The Origins of the Modern Financial Revolution: Responses to Impediments from Church and State in Western Europe, 1200 - 1600

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Abstract: John H. Munro (University of Toronto)

The basic thesis is that the modern ‘financial revolution’, usually dated to eighteenth century England, but far more properly to the sixteenth-century Netherlands, in terms of those institutions for both government finance (borrowing) and international finance (bills of exchange), owed its essential origins to the impediments of Church and State that reached their harmful fruition in the later thirteenth and early fourteenth century. The major obstacle that came from the Church was of course the usury doctrine, and more accurately the final evolution of this doctrine in Scholastic theology and canon law, along with the intensification of the campaign against usury in the thirteenth century. The major obstacles that the State provided, with the spreading stain of ever more disruptive international warfare from the 1290s, was the development of nationalistic bullionist philosophies and of monetary-fiscal policies (to finance warfare) that hindered the international flow of specie in later medieval Europe. For public borrowing, one must begin with the contentious policies of Venice, Florence, and other Italian city states in basing their finances on forced loans, which did pay interest, and thus with the usury controversies that erupted, over not just the loans, but the sale of interest-bearing debt certificates in secondary markets. The alternative solution, found elsewhere – first in Flemish towns from the 1270s – and one that would govern European public finance up to the nineteenth century, was to raise funds for urban governments through the sale of rentes, for one or more lifetimes (lijfrenten, erfelijkrenten). These were not loans, and hence they were not usurious, because the buyer of rentes had no expectation of repayment (unless the government chose to redeem them); instead they represented the purchase of a future stream of income, either lifetime or perpetual (heritable). Those rentiers who sought to regain some part of their invested capital had only one recourse: to seek out buyers in secondary markets. The true efficiency of modern public finance also rested upon the development of such markets and thus upon the development of full-fledged negotiability; and public finance also depends upon satisfactory instruments to permit low risk, low cost international remittances. The solution to both problems lay in the development of the negotiable bill of exchange. Such bills, at first non-negotiable, emerged in the late thirteenth century as a response to circumvent not only the usury doctrine (to ‘disguise’ interest payments in the exchange rate) but also the almost universal bans on bullion exports. Yet another barrier that medieval English merchants faced was the virtual absence of deposit-banking because of the crown’s strict monopoly on the coinage and money supply, so that the usual origin of such banking, in private money-changing, was unavailable. Although English merchants sought remedies by using transferable commercial bills, they were not truly negotiable, for they had no legal standing in Common Law courts. But from the late thirteenth century, the Crown was incorporating the then evolving international Law Merchant into statutory law, and it also established law merchant courts, which did give such financial instruments some legal standing. In 1437, a London law-merchant court was the first, in Europe, to establish the principle that the bearer of a bill of exchange, on its maturity, had full rights to sue the ‘acceptor’ or payer, on whom it was drawn, for full payment and to receive compensation for damages. From that precedent, and then from those provided by similar law-merchant court verdicts in Antwerp and Bruges (1507, 1527), the Estates General of the Habsburg Low Countries (1537-1541) produced Europe’s first national legislation to ensure the full legal requirements of true negotiability – including the right to sue intervening assignees to whom bills had been transferred in payment. These Estates-General also legalized interest payments (up to 12%), thus permitting open discounting, another obviously essential feature of modern finance, private and public. Antwerp itself, with the foundation of its Bourse in 1531, became the international financial capital of Europe, especially as a secondary market in national rentes – the very instrument that became the foundation of English public finance, in the form of annuities, from the 1690s.

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Was adversity or necessity the mother of innovation in the development of modern European financial institutions? Perhaps a combination of both. Very few, if any, of the studies that have examined the origins of the modern financial revolution, as it developed in the form of both public and private institutions in the sixteenth-century Netherlands and eighteenth-century England, have given sufficient attention to all their antecedents in western Europe during the previous three or four centuries. Nor, therefore, have most economic historians observed the fundamental facts about these antecedents: that they had evolved as responses to serious impediments that both Church and state had imposed upon the operation of those financial instruments, including those involved in remitting funds between different jurisdictions, that we now regard as fundamental for both an efficient market economy and efficient governments.¹

**The Medieval Usury Doctrines**

The most obvious, the best known, but still imperfectly studied impediment was the usury doctrine: the exaction of any interest, any pre-specified return – anything beyond the principal value – on a loan, as defined in the Roman Law concept of the *mutuum.*² Unfortunately, however, the most commonly published

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¹ See the final note, n. 107

interpretations on the medieval usury doctrine are based on several misconceptions that have led far too many economic historians to believe that this doctrine was not a serious impediment to medieval commerce and finance. Usury did not, as John Gilchrist so wrongly suggested, refer merely to ‘excessive interest’; nor was the usury ban merely limited to consumption loans; nor did strictures against and enforcement of the usury ban wane with the commercialisation of the European economy during the later Middle Ages. On the contrary, just when the Commercial Revolution was reaching its apogee, during the later twelfth and thirteenth centuries, the ‘campaign against usury’ was vigorously resuscitated, especially by the new teaching orders of Franciscans and Dominicans, who managed to convince the secular authorities to act just as strenuously as the Church and canon lawyers in more rigorously enforcing the usury ban on all genuine loans (i.e. *mutuum*). With the contemporary scholastic analysis of usury, and especially with the wider spread dissemination of the masterful treatise *Summa Theologica* of St. Thomas Aquinas (c.1225-1274), usury came to be considered as not just a sin against charity, but much worse, as a sin against commutative justice and


3 John Gilchrist, *The Church and Economic Activity in the Middle Ages* (New York, 1969), in particular chapters 4-6, pp. 48-121, but especially pp. 62-75.

a sin against natural law, and thus a truly *mortal* sin. Preaching with lurid and horrifying *exempla*, diabolic stories about the ghastly fates awaiting usurers in and after death, and aided as well by the far more generalized observance of compulsory confession, these friars and other priests successfully convinced the public that usurers were ‘linked with the worst evildoers, the worst occupations, the worst sins, and the worst vices’. ⁵ Thus the loan contracts of a much earlier era, for example in twelfth-century Genoa, that openly admitted the payment of interest would not be found from the thirteenth century. ⁶

In popular preaching, in this revived campaign against usury, from the later twelfth to fourteenth centuries, the Franciscans and Dominicans could not be content with the older methods of condemning usury as a sin against charity: in taking advantage of the plight of one’s neighbours, in exacting interest on consumption loans. For clearly the usury prohibition applied as well to commercial loans from which the borrower hoped to gain, often substantially, by investing the borrowed funds in some enterprise or property that would produce a perfectly legitimate return, in profits or rent.

More ingenious arguments therefore had to be adduced in attacking usury. The most powerful was that, since usury (interest) was calculated according to the duration of the loan, it therefore meant the ‘theft of Time’, which belongs to God alone – clearly a dreadful sin. ⁷ With scholastic analysis of re-emerging ancient Greek texts, the Aristotelean-based arguments about the supposed ‘sterility of money’, bearing no fruit, became a popular weapon, even if theologians and canon lawyers did not really believe that invested

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⁵ LeGoff, ‘The Usurer and Purgatory’, pp. 29-34.

⁶ See the following loan contract from Genoa, 1161: ‘I, Embrone, have taken in loan from you, Salvo of Piacenza, £100 Genoese, for which I shall pay you or your messenger ... £120 within one year; but if I wish to pay you the aforesaid £100 and accrued interest before the next Feast of Purification, you must accept them.’ From Robert S. Lopez and Irving Raymond, eds., *Medieval Trade in the Mediterranean World: Illustrative Documents* (New York and London, 1955). With introductions and notes; see: Part III: ‘Commercial Contracts and Commercial Investments,’ pp. 157-238.

⁷ See for example Stephen of Bourbon (d. 1261): ‘Since they sell nothing but the expectation of money, which is time, they sell the day and the night. But the day is the time of light and the night of rest, and so consequently they sell light and rest. Therefore, it is not right that they should have eternal light and rest.’ From: *La tabula exemplorum*, ed., T. J. Welter (Paris, 1926), cited in Noonan, *Scholastic Analysis of Usury*, p. 58.
The first reference is in the palea Ejiciens, apparently written in the fifth or sixth century, and incorporated into Gratian’s Decretales (Decretum Gratiani) c. 1180, contending, inter alia, in comparing the differences between usury from a loan and rent from a field: ‘First, because money is only meant to be used in purchasing. Secondly, because one having a field by farming receives fruit from it.... Therefore, he who rents a field or house is seen to give what is his own use and to receive money... But from money which is stored up you take no use. Thirdly, a field or a house deteriorates in use. Money, however, when it is lent, is neither diminished nor deteriorated.’ See also St. Thomas: ‘All other things from themselves have some utility; not so, however, money. But it is the measure of utility of other things, as is clear according to the Philosopher [Aristotle] in the Ethics V:9. And therefore the use of money does not have the measure of its utility from this money itself, but from the things which are measured by money according to the different persons who exchange money for goods. Whence to receive more money for less seems nothing other than to diversify the measure in giving and receiving, which manifestly contains iniquity.’ Cited and translated in Noonan, Scholastic Analysis of Usury, pp. 38-39, 52-53.

8 The first reference is in the palea Ejiciens, apparently written in the fifth or sixth century, and incorporated into Gratian’s Decretales (Decretum Gratiani) c. 1180, contending, inter alia, in comparing the differences between usury from a loan and rent from a field: ‘First, because money is only meant to be used in purchasing. Secondly, because one having a field by farming receives fruit from it.... Therefore, he who rents a field or house is seen to give what is his own use and to receive money... But from money which is stored up you take no use. Thirdly, a field or a house deteriorates in use. Money, however, when it is lent, is neither diminished nor deteriorated.’ See also St. Thomas: ‘All other things from themselves have some utility; not so, however, money. But it is the measure of utility of other things, as is clear according to the Philosopher [Aristotle] in the Ethics V:9. And therefore the use of money does not have the measure of its utility from this money itself, but from the things which are measured by money according to the different persons who exchange money for goods. Whence to receive more money for less seems nothing other than to diversify the measure in giving and receiving, which manifestly contains iniquity.’ Cited and translated in Noonan, Scholastic Analysis of Usury, pp. 38-39, 52-53.

9 See Noonan, Scholastic Analysis of Usury, pp. 39-40. Evidently the Bolognese canon lawyer Paucapalea was the first the first, in 1165, to correlate Roman law with the canon law on usury, in commenting on the section on usury in Gratian’s Decretales (Decretum Gratiani), by paraphrasing the Justinian code (Digesta Justinium Augusti, corpus juris civilis) on the mutuum. Under Roman law, mutuum contracts themselves could not specify interest, and permitted the repayment only of the exact sum lent; but Roman law did permit auxiliary contracts (stipulatio) to specify interest payments under certain conditions, with supposedly ‘moderate’ interest rates. See Noonan, Scholastic Analysis of Usury, pp. 22-33, 39-40.

