

An Anthology of Medieval Texts on Money

All translations are mine unless otherwise noted. All references made in the medieval texts to Roman and canon law are converted to modern usage (Brundage, 1995) using Ochoa Sanz and Diez (1964, 1965) and Nicolini and Sinatti d'Amico (1964-70). For Roman law, Cod.=Justinian Code, Dig.=Digest, Inst.= Institutions, Auth., Nov. = Novels.¹ For Canon law, D=Decree of Gratian, X.= Liber Extra, Clem.= Clementines.

I have tried to be consistent in my rendering of certain Latin words. In particular, I have used 'estimation' for *aestimatio*, 'value' for *valor*, 'quality' for *bonitas*, 'rate' for *cursus*. The word *moneta* is translated as 'money', 'coin' or 'currency' depending on the context, while *num(m)us* and *pecunia* are translated as 'coin.'

¹ The citations include the divergence of the medieval vulgate from the classical text, when applicable.

Philosophers

Aristotle (384–322 B.C.)

The translations of Aristotle are by H. Rackham (Cambridge, MA: Harvard University Press, 1934–44), downloaded from *The Perseus Project*, <http://www.perseus.tufts.edu/>, August 1997.

Ethics, 1133a–b

Hence all commodities exchanged must be able to be compared in some way. It is to meet this requirement that men have introduced money; money constitutes in a manner a middle term, for it is a measure of all things, and so of their superior or inferior value, that is to say, how many shoes are equivalent to a house or to a given quantity of food. As therefore a builder is to a shoemaker, so must such and such a number of shoes be to a house, [or to a given quantity of food; for without this reciprocal proportion, there can be no exchange and no association; and it cannot be secured unless the commodities in question be equal in a sense. It is therefore necessary that all commodities shall be measured by some one standard, as was said before. And this standard is in reality demand, which is what holds everything together, since if men cease to have wants or if their wants alter, exchange will go on no longer, or will be on different lines. But demand has come to be conventionally represented by money; this is why money is called currency (*νόμισμα*), because it does not exist by nature but by custom (*νόμος*), and can be altered and rendered useless² at will. . . . That it is demand which, by serving as a single standard, holds such an association together, is shown by the fact that, when there is no demand for mutual service on the part of both or at least of one of the parties, no exchange takes place between them [as when someone needs something that one has oneself, for instance the state offering a license to export corn in exchange for wine]. This inequality of demand has therefore to be equalized. Now money serves us as a guarantee of exchange in the future: supposing we need nothing at the moment, it ensures that exchange shall be possible when a need arises, for it meets the requirement of something we can produce in payment so as to obtain the thing we need. Money, it is true, is liable to the same fluctuation of demand as other commodities, for its purchasing power varies at different times; but it tends to be comparatively constant. Hence the proper thing is for all commodities to have their prices fixed; this will ensure that exchange, and consequently association, shall always be possible. Money then serves as a measure which makes things commensurable and so reduces them to

² The Greek word *αχρηστος* means useless or worthless.

equality. If there were no exchange there would be no association, and there can be no exchange without equality, and no equality without commensurability. Though therefore it is impossible for things so different to become commensurable in the strict sense, our demand furnishes a sufficiently accurate common measure for practical purposes. There must therefore be some one standard, and this accepted by agreement (which is why it is called *nomisma*, customary currency); for such a standard makes all things commensurable, since all things can be measured by money.

Politics 1257b–1258a

In the primary association therefore (I mean the household) there is no function for trade, but it only arises after the association has become more numerous. For the members of the primitive household used to share commodities that were all their own, whereas on the contrary a group divided into several households participated also in a number of commodities belonging to their neighbors, according to their needs for which they were forced to make their interchanges by way of barter, as also many barbarian tribes do still; for such tribes do not go beyond exchanging actual commodities for actual commodities, for example giving and taking wine for corn, and so with the various other things of the sort. Exchange on these lines therefore is not contrary to nature, nor is it any branch of the art of wealth-getting, for it existed for the replenishment of natural self-sufficiency; yet out of it the art of business in due course arose. For when they had come to supply themselves more from abroad by importing things in which they were deficient and exporting those of which they had a surplus, the employment of money necessarily came to be devised. For the natural necessities are not in every case readily portable; hence for the purpose of barter men made a mutual compact to give and accept some substance of such a sort as being itself a useful commodity was easy to handle in use for general life, iron for instance, silver and other metals, at the first stage defined merely by size and weight, but finally also by impressing on it a stamp in order that this might relieve them of having to measure it; for the stamp was put on as a token of the amount.

Jean Buridan: Commentary on Ethics, Book 5

Jean Buridan (c. 1290–c. 1360) was a philosopher, who taught logic and philosophy at the University of Paris. His discussion of the passages of Aristotle in Politics and Ethics provide an extended discussion of money, based on Aristotelian principles.

In question 16 of the Questions on Aristotle's Ethics, he explains how hu-

man need measures all exchangeable things, and how relative prices are ratios of human needs. In question 17 he discusses the use of money to measure all exchangeable things.

Source: Quaestiones in decem libros ethicorum Aristotelis ad Nicomachum, 1637, Oxford, H. Cripps. See also French translation in Dupuy 1989 (which also has question 16, and two questions from the Commentary on the Politics).

Question 17. Is money necessary to measure exchangeable things?

[Arguments con:]

- a) It is argued that it isn't, because, for a given measurable thing there must be a unique measure according to one method of calculation of that thing. But exchangeable things can be measured by money according to no method of calculation, if not according to the fact that they come into human use, and thus have another measure according to human need. Therefore, they can be measured by money according to no method of calculation.
- b) if money were the measure of purchasable things, it would follow that for the same amount of money we could always have the same quantity of purchasable things; but this is false, because for 10 livres we have at times only one measure of wine, at other times two or three.
- c) from the fact that exchange is necessary for the sustenance of man (as said before), since nature does not fail to provide the necessities, it follows that everything that is necessary for exchange is established by nature; but money, as Aristotle says, does not come from nature; it is always in us to change it and make it useless; therefore money is not necessary or a necessary measure of exchangeable things.

[Arguments pro:]

Aristotle appears to be in opposition. First, in Book 1 of *Politics* he says that, since "it is not possible to transport things by nature exchangeable over long distances to obtain what we want, the use of money was invented out of necessity." First, it is appropriate to consider the necessity of money for exchanges. Second, that exchangeable things are measured by it.

I. With respect to the first point, that money is necessary in exchanges for perfect human communication and sustenance, in fact I think that it is necessary

simply for the sustenance of that large number of men living today. This conclusion is proven in a variety of ways:

1) By the distance between the places where things to be exchanged are located. For example, in Artois³ there is wheat and no wine to be found for the wheat; therefore, people there desire wine from Gascony. But to transport their wheat to Gascony would be a greater expense than the wheat is worth, and therefore no or little wine will be obtained; what will happen then? There is need of something of small quantity and easily portable, and of great value, which is exchangeable against wheat and wine, and that is money: which I will accept for wheat, and will bring back wine in exchange for it, and for this kind of exchange florins⁴ are most suited.

2) By the distance over time. For example, now I have a lot of wine, and the following year I will lack wine, and the wine that I have I cannot store, because it will perish; therefore there is need of something which I accept in exchange for my wine, and which I can easily store without expense, and without loss by rot, and that is money. And Aristotle offers this reason with those words, “if presently you do not want, for future exchanges if you will want, money will be a guarantee for us”.

3) From the multiple nature of needs. For example, this poor man has to earn what he needs by his labor, and he works three days for a rich man, and lacks bread, meat, milk, salt, turnips, etc which this rich man does not have, but instead has precious stones. What will happen? He must receive for his labor something divisible in small quantities, for one part whereof he will obtain milk and for another part bread, and so forth; and for this purpose small coins are necessary.

4) Because of the indivisibility of certain exchangeable goods of great value. For example, I have a horse, and I need clothes, shoes, and food; therefore I will not give my horse to the tanner, because perhaps he does not have clothes, nor to the peasant because perhaps he does not have shoes, and perhaps the peasant and the tanner do not need a horse. Therefore it is convenient to accept money for the horse, a part whereof I will give for a coat, another for shoes, the rest for wheat. And, to be brief, upon consideration many other needs for money will become apparent.

³ Buridan was a native of Artois, with perhaps a fondness for Gascony wines.

⁴ Probably meaning “gold coins” in general.

To fulfill these need, according to some, money requires certain conditions. 1) that it be of small quantity, for there cannot occur a loss of it, without it being easily examined (??); 2) that it have the imprint of the mark of some prince, otherwise anyone could make and falsify money, thereby depriving exchanges of equality; 3) that it be of a known weight, otherwise it would not be possible to put a certain price on exchangeable things; 4) that it be stable, without corruption, because otherwise it would not be possible to provide for future needs with it; 5) that it contain a precious substance, so that a large value might be contained in a small object, and easily transported to distant places; 6) that it be divisible into small parts, especially for the poor, since they often need many things of small price.

II. With respect to the second point some say that princes impose on money the quantity of value, and according to this value imposed on it money can measure exchangeable things. That is why Aristotle said “money does not exist by nature, but by name, and it is in us to make it useless”. But it is not necessary to speak so absolutely, since if there were no coin anymore, and the king made one again, it is true that he could give it a name, namely call it “penny” or “half-penny”. But he could not decide how much a penny or a halfpenny is worth. For suppose the king said that a penny is worth a quart of wine, that would not be fair, because one wine is better than another, and better in one place than in another.

