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On Interest and Usury*

Johann Gerhard
Translated by Richard J. Dinda

Whether we should tolerate interest on borrowed money in the state.

§ 232. The second question[1] is whether we should tolerate interest on borrowed money in the state.

**How shameful and detestable this practice is becomes clear (1) from the authority of Him who forbids it; (2) from the nastiness of the sin, which conflicts with the Seventh Commandment and therefore is theft; (3) from the seriousness of the loss, for usury is so called from "biting" and "gnawing" because it consumes

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* Johann Gerhard, Commonplace XXVII, On Political Magistracy, in *Locorum Theologicorum Cum Pro Adstruenda Veritate, Tum Pro Destruenda quorumvis contradicentium falsitate, per These nervose, solide & copiose explicatorum Tomus Sextus: In quo continentur haec Capita: 26. De Ministerio Ecclesiastico. 27. De Magistratu Politico* (Jena: Tobias Steinmann, 1619), pp. 911–45; reprint, *Loci Theologici Cum Pro Adstruenda Veritate Tum Pro Destruenda Quorumvis Contradicentium Falsitate Per Theses Nervose Solide Et Copiose Explicati … Tomus Sextus* (Berlin: Gust. Schlawitz, 1868), pp. 388–402. Copyright © 2019 Concordia Publishing House, www.cph.org. All rights reserved. On the English translation of Gerhard's *Theological Commonplaces*, see www.cph.org/gerhard. In this translation, all Gerhard's original in-text references have been retained. All footnotes are the work of the editors.

1 The question on interest and usury (§§ 232–56) falls within Gerhard's consideration of various matters of civil law in a Christian state. The preceding question (§ 231) concerns the establishment of places of refuge for asylum seekers. The next question (§§ 257–58) concerns whether commerce of any kind ought to be tolerated in a Christian state.

our neighbor's resources; (4) from the savageness of the punishment, for it is both temporal and eternal.**

Interest on borrowed money is condemned (1) by God's law: Exod. 22:25; Lev. 25:35–37; Deut. 23:19; Neh. 5:8; Ps. 15:5; Ezek. 18:7–8; and 22:12.

(2) It is condemned by canon law: dist. 46, c. *Non licet*, etc., c. *Sicut*, etc.;[2] dist. 47, c. *Episcopus*, etc.; c. *Quoniam*, etc.;[3] c. *Si foeneraveris*, etc., *cum seqq. caus. ead.*, 14 q. 3;[4] c. *Ministri*, etc., *cum seqq. caus. ead*., q. 4;[5] l. 5 *Decretalium*, tit. 19, *de usuris*, c. *Quia in omnibus*, etc., 2: "Obvious moneylenders should not be admitted to the fellowship of the altar; and if they have died in this sin they should not receive Christian burial."[6]

(3) It is condemned by the consensus of the nations.[7] When Cato had been asked what moneylending was, he said: "It is the same as killing a person." See Cicero, *Offic*., bk. 2;[8] *Vit. philos*., c. 95.[9] Cato also writes in *De re rustic*.: "Our forefathers so considered and so stated in their laws that a thief should be punished in two ways, a moneylender in four."[10] Lycurgus is said to have wiped out all moneylending from Sparta (see Plutarch on Lycurgus).[11] Agis, the ruler of the Athenians, considered moneylending so hateful that he burned the tables of all the usurers in a fire set in the forum. Agesilaus said that he had seen no light brighter than that fire, according to Alessandro Alessandri, *Genial. dier*., bk. 1,

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2 Decretum Gratiani 1.46.9, 10, in Aemilius Friedberg, ed., *Corpus Iuris Canonici*, editio Lipsiensis secunda, 2 vols. (Graz: Akademische Druck- u. Verlagsanstalt, 1959), vol. 1, col. 169.

3 Decretum Gratiani 1.47.1, 2, in Friedberg, ed., *Corpus Iuris Canonici*, vol. 1, col. 169–70.

4 Decretum Gratiani 2.14.3.1–4, in Friedberg, ed., *Corpus Iuris Canonici*, vol. 1, col. 735.

5 Decretum Gratiani 2.14.4.2–12, in Friedberg, ed., *Corpus Iuris Canonici*, vol. 1, col. 736–38.

6 Liber Extra 5.19.3, in Friedberg, ed., *Corpus Iuris Canonici*, vol. 2, col. 812.

7 Many of Gerhard's sources and quotations can be found in the anonymous collection of political texts, *De statu politico seu civili libri sex* (Frankfurt: Egenolph Emmelius, 1617), bk. 5, disc. 51 (pp. 475–78).

8 Cicero, *On Duties* 2.89.

9 See *De statu politico*, 476.

10 Cato the Elder, *On Farming*, Praefatio.

11 See *De statu politico*, 476.

c. 7.[12] France used to cut off usurers' hands, according to Cujas, *Observ.*, bk. 7, observ. 13.[13] Plato, *De legibus*, bk. 5, claims that usurers should be exterminated from the state.[14] Aristotle, *Politic*., bk. 1, c. 7, asserted that usurious gain was especially opposed to nature because money is a sterile thing.[15] According to Panormita, *De dict et fact. Alph.*, bk. 3, c. 34, Alfonso V of Aragon used to say: "Money lent at interest is the soul's funeral."[16] Tacitus, *Annal*., bk. 6, p. 105: "That evil of usury, long-standing in the cities, must be removed from the state."[17] It was unknown to the ancient Germans, about whom the same Tacitus, *De mor. Germ*., c. 8, writes: "To be involved in moneylending and to increase that by interest is unknown, which is a better protection than if it were forbidden."[18] Bodin argues, *De repub*., bk. 5, c. 2, that not only the roots but also the fibers of this wickedness should be cut off completely.[19]

(4) It is condemned by the authority of the fathers and councils. Usury was condemned in the First Council of Nicaea, c. 18;[20] the Council of Elvira, c. 20; the Council of Arles, c. 12; the Council of Laodicea, c. 5; the Third Council of Carthage, c. 16; the Sixth Council of Constantinople, c. 10; the Council of Lyon, c. 10; etc. We can quote many things from the fathers here. Jerome, on Ezekiel, bk. 6, c. 18, writes: "Some people are accustomed to receive small gifts of a different kind for money earned at interest. They do not understand that such is called usury and excess profit if they take from him more than they gave,

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12 Alessandro Alessandri, *Genialium dierum libri sex* (Leiden: Paul Frfllon [sic], 1615), 10v; cf. *De statu politico*, 476.

13 This may be a reference to Jacques Cujas, *Iacobi Cuiacii I. C. Praeclarissimi, Observationum et emendationum libri XXIIII* (Cologne: Johannes Gymnich, 1591).

14 Cf. Plato, *The Laws* 5.742c and 743b.

15 Aristotle, *Politics* 1.10 (1258b1–9); cf. *De statu politico*, 476.

16 Antonio Beccadelli (Panormita), *De dictis & factis Alphonsi Regis Aragonum et Neapolis, libri quatuor Antonii Panormitae* (Rostock: Myliander, 1585), 79; cf. *De statu politico*, 476.

17 Tacitus, *Annals* 6.16. For the wording of this quote, Gerhard may be relying on a secondary source, such as Georg Schönborner, *Georgii Schönborner, Silesii, Phil. et I. U. Doctoris Consiliarii & Cancellarii Zollerini Politicorum Libri VII* (Leipzig: Jacob Apel, 1610), 211.

18 Tacitus, *Germania* 26.1.

19 Jean Bodin, *De rebublica libri sex* (Paris: Jacob Du Puys, 1586), 528D; cf. *De statu politico*, 475.

20 I.e., canon 17.

whatever that was."[21] Ambrose's entire book on Tobit is filled with a contempt for usury. He says, c. 13:

> I think that usury is so called from "use" [*usu*] because, as clothes are torn by use, so inheritances are torn apart by usury. Its first letter sounds doleful; it produces grief, it is the word for sorrow. What good can be there which begins with sorrow and obligation? They say that hares reproduce and raise young and give birth all at the same time. Usury is generated and supergenerated, nursed and born, and once born now produces for the gouging of the usurers, etc. Funeral money is being sowed today and it produces fruit tomorrow. It is always giving birth and never dies; it is always being planted, but it is seldom uprooted. The money-lender always wants to acquire, never to lose, always to increase his money, never to heal, always to kill.[22]

Chrysostom, on Matt. 5, compares usury to a snake bite: "He who receives a bite from a snake goes off to sleep as if charmed and dies through the gentleness of that lethal sleeping potion because, during his sleep, the venom travels through all his members. In this way the person who takes money from a usurer rejoices temporarily as he has received a blessing, but the usury travels through all his resources and turns them all to debt."[23] Lactantius, *Instit*., bk. 6, c. 18: "If the one who takes care of God's money loans out any, he should not take interest so that benefit may be complete which assists a need and which keeps from setting up another need. In this kind of duty he should be content with his own with which, in order to do good, he must not otherwise be sparing. To get back more than he gave is unjust. Whoever does this sets up a sort of trap to prey on someone else's need."[24] Augustine, on Ps. 36, conc. 3:

> I do not want you to be moneylenders, and I don't want that because God doesn't want it. If I don't want it and God does, do it. But if God doesn't want it, even if I were to want it, he who would do it would do it to his own wickedness. From this it is apparent that God does not want this. In another passage it is said: "He has not given up his money to usury." How detestable, how hateful, how execrable that is! And I believe that the moneylenders know this.[25]

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21 Jerome, *Commentary on Ezekiel* 6.18. See J.-P. Migne, ed., *Patrologiae cursus completus: Series latina*, 221 vols. [hereafter PL] (Paris: Garnier, 1844–64), 25:177A.

22 Ambrose, *On Tobit* 13 (PL 14:775B–776A).

23 See *De statu politico*, 475.

24 Lactantius, *Institutes* 6.18 (PL 6:698C–699A).

25 Augustine, *In Psalmum XXXVI* 3.6 (PL 36:386).

Bernard, epistle 322, toward the end, col. 999: "Wherever there are no Jews we are sorry that Christian moneylenders Judaize even worse, if it is fitting that we call them Christians and not rather 'baptized Jews.'"[26]

(5) It is condemned by the many disadvantages that spring from it. Usury is harmful to those who take it, too. Those who loan out at interest suck out and drain those to whom they give. For this reason Baldus, vol. 3, counsel 449, compares usury to a woodworm that seems soft to the touch but has very hard teeth and so gnaws on the inside of a log that its surface appears to be unharmed.[27] Usury is so called in the Hebrew from "biting" and "gnawing." As Lyranus says, on Exod. 22: "Just as when a serpent begins to bite in silence and at first is not felt or sensed but later the person swells up and the effect of that little bite spreads throughout his body; so the evil of usury at first is not felt but later increases to great proportions and devours a person's entire substance."[28] Those who accept usury turn from their labors to idleness and encourage the abuse of wealth. People who are lured through usury by an easier and safer rationale for making profits care less for the respectable skills essential to human life. **Rabbi Salomon, on the word נֶשֶׁךְ, writes: "The increase of usury is so called because it behaves like the bite of a snake that makes a small wound in someone's foot so the person does not feel it. Soon, however, the venom creeps about and spreads until it comes to his brain. The increase of usury behaves in the same way, for it is neither felt nor sensed until it has grown so much that it diminishes someone's entire substance." In the Chaldean it is called חַבְלִיָּה, from "losing," as if to say "corruption, destruction," because it corrupts and ruins a person.**[29]

Narrowly speaking, what is usury?