10 In Italian and other partnership societas contracts, the partner was entitled to a share of the profit, in proportion to his investment; and normally bore a proportional share of the losses. But under Roman law, and law codes since then, each partnership investor bore unlimited liability for all losses. In one-venture
Of course, there were various ways of circumventing the usury bans on the true *mutuum*, but not without a significant impact on increasing transaction costs, in both the private and state spheres of finance. Perhaps the most common illicit technique was to disguise the actual amount of the loan, by augmenting the stipulated principal to be repaid – over and above the amount actually lent – by the amount of the required interest payments. But a defaulting borrower might claim that he (she) had been the victim of extortion in agreeing to a fraudulent contract. Apart from the threat or prospects of unpleasant prosecutions, and of severe social stigma, the participants would both know that they were guilty of fraud and usury. As Noonan remarked, even if the Church normally chose to inflict excommunication and other punishments only on ‘open’ and ‘flagrant’ or ‘notorious’ usurers, nevertheless ‘all hidden usury was still a mortal sin, and the ultimate punishment of [eternal] damnation still awaited all hidden usurers.’ Thus, ‘the real force of the usury law lay in its hold on men’s souls, and there no evasion was possible.’ Particularly in this medieval era, when the Church held such sway, ‘who will say that there is no meaning to the salvation or damnation of a man?’

Whether or not such matters are really subject to econometric analysis, Francesco Galassi has provided convincing statistical evidence that, with the intensification of the anti-usury campaigns, Genoese merchants, financiers, and other business were evidently seeking ‘fire insurance’ or even ‘passports to Heaven,’ by increased donations to the Church, some clearly in the form of restitution of illicit gains from usurious transactions. For a somewhat later period, in fifteenth century Florence, the Medici bank’s account books provide no visible evidence of interest payments that, according to Goldthwaite, were most certainly earned...

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from loans – accounts that are therefore difficult to reconcile by modern accounting principles.\(^{13}\)

There were also, to be sure, three permissible or licit exceptions to the usury prohibitions, so-called *extrinsic titles* that permitted lenders and borrowers to engage in making some payment beyond the principal in redeeming loans, in accordance with the basic concepts of commutative justice.\(^{14}\) Because, as noted, such concepts had provided the real foundation of the usury doctrine (and of the Just Price doctrine), a lender could claim compensation -- a *compensatory* return -- if proof was supplied that, in making such a loan, he or she subsequently suffered some kind of loss. But the conditions were strict and restrictive: the loss had to be real, and not supposed or imagined; and the loss had to be unforeseen and to have begun after the loan contract had begun. The first was *poena or mora*: a penalty imposed for late payment, i.e. repayment of the loan after the specified date of maturity of the loan. Such payments normally increased with the number of days or weeks of delay; but it could not be seen as a fixed percentage payment based on both the amount of principal and the duration of the loan, until repayment. Obviously if a financier was observed engaging in loans that always involved payment of *poena*, and if the payment penalties varied according to such provisions, the financier or merchant ran the risk of incurring prosecution for usury. The second was known as *damnum emergens*: a compensation for any damages or loss that the lender incurred after having made the loan and incurred from having done so, i.e. from not having the money himself to use in a some sudden emergency -- the destruction of a barn in a fire -- that had clearly taken place after the money had been lent in the *mutuum* loan. And that condition had to be well proven to make this title legitimate.

The third was and still remains the most contentious: *lucrum cessans*, which literally means ‘cessant gains’, or potential and foregone gains that could have been derived from other, alternative but licit investments. As just explained, there was no usury or related canonical ban on returns from investment in the form of profits, e.g. returns from equity investments in a partnership enterprise in trade or industry, or

\(^{13}\) Richard Goldthwaite, ‘Local Banking in Renaissance Florence,’ *Journal of European Economic History*, 14 (Spring 1985), 5-55.

\(^{14}\) The following is based principally upon Noonan, *Scholastic Analysis of Usury*, pp. 100-53; and McLaughlin, ‘The Teaching of the Canonists on Usury’, *Medieval Studies*, 1 (1939), 81-147; 2 (1940), 1-22.
dividends from, in effect, joint-stock enterprise. The real litmus test for the licitness of profit, apart from
the ownership of the capital, was simply that the investment return had to be residual, varied, and uncertain,
and one that could be deemed (though not necessarily, under canon law) a reward for incurring risk.
Similarly, there was no ban on receiving rental incomes from the ownership of land or of physical property
(including, for example, the rental use of a horse). Thus *lucrum cessans* may be viewed as the opportunity
cost of the lender: in not using that money, furnished in a *mutuum* loan, in order to invest in a legitimate,
profit-making enterprise, or in the ownership of land or property for rental income. The most widely citation
for the legitimacy of *lucrum cessans* is the following observation penned by Hostiensis or Henry of Susa,
sometime before 1271:

> If some merchant, who is accustomed to pursue trade and the commerce of fairs, and there
profit from, has, out of charity to me, who needs it badly, lent money with which he would
have done business, I remain obliged to his interesse, provided that nothing is done in fraud
of usury... and provided that the said merchant will not have been accustomed to give his
money in such a way to usury.

The problem was that this claim to compensation could easily be seen as pre-determined and fixed,
so that it did not meet the required conditions of loss under commutative justice, thus making the return
clearly usurious. Note, in particular, Hostiensis’s own insistence that the merchant making the loan could
not be one accustomed to earn income in this fashion, as indeed most merchants were, both lending and
borrowing to finance commercial enterprises. For these reasons, in fact, subsequent canon lawyers, popes,
and other Church authorities would not – contrary to the expressed opinions of some historians – accept the
doctrine of *lucrum cessans* as a legitimate claim or *extrinsic title* to usury; and the first grudging acceptance
from the papacy came only in the sixteenth century (and more fully in the eighteenth).

There were also several other exceptions, but of much lesser importance: including the right to


16 See Noonan, *Scholastic Analysis of Usury*, pp 118–21, 249–68. Our modern word interest comes
from this use of the term by Hostiensis: which clearly indicates that *interesse* represents the opportunity
cost involved in lending money: i.e. in foregoing the opportunity of earning a legitimate return through trade
(profit) or from property (rent), the lender as the owner of the capital is entitled to compensation. *Interesse*:
a medieval substantive derived from *quod intert*: that which remains.
charge usury on a loan made to an enemy alien, and justified on the grounds of weakening and undermining the enemy. Similarly the prohibition against usury did not apply to any non-Christians, including therefore Jews, who nevertheless were continually subjected to excoriating diatribes for engaging in money-lending (chiefly restricted to pawnbroking), including some from canon lawyers and papal officials that would have not been out of place in Nazi newspapers of the 1930s.17

In view of the importance of rent for this analysis, and for the foundations of modern finance, we must clearly understand why rental income from the loan of physical property was always licit, while ‘rental’ income from the loan and use of money was not – why the latter constituted the mortal sin of usury. Especially for those not convinced that the distinguishing feature was the retention of ownership in capital investments (equity capital), St. Thomas Aquinas again provided the solution to this seemingly vexing conundrum in his analysis of fungibles within a *mutuum* loan. A fungible, of course, is any commodity not distinguishable from others in its type or group by any specific defining individual characteristics, and thus is one that can be fully replaced and replicated by any other exactly similar such commodity, from that group: e.g. sheaves of wheat, a flagon of wine, a jar of olive oil, coined money – and, today, paper clips. But St. Thomas Aquinas added another important qualifying addition: that the use of such goods necessarily meant their consumption and thus complete destruction, which in turn meant that replacement was possible only with identical units of that commodity type. Obviously, one borrows money in order to consume it, necessarily making repayment with an exactly equivalent number of identical coins, or in reality an

17 See the following example, from the Twelfth General Council, Lateran IV, Constitution 67 (1215), published and translated in Gilchrist, *Church and Economic Activity*, pp. 181-82: ‘The more Christians are restrained from the practice of usury, the more are they oppressed in this matter by the treachery of the Jews, so that in a short time they exhaust the resources of Christians. Wishing, therefore, in this matter to protect the Christians against cruel oppression by the Jews, we ordain in this decree that if in the future, under any pretext, Jews extort from Christians oppressive and excessive interest, the society of Christians shall be denied them until they have made suitable satisfaction of their excesses.... Lastly we decree that the Jews be compelled by the same penalties [including a ban on business dealings with Christians] to compensate churches for the tithes and offerings owing to them, which the Christians were accustomed to supply from their houses and other properties before they fell into the hands of the Jews....’ Obviously this decree does not mean that the Church regarded as usurious only ‘oppressive and excessive interest’, but rather it used such terms in order to vilify the Jews.
equivalent amount in value; but no more than that.\footnote{18} Conversely, a non-fungible good is one with individual distinguishing characteristics and one not consumed and destroyed by its use: such as a piece of land, a house, barn, or horse. Therefore, one may lend the use of a ‘durable’ property or good, which is not so consumed; and thus licitly earn a rental income for that use – in part as compensation for the wear and tear involved in its use, while subsequently regaining possession of the very same individual commodity so lent (rented out).\footnote{19}

**Medieval State Loans: the Italian Republics of the Thirteenth and Fourteenth centuries**

Obviously no medieval European governments – urban, territorial, or national – were ever able to function without some form of borrowing, all the more so since their taxing and rent-exaction powers were relatively limited. The later thirteenth century brought with it not only the fruition of the Commercial Revolution era, with many new financial instruments – in particular the bill-of-exchange, but also an exponential increase in ever more costly warfare that did much to quench the beneficial fires of the Commercial Revolution era, above all in Italy.\footnote{20} In Italy, the leading city-states established what may be regarded as the first permanent funded debts, to finance such ongoing warfare; and most of them did so in the form of *prestanza*, or forced loans. Venice was evidently the first to so, in 1164, although that initial loan, secured by Rialto revenues, seems to have been voluntary. By 1207, however, such state loans, in the form of interest-free *imprestiti* had become forced, with fixed levies based upon the citizens’ ability to pay,

\footnote{18} St. Thomas, *De malo*, Q. 13, art. 4c: ‘In those things whose use is their consumption, the use is none other than the thing itself; whence to whomever is conceded the use of such things, is conceded the ownership of those things, and conversely. When, therefore, someone lends money under this agreement that the money be integrally restored to him, and further, for the use of the money wishes to have a definite price, it is manifest that he sells separately the use of the money and the very substance of the money. The use of money, however, as it is said, is not other than its substance: whence, either he sells that which is not, or he sells the same thing twice, to wit, the money itself, whose use is its consumption; and this is manifestly against the nature of natural justice. I answer: that to receive usury for money lent is in itself unjust since it is the sale of what does not exist; whereby, inequality results, which is contrary to justice.’ Cited in Noonan, *Scholastic Analysis of Usury*, pp. 53-54.

\footnote{19} Somewhat similar arguments can be found in the palea *Eficiens*, incorporated into Gratian’s *Decretals*; see n. 5 above.

