lend me a dollar to buy something, you concede to me not simply its use, but the dollar itself, since, like the wine, I cannot use it without consuming its substance (in this case, by spending it), thereby making it my own. Once the dollar has left your hand and entered mine for the purpose of spending it, you cease to have any proprietary right to it, and thus cannot charge for its use as though you still possessed it. Like the wine, the dollar's entire use-value is exhausted when I consume it in the act of spending. A dollar's worth of spending money is worth one dollar, and thus to expect \$1.25 in return for it is to charge for utility that does not exist and to which the lender has no right.<sup>26</sup> A loan of money is fundamentally different from the leasing of a house, or any other thing that is not consumed in use, since with such items the lessee does not consume the substance of the item in using it (thereby appropriating it), and thus the lessor may justly charge for the use of his thing.<sup>27</sup> The sin of usury, then, is fundamentally a sin of injustice. It represents a violation of the commutative justice governing contracts of exchange,<sup>28</sup> which demands that there be a strict, arithmetical equivalence between the items exchanged.<sup>29</sup>

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24. Cf. *Nicomachean Ethics* V.5, 1133a15-25 in Aristotle, "Nicomachean Ethics," 1788; and *Politics* I.9, 1257b20-25 in Aristotle, "Politics," in *The Complete Works of Aristotle: The Revised Oxford Translation*, trans. B. Jowett, 2 vols. (Princeton, NJ: Princeton University Press, 1984), 2:1995.

25. SC 2.7.3. Cf. Hostiensis's opinion that one who lends money to a merchant has no claim to any of the profits he may make with the money, since by consumption the money becomes the debtor's, along with the merchandise bought with it and the profits gained thereupon. SC 2.7.28.

26. However, if someone should lend money, or any other thing that is consumed in use, not for the purpose of consumption, she could legitimately charge for its use. Thus, it is licit, according to Aquinas, to charge someone for the use of money as a decoration (*ad ostentationem*), since then the substance of the money is not consumed in use and therefore ownership over the money does not pass to the debtor. The money remains in existence, thus remaining the lender's, and she may legitimately charge for the use of her thing (SC 2.7.4). Likewise, when someone entrusts his money to a merchant to trade with or to a craftsman to produce something, keeping to himself all the risks of the venture, he may legitimately profit from it as if from his own money, since he has not relinquished ownership over the money (as the retention of the risk in dealing with it indicates), but rather the merchant and the craftsmen act as his proxies in administering it (SC 2.7.37-38).

27. SC 2.7.3. Cf. SC 2.7.28, where Raymond offers three distinctions between a loan and a lease, the second of which is that in a lease the thing leased does not deteriorate in use.

28. Cf. Ulrich of Strasbourg's discussion of the justice of rent contracts in light of the usury ban in SC 2.7.31.

29. For an overview of the significance of Aristotle's concept of commutative justice to the usury prohibition in the Middle Ages, see Joel Kaye, *Economy and Nature in the Fourteenth Century: Money*,

Although it is a grave sin to lend at usury, John asserts, again following Aquinas, that if the proper precautions are observed, it is not a sin to receive a loan at usury. However, the potential debtor must ensure that the lender would not lend otherwise than at usury or else he would be inducing him to sin, which is illicit. If the lender will only lend at usury, then just as God uses all sins for good, so the debtor may use the usurer's sin for the good of alleviating his own or another's need, or even, Ulrich adds, "for the utility that someone derives in carrying out his business."<sup>30</sup> In so doing, Aquinas asserts, the debtor is merely emulating the example of the ten men in the book of Jeremiah (41:8) who, in order to escape death at the hands of Ishmael, exposed their goods to him, thereby using the sin of his depredation to the good end of saving their own lives.<sup>31</sup> Thus, as John points out elsewhere in the *Summa*, drawing on William of Rennes' gloss, in usury there is no shame for the giver, but only for the receiver. In this respect, usury differs from simony, where both the seller and the purchaser of ecclesiastical benefices are culpable, and therefore the pope may dispense from restitution of the illicit gain as he sees fit. In cases of usury, whether grounded in a formal contract or stemming from corrupt intention, divine law and natural equity demand that restitution must be made to the giver as the injured and innocent party.<sup>32</sup>

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*Market Exchange, and the Emergence of Scientific Thought*, Cambridge Studies in Medieval Life and Thought: Fourth Series (Cambridge: Cambridge University Press, 1998), 79-87. Cf. Raymond de Roover, *San Bernardino of Siena and Sant'Antonio of Florence: Two Great Economic Thinkers of the Middle Ages* (Boston: Harvard Graduate School of Business Administration, 1967), 8. On the natural law argument against usury, see Noonan, *The Scholastic Analysis of Usury*, 38-41, 51-57.

30. For the significance of Ulrich's addition here in terms of the social history of the usury prohibition, see below, p. 223. Ulrich clarifies, however, that where there is no pressing need of obtaining just profit (*coactio per utilitatem iusti lucri*), then it is illicit to receive such a loan at usury, as is the case with those who receive loans for gambling at dice. SC 2.7.44. We have an example of such a gambling loan from John's *Confessionale*. There he describes a gambling loan called a *vuertech* in German, in which two men wish to gamble but neither has any money at hand. A third person, a sort of medieval "backer," steps in and agrees to pay the winner in the place of the loser in exchange for a fee from the loser for the sake of the short-term loan. This fee taints the loan as usurious: "Item si accepit <quod> vulgariter dicitur in theothonico *vuertech*, cum, scilicet, ludentes nec denarios nec pignora parata habent, et aliquis sit fideiussor, promittens satisfacere et solvere ei qui lucratus fuerit. Et sic ex pacto accepit aliquotam lucri, puta duodecimum denarii, vel aliam quotam, si iste, rogatus, fideiussit, et talem usuram accepit." Vat., Urbin., MS lat. 502, fol. 36rb.

31. SC 2.7.44.

32. SC 2.7.9.

Granted that it is a sin to receive usuries at first hand, the question arises concerning whether it is a sin to receive them at second hand or otherwise benefit from them indirectly. In the *Summa*, John examines this question several times, and his analyses may be grouped under the categories of those involved immediately in the life and business of the usurer and those only entering his sphere tangentially.

Beginning with those at a further remove from the usurer's activity, John initially asserts, drawing on William's gloss, that a man who weds the daughter of a usurer may receive her dowry from the usurer's illicit wealth, provided he did not know beforehand that his father-in-law-to-be was a usurer and that he exhibited due diligence in attempting to find this out, or that he believed his future father-in-law had other means whence he could make restitution to his victims.<sup>33</sup> The same precautions apply to the creditor receiving a legitimate, non-usurious debt back from a usurer.<sup>34</sup> Towards the end of the question, William revises the opinion he has just offered and adds another precaution that the creditor must attend to in receiving back his debt from a usurer: the creditor must not have lent the money in bad faith. If, for example, he lent so that the borrower might use the money for gambling at dice or prostitution, then he may not receive back his debt from such tainted sources. All others may receive back a contractual debt or a debt arising from indemnification for some injury (*maleficio*) from usurers, provided that they do not receive as repayment usuries that the latter exacted in kind from others (such as excess grain obtained in an advanced purchase). Those from whom they exacted these usuries still have a right to reclaim them, and their creditors may not substitute anything else for them without the permission of their victims.<sup>35</sup>

If we compare this question with the one preceding it, which asks whether one who paid usuries can seek back something the usurer bought with the usuries and gave to

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33. SC 2.7.56.

34. Cf. SC 2.7.55.

35. SC 2.7.56.

someone else, it becomes clear that the reason sons-in-law may receive dowries from usurers and creditors may receive their debts is that these parties do not profit through the receipt of such goods, thereby indirectly profiting from a loan. They merely receive something that is owed to them. They do not receive the usuries *ex causa lucrativa*, in which case they would become a party to the usurious activity and would be bound to restore the usuries to the original victims.<sup>36</sup> Therefore, provided that they acted in good faith, which is established by observance of the precautions outlined above, they may licitly receive what is owed to them from usurers, leaving the responsibility for making satisfaction to their victims in the usurer's hands. If they have exercised all due diligence in their dealings, legitimate creditors of usurers have the same claim to restitution of something owed to them as the victims of usurers. The claims of the one do not trump those of the other.

Concerning those more closely involved in the usurer's activities, John notes, following Hostiensis, that notaries who create instruments for usurious contracts become infamous under the law, like the usurers themselves. They can no longer provide testimony in legal cases, nor do their instruments henceforth have any legitimacy.<sup>37</sup> Similarly, bishops who knowingly affix their signature and seal to usurious contracts become participants to the usuries, since according to many articles of law their signature implies their consent to and approval of the actions contained within the contract. Such bishops, Hostiensis concludes, are the "snare of young men," spoken of by the prophet Isaiah (42:22).<sup>38</sup>

Worse than opportunistic notaries and bishops, however, are those who induce others to engage in usury, either by merely counselling them or by lending them money – gratuitously or onerously – for this purpose or by entering into a partnership with them to

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36. SC 2.7.55.

37. SC 2.7.45.

38. SC 2.7.46.

this end. According to Aquinas, those who give money to someone who does not have his own means to engage in usury become partakers in the fault, since they provided the material for the sin.<sup>39</sup> In one of his rare additions to his sources in the section on usury in the *Summa confessorum*, John notes that Aquinas makes no mention of whether such inducers are responsible for making restitution. Therefore, the reader must rely on the opinion that he has already quoted from William of Rennes' gloss, which contends that such inducers are only responsible for making restitution to the victims of usury to the extent that they benefited from the usury themselves. Unlike those who induce others to commit theft and robbery, they are not responsible for the entirety of the restitution or for making any restitution at all if they received nothing from the usuries exacted by the person whom they induced to engage in usury. This is the case, William explains, because theft and robbery are entirely against the will of the victim, whereas in the case of usury the victim willingly hands over the usuries (that is, according to Ulrich, with a conditional will that prefers to pay the usuries rather than to forego the loan entirely).<sup>40</sup> The result is that those who induce others to commit usury are more lightly treated in the law concerning restitution than those who induce others to commit robbery and theft.<sup>41</sup>

In contrast to those who induce others to engage in usury, those who receive usuries in another's name without their knowledge are entirely culpable and bound to restore the whole of the ill-gotten gain. Therefore, just as it is forbidden to receive usuries in one's own name, neither may a tutor, guardian, or procurator receive them in another's. If such persons do accept usuries in managing the affairs of their clients, as

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39. However, Aquinas clarifies that one may place money for safekeeping with a usurer who has other means for carrying on his business, since then she uses the sinful man for good. *SC* 2.7.61.

40. *SC* 2.7.15. According to Odd Langholm, the argument that a debtor only pays usuries with a conditional will (*voluntate comparativa*) was first advanced by Thomas of Chobham in his *Summa confessorum* (1216) and William of Auxerre in his *Summa aurea* (ca. 1220-1225). Roland of Cremona, the first Dominican to occupy the chair of theology at Paris (in 1229), repeated the argument in his own *Summa* (ca. 1234), where he notes that usuries are only paid with a forced will (*voluntate coacta*), but that nevertheless, according to Augustine and Aristotle, "coacta voluntas est voluntas." Odd Langholm, *The Legacy of Scholasticism in Economic Thought: Antecedents of Choice and Power* (Cambridge: Cambridge University Press, 1998), 60-62. Since the wording of Roland and Ulrich's arguments is very similar, it is possible that Ulrich's source here was ultimately the *Summa* of his fellow Dominican.

41. *SC* 2.7.61.

those who exercise authority in their contracts they are responsible for the faults contained in them, even if their clients are technically the legal actors. Therefore Raymond argues that such persons are bound to make restitution for the ill-gotten gains they received in their clients' name if their clients are unable or unwilling to do so, since, as it is stated in Gratian's *Decretum*, "the same penalty binds those acting and those consenting" (C. 2 q. 1 c. 10).<sup>42</sup> For the same reason, agents who invest their principals' money in usury without a mandate from them to do so are, according to William of Rennes, entirely responsible for the fault and obligated to make restitution for their principals, even if they themselves did not receive any of the usuries.<sup>43</sup> From this we can infer a general principle of the practical morality arising out of the *Summa confessorum*: someone who has been unwittingly duped into engaging in an illicit act, such as usury, ought not to suffer a loss due to the conscious malevolence of the one who was managing her affairs, even if this means that in the end she will retain the shameful gains of that activity for her own utility.

Finally, entering the usurer's household, John asserts, following William of Rennes' gloss, that the servants of usurers who serve them in licit or honourable ways may accept their wages from his usurious gains. The reason for this is that vis-à-vis the servants these usuries do not represent a gain, but rather a compensation for the benefit the usurer derives from their services. As in the cases described above of the sons-in-law and legitimate creditors of usurers,<sup>44</sup> servants do not receive usuries from the usurer *ex causa lucrativa*, which would associate them to the sin insofar as they had gained indirectly by virtue of the loan itself. Since to receive what one is owed does not represent a gain, servants may licitly receive the wages due to them from the usurer.<sup>45</sup>

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42. SC 2.7.62.

43. SC 2.7.64.

44. See p. 80 above.

45. SC 2.7.59. This applies also, as William of Rennes explains in another question in John's *Summa*, to servants of usurers who count money for them and collect the usuries in their stead. These servants are not bound to make restitution of what they receive from their masters. SC 2.7.63.

Unlike the servants of the usurer, the usurer's family stands in a more precarious position since they do receive their food, drink, clothing, and other expenses from usuries without any compensatory labour. They benefit from usuries *ex causa lucrativa* and thus stand as ones who profit indirectly in virtue of a loan. Like the family of a robber, then,<sup>46</sup> they are obliged to restore every expense that they paid for with the shameful gains of the usurer, since, according to Raymond, "those who receive something as a gift are absolutely obligated to make restitution."<sup>47</sup> They remain obliged to such restitution unless they are actively engaged in urging the usurer to make restitution to his victims himself. In this case, the obligation for them to restore is removed, since "one who usefully manages the business of another, even with him ignorant or absent, licitly receives expenses."<sup>48</sup> Once again we see that the decisive criterion determining whether one may licitly receive usuries at second hand is whether one receives these usuries as a form of profit, which constitutes indirect usury, or one receives them as compensation, in which case they may be licitly received since they do not represent a profit for the person receiving them. Those who receive something that is owed to them do not profit indirectly from a loan and are thus cleared from the taint of usury.

#### EXCEPTIONS TO THE USURY BAN: WHAT CONSTITUTES GAIN FROM A LOAN?

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46. SC 2.7.70.

47. "Qui dono accipiunt precise tenentur ad restitutionem." SC 2.5.67 in John of Freiburg, *Summa confessorum reverendi patris Joannis de Friburgo sacre theologie lectoris Ordinis Predicatorum non modo utilis sed et Christi omnium pastoribus perquam necessaria, summo studio ex Raymundo, Guilhelmo, Innocentio, Hostiensi, Goffredo, aliisque viris perdoctis qui in vinea Domini laborarunt convexa, antea prelum non passa, luculento atque evoluto adhibito repertorio, ab innumeris insuper mendis per egregium iuris utriusque licentiatum dominum Henricum Vortomam de Norimberga emaculata, marginarisque doctorum notis insignita. Adhibitus est preterea epilogus totius ferme iuris canonici puncta complectens* (Lyons: Jacobus Saccon, 1518), fol. 65vb.

48. "Qui vero comedunt vel bibunt aut induunt vel in alios usus necessarios expendunt, ut uxor et ceteri familiares, tenentur de omnibus que sic expenderunt, nisi in casu cum agunt causam spoliatorum monendo et inducendo pro posse ipsum raptorem ad restitutionem faciendam. Tunc enim non tenentur. Nam qui alterius negocium gerit utiliter etiam ignorantis et absentis licite recipit expensas." SC 2.5.67 in Ibid., fol. 65vb.

Just as important for a correct understanding of the usury ban in the *Summa confessorum* as an awareness of what constituted the crime is a grasp of the cases to which it did not apply, insofar as these exceptions clarify the essence of the ban. They help us to understand what, according to the minds of medieval lawyers and theologians, precisely constituted gain in a loan, which it was illicit to exact in a contract or hope for with a corrupt intention. Broadly speaking, these exceptions can be analyzed under the two headings of compensation (*interesse*) and doubt (*dubium*). In the case of a loan where something was added to the principal, the former cleared the contract objectively, whereas the latter exonerated the lender from subjective culpability in a contract in which he stood to gain from another's loss.

Before sinking our teeth into the meat of the excepted cases under the usury ban as outlined in the *Summa confessorum*, it will be convenient first quickly to dispatch with those exceptions to the ban that we may rightly call “pseudo-exceptions,” since they do not ultimately escape the ban. The first concerns whether it is licit for Jews to lend money at interest. In Deut. 23:19-20 it is written, “Thou shalt not lend to thy brother money to usury, nor corn, nor any other thing: But to the stranger” (DRB). John argues, following Thomas, that the intention of this verse was not, as it appears, to legitimize usury, which is excoriated in several other passages of the Hebrew Bible,<sup>49</sup> but to grant a dispensation from the general prohibition to the Jews in order to avoid the greater, socially harmful evil of Jews lending to other God-fearing Jews. Such a dispensation was necessary, Aquinas concludes, expressing popular medieval anti-Semitic notions, on account of the avarice to which the Jews were naturally inclined.<sup>50</sup> At any rate, this concession was valid for the Jews under the “old dispensation” of the Hebrew Bible only, for later in the *Summa* John argues, drawing on Raymond, that under the Gospel

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49. Cf. Lev. 25:36-37, where the stranger seems to be equated with the brother, and Ps. 14:5, Jer. 15:10, Ezek. 18:8, 13, 17, 22:12, which all inveigh against usury. On the history of the Deuteronomic prohibition against usury, see Nelson, *The Idea of Usury*.

50. SC 2.7.3.

dispensation Jews commit a mortal sin when they lend at usury to Christians. The Church should compel them to desist from doing so by denying them association with the Christian community, or, at the very least, bishops and princes should seek to set a limit to the usuries they charge, thereby fulfilling the provisions of Innocent III's decree *Quanto amplius*, issued at the Fourth Lateran Council of 1215.<sup>51</sup>

As we know already from the part that John played in rescuing the Zofingen friars from their economic woes,<sup>52</sup> the reality of Jewish usurers was all too familiar to him, his fellow confessors, and the souls entrusted to their care. Even if we restrict ourselves to Freiburg and its environs around the time John was composing his *Libellus* and *Summa*, sources show clearly that Jewish usurers were actively plying their trade with diverse classes in society at that time. For example, in an instrument of 1281, Walter, the abbot of the Benedictine Monastery of St. Peter in the Black Forest, announces that due to the grave burden of debt of the monastery and "especially the usuries, which have increased rather frequently on our part with the Jews," the monks are now compelled to sell their properties at Hochdorf to Hugo Kucheli, a burgher of Freiburg, for the sum of 70 marks of silver in order to satisfy their creditors and escape from this heaping burden.<sup>53</sup> Not

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51. SC 2.7.66. Here is the relevant text of *Quanto amplius*: "So much the more is the Christian religion to be restrained from the exaction of usuries, as the more gravely the treachery of the Jews grows haughty concerning these matters, with the result that they thus, in a brief time, exhaust the means of Christians. Wishing, therefore, to provide for Christians in this regard, lest they be tremendously burdened by Jews, we establish in a synodal decree that, if henceforth Jews have extorted grave or immoderate usuries from Christians by whatever pretext, let the fellowship of Christians be withdrawn from them until they have made sufficient satisfaction concerning the immoderate burden. Whence, let Christians, if there is need, be compelled to abstain from their commerce by ecclesiastical censure with appeal postponed. Moreover, we enjoin upon princes to be not unfavourable to Christians concerning this, but rather to be zealous to restrain the Jews from so great a burdening" (X 5.19.18). On the relationship in the Middle Ages between the papacy and royalty, on the one hand, and Jewish money-lenders, on the other, especially in light of *Quanto amplius*, see Kenneth P. Stow, "Papal and Royal Attitudes towards Jewish Moneylending in the Thirteenth Century," *Association for Jewish Studies Review* 6 (1981): 161-84.

52. See ch. 1, pp. 43 ff.

53. "Notum facimus universis et singulis presentem literam inspecturis, quod nos gravi debitorum onere nostri monasterii gravati deliberato super hoc inter nos habito consilio communi necnon utilitate nostri considerata monasterii singulis perpensis, que perpendenda videbantur usuris, precipue que nobis apud judeos frequencius accreverunt, consulere cupientes, cum alias ista comodius relevare non possemus, bona universa et singula que Hermannus viceplebanus in Hohtorf, Cunradus villicus dictus Loseli, . . . [etc.] nomine nostro et monasterii nostri in banno et villa Hohtorf et extra tenuerunt et excoluerunt, quocumque nomine censeantur, cum suis censibus iuribus et pertinentiis universis vendidimus dedimus et corporaliter tradidimus cum consensu et consilio nobilis domini Eginonis comitis de Friburg advocati nostri Hugoni dicto Kucheli civi in Friburg eiusque successoribus universis cum omni iure, quo nos habuimus et possedimus, habenda et iure proprietario possidenda pro septuaginta marcis puri et legalis argenti ponderis

only the Benedictines, but also the Augustinians at St. Mary's in the Black Forest were hard-pressed by debts to Jewish creditors with usuries heaping up day by day. In order to repay their creditors, they were compelled to sell to the Cistercians at Tennenbach, in an instrument of 20 June 1284, the rights to a river that the White Monks had formerly been renting from them for the sum of 17 marks of silver.<sup>54</sup>

In addition to demonstrating the activity of Jewish usurers, documentary sources reveal that the Church, in some cases, took the ruling of *Quanto amplius* quite seriously. Shortly after John's death, John XXII, in a bull of 7 April 1320, ordered the Abbot of Murbach and the deans (*decanis*) of Colmar and Basel to examine the justice of a ruling of the Provost of the church of All Saints of the Augustinian Canons in Freiburg. The Provost had excommunicated the Mayor (*Schultheiß*), Master, and city council (*Rat*) of Strasbourg for associating with the Strasbourg Jews David Walch the Elder and his son Aaron after he had excluded them from the communion of Christians since they had extorted, and continued to extort, many things through "usurious depravity" from Margrave Rudolf of Baden. The issue was not whether the Provost had ruled in accordance with the law, for he was merely following the provisions of *Quanto amplius*,

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friburgensis, quas nobis solutas in Friburg et in utilitatem nostri monasterii conversas presentibus profiteamur, plenam sibi de bonis predictis warandiam nichilominus promittentes." Friedrich Hefele, ed., *Freiburger Urkundenbuch*, vol. 1, *Texte* (Freiburg im Breisgau: Kommissionsverlag der Fr. Wagnerschen Universitätsbuchhandlung, 1940), 304-05, no. 333. In an almost identical instrument of 13 Nov. 1281, Walter announces that the monks were also compelled to sell their court in Wiehre with all its appurtenances worth 12 *libras*, 7 *solidos*, 10 measures of wheat, and six measures of oats in rent per year to John Snewelin, a burgher of Freiburg, for the sum of 53 marks of silver to satisfy their debts due to the usuries that were piling up with their Jewish creditors. *Ibid.*, 314-15, no. 342.

54. "Notum facimus universis et singulis presentibus et posteris presentes litteras inspecturis, quod nos gravi honore debitorum nostri monasterii pregravati communi super hoc inter nos habito consilio necnon utilitate nostri monasterii considerata ac omnibus et singulis consideratis pro dicto debitorum honore relevando, cum cotidie usure super nos aput Judeos et Cauwercinos accrescerent, super quibus debitis et usuris nobis consulere cupientes, cum alias ista non possemus commodius relevare, aquam nostram seu alveum nostrum, que vel qui quondam in pratum nostrum dictum des Heldes matte defluebat, reverendis in Christo . . . abbati et conventui de Thennibach ordinis Cisterciensis Constantiensis dyocesis pro XVII marcis puri et legalis argenti ponderis friburgensis vendidimus tradidimus et dedimus cum omni iure et omnibus pertinentiis." Friedrich Hefele, ed., *Freiburger Urkundenbuch*, vol. 2, *Texte* (Freiburg im Breisgau: Kommissionsverlag der Fr. Wagnerschen Universitätsbuchhandlung, 1951), 23-25, no. 15. Cf. a similar instrument of Conrad, the abbot of St. Mary's, of 8 May 1284, which records the sale of a mill to Johann Hefenler, a burgher of Freiburg, for 43 and 3/4 marks of silver to repay debts under usuries. Conrad notes the "intolerabile onus usurarum" as the motivation for the sale. Jewish creditors are not mentioned explicitly here, but it is likely they to whom Conrad refers in the instrument. *Ibid.*, 19-23, no. 14.

but whether the accusation against the Mayor and his fellow citizens was true.<sup>55</sup> The Colmar annalist also informs us that in 1292 the Jews of Rouffach, approximately 50 km to the west of Freiburg, were prompted by fear of the local bishop to transfer themselves to Colmar. Although he does not explicitly mention that this was on account of their usurious lending, it is very likely that this was the case since in the same sentence he describes how the Abbot of Murbach seized the Cahorsins, professional pawnbrokers, in Gebweiler.<sup>56</sup> Given its quotidian reality, an awareness of the status of Jewish money-lenders under the law of the Church was therefore essential, practically useful information for confessors ministering to those who might be involved in contracts with them as debtors. It enabled confessors to inform their penitents of their options for seeking redress.

In a later question of John's *Summa*, Ulrich argues that the rationale governing the usury dispensation in the Hebrew Bible applies in a similar fashion to the secular laws that permit usuries to be exacted. As John notes, Raymond had previously argued that the laws regulating or permitting the exaction of usuries should be overturned, since divine law forbids the exaction of usuries, and, according to Justinian, the father of civil law, the laws do not disdain to follow the canons of the Church especially in matters of marriage and usury. However, Ulrich argues to the contrary that legislators often permit things that are contrary to divine law, and thus in themselves unjust, to avoid greater evils and thereby protect the common welfare of their subjects. In the case of usury, Ulrich asserts that if the state absolutely prohibited creditors to lend at usury, then the poor, requiring consumption loans to survive, would often go wanting, since, like the Jews, "on account of the avarice of men" creditors will not lend except at usury. As Hostiensis clarifies at the end of this question of the *Summa*, such laws do not overturn the divine law that

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55. Friedrich Hefele, ed., *Freiburger Urkundenbuch*, vol. 3, *Texte* (Freiburg im Breisgau: Kommissionsverlag der Fr. Wagnerschen Universitätsbuchhandlung, 1957), 388-89, no. 525.

56. Ph. Jaffé, ed., "Annales Colmarienses maiores," in *Monumenta Germaniae Historica*, ed. G. H. Pertz, *Scriptores* 17 (Leipzig: Karl W. Hiersemann, 1925), 220.

declares usuries unjust, but are concessions to the exigencies of the world.<sup>57</sup> These concessions do not, therefore, represent true exceptions to the usury ban, since those who take advantage of them, whether Christians or Jews, are still culpable under the general prohibition against taking interest in a loan.<sup>58</sup> Their sins, to draw on a principle John himself made use of several times in the *Summa*,<sup>59</sup> are used for the good of supplying the need of the poor, who would perish unless greedy creditors were permitted to lend to them at interest. Since the usury prohibition retains its general validity, the judgement of their sins in this world will simply be postponed to the next.

In contrast to these “pseudo-exceptions” to the usury ban, loans in which the surplus received by the creditor in addition to the principal represents compensation for a loss (*interesse*) arising from the loan, rather than a gain from the loan, are, according to John and his sources in the *Summa*, cleared of the taint of usuries.<sup>60</sup> John describes these cases chiefly in Question 16 of the section of his *Summa* on usury. Thus, according to Raymond, if a cleric receives from a layman as a pledge for a loan a benefice that the layman has usurped unjustly and violently from the Church to begin with, he may, according to canon law (X 5.19.1, 8), receive the fruits of that pledge in addition to the principal of the loan.<sup>61</sup> This is licit because the cleric does not profit from acting in this way (he does not act *ex causa lucrī*), but merely regains what is rightly his from its unjust possessor.<sup>62</sup> The “superabundant” fruits are not really surpluses from the perspective of

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57. SC 2.7.43.

58. The gravity of this concession to the usury ban, along with the ban’s ongoing general validity in secular affairs, is highlighted in a later question in the *Summa*, where John argues, following William of Rennes’ gloss, that kings and princes who do not merely regulate usuries, but compel them to be paid are responsible for making restitution of those usuries even if they themselves do not benefit from them. SC 2.7.58.

59. See p. 78 and n. 39 on p. 81 above.

60. On the concept of *interesse* in the history of the usury prohibition and its development over time, see Noonan, *The Scholastic Analysis of Usury*, 100-32, 193-95, 249-68, 281-93, 340-62.

61. When fruitful possessions, such as land, were pledged as security for a loan, the creditor was bound by law to deduct the fruits of the pledge from the amount owed to him. Otherwise, if he retained these fruits and received back the full principal, he would be receiving something over and above the principal and thus profiting by virtue of the loan. Consequently, he would be reckoned a usurer. See SC 2.7.77.

62. SC 2.7.16.

the lender, but just compensation for something violently stolen from him. According to Ulrich, laymen may also redeem a possession stolen from them “through usuries” by accepting it as a pledge for a loan and not reckoning the fruits of the pledge into the principal.<sup>63</sup>

John adds, drawing on Hostiensis, that under canon law (X 5.19.8) churches may also receive the fruits of the pledge without reckoning them into the principal when they receive a fief of their church as a pledge from one of their vassals, provided that they do not receive the services of their vassal for as long as the fief is pledged.<sup>64</sup> Since a fief is ultimately the property of the lord and not the vassal, who holds it conditionally in exchange for certain services and dues, when the vassal pledges the fief to the church as a loan, the church regains possession of its own thing and can licitly profit from its own possession.<sup>65</sup> However, the fief only becomes the absolute property of the lord again if his vassal ceases to perform his services. If the vassal continued to perform his services, then the land would remain conditionally his and the church would have to reckon the fruits of the pledge into the principal of the loan, or else stand guilty of gaining from another’s possession and therefore gaining by virtue of the loan. Provided that this is not the case, since neither the cleric nor the layman in any of the above instances are, in fact, profiting by virtue of the loan, the contracts are cleared from the taint of usuries.

The second case in which usuries may licitly be exacted is when someone has stood surety for a debtor and been compelled to pay usuries for him. The debtor must pay

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63. SC 2.7.16. In a later question of the *Summa confessorum* on usury, Ulrich argues that this is the way in which one must understand Ambrose’s famous statement, incorporated into Gratian’s *Decretum* (C. 14 q. 4 c. 12), that a Christian may exact usuries from one whom he may justly harm (an exception commonly referred to as *cui velle nocere*), which seems at first glance to open the door to indiscriminate exaction of usuries from Jews, pagans, and heretics – the enemies of the medieval Church. According to Ulrich, and John judges his interpretation of the exception as the most adequate among the alternatives (*videtur melius exponere*), Ambrose did not intend this statement as a license to exact usuries for their own sake, but only as a tactical device for recuperating a Christian’s rightful property unjustly held in the hands of an enemy of the Church. See SC 2.7.67.

64. SC 2.7.16.

65. For a brief overview of feudal property relations, see F. L. Ganshof, *Feudalism*, 2nd ed., trans. Philip Grierson (New York: Harper & Brothers, 1961), 129-33, 150-51.

back to the guarantor the principal and the usuries. In this case, Raymond states explicitly that the usuries are received “as compensation” (*quasi interesse*), since from the guarantor’s (*fideiussor*) perspective, the usuries do not represent a gain in virtue of a loan he made to someone, but compensation for a legitimate loss that he has suffered.<sup>66</sup> To the case of the guarantor Raymond adds the case of a son-in-law who receives a possession from his father-in-law as security for the dowry (*pro numerata dote*) that he is unable at present to pay. Since, as Innocent III notes in a decretal, “frequently the fruits of the dowry do not suffice to support the burdens of matrimony” (X 5.19.16), the son-in-law may legitimately receive the fruits of the pledge without reckoning them into the principal (the established amount of the dowry).<sup>67</sup> The son-in-law, by permitting his father-in-law to pay the dowry later, has made a virtual loan of the amount of the dowry to his father-in-law, since the amount should rightly be his as soon as he enters in matrimony. However, for him the additions to the principal of the loan drawn from the fruits of his father-in-law’s pledge do not represent a gain, but compensation for the duty of supporting his wife in lieu of his father-in-law. In relation to the son-in-law’s position vis-à-vis his wife, then, the fruits of the pledge stand as *interesse* rather than *usurae*.

Evidence that the exception of dowries to the usury ban was not merely “academic” speculation is found in an instrument of no less a person than Rudolph of Habsburg (1218-1291), the King of the Germans and *Rex Romanorum*. In an instrument of 3 June 1290, Rudolph declares that he is obligated to the noblewoman Katarina de Ossinsten, the widow of the former Count Emicho de Liningen and Rudolph’s kin, for the sum of 1500 marks of pure silver. For the repayment of this sum, Rudolph pledges his castle at Kaiserswerd and all its appurtenances to Katarina. In addition, he makes it known in the instrument that Katarina herself has transferred this obligation of 1500 marks, secured by the castle, to the nobleman Johann, the Count of Sponheim and

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66. “Non est lucrum, sed vitatio dampni.” SC 2.7.16.

67. SC 2.7.16. On additional considerations surrounding the dowry, see SC 2.7.17-18.

Katarina's present husband, "under the title of a dowry." Clarifying the implications of this, Rudolph goes on to explain that:

Since the rationale of the dowry ought always and everywhere to be extraordinary, we decree by adding to the above that the fruits and yields received by the Count and his aforementioned wife, and by their heirs, from the aforementioned castle and any of its dependencies and appurtenances whatsoever, through the pretext of the aforesaid obligation, are by no means to be reckoned into the aforesaid principal, and that they ought not and cannot in any way diminish it.<sup>68</sup>

If we recall that John completed his *Summa* ca. 1298, then we have here clear evidence that the exception of dowries to the usury ban had been taken up into contemporary medieval matrimonial practice in the empire. Insofar as this instrument provides evidence of observing an exception to the usury ban, it demonstrates that the prohibition against receiving any superabundance in a loan was an active concern in the minds of medieval men and women, since diligence over exceptions to the rule implies a general underlying observance of it. As a result, the instrument gives us a glimpse of the extent to which the Church's teaching on this matter had penetrated medieval society by the time John of Freiburg was writing his *Summa confessorum*, underscoring the need for such manuals to train confessors in dealing with the realities of usury and its prosecution in day to day life. A knowledge of the limits of usury, then, was essential to the actual practice of administering confession within late medieval society, and John of Freiburg sought to provide the friars of his Order with this essential knowledge in his *Summa* and

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68. "Rudolphus Dei gratia Romanorum rex et semper augustus universis sacri Romani imperii fidelibus presentes litteras inspecturis, gratiam suam et omne bonum. Ad universorum singulariter et ad singulorum universaliter notitiam volumus pervenire, quod nos propter communem utilitatem et profectum sacri Romani imperii pro mille et quingentis marcis argenti puri et examinati, in quibus nomine vice imperii Romani nobili domine Katarine de Ossinsten relicte quondam Emichonis comitis de Liningen consanguinee nostre dilecte scriptis presentibus recognoscimus nos teneri, castrum Werden sacro pertinens imperio cum suis appendiciis et pertinenciis universis eidem Katarine presentibus titulo pignoris obligamus, dictaque Katarina obligationem eandem, sibi per nos factam, per manus nostras et de nostro consensu expresso dotis titulo transtulit in nobilem virum Johannem comitem de Sponheim suum maritum, cum quo matrimonium per verba de presenti dinoscitur contraxisse. Et quia dotis causa semper et ubique precipua esse debet premissis decernimus addicendo, ut fructus et proventus de castro prefato suisque pertinenciis et appendiciis quibuscunque pretextu obligationis premisse ab ipsis comite et uxora sua predicta ipsorumque heredibus percipiendi in sortem principalem memoratam nullatenus computentur, quodque ipsum non debeant aut possint aliquatenus extenuare, adhibitis per nos in premissis verborum atque testium sollempnitatibus debitis ac consuetis. In evidentiam itaque eorundem litteras presentes conscribi fecimus et sigilli nostre majestatis robore communiri. Actum et datum III nonas Junii, anno regni nostri decimo octavo, anno vero incarnationis Domini MCCXC." J. D. Schoepflini, *Alsatia periodi regum et imperatorum Habsburgicae, Luzelburgicae, Austriacae, tandemque Gallicae diplomatica*, vol. 2, ed. Andreas Lamey (Mannheim, 1775), 44-45, no. 767.

other pastoral writings. John did not engage in casuistry for its own sake, but always had in mind the practical utility of the confessor in addressing actual cases of conscience.

Like the guarantor, the creditor may exact “usuries” if he suffered a loss due to the debtor’s failure to repay on time (*ratione morae*). It may be the case, Raymond argues, that in order to carry out his lawful business a creditor had to take a loan at interest, since he lacked his own funds for the venture due to the debtor’s delinquency in repayment. In this case, the debtor must remedy the injury that the creditor suffered due to his delinquency and either repay the usuries to the creditor as compensation or pay the usuries to the creditor’s own creditor and free him from his obligation there. It is licit to claim such compensation over and above the principal of the loan, John adds, drawing on Hostiensis’ *Summa aurea*, because then “the usuries are sought as compensation” (*quasi interesse*). As Gottofredo da Trani clarifies, in this case the usuries “are sought for the sake of avoiding loss, not for the sake of garnering profit.”<sup>69</sup> This same reason, according to Hostiensis in another question of John’s *Summa*, permits the lender to take compensation from the fruits of the pledge for any labours that he has undertaken in granting the loan.<sup>70</sup>

In addition to recouping their losses, creditors may also seek to avoid loss in the first place by appending a penalty to the loan contract, to which the creditor and the debtor mutually agree, that will be applied if the debtor defaults on the specified date of repayment. In establishing such penalties, Raymond adds the qualification that the creditor must not have the intention to gain by means of the penalty, since then he would be profiting from the loan through a corrupt intention, which is usurious. In this case, the creditor would have intended the penalty as a means of fraudulently circumventing the usury ban (*in fraudem usurarum*). Such frauds can be detected if the penalties are to be

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69. SC 2.7.16.

70. SC 2.7.24. Unfortunately, neither Hostiensis nor John specify what is meant here by “labour” (*laborem*), but they likely had in mind the expenses incurred in managing and safeguarding the pledge. Cf. SC 2.7.79.

reckoned monthly, annually, or, as William of Rennes adds, from one market to the next, as is the practice of Lombard money-lenders and Roman merchants. The creditor's sole intention must be merely to avoid loss by stimulating the debtor to repay at the established due date from fear of incurring the penalty. Such penalties are licit, furthermore, because, as William asserts, it is in the common interest that contracts be preserved and that debtors not defraud their creditors.<sup>71</sup> If debts were not honoured, no one would be willing to lend and those in need of relief would be mired in their suffering.<sup>72</sup> Once again, in the case of a penalty attached to a loan contract the creditor does not seek to profit from the loan – a corrupt intention that would taint the contract as usurious – but only to stimulate the debtor to repay on time. Such legitimate penalties only function to restore to the creditor what rightly belongs to him – his money that ought to return to his possession on the specified date. Therefore, to the canonists's way of thinking, legitimate penalties constitute no gain in virtue of the loan contract.<sup>73</sup> Implemented properly, they are intended purely and simply as a punitive means of urging

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71. "Ego credo quod ubi sine fraude est pena appositae, potest exigi tota, quia publice rei interest pacta servari et creditores a debitoribus non fraudari." *SC* 2.7.23.

72. Cf. my discussion above of the treatment in the *Summa confessorum* of laws that permit usury on p. 87. The repayment of a legitimate debt was just as much a requirement of commutative justice as the requirement not to exact anything in addition to the principal in a loan. A brief passage in John's *Confessionale* conveys a striking impression of how seriously confessors took the obligation to honour one's debts. There John urges the confessor to instruct a penitent with hidden debts, which his creditors have overlooked or for which they have been unable to prove their title, to write these down diligently so that the confessor can especially remind him to pay them. In the case that the penitent fell ill and could not recall all of his debts, the confessor should use the record to remind him or his heirs to pay the outstanding debts, lest he die with an injustice weighing down his breast. This record was to be brought before the penitent every year after his Lenten confession and should be assiduously kept up to date by the confessor: "Consulo etiam quod confitens debita occulta que ignorant illi quibus debentur, et alia que creditores vel spoliati recipere non possunt vel que testimonio probari nequeunt, et generaliter omnia que insoluta remanerent, nisi in quantum hunc confitentem sua conscientia absolvendum artat, diligenter conscribat, ut eum sepius ad solutionem talium movere scias in speciali, et forte in infirmitate incidens, talia per singula ad memoriam revocare non posset, tu eum moneas vel heredes ad solutionem talium. . . . Singulis etiam annis illam scripturam coram eo legere post confessionem factam in quadragesima proficuum iudico. Et eum tunc diligenter hortoris ad debitorum solutionem. Et si dicat se aliqua solvisse de his que antea in nota posuerat vel compositionem aliquam intervenisse, non de facili scripturam totam autem deleas, sed per lineam subtractam signa illa debita esse soluta, ut si postea forsitan obliviscatur se illa solvisse, dicere ei tu possis pro certo quod sint soluta. Et si minus plene solvit, ut sepe contingit in dampnis huiusmodi, magis artante conscientia, suppleat quod omisit." *Vat., Urbin., MS lat. 502, fol. 37va*. Cf. also X 5.3.24, which mentions the case of a certain C. de Senevilla, who was excommunicated for failing to repay his debts during the papacy of Lucius III (1181-1185).

73. The case where a judge has imposed the penalty to punish the debtor's refusal to repay on time, which Raymond also discusses, is patently non-usurious, since it brackets the entire question of the creditor's subjective intention with respect to the penalty by bringing in the objective evaluation of an independent third party. *SC* 2.7.23.

the debtor to uphold his contractual obligations, and not as a subterfuge to line the pocket of the lender or to satisfy him proportionately for potential losses.<sup>74</sup>

Although John clearly affirms that creditors may seek compensation for actual losses arising from the debtor's failure to uphold his contractual obligations and may even impose penalties to help avoid such losses in the first place, whether the lender may charge for profit foregone by virtue of making the loan itself is a grey area in the *Summa confessorum*. That is, the *Summa confessorum* contains ambiguous indications concerning whether the lender has a right to charge for the opportunity cost to him of making the loan – a title to interest commonly referred to as *lucrum cessans*.<sup>75</sup> After having concluded on the basis of the decretal *Naviganti* (X 5.19.19) that it is illicit for the creditor to expect any superabundance when he lends to a merchant for the purpose of trading at the markets, even if he accepts the risk in such a way that he will expect nothing back if the money or the wares do not reach their destination, Raymond goes on at the end of Question 28 of the *Summa confessorum* to add that cases could be imagined of similar loans where it would be licit to accept something in addition to the principal. For example, if someone had intended to buy certain wares and sell them in another place for a profit, but with great urging someone else convinced him to lend the money earmarked for this purchase to him instead, Raymond concludes that the creditor in this situation can arrange the contract such that the debtor will return to him as much as he

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74. Cf. Ibanès, *La doctrine de l'Église et les réalités économiques*, 24. To be clear, such losses are not identical with the profit the lender has foregone by virtue of the loan itself, a title to interest referred to as *lucrum cessans*, which John discusses briefly and somewhat obscurely in Question 30 and which I shall take up below. An analogy can be drawn to the penalties for smoking in an enclosed public place in the province of Ontario in Canada under the Smoke-Free Ontario Act of 31 May 2006. The penalty of up to \$5000 does not represent a redress in proportion to the actual amount of damage inflicted by the smoker on those surrounding him or her, but is intended purely as a punitive means of dissuading him or her from smoking to begin with. See, "Smoke-Free Ontario Act: How the Act Affects: Enclosed Public Places," *Government of Ontario*, accessed May 15, 2012, [http://www.mhp.gov.on.ca/en/smoke-free/factsheets/enclosed\\_public\\_places.pdf](http://www.mhp.gov.on.ca/en/smoke-free/factsheets/enclosed_public_places.pdf).

75. According to Noonan, Hostiensis first advanced *lucrum cessans* as a legitimate title to interest. On the origins of the concept and its development over time, see Noonan, *The Scholastic Analysis of Usury*, 100-32, 249-68. On the equivalence between *lucrum cessans* and the modern notion of opportunity cost, see De Roover, *Two Great Economic Thinkers*, 31; Raymond de Roover, "Joseph A. Schumpeter and Scholastic Economics," *Kyklos* 10 (1957): 140; Raymond de Roover, *La pensée économique des scolastiques: Doctrines et méthodes*, Conférence Albert-le-Grand 1970 (Paris: J. Vrin, 1971), 89.

would have had from the wares had he transported them to their intended destination.<sup>76</sup> That is, he may charge the borrower for the profit he would have made had he not lent him the money – a clear example of opportunity cost as a title to interest. However, Raymond adds the all-important qualification that the merchant-cum-creditor must retain the risk of the loss of the principal in this case.<sup>77</sup> Unlike a standard loan contract, where the creditor is guaranteed to receive back the entire principal no matter what may happen to the money once it leaves his hands, in this exceptional case he takes on the same risk as the debtor in a standard loan.<sup>78</sup>

Although Raymond does not state this explicitly, what this absorption of risk accomplishes is to clear the contract from the motive of a corrupt intention to gain from a loan. This is so because both the gain and the principal are unsure. The loan contract that Raymond describes functions as a substitute contract for the contract of purchase and sale the merchant would have entered into, and it possesses the same essential features. Since the debtor is to repay what the creditor would have had, had he transported the goods to their intended location, this value remains uncertain, subject to the vagaries of shifts in time and place and the consequent variations in supply and demand for the wares.<sup>79</sup> Since the creditor retains the risk to the principal, he is no better off than he would have been in the original transaction – he still stands to lose from the venture. Essentially, the principal of the loan here stands in as a substitute for the value of the wares themselves. If this value in the future should come under or exceed the initial purchase price of the wares, the debtor will return a sum in like proportion. The contract represents a gamble for both parties. For this reason, William of Rennes concludes that “receipt of this kind

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76. SC 2.7.28.

77. SC 2.7.28.

78. Cf. SC 2.7.36, where William of Rennes argues that where the condition of both parties to a contract (in this case, a partnership contract) is presumed to be equal, there is no sin.

79. On scholastic notions of price valuation, see John W. Baldwin, *The Medieval Theories of the Just Price: Romanists, Canonists, and Theologians in the Twelfth and Thirteenth Centuries*, Transactions of the American Philosophical Society, n.s., 49, pt. 4 (Philadelphia: The American Philosophical Society, 1959); Raymond de Roover, "The Concept of the Just Price: Theory and Economic Policy," *Journal of Economic History* 18 (1958): 418-34; De Roover, "Schumpeter and Scholastic Economics," 124-39.

of danger excuses [such a contract] entirely from usury.”<sup>80</sup> Therefore, while at first glance Raymond’s exceptional case described above seemed to introduce the title to *lucrum cessans* in a loan contract, upon deeper reflection it does no such thing, since the substitute contract lacks the essential features of a loan: the guaranteed return of the principal and the shifting of all risk to the debtor. In the case that the lender does in fact return something over and above the principal, this does not represent compensation for the potential loss the creditor has incurred by virtue of the loan, which is the definition of opportunity cost, but for the actual loss he has incurred from making the loan rather than investing his money as he had intended.

The difference between the two is subtle: opportunity cost represents the amount of utility (profit) the lender has potentially sacrificed in making the loan, whereas the situation Raymond describes offers compensation to the lender for the amount of utility he has actually sacrificed, and thus serves as compensation for a genuine loss (*interesse*), rather than remuneration merely for the sake of granting the loan (*lucrum cessans*). But it is clear that this loss differs from the sort of loss that Raymond had previously argued should be compensated in a loan contract,<sup>81</sup> for it does not represent compensation for an injury arising from the debtor’s failure to uphold his contractual obligations, but rather it is compensation for the sacrifice of the utility of the creditor’s money. The line between *lucrum cessans* and this latter sort of *interesse* is admittedly blurry. By admitting the latter, besides opening the door to the former, Raymond created a significant problem for upholding a consistent theoretical position on the usury ban. If the utility that the merchant-cum-creditor has actually forgone in making the loan rather than investing his money in trade must be compensated, then Raymond must concede that money has utility for the lender over and above its face value. This runs contrary to his declaration in the same question, rehearsing an age-old opinion in canon law, that “the use of money gives

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80. SC 2.7.28.

81. See p. 92.

rise to no fruit or utility for the user,” and hence there is no foregone utility for which the lender can justly charge in a loan.<sup>82</sup>

The issue of *lucrum cessans* in the *Summa confessorum* becomes muddier still if we turn to the second case that John describes wherein someone could conceivably receive something in addition to the principal in a loan. In Question 30 of the *Summa* William of Rennes describes a case in which someone was prepared to buy a *census* (rent) contract for the annual income of a piece of land up to a certain period of years, but, at the urging of another, instead lent him the money he had intended to invest on the condition that the debtor or his heirs will pay him back the same annual returns for the same period of time as he would have received had he, in fact, purchased the rent contract. William declares briefly that if the initial rent contract was licit, then the second contract is licit.<sup>83</sup>

In a standard medieval rent contract, the purchaser of the contract paid the seller a large sum of money up front in exchange for the right to receive the incomes of a piece of land, in kind or in money, over an extended period of time. This gave to the rent contract the appearance of a loan whose repayment was secured by the fruits of a piece of land.<sup>84</sup>

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82. SC 2.7.28. Cf. Aquinas’s consumptibility argument against usury in SC 2.7.3, which I discussed above on pp. 75 ff. This argument would seem to rule out the lender’s ability to receive any increase from money handed over for the purpose of consumption, as is still the case in the contract Raymond describes. On the traditional view of the sterility of money, cf. D. 88 c. 11: “Hitherto someone says: He who leases a field in order to receive a price for it (*agrariam*), or a house in order to receive rent (*pensiones*), is he not similar to him, who gives his money to usury? Far from it. First, indeed, since money has not been ordered (*disposita*) to any use except for buying; second, since, having a field, he receives the fruit from cultivating it, and having a house, he takes the use of the residence from it. Therefore, he who leases a field or a house seems to give its use and to receive money, and in a certain way he seems as if to exchange gain with gain; you take no use from stored up (*reposita*) money. Third, a field or a house wears out (*veterascit*) with use. Money, however, when it has been borrowed, neither decreases nor wears out.” Cf. also Aristotle, *Politics*, I.10, 1258b1-10 in Aristotle, “Politics,” 1997: “The most hated sort [of wealth-getting], and with the greatest reason, is usury, which makes a gain out of money itself, and not from the natural object of it. For money was intended to be used in exchange, but not to increase at interest. And this term interest, which means the birth of money from money, is applied to the breeding of money because the offspring resembles the parent. That is why of all modes of getting wealth this is the most unnatural.” On the contradiction that Raymond created here, see Noonan, *The Scholastic Analysis of Usury*, 194; Ibanès, *La doctrine de l’Église et les réalités économiques*, 21-22. According to Ibanès, the scholastics only denied the productivity of capital for the lender in a *mutuum*, but otherwise recognized its fruitfulness, as in the partnership contract.

83. SC 2.7.30.

84. Clemens Bauer underscores the similarity between the rent contract and a loan at interest exceptionally well: “Der Rentkauf mit der generellen Rückkaufoptionsklausel für den Rentschuldner, wie er sich in Deutschland und anderwärts im Ausgang des Mittelalters präsentiert, ist nicht anderes als ein langfristiges verzinssliches Darlehen, wobei eben die Rente der Zins ist, und das um so ausgeprägter, je mehr die Kaufverträge sich von

However, since canonists, and later theologians, traditionally conceived of rent contracts as purchases rather than loans, profits from them were not proscribed in the same way that they were in the case of loans.<sup>85</sup> As William concedes in another question in the *Summa*, as long as the value of the fruits over time does not far and away exceed the sum the purchaser has paid for the rent contract up front, there is no fault that requires restitution.<sup>86</sup> Since the purchaser of the rent contract possibly stood to gain from it, so too does the creditor in the substitute contract that William proposes.

So far, there is little difference between this case and the case that Raymond described above. However, the key difference is that nowhere in this question does William of Rennes insist that the creditor must take on the risks to the principal of the loan. William states in the question that the land is worth, for example, “10 *libras* of returns per year,” thus fixing the amount that the debtor must repay per year over the term of the loan to extinguish the debt, since he must pay “just as much of the returns.”<sup>87</sup> Nothing in the substitute contract is left to chance, since in the initial contract the purchaser is not buying a right to the variable fruits of the land, but to a fixed income derived from it: a right of receiving money from it.<sup>88</sup> The specific difference between the case that Raymond describes and the case that William describes is that in the former the substitute contract does not take on the character of a loan, with a fixed repayment schedule. Therefore, it is excluded from the category of titles to interest in a loan contract: the creditor simply mirrors with the debtor the uncertain transaction he would have conducted with the wares. Strictly speaking, there is here no charge for a loan in consideration of foregone profit. Although in the second case the substitute contract also

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Natural- auf Geldrenten umstellen.” Clemens Bauer, “Freiburgs Wirtschaft im Mittelalter,” in *Freiburg im Mittelalter: Vorträge zum Stadtjubiläum 1970* (Baden: Verlag Konkordia AG, 1970), 72-73.

85. Cf. McLaughlin, “The Teachings of the Canonists on Usury (XII, XIII and XIV Centuries),” 136.

86. *SC* 2.7.27.

87. “Quod ipse vel heredes eius solvant ei tantum de redditibus usque ad illud tempus.” *SC* 2.7.30.

88. Cf. the opinions of Godfrey of Fontaines (1250 - ca. 1306) on the licitness of this right, as discussed in Langholm, *Economics in the Medieval Schools*, 293.

mirrors the original contract exactly, this generates a different result from the standpoint of the analysis of interest. In the second case the original contract guarantees at least the return of the purchase price, since no one would purchase a rent contract for less than the value of the income of the land over time. When this rent contract is translated into a loan contract, and the income of the land is converted into the total amount of the loan from the debtor's perspective, this means that at the very least the purchase price of the rent contract, which represents the principal of the loan from the creditor's perspective, is guaranteed to be returned. Since in the substitute contract repayment of the principal to the creditor is guaranteed, it has the rationale of a loan, and thus, if the creditor receives anything in addition to the purchase price of the rent contract, he is *de facto* charging for his foregone profit in virtue of the act of granting the loan, which more accurately describes the concept of *lucrum cessans* than *interesse* as a title to compensation. Since John does not concede the title to *lucrum cessans* explicitly in the *Summa*, doubt remains concerning his precise views on its licitness.<sup>89</sup> However, in light of the observations above on the nature of the compensation exacted in the case that William describes, the title to *lucrum cessans* seems to be implicitly conceded in the *Summa*, as it was explicitly conceded by certain other scholastics.<sup>90</sup>

Finally, in addition to compensation (*interesse*), according to John and his sources, doubt (*dubium*) over the outcome of a contract excuses it from the taint of usuries. This exception particularly applies in the case of sales on credit and advanced purchases.<sup>91</sup> For example, Raymond and William of Rennes contend that if someone

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89. Bartholomew of San Concordio, for example, who drew on John's teachings on the usury ban extensively in his *Summa de casibus conscientiae* (1338), understood the substitute contract described by William of Rennes here as implicitly identical in form to the one mentioned by Raymond in Question 28, since he added to it that when the debtor returns the foregone income from the purchase of the land, he must deduct the expenses, labour, and risk that the creditor would have taken on had he purchased the land as he intended. Given the element of risk, this arrangement is more akin to *interesse* than *lucrum cessans*. It seems, then, that Bartholomew did not believe that John had granted the title to *lucrum cessans* in the *Summa confessorum*. See ch. 4, pp. 179 f.

90. See the views of Peter Olivi (1247/48-1298) and Gerald Odonis (ca. 1290-1348) as discussed in *Ibid.*, 345-73, 508-35.

91. As Aquinas explains towards the end of Question 16 of the *Summa confessorum*, such contracts pertain to the usury ban, since in the case of a sale on credit the expectation of the price for the wares to be paid by

gives 10 *solidi* at Easter in order to receive just as many measures of grain, wine, or oil in the autumn, the contract is licit even if these measures end up being worth more than 10 *solidi*, provided that there was genuine doubt over their future price at the time the 10 *solidi* were paid.<sup>92</sup> Whoever engages in such advanced purchases in which there is genuine doubt about the future price “should not be reckoned a usurer.”<sup>93</sup> Those who sell textiles, grain, wine, oil, or other wares for a payment at a later date that will exceed their value at the time they are handed over to the purchaser are also free from the taint of usury, provided that doubt over their future price exists and that they did not intend to sell them at the time they were handed over.<sup>94</sup> A passage from Guy de Toulouse’s *Regula mercatorum*, an early fourteenth century compendium of material on the ethics of business extracted principally from the *Summa confessorum*,<sup>95</sup> provides a helpful explanation of the second *proviso* in such contracts. The merchant who will charge the increased price at a later date for wares handed over to the purchaser now must have originally intended to preserve them until that time in order to obtain more for them; otherwise, the intention to gain is present.<sup>96</sup> In legitimate credit sales, then, the increased

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the buyer in the future has the rationale of a loan of that price from the seller to the buyer, and thus whatever the seller/lender should exact beyond the just price of the wares he is selling functions as the price of the loan and thus constitutes usury. Similarly, in the case of an advanced purchase, the pre-payment for the value of the wares on the part of the buyer has the rationale of a loan of that price to the seller, and if buyer/lender should deduct anything from the just price of the wares, the amount he has saved functions as the price of the loan and thus constitutes usury. See SC 2.7.16. The exception of doubt also serves to clear loans of currency and other items whose value fluctuates over time and are to be returned in kind. Cf. the discussion below with SC 2.7.19.

92. For examples of how widely prices of goods such as wine and grain could fluctuate in relation to supply and demand in the regions near Freiburg at around the time John composed the *Summa confessorum*, see Ph. Jaffé, ed., “Annales Basileenses,” in *Monumenta Germaniae Historica*, ed. G. H. Pertz, Scriptores 17 (Leipzig: Karl W. Hiersemann, 1925), 194, 198, 202; Jaffé, “Annales Colmarienses maiores,” 202-05, 208-10, 219, 221, 227, 231. For example, in the year 1278 at Colmar the price of a *quartale* of corn went from 6 *solidi* at Easter when it was scarce to 4 *solidi* at Advent after the harvest when it was plentiful, a decline in value of 33.33%. See *Ibid.*, 202-03.

93. SC 2.7.16.

94. “Si tamen ea tempore contractus non fuerat venditurus.” SC 2.7.16.

95. See my discussion of Guy’s place in the reception history of the *Summa confessorum* on usury in ch. 4, pp. 141 ff.

96. “Si tamen aliquis tempore vindemiarum vendet bladum vel vinum plus quam in tempore illo vindemiarum valeret propter hoc quod in tempore vindemiarum non intendebat vendere, sed intendebat tenere et conservare usque ad pasca intencione maioris lucri, est excusatus, sed est in hoc periculum si fiat ex astucia et intencione usure.” Oxford, Lincoln, MS lat. 81 fol. 38r (*de usuris*, q. 14). Cf. SC 2.7.19, where this same condition applies to those who lend currency whose value fluctuates over time.

price fixed at the time of the contract when the wares are handed over to the purchaser seems to reflect an estimation of their value at the time they will be paid for. It is licit to charge this price both as a form of just compensation and because, in legitimate cases, the future value is genuinely uncertain. The seller, in short, merely seeks compensation for the utility he would have had from the wares had he preserved them as he intended, and he stands equally as likely to lose as he is to break even or gain. The same reasoning applies to legitimate advanced purchases: the reduced price the purchaser pays for wares to be delivered in the future represents an estimation of their future value, which is also subject to doubt.

If, on the contrary, there is no doubt about the future price, then the intention to gain from the loan of either the wares, in the case of a sale on credit, or the purchase price, in the case of an advanced purchase, is present and the contract is manifestly usurious. Thus, according to William of Rennes, those who pay less in advance for grain or wine in the autumn at the time of the harvest and vintage, when agricultural products are abundant and cheap, to receive back measures in Easter, “when according to common estimation they are accustomed to be more expensive,” are usurers, since “it is not genuinely doubted, but rather likely believed that those measures will be worth more at the time of payment than they were worth at the time the contract was initiated.”<sup>97</sup> The creditor, in such cases, intends to gain from the loan. Similarly, according to Raymond, if the future price in a credit sale is far and away beyond the price at which the wares are now valued, then the contract should be presumed to be usurious, since, as William of Rennes clarifies, then there is no doubt that the future price may be more or less, but rather a presumption that the goods are worth far less at the time the contract is initiated.<sup>98</sup>

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97. SC 2.7.16. Cf. SC 2.7.19, where William of Rennes describes the case of someone who lends 20 *libras* of sterling in the winter to be returned in the summer when money is in high demand among travellers and thus worth more and the case of someone who lends 20 marks of gold to be returned when crusaders are passing through and money is also in very high demand. In such cases, if the lender did not already intend to keep his own money until those times to gain by it, he is to be reckoned a usurer, since there is no doubt about the future value of what he has lent.

98. SC 2.7.16.

From the above examples, it is possible to infer that genuine doubt about the future outcome of a contract clears it from the taint of usury insofar as such doubt clears the lender from a presumption of a corrupt intention to gain from the loan – one of the essential components of the definition of usury in the *Summa confessorum*.<sup>99</sup> Since the gain in such contracts is uncertain, it cannot be the primary hope of the lender in making the loan. In the ideal situation, his hope is only to receive back the just value for the wares that he would have obtained in the future.<sup>100</sup> Nevertheless, as John makes known in the *Summa*, the canonists were wary of the exception of doubt in cases of potentially usurious contracts, such as credit sales and advanced purchases. This concern arose due to the difficulty of assessing what constituted genuine doubt and the consequent possibility of abusing the exception of doubt to concoct contracts *in fraudem usurarum*. In the decretal *In civitate* (X 5.19.6), Alexander III cautioned that men should abstain from such potentially hazardous contracts, “since the thoughts of men cannot be hidden from the Almighty God,” to which sentiment Hostiensis and Raymond give their approval in the *Summa confessorum*. As Gottofredo da Trani explains clearly, buyers and sellers on credit must beware “lest they turn aside more in estimation of the gain than of the loss . . . For God sees the heart.”<sup>101</sup>

#### PROSECUTING USURY I: PREVENTIVE MEASURES AND DETERRENTS

An understanding of the theoretical foundations of the usury ban was essential for the confessor in order for him to recognize the crime when he encountered it and

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99. See p. 73.

100. In the case of credit sales, the compensation that the borrower offers to the lender for the future value of the wares that he foregoes again approximates the title to interest of *lucrum cessans*, but neither John nor his sources make any explicit mention of this as the grounds for this exception to the usury ban. See my discussion of *lucrum cessans* in the *Summa confessorum* above on pp. 94 ff.

101. SC 2.7.16.

understand the reasons for its illicitness, but such knowledge was not sufficient. The confessor's primary concern was to remedy the fault of usury among those entrusted to his care, and for this he had to know the tools that the law of the Church had provided to this end. Since the best remedy for any fault is to prevent it from occurring in the first place, the medieval Church set in place several measures to deter the faithful from engaging in usury that the confessor had to be aware of.

In the first place the Church sought to dissuade the faithful from engaging in usury by ensuring that her clerics set a good example for their flocks. The parish priest or confessor could not convincingly inveigh against usury and counsel restitution in the penitential forum if he himself was known to be a usurer or supported by usuries. For this reason, clerical usury was not tolerated in the slightest, and the Church dealt with obstinate priests severely. As Raymond notes in Question 51 of John's *Summa*, under canon law (X 5.19.7; D. 47 c. 1, 5) clerics who are usurers or the heirs of usurers are to be suspended from office if they do not wish to make restitution for their or their predecessor's usurious gains from their own goods. If such clerics persist in their refusal to make restitution, they are to be deposed. Finally, if they do not yield to the demands of the local bishop to make restitution, they are to be handed over to the secular power and compelled to do so by force.<sup>102</sup> Through such rigorous prosecution of clerical usury, the Church underscored the seriousness and impartiality of the ban and ensured that her priests could effectively instruct their flocks as much by their good example as by their speech. Hypocrisy among the clergy would completely undermine the effectiveness of the usury ban, and so the Church made clear that it would not be tolerated.

The Church also sought to restrain usurious activity by nullifying the fraudulent devices that usurers had created to ensure their immunity from prosecution for the crime. As Raymond informs us in John's *Summa*, usurers often compelled their debtors to swear more or less detailed oaths to ensure the exaction and retention of usuries. Debtors had

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102.SC 2.7.51.

either to swear that they would simply pay the usuries or that they would pay them and not seek restitution for them or that, in addition to not seeking restitution, they would also not denounce the usurer to the Church. The effectiveness of these oaths as a means for skirting the usury ban, Raymond explains, lay in the fact that the oath was a pledge guaranteed by God, and for this reason it had to be fulfilled. In the first case, therefore, where the debtor has merely promised to pay the usuries, Raymond counsels him either to denounce the usurer to the Church so that she may compel the usurer to relax the oath through ecclesiastical censure or to pay the usuries to fulfill his oath to God (*ut satisfaciat Deo de iuramento*) and then seek them back through the process of restitution. In the second case, where the debtor has promised to pay the usuries and not seek them back, Raymond advises him to seek back the usuries indirectly by denouncing the usurer's crime to the Church so that she may compel him to make restitution. In the third case, Raymond argues that the portion of the oath wherein the debtor promises not to denounce the usurer to the Church is not binding, since in allowing him to carry on the mortal sin of usury undisturbed it impedes the salvation of the usurer and consequently runs contrary to the fundamental Christian principle of love of the neighbour. Hostiensis adds that if the debtor has sworn not to receive usuries at all, such that he cannot receive back the very usuries he paid, the Church ought nevertheless to compel the usurer to make restitution, but in light of the debtor's oath the money should be given to the poor rather than to the debtor.<sup>103</sup>

Finally, John shows in the *Summa* that the Church sought to prevent usury by placing obstacles in the path of establishing usurious enterprises. Citing a decree of pope Gregory X (d. 1276) in the Second Council of Lyons (1274), John writes that according to papal decree no one may lease houses to usurers from foreign parts. Patriarchs, archbishops, and bishops who contravene this statute are to be suspended from their office, whereas all those holding lesser positions in the Church are to be excommunicated

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103.SC 2.7.53.

for failing to uphold it. Ecclesiastical corporations, such as cathedral chapters, are to be subjected to interdict for contravening the statute, and the local bishop is charged with restraining laymen through ecclesiastical censure from fostering usurers in this way.<sup>104</sup> By preventing usurers from establishing their businesses in the first place, the Church could effectively head off usurious activity. Knowledge of this provision of the Church, moreover, was essential for the confessor in examining his penitents, who might have been inadvertently fostering usurers by placing their properties at their disposal.

## PROSECUTING USURY II: PUNISHMENT AND RESTITUTION

In the event that sins could not be prevented, the correction of faults through the assignment of an appropriate penance was the most important work of the confessor. Since usury for the medieval lawyers and theologians was fundamentally a violation of justice, the confessor had to know the means through which justice could be restored and the fault redeemed. In the *Summa confessorum*, John provided both general principles for dealing with usurers in the confessional and guidance on specific issues pertaining to the process of restitution that lay at the heart of absolving this particular sin.

The domain of the medieval confessor was the penitential forum, the internal court (*forum internum*) of the penitent's conscience where he made manifest the shadowy secrets of his heart, rendered his judgement upon them, and prescribed his sentence in the form of a penance to be executed, for which he granted absolution. His area of competency and manner of operating were related to, but distinct from, that of the ecclesiastical judge who prosecuted public transgressions in the bishop's court. For this reason, in the *Summa confessorum* John instructs the confessor concerning how the sin of usury is to be dealt with in each jurisdiction. In the case of manifest or public usurers,

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<sup>104</sup>.SC 2.7.71.

whose usurious activity is a matter of public knowledge, such as those “who keep a table prepared to loan money at usury to anyone,”<sup>105</sup> competence falls to the external forum of the ecclesiastical judge. As Raymond explains, in the case of public usurers, whose occupation is therefore known to the community, the Church ought *ipso iure* to exclude them from communion, reject their offerings, and, should they die without remedying the sin, deny them burial in consecrated ground.<sup>106</sup> Such punishments, insofar as they denied the unrepentant usurer access to the means of salvation and eternal life within the Church, established him, according to Jacques Le Goff, as one who was inexorably Hell-bound within medieval society.<sup>107</sup> The usurer was a companion of Death, as in Matthäus Merian’s (1593-1650) copy of the mid-fifteenth century *Totentanz*, originally painted on the inner wall of the lay-cemetery of the Dominican convent in Basel, where Death is depicted holding the throat of a usurer.<sup>108</sup> It was necessary in the *Summa confessorum* to remind confessors of the condemned status of the public usurer, for the rigours of the Church were not always observed in practice, even among its spiritual elite. As the Colmar Annalist informs us, in 1278 the Franciscans in Basel, to their great disrepute, buried a pawnbroker in the ground of their Church.<sup>109</sup>

In addition to the aforementioned penalties that the public usurer incurred automatically due to his occupation, the ecclesiastical judge also possessed the authority

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105.SC 2.7.48.

106.SC 2.7.47. In the event that a priest has wrongly received the offerings of a manifest usurer, Hostiensis, in Question 52 of the *Summa confessorum*, contends that the illicit offerings should be handed over to the local bishop in order that he may see to it that they are restored to their rightful owners or, if they cannot be found, to the poor in his stead. SC 2.7.52. In another case of illicitly received usuries, Raymond encourages a Christian who has received usuries from a Jew engaged in usury to make restitution not to the Jew from whom he extorted the usuries, but to the victims of the Jew’s own usurious activity, thereby indirectly compelling the Jew to restitution and fulfilling both his obligation to the Jew and the Jew’s obligation to his victims. SC 2.7.69.

107. See his treatment of the connection between death and usury in Jacques Le Goff, *Your Money or Your Life: Economy and Religion in the Middle Ages*, trans. Patricia Ranum (New York: Zone Books, 1990), 47-64.

108. Matthäus Merian, *Todten-Tanz: Wie derselbe in der Weitberümbten Statt Basel als ein Spiegel menschlicher Beschaffenheit ganz künstlich mit lebendigen Farben gemahlet nicht ohne nützliche Verwunderung zusehen ist* (Basel: Mattheus Mieg, 1621), 64. This volume is not paginated, and so I have counted the pages starting with the preface, which begins, “An den Christenlichen Leser.”

109. “In civitate Basiliensi sepelierunt fratres Minores cauwircinum, est manifestum in magnum suorum scandalum vicinorum.” Jaffé, “Annales Colmarienses maiores,” 203.

to compel him to restore the usuries he had exacted from his victims. If necessary, he could even use the means of major excommunication with no opportunity of appeal to a higher authority within the Church to accomplish this.<sup>110</sup> In addition, if the usurer should petition an ecclesiastical judge in court for restitution of usuries exacted from him, canon law (X 5.19.14) authorized the judge to deny his petition until he made full restitution of the usuries he himself had wickedly exacted.<sup>111</sup> Usurers whose activities were a matter of public rumour, but not notorious, also fell subject to such penalties if the local bishop declaimed against them openly in his church, which he could proceed to do on the testimony of witnesses, on the admission of the usurer himself if he confessed to the bishop when summoned before him, or even *ex officio* if no one appeared to accuse a reputed usurer known to the bishop.<sup>112</sup>

Although confessors had to be aware of the temporal and judicial penalties facing manifest usurers, the latter belonged properly to the jurisdiction of the bishop and his court. In the area of the confessor's competence, the penitential forum of conscience, his *modus operandi* differed insofar as he dealt with occult usurers whose compunction had moved them to seek absolution. Unlike the judge, the confessor sought a voluntary restoration of justice on the part of the usurer, rather than to compel this outcome. The confessor set the conditions for the usurer's absolution, working with him in order that he himself might remedy the injustice and return to a state of salvation. To accomplish this, according to Raymond, the confessor must urge the usurer to make full restitution immediately of the usurious gains that he illicitly received. If the usurer lacks the means to make complete restitution, he should restore as much as he can, grieving over his sin and promising continually to work towards completing the restitution if he should ever

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110. "Potest quemlibet usurarium cogere ad restituendas usuras si necesse fuerit, etiam per maiorem excommunicationem omni appellatione remota." SC 2.7.47. As John explains elsewhere in the *Summa* (3.33.33), major excommunication entailed denying the sacraments to the excommunicate, barring him from entry into a church, and removing the communion of the faithful from him. See Troyes, Bib. mun., MS 1492, fol. 307vb.

111. SC 2.7.47. John lays out the full implications of this provision in q. 49.

112. SC 2.7.48.

come into some money. In the meantime, Raymond suggests that such impoverished usurers beseech their victims for a delay in repayment, or even ask that their debtors forgive a part of the debt owed to them for the sake of alms, effectively granting this amount, in an ironic twist, to the poor in the form of the destitute usurer himself!<sup>113</sup>

Despite the different jurisdictions of the ecclesiastical judge and the confessor, a case could arise wherein a manifest usurer, having escaped public prosecution, should seek absolution from a confessor before his death. Being a true encyclopedist, John did not fail to include this scenario in the *Summa*, addressing it briefly in Question 72. Citing a decree of Gregory X in the Second Council of Lyons, John writes that the confessor must not admit the usurer to confession or absolution nor permit him to be buried in the church's cemetery nor legitimate his will as a witness to it, until he has made full restitution of the usurious gains to his victims.<sup>114</sup> Alternatively, he must at least offer a sufficient pledge to his victims or, if they are absent, to the bishop or his parish priest in order to secure the full amount of the usuries to be restored, and this sum should be expressed in writing as accurately as possible.<sup>115</sup> Essentially, therefore, the role of the confessor in dealing with usurers of whatever stripe was to urge them to make full restitution of the unjust gains they had received, thereby remedying the injustice they created and permitting them to re-enter the ranks of the saved.

Restitution, however, was not for the medieval canonists as simple a matter as it seems at first glance. A whole host of issues might arise to complicate the remedy that the confessor urged his penitent to carry out in order to secure his salvation. What was the usurer to do, for example, if his victims could no longer be found? For this reason,

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113.*SC* 2.7.47.

114.*SC* 2.7.72. As Gregory notes here, wills lacking such ecclesiastical intervention are invalid: "Testamenta facta aliter nihil valent."

115. Presumably the conditions of the restitution were to be stipulated in the usurer's last testament, but neither John nor his sources declare this explicitly. For an examination of the connection between restitution and the wills of usurers, see Lawrin Armstrong, "Usury, Conscience and Public Debt: Angelo Corbinelli's Testament of 1419," in *A Renaissance of Conflicts: Visions and Revisions of Law and Society in Italy and Spain* (Toronto: Centre for Reformation and Renaissance Studies, 2004).

confessors had to be informed of the diverse issues surrounding the manner of making restitution in order to counsel their penitents effectively, for whom the successful achievement of this act was, so to speak, a matter of (eternal) life and death. To this end, John provided substantial guidance on the complexities of restitution in several questions of the *Summa confessorum*.

In the case just mentioned, where the usurer cannot find the debtors, or their heirs, to whom he is obligated to make restitution, John, drawing on Hostiensis, informs the confessor that if the usurer's victims truly cannot be found, he must counsel the usurer to make restitution to the poor in their place. If the victims cannot be found readily because the usurer has moved away from them, then he must send the money to them at his expense. If, on the other hand, the victims have moved away from the usurer, then they must pay the expenses in order to receive what is due to them from their now distant, erstwhile exploiter, provided that these expenses do not exceed the original amount due to the debtor. In this case the restitution should be made to the poor in the usurer's location. If any of the usurer's victims is expected to return, then on the authority of the confessor's church the usurer must deposit in the local church or another safe location the sum to be restored, which will be returned to the victim upon his arrival.<sup>116</sup>

Since the heirs of usurers inherited their worldly goods, they also inherited the burden of the sin of their ancestors through which they had acquired those goods. The obligation to make restitution did not cease with the usurer's death. The confessor had therefore also to deal with the concerns of the usurer's heirs in the penitential forum. Specifically, the question arose of the precise extent to which heirs were culpable for their ancestor's sins and whether anyone who received any sort of bequest from a usurer should also be held accountable for his sin. To the first concern Hostiensis replies in the

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116. SC 2.7.68. For the location of the deposited usuries, cf. SC 2.7.69. Similarly, in Question 50 of the *Summa* on usury, Gottofredo da Trani asserts that in order for a manifest usurer's petition to seek back usuries in the external forum to proceed, which required him first to make restitution of his own illicit gains, he must restore the usuries to the poor if the original victims cannot be found, either because they died or moved away. Again, if the usurer's victims are expected to return, he must deposit the amount of the restitution before his own petition to seek back illicitly exacted usuries may proceed.