Therefore it is appropriate that the value of money measure human need. Although we do not need gold or silver for our needs, yet the rich need them for their excesses in apparel and display. Therefore we see that gold and silver are worth as much, or almost as much, in matter as they do in the form of coin. Since the value of money will have been measured according to human need, all exchangeable things will be measurable according in proportion to money; that proportion which they shall have to human need, they shall have to money itself proportioned to human need. But it is true that, with one money current, if the king made another one, he could set it in relation to the previous price: for example, he could say that the new penny shall be given and taken for three old ones. But if it were not worth as much, or nearly as much, according to the relation of its intrinsic content to human need, the king would be committing a sin, and unfairly profiting from the common people; unless he were excused of sinning because of a war involving the people, or some other public necessity.

[Response to arguments con:]

To the arguments this should be said.

- a) the first and foremost measure of exchangeable things is unique, namely human need. But there is no problem in having another intermediate measure, which, measured by the first, can make everything else measurable.
- b) it is conceded that money is not a certain measure of purchasable things, except according to the relation between it and those things for human need.
- c) It can be said, that such a multitude of people as there is now cannot be well sustained without a multitude of things that nature cannot give us without industry; yet it does not follow that nature lacks in necessary things, because it gives us reason, by which we can acquire for ourselves all arts, and therefore procure everything we need.

Roman Law (6th c.) and the Ordinary Gloss

The Code of Justinian was first promulgated as law in 529, the existing text in 534. The *Digest* was compiled from the works of the best Roman jurists and approved for use as a law textbook in 533. By analogy with the Code, the sections of the Digest are called “laws,” although they are legal commentaries (the law *Origo*, for example, is a discussion of the origins of money). The Ordinary Gloss is a compilation of glosses from the late 11th to the mid-13th century, due mainly to Accursius (d. c.1260). In medieval law schools, it was taught as part of the Corpus, with almost the same authority as the text itself.⁵

Justinian’s Code

The translation of the Code is based on the translation by J. A. C. Thomas (Amsterdam: North-Holland, 1975).

Cod. 11.11(10): Concerning the value (potestas) of ancient money

1. *The Emperor Constantine.*

We order that the *solidi* coined by former Emperors shall be paid and accepted by purchasers and vendors, and that no dispute shall arise with reference to them, provided that they are of the requisite weight (*debitum pondus*, and

⁵ Cite Pennington.

genuine kind (*species proba*), and all persons are hereby notified that if they violate this law they will be subjected to severe punishment.

2. *The Same Emperor.*

When the value (*aestimatio*) of a *solidus* is depreciated, it is necessary for the price of all articles purchased to be diminished in the same proportion.

3. *The Emperors Gratian, Valentinian and Theodosius.*

You must notify all persons by the proposed Edict that an uniform value (*pretium*) of all *bryzat solidi* will be established, and that anyone who, through the blindness of avarice, either disobeys Our orders or fraudulently attempts to change the appearance of these coins, will be punished by death.

The Digest

The translation of the Digest is based on that of Alan Watson (Philadelphia: University of Pennsylvania Press, 1985), but with some important alterations. Only a few glosses are given here; the text is taken from the Corpus Juris Civilis, Venice, 1598, Giunta.

Digest 12.1.2, Mutuum damus

Paul, *on the Edict, book 28*: We make a consumption loan (*mutuum*) in order to receive, not the same thing that we gave (that would be a loan for use, *commodatum*, or a deposit), but of the same kind: for if it is to receive a different kind, such as wine for grain, it will not be a loan.

§1 (*mutui datio*): the transfer [that initiates the loan] consists of things which are dealt in by weight, number or measure. For the transfer of these things can make us creditors, since they perform their part in repayment generically, not specifically. But in the case of other things we cannot become creditors, because one thing cannot be repaid for another against the will of the creditor.

Digest 12.1.3, Cum quid

Pomponius, *on Sabinus, book 27*: Even if there is no provision in a loan for consumption that the thing returned should be of the same quality, the debtor is not allowed to give back some thing which, though of the same kind, is of inferior quality, for example, new wine for old. The reason is that when a contract is made,

the nature of the transaction is given effect just as though expressly provided for; and the nature of this one is taken to be that the thing paid back must be of the same kind (*genus*) and quality (*bonitas*)^a as the thing given.

^a *Gloss on “bonitate”*

As to intrinsic quality, such as of similar flavor, even if the price has changed over the course of time.

Digest 12.1.22, Vinum

Julian, *From Minicius, book 4*: Wine which had been given on loan for consumption was claimed before a judge. To what time should its valuation (*aestimatio*) relate: the making of the loan, joinder of issue, or judgment? Sabinus gave the opinion that if a time was specified for return of the loan, the value at that time should be taken; if not, the value at the time the demand was made.^a I asked what place’s price should be followed. He answered that the value at the place specified for return of the loan should be taken, and if none was specified, the value at the place where the demand was made.

^a *Gloss on “cum petitum esset”*

Say that here the intrinsic quality is considered according to the time of the loan: not the extrinsic quality, which is how much it is worth.

Digest 18.1.1, Origo (beginning)

Paul, *Edict, book 33*: All buying and selling has its origin in exchange or barter. For in times past money was not so, nor was one thing called “merchandise” and the other “price”; rather did every man barter what was useless to him for that which was useful, according to the exigencies of his current needs; for it often happens that what one man has in plenty another lacks. But since it did not always and easily happen that when you had something which I wanted, I, for my part, had something that you were willing to accept, a material was selected which, being given a stable value (*aestimatio*) by the state, avoided the problems of barter by providing a constancy of quantity (*aequalitas quantitatis*). That material, struck with a public design (*forma*), demonstrates^a its utility (*usus*) and title (*dominium*) not by its substance (*substantia*) as such but by its quantity (*quantitas*), so that no longer are the things exchanged both called wares but one of them is termed the price (*pretium*).

^a Gloss on “*praebet*”

Note that it demonstrate the utility of its use (*usu*) and its title (*dominium*) from two things. First, from its substance, because one coin is worth as much as the amount of silver in its mass. Second, from its quantity, because the quantity of the coin is made equal to the equivalence of the object, and thus constancy in quantity arises for the coin.

Digest 46.3.99, Paulus respondit

Paulus replied that a creditor cannot be required to accept money in any other form lest he suffer some disadvantage thereby.

Romanists

Medieval Romanists (students of Roman law) are divided in glossators (1090–1260) and post-glossators.

From the time when Irnerius started teaching about Roman law in Bologna around 1090, glosses accumulated. As teachers lectured on a passage of the Digest, they would recall another passage which they thought was connected, either by similarity or by apparent contradiction. They started by making notes in the margins of the manuscript (glosses), at first just references or grammatical clarification, then progressively discussions of the apparent similarities or contradictions, using similarities to derive general principles, and contradictions to refine these principles.

After Irnerius, several generations accumulated glosses, and also treated theoretical questions in separate collections. Among those relevant to us are Pillius (late 12th c.) whose Questiones contain the first treatment of the question of debasement, with reference to an answer formulated by his master Placentinus (d. 1192); Azo (d. c.1230) whose Brocardica contained a generalization of the rule on repayments; and Accursius (d. 1263) who compiled the existing glosses into the Ordinary Gloss.

Among the important post-glossators for our purposes are Odofredo de Denari (d. 1265), Jacopo de Arena (d. c.1296), Pierre de Belleperche (d. 1308), Jacopo de Belvisio (1270–1335), Cino da Pistoia (1270–1336), Oldrado da Ponte (d. 1336). Bartolo di Sassoferrato (1314–57) was the greatest and most influential Romanist of his time, and his work remained an important reference for two

hundred years. We present texts by Cino da Pistoia, who reports opinions of other doctors, and long excerpts from Bartolo's commentaries.

Cino da Pistoia (1270–1336)

In his commentary on Cod. 2.40(41).3, Cino da Pistoia considers the rules governing repayment of perishable objects. He then turns to the apparent application of similar rules to objects that cannot perish.

Source: In Codicem . . . Commentaria, 1578 edition, Frankfurt, Feyerabend. Also Täuber, 324–7.

Commentary on Code 2.40(41).3; §15

There remains one other doubt about the *praemissa*. What was said about this *locus* holds according to the Doctors in individual items (*species*) that can perish, and that can be estimated. Likewise in the case of quantities, in which the said effects cannot occur together, Cod. 4.2.11 and Dig. 46.1.42(43),⁶ according to them.

Now let us suppose that you have lent me 10 in the money then current, and before the due date (*ante moram*), the lord of the land, king or other lord, or the city Commune, has destroyed that money; am I free of the debt, or what must I repay?

Some have said that I must repay the money that was current at the time of the loan, even though it is decried, because it is a loan (*mutuum*), which requires the same amount of intrinsic quality (*bonitas intrinseca*), and therefore etc, as in Dig. 12.1.3. Thus, if I first accepted tournois coins in a loan, and afterwards the king of France destroyed them, and changed the currency as he is wont to do, by repaying the same material and intrinsic quality, the debt is discharged.

Some, like Ja[copo de Belvisio]⁷ and Odofredo de Denari,⁸ hold the contrary opinion, that is, that I must pay in deniers or money now current, and I will not be quit otherwise; because there are things whose quality (*bonitas*) is considered with respect to matter (*penes materiam*), and the debtor will be quit by repaying such things in the same amount, and by taking into account the intrinsic quality

⁶ The Dig. says that money can estimate goods but goods cannot estimate money.