\footnote{20} See note 36 and 57 below.
in accordance with the recorded value of moveable-property in the communal estimo. Such loans were considered temporary; and state payments to the debt holders were considered to be redemptions of the principal. In or by 1262, however, the Venetian Senate consolidated all the outstanding national debts into one fund (later called the Monte Vecchio); and decreed that debt-holders were to receive annual interest of five percent, to be paid twice yearly from eight specific excise taxes. Such interest payments were indeed regularly made without fail until the War of Chioggia in 1379-81. These debt claims (with interest payments) were readily assignable; and by at least 1320 an organized secondary market for them had developed.²¹ In this era when interest payments were regular, i.e., up to 1379, with occasional amortisation, they traded between par and 75 percent.²²

During this same era, in the years 1343-45, Florence had established the best known Italian public debt: the monte comune – literally a ‘communal debt mountain’, which was similarly an interest-bearing forced-loan, now called prestanza. Such loans, for the Italian city states, had two major advantages. First, they made absolutely clear that the whole commune had a clear public duty to provide the city-state with financial support, if only to help guarantee its territorial integrity and security. Thus, the nobility and wealthy bourgeoisie could not escape this duty, and thus could not avoid ‘paying their fair share’ in doing

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²² Interest payments did resume in 1382, but were then subject to withholding taxes, so that some netted only 3 percent, and other 4 percent. A new series of public debt was initiated in 1482, thus giving rise to the term Monte Vecchio for the earlier public debt. Lane, ‘Funded Debt’, pp. 87-88; Mueller, Venetian Money Market, pp. 465-76.
so. Second, because the loans were forced, under these circumstances of rendering one’s public duty, most canon lawyers, as well as secular jurists, were able to justify the payment and receipt of interest payments (with some version of *damnum emergens*), since volition and intent were at the very core of the usury doctrines.\(^{23}\)

Such justifications became far more difficult to concoct, however, when secondary markets in the *monte* necessarily developed, and very quickly, with the establishment of *monte comune* to pool all outstanding issues. Obviously, if those individuals forced to make such loans were not permitted the right to sell their claims to their share of the *monte*, and thus their claims to the annual interest payments, public resistance to these *prestanzi* would very like have mounted (or become more intense than they did become). The secondary market was a free one, so that those who offered their shares often to had agree to sell them at discount, in order to attract buyers. Nevertheless, what justification did such third parties, entering into fully voluntary contracts, have for receiving interest payments on the shares of the *monte* that they had just purchased (and at often higher yields)?

Much ink was spilled in the later fourteenth and fifteenth centuries on such justifications. The best known treatise, and a very long one, is *De Usuris*, composed in 1403-04 (ns) by the Florentine politician and

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civil jurist Laurentius di Ridolfis, who also taught canon law. While Laurentius di Ridolfis in fact accepted the already evolved usury doctrine, he sought to explain why, within the context of canon law, interest payments on shares of *monte* purchased in secondary markets were not usurious. One of his most important arguments was based upon the treatise of the much earlier, fourteenth-century Franciscan master, Francesco da Empoli. Both contended that such shares of the Florentine *monte* purchased in this manner were not or were no longer *mutuum* contracts. Instead, they were an *emptio-venditio* (purchase-sale) contract in which the holder was not in fact a lender to the state, but now the purchaser of the right to collect an income stream from the state – and argument with considerable significance. Suffice it to say that such legal treatises, brilliant and eloquent though they were, never sufficed to satisfy Church, state, and the consciences of investors. Therefore some alternative route to a morally safer and more efficacious form of public finance had to be found, at least elsewhere in Europe.

**The Census Contracts**

That route was found through the use of an older medieval contract, the *census* (Fr. *cens*), which probably had feudal origins, and was certainly unknown to Roman law. By this contract, a merchant or

24 See Noonan, *Scholastic Analysis of Usury*, pp. 69, 123, 126-29.


27 See Noonan, *Scholastic Analysis of Usury*, p. 155. But there is some evidence that the Greek city state of Miletus, in Asia Minor, had engaged in the sale of *census* contracts, in what would be later known
some other person purchased, for a fixed sum of money furnished in advance, an obligation on the part of
the recipient ‘to pay an annual return from fruitful property’. Thus it provided a means by which a
landowner or even a peasant could acquire some capital to work his agricultural holding, while the investor
would receive a guaranteed annual income, often perpetual and certainly for at least a lifetime, from the
fruits of that holding. Originally, indeed, such payments were normally made in kind, though later evolving
into money payments based upon the value of the agricultural or other output from that property. For that
reason the census or cens later came to be more commonly known as the rente, from which, of course, we
have derived the term rentier. The modern English term with the closest equivalence is annuity, though this
term does not imply that the annual return was based on a ‘fruitful good.’

According to Van der Wee, in many parts of medieval Europe, these cens, which commonly came
to be assigned to third parties, evolved into two other, more commercial contracts: (1) the constitution de
rente, as a lifetime or hereditary contract by which some property holder sold (as the débirentier) the right
to receive a fixed annual income from the property, for one, two, or three ‘lives’; and similarly (2) the bail
à rente, as ‘the sale of real estate in return for payment of a hereditary annuity’, somewhat akin, indeed, to

as rentes viagères or lijjrenten, from as early as 203 BCE. See Raymond Van Uytven, Stadsfinanciën en
stadsekonnie te Leuven: van de XII tot het einde der XVI eeuw, Verhandelingen van de Koninklijke
Vlaamse Academie voor Wetenschappen, Letteren en Schone Kunsten van België, Klasse der Letteren,
164-65.

28 Noonan, Scholastic Analysis of Usury, p. 155.

29 Though the evidence on this ill-researched subject is far from conclusive, the only peasants who
could engage in this form of finance, selling some of their future income streams from the exploitation of
their holdings, were those who enjoyed some form of free-hold, or were free from the constraints of
communal common- or open-field farming. Common-field farming, in which peasants held their tenancies
in the forms of scattered and separated plough strips in two or three great open fields, and were subject to
communal restraints on the use of such lands, was never universal in medieval Europe; but it was far more
prevalent in northern Europe (excepting Normandy, the Low Countries, SE England) than in southern,
Mediterranean Europe. Mezzadria or métayage was an alternative method of financing peasant agriculture:
another landowner, a merchant, financier, etc. invested capital in the peasant’s holding (livestock, olive trees,
vineyards, tools, working capital) in return for a share, usually one-half of the harvest. For similar reasons,
the relative absence of communal constraints, this system was far more prevalent south of the Loire than
north of that boundary for the same reasons.
the even older mortgage. 30 There was, to be sure, some ecclesiastical opposition to such census contracts, particularly from Henry of Ghent (c. 1293), who contended that the census really involved the sale of money, which is ‘non-vendible’, and was thus usurious. According to Noonan, however, ‘his opinion was singular and apparently startling to his thirteenth-century contemporaries, who had placidly accepted the contract as lawful.’ The much more commonly accepted view was that the census was simply the licit purchase of the right to receive an income; and most argued that its legitimacy should be governed by the canon laws on Just Price, rather than on usury. 31 In most respects, the census did not differ in essentials from the thirteenth-century collecta purchase contracts that Italian merchant-financiers undertook in dominating the English wool trade. By an agreement to provide a fixed cash payment in advance, these merchants purchased annual future deliveries of wool from various Cistercian and other monasteries, over many years, though not, of course, ‘in perpetuity’, as was the case with heritable census contracts. 32

Surely the crucial feature of these various contracts was that no mutuum type loan was involved, for the purchaser, who furnished the capital sum, had no expectation of any repayment of that principal sum, before expiry of the contract (if not perpetual), after the stipulated one, two, or three lives. 33 In any event,


31 Noonan, Scholastic Analysis of Usury, pp. 155-56; the more extreme view was that of that of the fourteenth-century theologian Henry of Hesse, who argued that those who purchases a census in effect became part-owners of the property, and were thus entitled to some share of its fruits.


33 Cf Noonan, Scholastic Analysis of Usury, p. 160: ‘The real perpetual census was accepted almost unanimously’, citing particular Innocent IV, Apparatus: V, De usuris, in civitate. Even Henry of Ghent agreed that if A, needing money, sold his farm to B, B was then permitted to rent the farm to A, in return for annual payment; and ‘the effect is that of a perpetual census). Noonan also notes that the ‘real-life’ census was accepted ‘by almost everyone: Innocent IV, Hostiensis, the Gloss, Giles of Lessines, Alexander Lombard, Astensanus, Eutin, Gerson, Panormitanus, Laurentius de Ridolfis, St. Bernardine, and St. Antoninus’ (pp. 154-70). Debates instead centred more on short, fixed-term contracts that appeared to be just
moral, legal, and ecclesiastical doubts were fully resolved in the fifteenth century, by papal bulls of Martin V (Extravagantes comunes, 1425), Nicholas V (Sollicitudo, 1452), and Calixtus III (Regimini, 1455). These census contracts (including bail à rente and constitution de rente) were all permissible, under three conditions: (1) that the contracts had to be ‘real’, assigned to specific properties; (2) that the seller of the census (the débirentier) had to be permitted to redeem the contracts, if he (they) so desired; and (3) that the annual return or annuity payments could not exceed 10 percent of the invested capital sum.\(^{34}\) Note that such rights of redeemability resided only with the seller or issuer of the census; and they usually reserved the option to exercise this right chiefly with rentes heritables or erfelijkrenten (often called erfrenten). Those who purchased such rentes (furnished the funds) never had any right to request let alone demand repayment. If the purchaser (crédirentier) wished to regain some or all of the capital that he had so invested, he or she had to find some third party willing to buy the rente. Evidently, from the very early history of their evolution, such rentes had been transferable or assignable, though not, strictly speaking, negotiable.

Long before those bulls were issued, indeed almost two centuries earlier, many northern towns had already resorted to rentes, similarly assignable, to finance some part of their urban expenditures. From the early 1260s, Douai, a major francophone textile town, but then still part of the county of Flanders (until 1305), had been selling both rentes viagères (lijfrenten) and rentes heritables (erfelijkrenten) to finance civic expenditures. So had Calais, and perhaps other northern French towns, from about this same period.\(^{35}\) To the north, another Flemish textile town, Ghent, had begun issuing its own lijfrenten in 1275, finding most

\(^{34}\) Noonan, *Scholastic Analysis of Usury*, pp. 160-61; Van der Wee, ‘Monetary, Credit, and Banking Systems,’ pp. 304-05.

of its purchasers, in a free market, in the nearby city of Arras, long famous for its bankers and financiers, who agreed to convert their short term debt claims into the much longer term *rentes*. These Flemish *rentes* were guaranteed by the Count of Flanders, but only in the sense that the count would use his powers to ensure that the Ghent civic governments made their annual payment obligations.

As is well known, from the late 1280s, Count Guy de Dampierre (1278-1305) engaged in serious conflicts with the merchant-*patriciate* governments of these towns, who sought support from the kings of France. Those conflicts ultimately led to a French invasion and civil wars from 1297 to 1319-20.\(^{36}\) Having himself incurred very heavy loans, especially from Arras bankers, Count Guy appealed to Pope Boniface VIII, in 1298, for assistance in releasing him from these *usures* that he owed the Arras bankers, a commonly used threat that may have enhanced the attractiveness of *renten* for many investors.\(^{37}\) Nevertheless, as a consequence of such debilitating warfare and continued turmoil, further Flemish civil wars, against the

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\(^{36}\) See: David Nicholas, *Medieval Flanders* (London, 1992), pp. 186-202, 212-24; Henri Nowe, *La bataille des éperons d’or* (Brussels, 1945), pp. 13-113; David Nicholas, *Town and Countryside: Social, Economic, and Political Tensions in Fourteenth-Century Flanders* (Bruges, 1971); Nicholas, *Metamorphosis of a Medieval City*, passim. Philip IV of France invaded Flanders in June 1297, but made a truce in October (in effect with England, Count Guy’s ally and Philip’s enemy), seizing half the county. On its expiry in January 1300, he incorporated all of Flanders into the royal domain; and imprisoned Count Guy (d. 1305). In July 1302, the citizenry of the towns, led by guildsmen, and aided by the count’s supporters rebelled and defeated the French army at the Battle of Kortrijk; but were in turn defeated by the French armies at Mons-en-Pévèle in August 1304. The subsequent Peace of Athis-sur-Orge, in June 1305, cost the Flemish enormous indemnities and a large perpetual rent (ceasing only in 1333). Lille, Douai, and Béthune were placed under royal control, as security for the debts; and these towns were transferred (with) Orchies to the French royal domain by the Treaty of Pontoise in July 1312. Further Flemish resistance ensued to 1319, but ended with the Treaty of Paris on 5 May 1320, by which Count Robert III de Béthune (1305-22) recognized French suzerainty. Subsequently, in 1323 the coastal peasantry and the towns of Bruges and Ypres took part in the destructive Revolt of Maritime Flanders (against his successor Louis de Nevers), which was crushed by French armies at the Battle of Mont Cassel, in 1328. The next revolt took place, under the leadership of Ghent, in 1339, when the Flemish towns decided to support Edward III against Philip VI, with the outbreak of the Hundred Years’ War. That revolt ended in 1349, with the return of the exiled new count Louis de Maele (1346-1389).

counts, in 1323-28 and 1339-1349, the count’s guarantees came to count for nothing, so that the values of these *lijf*- and *erfrenten* were seriously undermined, especially by the 1330s.  