*Summa* that the heirs of usurers are only responsible for making restitution in proportion to the value of what they have received from their ancestor's estate, since, as he explains, under canon law (X 5.19.5) the estate of the usurer seems to be tacitly obligated to his victims for making restitution of his ill-gotten gains.<sup>117</sup> To the second concern Hostiensis answers in the negative. If someone receives a bequest from a usurer, but is not his designated heir, he is not held to restore it to the original owner from whom the deceased usurer extorted it, even if he received the bequest as a pure bounty without rendering any service to the usurer in return (*ex causa lucrativa*).<sup>118</sup>

The case of a usurer's bequest seems to have been exceptional, for, as John notes in the same question, other opinions prevail on goods received from usurers during their lifetime and the culpability of those who receive them. Perhaps since the person who received such a bequest did not consciously seek it, and thus lacked the intent to gain from the usurer's activity, he did not incur the taint of usury. At any rate, in the case of those who had dealings with the usurer while he lived and received something from his usurious goods, in some instances they could be held responsible for making restitution in lieu of the usurer. In examining the penitent, it was the confessor's task to interrogate her in order to elicit a full and detailed confession of all her sins in order to assign an appropriate penance. Thus it was necessary for the confessor to know who was culpable in their dealings with usurers in order to remedy their faults in the penitential forum.<sup>119</sup> The example that Raymond of Penyafort provides in Question 55 on usury of the *Summa* is a case where a usurer bought a manor with his ill-gotten gains and handed it over as a

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117. SC 2.7.54. Cf. SC 2.7.74, *in fine*. In cases of corporate usury also, according to William of Rennes, such as when a collegiate chapter receives usuries, each member of the corporation is held culpable in proportion to the amount he received from the usuries, or to the extent that the usuries relieved him from his share of expenses in supporting the corporation. If, however, someone compelled the corporation to engage in usury, which otherwise it would not do, then he alone is bound to restore all of the usuries. SC 2.7.60. Cf. the analogous case of communities of citizens who lend at usury in 2.7.57.

118. SC 2.7.54.

119. This concern is mirrored in the *Summa confessorum* in the phrasing of the question itself: "Queritur utrum ille qui solvit usuras possit cum effectu petere rem emptam de usuris ab ipso possessore, et utrum in foro penitentiali ille teneatur restituere." SC 2.7.55.

gift to another person. In such a case, Raymond argues that the thing purchased takes the place of the usuries themselves. Therefore, the victim of the usurer, to whom the usuries are owed, may petition for restitution of the manor as compensation, and the recipient of the manor is bound to restore it.<sup>120</sup> As in the case of the usurer's estate, the taint of usury follows the usuries themselves.

William of Rennes adds the qualification, however, that this is only the case when someone has received something from a usurer as a pure boon (*ex causa lucrativa*), which is evident from Raymond's example, in which the recipient received the manor from the usurer as a gift. Someone, on the contrary, who purchased something from a usurer or received it as compensation in good faith – which is evident either from the fact that he did not know that the person he was acquiring the goods from was a usurer or did not believe that what he was purchasing stemmed from ill-gotten gains or believed that the usurer had other means for making restitution – is not bound to make restitution.<sup>121</sup> Since the recipient in this case received the goods from the usurer as compensation and in good faith, he neither gained nor intended to gain from usurious activity, and thus is free from the taint of usury.<sup>122</sup>

Related to the question of the liability of goods purchased with usurious money was whether the usurer was also compelled to restore any additional gains that he had made with the usuries he had exacted. As John explains in the *Summa*, confessors had to distinguish carefully the precise nature of the gain that the usurer acquired with his debtor's money. According to Raymond, a corrupt root gives rise to poisoned fruit, and thus the usurer is bound to restore to the debtor everything that he gained beyond the principal in virtue of the loan.<sup>123</sup> William of Rennes qualifies, however, that this is only

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120.SC 2.7.55.

121.SC 2.7.55.

122.Cf. My discussion of compensation in loan contracts above, p. 80.

123.SC 2.7.65.

the case when the usurer gained directly from something held on account of usury. For example, if the usurer held a piece of land from the debtor as usury, he is bound to restore the land and all the fruits he received from it to the debtor, as well as to make good any losses the debtor may have sustained in virtue of the burden of the usury, such as having to sell his home below its true value and rent a new residence. If, on the other hand, the usurer invested the ill-gotten gains in a business venture and profited from it or purchased a manor with them and received its fruits, he is not obligated to restore the additional gains beyond the initial sum of the usuries.<sup>124</sup>

John then draws on Thomas Aquinas and Ulrich of Strasbourg to explain the difference here. As they assert, in the latter cases the usurer is not bound to restore the additional gains, since, in the case of the business venture, the gains are due not to the fruitfulness of the money itself, but to the industry of the usurer who employed it.<sup>125</sup> Since money in itself has no utility,<sup>126</sup> the gains that the usurer made with it are entirely due to his own efforts. If the lender petitioned for these gains, he would be seeking something that is not rightly his. Similarly, in the case of the manor purchased with usuries, the debtor has no claim to its fruits, since in the act of purchasing it the manor becomes the buyer's exclusive property and the fruits derived from it are his.<sup>127</sup> They are not the fruit of the debtor's money, which is sterile in itself, and thus the debtor has no claim to them. An analogy can be drawn here to an argument of Aquinas' that John related elsewhere in the *Summa*. By consuming the money the usurer made it his own and the debtor can expect no utility from it beyond its substantial or initial value.<sup>128</sup> In the case of restitution, the usurer takes on the role of a debtor who owes the ill-gotten gains to his victim. However, the same rationale applies to this loan as to all others. Thus, as

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124.SC 2.7.65.

125.SC 2.7.65.

126.See n. 82 on pp. 97 f.

127.SC 2.7.65.

128.Cf. my lengthy discussion of Aquinas' consumptibility argument above on pp. 75 ff.

Hostiensis concludes, for the debtor to whom restitution is owed to demand the gains that the usurer made from the usuries in the latter cases would be to seek back his principal with usuries!<sup>129</sup> Restitution, as is evident from this case and those mentioned above, could be as fraught with difficulties as the prosecution of usury itself. For this reason John provided extensive, essential guidance for the practical use of confessors in the *Summa confessorum*.

#### THE MANY FACES OF USURY: ANALYSIS OF SPECIFIC USURIOUS CONTRACTS

Usurious activity in the Middle Ages took on an astonishing number of forms. The financial incentive to skirt the Church's ban on exacting any surplus in a loan was strong, and clever usurers developed a number of devices for cloaking usuries in contracts that did not appear, at first sight, to be loans. Just as essential for the confessor as an understanding of the theoretical foundations of the usury ban and the Church's general method of effacing this sin was an awareness of the particular forms it assumed. Since it was the confessor's duty to unearth the hidden shame of the penitent, he had to know how and where to look for these secrets, and thus he had to be familiar with the numerous devices through which medieval Christians feigned to themselves that they were not engaged in the deadly sin of usury. In the *Summa confessorum*, John gave them this information abundantly.

In the course of analyzing the theory of usury in John's *Summa*, we already examined some of the specific contracts in which usurious activity was cloaked. In particular, I went on at some length about how credit sales and advanced purchases could be used to cloak a usurious loan.<sup>130</sup> As John informs us elsewhere in the *Summa*, the

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129.SC 2.7.65.

130.See pp. 99 ff.

same criterion of reasonable doubt (*dubium*) determines the licitness of advanced purchases of corn in the blade<sup>131</sup> – a practice that we know was mirrored in the Alsace region near Freiburg in the purchase of wine. The Colmar Annalist relates that the grapes of the year 1303 had such great potential that merchants could not purchase a *carrata* of new wine “on the vines” for even 10 *libras*, which clearly implies that such merchants paid in advance for wine to be delivered at a later date.<sup>132</sup> Wine was also purchased on credit. In 1302, as the Colmar Annalist again informs us, a *carrata* of wine was sold in Westhausen for 100 *libras* on the condition that the buyer would pay one *libra* a year for it.<sup>133</sup> Probable doubt over their future value also excuses advanced purchases of horses to be delivered at upcoming markets, as William of Rennes asserts in another question of John’s *Summa*.<sup>134</sup>

While advanced purchases are licit, provided genuine doubt is present about the outcome of the transaction, according to John it is entirely another matter if the object of the purchase is not goods that the seller will have in the future, but goods that he does not have at all at the time of the contract. Following William of Rennes, John contends that those who wittingly purchase animals from another person who does not possess them or, as the *Regula mercatorum* helpfully adds, merely feigns to possess them, and then lease them back to the seller for an annual payment are engaged in usurious activity.<sup>135</sup> Since the seller does not actually have the animals that he is offering for sale, he does not exchange them with the buyer, but rather incurs a *de facto* debt with the buyer in the

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131.SC 2.7.26.

132.“Bonum vinum crevit et carrata vini novi in vitibus pro decem libris non poterat comparari.” Jaffé, “Annales Colmarienses maiores,” 229.

133.“In Westhusen carrata vini pro centum libris tali condicione vendebatur, ut una libra annis singulis solveretur.” This *carrata* of wine had an interesting history subsequent to its purchase, which the Colmar Annalist has thankfully recorded. The original purchaser sold the wine for twenty *libras*, and used these, in turn, to buy a vineyard that yielded two *libras* of returns per year, netting the purchaser a profit of one *libra* per year! Ibid., 227.

134.SC 2.7.34.

135.SC 2.7.33. Cf. Germain Sicard’s discussion of the livestock lease (*bail à cheptel*, *soccida*, *gazalha*) as a form of rural credit and its potential abuses. Germain Sicard, “L’usure en milieu rurale: Notes sur le bail à cheptel dans la doctrine de la fin du Moyen Âge,” in *Études d’histoire du droit canonique dédiées à Gabriel LeBras* (Paris: Sirey, 1965), 1396-1403.

amount of the purchase price of the animals. This value, which takes on the character of the principal in a loan contract, must be returned to the buyer, and therefore anything that the buyer should receive beyond the principal in this case would constitute usuries. In the case that William describes, the buyer is not really purchasing the animals, but providing seed money to the seller and receiving a superabundance in exchange for this in the form of the lease payments. Essentially, the buyer is leasing the use of the seed money to the seller. The truth of this statement becomes particularly clear if we keep in mind that even if the seller goes out and immediately buys the animals with the seed money, the animals will then stand *in loco pretii*,<sup>136</sup> and charging for the use of the animals, in this case, will be just as illicit as charging for money itself. Since the buyer is charging a price for the use of money, he is engaged in usury and commits a patent injustice.<sup>137</sup>

Loans involving currency exchanges could also be usurious on the grounds of intention. Following Hostiensis, John contends that when someone lends money of one kind in order to receive it back in another currency, the contract is usurious if the lender intended to profit from the exchange.<sup>138</sup> What John is likely referring to here is the device known as a bill of exchange, which was originally devised to facilitate the transactions of merchants who bought their goods in one currency and sold them for another.<sup>139</sup> For example, a banker might grant one of his merchant clients a sum of Genoese money to make his purchases there, which the merchant had to repay to the banker's agent at the fairs of Champagne in the local currency after he had sold his goods.<sup>140</sup> The amount

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136.Cf. *SC* 2.7.55 and pp. 111 ff. above.

137.See pp. 75 ff.

138.*SC* 2.7.20.

139.For a detailed explanation of medieval bills of exchange, see Raymond de Roover, *The Rise and Decline of the Medici Bank, 1397-1494* (New York: W. W. Norton & Co., 1966), 110-12; Raymond de Roover, *Money, Banking and Credit in Mediaeval Bruges: Italian Merchant-Bankers, Lombards and Money-Changers, A Study in the Origins of Banking* (Cambridge, MA: Mediaeval Academy of America, 1948), 48-75.

140.This is the process referred to, from the bank's perspective, as buying bills of exchange. Banks also sold bills of exchange. In this contract a client deposited a sum of money in a bank in one place in order to receive it back at another time and place in another currency. In this situation, the bank took on the role of a debtor vis-à-vis its client. The example here of trade based on credit between Genoa and the fairs of Champagne is inspired by R.D. Face, "Techniques of Business in the Trade between the Fairs of

returned was to be the equivalent of the amount that the merchant had received in Genoa. The equivalency was governed by an exchange rate, which, in turn, was determined by the relative forces of supply and demand in the two locations. Strictly speaking, then, if a merchant banker lent money in Genoa to be repaid at the fairs of Champagne, he was only seeking just compensation for the amount of the principal of the loan, and had no intention to profit in virtue of the loan itself. Reputable merchant bankers made their profits from closely watching the exchange rates between different currencies. They strove to remit the sums that they had originally lent from abroad when the exchange rate between the two countries had changed in their favour, thereby profiting from the differences in rates over time through distinct contracts.<sup>141</sup> Such contracts were in theory licit, since they corresponded to the exigencies of canon law (C. 14 q. 4 c. 5), which demanded that those who lend money in order to receive repayment at another time and in a different species receive back only its equivalent value at the time of repayment.<sup>142</sup> However, contracts of exchange were not impervious to abuses, such as the fictitious exchange, in which a straight loan at interest was disguised as an exchange and re-exchange of currency, where the rates were predetermined to ensure a profit to the lender.<sup>143</sup> Even the intention to gain from the vagaries of exchange rates could fall subject to the censure of the usury ban if it was taken too far. In the *Summa confessorum*, Gottofredo da Trani rebukes those who lend “from the markets” and decries their business as “execrable usury” when their gains exceed the *centesima*.<sup>144</sup> Lenders who are

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Champagne and the South of Europe in the Twelfth and Thirteenth Centuries," *Economic History Review* n.s. 10, no. 3 (1958): 427-38.

141. Raymond de Roover provides an excellent example, complete with diagrams, of how profit is generated in bills of exchange in Raymond de Roover, "What is Dry Exchange? A Contribution to the Study of English Mercantilism," *Journal of Political Economy* 52, no. 3 (1944): 255-56.

142. SC 2.7.20.

143. On fictitious exchange, see *Ibid.*, 250; De Roover, *Medici Bank*, 135. Dry exchange, where the borrower did not repay the money abroad, but instead drafted a re-exchange at the prevailing rate of exchange in order to repay the money to the original lender in the original place of the loan, involved more complex ethical considerations for canonists, since it more nearly approximated a straight loan at interest. Since John does not discuss bills of exchange explicitly, I have omitted its consideration here and direct the reader to Dr. de Roover's excellent analysis of the ethics of Dry exchange in De Roover, "What is Dry Exchange?," *passim*; De Roover, *Medici Bank*, 132-35.

confident that the sum they will receive in the future in a different currency will surpass the initial value of the loan incur the taint of usury on the grounds of corrupt intention.<sup>145</sup>

According to John, the confessor had also to be chary in the case of contracts of sale that permitted the seller to repurchase the item sold at a later date. The example he provides is of someone who sells a manor on the condition that he or his heir may repurchase it within so many years by refunding the purchase price.<sup>146</sup> In the event of repurchase, one could argue that the contract should be characterized not as a sale, but more appropriately as a loan of the original purchase price from the buyer to the seller of the manor that was secured by the manor itself, which the buyer took possession of for the term of the loan as a pledge. If this is the case, then any utility that the buyer derived from the pledge and did not subtract from the original purchase price would constitute a superabundance from the loan, and thus taint it as usurious.<sup>147</sup> According to Raymond, however, since such contracts are not properly speaking loans, the buyer can “make the fruits his own without danger of usury, even though the seller . . . should afterwards regain his manor.”<sup>148</sup> Although such contracts are licit *ex forma*, Raymond goes on to point out that they can be carried out *in fraudem usurarum*, which the confessor can presume from the following three conditions: (1), the original purchase price of the item is moderate with respect to its true value, endowing the item with the character of a pledge that guarantees the full value of the loan;<sup>149</sup> (2), the repurchase price exceeds the original purchase price, with the difference constituting the usuries; and (3), the buyer is

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144. 1% interest per month. See p. 74 above.

145. See n. 97 on p. 101.

146. SC 2.7.25.

147. See n. 61 on p. 88.

148. SC 2.7.25.

149. Hans van Werveke calculated that on average in Flanders and Lotharingia in the thirteenth century the value of loans was approximately 2/3 the value of the pledges securing them, making the pledge worth considerably more than the value of the loan. Hans Van Werveke, "Le mortgage et son rôle économique en Flandre et en Lotharingie," *Revue belge de philologie et d'histoire* 8, no. 1 (1929): 79.

accustomed to lend at usury.<sup>150</sup> For the confessor questioning his penitent about his day to day affairs, the ability to distinguish between his licit and fraudulent ventures was essential in ministering to his salvation and treating him justly. Ignorance of such distinctions could produce excessive zeal in the confessor, who might prosecute sins that were really, according to the canonists, not sins at all. Oversight could also, on the other hand, fatally endanger the penitent's soul. John of Freiburg sought to address both of these problems through the introduction of fine distinctions, such as the case described above, in the *Summa confessorum*.

Like the sale-resale contract, the ethical analysis of the medieval rent (*census*) contract in the *Summa confessorum* is complicated by the blurred boundaries between contracts of sale and loan contracts. I alluded briefly to the significance of the canonists' interpretation of the medieval rent contract as a contract of purchase above,<sup>151</sup> and so the reader will not be surprised to learn that William of Rennes argues, following the traditional legal view, that the contract is not usurious *ex forma*, even though there is the possibility that the purchaser will receive back more from the fruits paid out over time than he initially paid for the rights to the land. However, he adds that the rent contract, insofar as it approximates a loan, can be carried out *in fraudem usurarum*, which can be inferred using the same three criteria that Raymond devised above for assessing the licitness of sale-resale contracts. He advises that in the penitential forum the confessor should accept the penitent's confession concerning his benign involvement in rent contracts in good faith, but warns that "much is to be presumed against such a creditor." Restitution should be enjoined to him if he will profit considerably from the rent contract at the expense of the seller.<sup>152</sup>

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150.SC 2.7.25.

151. See p. 97.

152.SC 2.7.27.

In determining the licitness of a rent contract, Raymond's first criterion, the issue of the price of the contract, was decisive. Discussing the case of those who purchase, particularly from churches and monasteries, the usufruct of a castle or village in a rent contract, Raymond contends in a later question of John's *Summa* that where this right is purchased for the lifetime of the buyer, a presumption of usurious intent can be gathered from the age and well-being of the buyer. The price of a licit contract should vary directly with the buyer's life expectancy, since it would be unjust for a young, healthy man to buy a lifetime rent contract at a lower price than an aging and unwell investor.<sup>153</sup> In this case, the younger buyer would be certain to gain from the contract over time at the seller's expense, incurring something analogous to the guilt of a corrupt intention to gain from a loan contract.<sup>154</sup>

Even when the buyer's motives are pure, Raymond argues that if the price of the rent contract is too high or too low, it must be adjusted to reflect the "just price" of the rights to the castle or village.<sup>155</sup> This can be accomplished either by supplying the difference from the just price to the seller if the price is too low or to the buyer if the price

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153.SC 2.7.31. There is also some disagreement among John's sources over whether it was licit to purchase rent contracts for the lifetime of the buyer, since, as William of Rennes argues, they could cause the seller to desire the death of the buyer prematurely to avoid paying out the full value of the contract. Since for this same reason the Church prohibited benefices that were not vacant to be promised to others and forbade Christians from designating their heirs in a living will, William argued that such contracts should be avoided, although the law does not expressly condemn them. To sell contracts for the lifetime of the seller would be more desirable, he contends, since then both the buyer, who stood to gain from the seller's ongoing vitality, and the seller, who valued his own life, would wish him to live as long as possible. Ulrich, Hostiensis, and Innocent IV, on the other hand, approved of rent contracts for the lifetime of the buyer, so long as they were valued at a just price.

154.Since the medieval rent contract straddled the line between a loan and a sale, the canonists were not always consistent in their manner of treating it. Often the methods and principles of analyzing usurious contracts were applied to the analysis of rent contracts, despite the fact that the latter were properly speaking sales in the eyes of the canonists.

155.In the *Summa confessorum*, neither John nor his sources elaborate on what constituted a "just price" for something put up for sale. In his treatise *de emptione et venditione*, John merely states, following Aristotle, that it is the "quantita[s] valoris rei." SC 2.8.9 in John of Freiburg, *Summa confessorum*, fol. 92rb. As John Baldwin has painstakingly demonstrated, the common medieval conception of the just price, which was derived from the Roman legal tradition, reflected a measure of the common need for the item put up for sale, established with respect to the varying circumstances of time and location. The just price was essentially identical with the common market price, established by the forces of supply and demand, but without being prejudicial to the individual circumstances of the buyer. See Baldwin, *Medieval Theories of the Just Price*, 20, passim. In the words of the renowned Romanist Accursius, "pretia rerum non ex affectu et utilitate singulorum, sed communiter funguntur; et tantum valet res communiter quantum vendi potest." Qtd. in Kaye, *Economy and Nature*, 113-14. On the just price see also pp. 87-101.

is too high, or by cancelling the sale and obtaining a refund for the buyer. The buyer has the right to choose which of these options he prefers. If he chooses the first, Raymond adds that the deviation from the just price is to be evaluated at the time of the sale, and not at the present time, when the item purchased may have been much improved. William of Rennes clarifies, moreover, that deviations from the just price must be remedied even if they fall within half of or one and a half times the just price of the item put up for sale. These prices would not fall subject to the censure of the Roman law of *laesio enormis*, which only considered exchanges where the price exceeded by one half or fell under one half of the just price as injurious to the buyer or the seller respectively.<sup>156</sup> However, Roman law permitted buyers and sellers to negotiate with one another within the boundaries of *laesio enormis*.<sup>157</sup> William does not believe that the provision is valid for Christians, but in light of the Roman law he advises the confessor not to deny absolution to the penitent who does not wish to make restitution of a deviation from the just price within these boundaries. John concludes this lengthy question in the *Summa* by noting the dissenting opinion of Thomas Aquinas, who argues that divine justice requires any notable inequality to be remedied by the party who obtained the advantage.<sup>158</sup> Since John does not explicitly endorse Aquinas' opinion as the correct one, he leaves it to the confessor's discretion to decide which authority he finds more compelling.

In addition to the circumstances of the rent contract, the confessor also had to enquire into the object of the contract: the precise nature of the rights put up for sale. I noted above that the most basic form of medieval rent contract involved a purchase of a right to the yields of a piece of land over time. However, virtually any lucrative right could be purchased by means of a *census* contract – including a personal *census* on a person's individual labour productivity. This form of rent contract was virtually

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156. On the concept of *laesio enormis*, see Baldwin, *Medieval Theories of the Just Price*, 27, *passim*.

157. "Iura civilia sustineant quod sese invicem re ipse decipiant contrahentes." SC 2.7.31.

158. SC 2.7.31.

indistinguishable from a straight loan from the buyer to the seller of the purchase price of the contract, which the seller worked over time to repay.<sup>159</sup> In this case, William of Rennes contends in John's *Summa* that the contract is illicit because the purchaser stands to gain with near certainty. Since a personal (*personalis, bursalis*) *census* is based generically on a person's labour productivity, there is no risk, William notes, of storms or of the sterility of the earth, which renders the yields from earth so uncertain that those who buy rents on land sometimes even lose the expenses of their labour in managing it.<sup>160</sup> Once again, the proximity of the personal rent contract to a loan renders it illicit on the grounds of a corrupt intention to gain at another's expense.

Finally, to his analyses of contracts that fall more or less directly under the category of usurious loans, John adds a treatment of certain cases that fall under the generic category of illicit gain, which medieval moralists often subsumed under the heading of usury on the grounds that *plus recipitur quam detur*.<sup>161</sup> Aside from justifying the licitness of certain contracts that could have the appearance of generating shameful gain, such as the *precaria* contract and the profits that clerics derive from handicrafts,<sup>162</sup> John's central concerns in this connection are the justice of certain lease contracts<sup>163</sup> and

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159. On the personal *census*, the ethical considerations surrounding it, and its historical development, see Noonan, *The Scholastic Analysis of Usury*, 154-70, 230-48.

160. SC 2.7.29.

161. Of the conceptual looseness of the usury ban among moralists and preachers Gerhard Rösch has remarked: "Die Schwierigkeiten der Theoretiker bei der Beurteilung des Wuchers interessierten sie [Prediger] nicht. Dies gilt in ganz ähnlicher Weise für alle großen Prediger des Jahrhunderts wie Jacque de Vitry, Guibert de Tournai oder Humbertus a Romanis und Albertus Magnus. Bei ihnen wird der Bürger eindringlich vor den Sünden des Betrugs, des Meineids und des Wuchers gewarnt, ohne daß dies näher erläutert wird." Gerhard Rösch, "Wucher in Deutschland 1200-1350: Überlegungen zur Normdidaxe und Normrezeption," *Historische Zeitschrift* 259, no. 3 (1994): 611-12, see also p. 609.

162. See SC 2.7.32, 41.

163. See SC 2.7.35, 36, 39. The lease contracts that John investigates in the *Summa* all involve the leasing of animals: oxen for ploughing and sheep for their wool. Given the centrality of trade in agricultural products from the Breisgau within Freiburg's economy specifically and the trade of Northern Europe in the Middle Ages generally, such contracts must have been commonplace and thus a matter of pressing concern for confessors ministering to the agricultural and urban populations who took part in them as lessees and lessors. For the centrality of trade in the agrarian surplus of the Breisgau to the economy of Freiburg, see ch. 5, p. 206. On its predominance, and especially the predominance of wool, in the trade of Northern Europe in the Middle Ages, see Michael Postan, "The Trade of Medieval Europe: The North," in *Cambridge Economic History*, vol. 2, 2nd ed., eds. M. M. Postan and Edward Miller (Cambridge: Cambridge University Press, 1987), 169-78. Of particular interest in John's discussion of animal leases is his treatment, following William of Rennes, of the *ad crementum* contract of sheep-raising in Question 36. This contract can be conducted either as a straight lease, or as a partnership, or as a hybrid contract in which

the profits of speculative trade.<sup>164</sup> However, since these matters are only tangential to the usury ban, and do not occupy a significant portion of the *Summa confessorum*'s section on usury, I will pass over them here without additional comment, referring the interested reader to the text of the relevant questions in the appendix.

Insofar as this overview of John's treatment of usury in the *Summa confessorum* has been selective, its length (which, I hope, has not exhausted the reader's patience) is a testament to the truly encyclopedic nature of the work. It is a work that offers its intended readership, like all good encyclopediae, a summary of the state of knowledge on a given topic adapted to the needs of its audience. If I have desired to bring as much of the *Summa confessorum* on usury into as clear a focus as possible, it is because it represents the information that John considered necessary for confessors to exercise their duties in the penitential forum competently. Therefore, in light of its lengthy treatment of the topic, the *Summa confessorum* gives us an awareness of how extensive a knowledge of the Church's usury ban the many late thirteenth and early fourteenth century confessors who used John's compendium possessed. The full socio-historical significance of this statement will become apparent through my discussion of the influence of the *Summa confessorum* in the next chapter.

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a loan is combined with partnership. For example, someone who has 20 sheep loans 10 of them to a business partner (obligating him to restore those 10 before the maturity of the loan whatever might happen to them) and enters into a partnership with him with his own remaining 10. The partners agree to watch over the 20 sheep in common and share the risks and the gains with each other. The latter contract can become usurious if the loan contract and the partnership contract are not kept distinct from one another, such that the creditor of the 10 sheep compels debtor to use his portion of the yields from the partnership to repay the principal of the loan before he can receive any profit from it. In this case, the partnership contract would take on the character of the loan. Therefore, any profit that the creditor drew from the partnership would be tainted as usurious. In his *Summa de casibus conscientiae*, Bartholomew of San Concordio, confirming the reader of the *Summa confessorum*'s suspicions, clarifies that the victims of such contracts were typically peasants; for where William wrote *debitor* in discussing this hybrid contract, Bartholomew substituted *rusticus*. Bartholomew of San Concordio, *Summa de casibus conscientiae* (Augsburg, 1475), fol. 107va (Usura 2.5). See my discussion of Bartholomew's use of the *Summa confessorum* in ch. 4, pp. 175 ff.

164. See SC 2.7.40.

CHAPTER FOUR: THE AFTERLIFE OF JOHN'S TEACHINGS ON USURY: THE RECEPTION HISTORY OF  
THE *SUMMA CONFESSORUM*

As we have seen in the previous chapter, John placed a tremendous amount of information on the Church's usury prohibition at the fingertips of anyone who managed to obtain a copy of his *Summa*. The reception history of the *Summa confessorum* on usury demonstrates that this was not an insignificant number of people. Not only was John's teaching on the usury prohibition reasonably comprehensive, but it was also quite popular. If we consider, in addition, that John's teachings in the *Summa* reached not only their immediately intended audience – confessors engaged in the pastoral care – but also the penitents whom these confessors counselled in the confessional and to whom they preached in their churches,<sup>1</sup> the audience of John's *Summa* increases dramatically. Given the popularity of the *Summa confessorum* and its ability to reach all levels of medieval society through the preacher's pulpit and the penitential forum, I contend that it gives us a unique insight into what constituted common knowledge of the Church's usury prohibition in the many places where it was popular during the Late Middle Ages.

DELIMITATION OF THE ENQUIRY

The researcher who wishes to make a detailed study of the reception history of the *Summa confessorum* encounters, albeit cheerfully, the obstacle that the *Summa* was so popular that it would be impossible to do justice to its subsequent history without

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1. The close connection between the office of preaching and confession is underscored by Humbert of Romans (d. 1277), the fifth master general of the Order of Preachers, who argues that moving the audience to do penance is one of the ten fruits of good preaching: "As the seed is planted in preaching," he writes, "the fruit is harvested in confession." Qtd. in Lester K. Little, *Religious Poverty and the Profit Economy in Medieval Europe* (Ithaca, NY: Cornell University Press, 1978), 190. On the relationship between preaching and confession, see also pp. 187-89. Hence, in his capacity as preacher or as confessor, the friar or parish priest could equally turn to the *Summa confessorum* for guidance.

devoting an entire volume to the enterprise. In order to provide a sufficiently specific history of the *Summa confessorum*'s afterlife, I have had to be selective in my enquiry, hoping not only to contribute to our knowledge of the history of this influential text, but also to blaze a trail for other researchers interested in investigating the extent of John of Freiburg's imprint upon intellectual and social history. As a result, the reception history that I offer in this chapter is partial; nevertheless, it represents a significant advancement in terms of our knowledge of John of Freiburg's historical significance.

The first limitation that I have imposed is linguistic. Below, I shall only analyse the reception history of the *Summa confessorum* in Latin texts. As such, I shall not discuss, for example, Brother Berthold's re-working of the *Summa confessorum* into German in his *Rechtssumme* or *Summa Ioannis Deutsch* (2<sup>nd</sup> half 14<sup>th</sup> cent.), which has already been published in a critical edition and studied extensively.<sup>2</sup> I shall pass over as well the use of the *Summa confessorum* on usury in the fifteenth century *Regle des marchans*, a French translation of Guy de Toulouse's *Regula mercatorum* (ca. 1315).<sup>3</sup>

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2. Georg Steer et al., eds., *Die "Rechtssumme" Bruder Bertholds: Eine deutsche abecedarische Bearbeitung der "Summa Confessorum" des Johannes von Freiburg. Synoptische Edition der Fassungen B, A und C*, 4 vols., Text und Textgeschichte 11-14 (Tübingen: Max Niemeyer Verlag, 1987). On Berthold's life and writings, see also Roderich Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts in Deutschland am Ende des fünfzehnten und im Anfang des sechszehnten Jahrhunderts* (Leipzig: S. Hirzel, 1867), 516-19; Amédée Teetaert, *La confession aux laïques dans l'Église latine depuis le VIII<sup>e</sup> jusqu'au XIV<sup>e</sup> siècle* (Paris: J. Gabalda, 1926), 444; Pierre Michaud-Quantin, *Sommes de casuistique et manuels de confession au moyen âge (XII-XVI siècles)*, *Analecta Mediaevalia Namurcensia* 13 (Louvain: Nauwelaerts, 1962), 48; Académie des Inscriptions et Belles-Lettres, *Histoire littéraire de la France*, vol. 28, *Suite du quatorzième siècle* (Paris: Imprimerie Nationale, 1881), 268; Otto Geiger, "Studien über Bruder Berthold: Sein Leben und seine deutschen Werke," *Freiburger Diözesan-Archiv* 48 (1920): 1-54; Thomas Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 4 vols. (Rome, 1970), 1:238. Several manuscripts of the *Rechtssumme* attribute the work erroneously to John of Freiburg. See Geiger, "Bruder Berthold," 3, n. 1.

3. *La regle des marchans nouvellement translatee de latin en francoys* (Provins: Guillaume Tavernier, 1496). On the *Regle des marchans*, see Michaud-Quantin, *Sommes de casuistique*, 48; Académie des Inscriptions et Belles-Lettres, *Histoire littéraire de la France*, vol. 28, *Suite du quatorzième siècle*, 268; Leonard E. Boyle, "The 'Summa Confessorum' of John of Freiburg and the Popularization of the Moral Teaching of St. Thomas and some of his Contemporaries," in *St. Thomas Aquinas 1274-1974 Commemorative Studies*, vol. 2 (Toronto: Pontifical Institute of Mediaeval Studies, 1974), 260; H. Finke, "Die Freiburger Dominikaner und der Münsterbau," in *Festschrift zur Generalversammlung des Gesamtvereins der deutschen Geschichts- und Altertumsvereine zu Freiburg in Breisgau vom 23 bis 26 September 1901* (Freiburg im Breisgau: Friedrich Ernst Fehsenfeld, 1901), 169.

However, this particular omission is partly compensated by my detailed analysis of the reception of the *Summa confessorum* in the *Regula mercatorum* itself.<sup>4</sup>

Secondly, with the exception of John's own *Manuale collectum de Summa confessorum*,<sup>5</sup> I have restricted myself to pursuing the use of the *Summa confessorum* in substantively new texts, bypassing the more or less pure abridgements of John's *Summa*. Thus, I shall not discuss of the use of John's *Summa* in the *Summa rudium* (1334 x 1338), an abridgement of the *Summa confessorum* by an anonymous Dominican, nor shall I investigate its use in the *Summa confessionis abbreviata* (1298 x 1309) by Guillaume de Cayeux, Provincial Prior of the French Dominicans from 1296-1302 and 1306-09.<sup>6</sup> In so doing my intention is to provide a greater service to the scholarly community by tracking the use of the *Summa* in less obvious sources than such abridgements, where use of the *Summa* is expected and can be easily identified. However, a study of such abridgements is a worthy enterprise for the future, since they were another, significant channel through which John's teachings in the *Summa confessorum* were diffused to ever wider audiences.

Thirdly, in order to formulate a research problem of manageable proportions, I have restricted myself temporally to the reception history of the *Summa confessorum* on usury prior to the end of the fourteenth century. Leonard Boyle, however, has pointed out that the *Summa confessorum* influenced the great Franciscan *Summae* at the end of the fifteenth century – the *Rosella casuum* of Baptista de Salis and the *Summa angelica* of Angelo Carletti – as well as the last medieval Dominican manual for confessors, the *Summa summarum Sylvestrina* (1516) of Sylvester Mazzolini de Prierio.<sup>7</sup> The extent to

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4. See pp. 141 ff. below.

5. See pp. 128 ff. below.

6. On the *Summa rudium*, see Michaud-Quantin, *Sommes de casuistique*, 48; Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 514. On Guillaume de Cayeux and his *Summa abbreviata*, see Michaud-Quantin, *Sommes de casuistique*, 48; Johann Frederich von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts*, 2 vols. (Stuttgart: Ferdinand Enke, 1875), 2:425; Teetaert, *La confession aux laïques*, 445; Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 2:94, no. 1470.

7. Boyle, "The 'Summa Confessorum' of John of Freiburg," 260.

which these works draw on John's teachings on usury in the *Summa confessorum* must, for now, await future research.

Finally, although I have not, strictly speaking, restricted myself geographically in pursuing the reception history of the *Summa confessorum* in Latin texts prior to the end of the fourteenth century, I have focused particularly on the subsequent history of John's *Summa* in England. My reasoning here is similar to that present in my decision to pursue substantively new works rather than abridgements. England, being far distant from the Breisgau in Germany where the *Summa confessorum* originated and began to circulate, is not the most obvious place to search for its traces. For this reason, pursuing the reception history of John's *Summa* there represents a more significant scholarly contribution than an investigation of its use in German *Summae* for confessors, which would be expected. In addition, a demonstration of the use of John's *Summa* in England further highlights its widespread popularity in the Late Middle Ages and underscores its hold on the popular imagination of late medieval men and women. In stating this, however, I do not mean to disparage the reception history of the *Summa confessorum* in Germany, which remains a necessary, challenging, and worthwhile field of investigation, to which I hope to return in the future.

#### THE POPULARITY OF THE SUMMA CONFESSORUM IN MANUSCRIPT AND PRINT

Before turning to the use of the *Summa confessorum* in other Latin texts from the Late Middle Ages, we can obtain a striking impression of the popularity of the work from a few naked statistics about its tradition in manuscript and print. Thomas Kaeppli, the great bibliographer of the Dominicans, has identified not less than 169 manuscript copies of the *Summa confessorum* spread throughout Europe from Valencia in Spain to Pelplin

in Poland, with most manuscripts concentrated in France (37) and Germany (35), as the table below illustrates:

Table 2. Distribution of Manuscripts of the <i>Summa confessorum</i> throughout Europe and the U.S.A. <sup>8</sup>	
Country	# of mss. of <i>Summa confessorum</i>
Austria	17
Belgium	4
Croatia	3
Czech Republic	3
England	12
France	37
Germany	35
Ireland	1
Italy	29
Poland	6
Spain	12
Sweden	1
Switzerland	8
U.S.A.	1
Total	169

In addition to the large number of manuscript copies, the *Summa confessorum* was printed six times in early modern editions.<sup>9</sup> Furthermore, as Boyle notes, John's *Summa* was printed twice before 1500, whereas the *Summa* of that great Dominican authority on pastoral care, Raymond of Penyafort, was not printed until 1603. This highlights the

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8. Compiled from Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 2:430-33, no. 2344.

9. Ibid., 2:433, no. 2344. See also Académie des Inscriptions et Belles-Lettres, *Histoire littéraire de la France*, vol. 28, *Suite du quatorzième siècle*, 267.

dominance that John's *Summa* had attained in the field of pastoral care.<sup>10</sup> Clearly, John's *Summa* was in high demand among those working in the cure of souls. Quite apart from any other authors' use of his writings, John's *Summa confessorum* itself was a popular work that attained a wide distribution throughout the European continent up to the beginning of the seventeenth century.<sup>11</sup> We cannot be certain that everyone who possessed a copy of the *Summa confessorum* read it thoroughly and thus absorbed John's teachings on the usury prohibition; yet, the vast number of copies of the *Summa* that exist in manuscript and in print permit us safely to suppose that significant numbers did. This is especially so because, as I demonstrated in the previous chapter, usury was a pressing practical problem in the day to day lives of medieval men and women, for which the confessor required practical guidance. It was not the sort of thing that the confessor had the luxury of overlooking.

#### JOHN'S OWN POPULARIZATION OF THE *SUMMA CONFESSORUM*: THE *MANUALE COLLECTUM DE SUMMA CONFESSORUM* AND THE *CONFESSIO*

The earliest attempts at diffusing the teaching of the *Summa confessorum* beyond its own covers come from the pen of John of Freiburg himself. Shortly after completing the *Summa confessorum*, John composed an abridged version of his text, the *Manuale collectum de Summa confessorum*. As he writes in the prologue to the *Manuale*, due to the size of the *Summa confessorum*, the cost of a copy placed it beyond the means of many friars and its heft made it inconvenient for them to carry it around with them as they laboured in the field for the salvation of souls. For this reason, John considered it advantageous to compose a *Manuale* extracted from the *Summa confessorum* in which he

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10. Boyle, "The 'Summa Confessorum' of John of Freiburg," 268.

11. The *Summa confessorum* was last printed, according to Kaeppli, in Rome in 1619. Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 2:433, no. 2344.

outlined the most frequently occurring cases of conscience so that those who had read the *Summa confessorum* thoroughly (or had it read to them in the convent's *studium* during the *collationes de moralibus*)<sup>12</sup> could rapidly call them to mind in the field.<sup>13</sup> In this *Manuale*, John notes, less necessary and rarer cases of conscience are entirely omitted. For these and for those difficult cases that he treats only briefly, the reader should turn to the *Summa confessorum*.<sup>14</sup> In general, wherever there is some doubt about a question in the *Manuale* due to its brevity, the reader is to consult John's more compendious *Summa*.<sup>15</sup> He has facilitated this process by placing in the margin of the text the number of the question in the *Summa confessorum* to which a given entry in the *Manuale* corresponds, and he took especial care to circle the correct question number of those entries in the *Manuale* that break from the order of the *Summa*.<sup>16</sup>

As I demonstrated above, John intended the *Summa confessorum* principally as a comprehensive reference work for specialists in the pastoral care – the *penitenciarios*, who had to settle particularly thorny issues in the internal forum, and likely also the lectors of the Order's *studia*, who had to pass on their expertise to their students actively

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12. See ch. 1, pp. 34 f. That the *Summa confessorum* may have been read during the *collationes de moralibus* is suggested by its close relationship to Raymond's *Summa*, which we know was read during these meetings in the convents' *studia*. Since John of Freiburg's task was to update Raymond's *Summa* and he includes much of it verbatim in the *Summa confessorum*, it stands to reason that it displaced Raymond's work as one of the loci for instruction in pastoral theology in the Order's *studia*. Cf. Boyle, "The 'Summa Confessorum' of John of Freiburg," 268.

13. "Cum *Summa confessorum* penitenciarios specialiter dirigens ob sui magnitudinem notabiles in comparando requirat expensas et a fratribus itinerantibus ac fructuose pro animarum salute currentibus de facili circumferri non possit, utile iudicavi de ipsa *Summa* manuale quoddam colligere in quo hii qui cum diligenti studio eandem *Summam* perlegerent ad memoriam revocare possint casus frequentius occurrentes." Vat., Pal., MS lat. 712, fol. 1ra.

14. "Difficiliora et rariora, ac etiam eorum que hic breviter posita interdum obscuriora videntur, expressiorem doctrinam quam opus fuerit requirant in illa *Summa*. Nam hic questiones aliquae minus necessarie et que occurrunt rarius etiam totaliter obmittuntur." Vat., Pal., MS lat. 712, fol. 1ra.

15. "Ubi minus sufficientes probationes virum ac rationum hic adductas inveneris, require in sepius dicta *Summa*." Vat., Pal., MS lat. 712, fol. 1rb.

16. "Numerus tamen quem habet in *Summa confessorum* sibi imponitur in spatio sicut et singulis aliis questionibus suis numerus annotatur ut ibidem si qua vult lector respicere plenius possit . . . cicius invenire. Numerus vero questionis extra ordinem posite cum linea circumducta signatur, ut sciatur illa questio extra cursum numeri collocata." Vat., Pal., MS lat. 712, fol. 1ra-b. John was so concerned that his facilitated means of cross-referencing the *Manuale* with the *Summa confessorum* be preserved for the convenience of the reader that he even warns the scribe copying his work to pay careful attention to the numbering of the questions in the margin, since this is not always sequential: "Scribentes autem diligentissime advertant quem numerum cui questionis imponant, quia propter aliquarum questionum obmissionem ac quarundam transpositionem, numerus non continuatur." Ibid., fol. 1rb.

engaged in the cure of souls.<sup>17</sup> However, from the above it is clear that he intended the *Manuale* as a sort of *vade mecum* for ordinary friars to consult in the field.<sup>18</sup> Since, as John writes in the prologue to his *Confessionale*, a brief treatise on the manner of hearing confessions,<sup>19</sup> he intended the *Manuale* to be combined with the *Confessionale* in one integral work,<sup>20</sup> John likely envisioned the same audience for both works: those “simpler and less experienced confessors.”<sup>21</sup> Whatever perplexed them in their ministry, for which there was no clear indication in the *Manuale*, the friars could seek out in their convent’s copy of the *Summa confessorum* or enquire of their conventual lector, who was much more familiar with the contents of the latter than they.<sup>22</sup> The *Manuale collectum de Summa confessorum*, then, was a practical manual of confession for those actively engaged in the pastoral care. As such, it is one of many adaptations of John’s *Summa confessorum* that ensured that its teachings reached beyond the realm of specialists in canon law to the broader audience of the common priesthood and, through its ministry, to society at large.

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17. See ch. 2, p. 63.

18. The codex of the *Manuale* that I was able to investigate also suggests a handbook due to its physical make-up. The *Manuale* and John’s *Confessionale* are bound together in an octavo volume of 293 folios. See J. B. Pitra, *Codices palatini latini bibliothecae vaticanae*, vol. 1, eds. Henry Stevenson Jr. and I. B. De Rossi (Rome, 1886), 254. However, further codicological research into the codices of the *Manuale* and *Confessionale* is necessary before any general claim about the works’ physical portability can be advanced.

19. See my discussion of the *Confessionale* below, pp. 134 ff.

20. “In tractatu hoc qui ponendus est in fine compendii, quod dicitur *Manuale*.” Vat., Urbin., MS lat. 502, fol. 34ra. Incidentally, this proves that the *Manuale*, which lacks an explicit attribution in the manuscript that I was able to consult, must have been written by John himself, since the *Confessionale* is clearly attributed to John: “Incipit prologus super Confessionale fratris Iohannis Theothonici ordinis fratrum predicatorum adiunctum *Summe confessorum*.” Ibid., fol. 34ra. Cf. Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 510.

21. “Simpliciores et minus expertos confessores de modo audiendi confessiones informare cupiens.” Vat., Urbin., MS lat. 502, fol. 34ra. Thus, Boyle is right to say that the *fratres communes* within the Order of Preachers were the beneficiaries of the penitential *Summae*, but in the case of John of Freiburg’s *Summa confessorum* they were so only indirectly by means of the *Manuale* and *Confessionale*. Boyle, “The ‘Summa Confessorum’ of John of Freiburg,” 253.

22. According to Walz, at least in Southern Germany many convents possessed a copy of the *Summa confessorum* among their library’s slender holdings: “Der Bücherbestand in den Dominikanerklöstern des 13. Jahrhunderts war gewiß noch gering und oft ärmlich. Doch das für Liturgie und Nutztheologie Notwendige – hierzu sind auch die Werke Alberts des Großen, Ulrichs von Straßburg, Hugos von Straßburg, Johannes von Freiburg und Bartholomäus von Freiburg zu rechnen – fehlte nicht.” P. Angelus Walz, *Dominikaner und Dominikanerinnen in Süddeutschland (1225-1966)* (Meitingen: Kyrios-Verlag, 1967), 14-15.

Since the *Manuale* is an abbreviation of the *Summa confessorum*, it must have been written after that work had been completed, setting a *terminus post quem* of 1298.<sup>23</sup> Since in the *Manuale* John revised certain citations of canon law to point to their new home in the *Liber sextus*,<sup>24</sup> it must have been written after 3 March 1298, when Boniface VIII officially promulgated the new collection of law. As for a *terminus ad quem* I have unfortunately been unable to find anything more precise than John of Freiburg's death in 1314.<sup>25</sup> We know that John remained lector of the Freiburg convent until 1304 at the latest,<sup>26</sup> and hence it is possible that he composed the *Manuale* as a sort of crib sheet for his students in connection with his own lectures on pastoral theology.<sup>27</sup> Whether John was serving formally as lector or simply rounding out his final years in contemplation in the Freiburg convent as an ordinary friar, it was his students, and Dominican students elsewhere like them, whom he had in mind as the initial audience of the *Manuale*.

The *Manuale* contains abridgments of 82 of the 83 questions on usury in the *Summa confessorum*. Only Question 9 of the *Summa confessorum*, which explains the difference between mental simony and mental usury, is omitted in the *Manuale* on usury.<sup>28</sup> This figure alone tells us something significant about the practical application of the Church's usury ban in the Late Middle Ages. As I noted above, John states in the prologue to the *Manuale* that he will include only the most necessary and frequently occurring cases of conscience in this abridgment.<sup>29</sup> Given the inclusion in the *Manuale* of

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23. For the dating of the *Summa confessorum*, see ch. 2, p. 64.

24. For example, in Question 72 of the section on usury in the *Manuale*, corresponding to SC 2.7.72, which describes the manner of receiving manifest usurers in the penitential forum, John updated the reference to the decretal *Quamquam* of Gregory X from "in concilio Lugdunensi" to "in Sexto": "De modo recipiendi manifestos usurarios ad penitentiam nota statutum Gregorii X, Extra. in Sexto, eodem titulo, c. Quamquam, ubi dicitur quod licet usurarius manifestus mandet satisfieri de usuris, non est tamen sepeliendus in cimiterio donec de usuris sit plenarie satisfactum." Vat., Pal., MS lat. 712, fol. 107vb. See also q. 71, Ibid., and q. 83 on fol. 108va, where John made the same revisions to point to the *Liber sextus*.

25. For the date of John's death, see ch. 1, p. 12.

26. See ch. 1, p. 50.

27. Cf. Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 509., where he argues that the *Manuale* was composed for the "studencium commoditas."

28. These conclusions arise from my examination of Vat., Pal., MS lat. 712, fols. 100ra-108va.

29. See p. 129.

virtually the entirety of John's discussion of usury in the *Summa confessorum*, it is clear that John's encyclopedic discussion of usury there was not merely an "academic" exercise; it answered a real, practical need for guidance on actual cases of conscience that the confessor would encounter in the penitential forum. In the case of usury, John was not engaged in hypothetical casuistry in the *Summa confessorum*, but had flesh and blood usurers as his subject matter – shadowy characters whose sins the confessor would routinely bring to light in the confessional.

Since the *Manuale* consists entirely of abridgments of the *Summa confessorum*, an exposition of its contents would be superfluous given my extensive treatment of John's teachings on the usury ban in the previous chapter. However, a few examples are in order to show how John altered the material of the *Summa confessorum* and adapted it for rapid, practical consultation in the *Manuale*. The most significant change John made in the *Manuale* is signaled by him directly in the prologue. As he says there, except in a few places, the *Manuale* does not follow the question and answer format of the *Summa confessorum*.<sup>30</sup> John introduced this change to make the *Manuale* more succinct by simply delivering the answers the confessor needs, rather than taking him through a sophisticated debate on the question. Thus, for example, John's abridgment of SC 2.7.15 in the *Manuale* is as follows:

In usury, according to the doctors, ownership is transferred, whence gifts and alms can be licitly received from usurers, unless in so doing they are unable to make restitution. For then the one who received from the usurer must either make restitution to him or to those from whom he himself received [usuries].<sup>31</sup>

In the version of the *Manuale* we have lost John's original formulation of the question (*Utrum in usura transferatur dominium?*), the discussion of conditional will in light of Aristotle and Augustine, and the reference to canon law within the original. What

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30. "Sequitur autem ordinem prefate Summe, sed non per modum questionum nisi in paucis locis." Vat., Pal., MS lat. 712, fol. 1ra.

31. "In usura secundum doctores transfertur dominium, unde dona et elemosyne licite accipiuntur ab usurariis, nisi per hoc efficiantur non solvendo. Tunc enim ab usurario recipiens tenetur vel ei restituere vel illis a quibus ipse accepit." Vat., Pal., MS lat. 712, fols. 100vb-101ra.

remains for the reader of the *Manuale* is the practical outcome of the lengthier discussion in the *Summa confessorum*: provided that the usurer is still able to make restitution to his victims afterwards, gifts and alms can be received from his usuries, because ownership over the usuries has been transferred to him through the loan. The *questio* in the *Manuale* is direct and to the point, eschewing the learned considerations present in the *Summa confessorum*.

This same concern with directness is evident in several other questions on usury in the *Manuale*, where, rather than engaging in debate over an issue with his reader, as he does in the *Summa confessorum*, John instructs the reader merely to “say” (*dic*) the required response. For example, in the *Manuale*’s version of *SC* 2.7.10, concerning whether the lords of mills commit usury when they lend to millers on condition that they grind their grain in their mills, John commands, “Dic secundum glossam quod usurarii sunt,” and then briefly explains the reasoning for this from the *Summa confessorum*.<sup>32</sup> The tone of the *Manuale* is further evidence that it was directed to those who were engaged in the practical work of hearing confessions. As technicians, they did not have a use for sophisticated discussions of moral problems that might muddy the solution. They required uncomplicated, direct responses to offer to their penitents. It was this level of directness and clarity surrounding the Church’s teaching on usury that John sought to offer them in the *Manuale*.

Apart from these specific techniques of altering the *Summa confessorum*, the remainder of the *Manuale* on usury consists of simple abridgments of the sometimes lengthy *questiones* of the *Summa*. For example, John reduces the rather lengthy discussion of the licitness of laws that permit usury to be exacted in *SC* 2.7.43 to a few

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32. “Quid de dominis molendinorum qui credunt pecuniam pistoribus ut molant in molendinis eorum? Dic secundum glossam quod usurarii sunt. Accipiunt enim ultra sortem et auferunt libertatem debitoribus molendi ubi voluerint. Si tamen non sunt illi ex hoc dampnificati, non tenentur creditores ad restitutionem, nisi quantum estimari potest libertas molendi ubi volebat.” Vat., Pal., MS lat. 712, fol. 100va. See also q. 11, fol. 100va-b; q. 13, fol. 100vb; q. 23, fol. 102ra; qq. 24-25, fol. 102ra-b; q. 28, fol. 102va; q. 53, fol. 106ra; and q. 70, fol. 107va-b.

lines that state the results of that discussion clearly, and he refers the reader to the *Summa confessorum* for additional detail:

Note, moreover, that according to Raymond all the laws that permit usuries to be exacted, which are not exacted by reason of compensation (*interesse*), are null and void, because the laws do not disdain to imitate the holy canons. Others say that the laws permit [it] sometimes, that is, they do not punish [it]. See the *Summa confessorum*.<sup>33</sup>

The *Manuale*'s version is humble, but effective. It would be needless here to multiply examples of this work of abridgment. It is sufficient to say generally that in the *Manuale* John abridged the questions on usury in the *Summa confessorum* in a manner similar to that shown above. All the questions are reduced to their essentials, with any superfluous detail excised, for which the reader is often instructed to look in the *Summa confessorum*.

Largely divested of their legal and theological refinement, for which the *Summa confessorum* is notable, John's teachings on usury reached wider audiences in their essentials through the more intellectually modest *Manuale*. Often it was in this more humble form that they passed through the lips of many confessors in the penitential forum and reached the ears of their penitents, forming in the process the popular conception of the Church's usury ban in the places where the *Manuale* was used. Since the *Manuale* was often copied together with the *Confessionale*, I shall defer my discussion of its popularity to my discussion of the *Confessionale*, which I shall take up presently.

Although to a lesser extent than in the *Manuale*, John's teachings on the Church's usury ban also spread to a wider audience through the *Confessionale*. The general subject matter and the intended audience of the *Confessionale* have already been touched on above in connection with my discussion of the *Manuale collectum de Summa*

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33. "Nota etiam secundum Raymundum quod omnes leges que permittunt usuras exigi, <que> non exigantur ratione interesse, abrogate sunt, quia leges non dedignantur sacros canones imitari. Alii dicunt quod leges permittunt aliquando, id est, non puniunt. Vide in *Summa confessorum*." Vat., Pal., MS lat. 712, fol. 105va. For other striking examples of John's work of abridgment, see q. 49, fol. 106ra and q. 67, fol. 107rb.

*confessorum*. The *Confessionale* was directed to the simple friars within the Order of Preachers to instruct them in the rudiments of hearing confessions.<sup>34</sup>

The dating of the *Confessionale* is complicated by the fact that the treatise was written in two recensions. John mentions in the prologue that whereas formerly in the *Confessionale* he referred the reader to Raymond of Penyafort's *Summa* and his own *Libellus questionum casualium* for additional material, in the present edition he will refer him to the *Summa confessorum* and, by extension, to his *Manuale collectum de Summa confessorum*.<sup>35</sup> Since John had incorporated much of Raymond's *Summa* and, at least in the section on usury, the entirety of the *Libellus questionum casualium* into the *Summa confessorum*,<sup>36</sup> which expanded on both of these works, the references in the original edition of the *Confessionale* had become obsolete and required updating. Since the first recension of the *Confessionale* refers to the *Libellus questionum casualium*, it must have been written after John completed that work. As I demonstrated above, John must have written the *Libellus* between 1277 and 1290.<sup>37</sup> Furthermore, since the first recension of the *Confessionale* does not refer to the *Summa confessorum*, it must have been completed before John finished his magnum opus, and thus before 1298.<sup>38</sup> Since it is likely that John composed the first recension of the *Confessionale* as a supplement to his *Libellus*, it would be unwise to separate it from the *Libellus*' own period of composition. Thus it must have been written between 1277 and 1298, though it is likely that John composed both the *Libellus* and the first recension of the *Confessionale* closer to 1290, by which time we have good reasons to believe that John was serving as lector of the Freiburg

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34. See p. 129. Cf. Michaud-Quantin, *Sommes de casuistique*, 49-50; William A. Hinnebusch, *The History of the Dominican Order: Intellectual and Cultural Life to 1500* (New York: Alba House, 1973), 253-54.

35. "Hoc quoque advertendum est quod licet in isto tractatu quondam inscripta fuerit remissio ad *Summam* fratris Raymundi et ad *Libellum questionum casualium*, tamen in tractatu hoc qui ponendus est in fine compendii, quod dicitur *Manuale*, tantum fit remissio ad *Summam confessorum*, et per consequens ad *Manuale* ipsum, cuius materie questionum eiusdem *Summe* numerus prenotatur." Vat., Urbin., MS lat. 502, fol. 34ra.

36. See ch. 2, pp. 59 f.

37. See ch. 2, p. 58.

38. See ch. 2, p. 64.

convent and likely to be producing such texts for his students.<sup>39</sup> The second recension of the *Confessionale* must have been written after John completed the *Manuale collectum de Summa confessorum*, since it refers to this work. I have unfortunately been unable to find any other means to date the second recension of the *Confessionale* more precisely, and so its period of composition falls within the same range as that of the *Manuale*: between 1298 and John's death in 1314.<sup>40</sup>

While, as I mentioned above, in the prologue John described the *Confessionale* as a treatise on the manner of hearing confessions,<sup>41</sup> it is nevertheless not solely occupied with the strictly procedural elements of the confessional. In fact, part of the procedure that John describes for the would-be confessor involves an interrogation of the penitent according to the seven deadly sins.<sup>42</sup> In the course of explaining to the confessor how to question the penitent according to the sin of avarice, John draws on several *questiones* on usury from the *Summa confessorum*, thereby further disseminating his teaching on the Church's usury ban.

Unlike the *Manuale*, the *Confessionale* is not a simple abridgment of the *Summa confessorum*, but rather a substantively new treatise. In the section on the seven deadly sins, rather than conducting a thorough examination of different points of practical morality, as he does in the *Summa*, John simply instructs the confessor concerning which questions to ask the penitent in the confessional in order to bring his or her sins to light. John does not tell the confessor what to do should the penitent answer any of his enquiries in the affirmative, but merely refers him to the relevant section of the *Summa* or, by extension, the *Manuale* where he might find his answers.

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39. See ch. 1, pp. 42 f.

40. See p. 131.

41. See n. 21 on p. 130.

42. "Hunc autem tractatum in duas partes divisi, ita quod primo quedam documenta generalia posui et modum inquirendi de septem capitalibus vitiis et de quibusdam aliis peccatis generalibus que inveniri possunt in hominibus status cuiuscumque." Vat., Urbin., MS lat. 502, fol. 34ra.

After instructing the confessor how to enquire of his penitent about theft, robbery, and any shameful gains that she may have made,<sup>43</sup> John turns to the examination of the penitent for the sin of usury, instructing him first:

Concerning usuries ask whether he ever received in exchange for a loan manual labour, valuable counsel, indulgence [in some matter], or anything whatsoever that can be estimated in money, or whether when he loaned he was motivated by a hope for temporal gain. Concerning this you have [more information] in bk. II, tit. VII, *de usuris*, q. I f. Again, [see] q. 5 f.<sup>44</sup>

This brief instruction alludes in a very rudimentary fashion to the information contained in SC 2.7.1, 2, 5, and 6. Stating the questions the confessor should ask about usury and referring him to the *Summa confessorum* in a similar fashion to the example given above, in the *Confessionale* John also instructs the confessor to ask the penitent whether he purchased grain or wine out of greed in order to sell them dearer (SC 2.7.40); whether he obtained a loan at usury without valid cause or induced another to lend to him at usury (SC 2.7.44); whether he leased his house to a usurer (SC 2.7.71); whether he had received a pledge for a loan and did not reckon its fruits into the principal (SC 2.7.77); and whether he bought or sold goods on credit illicitly (SC 2.7.16).<sup>45</sup> After enquiring about usuries specifically, the confessor should interrogate the penitent, when applicable, about sins that are common in handicrafts and in the merchant trade. In connection with usury here, the confessor must ask the penitent whether he received gifts from Jews or usurers who cannot otherwise make restitution to their victims (SC 2.7.15).<sup>46</sup> Finally, moving on from

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43. Vat., Urbin., MS lat. 502, fols. 36ra-36va.

44. "Circa usuras queras si unquam pro mutuo accepit munus a manu, vel a lingua, vel ab obsequio, vel quidquid pecunia extimari potest, vel sub spe lucris temporalis mutuavit. De hoc habes lib. II, tit. VII, de usuris, q. I et sequenti. Item q. V et sequenti." Vat., Urbin., MS lat. 502, fol. 36va.

45. "Item si ex cupiditate emit bladum vel vinum ut carius venderet. De hoc habes ibidem, q. XL. Item si accepit mutuo pecuniam sub usura sine causa rationabili vel induxit aliquem ad prestandum sub usura qui hoc facere non consuevit. De hoc habes ibidem, q. XLIII. Item queras si usurariis locavit domum suam vel locatam habere promisit contra constitutionem Gregorii X. Hanc habes eodem titulo, q. LXXI. Item queras si pignus aliquod accepit cuius fructus non computavit in sortem. . . . Item si dedit minus quia in futurum rem emptam expectavit, ut vinum vel annonam vel alia mercimonia, nisi aliquando verisimiliter dubitaretur an in termino solutionis plus aut minus valeret; vel si carius rem suam vendidit, quia terminum solvendi precii protelavit. Hec duo ad usuram pertinent." Vat., Urbin., MS lat. 502, fol. 36va. The excised portions refer to questions on the ethics of marketing, which are addressed in John's treatise *de negotiis secularibus* in SC 2.8.

46. "Item quere an dona aliqua accepit a Iudeis vel usurariis, quia si illi efficiunt non solvendo, tenetur restituere vel illis vel aliis a quibus ille accepit, ut patet lib. II, tit. VII, de usuris, q. XV." Vat., Urbin., MS lat. 502, fol. 36vb.

the discussion of avarice to its remedy, restitution, John points the confessor to the relevant passage in the *Summa confessorum* outlining the manner of receiving manifest usurers in the penitential forum (SC 2.7.72).<sup>47</sup> In total, John included in the *Confessionale* references to 11 questions on usury from the *Summa confessorum*.

Since the *Confessionale* is a treatise for simpler confessors, John probably intended the confessor to seek his answers in the abridged *Manuale*, to which the *Confessionale* was supposed to be attached as a sort of appendix. The inexperienced priest holding court in the confessional would follow the order of the *Confessionale* and then peek into the *Manuale* when he needed further guidance on a given question. Since the confessor was constantly being pointed to the *Manuale*, he also knew to look there for questions not raised in the brief outline of confessional practice that John presents in the *Confessionale*. Thus, the *Confessionale* and *Manuale* combined the benefits of a procedural and a technical manual in one handy, portable reference for confessors.

Insofar as John intended the *Confessionale* as an outline of the bare essentials of confessional practice, the questions that he instructed the confessor to put to the penitent concerning usury represented, to his mind, the most common forms of usury the confessor might encounter in the penitential forum. This tells us something interesting about the practice of usury in the Breisgau, and likely beyond, in the Late Middle Ages. If we take the *Confessionale* as our guide, then usurers in and around Freiburg were most commonly to be found among those speculating in prices, those buying and selling on credit, and those dabbling in mortgage financing. As we shall see in the next chapter, John's appraisal of the frequency of these usurious activities matched the economic situation in Freiburg to a tee.<sup>48</sup>

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47. "De modo recipiendi ad penitentiam usurarios manifestos et qualiter debent satisfacere habes specialiter in titulo de usuris, q. LXXII." Vat., Urbin., MS lat. 502, fol. 37rb.

48. See below, pp. 229 ff.

The *Confessionale* enjoyed almost as great a popularity as the *Summa confessorum* in manuscript and in print. Pierre Michaud-Quantin notes that the *Confessionale* was one of the most often copied texts in the late Middle Ages, and its scribes accorded it such respect and careful attention that the numerous extant copies of the work display a remarkable consistency with one another.<sup>49</sup> Kaeppli has identified 158 extant manuscripts of John's *Confessionale*, which can be found in libraries all over Europe, as the table below indicates:

Table 3. Distribution of Manuscripts of the <i>Confessionale</i> throughout Europe and the U.S.A. <sup>50</sup>	
Country	# of mss. of <i>Confessionale</i>
Austria	34
Belgium	2
Croatia	1
Czech Republic	10
England	6
France	12
Germany	41
Ireland	1
Italy	27
Poland	9
Slovenia	1
Spain	3
Switzerland	10
U.S.A.	1

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49. Michaud-Quantin, *Sommes de casuistique*, 43, n. 11.

50. These figures have been compiled from Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 2:433-36, no. 2346.

Total	158
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In addition to this large number of manuscript copies, two editions of the *Confessionale* were also printed before the end of the fifteenth century.<sup>51</sup> Given its vast circulation, John's brief treatise on the rudiments of confessional practice was an excellent vehicle for widely disseminating what he considered to be indispensable information for the confessor concerning the Church's usury prohibition. Furthermore, since in the *Confessionale* John constantly refers the reader to his *Summa confessorum* and, by extension, his *Manuale*, its wide circulation functioned as a sort of advertisement for those works, increasing the interest and awareness of them among medieval men and women and thereby further diffusing the more compendious teachings on the usury prohibition contained within them.

Additional research is necessary, however, to determine how the success of the *Confessionale* in manuscript and in print correlates with that of the *Manuale collectum de Summa confessorum*. As I mentioned above, John intended the *Manuale* and the *Confessionale* to be combined into one integral work.<sup>52</sup> Nevertheless, medieval scribes did not always fulfill John's wishes and the *Confessionale* often circulated independently of the *Manuale*. For example, while in Vat., Pal., MS lat. 712 the *Confessionale* is appended to the *Manuale* as John intended, in Cambridge, Corpus Christi College, MS 501 the *Confessionale* has been separated from the *Manuale* and copied alongside Gregory of Rimini's commentary on the *Sentences*, pseudo-Augustine's *Soliloquies*, and James of Milan's *Stimulus amoris*.<sup>53</sup> In Cambridge, Pembroke College, MS 267 it has been appended not to John of Freiburg's *Manuale*, but to Bartholomew of San Concordio's *Summa de casibus conscientiae*.<sup>54</sup> As such, without a systematic

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51. Ibid., 2:436, no. 2346.

52. See p. 130.

53. Pitra, *Codices palatini latini bibliothecae vaticanae*, vol. 1, 254; Montague Rhodes James, *A Descriptive Catalogue of the Manuscripts in the Library of Corpus Christi College, Cambridge* (Cambridge: Cambridge University Press, 1912), 453.

54. Montague Rhodes James and Ellis H. Minns, *A Descriptive Catalogue of the Manuscripts in the*

investigation of all of the extant manuscript copies of the *Confessionale* that Kaeppli lists,<sup>55</sup> which has regrettably proved impracticable within the confines of this dissertation, we can only hypothesize that the *Manuale* enjoyed considerable popularity, since it must have frequently been copied together with the *Confessionale*, but that it circulated significantly less widely than either the *Confessionale* or the *Summa confessorum*.<sup>56</sup>

Despite this limitation, the general conclusion of research into the afterlife of John's works is clear. The *Summa confessorum*, *Confessionale*, and likely also the *Manuale collectum de Summa confessorum*, were by medieval standards wildly popular books that reached audiences all over the face of Europe. They were read and studied by priests, monks, friars, and other dignitaries within the Church, and the fruits of this reading were passed along to parishioners of all classes from the preacher's pulpit and in the confessional. When we take into consideration the numerous adaptations of John's writings in the works of others, which I shall turn to presently, it becomes evident that John of Freiburg had a significant role in shaping the popular conception of usury in the Late Middle Ages.

#### A GUIDE TO USURY FOR THE LAITY: GUY DE TOULOUSE'S *REGULA MERCATORUM*

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*Library of Pembroke College, Cambridge, with a Hand List of the Printed Books to the Year 1500* (Cambridge: Cambridge University Press, 1905), 245. Insofar as Bartholomew's *Summa* was intended as a revision and update of John's *Summa confessorum*, the attachment of the *Confessionale* to it is fascinating in terms of appreciating John's reputation in posterity, for it seems to imply that while John's compendium may have begun to show its age, his expertise as an instructor in the elements of the pastoral care had not been surpassed. See my discussion of Bartholomew's *Summa* below, pp. 175 ff.

55. Unfortunately, Kaeppli does not list the manuscripts of the *Manuale* separately.

56. Morton Bloomfield et al. in their bibliography of Latin works on the virtues and the vices have identified only seven manuscripts of the *Manuale*, but their listing should not be considered exhaustive, especially since they have overlooked the Vatican manuscript mentioned above. See Morton W. Bloomfield, Bertrand-Georges Guyot, Donald R. Howard and Thyra B. Kabealo, *Incipits of Latin Works on the Virtues and Vices, 1100-1500 A.D.: Including a Section of Incipits of Works on the Pater Noster* (Cambridge, MA: Mediaeval Academy of America, 1979), 119-20, no. 1245.

A fellow friar within the Order of Preachers made use of John of Freiburg's *Summa confessorum* rather early. Only one year after John of Freiburg's death and less than twenty years after he had completed his weighty tome, the *Summa confessorum* managed to reach the South of France. Around 1315 a certain friar Guy of the Preachers of Toulouse composed his *Regula mercatorum*, which draws extensively on the sections of the *Summa confessorum* on the ethics of marketing and usury.<sup>57</sup>

Little is known about the author of the *Regula mercatorum*, except that he may have stemmed from Altamura in Southern Italy.<sup>58</sup> However, Guy has thankfully spelled out the audience for the work in the prologue. As Guy says there, he made an “abstraction and summary compilation” of the cases pertaining to the market from John's *Summa confessorum* for his own benefit and that of all merchants, so that the latter should not turn from the way of equity and justice in their contracts and sink into sin.<sup>59</sup> In addition to his own benefit, Guy surely had in mind the benefit of other confessors like him within and beyond his Order. Therefore, the *Regula mercatorum* may be understood as, on the one hand, a guide for confessors, like the *Summa confessorum* but focused

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57. F. Pelster identifies the author of the *Regula mercatorum* as the renowned inquisitor Bernard Gui, but offers little support for this assertion. F. Pelster, "Eine Kontroverse zwischen englische Dominikanen und Minoriten über einige Punkte der Ordensregel," *Archivum Fratrum Praedicatorum* 3 (1933): 71. Pierre Michaud-Quantin firmly rejects that it is a work of Guy d'Évreux, the author of a well-known collection of *Sermones de tempore et de sanctis* (1290-93), on the grounds that the author explicitly identifies his origin as Toulouse. Pierre Michaud-Quantin, "Guy d'Évreux O. P. technicien du sermonnaire médiéval," *Archivum Fratrum Praedicatorum* 20 (1950): 216-17. The *explicit* of the *Regula mercatorum* in Oxford, Lincoln, MS lat. 81 offers no additional hints on the authorship of the work: "Explicit tractatus qui dicitur *Regula mercatorum*, quem composuit frater Guydonis de ordine fratrum predicatorum" (fol. 41ra). In the prologue the author refers to himself merely as "pauper quidem religiosus de Tholosa" (fol. 34rb). For the dating of the *Regula mercatorum*, see P. Michaud-Quantin, "Textes pénitentiels languedociens au XIIIe siècle," in *Le Crédo, la morale, et l'Inquisition*, Cahiers de Fanjeaux 6 (Toulouse: Édouard Privat, 1971), 160-61; Sylvain Piron, "Marchands et confesseurs. Le 'Traité des contrats' d'Olivi dans son contexte (Narbonne, fin XIIIe-début XIVe siècle)," *Actes des congrès de la Société des historiens médiévistes de l'enseignement supérieur public* 28 (1997): 293-94, n. 27. On the *Regula mercatorum* generally, see also Michaud-Quantin, *Sommes de casuistique*, 48; M. Michèle Mulchahey, "First the bow is bent in study": *Dominican Education before 1350* (Toronto: Pontifical Institute of Mediaeval Studies, 1998), 548. On Guy d'Évreux, see Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 2:71-73.

58. J. Quéatif and J. Echard, *Scriptores Ordinis Praedicatorum*, vol. 1 (Paris: J. B. Christophorus Ballard and Nicholas Simart, 1719), 726a.

59. "Quia caucius et melius potest viam sequi qui diligenter didicit eam quam qui eam non didicit neque eam novit, hinc est quod abstraccionem et summariam compilationem feci de *Summa confessorum* facta per fratrem Ordinis Predicatorum ad nostram direccionem et omni generaliter mercatorum quoad casus ad mercacionis negotium pertinentes, ut in ipsis mercacionibus a via equitatis et iusticie vos deviare et in peccatis vos ipsos involvere non contingat, quam compilacionem volo *Mercatorum regulam* appellari." Oxford, Lincoln, MS lat. 81, fol. 34rb.

exclusively on the ethics of the market. On the other hand, it constitutes a sort of pamphlet for lay merchants to guide them in their practice. In fact, Guy recommends that businessmen read the *Regula mercatorum*, or at least have it read to them by their assistants, in place of the useless tales and romances that they usually indulge in at their workplaces.<sup>60</sup> To facilitate this, Guy composed the *Regula* originally in Toulousain (*in Tolosano*), a dialect of Occitan, which also suggests that he initially composed the *Regula* in Toulouse for the benefit of the merchants there.<sup>61</sup> However, as another manuscript of the *Regula mercatorum* informs us, Guy translated the *Regula* into Latin, the *lingua franca* of the Church and of the learned in medieval society, in order to facilitate re-translation of his treatise into vernacular languages wherever it might be carried.<sup>62</sup> Unfortunately, save for one translation of the *Regula* into Early Modern French, no other vernacular editions of the treatise have come down to us.<sup>63</sup>

As Guy reminds the reader, the knowledge contained in the *Regula mercatorum* is especially urgent for the businessman, since ignorance of the law of the Church will grant him no excuse if he should transgress it in one of his contracts.<sup>64</sup> Knowledge of the law of the Church in particular, as opposed to the secular laws of the municipality, is necessary, since often the secular laws concede things to businessmen that run contrary to divine law.<sup>65</sup> Therefore, in order to avoid ecclesiastical prosecution and prosper through

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60. “Quam legere vel saltem audire cuicumque vestrum consulo loco fabularum et romanciorum inutilium que consueverunt legi in operatoriiis et ab assistentibus ascultari.” Oxford, Lincoln, MS lat. 81, fol. 34rb.

61. Piron, “Marchands et confesseurs,” 293-94, n. 27.

62. “Hec est *Regula mercatorum* que primo fuit facta in vulgari, sed hic est translata in latinum ut de latino possit transferri in vulgare cuiuscumque lingue.” Paris, Bib. Nat., MS lat. 10689, fol. 27va.