§ 233. We are correct in saying these things about or rather against usury. Nevertheless, lest we impose a scruple of conscience in regard to a free matter and lest we stir up disturbance and confusion in the church and government, we must take great pains not to condemn under the name of usury legal and just contracts suitable to the law of nations and to promoting public benefit. For that reason lawyers distinguish between profiteering and compensatory interest,

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26 Bernard of Clairvaux, Epistle 322 [365], § 7 (PL 182:567C).

27 Baldus de Ubaldis, *Consiliorum, siue responsorum*, vol. 3 (Venice: Nicolinus, 1580), cons. 449, § 8 (fol. 131v); cf. *De statu politico*, 476.

28 Nicholas of Lyra. See *De statu politico*, 475.

29 Paul Fagius, ed., *Thargum, hoc est, Paraphrasis Onkeli Chaldaica in Sacra Biblia* (Strassburg, 1546), in Exod. c. 22, § 24.

between immoderate and moderate interest. They condemn the former but approve the latter. Theologians say that usury is simply forbidden; meanwhile they deny that just and fair contracts come under the name of usury and say that the laws permit them. Although they agree about the actual subject matter, however, there is an idle dispute about words. Therefore, when the question is asked whether we include under the title of condemned usury that contract by which one demands four or five florins each year for the use of a hundred; we say absolutely, simply, and always that such a contract for loaning money is not illegal and usurious. That one may see this more correctly we proceed in this way. There are three kinds of people with whom we have business in civil society and who ask us for money because of either their need or utility. First, there are some who are very poor who do not have the wherewithal to support life but who are reduced to the bottom line of need and cannot pay back the amount borrowed. We owe them alms. That is, we should give to them with this reasoning: we "expect nothing in return" (Luke 6:35); "Do not let the left hand know what the right hand does" (Matt. 6:3). Second, there are some who are indigent. They have a temporary need for a sum of money for the necessary sustentation of life. They do not intend to make a profit from it nor enter into business with it but to take care of the current need. To them we owe the free responsibility of a loan. That is, we should give to them with this reckoning that they repay the principal at the agreed time but that we exact no more because of the use of the money (Lev. 25:35; Ps. 37:21, etc.). Finally, some are wealthy, and they ask us for money not because of some urgent need but to do business with our money, profit from it, and buy estates and farms with it. We are permitted to enter with them into a sort of contract that they pay an annual four or five florins for the use of a hundred while we do not ask for repayment of the whole principal. **The theologians of Jena, in their response of July 17, 1594, said:

> Because the magistrates, under the pretext of a contract and to prevent greater usury, officially allow five percent interest, and because they prosecute those who charge over that, we must go along with such practices of the magistrates for which they will have to answer. We do this in the confidence that in every age God allows His people certain grievous sins as, for instance, polygamy to the Jews. So also, this practice of allowing interest, which our magistrates accept, we shall out of necessity and by probable reasoning regard as good under grace.

In fact, Socinus himself writes in his fourth letter to Mörstin, p. 503:

> In regard to usury I have always been of this opinion, that it has not of itself been forbidden by any means, something against which our moral fathers or our theologians argue. I dismiss the reasons of both philosophers and theologians, and I shall speak only two statements concerning the testimonies of the Holy Scriptures. First, I posit this as a concession that, in the entire New Testament, we do not find usury forbidden. In fact, I affirm with a quite strong argument its permission because absolutely no mention is made of it among those things which are among our habits and activities and which conflict with the Spirit and the teaching of the Gospel, although those things are mentioned so many times and listed in various places in the New Testament, etc.**[30]

We prove that annual taxes are licit. First, from natural equity.

§ 234. We demonstrate this with the following reasons: (I) from natural equity.

(1) Christ, our Savior, embraced the precept of natural equity with this original rule: "Whatever you wish that people would do to you, do so to them" (Matt. 7:12); or as Luke relates the words: "As you wish that people would do to you, do so to them" (6:31). In Matthew we have the addition: "This is the law and the prophets," that is, whatever the law and the prophets prescribe in civil society concerning justice and rights, all of that can be related most agreeably to this canon. But now, in the aforementioned case, it is so arranged that the debtor asks us for money not compelled by some extreme need but to the end of going into business, making a profit, and gaining advantage for himself. In turn, we also cannot deny that the creditor himself could also have gone into business with this money of his, earned a profit, and gained advantages for himself. Therefore, equity itself and the sanction of the natural law require that a debtor deal with his creditor in the same way that he would wish himself to be dealt with in a similar situation; that is, that he admit the creditor into a sharing of the advantage and as payment for that increase of resources which he could have gotten with the use of the money. But in the meantime he is forced to do without it. Therefore, he should pay him something each year.

(2) Furthermore, what owed gratitude demands, natural law is also certain to demand, for gratitude is related to the natural law. But now, in the aforementioned case, due gratitude demands that he who does business and makes a profit with another's money and is even unburdened and freed from the great load which goes together with his real estate show that he is grateful to him from whom he has been affected by this kindness. This does not happen by repayment of the

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[30] Faustus Socinus, *Fausti Socini Senensis ad amicos epistolae* (Rakow: Sebastian Sternacius, 1618), 503.

capital alone but also by some generous compensation. He who realizes that another's money has returned a great profit to himself is naturally obligated to acknowledge the benefit and to provide a gift [ἀντίδωρον] in return. The natural law also demands the same thing of him. It is not the way some twist this, namely, that gratitude is in fact part of the natural law and obligation, and yet it should be a free matter, and that as a consequence the debtor must not be obligated civilly to that once a promissory note has been given. Indeed, that to which someone is obligated naturally, he can also be obligated civilly. To that which someone is bound by law he can also be driven by external means. Thus, he who takes borrowed money is bound naturally to restore it; in the meantime, however, he can be obligated to the same thing civilly also without harm. To be sure, because of the taint of original sin such ingratitude [ἀχαριστία] has taken over the minds of very many so that they use borrowed money the way they would use found money and do not make plans about its repayment. For that reason they quite often force their creditors to be imperiled by such fortune. Sirach 29:4–10 complains in detail about that. For that reason, the ruler wanted to provide his realm with salutary laws that are the medicine for evils, so that the debtor was bound not only to the security, as they call it, of the borrowed money he had taken but also to the compensation for the duty which has come from a grateful heart.

Second, on the basis of Christian charity.

§ 235. (II) We demonstrate this from Christian charity.

(1) The apostle, 2 Cor. 8:13, prescribes this rule of love: "I do not mean that others should be eased [*relaxatio*] and you afflicted [*afflictio*], but that it be a matter of equality." But, although we may accommodate this rule in particular also to the generous giving of alms, in and of itself it is a general rule that we should do good to others, lest some serious loss arise therefrom for us or for our people. Some relate to this Solomon's words, Prov. 5:16–17: "Should your springs be scattered abroad, streams of water in the streets? Let them be for yourself alone and not for strangers with you." Nevertheless, some gather from what precedes and follows some special meaning related to one's wife and children. But now, if other people use our money as they wish for business, commerce, buying real estate, etc., and profit greatly from that without making any compensation to us, they then indeed would have an easing [*relaxatio*], while we and our families would have an affliction [*afflictio*]. In fact, we no less than they themselves could have exercised with this money land-buying contracts or other contracts suitable for this matter and acquired our own gains. Equity and Christian charity corresponding to it require that an equality be arranged, namely, that the plenty of

that wealthy businessman who has made profits with our money should supply our need and that of our people, "that their abundance may supply our want," as the apostle says in like fashion in 2 Cor. 8:14.

(2) There is also this apostolic statement, 1 Tim. 5:8: "If anyone does not provide for his kin and especially for his own family, he has disowned the faith and is worse than an unbeliever." We connect with this 2 Cor. 12:14: "Parents should lay up for their children." But now, we would manage no care of our own, much less lay up treasures for them, if our neighbor with our money were merely to gain profit for himself and not admit us into the sharing and partnership thereof. This, therefore, militates against the responsibility of Christian love. "Ordered love begins with one's self" and persuades us to have a better program for those people whom God and nature have joined intimately to us.

(3) Just as it would be unfair and repugnant to Christian love if those indigents whom we placed into the second class above were to demand of us in place of alms a great sum of money which they would never have to repay and then would need that only temporarily and later could repay the principal without great loss to themselves; so also for a similar reason it is unfair and contrary to love if the rich people we placed in the third class would ask us for a huge sum of money, without any compensation beyond the principal, by which to promote their own business and gain, although they could and should without any loss on their part invite us to share in the profits. Just as it conflicts with love if people of the second class demand that we deal with them with alms; so also it is contrary to love if people of the third class ask us to deal with them and enter into contracts with them through free lending.

(4) Finally, in all legitimate contracts love should be reciprocal—that is, the advantages of both contracting parties should be promoted. Therefore, also in this special contract we must consider both creditor and debtor. If, on the other hand, a debtor set up in a rich situation profits from someone else's money, buys land, frees his own real estate from the burden of mortgage so that he uses and enjoys his property freely to his own great advantage, and if the creditor meanwhile is compelled to do without his own money without any compensation; then the love is not reciprocal but returns profit to only one party of those contracting, while the other party clearly is passed by and overlooked. It is not the way some turn this around, that danger comes only to him who does business and trades with another's money, and therefore to him alone belongs the profit of such business. It is not this because in deciding this question we presuppose that the debtor makes a profit and gains his own advantages with money received from borrowing. If however by some accident, unanticipated and unavoidable, he is reduced to poverty, then let Christian love, the director and mediator of all contracts in

the Christian state, place itself in the middle and, after considering the reason for the circumstances, command that the annual tax or even the principal itself be forgiven the debtor. For when people of the third class are brought down to the second class, then their borrowing should be free for them. When they are reduced to the first class, we must help them with alms, and far be it from us that we should demand from them the annual taxes.

Third, from the authority of the Christian magistrate.

§ 236. (III) We prove it from the authority of the Christian magistrate. That theological axiom should be firm and fixed, that the Gospel does not abolish politics nor does it remove legitimate contracts. Therefore, it also does not abolish the salutary laws and constitutions of the magistrate that agree with the natural law (Rom. 13:1; 1 Peter 2:13). Lobech says, *in August., confes.*, disp. 18. thesis 93: "Judging how a contract should be arranged and which contracts should be considered legitimate and illicit is not the business of theologians but of the ruler and attorneys. For this is related to theologians no more closely than it is for them to prescribe to doctors what medicine they should prescribe to which sick people."[31] (This is something we must take especially as a reference to the equity of contracts, for God's Word commands in general that we should avoid injustice, frauds, the violation of love, etc.) But now, the Christian ruler has approved that contract by which a hundred florins are let out to a neighbor at an annual interest of 5 percent, so to speak, as we have learned from Justinian's laws and the constitutions of the Roman Empire. Therefore, just as a godly Christian person can without hurting or harming his conscience use in civil life other salutary and lawful constitutions of the ruler in commerce, inheritances, testamentary cases, etc.; so also he can use without scruples of conscience this same just and reasonable constitution of the ruler in reference to annual payments since the ruler is God's minister, divinely equipped with the power to make laws.