⁷ The abbreviation “Ja” in the text is usually understood as referring to Jacopo de Belvisio (c. 1270–1335).

⁸ Odofredo de Denari (d. 1265).

with respect to the matter. But there are things in which quality is considered with respect to use (*penes usum*). Suppose indeed that first, for a denier tournois now current I can have one measure, or one weight of something, but now I cannot have as much for a tournois. Certainly, having considered the extrinsic quality with respect to use (*bonitas extrinseca penes usum*), I will not be quit when repaying this money which is not current now. This can be shown by Dig. 50.16.14 where it is pointed out that there are things which consist mostly in their use, and in the case of those things comes quality in use.

What shall we say? I believe with Pierre de Belleperche⁹ that by repaying the tournois or that money which was current in the same quantity of metal (*in eadem materiam*), I will discharge my debt, according to D 12.1.3. Moreover this is the same reason for which, in the case of a debt in something which has been destroyed or damaged before the due date without the debtor's fault, he is not responsible, Dig. 45.1.23. Therefore, when the coin's quality is reduced, to the degree that its quality in use is reduced without any fault of mine, I am discharged.

To this reasoning can be opposed the law that says that a category (*genus*) cannot perish. Here I am held to a category that cannot perish, Cod. 4.2.11. To which is answered, that just as in Porphyrius¹⁰ there is a general category (*genus generalissimum*) and a subsidiary category (*genus subalternum*), so it is in our law, so that if I owe a man in the general sense, it cannot perish, and so it is said in Cod. 4.2.11. But suppose that I owe a man out of the slaves of the testator. Certainly if all perish I am quit, Dig. 35.2.30.5. So here in the hypothetical of the Tournois money I was a debtor in the subsidiary sense, which can perish, and with its demise the debtor is free.

To this opinion can be opposed the argument of avoiding the injustice, which occurs if it is possible to repay with demonetized money. But there is no injustice here, as for example in this similar case. Suppose that I bought from you your animal, and I paid in good money for its price. The animal dies while it is still with you by no fault of yours. Certainly the risk falls on me. So it is here. Although the creditor paid me in good money, I will return the same to him, even if it is demonetized.

Commentary on Digest 12.1.3; §9

Thirdly I ask, if I lent you 10 lire in money that has been altered before you repay me, and you want to repay me the altered money in the same kind: can

⁹ d. 1308.

¹⁰ Neo-Platonic philosopher on which the glossators relied for some philosophical concepts.

you? It appears so, because here the same quality is given in the same form and in the same intrinsic kind; therefore etc, by Dig. 12.1.3. Against this it appears that no, arguing from a failure of the *ratio*. The rationale, why this is part of the contract, is lest the creditor suffer a loss. But if you can repay with altered money, immediately the fairness of this law would cease.—This question is an ancient one, and the opinions are varied, and in modern times they agitate the minds of doctors. Of this question I will say what is to be done, although I have spoken elsewhere, in Cod. 2.40(41).3.

Certain modern authors say, that you must pay the money that is current now, not the one that was current at the time of the contract, in order to be freed of the obligation. And this is because in money we must consider the quality (*bonitas*) with respect to use (*penes usum*) not with respect to matter (*penes materiam*), as in other things. For, according to them, there are things whose quality depends on the material, such as from the point of view of taste; this is the case of wine, wheat and similar things. And in those things it is enough to consider if repayment is in the same kind and same intrinsic quality, as in Dig 12.1.3. But there are other things whose quality does not depend on the matter but on the use, whether in art or in other form; such is money, which depends on the approval of the Prince. And such things have the same intrinsic quality from their use, because I have as much of things for the current money as you had for the money that you lent; therefore, etc. The proof is because things or the value (*aestimatio*) of things must be considered for some with respect to matter, and for some with respect to the use for which they are intended, because that is what Dig 50.16.14 says.

Pierre de Belleperche does not approve this view, and instead distinguishes: either the coin is modified or decried after the due date (*in mora*), and therefore it must be repaid according to its higher estimation (*aestimatio*), Dig. 12.1.22, or it is decried or modified before the due date, and then the debtor will discharge himself by returning the money which he received, by Dig. 12.1.3. The reason is the same here as in the debt in kind, because if it is destroyed or diminished without any fault of his, the debtor is freed. Therefore as long as the quality is diminished with respect to use without any fault of mine, I am completely quit, Dig 45.1.23.

But you say that, while this is true in the case of an debt of an individual (*obligatio in speciei*), but here is a case of a debt in the general sense (*obligatio generis*). therefore etc, Cod. 4.2.11. I reply: [same argument as above; to be completed.]

Jacopo de Arena distinguishes between the estimation alone, and the weight, so that if the estimation alone is reduced, he will return it as it is now before the due date, because he would return the same if it had increased, by Cod. 8.42.24, and after the due date he must make good to the extent that it has increased, Dig. 12.1.22. But if the weight is changed, he will not be discharged by giving that coin, Dig. 12.1.3, Dig. 18.1.1, but he will give the old one, and if he doesn't have it he will make up for the difference, X 3.39.26; and according to him, this is true when the weight changes while the form and the quality [fineness?] remain the same. But if the coin were decried, then I would believe what Pierre de Belleperche says.

Bartolo da Sassoferrato (1313–57)

Bartolo was the most prominent jurist of his century, and remained influential until the 16th century. He earned his doctorate in law at the age of 21 in Bologna, and taught there and mainly in Perugia. His general approach was to adapt Roman law to the realities of contemporary society. He wrote commentaries and the Corpus as well as numerous treatises, although none on money. On the subject of money his commentaries were usually cited to represent the standard romanist view.

Source: Opera Omnia, 1570–1 Venice, Giunta. See also the French translation in Dupuy 1989, and texts in Stampe 1926.

Commentary on Cod. 11.11(10).1–3

Q: What is a coin? **R:** The gloss says that the solidus and the aureus are both coins. But today things are different. **Q:** Of what weight should the coin be? **R:** The gloss says that 72 make a pound of gold, Cod 10.72(70).5. But today the aureus that we use, at the weight of Florence, is 96 into the pound of gold, as I said in my commentary on Cod 10.72(70).5. **Q:** What form should the coin have? **R:** it must have the image of the prince, as in the next law, and this is shown in the Gospel when Christ says, Show me the coin that I may see that the image is that of Caesar or someone else.

[on law *Solidos*: Cod. 11.11(10).1]

Q: Who has the right to make money? **R:** in law only the prince,¹¹ see Cod. 9.24.1 and 2. Today, by concession of the prince, money is made by kings and many cities to whom he has granted it, see the gloss to this section. **Q:** What

¹¹ Bartolo means the Holy Roman Emperor, as successor to the Roman Emperor.

does the text mean by *species proba* and *debitum pondus*? **R:** the requisite weight (*debitum pondus*) is such that it brings the same usefulness in coin (*in forma*) as in kind (*in specie*), so that this gold coin is worth as much if it is reduced to its matter than it is worth in the form of coin, Dig. 18.1.1. From this it follows that the costs of minting must be born by the state, although Innocent says otherwise in X 2.24.18. **Q:** Who states what the requisite weight and genuine kind? **R:** By he who directs and is appointed by the community, Cod. 10.73(71).1.

[on law *Pro Imminutione*: Cod. 11.11(10).2]

A fall in the estimation of the florin decreases the estimation of things which are sold for florins. **Q:** to clarify, how can the estimation of gold be decreased? **R:** The gloss says, only by the authority of the prince or him to whom the prince has granted it. Note the gloss by which you have that the estimation which exists initially cannot be reduced other than by the authority of the prince or by him who makes it by concession of the prince. Note that the estimation which is imposed on the money from the beginning cannot be reduced other than by the authority of he who makes it, as I will say on the next law. **Q:** Second, how can the estimation of things decrease with a decrease in the estimation of gold, whereas it decreases or increases by itself, as in Dig 42.5.12.1? **R:** You must not understand that things are given for a lesser price, but rather they are given for as much as they are worth in gold, but we say that they have decreased by gold because gold is worth less. **Q:** Finally, on whom does the loss from a change in the estimation of money fall? **R:** I have answered fully in the comment on Dig 46.3.99.

[on law *Universos*: Cod. 11.11(10).3]

The law says that the gold coins must be accepted for the same estimation and those who contravene must be severely punished. Note that everyone must accept the money for that quantity which the authorities have ordered. **Q:** But if a coin is made in one city under one estimation, is it possible to spend it in another city, as if it were deemed to be accepted for the same estimation? **R:** Cities cannot make coins except by authority of the prince, as I said above. Therefore, either the prince conceded to the city the right to make a public coin which can be used throughout the world, and then it will be accepted, because it will be as if the prince himself had made it, as this law says. Or the prince conceded the right to make a money to be used in its territory and then, without doubt it cannot circulate in other territories. Or there is doubt, and in case of doubt it is presumed that the prince conceded only for its own territory, arguments in Dig 42.5.12, Cod. 3.13.7, Dig. 26.5.1. **Q:** When a money has been made by some city or lord, if it is not of right and fair kind (*specie*) or an excessive estimation is

placed on it, is there recourse to a superior authority? **R:** Yes, as in X 2.24.18. I have seen it in the Marches when some coin was minted by the rector which was not of right kind, and the citizens of the Marches made a complaint to the pope who rectified the situation. I believe it was dom Tancredo.