63. See n. 3 on p. 124.

64. “Quod si aliquis facere neglexerit et ex hoc contrarium fecerit eorum que in ipsa regula sunt contenta, ex tali ignorancia non se reputet excusatum, quia iuris ignorancia neminem excusat.” Oxford, Lincoln, MS lat. 81, fol. 34rb.

65. “Nec miretur aliquis si aliquarum questionum stricte sunt determinaciones, quia arta est via que ducit ad vitam, sicut dixit Christus in evangelio, et quia multa per leges sunt concessa que secundum Deum nunquam licent.” Oxford, Lincoln, MS lat. 81, fol. 34rb.

legitimate trade, the businessman must follow the opinions of the masters and doctors of the Church.<sup>66</sup>

Thus, in the *Regula mercatorum* Guy sought to combat the economic injustices prevalent among businessmen with a two-pronged attack. From without, he sought to reform business practices through the cure of souls that the confessor applied to the transgressor in the penitential forum and through preaching targeted specifically towards the sins of the marketplace. From within, he sought to reform the businessman himself through a voluntary reformation of his practices upon reading the *Regula mercatorum*.

Generally in the *Regula mercatorum*, Guy self-consciously sought to stay close to his main source, John of Freiburg's *Summa confessorum*. He even suggests to the reader that if in the course of time careless scribes should introduce corruptions into his treatise, it can be handily emended with reference to the *Summa confessorum*. To facilitate this process, at the end of each question in the *Regula* Guy included the incipit of the question corresponding to it in the *Summa confessorum*.<sup>67</sup> Guy also warns the reader that passages that diverge from the *Summa* will be marked with a prefatory "Addicio," thereby distinguishing his own contributions from his use of John's *Summa*.<sup>68</sup>

Even in raw numbers Guy de Toulouse's use of the *Summa confessorum* in the *Regula mercatorum* is impressive.<sup>69</sup> Of the 37 questions on usury in the *Regula*, 32 consist of paraphrases or excerpts of the *Summa confessorum* on usury. In total, Guy excerpted or paraphrased 35 of the 83 questions on usury in John's *Summa*. In general, Guy appears to have selected only those questions of the *Summa confessorum* that touch

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66. "Necesse est sequi magistrorum sententias et doctorum." Oxford, Lincoln, MS lat. 81, fol. 34rb.

67. "Quod si dictam *Regulam* per falsos scriptores contingat falsari in posterum, cum dicta *Summa* poterit emendari. Quod, ut melius et promptius possit fieri, et quod est hic ibi facilius possit inveniri, invenietis in fine cuiuslibet questionis huius compilacionis principium questionis de qua dicta *Summa* est assumpta." Oxford, Lincoln, MS lat. 81, fol. 34rb.

68. "Et advertatis quod ibi in sequentibus in medio aliquarum questionum est scriptum per hunc modum: Addicio. Est signum quod ea que sequuntur non sunt de dicta *Summa*, sed sunt addita ad declaracionem premissorum." Oxford, Lincoln, MS lat. 81, fol. 34rb.

69. For the source of the following statistics, refer to tables 15 and 19 in Appendix II.

on the practical affairs of his intended audience of lay businessmen. Thus, all of the questions of the *Summa confessorum* that discuss the ethics of specific business contracts involving credit are included (e.g., SC 2.7.33-36, 39 on animal contracts), whereas questions on restitution, for example, such as 2.7.65, 68, 69, are omitted insofar as these matters are properly the business of clerics and not of merchants.

Although Guy copied some questions from the *Summa confessorum* verbatim,<sup>70</sup> most often in the *Regula mercatorum* he composed brief paraphrases of John's questions on usury. Just as John did in his own *Manuale collectum de Summa confessorum*, in these paraphrases Guy preserved only the basic kernel of the *Summa's* teachings on usury. Protracted discussions of thorny legal issues and finer ethical reflections are omitted and must be looked up in the *Summa confessorum*. Guy provided only the basic, practical information that medieval businessmen required to discern right from wrong in their contracts. Thus, for example, when Guy discusses in the *Regula* whether it is licit for someone to sell something to another on the condition that, should the price of the item increase before the next Easter, the difference will be supplied to him, but, should it diminish, he will not provide a refund to the purchaser, he merely states that "it must be said that there is usury and such a person is to be judged a usurer." He omitted Hostiensis' legal justification for this response on the grounds of C. 8.42.24, which John of Freiburg gives in SC 2.7.21.<sup>71</sup> Again, when discussing the licitness of lending an old harvest to someone in exchange for a new one, which in the *Summa confessorum* John draws on not less than four canonists to determine, Guy's response is similarly truncated and stripped of all the *Summa's* legal refinements:

If the opinion is that the new [harvest] will be worth more, and on account of this the thing is done, then there is usury. If the opinion is that it will be worth as much or near as much, and [the loan] is done as a favour to the debtor or so that the wheat or the corn of the lender will be better conserved, then there is no usury,

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70. For example, Question 18 of the *Regula* (Oxford, Lincoln, MS lat. 81, fol. 38vb) is copied directly from SC 2.7.30.

71. "Responsio: Dicendum quod usura est et talis est usurarius iudicandus. Hec questio incipit in *Summa*, 'Quid si aliquis vendat res aliquas, etc.'" Oxford, Lincoln, MS lat. 81, fol. 38vb.

provided that the lender does not take away the debtor's freedom to repay the old [harvest] before the time of repayment if he wishes to do so.<sup>72</sup>

Examples of this kind of paring down of the *Summa confessorum* on usury abound in the *Regula*, and it would be needless to multiply them here. It is sufficient to say that Guy's abridgment and simplification of the *Summa* on usury was intended to popularize the *Summa*'s contents among those engaged in the very sins it sought to vanquish – the merchants, who had little time for, or interest in, the finer points of theology or ecclesiastical jurisprudence. The same might be said of the simple parish priest or common friar, who was engaged in combatting sins of economic injustice in the field, to whom Guy also addressed his treatise. Lacking an advanced education that might equip them to deal with the *Summa*'s learned discussions of usury, but in need of guidance concerning the business activities of those to whom they ministered, these humbler clerics must have welcomed a brief pamphlet outlining what they should do in a fashion that was readily graspable.<sup>73</sup>

In addition to simple paraphrases, from time to time Guy added helpful explanations and minor additions to his simplifications of the questions of John's *Summa* on usury. For example, in Question 22 of the *Regula* on usury, in which Guy discusses whether it is licit for someone to buy, or receive as a gift in exchange for some service, the usufruct of a castle or some other property from a monastery or a church, whereas John simply said that it is licit for a rich man to receive this kind of usufruct as a gift if he lent money without interest and with a pure intention, Guy clarifies that this is the case only when he is a friend of the monastery and would have lent to it out of friendship even

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72. "Si est opinio quod novum plus valeat et propter hoc fit, usura est. Si sit opinio quod valeat tantum vel circa et fit in gratiam illius cui mutuatur vel ut bladam vel annona mutantis melius conservetur, non est usura, dum tamen mutans non auferat alterius libertatem solvendi vetus infra tempus solutionis si voluerit." Oxford, Lincoln, MS lat. 81, fol. 39rb. Cf. SC 2.7.42.

73. On the educational requirements and careers of parish priests and common friars, see Leonard Boyle, "Aspects of Clerical Education in Fourteenth-Century England," in *Pastoral Care, Clerical Education and Canon Law, 1200-1400* (London: Variorum, 1981), 19-32; Leonard E. Boyle, "Notes on the Education of the Fratres Communes in the Dominican Order in the Thirteenth Century," in *Pastoral Care, Clerical Education and Canon Law, 1200-1400* (London: Variorum, 1981), 249-67.

without the gift in return. If the lender expects the gift, the loan is usurious.<sup>74</sup> To Question 33 of the *Summa confessorum* on usury, where John asks whether it is licit to buy oxen or sheep from poor men who perhaps do not have them, Guy adds in Question 24 of his *Regula* that such poor men may feign that they have them.<sup>75</sup> Question 25 of the *Regula* concerns the illicitness of leasing oxen *ad mediationem*, where the lessee accepts half the risk and half the gain from the oxen leased to him. In the *Summa confessorum*, John claims that the lessor can licitly attach a provision to the lease contract that the lessee will undergo some of the damages if he overburdens the oxen intentionally unless some scandal should arise among those who hear of the contract, but are ignorant of its intention. Guy adds to John's concession here that such scandal can be avoided if the lessor expresses his good intention in the contract clearly and arranges matters so that his heirs cannot take action against the lessee for damages to the oxen except under the conditions stipulated in the contract.<sup>76</sup>

Guy's addition to Question 77 of the *Summa confessorum*, which asks whether it is always usury for the creditor to use something pledged to him as security for a loan, offers us a charming insight into the banalities of academic life in the Late Middle Ages. John, following Aquinas, simply states that it is not usury for the creditor to avail himself of a pledge whose use is customarily granted freely among friends, such as a book. Guy, however, hastily adds in Question 31 of the *Regula* that not all of the uses of a book are alike. When the creditor makes extensive use of the book in his studies, carries the book with him to the schools, or uses it as an exemplar from which to make his own copy of the book, such usages ought to be reckoned into the principal of the loan.<sup>77</sup> This is

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74. "Et idem dicendum est de divite si post donum mutuaret pecuniam, si tamen tantum est familiaris et amicus monasterii quod ita mutuaret monasteriis sine illo dono sicut cum dono ratione eius intime amicitie. Aliter esset manifeste usura." Oxford, Lincoln, MS lat. 81, fol. 39rb. Cf. SC 2.7.31.

75. "Questio XXIII est de illis qui emunt boves vel oves a pauperibus quas forte non habent, sed fingunt se habere." Oxford, Lincoln, MS lat. 81, fol. 39va. Cf. SC 2.7.33.

76. "Quod autem dictum est de scandalo, dico quod <non> esset scandalum ubi intentionem exprimeret et sic in corde haberet et ordinaret quod heredes sui non possent repetere nisi sub dicta conditione." Oxford, Lincoln, MS lat. 81, fol. 39va-b. Cf. SC 2.7.35.

77. "Aliter idem esset ac si acciperet pro mutuo pecunie illum usum rei, quod est usura, nisi forte esset talis

because both textbooks and exemplars have a pecuniary value, and thus for the creditor to use them without reckoning the benefits he derived from them into the principal would permit him gain from a loan, which is usurious.<sup>78</sup> The extent to which the creditor has been relieved of supporting his own educational expenses is equivalent to the usuries in this case.<sup>79</sup> From the level of detail that Guy supplied here we can gather that loans between students secured by books, and abuses related to them, were common enough, especially since they warrant mentioning in a treatise otherwise dedicated to the ethics of the marketplace. It was also his observation of common, local practices and his anticipation of misunderstandings of the *Summa confessorum* that led Guy to make his other minor additions to John's *Summa*.<sup>80</sup>

Besides clarifying and expanding upon John's *Summa*, Guy also made minor alterations to it by tinkering with the wording of John's questions and re-arranging the order of his responses. In Question 30 of the *Regula*, for example, Guy expands the wording of John's Question 63 on usury in the *Summa confessorum* by asking whether, in addition to the servants of usurers, the servants of merchants who sell on credit are also liable for making restitution.<sup>81</sup> The response that Guy offers does not diverge from the *Summa confessorum*; he simply sought to broaden the sphere of its applicability.<sup>82</sup> Guy

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res cuius usus sine precio solebat concedi inter amicos, sicut patet de libro. Verum est tamen quod longo tempore studere vel portare librum ad scholas vel facere exemplar ad scribendum, tales usus sunt merito computandi." Oxford, Lincoln, MS lat. 81, fol. 40rb. Cf. SC 2.7.77.

78. On the prices of textbooks at the University of Paris, see n. 61 on p. 29 above.

79. Cf. SC 2.7.60.

80. Additional examples of Guy's additions can be found in questions 32-33 of the *Regula*. Oxford, Lincoln, MS lat. 81, fols. 40rb-40va. Cf. SC 2.7.79, 81.

81. "Questio XXX est de servientibus usurariorum et mercatorum vendencium ad tempus qui numerant pecuniam pro dominis suis et usuram recipiunt ad usus eorum et de mandato eorum. Nunquid tenentur ad restitutionem?" Oxford, Lincoln, MS lat. 81, fol. 40ra. Cf. SC 2.7.63.

82. Guy similarly altered SC 2.7.13, without modifying the response, by changing the unit of measurement that John employed in the question and adding another example of a loan in kind: "Questio XXIII est utrum sit mutuum si quis dederit X cannas de stamforti vel preceti rubei pro aliis decem recipiendis in certo termino." Oxford, Lincoln, MS lat. 81, fol. 39va. Cf. SC 2.7.13. Without a survey of all of the manuscripts of the *Summa confessorum*, however, we cannot be certain that Guy is the author of the change in units from *ulnae* to *cannae*. A scribe may have made this minor modification in his copy of the *Summa confessorum* and Guy subsequently used it or another copy made from it. Alternatively, a scribe may have introduced the modification in the process of copying the *Regula mercatorum*.

also modified the order of John's response in Question 36 of the *Summa confessorum* on usury to bring the more general ethical principle to the fore. Whereas John first discusses the specific varieties of animal contracts that could become usurious and then states the general guideline that whenever the condition of the parties to a contract is equal, the contract should be considered licit, Guy states this general ethical principle first and then moves on to briefly paraphrase John's discussion of the specific contracts.<sup>83</sup> Perhaps Guy worried that if he followed the order of the *Summa*, then the merchant or confessor perusing the *Regula* would become lost in the complexities of the specific contracts and throw up his hands in frustration before reaching the more helpful rule of thumb, since, as William of Rennes concedes in the *Summa*, "no general teaching can be given for such exchanges of sheep on account of the variety of the exchanges and the deceits that are conjured up by some people engaged in them."<sup>84</sup>

As Guy himself indicates in the prologue to the *Regula*, he also made several original additions to the *Summa confessorum*, which he signaled explicitly for the benefit of the reader.<sup>85</sup> Thus, for example, in his *Additio* to Question 30 of the *Regula*, Guy disagrees with John's decision to absolve the servants of usurers – specifically, those who support the illicit business of their masters by counting money and receiving usuries – from the responsibility of making restitution. On the contrary, Guy asserts, if the usurer's servants received a fixed share of the usuries, then they are liable for making restitution of that sum. If they did not receive a fixed share, then, although they cannot be held responsible for making restitution, they nevertheless commit a mortal sin, since perpetrators and accessories to the crime incur the same guilt. This same reasoning, he

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83. "Responsio: Dicendum quod in facto societatis quando conditio unius non est melior quam conditio alterius, nullum est peccatum. Ubi autem ad arbitrium boni viri gravatur alterius conditio, est peccatum ex parte gravantis, si tamen faciat scienter, et tenetur ad restitutionem. Et dico quod in traditione ovium non potest dari regula generalis, tot sunt <fraudes> et modi tradendi." Oxford, Lincoln, MS lat. 81, fol. 39vb. Cf. SC 2.7.36.

84. "Non potest tamen dari doctrina generalis super huiusmodi traditionibus ovium propter varietatem traditionum et dolos qui super talibus excogitantur a quibusdam." SC 2.7.36.

85. See p. 144 above.

adds, applies to courtiers and other intermediaries in the service of usurers, who seek out clients for them in exchange for a price and receive pledges in the usurer's stead.<sup>86</sup> Adding to John's response in Question 81 of the *Summa confessorum* on usury, where he argues that a creditor who in good faith sells something pledged to him and receives more than the principal must return this to the debtor, Guy specifies that if the creditor retains this surplus without the debtor's awareness, then he commits not simply usury, but outright theft.<sup>87</sup>

In his addition to Question 6 of the *Regula*, which draws on the discussion of the ethics of sales on credit in Question 16 of the *Summa confessorum* on usury, Guy provides us with an additional, fascinating example of an illicit sales contract. He argues that the same reasoning for the illicitness of sales on credit that Aquinas provides in the *Summa confessorum* applies to the contracts of carpenters who agree to build houses for clients who have a plot of land, but do not have the money to pay for construction up front. In these contracts, the carpenters effectively loan all of the materials and their labour to the future homeowner on the condition that, once the homes are built, the carpenters will possess them and the debtors will lease the houses from them. The debtors must pay the carpenters rent until the latter have received back their labour, expenses, and materials and beyond this a certain amount of money over and above the principal for the favour of building the homes on credit. Then full ownership over the houses will revert to the debtor. For example, Guy writes, a carpenter will complete the

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86. "Notandum quod si serviens vel mancipium habet ibi certam partem, scilicet, 4 vel 5 denarios, tenetur ad restitutionem pro parte sua. Sed si non habeat partem, peccat mortaliter, quia facientes et consencientes eiusdem culpe sunt. Idem est de corateriis sive mediatoribus quando habent ibi partem, tunc tenentur ad restitutionem pro parte sua preter peccatum, quia consenciant et iuvant. Et si non habeant ibi partem, dico quod non tenentur ad eius restitutionem, sed peccant mortaliter si habeant colligacionem et societatem cum ipsis usurariis procurando eis homines qui ab eis recipiant mutua ad usuram et recipiendo pignora et faciendo similia." Oxford, Lincoln, MS lat. 81, fol. 40ra-b. Cf. SC 2.7.63 and C. 2 q. 1 c. 10 qtd. in SC 2.7.62.

87. "Si retinet sine scientia illius cui debetur, est furtum." Oxford, Lincoln, MS lat. 81, fol. 40rb. Cf. SC 2.7.81.

houses for a thousand *libras* and receive 1200 in return from the debtor. Such contracts are, of course, clearly usurious.<sup>88</sup>

Lastly, expanding upon John of Freiburg's discussion of the licitness of advanced purchases of grain at a discounted price in Question 26 of the *Summa confessorum* on usury, in his *additio* to Question 15 of the *Regula* on usury Guy enters into a lengthy refutation of several arguments, which must have been popular at the time he was writing, that correspond roughly to our modern conception of time-preference: the notion that a present thing is worth more than a future, uncertain thing, and thus it is licit in the case of future commodities to pay less for the right to receive them than their present worth.<sup>89</sup> Guy's entire refutation is too lengthy to summarize adequately here, but his strongest argument against the notion of time-preference is that since all the doctors of the Church

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88. "Idem omnino est de carpentariis qui operantur domos alicui qui habet locum et non habet pecuniam pro opere faciendo, et mutant, scilicet, totam materiam et operas suas, tali pacto, quod, factis domibus, teneant eas, recipiendo precium locacionis earum tanto tempore quod reciperent operas suas et quicquid ibi posuerant et expenderant, et ultra hoc aliquam quantitatem pecunie ultra sortem pro gratia sibi facta de operatione domorum et sumptibus, sic quod si <carpentarii> constiterit totum opus <M> libras, reciperent inde MCC libras. Idem est de omni contractu consimili in quarum quemlibet est usura." Oxford, Lincoln, MS lat. 81, fol. 37rb. Cf. SC 2.7.16.

89. In this *additio*, Guy may have been responding, in part, to the treatise *De emptionibus et venditionibus, de usuris, de restitutionibus* of the Franciscan theologian Peter John Olivi (d. 1298), who uses the argument from time-preference to support the purchase of a right to future goods at a reduced price. In the *Regula*, Guy summarizes the position of his opponents as follows: "Sed contra ea que dicta sunt in hac questione, scilicet, de illis qui emunt vel appendant fructus alicuius possessionis ad 3 vel 9 annos, obiciunt pro se aliqui in contrarium per alias rationes quarum prima est hec: Res presentes sunt pocioris et melioris condicionis quam future. Sed secundum hoc res future, ceteris paribus, mitius debent vendi et minori precio quam presentes et presentes plus. . . . Secunda ratio quam ponunt est quod presentia sunt certiora et habentur actuali possessione, sed futura sunt incerta et dubia et ignoratur quod continget de eis, propter quod sunt ex se et ex conditione sue minoris conditionis et minoris valoris, ceteris paribus, propter quod sunt et debent esse minoris pretii. . . . Tertia ratio quam ponunt est <quod> res future quanto longioris et distantioris temporis sunt, tanto minoris conditionis et minoris valoris sunt, et sic debent minus vendi. . . . Quarta ratio est quod aliquis potest emere ius alicuius rei, posito quod res non sit, sicut bladum secundi anni ver tertii alicuius campi. Plus autem valet ius et res quam ius solum." Oxford, Lincoln, MS lat. 81, fols. 38ra-38va. Cf. Olivi's arguments: "Patens est quod ius futuri temporis seu ius rerum aut reddituum pro futuro tempore, potest licite minus emi, quam si omnes ille res essent tunc simul presentes et simul tradite ipsi emptori; et secundum hoc, quanto ius futurorum procedit in longinquiora futura, tanto ceteris paribus potest minori pretio emi. Huius autem ratio est; quia in his in quibus ius rei seu supra rem differt a re ipsa, aut ab actuali possessione ipsius, potest ipsum ius emi, quamvis res ipsa non sit, aut non tradatur actu, sicut patet de iure fructuum futurorum, quod potest emi agro non empto, nec fructibus ipsius existentibus actu. Constat autem quod ius et naturalis possessio rei presentis plus valet ceteris paribus, quam solum ius rei future, aut quam solum ius absque actuali possessione non statim tradita vel tradenda. Certitudo autem rei presentis et presentialis possessionis eius maior et prestancior est quam certitudo rei future possessionis aut quam certitudo future possessionis rei presentis, propter quod non immerito potest prima plus vendi, et secunda licite minus emi." Giacomo Todeschini, ed., *Un trattato di economia politica francescana: Il "De emptionibus et venditionibus, de usuris, de restitutionibus" di Pietro di Giovanni Olivi* (Rome: Istituto Storico Italiano per il Medio Evo, 1980), 83. For an overview of Olivi's economic teachings, see Odd Langholm, *Economics in the Medieval Schools: Wealth, Exchange, Value, Money and Usury according to the Paris Theological Tradition, 1200-1350* (Leiden: E.J. Brill, 1992), 345-73; Amleto Spicciiani, *Capitale e interesse tra mercatura e povertà* (Rome: Jouvence, 1990), 85-96.

agree that it is usurious to buy wheat in the blade in the winter for less than it is worth when the wheat is harvested and delivered in the following summer, therefore it is equally as illicit to pay less than the full value for wheat that will not be delivered in the next summer, but the one after that or the one after that, and so on.<sup>90</sup> Therefore, a future thing cannot be sold for less than its full value. By means of these additions, Guy sought to further clarify the teaching of the *Summa confessorum* on usury and bring it into dialogue with contemporary business practices and ideas current in Toulousain society. In order to be an effective means of shaping the behaviour of merchants, the usury doctrine had not only to be clear, but also relevant to the daily concerns of medieval businessmen.

Despite the improvements Guy made to John's questions on usury in the *Summa confessorum*, the available evidence indicates that his *Regula* did not prove to be overwhelmingly popular. Kaeppli identified only four extant manuscripts of the *Regula* and the only printed edition to come down to us is the French translation of the *Regula* printed at Provins in 1496.<sup>91</sup> However, this modest figure may not tell the whole story of the *Regula*'s success in posterity. Since Guy intended the *Regula*, in part, as a sort of work-a-day reference for merchants in conducting their contracts ethically according to the prevailing norms of the Church, it may not have been a work that the latter thought fit to preserve once these norms had changed. Hence, there is no telling how many copies of the *Regula*, in Latin or in the vernacular languages, were consigned to the dustbin or torn apart and used for keeping accounts by merchants after its doctrine had become obsolete. We have, nevertheless, no way of knowing this and can only affirm on the basis of the evidence available to us that the *Regula* was not widely read.

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90. "Totus mundus tenet et omnes doctores quod emere bladum ad novum, id est, emere in yeme bladum novum quod colligetur in sequenti estate pro minori precio quam valeat in estate arbitrio virorum bonorum expertorum in talibus est usura, et intelligo quod solvatur statim pretium. Eadem igitur ratione erit usura si aliquis emat nunc bladum quod est non in sequenti estate, sed in estate secunda et in tertia et quarta, statim solvendo pretium, pretium, inquam, minus multo secundum estimationem virorum bonorum in talibus expertorum, propter hoc quod statim solvit, ita quod aliquando in primo anno vel in duobus recuperat totam sortem." Oxford, Lincoln, MS lat. 81, fol. 38va. For the full *additio* and refutation, see Oxford, Lincoln, MS lat. 81, fols. 38ra-38vb. Cf. SC 2.7.16.

91. Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 2:75, no. 1405.

The number of extant manuscripts of the *Regula mercatorum* implies that it was by no means an exceedingly popular work, but it was nevertheless one of the channels through which John of Freiburg's teachings on the usury prohibition reached larger audiences outside his native Germany. Guy de Toulouse's *Regula* represents an attempt, like John's *Manuale collectum de Summa confessorum*, to popularize the usury doctrine of the *Summa confessorum*. However, unlike John, Guy broke off from the form and content of the *Summa* to create, relatively speaking, a new work targeted specifically to the concerns of the marketplace and directed to the merchants who worked in it and to the confessors – priests and friars – who sought to keep their activities within the boundaries of justice as established by the law of the Church. In light of current business practices and popular ideas about the marketplace, Guy adapted and emended the teaching of the *Summa confessorum* to suit local conditions in order to maintain its relevancy and usability. In this respect, his approach differed considerably from that of William of Pagula, the next author to draw extensively on the *Summa confessorum*, who preserved the integrity of John's usury doctrine to a much greater extent.

#### A PENITENTIARY'S REFERENCE MANUAL: THE *SUMMA SUMMARUM* OF WILLIAM OF PAGULA ON USURY

If we are struck by the fact that shortly after John's death the *Summa confessorum* managed to reach Toulouse, some thousand kilometres southwest of Freiburg across land, we shall only be further astounded that his weighty tome managed a few years later to cross the English channel and arrive in the parish of Winkfield, Berkshire, in the Southeast of England, far to the north of John's native city. It was there at some time between 1320 and 1322/3 that William of Pagula composed his own massive *Summa*

*summarum*, which draws copiously from John of Freiburg's teachings on usury in the *Summa confessorum*.<sup>92</sup>

Fortunately, we know a great deal more about William, the next link in the chain of the *Summa confessorum*'s transmission, than we do about Guy de Toulouse.<sup>93</sup> William of Pagula (Poul, Paul) was most likely a native of Paull, near Hull, Yorkshire, in the North of England.<sup>94</sup> On 5 March 1314, bishop Simon of Ghent appointed William as the perpetual vicar of the parish of Winkfield in the diocese of Salisbury.<sup>95</sup> He was subsequently ordained a priest by archbishop Walter Reynolds (d. 1327) in Canterbury Cathedral on 1 June 1314.<sup>96</sup> Shortly after his appointment to Winkfield, William was released from his duties there in order to study canon law at the University of Oxford on a *Cum ex eo* license – a provision that Boniface VIII promulgated in the *Liber sextus* (5 March 1298) whereby the pope permitted local bishops to grant parochial clergy a leave of absence to study at a university for up to seven years, with their expenses supported by the revenues of their parishes.<sup>97</sup> At some time between 1320 and 1321 William became a doctor of canon law at Oxford and then served as regent master there, most likely between 1320 and 1323, before returning to Winkfield.<sup>98</sup> His studies at Oxford earned William a promotion within the Church hierarchy. On 8 March 1322 bishop Roger

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92. For the dating of the *Summa summarum*, see L. E. Boyle, "The 'Oculus Sacerdotis' and Some Other Works of William of Pagula," *Transactions of the Royal Historical Society* Fifth Series, 5 (1955): 105; A. B. Emden, *A Biographical Register of the University of Oxford to A. D. 1500*, 3 vols. (Oxford: Clarendon Press, 1959), 3:1437.

93. Brief summaries of William's life can be found in Ibid., 3:1436-37; Cary J. Nederman, "Pagula [Paull], William," in *Oxford Dictionary of National Biography*, online ed., ed. Lawrence Goldman (Oxford: Oxford University Press, 2004), <http://www.oxforddnb.com/view/article/21127> (accessed June 12, 2012); Boyle, "Oculus Sacerdotis", 98-99.

94. Leonard Boyle, "The 'Summa summarum' and Some Other English Works of Canon Law," in *Pastoral Care, Clerical Education and Canon Law, 1200-1400* (London: Variorum, 1981), 418-19, n. 20; W. A. Pantin, *The English Church in the Fourteenth Century* (Notre Dame: University of Notre Dame Press, 1962), 195.

95. Emden, *Biographical Register*, 3:1436-37; Pantin, *English Church*, 195.

96. Nederman, "Pagula [Paull], William."

97. Boyle, "'Summa summarum'," 419; Boyle, "Clerical Education," 26-27. On the history of *Cum ex eo*, see Ibid., pp. 22, 25 and Leonard E. Boyle, "The Constitution 'Cum ex eo' of Boniface VIII: Education of Parochial Clergy," *Mediaeval Studies* 24 (1962): 263-302.

98. Boyle, "Clerical Education," 26-27; Emden, *Biographical Register*, 3:1436-37.

Martival (d. 1330) appointed him as penitentiary for the deanery of Reading. This relatively minor appointment was intended as a probationary period for the new master, since shortly thereafter Martival extended William's jurisdiction to include the whole of Berkshire.<sup>99</sup> William served faithfully in his capacity as parish priest of Winkfield and penitentiary for the county of Berkshire until his death around 1332, when Master John Lavyngham succeeded him as vicar of Winkfield.<sup>100</sup>

The *Summa summarum* is an anonymous work, but thanks to the efforts of Dr. Boyle we are certain that it should be attributed to William of Pagula, who also composed the *Speculum praelatorum*, a comprehensive guide to the duties of bishops, the *Speculum religiosorum*, a compendium of legal information relevant to monks and friars, and the *Oculus sacerdotis*, a guide to the duties of parish priests.<sup>101</sup> As Dr. Boyle has shown, in all of these works the author made autobiographical references that correspond to the details of William of Pagula's life. In addition, cross-references among these works indicate that they stem from a single author. For example, in one passage of the *Summa summarum* the author notes that he treated (*tractavi*) the relevant subject matter at greater length in the *Sinistra pars oculi sacerdotis* and that he intends to treat it again (*tractabo*) in the *Speculum praelatorum*. In the *Oculus sacerdotis*, moreover, the author frequently urges the reader to consult the *Summa summarum* for additional information on a given subject. Finally, a copy of the *Summa summarum* (Cambridge, Christ's College, MS 2) bears a note in a late fourteenth century hand stating that "hoc opus compositum fuit per Dominum Willelmum de Pabula" (fol. 269r).<sup>102</sup> In light of the aforementioned evidence, William of Pagula's authorship of the *Summa summarum* and of the other works that Boyle attributed to him is secure.

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99. Boyle, "Oculus Sacerdotis," 100; Emden, *Biographical Register*, 3:1436-37; Pantin, *English Church*, 195.

100. Boyle, "Clerical Education," 26-27; Nederman, "Pagula [Paull], William."

101. Boyle, "Summa summarum," 418.

102. Ibid., 421-22; Boyle, "Oculus Sacerdotis," 95-99.

The prologue to the *Summa summarum* reveals that William composed the book, as Boyle puts it succinctly, “to provide every ‘literate cleric’ from curates to lawyers with a compendium of canon law and pastoral theology in which an answer could be found to every question.”<sup>103</sup> Although William envisioned his *Summa* as a helpful tool for all clerics, like John of Freiburg in his *Manuale* he had in mind especially the poorer sort,<sup>104</sup> who could not afford singly all of the volumes whose teachings he had assembled into one convenient place.<sup>105</sup> Through the *Summa summarum* William hoped to improve the *regimen animarum* of parish priests and to advance the state of legal and theological learning in the Church as a whole.<sup>106</sup> Like the *Summa confessorum*, the *Summa summarum* was designed to serve as a comprehensive reference work for those engaged in the pastoral care of souls. The difference between the two works lies in the fact that the subject matter of the *Summa summarum* reached beyond the confessional – already an expansive topic – to embrace every matter of concern to the priest.

As W. A. Pantin astutely observes, the *raison d’être* of fourteenth century manuals for English parish priests, such as the *Summa summarum*, can ultimately be tracked back to Innocent III’s decree *Omnis utriusque sexus* issued at the Fourth Lateran Council in 1215. As I mentioned above, this decree made annual confession to one’s parish priest and communion at Easter mandatory for all Christians. To be effective the decree required that all parish clergy be versed in moral theology and the procedures of the confessional, which gave rise to manuals for priests such as John of Freiburg’s *Summa confessorum* and William’s *Summa summarum*.<sup>107</sup>

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103. Boyle, "Summa summarum", 419.

104. See p. 128 above.

105. However, as William indicates in the prologue, the *Summa summarum* was directed equally to bishops who had ample means: “Ne quis igitur de cetero ignorancia iuris canonici valeat honeste accusari, hanc summam composui quam breviter et levius potui secundum modicam scienciam mihi a Deo ministratam qui unicuique propria dividit prout vult . . . Et hoc feci pro rudibus et penitus ignorantibus ius canonicum, et potissime pro prelatibus et sacerdotibus, cum ignorancia iuris canonici sit eis inter ceteros magis periculosa.” The text of the prologue is edited in *Ibid.*, 440-43.

106. *Ibid.*, 425.

107. See ch. 2, pp. 56 f. Pantin, *English Church*, 191-92.

However, in the case of the later pastoral manuals of English origin, Pantin has pointed out that a more proximate cause for their production is to be sought in the legislation of Archbishop John Peckham (d. 1292) at the Provincial Council of Lambeth in 1281. There Peckham issued directions on the administration of the sacraments, focusing especially on confession and the publication of excommunications. To improve the quality of the spiritual care of parish priests for their congregations – which, according to Peckham, had declined precipitously – he outlined in the section of the council on the education of parish priests (*De informatione simplicium sacerdotum*) a basic curriculum for all English Christians. This curriculum consisted of the fourteen articles of faith, the ten commandments of the Hebrew Bible and the two commandments of the Gospels, and lessons on the seven works of mercy, seven virtues, seven vices, and seven sacraments. According to Peckham's instructions, priests had to preach on these items in the vernacular four times a year to their parishioners.<sup>108</sup> As a result, many of the pastoral manuals of fourteenth century England were composed, Pantin argues, to assist priests in fulfilling their pastoral duties as stipulated by Peckham by elaborating upon his spare outline.<sup>109</sup> According to Fr. Boyle, this was explicitly the case with William of Pagula's pastoral guide, the *Oculus sacerdotis* (ca. 1320).<sup>110</sup> This same rationale can be extended to William's more extensive compendium for clerics, the *Summa summarum*.

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108. "Ignorantia sacerdotum populum precipitat in foveam erroris; et clericorum stultitia vel ruditas, qui diffinitione canonica filios fidelium instruere iubentur, magis aliquando ad errorem proficit quam doctrinam. Quidam etiam ceci predicantes non semper loca visitant que magis constat veritatis lumine indigere; testante propheta, quia parvuli . . . petierunt panem, nec erat qui frangeret, et alio clamante quia egeni et pauperes querunt aquas, lingua eorum siti arruit. In quorum remedium discriminum statuendo precipimus ut quilibet sacerdos plebi presidens, quater in anno, hoc est, semel in qualibet quarta anni, die una sollempni vel pluribus, per se vel alium exponat populo vulgariter, absque cuiuslibet subtilitatis textura fantastica, quatuordecim fidei articulos, decem mandata decalogi, duo precepta evangelii, scilicet, gemine caritatis, septem etiam opera misericordie, septem peccata capitalia, cum sua progenie, septem virtutes principales, ac septem gratie sacramenta." F.M. Powicke and C.R. Cheney, eds., *Councils and Synods with Other Documents Relating to the English Church*, vol. 2, pt. 2 (Oxford: Clarendon Press, 1964), 900-901. Peckham then goes on to provide a very brief outline of these topics, which can be found on pp. 901-05.

109. For an overview of the relationship between *Ignorantia sacerdotum* and medieval English pastoral manuals, see Pantin, *English Church*, 193-94.

110. Boyle, "'Oculus Sacerdotis'," 83.

William of Pagula's social and intellectual milieu in the diocese of Salisbury was also a spur to the production of the *Summa summarum*. Pantin claims persuasively that it is not a coincidence that this great author of pastoral manuals spent his professional career in Salisbury, since Simon of Ghent, bishop there from 1297-1315,<sup>111</sup> was very active in advancing pastoral care in his diocese and reviving theological learning among the clergy.<sup>112</sup> In 1300, for example, Simon commanded the chancellor of Salisbury Cathedral to give lectures on pastoral theology. He also used the prebends at his disposal to attract scholars to his diocese by providing them with livings, forming a sort of learned society centred on the Salisbury cathedral chapter. During Simon's episcopate four chancellors of Oxford and four Oxford theologians were present there: William de Bosco, Henry de la Wyle, Walter Burdun, Richard of Winchester, John of Winchelsea, James Berkeley, and Roger Mortival, who succeeded Simon as bishop of Salisbury.<sup>113</sup> Besides assembling these luminaries, Simon encouraged the widespread diffusion of the sophisticated learning of the universities in his diocese and beyond by granting just over three hundred *Cum ex eo* licenses to his clergy during his episcopate, far more than most other bishops.<sup>114</sup> The intellectually stimulating environment of Salisbury in the early fourteenth century together with the spirit of reform that permeated its air might well have pushed William of Pagula to make his own contribution to the movement initiated by Simon of Ghent in the form of the *Summa summarum* and his other pastoral works.

An even more immediate cause for the production of the *Summa summarum* was connected to William's recent appointment as penitentiary, first for the deanery of Reading and then for the whole county of Berkshire. As I mentioned above, internal

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111. John Le Neve and T. Duffus Hardy, *Fasti Ecclesiae Anglicanae or A Calendar of the Principal Ecclesiastical Dignitaries in England and Wales and of the Chief Officers in the Universities of Oxford and Cambridge from the Earliest Time to the Year M.DCC.XV*, 3 vols. (Oxford: Oxford University Press, 1854), 2:599; P. Pius Bonifacius Gams, *Series Episcoporum Ecclesiae Catholicae*, 2 vols. (Leipzig: Karl W. Hiersemann, 1931), 1:197.

112. Pantin, *English Church*, 195.

113. Ibid., 112-13.

114. Boyle, "Clerical Education," 25.

evidence suggests that William wrote the *Summa summarum* between 1320 and 1322/3.<sup>115</sup> William was appointed penitentiary for Reading in the first quarter of 1322.<sup>116</sup> The coincidence of these dates suggests that William came up with the idea for the *Summa summarum* first and foremost as a reference manual for his own work as Roger of Mortival's *penitentiarius*. That is, in order to easily locate the solutions to whatever cases might be presented to him as penitentiary, William created for himself a massive encyclopedia of pastoral theology, which he thought would also be useful to other priests in both the humbler and more exalted ranks of those administering the *regimen animarum*.<sup>117</sup>

Leonard Boyle was the first scholar to take notice of William of Pagula's unacknowledged use of John of Freiburg's *Summa confessorum* in the *Summa summarum*. Speaking broadly, Boyle claims that most of the citations of the famous canonists and of the opinions of the renowned Dominican theologians Albert the Great, Thomas Aquinas, and Peter of Tarentaise in the *Summa summarum* could ultimately be traced to their initial inclusion in John of Freiburg's *Summa confessorum*.<sup>118</sup> Boyle also asserts that all of the passages in the *Summa summarum* where Raymond of Penyafort's name appears come not from Raymond's *Summa* directly, but from John's extensive use of his *Summa de poenitentia* in the *Summa confessorum*.<sup>119</sup> As for why William did not disclose that John of Freiburg was one of his principal sources in the *Summa summarum*, Boyle suggests that William may have been under the mistaken, but relatively common, impression that Raymond was actually the author of the *Summa confessorum*.<sup>120</sup> This confusion arose due to the similarities between the two works. Hence, William did not

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115. See n. 92 on p. 154 above.

116. See p. 154 above.

117. See n. 105 on p. 156 above.

118. Boyle, "Oculus Sacerdotis," 103; Boyle, "Summa summarum," 423.

119. Ibid., 424, n. 34.

120. Ibid., 424.

set out intentionally to efface John of Freiburg's contribution to the *Summa summarum*. He simply did not know that there was one.

Much of what Boyle asserts broadly about William's use of the *Summa confessorum* in the *Summa summarum* can be demonstrated specifically through his use of John's questions on usury. However, since William did not anywhere acknowledge the *Summa confessorum* as his source explicitly, a reliable means of detecting its influence must be devised. For example, if William refers to Hostiensis' *Summa aurea* or Raymond of Penyafort's *Summa de poenitentia*, how can we know that he is accessing these works through the *Summa confessorum* and not directly? In the case of the *Summa summarum*, the answer is, thankfully, relatively straightforward. In the first place, William paraphrased John's questions and responses closely, which provides the researcher with a means of determining where adaptations from the *Summa confessorum* might begin and end in the *Summa summarum*. However, since so much of the *Summa confessorum* consists of quotations of other authors, the criterion of linguistic similarity is not decisive for showing its influence. Yet, once the researcher has noticed in the *Summa summarum* a string of possible adaptations of the *Summa confessorum* on the grounds of linguistic similarity, he is immediately struck by the fact that the order of the successive *questiones* in the *Summa summarum* closely follows the order of *questiones* in the *Summa confessorum*. When William appears to be borrowing from the *Summa confessorum*, he combines the same authorities in each question in the same order. The coincidence of these features between the two works shows the influence of the *Summa confessorum* upon the *Summa summarum* decisively. Even supposing that William had independent access to the same sources as John did when writing on usury, there is an exceedingly small chance that he would have consistently combined them in the same way and in the same order.

Thus, for example, the wording of Question 18 of the *Summa summarum* on pledges causes the researcher's ears to prick up – he has caught the scent.<sup>121</sup> It bears a remarkable resemblance to Question 73 of the *Summa confessorum* on usury. Following his nose, the researcher then notices that Question 19 on pledges in the *Summa summarum* appears to be a paraphrase of Question 74 of John's *Summa* on usury.<sup>122</sup> William claims that these two questions come from Hostiensis, but the researcher is now suspicious. In Question 20 on pledges, William draws on Innocent IV's *Apparatus* to the *Liber extra*, as John also does when attempting to answer the same question in Question 76 of the *Summa confessorum* on usury.<sup>123</sup> In Question 21 William now takes Raymond of Penyafort as his source, as does John to answer the same question in Question 78.<sup>124</sup> Now the researcher is in a full lather. He knows he is close to seizing his prey – the elusive influence of the *Summa confessorum* in the *Summa summarum*. The fatal blow comes once he notices that questions 22-25 of the *Summa summarum* on pledges all closely paraphrase questions 79-82 on usury in the *Summa confessorum*, with William claiming Raymond of Penyafort as his source in each case.<sup>125</sup> The likelihood that William of Pagula independently pursued the same series of questions on usurious pledges using the same group of diverse authorities as John of Freiburg in the *Summa confessorum* is next to nothing. The only sensible conclusion is that William must have accessed these

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121. "Quid est pignus? Dic quod pignus est obligacio rei licite pro debito inita. Fit et ad maiorem securitatem creditoris, quia potius est pignori incumbere quam in personam agere et tucius est non solvere quam solutum repetere, secundum Hostiensem, eodem, §. 1." Oxford, Bodleian, MS Bodley 293, fol. 118vb. Cf. SC 2.7.73.

122. "Que intelliguntur pignoratice obligata. Dic quod si quis dotem promiserit, omnia bona sua pro dote restituenda uxore tacite obligantur . . . Item, tacite obligantur bona defuncti pro legatis et fideicommissis, secundum Hostiensem, eodem tit., §. III." Oxford, Bodleian, MS Bodley 293, fol. 118vb. Cf. SC 2.7.74.

123. "An redditus ecclesiasticus vel stipendia possit obligari? Dic quod non speciali obligatione, sed a iudice pro debito canonici et ex causa iudicati possunt iudicari, Extra. de fideiussoribus, Pervenit, secundum Innocentium." Oxford, Bodleian, MS Bodley 293, fol. 118vb. Cf. SC 2.7.76.

124. "Quid si creditor vult omnes fructus pignoris perceptos bona fide deductis expensis computari in sortem, sed de residuo postulat debitorem compelli ad solutionem. Nunquid potest? Dic quod si et habet alia remedia contra debitorem. Potest enim pecuniam petere per accionem personalem coram iudice . . . Si vero nichil de vendicione convenit inter debitorem et creditorem, sufficit unica denunciatio et postea, elapso biennio, poterit fieri vendicio. Probantur hec, ff. de pig., l. Si convenerit, secundum Raymundum in titulo de usuris, §. circa pignora." Oxford, Bodleian, MS Bodley 293, fol. 118vb. Cf. SC 2.7.78.

125. Oxford, Bodleian, MS Bodley 293, fol. 118vb. Cf. SC 2.7.79-82.

authorities through the *Summa confessorum*, thus establishing the *Summa summarum* as another link in the chain of its transmission. Furthermore, since William's use of the *Summa confessorum* has been definitively established using this method in this part of the *Summa summarum*, the researcher now has good reason to suspect that other passages of the *Summa summarum* where William closely paraphrases the *Summa confessorum* – even if they do not end up presenting a series of questions that follow the order of the questions in John's *Summa* – are likely drawn from John's *Summa* and not directly from the sources that William names.

Using the method described above I have established that in the *Summa summarum* William of Pagula incorporated 45 of the 83 questions on usury in the *Summa confessorum*.<sup>126</sup> Even a cursory glance at the table summarizing the reception of John's *Summa* in the *Summa summarum* reveals how closely William followed the order of the questions on usury in the *Summa confessorum*. William drew on John's *Summa* in 8 of the 25 questions on pledges in the *Summa summarum* and in 36 of the 90 questions on usury. Thus, while John of Freiburg was not the only source that William employed in composing his *Summa*, as was the case with Guy de Toulouse's *Regula mercatorum*, the *Summa confessorum* was nevertheless a significant source of much of William's teaching on the Church's usury prohibition. By virtue of its incorporation of just over half of John's questions on usury, William's *Summa summarum* also served as an important channel through which the *Summa confessorum*'s teachings reached wider audiences.

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126. See Appendix II, tables 16 and 19 for the following statistics. My examination of William's other works did not reveal any use of the *Summa confessorum* on usury. For the *Speculum religiosorum* I consulted London, Gray's Inn, MS 11. For the *Oculus sacerdotis* I consulted the section *de usuris* of the *Dextera pars oculi sacerdotis* contained in University of Pennsylvania, MS Codex 721, fols. 66ra-67ra, available on-line at <http://hdl.library.upenn.edu/1017/d/medren/2487538>. It is possible that William drew on the *Summa confessorum*'s teachings in the *Speculum praelatorum*; unfortunately, we shall never be able to know since only one manuscript of the *Speculum praelatorum* survives (Oxford, Merton College, MS 217) and in this copy 28 chapters from the end of Book Two are missing. The table of contents of the manuscript indicates that the section *de usuris* should appear among the missing chapters (fol. 80rv). A note from the scribe on fol. 179v indicates that the chapters were missing from his exemplar (*Hic deficit de exemplari*). It is impossible to say whether this scribe was working with a defective exemplar or whether William did not have the chance to complete these chapters of the *Speculum praelatorum* before his death. On this manuscript of the *Speculum praelatorum*, see Boyle, "Oculus Sacerdotis", 102, n. 1.

Like those of Guy de Toulouse, most of William's borrowings from the *Summa confessorum* on usury consist of brief paraphrases that convey the bare essentials of the original *questio* in the *Summa confessorum*. For example, John's extensive discussion of the ethics of Jewish moneylending in questions 66 and 67 of the *Summa confessorum* on usury has been reduced in the *Summa summarum* to a handful of words: "Can a Jew exact usuries from Christians? Say that no, nor a Christian from Jews, according to Raymond, §. Quid de communitatibus, Extra. eodem tit., Post Miserabilem."<sup>127</sup> In his paraphrases William often omitted references to the sources that John listed in the *Summa confessorum*, or merely stated the authority that John employed in a general fashion. Generic references such as "secundum Thomam in *Summa*," "secundum Hostiensem," "secundum Raymundum," and "secundum Gaufredum" are not uncommon in the questions of the *Summa summarum* on usury.<sup>128</sup> At times William exhibits a carelessness about listing these authorities accurately in the *Summa summarum*. What was essential for William was to convey the kernel of the *Summa confessorum*'s teaching "as briefly and easily as possible," as he mentions in the prologue.<sup>129</sup> For example, in Question 77 of the *Summa summarum* on usury, which is a paraphrase of Question 42 of the *Summa confessorum* on usury, William mistakenly writes that Raymond of Penyafort argues that if someone lends an old harvest in exchange for a new one in order to protect the old harvest from spoiling or as a favour to the borrower, the transaction is not usurious. This was, in fact, Hostiensis' argument, as John correctly indicates in the *Summa confessorum*. In the same question William also mistakenly attributes an opinion of William of Rennes, correctly marked as such in the *Summa confessorum*, to Gottofredo da Trani.<sup>130</sup> For

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127. "An Iudeus possit exigere usuras a Christianis? Dic quod non, nec Christianus a Iudeis, secundum Raymundum, §. Quid de communitatibus, Extra. eodem tit., Post miserabilem." Oxford, Bodleian, MS Bodley 293, fol. 190vb. Cf. SC 2.7.66-67.

128. For examples, see 5.22.55-56, 70, 77, 79 of the *Summa summarum*. Oxford, Bodleian, MS Bodley 293, fols. 189vb, 190rb, 190va.

129. See n. 105 on p. 156 above.

130. "Quid de hiis qui <annonam> veterem mutant ut recipiant novam? Nunquid comittant usuram? Dic aut hoc faciunt quia meliorem rem recuperare volunt, et tunc comittunt usuram. Si autem hoc faciunt ne sua sibi pereant vel forte ut accipienti gratiam faciant, non comittunt usuram secundum Raymundum. Dicit Gaufredus quod non audet istos culpae si ad hoc mutant, ut proximo subveniant, dummodo non auferant

William, precision mattered less than usability. What was most urgent was to get John's point across to the readers of the *Summa summarum* clearly and plainly. Scores of examples of William's ability to strip the *Summa confessorum* down to its bare essentials could be advanced here, but those given above are sufficient to offer the reader a sense of his general approach to the material contained in John's *Summa*.<sup>131</sup>

In addition to simple paraphrases of the *Summa confessorum* on usury, which make up the bulk of William's borrowings from John of Freiburg, he also made modifications to some of John's responses. For example, in Question 3 of the *Summa summarum* on usury, which discusses the advice that the priest should offer to a debtor who has given an oath to pay usuries or has sworn not to denounce the usurer or seek back the usuries exacted, William added to his source in the *Summa confessorum* (SC 2.7.53) an extensive excerpt from Innocent IV's *Apparatus* to the *Liber extra*. In the case where a debtor has sworn not to seek back usuries exacted from him, he can still receive them back, according to Innocent, by denouncing the usurer to the Church. The Church will then compel the usurer to do penance, which cannot be accomplished without restitution, and thus the debtor will receive back the usuries he paid without directly violating his oath. An ecclesiastical judge can also compel others under pain of excommunication to come forward and expose the usurer, who will subsequently be compelled to make restitution. Finally, Innocent notes, as Raymond also does in the *Summa confessorum*, that if the debtor has sworn not to denounce the usurer, this oath is not binding since it violates the rule of the Gospel, which, as Raymond states explicitly,

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ei libertatem liberandi se interim solvendo veterem vel si probabiliter dubitet utrum plus vel minus valitura sit tempore solucionis." Oxford, Bodleian, MS Bodley 293, fol. 190va. Cf. SC 2.7.42. Again, in Question 65 of the *Summa summarum* on usury, William mistakenly attributes Aquinas' argument to Hostiensis, who, in Question 22 of the *Summa confessorum* on usury is listed merely as a concordance: "An dans pecuniam mutuum alii eo pacto vel intencione principali, ut ille remuneret ei quando indiget usuram comittat? Dic quod sic, quia remuneracio est aliquod commodum, quia pro pecunia mutuata nichil expectandum est nisi benivolencia affectus, <qui> sub estimacione peccunie non cadit. Ex illo enim procedere potest spontanea mutuacio, set repugnat ei obligacio ad mutuum faciendum in posterum, quod non licet secundum Hostiensem, §. IX." Oxford, Bodleian, MS Bodley 293, fol. 190ra. Cf. SC 2.7.22.

131. For further examples of William's paraphrases of the *Summa confessorum* see also the notes to pp. 161 f.

commands the love of the neighbour.<sup>132</sup> William added another extract from Innocent's *Apparatus* to his paraphrase of Question 29 of the *Summa confessorum* on usury in his own Question 71 on usury. To William of Rennes' discussion in the *Summa confessorum* of the different factors affecting the licitness of rent contracts purchased for the lifetime of the buyer, William of Pagula joined Innocent's opinion that as long as a just price according to common, market estimation is observed, such contracts are licit.<sup>133</sup>

William's other interventions in John's text are less extensive, consisting of brief explanations or minor additions to the responses contained in the *Summa confessorum* on usury. For example, in Question 59 of the *Summa summarum* on usury, which examines whether it is licit for a creditor who has loaned without a corrupt intention to accept a gift offered to him by the debtor for the sake of having granted the loan or extended its term, William added to his source's treatment of the question (*SC* 2.7.8) that some say that if the gift is moderate, then the creditor need not make restitution for it.<sup>134</sup> In Question 63 of the *Summa summarum* on usury, where those who lend money and receive repayment at a later date in another currency in order to profit through the exchange are condemned as

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132. "Quid iuris si debitor iurat non denunciare vel non repetere usuras vel usuras solvere? Dic quod si iuravit non denunciare nichilominus potest usuras et repetere et eo modo. Si autem iuraverit usuras solvere, cogendus est Deo reddere iuramentum et cum solute fuerint usure, creditor est compellendus ad usuras restituendas per sententiam ecclesiasticam. Et dicit Innocentius, 'Si iuravit non repetere, denunciabit ecclesie et ecclesia compellet eum ad penitenciam, quam penitenciam non potest agere nisi solvat vel reddat usuras. Vel etiam iudex sine alicuius denunciacione precipiet sub pena excommunicacionis quod quicumque scit dicat veritatem et sic coget usurarium <ad> restituendum. Si vero iuraverit non denunciare ecclesie, tale iuramentum non est servandum, quia est contra regulam evangelii.' Extra. eodem tit., Tuas. Extra. de iureiurando, Debitores secundum Innocentium, et Raymundum, eodem, XIII, et secundum Gaufredum et Hostiensem, ver. Quid si debitor." Oxford, Bodleian, MS Bodley 293, fol. 188vb. Cf. *SC* 2.7.53. For the excerpt from Innocent IV, see Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X 2.24.6.

133. "Quid si aliquis emerit a monasterio vel civitate certos annuos redditus vel certos modios annuos ad vitam suam? Nunquid est usura? . . . Dicit Innocentius quod huiusmodi contractus licitus est dummodo iusto precio et secundum communem estimacionem, Extra. eodem, In civitate secundum Innocentium, Hostiensem, et secundum Raymundum §. VIII." Oxford, Bodleian, MS Bodley 293, fol. 190rb. Cf. *SC* 2.7.29. For the excerpt from Innocent IV, see Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X 5.19.6.

134. "Quid si non sit intencio creditoris corrupta, debitor tamen propter mutuum acceptum vel propter mutuum ulterius retinendum dat aliquid creditori? Nunquid creditor tenetur illud ei restituere? Dic quod non quamdiu probabiliter credit quod ex sola dileccione ei dederit vel servierit. Si etiam credit vel probabiliter dubitat quod propter mutuum <receptum> vel propter mutuum ulterius retinendum dederit vel servierit, tenetur restituere. Quidam dicunt si sit modicum, non tenetur restituere, secundum doctorem et secundum Gaufredum, eodem tit., ver. Quid sit." Oxford, Bodleian, MS Bodley 293, fol. 189vb. Cf. *SC* 2.7.8.

usurers, William added a helpful analogy to his source (*SC* 2.7.20). He likens such lenders to merchants who sell their wares on credit for an increased price, charging for the interval of time before repayment.<sup>135</sup> In this case, the lenders “sell” their money dearer than its face value in exchange for repayment at a later date. By means of these greater and lesser additions to John’s *Summa*, William sought to clarify its teachings and to provide helpful guidance to the reader grappling with the extensive and often confusing literature on the Church’s usury prohibition.

Finally, in two instances in the *Summa summarum* William made alterations that changed John of Freiburg’s teaching substantially. The first and most significant instance occurs in Question 86 of the *Summa summarum* on usury. There William discusses whether the creditor is obligated to restore all the secondary gains that he made from the usuries he exacted. In the paraphrase of his source in the *Summa confessorum* (2.7.65), William only relates the older, more conservative opinion of Raymond of Penyafort, who argues that all secondary gains are fruit of the poisonous tree and must therefore be restored to the debtor. He completely excluded the opinions of William of Rennes, Ulrich of Strasbourg, and Thomas Aquinas, which John offers in the *Summa confessorum*. They argue that secondary gains from business that the usurer conducted with the usuries or from fruitful land that he purchased with them are by rights his, and for this reason the usurer is not liable for restitution of them.<sup>136</sup> Hence, here we observe a

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135. “Quid si quis mutuet peccuniam redempturus alterius generis monetam ad certum terminum, vel aurum vel argentum vel aliam speciem? An sit usurarius? Dic quod si hoc faciat ut in estimacione lucretur, usurarius est, sicut mercatores in nundinis vendunt carius res suas pro dilacione temporis. Quandocumque aliquid sorti accedit, usura est, eodem tit., Consuluit et secundum Hostiensem, eodem tit.” Oxford, Bodleian, MS Bodley 293, fol. 190ra. Cf. *SC* 2.7.20.

136. “An usurarius teneatur restituere non solum peccuniam, set etiam quicquid cum ea lucratus est et fructos perceptos ex re empta de peccunia usuraria? Dicunt quidam quod tenetur omnia restituere, quia ex radice corrupta venit et quia usura est quedam rapina, verum quia qui nimis emungit elicit sanguinem, et ideo dic quod tenetur restituere quicquid ultra sortem accepit pacto precedente vel intencione corrupta, non lucrum. Et tenetur restituere omnia dampna que propter <solucionem> usure passus est debitor, set secundum Raymundum, §. Item queritur.” Oxford, Bodleian, MS Bodley 293, fol. 190vb. Cf. *SC* 2.7.65. It is difficult to say how one should interpret “non lucrum” in the quotation above. However, it must be conceded that with these two brief words William may have intended to allude to the entire argument of William of Rennes, Aquinas, and Ulrich of Strasbourg concerning the licitness of secondary gains from business conducted with usuries. Nevertheless, given the importance of the question and the level of detail required in order to understand their argument correctly, this seems unlikely to me.

personal intervention on the part of William of Pagula, who disagreed with the latter argument and therefore excluded it from his compendium, not wishing to give it any further currency among his readers, lest they exonerate usurers from a burden of restitution that William believed was legitimate.

The second alteration that William made in his *Summa* is much less consequential. In Question 88 of the *Summa summarum*, William simply changed the wording of John's Question 69 on usury to ask what should be done if a Jew receives usury from Jews, rather than a Christian, as in the original. The response, however, remains the same as in the *Summa confessorum*: the best course of action is for the usurer to make restitution not to the Jews he exacted the usuries from, but to those from whom they exacted usuries, making restitution for them in their stead and liberating himself and them in the process.<sup>137</sup>

The *Summa summarum* was thus an effective means of transmitting a substantial portion of John's teachings on the usury prohibition from the Breisgau to priests and their parishioners in the diocese of Salisbury, where William, in his capacity as penitentiary for the whole of Berkshire, would have promoted the use of the *Summa summarum*. However, as the *Summa summarum*'s subsequent history reveals, its influence, and consequently the influence of the teachings of the *Summa confessorum* contained within it, spread beyond the diocese of Salisbury to reach locations scattered all over the English map. Through extensive bibliographical research, Dr. Boyle has determined that from the time William completed his *Summa* up to the English Reformation in the sixteenth century, at least seventy copies of the *Summa summarum* were circulating in England. Only thirteen of these manuscripts survive today.<sup>138</sup> The majority of these copies were owned by monasteries, cathedral chapters, and university libraries. Dr. Boyle has also

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137. "Quid si Iudeus accipit usuras a Iudeis? Cui restituet? Dic quod auctoritate ecclesie restituet nomine Iudei illis Christianis a quibus Iudeus exegerat usuras et notificet hoc Iudeo ut sciat se liberatum ab illis Christianis per ipsius solucionem." Oxford, Bodleian, MS Bodley 293, fol. 190vb. Cf. *SC* 2.7.69.

138. For the extant manuscripts of the *Summa summarum*, see Boyle, "'Summa summarum'," 452-54.

succeeded in identifying some individual owners. Lewis Charlton, the bishop of Hereford, just under 200 km to the northwest of Winkfield, possessed a copy of the *Summa summarum* before 1369, as did Ralph Ergom, the bishop of Bath and Wells, before 1396. By 1383 the *Summa summarum* had travelled south to Chichester, where one of its deans possessed a copy. The Archbishop of York, over 300 km to the north of Winkfield, owned a *Summa summarum* shortly after 1395, and William's compendium travelled almost as far west to Wales, where a community of priests possessed a copy. Around 1417 a community of priests in Norfolk, to the northeast of Winkfield, also possessed a copy.<sup>139</sup>

As such, the *Summa summarum* did not merely transmit a substantial portion of the *Summa confessorum*'s teachings on the usury prohibition, but also diffused these teachings to significant numbers of churchmen widely spread over the face of England. These, in turn, further diffused its teachings through their preaching and work in the penitential forum to the ordinary medieval men and women whose souls were in their care. Consequently, the *Summa confessorum*, supplemented by William of Pagula's own researches into the law of the Church on usury,<sup>140</sup> contributed partially to the formation of popular notions of the Church's usury ban in wide sections of medieval English society. This hypothesis will become even more compelling after the examination of the next link in the *Summa confessorum*'s chain of transmission, the *Regimen animarum*. In its discussion of usury, the *Regimen* borrowed extensively from William's *Summa summarum*, thereby further spreading his and, by extension, John of Freiburg's teachings on the usury prohibition throughout England in the Late Middle Ages.

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139. Ibid., 426.

140. On William's sources in the *Summa summarum* generally, see Ibid., 422. In addition to the examples discussed above, in his treatment of usury William added to the *Summa confessorum* extracts from Innocent IV's *Apparatus* to the *Liber extra* in 5.22.5 (Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X 5.19.10) and 5.22.29 (Ibid., ad 5.19.19, v. *Periculum*). He also made independent use of the Ordinary Gloss to the *Decretum* in 5.22.10 (Ordinary gloss to C. 14 q. 4 c. 5, *Si quis clericus*). Finally, he added *questiones* based on his own reading of canon law in 5.22.51 (X 5.19.5) and 5.22.90 (Clem. 5.5.1). For these questions in the *Summa summarum*, see Oxford, Bodleian, MS Bodley 293, fols. 188vb, 189ra-b, 191ra.

In 1343 an anonymous Englishman compiled from diverse legal and theological sources the *Regimen animarum*,<sup>141</sup> a small handbook for parish priests and curates that, as the author claims, contains “all the chief items that they are instructed by the canons and provincial constitutions to know and to expound to their parishioners and to preach to them in church.”<sup>142</sup> In the section on usury, the author of the *Regimen* drew exclusively and extensively on William of Pagula’s questions on usury in the *Summa summarum*. As a result, he indirectly transmitted a significant number of the *Summa confessorum*’s questions on usury, since these had already been taken over by William in his *Summa*.<sup>143</sup>

Unfortunately, we do not know anything about the author of the *Regimen*. Since the *Regimen* draws so extensively on William’s *Summa summarum* and was composed not long thereafter, its author may have spent at least part of his career in the diocese of Salisbury, where William employed the *Summa summarum* in his work as penitentiary for the county of Berkshire. It is possible that the author of the *Regimen* was attached in some way to the learned society that Simon of Ghent had originally assembled around the

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141. The incipit of the *Regimen animarum* in Brigham Young University, Harold B. Lee Library, MS 091 R263 1343 mentions the date of composition explicitly: “Incipit liber que vocatur *Animarum regimen*, compilatus in anno domini MCCCXLIII” (fol. 6r). According to an article in the *Gentleman’s Magazine* of February 1865 (pp. 209-12), this manuscript formerly belonged to Rev. John Sankey of Leicestershire, though he referred to it erroneously there as the *Maximum Regimen*. I am grateful to Dr. Russ Taylor, supervisor of reference services at BYU, and Dr. Maggie Kopp, curator of rare books at the same institution, for this reference and for assistance with the manuscript. Pantin notes that other manuscripts of the *Regimen* also contain this date in the incipit. Pantin, *English Church*, 203. On the date of the *Regimen*, see also Boyle, “Oculus Sacerdotis,” 95; Boyle, “Summa summarum,” 429-30.

142. “Ne aliquis igitur sacerdos parochialis vel curatus de hiis per ignoranciam aliquialiter se excuset, omnia precipua que per canones et constitutiones provinciales precipiuntur scire et parochianis exponere et inter ipsos in ecclesia predicare in hac modica summa per ordinem conscribuntur.” Brigham Young University, Harold B. Lee Library, MS 091 R263 1343, fol. 6ra.

143. It is thanks to Dr. Boyle’s general remark that the *Regimen animarum* makes use of the *Summa summarum* that I was able to track down its specific use of William of Pagula’s teachings on usury. See *Ibid.*, 429-30.

Salisbury cathedral chapter, but in the absence of evidence it would be imprudent to speculate any further.

Where the *Regimen animarum* was produced also remains unknown. The *Regimen* was clearly directed to English priests, since it contains sections on excommunications pertaining to English provincial councils, the Magna Carta, and the Charter of the Forest, which would be of no interest elsewhere.<sup>144</sup> We may therefore suppose, at least, that it was produced in England.

The author of the *Regimen* does give us a clear sense of its audience and intention. As the brief prologue to the *Regimen* indicates, it is directed to all priests burdened with the cure of souls. The author wrote the handbook to provide them with medicines for sick souls: the essential information concerning pastoral care that all parish priests must have. Hence, he has called the treatise the *Regimen animarum*.<sup>145</sup> The *Regimen animarum* was thus intended as a guide to the essentials of pastoral care for English parish priests. Like the *Summa summarum*, the *Oculus sacerdotis*, and many other English manuals of pastoral care, it was likely conceived as an attempt to expand upon the plan of parochial education laid down in John Peckham's *Ignorantia sacerdotum*, which he issued at the Council of Lambeth in 1281.<sup>146</sup>

In the prologue to the *Regimen animarum* the author mentions William of Pagula's *Summa summarum* explicitly as one of his sources, together with the *Summa confessorum*, which he attributed erroneously to Raymond of Penyafort.<sup>147</sup> However,

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144.c. 27, "De casibus quibus quis est excommunicatus eo facto per constitutiones provinciales"; c. 28, "De magna carta Anglie"; c. 29, "De carta et foresta Anglie." Brigham Young University, Harold B. Lee Library, MS 091 R263 1343, fol. 6rb.

145."O vos omnes sacerdotes, qui laboratis onerati et curati animarum estis, attendite et videte libellum istum, et Dei adiutorio saturabitis et reficietis animas subditorum vestrorum. Nam in isto opusculo continentur pericula et medicine que ad animas pertinent, et ideo Regimen animarum vocatur." Brigham Young University, Harold B. Lee Library, MS 091 R263 1343, fol. 6ra. See also note 142 above.

146. See p. 157 above.

147."Compilavi enim hoc opusculum ex quibusdam libris, videlicet, *Summa summarum*, Raymundus, *Summa confessorum*, *veritatis theologie*, *pars oculi sacerdotis*, et de libro venerabili Anselmi *de concordia presciencie et predestinatione et gracie Dei cum libero arbitrio*." Brigham Young University, Harold B. Lee Library, MS 091 R263 1343, fol. 6ra.

even had he not said so explicitly, the influence of the *Summa summarum* would not have been hard to detect in the *Regimen*, since in the section on usury the author always quotes it verbatim, adding nothing of his own to William's compendium apart from changing the order of some of its questions. A close reading of the section *De usuris*, the thirteenth chapter of the first book of the *Regimen*, which pertains to "the conduct and science of priests and other clerics,"<sup>148</sup> reveals that the author has taken over verbatim 74 of the 90 questions on usury in the *Summa summarum*.<sup>149</sup> 74 of the 75 questions on usury in the *Regimen animarum* are drawn from the *Summa summarum*. Although the author claims in the prologue that he made use of the *Summa confessorum*, in the section on usury at least there is no direct use of John of Freiburg's *Summa*. However, through its borrowings from the *Summa summarum*, the *Regimen* indirectly transmitted 33 of the 83 questions on usury in the *Summa confessorum* – just 12 questions short of the number transmitted in the *Summa summarum*.<sup>150</sup> Therefore, like its model, the *Summa summarum*, the *Regimen animarum* transmitted a significant portion of John's teachings on the usury prohibition to a wider audience in the parishes of England.

Since the questions of the *Regimen animarum* on usury consist entirely of verbatim quotations from the *Summa summarum*, it is needless to bore the reader with a plethora of extracts from it. She already has a good idea of the contents and method of the *Regimen* on usury from my discussion of the *Summa summarum* above. It is hoped that one example from the *Regimen* will be sufficient to secure the confidence of the reader that the remainder of its treatment of usury consists of more of the same. Thus, Question 11 on usury of the *Regimen* gives the same treatment of those who lend money

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148. In the prologue, the author explains that he divided the *Regimen* into three parts, "quarum prima est de moribus et sciencia presbiterorum et aliorum clericorum; secunda, de exhortacionibus et doctrinis bonis erga subditos suos faciendis; tercia, de septem sacramentis ecclesie et eorum ministracionibus in illis agendis." Brigham Young University, Harold B. Lee Library, MS 091 R263 1343, fol. 6ra.

149. For the following statistics, see tables 17 and 19 in Appendix II.

150. See p. 162 above.

and receive repayment in a different currency in order to profit from the exchange as the

*Summa summarum*:

What if someone lends money and receives money of another kind at a fixed term, either gold or silver or some other kind? Is he a usurer? Say that if he does this in order to profit through speculation, he is a usurer, just like merchants who sell their wares more expensively in the marketplace in exchange for repayment at a later date. For whenever something is added to the principal, there is usury, Extra. eodem tit., and according to Hostiensis, eodem tit.<sup>151</sup>

No word has been altered from the original in the *Summa summarum* – a practice that the *Regimen* follows throughout its absolutely derivative treatment of the usury prohibition.

The *Regimen animarum* indirectly incorporated a substantial number of John of Freiburg's questions on usury, but it did not increase the audience for his teachings to the same extent as William of Pagula's *Summa summarum*. Unlike the *Summa summarum*, the *Regimen* did not circulate widely nor did it obtain a significant readership. According to the researches of Bloomfield et al., only eleven manuscripts of the *Regimen animarum* are extant, all held in English libraries.<sup>152</sup> To their number we can add the manuscript that I have consulted.<sup>153</sup>

The *Regimen animarum* not only popularized the teachings of William of Pagula on usury, but also, due to William's own use of the *Summa confessorum* on usury, established another conduit through which John's teaching on the Church's prohibition of usury could reach wider audiences. Though the increase in the number of readers exposed to John's teachings on usury was less significant in the case of the *Regimen* than in some of the other channels through which John's *Summa* coursed, it nevertheless enlarged the sphere of its reception in a country far distant from the Breisgau, where John first composed the *Summa confessorum*. Insofar, moreover, as the *Regimen* placed the

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151. "Quid si quis mutuet pecuniam, recipit alterius generis monetam ad certum terminum, vel aurum vel argentum vel aliam speciem? An sit usurarius? Dic quod si hoc faciat ut in estimacione lucratur, usurarius est, sicut mercatores in nundinis vendunt carius res suas pro dilacione temporis. Quandocumque enim aliquid sorti accedit, usura est, Extra. eodem tit., et secundum Hostiensem, eodem tit." Brigham Young University, Harold B. Lee Library, MS 091 R263 1343, fol. 39va-b. Cf. *Summa summarum* 5.22.63. See n. 135 on p. 166 above.

152. Bloomfield et al., *Incipits of Latin Works on the Virtues and Vices*, 85, no. 835.

153. Brigham Young University, Harold B. Lee Library, MS 091 R263 1343.

teachings of the *Summa summarum* and *Summa confessorum* in the hands of more parish priests, who, in turn, passed them along to their parishioners from the pulpit and in the confessional, it also ensured that the *Summa confessorum* would continue significantly to shape popular ideas of usury in late medieval English society.

Before leaving England and moving on to Italy for the next and final link in my investigation into the transmission of the *Summa confessorum*'s teachings on usury, I will mention briefly the minimal use that another Englishman made of John of Freiburg's usury doctrine. John Baconthorpe (d. 1345 x 1352) – a Paris-trained theologian, master at Cambridge and Oxford, and provincial of the English Carmelites from 1326/27 until 1333 – makes explicit use of Question 53 on usury of the *Summa confessorum* (the “nova *Summa* Joannis”) in Distinction 23 of his *Quaestiones canonicae*. The *Quaestiones canonicae* consist of a commentary on the legal aspects of Book IV of Peter Lombard's *Sentences*, which Baconthorpe likely delivered in a series of lectures at Oxford in the 1340s.<sup>154</sup> In Distinction 23, Baconthorpe paraphrases the question from John's *Summa* in its entirety, which concerns the advice that the priest should offer a debtor who has sworn to pay usuries. He adds to it that in the case of someone who has sworn to pay usuries and not seek them back, he may nevertheless seek them back if a new circumstance (*nova causa*) should modify (*supervenerit*) the terms of the original contract. The example that he provides is of a usurer who in his last will instructed his heirs to make restitution in his stead to all who can prove that they paid usuries to him. In this case, Baconthorpe contends, a debtor who has sworn to pay usuries and not seek them back may, notwithstanding the oath (*non ratione iuramenti*), seek them back by reason of the legacy. He also adds that an oath not to denounce a usurer is illicit, since in the case of hidden

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154. On Baconthorpe's life and works, see Emden, *Biographical Register*, 1:88-89; John Marenbon, "Baconthorpe [Baco], John," in *Oxford Dictionary of National Biography*, online ed., ed. Lawrence Goldman (Oxford: Oxford University Press, 2004), <http://www.oxforddnb.com.myaccess.library.utoronto.ca/view/article/1011> (accessed June 12, 2012). It must be noted here that Dr. Boyle facilitated my research by being the first to recognize, in a general fashion, Baconthorpe's use of the *Summa confessorum* and William of Pagula's *Summa summarum* in his *Quaestiones canonicae*. See Boyle, "Summa summarum," 430.

transgressions canon law obliges each person to work towards the correction of his brother with those who he knows wish to do good in society – in this case, the authorities of the Church. In the case of manifest transgressions, the law compels one to denounce the transgressor.<sup>155</sup>

In addition to this clear use of John's *Summa*, Baconthorpe may also have relied on it in his *Quaestiones canonicae* as a guide to legal sources on usury. Although Baconthorpe demonstrates an independent knowledge of canon law and the Ordinary Glosses, Aquinas' *Summa theologiae*, and the works of Gottofredo da Trani, Innocent IV, and Hostiensis, there are nevertheless instances in the *Quaestiones canonicae* where he combines the same authorities in the same questions as John of Freiburg; yet, he combines them in such a way that it is clear that he is not merely paraphrasing John's *Summa*. For example, in his discussion of the liability of those who receive goods from usurers for making restitution, Baconthorpe combines the opinions of Hostiensis and Gottofredo da Trani in the same way as John did in his *Summa*, but his treatment of the legal aspects of the question from these sources is far more extensive than John's, which precludes the possibility that he merely adapted John's question here.<sup>156</sup> Hence, it is possible that while composing his *Quaestiones canonicae* Baconthorpe had the *Summa confessorum* at his elbow as a guidebook, which he used to track down material relevant

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155. "Sed numquid est aliquod remedium iuramenti super usuris prestitis ne solvant post iuramentum? Dic quod sic, ut patet in nova *Summa* Joannis, titulo de usuris. Quia aut solum promisit solvere, et tunc non debet cogi ad solvendum, cum usure sint indebite, de iureiurando, Debitores. Aut solum solvere et sic habet adhuc duo remedia. Primum, quod faciat cogi creditorem quia relaxet iuramentum vel quod desistat ab actione, Extra. de iureiurando, c. I, §. Tuas. Secundo, quod post solutionem repetere potest. Debitor enim debet cogi servare iuramentum suum si creditor non potest reduci ad relaxandum, sed postquam solverit, repetere potest. Aut iuravit solvere et non repetere. Tunc non debet repetere in iudicio. Potest tamen denunciare ecclesie, et iudex officio suo cogere eum potest vel potest cogere ipsum ad relaxandum iuramentum. Tamen si nova causa supervenerit, potest qui iuravit non petere noviter repetere, Extra. de iureiurando, Nostram. Ubi quidam iuravit non repetere usuras et postea usurarius condens testamentum precepit heredibus quod usuras restituant omnibus qui probarent se ei dedisse usuram, et sic ratione legati potest repetere sed non ratione iuramenti. Aut iuravit solvere nec repetere nec denunciare. Sic illicitum est iuramentum, quia quilibet tenetur agere ad correctionem fratris apud eos quos scit velle prodesse, si sit occultum, vel eum denunciare, si manifestum, 2 q. 2, Si peccavit; Extra. de cognitione spirituali, A nobis; Extra. de iureiurando, Debitores." Joannes Bachonus, *Super quatuor Sententiarum libros* (Venice, 1526), fol. 143rb (D. 23 q. 2 art. 1). Cf. SC 2.7.53. For the sources of Baconthorpe's additions here see X 2.24.20 and C. 2 q. 1 c. 19.