(1) Nor is it true what is directed against this, namely, that the ruler's constitution runs counter, first, to divine law, which indiscriminately and absolutely forbids all usury; second, to the natural law, which teaches that the office of lending should be free; and third, to right reasoning, which shows that money is a sterile thing and thus produces no fruit. What we must decide about this subject we shall explain clearly below. Here we wish to remind the reader only of this: in this arrangement the magistrate had regard for natural equity and

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31 David Lobech, *Disputationes theologicae XXX. Articulorum Augustanae Confessionis* (Wittenberg: Wolfgang Meisner, 1610).

wanted to obviate many controversies and difficulties. You see, it is a matter of a definite and convenient law that in a loan what is interest can be exacted from a debtor; that is, one can demand by right some compensation for cessant gain [*lucrum cessans*] and damage incurred [*damnum emergens*]. Yet in trials there are very often long and involved controversies as to what usury properly is and what the compensation is for cessant gain and damage incurred. They therefore have wanted to reduce to a certain mean that which is interest, namely, that for a hundred florins loaned out, five be exacted in place of that principal. For this reason very long controversies occur in court. The laws claim that the taxation of that, which is interest, has been left to the judge's judgment, l. 3, last paragraphs, *de eo, quod certo loco*.[32] Why in the world was the higher magistrate not free to institute some such arrangement and, so to speak, taxation in this contract?

(2) Nor is it true what is directed against this, namely, that the magistrate, in order to avoid a greater evil and more serious sin, has merely permitted that which by its own nature is sin; that consequently we must distinguish between a public right and a law of the state; and that peace of conscience cannot be attained through those political laws. For the godly magistrate does not arrogate to himself such power that, to avoid a greater evil, he permits that which of itself and by its own nature is unjust. For we must not do evil things, much less sanction them by law, in order that good things may result (Rom. 3:8); the magistrate should be the guardian of both tables of the Law; and an inferior cannot remove the law of a superior. We shall therefore have to claim one or the other: either that taking that annual tax of money in the often-named contract is not in and of itself always illicit and opposed to divine and natural law; or that the magistrate who allows that has acted against the divine and natural laws, against equity and justice. To affirm that about a Christian magistrate is very harsh and bitter to hear. There are those who compare the magistrate's constitution with the Mosaic laws about polygamy, which was forbidden by God's law. Matt. 19:8: "Because of your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so." If perhaps Moses had permitted something like that by some divine dispensation, the point still would not have been made, however, that such a right of dispensing contrary to God's law befits the magistrate. This is because he has been set up as the guardian of God's law and the avenger of those who transgress divine law.

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32 Digest 13.4, in Theodore Mommsen, ed., *Corpus Iuris Civilis*, vol. 1, *Digesta*, editio stereotypa sexta (Berlin: Weidmann, 1893), 176–77.

Fourth, from the parity of other contracts.

§ 237. (IV) We prove it from the parity of other contracts. In regard to similar things we pass the same judgment, and where there is a like reckoning there is also the same law. But now, the contracts that are clearly similar to that very one we are discussing that is related to natural equity are approved. Therefore, this, too, that we are discussing can be approved and should not be rejected simply and rashly as unjust and usurious.

(1) The leaseholding contract [*contractus emphyteuseos*] is approved, as when I buy a field with my money and hand it over to another to cultivate with the agreement that out of the annual receipt of fruits he will pay me a definite amount of money and even some measures of grain each year, provided that the "canon," as they call it, that is, the money or grain he is to pay annually, is harmonious with legal right and equity. What is the difference, however, if I merely buy a field directly with my money and rent it out to someone else that I may receive each year a part of its fruits, or if I lend my money to another for him to buy a field with it and pay me each year a specific and moderate assessment for the annual receipt of fruits from that purchased field? Surely, as regards natural equity, no disparity occurs here. In the following paragraphs we shall dash to pieces the account of the difference that some people generally assert.

(2) The contract of usufruct substitution [*contractus antichreseos*] is approved, as when for a certain sum of money given as a loan the creditor gains the title to a farm instead of security and receives fruits from it each year instead of interest. But now, it is less a burden to the debtor, and less bothersome to the same, if he can keep all his farms, fields, and estates and the produce of them safe and untouched while in the meantime he gives an annual return for the use of the borrowed money than if he is forced to deliver over to the creditor the farms, fields, and estates and their produce in the place of security. From this, we draw the following conclusion. Whatever lessens the burden of the debtor and worsens the condition of the creditor diminishes the suspicion of usury. But the sole personal obligation to an annual payment without the handing over of usufruct as security burdens the debtor less and makes the creditor's situation worse than the giving of real security in the contract of usufruct substitution. It therefore diminishes the suspicion of usury.

(3) The contract of the purchase of returns [*contractus emtionis redituum*] is approved, as when I earn from my neighbor five florins for a borrowed hundred each year under the agreement that control of the hundred florins clearly passes from me and I am never permitted to ask for their return. Chemnitz writes, *Loci*, part 2, c. *de paupertate*, p. 454: "Many people argue about the purchase of returns,

but if we consider the subject itself correctly, it shows that if we exercise the contract rightly, it does not oppose love."[33] Chemnitz is absolutely correct in this assertion, for if we approve in general the contract for buying we cannot disapprove in particular that of buying returns. The first is agreed on the basis of Lev. 25:15 and 1 Cor. 7:30; consequently, the second also stands as unshaken. Yet, if we are permitted to gain the five florins to be paid annually for the hundred, we shall also surely be permitted to loan the hundred florins for an annual payment of five florins. If we may buy a house for a thousand florins and rent it out to someone else and demand fifty florins for wear and tear, why in the world may we not also rent directly to another the annual use of that thousand florins? We shall consider below what is directed against this, namely, "in perishable things to which money applies, use cannot be sold or rented separately because the use of it is the actual consumption."

(4) The contract of partnership [*contractus societatis*] is approved. Chemnitz writes, *op. cit*., p. 455: "It is a legitimate contract when one has the ability to conduct business but lacks money while another has money but not the ability to carry on business if they enter a partnership so that one supplies the money and the other the efforts. The laws say that what lacks money is supplied by work."[34] There is little or no difference, however, between this contract of partnership and the one we have just been discussing, for in both instances something is being given in place of compensation to him who has paid out money for the sake of the profit resulting from its use. They respond: "In the partnership contract the gain, danger, and loss are common to both parties contracting, something that has no place in the annual interest for money loaned." We have already said before, however, that Christian love should observe such a moderation and equity that the danger and loss should be common even in this very contract, that is, that the annual payment otherwise due should be forgiven the debtor who has been reduced to poverty through no fault of his own.

(5) The contract by which I buy from another a promissory note for the purchase of returns [*contractus, quo syngrapham emtionis redituum ab altero emo*] is approved. If one is permitted to transfer to me for a certain sum of money a promissory note for that purchase and, consequently, also the annual returns due because of that note, why in the world may he not also receive an annual

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[33] Martin Chemnitz, *Locorum theologicorum … pars secunda quibus et Loci Communes D. Philippi Melanchthonis perspicue explicantur, et quasi integrum Christianae doctrinae corpus ecclesiae Dei syncere proponitur. Editio noua* (Frankfurt am Main: Zacharias Palthenius, 1599), 454.

[34] Chemnitz, *Locorum theologicorum … pars secunda*, 455.

interest for the loaning of that money? Surely in both instances, because of the use of money either purchased or borrowed, he is compelled to do without those annual returns which otherwise would accrue to him. Nor is it true what is directed against this, namely, that "those contracts are considered licit because they do not militate against the expressed statements of Scripture. But they have a different reckoning from that contract we have just discussed, which the Word of God condemns utterly under the name of usury." We shall prove in its own place that this is begging the question.

Fifth, from its usefulness to human society.

§ 238. (V) We prove this from its usefulness to human society. "God is not a God of confusion [ἀκαταστασίας]" (1 Cor. 14:33). But now, great disorder [ἀταξίαι] and confusion [ἀκαταστασίαι] would develop not only in politics but even in the church if someone were to claim that it was absolutely and simply forbidden to demand some return for money given to another to engage in business and trade. For those who were obligated to pay those assessments would refuse to do so and would merely seek and acquire their own profits with other people's money. Those who have great amounts of money would refuse to give them to a neighbor to use because there appears to be no hope of repayment. In this way they would hinder the business and commerce which are not only useful but even necessary for humankind. For this reason the professor of Ferrara in practical *form. libell. action. hypothec. verb*. "without any usury," p. 379 of the old edition, writes: "The world can scarcely be maintained or controlled without usury."[35] This we must take as a reference to those annual interest charges that we have just discussed, which lawyers call "licit usury," but not the usury that God's Word condemns. Baldus, in bk. 1, c. *de summ. Trinit. et cons*., p. 453, says: "It is expedient that we find many moneylenders lest many people die of hunger." He seems to have said this not unjustly, considering the extreme corruption of human nature. To this, however, we must especially relate Leo's *Novella* 83. For although the Eastern emperor Basil had completely abrogated all usury, his son Leo removed his father's decree because of the disadvantage it produced in the state. He said:

> Our father, the prince of eternal memory, knew that usury was condemned everywhere by the Spirit's decree and thought that he should forbid the payment of usury with his sanction. Yet, because of poverty, that situation did not turn out for the better, which the legislator nevertheless had intended, but for

35 Francis de Sylvestris. See *De statu politico*, 477.

> the worse. For those who had been quick to loan money earlier in the hope of interest became difficult and cruel against those who were in need after the law was made, because they could see no profit in lending. In fact, it provided an opportunity to take an oath easily and, something which closely followed that, to break an oath. Briefly, because of the perversity redounding to human life, not only did the virtue of the law bring no advantage but also got in the way of advantage.[36]

The circumstances we must consider in loaning money.

§ 239. These are our chief reasons that have moved us to claim that one should not absolutely and simply count these annual assessments for money loaned among the condemned usuries. Yet in regard to this loaning of money we add that we must consider certain circumstances as, for instance, first, the condition of the persons who take the money from us; second, the amount of money given and the time prescribed for the payment; third, the annual interest payment that appears in the contract; fourth, the state of the persons who loan out the money.

(1) In regard to the first, note that we must be careful not to demand the annual interest payment from those who do not use the borrowed money to transact business and make profits but who ask us for money for the necessary support of their families and themselves and can barely or not even barely repay the principal. Also, we must be careful not to demand it from those who first ask us for money to transact business and to make profits but who later, truly by no fault of their own, by accidental and unexpected misfortunes like fire, shipwreck, long illnesses, etc., are forced into such poverty that they should deservedly be listed among people of the second class. We said earlier that we should permit them free borrowing. Why it could even happen (as human affairs are) that such businessmen are pushed into the first class, namely, of those whom we have explained we should help with alms and to whom we should give away not just the annual interest payment but even the principal itself. If anyone should change from a rich man to a pauper, then I should also change the way I deal with him. Briefly speaking, we should set up Christian love as the guide and moderator of this contract, too, as well as of all the rest.