Yet, in 1346, when Ghent was virtually independent of the count (though only until 1349), its civic council of *schepenen* launched a new series of *renten*, primarily *erfelijkrenten*, usually for two or three lives; and it found most of its buyers in the Brabantine drapery towns of Brussels and Leuven, and some others in the neighbouring county of Hainaut. Thus in curious contrast to Italy, where public-debt financing was almost entirely communal and internal, the Flemish towns depended strongly on external sources. But in the more peaceful years of the 1350s, 1360s, and early 1370s, the revenue from the sale of these *renten* were responsible, on average, for only 3.65 percent of Ghent’s total urban revenues. In this same period, Count Louis de Maele (1346-1389) also raised public finances for the county of Flanders by selling both *lijfrenten* and *erfelijkrenten*, which were secured by *aides* and other payments that he received from the towns. This practice was followed by the successor dukes of Burgundy, from 1389 to 1477: in Flanders, the neighbouring county of Hainaut, and the duchy of Brabant.

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39 See note 36, above.


41 See Alfons Van Werveke, ed., *Gentse stads- en baljuwsrekeningen (1351-1364)*, Koninklijke Academie voor Wetenschappen, Letteren en Schone Kunsten van België (Brussels, 1970), with an introduction by Hans Van Werveke, pp. ix-xxi; and for the records of the *renten*, see pp. 26, 92, 140, 188, 232, 261, 317, 377, 453, 497, 550, and 659; David Nicholas and Walter Prevenier, eds., *Gentse Stads- en Baljuwsrekeningen (1365-1376)*, Koninklijke Academie van België, Koninklijke Commissie voor Geschiedenis (Brussels, 1999), pp. 7, 12, 34, 35, 58, 85, 102, 105, 123, 127. For the years 1352 to 1373, Ghent received total revenues of £1,240,454.9 payment, of which £45,231.2 were from sales of *renten*. See also Stadsarchief Gent, Stadsrekeningen, Reeks 400: nos. 1 - 43 (1315-1520); Algemeen Rijksarchief België, Rekenkamer, reg. nos. 38,635-72; Stadsarchief Brugge, Stadsrekeningen, 1302/03 to 1519/20. Tracy, *Financial Revolution*, p. 14 states ‘between 1346 and 1356;’ but clearly the annual issues extended long beyond that year, certainly up to the next Ghent (Artevelde) revolt of 1379.

By 1356, the Brabantine textile town of Leuven was also selling lijfrenten and erfelijkrenten, the latter generally for two lives, at rates averaging 12.5 percent (1/8). Typically, an individual investor would purchase such a rente for, say, £100 groot Flemish or Brabant, in order to receive a lifetime or ‘perpetual’ annual income of the aforesaid £12 10s 0d groot. The town government paid this annuity with the revenues that it earned from various urban properties, but more commonly from its collection of excise or sales taxes (accijnzen), or indeed from the annual sales of the excise farms (pachten). Virtually all legal authorities agreed that these revenue sources were the equivalent to the ‘real property’ attachments that the Church was then demanding as a test of a legitimate census.

Early Modern Public Finance: Rentes, Renten, and Juros in the Habsburg Empire and France

Subsequently, in the course of the later fourteenth and fifteenth centuries, most other towns in the Low Countries, and then in France and Germany had also adopted such rentes as an important, if not yet the primary vehicle for public finance. In the Burgundian and then the Habsburg Netherlands, all these towns stipulated that they, and they alone, had the right to redeem or ‘call’ these rentes whenever they wished. Imperial Habsburg edicts (Charles V) formally made this principle applicable to the entire duchy of Brabant (Antwerp, Brussels) in 1520, and to the County of Flanders in 1529. A few years later, in 1533, King Henry II of France promulgated similar legislation for all the French towns; and such redeemability provisions were also imposed on all the German towns in Habsburg Empire by Reichspolizei-ordnungen issued in 1530, 1548,

43 Van Uytven, Stadsfinanciën, pp. 196-231; and for some annual lists of lijfrenten, see also Tables XIVA and B (1377-78, pp. 209-110), XV (1389, p. 213), XVI (1391, pp. 217-18), XVII (1396 and 1407, p. 221), XVIII (1429-30, p. 223); XIX (1492, p. 225-27). The rates (Table XIII, pp. 199-200) were quoted in fractions: 1/7 (1d. for 7d), 1/8, 1/9, and 1/10; i.e., from 10% to 14.29%. For the archival accounts from 1345 - 1600: Stadsarchief Leuven, nos. 4986 -5224.

44 See sources in nn. 39-40.

45 For Leiden, from about the 1360s, and for the German towns, by the early 15th century, see Tracy, Financial Revolution, pp. 13-14; Bruno Kuske, Das Schuldenwesen der deutschen Städten im Mittelalter (Tübingen, 1904). See also Winfried Trusen, ‘Zum Rentenkauf im Späten Mittelalter,’ Festschrift für Hermann Heimpel, 3 vols. (Göttingen, 1972), vol. II, pp. 140-58.
and 1577.\(^{46}\)

Indeed, even before then, from at least 1515, the provincial Estates (parliament) of the Habsburg Netherlands, beginning with those of Holland, began issuing such *renten*, each backed by specific tax revenues.\(^{47}\) For the county of Holland, a financial report presented to Charles V’s government for the fiscal years 1521 to 1530 indicated that revenues from the sales of *renten* accounted for 6.73 percent of the province’s total income, which was then overwhelmingly dominated by ‘subsidies’ (67.0 percent), i.e., taxes voted by the Estates. By this era, and evidently from a much earlier period, the annuity rate on *erfelijkrenten* had fallen by one half, to a much more modest 6.25 percent (1/16).\(^{48}\)

In view of this long historical experience with *renten* in northern Europe, and generally a successful experience, it seems all the more surprising that the Italian city states did not resort to them before the sixteenth century. Venice, or more properly speaking the Venetian mint (*zecca*), was the first to do so, from 1536, issuing life annuities at 14 percent; and from 1571, during war with the Turks, heritable annuities at 8 percent. Yet this turned out to be only a temporary mode of public finance. From 1577 to 1600, the communal government of Venice spent over 10 million ducats to redeem all the outstanding annuities and remaining shares of the *monti* that had the *zecca* had issued in its own name.\(^{49}\)

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\(^{48}\) Tracy, *A Financial Revolution*, pp. 30-32. In pounds of 2 stuivers or 40d. *groot*, aggregate revenues were £15,093,458; the revenues from sales of *renten* were £1,016,051; from domainal receipts, £2,509,04; from *parties extraordinaires*, £1,051,717; and finally from loans raised on *obligations*, £405,889. The subsidies were known as *aides* in French-speaking provinces; and *beden* in the Nederlands regions. Evidently the annuity rate of 1/16 had been in force since the era of Philip the Good of Burgundy (1419-67).

\(^{49}\) See Lane, ‘Public Debt and Private Wealth’, pp. ; Tracy, *A Financial Revolution*, pp. 12-13: ‘...lijfrenten seem not to have played any role in Italian public finance until the Venetian mint began offering life annuities... between 1536 and 1540’. Tracy notes, however, that fifteenth-century Florence had utilized
Thus the Habsburg governments of both Spain and their Netherlands’s provinces were the first in Europe to establish, in effect, permanently funded national debts, based on these rentes. The best example to illuminate the magnitude of such public debts is the case of Spain, under Charles V and his son Philip II, where the aggregate volume of such rentes – better known first as censos (for private rentes) and then as juros (state issues), yielding from 3 to 7 percent – ballooned from 3.536 million ducats (escudos of 375 maravedis) in 1515 to 80.039 million ducats in 1598. Part of this enormous expansion involved the forced conversion of short-term debts into 5 percent perpetual and heritable juros, when King Philip II declared ‘bankruptcy’, or, rather, his financial inability to meet such debts: in 1557, 1575, and 1594. Yet such an expansion pales in comparison with the 25-fold expansion in the issue of French rentes, between 1547 and 1574 – and without any such payment suspensions as in Habsburg Spain.

The success of all these financial adventures in such rente issues was essentially based upon the development of secondary financial markets. A physical presence for such a market had been provided by the foundation of the Antwerp Beurs (Bourse) in 1531. From there, trading in these rentes and juros became one of the principal activities of the South German merchant-banking houses, led by the Fuggers, Welsers, Höchstetters, Herwarts, Imhofs, and Tuchers. As Van der Wee has so justly commented, this sixteenth-century ‘age of the Fuggers and [subsequently of] the Genoese was one of spectacular growth in public finances’.

Such secondary markets in turn had depended upon the very recent adoption, first nationally in the

Habsburg Low Countries (1537-41), of full-fledged negotiability: complete legal sanctions to sustain the judicial rights of third-party creditors who purchased these *rentes* and similar credit instruments.\(^{51}\) In that respect, assignability and negotiability of shares in the Florentine (and other Italian) *monte* had been much simpler and much more efficacious: in that the seller and buyer met together in the financial offices of the communal government to effect the transfer of shares in writing, which also legally assigned the annual interest payment to the new buyer.\(^{52}\) Furthermore, these city state governments were less likely to repudiate or ‘dishonour’ their debt-payment obligations.

**The Medieval Bill of Exchange and the Negotiability Problem**

The road to the early-modern establishment of effective negotiability, in northern Europe, lay through the evolution of another vital credit instrument in European economic development, the bill of exchange. According to De Roover, the bill of exchange, though based upon the earlier *lettre de foire* of the Champagne Fairs, technically known as the *instrumentum ex causa cambii*, also owed its real genesis and successful dissemination, from the later thirteenth and early fourteenth centuries, to the now universal mercantile necessity of evading usury legislation. In De Roover’s famous thesis, the bill of exchange effectively achieved this objective by so cleverly disguising the real interest rate within the exchange rates, by ‘artificially’ raising them in favour of the ‘lender’. The bill of exchange, however, was not so much a loan instrument as a remittance or investment instrument, to effect the purchase and sale of foreign bank balances.

While the earlier *instrumentum ex causa cambii* was in fact a formal, notarized loan contract, the bill of exchange was simply a holograph document, a letter involving two principals in one city and two financial

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\(^{51}\) See below, pp. for the discussion of this legislation.