156. Ibid., 145ra-b (D. 23 q. 3 art. 2). Cf. SC 2.7.55.

to the usury prohibition in his own copies of the aforementioned theological and legal works.

In terms of the transmission of John's teachings on the usury ban, this moment in the *Summa confessorum*'s reception history is relatively insignificant; however, I mention it here in order to raise awareness among scholars that Baconthorpe did incorporate the *Summa confessorum* into his *Questiones canonicae* – a fact overlooked by Walter Ullman, who has conducted the most extensive researches into Baconthorpe's legal learning to date.<sup>157</sup> It is hoped that the knowledge that Baconthorpe used John of Freiburg's *Summa* in his treatment of usury will assist scholars puzzling over his sources in other portions of the *Questiones canonicae* or in Baconthorpe's works generally. The *Summa confessorum* could be a valid option for settling such uncertainties. But now it is time to turn to a much more substantial chapter in the afterlife of John's teachings on the usury prohibition – their penetration into Italy and diffusion far beyond by means of Bartholomew of San Concordio's *Summa de casibus conscientiae*.

#### THE *SUMMA CONFESSORUM* REDUX: BARTHOLOMEW OF SAN CONCORDIO'S *SUMMA DE CASIBUS CONSCIENTIAE* ON USURY

Forty years after John completed the *Summa confessorum*, it had not only traveled north to England, but had also wound its way over 600 km south to Pisa, where Bartholomew of San Concordio, a fellow Dominican, took over its contents virtually in their entirety into his own *Summa de casibus conscientiae* (6/7 Dec. 1338).<sup>158</sup>

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157. Walter Ullmann, "John Baconthorpe as Canonist," in *Scholarship and Politics in the Middle Ages: Collected Studies* (London: Variorum, 1978), 223-46. See especially pp. 226-27, where Ullman discusses Baconthorpe's legal sources in the *Quaestiones canonicae*.

158. A great number of manuscripts of Bartholomew's *Summa* indicate one of these two dates. On the date of the *Summa de casibus conscientiae*, see A. Teetaert, "Barthélemy de Pise ou de San Concordio," in *Dictionnaire de droit canonique*, ed. R. Naz, 7 vols. (Paris: Letouzey et Ané, 1957), 1:214; Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 524; von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts*, 2:428-29; Michaud-Quantin, *Sommes de casuistique*, 60-62.

Bartholomew intended to produce a revised edition of the *Summa confessorum*, and so it will come as no surprise that in his own *Summa* he adapted nearly every one of John's questions on usury. In light of the tremendous popularity of Bartholomew's revised edition, it can rightly be considered the principal and most effective channel through which John of Freiburg's teachings reached vastly wider audiences and influenced popular opinions on usury in the Late Middle Ages.

Bartholomew was born around 1260 in the small village of San Concordio, just outside of Pisa.<sup>159</sup> He entered the Dominican order at Pisa in 1277 and thereafter pursued studies in canon law and theology at the Universities of Bologna and Paris, attending the latter around 1285. After completing his studies, Bartholomew began his lifelong career as a teacher in the *studia* of the Order, first teaching logic at Anagni (1291-92) and Todi (1292-93), then serving as lector in several Italian convents: at Lucca; at Florence in the Convent of Santa Maria Novella in 1297 and again in 1304; at Rome (1299-1300); at Arezzo (1305-06); at Pistoia (1310-11); and at Pisa, where he is known to have been in 1312, 1317, 1320, and 1326. In 1331 he served as the official preacher for the priory at San Gimignano in Tuscany, where he also held the office of lector until 1333. Finally, from 1335 until his death on 11 July 1347, Bartholomew served as lector and master of the *studium* at Pisa.

The colophon to the 1475 edition of the *Summa de casibus conscientiae* states that Bartholomew composed the work for the benefit of "parish priests, individual confessors, and all priests who wish to know the penitential cases according to the new laws."<sup>160</sup> Bartholomew himself states in the prologue that he bowed more concretely and

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159. On Bartholomew's life and works, see Teetaert, "Barthélemy de Pise ou de San Concordio," 213; Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 524; von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts*, 2:428-29; Hinnebusch, *Intellectual and Cultural Life to 1500*, 254; Quétif and Echard, *Scriptores Ordinis Praedicatorum*, vol. 1, 623-25; Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 1:157-58.

160. "Ad laudem et gloriam sanctissime et individue trinitati pastoremque curam animarum, pastoribus ac singulis confessoribus omnibusque casus penitentiales nova secundum iura sacerdotibus scire cupientibus." Bartholomew of San Concordio, *Summa de casibus conscientiae* (Augsburg, 1475), fol. 2ra.

immediately to pressure from his fellow friar preachers to create a new work on confessional practice.<sup>161</sup> As he goes on to explain, although the *Summa confessorum* already provided such a guide to cases of conscience, it was no longer sufficient for the use of those engaged in pastoral care. When John of Freiburg composed his compendium, many papal decrees were in vogue that were not sanctioned in the canonical collections (*decretales extravagantes*). However, these decrees have now become invalid, since Boniface VIII revoked them in his prologue to the *Liber Sextus* (5 March 1298), which was published shortly after John completed his *Summa*. In light of this circumstance, the *Summa confessorum* requires revision in order to remain useful. Furthermore, Bartholomew explains, the *Liber Sextus* not only made portions of the *Summa confessorum* obsolete, but it also introduced many new decrees that John did not have access to when he wrote his compendium, and so John's *Summa* requires updating in order to remain relevant. As such, it is Bartholomew's intention to revise and update the *Summa* for the sake of his fellow friars with the latest law of the Church, supplementing it with the decrees of Boniface VIII, Benedict XI, Clement V, and John XXII.<sup>162</sup>

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161. "Quoniam, ut ait Gregorius super Ezechielem, nullum omnipotenti Deo tale sacrificium est quale zelus animarum, ideo a pluribus nostri predicatorum ordinis fratribus huiusmodi sacrificium offerre Deo cupientibus et proximorum salutem zelantibus frequentibus et assiduus sum precibus requisitus ut opus condere in quo de casibus et consiliis ad animam seu conscientiam pertinentibus studiose pertractarem." Ibid., fol. 2ra.

162. "Cum obiicerem opera que iam dudum per alios circa materiam istam condita fuerant, precipue summam que dicitur *Summa confessorum*, in contra per eos responsum est quod, hoc non obstante, requirebant opus predictum multis ex causis. Primo quidem, quia tempore quo dicta summa condita fuit multe decretales extravagantes diversorum pontificum vigeant quibus et ipsa summa quandoque utitur, que tamen postea per Bonifatium VIII in prohemio *Sexti* revocate fuerant. Secundo, quia per eundem *Sextum* multe novitates reducte sunt, propter quas non videbatur sufficere additiones facere. Quin potius ex uno sepe iure plurimas questiones novas movere et antiquorum responsiones oportebat immutare. Tertio, propter plures alias extravagantes tam ipsius Bonifacii quam etiam Benedicti XI et Clementis V, presertim in Concilio Viennensi, <et> Johannis XXII, que omnes postea condite et promulgate fuerunt. Super quibus recogitans et summam predictam considerans, percepi non solum propter predictas ab eis causas, sed etiam alias non paucas, id quod petebant satis utile et necessarium fore. Ideoque, eorum postulationibus annuens, secundum iura que nunc vigent et etiam secundum plurima que de ipsa summa cepi, quanto clarius et verius potui explicare, curavi singula dicta, vel per patentia iura vel per famosos doctores confirmando." Ibid., fol. 2ra. On the relationship of Bartholomew's *Summa* to the *Summa confessorum*, see also Michaud-Quantin, *Sommes de casuistique*, 60-62; Hinnebusch, *Intellectual and Cultural Life to 1500*, 254-55; Teetaert, "Barthélemy de Pise ou de San Concordio," 214; Stintzing, *Geschichte der populären Literatur des römisch-kanonischen Rechts*, 525.

Since, as I mentioned above, Bartholomew finished the *Summa* in 1338, when he was lector and master of the *studium* at Pisa,<sup>163</sup> the friars for whom he wrote were probably his students, whom he guided in the study of canon law and pastoral theology, especially in the weekly *collationes de moralibus* of the convent.<sup>164</sup> Like John of Freiburg's *Summa confessorum*, the *Summa de casibus conscientiae* probably originated as a classroom teaching aid.<sup>165</sup>

Since Bartholomew's *Summa* was intended as a revision of John of Freiburg's *Summa confessorum*, there is fortunately no difficulty in identifying the influence of John's compendium in the later work. If anything, Bartholomew has facilitated the researcher's task by arranging the contents of John's *Summa* and his own contributions in alphabetical order according to subject.<sup>166</sup> In the sections on pledges (*Pignus*), reprisals (*Represalie*), and usury (*Usura*), Bartholomew took over 73 of the 83 questions on usury in the *Summa confessorum*.<sup>167</sup> In the section on usury, 74 of the 80 questions in the *Summa de casibus conscientiae* are adapted from John's *Summa*, and all fourteen questions on pledges also derive from there.

Although Bartholomew claimed that the *Summa confessorum* had become obsolete in many areas of pastoral care, this was not the case with its treatment of usury. Bartholomew's alterations and revisions of John's teachings on the usury prohibition did not significantly modify their substance. In his treatment of usury, Bartholomew was

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163. In addition to chronology, the colophon of Bartholomew's *Summa* indicates explicitly that he completed the work in Pisa: "Summa fratris Bartholomei de Sancto Concordio . . . in Pisana civitate edita." Bartholomew of San Concordio, *Summa de casibus conscientiae*, fol. 2ra.

164. On the *collationes de moralibus*, see ch. 1, pp. 34 f.

165. On the educational context of John's *Summa*, see ch. 2, pp. 63 f.

166. "Ceterum deliberanti quo esset ordine procedendum, non placuit procedere per rubricas ne forte multitudo illarum difficultatem et retardationem induceret inquirenti. Ordinavi potius secundum alphabetum ut cuilibet esset promptum et facile quesitam materiam invenire." Ibid., fol. 2rb. Alphabetical ordering made the *Summa de casibus conscientiae* easier to use for those who were unfamiliar with the organizational scheme of the collections of canon law or the commentaries upon them, which many other *summae* employed. For example, to find relevant material on the usury prohibition in Bartholomew's *Summa*, one did not need to know that usury is discussed in the nineteenth title of the fifth book of the *Liber extra* or that Raymond had treated it in the seventh title of the second book of his *Summa*; one could simply look it up under the letter 'u.' Cf. Steer et al., *Rechtssumme*, 1:8-9.

167. For the following statistics, see tables 18 and 19 in Appendix II.

principally concerned to improve the reader's understanding of John's teachings by modifying the order of his questions and clarifying and simplifying them. In terms of content, Bartholomew rarely dissented from John's teachings and added only a small number of additional items that consist either of entire questions or elaborations of John's questions.<sup>168</sup>

Like the other actors in the reception history of the *Summa confessorum* on usury, Bartholomew, for the most part, simply made more or less brief paraphrases of John's questions. In his drive for clarity and concision Bartholomew more than once combined different questions on logically related issues from the *Summa confessorum* into a single, brief question. For example, in Usura 1.26 Bartholomew blends brief paraphrases of questions 28 and 30 of the *Summa confessorum*, which discuss the conditions under which foregone profit arising from a loan is a valid title to interest for the creditor:

But is there usury if, when I was about to buy or wished to buy wares, you urged me to forego this purchase in order to lend you and I said, "I want you to return to me as much as I would have had from those wares in that place if I had sold them there, and I will take on the risk"? I answer according to Raymond: There is no usury, since the aforesaid profit is received as compensation. Hostiensis agrees with this view. And similarly [there is no usury] according to William if I wished to buy a piece of land worth ten *libras* a year and you urged me to forego this in order to lend to you in this way, such that you pay me as much as that land would have given me, having first deducted the expenses, labour, and risk if there was any.<sup>169</sup>

Bartholomew here lopped off from Question 28 of the *Summa confessorum* on usury the concordance of Ulrich of Strasbourg with Raymond's opinion as well as William of Rennes' clarification that it is the taking on of risk that allows one to claim the foregone

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168. Bartholomew outlines his basic approach to John's *Summa* in the prologue to the *Summa de casibus conscientiae*: "Et iterum, quia si forte miraretur aliquis quod ego minimus tam frequenter a predictae summe dictis et probationibus videar discessisse, aliquid abstrahendo vel addendo seu etiam oppositum dicendo, considerari possit allegatio sive probatio utriusque et <si> illius est probatio verior, illius sententiae adhereri." Bartholomew of San Concordio, *Summa de casibus conscientiae*, fol. 2rb.

169. "Sed nunquid est usura si dum emerem vel emere vellem merces tu ad tuam instantiam fecisti me cessare a parte emptionis ut tibi mutuarem et ego dico, 'Volo quod reddas mihi tantum quantum essem in tali loco habiturus de mercibus illis si eas illuc deferrem, et recipio in me periculum'? Respondeo secundum Raimundum: Non est usura, sed recipitur inde lucrum predictum tanquam interesse. Concordat Hostiensis. Et similiter secundum Guilielmum si volebam emere terram valentem singulis annis libras decem et ad instantiam tuam cessavi et mutuavi tibi hoc modo quod solvas mihi tantum vel tantum sicut redderet mihi expedite illa terra, deductis sumptibus et labore et etiam periculo si quod esset. Concordat Hostiensis et vide hoc supra §. XVI, qui incipit, 'Utrum usure possint' et supra, Restitutio I, §. V." Ibid., fol. 186vb. Cf. SC 2.7.28, 30.

profit as a title to interest in the case described by Raymond. However, he adds to William of Rennes' discussion of a similar substitute contract in Question 30 of the *Summa confessorum* on usury that when the debtor returns the foregone profit to the creditor, he must deduct whatever expenses, labour, and risk the creditor would have taken on had he purchased the land as he intended. As such, this case is no different than the one described by Raymond in Question 28. In both substitute contracts, given the element of risk, the foregone profit that the creditor will receive represents compensation for a genuine loss rather than a guaranteed return of an estimation of the profit he would have made had he entered into the contracts as he intended, as the original contract in Question 30 on usury of the *Summa confessorum* seems to imply. Here, then, Bartholomew has cleared up some of the ambiguity about the legitimacy of *lucrum cessans* as a title to interest in the *Summa confessorum*.<sup>170</sup> The creditor has a right to receive compensation only for genuine losses, and not for the opportunity cost of making the loan. Hence, we observe here the two aims that characterize all of Bartholomew's paraphrases of John's teachings on usury: simplification and clarification.

It is needless to multiply examples of Bartholomew's work of abridgment extensively. The reader has a good sense of his approach from the example quoted at length above. However, it will not be out of place to mention briefly some additional examples of his work of combination in order to give a better sense of the extent of his modification of the *Summa confessorum* on usury. In Usura 1.36, Bartholomew combines Questions 66 and 67 of the *Summa confessorum* on usury in order to contrast the illicitness of Jews receiving usuries from Christians with the licitness of Christians receiving usuries from their enemies. The latter, he contends, are merely regaining what is rightly theirs.<sup>171</sup> In Usura I.36, John's questions 29 and 31, which examine the licitness

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170. On the issue of *lucrum cessans* in the *Summa confessorum*, see ch. 3, pp. 94 ff.

171. In the latter case Bartholomew clearly took his lead from the *Summa confessorum*, in which Ulrich of Strasbourg argues that it is also licit for Christians to accept usuries from their enemies on the grounds that they are recuperating what is theirs. Nevertheless, the argument he provides is his own formulation: "Sed Cristianus licite accipit usuras ab hostibus contra quos iustum bellum gerit, maxime si sint infideles, XIII,

of purchasing rent contracts, are fused into a single discussion. Here Bartholomew has simply integrated the specific observations about the licitness of rent contracts purchased for the life of the buyer in Question 29 into the more general discussion of diverse rent contracts in Question 31.<sup>172</sup> Finally, in Usura 6.5 Bartholomew binds together questions 49 and 50 of the *Summa confessorum* on usury to provide the reader with a brief overview of the problems that an ecclesiastical judge might encounter when compelling a usurer to make restitution.<sup>173</sup>

Bartholomew also tinkered with the form of the *Summa confessorum* by dividing some of its lengthier questions on usury. For example, in Usura I.13 and 14 respectively Bartholomew discusses separately whether gifts and alms may be received from usurers and whether ownership over usuries is transferred to the creditor in an usurious loan, whereas John treats these questions together in SC 2.7.15.<sup>174</sup> John's very lengthy treatment of the various exceptions to the usury prohibition in Question 16 of the *Summa confessorum* on usury is divided into five distinct questions in the *Summa de casibus conscientiae*: Usura 1.15 deals with priests who receive a pledge of something that formerly belonged to their benefice, but was unjustly seized by a layman; Usura 1.16 deals with compensation (*interesse*) as an exception to the ban; Usura 1.17 concerns the exception of pledges for dowries that are owed; Usura 1.20 deals with compensation due to delay in repayment (*ratione more*); finally, Usura 3.1 discusses the exception of doubt in the case of sales on credit.<sup>175</sup> Again, Bartholomew divides the lengthy treatment of various potentially usurious animal contracts in SC 2.7.36 into four questions, with each treating a specific type of contract. Thus, Usura 2.2 deals with partnership contracts,

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q. III, Ab illo, quia accipit quod suum est." Ibid., fol. 187va. Cf. SC 2.7.66-67.

172.Ibid., fol. 188ra. Cf. SC 2.7.39, 31.

173.Ibid., fol. 189va. Cf. SC 2.7.49-50.

174.Ibid., fols. 185vb-186ra. Cf. SC 2.7.15.

175.Ibid., fols. 186ra-b, 187b. Cf. SC 2.7.16.

Usura 2.3 examines lease contracts, and Usura 2.4-5 probes the potential hazards of hybrid loan-partnership contracts.<sup>176</sup>

Bartholomew subdivided the lengthier questions on usury in the *Summa confessorum* in order to reduce them to smaller, more readily graspable principles.<sup>177</sup> Perhaps he feared – particularly in the case of questions 16 and 36 – that if he preserved the original structure of John’s *Summa*, many confessors would become lost in the sea of verbiage and be unable to find the specific answers that they required for use in the penitential forum. By dividing the lengthier questions of the *Summa confessorum* on usury, Bartholomew further advanced a strategy that John of Freiburg, likely pursuing the same aim, had himself made use of. To cite just one example, in the *Summa* John divided a very lengthy gloss of William of Rennes on animal contracts into three distinct questions.<sup>178</sup>

In several passages of the *Summa de casibus conscientiae*, Bartholomew also tinkered with the form of the *Summa confessorum* on usury by changing the ordering of its questions. The most significant change that Bartholomew imposed on John’s questions on usury consists of their arrangement under six distinct headings: the first concerns the definition of usury, in theory and in practice; the second is devoted exclusively to usury in animal contracts; the third discusses usury in sales and purchases; the fourth treats of the specific case of manifest usurers; the fifth examines the culpability of auxiliaries to the usurer’s business; and the sixth concludes with a discussion of restitution.<sup>179</sup> Beneath these rubrics Bartholomew arranged the relevant questions on

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176.Ibid., fol. 187va. Cf. SC 2.7.36.

177.Additional examples of Bartholomew’s work of division can be found in Usura 1.32-34, which subdivides SC 2.7.56 on issues pertaining to dowries; Usura 5.5-6, which subdivides SC 2.7.64 on those who induce others to lend at usury; and Usura 6.11-12, which subdivides SC 2.7.65 on the usurer’s liability for restitution of secondary gains and of losses that the debtor has incurred by virtue of the loan. Ibid., fols. 187ra-b, 189rb, 190ra.

178.SC 2.7.33-35. Cf. William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.8, v. *Qui emunt*.

179.For the location of the rubrics, see Ibid., fols. 185ra, 187va, 187vb, 188va, 188vb, 189rb.

usury from John's *Summa*, disrupting their order in the original where necessary.<sup>180</sup> From time to time Bartholomew also disrupted the order of the questions on usury in the *Summa confessorum* in order to group John's dispersed questions around a single point of doctrine. For example, in Usura I.17, Bartholomew discusses the exception to the usury prohibition of pledges for unpaid dowries, paraphrasing a portion of SC 2.7.16. However, instead of immediately moving on to discuss exceptions to the ban due to delay and doubt, as John does in the *Summa*, Bartholomew broke the continuity of the *Summa confessorum* and placed questions 17 and 18 on usury of John's *Summa* immediately after (Usura 1.18 and 19). In these questions, John of Freiburg discusses additional considerations surrounding pledges in the case of dowries, such as whether a husband may transfer the right to receive the fruits of the pledge to a third party. For this reason, Bartholomew grouped these questions into one convenient location for the benefit of his readers.<sup>181</sup>

Just as with his work in dividing and combining some of the questions on usury from the *Summa confessorum*, through his modification of their order Bartholomew sought to facilitate his audience's ability to locate the information that they required in dealing with their penitents as effortlessly and quickly as possible. He ensured that the confessor with a specific problem in mind would not have to flip back and forth to find his solution, but could be confident that his specific answer, together with analogous cases, would all be located in a single, convenient location. In terms of practical usability, then, the form of the *Summa de casibus conscientiae* on usury represents a significant improvement over the *Summa confessorum*, whose structure followed the sometimes haphazard treatment of usurious cases in Raymond of Penyafort's *Summa*.

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180. For Bartholomew's modifications to the order of questions in John's *Summa*, see Table 18 in Appendix II.

181. Ibid., fol. 186rb. Cf. SC 2.7.16, 17, 18.

To clarify and, in a few instances, to revise certain of the teachings of the *Summa confessorum* on usury, Bartholomew also made minor additions to John's responses. In one instance where John had left it up to the reader of the *Summa confessorum* to decide among competing solutions to the question he had posed, Bartholomew provided a clear indication of the solution to be preferred. At the end of *SC* 2.7.3, which discusses the rationale for the illicitness of usury, John of Freiburg avoids determining whether the reason why God permitted Jews to exact usuries from gentiles was for the sake of avoiding the greater evil of exacting them from other, God-fearing Jews, as Aquinas argues, or whether it was because the whole of the promised land had been given to the Jews, and thus when they exacted usuries from gentiles who unjustly inhabited it, they merely received back what was rightly theirs, as Ulrich of Strasbourg contends. Bartholomew, on the other hand, declares firmly in favour of the first solution, justifying his preference on the grounds that "Jews say that the Lord did not promise usuries on account of those, but on account of other gentiles; for concerning the former he had commanded that they not be kept alive."<sup>182</sup>

Besides deciding between alternative solutions from the *Summa confessorum* on usury, Bartholomew also did not shy away from dissenting from some of the opinions expressed there. Discussing the extent to which those who counsel others to lend at usury should be held liable for making restitution in the *Summa confessorum* (*SC* 2.7.61), William of Rennes cautiously diverges from an earlier opinion, which contends that those who induce others who were not otherwise about to lend (*alias non feneraturos*) should be held liable for making full restitution of the usuries that their proteges exacted. William asserts, rather, that they should be held liable only to the extent that they benefitted from the usuries, in the same way as those who induce others to lend at usury, who were likely to do this even without their counsel. Bartholomew, however, harkens

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182. "Quia tota illa terra Iudeis a domino data fuerat. Sed ad hoc respondent Iudei dicentes quod non promisit dominus usuras propter illos, sed propter alias gentes. De illis enim mandaverat quod non reservarentur in vita. Ideo solutio Thome melior videtur." Ibid., fols. 185rb-185va. For the biblical allusions here cf. Gen. 12:1-7; Deut. 20:16-18. Cf. *SC* 2.7.3.

back to the earlier opinion in his *Summa*, noting that it is safer at least in cases where the actual usurer cannot make restitution. In this case, all inducers should be held liable for making full restitution, since, as he writes, “all such men without a doubt share in the blame.”<sup>183</sup>

To cite another example, in *Usura* 1.25, Bartholomew discusses the legitimacy of the nautical loan, wherein a creditor lends capital to a merchant on the condition that if his wares perish at sea, he need not return anything, but if he brings them to port, he must pay back from the profits of his sale the principal and something in addition. Modifying John’s response to the same question (*SC* 2.7.28), Bartholomew explains that while it is true that the taking on of risk does not make it licit for the lender to receive something beyond the principal, he could, nevertheless, receive the “price of the risk,” since he can do this even in the absence of a loan, just as those who insure ships’ cargo for a price. Since, in Bartholomew’s view, insurance is a valid enterprise, a contract in which a loan and insurance run together must also be licit, so long as the insurance is not merely a fraudulent means of cloaking what is really usury.<sup>184</sup> Marine insurance began to develop towards the end of the thirteenth century in Italy, and thus we can observe through Bartholomew’s discussion here that by the time he was writing in 1338, at least in Pisa where he composed the *Summa*, it had become commonplace and uncontroversial.<sup>185</sup> As a relatively new and, at the time, distinctly Italian phenomenon, insurance did not enter the purview of John of Freiburg when he composed his *Summa*. However, it was essential for Bartholomew’s immediate audience to be familiar with how the concept

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183. “Prima autem opinio tutior est, saltem quando principales non essent solvendo; omnes tales indubitanter sunt participes culpe.” *Ibid.*, fol. 189ra. Cf. *SC* 2.7.61.

184. “Sed tamen forte posset recipere precium periculi, quia etiam si nihil mutuaret ei et ipse vellet in se recipere periculum navigantis, ut, scilicet, si perdat merces vel pecuniam, quod promissor restaurabit ei, certe iste promissor licite posset ad hoc precium recipere. Et eodem modo si mutuatur, dummodo nihil plus exigat in fraudem usure.” *Ibid.*, fol. 186vb.

185. On the development of insurance in Italy, see Raymond de Roover, *Money, Banking and Credit in Mediaeval Bruges: Italian Merchant-Bankers, Lombards and Money-Changers, A Study in the Origins of Banking* (Cambridge, MA: Mediaeval Academy of America, 1948), 9-28; Robert S. Lopez and Irving W. Raymond, *Medieval Trade in the Mediterranean World* (W.W. Norton and Co), 255-65; Yves Renouard, *Les hommes d'affaires italiens du moyen age* (Paris: Librairie Armand Colin, 1949), 95-108.

modified the role that risk played in loans. After all, the friars and other confessors to whom Bartholomew principally directed his *Summa* were ministering to the population of Pisa – a bustling port city by the coast of the Ligurian Sea.<sup>186</sup> Many of their penitents must have been merchants who purchased insurance contracts regularly, and thus the discerning confessor had to know how to distinguish legitimate contracts from those that were mere devices for circumventing the Church's usury prohibition. Changed circumstances required an update and revision of John's opinions here.

The remainder of Bartholomew's additions to the *Summa confessorum* on usury are of a less controversial character. Through them, he simply sought to expand on some of the points raised in John's responses. For example, in Usura 1.16, which examines the licitness of compensation for losses incurred by virtue of a loan (*interesse*) as a title to interest, Bartholomew adds to John's examination of the question (SC 2.7.16) an argument from Aquinas' *Summa theologiae*. According to Thomas, contractual provisions that serve to compensate genuine losses incurred by the creditor in a loan are licit; however, the lender cannot stipulate compensation for profit that he has foregone by lending his money rather than investing it in some venture, since he should not sell something that he does not yet have nor has any certainty of obtaining. Bartholomew then goes on to cite another opinion of Aquinas, who argues elsewhere in his *Summa* that legitimate losses for which compensation can be stipulated in a loan contract do not include the customary acquisitions that the lender would have made in the ordinary course of his life with the money, had he not lent it. However, Bartholomew diverges somewhat from Aquinas' opinion here by noting in conclusion that some compensation is due to the lender out of consideration for his status in society or his business, and in connection with this he refers the reader to the discussion of compensation for business

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186. On the significance of Pisa as the central hub for Tuscan imports and exports in the thirteenth and fourteenth centuries and its primary role in the shipping of Italian goods overseas, see Gino Luzzato, *An Economic History of Italy from the Fall of the Roman Empire to the Beginning of the Sixteenth Century*, trans. Philip Jones (London: Routledge & Kegan Paul, 1961), 89-90, 97, 106.

losses in Usura 1.26.<sup>187</sup> Again, adding to John's discussion of the licitness of penalties in loan contracts as a means of stimulating the debtor to pay on time (SC 2.7.23), in Usura 1.23 Bartholomew qualifies William of Rennes' statement that such legitimate penalties may be exacted. According to Bartholomew, in the case of debtors who are unable to pay on time through no fault of their own, such penalties, however legitimate, should not be exacted. Though Bartholomew does not say so, presumably the creditor should be moved to waive the penalties out of charity and love of his neighbour.<sup>188</sup>

The least controversial of Bartholomew's additions to the *Summa confessorum* on usury are his additions to a handful of John's responses of new law relevant to the Church's usury ban. For example, to John's refutation of the argument that usury is licit on the grounds that the natural obligation to reciprocate a favour can be stipulated as an interest payment (SC 2.7.6), Bartholomew adds in Usura 1.7 the decree *Ex gravi* of Clement V in the Council of Vienne (1311-12), which condemns as a heretic anyone who maintains that usury is licit.<sup>189</sup> Another decree from the Council of Vienne is added to John's *Summa* in Usura 4.3. After paraphrasing John's discussion of the penalties that priests who receive offerings from manifest usurers incur (SC 2.7.52), Bartholomew notes that both those who receive such offerings and those who bury manifest usurers incur the penalty of suspension from office. Furthermore, in the wake of the Council of Vienne,

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187. "De hoc casu Thomas, secunda secunde, q. LXXVIII, dicit sic: 'Ille qui mutuum dat potest absque peccato in pactum deducere cum eo qui mutuum accipit recompensationem damni per quod subtrahitur sibi aliquid quod debet habere. Hoc enim non est vendere usum pecunie, sed damnum vitare, et potest esse quod accipiens mutuum <maius> damnum evitet quam dans incurrat. Unde accipiens mutuum cum sua utilitate damnum alterius recompensat. Recompensationem vero damni quod consideratur ex hoc, quod de pecunia non lucratur, non potest in pactum deducere, quia non debet vendere quod nondum habet et potest impediri multipliciter ab habendo.' Et adde quod idem Thoma dicit, secunda secunde, q. LXII, quod ille qui detinet pecuniam alterius videtur eum damnificare impediendo ne adipiscatur quod erat in via habendi, et tale damnum non oportet ex equo recompensare. Tenetur tamen aliquam recompensationem secundum conditionem personarum et negotiorum, et circa hunc casum facit quod dicitur infra §. XXVI, quid incipit, 'Sed nunquid est usura.'" Bartholomew of San Concordio, *Summa de casibus conscientiae*, fol. 186ra-b. For the references to the *Summa theologiae*, see ST IIa-IIae q. 78 a. 2, ad 1 and q. 62 a. 4, ad 1-2. Cf. SC 2.7.16. See my discussion of Usura 1.26 above on p. 179.

188. "Tamen in omni eventu non videtur honestum petere penam. Imo etiam nec licitum est quando debitor sine culpa sua factus est impotens ad solvendum. Ideo puniri non debet." Ibid., 186va. Cf. SC 2.7.23.

189. "Ergo et hanc obligationem potest creditor deducere in pactum vel saltem sperare eius effectum. Sed sciendum quod quicumque hoc pertinaciter teneret esset hereticus, Extra. eodem, Ex gravi in Cle." Ibid., fol. 185va. For the legal reference, see Clem. 5.5.1. Cf. SC 2.7.6

those who bury manifest usurers are “today” *ipso facto* excommunicated for this crime.<sup>190</sup> In Usura 4.4 and 4.5 Bartholomew merely updated two of John’s references in the *Summa confessorum* (2.7.71-72) to a decree of Gregory X in the Second Council of Lyons (1274) to reflect its new incorporation into the *Liber Sextus*.<sup>191</sup> With the addition of these decrees, Bartholomew ensured that the core teachings of the *Summa confessorum* on usury would remain relevant and useful to parish priests and other confessors, who had to judge their penitents according to the current law of the Church.<sup>192</sup>

In addition to modifying and supplementing some of the questions from the *Summa confessorum*, Bartholomew added a handful of his own questions to John’s lengthy treatment of the Church’s usury ban. I shall discuss them only briefly here, since these questions belong more properly to the history of the *Summa de casibus conscientiae* than to the afterlife of the *Summa confessorum* on usury. Two brief additions are found in the first section of Bartholomew’s treatment of usury. In Usura 1.30, Bartholomew contends that it is illicit to seek out a loan at usury for another person if the seeker is acting as the agent of a usurer, who has sent him out to hunt for more business. However, if the person seeking the loan is spurred to do so only in order to help his neighbour who is in need, then such a proxy acts without fault, especially if his intervention will reduce the rate of the usuries for the debtor.<sup>193</sup> In the next question, Bartholomew ultimately rejects the argument that one may licitly charge a debtor for standing surety for him when such a guarantee results in a reduction of the usuries in the loan. According to

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190. “Et debet sacerdos manere suspensus ab executione officii donec satisfaciatur arbitrio episcopi. Eandem penam incurrat qui eos tradat ecclesiastice sepulture, ut in dicto c. Quia in omnibus. Sed hodie sepelientes sunt <excommunicati> ipso facto, Extra. de sepul., Eos in Cle.” Ibid., 188va-b. For the legal references, see X 5.19.3 and Clem. 3.7.1. Cf. SC 2.7.52.

191. Ibid., 188vb. Cf. SC 2.7.71-72. For the location of the decree *Quamquam* in the *Liber Sextus*, see VI 5.5.2.

192. For an additional example of Bartholomew’s work of updating, see Usura 1.12, where he adds a reference to VI 5.5.2 to John’s discussion of the infamy that usurers incur in SC 2.7.14. Ibid., 185vb.

193. “Utrum acquirere sub usuris pro alio sit licitum? Respondeo: Si hoc faciam in servitium usurarii ut ipse, scilicet, mutuet et lucretur, teneor, quia fautor eius sum. Si vero faciam in servitium acquirentis, tunc per illum modum licet, quia dicitur in precedente §., et maxime si causa mei miciores usure exigantur ab illo.” Ibid., fol. 187ra.

Bartholomew, if this is the case, then the guarantor also partakes of usury in the contract.<sup>194</sup> Later on in the *Summa*, in Usura 3.2, Bartholomew condemns merchants who mandate obligatory delays in selling certain types of merchandise in order to increase their prices by selling on credit.<sup>195</sup>

In the last two questions of section three on usury, Bartholomew provides us with a fascinating discussion of the ethics of buying debt at a discount and of the culpability of those who are compelled to lend at usury to municipal governments. In the case of someone who wishes to buy the rights to another person's debt, in Usura 3.10 Bartholomew argues that she may do so for a price that is less than the total amount of the outstanding debt provided that this reduction is equivalent to any losses she may incur in purchasing the debt (*interesse suum*); to a true estimate of the risk of nonpayment that she is taking on; or to the future labour that she will undertake in recovering the outstanding principal of the loan. In short, the diminution in the price of the debt must represent genuine compensation for loss or labour, which thus clears the purchaser of the corrupt intention to gain in virtue of a loan. To pay less solely on the grounds that the purchaser of the debt must wait for repayment of the outstanding principal is manifest usury. However, Bartholomew in closing warns those who buy debt at a reduced price, even in legitimate circumstances, that according to civil law they can only sue the debtor for the amount that they paid for the rights to the debt, and not for the total outstanding principal, even if the original seller of the debt claimed that he "donated" the remainder of the

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194. "Sed quid si ego, rogatus ab illo qui vult acquirere sub usuris, fideiubeo sive promitto pro ipso ad hoc, ut miciores usure exigantur? Nunquid in hoc casu ego possum recipere aliquid ab eo? Respondeo: Non, quia sic essem particeps usure in ea parte quam recipio. Alii contra, quia uti fideiussione alicuius non est usus pecunie, sic nec uti pignoratione. Unde sicut pro pignoratione rei mee possum aliquid recipere, ut in VI §. dictum est supra, ita videtur quod possum pro fideiussione recipere. Sed primum tucius." Ibid., fol. 187ra. Cf. SC 2.7.4.

195. "Quid de mercatoribus qui habunt pro statuto quod quicumque emit vel vendit tales merces intelligatur talis vel talis dilatio solutionis? Respondeo: Si venditor propter hoc non apponat ad precium, non est usura. Alias, sicut in precedente §. nostri, patet quod si post concordiam de precio et dilatione velit emptor nunc solvere et sic de precio minuere, patet quod prima venditio usuraria erat, scilicet, ultra precium, nisi forte talis minutio precii fiat ratione alicuius interesse. De quo vide supra, Usura I, §. XVI, qui incipit, 'Utrum usure possint,' et §. XXVI, qui incipit, 'Nunquid est usura.'" Ibid., fol. 187vb.

obligation to the purchaser.<sup>196</sup> In the purchase of debt, the purchaser can only claim compensation for the amount of loss that she has actually incurred.

Finally, in Usura 3.11 Bartholomew argues that when municipalities compel their citizens to lend to them at interest to supply their coffers, the citizens do not sin in so doing, since they do not act willingly. On the contrary, it is likely that if they could, they would abstain from such lending, since it creates many inconveniences for the lenders.<sup>197</sup> Therefore, they are free from the taint of usury. Although Bartholomew does not say so explicitly, presumably this is the case because such forced lenders lack any intention to gain from a loan. Bartholomew then harkens back to the preceding question by arguing that in the case of those who wish to buy the rights of others to their share of the city debt, a reduced price is only justified on the same grounds as those that he discussed there.<sup>198</sup>

In this question, Bartholomew was likely speaking from his own observation of the market in government debt in Florence, where he served as lector in 1297 and 1304.<sup>199</sup> Beginning in the thirteenth century, Florence compelled loans from its citizens as a form of municipal financing of public goods and services. In exchange for the forced loans, the commune paid its citizens an annual rate of interest, which could reach as high as 15

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196. "Pone quod quidem habet recipere ab aliquo centum in certo termino. Venit tercius emens ipsa iura contra debitorem pro precio quod numero solvit. Nunquid emptor committit usuram? Respondeo: Si iste emit tantum minus quantum vere est interesse suum; aut quantum vere est estimandum sive timendum ne ille debitor solvat; aut quantus est futurus labor rehabendi, non est usura. Si vero alias vult diminuire precium solum propter hoc, quod nunc solvit sed in futuro rehabebit plus, manifeste est usura. Et nota quod talis emptio iurium, presertim quando immineret de hoc litigium, si fiat pro minori precio, non valet, nec iste emptor poterit plus petere ab illo debitore quam in veritate solverit, etiam si residuum sit ei donatum, C. mandati, l. Per diversas et l. Ab Anastasio, quod pro bono communi statutum est ne litigia emergerentur et moverentur." Ibid., fols. 188rb-188va. For the legal references here, see C. 4.35.22-23.

197. An idea of such inconveniences can be gleaned from Lorenzo Ridolfi's description of the hardships that compulsory municipal loans impose on citizens in his *Tractatus de usuris* (1404). Among other evils, he notes that heavy *prestanze* on the part of the Florentine municipal government often compel citizens to go hungry and to sell their possessions in order to meet their assessed obligations. See Lawrin Armstrong, *Usury and Public Debt in Early Renaissance Florence: Lorenzo Ridolfi on the Monte Comune*, Studies and Texts 144 (Toronto: Pontifical Institute of Mediaeval Studies, 2003), 100.

198. "Item, pone quod quedam communitas indiget pecuniam et imponit civibus prestantiam, scilicet, mutuo, promittens et obligans prestantibus certa pignora et certum lucrum? Nunquid prestantes committunt usuram? Respondeo: Ex quo prestantes coacte faciunt et forte propter hoc multam incommoditatem incurrunt ita quod libenter ad hoc cessarent si possent, non est usura. Sed iuxta hec est alia dubitacio, videlicet, <quid> si postquam civis primo prestit, veniat secundus et emat iura a primo pro minori pretio eo quod solvit ei? Nunquid iste secundus committit usuram? Respondeo ut in precedente §." Bartholomew of San Concordio, *Summa de casibus conscientiae*, 188va.

199. See p. 176 above.

percent. Both the principal and the interest of the loans were guaranteed by income from indirect taxation (*gabelle*) and claims on property forfeited to the commune. However, those creditors to the municipality who were impatient to retrieve their funds could readily find buyers to purchase their shares in the city debt (*prestanze*) at a discount. Shortly before Bartholomew's death in 1347, the city systematized its large number of outstanding loans in 1343-45 by combining them into a single, consolidated debt called the *Monte Comune*. The city now promised to pay its debtors an annual interest rate of 5% in perpetuity, funded by income from taxes (*gabelles*), in exchange for repayment at an unspecified time, making the loans effectively irredeemable. Legislation on the *Monte* provided that shares of the debt could be legally traded and their prices negotiated between buyers and sellers.<sup>200</sup> Similar systems of municipal financing were employed in Venice (*Monte Vecchio*, est. 1262) and in Genoa (*compere*, est. 1405), around which also emerged a trade in shares of discounted government debt (called *prestiti* in Venice and *luoghi* in Genoa).<sup>201</sup>

Unfortunately, in neither Usura 3.10 nor 3.11 does Bartholomew offer a hint about his sources, other than the civil laws cited in Usura 3.10.<sup>202</sup> Not knowing where to begin and, alas, not having the leisure to roam so far outside my focus on the reception history of the *Summa confessorum*, I have not been able to track them down. With respect to Usura 3.11, Astesanus de Asti did conduct a similar analysis of the sale of Genoese public debt in his *Summa de casibus conscientiae* (ca. 1317).<sup>203</sup> However, it is clear that

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200. On Florentine municipal financing and the *Monte Comune*, see Armstrong, *Usury and Public Debt in Early Renaissance Florence*, 28-52; Lawrin Armstrong, "Usury, Conscience and Public Debt: Angelo Corbinelli's Testament of 1419," in *A Renaissance of Conflicts: Visions and Revisions of Law and Society in Italy and Spain* (Toronto: Centre for Reformation and Renaissance Studies, 2004); Julius Kirshner, "The Moral Theology of Public Finance: A Study and Edition of Nicholas de Anglia's 'Quaestio disputata' on the Public Debt of Venice," *Archivum Fratrum Praedicatorum* 40 (1970): 51-52; Julius Kirshner, "Storm over the 'Monte Comune': Genesis of the Moral Controversy over the Public Debt of Florence," *Archivum Fratrum Praedicatorum* 53 (1983): 222-25.

201. On the public debt of the Italian communes, and of Venice in particular, see Kirshner, "Moral Theology of Public Finance," 47-63; Raymond de Roover, *San Bernardino of Siena and Sant'Antonio of Florence: Two Great Economic Thinkers of the Middle Ages* (Boston: Harvard Graduate School of Business Administration, 1967), 38-40.

202. See n. 196 on p. 190 above.

203. I thank Dr. Lawrin Armstrong for pointing out this reference to me. See Armstrong, *Usury and Public*

Astesanus was not Bartholomew's source here, since in his treatment of the sale of public debt at a discount he does not mention the rather sophisticated criteria that Bartholomew gives in *Usura* 3.10 for justifying such a discount, but merely repeats, following John of Saxony's *Tabula iuris*, that an obligation can be sold for whatever price the seller can obtain.<sup>204</sup> There remains the possibility that these *questiones* are original creations of Bartholomew of San Concordio, but further research is necessary to confirm this.

More than any other work, Bartholomew's *Summa* spread the teachings of the *Summa confessorum* on usury to wider audiences. Not only did Bartholomew incorporate far more of John's questions on usury than any other writer examined above, but the stunning success of his *Summa* ensured that vastly greater numbers of parish priests, confessors, and the ordinary Christians to whom they ministered would come to understand the usury prohibition through the only slightly modified lens of the *Summa confessorum*. As von Schulte notes, the number of manuscript copies of the *Summa de casibus conscientiae* indicates that it was one of the most popular books in the fourteenth and fifteenth centuries.<sup>205</sup> Amédée Teetaert, one of the foremost authorities on confessor's manuals, underscores the popularity of Bartholomew's *Summa* by referring to it as the "bedside reading of simple priests and confessors," which served as the "principal guide for confessors for an entire century."<sup>206</sup> The truth of this statement is borne out by Kaeppli's bibliographical researches into the extant copies of the *Summa de casibus conscientiae*:

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*Debt in Early Renaissance Florence*, 73, n. 80. On Astesanus' *Summa*, see Michaud-Quantin, *Sommes de casuistique*, 57.

204. "Quia iusto titulo ius aliquod iuste possidens iuste potest vendere, et alius iuste emere ius illud, quia quod iuste venditur non iniuste emitur – et hoc precio equali vel minori vel maiori quam fuerit datum, quia res tantum valet quantum vendi potest." Astesanus de Asti, *Summa de casibus conscientiae* (Venice, 1478), fol. 166va (Bk. 3, tit. XI, §. 5). On John of Saxony, see von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts*, 2:385-91.

205. Ibid., 2:428-29.

206. Teetaert, "Barthélemy de Pise ou de San Concordio," 213, 214.

Table 4. Distribution of Manuscripts of the <i>Summa de casibus conscientiae</i> throughout the World. <sup>207</sup>	
Country	# of mss. of <i>Summa de casibus conscientiae</i>
Austria	65
Belgium	14
Canada	1
Croatia	3
Czech Republic	28
England	34
France	65
Germany	128
Hungary	1
Italy	191
Netherlands	5
Poland	34
Romania	2
Scotland	2
Slovenia	1
South Africa	1
Spain	14
Sweden	1
Switzerland	8
U.S.A.	10
Total	608

An astonishing 608 manuscript copies of the *Summa de casibus conscientiae* are extant in libraries all over the world today, making it one of the most widely read works of the Late Middle Ages. In Italy alone the number of extant copies of Bartholomew's *Summa*

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207. Compiled from Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 1:158-65, no. 436.

surpasses the total number of extant copies of the *Summa confessorum*.<sup>208</sup> In addition to being copied many times in manuscript, the *Summa de casibus conscientiae* was printed several times, beginning in 1473.<sup>209</sup> Two manuscripts of a German translation of Bartholomew's *Summa* are extant, along with a printed Spanish translation, which was published at Zamora in 1482. Bartholomew's *Summa* also enjoyed great popularity in the native tongue of its author, with 24 manuscripts of different Italian translations surviving today.<sup>210</sup> The *Summa de casibus conscientiae*, then, more than any other work, was the principal means through which John's teachings on the usury ban reached large audiences in diverse locations spread throughout Europe. The impact of John of Freiburg's *Summa* on the formation of popular notions of the usury prohibition would certainly not have been as large had Bartholomew not took it upon himself to revise the *Summa confessorum*.

It is clear from the tremendous popularity of Bartholomew's *Summa* that medieval readers cottoned to the improvements he had made to John of Freiburg's *Summa confessorum*. His alphabetical re-ordering of the *Summa*, his re-arrangement of its questions into thematic rubrics, his division of some lengthier questions and combination of others for greater ease in rapid consultation in the field, his additional explanations of John's responses, his updates, and his revisions all worked together to make the *Summa confessorum*, in its revised form, a much easier and more effective tool for the confessor to employ in exercising the cure of souls.<sup>211</sup> For these reasons, medieval churchmen took to it with gusto and passed its teachings along to their parishioners and penitents from the pulpit and in the confessional. The popularity of Bartholomew's *Summa* thus enlarged the role that the *Summa confessorum*, filtered through the prism of Bartholomew's

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208. See Table 4.1 on p. 127 above.

209. Ibid., 1:165.

210. Ibid., 1:165.

211. Alphabetical ordering was essential to extending the readership of Bartholomew's *Summa* to those who were not trained in canon law. See n. 166 on p. 178 above.

considerable modifications, played in shaping popular ideas about usury in many places in the Late Middle Ages.

When we consider the popularity of the *Summa confessorum* in manuscript and in print, together with the extensive use of its teachings on usury in later works on pastoral care – some of which were also very widely read – the supposition that John's usury doctrine significantly shaped the opinions of vast numbers of those on the frontline of the effort to shape society in the image of the Kingdom of God becomes much stronger. If the *Summa confessorum* represented the state of many parish priests' and confessors' knowledge of the canon law on usury, then, by extension it also gives us a window into popular notions of the usury prohibition towards the end of the Middle Ages. Since the confessional and the preacher's rostrum closely connected with it were in most cases the primary vehicles for transmitting the legal and theological doctrines of the Church to the masses, for many medieval men and women the ultimate source of their knowledge of the Church's usury prohibition can be traced back, through the mediation of their priest, to the *Summa confessorum*. What the confessor learned in the classroom or by perusing the *Summa confessorum* during private study he made available to his own students: the penitents he met in the internal forum of conscience. As such, the *Summa confessorum* has an essential place in both the social and intellectual history of the later Middle Ages.

In my commentary on John of Freiburg's teachings on the usury prohibition, I offered some suggestions to explain why he wrote so extensively on the topic. I argued there that it was because usury was a phenomenon of everyday life confronting the Freiburg friars and other confessors in the Breisgau during the Late Middle Ages. As a mortal sin akin to theft, usury was a pervasive and grave pastoral problem for priests and friars ministering to penitents in the confessional. For this reason, John, in his self-professed desire to provide a comprehensive guide to pastoral care, naturally included a significant amount of information on the usury prohibition to help confessors judge the faults of sinners within their care and assign a suitable penance, whose fulfilment would allow penitents to return to the ranks of the saved.

This, however, is only a partial explanation for why John of Freiburg felt that it was necessary for him to examine these illicit contracts in his *Summa confessorum* and why he thought that this discussion would be of such pressing interest to his audience that he composed 83 questions on the topic. To draw nearer to a more comprehensive answer to these questions, we must examine the implicit structural elements that shaped John of Freiburg's activity in composing the treatise on usury in the *Summa*. John's conscious motives for writing extensively on usury were primarily religious, shaped, in short, by the demands of Christian law and spirituality, and a consequent desire to contribute to the advancement of pastoral theology. However, I contend that the particular urban spirituality of the Order of Preachers and the socio-economic conditions of the Freiburg Dominicans around the time that John was composing his *magnum opus* also shaped his choices in his treatment of usury.<sup>1</sup> The usury prohibition, as I shall show, was an

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1. Political and economic structures were, of course, only part of the overall context that surrounded John

essential tool for preserving and contesting structures of power within the society of the Breisgau, and its exposition in John of Freiburg's *Summa confessorum*, at least in part, arose and was shaped by the struggle for economic, social, and political supremacy among the dominant classes of Freiburg at the time John was writing.

#### ANTONIO GRAMSCI ON THE SOCIAL FUNCTION OF THE TRADITIONAL INTELLECTUAL

Too often the history of ideas has been carried out as a process of investigating the historical relationships between ideas abstracted from the social, political, cultural, and economic contexts within which they were formed. To trace an idea, in this fashion, is to trace its previous iterations and modifications over time, with little thought for the changing of the times themselves.<sup>2</sup> However necessary and fundamental such scholarship is, it provides us with only partial insight into the history of ideas. It must be complemented by investigations into the total historical context within which these ideas were formed and which contributed essentially to them. Economic and political structures make up an important segment of that broad historical context, and for this reason they must be attended to when tracing the history of an idea.<sup>3</sup> In pursuing such an

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of Freiburg as he was producing his *Summa confessorum*. As such, I do not claim that the argument given below provides an exhaustive account of the origins of his interest in, and specific contributions to the history of, the usury prohibition. I aim only to make a compelling case that economic and political conditions were a significant influence, among others to be explored in future research, on John's treatment of the usury prohibition in the *Summa confessorum*.

2. Odd Langholm's *Economics in the Medieval Schools* and *The Merchant in the Confessional* are good examples of this approach. Odd Langholm, *Economics in the Medieval Schools: Wealth, Exchange, Value, Money and Usury according to the Paris Theological Tradition, 1200-1350* (Leiden: E.J. Brill, 1992); Odd Langholm, *The Merchant in the Confessional: Trade and Price in the Pre-Reformation Penitential Handbooks* (Leiden: Brill, 2003).

3. Lawrin Armstrong makes a similar point in the introduction to his study of the Florentine lay canonist Lorenzo Ridolfi's *Tractatus de usuris* (1404). Lamenting the lack of engagement of historians of the usury prohibition with new research into the social history of Florentine intellectuals, he writes that "with few exceptions . . . historians of law and economic theory have remained immune to this change, continuing to view their subjects from the perspective of theoretical developments largely undetermined by material factors. The weakness of this approach is that it obscures how the usury debate was implicated in real economic, social and political relations." Lawrin Armstrong, *Usury and Public Debt in Early Renaissance Florence: Lorenzo Ridolfi on the Monte Comune*, Studies and Texts 144 (Toronto: Pontifical Institute of Mediaeval Studies, 2003), 3-4 and n. 8. For additional criticism of the abstractness of many studies of the usury prohibition, see Jacques Le Goff, "The Usurer and Purgatory," in *The Dawn of Modern Banking*

investigation, the dialectical materialist school of thought provides a useful set of theoretical tools for the scholar's use. Dialectical materialists contend that ideas, in the last analysis, are superstructures erected on the foundation of material circumstances and thus intimately related to historical processes transpiring outside of the learned volumes to which historians of ideas have traditionally and often exclusively directed their attention. The foremost theorist of superstructure is Antonio Gramsci (d. 1937), whose analysis of the social functions of intellectuals provides a useful hermeneutical device that can illumine some of the significant causes underlying John's treatment of usury in the *Summa confessorum*.<sup>4</sup>

Many scholars have pointed to Gramsci's concept of the organic intellectual as one of his most significant theoretical innovations,<sup>5</sup> and some have sought to employ it energetically in the study of history. However, a failure to understand this concept within the broader context of Gramsci's discussion of intellectuals in general, and within the tradition of materialist analysis even more generally, has led to a clumsy application of it at times.<sup>6</sup> To understand Gramsci's concept of the intellectual, it is essential to recognize

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(New Haven, CT: Yale University Press, 1979), 26-27; Jacques Le Goff, *Your Money or Your Life: Economy and Religion in the Middle Ages*, trans. Patricia Ranum (New York: Zone Books, 1990), 20, 69; Hans-Jörg Gilomen, "Wucher und Wirtschaft im Mittelalter," *Historische Zeitschrift* 250 (1990): 267.

4. Armstrong has already shown the fruitfulness of this approach through his use of Gramsci's concept of hegemony – whose management is a key function of traditional intellectuals – to explore the material factors underlying Lorenzo Ridolfi's defence of the Florentine public debt in the early fifteenth century. According to Armstrong, "Ridolfi's apology for the *monte* should not be interpreted as an abstract theoretical exercise but rather as part of a broader elite strategy to generate consent to its political programme at a moment of instability and crisis." Armstrong, *Usury and Public Debt in Early Renaissance Florence*, 5 and n. 9. Dr. Armstrong's application of Gramscian theory to the study of Ridolfi on the *monte comune* has provided helpful guidance in my own application of it to John of Freiburg's treatment of the usury prohibition. See esp. pp. 100-11 of the work just cited.

5. It was during his decade of imprisonment in Italy as a political dissident during Mussolini's regime that Gramsci formulated his strikingly original contributions to dialectical materialism in his voluminous *Prison Notebooks*. Gramsci became fascinated with the role of intellectuals in society early on in his imprisonment. In a letter to his sister-in-law Tania of 19 March 1927, Gramsci expressed his desire to accomplish a scholarly work of eternal value, and to this end he described a plan for a "history of Italian intellectuals, their origins and groupings in relation to cultural currents, their various modes of thinking, and so on." In preparation for this grand history, he set down a series of observations about the role of intellectuals in society in the *Prison Notebooks*. Antonio Gramsci, *Letters from Prison*, trans. Lynne Lawner (New York: Harper & Row, 1973), 79, no. 6.

6. See, for example, Janet Nelson's attempt to apply Gramsci's concept of organic intellectuals to the Dark Ages. Nelson argues, contrary to the fundamental insight of Gramsci's theory, as I shall show below, that intellectuals of the Dark Ages "transcend merely individual and even class experience and self-consciously speak for and to wide publics." Janet L. Nelson, "Organic Intellectuals in the Dark Ages?," *History Workshop Journal* 66 (2008): 6, and *passim*.

that the concept is embedded within the fundamental materialist analytical premise that the real motive forces of history are the material struggles between diverse socioeconomic classes.<sup>7</sup> Gramsci's fundamental and revelatory insight is that, in the last analysis, all intellectuals elaborate, articulate, advance and defend the interests of a particular social class.<sup>8</sup> For Gramsci, both the hands-on advocacy of the shop foreman and the lofty insights of the university professor are ultimately expressions of diverse economic motives and interests. The essential difference between the two kinds of intellectuals is the degree of immediate relation to, and self-awareness of, the economic interests at stake in their intellectual activity.

According to Gramsci, organic intellectuals are formed and operate in close relation to the economic classes whose interests they articulate. Their task is to cement a loose association of producers working together in a common form of labour, mental or physical, into a coherent class that has an awareness of its own economic interests and a sense of the significance it has or should have in the social and political realms.<sup>9</sup> Without intellectuals, classes may objectively exist (what is referred to in materialist analysis as "class-in-itself"), but the members of these classes have no subjective consciousness that they belong to a common class with common material interests ("class-for-itself").<sup>10</sup> Thus, organic intellectuals provide to the members of their class an articulate, homogeneous, and subjective form of class consciousness through which they are able to assert their class interests on the ideological plane.<sup>11</sup>

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7. For a brief overview of the fundamentals of dialectical materialism, particularly in relation to the study of history, see Matt Perry, *Marxism and History* (New York: Palgrave, 2002). Perry provides a very brief and useful summary of its principles on p. 46.

8. In Gramsci's words: "The problem of creating a new stratum of intellectuals consists therefore in the critical elaboration of the intellectual activity that exists in everyone at a certain degree of development, modifying its relationship with the muscular-nervous effort towards a new equilibrium, and ensuring that the muscular-nervous effort itself, insofar as it is an element of general practical activity, which is perpetually innovating the physical and social world, becomes the foundation of a new and integral conception of the world." Quentin Hoare and Geoffrey Nowell Smith, trans. and eds., *Selections from the Prison Notebooks of Antonio Gramsci* (New York: International Publishers, 1971), 9.

9. *Ibid.*, 5.

10. Perry, *Marxism and History*, 44.

11. Subjective class consciousness, in turn, is the tool through which the fundamental clashes of economic

However, contrary to Lenin's notion that this consciousness must be imposed from outside by a revolutionary *intelligentsia*, Gramsci affirms that the articulation and creation of subjective class consciousness occurs through a dialectical interaction between the organic intellectual and the members of his or her class.<sup>12</sup> Class consciousness is not the unique discovery and creation of the organic intellectual; it is drawn from the real experience and more diffuse notions of members of the class he or she represents. Organic intellectuals provide, in Gramsci's own words, a "critical elaboration of the intellectual activity that exists in everyone at a certain degree of development."<sup>13</sup> In sum, the function of organic intellectuals is the critical elaboration of class-consciousness in close relation to the class from which they arise.

The role of traditional intellectuals in society is essentially the same, but this category of intellectuals possesses two distinct features. In the first place, Gramsci notes, traditional intellectuals appear, and indeed profess to be, an "autonomous" group, somehow abstracted from the complex of class relations in society. This appearance is due to their "uninterrupted historical continuity" as a group.<sup>14</sup> Traditional intellectuals, such as university professors, doctors, lawyers, etc., seem to stand apart from the chop and change of day-to-day activity, because their professions possess their own lengthy historical traditions, which they have absorbed and to which they contribute. When certain of the various social classes emerged, such as the working class, traditional intellectuals already existed, and so the latter seemed have no immediate connection to

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classes are exercised on the ideological plane. As Georg Lukács writes, "Ideological factors do not merely 'mask' economic interests, they are not merely the banners and slogans: they are the parts, the components of which the real struggle is made." Thus there are bread riots and laws on the assize of bread: each represents the struggle of diverse classes within society, just as surely as each asserts a worldview reflecting the proper relations, and equitable distribution, between the various productive classes in society. Georg Lukács, *History and Class Consciousness: Studies in Marxist Dialectics*, trans. Rodney Livingstone (Cambridge, MA: MIT Press, 1971), 58.

12. For an overview of the difference between Lenin and Gramsci's understanding of the creation of class consciousness, see Harvey J. Kaye, *The Education of Desire: Marxists and the Writing of History* (New York: Routledge, 1992), 9-30; George Rudé, *Ideology and Popular Protest* (New York: Pantheon Books, 1980), 15-26.

13. Hoare and Smith, *Prison Notebooks*, 9.

14. *Ibid.*, 7.

the former.<sup>15</sup> We look at the professional economist's learned article on the stimulating effects of lower tax rates on dividends in a different way than the outrage expressed by a citizen at a Town Hall meeting over lack of access to affordable medical care. The economist underwent a long period of study and absorbed theoretical ideas that developed over centuries, which she has carefully weighed before advancing her own application or synthesis of them. Hers is the realm of theory, sifted and refined through time, however much this activity may be used to inform practice. What relation could a traditional intellectual have, then, to the immediate clash of economic interests in society?

Gramsci argues that the traditional intellectual is nevertheless embedded in the complex of class conflicts within society in two ways. Firstly, the professional tradition within which traditional intellectuals are moulded contains the ideological accretions of a specific class within society. Gramsci contends that "the elaboration of intellectual strata in concrete reality does not take place on the terrain of abstract democracy but in accordance with very concrete traditional historical processes." Historically, traditional intellectuals, according to Gramsci, were not drawn indiscriminately from all walks of life, but traditionally arose from the social strata that "have specialised in 'saving', i.e. the petty and middle landed bourgeoisie and certain strata of the petty and middle urban bourgeoisie." This led him to conclude that "the varying aspirations of different categories within these strata determine, or give form to, the production of various branches of intellectual specialisation."<sup>16</sup> Thus, the work of traditional intellectuals is particularly related to the economic interests of the bourgeoisie.<sup>17</sup>

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15. "Every 'essential' social group which emerges into history out of the preceding economic structure, and as an expression of a development of this structure, has found (at least in all of history up to the present) categories of intellectuals already in existence and which seemed indeed to represent an historical continuity uninterrupted even by the most complicated and radical changes in political and social forms." Ibid., 6-7.

16. Ibid., 11-12.

17. However, Gramsci notes that traditional intellectuals are "formed in connection with all social groups." Ibid., 10.

The second way that traditional intellectuals are connected with the play of economic interests in society, according to Gramsci, is their connection to the exercise of hegemony within that society. Gramsci contends that the economic dominance of one class over others, which characterizes all non-egalitarian societies and hence nearly all societies hitherto, is maintained through the two forces of coercion in the public realm and hegemony in the private realm, which he refers to as civil society. Gramsci's concept of coercion is self-evident. The dominant class maintains its position at the top of the economy and society and secures the consent of all subaltern classes to its elevated position through the exercise of naked force, which the dominant class contends is necessary for the preservation of law and order within society.

However, Gramsci notes that the dominant class only resorts to coercive power in the public realm to secure its dominance as a last resort, when in the private sphere hegemony has failed to obtain from the masses “‘spontaneous’ consent . . . to the general direction imposed on social life by the dominant fundamental group.”<sup>18</sup> Hegemony represents a state wherein a dominant class has successfully established a robust worldview within a given society that projects its hierarchical class relations as normative and as having an eternal, imperturbable character. Citizens are educated within this worldview, and, if the dominant class has succeeded in obtaining hegemony, they grow to subscribe to it more or less unconsciously and uncritically. Citizens end up internalizing the normativity of the class relations of their society, such that they do not go on to imagine alternative possibilities. Whereas coercion is the implementation of class dominance on the material, physical plane, hegemony is its implementation on the mental, ideological plane.

Traditional intellectuals, Gramsci argues, are responsible for the exercise of “social hegemony and political government” within society, acting in this capacity as the dominant group’s “deputies.” This is the second feature that distinguishes them from

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18. Ibid., 12.

organic intellectuals. Traditional intellectuals relate to the world of production through “the complex of superstructures,” or ideas, within society, of which they are the “functionaries.”<sup>19</sup> Discussing the historical role of Italian intellectuals in a letter to his sister-in-law Tania, Gramsci explains that “their function had been to give the culture of both Church and Empire a universal character . . . they performed the role of ‘managers’ for the leaders of Europe.”<sup>20</sup> Thus, traditional intellectuals are closely connected to the advancement and safeguarding of the economic interests of the dominant class in society through their superstructural “management” of that group’s hegemony over society in the disciplines of law, philosophy, religion, etc. Whether they are conscious of this or not, the traditional intellectuals help to produce the spontaneous ideological consent of the masses to the prevailing system of class relations. As such, Gramsci notes, it is essential for any group that is struggling to dominate society to win over the traditional intellectuals in order to establish their own worldview and system of class relations as normative for the masses.<sup>21</sup>

Now that I have reviewed Gramsci’s concept of the intellectual,<sup>22</sup> the stage is set to show how it can be applied to the study of medieval intellectual history. Gramsci himself sketched the first steps in this task in a brief note in the *Prison Notebooks*. He writes there that “the category of ecclesiastics can be considered the category of intellectuals organically bound to the landed aristocracy, with which it shared the exercise of feudal ownership of land, and the use of state privileges connected with property.”<sup>23</sup> Churchmen, the traditional intellectuals of the Middle Ages *par excellence*, should

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19. Ibid., 12.

20. 3 August 1931. Gramsci, *Letters from Prison*, 200-201, no. 55.

21. Hoare and Smith, *Prison Notebooks*, 10.

22. It should be noted in closing that the categories of organic and traditional intellectual are not mutually exclusive. A person can be both a traditional intellectual in one sense and an organic intellectual in another, producing within himself a dialectical synthesis of the fruits of his relation to a given productive class and his intellectual traditions. Karl Marx, the Doctor of Philosophy and leader of the International Communist Movement, was a striking example of such a figure.

23. Ibid., 7.

therefore be understood, through Gramsci's eyes, as the ideological protectors of the economic and social interests of the landed nobility.<sup>24</sup>

Therefore, a fruitful avenue of materialist historical inquiry would be a concrete investigation into whether intellectuals within the medieval Church accomplished the process of securing the hegemony of the landed nobility, as Gramsci theorized. Moreover, in light of the growth in influence and prestige of the merchant class during the "Commercial Revolution" of the twelfth and thirteenth centuries, an examination of the extent to which merchant interests penetrated the intellectual endeavours of medieval churchmen would also serve as an empirical test of what Gramsci described above as the contested nature of this hegemony. To this end, I shall demonstrate how the application of the Church's usury ban to the medieval confessional in John of Freiburg's *Summa confessorum* contributed to establishing, and also contesting, the hegemony of the landed aristocracy within the society of the Breisgau in the Late Middle Ages.<sup>25</sup>

#### USURY AND CLASS CONFLICT IN JOHN OF FREIBURG'S *SUMMA CONFESSORUM*

Since Gramsci argues that traditional intellectuals are generally drawn from the landed or urban bourgeoisie, whose interests they carry with them, an essential first step to evaluating the accuracy of his theory critically is an analysis of the class background of John of Freiburg. As I suggested above, John most likely belonged to the ministerial class within the German feudal hierarchy, since a possible ancestor of his is listed as a

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24. Later on in the *Prison Notebooks*, Gramsci notes that key to maintaining the unity of a social bloc is preserving the ideological unity that cements it together, or, in other words, maintaining the hegemonic worldview of the dominant class, and he points explicitly to the significance of religion in maintaining this unity. Finally, Gramsci notes that this hegemonic worldview "can have its origins in the parish and the 'intellectual activity' of the local priest." Ibid., 323, 328.

25. Without making use of Gramsci's insights into the role of intellectuals in society, Thomas N. Tentler has also highlighted the connection between *Summae* for confessors and social control. See Thomas N. Tentler, "The Summa for Confessors as an Instrument of Social Control," in *The Pursuit of Holiness in Late Medieval and Renaissance Religion: Papers from the University of Michigan Conference*, eds. Charles Trinkaus and Heiko A. Oberman (Leiden: E. J. Brill, 1974), 103-26.

ministerial of Count Egino von Urach in a charter of 17 May 1221, and we know that this was a hereditary class. Ministerials belonged to the lesser nobility and consisted of a servile class of knights who held offices from the greater, free lords. Since John rose to the position of lector and prior within the Freiburg Dominican convent, it is also likely that he belonged to the ministerial class, because, according to a statistical analysis conducted by John Freed, members of the ministerial class most often occupied leadership positions within the Order of Preachers in the German province.<sup>26</sup>

Thus far, then, Gramsci's model of the background of the traditional intellectual is accurate. If John did, in fact, belong to a family of the ministerial class, then he would have stemmed from an economic background of moderate wealth, grounded in the lands surrounding Freiburg. For these lands his family depended on the good graces of the Counts of Urach, who ruled as Counts of Freiburg over the course of the thirteenth and fourteenth centuries. In short, John's family was just the moderately wealthy kind that Gramsci theorized as the typical background of the traditional intellectual.

Referring specifically to the category of ecclesiastics, Gramsci goes on to argue that in the Middle Ages churchmen were organically bound to the landed aristocracy in the shared exercise of feudal ownership. The validity of this statement vis-à-vis John of Freiburg is evident not only from his personal status as a member of the ministerial class, which directly assisted lords in the administration of their domains, but also through an analysis of the economic foundations of the Freiburg Dominican convent. Research into archival sources pertaining to the Freiburg convent has revealed that the Dominicans were particularly indebted to the land-owning classes for their support. The lion's share of donations to the convent came from the lesser and greater nobility and the rising burgher class, whose trade depended on the landed economy and whose profits were reinvested into it.<sup>27</sup>

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26. See ch. 1, pp. 16 f.

27. A. Poinson, "Das Dominicaner- oder Prediger-kloster zu Freiburg im Breisgau," *Freiburger*

The dependence of the feudal nobility on wealth derived from land is so much a commonplace of medieval history that it requires no further comment here. Lords grew rich through warfare and by collecting the fruits of their vast estates. However, the dependence of the rising burgher class of Freiburg on the vitality of the countryside requires some explanation. Jan Gerchow and Hans Schadek have shown that thirteenth-century Freiburg, which was founded as a free trading city in the early twelfth century, functioned as the regional trading hub for the entire region of the Breisgau. Its principle trade was in the agrarian surplus of the countryside and local industrial products fashioned from that surplus, such as tanned hides, shoes, gloves, and textiles. Freiburg was not, like the fairs of Champagne, a significant centre of long distance trade. Consequently, the prosperity of its merchant capital was partly tied to the vitality of the land. In Freiburg it was the food trade that played the most significant role in the economy. The regional export of meat, grain, and wine were its mainstays, which were supplemented from the middle of the thirteenth century on by corporate investment in the mining of the Breisgau region's silver, and the smelting and smithing industries established in connection with it.<sup>28</sup> The form of the donations that burghers presented to the Freiburg convent, to which I shall turn shortly, also shows that they reinvested capital

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*Diöcesan-Archiv* 16 (1883): 9, 12; Hans Schadek and Jürgen Treffeisen, "Klöster im spätmittelalterlichen Freiburg: Frühgeschichte, Sozialstruktur, Bürgerpflichten," in *Geschichte der Stadt Freiburg im Breisgau*, vol. 1, eds. Heiko Haumann and Hans Schadek (Stuttgart: Theiss, 1996), 421, 425-26. Bernhard Neidiger has shown that a significant amount of the economic support for the friars in nearby Basel also came from the landed nobility. Nobles accounted for 32% of all donations to the Basel preachers up to the year 1300, and 34% of donations from 1301-1350 – more than any other social class. See his summary tables of donations to the order, organized by social class. Bernhard Neidiger, *Mendikanten zwischen Ordensideal und städtischer Realität: Untersuchungen zum wirtschaftlichen Verhalten der Bettelorden in Basel*, Berliner historischen Studien (Berlin: Duncker & Humblot, 1981), 169, 324. Georges Bischoff has shown the particular economic dependence of the Colmar Dominicans on the noble family of the Nordgassen, and of the Guebwiller convent on the Stoer and Waldner families, together with the lords of Meyenheim. Georges Bischoff, "Noblesse et ordres mendiants: Quelques remarques sur les couvents de Haute-Alsace à la fin du Moyen Âge," in *Dominicains et Dominicaines en Alsace XIIIe-XXe siècle: Actes du colloque de Guebwiller 8-9 avril 1994*, ed. Jean-Luc Eichenlaub (Editions d'Alsace, 1996), 22-24. On the dependence of the mendicant orders in general on the high nobility and their increasing reliance upon the members of the urban commercial bourgeoisie for material support over the course of the thirteenth century, see Lester K. Little, *Religious Poverty and the Profit Economy in Medieval Europe* (Ithaca, NY: Cornell University Press, 1978), 203-05.

28. Jan Gerchow and Hans Schadek, "Stadtherr und Kommune: Die Stadt unter den Grafen von Freiburg," in *Geschichte der Stadt Freiburg im Breisgau*, vol. 1, eds. Heiko Haumann and Hans Schadek (Stuttgart: Theiss, 1996), 172-83; Clemens Bauer, "Freiburgs Wirtschaft im Mittelalter," in *Freiburg im Mittelalter: Vorträge zum Stadtjubiläum 1970* (Baden: Verlag Konkordia AG, 1970), 51-63.

gains from trade into land. For example, in their will of 21 May 1334, the Freiburg burghers Johann von Kippenheim and Friedrich der Soler grant to the Freiburg Dominicans a yearly rent consisting of 9 bushels of rye, 10 shillings of pennies, and over 100 gallons of red wine from their lands after their deaths.<sup>29</sup> Clearly, the burghers had invested some of their capital into the countryside surrounding Freiburg.

The Freiburg Dominican convent amassed its wealth principally through donations from lords and burghers of annual rents in kind, supplemented at times with cash, which Innocent IV (d. 1254) had recently (2 May 1244) authorized the Preachers to collect.<sup>30</sup> Nobles most often bequeathed these rents to establish annual memorial services for themselves and their posterity or ancestors.<sup>31</sup> The rents were drawn more or less directly from the countryside of Freiburg. To the example of Johann von Kippenheim and Friedrich der Soler, mentioned above, we can add that of the noblewoman Anna von Opfingen. Shortly after John's death in 1314, she bequeathed an annual grant to the Freiburg Dominicans of just under 20 bushels of rye and 20 bushels of oats to establish a

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29. Augustin Dold, "Zur Wirtschaftsgeschichte des ehemaligen Dominikanerklosters zu Freiburg," *Zeitschrift der Gesellschaft für Beförderung der Geschichts-, Altertums- und Volkskunde von Freiburg, dem Breisgau und den angrenzenden Landschaften* 26 (1910): 216. Cf. F. L. Ganshof and A. Verhulst, "Medieval Agrarian Society in its Prime, § I. France, The Low Countries, and Western Germany," in *Cambridge Economic History*, vol. 1, ed. M. M. Postan (Cambridge: Cambridge University Press, 1966), 304-05. For the conversion of *Saum* to gallons, see Patrick Kelly, *The Universal Cambist and Commercial Instructor; Being a General Treatise on Exchange; Including the Monies, Coins, Weights, and Measures, of All Trading Nations and Colonies, with an Account of their Banks and Paper Currencies*, 2 vols. (London: Lackington, Allen, and Co., 1811), 1:448. On the dependance of the Freiburg preachers on donations from burghers that stemmed from lands in the countryside, see Schadek and Treffeisen, "Klöster im spätmittelalterlichen Freiburg," 423.