(2) Regarding the second, note that we must establish a difference between a greater or smaller sum of money and between a shorter and longer time. For example, if someone should ask you for one or two florins for a period of two or

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[36] Gerhard quotes Leo in Latin. A different Latin rendering appears in Leo VI, *Imp. Leonis Augusti Constitutiones Novellae, aut correctoriae legum repurgationes, Latinae nunc primum ab Henrico Agylaeo factae* ([Geneva]: Henri Estienne, 1560).

three months, I am not willing to say that consequently you should demand an interest payment. If, however, someone should ask for a hundred, two hundred, or even a thousand florins for a period of one or even more years to buy estates and farms to carry on business and to make profits, here, for the reasons cited above, we say that some interest prescribed by the laws can be rightly demanded as compensation for this service. Meanwhile, we must warn that a person must judge about a greater or smaller sum of money not generally [ἁπλῶς] but comparatively [συγκριτικῶς] with regard to the one who pays it out, according to geometric rather than arithmetic proportion. As Hunnius is correct to advise in his commentary on 2 Cor. 8, p. 342, it can happen "that some fellow of a less solid condition and lot may pay out twenty florins or even less, but because this money is part of his substance, I think that it is more for him than for you to receive the legally defined interest annually for a hundred or for a thousand florins."[37]

(3) We should note that the interest should be moderate and determined by law. Thus, the imperial laws claim that one can demand five florins a year for the use of a hundred. Regarding the equity of this constitution, Luther, in his admonition that pastors of the church should condemn usury, German edition of Wittenberg, vol. 6, f. 323, makes this judgment: "Now therefore there is no time for a person to obtain wealth with five or six percent on a hundred, especially because the poor cannot pay such interest but must necessarily provide their own daily bread."[38] Here, however, Hunnius again advises, *op. cit*., that merchants are not very strict that the rate prescribed in the laws not be exceeded, because some merchant can profit from a hundred florins borrowed elsewhere at his expense for the benefit of his business so much that that profit equals the actual principal. It should therefore not be judged unfair because of the hope of so splendid a profit, that he pay out to his creditor over the hundred even a little more than has been accepted in the usual loaning out, especially because he is not sharing that profit with his creditor.[39]

(4) In regard to the fourth, we should note that there is a great difference among those who ask for a loan. Some are very wealthy and can preserve their own substance and can support a poor neighbor with their legitimate trade or

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37 Aegidius Hunnius, *Commentarius, in Posteriorem Epistolem D. Pauli Apostoli ad Corinthios*, in *Tomus quartus operum Latinorum* (Frankfurt: Porssius, 1606), 342.

38 Martin Luther, *An die Pfarherrn wider den Wucher zu predigen*, in *Der Sechste teil der Bücher des Ehrnwirdigen Herrn Doctoris Martini Lutheri* (Wittenberg: Hans Lufft, 1553), 318v–335r; cf. *D. Martin Luthers Werke* [hereafter WA]. *Kritische Gesamtausgabe*, vol. 51 (Weimar: H. Böhlaus, 1914), 331–424.

39 Hunnius, *Commentarius*, in *Tomus quartus operum Latinorum*, 342.

work or labors without any loss of resources by giving out money on loan. Some have modest wealth but cannot use those monies without a daily decrease of their substance. Such are orphans, widows, the aged, those living in literary leisure, all of whom are not very well suited for conducting business. If the first should exercise that contract for this purpose to be able to live securely in their leisure, to indulge their appetite and to enrich their family wealth without any effort but meanwhile should be little concerned about what they are doing for their needy debtor or neighbor, they are not acting correctly. We must therefore warn them to think that it is God's will that "each should eat the labors of his hands" (Ps. 128:2; 1 Thess. 3:11; 2 Thess. 3:10), and that alms and borrowing have special and very honorable promises in God's Word but that the remaining contracts are enclosed within the general promises of the Seventh Commandment. Consequently, those who are in the first group should be eager to deal with their neighbor with alms and free lending rather than to establish either uniquely or especially that contract for annual interest payments. The second group deserves more ready forgiveness if they loan out their money to businessmen and support themselves and their households with their annual interest income.

The arguments of those who absolutely and simply condemn those annual interest payments. First, from Old Testament passages.

§ 240. From this it readily appears how we should respond to the arguments of those who absolutely and simply condemn those annual interest payments.

(I) They urge the Old Testament passages noted earlier (Exod. 22:25; Lev. 25:35; etc.), in which interest is simply forbidden.

We respond. We readily admit that usury is forbidden in those passages. Still in question, however, is whether that contract by which five florins are exacted annually for a hundred because of money loaned must of itself simply and absolutely and always be related to the interest that God's law has forbidden, a point which has not yet been made with clear arguments. In fact, the contrary has become clear from the arguments given. Furthermore, that this response may be more clear, we must note that in those passages of Scripture the discussion involves true loans made to people whom we assigned earlier to the second class. By its own nature that should always be free and, consequently, he who demands or takes from such people to whom he owes the duty to loan anything beyond the principal, whatever that ultimately may be, is practicing usury and acting against God's law. Ambrose, in his book on Tobit, c. 14, p. 347: "Food is usury, clothes are usury, whatever happens to one's lot is usury. Whatever name you

may wish to place on it, it is usury."[40] From this, however, one cannot yet make the point that we should make that free loan to everyone who asks us to give them money. Rather, this pertains only to those whom we placed earlier into the second class.[41] With respect to those who are in the third class, that is, those who are quite wealthy and ask us for money not to alleviate their need but to engage in business and make profits to buy farms and increase their fortunes more and more, it is licit to deal with them not through free loans but through the sort of contract that obliges them to not only repay the capital but also to compensate us for our activity. We make this clear with a quite obvious example and on the basis of a related request. The Scriptural passages that speak about the alms and benefits we must provide for our neighbor are quite clear and manifest. Christ, however, especially declares universally: "Give to him who asks" (Luke 6:30). From this we cannot infer that we must give such alms to absolutely all people, even to those whom we earlier placed in the second and third class, for Sir. 29:2 and the example of Tobias (Tob. 4:21) teach that it is lawful to demand repayment of the principal from the second class of people. Those alms, however, are owed only to those people to whom we have assigned the first class, that is, to those who are very poor, who cannot even repay the actual principal. With like reasoning the Scriptural passages about the responsibility to loan are quite clear, namely, that a loan should be free and come under the name of unlawful usury if anyone demands something beyond the principal because of the responsibility of lending. From this, however, one cannot yet conclude that we owe this responsibility of a free loan to all and therefore also to those who have a place in the third class, that is, those who with our money do business, make profits, and clearly increase their fortunes. For if this were to happen, one ultimately would be able to give neither alms to the extremely poor nor free loans to the needy. In fact, "the flowing spring stops flowing unless a flow comes from another place." We should note carefully that the usury that is so severely forbidden in divine law should not be assigned to or sought only in the loan, but also in all contracts through which it has swept like a poison. Indeed, experience bears witness that we notice the usurial arts particularly in the borrowing of money; meanwhile, that damnable usury has a place not only in the loan but also in buying, selling, and other contracts, namely, when a neighbor is defrauded, when something is done in contracts which is against rightful equity or Christian love, or, as the apostle says in 1 Thess. 4:6: "That no person transgress and defraud his brother in business." If it is usurious when in a contract of usufruct substitution [*antichreseos*]

40 Ambrose, *On Tobit* 14 (PL 14:778C).

41 See § 233.

the fruits of the entire farm are taken for the modest amount of borrowed money, and in this way farmers are evicted from their possessions (the sort of usufruct substitution [*ἀντίχρησιν*] that Justinian prohibits), then it is usurious when in a partnership contract an agreement is arranged over preserving the capital, even if the one suffers loss without his own negligence. Therefore, just as contracts themselves are not immediately rejected and condemned because of the usurious corruption that very often adheres to them, so also even if we note very often the usurial arts in borrowing money, we should not absolutely, simply, and always condemn as usurious that contract by which five florins are taken as annual payment for the year's use of a hundred by the rich and by businessmen.

§ 241. This statement of our opinion agrees with the response of those who claim that the divine laws opposed to usury only forbid those annual assessments that, for the mere service of a loan, are demanded from the poor and needy suffering under burden and oppression.

(1) That this restriction and limitation must be understood in this way is proved from its name. The usury that God prohibits with His broad law is called נֶשֶׁךְ in Deut. 23:19 and Ps. 15:5, from "biting" and "eating away." The root נָשַׁךְ is used with reference to a snake bite (Num. 21:9; Prov. 23:32; Amos 5:19), and denotes that we should take the expression "forbidden usury" to mean that by which our needy neighbors are bitten, eaten away, and consumed. We have these bites and erosions described vividly in Mic. 3:3: "They eat My people's flesh and flay their skin from off them and break their bones in pieces and chop them up like meats in a kettle, like flesh in a caldron." Next, it is called מַשֶּׁה, from the root נָשָׁה (he gave at interest, he gave a loan), as is evident when it is placed with ב (Deut. 24:10). The same root in Ezek. 39:26 means "he carried," "he bore," so that we finally take that forbidden usury to mean that by which our neighbor is burdened or weighed down, something that surely does not happen in the annual interest payments that we demand from businessmen and from those who make a great profit with our money because of the use thereof. Elsewhere, however, these words may refer to usury: מַרְבִּית and תַּרְבִּית, from the root רָבָה, which in general means "multiplication" and "abundance." In the Targum it is ריבית, from which we have today the *ribim* of the Jews (Deut. 23:21; Prov. 28:8; Ezek. 18:8). In the Chaldean it is חבוּל (interest), from the root*** חִבֵּל (it produced, it gave birth), just as *τόκος* is from *τίκτω*, because money produces money (Exod. 22:25). From this some draw the conclusion that all of that which is taken beyond the capital amount in any lending or letting out of money is forbidden under the name of usury. Nevertheless, from the rest of the expressions and from the following foundations of this limitation, it is obvious that the only thing forbidden is the superabundance by which the needy are drained, weighed down, and burdened.

§ 242. (2) We prove it from the determination of the object, for in very many passages that prohibit usury mention is made of the poor and needy from whom we must exact nothing beyond the principal for the service of lending. Exod. 22:25: "If you lend money to any of My people with you who is poor you shall not be to him like a creditor." In this verse "poor" is הֶעָנִי (afflicted, oppressed, of more tenuous and afflicted fortune), where we should note that the ה functions as a kind of determinative. Luther translates בְּנֹשֶׁה as "you should not press him to misfortune," that is, you shall not be too rigid a collector, so that with great harm to him he is forced to return the exact amount borrowed at the appointed time. Verse 25 concludes: "You shall not exact from him interest" (נֶשֶׁךְ, biting and gnawing). Lev. 25:35: "When your brother becomes poor." The word "poor" in Hebrew is מוֹךְ (knocked down, cast down, reduced to need). Here the Targum has יִתְמַסְכַּן (has become a pauper). Verse 35 continues: "and cannot maintain himself with you." The Hebrew for "cannot maintain himself" is מוֹט (he has been moved from his place, has staggered, has been subverted). The Targum has וּתְנוּט, "his hand has been moved with you," that is, if he reaches out his hand that you may grasp it and he may receive your help. Luther renders it: "When your brother has become impoverished and is carried down beside you." The Septuagint translators have *ἐὰν πένηται ὁ ἀδελφός σου ὁ μετὰ σοῦ καὶ ἀδυνατήσῃ ταῖς χερσὶ παρὰ σοί*, "If his hands have become weak and powerless to work," namely, to carry on business and earn a living, or *wenn er mit leerer hand kommt* (when he comes with weak hands). The verse continues: "you will maintain him, and as a stranger and sojourner he will live with you," that is, remember that you too are a stranger and pilgrim with respect to God, as v. 23 says, "for you are strangers and sojourners with Me." Luther renders this in the accusative: "You should receive him as a stranger or guest," following the Septuagint translation *ἀντιλήψῃ αἰτοῦ ὡς προσηλύτου καὶ παροίκου*. However, above the preceding בּוֹ there is the distinguished *zaqef qatan* accent that establishes a major break. Verse 36: "Take no interest from him nor increase"—מֵאִתּוֹ, when you deal with him, that is, when you deal with him through a loan, you will not take from him נֶשֶׁךְ וְתַרְבִּית—"and you shall fear your God that your brother may live with you." Verse 37: "You shall not lend him your money at interest nor give him your food for profit." From this it is crystal clear what in divine law finally is considered to be usury: what we take from a poor and needy brother, or that by which we so burden our neighbor that he no longer has the necessities for the support of this life. Therefore, although no expressed mention may be made of a pauper in the rest of the passages, nevertheless we must look for the explanation thereof from this passage as from the proper seat of doctrine and must deduce that explanation through the remaining passages of Scripture.