\(^{52}\) See in particular the sources cited in n. 15 above; and especially Julius Kirshner and Jacob Klerman, ‘The Seven Percent Fund of Renaissance Florence,’ pp. 367-98. According to Goldthwaite, ‘Local Banking in Renaissance Florence,’ pp. 5-55 (and private correspondence), the Florentine *Mercanzia* was the recognizing the validity of credits and debits owing as recorded in the account books that merchants brought there for inspection.
agents in some foreign city. By this letter, the principal merchant in city A (the taker or prenditore), having received investment funds or funds for remittance from another principal (the deliverer or datore), ‘drew a bill upon’ his resident payer agent in city B abroad, thereby instructing him to make payment on his behalf to the payee agent of the merchant from whom he had received the original funds (i.e., the deliverer). If the first city was, say, Florence, and the second, say, London, the letter would specify the receipt of funds in florins and stipulate repayment in English sterling, at a specific exchange rate, on a specified date (usance), usually three months after the bill had been drawn. For the bill to be valid, the payee (beneficiario) agent first had to present the bill to the payer (pagatore) agent, in order to obtain his written assent, in the form of words acknowledging ‘acceptance’, on the back; and then he had to present it once more, for redemption, on the maturity date. In turn that London agent arranged to remit the proceeds to the original deliverer by similarly buying a bill of exchange drawn upon a Florentine merchant banker.

So far as the Church and canon lawyers were concerned, there was nothing usurious about such contracts, so long as the second set of exchange rates were not predetermined, thus permitting the element of risk that exchange rates might subsequently alter adversely for the original deliverer. If both sets of rates

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53 See example of bills-of-exchange, from the Datini archives in Prato, involving Italian merchants in Bruges and Barcelona, in 1399-1400: in De Roover, Money, Banking and Credit in Mediaeval Bruges, pp. 56, 72.

on the original *cambium* and on the *recambium* had been fixed, in that manner, then the contract was most clearly usurious, as *cambio secco* (‘dry exchange’).\(^{55}\) But even secular authorities regarded any bills of exchange with grave suspicions: as ‘dampnable bargaynes groundyt in usurye,’ as the preamble to a 1489 English parliamentary statute colourfully contended, while strengthening enforcement of the anti-usury laws.\(^{56}\)

**Bullionism and the Bill of Exchange in Later-Medieval Europe**

Nevertheless, an even more important, and certainly an equally important, reason for its widespread diffusion in later medieval Europe, from the late thirteenth and early fourteenth century, was to reduce the payment risks, and attendant transaction costs, involved in the physical transport of precious metals in international trade. One of the greatest risks lay in the now almost universal bans on the export of bullion across international frontiers. The fundamental reasons that explain both the higher degree of risk itself, in general, and the implementation of these bullion export bans was the almost exponential rise in international warfare and violence, throughout the Mediterranean basin and western Europe, from the 1290s. Such warfare and the consequent weakening of central authorities in their police powers led to an even more debilitating and commercially disruptive spread of brigandage on land routes and piracy on sea routes.\(^{57}\)

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\(^{56}\) *Statutes of the Realm*, vol. II, p. 514 (3 Henrici VII. c. 6). Though genuine ‘merchant’s exchange’ did escape this renewed ban, while ‘drye eschaunge’ did not, another statute of this same 1489 Parliament forbade anyone ‘to paye or delyver wyttyngly be way of exchaunge’ any moneys to any aliens for merchandise, on pain of double forfeiture. *Ibid.*, p. 546 (4 Hen. VII. c. 23).

Another impediment to international specie flows also arose from what became, from 1296, one of the most common non-debt forms of public, and especially princely, financing of endemic warfare: coinage debasements, beginning with those of Philip IV in France, in his wars with England and Flanders. Since so many of the debased coins were counterfeits (even of the earlier, better versions), and since a chief objective of coinage debasement, as a fiscal policy, was to lure bullion away from competing mints, most princes reacted to such debasements by preventing the import of most foreign coins and by more rigorously enforcing bans on bullion exports.58

Obviously a major benefit of employing bills-of-exchange, with funds furnished in one currency and repaid in another, was in obviating the shipment of so much bullion and specie over long distances, and thus in greatly reducing the risks of high costs of doing so. That significance was not lost upon one of Queen Elizabeth I’s councillors who remarked, though without any historical documentation, that ‘marchauntes naturall exchaunge was first divised and used by the trewe dealing marchauntes immediately after that princes did inhibit the cariage of gould and silver out of their Realmes’.59 Risks, of course, were by no means fully eliminated, of course, because much bullion and specie still had to be transported in trading with

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towns or regions, especially in the Baltic and eastern Europe, not equipped with bills-of-exchange banking, and in settling adverse trade and payments balances (again, especially with the Baltic and eastern Mediterranean zones). Furthermore, the bill of exchange itself involved considerable risks of repudiation or non-payment, because, in not being a bond or formally notarized contract, it had no legal standing in most medieval law courts; and thus enforcement of payment claims, when the bill was dishonoured, was often difficult to achieve. Those third parties who accepted such bills in payment for other transactions were at an even greater risk. Thus, even though bills of exchange and letters obligatory (ancestors of modern promissory notes) were assignable to third parties, they had not yet become negotiable means of payment; and they would not become fully negotiable until the early sixteenth century.

**Coinage, Money Changing, and Deposit Banking: Medieval England and the Low Countries**

The first major steps towards achieving modern negotiability took place, however, in supposedly ‘backward’ fifteenth-century England; and they are related to a third set of state financial impediments, those that the Crown had long imposed upon money-changing and thus deposit banking. As De Roover and others have long and correctly maintained, deposit- and transfer-banking arose in Italy and elsewhere almost entirely through the agency of money-changing. From the late twelfth-century in northern Italy – in Genoa and the Lombard towns – money-changers, who were required to exchange foreign for domestic coins and to buy bullion for resale to the official mints, did become private bankers, even if necessarily licenced by town or princely governments to practise their trade. Indeed, in medieval Flanders, and elsewhere in the Low Countries, such bankers were commonly called *tafeltiers*, from the *tafel* or table that money-changers maintained in engaging in their trade.

How such money-changers and coin dealers became bankers is a story now too well known to be

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expounded in any detail here. Suffice it to say, that because money-changers necessarily had to maintain adequate security to protect their valuable inventories, they soon came to offer the additional service of safeguarding the moneys, precious metals, and valuables of merchant clients. They also readily discovered that, by maintaining a sufficiently high reserve ratio (usually a third), they could safely lend out the remainder, in short-term interest bearing loans, disguising the interest by some of the means suggested earlier. They could also permit their clients who maintained deposit accounts to make transfer payments, with verbal and then written instructions (and ultimately, therefore, by cheques). Such transfer payments (giro payments) of course greatly economized on the use of scarce coin; and was often preferable, when so many coins were clipped, counterfeit, or otherwise debased. Certainly by the fourteenth-century, such

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61 On deposit-banking and the usury problem, see Noonan, Scholastic Analysis of Usury, pp. 171-75.

deposit-and-transfer banking had developed as well in Flanders, chiefly thanks to the activities of Italian merchants, though many such bankers were indigenous Flemish money changers.⁶³

In England, however, from at least 1222, and probably earlier, money-changing and commerce in bullion was a strictly-enforced crown monopoly, which was exercised and controlled by a senior crown official known as the Royal Exchanger.⁶⁴ Indeed, from the Statutum de Moneta Magnum in 1282, the importation of all foreign coins – and not just counterfeits – for domestic circulation was strictly prohibited;⁶⁵ and that rigorous ban was relaxed, and then only temporarily, in May and November 1522, when Henry VIII permitted the circulation of Italian ducats, florins, French écus, and Habsburg carolus coins as legal tender.⁶⁶

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⁶⁵ Statutes of the Realm, vol. I, p. 219. The Statute of Westminster (3 Edwardi I, c 15), of April 1275, had banned the importation of all suspected counterfeit or other defective coins, requiring them to be turned over and sold for their bullion contents to the office of the Royal Exchanger. See Munro, ‘Bullionism and the Bill of Exchange’, pp. 187-90, and Appendix A, pp. 216-19.

⁶⁶ Paul L. Hughes and James F. Larkin, eds., Tudor Royal Proclamations, 3 vols. (New Haven and London, 1964-69, vol. I: The Early Tudors (1485-1553) (London, 1964), no. 88, p. 136 (25 May 1522); no. 95, p. 141 (24 Nov. 1522); no. 102, p. 145 (6 July 1525); no. 103, p. 146 (8 July 1525); Robert Steele, ed.,
Similarly, Crown and Parliament had banned the export of all silver bullion (including by definition all foreign silver coin) and plate from December 1278, then gold bullion from January 1307, and finally, from January 1364, all coins, gold and silver, explicitly including all legal tender English coins (except under royal licence). That all-inclusive export ban remained in force, with continuous re-enactments, until May 1663.67

In this latter respect, England seems to have been unique; for other (west European) states did permit the export of legal-tender coins, reserving their export bans for bullion (as specific demonetized precious metals).68 Thus, in medieval and Renaissance England, the duty of the Royal Exchanger, in enforcing these statutes, was to employ licenced, salaried officials who were instructed to purchase or confiscate all foreign coins and to turn them over to the Tower Mint for recoinage, and to prevent any private commerce in precious metals, as well any export of such metals.

That the exercise of such princely authority over the coinage indeed did very adverse effects on the development of deposit banking can be illustrated with the aftermath of the Burgundian monetary unification and reform that duke Philip the Good undertook, from his original base in Flanders, after acquiring full control over the neighbouring principalities of Namur, Holland, Zeeland, Hainaut, and Brabant, in the years


68 On this see Munro, Wool, Cloth, and Gold, pp. 11-64, 181-86; John Munro, ‘Billon - Billoen - Bilio: From Bullion to Base Coinage,’ Belgisch tijdschrift voor filologie en geschiedenis/ Revue belge de philologie et d'histoire, 52 (1974), 293-305, and other studies in Munro, Bullion Flows and Monetary Policies (1994). In continental countries, the bullion export bans usually defined the meaning of bullion (bullon), as specific demonetized precious metals that had to be delivered to the mints, excluding legal tender coins and certain types of plate and jewellery.
1433-35.\textsuperscript{69} Fearing that the money-changers, especially those acting as deposit-bankers, were a threat to the integrity of the ducal mints and of the money supply, Duke Philip and his successors issued a series of ordinances to terminate such banking: in the years of the unification itself, in 1433-35, and then in 1467, 1480, and 1489. Certainly a major part of their concern lay in the normal functions of money-changing, which the authorities feared involved the purchase and then circulation of imported debased or counterfeit coin and most especially the sale of both coin and bullion for export.\textsuperscript{70} But the ordinances also reveal a deep fear of their role as bankers, in decreeing (1433) that it was unlawful for anyone ‘whether a money-changer or not, to have a bank in order to receive the money of merchants and to make their payments, under the penalty of banishment for three years’.\textsuperscript{71} The 1489 ordinance, in again banning changeurs-bancquiers, also contended that frequent bank ‘failures have wrought utter ruin among all classes of people, but especially


\textsuperscript{70} See note 68. The difference between the attitudes of late-fifteenth-century England and the Habsburg Low Countries on specie exports is revealed in this rebuke that Archduke Philip’s officials delivered to Henry VII’s ambassadors, in 1499: ‘They [the Archduke’s councillors] thynk that theye do very moche for your subjectes to graunt them to conveigh oute of the archdukis landis all money current in thoos parties and also all manere of plate wrought and brought to eny man certen forme and fasshion [unbroken]. For the archdukis subjectes may not have like pryvylage to convey money nether plate oute of your realme of England into the archdукis parties, nor all manere of cune [coins]...’. Georg Schanz, ed., Englische Handelspolitik gegen Ende des Mittelalters, II: Zoll-und Handelsstatistik, Urkunden, Beilagen (Leipzig, 1881), doc. no. 8, p. 196.

among the merchants...”