30. At the General Chapter of the Order of Preachers held at Bologna in 1220, Dominic and the friars agreed to reject ownership of possessions and the support of rents, binding the Order to a strict form of mendicancy and forbidding the friars from handling money. Humbert of Romans (d. 1277), however, interpreted this not as a strict obligation, but as a counsel that could be relaxed if the Order's preaching mission, its true end, were harmed. On the evolution of Dominican attitudes towards property and money, see Dold, "Wirtschaftsgeschichte des ehemaligen Dominikanerklosters," 192-95; Little, *Religious Poverty*, 164. On the complexity of St. Dominic's views on the Order's obligation to poverty and their development up to the time of Humbert of Romans, see R. F. Bennett, *The Early Dominicans: Studies in Thirteenth-Century Dominican History* (Cambridge: Cambridge University Press, 1937), 31-51, and pp. 233 ff. below. William Hinnebusch notes that the observance of strict poverty among the Dominicans declined after 1275. William A. Hinnebusch, *The History of the Dominican Order: Origins and Growth to 1500* (Staten Island: Alba House, 1966), 161-63.

31. Poinsignon, "Das Dominicaner- oder Prediger-kloster," 12-13. This was a common practice throughout Germany on the part of noble lords and ministerials. See Benjamin Arnold, *German Knighthood 1050-1300* (Oxford: Clarendon Press, 1985), 156-57. On the history of the Freiburg convent, see August Dold, "Studien zur Geschichte des Dominikanerklosters zu Freiburg i. Br.," *Freiburger Diözesan-Archiv* 40 (1912): 67-96.

yearly memorial for her and her posterity.<sup>32</sup> Again, in 1272, an instrument records that the Freiburg preachers were henceforth to receive one pound of the coins of Freiburg a year for the anniversary of Hugo von Krozzingen, a member of one of Freiburg's great noble families, whose wealth came from the income of his landed estates.<sup>33</sup> These are just two of many examples of annual donations in kind or in cash to the Freiburg convent that could be cited. During John of Freiburg's time in the city, these donations placed the convent in material dependence on the well-being of the landed economy, and particularly on the masters of that economy, the nobles of Freiburg.<sup>34</sup>

In addition to rents, the Freiburg Dominicans received other forms of support from the ecclesiastical and lay nobility. After the Dominicans arrived in Freiburg, in 1238 the young Count Konrad, "for the restoration of his soul and that of his mother and father," waived his right to collect the ground tax (*census*; *Hofstättenzins*) from the cloister, thereby easing the economic burden of constructing their church.<sup>35</sup> Continuing his support of the Preachers, Konrad renewed this privilege twice, first in 1240 and then again in 1241; Innocent IV finally confirmed it in a bull of 10 October 1245.<sup>36</sup>

The aristocracy of the Church also fostered the early development of the Freiburg Preachers by encouraging others to donate to their convent in exchange for an indulgence. On 20 October 1246, Innocent IV granted the first indulgence of 40 days penance "to all true penitents and those who have confessed, who have extended a helping hand to [the

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32. Dold, "Wirtschaftsgeschichte des ehemaligen Dominikanerklosters," 219.. I have here converted 4 *Mutt* into a more readily comprehensible measure. This I have done on the calculation that 1 *Mutt* = 12 Measures, and 5 Measures = approximately 2 English bushels. See Kelly, *The Universal Cambist*, 1:61.

33. Ibid., 218.

34. Cf. Hinnebusch, *Origins and Growth to 1500*, 287. For further examples of donations from nobles to the Freiburg Dominicans, see Dold, "Wirtschaftsgeschichte des ehemaligen Dominikanerklosters," 215-220.

35. "Ob anime patris nostri et matris pariter et nostre remedium." See Friedrich Hefele, ed., *Freiburger Urkundenbuch*, vol. 1, *Texte* (Freiburg im Breisgau: Kommissionsverlag der Fr. Wagnerschen Universitätsbuchhandlung, 1940), 48-51, no. 63, for the text of the privilege. See also Schadek and Treffeisen, "Klöster im spätmittelalterlichen Freiburg," 423.

36. Hefele, *Freiburger Urkundenbuch*, vol. 1, *Texte*, 58, no. 69; 59, no. 71; 76, no. 89.

Preachers] for the completion of their work or for relieving them in their necessities.”<sup>37</sup> In June of 1251, Hugh, an apostolic legate and cardinal priest of St. Sabina, renewed this same indulgence.<sup>38</sup> Hugh increased the indulgence to 100 days of penance in 1253 for those who visited the Dominican church at Freiburg with donations in hand during four feasts of the Virgin Mary, Easter, Pentecost, Christmas, and the feast of St. Dominic and remained for their octaves.<sup>39</sup> In 1258, Alexander IV (d. 1261) granted a similar indulgence of 100 days of penance to those who visited the Dominicans in Freiburg during the feasts of the Virgin, of St. John the Evangelist, of St. Dominic, and of the recently canonized St. Peter Martyr, also a Dominican. Clement IV (d. 1268) issued the same indulgence once more in 1265.<sup>40</sup> Conrad, the bishop of nearby Strasbourg, intervened in 1281 to assist the Dominicans at Freiburg with the completion of their choir by granting an indulgence of 40 days of penance and a year of venial sins to whoever contributed to its construction or visited the church on certain feast days after its completion.<sup>41</sup> Similar indulgences of 40 and 80 days of penance, respectively, were granted by a group of archbishops and bishops assembled at Orvieto in 1284 and by the

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37. “Omnibus vere penitentibus et confessis, qui eisdem pro dicti consumatione operis vel pro ipsorum necessitatibus relevandis manum porrexerint adiutricem, quadraginta dies de iniuncta sibi penitentia misericorditer relaxamus.” Ibid., 81-82, no. 94.

38. Ibid., 102-03, no. 121.

39. “Cupientes igitur, ut ecclesia vestra congruis honoribus frequentetur, omnibus Christi fidelibus vere penitentibus et confessis, qui ad ipsam ecclesiam in quatuor beate Marie virginis, pasche, pentecostes, nativitatis domini et sancti Dominici festivitibus necnon et per octavas earundum singulis annis causa devotionis accesserint, centum dies de iniuncta sibi penitentia misericorditer relaxamus.” Ibid., 114, no. 135.

40. “Omnibus vere penitentibus et confessis, qui ad eandem ecclesiam in omnibus festivitibus beate virginis Marie et beatorum Johannis evangeliste, Dominici confessoris et Petri martiris ipsius ordinis professoris ac septem diebus immediate sequentibus causa devotionis accesserint annuatim, centum dies de iniuncta sibi penitentia misericorditer relaxamus.” Ibid., 137-38, no. 166. For Clement’s indulgence, see Ibid., 172-73, no. 202.

41. “Cum igitur chorum construere ceperitis, ad cuius consumationem vestra non suppetit facultas, nisi Christi fidelium subsidiis fueritis adiuti, omnibus vere penitentibus et confessis, qui vobis ad predictum opus manum porrexerint adiutricem, XL dies de iniuncta sibi penitentia et annum venialium misericorditer relaxamus, concedentes de gratia speciali, quod omnes, qui ad ecclesiam vestram in die consecrationis eiusdem chori et per triginta dies continuos et primo anno semel in mense in anniversario ipsius, in die natalis domini, pasche et pentecostes, in singulis festivitibus gloriose virginis Marie, beati Johannis Evangeliste et beatorum Augustini et Dominici confessorum ac Petri martyris necnon et per octavas predictorum festorum et anniversarii dedicationis ecclesie devotionis causa accesserint, eandem indulgentiam consequantur.” Ibid., 310-11, no. 339.

bishop Boniface of Tino in 1299.<sup>42</sup> Clearly, the Dominicans owed much to their noble benefactors in Freiburg and in the Church.

The close ties of material dependence between the Freiburg preachers and the landed nobility of Freiburg were also reflected symbolically. The great families of Freiburg – including Count Konrad II (d. 1350) – preferred the Preachers' church as the location of their final resting place.<sup>43</sup> In light of the considerations developed above, any analysis of John of Freiburg's writings on the usury prohibition must take seriously Gramsci's suggestion that ecclesiastics functioned as intellectuals organically bound to the interests of the landed aristocracy. To protect their interests was to protect the friars' own.

Yet, the Freiburg Dominicans' interests were not exclusively bound to the land. The interests of burghers active in the Freiburg marketplace also penetrated their cloister. Many writers have remarked upon the close connection between the mendicant orders generally and the development of urban spirituality in the Middle Ages.<sup>44</sup> As Humbert of Romans (d. 1277), the fifth master general of the Order of Preachers, explains, the Dominicans proceeded to the towns first and foremost in order to maximize the effectiveness of their preaching mission. This was because towns were more populous and could provide a model of good practices and values for the countryside.<sup>45</sup> The friars, therefore, ministered principally to urban populations as preachers and confessors, and in the process they adapted their spirituality to the values of the city, which centred on trade

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42. For the text of these indulgences, see Friedrich Hefele, ed., *Freiburger Urkundenbuch*, vol. 2, *Texte* (Freiburg im Breisgau: Kommissionsverlag der Fr. Wagnerschen Universitätsbuchhandlung, 1951), 25-27, no. 16, 337-38, no. 337.

43. Schadek and Treffeisen, "Klöster im spätmittelalterlichen Freiburg," 426; Joseph Schlippe, "Die drei großen Bettelordenskirchen in Freiburg," in *Freiburg im Mittelalter: Vorträge zum Stadtjubiläum 1970* (Baden: Verlag Konkordia AG, 1970), 115.

44. In addition to the authorities cited below, see John B. Freed, *The Friars and German Society in the Thirteenth Century* (Cambridge, MA: The Mediaeval Academy of America, 1977), 30-43, for an excellent overview of the connection between the Preachers and medieval urbanization. See also, C. H. Lawrence, *The Friars: The Impact of the Early Mendicant Movement on Western Society* (London: Longman, 1994), 1-2, 102-08; D. L. d'Avray, *The Preaching of the Friars: Sermons Diffused from Paris before 1300* (Oxford: Clarendon Press, 1985), 30-31.

45. See Little, *Religious Poverty*, 187.

in commodities rather than direct production from the land.<sup>46</sup> As Lester K. Little states succinctly:

The unique achievement of the friars was their creation of new forms of religious expression specifically for the urban sector of society and those people dominant within it. These new forms included an ethical justification for urban society itself as well as for the characteristic activities of its more influential members.<sup>47</sup>

For the mendicant orders in general, then, the concerns of burghers were pressing.

What has been said above about the mendicant orders in general is no less true in the specific case of the Freiburg Dominicans. In 1233, Count Egino I, his wife Adelheid, and the city community invited the Preachers to found a convent in Freiburg so that the Dominicans could instruct the city-dwellers through the example of their life and their preaching. According to Henry, the bishop of Constance, who had diocesan authority over Freiburg, the faith and morals of the burghers had been compromised by the spread of the Waldensian heresy.<sup>48</sup> From the very beginning, then, the mission of the Freiburg Preachers was centred on the city and the needs of the burghers. Since their mission was

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46. Freed, *The Friars and German Society*, 11; Little, *Religious Poverty*, 24, 183. The connection between the friars and the city was so close that Martial Staub speaks of an “inscription des ordres mendiants au coeur de la ville médiévale.” Martial Staub, “Église et pouvoir à l’automne du Moyen-Âge: Les Dominicains de Fribourg-en-Brigau vus à travers une source inédite. Leur place dans le Siècle et dans l’Église (XIIIe - début XVIe siècles),” *Médiévales* 15 (1988): 98. For a detailed analysis of the mendicants’ role in developing urban religious life, see Little, *Religious Poverty*, 197-217.

47. Ibid., 173. Cf. Langholm, *The Merchant in the Confessional*, 9-10. Sylvain Piron describes the relationship of friar and burgher somewhat more expansively: “Nés d’une aspiration à la pauvreté évangélique, les ordres mendiants ont accompagné la croissance urbaine du XIIIe siècle et les développements de l’économie marchande, transformant une attitude faite de méfiance, et dans le cas de saint François, de rejet viscéral de l’argent, en écoute attentive des problèmes moraux qui se posaient aux élites urbaines.” Sylvain Piron, “Marchands et confesseurs. Le ‘Traité des contrats’ d’Olivi dans son contexte (Narbonne, fin XIIIe-début XIVe siècle),” *Actes des congrès de la Société des historiens médiévistes de l’enseignement supérieur public* 28 (1997): 289.

48. Schadek and Treffeisen, “Klöster im spätmittelalterlichen Freiburg,” 423; Poinson, “Das Dominicaner- oder Prediger-kloster,” 3, 9; Gerchow and Schadek, “Stadtherr und Kommune,” 139. The invitation extended to the Dominicans by the 24 consuls and the citizens of Freiburg on 14 December 1236 states, “Presumentes firmiter eorum vita ac predicatione instrui infra civitatem nostram Friburch una cum plebe ipsius civitatis vocavimus ad manendum.” Hefele, *Freiburger Urkundenbuch*, vol. 1, *Texte*, 45-46, no. 59. In bishop Henry’s letter permitting the foundation of the Dominican convent at Freiburg, he refers to the Preachers as “pre aliis et fidei zelatores et ecclesie dei defensores.” For the full text of the letter, see Ibid., 43-44, no. 56. On the construction of the Dominican church in Freiburg, see Schlippe, “Bettelordenskirchen,” 109-18; Schadek and Treffeisen, “Klöster im spätmittelalterlichen Freiburg,” 423. On the early history of the Dominicans in Freiburg, see H. Finke, “Die Freiburger Dominikaner und der Münsterbau,” in *Festschrift zur Generalversammlung des Gesamtvereins der deutschen Geschichts- und Altertumsvereine zu Freiburg in Breisgau vom 23 bis 26 September 1901* (Freiburg im Breisgau: Friedrich Ernst Fehsenfeld, 1901), 154-57. Martial Staub suggests that the Count invited the Preachers, who formed part of the international network through which papal policy was administered, to Freiburg to bolster his opposition to the anti-papal emperor Frederick II. He surmised that having agents of the papacy nearby could prove a useful tool in his struggles against Frederick. Staub, “Église et pouvoir,” 105-06.

dedicated to the spiritual care of the burghers, they were particularly well received among that section of Freiburg's society.<sup>49</sup> Burghers sought places in the convent and the nunnery at Adelhausen for the children who would not succeed them as heirs, providing for their financial support with grants of life rents or benefices (*Pfründstiftungen*). Extant records indicate that in both the Franciscan and the Dominican convents in Freiburg the majority of the membership was drawn from the urban bourgeoisie and the families of tradespersons, and only a small minority from the nobility.<sup>50</sup> Some fathers probably hoped that their sons might find in the Order of Preachers a means of gaining prestige and advancing in society through their service as confessors and, by extension, advisers to local potentates.<sup>51</sup> Like the nobility, burghers also richly endowed memorial services for themselves, their forebears, and their descendants, which obligated the friars to pray for the salvation of their souls on the anniversary of their death in order to hasten their release from purgatory.<sup>52</sup> Burghers also sought and obtained the privilege of burial alongside nobles in the Dominican cemetery.<sup>53</sup>

In addition to their specific interactions with the Dominicans, we cannot overlook the significant functions that burghers, and especially merchants, exercised within the society of Freiburg in general as a factor that may have thrust their interests into the

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49. Poinson, "Das Dominicaner- oder Prediger-kloster," 3-4; Heinrich Finke, *Ungedruckte Dominikanerbriefe des 13. Jahrhunderts* (Paderborn: Ferdinand Schöningh, 1891), 10.

50. Schadek and Treffeisen, "Klöster im spätmittelalterlichen Freiburg," 421, 425-26; Poinson, "Das Dominicaner- oder Prediger-kloster," 9. Cf. Freed, *The Friars and German Society*, 110. Georges Bischoff's study of obituaries and other documentary sources in the Haute-Alsace region during the Late Middle Ages reveals that only 9% of members within the Dominican convents there stemmed from noble families. In comparison to the secular clergy, the canons regular, the Benedictines, and the military orders, the Order of Preachers was a far less popular place for the nobility to pursue a career within the Church. Bischoff, "Noblesse et ordres mendiants," 25.

51. Freed, *The Friars and German Society*, 132-34.

52. "Stiftungen – vor allem in Form von Jahrzeitstiftungen – erlaubten den Bürgern aber auch, für die Sicherung des eigenen Seelenheils Sorge zu tragen. Die mit Schenkungen bedachten Konvente wurden verpflichtet, am Todestag des Stifters seiner und seiner Vorfahren im Gebet zu gedenken. Aus eben diesem Motiv heraus konnte auch der Stadtherr die Ansiedlung geistlicher Gemeinschaften fördern, der freilich darüberhinaus auch ein herrschaftlich begründetes Interesse an der Präsenz von Klöstern in seiner Stadt hatte." Schadek and Treffeisen, "Klöster im spätmittelalterlichen Freiburg," 421. Cf. Josef Fleckenstein, "Bürgertum und Rittertum in der Geschichte des mittelalterlichen Freiburg," in *Freiburg im Mittelalter: Vorträge zum Stadtjubiläum 1970* (Baden: Verlag Konkordia AG, 1970), 92-93.

53. Schadek and Treffeisen, "Klöster im spätmittelalterlichen Freiburg," 426.

consciousness of the Preachers. When Konrad von Zähringen founded the city of Freiburg in 1120, his intention was to create a significant market town in order to profit from taxes and tolls he would establish upon its trade. He summoned merchants to settle in the city, attracting them by offering them space in the market in exchange for a symbolic rent of a mere one shilling per year. The first merchants to settle within the city had free use of the lord of Freiburg's commons and could own land free of feudal restrictions on inheritance and alienation, as well as of feudal exactions. Local merchants were exempt from all tolls and customs – a right that was confirmed by the City Charter of 1218. Only visitors to the market, whose safe conduct was guaranteed, would have to pay customary fees to the lord of the market.<sup>54</sup> Although the burghers lost the privilege in 1247, initially they also had the right to elect their own parish priest.<sup>55</sup> From the very beginning, then, merchants held a privileged place in Freiburg's society. They constituted the nucleus of the burgher community, and their position was only to grow with time.<sup>56</sup>

By the middle of the thirteenth century the prestige of the wealthier burghers in Freiburg had risen to such an extent that they began to be referred to as knights (*milites*) and lords (*domini*) in municipal charters. They also began to affix their own seals to charters – an indication of the burghers' self-awareness of their nobility.<sup>57</sup> Members of the ministerial class, the legally dependent administrators of German feudal lords, envied the burghers' success to the extent that some, such as the von Zähringen "auf dem Markt" and the Trösche von Umkirch, obtained freedom from their lords and joined the burgher community, passing from the jurisdiction of feudal law to the municipal law of

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54. Hans Schadek and Matthias Untermann, "Gründung und Ausbau Freiburg unter den Herzögen von Zähringen," in *Geschichte der Stadt Freiburg im Breisgau*, vol. 1, eds. Heiko Haumann and Hans Schadek (Stuttgart: Theiss, 1996), 59-62; Gerchow and Schadek, "Stadtherr und Kommune," 135; Bauer, "Freiburgs Wirtschaft," 50; Fleckenstein, "Bürgertum und Ritterschaft," 78.

55. Schadek and Untermann, "Gründung und Ausbau Freiburg," 82-83.

56. Fleckenstein, "Bürgertum und Ritterschaft," 78.

57. Gerchow and Schadek, "Stadtherr und Kommune," 141-42; Fleckenstein, "Bürgertum und Ritterschaft," 86-87. As early as 1217 the Abess of Waldkirch referred to Konrad Snewlin, a prominent burgher, as *dominus* in a instrument. *Ibid.*, 85.

Freiburg.<sup>58</sup> Burgher families, such as the von Munzingen and von Tußlingen, acquired significant fiefs and the rights of lordship over them from nobles in Freiburg and the Breisgau, whose considerable debts had compelled them to sell or lease their lands in order to raise cash to pay back their increasingly impatient creditors.<sup>59</sup> The rising prestige of the great burghers was also reflected by their increasingly frequent marriages with members of the nobility.<sup>60</sup>

Eventually, the influence of these burgher-knights grew to such an extent that they felt that their best interests were not being well-served by the city council (*Rat*), which was composed principally of nobles and their *ministeriales*. In 1248, a group of prominent burghers accused the members of the city council of breaking the law of Freiburg, as enshrined in the charter of 1218, by ruling autocratically in their own interests. The burghers succeeded not only in compelling the aristocratic members of the city council to swear to uphold the provisions of the charter of 1218 in the local cathedral, but also secured from the lord of the city the creation of an advisory council (*Gremium*) of 24 members, which would be composed exclusively of elected members from among the burghers. The advisory council would henceforth share the jurisdiction of the original 24 members of the city council: the advisory council would attend to the administration of the city and the city council would maintain jurisdiction over the courts. Disputes over important legal matters in Freiburg would now require the assent of both the city council and the advisory council in order to be resolved. The advisory council established its own chancery – a significant indication of its legal independence from the lord and the city council – and over time it absorbed more and more of the jurisdiction over the courts. Around this time, prominent burgher families, such as the Snewlin, Kotz, and von Arra, also began to appear more frequently as witnesses in the charters of the city lord and the

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58. Ibid., 81, 89.

59. Ibid., 90-91; Gerchow and Schadek, "Stadtherr und Kommune," 141-42; Bauer, "Freiburgs Wirtschaft," 52-53, 65. On the causes of indebtedness among the nobles, see p. 217 below. On the creditors of the nobility, see p. 219 below.

60. Fleckenstein, "Bürgertum und Rittertum," 89.

city council, testifying to the rising political and social prestige of burghers within the city.<sup>61</sup> In short, in 1248, the burghers, in addition to securing their legal rights, obtained official and legitimate political power within Freiburg.

In 1293 – around the time John was composing the *Summa confessorum* and the same year in which the guild of merchants was formed in Freiburg – the political power of the burghers increased further. The Count of Freiburg granted to all extant guilds the right to draw up statutes for themselves in exchange for a pledge of military service to the city and the obligation to maintain a supply of arms at the guilds' expense. In 1338, not long after John of Freiburg's death, the guilds became wholly responsible for the defense and military organization of the city, answerable only to the city council. Thereby they became a vital part of the municipal government.<sup>62</sup> By combining the economic advantages of their commercial activities as burghers with the social prestige of knighthood and nobility, the burgher-knights became an increasingly dominant force in the society of Freiburg.<sup>63</sup> Their vital role in the city's economy translated, over time, into a vital political role for them in the administration of the city. Given the centrality of the burgher, and especially the merchant, within Freiburg's society in the Late Middle Ages, the interests of this class, for better or for worse, must have been prominent in the minds of all who dwelled there, including the Friar Preachers. The rising power of the burghers ensured that they could not be ignored.

Thus the interests of the trade-centred city ranged themselves alongside those of the producing countryside within the walls of the Freiburg Dominican convent. As a result of their outstanding pastoral activity within Freiburg, the Preachers had received extraordinary support from both groups, such that by 1381 the cloister buildings of the Dominicans occupied an area of 18 courts (*Hofstätten*), each equivalent to about 5000

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61. Gerchow and Schadek, "Stadtherr und Kommune," 140-46; Fleckenstein, "Bürgertum und Rittertum," 83-85.

62. Bauer, "Freiburgs Wirtschaft," 55, 64.

63. Fleckenstein, "Bürgertum und Rittertum," 93-94.

square feet, and the friars owned five private houses in the city in addition to a small number of other properties.<sup>64</sup> In material terms, the Preachers were deeply in debt to the landed aristocracy and the city-centred burghers.<sup>65</sup> The interests of both classes ran parallel to the convent's own interest in perpetuating its preaching mission. As Martial Staub keenly observes:

The power that the friars exercised due to their ministry could not help but involve itself in the competition between the other powers within the cities. . . . Because they participated in the game of alliances and oppositions that the powers at the heart of the city devoted themselves to, the friars are the key to revealing [this struggle].<sup>66</sup>

The truth of this statement can be confirmed through a critical, materialist analysis of John of Freiburg's treatment of the usury prohibition in the *Summa confessorum*.

To understand how John's discussion of the usury ban in the *Summa confessorum* is related to the preservation and contestation of the hegemony of the landed aristocracy in late medieval Freiburg, a brief explanation of the broad economic context in which John sought to implement the ban is necessary. The origins of the usury ban reach back to Late Antiquity, when the Church's concern to protect peasants and artisans working within an agrarian subsistence economy led her to forbid lending at interest.<sup>67</sup> Lacking stored surpluses and other forms of economic security, peasants and other small producers were particularly vulnerable to economic catastrophe due to natural and man-made disasters, such as war. In the wake of a bad harvest, or the loss of a harvest due to

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64. Dold, "Wirtschaftsgeschichte des ehemaligen Dominikanerklosters," 198, 227-28; Poinson, "Das Dominikaner- oder Prediger-kloster," 13. Cf. Finke, "Freiburger Dominikaner," 158.

65. This sort of language was used by the Dominicans themselves, for the prior provincial of the German Dominicans referred to his friars as debtors to the German king Rudolf of Habsburg (d. 1291) for his support of the Order. See Finke, *Ungedruckte Dominikanerbriefe*, 11-12. In the course of time, the Freiburg Dominicans became so rich from their noble and bourgeois benefactors that, ironically, from the first half of the fifteenth century onwards, they served as a *de facto* moneylending institution for the latter, buying rents on their lands around Freiburg and in the Breisgau in exchange for periodic payments of goods in kind. Dold, "Wirtschaftsgeschichte des ehemaligen Dominikanerklosters," 231-32.

66. "Le pouvoir qu'exerçaient les frères grâce à leur ministère ne pouvait que s'inscrire dans la compétition à laquelle se livraient, à l'intérieur des villes, les autres pouvoirs. . . . Parce qu'ils participent au jeu des alliances et des oppositions auquel se livrent les pouvoirs au sein de la ville, les frères en sont le révélateur." Staub, "Église et pouvoir," 98-99.

67. Cf. Freed, *The Friars and German Society*, 9; Little, *Religious Poverty*, 35-41; Odd Langholm, *The Legacy of Scholasticism in Economic Thought: Antecedents of Choice and Power* (Cambridge: Cambridge University Press, 1998), 6-7.

the razing of his fields by a passing army, the peasant was forced to borrow the necessities of life for a time in order to avoid starvation. Therefore, he became an easy target for exploitation by lenders, who could take advantage of his great need to charge exorbitant interest rates.<sup>68</sup> It was to protect these economically disadvantaged classes that the Early Church strictly forbade creditors from exacting interest in their loans.

In the thirteenth century, however, in the wake of the “Commercial Revolution” and the steady emergence and increasing dominance of an urbanized cash economy,<sup>69</sup> the Church and the landed aristocracy had a new reason for implementing the ban, which placed them in tension with the rising merchant class.<sup>70</sup> The purchase of imported luxury goods, always in demand among the high nobility as a status symbol, together with the daily expenses of city life, where many nobles had transplanted themselves from their country estates, and the extraordinary expenses of feudal politics – the more or less continuous occupation of feudal lords – required cash. Prosecuting feuds, arming for feuds, raising money for ransoms, dowering their daughters, and endowing the places of their next-born children at the various religious houses of Freiburg all weighed heavily on the purses of Freiburg’s nobility.<sup>71</sup>

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68. J. Gilchrist, *The Church and Economic Activity in the Middle Ages* (New York: St Martin's Press, 1969), 63-64. For a similar explanation of the reasons for Charlemagne's introduction of the usury prohibition in his domains in the late eighth century, see Erwin Leiber, *Das kanonische Zinsverbot in deutschen Städten des Mittelalters* (Ueberlingen: Buckdruckerei Seebote, 1926), 3, 19.

69. On the commercial revolution and the new cash economy centred around the market, see John W. Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter and his Circle*, 2 vols. (Princeton, NJ: Princeton University Press, 1970), 1:264; Lester K. Little, "Pride Goes before Avarice: Social Change and the Vices in Latin Christendom," *American Historical Review* 76, no. 1 (1971): 16, passim; Robert S. Lopez, *The Commercial Revolution of the Middle Ages, 950-1350* (Englewood Cliffs, NJ: Prentice-Hall, 1971), 56-84; Little, *Religious Poverty*, 3-18; Carlo M. Cipolla, *Before the Industrial Revolution: European Society and Economy, 1000-1700*, 3rd ed. (New York: W. W. Norton & Co., 1994), 160-98; N. J. G. Pounds, *An Economic History of Medieval Europe*, 2nd ed. (London: Longman, 1994), 407-42.

70. Cf. Leiber, *Das kanonische Zinsverbot*, 4-5.

71. Bauer, "Freiburgs Wirtschaft," 68; Hermann Nehlsen, *Die Freiburger Familie Snewlin: Rechts- und sozialgeschichtliche Studien zur Entwicklung des mittelalterlichen Bürgertums* (Freiburg im Breisgau: Wagnersche Universitätsbuchhandlung, Karl Zimmer Kommissionsverlag, 1967), 120, n. 9. To cite one local example of such feudal politics, on 7 October 1281, while John was serving as lector of the Freiburg convent, the German king Rudolf of Habsburg at the head of three armies besieged Count Egino's forces within the city, destroying the cloister of the Dominican nuns at Adelhausen in the process. See Ph. Jaffé, ed., "Annales Colmarienses maiores," in *Monumenta Germaniae Historica*, ed. G. H. Pertz, *Scriptores* 17 (Leipzig: Karl W. Hiersemann, 1925), 208-10.

Gerhard Rösch notes that the transition from a natural, landed economy to a market economy occasioned an economic crisis for German bishops, who required cash to intervene in imperial politics and to pay the hefty services for entry into their benefices that the papal camera had introduced in the second half of the thirteenth century.<sup>72</sup> These services, which had certainly come into existence by the papacy of Alexander IV (1254-61), amounted to a third of the annual income of the benefice being conferred. A bishop's failure to pay services on time could result in his suspension, excommunication, confiscation of the benefice, or even, should the delay prove longer than four or five months, his imprisonment at the papal court for the debt.<sup>73</sup>

Although by the thirteenth century lords had more need of money than ever before, their own wealth was, to their great chagrin, tied up in immovable and relatively inflexible real estate, which was burdened with numerous and diverse feudal obligations to their tenants. Landed lords attempted to generate cash from the land by commuting the labour services their tenants owed to fixed monetary dues and leasing portions of their demesnes,<sup>74</sup> but feudal plots did not, as a rule, produce a ready source of liquid funds. Feudal lords commanded considerable wealth in possessions, but could not always exchange it when necessary or desired expenditures loomed on the horizon. Unlike the cash that they so urgently required, land did not have the property of universal and convenient exchangeability.

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72. Gerhard Rösch, "Wucher in Deutschland 1200-1350: Überlegungen zur Normdidaxe und Normrezeption," *Historische Zeitschrift* 259, no. 3 (1994): 605-06.

73. On the introduction of services within the papal government, see William E. Lunt, *Papal Revenues in the Middle Ages*, 2 vols. (New York: Columbia University Press, 1934), 1:81-91.

74. On the urbanization of lords and their attempts to generate cash revenues from land, see Ganshof and Verhulst, "Medieval Agrarian Society in its Prime," 329. On the monetization of feudal relations as a consequence of the emergence of a cash economy, see Little, *Religious Poverty*, 29-30; Pounds, *Economic History*, 208-09. According to Bryce D. Lyon, fiefs "in kind, more numerous in the early Middle Ages, declined as the money economy grew stronger but never completely disappeared." In Germany, *fiefs-rentes* became exceedingly widespread in the last quarter of the thirteenth century. See Bryce D. Lyon, *From Fief to Indenture: The Transition from Feudal to Non-Feudal Contract in Western Europe* (Cambridge, MA: Harvard University Press, 1957), 25, 29. This major transition from fiefs in kind to fiefs in cash occurred right as the medieval commercial economy was reaching its peak and John was writing his *Summa*.

As a result, to cover their cash expenditures Freiburg's landed lords were compelled to take loans from prominent burghers such as the von Munzingen, Snewlin and von Tußlingen families, who had built their tremendous wealth on the back of investment in silver mining, trade, and finance (*Geldgeschäften*). They also received credit from professional pawnbrokers and Jews, more or less directly mortgaging the future income of their estates for such loans.<sup>75</sup> A state of chronic indebtedness emerged among the landed aristocracy, which threatened to undermine their socio-economic dominance if merchants and other possessors of capital succeeded in subjecting lords to themselves through the burden of hefty interest payments. Hence, in the absence in Western Europe of a mature, centralized State that could tame the aggressiveness of unbridled moneylenders – as had been possible in the Byzantine Empire<sup>76</sup> – it fell to the overarching authority of the Church, as a landowner and as an institution dependent upon landowners, and the local authority of the landed nobility to restrict severely any form of interest in loans in order to maintain their joint dominance over society.<sup>77</sup> Convincing the masses of the illicitness of interest thus became an essential part of the landed aristocracy's hegemony. If interest could be demonized, debt slavery would cease to be possible and the old feudal order could escape from under the thumb of the *nouveau riche* merchant class, whose command of the market *economy* was slowly and steadily transforming into command over the market *society* that had recently emerged.<sup>78</sup> The usury ban was, therefore, integral to the class struggle of the landed aristocracy against

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75. Fleckenstein, "Bürgertum und Rittertum," 88; Bauer, "Freiburgs Wirtschaft," 68-69. As an instrument from the municipal government of Freiburg indicates, in 1327 the Counts of Freiburg were in extraordinary debt to Jewish moneylenders. See Nehlsen, *Die Freiburger Familie Snewlin*, 128, n. 48. According to Jean Ibanès, the brisk demand for loans, secured by pledges of land, to cover new cash expenditures was common among the aristocracy throughout Europe in the thirteenth century. Jean Ibanès, *La doctrine de l'Église et les réalités économiques au XIII<sup>e</sup> siècle: L'intérêt, les prix et la monnaie*, Travaux et recherches de la Faculté de Droit et des Sciences Économiques de Paris, Série "Sciences Économiques" 4 (Paris: Presses Universitaires de France, 1967), 11.

76. Little, *Religious Poverty*, 8.

77. Thus Hans-Jörg Gilomen notes that Innocent III's primary motive in his struggle against usury was his anxiety that the indebtedness of lords would hinder them from participation in his crusade. Gilomen, "Wucher und Wirtschaft im Mittelalter," 290.

78. Cf. Little, *Religious Poverty*, 24.

the rising power of the merchants and burghers in the thirteenth century.<sup>79</sup> Its significance for the old feudal order was so great that Lester K. Little refers to it as the “central ethical problem of the new economy.”<sup>80</sup>

On the other side of this struggle one cannot overlook the increasing influence of merchant capital within medieval society.<sup>81</sup> From an economic perspective, the usury ban was meddlesome for possessors of capital in a double sense. Firstly, as cash-rich lenders, a prohibition against interest resulted in foregone profit. Capital tied up in loans to debtors, in the absence of interest, became sterile, since creditors could not otherwise invest it in trade. Secondly, merchants themselves often required credit to conduct their affairs, especially to cover temporary imbalances between payments and receipts.<sup>82</sup> Whatever could stimulate lenders to offer credit, which a modest rate of interest would accomplish, would also be in the economic interest of merchants as a means of facilitating their trade.<sup>83</sup> Thus, while it was in the interest of lords to oppose the exaction of interest, the further success of the emerging merchant class depended on a relaxation of the usury ban.

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79. That the high aristocracy in particular were exploited by usurers is suggested by a passage in Guy de Toulouse's *Regula mercatorum* (ca. 1315). In Question 30 of the section on usury, Guy asserts that courtiers who seek out clients for usurers and receive pledges in their stead are liable for making restitution and guilty of mortal sin. See ch. 4, p. 149. Thus, at least in Toulouse, where Guy composed the *Regula*, usurers went to the trouble to employ agents to stir up business among nobility, which implies that this class, starved for money as it was, but rich in land to pledge as security, must have been a prime market for predatory lending. Given the extent of the indebtedness of the high nobility in Freiburg, it is possible that local usurers also employed agents to stir up business among the aristocracy.

80. Ibid., 179. The prologue to Brother Berthold's German translation of the *Summa confessorum* (2<sup>nd</sup> half 14<sup>th</sup> cent.) indicates that members of Freiburg's landed aristocracy had a general interest in matters of canon law. There Berthold notes that he undertook the translation at the request of his friend, the knight Hans von Ow (Aur). See Otto Geiger, "Studien über Bruder Berthold: Sein Leben und seine deutschen Werke," *Freiburger Diözesan-Archiv* 48 (1920): 10, 16. A study of Berthold's reworking of John's questions on usury would therefore be valuable in exploring further the connections between the Dominicans and the landed aristocracy, as well as the consequences of this relationship for the history of the usury prohibition and the social history of the Order of Preachers.

81. On the rise of the 'new men' in medieval society in the thirteenth century, see Yves Renouard, *Les hommes d'affaires italiens du moyen âge* (Paris: Librairie Armand Colin, 1949), 43-61.

82. M. Postan, "Credit in Medieval Trade," *Economic History Review* 1, no. 2 (1928): 244-45.

83. According to Diana Wood, "the effect of the usury ban, if strictly applied, would have been to starve the developing mercantile world of the credit on which it was largely based." Diana Wood, *Medieval Economic Thought* (Cambridge: Cambridge University Press, 2002), 4.

John of Freiburg's treatment of usury in the *Summa confessorum* reflects the struggle between these classes and the contested position of the dominant class within the society of the Breisgau.<sup>84</sup> While John remained committed to upholding the dominance of landed wealth by severely restricting usury, commercial interests clearly began to influence his ideology. It would be premature to say that the forces of merchant capital successfully conquered this traditional intellectual, but they were certainly pounding at the gates, seeking legitimization for the new social position merchants and burghers had assumed in Freiburg.

On the whole, John of Freiburg's usury doctrine is conservative. He upholds the ban in its essentials, especially as these were formulated theoretically in the theology of Thomas Aquinas. For example, as I noted previously, John repeats Aquinas' consumptibility argument against usury, which states that in the case of things that are consumed in use, such as wine or money, use and ownership cannot be separated in a loan, and therefore it is illicit to charge for the use of money in such loans (*SC* 2.7.3).<sup>85</sup> For this reason it is illicit for creditors to receive or hope for anything in addition to the principal of the loan (*SC* 2.7.1-2). For the usurer to be saved, according to John, all usurious gains must be restored to the borrower, and if the usurer lacks the means to do so at the present, he must humbly beseech the mistreated debtor for a delay in repayment or beg that he forgive him the outstanding usuries and any other damages he may have caused the debtor by virtue of the malicious loan (*SC* 2.7.47, 68). Lenders cannot even retain the benefits that they derive from using something pledged to them as security for a loan, but must subtract these from the total amount of the debt owed to them (*SC* 2.7.77).<sup>86</sup>

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84. Cf. Armstrong's contention that the debate in the mid-fourteenth century between the Dominican master Piero degli Strozzi and the Franciscan Francesco da Empoli over the legitimacy of a market in Florentine public debt should be interpreted as a class struggle between the old patrician class, which Strozzi represented, and the "new men and lesser guildsmen," for whom Francesco advocated. Armstrong, *Usury and Public Debt in Early Renaissance Florence*, 78, 110.

85. See my lengthy explanation of Thomas' consumptibility argument in ch. 3, pp. 75 ff.

86. However, compare this statement to John's treatment of sale-resale contracts, discussed below on p.

On the level of practical enforcement, John argues that according to canon law usurers are to be denied burial in Christian ground unless they have first made restitution of all their usurious gains (*SC* 2.7.72). Bishops can *ex officio suo* start legal proceedings against occult usurers by denouncing them in their churches, with the aim of compelling them to make restitution (*SC* 2.7.48). The local bishop can also act against usurers by redistributing their offerings to the Church to those from whom they exacted usuries or to the poor, thereby indirectly compelling them to restitution (*SC* 2.7.52).

The two strategies of banning the exaction of usuries and compelling restitution of those illicitly exacted clearly served the interests of indebted landed lords and those who depended on them, such as the Freiburg Dominican convent.<sup>87</sup> That John had in mind in the *Summa confessorum* principally usurious loans to those rich in land, as opposed to consumption loans to the poor, can be gathered from his counsel that repentant usurers seek forgiveness from injured debtors when they are unable immediately to make full restitution to them. This sort of spiritual magnanimity was only materially possible for those who possessed other means of sustaining themselves, and not for the poor on the margins of subsistence. Hence, here we note the cooperation between Church intellectuals and the landed aristocracy in protecting the dominance of landed forms of wealth that Gramsci mentioned above.

Bubbling beneath the surface of John's basically conservative attitude to the usury prohibition were the new forces of merchant capital struggling to assert themselves in a changing economic order. The clearest indication of this is John's discussion of whether it is always a sin to take a loan at usury. After outlining the principle, derived from Aquinas, that it is illicit to lead someone to sin, but praiseworthy to use another's sin for good, and that therefore in cases of necessity one can borrow at usury if no one will lend

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224 f.

87. It is possible that the Freiburg Dominicans were themselves trapped under the burden of usuries for a loan of 20 marks that they had to take out to assist their even more indebted brothers in Zofingen. See my discussion of this episode during John's tenure as lector of the Freiburg convent in ch. 1, pp. 43 ff.

gratuitously, John cites with approval the opinion of his teacher Ulrich. According to Ulrich, not only in cases of necessity, “but even for the utility that someone derives from carrying on his business it is licit to take a loan at usury” (*SC* 2.7.44). What else do we have here but a reluctant seal of approval on business loans, so integral to the success of commerce and the prosperity of the rising merchant class and the burghers, with whose fate the Freiburg convent was also tied?

The tension between the forces of landed wealth and merchant capital is also evident in John’s discussion of rent contracts. In a basic medieval rent contract a landowner sold the fruits of the land, or some other stream of revenue, for a certain period of time or even, in some cases, for eternity, in exchange for a lump sum of money up front. The buyer received a steady annual income that he hoped would exceed the amount of his initial outlay, which gave the rent contract every appearance of a *de facto* loan at interest. Henry of Ghent, a master of theology at Paris towards the end of the thirteenth century and a lonely voice of opposition, decried the rent contract as usurious on precisely these grounds.<sup>88</sup> However, since the canonists and the majority of theologians had traditionally analysed the rent contract in terms of an exchange, rather than a loan, it skirted the usury ban despite the potential for the buyer to profit.<sup>89</sup> This exception was beneficial to merchants, since the purchase of rents on country estates was a common means of storing unemployed capital. Investment in rent contracts also had the prestigious side-effect of easing the transition of merchants into the country gentry.<sup>90</sup> However, in light of the potential for loss over time on the part of sellers, rents represented a threat to the continuing dominance and social prestige of the landed nobles.

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88. On Henry of Ghent’s economic ethics, see Langholm, *Economics in the Medieval Schools*, 249-75.

89. For an overview of scholastic doctrine on rents, see Bernard Schnapper, “Les rentes chez les théologiens et les canonistes du XIII<sup>e</sup> au XVI<sup>e</sup> siècle,” in *Études d’histoire du droit canonique dédiées à Gabriel LeBras*, 2 vols. (Paris: Sirey, 1965).

90. Postan, “Credit in Medieval Trade,” 248-49.

The desire to appease the needs of merchant capital for a secure investment vehicle, on the one hand,<sup>91</sup> and to abate the anxiety of the lordly sellers of rents, on the other, is clearly reflected in John's discussion of rents. Following William of Rennes' gloss to Raymond's *Summa*, John asserts that rent contracts are not usurious in form, but can be conducted in order to conceal usuries. If the price of a rent contract is far below a reasonable estimate of the total income to be derived from it, it should be considered a *de facto* loan and the buyer of the rent should be compelled to restitution. "Much is to be presumed against such a creditor," (SC 2.7.27) concludes William, expressing his, and by extension also John's, continuing defence of landed interests. Yet, at the same time, the clearing of the rent contract from the usury ban represents a clear concession to the economic exigencies of the surging merchant class within medieval society. The activities of merchants and burghers had to be curtailed, and landed interests protected, to be sure, but the possessors of capital had succeeded in getting their foot in the intellectual door.

In the case of sale-resale contracts, John also bowed to the pressure from commercial interests, while at the same time attempting to protect landed interests. As the name suggests, in a sale-resale contract the buyer purchased an item on the condition that, within a period of so many years, the seller could repurchase it from him. In the meantime, the buyer could use and profit from his acquisition as he pleased. On the surface, this contract has every appearance of a loan of the purchase price from the buyer to the seller that is secured by the item sold, whose fruits the buyer could enjoy over the term of the loan without reckoning them into the repurchase price. As such, it appears at first glance as a manifestly usurious transaction – the buyer received the fruits of the item he had purchased in addition to the principal of the loan, which was restored to him when the seller repurchased the item. However, according to Raymond, whom John cites in the

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91. As N. J. G. Pounds writes, in the thirteenth and fourteenth centuries "the overwhelming need for credit led theologians to excel themselves in finding ways to circumvent the obstacles [to lending at interest] which they had themselves erected." Pounds, *Economic History*, 411.

*Summa confessorum*, the contract is not usurious, since it is not, strictly speaking, a loan, but rather a sale. Discussing the specific case of the sale and resale of a manor, Raymond concludes that “the buyer receives the fruits without the risk of usury, even if the seller, in accordance with the provisions of the sale, should regain the manor.” Nevertheless, he cautions that such contracts are illicit when they serve merely to cloak an usurious loan, which the confessor can infer to be the case if the initial purchase price of the item is significantly lower than the value of the item up for sale. This gave to the item up for sale the character of a pledge, whose value in the Middle Ages, just as today, always exceeded the value of the loan it secured.<sup>92</sup> The contract should also be presumed to be an usurious fraud if when the seller repurchases he is made to pay something in addition to the purchase price, which would be a direct charge for the loan, or if the buyer is accustomed to lend at usury (*SC* 2.7.25). Despite these provisos, it is not difficult to perceive how a canny and not overly greedy investor could use the sale-resale contract to profit from money-lending simply by receiving and retaining the fruits of the pledge over the term of the loan, since nowhere does either Raymond or John indicate that these should be reckoned into the repurchase price. On the contrary, Raymond states expressly that buyers in a sale-resale contract need not do so. Essentially, by setting their seal of approval on sale-resale contracts, Raymond and John willy-nilly authorized the mortgage.

The sale-resale contract was an important tool in the struggle between landed and commercial wealth in the Middle Ages, since nobles who were rich in landed possessions but short on cash could turn to merchants and other burghers with surpluses of liquid capital, sell their land to them for a period of time, and hope to have the means in the future of reacquiring it. In short, it was a device very useful, but also potentially very harmful, to landed lords for converting their considerable immovable fortunes into sorely needed, ready cash. However, in the case of “default,” should lords not be able to

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92. According to Hans van Werveke, in the thirteenth century in Flanders and Lotharingia the value of secured loans was approximately 2/3 of that of the pledge. Hans Van Werveke, "Le mortgage et son rôle économique en Flandre et en Lotharingie," *Revue belge de philologie et d'histoire* 8, no. 1 (1929): 79.

repurchase, the sale-resale contract then became a powerful weapon in the hands of the burghers for encroaching upon the economic mainstay of the top tier of the feudal hierarchy – their lands, with all the privileges and esteem attached to them.

So far I have spoken largely in generalities, but the theoretical picture painted above is supported historically by the economic relations between nobles and burghers within the economy of Freiburg around the time John was composing his *Summa*. Hermann Nehlsen, who has conducted the most extensive research into these relations hitherto, states succinctly that “money-lending, despite the canonical usury prohibition, contributed in an outstanding way to the development of significant wealth in the Middle Ages.”<sup>93</sup> In the case of Freiburg, this wealth fell to the burghers at the expense of the landed nobility,<sup>94</sup> making money-lending a crucial part of the struggle between these two classes for dominance in the administration of Freiburg.

As Nehlsen’s research shows, the Snewlin family – wealthy burghers who were gradually penetrating the stratum of the nobility in Freiburg – particularly distinguished themselves in the fields of money-lending, speculation in rents, and pawnbroking in Freiburg in the High and Late Middle Ages.<sup>95</sup> As early as 1266 there is evidence of the usury ban being used in Freiburg as a tool in the struggle between the bishop of Strasbourg and Konrad Snewlin. In a letter to the dean of Lautenbach, Clement IV (d. 1268) describes the point of contention between the two parties. According to Henry IV, the bishop of Strasbourg, the cathedral had pledged certain of its lands and other

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93. “Bestreitet kein Forscher, daß die Geldleihe trotz des kanonischen Zinsverbotes in hervorragendem Maße geeignet war, zur Bildung der großen Vermögen im Mittelalter beizutragen.” Nehlsen, *Die Freiburger Familie Snewlin*, 118.

94. Where burghers did not profit directly from usurious moneylending, they sometimes did so indirectly by purchasing lands from Freiburg’s gravely indebted religious houses so that the latter might be able to liberate themselves from their creditors. For example, in 1284 the debts of the Augustinian hermits at St. Mary’s in the Black Forest, which they had incurred in reconstructing the abbey after a fire, compelled their abbot Conrad to sell one of their mills and a field to the burgher Johann Hefenler for 43 silver marks. Hefe, *Freiburger Urkundenbuch*, vol. 2, *Texte*, 19-23, no. 14. For additional examples of such sales, see *Ibid.*, 250-52, no. 214, 252-57, no. 215; Friedrich Hefe, ed., *Freiburger Urkundenbuch*, vol. 3, *Texte* (Freiburg im Breisgau: Kommissionsverlag der Fr. Wagnerschen Universitätsbuchhandlung, 1957), 356-59, no. 476.

95. Nehlsen, *Die Freiburger Familie Snewlin*, 118.

possessions to Konrad Snewlin and his mother Junta in exchange for a loan. The latter took possession of these pledges and reaped the fruits of them over the term of the loan, which, according to the provisions of canon law, they were to reckon into the amount of the outstanding principal, lest they should receive something in addition to this principal in return for the loan.<sup>96</sup> However, not only did Konrad and his mother not do this, but they refused to return the lands and possessions in question even though they had already received from their fruits an amount that exceeded the principal of the loan – a clear case of usurious lending. Clement instructed the dean to command the Snewlin family to restore the pledges to the bishop of Strasbourg along with anything that they had received in excess of the loan or else they would be excommunicated according to the penalties established against usurers by Alexander III (d. 1181) at the Third Lateran Council (1179).<sup>97</sup> The next year (1267) Clement dispatched an almost identical letter to the provost of St. Trinitas in Speyer, naming Konrad, Junta, and her sons Dietrich and Johann as holders of illicit pledges that had to be restored on pain of excommunication.<sup>98</sup>

According to Nehlsen, the Snewlin family's crime was by no means exceptional for the time, but was a common practice among burghers in Cologne, Basel, and Zurich, who would lend to secular and spiritual lords only on the condition that they could retain the use of the pledges in addition to expecting the return of the principal.<sup>99</sup> To cite another, particularly egregious example, in 1342 Konrad Dietrich Snewlin, the son of Konrad Snewlin, lent a sum of 200 marks of silver to Count Konrad von Freiburg on the condition that up to the time of repayment he would receive 20 silver marks a year as

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96. X 5.19.8. Cf. SC 2.7.77.

97. For the penalties, see X 5.19.3. Cf. X 5.19.7. Here is the text of Clement's letter: "Conquestus est nobis venerabilis frater noster episcopus Argentinensis, quod Conradus dictus Snewelin laicus et Junta mater eius Constantiensis diocesis quasdam terras possessiones et res alias ad mensam suam episcopalem spectantes titulo pignoris detinent obligatas, licet ex eis perceperint ultra sortem. Ideoque discretioni tue per apostolica scripta mandamus, quatinus, si est ita, dictos pignorum detentores, ut sua sorte contenti, pignora ipsa et, quicquid ultra sortem perceperunt ex eis, restituant conquerenti, per penam in Lateranensi concilio contra usurarios edictam appellatione remota compellas." Hefele, *Freiburger Urkundenbuch*, vol. 1, *Texte*, 181, no. 210.

98. Nehlsen, *Die Freiburger Familie Snewlin*, 118-19.

99. *Ibid.*, 120-21.

interest from a plot of land known as *Stechers* and that he would reap all of the fruits of the Count's court at Staufen-im-Breisgau, without reckoning any of the gains from the latter into the principal.<sup>100</sup> The debtors, rich in land but starved for cash, were compelled to accept such terms.

Nehlsen argues that at the root of Henry IV's appeal to Clement IV regarding the loan from Konrad Snewlin was a newfound awareness of how the canon law on usury could serve as a tool to improve the standing of the Church and other landed lords vis-à-vis the burghers, their lenders. By insisting, on the grounds of ecclesiastical law, that the Snewlin family only seek back precisely as much as they lent, Henry IV succeeded in removing his church from the woeful economic subjection in which it had hitherto stood. In the use of this tactic he followed the lead of Urban IV (d. 1264), who had used the usury prohibition to free the papacy from the mountain of usurious debt it had incurred under Urban's predecessor Alexander IV (d. 1261). Henry also emulated the Archbishop of Cologne, whom Urban had encouraged to follow his example in dealings with creditors in his own archdiocese.<sup>101</sup> The usury prohibition was, therefore, in the words of Nehlsen, a "welcome handhold" that the Church, and other overburdened lenders, could use to level the playing field between themselves and the cash-rich burgher lenders.<sup>102</sup> In short, the usury ban functioned as a tool in the class struggle between landed and liquid forms of wealth in the society of the Breisgau. Its limited effectiveness can be detected in the fact that, as Nehlsen notes, over the course of the fourteenth century it became common in loans secured by land to reckon into the principal gains from the pledge that exceeded the customary rate of interest of 10% per annum. Creditors could no longer receive unrestricted use of the pledge.<sup>103</sup> While this custom fell short of completely

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100.Ibid., 127.

101.Ibid., 122. For further examples of loans secured by usurious pledges, see pp. 128, 130-32.

102."Für Heinrich IV. mußten die Wucherbestimmungen eine willkommene Handhabe sein, einen Teil der drückenden Schulden dadurch zu tilgen, daß er sich weigerte, etwas über die *sors legitima* hinaus zurückzahlen, und auf einer Anrechnung der Nutzungen auf das Kapital bestand." Ibid., 121-22.

103.Ibid., 128.

protecting the interests of landed lords, it at least restricted the amount of harm that they could suffer at the hands of their creditors.

When the fundamental premises of the usury ban were applied, then, they protected the interests of landed wealth. However, the laxity of certain of the more advanced components of the usury ban benefitted the burghers tremendously. This was particularly the case with rent contracts, which, despite every appearance to the contrary, the majority of lawyers and theologians within the Church, including John of Freiburg, refused to categorize as usurious loans. Predictably, burghers exploited this loophole in the Church's usury prohibition with gusto in their exchanges with the nobility.<sup>104</sup> Rather than lending on the security of a piece of land or another revenue stream, which could expose lenders to the censure of the Church if they reaped the fruits of the pledge in addition to the principal of the loan, lenders could simply purchase a rent on the same security. Since most lawyers and theologians understood the rent contract as a contract of purchase, profiting from it was not *de iure* suspicious.

Several generations of the Snewlin family made excellent use of this subterfuge. For example, in 1318 Konrad Dietrich Snewlin purchased from Count Konrad of Freiburg a perpetual rent of 20 silver marks a year derived from the municipal taxes of Freiburg in exchange for the sum of 200 silver marks.<sup>105</sup> Johann Snewlin der Gresser, the cousin of Konrad Dietrich, became a past master in the rent business over the course of his life. His will indicates that at the time of his death the lords von Üsenburg owed him 60 silver marks a year of rent in exchange for a sum of 600 silver marks; the duke von Teck owed him 25 marks of silver in rent annually; the cloister of Augustinians at St. Mary's in the Black Forest owed him 19 silver marks a year for the sum of 190 marks of silver; Count Bertold von Sulz owed him a yearly rent of 15 silver marks; and the lords von Falkenstein

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104. According to Erwin Leiber, in Germany the rent contract was the most common means of bypassing the usury ban, so much so that it rendered the ban virtually illusory. Leiber, *Das kanonische Zinsverbot*, 15. Cf. Rösch, "Wucher in Deutschland," 633-34.

105. Nehlsen, *Die Freiburger Familie Snewlin*, 126-27.

owed a yearly rent in kind of 40 bushels of grain.<sup>106</sup> In 1338, the lords von Üsenberg owed Snewli Bernlapp, their favoured creditor, an annual rent of four silver marks from the Candlemas day tax (*Lichtmeßsteuer*) that they were owed from their lands at Kenzingen, about 30 km north of Freiburg.<sup>107</sup> Finally, an instrument of 20 October 1328 recording the debts of the municipal government of Freiburg demonstrates that the city owed rents to various members of the Snewlin family in exchange for a total of 920 silver marks that the Snewlin had previously loaned to the city.<sup>108</sup> Nehlsen estimates that in the same year the Count of Freiburg paid out approximately one third of the municipal taxes as rent to the Snewlin family. His debts to the family and other creditors eventually became so intolerable that in order to liberate himself from their burden he sold his dominion over Freiburg to its burghers – a pattern that the lords of Schwarzenburg, Üsenberg, and Falkenstein soon followed with respect to their dominions in the Breisgau.<sup>109</sup> Rents, therefore, clearly constituted a burden on the landed nobility while at the same time serving as a considerable pillar of economic support for the prosperous burgher community in Freiburg. Ultimately, they were to undermine the former group's dominance over the latter.

To a lesser extent the Snewlin family also made use of the sale-resale contract as a legitimate means of circumventing the usury ban and exploiting the aristocracy in and around Freiburg. At some time prior to 1314, Count Egino von Freiburg sold his rights to the cloister of St. Peter in the parish of Kirchhofen to Konrad Dietrich Snewlin in a sale-resale contract. However, the Count did not succeed in raising sufficient funds to repurchase them, and so in 1314 he enfeoffed Konrad Dietrich with the monastery and all its dependants, renouncing any rights he had to repurchase them. According to Nehlsen,

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106.Ibid., 131.

107.Ibid., 132.

108.Ibid., 133. For further examples of the Snewlin family's rent business, see pp. 133-34.

109.Ibid., 137-38.

this contract was a clear case of an usurious loan cloaked as a sale-resale contract.<sup>110</sup> The Count had originally intended to redeem the monastery, which was really a pledge for the loan, but ultimately he lacked the means to do so. Since he could not repay the loan, he handed over the full ownership of the monastery to Konrad Dietrich, just as a defaulting debtor today would have to hand over ownership of his pawn to the pawnbroker. In 1324, Snewli von Wiesneck purchased a large area of fields and meadows, together with their rights to pasturage, from the Counts of Freiburg in exchange for 40 marks of silver with the provision that the Counts could repurchase the lands for the same price within 10 years. Snewli stipulated that if in a given year the Counts repurchased the lands before Candlemas (2 Feb.), they would not have to pay him for the entire year of usages, but they would be compelled to do so if they repurchased after this date.<sup>111</sup> Clearly Snewli was here guaranteeing the rate of return on his investment. However, since Snewli derived his profit from the fruits of the item he had purchased, on the surface the contract, which was for all intents and purposes a loan, was not usurious, at least to Raymond of Penyafort and John of Freiburg's way of thinking. By legitimizing the sale-resale contract, they enabled burghers, such as the Snewlin family, to charge a rate of interest for what was essentially a loan and thereby gave them the means to improve their economic and – in the case where they acquired lordly rights due to “default” – their social position over and against that of the landed aristocracy in Late Medieval Freiburg.

The surging position of the merchant-financier in Freiburg and in medieval Europe at large necessitated these concessions on the part of the Church to the usury ban. The medieval Church's pastoral and evangelical mission depended for its continued existence on benefactors. Her spiritual fortunes were tied to the material fortunes of the world (though this does not mean, of course, that they were governed by them – prophets

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110. “Denkbar ist nun, daß Graf Egen die genannten Leute zu Kirchhofen zunächst an Konrad Dietrich verpfändet und man das Pfandgeschäft in die Form eines Kaufes mit Rückkaufsrecht gekleidet hatte.” Ibid., 125.

111. Ibid., 133.

and gadflies regularly emerged within extant structures of power). As a significant charitable institution in the Middle Ages, she had, in part, to serve the interests of the powerful in society, since without their good will she lacked the means to minister to the destitute.<sup>112</sup> Every institution of the Church from the papacy down to the humble parish had to ensure a stream of revenue for this purpose. Hence, if the composition of the material forces within the world changed, then so too would the Church's attitudes towards those who dominated in the new structure in order to preserve the material foundation of her spiritual mission. On the other hand, for the dominant classes within medieval society the legitimacy conferred upon them by the Church was invaluable in an era when she was the arbiter of the ideas and opinions of men and women.<sup>113</sup> The powerful needed the Church to approve their form of power in order for it to be accepted uncontested by the masses of medieval men and women, and the Church could not go on without the material assistance of the dominant classes. Hence, a complex, dialectical relationship emerged between the Church and the dominant classes throughout the Middle Ages.

When, in the midst of the Commercial Revolution, which reached its peak in the thirteenth century, a new class of materially and coercively powerful persons had emerged in the form of the merchant-financiers, the Church turned to them for support, through the agency of the new mendicant orders. The merchant-financiers, conversely, turned to the Church in order to receive her imprimatur upon their newly acquired power. Since much of the wealth of this new class was built upon the investment of the profits of trade in rents, and since the Church acquired ample support from wealth so derived – to such an extent that from the end of the thirteenth century the cloisters of Freiburg and the Hospital of the Holy Spirit became purchasers of rents from the nobility<sup>114</sup> – she

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112. On the charitable activities of the Church, see Brian Tierney, *Medieval Poor Law: A Sketch of Canonical Theory and Its Application in England* (Berkeley: University of California Press, 1959).

113. Cf. Little, *Religious Poverty*, 167.

114. Bauer, "Freiburgs Wirtschaft," 68, 70-72.

conceded, with some strenuous casuistry, the licitness of rents to her new benefactors. Thereby the Church legitimized the practice for the benefit of merchants and burghers and for the benefit of her ongoing spiritual mission. John of Freiburg's tentative concession of the licitness of rents, as well as sale-resale contracts, in the *Summa confessorum* represents the outcome of this long and complex dialectical process. It reflects, in the last analysis, the ascent of the merchant-financier to a new place of economic and social prominence within late medieval society and the gradually declining security of the aristocracy at the head of that society.

If we concluded at this point that John of Freiburg's discussion of the usury ban merely reflected the contending interests of fading and emergent powers within late medieval Freiburg, this would completely overlook the Dominicans' commitment to the ideal of Apostolic poverty as enshrined in the Rule of St. Augustine, which serves as the basis for the rule and constitutions of the Order of Preachers. Surely, this ideal would more readily urge us to interpret the usury ban in the *Summa confessorum* in the same way as it had originated: as a protection for the poor, with whom the Mendicant Orders, according to their apostolic spirit, theoretically stood in solidarity. If the Dominicans acted to foster a set of class interests, then, in accordance with this ideal, those of the poor must have been at the forefront of their minds. However, to understand the relative weight of the ideal of poverty within the Dominican consciousness, and its likely impact on John of Freiburg's treatment of the usury prohibition, we must first look more closely into the precise role that this ideal played for the Preachers.

The ideal of Apostolic poverty can be traced back to the origins of the Dominicans. When St. Dominic sought approval for his Order of Preachers from Innocent III in 1215, he was instructed that – in accordance with the recently published decree of the Fourth Lateran Council (1215) that had forbidden the creation of new religious orders, lest a profusion of them should introduce confusion in the Church – he

and the friars had to select an already extant rule as the foundation for their order.<sup>115</sup> Therefore, Dominic adopted the rule that he had himself been practicing for nearly twenty years as a canon at Osma: the Rule of St. Augustine.<sup>116</sup> Enshrined at the heart of this rule was the ideal of Apostolic poverty, which the Preachers thus placed at the centre of their own religious order.<sup>117</sup> In the words of St. Augustine, the rule ordered the following observances for the friars:

Before all, beloved brothers, love God, and then the neighbour, since these precepts have especially been given to us. These, therefore, are the things that we instruct that you, established in the monastery, should observe. First, since you are assembled in one, that you dwell harmoniously in the house, and that there should be among you one mind and one heart in God, and that you not call anything your own, but that all things should be common among you, and that food and clothing be distributed to each of you, not equally to all, since you are not all equally well, but rather to each as he has need. For thus do you read in the Acts of the Apostles: “Since all things were common to them, and to each it was distributed as he had need.”<sup>118</sup>

According to M. Vicaire, this rule envisioned nothing less than a renewal of the primitive Christian practice of communal poverty.<sup>119</sup>

In materialist terms, the primitive communism of the first Christians stemmed, according to Karl Kautsky, from an intense class hatred of the rich. In short, the cruel exploitation of the Roman slave economy up to the time of Christ marginalized the majority of free producers, who could not compete with the low production costs of slave

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115. The relevant text is contained in Canon 13 of the Fourth Lateran Council: “Ne nimia religionum diversitas gravem in ecclesia Dei confusionem inducat, firmiter prohibemus, ne quis de caetero novam religionem inveniatur, sed quicumque voluerit ad religionem converti, unam de approbatis assumat. Similiter qui voluerit religiosam domum fundare de novo, regulam et institutionem accipiat de religionibus approbatis.” J. Alberigo et al., eds., *Conciliorum oecumenicorum decreta*, 3rd ed. (Bologna: Istituto per le Scienze Religiose, 1973), 242.

116. M. H. Vicaire, *Histoire de Saint Dominique*, 2 vols. (Paris: Les Éditions du Cerf, 1957), 1:95, 2:30.

117. Ibid., 1:95, 2:35.

118. “Ante omnia, fratres charissimi, diligatur Deus, deinde proximus, quia ista praecepta sunt principaliter nobis data. Haec igitur sunt quae ut observetis praecipimus in monasterio constituti. Primum, propter quod in unum estis congregati, ut unanimes habitetis in domo, et sit vobis anima una et cor unum in Deo. Et non dicatis aliquid proprium, sed sint vobis omnia communia: et distribuatur unicuique vestrum a praeposito vestro victus et tegumentum, non aequaliter omnibus, quia non aequaliter valetis omnes, sed potius unicuique sicut opus fuerit. Sic enim legitis in Actibus Apostolorum: Quia erant illis omnia communia, et distribuebatur unicuique sicut cuique opus erat.” Augustine of Hippo, *Regula ad servos Dei* 1 (PL 32:1377-79).

119. Ibid., 1:95, 2:30.

labour in both agriculture and industry. This economy concentrated wealth in the hands of a small landed aristocracy, who employed slave labour on a massive scale to their benefit and increased their wealth by acquiring more and more land. This further exacerbated the poverty of large numbers of agrarian producers through expropriation and by reducing free peasants to the status of dependent tenant farmers. As a result, significant numbers of free citizens, freed slaves, peasants, exploited tenant farmers, artisans, and other free producers became economically superfluous within society and came to lack any form of security, having been deprived of even the means of subsistence. These classes, consequently, desired a radical redistribution of the means of consumption in order to obtain a share of the rich man's extravagant wealth.<sup>120</sup> It was from this corps of impoverished proletarians, who nourished an intense class hatred of the rich, that the early Christian community was assembled. The goal of this community was to throw off the domination of all rulers and take vengeance against the rich and powerful classes, who had marginalized them.<sup>121</sup>

Kautsky argues that this hatred of the rich among the first Christians is evident from New Testament texts: the story of the despised beggar Lazarus, who, after his death, is seated at the side of Abraham, whereas the rich man who scorned him is consigned to hellfire (Luke 16:19-31); Jesus' teaching that it is easier for a camel to walk through the eye of a needle than for a rich man to enter the kingdom of God (Luke 18:18-29); the beatitudes, wherein Jesus blesses the poor and needy and condemns the rich (Luke 6:20-21, 24-25); James' repeated upbraiding of the rich in his epistle (James 1:9-11, 2:5-7, 5:1); and so on.<sup>122</sup> Kautsky thus concludes that for the early Christians "being rich

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120.Karl Kautsky, *Foundations of Christianity*, trans. Henry F. Mins (New York: S. A. Russell, 1953), 25-59. On the slave mode of production in Ancient Rome, see also Perry Anderson, *Passages from Antiquity to Feudalism* (London: Verso, 1978), 53-103.

121.Kautsky, *Foundations of Christianity*, 323-24.

122.Ibid., 276-77.

and enjoying wealth is a crime that merits the most bitter atonement.” The Church Fathers fostered this notion from the time of Clement of Alexandria to Augustine.<sup>123</sup>

The poor, not only in spirit, overwhelmingly stood at the centre of the early Christian ideal of a communism of consumption, which abolished private property in order to supply the needs of the community from the collective possessions of all of its members (Acts 2:44-45).<sup>124</sup> The fundamental expression of this ideal consisted in the sharing of a common meal (e.g., Matt. 14:19, 15:36; Luke 22:19; John 6:11).<sup>125</sup> Even the resurrected life, Kautsky notes, is largely characterized by the attainment of material prosperity. For example, Jesus invites the apostles to his table in the kingdom of God to eat and drink with him (Luke 22:30); promises to drink wine with them again after the resurrection (Matt. 26:29); and even, in his third appearance to the disciples after his resurrection, breaks his fast with them after providing them with an abundant catch of fish (John 21:1-14).<sup>126</sup> Hence, in the gospels and in the teachings of the apostles there is not merely a preferential option for the poor. Their interests are foremost.

We should expect, therefore, that since as the Dominicans adopted the ideal of apostolic poverty, the sympathies of the friars should lie with the poor and the defense of their interests. However, in John of Freiburg’s treatment of the usury prohibition in the *Summa confessorum* there is very little direct evidence of such a concern, especially in contrast to the considerable evidence given above for a concern for the interests of landed and commercial wealth. In only one passage of the *Summa confessorum* on usury is there evidence of explicit advocacy for the interests of the poor and vulnerable. Discussing the pricing of goods, William of Rennes notes in Question 31 of the *Summa confessorum* that one must restore anything that has been added or subtracted from the just price, even

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123.Ibid., 277, 279.

124.Ibid., 280-84, 351.

125.Ibid., 353.

126.Ibid., 303-04.

within the bounds of the Roman concept of *laesio enormis*, especially when one has deceived a commoner (*maxime simplicem*).<sup>127</sup> Apart from this, the only other evidence of a concern for the poor is the condemnation of the usurious leasing of animals in Question 36 on usury of John's *Summa*, which, as Bartholomew of San Concordio notes, chiefly victimizes peasants.<sup>128</sup>

Indeed, another passage of the *Summa confessorum* on usury seems to run contrary to the interests of the poor and in favour of the interests of merchants. At the end Question 40 on usury, in which John discusses the ethics of commercial profits, he cites the opinion of Innocent IV, who contends that it is licit for merchants to buy victuals so that at a time of famine they may sell them at the going market price (*vendat eo precio quo tunc vendetur*). They may do this, Innocent clarifies, provided that in so doing their intention is to protect their communities from the improvidence of other merchants, who will sell off surpluses without taking thought for the future welfare of their native cities in a time of crisis.<sup>129</sup> Despite the proviso of good intention, this counsel is clearly to the disadvantage of the poor. The vastly increased market price of food and other necessary goods in a time of famine, arising due to a limited supply and brisk demand, would by and large make acquiring such goods impossible for those with slender means. The practical result of Innocent's line of thinking is that the prudence, albeit benevolent, of the farsighted merchant is handsomely rewarded and an unequal market in victuals is created, in which only the wealthy can afford to participate. The alternative of establishing an egalitarian market by regulating the prices of victuals in a time of crisis, which we know was not an uncommon practice in the Middle Ages, is never mentioned in the *Summa confessorum* on usury.<sup>130</sup> In this instance, commercial interests have clearly

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127.SC 2.7.31. On the concept of the just price and *laesio enormis* in the *Summa confessorum*, see ch. 3, pp. 120 f.

128.See n. 163 on p. 121 above.

129.SC 2.7.40.

130.For examples of price regulation from Medieval England, see W. J. Ashley, *An Introduction to English Economic History and Theory: Part I, The Middle Ages* (London: Rivingtons, 1888), 181-95. On the legal regulation of prices in the Middle Ages, see also Pounds, *Economic History*, 437-38, 476-77; Henri

trumped those of the poor. The impersonal logic of the marketplace has superseded humanitarian concerns. The merchant in John of Freiburg's *Summa* is a figure who is secure in the usefulness and dignity of his profession, and no longer anxious over the moniker of one who "can scarcely or never please God," as the *palea Eiciens* in Gratian's *Decretum* had formerly described him.<sup>131</sup>

Notwithstanding the arguments above, I do not contend that the medieval Dominicans in general were not advocates for the interests of the poor, since the social policies of the Preachers would require an entire volume to investigate. I am simply arguing that in the specific instance of usury the interests of the poor were not foremost in the minds of the friars. I speak of the medieval Dominicans in general on the topic of usury with some justice, since John of Freiburg summarized a lengthy tradition of Dominican writing on the question of economic ethics, and his views, transmitted by Bartholomew of San Concordio in his own astoundingly popular *Summa*, were a decisive influence on Dominican confessors and other churchmen throughout the fourteenth century. In the case of usury, broadly understood as any form of illicit gain in a contract, the issue for John of Freiburg and his disciples predominantly turned around the concerns of landed lords and merchants, with the interests of the poor in a subsidiary position.

This state of affairs was partially the outcome of the relative weight of the ideal of Apostolic poverty within the Order of Preachers. For St. Francis and his friars, and above all the Spiritual Franciscans of the late thirteenth and early fourteenth centuries, such as the Fraticelli in Tuscany, the ideal of poverty was a spiritual end in itself. Poverty in imitation of the Apostles was at the very core of the Franciscan religious life, and an

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Pirenne, *Histoire économique de l'occident médiéval* (Bruges: Desclée de Brouwer, 1951), 315-16; Wood, *Medieval Economic Thought*, 143-44; Raymond de Roover, *La pensée économique des scolastiques: Doctrines et méthodes*, Conférence Albert-le-Grand 1970 (Paris: J. Vrin, 1971), 71. Cf. George O'Brien, *An Essay on Mediaeval Economic Teaching* (New York: Burt Franklin, 1968), 106-09. The notion that public authorities had a right to intervene in the market and regulate prices in times of dearth was a commonplace of later scholastic economic theory. See Raymond de Roover, *San Bernardino of Siena and Sant'Antonio of Florence: Two Great Economic Thinkers of the Middle Ages* (Boston: Harvard Graduate School of Business Administration, 1967), 21; Raymond de Roover, "The Concept of the Just Price: Theory and Economic Policy," *Journal of Economic History* 18 (1958): 421, 425, 429-31.