§ 243. (3) We prove it from the added explanation. In several passages of Holy Writ that forbid usury an immediate explanation [ἐξηγητικῶς] is added as to just what falls under the name of "usury," namely, the sort of increase and superabundance that weighs down, overburdens, oppresses, and consumes the one paying. Exod. 22:21: "You shall not rob a stranger," or "you will not bring force upon a stranger"—יָנָה (afflict, oppress, steal from). Verse 25: "If you lend money to any of My people with you who is poor, you shall not be to him as a creditor and you shall not exact interest from him" (as some burden that oppresses and weighs him down). Lev. 25:36: "You shall not take from a brother interest and increase," which Luther translates as *Uebersatz* (overpay). Ps. 109:11: "May the creditor seize all that he has." Some derive יְנַקֵּשׁ (seize) from יָקַשׁ (he entrapped, caught), some from וָקַשׁ (he struck, he knocked down). The Targum has יְגַבֵּב (he hinders). The Septuagint translates it ἐξερευνησάτω (let him search), which they get from יְבַקֵּשׁ because of the similarity of the letters ב and נ. Luther has: "The usurer must suck up all that he has." Ezek. 18:8: "A man who has not loaned at interest"—Luther translates it as "who overcharges no one"—"nor has taken any increase, who has withheld his hand from iniquity, he will surely live." Ezek. 22:12: "You take interest and increase and make gain of your neighbor by extortion." In these and similar passages usury is described as oppression, burdening, the diminution of a neighbor's resources, which description does not fit those annual assessments about which we are speaking here.

§ 244. (4) We prove it from the condition of natural equity and mutual love. The sum of the entire Second Table of the Law is set forth in Christ's genuine words: "Whatever you wish people to do to you, do so to them. This is the Law and the prophets" (Matt. 7:12). For the sum of the entire Second Table of all the commandments is love of one's neighbor. "Love is the fulfilling of the Law" (Rom. 13:10). "He who loves his neighbor has fulfilled the Law. The commandments 'You shall not commit adultery, you shall not kill, you shall not steal, you shall not covet,' and any other commandment are summed up in this sentence: 'You will love your neighbor as yourself'" (Rom. 13:8–9). Christ teaches the same thing in Matt. 22:39. We have already pointed out earlier, however, that it is by no means opposed to natural equity or Christian love if in some certain cases we demand from those who make a great profit with our money some interest payment, moderate and defined by law, for the use of that money. The prohibition of usury, therefore, as that is set forth in God's law is something we must explain according to this norm of equity and love, that it may not upset that prohibition but stabilize it. Nor is it true what is directed against this, namely, that just as we should not follow in an article of faith the dictates of human reason but the clear word of divine revelation (2 Cor. 10:5), and just as we should not in our divine

worship add to or take away from God's Word according to our will but simply cling to the Word (Deut. 4:9; Num. 15:39; Is. 29:13; Matt. 15:9), so also in the prohibitory mandates opposed to usury we must not listen to what our reason judges is in harmony with natural equity and Christian love but must cling to the clear letter that forbids absolutely every increase and every overcharge. You see, there is an obvious difference between articles of faith that exceed every grasp of human wisdom, because they are untouchable mysteries [ἀκατάληπτα μυστήρια], and contracts related to human and civil life. We can pass judgment according to the light of nature when Christ Himself leads us down to the rule of natural right inscribed and carved into all people's minds and allows us to pass judgment on such contracts according to that rule. Similarly, there is a great difference between the love of God and divine worship prescribed in the First Table of the Law and the love of neighbor mandated in the Second Table. The norm of the love of God and respect owed to God cannot be sought from the light of nature, but one can pass judgment about the love of neighbor from natural equity. But if in those prohibitions of usury someone should wish to cling simply to the letter and to infer from it that in absolutely no case was it licit to demand some interest because of the use of money loaned and that everything taken beyond the principal, even if the neighbor is not burdened, comes under the name of forbidden usury; he is compelled to elicit by the same logic from the prohibition against lying that in absolutely no case is it lawful to speak otherwise than the situation actually is and that everything that does not agree in speech with the actual situation, even if it does not harm or deceive our neighbor, comes under the name of forbidden lying, something that Chemnitz and other theologians do not concede. Therefore, we must not infer from those passages that in general prohibit lying that absolutely everything comes under the name of lying which in speech does not agree with the actual situation. Rather, we must necessarily add to the definition of lying from the norm of love, which is the end of the Law, that what finally is a forbidden lie "is something false is held out with the intent or will to deceive," as Chemnitz teaches, *Loci*, part 2, c. *de lege Dei*, in his explanation of the Eighth Commandment, p. 235.[42] In the same way we cannot and should not infer from those passages which in general forbid usury that we must consider everything usury that is taken beyond the principal in the use of money granted to someone else. Rather we must necessarily add to the definition of usury, from the same norm of love and equity, that what ultimately is the forbidden usury is when something is taken above and beyond the principal to the detriment and oppression of a neighbor.

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42 Chemnitz, *Locorum theologicorum … pars secunda*, 235.

§ 245. (5) We prove it from the logic of parity. It is not uncommon in Scripture for something to be absolutely and simply commanded or forbidden in one passage, to which we nevertheless must add some restriction from other passages of Scripture. For instance, in Luke 6:30 Christ commands in general: "Give to everyone who begs from you." Yet we must take this with a certain limitation: "give to everyone who begs, namely, to the needy; give in proportion to the amount of your resources," etc. If anyone wants to understand Christ's command here so nakedly and crudely that we must give something to everyone at all who begs of us, regardless of what his or our condition may finally be, he will very badly abuse Christ's command, just as the Gnostics used to do when they would ask a neighbor's wife to commit adultery and say: "It is written: 'Give to everyone who begs.'" That we may come closer to our intent, however, we cite the passage Ezek. 18:8, where amid the description of the godly, just, and God-pleasing man this too is related among other things: "that he restore his pledge to his neighbor." We cannot, however, take this simply and absolutely in the sense that it is by no means lawful to take a pledge from a neighbor, but rather according to the explanation given in divine law we must understand this as a reference to the sort of pledge that a needy neighbor cannot do without. "If you ever take your neighbor's garment in pledge, you will restore it to him before the sun goes down, for that is his only covering. It is the mantle for his body in which he must sleep" (Exod. 22:26–27). "You will not take a widow's garment in pledge" (Deut. 24:17). We must take in the same sense the prohibition of usury as a reference to the sort of abundant increase that one exacts and demands to the loss and oppression of the needy.

§ 246. These are the principal bases by which we prove that we must not limit the command to not take interest to a definite reckoning nor relate it absolutely and simply to whatever interest is charged in a contract to loan money. Some add other bases that are not of the same force or importance.

(1) There is someone who from Gen. 47:24 weaves this kind of argument:

> Just as the fields of the Egyptians belonged to Pharaoh but he by right demanded a fifth of the produce, so it is not unfair if we take five a year for the use of five times ten florins, for that is the taking of a fifth part of the produce. Therefore, that contract by which five florins are given annually for a hundred is not foreign to godliness nor does it depend on an imperial constitution alone but has an example in Holy Writ and must be separated from the usurial arts.

But in order that we may pass over the reasons for the difference, of which many can be noted, we note that from this construction someone would be able to conclude that if it is lawful to take five florins annually for the use of five times ten, surely for the use of ten times ten, or a hundred, it will be lawful to take ten, something that is censured as usurious in a contract for the taking of returns.

§ 247. (2) Some cite the divine law, Deut. 23:20: "To a foreigner you may lend upon interest, but to your brother you shall not lend upon interest." From this they draw the conclusion that we should not take the prohibition of usury simply and absolutely but with some definite limitation and restriction, namely, that we not exact interest to the harm and oppression of our neighbor. They believe that this limitation is added in Exod. 22:21: "You shall not wrong a stranger nor oppress him, for you were strangers in the land of Egypt."

We respond to this argument, however, in various ways. Jerome, in his commentary on Ezek. 18, responds by means of a distinction of times: "In the beginning of the Law, lending money at interest was abolished among brothers; at the time of the prophets usury was forbidden to all. In the time of the Gospel the Lord commands an increase of virtue: 'Lend to those from whom you do not hope for a return.'"[43] That hypothesis, however, is repugnant to the perfection of God's Law. In *Loci*, part 2, p. 434, Chemnitz distinguishes, on the basis of Gerson,[44] between civil and theological permission and also between secular and canon law. He says:

> In the Old Testament Moses was both a lawgiver and a theologian, for in one place he teaches how we must serve God with righteousness and saintliness, but in another place he prescribes to his people some definite political constitutions for the external fellowship of civil life in the country of the Israelites. That is, he deals with civil and canon law. He arranges a political forum and a forum of conscience. Moreover, in the political laws that God gave the people of Israel, righteousness and saintliness are not always prescribed before God

43 Jerome, *Commentary on Ezekiel* 6.18 (PL 176C).

44 I.e., Jean Gerson.

> but have been accommodated to the preservation of external and civil society in that state in proportion to the condition and temper of the people to whom God Himself attributed the epithet "stiff-necked." Therefore, because God was prescribing civil laws to the political magistrate—laws with which they would punish civilly the people's faults—He saw that it could not happen that the unrestrained wickedness of people was completely restrained through political punishments by civil laws. Therefore, in order that worse evils might be avoided in the civil society of that people and that usury might not be demanded in the case of those who were of the household of faith, He did not approve it but permitted it to be tolerated for this civil and political purpose, that they not be punished by the civil magistrate, etc. In this way usury is forbidden in the Old Testament civilly but is condemned theologically in conscience before God.[45]

Others respond in this way: "Usury toward strangers is neither commanded nor permitted here; but because Scripture wants us to acknowledge all people as neighbors, the meaning is that, against whomever you exercise usury, you treat him as an enemy but not as a brother and neighbor." In his book against the Jews Luther responds:

> There are two kinds of Jews. Some are the Jews of Moses, that is, those whom God through Moses led out of Egypt into the land of Canaan and to whom He gave the law to be kept in that land until the Messiah came. Some, however, are the Jews of Caesar not of Moses, namely, those whose ancestors said before Pilate: "We have no king but Caesar." This law does not belong to them; but if they wish to use and enjoy it, they must return to the land of Canaan.[46]

Anton Margaritha, in his book on the faith and religion of the Jews, responds: "In divine law it has always been permitted to lend money at interest to a stranger 'if you walk in My commandments.'"[47] In Deut. 28:43 the adversative is added: "If you do not walk in My commandments, the sojourner will lend to you." But now, today's Jews do not walk in the rest of God's commandments. They therefore should not enjoy the benefits of this law about usury. Hotman, *De usuris*, bk. 2, c. 3, responds: "The Jews therefore were permitted to take interest from strangers

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45 Chemnitz, *Locorum theologicorum … pars secunda*, 434.