Commentary on Dig. 12.1.2.1 (mutuum damus): §6-7

Q: If I have borrowed silver in bullion (*ad pondus*), can I repay in coin? The Gloss presents opinions but does not decide. To solve this question, you must know that by common law (*de jure communi*)¹² coin must be made such that it brings as much usefulness in coin (*in forma*) as in kind (*in materia*), and as much in kind as in coin, as said in the gloss to Dig. 18.1.1, s.v. *praebet*. And thus the expenses of minting must be borne by the State (*de publico*); but today, we observe that by custom there is less in coin than in kind, because of the expenses of minting. That said, I now come to the solution of the question, and I say: if I owe you a quantity of silver bullion, I can pay with silver in coin, unmixed with copper, but of the same alloy. That I say when it is true that silver brings as much usefulness in coin as in kind, see Dig. 34.2.1 at the end, my comment on the words *si ea pecunia*. But if, by the admixture of some copper, or because of the form of the coin it brings less usefulness in coin than in kind, then I cannot repay in coin. And thus are brought into agreement those two opinions. This fails if the custom of the city has it differently, as noted in the gloss to Cod. 8.53(54).35.

Commentary on Dig. 12.1.3 (cum quid); §16–17

16. You must know that there is something called the intrinsic quality (*bonitas*) of a thing: in the case of wine, what its taste is, and color, and such characteristics. There is the extrinsic quality: for wine, how much it is worth. This comes from outside: because it is the same wine and of same quality, when it is worth more as when it is worth less: but that, by which it is worth more or less comes from accident. That extrinsic value is not taken into account, except in case of overdue payment (*a tempore morae*), Dig. 12.1.22 and you will see it there.

17. **Q:** Should a money that has been altered be repaid according to its old shape or its new shape? **R:** In brief, when the intrinsic quality of a coin is changed, because the form or material is changed; and therefore we say that it is another money, and thus it must be repaid in its old form, if possible, or according to its estimation, as here: this will be repaying it in the same quality and the

¹² Bartolo refers to the *jus commune*, the body of Roman and canon law which was perceived to underlie all local law across Western Europe. The meaning is distinct from the English common law.

same kind. Whenever the intrinsic quality is unchanged, but the its value varies: as when the florin is worth more or less than it did, that is not considered, except in case of overdue payment, Dig. 46.3.99 and I have said plenty there.

Q: But if I lent you one hundred florins, and the florin was worth thirty-two soldi at the time; and later when you return it to me, they are only worth thirty: can you repay me at this value of thirty soldi, and be discharged? Evidently you are discharged, Dig. 12.1.22, whether they are now worth less because their shape has been changed, or because new florins were made of less weight, etc., as long as they could be exchanged for that value at the time that the loan was made, arguments in Auth. coll. 8.12 = Nov. 115, Dig. 21.2.13, Dig. 18.1.69. and you could say the same of a changed measure, Cod. 2.40(41).3. Or you could phrase this question in another way, namely: suppose I have received money in one value, what must I give in payment? And we see that it is sufficient that the money repaid be the one that was current at the time of the contract; because it is the same in intrinsic value, and of same quality; and because it is the time of the contract that must be taken into account, Dig. 17.1.8, Dig. 16.3.11.30. And likewise if a woman enters into a marriage, the time of creation of the contract must be considered: by the laws cited above, and Cod. 6.61(60).6.4, Cod. 39.5.33(34)pr where the beginning of the contract is considered, and on this point Dynus adduces Dig. 32.1.41(39).4, and Jo[hannes?] adduces 34.2.7(9), et for this Dig. 32.1.33(32).1 and Dig.32.1.34(33).1, Dig. 44.7.22(21), special laws Dig. 18.1.69 et Dig. 18.1.77.

But some say otherwise, namely, that the money that is current at the time of repayment must be tendered; and that currency must be taken into account. There appears to be a case in Dig. 45.1.59. But say, that this law does not stand in the way, because in that case repayment was postponed in favor of the creditor and therefore the whole obligation is suspended at the time of repayment (???). Likewise the act of the Prince and fortuitous circumstance, Dig. 13.7.43.1. And on what we said above, see X 3.39.26, and Dig. 23.3.42(43), X 3.39.19 and the gloss, and X 2.24.18 and what Hostiensis noted there and in his *Summa*, §*ex quibus*, at the beginning, line “quid si moneta . . .” (what if money).

And this is true, unless it were agreed otherwise, for example that the time of repayment and return of the dowry would be considered; because in that case that money would be repaid that would exist at the time of repayment, Cod. 5.13.1.16(pr).

Commentary on Dig. 12.1.5 (quod te mihi); §6–7

6: Let us suppose that I owe you 10 pounds of Grossi of Perugia, and

it happens that this coin is decried by a law of that city, so that it cannot be used in transactions, is the debtor absolved of his debt? It appears that he is, because the reasoning is the same as for a debtor in kind, Dig. 35.2.11. Nor can you say that, at least, the silver remains as material which can repay the debt: for in personal obligations, what remains of a ruined object does not belong to the creditor, Dig. 31.1.49(50). But against this see Dig. 13.1.1. I think the contrary is true, namely that the debtor is freed from providing that coin in its shape (*forma*), but at least he must provide it in material. For in coin and in any kind of metal, the material is considered directly, and it draws the shape to itself more than the shape draws the material to itself, Dig. 32.1.78. See on this point X 3.39.26 and the end of the gloss to Dig. 12.1.3, s.v. *bonitate*.

Commentary on Dig. 18.1.1 (Origo)

Per this law it appears that the sale is not a contract of the law of nations (*jus gentium*), because coin is not of the law of nations but of civil law, but the end of this law says the contrary.¹³ The Gloss in Dig. 4.5.8 says that sale is of the law of nations, that is, because it derives its natural fairness from the law of nations, but it is derived from civil law. Briefly I think that sale is derived from the law of nations. For the law of nations is the law that all peoples use. Although sale did not appear at the origin, when peoples began to exist, nevertheless there is no people which does not use a matter or a money marked with a public design. Indeed the Ancients marked leather, and some today mark paper. Therefore I do not think that coins are derived from civil law, but from the law of nations.

Commentary on Dig. 46.3.99 (Paulus respondit); §1–17

1. **Q:** When I promise 100, in what coin do I make this promise? **R:** In that money which is current in the city, with respect to which the shilling and the pound are determined, Dig. 12.3.3. **Q:** What if in a city there are two monies, with respect to which the shilling and the pound are given, as is the case in Florence? Indeed, sometimes shilling and pound are determined with respect to the small old florins, in which the gold florin is worth 29s. But there is a new money of theirs, the new florins, in which the gold florin is worth 3.¹⁴ If I promise you 100, which is understood? **R:** this will be decided according to the custom of the city, and the likelihood of the situation. When I say “custom,” I mean this: here it is the custom that, for fabrics and silk ‘soldi’ and ‘lire’ refer to old florins, and in other

¹³ Dig. 18.1.1.2 states: “Sale is a contract of the law of nations and so is concluded by simple agreement; it can thus be contracted by parties not present together, through messengers, or by correspondence.”

¹⁴ [Bartolo is referring to the *lira affiorino* and the new silver coinage issued in 1332.]

matters they are understood to mean new florins. And when I said “likelihood” I mean this: if we were to interpret [a sum] in old coin, it would happen that a thing of small price would be given for a large price. Therefore we must always consider the likelihood based on the nature of the thing, Dig. 50.17.34(35) and Dig. 18.1.71.

3. Q: Can a debtor pay with one coin instead of another? **R:** Here the jurist appears to say that the debtor cannot, if the creditor will suffer some inconvenience: conversely, therefore, if the creditor will not suffer any inconvenience, he appears to say that the debtor can repay with one coin in place of another. But against this: one thing cannot be repaid for another against the will of the creditor, Dig. 12.1.2.1 and Cod. 8.42(43).16. Therefore, some have said, as the Gloss does, that whenever the creditor is unwilling, he is deemed to suffer an inconvenience, because it is done against his will; and he cannot be repaid so, argument in Inst. 4.6.31. Truly I do not believe that the jurist was thinking here of such inconvenience. Elsewhere he says that a damage is a diminution in patrimony, Dig. 39.2.2 and 3. But, although the will of the creditor is not abided, he does not suffer thereby a diminution of his patrimony, therefore, etc. Therefore some say, that he has to accept if he does not suffer damage. To this argument I respond, that it is not clear that something is being paid for something else as in the supposition of this law; instead, it seems that the same is repaid, although in a different form, arguments in Cod. 8.53(54).35, Dig. 34.2.1 at the end, and Dig. 34.2.35(37). I say: this coin must be such that it brings the same usefulness in form as it does in matter, Dig. 18.1.1.

4. If you owe me 10 Bolognese of silver, and you give me another silver money of same fineness, this is the same quality (*bonitas*) although the coins are of different form, nevertheless it appears that I am repaid. But if you give me money of another material, that are of a different fineness, the creditor could legally refuse: because one thing cannot be repaid for another, as said. Thus, where it is said “of another form” in the text of this law, you must understand “of same material”. Therefore, if you who owe small coins, want to give florins, or the reverse, they could be legally refused, although the contrary is observed by custom in that city and in many others, as I noted on Cod. 8.53(54).35, and we must stand by the custom, Dig. 18.1.71.

5. Q: When money is approved by those appointed to this effect by the community, there is an expense involved; who must bear the expense, the debtor or the creditor? **R:** The expenses are shared, Dig. 10.1.3.