131.D. 88 c. 11.

abhorrence of wealth is a marked feature of the life of St. Francis. There is the well-known story, reported by Jacopo de Voragine, that once when Francis was passing through Apulia he came upon a great purse lying on the road, swollen with coins. Francis' travelling companion wished to scoop up the purse and distribute the coins to the poor, but Francis forbade him, admonishing him that it was illicit to take another's goods. His companion insisted, and so Francis instructed him to pick up the purse. When he did so, rather than finding money inside of it, a great serpent leaped out at him. The moral of the miracle, Francis explained to his companion, was that "to the servants of God money is nothing else but a devil and a poisonous serpent."<sup>132</sup>

The Dominicans, however, even from their very origins took a different view of money, property, and the role of moderate wealth in supporting religious life. Unlike the Franciscans, the Dominicans were founded specifically as an order of preachers. Preaching was established as, and remained, their ultimate end, to which other considerations, including the ideal of poverty, were subservient. Nevertheless, the ideal of apostolic poverty that the friars created for themselves was by no means lax. The charter of Foulques de Toulouse of 1215, which authorized the preaching mission against the Albigensian heretics in his diocese, prescribed, at the request of Dominic and his preaching companions, a rigorous form of apostolic poverty. The charter forbade the preachers to travel on horseback, carry money, and commanded them to observe a strict life of mendicancy, which required them to beg for their daily sustenance. Although

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132. "Pecunia seruis dei nihil aliud est quam dyabolus et coluber uenenosus." Iacopo da Varazze, *Legenda aurea*, ed. Giovanni Paolo Maggioni, 2 vols. (Florence: Sismel, 1998), 2:1027-28. A variation of this phrase – "pecunia nichil aliud servis Dei est quam coluber et serpens venenosus" – was written across the top of a copy of the anonymous *Memoriale presbiterorum*, a popular manual for confessors that was composed in 1344. This is particularly interesting since the *Memoriale* is especially powerful in its lamentation over the ubiquitous practice of usury at the time its author was writing. In B. LXII, *De usurariis*, the author notes: "Hic scire debes quod usura singulis diebus, aliquando occulte, aliquando manifeste, exercetur a plerisque, tam clericis quam laicis, qui recipiendo aliquid ultra sortem in hoc non credunt se peccare nec in foro penitenciali de hoc peccato confitentur nec confessores moderni aliquid inquirunt de hoc peccato. In foro vero iudiciali iusticia contra usurarios non redditur eo quod omnes iudices moderni in exequenda iusticia circa hoc peccatum tepidi sunt et remissi, nec aliquantulum volunt punire hoc peccatum." Cambridge, Corpus Christi, MS 148, fol. 1r, 72rb. On the dating and authorship of the *Memoriale*, see W. A. Pantin, *The English Church in the Fourteenth Century* (Notre Dame: University of Notre Dame Press, 1962), 205; Michael Haren, *Sin and Society in Fourteenth-Century England: A Study of the Memoriale Presbiterorum* (Oxford: Clarendon Press, 2000), 6-38.

these prescriptions were not enshrined in the first constitutions of the Order of Preachers in 1216, their authority remained implicit for the Dominicans thereafter.<sup>133</sup> After 1216, the constitutions of the Order forbade the friars from owning property, but allowed the houses of the friars to be supported by revenues from the land. Finally, in the general chapter of 1220, held at Bologna, the friars were forbidden to hold even revenues.<sup>134</sup>

According to R. F. Bennett, who has studied the early history of the Dominican order extensively, this apostolic ideal, however lofty, arose initially as a rhetorical device to facilitate Dominic and his companions' preaching, prior to the founding of the Order, against the Albigensian heresy in Languedoc in 1205. By contrasting their own poverty with the luxuriant lifestyle of the Catholic clergy in Languedoc, the Albigensians had made a significant impression on the embittered local populace. The Albigensians consciously understood their conflict with the Church as the outcome of their desire to live a life of poverty in harmony with that prescribed by the Gospels and enacted in the lives of the Apostles. They believed that the extravagance of the Church was proof that she had forsaken this apostolic ideal and therefore lost her legitimacy as leader of the faithful.<sup>135</sup> In light of the popularity of the Albigensians' views, Diego, the bishop of Osma and St. Dominic's mentor, suggested at the Council of Montpellier in 1205 that the members of the Catholic preaching mission should use the effectiveness of the heretics' own tactics against them. What was necessary to win over the people of Languedoc to orthodoxy, Diego argued persuasively, was a group of mendicant preachers, whose own poverty would silence the criticism of the Albigensian clergy. Only the poor could preach without hypocrisy the Gospel of the poor.<sup>136</sup> It was this group of mendicant

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133. Vicaire, *Histoire de Saint Dominique*, 1:340, 2:45-46, 97.

134. Bennett, *The Early Dominicans*, 39-40, 43-44.

135. Herbert Grundmann, *Religious Movements in the Middle Ages: The Historical Links between Heresy, the Mendicant Orders, and the Women's Religious Movement in the Twelfth and Thirteenth Century, with the Historical Foundations of German Mysticism*, trans. Steven Rowan (Notre Dame: University of Notre Dame Press, 1995), 11-12.

136. Bennett, *The Early Dominicans*, 36-37; A. Lecoy de la Marche, *La chaire française au moyen âge* (Paris: Didier, 1868), 12.

preachers that later, in 1215, went on to form the first membership of the Order of Preachers.

Thus, the ideal of apostolic poverty originated among the Dominicans as a means of facilitating their preaching mission. It was not an end in itself, but “a means of serving effective preaching and heresy-fighting, in the same way as did learning.”<sup>137</sup> For this reason, the Dominicans’ rigid ideal of mendicant poverty was not uncommonly dispensed with when it hindered the preaching mission of the friars by undermining its material support. From 1205 to 1216, the friars owned possessions unproblematically. After 1216, the Dominicans continued to receive endowments, gifts, and property, such as the church of St. Nicholas in Bologna, which Reginald of Orleans acquired in March of 1219. Dominic himself purchased a large area of land around the church in 1221. Even the prescription of 1220 that the friars should receive neither property nor revenues was mitigated by the fact that Dominic desired that lay brothers be appointed to administer the property of the Order’s convents.<sup>138</sup> Effective preaching required learning, learning required education, books, freedom from work to study, and a place in which to study, and the latter needs had to be supported financially. Although Dominic personally practiced a rigorous form of mendicant poverty,<sup>139</sup> and urged the same for all his friars, institutionally the Dominicans did not altogether renounce wealth, but appreciated its necessity for their ultimate end of preaching.

In light of the Order’s commitment to apostolic poverty, it would be ludicrous to deny that the Dominicans carried with them the interests of the poor. At the same time, one would turn a blind eye to their history if one suggested that the interests of the poor

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137.Grundmann, *Religious Movements in the Middle Ages*, 238. Cf. Bennett, *The Early Dominicans*, 31-32, 37, 46, 48, 49.

138.Ibid., 35, 39-45.

139.Dominic’s commitment to an ascetic lifestyle from an early age is well-known. He demonstrated his commitment to personal poverty in solidarity with the poor even prior to the founding of the Preachers while pursuing his studies at Palencia. In the wake of a great famine that had gripped almost the whole of Spain, Dominic sold his beloved books and distributed all of his possessions among of the poor in order to satisfy their hunger. See Vicaire, *Histoire de Saint Dominique*, 1:76-77. On Dominic’s asceticism during his school days at Palencia, see *ibid.*, 1:63-79.

were foremost in Preachers' minds. For the Dominicans, wealth was not anathema, but a useful support for the preaching of the gospel to all classes within society. The wealthy could not be utterly reviled by the Dominicans, as they were among the primitive Christians, since the Order's mission depended on their ongoing financial support. Since, in the case of John of Freiburg and the Freiburg Dominicans, it was on the landed aristocracy and the commercial plutocracy that they depended chiefly for their material support, it proved impossible to ignore their interests entirely. After all, these groups stood at the centre of Freiburg's society, to which the friars had been sent to preach. Without their financial and social clout, their preaching mission would prove futile. The friars had to be in close personal contact with members of these classes, and their familiarity could not help but lead to the formation of a degree of sympathy among the Freiburg Dominicans for them. As a predominantly urban movement, which was powered to a significant extent by the commercial engine of the city economy, the Freiburg Dominicans, just as friar preachers elsewhere, were compelled to look more charitably upon the practices and values of commerce than had been necessary prior to the Commercial Revolution. As a result, the friars recognized the legitimate and beneficial services that merchants provided, such as provisioning in a time of crisis. Rather than casting them out of the temple with the moneychangers, as *Eiciens* envisioned, the friars invited them into their church, where their support was welcomed and their practices, once accepted, could be reformed in line with the prescriptions of the gospel.<sup>140</sup> Yet, the Freiburg Dominicans also retained their traditional ties to the landed aristocracy, whose patronage of the religious orders was ancient. They preached a gospel of poverty to poor and rich alike, but their preaching rested on the riches of town and country.<sup>141</sup> In his teaching on the usury prohibition, John of Freiburg had to negotiate

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140. Ibanès argues similarly that medieval theologians and lawyers did not accommodate their doctrine to economic necessity, but rather sought to regulate the new, thriving economic activity that had emerged during the Commercial Revolution. Ibanès, *La doctrine de l'Église et les réalités économiques*, 33.

141. I have not been able to find specific evidence for the friars' audience in Freiburg, but C. H. Lawrence contends that the principal audience of the friar preachers in general consisted of literate laymen and women of the urban plutocracy, who were "dissatisfied with the passive role of a spiritual proletariat assigned them by traditional ecclesiology." It was for these relatively wealthy members of urban,

between the conflicting material interests of lords, merchants, and the poor, which accounts, in part, for his lack of consistency in applying the ban. The available evidence indicates that in the end it was the struggle between merchant and landed interests that rose to the fore for him.

John of Freiburg's *Summa confessorum* is not simply a collection of theoretical notions in dialogue with one another; rather, the striving of these ideas reflects, in part, the dialectical process of class struggle and the attempt of a given class to assert its hegemony within society. Through the *Summa confessorum*, theory was translated into a material force, to use one of Marx's phrases. If the confessor applying John's teachings in the penitential forum convinced the merchant of the wickedness of certain of his activities, he might abstain from them, thereby neutralizing the threat those activities posed to the continuing economic dominance of landed wealth.<sup>142</sup> However, if members of the merchant class succeeded in convincing those on the other side of the confessional screen of their economic necessity, they might find the ideological justification necessary to rise to the top of the social hierarchy.<sup>143</sup> If we judge by a materialist reading of *Summa confessorum* on usury, John of Freiburg was not yet fully convinced, but he was also not deaf to the overtures of those new masters of the world, the merchants.

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commercial society that the friars devised a new form of urban spirituality. Lawrence, *The Friars*, 3-4. The social position of the patrons of the Freiburg Dominican church suggests that this general statement may be applicable to the audience of the Freiburg Preachers. If future research reveals this to be the case, then we would have even more reason to believe that a community of interests naturally arose between the Freiburg Preachers and their merchant churchgoers.

142. Raymond de Roover suggests that the confessional was very likely a rather effective means of controlling business activity in the Middle Ages, when religious concerns loomed much larger for businessmen than they do today. De Roover, *Two Great Economic Thinkers*, 16; De Roover, "The Concept of the Just Price," 429. John T. Noonan asserts that the primary vehicle for enforcing the usury ban was the spiritual menace produced by the usurer's guilty conscience. This menace could be effectively implanted and amplified in the confessional. John T. Noonan, *The Scholastic Analysis of Usury* (Cambridge, MA: Harvard University Press, 1957), 35-36.

143. Cf. Jacques Le Goff's argument that the invention of Purgatory was a form of ideological justification for merchant capital: "For the usurer who was ready for final contrition, Purgatory was the hope and, soon, the quasi-certainty of being saved, of being able to have both his money, here below, and his life, his eternal life beyond the grave . . . . These men were Christians, but it was not the earthly consequences of the Church's condemnation of usury that restrained them, on the threshold of capitalism; it was the agonizing fear of Hell. In a society where all conscience was a religious conscience, obstacles were first of all – or finally – religious. The hope of escaping Hell, thanks to Purgatory, permitted the usurer to propel the economy and society of the thirteenth century ahead toward capitalism." Le Goff, *Your Money or Your Life*, 92-93.

CONCLUSION: THE *SUMMA CONFESSORUM* AND POPULAR NOTIONS OF USURY IN THE

LATE MIDDLE AGES

Now that we have reached the end of this investigation into the history of the teachings on usury in John of Freiburg's *Summa confessorum*, we can confidently state that, in light of the *Summa*'s considerable popularity and the number of diverse texts through which it spread all over Europe, it must have played a significant role in shaping popular notions of the Church's usury ban in widespread areas. This is especially so given the tremendous popularity of Bartholomew of San Concordio's *Summa de casibus conscientiae*, which took up the greatest number of the *Summa confessorum*'s questions on usury.

What many ordinary (non-clerical, non-elite) medieval men and women knew about the Church's usury prohibition derived from what was preached to them in the pulpit or from the counsel they received in the penitential forum. For much of the laity, knowledge of the ecclesiastical laws on moneylending depended ultimately on the learning of their parish priests and confessors. Given the high levels of illiteracy in the Middle Ages and, even in the case of the literate, the specialized training and great material expense required to study the law of the Church directly, unmediated reflection on canon law was restricted to a small class of highly trained clerics. For the majority even of literate clerics, pastoral manuals, which simplified and popularized the jurists' highly technical discussions of canon law, were therefore absolutely essential to fulfilling their ministry, which consisted of applying this law to real, practical cases of conscience.

In the case of the Church's prohibition of usury, for many priests all over Europe it was the *Summa confessorum* that guided their understanding of the ethics of moneylending, either directly or through one of the texts that transmitted its teachings. Whatever the priest or confessor learned from the *Summa*, he would, given the opportunity, pass along to the penitent in the internal forum of the confessional – the

locus of popular contact with the law of the Church.<sup>144</sup> For a large number of men and women in the Late Middle Ages, then, the *Summa confessorum* played a significant role in shaping their awareness of the canon law on usury, which, as I have shown, was a pressing concern within medieval society, since the usury ban was a key tool in the struggle between different social classes for dominance over that society.

In the wake of these extensive researches, what can we say about what the popular conception of usury might have looked like? What did ordinary medieval people really know about the ethics of moneylending according to the law of the Church? Unfortunately, the answer to this question will prove to be somewhat disappointing due to methodological constraints. Since evidence recording the opinions of ordinary medieval men and women on any subject is hard enough to come by, much less on the specific topic of usury, we can only infer what sorts of questions might have fired their imagination.<sup>145</sup> The most, therefore, that we can say without venturing into irresponsible conjecture is that in places where John's *Summa* was reasonably popular or influential, such as France, Germany, and England, popular notions of usury were likely shaped by the specific questions that were transmitted from the *Summa confessorum*.<sup>146</sup> Without further research into local records, we have no means of knowing which of the questions transmitted to a given location were particularly pressing on local audiences. That is, localized research is necessary to determine which cases from his guidebook, the *Summa confessorum* (or one of the works that it shaped), the confessor actually had to address, and hence educate his parishioners about. The evidence has been presented for Freiburg from the late thirteenth to the early fourteenth centuries in Chapter Five, but remains to be unearthed for the other places that John's *Summa* reached. In the case of Freiburg, it was

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144.Cf. Gerhard Rösch, "Wucher in Deutschland 1200-1350: Überlegungen zur Normdidaxe und Normrezeption," *Historische Zeitschrift* 259, no. 3 (1994): 607-09.

145.Cf. *Ibid.*, 602.

146.As a guide to these questions, see Table 19 in Appendix II.

above all the handling of pledges, rent contracts, and sale-resale contracts that occupied the minds of local businessmen and lords.

Another difficulty in assessing the impact of the *Summa confessorum* on shaping popular notions of usury is that there are, of course, no records of the confessional in the Middle Ages. That John of Freiburg's *Summa* must have had some effect in transmitting the Church's usury doctrine through this channel can only be inferred from the fact that John bothered to write so extensively on the topic of usury and his disciples continued to copy large amounts of his treatment of moneylending. Why else would John go to such great pains in his treatment of usury, and his successors take over so much of his teaching, if not to address real cases in the confessional? The casuistry of the *Summa confessorum* was not merely an academic exercise; its contents were unfolded by the confessor and held before the guilty consciences of many penitents, effectively diffusing the canon law of the Church through the confessional.

Despite these limitations, my research has significantly advanced our knowledge of what popular notions of the Church's law on usury might have looked like in widespread areas of late medieval Europe. Textbooks are an excellent means for discerning what a large number of people know about a topic, and the *Summa confessorum* was the elementary textbook of canon law *par excellence*, which vast numbers of priests studied and explained to their parishioners and penitents. John of Freiburg's treatment of the usury prohibition in his popular textbook for confessors significantly moulded many medieval men and women's awareness of the ethics of moneylending.

My research has also laid a sturdy foundation for pursuing further the question of the popular awareness of the Church's law on moneylending. To draw closer to the questions about the ethics of moneylending that gripped medieval men and women, and the role that the *Summa confessorum* played in framing them, the next logical step would be to pursue the treatment of usury in sermons, art, and literature in the period after John

completed his *Summa*. Scholars engaged in sermon and literary studies in the many places where the *Summa confessorum* was popular will be well served by my edition of its questions on usury and detailed analysis of their reception history. Usury was by no means a seldom-treated topic in sermons and literature, and so my study will considerably assist scholars seeking to comprehend the sources from which preachers and poets crafted their works when they turned to the subject of usury.<sup>147</sup> A rich parallel genre of popular manuals of preaching, such as John Bromyard's *Summa praedicatorum* (1330 x 1348),<sup>148</sup> existed in the Late Middle Ages. However, preachers and authors stemming from the clergy no doubt also gleaned information for their compositions from the *Summa confessorum*, since, along with its successors, such as the *Summa de casibus conscientiae* of Bartholomew of San Concordio, it served as a comprehensive reference manual for all matters of interest to priests and confessors.<sup>149</sup> Authors of preaching manuals themselves might also have turned to the *Summa confessorum* and its derivative works to assist in the process of crafting their own works of reference. With the assistance of my research, this rich vein could also be explored to reveal more concretely the extent to which the *Summa confessorum* on usury succeeded in reaching the preacher's lips and, most importantly, the ears of churchgoers.

In short, my research has provided scholars with a well-lit place from which to continue investigations into the popular experience of usury in the Late Middle Ages. It has also greatly facilitated their means of consulting some of the most influential and

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147. On the treatment of usury in literary sources, see Jacques Le Goff, *Your Money or Your Life: Economy and Religion in the Middle Ages*, trans. Patricia Ranum (New York: Zone Books, 1990). For literary treatments of usury in Germany, see Rösch, "Wucher in Deutschland," 612-13.

148. On the history of manuals of preaching in the Middle Ages, see James J. Murphy, *Rhetoric in the Middle Ages: A History of Rhetorical Theory from Saint Augustine to the Renaissance* (Berkeley: University of California Press, 1974), 269-355. On John Bromyard's life and works, see Leonard E. Boyle, "The Date of the 'Summa Praedicatorum' of John Bromyard," *Speculum* 48, no. 3 (1973): 533-37.

149. Cf. Rösch, "Wucher in Deutschland," 621., who takes a very pessimistic view of the connection between preaching and the scholastic usury prohibition: "Betrachtet man Predigten und Beichtbücher in Zusammenhang mit der Bekämpfung des Wuchers, so ist zu konstatieren, daß die Predigt auf die scholastische Theorie kaum einging und darüber hinaus in weitem Umfang einen populären Wucherbegriff verwendete, welcher mit den kanonistischen Unterscheidungen kaum in Einklang zu bringen ist." Nevertheless, I believe that further research, particularly into Latin sermon collections, will reveal a closer connection between the two than Rösch was able to discern in this review article.

popular teachings on usury. In addition to these humble, albeit hard-won, accomplishments, I hope more broadly that, now possessing a fuller knowledge of the personality of John of Freiburg and a careful study of a portion of his *Summa confessorum* and its influence, others will be encouraged to look more deeply into his compendium in their researches into the history of canon law, theology, and above all the pastoral care of souls in the Late Middle Ages. As my own research into John's works reveals, he has a tendency to appear in the least expected places, such as in the *Regula mercatorum* of Guy de Toulouse or in John Baconthorpe's commentary on the fourth book of the *Sentences*. Perhaps in the wake of this study, scholars will come to recognize John's presence lurking behind their sources more frequently than they have hitherto. We have only begun to appreciate how deep an impression John of Freiburg, that German tottering beneath the weight of his *Summa*, has left on the intellectual history of the Church in the Late Middle Ages.

APPENDIX I. SOURCES ADDED TO RAYMOND OF PENYAFORT'S *SUMMA DE POENITENTIA* IN THE  
*SUMMA CONFESSORUM* ON USURY<sup>1</sup>

1. LEGAL SOURCES

Table 5. References to Hostiensis' <i>Summa aurea</i> in the <i>Summa confessorum</i> (SC)		
#	SC	<i>Summa aurea</i>
1	2.7.1	X 5.19 <i>de usuris</i> , n. 1 (2) <sup>2</sup>
2	2.7.4	X 5.19 <i>de usuris</i> , n. 7
3	2.7.12	X 5.19 <i>de usuris</i> , n. 1
4	2.7.16	X 5.19 <i>de usuris</i> , n. 7 (6)
5	2.7.18	X 5.19 <i>de usuris</i> , n. 7
6	2.7.20	X 5.19 <i>de usuris</i> , n. 7
7	2.7.21	X 5.19 <i>de usuris</i> , n. 7
8	2.7.22	X 5.19 <i>de usuris</i> , n. 12
9	2.7.25	X 5.19 <i>de usuris</i> , n. 7
10	2.7.26	X 5.19 <i>de usuris</i> , n. 7
11	2.7.28	X 5.19 <i>de usuris</i> , n. 7
12	2.7.31	X 5.19 <i>de usuris</i> , n. 7
13	2.7.32	X 3.14 <i>de precariis</i> , n. 1
14	2.7.37	X 5.19 <i>de usuris</i> , n. 7
15	2.7.38	X 5.19 <i>de usuris</i> , n. 7 (2)
16	2.7.39	X 5.19 <i>de usuris</i> , n. 7
17	2.7.42	X 5.19 <i>de usuris</i> , n. 7
18	2.7.43	X 5.19 <i>de usuris</i> , n. 7
19	2.7.45	X 5.19 <i>de usuris</i> , n. 7
20	2.7.46	X 5.19 <i>de usuris</i> , n. 7
21	2.7.47	X 5.19 <i>de usuris</i> , n. 10

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1. The editions of the works used to construct the following tables are noted in the introduction to the edition. See below, pp. 271 f.

2. Numbers in parentheses indicate that here John cited a passage from Hostiensis's *Summa* more than once in a given question. The same applies for the other authors studied in these tables.

22	2.7.48	X 5.19 <i>de usuris</i> , n. 10
23	2.7.50	X 5.19 <i>de usuris</i> , n. 10
24	2.7.52	X 5.19 <i>de usuris</i> , n. 10
25	2.7.53	X 5.19 <i>de usuris</i> , n. 13
26	2.7.54	X 5.19 <i>de usuris</i> , n. 10
27	2.7.55	X 5.19 <i>de usuris</i> , n. 10 X 5.19 <i>de usuris</i> , n. 12 (2)
28	2.7.57	X 5.38 <i>de poenitentiis et remissionibus</i> , n. 61
29	2.7.62	X 5.19 <i>de usuris</i> , n. 13
30	2.7.65	X 5.38 <i>de poenitentiis et remissionibus</i> , n. 61
31	2.7.67	X 5.19 <i>de usuris</i> , n. 7
32	2.7.68	X 5.19 <i>de usuris</i> , n. 11
33	2.7.69	X 5.38 <i>de poenitentiis et remissionibus</i> , n. 61
34	2.7.70	X 5.38 <i>de poenitentiis et remissionibus</i> , n. 61
35	2.7.73	X 3.21 <i>de pignoribus</i> , n. 1 X 3.21 <i>de pignoribus</i> , n. 2
36	2.7.74	X 3.21 <i>de pignoribus</i> , n. 3
37	2.7.75	X 3.21 <i>de pignoribus</i> , n. 6
38	2.7.82	X 3.21 <i>de pignoribus</i> , n. 7

Table 6. References to Hostiensis' <i>Apparatus super quinque libros decretalium</i> in the <i>Summa confessorum</i> (SC)		
#	SC	<i>Apparatus</i>
1	2.7.18	ad X 5.19.16, n. 2, v. <i>Supportanda</i>
2	2.7.31	ad X 5.19.6, n. 2, v. <i>Nomine usurarum</i>
3	2.7.40	ad X 3.50.1, v. <i>Propter necessitates</i>
4	2.7.49	ad X 5.19.14, n. 2
5	2.7.52	ad X 5.19.3, n. 3, v. <i>Reddere</i>
6	2.7.54	ad X 5.19.9, n. 2, v. <i>Cogendi</i>
7	2.7.55	ad X 5.19.9, n. 2, v. <i>Cogendi</i>

Table 7. References to Innocent IV's <i>Apparatus super quinque libros decretalium</i> in the <i>Summa confessorum</i> (SC)		
#	SC	<i>Apparatus</i>
1	2.7.16	ad X 5.19.1 (3) ad X 5.19.16
2	2.7.18	ad X 5.19.16
3	2.7.31	ad X 5.19.6, v. <i>Ex forma</i>
4	2.7.40	ad X 3.50.1, v. <i>Negocium</i> (2)
5	2.7.49	ad X 5.19.14
6	2.7.69	ad X 5.19.14, v. <i>Restituit</i>
7	2.7.76	ad X 3.22.2, v. <i>Redditibus</i>

Table 8. References to Gottofredo da Trani's <i>Summa super titulis decretalium</i> in the <i>Summa confessorum</i> (SC)		
#	SC	<i>Summa super titulis</i>
1	2.7.1	X 5.19 <i>de usuris</i> , n. 1
2	2.7.8	X 5.19 <i>de usuris</i> , n. 1
3	2.7.12	X 5.19 <i>de usuris</i> , n. 3 (2)
4	2.7.14	X 5.19 <i>de usuris</i> , n. 4 X 5.19 <i>de usuris</i> , n. 5
5	2.7.16	X 5.19 <i>de usuris</i> , n. 6 (2) X 5.19 <i>de usuris</i> , n. 12
6	2.7.22	X 5.19 <i>de usuris</i> , n. 9
7	2.7.32	X 5.19 <i>de usuris</i> , n. 12
8	2.7.38	X 5.19 <i>de usuris</i> , n. 12
9	2.7.42	X 5.19 <i>de usuris</i> , n. 12
10	2.7.46	X 5.19 <i>de usuris</i> , n. 13
11	2.7.47	X 5.19 <i>de usuris</i> , n. 7
12	2.7.49	X 5.19 <i>de usuris</i> , n. 10
13	2.7.50	X 5.19 <i>de usuris</i> , n. 10
14	2.7.53	X 5.19 <i>de usuris</i> , n. 11
15	2.7.55	X 5.19 <i>de usuris</i> , n. 9 (2)
16	2.7.62	X 5.19 <i>de usuris</i> , n. 11

17	2.7.73	X 3.21 <i>de pignoribus</i> , n. 1
18	2.7.75	X 3.21 <i>de pignoribus</i> , n. 4
19	2.7.79	X 3.21 <i>de pignoribus</i> , n. 6
20	2.7.80	X 3.21 <i>de pignoribus</i> , n. 6

Table 9. References to the *Glossa ordinaria* to Gratian's *Decretum* in the *Summa confessorum* (SC)

#	SC	<i>Glossa ordinaria</i>
1	2.7.15	ad C. 14 q. 4 c. 10, <i>rapinam</i>
2	2.7.16	ad C. 14 q. 4 c. 8, <i>Ad questum</i>
3	2.7.22	ad C. 14 q. 3 c. 1, <i>expectas</i>
4	2.7.38	ad C. 14 q. 3 c. 3, <i>Negotiatoribus</i>

Table 10. References to the *Glossa ordinaria* to the *Liber Extra* in the *Summa confessorum* (SC)

#	SC	<i>Glossa ordinaria</i>
1	2.7.4	ad X 5.19.8, <i>de feudo</i>
2	2.7.16	ad X 5.19.1, <i>beneficium</i>
3	2.7.25	ad X 5.19.8, <i>de feudo</i>
4	2.7.52	ad X 5.19.3, <i>Reddere</i>
5	2.7.54	ad X 5.19.8, <i>Cogendi</i>
6	2.7.76	ad X 3.22.2, <i>Redditibus</i>

Table 11. References to the Decrees of the Second Council of Lyons (1274) in the *Summa confessorum* (SC)<sup>3</sup>

#	SC	<i>Lyons II (1274)</i>
1	2.7.71	c. 26 = VI 5.5.1 <sup>4</sup>
2	2.7.72	c. 27 = VI 5.5.2

3. For the decrees of II Lyons cited here, see also J. Alberigo et al., eds., *Conciliorum oecumenicorum decreta*, 3rd ed. (Bologna: Istituto per le Scienze Religiose, 1973), 328-30.

4. I have here indicated the corresponding location of the decree from Lyons II in the *Liber Sextus* for the benefit of the reader; however, it should be recalled that John did not cite these decrees through the *Liber Sextus*, which appeared after he had completed the *Summa confessorum*.

3	2.7.83	c. 28 = VI 5.8.1
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## 2. THEOLOGICAL SOURCES

Table 12. References to Ulrich of Strasbourg's <i>Summa de summo bono</i> in the <i>Summa confessorum</i> (SC)		
#	SC	<i>Summa de summo bono</i>
1	2.7.1	6.3.4 <i>de illiberalitate</i> , Quartus modus, fol. 105v. <sup>5</sup> 6.3.4 <i>de illiberalitate</i> , Usura autem, fol. 105r.
2	2.7.3	6.3.4 <i>de illiberalitate</i> , Quamvis varie, fol. 107r.
3	2.7.14	6.3.4 <i>de illiberalitate</i> , Simile enim est in empicione, fol. 106v.
4	2.7.15	6.3.4 <i>de illiberalitate</i> , Quia vero omnis voluntaria donacio, fol. 105r.
5	2.7.16	6.3.4 <i>de illiberalitate</i> , Quamvis varie, fol. 106v. 6.3.4 <i>de illiberalitate</i> , Tercius modus est, fol. 105v.
6	2.7.19	6.3.4 <i>de illiberalitate</i> , Quartus modus, fol. 105v.
7	2.7.23	6.3.4 <i>de illiberalitate</i> , Unus est cum datur, fols. 105r-105v.
8	2.7.26	6.3.4 <i>de illiberalitate</i> , Quartus modus, fol. 106r.
9	2.7.28	6.3.4 <i>de illiberalitate</i> , Quartus modus, fol. 106r.
10	2.7.31	6.3.4 <i>de illiberalitate</i> , Interdum eciam emit, fol. 106v. (2) 6.3.4 <i>de illiberalitate</i> , Idem eciam credo, fols. 106v-107r.
11	2.7.40	6.3.4 <i>de illiberalitate</i> , Quartus modus est, fol. 105v. (5)
12	2.7.43	6.3.4 <i>de illiberalitate</i> , Addunt tamen predicti, fol. 106v.
13	2.7.44	6.3.4 <i>de illiberalitate</i> , Dicunt autem aliqui, fol. 106v.
14	2.7.65	6.3.4 <i>de illiberalitate</i> , Quamvis varie, fol. 107r.
15	2.7.67	6.3.4 <i>de illiberalitate</i> , Quamvis varie, fol. 107r.
16	2.7.69	6.3.6 <i>de illiberalitate</i> , Predictam vero, fol. 110r.

Table 13. References to the *Secunda secundae* of Thomas Aquinas' *Summa theologiae* in the *Summa confessorum* (SC)

5. I have cited Ulrich's *Summa* according to the incipit of each of the sections in the MS. that I investigated (Erlangen, Universitätsbibliothek, MS 530, II), followed by the folio number.

#	SC	<i>Summa theologiae, IIa-IIae</i>
1	2.7.2	q. 78 a. 2, co.
2	2.7.3	q. 78 a. 1, co. q. 78 a. 1, ad 2
3	2.7.4	q. 78 a. 1, ad 6
4	2.7.5	q. 78 a. 2, ad 3
5	2.7.6	q. 78 a. 2, ad 2
6	2.7.16	q. 78 a. 2, ad 7
7	2.7.22	q. 78 a. 2, ad 4
8	2.7.31	q. 77 a. 1, ad 1
9	2.7.38	q. 78 a. 2, ad 5
10	2.7.43	q. 78 a. 1, ad 3
11	2.7.44	q. 78 a. 4, co.
12	2.7.61	q. 78 a. 4, ad 3
13	2.7.65	q. 78 a. 3, co.
14	2.7.77	q. 78 a. 2, ad 6

Table 14. References to the <i>Glossa ordinaria</i> to the Bible in the <i>Summa confessorum</i> (SC)		
#	SC	<i>Glossa ordinaria</i>
1	2.7.1	ad Luc. 6:35, <i>nihil inde sperantes: et erit</i>

APPENDIX II. SUMMARY TABLES OF THE RECEPTION HISTORY OF THE *SUMMA CONFESSORUM* ON

USURY

Table 15. The Use of the <i>Summa confessorum</i> on Usury in Guy de Toulouse's <i>Regula mercatorum</i> <sup>1</sup>		
#	<i>Regula mercatorum, de usuris</i>	<i>SC</i>
1	1 (fol. 36vb)	2.7.3
2	2 (fols. 36vb-37ra)	2.7.2, 5, 6
3	3 (fol. 37ra)	2.7.44
4	4 (fol. 37ra)	2.7.43
5	5 (fol. 37ra-b)	2.7.11
6	6 (fol. 37rb)	2.7.16
7	7 (fols. 37rb-37va)	2.7.19
8	8 (fol. 37va)	2.7.20
9	9 (fol. 37va)	2.7.22
10	10 (fol. 37va)	2.7.23
11	11 (fol. 37va-b)	2.7.28
12	12 (fol. 37vb)	2.7.38
13	13 (fol. 37vb)	2.7.10
14	14 (fols. 37vb-38ra)	2.7.16
15	15 (fols. 38ra-38vb)	2.7.26
16	16 (fol. 38vb)	2.7.21
17	17 (fol. 38vb)	2.7.29
18	18 (fol. 38vb)	2.7.30
19	19 (fols. 38vb-39rb)	2.7.40
20	20 (fol. 39rb)	2.7.42

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1. This table has been constructed on the basis of a comparison of my edition of John's questions on usury in the *Summa confessorum*, to be found in Appendix III, with the following manuscripts of the *Regula mercatorum*: Oxford, Lincoln, MS lat. 81, fols. 34rb-40va; Paris, Bib. Nat., MS lat. 10689, fols. 27va-36ra. I have cited the *Regula* according to the Oxford manuscript, the less corrupt of the two. The *Regula* is divided into two sections, the first dealing with the ethics of sale and purchase and the second dealing with usury, which begins a new numbered series of questions. As such, I have cited the second section as *de usuris* and listed the question number in the table followed by a reference to the corresponding folios in the Oxford manuscript in parentheses.

21	21 (fol. 39rb)	2.7.25
22	22 (fols. 39rb-39va)	2.7.31
23	23 (fol. 39va)	2.7.13
24	24 (fol. 39va)	2.7.33
25	25 (fol. 39va-b)	2.7.35
26	26 (fols. 39vb-40ra)	2.7.36
27	27 (fol. 40ra)	2.7.39
28	28 (fol. 40ra)	2.7.34
29	30 (fol. 40ra-b)	2.7.61-63
30	31 (fol. 40rb)	2.7.77
31	32 (fol. 40rb)	2.7.79
32	33 (fols. 40rb-40va)	2.7.81

Table 16. The Use of the <i>Summa confessorum</i> on Usury in William of Pagula's <i>Summa summarum</i> <sup>2</sup>		
#	<i>Summa summarum</i>	SC
1	3.24.18 (fol. 118vb)	2.7.73
2	3.24.19 (fol. 118vb)	2.7.74
3	3.24.20 (fol. 118vb)	2.7.76
4	3.24.21 (fol. 118vb)	2.7.78
5	3.24.22 (fol. 118vb)	2.7.79
6	3.24.23 (fol. 118vb)	2.7.80
7	3.24.24 (fol. 118vb)	2.7.81
8	3.24.25 (fol. 118vb)	2.7.82
9	5.22.3 (fol. 188vb)	2.7.53
10	5.22.55 (fol. 189vb)	2.7.2
11	5.22.56 (fol. 189vb)	2.7.4
12	5.22.57 (fol. 189vb)	2.7.5

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2. This table has been constructed on the basis of a comparison of my edition of John's questions on usury in the *Summa confessorum*, to be found in Appendix III, with the sections *De pignoribus et aliis caucionibus* (3.24) and *De usuris* (5.22) of William of Pagula's *Summa summarum* as found in Oxford, Bodleian, MS Bodley 293, fols. 118va-b, 188vb-191ra. I have cited the *Summa summarum* through William's own division of the work into books, titles, and chapters and also provided in parentheses the reference to the folio(s) in the Oxford manuscript where each question can be found.

13	5.22.58 (fol. 189vb)	2.7.7
14	5.22.59 (fol. 189vb)	2.7.8
15	5.22.60 (fol. 189vb)	2.7.10
16	5.22.61 (fol. 189vb)	2.7.11
17	5.22.62 (fols. 189vb-190ra)	2.7.19
18	5.22.63 (fol. 190ra)	2.7.20
19	5.22.64 (fol. 190ra)	2.7.21
20	5.22.65 (fol. 190ra)	2.7.22
21	5.22.66 (fol. 190ra)	2.7.23
22	5.22.67 (fol. 190ra-b)	2.7.25
23	5.22.68 (fol. 190rb)	2.7.26
24	5.22.69 (fol. 190rb)	2.7.27
25	5.22.70 (fol. 190rb)	2.7.28
26	5.22.71 (fol. 190rb)	2.7.29
27	5.22.72 (fol. 190rb)	2.7.33
28	5.22.73 (fol. 190rb)	2.7.34
29	5.22.74 (fols. 190rb-190va)	2.7.39
30	5.22.75 (fol. 190va)	2.7.40
31	5.22.76 (fol. 190va)	2.7.41
32	5.22.77 (fol. 190va)	2.7.42
33	5.22.78 (fol. 190va)	2.7.45
34	5.22.79 (fol. 190va)	2.7.47
35	5.22.80 (fol. 190va-b)	2.7.52
36	5.22.81 (fol. 190vb)	2.7.55
37	5.22.82 (fol. 190vb)	2.7.57
38	5.22.83 (fol. 190vb)	2.7.60
39	5.22.84 (fol. 190vb)	2.7.61
40	5.22.85 (fol. 190vb)	2.7.62
41	5.22.86 (fol. 190vb)	2.7.65
42	5.22.87 (fol. 190vb)	2.7.66-67
43	5.22.88 (fol. 190vb)	2.7.69
44	5.22.89 (fols. 190vb-191ra)	2.7.77

Table 17. The Use of the <i>Summa confessorum</i> and the <i>Summa summarum</i> on Usury in the <i>Regimen animarum</i> <sup>3</sup>			
#	<i>Regimen animarum</i>	<i>Summa summarum</i>	SC
1	1.13.1 (fol. 39ra)	5.22.12 (fol. 189ra)	
2	1.13.2 (fol. 39rb)	5.22.7 (fol. 189ra)	
3	1.13.3 (fol. 39rb)	5.22.28 (fol. 189rb)	
4	1.13.4 (fol. 39rb)	5.22.29 (fol. 189rb)	
5	1.13.5 (fol. 39rb)	5.22.31 (fol. 189rb)	
6	1.13.6 (fols. 39rb-39va)	5.22.32 (fol. 189rb)	
7	1.13.7 (fol. 39va)	5.22.57 (fol. 189vb)	2.7.5
8	1.13.8 (fol. 39va)	5.22.58 (fol. 189vb)	2.7.7
9	1.13.9 (fol. 39va)	5.22.60 (fol. 189vb)	2.7.10
10	1.13.10 (fol. 39va)	5.22.61 (fol. 189vb)	2.7.11
11	1.13.11 (fol. 39va-b)	5.22.63 (fol. 190ra)	2.7.20
12	1.13.12 (fol. 39vb)	5.22.64 (fol. 190ra)	2.7.21
13	1.13.13 (fol. 39vb)	5.22.65 (fol. 190ra)	2.7.22
14	1.13.14 (fols. 39vb-40ra)	5.22.70 (fol. 190rb)	2.7.28
15	1.13.15 (fol. 40ra)	5.22.72 (fol. 190rb)	2.7.33
16	1.13.16 (fol. 40ra)	5.22.73 (fol. 190rb)	2.7.34
17	1.13.17 (fol. 40ra)	5.22.82 (fol. 190vb)	2.7.57
18	1.13.18 (fol. 40ra-b)	5.22.89 (fols. 190vb-191ra)	2.7.77
19	1.13.19 (fol. 40rb)	5.22.36 (fols. 189rb-189va)	
20	1.13.20 (fol. 40rb)	5.22.2 (fol. 188vb)	
21	1.13.21 (fols. 40rb-40va)	5.22.30 (fol. 189rb)	
22	1.13.22 (fol. 40va)	5.22.37 (fol. 189va)	
23	1.13.23 (fol. 40va)	5.22.38 (fol. 189va)	
24	1.13.24 (fol. 40va-b)	5.22.3 (fol. 188vb)	2.7.53
25	1.13.25 (fol. 40vb)	5.22.14 (fol. 189ra)	

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3. This table has been constructed using Table 2 together with a comparison of William of Pagula's *Summa summarum* on usury as found in Oxford, Bodleian, MS Bodley 293, fols. 118va-b, 188vb-191ra with the section *De usuris* (1.13) of the *Regimen animarum* as found in Brigham Young University, Harold B. Lee Library, MS 091 R263 1343, fols. 39ra-43vb. I have cited the *Regimen animarum* through the author's own division of the work into books, titles, and chapters and also provided in parentheses the reference to the folio(s) in the BYU manuscript where each question can be found.

26	1.13.26 (fol. 40vb)	5.22.15 (fol. 189ra)	
27	1.13.27 (fol. 40vb)	5.22.16 (fol. 189ra)	
28	1.13.28 (fols. 40vb-41ra)	5.22.42 (fol. 189va)	
29	1.13.29 (fol. 41ra)	5.22.43 (fol. 189va)	
30	1.13.30 (fol. 41ra)	5.22.44 (fol. 189va)	
31	1.13.31 (fol. 41ra)	5.22.45 (fol. 189va)	
32	1.13.32 (fol. 41ra)	5.22.46 (fol. 189va)	
33	1.13.33 (fol. 41ra-b)	5.22.79 (fol. 190va)	2.7.47
34	1.13.34 (fol. 41rb)	5.22.81 (fol. 190vb)	2.7.55
35	1.13.35 (fols. 41rb-41va)	5.22.83 (fol. 190vb)	2.7.60
36	1.13.36 (fol. 41va)	5.22.84 (fol. 190vb)	2.7.61
37	1.13.37 (fol. 41va)	5.22.85 (fol. 190vb)	2.7.62
38	1.13.38 (fol. 41va-b)	5.22.86 (fol. 190vb)	2.7.65
39	1.13.39 (fol. 41vb)	5.22.50 (fol. 189va)	
40	1.13.40 (fol. 41vb)	5.22.52 (fol. 189va-b)	
41	1.13.41 (fol. 41vb)	5.22.80 (fol. 190va-b)	2.7.52
42	1.13.42 (fol. 41vb)	5.22.4 (fol. 188vb)	
43	1.13.44 (fol. 42ra)	5.22.33 (fol. 189rb)	
44	1.13.45 (fol. 42ra)	5.22.34 (fol. 189rb)	
45	1.13.46 (fol. 42ra)	5.22.35 (fol. 189rb)	
46	1.13.47 (fol. 42ra)	5.22.39 (fol. 189va)	
47	1.13.48 (fol. 42ra-b)	5.22.1 (fol. 188vb)	
48	1.13.49 (fol. 42rb)	5.22.5 (fol. 188vb)	
49	1.13.50 (fol. 42rb)	5.22.6 (fols. 188vb-189ra)	
50	1.13.51 (fol. 42rb)	5.22.10 (fol. 189ra)	
51	1.13.52 (fol. 42rb)	5.22.11 (fol. 189ra)	
52	1.13.53 (fols. 42rb-42va)	5.22.13 (fol. 189ra)	
53	1.13.54 (fol. 42va)	5.22.17 (fol. 189ra)	
54	1.13.55 (fol. 42va)	5.22.18 (fol. 189ra-b)	
55	1.13.56 (fol. 42va)	5.22.20 (fol. 189rb)	
56	1.13.57 (fol. 42va)	5.22.21 (fol. 189rb)	
57	1.13.58 (fol. 42va)	5.22.22 (fol. 189rb)	
58	1.13.59 (fol. 42va)	5.22.49 (fol. 189va)	

59	1.13.60 (fol. 42va)	5.22.53 (fol. 189vb)	
60	1.13.61 (fol. 42va-b)	5.22.54 (fol. 189vb)	
61	1.13.62 (fol. 42vb)	5.22.55 (fol. 189vb)	2.7.2
62	1.13.63 (fol. 42vb)	5.22.56 (fol. 189vb)	2.7.4
63	1.13.64 (fols. 42vb-43ra)	5.22.62 (fols. 189vb-190ra)	2.7.19
64	1.13.65 (fol. 43ra-b)	5.22.66 (fol. 190ra)	2.7.23
65	1.13.66 (fol. 43rb)	5.22.67 (fol. 190ra-b)	2.7.25
66	1.13.67 (fol. 43rb)	5.22.68 (fol. 190rb)	2.7.26
67	1.13.68 (fols. 43rb-43va)	5.22.69 (fol. 190rb)	2.7.27
68	1.13.69 (fol. 43va)	5.22.71 (fol. 190rb)	2.7.29
69	1.13.70 (fol. 43va)	5.22.74 (fols. 190rb-190va)	2.7.39
70	1.13.71 (fol. 43va-b)	5.22.75 (fol. 190va)	2.7.40
71	1.13.72 (fol. 43vb)	5.22.76 (fol. 190va)	2.7.41
72	1.13.73 (fol. 43vb)	5.22.77 (fol. 190va)	2.7.42
73	1.13.74 (fol. 43vb)	5.22.78 (fol. 190va)	2.7.45
74	1.13.75 (fol. 43vb)	5.22.90 (fol. 191ra)	

Table 18. The Use of the <i>Summa confessorum</i> on Usury in Bartholomew of San Concordio's <i>Summa de casibus conscientiae</i> <sup>4</sup>		
#	<i>Summa de casibus conscientiae</i>	SC
1	Pignus 1.1	2.7.73
2	Pignus 1.2	2.7.74
3	Pignus 1.3	2.7.75
4	Pignus 1.4	2.7.75
5	Pignus 1.5	2.7.75
6	Pignus 1.6	2.7.76
7	Pignus 1.7	2.7.77
8	Pignus 1.8	2.7.79
9	Pignus 1.9	2.7.80
10	Pignus 1.10	2.7.78
11	Pignus 1.11	2.7.78
12	Pignus 1.12	2.7.81
13	Pignus 1.13	2.7.82
14	Pignus 1.14	2.7.82
15	Represalie 1.1	2.7.83
16	Usura 1.1	2.7.1
17	Usura 1.2	2.7.1
18	Usura 1.3	2.7.2
19	Usura 1.4	2.7.5
20	Usura 1.5	2.7.3
21	Usura 1.6	2.7.4
22	Usura 1.7	2.7.6

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4. This table has been constructed on the basis of a comparison of my edition of John's questions on usury in the *Summa confessorum*, to be found in Appendix III, with Bartholomew of San Concordio, *Summa de casibus conscientiae* (Augsburg, 1475). Bartholomew's *Summa* is arranged alphabetically by subject matter and each heading is subdivided into chapters. Some headings are first divided into subtopics and then into chapters. Hence, "Pignus 1.1" refers to the first chapter of the first, and in this case only heading on pledges and "Usura 3.1" refers to the first chapter of the third subtopic on usury. Since this division was Bartholomew's own creation and is consistent across the printed and manuscript editions of the *Summa*, I have not indicated the individual folio numbers of the questions in the table. The section on pledges (*Pignus*) may be found on fols. 139rb-140ra; on reprisals (*Represalie*), fol. 147vb; and on usury (*Usura*), fols. 185ra-190ra.

23	Usura 1.8	2.7.22
24	Usura 1.9	2.7.10
25	Usura 1.10	2.7.11
26	Usura 1.11	2.7.13
27	Usura 1.12	2.7.14
28	Usura 1.13	2.7.15
29	Usura 1.14	2.7.15
30	Usura 1.15	2.7.16
31	Usura 1.16	2.7.16
32	Usura 1.17	2.7.16
33	Usura 1.18	2.7.17
34	Usura 1.19	2.7.18
35	Usura 1.20	2.7.16
36	Usura 1.21	2.7.19
37	Usura 1.22	2.7.20
38	Usura 1.23	2.7.23
39	Usura 1.24	2.7.24
40	Usura 1.25	2.7.28
41	Usura 1.26	2.7.28, 30
42	Usura 1.27	2.7.42
43	Usura 1.28	2.7.43
44	Usura 1.29	2.7.44
45	Usura 1.32	2.7.56
46	Usura 1.33	2.7.56
47	Usura 1.34	2.7.56
48	Usura 1.35	2.7.57
49	Usura 1.36	2.7.66-67
50	Usura 2.1	2.7.35
51	Usura 2.2	2.7.36
52	Usura 2.3	2.7.36
53	Usura 2.4	2.7.36
54	Usura 2.5	2.7.36
55	Usura 2.6	2.7.39

56	Usura 3.1	2.7.16
57	Usura 3.3	2.7.21
58	Usura 3.4	2.7.25
59	Usura 3.5	2.7.26
60	Usura 3.6	2.7.29, 31
61	Usura 3.7	2.7.33
62	Usura 3.8	2.7.34
63	Usura 3.9	2.7.40
64	Usura 4.1	2.7.48
65	Usura 4.2	2.7.47
66	Usura 4.3	2.7.52
67	Usura 4.4	2.7.71
68	Usura 4.5	2.7.72
69	Usura 5.1	2.7.59
70	Usura 5.2	2.7.61
71	Usura 5.3	2.7.62
72	Usura 5.4	2.7.63
73	Usura 5.5	2.7.64
74	Usura 5.6	2.7.64
75	Usura 5.7	2.7.45
76	Usura 5.8	2.7.46
77	Usura 5.9	2.7.70
78	Usura 6.1	2.7.8
79	Usura 6.3	2.7.1-2
80	Usura 6.4	2.7.47
81	Usura 6.5	2.7.49-50
82	Usura 6.6	2.7.51
83	Usura 6.7	2.7.53
84	Usura 6.8	2.7.54
85	Usura 6.9	2.7.55
86	Usura 6.10	2.7.58
87	Usura 6.11	2.7.65
88	Usura 6.12	2.7.65

89	Usura 6.13	2.7.68
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Table 19. Summary of the Reception History of the Questions on Usury in the <i>Summa confessorum</i>				
<i>Summa confessorum</i>	<i>Regula mercatorum (de usuris)</i>	<i>Summa summarum</i>	<i>Regimen animarum</i>	<i>Summa de casibus conscientiae</i>
2.7.1				Usura 1.1, 1.2, 6.3
2.7.2	2	5.22.55	1.13.62	Usura 1.3, 6.3
2.7.3	1			Usura 1.5
2.7.4		5.22.56	1.13.63	Usura 1.6
2.7.5	2	5.22.57	1.13.7	Usura 1.4
2.7.6	2			Usura 1.7
2.7.7		5.22.58	1.13.8	
2.7.8		5.22.59		Usura 6.1
2.7.9				
2.7.10	13	5.22.60	1.13.9	Usura 1.9
2.7.11	5	5.22.61	1.13.10	Usura 1.10
2.7.12				
2.7.13	23			Usura 1.11
2.7.14				Usura 1.12
2.7.15				Usura 1.13, 1.14
2.7.16	6, 14			Usura 1.15, 1.16, 1.17, 1.20, 3.1
2.7.17				Usura 1.18
2.7.18				Usura 1.19
2.7.19	7	5.22.62	1.13.64	Usura 1.21
2.7.20	8	5.22.63	1.13.11	Usura 1.22
2.7.21	16	5.22.64	1.13.12	Usura 3.3
2.7.22	9	5.22.65	1.13.13	Usura 1.8
2.7.23	10	5.22.66	1.13.65	Usura 1.23
2.7.24				Usura 1.24
2.7.25	21	5.22.67	1.13.66	Usura 3.4
2.7.26	15	5.22.68	1.13.67	Usura 3.5
2.7.27		5.22.69	1.13.68	
2.7.28	11	5.22.70	1.13.14	Usura 1.25, 1.26
2.7.29	17	5.22.71	1.13.69	Usura 3.6

2.7.30	18			Usura 1.26
2.7.31	22			Usura 3.6
2.7.32				
2.7.33	24	5.22.72	1.13.15	Usura 3.7
2.7.34	28	5.22.73	1.13.16	Usura 3.8
2.7.35	25			Usura 2.1
2.7.36	26			Usura 2.2, 2.3, 2.4, 2.5
2.7.37				
2.7.38	12			
2.7.39	27	5.22.74	1.13.70	Usura 2.6
2.7.40	19	5.22.75	1.13.71	Usura 3.9
2.7.41		5.22.76	1.13.72	
2.7.42	20	5.22.77	1.13.73	Usura 1.27
2.7.43	4			Usura 1.28
2.7.44	3			Usura 1.29
2.7.45		5.22.78	1.13.74	Usura 5.7
2.7.46				Usura 5.8
2.7.47		5.22.79	1.13.33	Usura 4.2, 6.4
2.7.48				Usura 4.1
2.7.49				Usura 6.5
2.7.50				Usura 6.5
2.7.51				Usura 6.6
2.7.52		5.22.80	1.13.41	Usura 4.3
2.7.53		5.22.3	1.13.24	Usura 6.7
2.7.54				Usura 6.8
2.7.55		5.22.81	1.13.34	Usura 6.9
2.7.56				Usura 1.32, 33, 34
2.7.57		5.22.82	1.13.17	Usura 1.35
2.7.58				Usura 6.10
2.7.59				Usura 5.1
2.7.60		5.22.83	1.13.35	
2.7.61	30	5.22.84	1.13.36	Usura 5.2
2.7.62	30	5.22.85	1.13.37	Usura 5.3
2.7.63	30			Usura 5.4
2.7.64				Usura 5.5, 5.6
2.7.65		5.22.86	1.13.38	Usura 6.11, 6.12

2.7.66		5.22.87		Usura 1.36
2.7.67		5.22.87		Usura 1.36
2.7.68				Usura 6.13
2.7.69		5.22.88		
2.7.70				Usura 5.9
2.7.71				Usura 4.4
2.7.72				Usura 4.5
2.7.73		3.24.18		Pignus 1.1
2.7.74		3.24.19		Pignus 1.2
2.7.75				Pignus 1.3, 1.4, 1.5
2.7.76		3.24.20		Pignus 1.6
2.7.77	31	5.22.89	1.13.18	Pignus 1.7
2.7.78		3.24.21		Pignus 1.10, 1.11
2.7.79	32	3.24.22		Pignus 1.8
2.7.80		3.24.23		Pignus 1.9
2.7.81	33	3.24.24		Pignus 1.12
2.7.82		3.24.25		Pignus 1.13, 1.14
2.7.83				Represalie 1.1
Totals	35	45	33	73

INTRODUCTION TO THE EDITION

My edition of the 83 Questions on usury in John of Freiburg's *Summa confessorum* takes the Lyons 1518 edition of John's *Summa* as its base text (indicated by the siglum *L*),<sup>1</sup> which I have emended with the following manuscripts:

Table 20. Manuscripts of the <i>Summa confessorum</i> Used in the Edition	
Siglum	Manuscript
<i>C</i>	<p>Cambridge, Corpus Christi College, MS 85.</p> <ol style="list-style-type: none"> <li>1. parchment, 390 x 275 mm, in two columns.<sup>2</sup></li> <li>2. 135 folios, German (?) gothic book hand of the 14th cent.</li> <li>3. Contains only the <i>Summa confessorum</i>, with the section <i>de usuris</i> on fols. 49ra-53rb.</li> <li>4. Digital facsimile (colour): <a href="http://parkerweb.stanford.edu/parker/actions/zoom_view.do?ms_no=85&amp;page=fob">http://parkerweb.stanford.edu/parker/actions/zoom_view.do?ms_no=85&amp;page=fob</a></li> </ol>
<i>Ta</i>	<p>Troyes, Bibliothèque municipale, MS 156.</p> <ol style="list-style-type: none"> <li>1. parchment, 340 x 230 mm, in two columns.</li> <li>2. 336 folios, gothic book hand of the 14th cent.</li> <li>3. olim Clairvaux R 78.</li> <li>4. Contains only the <i>Summa confessorum</i>, with the section <i>de usuris</i> on fols. 106va-115rb.</li> <li>5. Digital facsimile (grayscale):<sup>3</sup> <a href="http://patrimoine.agglo-troyes.fr/simclient/integration/EXPLOITATION/dossiersDoc/voirDossManuscrit.asp?INSTANCE=EXPLOITATION&amp;DOSS=BKDD_MS_0156_00">http://patrimoine.agglo-troyes.fr/simclient/integration/EXPLOITATION/dossiersDoc/voirDossManuscrit.asp?INSTANCE=EXPLOITATION&amp;DOSS=BKDD_MS_0156_00</a></li> </ol>

1. John of Freiburg, *Summa confessorum reverendi patris Joannis de Friburgo sacre theologie lectoris Ordinis Predicatorum non modo utilis sed et Christi omnium pastoribus perquam necessaria, summo studio ex Raymundo, Guilhelmo, Innocentio, Hostiensi, Goffredo, aliisque viris perdoctis qui in vinea Domini laborarunt convexa, antea prelum non passa, luculento atque evoluto adhibito repertorio, ab innumeris insuper mendis per egregium iuris utriusque licentiatum dominum Henricum Vortomam de Norimberga emaculata, marginarisque doctorum notis insignita. Adhibitus est preterea epilogus totius ferme iuris canonici puncta complectens* (Lyons: Jacobus Saccon, 1518), fol. 84ra-90vb.

2. For the description of this manuscript, see Montague Rhodes James, *A Descriptive Catalogue of the Manuscripts in the Library of Corpus Christi College, Cambridge* (Cambridge: Cambridge University Press, 1912), 171. See also the brief notice in Thomas Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 4 vols. (Rome, 1970), 2:430.

3. The description of the manuscript has been drawn from its catalogue listing at this address. Accessed 11 September 2012. See also the brief notice in *Ibid.*, 2:432.

<i>Tb</i>	<p>Troyes, Bibliothèque municipale, MS 1492.</p> <ol style="list-style-type: none"> <li>1. parchment, 220 x 150 mm, in two columns.</li> <li>2. 465 folios, gothic book hand of the 14th cent.</li> <li>3. olim Clairvaux R 77.</li> <li>4. Contains only the <i>Summa confessorum</i>, with the section <i>de usuris</i> on fols. 167ra-181rb.</li> <li>5. Digital facsimile (grayscale):<sup>4</sup> <a href="http://patrimoine.agglo-troyes.fr/simclient/integration/EXPLOITATION/dossiersDoc/voirDossManuscrit.asp?INSTANCE=EXPLOITATION&amp;DOSS=BKDD_MS_1492_00">http://patrimoine.agglo-troyes.fr/simclient/integration/EXPLOITATION/dossiersDoc/voirDossManuscrit.asp?INSTANCE=EXPLOITATION&amp;DOSS=BKDD_MS_1492_00</a></li> </ol>
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Given that there are 169 extant manuscripts of the *Summa confessorum*,<sup>5</sup> a critical edition of the title *de usuris*, which would embrace all significant textual witnesses, was not feasible within the time constraints of my research project. To date, no one has studied the manuscript tradition of the *Summa confessorum*, and so there are no aids available to the editor in the task of sifting through the manuscripts to identify the different stages of the text's transmission. For this reason it has proven impossible to draw a stemma describing the relationships between the manuscripts used in the edition.

Since a critical edition was not possible, I have sought to improve the text of the Lyons 1518 edition of the *Summa confessorum* as much as possible by emending it with *C*, *Ta*, and *Tb*. I have selected the Lyons edition as the base text for the edition because, according to the editors of Brother Berthold's German translation of the *Summa confessorum*, it is the most complete and reliable of the printed editions.<sup>6</sup> My own comparison of the Lyons edition with the edition published at Paris in 1519 confirms their judgement.<sup>7</sup> The Lyons edition is also the version of the *Summa* most frequently

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4. The description of the manuscript has been drawn from its catalogue listing at this address. Accessed 11 September 2012. See also the brief notice in *Ibid.*, 2:432.

5. See Table 2 in ch. 4, pp. 127 f.

6. Georg Steer et al., eds., *Die "Rechtssumme" Bruder Bertholds: Eine deutsche abecedarische Bearbeitung der "Summa Confessorum" des Johannes von Freiburg. Synoptische Edition der Fassungen B, A und C*, 4 vols., Text und Textgeschichte 11-14 (Tübingen: Max Niemeyer Verlag, 1987), 1:1, n. 2.

7. John of Freiburg, *Summa confessorum reverendi patris Joannis de Friburgo Ordinis Predicatorum non modo utilis sed et Christi omnium pastoribus perquam necessaria, iam primum Parisiano prelo excussa impensis honesti viri Joannis Petit, librarii iurati Parisiensis academie. Adhibitus est preterea epilogus totius ferme iuris canonici puncta complectens* (Paris: Jehan Petit, 1519).

consulted by scholars,<sup>8</sup> and so its emendation would serve as a useful corrective. The manuscripts *C*, *Ta*, and *Tb* were chosen on the basis of their accessibility to the editor; however, each contains variants that significantly improve the accuracy of the Lyons 1518 edition. In short, my goal has been to produce a much improved working edition of the title *de usuris* in John of Freiburg's *Summa confessorum*, which, I hope, will serve as the basis for a fully critical edition of the text in the future.

A new edition of the *Summa confessorum* on usury is desirable for several reasons. The Lyons 1518 edition of the text is by no means critical nor is it exceedingly accurate. It is, in fact, grievously faulty in several instances (see, for example, the large omission in *L* of ll. 505-06 and ll. 1066-67), and thus needs to be emended. As the product of another era, before the rigorous standards and tools of scholarly editing had been developed, the Lyons 1518 edition also lacks an *apparatus fontium* and remains highly abbreviated. I have supplied both these wants in my edition by providing a comprehensive and exhaustive *apparatus fontium* listing every source that John of Freiburg drew upon in his discussion of usury in the *Summa confessorum* and by expanding the abbreviations in the text. The result of my editorial work is a text that is far more accurate and much more accessible to specialists and non-specialists alike.

The edition embraces in the *apparatus criticus* only those variants that substantially modify the text of the Lyons 1518 edition. Without a survey of all the manuscripts of the *Summa confessorum*, no definitive orthography or word order can be determined, since these are often products of the preferences or eccentricities of individual scribes. Thus, I have not included orthographical variations from *L*, such as the use of *-ci-* for *-ti-* (e.g., *exaccione*), *-mpn-* for *-mn-* (e.g., *dampnum*), *-ch-* for *-h-* (e.g., *nichilominus*), or alternative spellings, such as *Gaufredus* for *Goffredus*, *Uolricus* for *Ulricus*, *peccunia* for *pecunia*, *hiis* for *his*, etc. I have also omitted transpositions of

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8. Cf. Odd Langholm, *Economics in the Medieval Schools: Wealth, Exchange, Value, Money and Usury according to the Paris Theological Tradition, 1200-1350* (Leiden: E.J. Brill, 1992), 116, n. 142.

words except in very few cases where the sense of the text was improved by substituting the reading from one of the manuscript witnesses.

In the edition, I have largely preserved the orthography of the Lyons 1518 edition. I have modified it only by changing *u* when it serves as a consonant to *v* (e.g., *servientibus*, l. 1092, and not *seruientibus*) and *v* when it serves as a vowel to *u* (e.g., *usurarum*, l. 869, and not *vsurarum*). I have transcribed cardinal and ordinal numbers as they appear in the Lyons edition. To maintain a consistent orthography in the edited text, I have made minor changes to the spelling of manuscript variants that emend *L* when necessary, substituting, for example, *-ti-* for *-ci-* (e.g., *etiam*, l. 914). All of the abbreviations in the witnesses have been expanded silently in the edited text according to the orthography of the Lyons 1518 edition, with the exception of the oft-repeated *ver.* (for *versu*), *arg.* (for *argumentum*), *tit.* (for *titulo*), *c.* (for *capitulo*), *lib.* (for *libro*), and so forth. The abbreviations for the titles of the collections of canon and Roman law (e.g., “Extra.”, “Auth.”, “C.”, “ff.”, etc.) have also been left unexpanded in order to preserve their character as legal citations. The reader should refer to the list of abbreviations at the beginning of the dissertation for the sense of the abbreviations used in the edition.

The edited text has been capitalized and punctuated according to the conventions of Modern English usage. I have enclosed all of the more or less verbatim citations that John of Freiburg made from his sources in quotation marks. However, John’s looser paraphrases of his authorities are only marked out in the edited text by a note referring the reader to their source in the *apparatus fontium*.

The division of the text into numbered *questiones* reflects the common practice of all the manuscript and published witnesses consulted. In dividing the text into paragraphs, I have for the most part followed the Lyons edition of the *Summa confessorum*. However, in the case of certain rather lengthy *questiones*, such as Question 16, I have further divided the text into paragraphs where *C*, *Ta*, or *Tb* indicated an additional division. These alterations to the text should be considered editorial

interventions introduced for the sake of legibility rather than as critical decisions about the original form of the text. I have italicized the titles of the theological and legal works that John refers to in the edited text, as well as the title of each question. Additions to the text are enclosed in angled brackets (<>).

The *apparatus fontium* will be found immediately below the edited text. Most works in the *apparatus fontium* have been cited according to the standard internal divisions devised by the authors themselves or the editors of their works. However, in the case of Ulrich of Strasbourg's *Summa de summo bono*, it was not possible to cite precisely by paragraph number, since there is no standard edition of the treatise and hence no standard division of it. For this reason, to help the reader locate more rapidly the references to Ulrich's *Summa* in the *Summa confessorum*, I have provided the *incipit* of each of the paragraphs to which John refers before listing the folio number for the reference from the manuscript that I consulted.

Below the *apparatus fontium* the reader will find the *apparatus criticus*. In the *apparatus criticus* I have listed the lemma, followed by the witnesses that attest to it, and, after the bracket, the variants and the witnesses that attest to them. The line numbers of the edited text are listed in the left margin, while in the right margin the reader will find, next to the line in which they are mentioned, the canon law, Roman law, and biblical citations that occur in the edited text.

In preparing the *apparatus fontium* and the notes in the right margin of the text, the following editions have been consulted:

*Canon Law and the Ordinary Glosses:*

*Corpus juris canonici emendatum et notis illustratum.* 3 pts. in 4 vols. Rome, 1582.

Friedberg, Emil, ed. *Corpus iuris canonici.* Vols. 1 & 2. Graz: Akademische Druck U. Verlagsanstalt, 1959.

*Roman Law:*

Krueger, P. and T. Mommsen, eds. *Corpus iuris civilis*. 3 vols. Berlin: Weidmann, 1889.

*The Decretalists:*

Gottofredo da Trani. *Summa super titulis decretalium*. Lyons, 1519. Repr. Darmstadt, 1968.

Hostiensis (Henricus de Segusio). *Lectura sive apparatus super quinque libris decretalium*. Strasbourg, 1512.

Hostiensis (Henricus de Segusio). *Summa aurea*. Venice, 1574.

Innocent IV (Sinibaldus Fliscus). *Apparatus super quinque libros decretalium*. Venice, 1491.

*Pastoral and Theological Works:*

Fevardentius, F., J. Dadraeus, and J. Cuilly, eds. *Bibliorum sacrorum cum glossa ordinaria iam ante quidem a Strabo Fulgensi collecta, nunc autem novis, cum Graecorum, tum Latinorum patrum expositionibus locupletata*. 6 vols. Venice, 1603.

*Sancti Thomae Aquinatis Doctoris Angelici opera omnia iussu impensaue Leonis XIII P. M. Vol. 9, Secunda secundae Summae Theologiae a quaestione LVII ad quaestionem CXXII*. Rome: Typographia Polyglotta, 1897.

*Summa sancti Raymundi de Peniafort Barcinonensis, ordinis praedicatorum, de poenitentia, et matrimonio cum glossis Ioannis de Friburgo*. Rome: Giovanni Tallini, 1603.<sup>9</sup>

Ulrich of Strasbourg. *Summa de summo bono*. (Erlangen, Universitätsbibliothek, MS 530, II)

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9. The attribution of the gloss to John of Freiburg is an error on the part of the publisher. The gloss was composed by William of Rennes. See n. 3 on p. 55 above.

DE USURIS. TITULUS VII.

Dictum est supra de rapinis et furtis, sed quia parum aut nihil interest quantum ad restitutionis legem inter furtum, rapinam, et usuram, ut XIII, q. III, Si quis usuram, ideo de ea consequenter est agendum. Ubi primo quero.

C. 14 q. 4 c. 10

- 5      *Questio I.* Quid sit usura et utrum sola spes lucri faciat usurarium. Respon-  
deo secundum Raymundum, eodem tit., circa principium: “Usura est ex mutuo  
lucrum pacto debitum vel exactum. Non enim puto usuram committi si gra-  
tis oblatum gratis accipitur, arg. XIII, q. III, Usura; dist. XVIII, De eulogiis.  
‘Nulla enim oblatio suscipienti culpe maculam ingerit que non ex ambigentis  
10 petitione processit,’ I, q. II,”<sup>1</sup> sicut concordat Ulricus, lib. VI, tract. III, c. III.  
Et addit quod hec liberalis donatio est “cum non datur a debitore nec recipitur  
a creditore intuitu mutui, et ex neutra parte est corrupta intentio. Et hoc pre-  
cipue constat quando, soluto mutuo, aliquid datur.”<sup>2</sup> Unde et Goffredus, lib. V,  
tit. XIX, de usuris, sic dicit, “Usura est quicquid sorti accedit intentione prece-  
15 dente vel pacto. Sola enim spe vel expectatione vitium contrahitur usurarum, ut  
Extra. eodem tit., c. I et c. Consuluit; XIII, q. III, Si feneraveris. Quod intelligo  
verum esse cum causa mutuandi principaliter ponitur in spe vel in expectatione  
lucri vel emolumenti. Alias, si non principaliter super hoc moveatur mutuator ad  
mutuandum, sed ob charitatem et dilectionem, secundario autem sperat de ali-  
20 qua retributione, non puto hoc vitiosum, arg. ad hoc LXXVII dist., In singulis;  
LIX dist., Si officia secularia; LXI dist., Quid proderit. Cum enim quis mutuum  
dat liberaliter, scit, vel scire debet, debitorem sibi naturaliter obligari ad anthi-  
dotam. Extra. de testamentis, Cum in officiis; ff. de petitione hereditatis, Sed  
etiam si lege, §. Consuluit.”<sup>3</sup>

C. 14 q. 3 c. 4  
D. 18 c. 8

C. 1 q. 2

X 5.19.1 & c. 10  
C. 14 q. 3 c. 1

D. 77 c. 2; D. 59  
c. 2; D. 61 c. 7

X 3.26.7

Dig. 5.3.25.11

- 25      Concordat etiam cum hoc Hostiensis, eadem rubr., §. I, ver. Pactione, dicens  
quod si mutuo sub spe lucri, alias non mutuaturus, in foro penitentiali indu-  
cendus sum ad restituendum id quod ultra sortem recepi. Extra. eodem tit.,  
Consuluit. Si autem alias essem mutuaturus, sed secundario spero quod et mihi

X 5.19.10

<sup>1</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 1.

<sup>2</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 de illiberalitate, Quartus modus, fol. 105v.

<sup>3</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 de usuris, n. 1.

14 usuris CTaTb] usura L 22–23 anthidotam Tb] antidotam C: anthidota LTa

subvenias vel me remuneres, in nullo vel in modico pecco.<sup>4</sup> Argumentum ut supra in Goffredo. Concordant etiam cum hoc Innocentius et Bernardus et Alanus, eodem tit., in glossa super c. Consuluit, scilicet, quod non peccat qui secundo vel ex amicitia sperat aliquid.<sup>5</sup> Concordat etiam Ulrichus, §. Usura.<sup>6</sup> Concordare etiam videtur Thomas, ut patebit infra, questione proxima. Hostiensis quoque dicit quod usura est si ex post facto aliquid exigit.<sup>7</sup>

Raymundus etiam §. IIII, Sed nunquid, dicit quod “sola spes vel intentio facit hominem usurarium. Unde qui sub tali spe mutuavit pecuniam,” (glossa: “alias non mutuaturus”), “quicquid postea etiam gratis – id est, sine sua exactione – oblatum ultra sortem acceperit, usura est, sive illud sit pecunia numerata aut frumentum sive vinum sive oleum sive carnes sive fructus, ut poma et similia, sive species, et breviter quicquid excogitari possit et dici lucrum, sive illud consistat in dando sive in faciendo. Lev. XXV: ‘Pecuniam tuam non dabis ad usuram, et omnem frugum superabundantiam non exiges’. Item: ‘Nec usuram escarum accipies, nec omnium rerum’.”<sup>8</sup> XIII, q. III, Plerique et multa similia. “Item, Luc. VI: ‘Mutuum date nihil inde sperantes’. Glossa, ibidem: id est, ‘Non in homine spem mercedis fingentes, qui sive reddat quod accommodastis, reddet et Deus quo iubente fecistis, sive non reddat, hereditas vestra in eternum erit.’”<sup>9</sup> Hec etiam probant Augustinus, Hieronymus, et Ambrosius, XIII, q. III, c. I, II, et III, et est expressum Extra. eodem tit., Consuluit.”<sup>10</sup> Hec Raymundi.

*Questio II.* Utrum possit homo pro pecunia mutuata aliquam commoditatem recipere. Respondeo secundum Thomam, in *Summa*, q. LXXVIII, art. II: “Dicendum quod secundum Philosophum in IIII *Ethicorum* omne illud pro pecunia habetur, cuius precium potest pecunia mensurari.”<sup>11</sup> Et ideo sicut si aliquis pro

<sup>4</sup>Cf. Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 1.

<sup>5</sup>Cf. Ordinary gloss to X 5.19.10, *sperantes*. Only Alanus is mentioned here, but the author of the decretal is Innocent III and the gloss is found in Bernard of Parma’s ordinary gloss.

<sup>6</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 *de illiberalitate*, Usura autem, fol. 105r.

<sup>7</sup>Cf. Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 1.

<sup>8</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 4; William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.4, v. *Mutuavit pecuniam*.

<sup>9</sup>Ordinary gloss to Luke 6:35, *nihil inde sperantes: et erit*.

<sup>10</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 4.

<sup>11</sup>Cf. Aristotle, *Ethica Nicomachea*, IV.1, 1119b25 in R. A. Gauthier, ed., *Ethica Nicomachea: Translatio Roberti Grosseteste Lincolnensis sive ‘Liber Ethicorum’*: B. *Recensio*

35 sola C[TaTb] sala L 38 ultra C[TaTb] supra L 45 fingentes C[TaTb] figentes L 47 Hec TaTb] hoc CL

pecunia mutuanda vel quacumque alia re, que ex ipso usu consumitur, pecuniam accipit ex pacto tacito vel expreso, peccat contra iustitiam,” ut dicetur infra, 55 questione proxima, “ita etiam quicumque ex pacto tacito vel expreso quodcumque aliud acceperit, cuius precium pecunia mensurari possit, simile peccatum incurrit. Si vero accipiat aliquid huiusmodi non quasi exigens nec quasi ex aliqua obligatione tacita vel expressa, sed sicut gratuitum donum, non peccat quia 60 etiam antequam pecuniam mutuasset licite poterat aliquid donum gratis recipere, nec peioris conditionis efficitur per hoc, quod mutuavit. Recompensationem vero eorum que pecunia non mensurantur licet pro mutuo exigere: puta, benivolentiam et amorem eius qui mutuavit vel aliquid huiusmodi.”<sup>12</sup> Vide supra, questione precedenti.

*Questio III.* Sed quare peccatum est accipere usuram pro pecunia mutuata? 65 Respondeo secundum Thomam, in *Summa*, art. I: “Dicendum quod accipere usuram pro pecunia mutuata est secundum se iniustum, quia vendit id quod non est, per quod manifeste inequalitas constituitur, que iustitie contrariatur.”

“Ad cuius evidentiam sciendum est quod quedam res sunt quarum usus est ipsarum rerum consumptio, ut vinum, et panis, et huiusmodi. In talibus non 70 debet seorsum computari usus rei a re ipsa, sed cuicumque conceditur usus rei ex hoc ipso conceditur ei res. Et propter hoc in talibus per mutuum transfertur dominium. Si quis ergo seorsum vellet vendere vinum et seorsum usum vini, venderet eandem rem bis; unde venderet id quod non est, propter quod manifeste per iniustitiam peccaret. Et simili ratione iniustitiam committit qui 75 mutuans vinum vel triticum petit sibi duas recompensationes: unam quidem restitutionem equalis rei, aliam vero precium usus, quod usura dicitur. Quedam vero res sunt quarum usus non est ipsa rei consumptio, sicut usus domus est inhabitatio, non autem dissipatio. Et ideo in talibus seorsum potest utrumque concedi: puta, cum aliquis tradit alteri dominium domus, retento sibi usu, ad 80 aliquod tempus, vel econverso cum quis concedit alicui usum domus, retento sibi eius dominio. Et propter hoc licite potest homo accipere precium pro usu domus. Pecunia autem secundum Philosophum in V *Ethicorum*<sup>13</sup> et in I *Poli-*

*Recognita*, Aristoteles Latinus 26.1-3, fasc. 4 (Leiden: E. J. Brill, 1973), 431.