46 See *De statu politico*, 476–77; cf. Martin Luther, *Von den Jüden und iren Lügen* (Wittenberg: Hans Lufft, 1543), f1r–v; cf. WA 53:524–25; *On the Jews and Their Lies*, trans. Martin H. Bertram, in *Luther's Works*, vol. 47, ed. Franklin Sherman (Philadelphia: Fortress, 1971), 271.

47 See *De statu politico*, 476; cf. Anton Margaritha, *Der gantz Judisch Glaub* (Frankfurt am Main, 1561), J4r–v.

because they, too, did not have money loaned them freely by the Canaanites but used to be forced to pay interest. Therefore, they were granted the same thing by the law of retaliation."[48] Hunnius, commentary on 2 Cor. 8, distinguishes among strangers. He says:

> The fact that the Israelites once were conceded usury to strangers must not be taken indifferently as an indulgence over against some outside peoples but as a reference to those in whose midst the Israelites were living, such as the Canaanite tribes. Because these otherwise were destined by God's judgment to destruction because of the abominations which they had committed in their land, and because all their resources along with all that religion was directed by force of God's oath to God's people, and because the Canaanites could not be exterminated or driven out at one and the same time; God therefore granted among the remaining means also this to the Israelites: that they transfer to themselves those possessions which otherwise had been decreed to them by this intervening means from the Canaanites as hostile and unjust possessors. We cannot take this situation as an example today, nor should we, because of a reckoning of difference.[49]

This response fits that which Ambrose gives in his book on Tobit, c. 15, p. 348:

> Who at that time was a foreigner except Amalek, except Amoraeus, except the enemies? Here, He says, demand interest. You are lawful in demanding usury from him whom you deservedly wish to harm, against whom you have a right to bear arms. You will be able to avenge yourself a hundred times against him whom you cannot easily defeat in warfare. Exact interest from him whom it is not a crime to kill. He who demands interest fights without a sword. He avenges himself upon his enemy without a weapon if he is the moneylender and usurer of his foe. Therefore, where the right of warfare exists, there also is the right of usury.[50]

Whatever they may bring up in reference to this passage, about which we shall say more later, we say there is very little strength therein to establish those annual interest payments.

§ 248. (3) Petrus a Well, in his treatise on usury, c. 4, fac. b, published at Cologne, cites Christ's parable in Matt. 25:26, where the master says to the servant

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48 See *De statu politico*, 476; cf. François Hotman, *De usuris libri duo* (Lyon: Jean Frellon, 1551).

49 Hunnius, *Commentarius*, in *Tomus quartus operum Latinorum*, 340.

50 Ambrose, *On Tobit* 15 (PL 14:779B–C).

who had buried his talent in the ground: "You wicked and slothful servant, you ought to have invested my money with the bankers and, at my coming, I should have received what was my own with interest." From this he concludes that not all interest was simply forbidden.[51]

In addition to the fact that we do not draw firm arguments from parables and similes, however, we can respond readily that we must distinguish between a thing and the mode of a thing. Christ does not approve of the practice of usury by which the greedy increase their money and resources; rather, he proposes that we should imitate the profit and increase of money in our spiritual affairs. He also looks uniquely to this, that we should engage in church business and profit with the treasure of God's Word and of the spiritual gifts that He has entrusted to us, just as in Luke 16:8. He by no means recommends to us deceitful thefts but prudence in stewardship, which He sets before our eyes that we may imitate it in spiritual matters. Christ is not approving the usury forbidden in God's Law but assumes that the common way of making a profit that we see today in which money is used for carrying on business and commerce is known to all, and He explains this for His own purpose. Chrysostom, homily 41, on Genesis, says:

> See the mercy of God! In these worldly monies He forbids anyone to take interest. Why and for what reason? Because both parties suffer great loss. The debtor is eroded by poverty; and, as the creditor increases his wealth, he amasses a multitude of sins for himself, etc. Moreover, in spiritual matters He promises that He will ask for interest in return. Why? Because spiritual and temporal usury behave in a completely different way. In the former case, he from whom it is required severely is brought down into extreme need. In the latter case, when he from whom it is demanded shows gratitude, then the greater interest he pays, the greater repayment the other enjoys.[52]

§ 249. We therefore are content with the foundations cited above in favor of our opinion and with that general response that the Old Testament statements that prohibit usury are speaking of the service of lending freely to the needy so that one demands of them nothing beyond the principal to their harm and oppression. In place of a summary we add that even if one were able to make the point that those Old Testament statements that condemn usury are clearly general and must

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51 Petrus á Vuell (a Well), *De usuris tractatus utilissimus* (Cologne: Arnold Birckman, 1564).

52 Chrysostom, *Homilies on Genesis* 41.2. Gerhard quotes Chrysostom in Latin. See J.-P. Migne, ed., *Patrologiae cursus completus: Series graeca*, 161 vols. (Paris: Migne, 1857–1866), 53:375–77.

be taken in the sense that we must take back nothing beyond the capital amount in absolutely any case from those who gain much and profit significantly with our money, something that has not yet been evinced and proved; nevertheless in those laws we must draw a careful distinction between the moral and the forensic or judicial law. The moral law or law of character is related to the people of both Old and New Testaments. Because the forensic or judicial law is special, it involves only the Jewish state. The moral law, in contracts and commercial ventures, in buying, selling, and loaning, pertains to guarding against greediness [πλεονεξίαν], unfairness, and illicit usury. This binds us also today in the New Testament. It would be forensic or judicial that from money given out on loan we should take nothing beyond the capital from our neighbor. Because this looks only to the Jewish polity, it would no longer bind us in the New Testament. If we consider the circumstances carefully, however, there will appear a clear distinction between the Mosaic political constitution and ours. A special law forbade the Jews to sell their property at any time. Lev. 25:10 and 15: "And you shall hallow the fiftieth year and proclaim liberty throughout the land to all its inhabitants; it will be a jubilee for you when each of you will return to his property and each of you will return to his family. According to the number of years after the jubilee you will buy from your neighbor, and according to the number of years for crops he will sell to you." As a result, the buyer was not the hereditary and permanent possessor of estates and farms, for instance, of croplands, vineyards, etc., but only the usufructuary, because he would receive only the produce of the purchased item up to the year of the jubilee when those real estate properties would return to the original owner without any restitution of price. In addition, there was some other constitution about debts to be forgiven a brother in any seventh year, Deut. 15:1–4: "At the end of every seven years you shall grant a release. And this is the manner of the release. Every creditor will release what he has lent to his neighbor. He will not charge it to his neighbor, his brother, because the Lord's release has been proclaimed. Of a foreigner you may exact it, but whatever of yours is with your brother, your hand will release. But there will be no poor beggar among you." If the Jews had been allowed to exact from a brother an annual interest payment because of money given in loan, however, for the six prior years, they would have demanded such great and immoderate interest payments that they would have reached the capital amount in the seventh year, and a remission of debt would have been made without any alleviation of the needy brother. By this reckoning the Lawgiver would never have reached the goal of this constitution of His, namely, that there be no beggar in Israel. With like logic, if the Jews had been permitted to receive an annual interest payment from loaned money, that prior disposition about returning possessions in the year

of the jubilee to the owner who had sold them earlier without any restitution of price could have had absolutely no place nor effect. For anyone would rather have given his neighbor money under interest than to have purchased his farms, which he indeed could not have possessed forever as an inheritance because of the clear prohibition of the law. In fact, he was to a great degree doubtful about receiving the produce in the meantime. Consequently, lest the greed of the Jews circumvent the divine constitutions about restoring farms to the seller in the year of the jubilee and remitting debts in the sabbatical year, it seems they are absolutely and simply forbidden from demanding from a brother, that is, from an Israelite, an annual interest payment for giving out money in loan. In turn, however, lest one think that all people are forbidden morally and generally, they were therefore permitted to demand from strangers annual money payments. On this basis we can deduce a connection of those laws that at first glance appear to be opposed to each other. Deut. 23:20: "To a foreigner you will lend upon interest [תַּשִׁיךְ לַנָּכְרִי], but to your brother you will not lend upon interest." Exod. 22:21: "You will not wrong a stranger [תוֹנֶה לֹא גֵּר], nor will you oppress him." Some think that under the first law it was permitted to receive modest interest from a stranger and foreigner, but that the latter forbade immoderate, illicit, and unjust usury from the same. However, because we also have in the first law the verb נָשַׁךְ, which means to gnaw and chew away at a neighbor with interest, we are therefore more correct in looking for a reckoning of difference from the object of the prohibition. In the Scriptures they are called נָכְרִים (strangers and gentiles) (Judg. 19:12), whom the apostle describes in this way: "alienated from the commonwealth of Israel [ἀπηλλοτριωμένοι τῆς πολιτείας τοῦ Ἰσραήλ]" (Eph. 2:12). They are called גֵּרִים (proselytes), who indeed were going to rise from the gentiles but meanwhile would embrace the Israelite religion (Exod. 12:49; Deut. 14:21, 29). Some of them were living in the midst of the Israelites, and they were called "proselytes of the gate." Some however were in regions scattered here and there and would come to Jerusalem each year for the more solemn festivals (Acts 2:5 and 8:27). The Jews therefore were permitted to lend money at interest to a foreigner but meanwhile were forbidden to wrong or oppress a stranger. That is, they were allowed to suck out and drain foreigners with interest for the reason explained above, namely, because they were devoted to destruction. The Jews were forbidden, however, to demand interest from a stranger descended from the gentiles but who meanwhile had embraced the Jews' religion. You see, that law about not exacting usury from a brother is general and concerns not just those who by reason of origin were brothers but also those who were brothers by the profession of the same religion.