6. Q: If the money is changed, in which money should repayment be

made? **R:** This change can happen in two ways: either because the material or form of the coin is changed, that is, some change takes place in the quality of the coin; or neither the material nor the form change, but its quality has changed in that the gold florin or some other silver coin is worth more today than it used to.

In the first case our doctors say, and correctly, that if some of the old coins can be found, and its circulation (*cursus*) is not forbidden, repayment can and must be made in that coin. But if it cannot be found, or its circulation is totally forbidden, the estimation (*aestimatio*) of this old coin must be repaid, Dig. 13.7.24.1, and this is expressed in X 3.39.20, and noted by Cino in Cod. 2.40(41).3.

In the second case, if the change happens, as I said, we must consider. If the debtor is not behind payment, then he will be discharged by paying in that money without doubt: because the variation does not pertain in any way to the intrinsic quality. Indeed, it is repaid in the same form and material, according to what is due, Dig. 23.3.42(43), Dig. 12.1.3. But the variation pertains to the estimation, which is not imputed to a debtor who is not behind payment, Dig. 12.1.22. But if the debtor is behind payment, you would say that all the damage that is suffered from the duration falls on him. This point is subtle and difficult to understand.

7. Now pay attention: you know well that when someone is overdue on a payment, he is not accountable for the interest which represents a gain, but for the interest which represents a loss, Dig. 19.1.21(22).3. Now, let us see, in the proposed case, whether the creditor suffers a loss, as in: the petty currency is worse in its own estimation; or he loses a profit, as in: if he had had that money from the beginning, he could have bought more florins than he could now buy, and thus he would have made a profit. Indeed, if the latter were the interest, it would not be considered.

Pay attention: a thing is said to be degraded, when its estimation is lower in terms of coin, Dig. 12.1.22, and therefore in other things which are estimated by money, Dig. 46.1.42(43). and that is easy to see. But in the case of money, which is not estimated by things, Dig. 46.1.42(43), we must see if a coin can be estimated by another.

8. Briefly, it seems to me that a large coin of gold or silver is estimated by small coins. And this is common sense. But small coins are never estimated by large ones. For it is impossible to say what the value of one small coin is in florins, and likewise for two small coins, and three, and so ad infinitum. However, a pile or a sum of small coins can well be estimated in florins; but the coins considered individually can't. And this is obvious.

Likewise, it is shown that this thing is said to estimate another when it is convertible and exchangeable into any other, Dig. 18.1.1, but a small coin is exchangeable into any large one, therefore the large coin is estimated by the small one, but the large coin is not exchangeable into all small coins, therefore the small coin is not estimated by the large one.

I come to the matter at hand. If you owe me 100 in small coins, I say that the altered money is not said to be degraded with respect to its estimation, because there is nothing which estimates it, and therefore the creditor would be said to have lost a profit, and not suffered a loss, and this cannot be imputed to the debtor, Dig. 19.1.21(22).3; notwithstanding Dig. 12.3.3, because, although the interest comes in the coins from outside the object, that is true to the extent that it does not consist in a profit. But if you suppose, that I owe you 100 gold florins on January 1, and the florin was worth 4, and now that you pay me it is worth less, I say that from the time you became overdue the risk is on the debtor, Dig. 12.1.22. The reason is, that since the florin is estimated by small coins, and the estimation of the florin has changed, it appears that the florin is degraded in estimation, as we say for wine or other goods. Likewise I say for any large coin which is estimated by small coins.

9. I want you to know one thing, however: the increase or fall in the estimation of the florin or of another coin that has lasted a short time, such as one day or two or more, or has occurred now and then, should not be considered, Dig. 35.2.63 and what I noted there.

10. Q: What if I have lent you, or given as dowry, 100 in florins, and now you want to return them, am I supposed to accept, or are you supposed to give them in the estimation of that time, or in that at the time of repayment? **R:** These words, “I pay 100 in florins,” mean “These florins I give to you in repayment for 100;” Dig. 46.3.57, and therefore I cannot demand anything but 100, as when some thing is given in dowry at a certain estimation, Cod. 5.12.10, Dig. 24.3.50(51). If there is loss or profit with respect to the florin it pertains to he who receive; therefore those words have no effect. **Q:** But what if I deposit with you 100 in florins, what must you return? **R:** Briefly, I say the same thing. For here I am considered to be selling those florins for those 100 and depositing the price with you, Dig. 12.1.9.9 and Dig. 12.1.10, Cod. 4.2.6. **Q:** But what if it was said: “I deposit with you 100 in florins, under this agreement that you return it in florins at the same estimation”? Then it must be returned at the same estimation, Dig. 24.3.66.3. But if it wasn’t said “at the same estimation,” I think that it must be returned at the common estimation at the time that the repayment was due to

take place, Dig. 46.3.57.

Commentary on Dig. 24.3.7.1 (divortio §ob donationes)

One kind (*genus*) can be repaid in place of another if they are of the same material (*materia*): for example if I owe you ten pounds of gold, I can repay you in gold coins, and conversely. But if they are of different material, for example if money is owed by one and wheat by the other there isn't cancellation, as here. This is true unless the custom specifies otherwise. We see that small silver money is paid for florins, and conversely, when it follows from custom.

Later Romanists

In this section a few texts are presented from later times. These texts are, like the earlier ones, commentaries on the Digest. From the French literature, we cite Hugues Doneau (1527–91) whose writing reflects the teaching of Dumoulin, and Robert-Joseph Pothier (1699–1772), the greatest French jurist of the 18th century, whose work was the basis for the French Civil Code or Napoleon Code of 1804. From the German literature, we have Christian Friedrich von Glück (1755–831) whose extended commentaries on the Digest were continued after his death by Christian Friedrich Simon Mühlenbruch (1785–1843) and later by others.

Hugues Doneau (1527–91)

Influential French jurist. This text can be dated to the 1570s by the example of the écu soleil at 55dt.

Source: Opera Omnia, vol. 10, col. 120–1 ; Florence, 1847.

Commentary on Dig. 12.1.3, n. 9

The matter is different for coins, not because in a loan of coins there isn't an obligation to return something of the same kind and same quality, as for other things in which a *mutuum* loan consists; otherwise the definition of this passage would be false. The reason is that, in coins we do not receive the same kind as in other things, much less the same quality; so that we cannot follow here the law expositied above. [...] and however worthless it became, since the object alone was in obligation, the debtor will be free by tendering the object alone, nor is there necessity to add what is lacking from the estimation of the previous time, which he did not owe. The quality of the object, that is naturally in wine and

other similar goods has nothing in common with the estimation of those things, which is outside the object; and which proceeds more from their abundance or scarcity, than from their quality, as we have said above. Consequently, as long as the object lent is returned in the same quality as was lent, it is not necessary to return the same estimation; [...] Things are by far different for money and coins. All the power and quality of money, and therefore its very substance, is in that estimation which is publicly imparted to each coin imprinted with a certain mark; and a coin is nothing, if not that which it is publicly worth, and for which it is estimated; it does not exist by nature, but by the institution and estimation of men. Paulus proves this judiciously in Dig. 18.1.1. He states that a coin consists in the estimation of men with these words: “a material was selected which, being given a stable value by the state, avoided the problems of barter by providing a constancy of quantity.” He shows that the substance of a coin is in quantity and its estimation with those words, which follow: “that material, struck with a public design, demonstrates its utility and title not by its substance as such but by its quantity.” For example, the French gold *écu soleil*, when it is estimated 55 deniers Tournois (as they say in France), is not that little disc of gold with a certain mark which we perceive and touch with our hands, but rather 55 deniers Tournois which it is worth, and whose power is attributed to it by edict of the prince. And rightly so: for every thing has that in which it consists, or that by which it is made to be what it is, and once that is removed, the thing ceases to be what it is. The *écu*, publicly instituted to represent a certain quantity in exchanges of things, consists in that estimation, and receives from it that which it is. And without that estimation, it ceases to be a coin, and differs in nothing from an unwrought mass of the same weight. Therefore the substance of a coin is not in the matter or the shape of the coin, but in the estimation, which is indicated by matter and shape, or by the certain mark publicly imprinted. The quality of a coin consists much more in its own estimation: for a coin has no more good or usefulness as coin, than what it is worth, and what it affords in exchanges and acquiring things. Given this, he who receives certain coins in loan, is understood to receive not the matter and imprinted piece, but rather the estimation of that piece, that is the quantity by which this piece is estimated in small coins. And he is not understood to have accepted any other quality than that which is contained in that estimation.

Christian Friedrich von Glück (1755–1831)

Source: Ausführliche Erläuterung der Pandekten, nach Hellfeld; *Erlangen, 1790–1896. Vol. 12, p. 63–92.*

Canonists

The Corpus of Canon Law

A canon is a judicial decision made by an authorized bishop (frequently the Pope) or an ecclesiastical assembly, such as a council or synod. For centuries since its beginnings the Church had been regulating its members and resolving controversies; in that process, canons multiplied and accumulated. Around 1140, in Bologna (which had become the center for Roman law), Gratian produced a compilation of canons, thematically arranged, called Gratian's *Decretum*, which became the basis of the Corpus of Canon law. In the following two centuries more papal decisions or decretals were produced and collected; the most important collection, officially published in 1234m, were the *Decretals* of Gregory IX, also called *Liber Extra*.¹⁵

Although canon law dealt with clerics or with lay persons in their relation to religious matters (such as marriage) there was some overlap in subject matter. Jurists were usually trained in both laws, Roman and Canon, but tended to specialize afterward in one or the other. Similar methods and sources were used by Legists or Romanists (students of Roman law) and Canonists. An ordinary gloss to both the *Decretum* and the *Decretals* was compiled; students of the *Decretals* were called decretalists.