<sup>12</sup>ST IIa-IIae q. 78 a. 2, co.

<sup>13</sup>Cf. Aristotle, *Ethica Nicomachea* V.5, 1133a15-25 in Gauthier, ed., *Ethica Nicomachea: Translatio Lincolniensis*, 462-63.

66 id CTb] illud LTa 67 constituitur CTaTb] instituitur L 80 aliquod CTb] aliquid LTa 82 I CTaTb] primo L

tice<sup>14</sup> principaliter est inventa ad commutationes faciendas, et ita proprius et principalis usus pecunie est ipsius consumptio sive distractio, secundum quod  
 85 in commutationes expenditur. Et propter hoc secundum se est illicitum pro usu pecunie mutuate accipere precium, quod dicitur usura.”<sup>15</sup> Sufficit enim recipere equivalens ei quod mutuavit. Et si insuper pro usu aliquid recipit, iniquum est, et tenetur restituere.

Quod autem lex concessit Iudeis usuras accipere a gentibus, permissio fuit  
 90 “ad vitandum maius malum, scilicet, ne a Iudeis Deum colentibus usuras acciperent propter avaritiam, cui dediti erant,” ut dicit Thomas, ibidem, art. II.<sup>16</sup> Cf. Deut. 23:19-20

Sed Ulricus, §. Responsio, dicit quod illa acceptio usure a gentibus inter quas habitabant Iudei potius erat rei sue recuperatio quam usura, quia tota illa terra  
 95 Iudeis data fuit a Domino et iniuste possidebatur a gentibus.<sup>17</sup>

*Questio III.* Utrum concedere pecuniam signatam ad ostentationem vel ad ponendum loco pignoris pro aliquo precio sit usura. Respondeo secundum Thomam, ibidem, art. VI: Dicendum quod talem usum pecunie licite homo vendere posset, sicut homo licite vendit usum vasorum argenteorum, quia retinet sibi  
 100 dominium.<sup>18</sup> Idem dicit Hostiensis, §. VII, An aliquo, ver. Decimo et habetur ff. commodati, l. III, §. pen. et l. seq.<sup>19</sup> Concordat etiam Bernardus, in glossa super c. Conquestus.<sup>20</sup> Dig. 13.6.3.6 & 13.6.4

*Questio V.* Quid si pro pecunia mutuata exigatur munus a lingua vel ab obsequio? Respondeo secundum Thomam, ibidem, art. II, arg. III dicendum  
 105 quod sicut munus a manu non licet expectari vel exigere pacto tacito vel expresso pro mutuata pecunia, ita nec munus a lingua vel ab obsequio, “quia utrumque pecunia estimari potest, ut patet in his qui locant operas suas quas manu vel

<sup>14</sup>Cf. Aristotle, *Politica* I.9, 1257b20-25 in P. Michaud-Quantin, ed., *Politica (Libri I-II.11): Translatio Prior Imperfecta Interprete Guillelmo de Moerbeka (?)*, Aristoteles Latinus 29.1 (Paris: Desclée de Brouwer, 1961), 16-17.

<sup>15</sup>ST IIa-IIae q. 78 a. 1, co.

<sup>16</sup>ST IIa-IIae q. 78 a. 1, ad 2.

<sup>17</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 *de illiberalitate*, Quamvis varie, fol. 107r.

<sup>18</sup>ST IIa-IIae q. 78 a. 1, ad. 6.

<sup>19</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>20</sup>Ordinary gloss to X 5.19.8, *de feudo*.

93 acceptio C[TaTb] acceptio L 95 et C[Tb] etiam L[Ta] 95 iniuste C[TaTb] mistice L 106 ita C[Tb] om. L[Ta]

lingua exercent. Si vero munus ab obsequio vel a lingua non quasi ex obligatione rei exhibeatur, sed ex benivolentia que sub estimatione pecunie non cadit, tunc  
110 licet hoc accipere et exigere et expectare.”<sup>21</sup>

*Questio VI.* Cum creditor mutuatur alicui pecuniam gratis, debitor tenetur ei ad antidota, ut Extra. de testamentis, Cum in officiis. Quare ergo hanc natura- X 3.26.7  
lem obligationem non potest creditor deducere in pactum expressum vel saltem sperare effectum ipsius obligationis naturalis, cum etiam talia pacta interve-  
115 niant in spiritualibus ad que alias quis tenetur, ut quando datur prebenda ea conditione, ut canonicus singulis diebus celebret de beata virgine, quando, scilicet, tale onus est annexum illi prebende, ut Extra. de prebendis, Significatum? X 3.5.11  
Respondeo secundum Raymundum, §. IIII, Sed nunquid: “Ad hoc dico, salvo meliori iudicio, cum Alano et Tancredo quod creditor nullo modo debet pactum  
120 apponere nec principaliter spem vel intentionem in tali retributione habere, sed propter Deum et ex charitate principaliter debet mutuare proximo indigenti. Et tunc si forte secundario speret quod ille debitor sibi remutuet vel aliquid simile rependat si opus fuerit, forte non est reprobandum, arg. dist. LXI, Quid proderit, cum suis concordantiis.”<sup>22</sup> Concordant his Ulricus, Hostiensis, et Gof- D. 61 c. 7  
125 fredus, ut patuit supra, eodem tit., q. I, Quid sit usura.<sup>23</sup> Glossa dicit hic quod principaliter mutuatur propter Deum quando, etiam si “nulla haberetur spes de retributione temporali, nihilominus mutuaret.”<sup>24</sup>

Ad obiectionem tamen supradictam perfectius respondet Thomas, in *Summa*, art. II, arg. II, dicens quod “recompensatio alicuius beneficii dupliciter fieri  
130 potest: uno modo ex debito iustitie, et ad hoc aliquis ex certo pacto obligari potest, et hoc debitum attenditur secundum quantitatem beneficii quod quis accepit, et ideo ille qui accepit mutuum pecunie vel cuiuscumque rei similis cuius usus est consumptio non tenetur ad plus recompensandum quam mutuo accepit, unde contra iustitiam est si ad plus reddendum obligatur; alio modo  
135 tenetur aliquis ad recompensandum beneficium ex debito amicitie, in quo magis consideratur affectus ex quo aliquis beneficium contulit quam eius quantitas quod fecit, et tali debito non competit civilis obligatio per quam inducitur que-

<sup>21</sup>ST IIa-IIae q. 78 a. 2, ad 3.

<sup>22</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 4.

<sup>23</sup>SC 2.7.1.

<sup>24</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.4, v. *Principaliter*.

121 Deum C'TaTb] Dominum L 126 mutuatur C'TaTb] mutuabitur L 131 et C'TaTb]  
etiam L 136 affectus C'TaTb] effectus L

dam necessitas ut non spontanea recompensatio fiat.”<sup>25</sup>

*Questio VII.* Quid de his qui corrupta intentione mutuant? Respondeo: Usura est quod recipitur ultra sortem et tenetur restituere, ut patuit supra, eodem tit., q. I, Quid sit usura.<sup>26</sup> Et dicit glossa hic §. III, Licet autem, in fine, super ver. Intentio corrupta, quod si sit intentio corrupta ita quod “creditor non mutuasset pecuniam nisi propter spem lucri, tenetur totum restituere, etiam quacumque intentione dederit ei debitor, sive ex dilectione exorta forte propter  
140 mutuuum sibi datum aut propter aliud, sive propter mutuuum recipiendum aut retinendum usque ad prolixiorem terminum. Ubi tamen debitor ex sola dilectione dat aliquid creditori, non potest repetere, nec per retentionem sibi consulere, si forte habeat alias de bonis creditoris aliquid.”<sup>27</sup>

*Questio VIII.* Quid si non sit corrupta intentio creditoris, debitor tamen propter mutuuum acceptum vel ulterius retinendum dat ei aliquid? Nunquid creditor tenetur ei restituere illud? Respondeo secundum glossam, ibidem: “Credo quod non tenetur de bona fide consumptis, nec etiam de extantibus, quamdiu probabiliter credit quod ex sola dilectione gratis ei servierit. Si autem credit, vel probabiliter dubitat, quod propter mutuuum receptum vel ulterius retinendum  
150 ei servierit, restituere tenetur.”<sup>28</sup> Quando autem debitor non gratis dat, licet creditor gratis det mutuuum, debitor, si habeat alias aliquid de bonis creditoris et sibi consulat per retentionem de usura quam dedit, non credo ipsum compellendum in foro penitentiali ad restitutionem.<sup>29</sup> Unde etiam si quis mutuaturus erat alias, scilicet propter Deum, et tamen dum mutuavit habuit spem recipiendi  
160 aliquid ultra sortem, si credit quod sit oblatum ultra sortem non ex dilectione, sed propter mutuuum datum est, ei restituere tenetur, alias non, ut predictum est in precedenti casu. Goffredus tamen dicit quod non est hoc vitiosum.<sup>30</sup> Vide

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<sup>25</sup>ST IIa-IIae q. 78 a. 2, ad 2.

<sup>26</sup>SC 2.7.1.

<sup>27</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.3, v. *Intentio corrupta*.

<sup>28</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.3, v. *Intentio corrupta*.

<sup>29</sup>Cf. William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.3, v. *Intentio corrupta*: “Quando autem creditor non dat gratis mutuuum, debitor, si habeat aliquid aliud de bonis creditoris, et sibi consulat per retentionem de usura quam dedit, non credo ipsum compellendum in foro paenitentiali ad restituendum.”

<sup>30</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 *de usuris*, n. 1.

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140 recipitur C[TaTb] recipit L 145–146 aliud . . . retinendum C[TaTb] mutuuum recipiendum  
L 156 det C[TaTb] dat L

supra, eodem tit., q. I, Quid sit usura.<sup>31</sup>

*Questio IX.* Queritur etiam cum in mentali symonia non sit necessaria re-  
165stitutio, ut Extra. de symonia, Mandato, quare est necessaria in mentali usura? X 5.3.46  
Respondeo secundum glossam, §. IIII, Sed nunquid voluntas, super ver. In fa-  
ciendo: “In symonia est turpitudine utriusque partis, scilicet, dantis et accipientis,  
sed in usura non est turpitudine dantis. Et ideo iure divino et naturali equitate  
facienda est restitutio, nec posset etiam in hoc casu papa dispensare. Sed ex  
170solo iure humano pecunia symoniace accepta restituenda est, non illi qui de-  
dit turpiter, sed ecclesie. Unde nec Helyseus precepit Giezi restituere pecuniam  
quam acceperat a Naaman, et papa quod vult potest statuere in hoc casu. Pos-  
set etiam dispensare quod non solum in mentali symonia, sed etiam in illa que  
2 Reg. 5:20 ff.  
pacto erat expressa, retineri posset quod esset symoniace acquisitum.”<sup>32</sup>

*Questio X.* Quid de dominis molendinorum qui credunt pecuniam pistori-  
bus ut molant in molendinis eorum? Respondeo secundum glossam, ibidem:  
“Usurarii sunt. Accipiunt enim ultra sortem in faciendo,” ut tactum est supra,  
eodem tit., q. I, circa finem,<sup>33</sup> “et auferunt libertatem debitoribus molendi ubi  
voluerint. Si tamen debitores propter hoc non sunt damnificati, non tenentur  
180creditores ad restitutionem aliquam eis faciendam, nisi quatenus estimari debet  
libertas molendi ubi volebant, pensatis etiam circumstantiis de maiori et minori  
remotione molendinorum et facilitate molendi et qualitate.”<sup>34</sup>

*Questio XI.* Quid de illis qui, veniente termino solutionis, nolunt dare ter-  
mini prorogationem debitori, qui est iuramento astrictus solvere, nisi data eis  
185pecunia vel aliquo equipollenti, licet expresse non exigant? Respondeo secundum  
decretalem Extra. eodem tit., Consuluit: Tenentur isti. Et idem etiam dicit Ray- X 5.19.10  
mundus in fine distinctionis, §. IIII, Sed nunquid.<sup>35</sup>

*Questio XII.* Quero etiam unde dicatur usura et in quibus rebus seu contrac-  
tibus committatur. Respondeo secundum Raymundum: “Dicitur usura quasi usu  
190era, id est, usus eris, id est, pecunie, licet tamen nomine pecunie quicquid ha-

<sup>31</sup>SC 2.7.1.

<sup>32</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.4, v. *In faciendo*.

<sup>33</sup>SC 2.7.1.

<sup>34</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.4, v. *In faciendo*.

<sup>35</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 4.

- bent homines contineatur, I, q. III, c. Totum.”<sup>36</sup> Idem Goffredus.<sup>37</sup> Et item, “non dicitur committi usura nisi in his rebus tantum circa quas consistit mutuum, scilicet, que consistunt in numero, pondere, vel mensura: numero, ut quelibet moneta que proprie dicitur pecunia numerata; pondere, ut ere, argento, auro, etc. que appenduntur; mensura veluti frumento, vino, oleo, et similibus, Institutiones, Quibus modis contrahitur obligatio, circa principium.”<sup>38</sup> Et quod in his omnibus rebus committatur usura probatur XIII, q. III, Usura et q. III, Nullus. Sed secundum Hostiensem, §. I, quod hic dicit Raymundus sic intelligendum est, quod in contractu mutui solum regulariter habet locum usura.
- 195 “Mutuum autem locum habet in his rebus que consistunt in numero, pondere, et mensura. Si tamen aliquid tibi mutuo, et tu pro illo mutuo promittas mihi vestem, vel equum, vel predium, vel aliquid aliud quod nec in numero, mensura, vel pondere consistat, usura est, ut XIII, q. III, Plerique et c. Usura. Secus si res esset locata, non mutuata.”<sup>39</sup> Idem Goffredus.<sup>40</sup>
- 205 *Questio XIII.* Sed nunquid est mutuum si quis dederit X ulnas stamphorti vel aliam speciem panni pro aliis X reddendis ad certum terminum, cum talia videantur consistere in mensura? Respondeo secundum glossam hic: “Verius est contractus iste permutationis quam mutui. Et nomen mesure restringitur hic ad modios et lagenas et alia vasorum genera quibus mensurari solent liquida et grana. Potest tamen huiusmodi contractus fieri in fraudem usurarum.”<sup>41</sup>
- 215 *Questio XIII.* Quot sunt species usure? Respondeo: Iuriste communiter dicunt quod “due sunt species, quia alia spiritualis et equa, de qua in evangelio Mat. XXV, ‘Nonne oportebat te pecuniam dare nummulariis, et ego veniens cum usuris exegissem eam,’ alia vero corporalis et iniqua de qua hic agitur.”<sup>42</sup> Sed Ulicus, §. Communis, hanc distinctionem reprobatur, et dicit quod “isti propriam vocem non intelligunt, quia figurative et parabolice tantum lucrum bonorum
- C. 1 q. 3 c. 6  
Inst. 3.14 pr.  
C. 14 q. 3 c. 4 & q. 4 c. 6  
C. 14 q. 3 c. 3-4  
Matt. 25:27

<sup>36</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 1.

<sup>37</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 de usuris, n. 3.

<sup>38</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 1.

<sup>39</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 1.

<sup>40</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 de usuris, n. 3.

<sup>41</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.1, v. *Mensura*.

<sup>42</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 2. Cf. Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 de usuris, n. 4; Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 3.

205 dederit CTb] dedit LTa 208 hic CTaTb] hec L

operum dicitur usura, sicut fatuum esset dicere quod due essent species vitis, scilicet, corporalis et spiritualis, quia Christus dicit, ‘Ego sum vitis vera.’<sup>43</sup>

Jo. 15:1

Usura tamen corporalis et iniqua, secundum Raymundum, §. II, Species, subdividitur, “quia alia est sortis, alia usurarum. Hec ultima appellatur improbum fenus, et eam exercens fit infamis ipso iure, etiam secundum leges III, q. VII, §. Tria., in fine.”<sup>44</sup> “Secundum iura tamen canonica,” ut dicit Hostiensis, §. III, Quod sint, “in utraque peccatum mortale committitur et infamia irrogatur, VI, q. I, Infames.”<sup>45</sup> Idem Goffredus.<sup>46</sup>

C. 3 q. 7 c. 2 §.20

C. 6 q. 1 c. 17

“Item usura alia appellatur centesima, id est, que equiparatur sorti per annum;<sup>47</sup> alia sextupla a sexi, quod est totum, et plica, quod est pars vel medietas, que etiam alio modo dicitur emyolia ab emi, quod est medium, et olon, quod est totum. De his habes XLVII dist., Quoniam.”<sup>48</sup> Sed, ut dicit hic glossa, “Legiste aliter consueverunt distinguere per leges Codicis, de usuris, Eos, unde versus: ‘Discant illustres stipulari posse trientes, et mercatores sibi posse requirere beses. Querere semisses possunt communiter omnes.’ Verbi gratia, sors si sit XXX, huiusmodi triens est X, semis XV, bes secundum quosdam XX, secundum alios bes est octava pars.”<sup>49</sup>

D. 47 c. 2.

C. 4.32.26.2

*Questio XV.* Utrum in usura transferatur dominium. Respondeo secundum Ulricum, §. Quia vero, dicendum quod cum “omnis voluntaria donatio faciat transferri dominium, ideo in usura transfertur dominium, quia usure dantur voluntate conditionata, scilicet, quia potius vult ultra sortem dare quam mutuo carere. Quia voluntas conditionata est voluntas, ut dicunt Philosophus et Augustinus, unde dona et elemosyne licite accipiuntur ab usurariis, nisi per hoc efficiantur non solvendo. Tunc enim ab ipso recipiens tenetur vel ei restituere vel illis a quibus ipse accepit.”<sup>50</sup>

<sup>43</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 *de illiberalitate*, Simile enim est in empicione, fol. 106v.

<sup>44</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 2.

<sup>45</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 3.

<sup>46</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 *de usuris*, n. 5.

<sup>47</sup>Cf. Ordinary gloss to D. 47 c. 2, *centesimas*.

<sup>48</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 2.

<sup>49</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.2, v. *Sescupla*.

<sup>50</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 *de illiberalitate*, Quia vero omnis voluntaria donacio, fol. 105r.

223 utraque C[TaTb] utroque L 226 alia C[TaTb] alias L 226 sextupla CL[Ta] sexcupla Tb 226 vel C[TaTb] om. L 237 quia C[TaTb] quod L

*Glossa* etiam, XIII, q. III, super c. Si quis usuram, concedit quod in usura transfertur dominium.<sup>51</sup>

*Questio XVI.* Item quero in quibus casibus usura sit permissa. Respondeo  
245 secundum Raymundum, §. III, Licet autem: Permissa est usura in his casibus:

“Primo ubi possessio ecclesie est assignata clerico in beneficium, et laicus tenet eam iniuste et violenter. Tunc potest clericus fructus ipsius beneficii percipere ultra sortem, Extra. eodem c. I et c. Conquestus. Sed hoc non fit causa  
lucri, sed ut res eo modo de manu laici redimatur, ut in eadem decretali.”<sup>52</sup> Idem  
X 5.19.1 & c. 8  
X 5.19.1  
250 Hostiensis, §. VII, An aliquo, ver. Secundo fallit.<sup>53</sup> Require de hoc supra, lib. I, tit. XV, de decimis, q. XXXV, Utrum decimas iniuste.<sup>54</sup> Dicit Ulricus, §. Contra illud, quod non solum clericus vel ecclesia recuperare potest rem suam hoc modo, scilicet, per usuram, immo credit idem posse facere quamlibet privatam personam ut, scilicet, rem suam ab alio iniuste detentam et violenter in pignore  
255 accipiat et fructus non computet in sortem, et sic recuperet rem suam.<sup>55</sup> Idem etiam dicit Bernardus, supra, in glossa super c. I, eodem tit.<sup>56</sup> Idem est quando ecclesia accipit in pignore a vassallo suo feudum quod ab eadem tenet, ut tamen interim non recipiat servitium vassalli, ut Extra. eodem tit., Conquestus.<sup>57</sup> De  
hoc vide supra, in tit. de decimis, q. XXXVIII, Utrum ecclesia.<sup>58</sup> X 5.19.8

260 “Secundo ubi usure petuntur quasi interesse, verbi gratia, si fideiussor solvit usuras creditori, potest eas a debitore repetere pro quo fideiusserat, quia non sunt usure quantum ad ipsum fideiussorem, sed potius interesse; id est, non est lucrum, sed vitatio damni.”<sup>59</sup> Idem Hostiensis, ver. Quinto.<sup>60</sup> Idem Innocentius, Extra. eodem tit., in glossa super I c.<sup>61</sup>

<sup>51</sup> Ordinary gloss to C. 14 q. 4 c. 10, *rapinam*.

<sup>52</sup> Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 3.

<sup>53</sup> Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>54</sup> SC 1.15.35.

<sup>55</sup> Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 *de illiberalitate*, Quamvis varie, fol. 106v.

<sup>56</sup> Ordinary gloss to X 5.19.1, *beneficium*.

<sup>57</sup> Cf. Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>58</sup> SC 1.15.38.

<sup>59</sup> Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 3.

<sup>60</sup> Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>61</sup> Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X 5.19.1.

246 Primo C[Ta]Tb] Primus L 249 ut C[Ta]Tb] om. L 250 hoc C[Ta]Tb] his L 256 Bernardus C[Tb] om. L[Ta] 257 vassallo C[Ta]Tb] vasallo L 258 vassalli C[Ta]Tb] vasalli L 260 Secundo C[Ta]Tb] Secundus L 260 petuntur C[Ta]Tb] utuntur L 263 Idem Innocentius C[Ta]Tb] om. L

- 265 Tertius casus ponitur Extra. eodem tit., super c. Salubriter, ubi sic dicitur: X 5.19.16  
 “Sane generum ad fructus possessionum que sibi sunt a socero pro numerata  
 dote pignore obligate computandos in sortem non credimus compellendum, cum  
 frequenter dotis fructus non sufficiant ad matrimonii onera supportanda.” “Hoc  
 autem intelligas cum maritus sustinet onera matrimonii, alias non, ut arguitur  
 270 in fine littere precedentis decretalis et probatur ff. de doli exceptione, l. Pater.”<sup>62</sup> Dig. 44.4.17 pr.  
 Et concordat cum hoc Ulricus, §. Tertius,<sup>63</sup> et Innocentius, in glossa super idem  
 c. Salubriter.<sup>64</sup>
- Quartus, ratione more, “ut si debeas mihi centum ad certum terminum, nol-  
 uisti persolvere in termino, et ideo oportuit me recipere pecuniam sub usuris  
 275 propter negocia mea tractanda. Tu teneris mihi restituere illas usuras si solvi,  
 vel si non solvi, liberare me ab ipsa obligatione. Probantur hec Extra. de fi-  
 deiussoribus, Pervenit et c. Constitutus.”<sup>65</sup> Idem Hostiensis, ver. Idem potest, X 3.22.2 & c. 3  
 et dicit quod tunc petuntur usure quasi interesse. Hoc enim, scilicet, interesse,  
 secundum canones peti potest, patet XIII, q. III, Quoniam, ibi, Ad questum C. 14 q. 4 c. 8  
 280 etc.<sup>66</sup> Idem etiam dicit *Glossa* super idem decretum.<sup>67</sup> Item, XII, q. II, Si quis  
 de clericis.<sup>68</sup> Idem etiam Goffredus, et dicit quod tunc usura “petitur causa C. 12 q. 2 c. 33  
 damni vitandi, non causa lucri captandi.”<sup>69</sup> Idem Innocentius.<sup>70</sup>
- Item, ratione dubii. Nam “si quis dat decem solidos,” puta, in pascha, “ut  
 in alio tempore,” puta, circa autumnum, “totidem sibi grani, vini, vel olei men-  
 285 sure reddantur, que licet tunc plus valeant, utrum plus vel minus,” scilicet,  
 quam decem solidi, “tempore solutionis fuerint valiture, verisimiliter dubitatur.  
 Non debet ex hoc usurarius reputari,” Extra. eodem, Naviganti.<sup>71</sup> Idem Inno- X 5.19.19

<sup>62</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 3.

<sup>63</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 de illiberalitate, Tercius modus est, fol. 105v.

<sup>64</sup>Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X 5.19.16.

<sup>65</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 3.

<sup>66</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 7.

<sup>67</sup>Ordinary gloss to C. 14 q. 4. c. 8, *Ad questum*.

<sup>68</sup>Cf. Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 7.

<sup>69</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 de usuris, n. 6.

<sup>70</sup>Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X 5.19.1.

<sup>71</sup>Raymond of Penyafort quotes the same decretal to demonstrate the exception of doubt without adding the interspersed explications that John offers here. Cf. Raymond of Penyafort,

267 pignore C[TaTb] pignori L 269 cum C[TaTb] quod L 269 sustinet C[TaTb] sustineret L 270 littere Tb] litere LTa: *obsc. C, quia est in forma contracta, scil.*, lre 279 peti potest C[TaTb] petitur L

- centius.<sup>72</sup> Unde dicit hic glossa Willelmi quod “si aliquis daret decem solidos in autumno, quando parvi precii est bladum, vinum, vel oleum, ut ad pascha  
290 totidem sibi grani, vini, vel olei mesure redderentur, quando huiusmodi merces secundum communem cursum consueverunt esse cariores, usura esset, quia non verisimiliter dubitatur, immo probabiliter creditur quod plus valebunt ille mesure tempore solutionis quam valuerunt tempore contractus.”<sup>73</sup> Idem dicit Hostiensis, ver. Quid ergo.<sup>74</sup>
- 295 Sequitur in eadem decretali, scilicet, Naviganti, et etiam hic in Raymundo: X 5.19.19  
“Ratione dubii huiusmodi etiam excusatur qui pannos, granum, vinum, oleum, vel alias merces vendit, ut amplius quam tunc valeant in certo termino recipiat pro eisdem, si tamen ea tempore contractus non fuerat venditurus.”<sup>75</sup> Et ut dicitur Extra. eodem, c. In civitate, satis consulte agerent homines “si a tali  
300 contractu cessarent, cum cogitationes hominum omnipotenti Deo nequeant occultari.”<sup>76</sup> Idem est consilium Hostiensis et Raymundi.<sup>77</sup> Gaufredus etiam in hoc casu dicit, “Caveat sibi quilibet ne magis declinet in estimatione lucri quam damni ex dilatione. Deus enim intuetur cor.”<sup>78</sup> 1 Reg. 16:7
- Hostiensis, in ver. Hoc non licet, dicit specialiter quod hoc non licet clericis.  
305 Eis enim vilius emere et carius vendere turpe lucrum est, ut XIII, q. III, Quicumque et Extra. ne clerici vel monachi, Secundum instituta.<sup>79</sup> X 3.50.6
- Item consulit Hostiensis, ibidem, quod homines notent mentem horum verborum, scilicet, quod non erant vendituri tempore contractus. Deus enim intuetur
- 
- Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 3. John has drawn these amplifications to the text of *Naviganti* verbatim from William of Rennes gloss to Raymonds *Summa*. See William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.3, v. *Dat decem, Alio tempore, Plus vel minus*.  
<sup>72</sup>Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X 5.19.1.  
<sup>73</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.3, v. *Verisimiliter dubitatur*.  
<sup>74</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 7.  
<sup>75</sup>X 5.19.19 qtd. in Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 3.  
<sup>76</sup>X 5.19.6 qtd. in Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 3.  
<sup>77</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 7; Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 3.  
<sup>78</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 de usuris, n. 12. “Deus enim intuetur cor,” an allusion to 1 Reg. 16:7, was likely accessed through Augustine’s paraphrase of the same, which was incorporated into C. 14 q. 5 c. 6.  
<sup>79</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 7.

288 Unde CTaTb] ubi L 298 Et CTaTb om. L 303 dilatione CTb] dilectione LTa 305 lucrum CTaTb lucrum L 307 consulit CTb] consuluit LTa

cor.<sup>80</sup>

310 Glossa etiam dicit hic quod hec conditio attendenda est non solum in hoc ca-  
su sed etiam ubi datur species pro specie aut pecunia pro pecunia, sicut dicitur  
infra, eodem tit., q. XIX, Nunquid potest committi.<sup>81</sup> Sequitur in Raymundo:  
“Si tamen venderent ad terminum longe maiori precio quam modo valeat, usura  
esset, Extra. eodem, Consuluit,”<sup>82</sup> quia, ut dicit glossa, “tunc non verisimili- X 5.19.10  
315 ter dubitatur utrum plus vel minus sint valiture, sed presumitur quod longe  
minori.”<sup>83</sup>

Dicit Thomas, in *Summa* art. II, arg. VII, quod “si aliquis carius velit vende-  
re res suas quam sit iustum precium ut de pecunia solvenda emptorem expectet,  
manifeste usura committitur, quia huiusmodi expectatio precii solvendi habet  
320 rationem mutui. Unde quicquid ultra iustum precium pro huiusmodi expectatio-  
ne exigitur est quasi precium mutui, quod pertinet ad rationem usure. Similiter  
etiam si quis emptor velit rem emere vilius quam sit iustum precium, eo quod pe-  
cuniam ante solvit quam possit ei res tradi, est peccatum usure, quia etiam ista  
anticipatio solutionis pecunie habet rationem mutui, cuius quoddam precium  
325 est quod minuitur de iusto precio rei empte.”<sup>84</sup> Hec Thome.

Item gratis oblatum et acceptum non inducit usuram, dum tamen non sit  
intentio corrupta, ut dictum est supra, eodem tit., q. I et q. VI, Cum creditor  
et seq.<sup>85</sup> Omnes casus hos quos hic Raymundus tangit, etiam Goffredus ponit.<sup>86</sup>

*Questio XVII.* Circa casus predictos aliqua queruntur. Primo, quid iuris sit  
330 si gener possessionem sibi pro numerata dote obligatam cum iure quod ibi habet  
concedat alii, recepta ab eo summa que promissa fuerat ei pro dote? Nunquid  
poterit ille lucrificare fructus perceptos usque dum soluta fuerit ei pecunia,  
sicut poterat gener? Respondeo secundum glossam hic quod “si gener animo  
donandi transfert ius totum quod habebat in pignore, non propter contractum  
335 pecunie quam accepit ab eo, sed quia consanguineus eius est vel alia ratione

<sup>80</sup>Ibid.

<sup>81</sup>SC 2.7.19. Cf. William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.3, v. *Verisimiliter dubitatur*.

<sup>82</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de *usuris*, n. 3.

<sup>83</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.3, v. *Longe maiori*.

<sup>84</sup>ST IIa-IIae q. 78 a. 2, ad 7.

<sup>85</sup>SC 2.7.1, 6, 7. Cf. Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de  
*usuris*, n. 3.

<sup>86</sup>Gottofredo da Trani, *Summa super titulis decretalium*, X 5.19 de *usuris*, n. 6.

317 Thomas C] glossa LTaTb 317 aliquis CTaTb] quis L 328 hic CTaTb] habet L 328 etiam  
CTaTb] et L 330 pro numerata CTaTb] privata L 333 Respondeo CTaTb] Respondeo hic  
L

coniunctus amicus, et ille non propter fructus lucrificandos mutuatur ei pecuniam, sed propter dilectionem aut gratiam, credo quod absque periculo usure potest fructus lucrificare, nec est iste contractus veri nominis mutuum, nisi ductum sit in pactum quod gener teneatur numeranti reddere pecuniam si ille voluerit repetere, in quo casu usura esset si ille vellet lucrificare fructus.”<sup>87</sup>

*Questio XVIII.* Quid si, soluto matrimonio, heredes mariti obligant mulieri possessionem aliquam pro dote sua, quia non habent unde solvant? Nunquid fructus computabuntur in sortem? Respondeo secundum Hostiensem, ver. Quid in converso: “Dicis quod sic, ut ff. de solutionibus, Titia.”<sup>88</sup> Idem etiam dicit  
 345 Innocentius, in glossa super c. Salubriter, scilicet, quod mulier post mortem mariti debet fructus computare in sortem.”<sup>89</sup>

Dig. 46.3.48

Idem etiam Hostiensis, in glossa, ibidem, in fine, et addit dicens, “Sic ergo discreta mulier non recipiat rem obligatam, sed potius faciat ipsam distrahi vel recipiat in solutum, ff. de re iudicata, A divo pio. Alioquin, fructus extenuabunt  
 350 sortem.”<sup>90</sup>

Dig. 42.1.15 pr.

*Questio XIX.* Nunquid potest committi usura ubi creditur precise pecunia pro pecunia, marca argenti pro alia marca ad certum terminum persolvenda, aut cum datur precise species pro specie, ut granum pro grano, vinum pro vino, oleum pro oleo ad eandem mensuram? Respondeo secundum glossam hic super  
 355 verbo, Verisimile dubitatur: “Si verisimile est quod pecunia numerata, aurum, vel argentum ex tempore non fiant preciosiora tempore solutionis quam fuerant tempore contractus, aut verisimiliter dubitatur utrum preciosiora sint futura necne, non est usura. Si autem verisimile sit quod preciosiora sint futura tempore solutionis, ut si quis det XX libras sterlingorum in hyeme pro aliis totidem  
 360 in estate solvendis quando solet huiusmodi moneta requiri a viatoribus, aut XX marce auri vel argenti pro aliis totidem solvendis ad passagium cruce signatorum, distingue. Quia si creditor non erat servaturus illam pecuniam usque ad illud tempus, sed interim consumpturus, usura est. Si autem erat servaturus ut,

<sup>87</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.3, v. *Pro numerata*.

<sup>88</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>89</sup>Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X 5.19.16.

<sup>90</sup>Hostiensis (Henricus de Segusio), *Lectura sive apparatus super quinque libris decretalium*, ad X 5.19.16, n. 2, v. *Supportanda*.

339 numeranti CTaTb] mutuanti L 355–356 aurum, vel argentum CTaTb] auri vel argenti L

sic servando usque ad predictum tempus, lucraretur, distingue. Quia si credi-  
 365 tor aufert debitori libertatem liberandi se interim et debitum solvendi, usura  
 est, quia presumitur quod ideo crediderit pecuniam quod debitorem oneraret  
 periculo et se exoneraret. Sed si non aufert, immo concedit ei quod reddat pecu-  
 niam quandocumque voluerit infra terminum, meretur si ex misericordia faciat  
 hoc ut relevet debitoris inopiam. Si autem corrupta intentione hoc faciat ut se  
 370 exoneret a periculo servandi, peccat. Non credo tamen eum compellendum ad  
 restituendum lucrum, licet hoc esset ei consulendum in penitentia, vel quod da-  
 ret pauperibus. Eodem modo distinguendum est et iudicandum quando datur  
 species pro specie ad terminum, ut vinum pro vino, oleum pro oleo, granum pro  
 grano.”<sup>91</sup> Hec omnia in glossa. Concordat Ulricus, §. Similiter.<sup>92</sup>

375 *Questio XX.* Quid si quis pecuniam mutuet recepturus ad certum terminum  
 alterius generis monetam, vel aurum vel argentum vel aliam speciem? Respon-  
 deo secundum Hostiensem, ver. Quid si quis pecuniam: “Si hoc ideo facit ut in  
 existimatione lucretur, usurarius est secundum Goffredum, sicut hi qui de nun-  
 dinis mutant, quam usuram execrabilem omnibus iudico, quantumcumque sub  
 380 specie venditionis, vel permutationis, vel alterius contractus pallietur cum ex-  
 cedat centesimam. Quodcumque ergo ei nomen imponitur, ex quo fraudulenter  
 vel mala intentione et aliquid sorti accedit, usura est, Extra. eodem, Consuluit;  
 XIII, q. III, Plerique.”<sup>93</sup> XIII, q. III, Si quis clericus, plane dicitur quod qui  
 mutuatur pecuniam ut recipiat statuto tempore vinum vel frumentum debet reci-  
 385 pere quantum valet tempore solutionis et nihil ultra.

X 5.19.10  
 C. 14 q. 3 c. 3  
 C. 14 q. 4 c. 5

*Questio XXI.* Quid si aliquis vendat res aliquas pro precio quod in instanti  
 currit sed si plus valet usque ad pascha, vult quod sibi illud detur; si vero minus  
 valet, non vult quod precium minuatur? Respondeo secundum Hostiensem, ver.  
 Quid si vendat: “Proculdubio ipsum iudico usurarium, cum ipsum in pactis vi-  
 390 deam claudicare, ut arg. C. de solutionibus, l. pen.”<sup>94</sup> Concordat etiam glossa  
 hic, ut patet in questione precedenti proxima.<sup>95</sup>

C. 8.42.24

<sup>91</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.3, v. *Verisimiliter dubitatur*.

<sup>92</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 *de illiberalitate*, Quartus modus, fol. 105v.

<sup>93</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>94</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>95</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.3, v. *Verisimiliter dubitatur*; SC 2.7.19.

364 sic C<sup>TaTb</sup>] sibi L 383 q. III C<sup>Tb</sup>] q. III L<sup>Ta</sup> 387 vult C<sup>TaTb</sup>] ultra L 389 Quid C<sup>TaTb</sup>] quod L

*Questio XXII.* Utrum scholares vel alii qui dant mutuam pecuniam campso-  
ribus vel aliis secularibus eo pacto vel intentione principali, ut illi remutent eis  
quando indigebunt? Respondeo secundum glossam, §. IIII, Sed nunquid, circa  
395 finem, super ver. Retributione: “Credo quod usuram committunt.”<sup>96</sup> Idem Gof-  
fredus et Ulricus, quia remutuatio aliquod commodum est.<sup>97</sup> Concordat etiam  
Hostiensis §. IX, Que pena, ver. Quid si tibi.<sup>98</sup> Thomas, in *Summa*, art. II,  
arg. IIII, dicit quod quia pro pecunia mutuata nihil “exigendum vel expectan-  
dum est, nisi benivolentie affectus, qui sub estimatione pecunie non cadit. Ex  
400 illo autem potest procedere spontanea mutuatio. Repugnat autem ei obligatio  
ad mutuum faciendum in posterum, quia etiam talis obligatio pecunia estimari  
posset. Ideo licet mutuanti unum simul aliquid mutuare. Non autem licet eum  
obligare ad mutuum in posterum faciendum.”<sup>99</sup> Idem dicit *Glossa*, XIII, q. III,  
super c. Si feneraveris, in fine.<sup>100</sup>

405 *Questio XXIII.* Quid si pena est apposita in contractu mutui? Nunquid sal-  
tem pena illa poterit peti absque periculo usure? Respondeo secundum Ray-  
mundum, §. V, Item quid si pena: “Ad hoc dico quod si pena est iudicalis,  
id est, a iudice imposita et statuta propter puniendam contumaciam debitoris  
qui, cum possit, contemnit in termino statuto solvere pecuniam creditori, non  
410 est usura, arg. XXIII dist., Quamquam; ff. de re iudicata, Qui autoritate.”<sup>101</sup>  
Si vero pena sit conventionalis, id est, de communi consensu partium in ipso  
contractu apposita ut saltem metu pene debitum certa die solvatur, usura non  
committitur, dum tamen semper sit intentio recta, ut in precedentibus dictum  
est, arg. XXIII dist., Quamquam et Extra. de arbitris, Dilecti. Si autem ille qui  
415 talem penam apposuit consuevit esse usurarius, presumitur quod in fraudem  
usurarum adiecerit penam, ff. de actionibus empti, l. Putat, §. I,”<sup>102</sup> “in quibu-

D. 23 c. 6  
Cf. Dig. 50.17.137

D. 23 c. 6  
X 1.43.4

<sup>96</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.4, v. *Retributione*.

<sup>97</sup>Cf. Gotofredo da Trani, *Summa super titulis decretalium*, X 5.19 *de usuris*, n. 9.

<sup>98</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 12.

<sup>99</sup>*ST* IIa-IIae q. 78 a. 2, ad. 4.

<sup>100</sup>Ordinary gloss to C. 14 q. 3 c. 1, *expectas*.

<sup>101</sup>In the 1603 edition of Penyafort's *Summa*, the reference here is to “ff. de regulis iuris, Qui auctore,” which contains the relevant text. However, this form of citation was not found in any of the manuscripts consulted. Cf. Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 5.

<sup>102</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 5.

402 aliquid TaTb] aliquid aliud C: aliud L

sdam libris incipit Iulianus,”<sup>103</sup> “et arg. ff. de usuris, Qui semisses.”<sup>104</sup> “Melius tamen,” ut dicit hic glossa, “habetur hoc, ff. de pignoratitia actione, l. Uniuersorum.”<sup>105</sup> Item esset presumptio secundum Raymundum quod esset usura  
 420 “si per singulos menses vel annos dicatur committi, arg. C. eodem, Auth., ad hoc; et idem in similibus que ab usurariis solent specialiter exerceri. Talia enim inducunt semper presumptionem prima facie quod sit usura. In iudicio tamen anime, stare confessioni sue, sed propter presumptiones contrarias diligentius examinarem conscientiam suam.”<sup>106</sup> Per omnia in predictis cum Raymundo concordat Hostiensis, ver. Undecimo, sed multo plenius in rubr. de penitentiis et remissionibus, §. XXIII, Quibus et qualiter, sub §. Quid de usurariis.<sup>107</sup> Concordat etiam Ulricus §. Propter quod.<sup>108</sup> Glossa dicit hic, “Ego credo quod ubi sine fraude est pena apposita, potest exigi tota, quia publice rei interest pacta servari et creditores a debitoribus non fraudari.”<sup>109</sup> Item quod hic dicitur, “per  
 430 singulos menses vel annos,” dicit glossa quod est “argumentum contra Lombardos et Romanos mercatores qui apponi faciunt pactum de pena solvenda ad singulas nundinas sibi succedentes.”<sup>110</sup>

Dig. 19.1.13.1  
 Dig. 22.1.13 pr.

Dig. 13.7.12  
 C. 4.32.16  
 Auth. coll. 4.13.1  
 = Nov. 34.1

*Questio XXIII.* Quid de eo qui mutuans occasione mutui laborem subiit? Respondeo secundum Hostiensem, ver. Tertiodecimo: “In compensatione laboris  
 435 fructus pignoris receptos suos facit, ut Extra. de rebus ecclesie non alienandis, c. Ad audientiam.”<sup>111</sup>

Cf. X. 3.13.11

*Questio XXV.* Quid si vendidi predium tali conditione adiecta, ut quando-  
 cumque solvatur precium a me vel ab herede meo, rehabeam predium, ego vel  
 heres meus, vel quousque ad tot vel tot annos possim rehabere, soluto precio?  
 440 Nunquid est usurarius contractus? Respondeo secundum Raymundum, §. VI, Item quid si: “Ad hoc dico quod non est mutuum, et emptor facit fructus suos

<sup>103</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.5, v. *Putat*.

<sup>104</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 5.

<sup>105</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.5, v. *Putat*.

<sup>106</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 5.

<sup>107</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 7 and X 5.38 de poenitentiis et remissionibus, n. 61.

<sup>108</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 de illiberalitate, Unus est cum datur, fols. 105r-105v.

<sup>109</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.5, v. *Poenarum*.

<sup>110</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.5, v. *Singulos menses*.

<sup>111</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 7.

417 semisses C<sup>Ta</sup>Tb] semissem L 428 sine C<sup>Ta</sup>Tb] in L

sine periculo usure, licet venditor iuxta venditionis formam postea recuperet predium. Et hoc intelligas nisi in fraudem usurarum sit facta talis venditio vel conditio, quod presumitur ex his coniecturis: scilicet, ex eo quod modicum est  
445 precium respectu valoris rei, ut Extra. de emptione et venditione, Ad nostram; X 3.17.5  
item, ex eo quod aliquid persolvitur ultra summam receptam, puta, fuit vendita pro centum et est in pacto quod cum rescindetur venditio, reddantur CXX, Extra. de pignoribus, Illo vos; item, ex eo quod emptor consuevit exercere usuras,”<sup>112</sup> ut in predicta decretali, Ad nostram. Idem Hostiensis, ver. Nono,<sup>113</sup> et X 3.17.5  
450 Bernardus, in glossa super c. Conquestus.<sup>114</sup>

*Questio XXVI.* Quid de illis qui de agro seminato emunt fructus inde percipiendos illo anno? Nunquid est ibi aliqua usura? Respondeo secundum glossam hic, super ver. Consuevit: “Non est usura ex forma contractus. Potest tamen fieri in fraudem usurarum, ut si tantus sit ager et talis quod verisimile sit quod  
455 fructus inde colligendi valeant in autumnus plus quam emptor dedit – verbi gratia, sex solidos, et verisimile est quod valebunt undecim vel duodecim solidos – maxime si talis est persona que contractus huiusmodi consuevit exercere. Et restitutio in foro penitentiali est ei indicenda. Si autem probabiliter dubitatur utrum fructus illi plus vel minus debeant valere quam quod emptor dedit, non  
460 est usura.”<sup>115</sup> Idem Ulricus, §. Similiter.<sup>116</sup> Idem etiam Hostiensis, ver. Duodecimo et ver. Que tamen.<sup>117</sup>

*Questio XXVII.* Quid de eo qui fructus alicuius possessionis emit ad certum tempus, puta, ad quadriennium vel quinquennium, pro certa pecunie quantitate? Respondeo secundum glossam, ibidem: “Eodem modo credo iudicandum.  
465 Licet enim iste contractus non sit usurarius ex forma, potest tamen fieri in fraudem usurarum. Et recurrendum est in foro causarum ad presumptiones suprapositas,”<sup>118</sup> eodem tit., scilicet, q. XXV, Quid si vendidi.<sup>119</sup> “In foro autem

<sup>112</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 6.

<sup>113</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 7.

<sup>114</sup>Ordinary gloss to X 5.19.8, de feudo.

<sup>115</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.6, v. *Consuevit*.

<sup>116</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 de illiberalitate, Quartus modus, fol. 106r.

<sup>117</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 7.

<sup>118</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.6, v. *Consuevit*.

<sup>119</sup>SC 2.7.25.

444 quod CTaTb] qui L 447 cum CTaTb] tamen L

penitentiali stabitur eius confessioni, sicut dicit Raymundus,”<sup>120</sup> ut patuit supra,  
eodem tit., q. XXIII, Quid sit pena, circa finem.<sup>121</sup> “Et multum presumendum  
470 est contra talem creditorem. Et indicenda est ei restitutio in foro penitentiali si  
fructus illius terre verisimiliter credebantur plus longe valere quam iste dederit  
si iustus emptor inveniretur.”<sup>122</sup> Vide infra, q. XXXI, Quid de illis qui emunt.<sup>123</sup>

*Questio XXVIII.* Quid de eo qui mutuatur naviganti vel eunti ad nundinas cer-  
tam pecunie quantitatem, recepturus aliquid ultra sortem pro eo quod suscipit  
475 in se periculum: id est, si pecuniam vel merces inde emptas portaverit salvas,  
alias non teneatur sibi etiam de sorte?

Item, aliquis mutuatur in tali loco mille solidos ut in alio loco reddantur sibi  
centum aurei et scit vel credit dictos aureos ibi plus valere. Recipit autem in  
se periculum, ut etiam primus. Nunquid in his et similibus committitur usu-  
480 ra? Respondeo secundum Raymundum, §. VII, Item si aliquis mutuatur: Quamvis  
quidam dicant quod non, eo quod non videtur incongruum ut in compensatione  
periculi quod in se suscipit aliquid recipiat, alii tamen notaverunt contrarium  
et verius, scilicet, quod sit usura. Et est expressa decretalis, Extra. eodem tit.,  
c. ult., rubr. I. Ponit etiam hic Raymundus tres differentias inter mutuum et  
485 locatum: “Prima, quia in mutuo transfertur periculum in accipientem, secus in  
locato. Secunda, quia pecunia non deterioratur per usum, secus in domo, vel  
equo, vel alia re locata. Tertia, quia usus pecunie nullum fructum vel utilitatem  
parit utenti, secus in usu agri, vel domus, vel equi, vel alterius rei locate. Li-  
cet ergo in predicto casu cesset prima ratio differentie, non tamen cessant due  
490 ultime. Tales etiam semper faciunt tale mutuum propter spem lucri pecuniarii,  
quia non licet, ut supra dictum est.”<sup>124</sup>

Concordat etiam Hostiensis, ver. Sed nunquid. Ratio autem quam ponit est  
hec: Quia aut recipiens non iuvat se de pecunia illa, et sic iniquum est quod  
creditor ab eo lucrum exigat quod non habuit, aut iuvat se, et sic consumptione  
495 efficitur alterius, et res empti efficitur debitoris, licet de aliena pecunia empti  
sit. Quare patet quod non debet ab eo lucrum exigere, quia re sua utitur iste

<sup>120</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.6, v. *Consuevit*.

<sup>121</sup>*SC* 2.7.23.

<sup>122</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.6, v. *Consuevit*.

<sup>123</sup>*SC* 2.7.31.

<sup>124</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 7.

469 Quid CTaTb] Que L 473 eunti CTaTb] ementi L 474 suscipit CTb] suscepit LTa  
482 suscipit CTaTb] suscepit L

et ea lucratur. Quod autem ille in se periculum suscepit, sibi imputet, nec illud periculum in aliquo eum relevat. Partem tamen lucri stipulari potuit, ut Extra. de donationibus inter virum et uxorem, c. Per vestras.<sup>125</sup>

X 4.20.7

500 Sequitur in Raymundo: “Posset tamen hic excogitari casus in quo non esset usura ultra sortem accipere, puta, dum ego emerem vel essem paratus emere certas merces de pecunia, et tu propter nimiam instantiam fecisti me cessare a tali emptione ideo ut tibi mutuarem. Et ego dico, ‘Volo quod reddas mihi ibi tantum quantum essem ibi habiturus de istis mercibus si eas illuc deferrem. Recipio  
505 tamen in me periculum,’ ut supradictum est. Et hoc ideo, quia illud reciperet tanquam interesse, quod licet,” ut predictum est supra, eodem tit., q. XVI, Item quero in quibus casibus.<sup>126</sup> Concordat his Hostiensis in rubr. de penitentiis et remissionibus, ver. Quid si paratus.<sup>127</sup> Idem etiam Ulricus §. Similiter.<sup>128</sup> Dicit hic glossa quod “receptio huiusmodi periculi excusat hic potissimum ab usu-  
510 ra,”<sup>129</sup> in ultimo casu.

*Questio XXIX.* Quid de illis qui a communitatibus civitatum vel a monasteriis emunt certos annuos redditus vel certos modios annuos ad vitam suam? Nunquid est usura? Respondeo secundum glossam, ibidem, super ver. Paratus emere: “Non est usura ex forma contractus. Cum tamen huiusmodi redditus  
515 annuus personalis sit sive bursalis, non predialis, credo, licet quidam legiste dicant contrarium, quod illicitus est contractus, tum quia venditor facile possit desiderare mortem emptoris ut sic liberatus esset, tum quia nullum est emptoris periculum de sterilitate terre aut tempestatibus, que solent fructus terre iam paratos ad messem aliquando destruere, quod periculum emptores predio-  
520 rum sustinent aliquando in tantum quod etiam expensas laboris aliquibus annis amittunt.”<sup>130</sup> Vide infra, q. XXXI, Quid de illis, circa finem.<sup>131</sup>

<sup>125</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>126</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 7; *SC* 2.7.16.

<sup>127</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.38 *de poenitentiis et remissionibus*, n. 61.

<sup>128</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 *de illiberalitate*, Quartus modus, fol. 106r.

<sup>129</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.7, v. *Periculum*.

<sup>130</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.7, v. *Paratus emere*.

<sup>131</sup>*SC* 2.7.31.

500 hic C'TaTb] hoc L 505–506 Et ...est C'TaTb om. L 509 hic C'Tb] hoc LTa 519–520 prediorum C'TaTb] predictorum L

*Questio XXX.* Quid si aliquis, cum vellet emere usque ad certum tempus terram valentem singulis annis X libras reddituum, ad instantiam alterius dedit ei precium quod volebat dare pro illa terra, eo pacto, quod ipse vel heredes eius solvant ei tantum de redditibus usque ad illud tempus? Nunquid esset usura? Respondeo secundum glossam, ibidem, super ver. Cessare: “Si licitus fuit contractus quo volebat emere terram, vel verius fructus illius, credo quod et secundus licitus fuit, alias non.”<sup>132</sup> Videtur etiam concordare Hostiensis et Raymundus, ut patet in simili supra, eodem tit., q. XXVIII, Quid de eo, in fine.<sup>133</sup>

*Questio XXXI.* Quid de illis qui emunt vel dono forte occasione alicuius servitii precedentis accipiunt, vel in perpetuum vel etiam ad tempus, usufructum alicuius castri vel ville, quem contractum indifferenter exerceret precipue cum ecclesiis et monasteriis? Respondeo secundum Raymundum. §. VIII, Item quid de illis: “Credo quod si aliquis advocatus gratis servivit monasterio vel ecclesie de advocatione et consilio suo vel etiam dives gratis et pura intentione servierit ei mutuando pecuniam, licite possunt recipere huiusmodi usufructum vel aliud donum gratis datum, XII, q. II, Quicumque, Ecclesiasticis, Caritatem.”<sup>134</sup> De hoc supra, eodem tit., q. VII, Quid de his qui corrupta et seq.<sup>135</sup>

C. 12 q. 2 c. 4, 67, 45

“Item dico si nullo adhuc impenso servitio receperunt donum a monasterio, dum tamen semper sit intentio recta, et studeant fideliter respondere in servitio competenti, ne alias bona pauperum consumere videantur.”<sup>136</sup> In bonis enim huiusmodi, scilicet, ecclesiarum, que pauperibus sunt debita, strictius iudicantur, ut dicit hic glossa, quamvis gratis receptis, quam de rebus privatorum.<sup>137</sup>

“Idem dico de illis qui emunt, nisi facta sit talis venditio in fraudem usurarum, quod presumitur ex circumstantiis positis,”<sup>138</sup> supra, eodem tit., q. XXV, Quid si vendidi predium.<sup>139</sup> “Et etiam colligetur presumptio etate et sanitate, ex quibus potest haberi presumptio utrum multum vel parum debeat vivere,”<sup>140</sup>

<sup>132</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.7, v. *Cessare*.

<sup>133</sup>*SC* 2.7.28.

<sup>134</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 8.

<sup>135</sup>*SC* 2.7.7 ff.

<sup>136</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 8.

<sup>137</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.8, v. *Bona pauperum*.

<sup>138</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 8.

<sup>139</sup>*SC* 2.7.25.

<sup>140</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 8.

537 Caritatem CTaTb] dari tenetur L 547 vendidi C] vendi LTaTb

550 “quia secundum hoc,” ut dicit hic glossa, “maius vel minus debet esse precium  
 rei empte.”<sup>141</sup> “Tamen de his circumstantiis in iudicio anime serva quod di-  
 xi,”<sup>142</sup> supra, eodem tit., XXIII, Quid si pena, circa finem.<sup>143</sup> “Caute tamen et  
 discrete age ne decipiaris pro posse. Si tamen in tali venditione monasterium  
 esset enormiter vel manifeste deceptum,”<sup>144</sup> etiam citra medietatem iusti precii,  
 555 ut dicit hic glossa,<sup>145</sup> “licet fuerit pura venditio et recta intentio, nec dolus fuit  
 adhibitus, et ideo excusatur ab usura, tamen debet removeere deceptionem, vel  
 supplendo iustum precium vel restituendo rem, precio quod numeravit sibi red-  
 dito, Extra. de emptione et venditione, Cum dilecti.”<sup>146</sup> Et est in optione emp- X 3.17.4  
 toris ut faciat quod horum duorum voluerit, ut ibidem dicitur.<sup>147</sup> “Fiet autem  
 estimatio deceptionis non secundum tempus presens, in quo forte res multum  
 560 meliorata est, presertim si per industriam emptoris meliorata est, sed secundum  
 tempus in quo venditio facta fuit, ut Extra. de emptione, Cum causa. Item, non X 3.17.6  
 tenetur fructus quos percepit medio tempore computare in precio. Excusatur  
 enim propter bonam fidem, et iustum titulum, et laborem, et similia, Extra.  
 de rebus ecclesie non alienandis, Ad nostram; XII, q. II, Vulturane; Extra. de  
 565 restitutione in integrum, Requisivit.”<sup>148</sup> Concordat his Ulricus, §. Interdum.<sup>149</sup> X 3.13.11  
 C. 12 q. 2 c. 25  
 X 1.41.1  
 Dicit hic glossa super ver. Qui emunt, quod “ubi emuntur aliqui proventus  
 vel redditus ad vitam venditoris, servatis circumstantiis de quibus loquitur hic  
 magister, tolerabilior est huiusmodi emptio, quia non est periculum quod alter  
 desideret mortem alterius. Sed ubi emitur ad vitam ementis, non est tutum ne  
 570 venditor desideret mortem emptoris. Ideo enim inhibita est promissio prebende  
 vel beneficii non vacantis et pactum de futura successione in hereditate testatoris  
 – pactum, dico, factum dum adhuc vivit. Non tamen precise dico mortale esse  
 peccatum vendere vel emere ad vitam ementis, quia non invenio hoc inhibitu-

<sup>141</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.8, v. *Multum, et parum*.

<sup>142</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 8.

<sup>143</sup>*SC* 2.7.23.

<sup>144</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 8.

<sup>145</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.8, v. *Enormiter*.

<sup>146</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 8.

<sup>147</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.8, v. *Enormiter*.

<sup>148</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 8.

<sup>149</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 de illiberalitate, Interdum eciam emit, fol. 106v.

550 rei C<sup>Ta</sup>Tb om. L 553 medietatem C<sup>Ta</sup>Tb] medietatem L 560 presertim ... est C<sup>Ta</sup>Tb  
 om. L 563–564 Extra. ... Vulturane C<sup>Ta</sup>Tb om. L 566 ubi C] ibi L<sup>Ta</sup>Tb 573 vendere  
 C<sup>Ta</sup>Tb om. L

dummodo serventur debite circumstantie.”<sup>150</sup>

575 Ulricus autem simpliciter dicit quod credit licitum esse cum emit quis red-  
ditus aliquos ad tempus vite sue ab ecclesia vel etiam a privata persona, et hoc  
propter dubium, “dummodo, inspectis omnibus circumstantiis, servetur in tali  
contractu equalitas iustitie commutative, vel saltem non sit tanta inequalitas  
quod ecclesia sit enormiter lesa vel manifeste decepta.” Nam si sic, supplebitur  
580 precium,<sup>151</sup> ut supra dixit Raymundus et etiam glossa. Et concordat in hoc cum  
Ulrico Hostiensis, ver. Certe salva, et addit quod si pravam habet intentionem,  
purget conscientiam.<sup>152</sup>

Videtur quoque cum hoc satis concordare etiam quantum ad privatas per-  
sonas Innocentius, eodem tit., in glossa super c. In civitate, dicens quod “ex  
585 illa decretali satis innuitur quod si aliquis pro certa pecunie quantitate emeret  
aliquem redditum grani, vel vini vel simile perpetuo vel ad tempus certum vel  
ad tempus vite vel alicuius alterius, quod licitus est huiusmodi contractus ex  
forma,” dummodo iusto precio secundum communem estimationem, precipue  
si redditus constitutus sit ante contractum, sive constitutus fuerat redditus in  
590 re, puta, in domo, vel possessione vel aliis huiusmodi, sive in persona, puta,  
servi vel liberti vel rustici; item, sive sit certus redditus, puta, quia reddit X,  
sive incertus, puta, quia reddit quartam fructuum qui percipiuntur, sive sint in  
pecunia sive in aliis. Idem etiam dicunt aliqui quod licitus est contractus si de  
novo aliquis redditus constituatur in rebus vel in personis, sed hoc non adeo  
595 dicit consulendum esse ut primum. Hec, licet sparsa, ibidem ex glossa illa colligi  
possunt.<sup>153</sup> Concordat his Hostiensis, in glossa, ibidem, dicens quod huiusmodi  
contractus liciti sunt et concessi, dummodo neuter decipiat alterum, nisi ali-  
quid fiat in fraudem usurarum.<sup>154</sup> Vide etiam de his infra, questione proxima,  
et supra, q. XXVII, Quid de eo qui fructus.<sup>155</sup>

600 Addit etiam glossa, ibidem, scilicet, super ver. Debet remove, dicens, “Hoc

<sup>150</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.8, v. *Qui emunt*.

<sup>151</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 *de illiberalitate*, Interdum eciam emit, fol. 106v.

<sup>152</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>153</sup>Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X 5.19.6, v. *Ex forma*.

<sup>154</sup>Hostiensis (Henricus de Segusio), *Lectura sive apparatus super quinque libris decretalium*, ad X 5.19.6, n. 2, v. *Nomine usurarum*.

<sup>155</sup>*SC* 2.7.27.

583 quoque CTaTb] quocumque L 594 hoc CTa] hic LTb

idem etiam credo in privata persona servandum, et si non iure fori, tamen iuri poli, scilicet, cum quis manifeste vel enormiter decepit aliquem, maxime simplicem, licet citra medietatem iusti precii decipiat. Si tamen nollet restituere aliquid taliter decepto, non esset propter hoc deneganda ei absolutio, cum iura  
605 civilia sustineant quod sese invicem re ipsa decipiant contrahentes, dum tamen hoc sine dolo et fraude faciant.”<sup>156</sup> Concordat cum hac glossa Ulricus, §. Idem etiam.<sup>157</sup> Sed Thomas videtur contradicere, dicens quod secundum iudicium Dei quandocumque est nominabilis inequalitas, “tenetur ille qui plus habet recom-  
pensare.”<sup>158</sup> De hoc habebitur infra, tit. proximo, q. IX, Utrum liceat aliquid  
610 vendere.<sup>159</sup> Cf. Dig. 4.4.16.4

*Questio XXXII.* Quero etiam hic generaliter quid iuris sit de precaria. Respondeo secundum Hostiensem, lib. III, rubr. XIII, de precariis, §. III, in principio: “Contractus qui vocatur precaria est quedam personalis seu temporalis prestatio usufructus que conceditur ab ecclesia homini usque ad mortem suam.  
615 Et nota quod hec precaria ita conceditur secundum leges. Si laicus habet vineam valentem decem libras et vult dare ecclesie ad precariam, ecclesia dabit sibi duas vineas equivalentes, et hoc si transfert possessionem, et dominium, et usufructum penes ecclesiam in continenti. Nam si velit usufructum sue vinee retinere in vita sua, dabit ecclesia unam vineam equivalentem tantum, et sic  
620 laicus dicitur habere has duas vineas ad precariam, C. de sacrosanctis ecclesiis, l. Iubemus, c. ult.” C. 1.2.14.9

“Sed secundum canones benignius agitur respectu contrahentium et asperius respectu ecclesie, quia in quo casu dixi supra duas vineas dandas, concedunt canones tres, et in quo casu dixi dandam unam vineam, concedunt canones  
625 duas, ut patet X, q. II, Precarie.” C. 10 q. 2 c. 4

“Et non est facienda precaria vacante ecclesia, XII, q. II, Precarie. Et si precaria irrationabiliter fiat, potest revocari per successorem non obstante pena apposita per prelatum, Extra. de precariis, c. II.” C. 12 q. 2 c. 44

Quod autem canones dicunt de tribus vineis dandis, ut predixi, “forte lo-

<sup>156</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.8, v. *Debet remove.*

<sup>157</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 *de illiberalitate*, Idem etiam credo, fols. 106v-107r.

<sup>158</sup>*ST* IIa-IIae q. 77 a. 1, ad 1.

<sup>159</sup>*SC* 2.8.9.

606 sine CTaTb] non L 609 habebitur CTaTb] habetur L 624 dixi dandam CTaTb *om.*  
L 626 non CTaTb] tamen L

630 quantur quando persona est senex, vel debilis, vel pauper, quia tali debet ecclesia etiam de suo proprio subvenire.”<sup>160</sup> Goffredus tamen simpliciter ponit formam precarie que habetur in predicto canone, X, q. II, Precarie.<sup>161</sup>

C. 10 q. 2 c. 4

*Questio XXXIII.* Quid de his qui emunt boves vel oves a pauperibus quos forte non habent? Respondeo secundum glossam, ubi supra, super ver. Qui  
635 emunt: “Ubi emit quis a paupere, vel etiam a divite, huiusmodi animalia, que scit vel credit ipsum non habere, et, quasi iam tradidisset ei, locat ei pro certa annua pensione, usura est, vel ad minus presumendum est in fraudem usurarum fieri.”

“Idem credo de illis qui scienter emunt fructus terrarum ab illis qui eos non  
640 habent. Si autem sine fraude et bona fide fiat huiusmodi emptio, non credo emptorem peccare, quamdiu durat bona fides.”<sup>162</sup>

*Questio XXXIII.* Quid de illis qui emunt certos equos reddendos a venditore vel debitore in certis nundinis – emunt, inquam, minori precio quam valeant tempore contractus? Respondeo secundum glossam, ibidem: “Usura est nisi verisimiliter dubitetur equos illos tempore solutionis plus minusve valituros, sicut  
645 dictum est supra in quibusdam casibus, vel nisi sciatur vel probabiliter credatur quod totidem valituri sint vel minus.”<sup>163</sup>

*Questio XXXV.* Quid de illis qui tradunt boves ad mediationem, sive *morsum* vulgariter, pro certis sextariis bladi eo pacto, quod si moriantur vel deteriorentur, conductor subeat medietatem periculi; si autem meliorentur, habeat medietatem commodi? Respondeo secundum glossam, ibidem: “Revera licet locare boves sicut equos vel ad diem vel ad annum, dum tamen conductor non gravetur immoderate in mercede.”

“Pactum autem de communicando damno vel commodo rei locate iniquum  
655 est ex parte locatoris, nisi probabiliter dubitetur utrum locatoris vel conductoris melior aut deterior sit conditio, vel nisi credatur quod conductoris non sit deterior. In pacto tamen proposito videtur conductoris deterior conditio, quia vix aut nunquam potest tantum habere commodum de melioratione bovis quantum potest habere damnum de morte. Si tamen locator, timens ne conductor

<sup>160</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 3.14 *de precariis*, n. 1.

<sup>161</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 *de usuris*, n. 12.

<sup>162</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.8, v. *Qui emunt*.

<sup>163</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.8, v. *Qui emunt*.

642 reddendos CTa] reddentes LTb

660 gravaret bovem si non timeret de periculo huiusmodi, pactum apponat firmiter  
proponens quod si bos sine culpa conductoris periret, de illo periculo nihil ex-  
igeret ab eodem, non credo quod peccaret, nisi propter scandalum eorum qui  
ignorarent eius intentionem. Illud tamen verum est, quod conductor rei potest  
in se suscipere periculum rei conducte et casus fortuitos quantum est de natura  
665 contractus. Sed in proposito casu, non tantum est locatio et conductio, sed so-  
cietas in periculo et melioratione bovis.”<sup>164</sup>

*Questio XXXVI.* Quid de ovibus vel aliis animalibus que traduntur ad cre-  
mentum, sive ad *crois* gallice? Respondeo secundum glossam, ibidem, super ver.  
Quod dixi: “In huiusmodi traditione potest intervenire contractus societatis tan-  
670 tum, vel locationis et conductionis tantum. Possunt etiam concurrere contractus  
mutui et societatis. Contractus societatis tantum, ut quando quis habens vigin-  
ti capita ovium inivit societatem cum alio habente totidem et communicant ad  
invicem ipsas oves et periculum, et emolumentum, et expensas circa custodiam  
et pastum earum. In quo casu, si conveniant inter eos quod de fetibus recupe-  
675 rent capita demortua, aut de velleribus et pellibus emantur alia ad augendum  
gregem, aut si ineant aliud pactum licitum et honestum, non peccant, dum ta-  
men servetur equalitas inter eos ita quod ex huiusmodi pacto non videatur esse  
deterior vel melior conditio unius quam alterius.”

“Item locatio potest esse et conductio tantum, ut si quis habens XX capita  
680 tradat ea alicui custodienda et pascenda sub certa mercede pecunie vel par-  
ticipatione proventuum gregis. In quo casu, si dominus retinet sibi periculum  
illorum capitum nec alias in pactis et conventionibus conductorem gravet, licitus  
est contractus.”

“Item possunt concurrere contractus mutui et societatis, ut cum quis habens  
685 XX capita tradit ea estimata alicui, puta, pro XX solidis ita quod teneatur ei  
reddere medietatem sortis, scilicet, X solidos, quicquid contingat postmodum de  
ovibus. Et tunc providendum est ac si creditor dedisset ei mutuo X solidos, ex  
quibus, comparatis X capitibus, contraxisset societatem cum creditore habente  
X alia capita ita quod sint communia, et ipsi socii sint in periculo et proventibus.  
690 In quo casu, si commodatione mutui gravet creditor debitorem in contractu

<sup>164</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.8, v. *Qui emunt*.

682 conventionibus TaTb] in convencionibus C: conductionibus L 687 ovibus CTaTb] qui-  
bus L 688 comparatis CTb] compactis Ta: cum pactis L 690 commodatione CTaTb] cum  
moderatione L

societatis, usura est. Et in hoc casu procedendum est sicut dictum est in primo casu de contracta societate.”

“Illud autem valde iniquum est, cum quis certa capita ovium tradit estimata certo precio et sub eo pacto contrahit societatem, quod totam de proventibus  
695 sortem recipiat antequam alius aliquid inde percipiat, vel si paciscatur quod de fetibus reparentur capita casu demortua antequam alius aliquid de proventibus percipiat. Hoc enim est quasi tradere oves immortales.”

“Et generaliter verum est quod ubi probabiliter dubitatur utrum illius vel istius deterior sit conditio in forma conventionis sive pacti adhibiti in contracta  
700 societate, non est peccatum. Ubi autem ad arbitrium boni viri gravatur alterius conditio, peccatum est ex parte gravantis si scienter hoc faciat, et tenetur ad restitutionem. Non potest tamen dari doctrina generalis super huiusmodi traditionibus ovium propter varietatem traditionum et dolos qui super talibus excogitantur a quibusdam.”<sup>165</sup> Hec omnia in glossa.

705 *Questio XXXVII.* Quero etiam de societatibus primo in genere utrum, videlicet, societates inter mercatores de lucro et damno sint licite. Respondeo secundum Hostiensem in rubr. de usuris, §. VII, An aliquo, ver. Usura igitur: “Usura reprobatur, societas admittitur, et honestum lucrum est, dum tamen diebus concessis mercimonium exerceatur. Alias, illicitum est, ut Extra. de feriis, c. I.”<sup>166</sup>

X 2.9.1

*Questio XXXVIII.* Quid si contrahatur societas sic quod unus ponat pecuniam et alius operam? Respondeo secundum Hostiensem, ibidem: “Licetum est, dum tamen lucrum et damnum communiter sentiant.”<sup>167</sup>

Satis concordat Goffredus, qui sic dicit, “Vis dare pecuniam tuam naviganti  
715 vel eunti ad nundinas seu alii mercatori sine peccato. Pone tu pecuniam, et alius operam personalem et pecuniam tantam, vel minorem plerumque (enim quod pecunie deest opera suppletur, ut ff. pro socio, l. V, §. I), et communicetis pericula, lucra, et damna.”<sup>168</sup> Idem Goffredi dictum approbando recitat Hostiensis postea, ver. Ideoque.<sup>169</sup> Concordat etiam *Glossa*, XIII, q. III, super c. Pleri-

Dig. 17.2.5

<sup>165</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.8, v. *Quod dixi*.

<sup>166</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>167</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>168</sup>Gottofredo da Trani, *Summa super titulis decretalium*, X 5.19 *de usuris*, n. 12.

<sup>169</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

696 alius CTaTb] aliud L 706 societates CTaTb] societas L 711 contrahatur CTaTb]  
contrahitur L 714 concordat CTaTb] concordant L

720 que, dicens quod si societas contrahitur inter aliquos et periculum spectat ad  
utrumque, bene licitum est quod unus socius det pecuniam et alter suppleat per  
laborem quod deest in pecunia, ut in l. predicta, scilicet, ff. pro socio, l. V.<sup>170</sup> Dig. 17.2.5

De huiusmodi societatibus dicit Thomas, in *Summa* art. II, arg. V, quod  
quia “ille qui committit pecuniam suam mercatori vel artifice per modum socie-  
725 tatis cuiusdam non transfert dominium pecunie sue in illum, sicut in mutuo, sed  
remanet eius ita quod cum periculo ipsius mercator de ea negociatur vel artifex  
operatur. Ideo licite potest partem lucri inde provenientis expetere tanquam de  
re sua.”<sup>171</sup>

*Questio XXXIX.* Quid de his qui oves vendunt vel donant vel tradunt mo-  
730 nasteriis sub hoc pacto, quod pro qualibet ove recipiant in anno duos solidos,  
cum fructus cuiuslibet ovis valeat quinque solidos vel quattuor, sed quamvis  
omnes oves moriantur, nihilominus remanet ex pacto monasterium obligatum  
ac si viverent, sed post traditionem pertinent omnes ad monasterium, etiam  
si numerus centuplicatus foret? Respondeo secundum Hostiensem, ibidem, ver.  
735 Quid de his: “Ex vi pacti dico hoc licitum, nec potest ecclesia restitutionem  
petere ex quo in traditione lesa non fuit, quamvis eventus mortalitatis sequatur.  
Et hoc verum intelligas, nisi oves infecte essent et ad mortem parate, et non  
prospexit monasterium mortalitatem evenire posse, ut ff. de minoribus, Verum,  
§. Si locupletior. Consulo tamen tradenti quod si talis casus evenit, inspecto  
740 lucro quod fecit monasterium in ovibus quas forte longo tempore habuerat, in  
solidum exigat vel remittat vel partiatur et sentiat partem damni, nec unquam  
cum iactura monasterii velit locupletari, ut ff. de conditione indebiti, l. Nam  
hoc natura. Item caveat sibi tradens, nam nisi totus conventus consentiat, non  
745 tenetur monasterium de ovibus abbati vel celerario sub pacto precedenti vel  
consimili traditis vel donatis, ut Extra. de deposito, c. I.”<sup>172</sup> Dig. 4.4.11.5 X 3.16.1

*Questio XL.* Quid de quibusdam qui tempore messis vel vindemie emunt  
annonam vel vinum vilius ut postea vendant carius? Respondeo secundum Ray-  
mundum, §. IX, De quibusdam autem: Dicit quod peccant et turpe lucrum

<sup>170</sup>Ordinary gloss to C. 14. q. 3 c. 3, v. *Negotiatoribus*.

<sup>171</sup>*ST* IIa-IIae q. 78 a. 2, ad 5.