According to not only De Roover, but also to Van der Wee, ‘the few deposit and clearing-banks once operating in Antwerp and Bergen-op-Zoom had disappeared before the end of the [fifteenth century].’ They both contend that, in the Low Countries, effective banking re-emerged only slowly, in late sixteenth century Antwerp and then in Amsterdam, with the kassiers, or ‘cash-keepers’, who similarly ‘combined manual exchange with deposit banking’ (kassierbedrijf).

In medieval and Renaissance England, with an even more rigorous enforcement of the Crown’s monopoly on money and coinage, such restrictions meant the absence, or virtual absence, of any form of practical deposit-and-transfer banking, until the emergence of the goldsmith banks in the seventeenth century. To be sure, merchant-banking in the form of commerce in bills of exchange and letters obligatory was always present. As R.D. Richards informed us long ago, late Tudor and early Stuart England also enjoyed some very rudimentary forms of bank-lending, undertaken by various merchants, brokers, scriveners (notaries public, who drew up letters obligatory, recognizances, etc.), and also some goldsmiths, some of whom may occasionally have received moneys for safekeeping. The goldsmiths, as members of an ancient, fourteenth-century guild of jewellers, in serving (or serving as well) as precious-metal merchants and illicit coin dealers, were the most logical ones to become true bankers. But, according to Richards, their role was the least effective of these four groups until at least the 1630s, when they were still being prosecuted for exporting precious metals and illegal coin dealings. How the goldsmiths subsequently emerged, either during the

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73 Van der Wee, ‘Monetary, Credit, and Banking Systems’, pp. 323-24; De Roover, Money, Banking and Credit, pp. 341, 351.

74 See R. D. Richards, The Early History of Banking in England (London, 1929; reissued 1958), pp. 1-25; and see esp. p. 15: ‘There does not appear to be any evidence to show that the goldsmith, the broker, of the merchant made a practice of receiving deposits in Tudor and Jacobean times. A few instances of merchants keeping deposits occur in the Elizabethan and early Stuart Chancery proceedings, though not as a regular and specialised business..... See also J. R. Anonymous, ‘The Goldsmith Bankers’, in B.L. Anderson

75 See also Van der Wee, ‘Monetary, Credit, and Banking System’s’, pp. 351-52, which provides the conventional story: ‘Then came Charles I’s closure of the Tower Mint in 1640. Its silver deposits belonging to private persons were converted into a compulsory loan, so that deposits with goldsmith bankers henceforth seemed safer. Finally, government financial needs were also partially responsible for the rise of goldsmith banks from 1640 to 1672 [with the Stop of the Exchequer, which had little impact on most banks].’

indeed argue that the very absence of the safe, secure, and low-cost mechanisms for transferring credits, so readily available in contemporary Italian financial institutions, provided medieval English merchants with a powerful incentive to resolve the problems, especially legal problems, that accompanied their own transfer payments.

The central legal and financial problem should obvious: that third parties receiving such informal commercial paper had no readily available means of enforcing payments from the original debtor or issuer of commercial paper, or rather of the forms of credit that came to be most commonly used. To be sure, merchants and others could transfer formal, notarized debts, those in particular known as ‘recognizances’ (reconisaunce enroulee) that had been registered in the Rolls of a designated mayor’s court, in major English towns, according to the provisions of the 1282 Statute of Acton Burnell. Such debts (payments claims) could indeed be transferred to a third party; but such assignments necessarily meant that the two parties had to draw up an entirely new notarized, sealed, and enrolled recognizance, at some considerable cost. Subsequently, if the original debtor defaulted, that third-party creditor could file suit in a Common Law court only if fully armed with a duly notarized and unrevoked power of attorney to justify his/her claim. He

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77 Statutes of the Realm, vol. I, pp. 53-4 (11 Edward I: 12 Oct. 1283). The Statute of Acton Burnell (or Statutum de Mercatoribus) gave creditors the power to compel debtors to register their loans as bonds before the mayors of London, York, Bristol, other ‘good towns’, and fair courts. Their clerks were required to enter the debt on a Roll of Recognition (reconisaunce enroulee), to produce a corresponding bill obligatory (escrit de obligacion) for the creditor, and to fix the seals of both debtor and the king to that bill. The most significant feature of this Statutory Recognizance, an important advance over earlier forms, was the recourse given to creditors when debtors defaulted: in obligating mayors or sheriffs to imprison debtors and seize their lands and chattels without any further legal action. Other legal disputes over recognizances could be adjudicated by Common Law courts, which, in Postan's words, regarded the sealed bond as ‘the highest form of documentary evidence’ (Postan, ‘Financial Instruments’, pp. 40-54). Subsequently, in June 1285, the Statute of Merchants (Statutum Mercatorum, 13 Edwardi I, stat. 3, in SR, I, pp. 98-100) permitted recognizances to be registered before the mayors of any ‘good town’ or before fair courts, expanded provisions for debt registrations, and increased the creditor's powers of execution over the debtor's assets — lands as well as goods — with immediate imprisonment. Many of these provisions were nullified by the Ordinances of 1311, but were restored with the overthrow of the Lords Ordainers and repeal of their Ordinances in 1322.
could then hope for success, but at very considerable cost in time – for long delays were commonplace and money. According to Michael Postan, a major authority on this subject, English Common Law courts became ‘increasingly hostile’ to the assignment of such debts during the later Middle Ages. They generally recognized the validity of only those debt transfers that involved ‘a common interest’ between assignor and assignee, generally limited to assignments that satisfied ‘a pre-existing debt’ between them. Therefore, he argued implicitly, such rising transaction as well as rising legal costs forced most merchants to resort instead to such low-cost holograph documents as the letter obligatory (promissory note) and the bill of exchange, neither of which, of course, had any standing whatsoever in Common Law courts.

Nevertheless, a legal alternative to such courts then developed, if rather slowly, to resolve these financial problems. Surprisingly, as early as the late thirteenth century, the medieval Crown and Parliament, in supposedly anti-alien England provided the genesis of that ultimate remedy in legislation to incorporate

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78 See Postan, ‘Financial Instruments’, pp. 40-54, especially p. 43: ‘the courts made use of the doctrine of the chose in action, i.e. the doctrine of the unassignable nature of mere legal claims, to confine valid assignments to those cases only in which the assignor and the assignee could prove a ‘common interest’.’ The assignor's debt to the assignee was considered a ‘common interest’ so that the transfer of an obligation in settlement of a debt could be enforced in Common Law’. See also A.H. Thomas, ed., Calendar of Select Pleas and Memoranda of the City of London Preserved Among the Archives of the Corporation of the City of London at the Guildhall, Vol. 3: A.D. 1381 - 1412 (Cambridge, 1932), pp. xxxvi-vii: ‘a common interest could not be proved if it appeared that the assignee had merely purchased the deed [bond] from the assignor without any particular reason for doing so’. According to Holden, Negotiable Instruments, pp. 13-14: ‘the fifteenth century saw the advent of maintenance as an objection to the assignment of funds if the assignee sued for the debt in the assignor's name. The rule developed that it was maintenance to purchase a bond and sue upon it.... There was an exception, however, if the bond was transferred to satisfy a pre-existing debt’, according to the ‘common interest’ test.’ All cite William Holdsworth, A History of English Law (London, 1909 - 66), V, pp. 534-45, on this issue.

79 See Postan, ‘Financial Instruments’, pp. 33-5, 38-40, 43, 47-54, contending that Common Law courts and Parliament ‘ made the emergence of fully negotiable paper impossible’, so that ‘the transfer of obligations was fraught with cumbersome formalities’. Some support for Postan’s views can be found in Alice Beardwood, trans. and ed., The Statute Merchant Roll of Coventry, 1392-1416, the Dugdale Society (Oxford University Press, 1939), pp. xx-xxi, contending that, of 288 recognizances on this roll from 1392 to 1416, only 15 seem to concern mercantile transactions. But according to Pamela Nightingale, ‘Monetary Contraction and Mercantile Credit in Later Medieval England’, Economic History Review, 2nd ser., 42 (November 1990), 560-67, the Coventry roles indicate that most did indeed involve commercial contracts; and she strongly contends that recognizances continued to play a fairly important, even if relatively diminishing role, in later medieval English commercial and financial transactions.
the then evolving code of international Law Merchant into English statutory law. According to the British legal historian J.H. Baker, the so-called Law Merchant, as expounded in the treatise *Lex Mercatoria* (c. 1280) was ‘not so much a corpus of mercantile practice or commercial law as an expeditious procedure especially adapted for the needs of men who could not tarry for the common law.’ It differed from Common Law in its far speedier process, the ‘liability of pledges to answer’, and denial of the time-consuming Common Law practice of ‘wager of law’ in the negative, i.e. a compurgation with eleven witnesses swearing a formal oath to deny a specific debt obligation. At about this very time, in 1285, Edward I had established a Law-Merchant court in London composed of foreign merchants specifically empowered to settle their own commercial disputes. Subsequently, by the 1303 *Carta Mercatoria*, a treaty regulating English relations with foreign merchants, Edward further stipulated that all merchants were permitted to receive ‘speedy justice’ by the Law-Merchant (*secundum legem mercatoriam*); and that, in any dispute between foreign and domestic merchants, half of the jury had to consist of foreign merchants. Finally, in 1353, his grandson

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81 See evidence found in the documents cited in the next note.

Edward III completed this full royal empowerment of the international Law Merchant, by having Parliament enact the Ordinance of the Staples, which established fifteen Staple Courts, in the leading English port towns, to settle all disputes among merchants conducting their commerce there.\textsuperscript{83} Thus, all such merchants and their agents ‘shall be ruled by the Law Merchant (lei marchant), of all Things touching the Staple, and not by the Common Law of the Land’ (c. 8), without any interference from royal justices or other legal officers. Each court was to be conducted by the town’s Staple Mayor, ‘having Knowledge of the Law-Merchant to govern the Staple’, with the aid of two constables and a jury composed of domestic and/or foreign merchants, depending on the case. Finally, the Staple courts were empowered to seize the goods and chattels of defaulting debtors.\textsuperscript{84}

The Legal Foundations for Modern Negotiability: Law Merchant and the Burton v. Davy Case (1436)

The subsequent history of the treatment of bills of exchange and other transferable credit instruments in English law merchant (and Common Law) courts during the later fourteenth and early fifteenth centuries has been discussed elsewhere, in several publications.\textsuperscript{85} The culminating development took place in March

\textsuperscript{83} 27 Edw. III stat. 2, in Statutes of the Realm, vol. I, pp. 332-43. The primary purpose of this statute was to return from abroad the official staples for the sale of English wools and other stapled goods. It explicitly enjoined the King's justices or other legal officers from interfering with anything ‘which pertaineth to the Cognisance of the Mayor and Ministers of the Staple’ (c. 5). See also A. H. Thomas, ed., Calendar of Plea and Memoranda Rolls Preserved Among the Archives of the Corporation of the City of London at the Guildhall, I: AD. 1323 - 1364 (Cambridge, 1926), p. 258; A. H. Thomas, ed., Calendar of Plea and Memoranda Rolls Preserved Among the Archives of the Corporation of the City of London at the Guildhall, II: AD. 1364 - 1381 (Cambridge, 1929), pp. 248-9; A. H. Thomas, ed., Calendar of Select Pleas and Memoranda of the City of London Preserved Among the Archives of the Corporation of the City of London at the Guildhall, III: AD. 1381 - 1412 (Cambridge, 1932), pp. vii-xli; and Hubert Hall, ed., Select Cases Concerning the Law Merchant, III: Central Courts, Supplementary, AD. 1251 - 1779, Selden Society Publications Vol. 49, 1932 (London, 1932), pp. xi - xxxii.