The matter of money does not appear much in Gratian's *Decretum*. It is touched upon in several places in the *Decretals*. In the Title devoted to rents (*de Censibus*), are canon *olim causam* (X 3.39.20) issued in 1200, and canon *cum canonicis* (X 3.39.26) issued at an unknown date. Both canons deal with cases of annual payments in the case of a change in the currency, and both decide for continued payment in the original currency or its value (*aestimatio*). Neither canon was different in substance from Romanist teaching of the time, and the commentaries on these two canons offer little of additional interest.

Another canon, located in the Title on oaths (*de iurejurando*), is canon *quanto* (X 2.24.18). It deals with the following case. In 1196, Pedro I succeeded his father as king of Aragon and swore to maintain the currency as it was (an oath required of the kings upon their accession). He later discovered that the currency had been secretly debased soon before his father's death, and asked the pope to

¹⁵ See Brundage (1995) for a good introduction to Canon law.

be relieved of his oath in 1199. The pope did so in canon *quanto*, on the basis that a debased currency is “injurious” to the people, and ordered the king to return to the earlier, higher standard for the currency.

The canon became the occasion for Canonists’ musings on monetary doctrine. Because the context was not contract law, but rather a sovereign’s monetary policy, their attention was drawn to questions which the Romanists had ignored, the desirability or morality of debasements.

We present the text of the canon, and the commentary of the Canonists Innocent IV (1195–1254), Hostiensis (1190–1271) and Panormitanus (1386–1445). Also included influential passage by Guillaume Durant (1231–96), taken from his *Speculum judiciale*, a compilation of Roman and canonical procedure, with the additions by Giovanni d’Andrea (1270–1348).

Canon *Quanto* (X 2.24.18)

From the same [Innocent III] to the illustrious king of Aragon

As we care for your person among other Christian princes with sincere affection, so we want to take care of the royal serenity with great attention, lest it be threatened, God forbid, by something which could turn into a peril for your soul or an injury for your land. We have learned from your letters, and from several prelates, and from many residing in your realm, that, when you rushed to the help of our dear son in Christ the illustrious king of Castile, against enemies of Christianity who occupied Spain at the time with their great might; certain advisers of yours, or rather deceivers of yours, induced you to swear without the assent of the people to maintain for a certain time your father’s currency, which, however, had been deprived of its legitimate weight around the time of his death. Since this money is reduced and of lesser value (*valor*), which is cause of great disorder for the people, desirous of undoing what you did inconsiderately and of satisfying the need of the people, you have asked us humbly to relieve you of said oath, from which you fear arises a grave danger for you and your realm.

A diligent examination could have easily found, once the truth established, that an absolution was not as necessary as an interpretation was required, since, when you took the oath, you thought that the currency was either legitimate or false. If you thought it was false, something we cannot believe of the royal serenity, the oath would have been invalid and not to be observed, and a penitence would have to be imposed on you, because the taking of oaths was not instituted to be a bound of iniquity. But if you thought the currency legitimate, the oath was

valid and would have to be observed in all circumstances. And so that it might be observed without reproach, we decide and order that you repudiate the money which was deprived of its legitimate weight, and that you coin another money under the name of your father which you will return to the legitimate weight it had according to the better condition it had in your father's time; so that the old money which was in the same condition and not falsified be paid out at par with it; in which way it will be possible to avoid injury and observe the oath. However, if by chance if you thought at the time of the oath that the money was reduced from its legitimate weight, and your conscience torments you about it, humbly confess your sin to our venerable brother the bishop of Saragossa, to whom we write on this matter, and devoutly accept the penitence he will impose on you for illicit oath, and carry it out with care. [Given in the Lateran, the nones of April 1199.]

Innocent IV (1195–1254)

Sinibaldo dei Fieschi studied law under Azo and Accursius, taught in Bologna and became a lawyer at the court in Rome. He wrote his commentary on the Decretals during his pontificate (1241–54).

Source: In quinquo libros decretalium Commentaria, 1610, Venice. See also translation in Dupuy 1989.

Commentary on canon Quanto (X 2.24.18)

Money is said to be deprived (*defraudata*) of its legitimate weight when it has been initially ordered that a specific weight of gold or silver be put in any money, but later it has been ordered that less gold or silver be put, and that that this money be spent as if it were of the same weight; and this we believe also if it has been made from the beginning of much greater weight or value (*valor*) than the metal or material from which it is made is worth, with necessary and useful expenses deducted therefrom. However, we believe that the king, by his right, and by the fact that money receives authority and general acceptance (*authoritatem et communionem*) from his effigy or mark, can make it of somewhat less, but not much less value than the metal or matter from which it is made. Therefore, in the first case, when he wants to diminish a money already made, we do not believe he can do so without the consent of the people, but with its consent we believe that he can, just as anyone is allowed to renounce his right, D C. 7 q. 1 c. 8. And because the business of the king is considered to be the business of all, for this reason the consent of the majority of the notables of the kingdom suffices, Dig. 35.1.97;

Dig. 50.1.19. Likewise we do not believe that the consent of the people suffices for that money to be circulate (*communiter expendatur*) outside of the realm.

Henry of Segusio or Susa, a.k.a. Hostiensis (1190-1271)

Henri of Susa or Segusio (near Turin) was the most important decretalist. He taught in Bologna, Paris, England, and reached the rank of cardinal-bishop of Ostia, hence his nickname Hostiensis. His gloss to the canon Quanto, written shortly before his death, follows closely that of Innocent IV, as he concedes himself. It is nevertheless interesting to see how he brings Roman law and the standard of debt payment into his discussion.

Source: Decretalium Commentaria, 1581, Venice. See also translation in Dupuy 1989.

Commentary on canon Quanto (X 2.24.18), s.v. “legitima pondere”

A money is said to be deprived of its legitimate weight when it that a certain weight of gold or silver to be put in each coin has been ordered and specified by the prince, but later on that weight has been reduced by order of the king, and his has ordered that the money thus reduced be spent, and received, as if it were of its original weight. And the same is said even if he has coined the money which much less weight or value than the metal or matter from which it is made is worth, having deducted the cost of labor and other expenses necessary and useful. Care must be taken that money be coined so that he who makes it pays attention to the value of the metal, and that he put in the money what it is worth after deduction of expenses that occur in minting it, because he is not expected to make those expenses on his own account, so that he neither make a profit nor incur a loss from his office, Dig. 4.6.1 and 4.6.29.

But if the king, by the right he has, and because of the fact that money itself receives authority and general acceptance from his effigy or mark, has money made with a little less, but not much less, than the metal, after deducting said expenses, so that he draws a modest profit, Innocent IV believes that he can do it. However in the first case, when the prince wants to reduce a money already made, Innocent IV does not think he can do it without the consent of the people, but with his assent he can do it, because anyone can renounce his right, D C. 7 q. 1 c. 8, and since the business of the king is considered to be the business of the whole kingdom, for this reason it suffices to have the consent of the majority of the notables of the kingdom, Cod. 2.48.2.1; Dig. 35.1.97; Dig. 50.1.19. And for this the consent of the people of a single kingdom is not enough when the

money has common currency outside of the kingdom, according to Innocent IV whose thinking inspires this whole gloss, Dig. 2.1.20. Indeed someone's law or constitution cannot bind anyone but his own subjects, as appears in what you have read and noted above on X 1.2.7.10 and 11.

Money is defrauded by changers who weight coins one by one and keep the heavier ones have them melted, and allow the other ones to pass. Others shave or dip money, and their punishment is given below in the note on *or false*. There is also fraud by those who hold lordship over a land and rule it, when they make a money of lesser weight and force it to be received at par with a money of greater weight, or when they decry a good money and approve an equivalent money of lesser weight, so as to have the decried money at a good price, and then have it melted and coined at the same weight or even lighter weight, with the same imprint as the approved money, Dig. 13.7.24.1.

In all these cases and similar cases, money is understood to be defrauded, with respect to the good of the people whose loss is not small. For "whatever the kings' follies, the Achaians cry."¹⁶ And it may be that such people make a profit for their own purse, but they damn their souls if they do not make reparation and penitence, as it appears in what I say on this canon, last paragraph.

But there is one thing to note on this subject. Money can be decried in three ways. In matter (*materia*), because it is not wholly gold or silver as it used to be; in weight (*pondus*), which is defrauded; and in rate (*cursus*), because it is not current or received as it used to be. In this respect creditors have taken the habit of protecting themselves, they lend money to be returned at a certain date, and have it added in the contract that they must be given money of same matter and same value and weight, and at the same rate. But what if a merchant has not protected himself in this manner and in the meantime the lord of the land has proclaimed that the money which was lent is not current anymore, and that that the pound is reduced in price by three, or four or more shillings, whose risk is it?

The law seems to say it is the debtor's and not the creditor's, Dig. 46.3.102; arguments in Dig. 13.7.24.1 and 43, Dig. 21.2.11. But conversely the law says that money of the same kind, I say same specie or kind and not same number, as was given by the loan, must be returned, Dig. 12.1.2. But in a loan if the question is to estimate it, we must look at the date due and not the date at which it was contracted, that is, if a money was current at the time the loan was contracted and is not current anymore, we must not consider how much it was worth then,

¹⁶ Horace, *Epistles*, I, 2, 16.

but how much it is worth now, Dig. 12.1.22. Thus if I gave you 10 so that you owe me 9, I cannot ask for more than 9. If I gave you 10 so that you owe me 11, I cannot demand more than 10, because I did not give more, Dig. 12.1.11.1. It is also certain that the creditor is not forced to receive coins in another form at his loss, Dig. 46.3.99. Therefore he cannot demand from the debtor that he repay in another form at his loss, arguments in Dig. 39.2.13.7, Cod. 8.43.22, Dig. 19.2.51(53).