§ 250. Therefore, even if we were to concede from the hypothesis that just and moderate interest rates were forbidden to the Israelites—that is, that they were not allowed to demand from a brother an annual interest payment for the use of the money they had loaned—yet we must distinguish in that prohibition the forensic and judicial from the moral, something we prove by this logic. Whatever was forbidden to the people of Israel, although it nevertheless may not in and of itself conflict with natural equity and brotherly love, does not relate to the moral law by which all people, even in the New Testament, are bound but to the forensic and judicial law that obligated only the Israelites. And yet, in some definite cases it is not opposed to natural equity and brotherly love to take from a neighbor an annual interest for money one has loaned to him, as we proved above. Therefore, even if the Israelites had been forbidden, there still would have been a special forensic edict [διάταγμα] but not a particular moral law. Chemnitz claims, *Loci*, part 2, c. *De imaginibus*, p. 105, that "the commandment to not have nor make images is partly moral and partly ceremonial."[53] It is moral because images are forbidden universally that obviously bring with them an ethnic superstition and manifest ungodliness that are opposed to God's Word. Also forbidden are whatever images that offer themselves for worship and adoration because it is forbidden to worship and bow down before graven images, that is, to consider them as God or to attribute to them the worship due to God alone, etc. It is ceremonial because God, on account of the proclivity of the Israelites to idolatry, absolutely forbade them to make and use any images whatsoever and forbade that they be brought into the temple. The moral pertains to all people, the ceremonial only to the Jews. The moral involves the Old and New Testaments, the ceremonial only the Old. In the same way and by the same right we could say that even if the commands about usury forbid every annual interest payment given for the use of money, that still is partly moral and partly civil. It is moral in the sense that we should not burden, weigh down, and oppress a neighbor in demanding and taking those interest payments. It is civil in the sense that we not take something from a neighbor in place of interest for borrowed money. The former is general and obligates all people; the latter, however, is special and refers only to the Israelites to whom this had been forbidden because of their proclivity to greed, deceit, and the oppression of their neighbors, just as we have it in the law of lending in reference to remitting debts to a neighbor every seven years (Deut. 15:2). We must distinguish the civil law from the moral. It is civil because absolutely all things had to be remitted to a brother, and that pertained only to the Israelites' political administration. It is moral because by reason of a neighbor's indigence

53 Chemnitz, *Locorum theologicorum … pars secunda*, 105.

lending should be free, and because a debt must be forgiven to a neighbor if he be reduced to poverty on account of his own deserts.

Second, on the basis of Christ's statement in Luke 6:35.

§ 251. We had to say these things about the divine laws in the Old Testament that simply and absolutely forbid usury. These are the laws that those who completely condemn annual interest payments granted under imperial law always urge in the first place.

(II) They cite Christ's statement in Luke 6:35: "Do good and lend, expecting nothing in return [ἀγαθοποεῖτε και δανείζετε μηδὲ ἀπελπίζοντες]." From this they believe they can conclude demonstratively that we must demand of a neighbor nothing beyond the principal in the service of lending.

We respond briefly, however, that from the entire series and context of the passage it is clear that Christ is speaking about loaning alms [*de mutuo eleemosynario*] and thus is by no means removing civil contracts that are congruent with civil law, something we must prove from an analysis of the text. In Luke's Gospel, 6:33–35, Christ's words are as follows: "If you do good to those who do good to you, what credit is that to you? For even sinners do the same. And if you lend to those from whom you hope to receive, what credit is that to you? Even sinners lend to sinners to receive as much again [ἵνα ἀπολάβωσιν τὰ ἴσα]. But love your enemies and do good and lend, expecting nothing in return; and your reward will be great." On the basis of the antithesis, it becomes clearer than the sun that Christ certainly is not speaking about official lending in which one gives his neighbor a certain sum of money under this law and condition that at the appointed time he repay the same and thus an equal amount [τὰ ἴσα]. Rather, He is speaking about loaning alms [*de mutuo eleemosynario*] in which an actual sum is given to a needy neighbor so that he clearly returns nothing to the creditor who paid out the money to his neighbor. For He says in reference to sinners that they practice an official lending, that is, they give a loan to those from whom they expect to be repaid. He demands, however, a higher level of kindness and love from the godly and Christian and commands that they give a loan even to those from whom they cannot hope for anything, that is, when they have doubts about the principal and there is danger that they will be forced to do without the amount loaned forever. Matthew describes the same sermon of Christ in this way in words just a little different: "If anyone strikes you on the right cheek, turn to him the other also; and if anyone would sue you and take your coat, let him have your cloak as well; and if anyone forces you to go one mile, go with him two miles. Give to him who begs from you, and do not

refuse him who would borrow from you" (5:39–42). Here, on the basis of the preceding verses, we draw the obvious conclusion that Christ is speaking about a loan not simply [ἁπλως] and absolutely but in compound [συγκριτικώς] and comparatively. For this meaning is revealed in the preceding mandates: that it is better for someone to turn and allow another to strike his other cheek than to exercise private vengeance and strike back, that it is more excellent for someone to let another have his cloak along with his coat than for someone to go to court with another because of his eagerness for strife, and that it is better for someone to go two miles in the favor of his enemy and thus double his service than to be lacking in his responsibility to love and simply refuse the request to go one mile. In the same way, that last part must not be taken absolutely but comparatively, namely, that it is more excellent to give a loan to the poor in the common life in such a way that you not only take nothing beyond the principal, but also that you rather allow the loan to be endangered by evils if the situation demands it than deprive a brother who needs this service from you. See the judgment of the law faculty at Tübingen in the controversy at Regensburg over usury; and Hunnius, commentary on 2 Cor. 8.[54]

§ 252. You say: "But if the Christian is bound by the force and vigor of this command to the loaning of alms [*mutuum eleemosynarium*], that is, to give by loan even to those from whom he cannot hope that the principal amount will be repaid, all the more will he have been bound to free loaning, that is, to loan out and demand or take nothing beyond the principal amount."

We respond. From those points that we brought out earlier, it is clearly evident that we must not take this mandate to mean every kind of person absolutely and simply, as if we have to give to everyone without any distinction, but only to mean two types of people. The first type are those who are already poor and, indeed, so poor that they are not able to return the principal itself without great loss to themselves. We must not deny these the service of lending under this pretext. The second type are those who at the time they ask us for a loan enjoy that condition of resources that they can pay back the principal, but afterwards are reduced by fires, shipwreck, illnesses, or other misfortunes to that level of poverty that they cannot repay the principal without great loss. Here Christ's command certainly should have a place: "Lend, expecting nothing in return." Worldly people, or,

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[54] *Decanus* und *Doctores* der Juristen Facultet hoher Schul zu Tübingen, *Christlich Bedencken der Juristen Facultet zu Tübingen*, in Jakob Andreae, *Abfertigung des ungegründten Gegenberichts der zu Regenspurg* (Tübingen: Georg Gruppenbach, 1589), 127–72; Hunnius, *Commentarius*, in *Tomus quartus operum Latinorum*, 340–41; cf. *De statu politico*, 477.

as Christ says here, "sinners," who are about to loan money at interest are very careful not to loan money to those who endanger the capital even though they may have a special need for such a service. The Christian should always be quick, however, to this service of lending, and even if the principal is exceedingly endangered, he should commit the matter to God and should consequently not become too anxious. Instead, he should prefer to undergo that peril rather than deny his needy neighbor that service of lending. We must have constant respect, therefore, for the condition of the persons who ask us for the service of a loan. If they are quite wealthy and are asking us to loan them money that they may engage in business, make profits, buy farms, and make their situation more wealthy, we can exact from them something beyond the principal amount and establish a sharing in the profits. But to those whose fortunes are very slim, not only must we loan without interest but also forgive the actual principal if the situation demands.

§ 253. That this entire business may be more clear and obvious, we can for the sake of explanation set up four kinds of loans (if we take this word quite loosely). The first is the alms loan [*mutuum eleemosynarium*], when both the principal and interest are forgiven. The second is the free loan [*mutuum gratuitum*], which we can also call a "service loan" [*officiosum*], when someone takes back the principal without interest. The third is the compensatory loan [*mutuum compensatorium*], which the lawyers call a "loan with a stipulation" [*mutuum cum stipulatione*], when for money loaned we demand in addition to the principal amount also some annual payment of interest from our neighbor. The fourth is the usurious loan [*mutuum usurarium*], which is obviously when we demand illicit and immoderate interest that is forbidden by both divine and human laws, and that weighs down, burdens, and drains our neighbor of his resources. The first two kinds are special works of love and mercy we owe our neighbor. The third kind is a lawful contract, provided we observe the conditions set out earlier. The fourth kind is the usury that the laws condemn.

Third, on the basis of reason. From the obligation of the natural law.

§ 254. (III) They produce some rationalizations by which they believe they can make the point that, because of the use of money loaned to a neighbor, one must not exact some interest payment from him.

(1) "The natural law and equity demand that in contracts established among people we preserve equality lest one party become enriched at the expense of another. We do not preserve equality, however, when the creditor not only takes

back the capital amount but also exacts something in excess because of that. That therefore conflicts with the natural law and equity."

We respond through inversion. Because the natural law and equity require equality and contracts and because it would be unfair if one party were enriched at the expense of another, one can demand some compensation from he who with our money engages in business, profits, and increases his wealth. Otherwise the gain resulting from the use of money would return to him alone, something that we ourselves could have accomplished by the same logic and yet in the meantime we are forced to do without. It would be unfair if the creditor were to exact anything beyond the principal from an indigent person who asked for money not to make a profit but to ease his poverty. This, too, would be unfair, however, if the debtor, greatly enriched by the money he had taken from his creditor, were unwilling to declare that he was grateful to and mindful of his benefactor. We can pass judgment about this entire argument from what we have said above.

From the condition of the loan.

(2) "A loan is of itself and by its nature free. But now, we owe the service of lending by natural law to our neighbor. Natural law, therefore, also binds us to lend our neighbor money without any compensation."

We respond. Just as we owe the alms loan [*eleemosynarium*], so also we owe the free loan [*gratuitum*] to our neighbor by the law of nature, but not to absolutely all people but only to those who ask us for this humanitarian service to alleviate their poverty. As for the rich who ask us for money to be used and enjoyed for business and profits, we can deal with them through another contract that we earlier called the compensatory loan [*mutuum compensatorium*], although we readily admit that some judge the word *loan* in this contract quite unsuitable and prefer to call it a contract for putting out money on loan [*contractum elocationis*]. Well, whatever it may be, when we agree here about the matter itself we can deal with names without difficulty.

From the denial of money's fruitfulness.

(3) "Money is a thing sterile by its own nature and does not produce fruit. Even if you were to keep a thousand dollars in a safe for a hundred years, they would not be able to produce even one more. But now, demanding fruit from a thing barren by its own nature is contrary to natural law. Therefore, one cannot establish annual interest payments on money loaned to another. Fields, vineyards, and gardens produce very rich fruits, when God's blessings come upon them

(Gen. 26:12; Matt. 13:23). For these, therefore, they can loan through interest contracts. There is, however, a different reckoning for money."

We respond. We must distinguish between the money itself and the use of money in business and commerce. Money itself produces no fruits of itself, immediately and outside its use in business, but by means of its use in civil society it can produce a very rich fruit. At the cost of a hundred florins borrowed from another source, a merchant can make such a profit by engaging in business that that profit almost equals the principal amount. Whoever uses money received from elsewhere to purchase fields, vineyards, and farms realizes very bountiful fruits from them that he would be forced to do without had his neighbor not loaned him that money. Many people would be compelled to sell their estates and farms because of the debt by which they are being oppressed were they not to make a loan and satisfy their creditor with money received on loan. With regard to them, money is not a sterile thing but causes them to be able to realize the returns of their estates. We also see this similarity to a field: unless seed is sown and people tend it, the field of itself and absolutely by no means produces useful fruits. If the field receives the efforts of oxen and people's cultivation, however, and especially if it is touched by God's blessing, it produces very rich fruits. Yet we find no one who denies that one can realize annual returns from the letting out of a field. Finally, we must distinguish between natural and civil fruits. Money does not produce natural fruits the way fields, vineyards, and the like do. Nonetheless, it does produce civil fruits in business and commerce as experience proves absolutely clearly.