\textsuperscript{84} Plaintiffs holding bonds as Statutory Recognizances were also allowed to sue at Common Law (27 Ed III, stat. 2, c. 8). See also Thomas, Calendar of Select Pleas, 1381-1412, pp. xxiii-iv.

and November 1436, when the London Mayor’s law-merchant court was called upon to adjudicate a dispute concerning a dishonoured bill of exchange. The case involved five parties in an Anglo-Flemish commercial transaction. In Bruges, on 15 December 1435, the Englishman Thomas Hanworth, resident ‘factor and attorney’ for the Norwich-based merchant John Burton, acting as the deliverer, purchased a bill of exchange from John Audley, who was the resident factor for Elias Davy, a London-based Mercer engaged in the import trade from the Low Countries; and he used the Flemish funds so acquired to purchase linens for delivery to the Mercers in London. As the taker, Audley thus drew the bill for payment on his master Elias Davy, as the designated payer, with instructions to pay the sum of £30 sterling to the designated payee, the aforesaid ‘John Burton or the bearer of this letter of payment’. Subsequently, in another commercial transaction, Burton sold his claim to the bill (or used the bill to make payment) to John Walden, another London merchant. Presumably, from the evidence, Davy had ‘accepted’ the bill upon presentation. But when Walden tried to collect payment on the designated maturity date, 14 March 1436, Davy refused – he ‘dishonoured’ the bill. Presumably following further rebuffs, John Walden presented this dishonoured bill to the London Mayor’s court, on 10 August 1436, with a ‘supplication made in the name of the aforementioned John


87 Hall, Select Cases, vol. III, p. 117: ‘To my very honoured master, Elias Davy, mercer, at London, let this be given. Very honoured sir, please it you to know that I have received here [in Bruges] of John Burton [by the hands of Thomas Hanworth] by exchange, 30l. [sterling] payable at London to the aforesaid John [Burton] or to the bearer of this letter of payment on the 14th day of March next coming, by this my first and second letter of payment. And I pray you that it may be well paid at the day. Written at Bruges, the 10th day of December [1435], by your attorney, JOHN AUDELEY, etc.’
Burton, according to the Law Merchant and custom of the city of London’. Speedy justice did indeed follow. Three weeks later, on 1 September, the London Mayor Henry Frowyk issued the court’s decision: that the petitioner ‘John Walden, the bearer of the letter aforesaid ... is held, reputed, and admitted in place of the said supplicant in this case [Burton], according to the Law Merchant and custom before said’. When Elias Davy sought to escape this jurisdiction by transferring the case to the Common Law Court of King's Bench at Westminster, where he could ‘wage his law,’ and where Walden would clearly have had no standing, Mayor Frowyck refused, stating that ‘no discontinuance, according to the Law-Merchant and custom aforesaid, is permitted in any mercantile causes of a court of this nature’. On 3 November 1436, at the law-merchant court’s next session, Walden and Davy (though not Burton), along with Hanworth and Audley, appeared before the new Mayor, John Mitchell, who first ruled, successfully, that his law-merchant court, and not the Court of King’s Bench, had sole jurisdiction in this case, ‘according to the Law-Merchant ... and by divers statutes and Parliaments’, and indeed in all other cases, involving ‘all manner of loans, barmatizes, exchanges and letters of payment and other things, and mercantile contracts made or entered into between merchants themselves or their factors’. At the next session, on 19 November, after hearing all the testimony, Mayor Mitchell’s verdict was equally swift and decisive: that Elias Davy must pay the stipulated amount of £30 sterling, ‘according to the Law Merchant and the custom aforesaid in such like cases,’ and according to ‘the force, form and effect of the said letter [to] the supplicant or to John Walden, the bearer of the same letter, who is held and reputed in [Burton’s] place’. Davy was also fined an additional 20s. – equivalent to

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89 *Ibid.*, pp. 118-19. Cf. Sharpe, *Letter Book K*, pp. 208-09: ‘by the Law-Merchant and the ancient liberties and customs of the City the Mayor and Aldermen, from time immemorial, had exercised jurisdiction over mercantile disputes arising between merchants of the City; and that Elias Davy, mentioned in the writ, was for many years and is a merchant and citizen of London, and was warned by order of Henry Frowyk, the Mayor, and the Aldermen to appear before them in the Chamber of the Guildhall...’
30 days wages for a London master mason – for damages incurred.\textsuperscript{90}

This landmark case, if not then establishing the full-fledged legal conditions and sanctions for modern negotiability, nevertheless provided the true legal precedent in laying its foundations.\textsuperscript{91} Certainly no English law-merchant court, or any other court, subsequently denied the right of the unnamed bearer of a bill of exchange to sue the acceptor (the payer), or even the drawer, for payment and damages - except, of course, when the bill was illegally obtained. English commercial records for late-fifteenth and sixteenth century trade fully attest that bearer bills were now commonplace – bills that would later become better known as ‘acceptance bills’.\textsuperscript{92} The common argument that England did not establish the legal conditions for negotiability until the beginning of the eighteenth century has been used entirely out of context. To be sure, in the seventeenth century, Chief Justice Edward Coke did attempt to give Common Law courts more

\textsuperscript{90} Ibid., p. 119: ‘ideo consideratum est per eandem curiam mercatoriam juxta legem mercatoriam et consuetudinem predictam in hujusmodi casibus etc. usitatas et approbatas, quod idem Elias juxta vim, formam et effectum dicte litere solvat easdem xxxl prefato supplicanti vel Johanni Walden portitori ejusdem litere, qui loco suo tenetur et habetur in hoc casu, etc., juxta legem mercatoriam et consuetudinem antedictam, etc. et xxs. ultra pro dampnis in hac parte habitis et sustentatis, etc.’ Elias Davy then appealed this decision to Chancery; and on 14 February 1437 Henry VI issued a royal writ to London's mayor ‘that you do send the tenor of the record and process of the plea aforesaid to us into our Chancery’. Mayor Mitchell immediately responded and successfully rebuffed this appeal to Chancery, by reiterating all the arguments made in rejecting the king's previous writ of 3 November. See Hall, Law Merchant, III, 117-19.

\textsuperscript{91} For a contrary view, denying that this case had any real significance in English law, see James Steven Rogers, The Early History of the Law of Bills and Notes: A Study of the Origins of Anglo-American Commercial Law (Cambridge, 1995), pp. xi-xiv, 1-11, 44-68. In my view he seriously misinterpreted the reported testimony and the circumstances of this case. See my rebuttal in Munro, ‘English Backwardness’, pp. 105-67. First, the conclusion is inescapable that Davy had originally accepted the bill and then dishonoured it. Secondly, since this was a legal precedent, Walden necessarily had to support John Burton in this lawsuit, but played no further role. Thereafter, the bearer had the uncontested right to sue on his own behalf for payment.

and more restrictive jurisdiction over commercial cases. Nevertheless, in 1666, the Common Law courts did agree that ‘the law of merchants is the law of the land’, and therefore that endorsed and bearer bills of exchange were fully ‘transferable within the custom of merchants’. Astoundingly, however, in 1703, Chief Justice Holt issued a decision that in effect rejected such legal sanctions for the negotiability of promissory notes (letters obligatory) -- the right of the bearer or endorsee of such bills to sue the debtor for non-payment -- on the very narrow and specious grounds that they were not bills of exchange. The next year, in 1704, Parliament was forced to remedy that blunder in the Promissory Notes Act: to make all such bills fully transferable and negotiable, whether to order by endorsement or to bearer, ‘according to the custom of merchants ... as is now used upon Bills of Exchange’.

**The Establishment of Modern Negotiability in the Habsburg Netherlands, 1507 - 1541**

If the 1436 law-merchant verdict in the Burton v. Davy case may certainly be considered as the true foundation for that legislation, it was, much further back in time, also the fundamental precedent for Europe’s first *national* legislation to provide the complete judicial sanctions for modern negotiability, as we now understand the term. The route, ending in the Habsburg Netherlands, was indirect. First, in May 1499, the law-merchant court of Lübeck rendered a verdict concerning the property rights of bearers in disputed bills.

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93 In 1632, Coke limited the jurisdiction of the Admiralty Courts (successors of law-merchant courts) over commercial cases; and in 1648, transferred it fully to Common Law Courts. In 1628, however, Coke had stated that the Law Merchant ‘is part of the lawes of this realme’, in essence repeating Chief Justice Hobart's statement of 1622 that ‘the custome of merchants is part of the common law of this kingdome of which the judges ought to take notice’. See Eric Kerridge, *Trade and Banking in Early Modern England* (Manchester University Press, 1988), p. 72, who also comments: ‘Assignability is not negotiability... To be fully negotiable a credit instrument must, first, be transferable as by the custom of merchants...; and secondly, it must be capable of being sued upon by the holder for the time being’.

94 Holden, *Negotiable Instruments*, pp. 33-6; Beutel, ‘Negotiable Instruments’, pp. 833-34; Kerridge, *Trade and Banking*, pp. 71-2. In Woodward vs. Rowe (1666) the Common Law court declared that ‘the law of merchants is the law of the land, and the custome is good enough generally for any man, without naming him merchant’; and in Williams vs. Williams (1693) it ruled that the customs of Law Merchant did not have to be detailed, for ‘tis sufficient to say that such a person *secundum usam et consuetudinam mercatorum* drew the bill’.

one that was virtually identical to the Burton v. Davy case; and in March 1502, this same court, hearing a similar case, reconfirmed this decision. Late-medieval Lübeck was, of course, the *chef ville* of the Hanseatic League; and its merchants traded extensively with both England and the Low Countries. In Antwerp, just five years later, a similarly-constituted law-merchant court, in adjudicating a case involving some disputed and evidently dishonoured English letters obligatory (promissory notes), issued a *turba* or verdict that ‘granted the bearer of writings obligatory the same rights as the original creditor [payee] with regard to the prosecution of an insolvent debtor’. Prior to this decision, according to Herman Van der Wee, merchants in the Netherlands had required very rigid and cumbersome legal procedures to secure enforcement of debt payments, with lawsuits that required the plaintiff ‘to obtain an explicit authority from the original creditor [revocable at any time]’, or ‘an official transfer made by means of a formal *cessio*’. For Van der Wee, this was the crucial precedent for all the judicial and statutory decisions that followed.

For the Habsburg Netherlands itself, that is strictly speaking true, though Van der Wee was evidently unaware of the earlier precedents from the Lübeck and London law-merchant courts. In view of the now predominant influence of the English cloth trade in Antwerp’s burgeoning international commerce – far more...