Therefore the reason why the money was decried is important: was it because it was too diminished, or because of greed for the gain the lord makes in the decrying, although it may not be diminished in value. In the first case when the money is diminished in value and because of this its currency is impeded, the risk is on the debtor and not on the creditor, so that the debtor must return the money at the value at which it was current at the time of the contract, when it is known that it has been defrauded of its legitimate weight, as it appears in this chapter and what has been noted above, and is explicitly shown, X 3.39.20 and 26, and so says Dig. 46.3.99. [*philological discussion omitted*]

But if money is not diminished but is decried solely out of greed so that it may be collected and melted and afterwards minted at the same weight, as frequently happens, if the debtor was conscious of the fraud, or in fault, the risk is his, Dig. 12.1.5 and 35, Dig. 2.11.2. If the debtor is in no fault, it suffices that he return money of the same kind (*genus*) and weight, and the same value in weight, even if the coin is current for less (*diminuta quo ad cursum*), Dig. 12.1.2 and 3, unless specified otherwise, Dig. 12.1.22. because contracts have force of law out of convention, Dig. 50.17.23(24).

Guillaume Durant (the Speculator, 1231–96)

The most prominent French canonist of his time, a protege of Hostiensis, who spent most of his life in papal service. His Speculum was completed around 1271 and remained an influential compendium of romano-canonical procedure for centuries. It was often quoted with the Additions made by Giovanni d'Andrea (1270–1348). In the following passage, Durant examines the case of obligations arising from statute and expressed in units of account. D'Andrea's addition to the same passage was widely cited as well; but, as it turns out, the addition is in fact plagiarized from consilium 250 by Oldrado da Ponte (d. 1335),¹⁷ see Stampe (1926, 14–17, 44–5). The case involved a rent of 300 which the pope had ordered to be paid annually by the abbey of Cîteaux to the abbey of Clairvaux, in 1302. At the time,

¹⁷ He taught in a number of places, including Bologna where Bartolo was his student; he was also an advocate at the papal court in Avignon, and produced many consilia, or legal opinions.

the currency of France had been debased by its king. The currency was reformed in 1306, with the new penny rated at 3 old pennies. The abbey of Clairvaux demanded 300 in the new, 'strong' currency and the abbey of Cîteaux argued that he should only have to pay 100. Oldrado's consilium sides with Cîteaux.

Source: Speculum Judiciale, 1574, Basel. See also text in Stampe (1926, 28).

Speculum Judiciale, Book IV, part 3, Title de obligationibus et solutionibus, §3

n 9. Suppose the following. In the statute of a city, it is said that whosoever commits such thing shall pay a fine of 10 livres Tournois, or it is said that such official shall receive so many livres Tournois as salary. It happens that the Tournois money is altered and reduced. Now the official asks that his salary be paid according to the value (*aestimatio*) of the old money; or it is asked of the sentenced individual that he pay his fine at the same value. What holds in law? I answer: salaries and fines must be paid according to the present money: because, once the money is altered, the statute must be understood in terms of that money, not the old one, Cod. 6.9.8, Cod. 4.18.2, Cod. 5.13.1, Auth. 2.1.2=Nov. 7.2, X 1.2.3. And if there were two monies, the weaker one would be understood, Dig. 32.1.75(73), X 3.39.18, Dig. 50.17.34 and Dig. 50.17.67(68). But if the money owed because of a contract were reduced, repayment would take place according to the earlier value, X 3.39.20.

Addition by Giovanni d'Andrea/Consilium 250 by Oldrado

Giovanni d'Andrea's addition to Durant contains essentially a literal copy, without acknowledgement, of Oldrado da Ponte's consilium 250. We present the text of that consilium instead (see Stampe 1926, 14–5). Oldrado's Consilia were very famous, and quoted by later jurists. This legal opinion was apparently written in 1320, when Oldrado was an advocate at the papal Curia in Avignon.

The facts are as follows: pope Boniface VIII made a judgment over certain matters between the abbey of Cîteaux and the abbey of Clairvaux, in which he prescribed that the abbot of Cîteaux would give the abbot of Clairvaux immediately 10,000 livres of deniers Tournois, and no less than 300 livres annually at Christmas, in perpetuity.

At the time of this order, there circulated in France a weak money, such that one *gros* Tournois was worth three sols. In that money, the abbot of Cîteaux paid the abbot of Clairvaux said 10,000 livres.

Subsequently, by royal ordinance a good money was minted in the kingdom, which circulated commonly, and in which 12 deniers were worth 1 gros Tournois. The earlier weak money was not decreed, however, but it remained in circulation at the intrinsic value which it contained, so that 3 deniers of that weak money circulated for 1 denier of the strong money.

And the King ordered, that if anyone had obligated himself at the time at which the weak money circulated, to pay a perpetual rent for the duration of the weak money, he would be obliged to repay in strong money.

The said order of the pope was made in 1302, from which time the abbot of Cîteaux continually paid the abbot of Clairvaux said pension in strong money.

From these facts, it is asked:

- 1) whether said abbot of Cîteaux in Roman law (*de jure scripto*) must pay the annual pension in said strong money, or whether he would be quit by paying in weak money or its equivalent?
- 2) if, in common law (*de jure communi*) it is enough to repay in weak money, or whether the royal statute mentioned in the thema has effect over the said clerics, and whether they must abide it, supposing that the matter which the pope adjudicated and for which the annual rent was paid in the kingdom of France were either spiritual or temporal?
- 3) [whether the abbot of Clairvaux had any recourse stemming from the fact that the abbot of Cîteaux had paid the rent in strong money for 18 years]

Answers:

- 1) repayment must take place in the weak money, which was current at the time of the order, or in the new money having taken into account the value of the weak money, Dig. 32.1.41(39).4; indeed it is here a question of intrinsic quality, as in Dig.12.1.3 and the gloss, and X 3.39.26 applies, and in the contrary case X 3.39.19, from which it can be argued for the proposed case, by Dig. 46.3.107. And on this Hostiensis commented in X 2.24.18, and Azo in his book of Brocards, on money and measure.
- 2) With respect to the matter under consideration, the royal statute has no power. For the king did not want to increase the debt, but determine in

which form of money repayment would take place, Dig. 30.1.96(99); and if he had wanted to, he could not have, D D. 96 C. 1, X 1.2.7, X 1.2.10.

3) [answer, that the abbot of Clairvaux had no recourse]

Panormitanus (Niccolo di Tedeschi, 1386–1445)

One of the later Canonists, and one of the clearest. His exposition on the canon Quanto collects much of the existing literature.

Source: Commentaria in quinque Decretalium libros, 1617, Venice, Giunta.

Commentary on canon Quanto (X 2.24.18): §11–15

§11. I first ask, in what ways a prince, or someone who has the right to coin money, can be said to defraud it?

Innocent posits two ways. The first is when the specific weight set by the prince for any coin is decreased by order of the prince, who also orders that the coin thus diminished be accepted thereafter as if it were of the original weight; the second is when the coin is from the start coined with much less weight or value than there should be after deduction of the expenses. Innocent indeed wants money to be worth as much coined (*in forma*) as it is worth uncoined (*in materia*), the expenses deducted; expenses which he who gives authority is not held to meet, for from his office he should not incur a loss, Dig 4.6.1, VI 5.13.66 or VI 1.6.30.

Innocent also believes that if the prince lacks funds he may obtain some profit so that the coin would be worth less than uncoined after deducting expenses, since he himself by his office gives authority to the coin. This is true if it is not circulated outside of the kingdom, inasmuch as he cannot inflict a loss on those who are not his subjects. Innocent also believes that in the first case the prince can debase the money with the assent of the people, because anyone can renounce one's right, D C. 7 q. 1 c. 8. And he says that the consent of the majority of the notables of the kingdom suffices, because the business of the kingdom is considered to be the business of everyone, Cod. 2.48.2, and what Innocent notes in X 1.33.1 applies. But I myself doubt it, because it is a loss inflicted on individuals, by the arguments made in X 1.2.6. Innocent does admit that the consent of the people is not enough when this money is spent outside the kingdom, and so does Hostiensis, arguments in Dig. 2.1.20, X 1.2.7 and X 1.2.10 .

But on this point Bartolus says, in his commentary on Dig. 12.1.2.1 and Dig. 46.3.99, that money should be worth as much as its content: the expenses should be born by the community, Dig. 48.1.1. He admits that the contrary is observed in common practice: and you, say that Innocent's dictum is observed, for the expenses as well as a small profit.

Hostiensis adds a third way of defrauding the extrinsic: which is when a prince repudiates a good money, and accepts a money of equivalent or lesser value, so as to obtain the repudiated money cheaply, melt it and coin it. And in summary as I have said that thus there are three ways in which fraud can be committed in money, but this last dictum of Hostiensis concerns the use of money, and the prince alone is entitled to it.