<sup>172</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

720 et CTaTb om. L 721 bene CTaTb] unde L 727 Ideo licite CTaTb] sollicite L 730 duos  
solidos CTaTb] duos enim solidos L 732 remanet CTaTb] remaneat L 738 evenire CTaTb]  
eveniri L 748–749 Dicit ... est CTaTb om. L

- est.<sup>173</sup> Glossa dicit hic quod hoc nimis durum est si sine distinctione intelligatur.<sup>174</sup> Unde et canon XIII, q. III dicit sic, “Quicumque tempore messis vel vindemie non necessitate, sed propter cupiditatem, comparat annonam vel vinum, verbi gratia, de duobus denariis comparat modium vini, et servat usque dum vendatur denariis III aut VII aut amplius, hoc turpe lucrum dicimus.” C. 14 q. 4 c. 3 Propter quod et ipse Raymundus postea distinguit.
- 755 Sed Ulricus plenius et planius, §. Est etiam turpe, distinguit dicens, “Quia vel talis emptio fit propter commune bonum, sicut Joseph emit frumenta ut haberet unde provideret populis tempore famis, et hoc meritorium est.”<sup>175</sup> Idem Raymundus.<sup>176</sup> Gen. 41:29-57
- “Vel fit propter privatum commodum, et hoc tripliciter. Quia vel fit ex providentia, sicut si aliquis emat huiusmodi timens quod postea oporteat eum carius emere si indiguerit, et nihilominus tamen postmodum carius vendit sicut in foro venditur, quia non indiget sicut credebat, et hoc etiam licitum est.”<sup>177</sup> Idem Raymundus et glossa hic.<sup>178</sup> Idem etiam Innocentius dicit, Extra. ne clerici vel monachi, in glossa super c. I.<sup>179</sup>
- 765 “Et multo fortius licitum est hoc si non emit ultra suam necessitatem vel emit ex pietate ut ex lucro venditionis habeat unde provideat pauperibus, dummodo ita moderate hoc faciat quod per caristiam communitas non ledatur.”<sup>180</sup>
- “Vel fit secundum iustitiam commutativam, ut faciunt mercatores. Et illi licite possunt pro opera sua recipere lucrum unde sustententur, dummodo non intendant caristiam inducere.”<sup>181</sup> Idem dicit hic glossa, et addit, “Et maxime cum aliud genus negotiationis non novit, nec alias habet unde vivat vel
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- <sup>173</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 9.  
<sup>174</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.9, v. *Emunt*.  
<sup>175</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 de illiberalitate, Quartus modus est, fol. 105v.  
<sup>176</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 9.  
<sup>177</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 de illiberalitate, Quartus modus est, fol. 105v.  
<sup>178</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 9; William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.9, v. *Peccant, Necessitatem*.  
<sup>179</sup>Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X 3.50.1, v. *Negocium*.  
<sup>180</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 de illiberalitate, Quartus modus est, fol. 105v.  
<sup>181</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 de illiberalitate, Quartus modus est, fols. 105v-106r.
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- 749 Glossa CTaTb om. L 753 aut CTaTb] vel L 763 etiam CTaTb] et L 763 clerici CTaTb] cleri L

sustentetur.”<sup>182</sup>

“Vel fit ex avaricia, ita quod unus tantum de huiusmodi congregat quod compelluntur homines ab ipso emere ad libitum suum, et ideo vendit adeo care  
775 sicut vult. Et patet quod isti enormiter peccant, non solum contra proximum, sed etiam contra communitatem proximorum.”<sup>183</sup> Tales etiam necnon et eos qui emunt aureos vel alias monetas vel res venales et precipue victualia ut caristiam inducant, vocat etiam hic Raymundus “nephandas belvas.”<sup>184</sup>

Glossa etiam dicit hic quod quando hec fiunt ex cupiditate, sive a clericis  
780 sive a laicis, mortale peccatum est. “Quando autem laicus non ex cupiditate, sed ut provideat sibi et suis, emit aliquid ut postea carius vendat, sive annonam sive aliud, non audeo dicere mortale.”<sup>185</sup>

Innocentius quoque, ubi supra, dicit quod etiam licitum est quod aliquis emat huiusmodi victualia ut tempore famis vendat eo precio quo tunc vendetur,  
785 dummodo hoc faciat “quia homines propter abundantiam ad gentes alias transportabant vel quia debitam curam circa victualia non habebant, dissipabantur. Si autem emant ut carius vendant, nulla utilitate pensata, peccant omnes.”<sup>186</sup> Idem dicit Hostiensis in glossa.<sup>187</sup>

Addit etiam hic Raymundus quod in hoc peccato “gravius peccant clerici  
790 quam laici. Neutros tamen dico hic ad restitutionem faciendam certe persone teneri, sed debet erogari tale lucrum in usus pauperum.”<sup>188</sup> Sed glossa dicit hic, “Hoc intelligo de consilio, non de necessitate.”<sup>189</sup>

*Questio XLI.* Quid si clericus rem aliquam emat ut eam per suam industriam melioratam vel mutata forma vendat carius quam emerit, ut si pullum  
795 emat equinum et nutriat vel tabulam emat et inde faciat ymaginem et similia? Respondeo secundum glossam: Hoc licitum est, quia, sicut dicit *Glossa*, XIII,

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<sup>182</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.9, v. *Necessitatem*.

<sup>183</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 *de illiberalitate*, Quartus modus est, fol. 106r.

<sup>184</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 9.

<sup>185</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.9, v. *Peccant*.

<sup>186</sup>Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X 3.50.1, v. *Negocium*.

<sup>187</sup>Hostiensis (Henricus de Segusio), *Lectura sive apparatus super quinque libris decretalium*, ad X 3.50.1, v. *Propter necessitates*.

<sup>188</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 9.

<sup>189</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.9, v. *Debent erogari*.

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779 hic CTaTb om. L 791 sed CTaTb om. L 791 in CTaTb] ut L

q. IIII, super c. Canonum, in talibus non est negociatio, sed artificium.<sup>190</sup> Idem etiam dicit Raymundus infra, tit. proximo, §. II, Casus tamen sunt.<sup>191</sup> Probatur etiam de consecratione, dist. V, Nunquam; Extra. ne clerici vel monachi, c. I; et arg. dist. XXI, Cleros.

D. 5 de cons. c. 33; X 3.50.1; D. 21 dict. ante c. 1

*Questio XLII.* Quid de his qui annonam veterem mutant ut recuperent novam? Respondeo secundum Raymundum: Dicit ibidem quod usuram committunt, quia meliorem rem recuperare volunt, ut supra, eodem tit., q. I, Quid sit usura.<sup>192</sup>

805 Hostiensis, ver. Quid si quis mutuatur, dicit idem, quando, scilicet, propter hoc facit, ut meliorem recipiat, Extra. eodem, Consuluit et c. In civitate. Si autem hoc facit “ne sua sibi pereant, vel forte ut accipienti gratiam faciat, non committit usuram.”<sup>193</sup> Idem per omnia dicit Goffredus.<sup>194</sup>

X 5.19.10 & c. 6

810 Glossa etiam hic dicit quod non audet “istos condemnare si ad hoc mutant, ut promixio subveniant, dummodo non auferant ei libertatem liberandi se interim solvendo veterem, vel si probabiliter dubitetur utrum plus vel minus valitura sint tempore solutionis. Alias verum est quod dicit hic Magister,” scilicet, Raymundus.<sup>195</sup>

815 *Questio XLIII.* Quid de legibus que permittunt usuras exigi? Nunquid tenentur? Respondeo secundum Raymundum, §. X, Quid de legibus: “Dico breviter quod non tenentur. Immo sunt omnes abrogate, quia imperator terre non potuit condere legem contra imperatorem celi iure civili. Nam dicit imperator quod sacre leges non dedignantur sacros canones imitari, specialiter in matrimoniis et usuris, Auten. ut clerici apud proprios episcopos conveniantur, collatio VI; et II, q. III, §. Hinc colligitur; Extra. de novi operis nunciatione, Intelleximus. Sed secundum canones non possunt exigi, ergo nec secundum leges. Ille tamen leges que permittunt usuras exigi ratione interesse vel ratione more bone sunt

Auth. coll. 6.12.1 = Nov. 83; C. 2 q. 3 dict. post c. 7; X 5.32.1

<sup>190</sup>Ordinary gloss to C. 14 q. 4 c. 3, v. *Et vendendi*. Cf. William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.9, v. *Peccant*.

<sup>191</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.8 *de negotiis saecularibus*, n. 2.

<sup>192</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 9; *SC* 2.7.1.

<sup>193</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>194</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 *de usuris*, n. 12.

<sup>195</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.9, v. *Recuperent novam*.

et approbando si sane intelligantur,” ut supra, eodem tit., q. XVI, Item quero in quibus casibus.<sup>196</sup>

825 Dicit Ulricus, §. Dubitant, quod non credit illas leges abrogatas. Legis enim lator multa permittit “ne commune bonum impediatur et ut maius malum evitetur que tamen contra Deum sunt, et ideo iure canonico prohibentur et puniuntur. Et illa lex iuste permittit, quamvis iniuste talia fiant. Et sic est in proposito. Nam propter avariciam hominum pauperes sepe cogerentur deficere nisi permit-

830 teretur quod aliqui eis mutuarent ad usuram.”<sup>197</sup> Concordat cum his Thomas, art. I, arg. IIII.<sup>198</sup> Concordat etiam Hostiensis, §. VI, Qualiter, in fine, dicens quod “propter mundi necessitates non potuit imperator ex toto cassare obligationem usurarum, sed tamen minuit. Lege autem Dei omnes usure prohibite sunt et execrate, nec servus abolere potest legem domini sui.”<sup>199</sup>

835 *Questio XLIII.* Quero etiam utrum sit peccatum accipere mutuo pecuniam sub usura? Respondeo secundum Thomam, in *Summa*, art. IIII: “Dicendum quod inducere hominem ad peccandum nullo modo licet. Uti tamen peccato alterius ad bonum licitum est, quia et Deus utitur omnibus peccatis ad aliquod bonum. Ex quolibet enim malo elicit aliquod bonum, ut dicit Augustinus in

840 *Enchyridio*.<sup>200</sup> Unde et Publicole querenti utrum liceret uti iuramento eius qui per falsos deos iurat, in quo manifeste peccat, eis reverentiam divinam exhibens, respondit quod ‘qui utitur fide illius qui per falsos deos iurat non ad malum, sed ad bonum, non peccato illius se sociat, quo per demonia iuravit, sed pacto bono eius, quo fidem servavit.’<sup>201</sup> Si tamen induceret eum ad iurandum per falsos

845 deos, peccaret.”

“Ita etiam in proposito dicendum est quod nullo modo licet inducere aliquem ad mutuandum pecuniam sub usuris; licet tamen ab eo qui paratus est hoc facere et usuras exercet mutuum accipere sub usuris propter aliquod bonum, quod est subventio sue necessitatis vel alterius. Sicut etiam licet ei qui incidit in latrones

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<sup>196</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 10; *SC* 2.7.16.

<sup>197</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 *de illiberalitate*, Addunt tamen predicti, fol. 106v.

<sup>198</sup>*ST* IIa-IIae q. 78 a. 1, ad 3.

<sup>199</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>200</sup>Augustine, *Enchyridion* 11 (PL 40:236).

<sup>201</sup>Augustine, *Epistolae* 47 (PL 33:184).

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838 aliquod C'TaTb] aliquid L 839 aliquod C'TaTb] aliquid L 848 aliquod C'TaTb] aliquid L

850 manifestare bona que habet, qui latrones diripiendo peccant, ad hoc, quod non  
occidatur, exemplo X virorum qui dixerunt ad Ismael, ‘Noli occidere nos, quia  
habemus thesaurum in agro,’ ut dicitur Hieremia, XLI.”<sup>202</sup>

Jer. 41:8

Eandem sententiam tenet Ulricus, §. Dicunt etiam. Et addit quod non solum  
in necessitate, sed etiam pro utilitate quam aliquis consequitur agendo negocia  
855 sua, licitum credit accipere mutuum ad usuram, “cessante autem hac ratione, id  
est, quando non est coactio per utilitatem iusti lucri, sicut cum propter ludum  
alee vel aliud simile usura datur.” Tunc iudicat peccatum esse mortale accipere  
mutuum ad usuram.<sup>203</sup>

*Questio XLV.* Quid de notariis qui super usuris scienter conficiunt instrumen-  
860 ta? Respondeo secundum Hostiensem, §. VII, An aliquo, circa finem: “Periuri  
sunt, quia quando creantur iurant quod hoc non faciant. Ergo de cetero nec te-  
stificari poterunt, nec publica conficere instrumenta. Ex hoc etiam sunt infames;  
quibus sunt actus legitimi interdicti, Extra. de testibus, Licet ex quadam, §. I,  
ad finem.”<sup>204</sup>

X 2.20.47

865 *Questio XLVI.* Quid de prelatiis subscribentibus et sigillantibus? Respondeo  
secundum Hostiensem, ibidem: “Si prelatus non legit tenorem, vel legit, sed  
usura velata est, quia forte apponitur maior quantitas quam in veritate mutuata  
sit, nec diligenter scrutatur, et ideo non intelligit, fatue agit, sed in veritate non  
consentit. Si vero legit et veritatem invenit, particeps est usurarum, et si non  
870 commodi. Nam subscriptio in multis iuris articulis consensum et approbationem  
inducit, Extra. de sententia et re iudicata, Cum inter nos. Talibus prelatiis dici  
potest illud: ‘Laqueus iuvenum omnes vos’, II, q. VII, Paulus.”<sup>205</sup> Idem per  
omnia dicit Goffredus.<sup>206</sup>

X 2.27.13

Isa. 42:22

C. 2 q. 7 c. 28

*Questio XLVII.* Qualiter usurarii compellantur ad restitutionem faciendam?  
875 Respondeo secundum Raymundum, §. XI: “Compelluntur restituere usuras a  
iure et a iudice: A iure, quia si sunt publici usurarii, ipso iure sunt excommuni-  
cati quantum ad tria, scilicet, quod non debent recipi ad communionem altaris,  
nec debent recipi eorum oblationes, nec debent recipi ad christianam sepultu-

<sup>202</sup>ST IIa-IIae q. 78 a. 4, co.

<sup>203</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 *de illiberalitate*, Dicunt autem aliqui,  
fol. 106v.

<sup>204</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>205</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 7.

<sup>206</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 *de usuris*, n. 13.

- ram si in hoc peccato decesserint, Extra. eodem, Quia in omnibus; a iudice, X 5.19.3
- 880 quia potest quemlibet usurarium cogere ad restituendas usuras si necesse fuerit, etiam per maiorem excommunicationem omni appellatione remota, Extra. eodem, Quoniam non solum. Item compellitur tertio modo, quia si usurarius repetat ab aliquo usuras, repellitur per exceptionem donec ipse restituerit usuras X 5.19.2
- 885 frustra. Istis eisdem modis compelluntur heredes usurariorum, sive sint filii sive extranei, Extra. eodem, Tua et c. Michael.” X 5.19.14 X 5.19.9 & c. 17
- “In foro autem penitentiali indubitanter tenentur tam usurarii quam heredes ad solidam restitutionem omnium usurarum quas illicite receperunt, vel saltem faciant posse suum et doleant de peccato. Et quia non possunt plene restituere, et
- 890 proponant in animo restituere si pervenerint ad pinguiorem fortunam, et semper pro posse nitantur ad hoc.”<sup>207</sup> Concordat omnibus supradictis Goffredus, et Hostiensis, §. IX, Que pena.<sup>208</sup>
- Addit hic Raymundus dicens, “Possunt etiam tales contriti et satisfacere non valentes postulare dilationem vel causa elemosyne sibi remissionem fieri ab eo
- 895 cui tenentur, et sic erunt in statu salvandorum, alias non, XIII, q. VI, Si res.” C. 14 q. 6 c. 1
- “Qualiter autem et in quantum teneantur heredes, tam in hoc quam in aliis casibus.”<sup>209</sup> Vide supra, eodem lib., tit. V, de raptoribus, in rubr. de restitutionibus.<sup>210</sup>
- Questio XLVIII.* Sed qualiter intelligitur usurarius manifestus fore? Respon-
- 900 deo secundum Hostiensem, ibidem, ver. Sed quomodo: “Manifestos voco notorios, et hoc vel evidentia facti, puta, quia usurarius mensam tenet paratam ad mutuandum pecuniam cuilibet sub usuris, arg. Extra. de cohabitatione clericorum, Tua et circa finem, et in hoc casu ipso iure patitur penam canonis X 3.2.8 & c. 10
- 905 pretaxatam, vel notorio iuris, puta, quia sunt per episcopum in ecclesia publicati. Secus si ab ecclesia adhuc tollerentur, ut arg. Extra. de cohabitatione clericorum et mulierum, Nostra. Nam si manifesti sint per famam, tantum non X 3.2.7
- notorii, non patiuntur hanc penam ipso iure, sed per publicationem. Sic intellige

<sup>207</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 11.

<sup>208</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 *de usuris*, n. 7; Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 10.

<sup>209</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 *de usuris*, n. 11.

<sup>210</sup>SC 2.5.64 ff.

	Extra. eodem, Cum tu, rubr. I.”	X 5.19.5, §. 1
	“Sufficit autem ad publicationem faciendam quod, vocati, confiteantur vel,	
910	negantes, per testes convincantur, ut Extra. de cohabitatione clericorum, Tua.	X 3.2.8
	Sufficiunt etiam certa argumenta cum fama, ut Extra. eodem, Cum tu.”	X 5.19.5
	“Quamvis autem nullus appareat accusator super hoc, procedet nihilominus	
	episcopus ex officio suo, ut ibidem. Quam cito autem satisfaciunt, hec pena ces-	
	sat, ut in c. Cum tu. Vel ex officio etiam suo puro vel ad denunciationem alicuius	X 5.19.5, §. 1
915	potest episcopus compellere usurarium ad restitutionem faciendam, Extra. eo-	X 5.19.15
	dem, Cum in dyocesi; Extra. de iureiurando, Ad nostram.” <sup>211</sup> Vide de hoc infra,	X 2.24.7
	eodem tit., q. LIII, Quid si quis iuravit. <sup>212</sup>	
	<i>Questio XLIX.</i> Quid si quis repetat usuras, et excipiat contra eum quod	
	ipse repetere non potest nisi ipse restituat usuras quas extorsit, ipse vel is cui	
920	successit, ut Extra. eodem tit., c. Michael? Ipse autem replicet, “Paratus sum	X 5.19.17
	restituere si sit qui petat.” Quid faciet iudex ecclesiasticus? Respondeo secun-	
	dum Goffredum: “Faciet preconizari quod quicumque tali solvit usuras veniat	
	et probet et rehabebit, et consimile fit alias, V, q. I, Quidam maligni spiritus	C. 5 q. 1 c. 3
	et Extra. de clandestina desponsatione, Cum in tua. Et si illi negligant aut	X 4.3.3
925	contemnunt venire vel accusationes suas remittant, procedet istius petitio sine	
	impedimento illius exceptionis. Sed si veniant et probent se solvisse usuras, fiet	
	eis restitutio. Nec in hoc casu sufficit pignora dari vel cautiones, ut Extra. de	
	sententia et re iudicata, Cum aliquibus et ff. de pignoratitia actione, l. Quod si	X 2.27.6
	non solvere,” nisi magna causa interveniat, ut dicunt Hostiensis et Innocentius	Dig. 13.7.10
930	super c. Quia frustra. <sup>213</sup>	

*Questio L.* Sed quid si is a quo exactum est, vel eius heres, non sit superstes? Nunquid impediatur actoris petitio, an procedet? Respondeo secundum Goffredum: “Mandabit iudex ecclesiasticus pecuniam fenebrem pauperibus erogari, ut Extra. eodem, Cum tu. Et cum hoc factum fuerit, petitio procedet, alias non. Et

<sup>211</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 10.

<sup>212</sup>SC 2.7.53.

<sup>213</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 *de usuris*, n. 10; Hostiensis (Henricus de Segusio), *Lectura sive apparatus super quinque libris decretalium*, ad X 5.19.14, n. 2; Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X 5.19.14.

914 ut in c. Cum tu CTb] c. 1, ut in c. Cum tu Ta: c. 1, ut Cum tu L 914 etiam suo puro CTb] etiam suo pure Ta: et suo puro L 923 alias CTaTb] alibi L 927 eis CTb] ei LTa 929 solvere CTaTb] solveret L 933 fenebrem CTaTb] funebrem L

- 935 idem, puto, si vivat, sed nesciatur ubi sit, vel scitur, sed ad eum mitti non potest;  
tunc similiter detur pauperibus, Extra. de Iudeis, Cum sit. Ceterum si de illius X 5.6.16  
adventu speretur, tunc pecunia deponetur et consignabitur,” et tunc procedetur  
in petitione actoris, alioquin repellitur.<sup>214</sup> Concordat predictis Hostiensis, ver.  
Quid si notorium sit.<sup>215</sup> Hec enim intelligit de usurario notorio.
- 940 *Questio LI.* Quid si clericus sit usurarius vel heres usurarii? Respondeo se-  
cundum Raymundum, ubi supra: “Si clericus est usurarius vel heres usurarii et  
non vult satisfacere, ab officio suspendatur, et si emendare noluerit, deponatur, X 5.19.7  
Extra. eodem tit., Preterea; dist. XLVII, Episcopus, Si quis clericorum. Exinde D. 47 c. 1  
si fuerit incorrigibilis ad mandatum episcopi, si alias non potest corrigi, coher- D. 47 c. 5  
cebitur per potentiam laicalem, Extra. de iudiciis, Cum non ab homine, dist.  
945 XVII, Non licuit.”<sup>216</sup> X 2.1.10  
D. 17 c. 4
- In foro autem penitentiali procedetur ut dictum est supra, eodem tit., q. XL-  
VII, Qualiter usurarii.<sup>217</sup> “Ita tamen quod non de rebus ecclesie sue, que sunt  
pauperibus deputate, sed de suis hoc faciat fideliter iuxta posse, nisi quatenus  
950 de pecunia illa vel alia qualibet sua expenderit in utilitatem ecclesie.”<sup>218</sup> Re-  
quire per simile supra, eodem lib., tit. V, de raptoribus, q. XII, Utrum clerici  
possint.<sup>219</sup> Glossa tamen hic intelligit hec quando clericus habet alia bona quam  
de ecclesia. “Si autem non habeat alia bona, credo quod de bonis ecclesie, id  
est, de fructibus quos legitime percepit de ecclesia sua, potest se liberare” de  
955 huiusmodi debitis, etiam ex maleficio.<sup>220</sup>
- Questio LII.* Quid si sacerdos de facto, cum de iure non debeat, oblationem  
recipiat usurarii manifesti? Cui est restituenda? Respondeo secundum Hostien-  
sem, ver. Sed cui: “Quidam, ut Alanus, dicunt quod dabitur episcopo loci et  
auferetur ecclesie in penam accipientis. Willielmus Naso dicit quod restituitur  
960 illi qui obtulit in opprobrium sui, arg. Extra. de homicidio, Sicut dignum, §.  
Eos.”<sup>221</sup> X 5.12.6, §. 5

<sup>214</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 de usuris, n. 10.

<sup>215</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 10.

<sup>216</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 11.

<sup>217</sup>SC 2.7.47.

<sup>218</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 11.

<sup>219</sup>SC 2.5.12.

<sup>220</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.11, v. *De rebus Ecclesiae*.

<sup>221</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 10.

949 faciat CTaTb] faciant L 952 hic CTaTb] hoc L 952 hec CTaTb] hic L 959 auferetur  
... restituitur CTaTb] an L

Bernardus, in glossa super c. Quia in omnibus, dicit sic, “Potius credo restituendam illi qui dedit ut ipse postea restituat ei a quo accepit.”<sup>222</sup>

Sed Hostiensis, in glossa, ibidem, consentit cum opinione Alani, scilicet, ut  
965 detur episcopo ita quod secundum eius providentiam restituatur ei a quo extor-  
tum est, si invenitur; alioquin pauperibus erogetur, arg. XX, q. III, Constituit.<sup>223</sup> C. 20 q. 3 c. 5

*Questio LIII.* Quid si quis iuravit se soluturum usuras vel non repetiturum, vel forte non audet repetere propter potentiam usurarii manifesti? Respondeo secundum Raymundum, §. XIII, Patet ex premissis: “Dic quod potest, si vult, debitor denunciare ecclesie monitione, scilicet, premissa, ut compellat ipsum usurarium per censuram ecclesiasticam ad relaxandum iuramentum. Si per hanc  
970 viam non vult procedere, debet solvere ut satisfaciat Deo de iuramento, et postea poterit repetere, quando tantum iuravit se soluturum, Extra. de iureiurando, Ex administrationis, Debitores.” X 2.24.1 & c. 6

975 “Si autem iuravit quod solveret usuras et non repeteret, dico quod non repetet directe propter vim iuramenti, sed indirecte bene repetet, scilicet, denunciando ecclesie crimen illius ut sic compellatur ad penitentiam quantum potest agere nisi restituat. Si autem iuravit etiam quod non denunciaret, non tenet in hac parte iuramentum, cum sit illicitum, ut, puta, contra salutem proximi et  
980 per consequens contra preceptum de proximo diligendo. Unde non obstante iuramento, potest procedere in hunc modum denunciationis. Et ita occurratur fraudibus usurariorum, Extra. eodem, Tuas, et de iureiurando, Quemadmodum.”<sup>224</sup> X 5.19.13  
Require supra, eodem lib., I, tit. IX, de iuramento et periurio, q. XXX, Quid de eo qui compulsus.<sup>225</sup> Concordant his et Goffredus et Hostiensis, ver. Quid  
985 si debitor, ubi etiam addit Hostiensis quod si debitor iuravit non repetere nec etiam recipere usuras, nihilominus usurarius cogi debet ad restituendum, et in hoc casu erit pecunia pauperibus eroganda.<sup>226</sup> X 2.24.25

*Questio LIV.* Quid si heredum usurarii alter factus sit non solvendo? Nun-

<sup>222</sup>Ordinary gloss to X 5.19.3, v. *Reddere*.

<sup>223</sup>Hostiensis (Henricus de Segusio), *Lectura sive apparatus super quinque libris decretalium*, ad X 5.19.3, n. 3, v. *Reddere*.

<sup>224</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 14.

<sup>225</sup>SC 1.9.30.

<sup>226</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 de usuris, n. 1; Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 13.

964 ibidem C[TaTb] idem L 964 consentit C[TaTb] sentit L 977 penitentiam C[TaTb]  
pecuniam L 980 non C[TaTb] om. L

- quid alius tenetur in solidum? Respondeo secundum Hostiensem, ver. Quid si  
 990 alter: “Dic quod in solidum tenetur quantum ad ipsum saltem de hereditate  
 provenit. Nam et res hereditaria obligari videtur, Extra. eodem, Cum tu, §.  
 fine.”<sup>227</sup> Idem dicit Bernardus, in glossa super c. Tua nos, et est verum. Est X 5.19.5  
 tamen arg. contra, ff. de fideiussoribus, Inter eos, §. Cum inter.<sup>228</sup> Dig. 46.1.51.4
- Hostiensis vero, in glossa super idem c. Tua nos, sic dicit quod predicta opi-  
 995 nio “in conspectu multorum favorabilis est quantum ad animas, et satis equa,  
 ac ab omnibus approbata. Ideo non audeo contradicere. Considerata tamen ve-  
 ritate et subtilitate iuris, cum certum sit multos possidere aliqua que notum est  
 fuisse usurariorum qui nunquam de usuris satisfecerunt, durum est sentire quod  
 omnes tales possessores ad restitutionem eorum que possident taliter teneantur,  
 1000 maxime cum forsitan XL anni vel plures elapsi sint quod usurarii mortui fuerunt.  
 Et gravius est tot animas condemnare. Ideo videtur distinguendum inter here-  
 dem et non heredem. Heres enim in solidum astringitur si non fecit inventarium,  
 alioquin contra, C. de iure deliberandi, Sancimus, §. II et III et seq., sicut etiam C. 6.30.19.2-3 f.  
 in solidum acquirit actiones, Extra. eodem, Michael. Is autem qui heres non X 5.19.17  
 1005 est, ad quem alias pervenit, non videtur teneri, etiam si ex causa lucrativa ad  
 ipsum pervenisset res defuncti, ut patet C. de donationibus, l. Eris alieni et l.  
 Si patri tuo, nisi esset saltem ex pecunia fenebri empti.”<sup>229</sup> De quo etiam sunt C. 8.53.15 & c. 24  
 opiniones, ut patet infra, q. proxima. Item, nullo iure cavetur quod possessor  
 non heres de aliqua re teneatur. Vide infra, q. proxima.
- 1010 *Questio LV.* Pone quod usurarius emit equum vel predium de pecunia usura-  
 ria et donat rem illam alteri. Postea efficitur non solvendo. Queritur utrum ille  
 qui solvit usuras possit cum effectu petere rem emptam de usuris ab ipso pos-  
 sessore et utrum in foro penitentiali ille teneatur restituere? Videtur quod non,  
 quia precium etiam ex re furtiva redactum non est furtivum, ff. de furtis, l. Qui  
 1015 vas. Ergo a simili res empti de pecunia usuraria non est vitio usure subiecta. Dig. 47.2.48.7  
 Respondeo secundum Raymundum, §. XII: Pone quod usurarius dicit sic, “Ego  
 cum Alano credo contrarium, scilicet, quod potest petere, et ille tenetur resti-  
 tuere. Expresse enim dicit hec decretalis, Extra. eodem, Cum tu. Succedit enim X 5.19.5

<sup>227</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 *de usuris*, n. 10.

<sup>228</sup>Ordinary gloss to X 5.19.9, v. *Cogendi*.

<sup>229</sup>Hostiensis (Henricus de Segusio), *Lectura sive apparatus super quinque libris decretalium*, ad X 5.19.9, n. 2, v. *Cogendi*.

999 possident CTaTb] possident L 1002 inventarium CTb] inventariam LTa 1017 petere CTaTb] peterre L

hic res loco precii, sicut e converso precium succedit loco rei, ff. de petitione  
1020 hereditatis, l. Si rem et precium.”<sup>230</sup>

Dig. 5.3.22

Glossa dicit hic, “Hoc credo verum esse quando habuit ex causa lucrativa  
rem talem. Unde et Raymundus hic casum ponit de eo qui donat rem illam  
alteri, scilicet, gratis. Secus si emisset vel ex alia causa non lucrativa adeptus  
esset eam bona fide ab usurario, non credens eum forte usurarium aut credens  
1025 rem illam non esse emptam de pecunia usuraria aut ipsum usurarium habere  
alias unde posset redere usuras.”<sup>231</sup>

Cum glossa concordat Goffredus, et Hostiensis in glossa, ut patet supra,  
questione proxima.<sup>232</sup> Et addit Goffredus quod si res talis ex causa lucrativa  
perveniat ad eum qui solvit usuras, liberabitur ille ad quem prius pervenerat  
1030 ex simili causa eadem res ut contra eum agi non possit, ut ff. de actionibus  
et obligationibus, l. Omnes debitores.<sup>233</sup> Idem dicit Hostiensis, ver. Sed quid  
si talis, et addit, “Usurarius tamen vel heres eius minime liberatur, ut ff. de  
verborum obligationibus, Inter stipulantem, §. Si rem quam ex causa et seq.”<sup>234</sup>

Dig. 44.7.17

Dig. 45.1.83.6-7

Circa hanc materiam, scilicet, an solvens usuras possit agere actione reali ad  
1035 rem emptam cum pecunia usuraria, ut dixit Alanus, an solum actione personali  
contra usurarium vel heredem eius ad pecuniam, ut dicit Goffredus, et iudex ex  
officio suo compellet usurarium solvere usuras si habeat unde solvat; alioquin  
compellet vendi possessiones illas et satisfacere creditori, ut Extra. eodem, c.  
Cum tu, §. Possessiones. Hostiensis, ver. Nedum et seq., utramque opinionem  
1040 recitat.<sup>235</sup>

X 5.19.5

Item quod dictum est de predio empto cum pecunia usuraria, idem est di-  
cendum si illud predium venditur et precium eius in aliud predium convertatur,  
ut dicunt Goffredus et Hostiensis.<sup>236</sup>

*Questio LVI.* Sed quid de eo qui filiam usurarii vel raptoris ducit in uxorem?  
1045 Nunquid potest accipere dotem de rebus illius cum quicquid habet non sufficit ad

<sup>230</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 12.

<sup>231</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.12, v. *Teneatur restituere*.

<sup>232</sup>Hostiensis (Henricus de Segusio), *Lectura sive apparatus super quinque libris decretalium*,  
ad X 5.19.9, n. 2, v. *Cogendi*.

<sup>233</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 de usuris, n. 9.

<sup>234</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 12.

<sup>235</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 10 ff.

<sup>236</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 de usuris, n. 9; Hostiensis  
(Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 12.

1019 hic C[TaTb] hec L 1034 solvens C[TaTb] soluturus L

restitutionem faciendam? Respondeo secundum glossam hic, super ver. Tenetur restituere: “Licet dos non proveniat ex causa lucrativa, sed recipiatur propter onera matrimonii supportanda, tamen, si maritus sciens veritatem, aut crassa ignorantia ductus, contraxit cum huiusmodi filia, non debet recipere dotem de  
1050 rebus huiusmodi de equitate canonica, licet de subtilitate iuris civilis aliter forte posset dici. Si autem probabili ignorantia ductus est quia credebatur socerum non esse usurarium vel alias esse solvendo, potest dotem in solidum recipere, licet postmodum sciat veritatem.”

“In creditore autem qui recipit quod sibi debetur a raptore vel ab usurario  
1055 non distinguo, nisi quod bona fide credidit ei pecuniam ut ex illa commodum suum faceret, et lucrando forte, ex ea se liberaret.”

“Nec est simile de marito quantum ad dotem, ut dictum est, quia socer dando dotem genero efficitur pauperior nisi quatinus relevetur ab onere alende filie, sed debitor non fit pauperior recipiendo mutuum a creditore, vel emptor  
1060 aut venditor recipiendo rem vel precium rei vendite.”

“Creditor autem qui mala fide credidit pecuniam, puta, ludenti in alea vel daturō meretrici aut hystrioni vel alias dilapidanti bona sua, non debet huiusmodi debitum accipere ex rebus predictis. Ceteri autem omnes quibus debetur ex contractu vel quasi aut ex maleficio vel quasi possunt recipere de rebus huiusmodi quod sibi debetur, dum tamen rem furtivam vel raptam in specie non recipiant. Et idem de re usuraria, maxime secundum illos etiam qui dicunt quod in usura non transfertur dominium, ut dixit Huguccio. Secundum illos etiam qui dicunt contrarium, credo quod ipsa res usuraria in specie non debet recipi in solutum, quia debitor qui eam dedit pro usura potest eam condicere, id est,  
1070 evincere a creditore si extat, nec posset creditor pro ea aliam rem ei solvere ipso invito.”<sup>237</sup> Hec omnia in glossa. Vide etiam de hoc supra, q. proxima, et supra, eodem lib., tit. V, in rubr. de restitutionibus, q. LXVII, Quid de his qui nec adiuvant, et seq.<sup>238</sup>

<sup>237</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.12, v. *Teneatur restituere*. For the precise reference to Huguccio’s *Summa decretorum* here, see Odd Langholm, *The Legacy of Scholasticism in Economic Thought: Antecedents of Choice and Power* (Cambridge: Cambridge University Press, 1998), 70, n. 49.

<sup>238</sup>*SC* 2.7.55 and 2.5.67 f.

1055 pecuniam CTaTb *add.* ut, puta, ludenti in alea vel daturō meretrici aut hystrioni vel alias dilapidanti bona sua. Non debet huiusmodi debitum accipere L 1055 ex illa CLTb *om.* Ta 1058 dotem CTaTb *add.* in L 1066–1067 qui . . . etiam CTaTb *om.* L 1072 restitutionibus CTaTb] restitutione L

*Questio LVII.* Quid de communitatibus quarundam civitatum que dant pecuniam ad usuram, maxime in Lombardia? Nunquid omnes cives sunt usurarii propter hoc et per consequens in statu damnandorum? Respondeo secundum Raymundum, §. XV, Quid de communitatibus. Dico quod sic: “Omnes, scilicet, quorum autoritate vel consensu fit, et idem si collegium vel capitulum aliquod accepit pignus in casu non concesso, Extra. eodem, Conquestus, et arg. VII, q. I, X 5.19.8  
C. 7 q. I c. 11  
C. 24 q. 3 c. I  
Dig. 4.2.9.1

1075  
1080 Sicut vir, et XXVIII, q. III, Si heres, et ff. quod metus causa, Metum, §. Animadvertendum.”<sup>239</sup> Idem dicit Hostiensis in rubr. de penitentiis et remissionibus, §. XXIII, Quibus et qualiter, ver. Quid de civitatibus. Et addit quod idem est de his qui prohibere possent et non faciunt, Extra. de sententia excommunicationis, Quante.<sup>240</sup> X 5.39.47

1085 *Questio LVIII.* Quid de regibus et principibus qui compellunt ad reddendum usuras? Respondeo secundum glossam, ibidem, super ver. Autoritate vel consensu: Dico quod “tenentur etiam si nihil ad eos inde pervenerit.”<sup>241</sup>

*Questio LIX.* Quid de servientibus usurariorum? Respondeo secundum glossam, ibidem: “Credo quod possunt accipere mercedem suam de rebus huiusmodi si serviant eis in licitis et honestis aut necessariis, quia utilitas quam consequuntur usurarii ex huiusmodi opere servientium compensatur cum mercede quam dant servientibus illis, nec possunt dici pauperiores propter mercedem datam, cum loco mercedis habuerint commodum operarum. Si autem in inhonestis aut illicitis, non credo quod debeant recipere mercedem de rebus huiusmodi. Idem etiam iudicandum est de cultoribus prediorum usurariorum et de aliis mercenariis eorundem.”<sup>242</sup>

1090  
1095

*Questio LX.* Cum collegium accipit usuram, nunquid singuli de collegio tenentur illam usuram restituere in solidum? Respondeo secundum glossam, ibidem, super ver. Collegium: “Licet usurarii sint, ut dicit hic magister Raymundus, illi quorum autoritate vel consensu fiunt talia, non credo tamen quod teneantur

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<sup>239</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 15.

<sup>240</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.38 de poenitentiis et remissionibus, n. 61.

<sup>241</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.15, v. *Auctoritate fit, vel consensu*.

<sup>242</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.15, v. *Auctoritate fit, vel consensu*.

1087 pervenerit CTaTb] pervenit L 1093 habuerint CTb] habuerit Ta: habuit L 1094 debeant CTaTb] debeat L

ad restitutionem nisi quantum ad eos pervenerit de usura vel quantum relevati sunt ab expensis quas fecissent de suo in sustinedis oneribus communitatis, nisi forte prestiterint auctoritatem compellendo aut precipiendo communitati taliter fenerari, que alias non esset hoc factura. In quo casu credo eos teneri in solidum.”<sup>243</sup> Vide plenius de hoc supra, in rubr. de restitutionibus.<sup>244</sup>

*Questio LXI.* Quid de illo qui consuluit alicui quod feneretur?

Item, quid de illo qui dat amico suo vel consanguineo suo pecuniam vel commodat gratis ut ex ea feneretur?

Item, quid de eo qui contrahit societatem cum aliquo ad fenus exercendum?

1110 Item, quid de eo qui dat usurario mutuam pecuniam ad participationem lucri usurarum? Nunquid in his casibus omnibus tenentur in solidum qui hoc faciunt aut tantum de eo quod ad ipsos pervenit de usura? Respondeo secundum glossam, ibidem: “Quidam dicunt tales qui inducunt alios ad fenerandum alias non feneraturos teneri in solidum. Si autem alias erant feneraturi, non tenentur  
1115 nisi in quantum ad eos pervenerit.”

“Ego credo sine preiudicio quod in neutro casu tenentur nisi quantum ad eos pervenerit hi qui taliter inducunt alios ad fenerandum, et melior est conditio talium in hoc casu quam in rapina vel furto, ubi qui prestant auctoritatem tenentur ad restitutionem etiam cum nihil ad eos pervenerit de maleficio. Et hoc  
1120 ideo, quia rapina vel furtum contra voluntatem domini fit, qui patitur damnum, sed usura de voluntate domini pervenit ad creditorem. Nec invenio iura dare actionem debitori contra huiusmodi inductores ad repetendum usuras ab eis quas ipsi debitores solverunt taliter inductis per alios, cum tamen ad inducentes nihil pervenerit de usura, sicut iura dant actionem contra illos quorum opere vel  
1125 consilio vel ministerio fiunt furta vel rapine, licet nihil ad eos pervenerit.”<sup>245</sup>

Thomas, in *Summa*, art. IIII, arg. III, dicit quod “si quis pecuniam suam committeret usurario non habenti alias unde usuras exerceret vel hac intentione concederet, ut inde copiosius per usuram lucraretur,” esset particeps culpe, quia daret materiam peccandi. Secus de eo qui dat tali solum pro custodia qui tamen  
1130 alias habet unde feneretur, quia “utitur homine peccatore ad bonum.”<sup>246</sup> De restitutione autem non fit ibi mentio.

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<sup>243</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.15, v. *Collegium*.

<sup>244</sup>*SC* 2.5.64 ff.

<sup>245</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.15, v. *Collegium*.

<sup>246</sup>*ST* IIa-IIae q. 78 a. 4, ad 3.

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1113 alios ad CTaTb] ad alios L

*Questio LXII.* Quid de eo qui accipit usuras nomine alieno, ut tutor, curator, vel procurator? Respondeo secundum Raymundum, §. ult., in *Summa*, ubi dicit, “Nota quod sicut prohibetur aliquis accipere usuras nomine suo, ita et alieno,  
1135 dist. XLVI, Sicut non suo. Et si accipit alieno nomine, sive sit tutor sive curator D. 46 c. 10  
sive quicumque alius, tenetur ad restitutionem si ille cuius nomine accepit non  
est solvendo vel non vult restituere, nam ‘facientes et consentientes par pena  
constringit,’ II, q. I, Notum, in fine.”<sup>247</sup> C. 2 q. 1 c. 10

Goffredus dicit quod isti restituere tenentur si is pro quo exactum est sit non  
1140 solvendo.<sup>248</sup>

Hostiensis, ubi supra, in fine §., videtur concordare cum Raymundo. Addit  
autem dicens, “Fateor tamen quod is in cuius utilitatem versum est primo et  
principaliter tenetur et alius in subsidium, ff. de eo per quem factum est, l. Ex  
hoc edicto.”<sup>249</sup> Dig. 2.10.3 pr.

1145 Glossa tamen hic concedit hoc quod dicit Raymundus “de tutore et curatore,  
pro eo quod prestant auctoritatem talibus contractibus, et illi quorum tutelam  
vel curam gerunt per se non essent talia facturi. Secus de his qui nudum prebent  
ministerium,”<sup>250</sup> ut patebit infra, q. proxima. Item, si solvit ille cuius nomine  
accepte sunt usure, liberatur tutor vel curator.<sup>251</sup>

1150 *Questio LXIII.* Quid de servientibus usurariorum qui numerant pecuniam  
pro dominis suis ad usuram et usuram recipiunt ad opus eorum et de mandato  
eorum? Nunquid tenentur ad restitutionem cum nihil ad eos inde pervenerit?  
Respondeo secundum glossam, ibidem, super ver. Et alieno: “Non credo quod  
teneantur, presertim si idem usurarii per se ipsos vel per aliquos ministros huius-  
1155 smodi usuram exercerent, quamvis non per istos.”<sup>252</sup>

*Questio LXIII.* Quid de illo qui, sine mandato gerendo, negocium alienum  
feneratur ad opus illius cuius negocium gerit?

Item, quid de illo qui, cum vellem dare mutuam pecuniam alicui gratis, in-  
duxit me quod darem eam illi sub usuris? Nunquid tenentur isti ad reddendas

<sup>247</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 18.

<sup>248</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 5.19 de usuris, n. 11.

<sup>249</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 13.

<sup>250</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.18, v. *Quicumque alius*.

<sup>251</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.18, v. *Vel non est solvendo*.

<sup>252</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.18, v. *Alieno*.

1160 huiusmodi usuras, licet nihil ad eos pervenerit? Respondeo secundum glossam  
super ver. Non est solvendo: “Dicendum quod sic. Primus enim tenetur, quia  
totaliter fuit autor et minister contractus usurarii. Secundus tenetur, quia inde-  
bite impedivit utilitatem proximi procurando ne ei gratis mutuum daretur.”<sup>253</sup>

*Questio LXV.* Quero etiam utrum usurarius teneatur restituere non solum  
1165 pecuniam usurariam, sed etiam quicquid cum ipsa lucratus est et fructus percep-  
tos ex re empti de pecunia fenebri. Respondeo secundum Raymundum, §. XVII,  
Item queritur: Ad hoc dicunt quidam quod tenetur omnia restituere. “Que enim  
ex radice corrupta procedunt corrupta sunt, XIII, q. V, Neque.” Et quia usura C. 14 q. 5 c. 9  
quedam rapina est, “verum, quia ‘qui nimis emungit elicit sanguinem’, dicamus Prov. 30:33  
1170 cum aliis quod teneatur usurarius restituere quicquid ultra sortem accepit a de-  
bitore occasione sortis, pacto precedente vel intentione corrupta,”<sup>254</sup> ut supra,  
eodem tit., q. I. SC 2.7.1.

Glossa dicit hic quod tenetur etiam restituere quicquid habuit “de re debi-  
toris habita per usuram. Unde si habuit de usura terram vel pecus, quicquid  
1175 de naturalibus fructibus illius terre vel pecudis habuit, et pensionem terre et  
mercedem pecudis si eam locavit, restituere tenetur. Credo etiam quod ei resti-  
tuere teneatur damna que propter solutionem huiusmodi usure passus est, ut si  
domum suam vel predium oportuit propter hoc distrahere viliori precio quam  
valeret et aliam domum conducere ad usum suum aut si oportuit eum accipe-  
re ad usuram ab alio usurario propter usuras predictas solvendas. Si autem ex  
1180 pecunia usuraria negociatus sit et lucratus, vel inde emit predium et fructus per-  
cepit, nec lucrum nec fructus huiusmodi tenetur restituere. Idem etiam credo de  
lucro habito de re furtiva vel rapta per negotiationem aut per comparisonem  
redditus vel predii factam de re huiusmodi furtiva aut rapta.”<sup>255</sup>

1185 Concordant cum hac glossa et Thomas, in *Summa*, art. III, et Ulricus, et  
assignant rationem quia quod de huiusmodi pecunia acquisitum est non est  
fructus huiusmodi rei, sed humane industrie.<sup>256</sup> Item, si possessio empti est  
cum tali pecunia, hec est res ementis, et non eius a quo est accepta usura, licet

<sup>253</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.18, v. *Vel non est solvendo*.

<sup>254</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 17.

<sup>255</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.17, v. *Acceperit a debitore*.

<sup>256</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 de illiberalitate, Quamvis varie a  
diversis, fol. 107r; *ST* IIa-IIae q. 78 a. 3, co.

1173 habuit CTaTb] habuerit L 1176 locavit CTaTb] locaverit L 1185 hac CTb] hoc LTa

talis possessio obligata sit ei a quo usure accepte sunt, sicut et alia bona usurarii.

1190 Videtur etiam cum hac glossa concordare Hostiensis in rubr. de penitentiis  
et remissionibus, ver. Sed pone et seq., ubi in fine dicit, “Sed nec video quare  
debitor ultra interesse suum possit petere lucrum totum; hoc enim esset suum  
repetere cum usuris.”<sup>257</sup>

Sequitur hic in Raymundo: “Expensas tamen potest iste, scilicet, usurarius,  
1195 deducere et forte operas suas moderatas, ut in his etiam agatur cum eo mitius  
quam cum fure vel raptore.”<sup>258</sup> Glossa dicit hic, “Quia fur et raptor non dedu-  
cunt expensas nec operas suas. Quod tamen intelligo si agatur in foro iudicii. In  
foro autem penitenciali non credo hunc rigorem esse servandum; iniquum enim  
esset aliquem locupletari cum damno alterius postquam ei plene satisfactum  
1200 esset de damno illato.”<sup>259</sup> Hec in glossa.

*Questio LXVI.* Item quero utrum Iudeus possit exigere usuras a Christia-  
nis? Respondeo secundum Raymundum, §. XV, Quid de communitatibus: “Dico  
quod peccat Iudeus mortaliter, et ad relevandas usuras Christianis potest com-  
pelli ab ecclesia indirecte, scilicet, per subtractionem communionis Christiano-  
1205 rum, Extra. eodem, Post miserabilem; vel saltem compellendi sunt a principibus X 5.19.12  
Christianis et ab episcopis et ab ecclesia predicto modo ut non exigit immode-  
ratas usuras, Extra. eodem, Quanto.”<sup>260</sup> X 5.19.18

*Questio LXVII.* Utrum Christiani a Iudeis vel paganis aut ceteris hostibus  
fidei Christiane possint usuras exigere? Respondeo: Videtur Ambrosius sentire  
1210 quod sic, qui sic dicit, “Ab illo exige usuras cui merito nocere desideras; cui  
iure inferuntur arma, huic legitime auferuntur usure. Quem in bello vincere non  
potes, ab hoc usuram exige, quem non sit crimen occidere. Sine ferro dimicat  
qui usuras flagitat. Ergo ubi ius belli, ibi ius usure,” XIII, q. III, Ab illo. Super C. 14 q. 4 c. 12  
ista autoritate diverse sunt opiniones et varie expositiones quas etiam recitat hic  
1215 Raymundus, ubi supra. Joannes intellexit “de hostibus rei publice, sicut littera  
plane sonat.” Aliorum opinio, ut dicit Raymundus, communior est quia “a nullo  
homine Christiano, Iudeo, pagano, vel alio licet exigere usuras,” et exponunt

<sup>257</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.38 de poenitentiis et remissionibus,  
n. 61.

<sup>258</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 17.

<sup>259</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.17, v. *Fure vel raptore*.

<sup>260</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 15.

1191 pone CTaTb add. quod usu L 1208 ceteris CTa] certis Tb: eternis L 1210 exige  
CTaTb] exigere L

litteram hanc Ambrosii negative sic: “Ab illo exige usuras, tu quicumque sis, cui merito nocere desideras, sed nulli merito debes nocere, ergo a nullo debes  
1220 usuras exigere.”<sup>261</sup> Hanc expositionem etiam Hostiensis ponit, §. VII, an aliquo, ver. Octavo.<sup>262</sup>

Ulricus, Contra illud, videtur melius exponere, dicens quod illud verbum Ambrosii est intelligendum non secundum rationem usure proprie dicte, sed quod  
1225 illud quod supra sortem sumitur magis sit recuperatio rei sue quam lucrum rei aliene.<sup>263</sup>

*Questio LXVIII.* Deinde quero cui restituere debeat usurarius usuras quas extorsit et qualiter? Respondeo secundum Hostiensem, §. IX, Que pena, ver. Est autem et seq.: “Reddenda est ei a quo extorsit vel heredi suo, et si talis non inveniatur, est pauperibus eroganda, ut Extra. eodem, Cum tu, §. Super his.” X 5.19.5  
1230 Sed si absens est, aut hoc ideo, vel quia usurarius se transtulit ad locum alium quam ubi exercuit usuras, et tunc propriis sumptibus tenetur ei usuras mittere, vel ideo quia dans usuras vel heres eius transtulit se alibi, et tunc mittet ei sumptibus illius, nisi expense itineris summam usurarum excederent. Tunc enim debet pauperibus erogari, ut II, q. VI, Anteriorum, Extra. de iudeis, Cum  
1235 sit. “Sed si de proximo eius adventus speratur, tunc pecunia deponetur et consignabitur, C. de usuris, Acceptam.”<sup>264</sup> Vide supra, in rubr. de restitutionibus, C. 4.32.19  
q. LXXXIII, Quid si sciatur persona et seq.<sup>265</sup>

Item, dicit Raymundus, §. XVII, Item queritur utrum, in fine, “Consulo autem ut satisfacto de usuris petatur,” “ex parte usurarii,” “venia a debitore, quia  
1240 forte,” preter usuras, “esset ei aliquid restituendum,” scilicet, “pro aliquo interesse vel damno,” ut dicit glossa.<sup>266</sup>

*Questio LXIX.* Sed pone quod Christianus accepit usuras a Iudeo. Cui restituet? Respondeo secundum Raymundum, §. XVI, Sed pone: “Videtur quod

<sup>261</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 15.

<sup>262</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 7.

<sup>263</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.4 de illiberalitate, Quamvis varie a diversis, fol. 107r.

<sup>264</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.19 de usuris, n. 11.

<sup>265</sup>SC 2.5.83 f.

<sup>266</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 17. The interjections are from William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.17, v. *Petatur* and v. *Restituendum*.

1231 et TaTb om. CL

Iudeo,” per ea que dicta sunt supra, eodem tit., q. XLVII, Qualiter usurarii  
 1245 compellantur,<sup>267</sup> “ita tamen si ipse restituat omnes usuras quas accepit, quod,  
 nisi velit facere, satius consulo Christiano quod cum autoritate ecclesie restituat  
 nomine Iudei illis Christianis a quibus ipse Iudeus exegerat usuras et notificet  
 hoc Iudeo ut sciat se liberatum ab illis Christianis per ipsius solutionem.”<sup>268</sup>  
 Et hoc, ut dicit hic glossa, potest notificare “per se vel per alium, tacito vel  
 1250 expresso nomine, secundum quod videbitur expedire.”<sup>269</sup>

“Nec poterit Iudeus ab eo repetere cum utiliter gesserit negocium ipsius  
 Iudei, et ideo, velit nolit, tenetur habere ratum.”<sup>270</sup>

Concordat etiam his Innocentius, Extra. eodem tit., in glossa super c. Quia  
 frustra.<sup>271</sup> Require supra, eodem lib., tit. V, de raptoribus, q. LXVII, Quid de  
 1255 his qui nec adiuvant.<sup>272</sup> Et satis credo quod idem sit in Christiano. “Verumta-  
 men in utroque casu liberatur iste Christianus restituendo usuras illi a quo ipse  
 accepit, sive ille sit Christianus sive Iudeus. Salubrius tamen est primo dictum,  
 ut, scilicet, solvat illis quibus iste tenetur, vel deponat pecuniam in ede sacra vel  
 alio loco tuto cum autoritate ecclesie ut cum ipse satisfecerit, recipiat eam.”<sup>273</sup>

1260 Dicit hic glossa super ver. Salubrius, quod hoc est salubrius “quando factum  
 est occultum et non timetur scandalum nec periculum taliter solventis; alias  
 sufficit quod fiat restitutio illi a quo sunt accepte usure.”<sup>274</sup>

Concordat cum Raymundo in supradictis a principio questionis Ulricus, c.  
 VI, §. Predictam vero etc.<sup>275</sup> Satis etiam concordat Hostiensis in rubr. de peni-  
 1265 tentiis et remissionibus, ver. Quid ergo si a Iudeo.<sup>276</sup> Vide de hac materia supra,  
 in rubr. de restitutionibus, q. LXXIII, Cui et qualiter.<sup>277</sup>

*Questio LXX. Quid de uxore et familia usurarii? Respondeo secundum Ray-*

<sup>267</sup>SC 2.7.47.

<sup>268</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 16.

<sup>269</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.16, v. *Notificet*.

<sup>270</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 16.

<sup>271</sup>Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X  
 5.19.14, v. *Restituit*.

<sup>272</sup>SC 2.5.67.

<sup>273</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 16.

<sup>274</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.16, v. *Salubrius*.

<sup>275</sup>Ulrich of Strasbourg, *Summa de summo bono*, 6.3.6 de *il liberalitate*, Predictam vero, fol.  
 110r.

<sup>276</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.38 de *poenitentis et remissionibus*,  
 n. 61.

<sup>277</sup>SC 2.5.74.

1260 quod ...salubrius CTaTb om. L

mundum, §. ult., in *Summa*: “Debent procedere sicut uxor et familia raptoris,”  
de quibus habes supra, in rubr. de restitutionibus, q. LXVII, Quid de his qui  
1270 nec.<sup>278</sup> Idem Hostiensis, ut patet ibidem.<sup>279</sup>

Glossa dicit hic quod id quod dicitur hic de familia intelligendum est de non  
mercennaria. De mercennariis enim locantibus operas suas tene quod dictum est  
supra, eodem tit., q. LIX, Quid de servientibus.<sup>280</sup> Illud possunt enim accipere  
quod sibi debetur de rebus usurariis.<sup>281</sup>

1275 *Questio LXXI.* Que pena eorum qui publicos usurarios in terris suis re-  
cipiunt vel eis domos locant? Respondeo secundum Gregorium X, in concilio  
Lugdunensi, tit. de usuris, c. Usurarum: Statuit quod “nec collegium nec alia  
universitas vel singularis persona, cuiuscumque sit dignitatis, conditionis, aut  
status, alienigenas et alios non oriundos de terris ipsorum publice pecuniam fe-  
1280 nebrem exercentes, aut exercere volentes, ad hoc domos in terris suis conducere  
vel conductas habere aut alias habitare permittant. Sed huiusmodi usurarios  
manifestos omnes infra tres menses de terris suis expellant, nunquam aliquos  
tales de cetero admissuri. Nemo illis ad fenus exercendum domos locet vel sub  
alio titulo quocumque concedat. Qui vero contrarium fecerint, si persone fue-  
1285 rint ecclesiastice, patriarche, archiepiscopi, episcopi, suspensionis, minores vero  
persone singulares, excommunicationis, collegium autem seu alia universitas, in-  
terdicti, sententiam ipso facto se noverint incururos, quam si per mensem animo  
sustinuerint indurato, terre ipsorum quamdiu in eis idem usurarii commorantur  
ex tunc ecclesiastico subiaceant interdicto. Ceterum, si laici fuerint, per suos  
1290 ordinarios ab huiusmodi excessu, omni privilegio cessante, per censuram eccle-  
siasticam compescantur.”<sup>282</sup>

*Questio LXXII.* Qualiter manifesti usurarii ad penitentiam sunt recipiendi  
et qualiter debeant satisfacere? Respondeo secundum Gregorium X, in eodem  
concilio et eodem tit., c. Quamquam: Licet usurarius manifestus mandet sa-

<sup>278</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 18; *SC* 2.5.67.

<sup>279</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 5.38 de poenitentiis et remissionibus, n. 61.

<sup>280</sup>*SC* 2.7.59.

<sup>281</sup>William of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.18, v. *Familia*.

<sup>282</sup>Lyons II (1274) c. 26 = VI 5.5.1. See J. Alberigo et al., eds., *Conciliorum oecumenicorum decreta*, 3rd ed. (Bologna: Istituto per le Scienze Religiose, 1973), 329.

1275–1276 recipiunt C'TaTb] recipint L 1278 singularis C'TaTb] singuris L

1295 tisfieri de usuris, non tamen est sepeliendus in cimiterio donec de usuris sit  
plenarie satisfactum. Si tamen suppetunt facultates, vel illis quibus facienda  
est restitutio, si presentes sunt, vel, eis absentibus, episcopo vel sacerdoti suo  
parochiali coram fide dignis sufficiens cautio prestetur de restitutione, et expri-  
matur quantitas restituendorum quantum possibile est; alias, non recipiantur  
1300 ad sepulturam. Alias, etiam, nisi sic satisfecerint, nullus eos ad confessionem  
seu absolutionem admittat nec testamentis eorum intersit, et testamenta aliter  
facta nihil valent.<sup>283</sup>

#### DE PIGNORIBUS. RUBRICELLA.

Post hec addenda sunt hic aliqua de pignoribus, in quorum usu frequenter  
1305 usura exercetur.

*Questio LXXIII.* Quero ergo primo quid sit pignus? Respondeo secundum  
Hostiensem, lib. III, rubr. XXI de pignoribus, §. I, Quid sit: Pignus est “obli-  
gatio rei licite pro debito inita. Fit autem ad maiorem securitatem creditoris,  
quia tutius est ‘pignori incumbere quam agere in personam,’ Institutiones, de  
1310 obligationibus que ex delicto nascuntur, §. Furti, et tutius est ‘non solvere quam  
solutum repetere’, ut ff. de compensationibus, l. Ideo compensatio.”<sup>284</sup> Et in se-  
cundo, §. Et unde dicatur, dicit quod pignus est cum tamen transit, scilicet, in  
potestatem creditoris, sed hypoteca cum non transit. Sed quantum ad actionem  
non differunt.<sup>285</sup> Idem Goffredus, eodem tit.<sup>286</sup>

Inst. 4.1.14

Dig. 16.2.3

1315 *Questio LXXIII.* Que intelliguntur pignori tacite obligata? Respondeo se-  
cundum Hostiensem, §. III, Qualiter contrahatur, sub §. Conventionalium: “Si  
quis tibi dotem promiserit, omnia bona sua pro illa promissione tacite obligan-  
tur. Sic et bona mariti omnia pro restituenda dote uxori tacite obligantur. Etiam  
ubi extraneus, id est, is qui mulierem non habet, in potestate confert dotem,  
1320 et nisi ipse extraneus ipsam dotem sibi specialiter stipuletur, ipsa mulier taci-  
te stipulata videtur, ut C. de rei uxoriae actione, l. una, §. Et ut plenius. Nec  
C. 5.13.1b

<sup>283</sup>Lyons II (1274) c. 27 = VI 5.5.2. See Alberigo et al., *Conciliorum oecumenicorum decreta*, 329-30.

<sup>284</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 3.21 *de pignoribus*, n. 1.

<sup>285</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 3.21 *de pignoribus*, n. 2.

<sup>286</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 3.21 *de pignoribus*, n. 1.

1301–1302 aliter facta CTb] facta aliter LTa 1307–1308 obligatio CTaTb] obligatio L 1311 solutum  
CTaTb *obsc.* L 1319 ubi CTaTb] si L

- pro delicto viri debet amittere uxor dotem suam, ut Extra. eodem tit., Ex literis, etiam si crimen lese maiestatis commiserit, C. ad legem Iuliam maiestatis, Quisquis, §. Uxores.” X 3.21.5  
C. 9.8.5.5
- 1325 “Item omnia bona conductoris invecta et illata in rustico predio domino sciente, nisi ad tempus inferantur, domino tacite obligantur pro pensione, ut C. in quibus causis pignus tacite contrahitur, l. Quamvis. In urbano autem non distinguo utrum dominus sciat vel nesciat.” C. 8.14.3
- 1330 “Item bona curatorum et tutorum tacite obligantur filiis pro rebus adventitiis, C. de administratione tutorum, Pro officio. Sed et bona patris tacite obligantur filiis pro rebus adventitiis et precii earundem.” C. 5.37.20
- “Item bona matris convolantis ad secundas nuptias sunt filiis prioris matrimonii tacite obligata, ut eis restituat que a priore marito lucrata fuit, C. de secundis nuptiis, Hac edictali, §. pen.” C. 5.9.6.10
- 1335 “Item tacite obligantur bona defuncti pro legatis et fideicommissis, ut C. communia de legatis, l. I.”<sup>287</sup> C. 6.43.1
- Nota plura que de hac materia ponit ibi Hostiensis.
- Questio LXXV.* Que res obligari possunt vel non? Respondeo secundum Hostiensem, §. VI, Que res obligari possunt: “Res tam presentes quam future, 1340 ut fructus pendentes, partus ancille, fructus pecorum et ea que nascentur, ff. eodem, Et que nondum.” Dig. 20.1.15 pr.
- “Item res corporalis et incorporalis, ut cautiones et nomina debitorum, ff. eodem, Cum convenit. Item possunt pignori obligari personales servitutes, ut usus et usufructus, ff. eodem, Si is, §. ult.” Dig. 20.1.20  
Dig. 20.1.11.2
- 1345 “Item prediales servitutes rustice, ut quamdiu pecunia soluta non sit, nec liceat uti servitutibus, et si infra certum diem non fuerit reddita, liceat vendere, ff. eodem, Sed et an vie. Urbane autem servitutes non possunt sic pignori obligari, ff. eodem, Si is, §. ult. Ratio diversitatis est ne ex varietate usus et utentium edificia destruantur et inutilia fiant. Dicit tamen posset quod commoditas 1350 servitutum prediorum urbanorum obligari potest, sicut in rustico hoc contingit, ut, scilicet, liceat ire et agere creditori, ff. eodem, Sed et an vie, secundum Goffredum.”<sup>288</sup> Dig. 20.1.12

<sup>287</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 3.21 *de pignoribus*, n. 3.

<sup>288</sup>Cf. Gottofredo da Trani, *Summa super titulis decretalium*, X 3.21 *de pignoribus*, n. 4.

1347 et CTaTb om. L 1347 vie CTb] me LTa 1351 et CTb] etiam Ta om. L 1351 vie CTaTb] me L

- “Prohibentur obligari res sacre, ut ecclesie, in Auth., de non alienandis, Emphiteusim, §. Et quam.” Auth. coll. 2.1.3 = Nov. 7.3
- 1355 “Item vasa sacra vel vestimenta vel ornamenta ecclesiastica, ut C. de sacrosanctis ecclesiis, Sancimus nemini, et hoc nisi necessitate urgente, ut Extra. eodem tit., c. I. Hanc necessitatem intellige in casibus in quibus etiam alienari possunt res ecclesie, ut XII, q. II, Aurum.” C. 1.2.21  
X 3.21.1  
C. 12 q. 2 c. 70
- 1360 “Item liberi hominis obligatio nulla est, quia in his tantum consistit obligatio pignoris que de bonis nostris facimus obnoxia.”
- “Fallit hoc in libero homine suspecto et male merito, vel in proprio debito nisi debitor cedat bonis, Extra. de solutionibus, Odoardus, vel si tanta necessitas ducat patrem quod filium obliget, quem vendere posset. Item, fallit in redempto ab hostibus qui per quinquennium servire iubetur nisi precium reddere posset, ut C. de captivis et postliminio redemptis, l. ult. Item, in raptore virginis, qui, si fugerit ad ecclesiam, reservatur ei vita, sed ad serviendum subiicitur nisi se redimat, ut XXXVI, q. I, de raptoribus. Tamen secundum leges decapitatur talis. Item, fallit si quis iuravit tenere obstagia, ut Extra. de iureiurando, Ex rescripto, vel etiam fidem dedit de hoc.” X 3.23.3  
Dig. 49.15.30  
C. 36 q. 1 c. 3  
X 2.24.9
- 1370 “Si quis autem res suas obligaverit de presentibus et futuris, sensisse presumitur, quamvis hoc non exprimatur, ut C. que res pignori obligari possunt, l. ult. Sed videtur exceptum omne id quod specialiter obligaturus non erat, ut, puta, vestis, suppellectilia, mancipia que in usu habebat, et similia, C. que res pignori obligari possunt, l. I, et ff. eodem, l. Obligatione et l. Denique.” C. 8.16.9  
C. 8.16.1  
Dig. 20.1.6 & l. 8
- 1375 “Sed et servus obligando omnia bona domini, ipso domino sciente, obligaturus videtur, ff. eodem, l. Paulus. Et qui obligat instrumenta et de agris que ibi continentur sensisse videtur, C. que res pignori obligari possunt, l. II.” Dig. 20.1.29.3  
C. 8.16.2
- “Pignoratitia vero non nascitur nisi demum re tradita creditori, Institutiones, quibus modis re contrahitur obligatio, §. ult.”<sup>289</sup> Inst. 3.14.4
- 1380 Nota etiam quod quamdiu unus denarius remanet ad solvendum pignus nihilominus remanet obligatum, ff. eodem, Qui plures. Dig. 20.1.19

*Questio LXXVI.* Utrum ecclesiastici redditus vel stipendia possint obligari? Respondeo secundum Innocentium, Extra. de fideiussoribus, in glossa super c. Pervenit: “Non possunt obligari speciali conventionione, sed a iudice pro debito

<sup>289</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 3.21 *de pignoribus*, n. 6.

1361 suspecto CTb] supradicto LTa 1374 eodem CTaTb add. titulo L 1376 eodem CTaTb add. titulo L 1382 possint CTb] possunt LTa

1385 canonici et ex causa iudicati possunt obligari, arg. C. de exceptione rei iudicate, Stipendia, et ff. de re iudicata, Commodis premiorum.”<sup>290</sup> Idem etiam dicit Bernardus, in *Glossa*, ibidem.<sup>291</sup> C. 7.53.4  
Dig. 42.1.40

*Questio LXXVII.* Utrum semper sit usura uti pignore sibi pro debito obligato? Respondeo secundum Thomam, in *Summa*, q. LXXVIII, art. II, arg. VI:  
1390 Dicendum quod “si quis, pecunia sibi mutuata, obliget rem aliquam cuius usus precio estimari potest, debet ille qui mutuavit computare usum illius rei in estimationem eius quod mutuavit. Alioquin, idem est ac si pecuniam acciperet pro mutuo, quod est usurarium, nisi forte esset talis res cuius usus sine precio soleat concedi inter amicos, sicut patet de libro accommodato.”<sup>292</sup>

1395 *Questio LXXVIII.* Quid si creditor vult omnes fructus pignoris perceptos bona fide, deductis expensis, computare in sortem, sed de residuo postulat debitorem compelli ad solutionem? Quid consulendum est creditori? Respondeo secundum Raymundum, in tit. de usuris, §. XIII, Circa pignora: “Ad hoc credo plura auxilia sibi esse parata. Potest enim pecuniam mutuam per actionem  
1400 personalem petere coram iudice, C. de pignoribus, l. Quamvis personali et l. Distractis.”

C. 8.13.8 & l. 14

“Item potest alii pignus sibi obligatum in pignore dare, C. si pignus pignori datum sit, l. I et II.”

C. 8.23.1-2

1405 “Item potest pignus vendere, etiam invito et contradicente debitore, nisi debitum offerat, C. debitorem venditionem pignorum impedire non posse, l. I et II. Circa venditionem tamen est adhibenda distinctio, quia aut certa pacta fuerunt inter creditorem et debitorem firmata super venditione pignoris in certo termino vel loco vel certe persone vel simili modo facienda aut nullo modo facienda aut nihil super hoc convenit inter eos. In primo casu tenetur creditor  
1410 prius notificare debitori et postea poterit vendere secundum formam conventam, et non aliter. In secundo casu, videlicet, cum pactum fuit appositum ne venderet, etiam tunc potest vendere. Sed debet prius ter denunciare debitori ut solvat, et si cessaverit, poterit postea vendere. Alias, si ante trinam denunciationem venderet, furti teneretur. In tertio vero casu, scilicet, cum nihil convenit, sufficit

C. 8.28.1-2

<sup>290</sup>Innocent IV (Sinibaldus Fliscus), *Apparatus super quinque libros decretalium*, ad X 3.22.2, v. *Redditibus*.

<sup>291</sup>Ordinary gloss to X 3.22.2, v. *Redditibus*.

<sup>292</sup>*ST* IIa-IIae q. 78 a. 2, ad 6.

1387 Bernardus, in *Glossa* CTaTb] in glossa Bernardus L

- 1415 una denunciatio et postea, elapso biennio, poterit fieri venditio. Probantur hec:  
ff. de pignoratitia actione, l. Si convenit de distrahendo, C. de iure dominii  
impetrando, l. ult.” Dig. 13.7.4  
C. 8.33.3
- Ad satisfaciendum etiam creditori supradictis modis, scilicet, per solutionem  
debiti vel per venditionem pignoris, potest debitor “cogi per ecclesiam si est de  
1420 foro suo vel etiam quicumque sit, etiam non de foro ecclesie, per modum denun-  
ciationis ratione peccati, Extra. de iudiciis, Novit, vel in modum reconventionis,  
III, q. VIII, Cuius in agendo, Extra. de mutuis petitionibus, c. I et II. Et si forte  
post inceptam causam vellet debitor desistere a causa mota contra creditorem,  
videtur quod ad petitionem creditoris posset eum cogere iudex ecclesiasticus ut  
1425 responderet ei coram eo vel satisfaceret, arg. Extra. de ordine cognitionum, Cum  
dilectus. Sepe enim iudex potest et debet iudicare indirecte et occasione alterius  
questionis mote coram eo de re de qua alias non posset, Extra. de donationibus  
inter virum et uxorem, De prudentia, C. de iudiciis, l. III.”<sup>293</sup> X 2.10.2  
X 4.20.3  
C. 3.1.3
- Questio LXXIX.* Quid de impensis factis in pignore a creditore? Respondeo  
1430 secundum Raymundum, ibidem: “Creditor potest exigere vel compensare non  
solum expensas quas fecit colligendo fructus, sed etiam quas fecit bona fide circa  
rem pignoratam,” puta, “colendo fundum pignorum vel pascendo iumentum  
pignorum.”<sup>294</sup> Et hoc, secundum Goffredum, “nisi fuerint immoderate, ut ff.  
de pignoratitia actione, l. Si servos.”<sup>295</sup> Dig. 13.7.25
- 1435 *Questio LXXX.* Quid si pignus perit vel deterioratur? Respondeo secundum  
Raymundum, ibidem: “Si casu fortuito vel sine culpa sua res periit vel deteriora-  
ta est, non tenetur creditor. Sed si dolo vel culpa sua, tenetur. C. de pignoratitia  
actione, l. II, III, IV, V.”<sup>296</sup> Immo sicut dicit Goffredus, “Si pignus perit sine  
culpa creditoris, nihilominus tenetur solvere debitum qui pignus dedit, nisi ac-  
1440 tum sit quod amissio pignoris liberet debitorem, ut C. de pignoratitia actione,  
l. Que fortuitis.”<sup>297</sup> C. 4.24.2-5  
C. 4.24.6

*Questio LXXXI.* Quid si, vendito pignore bona fide, creditor minus accepit

<sup>293</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 13.

<sup>294</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 13; William  
of Rennes, *Glos. ad Sum. Ray.*, ad 2.7.13, v. *Rem pignoratam*.

<sup>295</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 3.21 de pignoribus, n. 6.

<sup>296</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 13.

<sup>297</sup>Gottfredo da Trani, *Summa super titulis decretalium*, X 3.21 de pignoribus, n. 6.

quam erat in sorte? Respondeo secundum Raymundum, ibidem: “Potest agere ad residuum. Si vero plus, tenetur restituere debitori, C. de iure domini impetrando, l. ult.”<sup>298</sup> C. 8.33.3

*Questio LXXXII.* Cui et contra quem detur actio pignoratitia? Respondeo secundum Raymundum, ibidem: “Sicut potest agere debitor contra creditorem vel contra heredem eius, vel e converso, ita etiam heres debitoris contra creditorem vel contra heredem eius, vel e converso.”

1450 “Et si forte creditor vel heres eius rem sibi obligatam alteri impignoravit vel quoquomodo in alium transtulit, tenetur possessor computare in sortem non solum fructus quos ipse percepit, sed etiam omnes quos anteriores perceperant a tempore primi contractus, Extra. de pignoribus, Cum contra G. civem. Ipsa enim fructuum perceptio ipso facto attenuat sortem, ut in preallegata decretali.”<sup>299</sup> X 3.21.6

1455 Item, secundum Hostiensem, §. VII, Que actio: “Datur hec actio contra quemlibet possessorem pignoris cum ipsa sit in rem, unde et contra emptorem datur, ff. eodem, Pignoris, C. eodem, Pignoris et l. Debitorem. Et si possessor habet titulum lucrativum, tunc creditor habet electionem utrum agat personaliter contra debitorem vel hypothecarie contra possidentem, C. eodem tit., l. Distractis et l. Persecutionem. Idem si habet titulum onerosum, sed fuit fraudis conscius, scilicet, quia sciebat rem alii obligatam. Si autem habet titulum onerosum et habet bonam fidem, tunc obstat creditori exceptio quod non potest contra eum agere quousque egerit contra debitorem et fideiussores et mandatores. Sed postea, agi potest contra pignorum possessores. Nec distinguo utrum lite contestata alienaverit debitor.”<sup>300</sup> Recitantur tamen ibi et aliorum opiniones circa hoc. C. 8.13.18 & l. 15 Dig. 20.1.17 C. 8.13.14 & l. 24

*Questio LXXXIII.* Quid iuris de pignorationibus que vocantur vulgariter *repressalia*, in quibus, scilicet, cum aliquis oriundus de una terra contrahit cum alio oriundo de alia terra et debitor non satisfacit creditori, datur *repressalia*, id est, potestas impignorandi contra quemlibet de terra de qua erat debitor, et ita gravatur unus pro alio? Respondeo secundum Gregorium X, in concilio

<sup>298</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 13.

<sup>299</sup>Raymond of Penyafort, *Summa de poenitentia et matrimonio*, 2.7 de usuris, n. 13.

<sup>300</sup>Hostiensis (Henricus de Segusio), *Summa aurea*, X 3.21 de pignoribus, n. 7.

1451 quoquomodo TaTb] alio quoquomodo C: alio modo L 1452 perceperant CTb] perceperat LTa 1460 Persecutionem CTaTb] Persecutione L 1468 *repressalia* CTaTb] represalie L 1469 *repressalia* CTaTb] represalia L

Lugdunensi, tit. de iniuriis et damno dato, c. Etsi pignorationes: Iniquum est et etiam legibus prohibitum tanquam naturali equitati contrarium. Insuper ista constitutio Gregorii prohibet ista *repressalia* concedi vel extendi ad personas  
1475 ecclesiasticas vel bona ipsorum pretextu etiam cuiuscunque consuetudinis, que potius est corruptela. Et qui contra fecerint, nisi revocaverint infra mensem numerandum a tempore concessionis vel extensionis, si persone singulares sint, sententiam excommunicationis incurrunt; si universitas, ecclesiastico subiaceat interdicto.<sup>301</sup>

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<sup>301</sup>Lyons II (1274) c. 28 = VI 5.8.1. See Alberigo et al., *Conciliorum oecumenicorum decreta*, 330.

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1474 *repressalia* C[TaTb] represalia L 1476 contra fecerint C[TaTb] confecerit L 1477 extensionis C[Tb] executionis L[Ta]

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