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important than any current trade with Lübeck – and the involvement of English merchants in this case, we may justly contend that the true precedent was Burton v. Davy. 98 Possibly the current inhibitions or impositions on deposit-and transfer-banking in the Low Countries made such legal decision on negotiable transfers all the more welcome in this mercantile community.

Subsequently, in 1527, in neighbouring Flanders, the municipal court of Bruges rendered an almost identical decision in stating that ‘the bearer had all the rights of a principal’ in suing defaulting debtors to claim payment on commercial bills. 99 Such decisions were codified into national legislation a decade later, in ordinances enacted by the Estates General of the Habsburg Netherlands in March 1537 and October 1541. In essence, they permitted the bearer to sue not only the original debtor but any and all prior assignors of the note for the full payment, with full judicial procedures to enforce such payments across the Netherlands. 100

**Usury and Discounting in the Low Countries and England**

An equally significant feature of this complex legislation was a companion ordinance of the 1541 Estates General that permitted interest payments up to 12 per cent per annum on all debts and commercial

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98 For the most famous compilation of Law-Merchant by a merchant of Flemish origin with wide commercial and legal experience in both the Low Countries and England, see Gerard de Malynes, *Consuetudo vel Lex Mercatoria or the Ancient Law Merchant* (London: Adam Islip, 1622).


100 Van der Wee, ‘Anvers et les innovations,’ pp. 1067-89; Van der Wee, ‘Credit and Banking Systems’, p. 326: ‘...in this way, the various transferring creditors remained jointly responsible for payment’. For the text of the March 1537 ordinance, concerning bills of obligatory only, see C. Laurent, M. J. Lameere, and H. Simont, eds., *Recueil des ordonnances des Pays Bas, deuxième série, 1506 - 1700*, Commission Royale d'Histoire (Brussels, 1907), Vol. 4, pp. 15-17, and 34-5. For the text of the 31 October 1541 decree (which included bills of exchange), see Van der Wee, *Growth of the Antwerp Market*, vol. II, p. 344: ‘Ordonnons que doresenavan tous ceulx qui aueront accepté ... quelque lettre de change seront tenus de payer la somme contenue en ycelle en deniers évaluez ... sans que pour lesdits changes ou aultres obligations contractez entre marchans on puis donner en payement aultres obligations par forme d'assignacions, lesquelles le crédeite ne sera tenu dacceper sil ne velt, et en acceptant lassignacion demeurereaneantmoins le premier debteur obligé tant que le marchant sera réalement payé ou effectuellement contente de son due’. 
bills -- so that ‘usury’ now changed its meaning to indicate interest payments in excess of that limit.\textsuperscript{101} Despite the spread of Calvinism, the Habsburg Netherlands were, of course, still Catholic; but perhaps the spread of Calvinism amongst the commercial and industrial classes had, directly or indirectly, undermined faith in the medieval usury doctrines. England, under Henry VIII, had become at least nominally Protestant; and just a few years later, in 1547, Henry VIII’s Parliament enacted similar legislation, though with just a 10 percent limit. In the following reign of Edward VI, parliament repealed this statute in 1552; but subsequently, in 1571, Queen Elizabeth I’s Parliament fully restored her father’s statute.\textsuperscript{102}

The significance of this ‘usury’ legislation for the history of modern financial institutions should be obvious. Effective financial negotiability usually requires the discounting of credit instruments. Thus, anyone selling and transferring a financial claim, whether in a bill of exchange or in a promissory note, before the stipulated date of maturity, necessarily had to accept a payment for less than its face value, to compensate for the foregone interest to be earned between the date of sale and maturity. To do so, to discount such bills openly, would therefore have rendered both the buyer and seller subject to prosecution under the previously existing usury laws; and it would have at least rendered the transaction invalid and unenforceable in law courts. The subsequent history of discounting and the endorsement of bills in the Low Countries has already been told, in several publications by Herman Van der Wee, who discovered the first fully documented example of true discounting anywhere in Europe, in, once more, an English merchant's bill obligatory on the Antwerp market (dated 1536).\textsuperscript{103} Nevertheless the evolution of this financial development

\textsuperscript{101} See notes 97, 100, and in particular: Van der Wee, ‘Credit and Banking’, p. 302.

\textsuperscript{102} Statutes 37 Henrici VIII, c. 9 (1545), 5-6 Edwardi VI, c. 20 (1552), 13 Elizabeth I, c. 8 (1571): in Statutes of the Realm, vols. III, p. 996; and IV.i, pp. 155, 542, respectively. It is worth noting that the usury ceiling was progressively lowered, with the gradual fall in the real rate of interest: from 10 to 8 per cent in 1623, to 6 per cent in 1660, and finally to 5 per cent in 1713. Not until 1854 (17-18 Victoria c. 90), however, were the British usury laws finally abolished. See Richards, Early History of Banking in England, pp. 19-20.

\textsuperscript{103} Van der Wee, ‘Credit and Banking Systems’, pp. 329-31; Van der Wee, Antwerp Market, vol. II, pp. 349-55 (from the Kitson papers at Cambridge). He contends that, before the formal acceptance of discounting, those merchants requiring ready cash would have asked some debtor to pay in advance, offering
was slower than might be expected, becoming widespread only after formal endorsement had become customary, in the later sixteenth, early seventeenth centuries, in the Netherlands, south and north. Discounting certainly became a signal feature of English finance by the seventeenth century.


If we were to cross the Channel, we would encounter, in late-seventeenth century England what Peter Dickson famously called the ‘financial revolution’, commencing with the aftermath of the Glorious Revolution of 1688-89, which, with William III’s ongoing and very costly wars against Louis XIV, led to the establishment of a permanent funded national debt in 1693-97. That financial revolution culminated in the famous ‘Pelham’s Conversion’, in 1749-52. The inception of that permanent debt, in 1693, with the so-called Million Pound Loan was in fact a self-liquidating one: a 14 percent lifetime annuity (i.e., lijffrenten). The subsequent £1.2 million ‘loan’ (at 8 percent) that the original directors of the Bank of England furnished in 1694-97, to secure their monopoly charter, was in fact perpetual. Similar loans, also to secure monopoly charters, followed in 1698 and 1709, from the East India and then the merged New East India Companies. From 1704, the government’s Exchequer began issuing more self-liquidating annuities, usually for 99 years (initially at 6.6 percent); and then from 1711, the newly formed South Sea Company bought up and converted short term floating debt (and some annuities) in so-called ‘perpetual stock’ with a 5.0 percent return, converting almost £14 million in other loans and annuities into more 5 percent perpetual stock, just before its collapse in the 1721 ‘Bubble’ (leaving stock that thus more formally became part of the national debt). Subsequent government issues were in callable or redeemable ‘stock’, some with lottery

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104 Van der Wee, ‘Credit and Banking’, pp. 327-29. Many of these legal provisions were encoded in the Antwerp Costumyn of 1608, which also required a variant of endorsement, by which all assigning creditors were listed within the bill, obligating all who accepted transfers of payment ‘from hand to hand to four or five persons or more’ to make payment in case of default by the debtor.

provisions, with progressively lower rates of interest (4.0, 3.5, and 3.0 percent). Finally, in 1749, the Chancellor of the Exchequer, Sir Henry Pelham, commenced his famous conversion of all outstanding debt issues (those not held by the Three Sisters – the Bank of England, the East India Co, and the reconstituted South Sea Co) into the Consolidated Stock of the Nation – popularly known as ‘consols’ – initially paying 3.5 percent, with its completion in 1752, but then reduced to 3.0 percent in 1757.

The Consols and preceding annuity issues were of course, no different from the continental rentes, even though the current, so-called ‘usury’ legislation was hardly an impediment to the issue of actual bonds, as formal loans at interest with a specified redemption date. The English/British annuities were similarly perpetual, indeed ‘perpetual stock’, but callable or redeemable at par at the will of the government. Admittedly, however, Pelham had achieved his conversion of higher-interest to lower-interest annuities by the government’s promise not to call the Consols for at least thirty years. They were also fully transferable and negotiable. Indeed, along with Bank of England and East India Co stock (in effect government debt), they were the major securities traded on the London Stock Exchange for the eighteenth and much of the nineteenth century; and they proved to be a major source of collateral for business loans in the Industrial Revolution era.

Some Conclusions on the Origins of the ‘Financial Revolutions’

In view of this long history, some may rightly claim that early-modern England was fundamentally indebted, as in so many other economic aspects, to the sixteenth-century Netherlands for its own eighteenth-century financial revolution: both for the role of renten in helping to finance the ‘national’ government and for the establishment of nationally-legislated sanctions to achieve complete negotiability of financial instruments. Yet these sixteenth-century ‘financial revolutions’ in turn owed their real origins to European

106 See the sources in the previous note. The 1752/57 Consols were not in fact called until Goschen’s conversion, in 1888: converting 3.0 percent Consols into 2.75 and then 2.5 percent consols.

107 See in particular: Tracy, A Financial Revolution, a study to which I am deeply indebted. But, while this book does illuminate the earlier history of rentes in European finance, it does neglect the role of bills of exchange in European finance and the very important issues of secondary markets and thus
mercantile ingenuity in overcoming those ecclesiastical and secular impediments dating from at least the later thirteenth century. The most important, of course, was the fruition of the Scholastic and canon law usury doctrine; and it was in this very era that rentes (census) began their role as a significant feature of government, if then chiefly municipal, finance. Equally important, for the question of negotiable credit instruments, was the role played by late thirteenth-century and early fourteenth-century princely governments in imposing bullionist impositions to international bullion flows; and also, in the case of England, and even later the Low Countries, to deposit-banking and thus to transfer payments. Obviously negotiable bills of exchange, or acceptance bills, which are at the heart of this story, are not only the most essential feature of modern international trade and the accompanying private finance, but also an essential feature of modern public finance as well, in permitting governments to make secure and low cost international remittances.
Ghent: Revenues from the Sales of Erfelijke Renten and Lijfrenten

1352 - 1373

in ponden payement: £40 payement = £12 parisis = £1 groot Flemish

<table>
<thead>
<tr>
<th>Years</th>
<th>Page</th>
<th>Renten:</th>
<th>Total Revenues</th>
<th>Renten as % of Total</th>
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<tbody>
<tr>
<td>15 Aug.</td>
<td></td>
<td>dec. £ paye</td>
<td>dec. £ paye.</td>
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<tr>
<td>1353-54</td>
<td>92</td>
<td>3,035.700</td>
<td>62,049.600</td>
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<td>188</td>
<td>[2,762.279]</td>
<td>n.a.</td>
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<td>1356</td>
<td>232</td>
<td>4,015.054</td>
<td>37,066.321</td>
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<td>1358-59</td>
<td>377</td>
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<td>39,023.133</td>
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<tr>
<td>1360-61</td>
<td>453</td>
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<td>1362-63</td>
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<td>83,793.738</td>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>45,231.220</strong></td>
<td><strong>1,240,454.925</strong></td>
<td><strong>3.65%</strong></td>
</tr>
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</table>
Sources:


(2) David Nicholas and Walter Prevenier, eds., *Gentse Stads- en Baljuwsrekeningen (1365-1376)*, Koninklijke Academie van België, Koninklijke Commissie voor Geschiedenis (Brussels, 1999), pp. 7, 12, 34, 35, 58, 85, 102, 105, 123, 127.