From the invention of the coin.

(4) "The coin was invented not to be merchandise but the means of acquisition and the price of merchandise. Therefore, to sell or place out money as merchandise (as happens in usury) is contrary to the nature of the invented coin."

We respond. Money is not merely the means of necessary exchange by which the needy person can get food, drink, clothing, and the other things necessary to sustain life, but it is also the means of profitable business by which the rich man can engage in business, buy real estate, and enrich his own situation. But now, those interest payments we are discussing here are exacted not by reason of the former use but by reason of the latter. We must also distinguish between the primary purpose of the invention of the coin, which we admit is that expressed in the argument, and the secondary use of it in business, commerce, and contracts.

From the selling of money for use.

(5) "In whatever things in which the use is the actual consumption, we do not separate use from the ownership of the thing itself, just as wine and the use of wine are not sold separately. In the case of loaned money, however, use is separated out for sale. It is unfair, therefore, that the use of money be sold, as happens in a loan, beyond the repayment of the principal."

We respond. We must distinguish between the use of money and the advantage gained by use. Money indeed is consumed by use but the advantage gained by use endures. When a creditor loans money to a debtor, he provides him with two blessings: first, he grants him ownership and the property of that money; and second, he hands over the right to use and enjoy it as he will in business and commerce. Consequently, because the debtor can acquire his own advantages, and these very broad, with respect to the latter benefit, it is fair that he should be thankful to his creditor. Experience shows that the use of money is not consumption in the same way as wine, grain, and other fungibles, but that beyond the sale of the principal the use of money itself has a utility suited to people's uses. Therefore, the principal itself is not sold twice, but a real utility, the utility the creditor does not have but the debtor does, as in the renting of a house. You see, the use of money does not consist narrowly in selling or spending it, but in the use of the things which it can gain or acquire, or which for this reason are preserved that otherwise would be divided up for sale. This response is one that Chemnitz does not disapprove in *Loci*, part 2, p. 439.[55]

From the term *loan*.

(6) "*Loan* [*mutuum*] is so called from the fact that yours [*tuum*] is made from mine [*meum*]. However, just as it is unfair for me to sell to you what is yours, so it unfair to exact anything for the use of money that has already become someone else's."

The response is clear from what we have already said. There are two uses of money, necessary and profitable. The necessary use of money is related to the needy who alleviate their extreme need by money loaned to them. The profitable use is related to the quite wealthy who carry on business and make profits with money taken in loan. We must believe that it is not unjust to take part of the profit from these people.

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[55] Chemnitz, *Locorum theologicorum … pars secunda*, 439.

From the effect of harm in the state.

(7) "Experience proves that those annual interest payments drain debtors but enrich creditors. Also because of them the respectable arts and the necessities of life are neglected. This means for gaining wealth is preferred as safer and easier than the other more difficult means, and from this great harm threatens the state."

We respond. We must distinguish the accidental abuse from the contract itself, which is in and of itself permitted. Usurious corruption that adheres to a contract does not remove the justice and equity of the contract itself. If the conditions set forth earlier are observed, no one will have to fear any danger from them, and the godly Christian magistrate will place a definite limit on those payments to this end, that they not grow into illicit usuries and destroy justice, which is the support of commonwealths.

Fourth, on the basis of canon law.

§255. (IV) They cite the disposition of canon law, which absolutely and simply condemns all usury.

We respond. We must take this as a reference to illicit and immoderate interests and not to contracts in harmony with natural, common, and civil law, as Gerson prudently warns: "We should not easily declare usurious a contract in which we see ordinary equality."[56] For in canon law not only is one permitted to exact that which is interest because of a delay in repayment (c. *pervenit. de fidejussoribus*)[57]—which certainly is a long way from that moderate interest which we are now discussing—but also certain cases are cited in which one is permitted to receive from his debtor something above and beyond the principal amount as, for instance, when because of an unpaid dowry a son-in-law is permitted by his father-in-law to take from that which has been pledged to him the produce in addition to the principal or to agree that a definite amount be given him each year as long as the dowry is not paid. This is applied also to the widow to whom the dowry is not restored after the marriage has ended (c. *salubriter, X, de usuris*);[58] and to the lord of a fief to whom the feudal property is given to use

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[56] See *De statu politico*, 477.

[57] Liber Extra 3.22.2, in Friedberg, ed., *Corpus Iuris Canonici*, vol. 2, col. 530; cf. Gloss on Liber Extra 3.22.2, in *Corpus juris canonici emendatum et notis illustratam*, 4 vols. (Rome, 1582), vol. 2, col. 1148–50.

[58] Liber Extra 5.19.16, in Friedberg, ed., *Corpus Iuris Canonici*, vol. 2, col. 815; cf. Gloss on Liber Extra 5.19.16, in *Corpus juris canonici emendatum*, vol. 2, col. 1742.

and enjoy while his money was given out on loan (c. *conquestus, de usuris*).[59] Here a gloss lists several cases in which what has been received beyond the principal cannot be called usury:

> First, if the fief from which the fruits have been realized belongs to a monastery or church; second, if real estate has been sold and handed over but payment has not yet been made, for there the fruits realized are not counted into the principal amount; third, all losses in contracts in good faith, especially because of an intervening delay; fourth, in a contract of repurchase where the buyer gets the fruits as profit; fifth, when money is given for ostentation, merchandise can be accepted; sixth, when something is set out in the name of penalty, the conventional penalty can be taken without danger to conscience and without sin but in such a way that the penalty is imposed with good intent and is moderate.[60]

But, if one is permitted to take something beyond the principal in so many cases, surely the annual interest payment of money cannot be absolutely and simply condemned as usurious and illicit. Not only that, but agreements about nautical loans [*de foenore nautico*] are approved in canon law (c. *navigantibus, X, de usuris*; and Covarrubias, bk. 3, *resol*., c. 1, no. 3),[61] and interest paid by the giver of the surety for the principal is similarly examined under the same law (c. *Constitutus, X, de fidejuss*.).[62]

Fifth, on the authority of Luther.

§ 256. (V) Finally, they urge the authority of Luther, who simply condemned those annual interest payments as usurious.

First of all, however, against the severity of his first writings we place the moderation he employed in the writing entitled *To Pastors, that They Should Preach against Usury*, German edition of Wittenberg, vol. 6, f. 325b,[63] where you will find these aphorisms: First, in certain cases we must use some mitigation

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59 Liber Extra 5.19.8, cf. Gloss on Liber Extra 5.19.8, in *Corpus juris canonici emendatum*, vol. 2, col. 1737–38.

60 Gloss on Liber Extra 5.19.8, in *Corpus juris canonici emendatum*, vol. 2, col. 1737–38.

61 Liber Extra 5.19.19, in Friedberg, ed., *Corpus Iuris Canonici*, vol. 2, col. 816; Diego de Covarubias y Leyva, *Variarum resolutionum iuridicarum ex iure Pontificio, Regio, et Caesareo libri III* (Frankfurt: Nicolas Baffei, 1573), 3.1.3 (pp. 318–22).

62 Liber Extra 3.22.3, in Friedberg, ed., *Corpus Iuris Canonici*, vol. 2, col. 530–31.

63 Luther, *An die Pfarherrn*, 325v.

of the strict law in the prohibition of usury. Second, we can concede to widows, orphans, the aged, etc., who cannot transact business, that they may receive interest payments from businessmen for loans they have made to them. He calls that contract "a little usury of need" [*ein Nothwucherlein*].[64] Third, one can consult his conscience if the magistrate has taken theologians' and lawyers' advice and is using some equity [ἐπιείκειαν] in these contracts. Fourth, we must distinguish a case of necessity from times and persons who are not subject to a necessity of this kind. Fifth, he is not excessively opposed to the idea that, for illicit and immoderate interest rates to be used, the nobleman be allowed to take four florins, the merchant eight, and the rest six. Sixth, the times now are the sort that we can earn great profits from six florins taken from the loan of a hundred gold ones. Seventh, ministers of the church should send these disputes back to lawyers and good men, etc. So much for Luther, who permits the godly Christian magistrate to judge what we must determine under the name of forbidden usury, and who correctly distinguishes between works of mercy one owes his neighbor and civil contracts permitted under the laws. See also Brenz in his German pamphlet "On Usurious Contracts;"[65] Aepinus, commentary on Ps. 15;[66] Chytraeus, commentary on Deut. 23;[67] Heerbrand and Schnepff, *Cons. Theol. Bidenb*., decad. 1, cons. 4,

64 Luther, *An die Pfarherrn*, 325v: "ein not Wuecherlin."

65 Johannes Brenz, "Von wucherlichen Contracten und Zinßgelt." See n68 below. Cf. Walther Köhler, ed., *Bibliographia Brentiana* (Berlin: C. A. Schwetschke, 1904), no. 730.

66 Johann Aepinus, *Auszlegung D. Johannis Epini vber den XV. Psalm Dauids* (Frankfurt am Main, 1543).

67 David Chytraeus, *In Deuteronomion Mosis justa enarratio* (Wittenberg: Johannes Crato, 1590), 108–9.

and decad. 6, cons. 8;[68] Hunnius, on 2 Cor. 8;[69] Gesner, on Ps. 15;[70] Hoë, in his German tract published in 1617 in Leipzig entitled *Instruction as to Whether a Christian May with Good Conscience Collect Interest*;[71] and Marbach, commentary on Ex. 22.[72] The opinion of these men conforms to ours.

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68 Gerhard is referring to two treatments of usury in Felix Bidembach's collection of moral and theological counsels, *Consiliorum theologicorum decas … Das ist, … Theologischer Bedencken, Bericht, oder Antwort, auff mancherley … zutragende Fäll, und vorfallende Fragen, oder Handlungen gerichtet, und mehrern Theils vor vielen Jaren gestellet*, 10 vols. (1605–21). The first reference ("decad. 1, cons. 4") is to Johannes Brenz, "Bedencken Iohannes Brentij, von wucherlichen Contracten und Zinßgelt," in *Consiliorum theologicorum decas I*, ed. Felix Bidembach (Frankfurt am Main: Johann Berzner, 1608), 20–22. The second reference ("decad. 6, cons. 8") is to Jacob Heerbrand and Theodore Schnepff, "Bedencken vom Wucher und Zinsen," in *Consiliorum theologicorum decas VI*, ed. Felix Bidembach (Darmstadt: Johann Börners, 1609), 65–71.

69 Hunnius, *Commentarius*, in *Tomus quartus operum Latinorum*, 338–44.

70 Salomon Gesner, *Commentationes in Psalmos Davidis, in Academia Wittebergensi publice praelectae* (Wittenberg: Clement Berger, 1605), 143–48.

71 Matthias Hoe von Hoenegg, *Christlicher und nützlicher Unterricht, ob ein Christ, ohne verletzung seines Gewissens, kein Geld auff gewöhnliche und Landübliche Zinß außleihen, noch einige Zinß darvon fordern und einnehmen könne* (Leipzig: Abraham Lamberg and Caspar Kloseman, 1616).

72 Erasmus Marbach, *Commentariorium in Pentateuchum*, vol. 1 (Strassburg: Bernhard Jobin, 1597).