§12. Further, I ask an everyday question: at the time of a disposition or a contract a certain money circulates; over the course of time this money deteriorates or diminishes: should repayment be made according to the old estimation, or as it is current and particularly if a new better coin is in existence. This question has been touched upon rather succinctly by the gloss to X 3.39.20 and on D C. 32 q. 4 c. 6, Hostiensis in X 2.24.18, Paulus de Castro in Clem. 3.8.2, Cino da Pistoia and Odofredo Denari in Cod. 2.40(41).3, Bartolo di Sassoferrato in Dig. 46.3.99, Guillaume Durant in his *Speculum*, title *de obligationibus et solutionibus* §3 n. 9,¹⁸ Giovanni d'Andrea in his additions to the *Speculum*, Antonio de Butrio¹⁹ on this passage at sufficient length.

But to deal with the matter clearly and conclusively we must consider the following. There are two main ways that a coin or money can deteriorate or be diminished: obviously with respect to its current rate (*cursus*), because it has the same intrinsic content but is not worth as much as it used to. Also by a deficiency of the coin, because it is diminished in weight, when it is shaved, clipped and reduced to copper by long use, for example when it is made of bronze with added silver which is corrupted by long use.

I. In the first case, let us distinguish:

(1) either the money is completely cried down, for example, because the prince forbids its use completely. Now if the debtor is not behind payment, Pierre de Belleperche and following him Cino da Pistoia, in Cod. 2.40(41).3, hold that he can repay with the old [coin]: because it is enough to repay the loan in the same kind

¹⁸ See above.

¹⁹ Antonio de Butrio (1338-1408), student of Pietro de Ancarani; taught canon law in Bologna and Florence.

and with the same intrinsic content, Dig. 12.1.3. Jacopo de Arena and Odofredo Denari hold the opposite view and following them Bartolo in Dig. 46.3.99, and Antonio de Butrio, and the following is commonly held. Although Hostiensis appears to hold the first view in his commentary on this canon, you, hold the latter, by the argument in Dig. 13.7.24.1. And the the contrary opinion does not hold, because it is not true that the decried money has the same intrinsic quality, since money is considered more with respect to its current rate (*cursus*) than with respect to its content, and on this point a good text in D D. 88 C. 11. He must therefore repay according to the original estimation (*aestimatio antiqua*), X 3.39.20, and so hold Guillaume Durant and Giovanni d'Andrea as noted above.

(2) Or the money is not decried completely, but somewhat altered in value, because it is not worth as much as it used to. And distinguish two subcases:

(a) either the alteration takes place forever, because the prince forbids that it be worth as much, perhaps because of the gain he may obtain by collecting the coins and having them melted and coined again. Hostiensis holds here that the cost falls on the creditor if the debtor was not overdue or in any fault; likewise Jacobus de Arena and Bartolo, in Dig. 46.3.99, because that coin has its intrinsic quality. But Odofredo Denari in Cod. 2.40(41).3 and Antonio de Butrio hold the opposite view. That is, that it must be repaid at the estimation of the old money, for the reason given above: because the quality of a coin is mainly with respect to its use, and therefore that restitution will be made with that quality, Dig. 12.1.3. If the use of the coin were completely forbidden, the estimation would be owed, as said in the previous part. Therefore likewise if it is reduced in part, arguments in Dig. 6.1.76 and X 1.29.28. Besides, this is proven in X 3.39.20, as noted above. And I think it right that the creditor not suffer out of his benefit.

(b) In the second case, when the alteration is not permanent, but for a time, as it happens everyday, when a florin is worth more one day than another, that is, when its value rises and falls according to circumstances, it is commonly held that no attention should be paid to this variation, excellent argument in Dig. 35.2.63.2. Just as the creditor would want to be repaid if the coin was worth more, so he should receive the same money if it is worth less, since he can expect an increase. So said Bartolo in Dig. 46.3.99, and others in Cod. 2.40(41).3, and that is fair enough.

Nevertheless, I think that if there is no hope that an increase will soon occur, that one should take account of the estimation at the time of the loan; because it is correct to say that it doesn't have today the quality with respect to its circulation that it had before; and so the earlier argument comes into force, especially since it

could happen that it never rises, Dig. 27.1.30(33) at the beginning, and the gloss in Clem. 1.2.1.

II. I come to the second main case, namely, when the deterioration pertains to a defect of the coin itself, and it is commonly held by Canonists and legists, that the loss falls on the debtor, because the coin does not have its intrinsic quality which it had at the time of the loan, Dig. 12.1.3. Likewise, you will know that what has been said remains even if the debtor was not overdue. And if indeed he was overdue, according to everyone, all risk falls on this debtor: he must repay according to the estimation which was at the time of payment, unless it were temporary and momentary, as I said above; on this Dig. 12.1.22 and what I noted there.

However, Bartolo has restricted this to the case where the loss occurs in large coins, not so where small coins are concerned, because large coins are estimated with small coins, and not the reverse. Indeed, one penny cannot be estimated by a silver or gold shilling, and since this small money cannot be measured we cannot say that attention must be paid to the estimation at the time the payment was due, or later until the time the payment is made, as is the case with other kinds of coins, Dig. 12.1.22.

This argument of Bartolo does not satisfy Antonio de Butrio, because according to him, just as a large coin can estimate a small coin, so a small coin can estimate a large coin, if perhaps the small coin offers something of use; for just as piccioli can buy a florin, so a florin can buy piccioli is some necessity required it. And this seems more correct than Bartolo's opinion, which only consists in subtlety; if one allows that one penny cannot be estimated, then many together cannot either, and I would then say that this money is completely decried and one cannot be repaid with it, Dig 13.7.24.1. Likewise in my opinion in any loss arising after the due date as long as the deterioration itself concerned directly the small coin itself, as when it has been decreed that two will be worth only one of the new coins. All of this proceeds when the money is due on the grounds of a contract.

13. What of the case of a testament, as when the currency was worth more or less at the time of the testament than it is worth now? Assume the case of a permanent alteration, and say that the value at the time of the testament must be considered, because that is the one the author is presumed to have had in mind, Dig 32.1.41(39).4, Dig 34.2.40 at the beginning, Giovanni d'Andrea in the additions to the *Speculum*, and so advised²⁰ Oldrado da Ponte and so teaches Pietro

²⁰ That is, wrote in a *consilium*. See Stampe 1926 for Oldrado's consilia.

d'Ancarano in X 3.39.20. Oldrado says the same in the *praeceptum arbitrorum*. And for the same reason say the same in the case of a judge sentencing someone to a certain fine.

14. What of the case of a statute? Suppose it is stated that for such offence 10 must be paid, or that so many pounds are owed to an official; then the currency is altered forever. Notably, Guillaume Durant in the passage cited above says that the current money must be paid, because the statute is presumed to have such a currency in mind. Therefore the statute is considered to be changed by a change in currency, argument in X 1.2.3.

I am myself quite doubtful of this. Indeed, what if the florin was worth more at the time of the statute than today? Would we then say that such a small sum would pay the fine, when the statute had intended to penalty to be imposed to the offence? D C. 24 q. 1 c. 21 and Dig 48.19.21. And I say the same in the case of the salary of an official set by law. In contradiction with my judgment of the case is X 3.39.20, and notwithstanding Clem. 3.8.2 where the repayment is in current money, because in this case the disposition is not altered, for it is said there that if the income of a benefice is granted to someone, it can be paid in current money.

What of the case of a mandate or grant made by some lord, for example when a prince has granted someone 100 florins annually on some rents, and the value of the florin has been changed permanently? Here Antonio de Butrio says that if the lord did not know the value of money it must be understood that the repayment is in current money, so hold the gloss and Gulielmo de Monte Laudensis in Clem. 3.8.2. This seems sufficient as long as he weighs the ignorance of the prince, otherwise I think not, X 3.39.20 and Dig 34.2.40(42). And in those references you have this article fully and clearly covered by others.

15. Finally I ask a daily question. I have lent you 100 in gold, am I obliged to accept repayment in silver or in petty coins? Or conversely, I have lent to you in silver: can you discharge yourself in gold against my will? What about in the same metal (*materia*) but in a different form, if for example I lent you florins of Siena, and you want to return florins of Florence in the same amount?

You, argue according to Bartolo in Dig 46.3.99 that either I lent you 100 in florins, and then it suffices that 100 be returned in another money, because in estimating those florins for 100 I am presumed to have sold those florins, as we say in the case of a dowry, when that which is estimated is delivered, Cod. 5.12.10. and say likewise in the case of a deposit. Or else it was specified: I lend or deposit

100 in florins, and I want restitution to be made to me in florins. And in this case the risk and gain of diminution or increase falls on the debtor or recipient, and he must repay in florins at the estimation existing at the time of the repayment, Cod. 5.12.10. Or the loan was made in a simple manner, for example: I lend you 10 or 100 florins, and now, either I suffer some loss by receiving it in another form and therefore I am not obliged to accept it, Dig. 46.3.99. or I suffer no loss, and then I am not obliged to receive in another matter, such as silver for gold: because a loan must be returned in the same kind (*genus*) and the same quality, Dig. 12.1.3, and a creditor cannot be repaid by one thing instead of another against his will, Dig. 12.1.2. Or you want to repay in the same matter, but in a different form, such as Florentine coins for Sienese coins : and it is commonly held that I am obliged to accept, Dig. 46.3.99. However, the custom in many parts is that I can also repay in another matter, and it must be observed; because it is presumed that contracts are implicitly made according to the local custom, Dig. 21.1.31.20, Dig. 33.10.7; so holds Bartolo as above and so advised Oldrado.